BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between TEAMSTERS LOCAL UNION NO. 43 and TAYLOR ENTERPRISES	Case 39 No. 53300 A-5420 Nancy Raedlein Discharge

Appearances:

Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Post Office Box 12993, Milwaukee, WI 53212, by Mr. John Brennan and Ms. Leeann Gruwell Anderson, Attorneys at Law, appearing on behalf of the Union.

Long & Halsey Associates, Inc., 8338 Corporate Drive, Suite 500, Racine, WI 53406, by Mr. William R. Halsey, Attorney at Law, appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement for the years 1993 - 1996, Teamsters, Chauffeurs and Helpers Union No. 43 (hereinafter referred to as the Union) and Taylor Enterprises (hereinafter referred to as the Employer or the Company) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning discipline imposed on Nancy Raedlein. Daniel Nielsen was so designated. A hearing was held on March 25, 1996 at the Union's offices in Racine, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, and after allowing a one week period for the parties to review one another's briefs, the record was closed on May 20, 1996.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Award.

I. Issue

The parties stipulated that the following issue should be determined herein:

1. Did the Employer have just cause to terminate the grievant on September 13, 1995? If not,

2. What is the appropriate remedy?

II. Pertinent Contract Language

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ARTICLE 9. Posted Rules

It is agreed between the parties hereto that any Employer posted rules that have been approved by the Union must be observed by the employees. All present employees shall be given a copy of such rules and new drivers shall be given a copy of such rules upon hiring.

The following rules and regulations set forth and the penalties to be charged for the violations of these rules are placed in effect so that all employees may know what duties are required of them in the general conduct of the Employer's business. Discipline imposed under these rules and regulations must be imposed within ten (10) working days for minor violations and must be imposed immediately for major violations. Any grievance resulting from discipline of any violations must be filed with the Employer within five (5) days of the violation.

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3. CONDUCT

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(e)	Discourtesy to customers	First Offense - written reprimand Second Offense - 1 day layoff Third Offense - 3 days layoff Fourth Offense - subject to immediate discharge

. . .

(f)	Disobeying orders from qualified personnel designated by Employer (Names will be posted)	First Offense - written reprimand Second Offense - 3 days layoff Third Offense - 5 days layoff Fourth Offense - subject to immediate discharge

. . .

The Employer and the Union agree that the Employer has the right to discipline any employee for violation of any of the above rules and regulations up to and including the maximum penalty. Further, the Employer and the Union agree that any penalty or lack of penalty assessed by the Employer will not be considered a precedent or act as a waiver on any other violation of the above rules and regulations.

. . .

ARTICLE 14. Management Rights

The Employer possesses the sole right to operate the mass transit system and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this agreement and the past practices in the departments covered by the terms of this agreement, unless such practices are modified by this agreement or by the Employer under rights conferred upon it under this agreement or the work rules established by the Employer. These rights which are normally exercised by the Employer include but are not limited to the following:

1. To direct all operations of the transit system.
2. To hire, promote, transfer, assign, and retain employees in their position with the transit system and to suspend, demote, discharge and take other disciplinary action against employees for just cause.

. . .

In addition to the management rights listed above, the powers of authority which the Employer has not officially abridged, delegated or modified by this agreement are retained by the Employer. The Union recognizes the exclusive rights of the Employer to establish reasonable work rules.

The Union and the employees agree that they will not attempt to abridge these management rights and the Employer agrees that he will not use these management rights to interfere with rights established under this agreement. Nothing in this agreement shall be construed as imposing an obligation upon the Employer to consult or negotiate with the Union concerning the above areas of discretion and policy.

. . .

ARTICLE 25. ARBITRATION

In the event that the Employer and the Union cannot mutually agree to a settlement of any unresolved controversy which may arise concerning any matter or the interpretation of this Agreement, such unresolved controversy shall be reduced to writing and shall be referred to the Wisconsin Employment Relations Commission to have an arbitrator appointed for settlement.

> The filing fee required by the Wisconsin Employment Relations Commission for arbitration shall be split equally between the Union and the Employer.
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> The Employer and the Union agree that the decision of the arbitration committee shall be final and binding upon both parties. The Employer and the Union agree that Union membership shall not be a matter subject to arbitration.
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> . . .

