BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between LABOR ASSOCIATION OF WISCONSIN, INC., AND THE EMPLOYEES OF THE STREETS, PARKS, AND WASTEWATER TREATMENT DEPARTMENTS LOCAL NO. 218 and CITY OF BURLINGTON	Case 66 No. 52254 MA-8891

Appearances:

DuRocher, Murphy, Murphy & Schroeder, S.C., Attorneys at Law, by Mr. Scott L. Schroeder, appearing on behalf of the Union.

vonBriesen & Purtell, S.C., Attorneys at Law, by Mr. James R. Korom, appearing on behalf of the City.

ARBITRATION AWARD

Pursuant to a joint request by Labor Association of Wisconsin, Inc., and The Employees of the Streets, Parks, and Wastewater Treatment Departments Local No. 218, herein "Union," and by City of Burlington, herein "City," the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on April 3 and April 4, 1995 at Burlington, Wisconsin. The hearing was transcribed. The parties completed their briefing schedule on May 31, 1995.

After considering the entire record, I issue the following decision and Award.

STIPULATED ISSUES:

> Did the City have just cause to terminate the grievant, James Fait, Sr.? If not, what is the appropriate remedy?

FACTUAL BACKGROUND:

PRIOR DISCIPLINE AND WORK HISTORY

The City hired James C. Fait, Sr., hereinafter the grievant, as a truck driver/laborer in 1973.

In 1975 the City terminated the grievant for failing to follow department policies regarding call-ins. He was returned to work through a grievance settlement prior to arbitration.

In 1983 or 1984, the grievant was selected as Working Foreman. In 1987, he was removed from this position for a number of reasons including failure to get work done, and not supervising the work crew properly.

The City selected Frank Schwartz to replace the grievant. Within a week, the grievant called Schwartz and told him "he wasn't happy about" Schwartz replacing him as a Working Foreman in a phone conversation lasting about an hour.

On November 2, 1993, the City gave the grievant a "final verbal warning" regarding "scavenging" or "scrapping," where he would remove items like copper and aluminum from the trash brought into the transfer station, taking them home to sell, earning up to $25.00 per week.

On March 1, 1994, the City gave the grievant a verbal warning regarding his conduct at the transfer station including getting into strong arguments with citizens and aldermen over the issue of scavenging and decisions that management had made. The grievant was told to alter his behavior and "turn over a new leaf immediately" as his misconduct would not be tolerated.

On July 22, 1994, the City issued a final written warning to the grievant regarding his continued "scavenging" or "scrapping." Richard Pieters, the City's Streets and Parks Superintendent, gave the grievant a direct order to sign the letter which he refused. By letter dated August 2, 1994, the grievant was given a three-day suspension for his failure to sign his written warning letter.

Grievances were filed over the written warning and three-day suspension and are currently pending before the undersigned, where they are being held in abeyance pending resolution of this matter.

DECEMBER 1994 STATEMENT

Thereafter, the grievant attempted to get an affidavit from Jim Regner, a co-worker, regarding the actions of Pieters involving his (the grievant's) pending grievances with the City. However, in early November, 1994, Regner refused to sign the affidavit "against" Pieters. The

grievant was upset and angry about Regner's decision, was "in Mr. Regner's face" about it, and told Regner "you have to live with your decision, you know what happened."

To avoid similar confrontations with the grievant, Regner asked William Weyrauch to drop him off at the City Garage before dumping the garbage truck at the transfer station. Weyrauch would then return to the garage, pick up Regner, and continue with their duties, a delay of up to ten minutes, several times per day.

The week before Christmas in 1994, Regner and Weyrauch were at the transfer station. Regner made a comment to the grievant about the taxes being really high. The grievant said in response:

> If my father was to lose his house due to high taxes, I will grab my gun and I will take care of the Mayor, City Administrator, the Superintendent and the Working Foreman. And then I will say why I did it and turn it on myself.

Weyrauch did not hear this comment.