III. Background Facts

The Employer operates the Belle Urban System busses in Racine, Wisconsin. In so doing, it employs personnel in the classification of Driver, who are represented for the purposes of collective bargaining by the Union. The grievant, Nancy Raedlein, was employed as a Driver for six years until her termination on September 13, 1995. Her immediate supervisor at the time of her discharge was Frank Serwatka, who reported to Acting Transit Manager Steve Rogstad.

When the grievant completed her run and returned to the garage on Saturday, September 9th, Serwatka called her into his office to discuss a customer complaint. The grievant told him that she already knew what the complaint was, and that it was from a woman who had been a half block from the bus while the grievant waited for her, and who started cursing her, calling out that she was a "fucking bitch", whereupon the grievant pulled out without waiting for her. He told her there were other things in the complaint, and the grievant told Serwatka that after 6 years as a supervisor, he should know what is and is not a valid complaint, and that he should not be calling drivers into his office to discuss these things because it was irritating to them. She told him that in the future she would have a union steward with her during any such meetings. He said "fine" and she abruptly left his office.

On Sunday, the grievant contacted the Union's Secretary-Treasurer at his home and told him she was concerned that the Company was going to discipline her over the customer complaint. They spoke briefly and agreed to speak again the next day. Before her shift, they had a second conversation, and he told her not to speak with anyone from management or sign anything without Union representation.

Serwatka reported the meeting with the grievant to Steve Rogstad, who viewed her actions as insubordinate. Rogstad prepared a letter of reprimand for the grievant:

> On Saturday, September 9, 1995 you were instructed to report to

> the office of Frank Serwatka upon the conclusion of your work shift. At that time, Mr. Serwatka told you that he wanted to discuss a complaint which had been called in earlier that day concerning an incident which allegedly occurred at the bus stop on Oakes Road adjacent to Case High School. You responded by telling your supervisor that you "would run the complaint by him instead", that he should not be calling drivers into his office to go over complaints and that he is aggravating drivers by such meetings. After two unsuccessful attempts by Mr. Serwatka to read the complaint to you, you left the office saying that you desire union representation for any future such discussions.
>
> Your insolent attitude and insubordination toward the company Supervisor will not be tolerated, and this reprimand is for a violation of Article 9, Section 3F. Further, you are instructed to report to Mr. Serwatka's office after your shift on Tuesday, September 12, 1995 to listen to and answer the complaint which has been made. Feel free to have in attendance whatever union representation you deem necessary to hear a complaint.

Rogstad placed the letter in an envelope and told Serwatka to deliver it to the grievant on her route and have her sign for it. That afternoon, Serwatka met her bus at the turnaround point on the route, and he told her to step off the bus so he could speak to her. She asked him what he wanted and he didn't reply, other than to tell her to step off the bus so he could speak to her. She could see that he had a letter in his hand, but he did not offer it to her and she did not ask for it. She told him that she would not speak to him without the presence of a union steward and he left. A short while later, Rogstad called her on the radio, and told her that Serwatka had a letter for her, and that she was to sign for receipt of the letter. He advised her that signing for the letter did not indicate agreement with the contents. She responded that she would not sign anything without a steward. Ten minutes later, she came upon Serwatka waiting for her at one of her stops, and he told her to step off the bus and sign for the letter. She refused, said she wanted a steward and then closed the doors and drove away.

The next day, September 12th, Rogstad prepared another letter of reprimand, imposing a three day suspension on the grievant for failing to follow his directive to sign for the first letter. The letter warned her that the next infraction would lead to a five day suspension. He told Serwatka to deliver it to her on her route.

In the meantime, the grievant had spoken with Judy Thompson, the assistant steward, and they had decided to file a grievance against the Company for trying to make her accept the letter. Thompson later contacted steward Walter Coney, who was out on an extended sick leave, and briefed him on the situation. Although Coney was off work, he was coming in on Wednesday

for a meeting with the Company on other matters, and they decided to wait until then to raise the issue.