The grievant testified that he did not intend the statement be made to anyone other than Regner. However, he also admitted he knew this remark was wrong immediately after he said it. The grievant also testified that he had no intention of carrying out the threat but acknowledged that he has ready access to both guns and ammunition sufficient to carry out his threat. He admitted that death threats were not a common part of routine work place banter among street crew employes. He verified he was aware of work place shootings in post offices and other work places, and that these matters were not proper subjects for joking among employes. When asked why he made the statement, the grievant replied: "Just made it. There was no thought, no nothing behind it; I just said it."

The grievant admitted that his father was in no danger of losing his home and that he did not know if his father's taxes had gone up. The grievant made no effort to retract, explain or apologize to anyone for this threat before January 11, 1995.

The grievant's comments created significant discussion among his co-workers. Then, on or about January 5, 1995, the rumors first came to the attention of Mark Fitzgerald, the City Administrator. An investigation was begun immediately.

THE INVESTIGATION

On or about January 6, 1995, Fitzgerald and Pieters met with Regner, Weyrauch and Mr. Lahodik. Fitzgerald testified that Regner was very reluctant to make any statements against the grievant, but after assurances that he would not be the sole witness against him, finally

admitted that the grievant had threatened him earlier in November and had threatened in December to shoot the aforesaid four individuals. Regner, on the other hand, testified that the grievant had never previously threatened him physically or verbally and that he did not recall the grievant making a statement to him to the effect that he was going to shoot four people, "the Mayor, Mr. Fitzgerald and two other people," but had only heard about it as a rumor around the Department.

Weyrauch confirmed that Regner did not want to have any more confrontations with the grievant and that he changed his work habits to avoid him.

A meeting then took place between the grievant, Pieters, Fitzgerald and a union steward, also on January 6, 1995. At this meeting, Fitzgerald asked the grievant if he had made a comment that he was going to get a gun and shoot the Mayor, the City Administrator, the Superintendent and the Working Foreman. The grievant responded: "I did not make that alone as a comment." The grievant went on to tell Fitzgerald that he had made a comment to the effect as noted above that he would "take care of" those people and then "explain why," and then "do it to myself."

Following this admission, the only question left in Fitzgerald's mind was whether the grievant's threats were triggered by a psychological condition making him a danger to his fellow workers or the community or entitling him to reasonable accommodation under the ADA. At this point, the City placed the grievant on paid leave and ordered him to undergo a psychological examination.

Thereafter, Fitzgerald requested and received increased police surveillance on the homes of the Mayor, Pieters and himself. Mr. Schwartz (the Working Foreman) began locking all his doors and windows, something he had never done before. Fitzgerald sent his wife and children to her mother and father's house for that weekend. When the grievant called Fitzgerald the following Wednesday night, Fitzgerald immediately sent his wife and child to the library "'cause I wasn't entirely sure that he wasn't calling to find out if I was home."

Fitzgerald, Pieters and Schwartz all testified that they took the grievant's threat seriously and were fearful for their safety.

On January 10, 1995, Assistant Superintendent Larry Gobel called the grievant to inform him of the date, time and place of the psychological exam. In a telephone call lasting nearly an hour, the grievant "started opening up to me and I just kind of lent an ear to him." The grievant explained a lot of what was happening at the transfer station, his irritability with Bill Leonard coming in and honking the horn and getting him upset and angry about that, and his problems with members of the public. The grievant then reiterated the statement he had made to the effect that he "would take a gun and take care of . . . and then anyone else responsible for increased taxes in the City." The grievant said it "was hinging on the fact that his father would have to lose his house due to increased taxes," and mentioned how close he was to his dad, and then asked Gobel "wouldn't you do the same thing for your dad." At that point Gobel changed the direction of the

conversation.

The grievant also told Gobel that he realized after he made the comment, he should not have said it.

The next day, the grievant had his meeting with Dr. Nicholas E. Claditis, a Licensed Psychologist. He spent approximately three hours filling out written tests, and about two hours talking with the doctor. During the time the grievant was talking to Dr. Claditis, he was asked whether he had apologized to anyone for his threats. The grievant responded that he wasn't sure.

After the evaluation, the grievant spoke with Gobel again and asked his advice as to the appropriate way to apologize to Fitzgerald. Gobel testified that he suggested a written apology to all the people the grievant had threatened. The grievant denied that Gobel made such a suggestion. After talking with Gobel, the grievant called Fitzgerald at home that same evening. The grievant apologized for what he had said. Fitzgerald thanked him, told him good-bye, and hung up the phone.

The grievant did not apologize to the other people he threatened, in person, in writing, or by telephone, before or after his discharge.

The next day Fitzgerald learned that Gobel had suggested to the grievant that he give a written apology to all four management people. He also spoke with Dr. Claditis. Dr. Claditis told Fitzgerald that the grievant did not have a psychological disability under the ADA. Dr. Claditis also told Fitzgerald that the grievant did not have an abnormal personality, he was not psychopathic, and "it was not likely that he would do harm to others as he had threatened." Dr. Claditis further told him that the grievant was emotionally immature, had not learned according to adult standards to control his temper, was a real loner and had a real problem with the truth. Dr. Claditis admitted there were no guarantees that management personnel were safe from the grievant's threats, and that his opinion was "more art than science." Dr. Claditis recommended that if the grievant returned to work he work alone or in as isolated set of circumstances as possible.

Fitzgerald then considered the grievant's admissions, the information received from Gobel as well as the statements and actions of the grievant's co-workers, the opinions of Dr. Claditis and his own knowledge of the grievant's work history in his decision to discharge. He also considered, in particular, the seriousness of the threats; the irrational nature of the grievant's proffered reasons for the threats; the grievant's specific recall of the detail of those threats; the possible impact of a return to work on productivity; the morale and response of management; the impact of any lesser penalties and the message it would send to other city employes; and the continuing nature over the recent past of the grievant's "contemptuous behavior" toward City officials and management.

On January 13, 1995, City police officers served the grievant with a termination letter. The termination letter indicated that his termination was based on two charges: one, that he

"verbally threatened the Mayor, City Administrator, Street Superintendent and Street Working Foreman during working hours by threatening the use of a loaded gun to cause bodily harm or kill the above individuals"; and two, "you have been responsible for an ongoing pattern of verbal threats to do bodily injury to fellow employees and supervisors." The termination letter went on to state that the grievant's "repeated threats of acts of violence has created a hostile work place environment which your employer has determined to be gross misconduct on your part." The letter concluded by stating that termination was pursuant to Article 15 of the collective bargaining agreement and was "being done without prior warning notice or prior suspension due to the severe nature of these offenses."

The parties stipulated that there are no procedural issues and that the grievance is properly before the Arbitrator for a decision on its merits.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE XV - DISCHARGE AND SUSPENSION

Section 15.01: The Employer shall not discharge or suspend any non-probationary employee without just cause, providing however:

A. That in the case of any default or infraction by any employee, he shall be given at least one (1) warning notice of such default or infraction, and may be suspended upon repeating such default or infraction;

B. Except as hereinafter provided, no employee shall be discharged for a further particular default or infraction, unless he shall theretofore have been given one (1) warning notice with respect to a prior such default or infraction, and has been suspended by the Employer upon a repeat of such default or infraction.

All warning notices shall be in writing and signed by the superintendent of the department in which the employee is employed; they shall be delivered personally by the superintendent to the employee, and the employee shall, in acknowledgement of receipt thereof, sign his name thereto; thereupon a copy thereof shall be promptly sent to the Association and a copy thereof also given to the departmental steward by the superintendent. In the absence of the superintendent, the authority vested in this paragraph shall be vested in the assistant superintendent.

All suspensions and discharges shall be evidenced in writing and delivered personally by the department superintendent to the

employee, and a copy thereof shall be sent by him to the Association and a copy thereof also given by him to the department steward; such writing shall set forth the reasons for the suspension or discharge.