When Serwatka came out to her route with the two letters and tried to get her to sign for them, she again refused and said she needed a steward. Serwatka returned to the garage without telling her the contents of either letter.

Serwatka told Rogstad that the grievant had again refused to sign for the letters, and Rogstad told him to approach her in the drivers' room after her route with the two letter, plus another that he prepared, imposing a five day suspension on her for refusing to accept the letters that day. The final paragraph of the letter warned that the next instance of insubordination would lead to her discharge:

> Be advised that the next instance of insubordination within the next six months will result in the termination of your employment with this company. I strongly recommend you reconsider the course of action you have taken and sign for all three letters of reprimand which have been issued to you, as well as report to Mr. Serwatka's office to discuss the complaint. The method of letter transmittal which Mr. Serwatka has attempted to perform was approved by your union several years ago. With or without union representation present, you are required to sign for letters issued to you by management.

When the grievant finished her route that evening, she came into the drivers' room and Serwatka approached her, saying that he had three letters for her to sign for. She did not respond. He said to her "Did you hear me" and without responding she walked out, got into her car and drove away.

The next morning, Rogstad prepared a letter discharging the grievant for insubordination:

> Dear Ms. Raedlein:
>
> Yesterday evening, September 12,1995, company supervisor, Frank Serwatka met you in the driver's room at the conclusion of your work shift and instructed you to sign for three letters which have been issued to you since Monday, September 11, In the presence of another employee, you refused to acknowledge or verbally respond to his request. As you left the driver's room and were in the hallway, Mr. Serwatka said, "Did you hear me?" You continued to ignore your supervisor and walked out into the parking lot to go home. This extreme example of insolence is a violation of Article

9, Section 3F of the tabor agreement.

On September 9, 1995, you refused to listen to, or discuss, a complaint that Mr. Serwatka attempted to read to you in connection with your driving. The letter for that instance of insubordination, is dated September 11, 1995 and remains unsigned.

On September 11, 1995, you refused to sign for the above letter in connection with not hearing the complaint. A second letter for that instance of insubordination is dated September 12, 1995 and remains unsigned. That example of insubordination carried a three-day penalty, and the penalty days assigned were Tuesday, September 19 1995; Wednesday, September 20, 1995; Thursday, September 21, 1995.

On September 12, 1995, you refused to sign for the above two letters which described two separate acts of insubordination, Your refusal to sign was a third act of insubordination, which carried a five-day penalty, and the penalty days assigned were Monday, September 25, 1995; Tuesday, September 26, 1995-, Wednesday, September 27, 1995; Thursday, September 28, 1995; Friday, September 29, 1995. This third letter, dated September 12, 1995, remains unsigned.

Your refusal last evening to acknowledge the company supervisor and sign the three letters described above marks the fourth instance of overt insubordination to management within five days. The company supervisor has given you four opportunities in two days to sign for these letters. I instructed you over the radio on September 11 to sign for the first letter, which you also ignored, This method of letter transmittal which Mr. Serwatka has attempted to perform was approved by your union several years ago, and does not require union representation.

Yesterday, I recommended in the second letter dated September 12 that you strongly reconsider the course of action you have taken. You have, however, decided to answer the authority of the Supervisor and Acting Transit Manager with continued insolence, and now silence, by your refusal to sign for letters issued to you and not agreeing to listen to the complaint registered against you. You have left me with no choice but to terminate your employment with this company under Article 9, Section 3F of the labor agreement.

> Effective immediately, you are terminated from employment with Taylor Enterprises Inc.

The instant grievance was filed, protesting the discipline. It was not resolved in the lower levels of the grievance procedure and was referred to arbitration. Additional facts, as necessary, will be set forth below.

IV. The Positions of the Parties

A. The Position of the Company

The Company dismisses the Union's claim that it in any way violated the grievant's Weingarten rights. The Company was not contemplating discipline against the grievant when Serwatka sought to discuss the citizen complaint with her. There had never been an instance of discipline against a driver over such a complaint, and the grievant could not reasonably have expected any discipline to result from this meeting. Her insolent and insubordinate attitude during the meeting is what resulted in the discipline, and this conduct occurred before she had ever requested a Union representative. Once she did say she wanted a Union representative in future meetings, she was told verbally that she could have one. This was repeated in the letter of reprimand, which in addition to imposing discipline, directed her to meet with Serwatka to listen to the citizen complaint. In reference to that meeting, Rogstad wrote: "Feel free to have in attendance whatever union representation you deem necessary to hear a complaint." The subsequent meetings that the Employer attempted to hold with her on her bus were solely for the purpose of announcing discipline already decided upon. They were not investigatory interviews. There is no Weingarten right to Union representation in such a meeting.

The Company notes that it is settled law that Weingarten requests designed to delay or obstruct management are simply not valid, and are thus unprotected. The grievant's persistent refusal to sign for letters unless a Union representative was present,, when she had been both directly ordered to sign for them and assured that signing did not mean agreeing with the Company or giving up any rights is purely obstructionist. There is no valid purpose to the request for a Union representative in these circumstances. It is also quite clearly rank insubordination. Management had the right to insist on having her sign for the letters, and there is a long standing and well known practice of requiring such signatures. Each of her refusals is a separate act of insubordination, and each has the effect of advancing her through the progression of discipline. The grievant willfully, repeatedly and without justification refused to follow the valid directives of her supervisors. This provides ample grounds for the discipline imposed. Thus the grievance should be denied.

B. The Position of the Union

The Union takes the position that the Company violated the contract, and that the grievant should be reinstated and made whole for her losses. The discipline that initiated this entire chain of events was a reprimand for insubordination rising out of the September 9th meeting about a customer complaint between the grievant and her supervisor, Frank Serwatka. During the meeting she gave her side of the story, told him she wanted Union representation in any future meetings and abruptly left. Her conduct during the meeting was not inherently insubordinate. She did not threaten Serwatka. She may have been blunt, but her statements were not abusive or profane. While she left abruptly, she was off the clock and had the right to leave. She had abruptly left meetings before without disciplinary consequences, and this trait was well known to the Employer. Serwatka never told her at any time that she was acting in an inappropriate manner. He gave her no direct orders during the meeting. He gave her no warning of discipline. Under these circumstances, it is not plausible that she intended to be insubordinate, and intent is a key element of that offense. Absent improper intent, and given that she could not reasonably have expected to be disciplined for this exchange, the reprimand cannot stand.

The subsequent discipline on the grievant was similarly unjustified. As with the initial reprimand, there is no evidence that she intended to be deliberately disobedient. In an attempt to protect her employment status, she followed her Union's advice not to speak with anyone or sign for anything without Union representation. She did nothing to escalate the situation, but instead acted reasonably in the face of continuing Employer harassment. Thus the subsequent discipline rises or falls on the Employer's claim that it has the right to discipline employees for refusing to sign for letters. The evidence is overwhelming that employees have not routinely been disciplined for this. While the Employer presented evidence of one isolated incident of discipline five years earlier, the Union proved that it had not acquiesced in that discipline. The employee was urged to file a grievance, but he refused. In every other case of employees refusing to sign for letter, the Employer either explained the contents of the letter and persuaded the employee to sign, or simply noted that the employee had refused to sign. The Employer did neither in this case. The lack of any consistent practice of discipline for refusing to sign for letters is critical, since there is no posted work rule requiring signatures. Absent either a clearly known standard or a posted work rule, the employee does not have reasonable notice of the alleged rule and cannot be disciplined for violating it.

The Union asserts that the Employer's attempts to ratchet the grievant up through the progressive discipline system in this case is outrageous and inconsistent with the corrective purpose of the discipline process. Conduct cannot be corrected if the employee is not made aware that discipline is being imposed, yet the Employer never attempted to explain to the grievant that it was imposing discipline upon her. Instead, it took advantage of the situation, repeatedly attempting to have her sign for letters when it knew she would not, and using each refusal to impose greater levels of discipline. This behavior cannot be used to support a discharge.