A prior warning notice and prior suspension shall not be required as predicates of discharge of an employee for the following causes:

1. Dishonesty or theft;
2. Being under the influence of intoxicants or drugs;
3. Recklessness resulting in accident while on duty;
4. Using City vehicles for unauthorized purposes or carrying unauthorized passengers in City vehicles;
5. Wilfully damaging City property;
6. Fighting or assaulting other persons while on duty;
7. Insubordination.

A prior warning notice as a predicate for suspension or discharge, as well as a prior suspension as a predicate for a discharge, shall not remain in effect for a period of more than nine (9) months from the date thereof. (See Exhibit 1)

PARTIES' POSITIONS:

The Union initially concedes charge number one in the termination notice that the grievant threatened various City officials. However, the Union argues that the second charge in said notice regarding the grievant's responsibility "for an ongoing pattern of verbal threats to do bodily harm to fellow employees and supervisors" is not substantiated by the evidence.

Regarding the severity of the penalty, the Union maintains termination is excessive for the following reasons. One, the City did not follow progressive discipline or due process when it terminated the grievant as required by Article XV, Section 15.01B. The Union argues this is not a situation which falls into one of the exceptions to the requirement for progressive discipline, found in the aforesaid contract provision, particularly fighting or insubordination. Two, the degree of the penalty is not in proportion to the seriousness of the offense because the threat was nothing more than shop room banter. Three, the grievant's long work history with little or no discipline should mitigate the penalty. Four, the City's own expert stated the grievant is not a threat and should be treated like any other employe. Five, the grievant was not given proper notice of the charge and an opportunity to defend himself.

In its reply brief, the Union attacks alleged mis-statements of fact and other inaccuracies

contained in the City's brief as well as the City's reliance on specific arbitration cases. Finally, the Union argues the Arbitrator should give great weight to Dr. Claditis' report which states in his opinion that the grievant was not a threat to supervisors or co-workers and recommended that the City treat the grievant like any other employe.

Based on the foregoing, the Union requests that the grievance be sustained, that the discharge be converted to a two week suspension without pay and that the Arbitrator order the City to reinstate the grievant to his position thereafter with pay, benefits and seniority.

The City, on the other hand, first argues that "the only true issue here is the issue of penalty" since the grievant "admitted the salient facts." In this regard, the City notes that the seven tests of just cause have been met because the grievant had notice these types of threats were improper in the work place, and he admitted the wrongdoing he was accused of. The City adds that this kind of conduct -- insubordination -- is a type of conduct which can lead to immediate discharge under Article XV of the contract, that the City has a reasonable/legitimate concern over the effects of these kinds of threats in the work place, that an adequate investigation was conducted into this matter and that this investigation was fair. The City concludes that the seventh test, that of the appropriate penalty, must be analyzed in light of arbitral precedent, which in its opinion, supports discharge. The City adds that only discharge will adequately protect the legitimate interests of the City and the human targets of the grievant's threats citing a number of arbitration awards in support thereof. Finally, the City maintains that the reasons offered by the grievant for mitigation are inadequate in light of the seriousness of his actions and his lack of true remorse.

The City in its reply brief, maintains the sole basis for mitigation -- the grievant's seniority -- cannot override legitimate safety concerns and fear of retaliation by City officials.

The City requests that the grievance be denied, and the matter be dismissed.

DISCUSSION:

At issue is whether there is just cause to discharge the grievant.

The City argues that the grievant was terminated for cause, in accordance with the terms of Article XV of the collective bargaining agreement, for threatening to use a gun to kill various City officials and for engaging in an ongoing pattern of threatening fellow employes and supervisors. The Union concedes the first charge of threatening certain City officials noted above, but argues for a variety of reasons that the penalty of discharge is too severe. The Union rejects the second charge contained in the termination letter as not substantiated by the record evidence.