Finally, the Union argues that the Employer violated the grievant's Weingarten rights by refusing to allow her Union representation when she requested it. The initial meeting was an investigatory interview over a citizen complaint, a complaint which would be placed in her file. Even the Employer agreed that she had the right to representation in such meetings. Having advised the Employer that she wanted representation, she had the right to terminate the meeting when no such representation was provided. As to the subsequent attempts to interview on the bus and have her sign for the letters, the grievant had a reasonable basis for believing that these were a continuation of the initial interview. The Employer gave her no reason to believe otherwise. Even if she had known the letters were disciplinary in nature, she had the right to representation in order to help her understand the contents. Discipline imposed after a denial of Weingarten rights cannot be sustained. For all of these reasons, the Union asks that the grievance be sustained and that the grievant be reinstated and made whole for her losses.

V. Discussion

A. Weingarten

An employee has the right to demand the presence of a union representative in any investigatory interview which the employee reasonably believes may result in discipline, and if the employer refuses this request, the employee need not participate in the interview. The initial meeting with Serwatka over the customer complaint could be considered an investigatory interview since, notwithstanding the fact that no employee has ever been disciplined as a result of customer complaints, "discourtesy to customers" is listed as a basis for discipline in the contract. Unless the Company wishes to take the unlikely step of formally disclaiming its right to impose discipline on these grounds, employees can reasonably expect that discipline is at least a possibility when they meet with their supervisor over a customer complaint. However, the conclusion that the grievant could have legitimately invoked her Weingarten rights, and did ask for a steward in future meetings, does not mean that the Company somehow violated them in the Saturday night meeting. The grievant walked out of the meeting immediately after saying that she wanted representation in the future and hearing Serwatka say that was fine with him. The letter of reprimand purports to discipline her for her conduct during the meeting, not for leaving the meeting. Thus there is no violation of Weingarten connected with the initial reprimand.

There does not appear to have been any other occasion for the assertion of Weingarten rights in the ensuing sequence of discipline against the grievant. She was disciplined for insubordination, in that she refused to sign for the letters of discipline without the presence of a steward. There is nothing of an investigatory nature involved in the delivery of a letter. Before any further discipline was imposed, Rogstad told the grievant that she was to sign for the letters, but that her signature indicated only that she had received them, not that she agreed with their contents. Given this assurance, the act of signing, without more, could not reasonably have been interpreted as likely to result in discipline. For these reasons, I conclude that there is no Weingarten issue presented in this case.

B. Insubordination for the September 9th Meeting

The grievant was disciplined for insubordination in the September 9th meeting called to discuss the customer complaint. According to Serwatka's written version of the meeting, she twice interrupted him when he was attempting to read the complaint to her. Initially when he said he wanted to run the complaint by her, she said she knew what it was and gave her version. When he said there was more to the complaint than the points she had covered, she criticized him for calling drivers in on customer complaints. Her testimony basically confirms his version of events, though she said she did not believe she was interrupting him, merely stating her side of things.

Insubordination involves a willful rejection of the employer's authority and generally falls into one of two categories. The more serious is a refusal to obey direct and lawful orders. Insubordination may also be committed by demonstrating contempt or serious disrespect to supervisors in the conduct of their official duties. This incident is in the second line of cases. Plainly the grievant was not polite to Serwatka, but there is a difference between impoliteness and insubordination. This difference is a matter of degree, and there is not a bright line separating the two. Where that line falls depends upon such factors as the words used, the tone of any exchange, the circumstances in which the incident occurred and the norms of the workplace.

The incident on the 9th did not involve profanity or raised voices. There was no order given or refused. To the extent that she was expected to give her version of what happened, she did so. The grievant abruptly walked out on Serwatka, but had done this before without any disciplinary consequence. On the whole, their interaction was apparently along the same lines as past encounters. This would be a very different case if Serwatka had given the grievant some sort of warning that her conduct was crossing the line and she continued, knowing that she was putting herself in danger of discipline. That is not what happened. Obviously the grievant must have realized that she was being aggressive and somewhat rude, but on the record as it stands, I cannot conclude that she would have had a reasonable expectation of formal discipline from this meeting.