The parties do not agree with respect to a standard to be applied herein. The City, in its

brief, makes reference to the "seven tests," 1/ approach as well as a "common sense" approach "to insure that employes are not disciplined improperly." The Union, on the other hand, argues "common sense" dictates the discharge should be converted to a two week suspension because the City did not follow progressive discipline in discharging the grievant as required by Article XV, because the penalty was excessive given the nature of the offense and the grievant's long "good" work history, because the grievant was denied due process, and because Dr. Claditis' written statement found the grievant was not a threat "and should be treated like any other employe."

This Arbitrator believes there are two basic and fundamental questions in any case involving just cause. One is whether the employe is guilty of the actions complained of, which the Employer has the duty of so proving by a clear and satisfactory preponderance of the evidence. If the answer to the first question is affirmative, the second basic question is whether the punishment is appropriate given the offense.

Applying the above standard to the instant case, the Arbitrator first turns his attention to the question of whether the grievant threatened various officials and management representatives, as claimed by the City in its first charge.

The grievant admits verbally threatening the Mayor, City Administrator, Street Superintendent and Street Working Foreman. However, the Union argues the threat should not be taken seriously because the grievant did not intend to carry out this threat; his comments were only meant for the ears of co-workers, Regner and Weyrauch; and no one gave any significance to the statement at the time it was made. The Union also feels the exact wording of the statement is significant in that the grievant did not threaten "the use of a loaded gun to cause bodily harm or kill the above individuals" as alleged by the City.

The Arbitrator does not agree. The real issue, in the Arbitrator's opinion, is whether or not the grievant's statements in December, 1994, could reasonably be regarded as a serious threat to the four city officials noted above. In concluding that the grievant's statements could reasonably be interpreted as a threat to harm or kill the four people in question the Arbitrator finds it significant that although the Union argues over the exact wording of the statement the grievant never denied at any time material herein that he meant anything other than the plain meaning of the words -- "I will grab my gun and I will take care of," i.e. use it on "the Mayor, City

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1/ This is an analytical framework devised by the late Carroll R. Daugherty, a Professor of Labor Economics and Labor Relations at Northwestern University and well-established arbitrator. It was his attempt at defining just cause. His approach has its critics and its shortcomings. [See, for example, John E. Dunsford, "Arbitral Discretion: The Tests of Just Cause," Proceedings of the 42nd Annual Meeting, National Academy of Arbitrators, ed. Gladys W. Gruenberg (Washington, D.C.: BNA Books, 1990), 23].

Administrator, the Street Superintendent and the Working Foreman" and then "turn it on myself." The Arbitrator also finds that the grievant's recent work history, 2/ history of confronting and intimidating co-workers, 3/ confrontations with management and elected officials, 4/ short fuse 5/ and in-your-face attitude 6/ supports a conclusion that this was
indeed a serious threat to the health and well-being of the people involved.

2/ Tr. 1, p. 198-199.

3/ Tr. 1, p. 123, 146 and 150; Tr. 2, p. 14-15, 20.

4/ Tr. 2, p. 62, 76.

5/ Tr. 2, p. 77; Exhibit No. 14.

6/ Tr. 2, p. 16, 61.

More persuasive than the Arbitrator's opinion of whether the statements in question could reasonably be interpreted as a serious threat is the issue of how his remarks were received, and whether the persons receiving them might have mis-interpreted them. In this regard, the record is undisputed that the people involved took these threats very seriously and took precautions to protect themselves. In addition, based on the grievant's work history noted above, and personal style, 7/ there is no reason to believe that these individuals misinterpreted the remarks in question. 8/

Based on all of the above, the Arbitrator finds it reasonable to conclude that the grievant is guilty of the conduct complained of in charge number one. The remaining question is whether the punishment is appropriate.

A review of this question may be undertaken within the context of the issues raised by the Union in arguing against discharge.

The Union initially argues that the City did not follow progressive discipline or due process when it terminated the grievant as required by Article XV, Section 15.01B. In this regard, the Union maintains that the City cannot discharge the grievant without at least one written warning followed by a suspension since the grievant's misconduct did not fall within one of the categories stated in said contract provision permitting immediate discharge without prior discipline, in particular, fighting or insubordination as alleged by the City.

Assuming arguendo that the conduct in question is not fighting or insubordination, 9/ the Union's case still must fail. The Arbitrator agrees with the Union that ordinarily just cause requires progressive discipline prior to termination. Certainly, Article XV, Section B provides as part of just cause that an employe must be given at least one written warning followed by a suspension before being terminated except in certain instances. However, in extremely egregious situations like the instant one, progressive discipline is not necessary. The grievant threatened the lives of four people. Even the grievant admits knowledge of postal workers going through and

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7/ Tr. 2, p. 75-76, 86.

8/ The grievant admitted that it was reasonable for other people to conclude that his remarks meant he intended "to do bodily harm to them." Tr. 2, p. 44.

9/ Insubordinate is defined as "not submissive to authority: has a history of insubordinate behavior." Implied in this term is "failure to recognize or accept the authority of a superior" or "promotes divisiveness, dissension, or disunity within a group or organization." The American Heritage Dictionary of the English Language, New College Edition, (10th Ed. 1981) p. 667. A strong argument can be made, in the Arbitrator's opinion, that threatening to do bodily harm to various city officials and management representatives by use of a gun falls within the parameters of this definition.

shooting co-workers and recent work place shootings, 10/ and agrees that joking around about killing supervisors or co-workers is not a proper subject for humorous discussion. 11/ Based on the foregoing, the Arbitrator is of the opinion that the City acted properly to protect both its elected officials as well as its supervisory personnel and employes.

The Arbitrator notes that implicit in the parties' listing of seven causes for immediate discharge in Article XV is an agreement that employes covered by the collective bargaining agreement will abide by the criminal code. Under the Union's theory that the grievant's conduct does not fall specifically within one of the seven categories listed in the contract and therefore he should not be subject to immediate discharge the grievant could theoretically and sequentially over time kill three city officials/management representatives before the City could contractually terminate him. 12/ Such a result would be absurd, and arbitrators are to avoid harsh, absurd or nonsensical results when interpreting ambiguous contract language. 13/

In addition, the Arbitrator would point out that item number 6 in Article XV, Section 15.01B provides for immediate discharge without prior warning notice and prior suspension for "assaulting other persons while on duty." The record is clear that the grievant threatened to kill four City officials which, in the Arbitrator's opinion, constitutes "assault" within the meaning of the aforesaid contract provision. 14/ As noted above, the grievant's letter of discharge cites as the primary grounds for discharge the grievant's threat to kill various City officials. Consequently, based on the foregoing, the Arbitrator finds it reasonable to conclude that there was a contractual basis for immediate discharge of the grievant without prior discipline pursuant to the aforesaid contract provision.

Nor can the Arbitrator find any merit to the Union's contention that the grievant was denied due process because he was not charged with fighting or insubordination. As noted above, the Arbitrator has concluded that the City acted properly when it terminated the grievant without

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10/ Tr. 2, p. 41.

11/ Tr. 2, p. 42.

12/ For example, under the Union's reasoning, the grievant could kill the Mayor, and only be eligible for a warning notice. Next, a few months later he could kill the City Administrator, but only be eligible for a suspension. Finally, he would have to kill or seriously harm a third City representative before the City could discharge him.

13/ Elkouri and Elkouri, How Arbitration Works, 3rd Edition p. 309 (1976).

14/ Assault is defined as "a violent attack, either physical or verbal . . . 3. Law. An unlawful attempt or threat to injure another physically." The American Heritage Dictionary of the English Language, New College Edition, (10th Ed. 1981) p. 134.

prior discipline the language of Article XV notwithstanding. In addition, the record is

clear that the grievant understood what he was being charged with in charge number one, 15/ and had plenty of opportunity to respond and/or defend himself both prior to and after his termination. 16/ Furthermore, there is no evidence that the City did anything to impede the Union's ability to prepare and present the grievant's case nor is there any evidence the grievant was not prepared to defend himself at the arbitration hearing regarding this matter. Finally, there is no persuasive evidence in the record that the City's apparent failure to get the exact wording of the grievant's statement correct adversely affected the grievant in any way.

The Union next argues the penalty is too severe given the nature of the offense. In particular, the Union argues that this was nothing more than shop room banter. However, the record does not support a finding regarding same. To the contrary, even though shop talk in the Street Department was at times rough or course, 17/ threats to kill people or to do bodily harm to them by use of a gun were not normal subjects of conversation. 18/ Nor are they acceptable. 19/

The Union also argues that the Arbitrator must look at the facts and circumstances of this case before upholding termination. In support thereof, the Union cites a number of arbitration cases for the proposition that even though threat cases are serious there can be mitigating circumstances -- the most important one being a long work history with little or no discipline. However, these cases are distinguishable from the instant dispute. While the grievant has been employed by the City for over twenty years, he has not been a particularly good employe. The record is replete with examples of his run-ins with management, confrontations with co-workers, incidents with elected officials and exchanges with members of the general public. Although promoted to working foreman in the early 1980's he was removed from that job because he didn't get along with most of the men, had acted in an unsafe manner in a couple of instances and had failed to perform his job. 20/ In addition, the grievant has been disciplined several times especially in recent years for different infractions. Based on the foregoing, the Arbitrator does not agree with the Union's contention that the grievant's work record is a mitigating factor in the instant case.

15/ Tr. 2, p. 19, 22-23, 25-26, 29-30 and 33.

16/ Tr. 2, p. 23, 32; Joint Exhibit Nos. 3 and 12.

17/ Tr. 1, p. 63.

18/ Tr. 2, p. 17, 83-86.

19/ Tr. 2, p. 42.

20/ Tr. 1, p. 22.

Finally, the Union maintains that Dr. Claditis's opinion supports reinstatement. Dr. Claditis evaluated the grievant and concluded that the grievant was not a threat to supervisors or co-workers and suggested that the City treat him as it would any other employe. However, as pointed out by the City, Dr. Claditis acknowledged that his opinion was "more art than science" and based on only a few hours of interview with the grievant. 21/ Dr. Claditis also could give no "guarantees" that management personnel were safe from the grievant's threats. 22/ In addition, Dr. Claditis gave no opinion regarding the merits of the grievant's reinstatement. Finally, the Union did not provide any persuasive examples of situations where other employes threatened to kill or seriously harm fellow employes and City officials and said conduct was tolerated by the City when brought to its attention. As noted above, the record supports a finding that the City acted properly in terminating the grievant.

21/ Tr. 1, p. 195-196.

22/ Id.

The Arbitrator is not unmindful of what is at stake here. The grievant has 22 years of service with the City. It is unfortunate that the grievant put this all at risk by making one comment with little or "no thought." 23/ However, a threat to kill or seriously harm various City officials and management personnel is a very grave offense. As pointed out by the City, the City has a right to protect the health and well-being of its employes and supervisors and to make the work place as safe as possible. Based on the grievant's admission that he made the threats in question, the lack of sufficient mitigating circumstances and the record as a whole, the Arbitrator finds that the answer to the issue as stipulated to by the parties is YES, the City had just cause to terminate the grievant, James Fait, Sr., 24/ and it is my

AWARD

That the grievance of James Fait, Sr. is hereby denied and this matter is dismissed.

Dated at Madison, Wisconsin this 31st day of July, 1995.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator

23/ Tr. 2, p. 14.

24/ Having reached this conclusion, it is unnecessary to address the issues raised by the Union and the City regarding the second charge contained in the grievant's termination notice -- that the grievant was "responsible for an ongoing pattern of verbal threats to do bodily injury to fellow employees and supervisors."