C. Insubordination for Refusing to Sign for the Letters - Obey Now and Grieve Later

The remaining three acts of discipline, two suspensions and a discharge, all resulted from the grievant's refusal to sign for letters when directed to do so. She did this believing that she was acting on the advice of her Union representatives, who told her that she should not speak to anyone or sign anything without a representative being present. It may well be that she took this advice more literally than it was intended, since it flies in the face of the usual principle of "obey now and grieve later". The evidence demonstrates that signing for notices had been a point of on-going controversy between the parties, and that some accommodation had been reached in the past between the former Union representative, Charles Schwanke, and the former Transit Manager, Jack Taylor. In the main, employees did sign for the envelopes containing notices and where they refused, Taylor would explain to them that signing simply indicated receipt, and would, if necessary, tell them what was in the envelope. There was evidence of one instance in

which an employee received discipline for refusing to sign, although the Union contends that that employee was advised to grieve and refused. There were also instances in which employees refused to sign, and the notices were delivered anyway, with the refusal noted in the file and no discipline imposed. It is apparent that new regimes on each side have decided to take a harder line with one another, and that the grievant's case is the battleground for this disagreement. This is a poor choice of battlegrounds, since nobody's conduct in this case is reasonable.

Rogstad gave the grievant a direct order to sign for the envelope, and the Union is on very thin ice in attempting to advise an employee that he or she may simply refuse such an order. The general principle is that no employee may refuse to obey a direct, work-related order. This rule, although fundamental, is not absolute and there are exceptions, the broadest of which is the right of employees to protect their own health and safety. There are other narrow exceptions to this rule, concerning personal dignity, the rights of skilled workers to protect the integrity of their craft, and the right of union officials to police the contract:

> When an employee is told by a supervisor to do something, his duty, perhaps after preserving his rights by a protest, is to do it. He then has the right to file a grievance and have the propriety of the order tested. No plant could operate if the employees were free to obey or disobey orders according to their own notions of their contract rights.
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> Certain exceptions to this principle are equally well recognized. No employee is bound to obey an order which would involve an unreasonable hazard to life or limb; no employee is bound to obey an order which would humiliate him or which has no reasonable relation to his job duties -- such as to shine a foreman's shoes or to withdraw a grievance. Arbitration decisions have established these and other exceptions.
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> This case presents the question whether the facts here involved bring it within the scope of the general principle or the scope of the exceptions. In considering this question, it is important to bear in mind the reasons for the general principle; the necessity for the efficient, orderly, uninterrupted operation of production; elimination of unseemly argument on the plant floor; and the practical necessity, for reasons of efficient operations, of maintaining the proper authority and dignity of those entrusted with supervisory duties. Since these are the reasons for the general principle, absence of such reason in a particular case (such as in the shoeshine case), or the existence of an overriding right or interest in the employee (such as to life or health), may form the basis for a legitimate exception. A weighing of the conflicting interests may be necessary on a given state of facts..." Sheller Mfg. Corp., 34 LA 689 (McCoy, 1960) at

689. 1/

1/ Arbitrator Harry Shulman, as umpire for Ford Motor Co. and the UAW also wrote strongly in support of the principle, upholding discipline against a union committeeman who had directed employees not perform work in other classifications:

> ". . . [An] industrial plant is not a debating society. Its object is production. When a controversy arises, production cannot wait for the exhaustion of the grievance procedure. While that procedure is being pursued, production must go on. And someone must have the authority to direct the manner in which it is to go on until the controversy is settled. That authority is vested in supervision. It

(Footnote continued on page 13)

(Continued)

> must be vested there because the responsibility for production is also vested there; and that responsibility must be accompanied by authority. It is fairly vested there because the grievance procedure is capable of adequately recompensing employees for abuse of authority by supervision..." (Ford Motor Co., 3 LA 779 (Shulman, 1944) at page 781).

In his next reported decision involving the same two parties, however, Arbitrator Shulman refused to uphold discipline against glaziers who refused to perform painting work as ordered:

> "Nothing in Opinion A-116 [3 LA 779] justifies the disciplinary action in this case. That opinion dealt primarily with production employees. It may be applied to the skilled classifications in situations where there is reasonable dispute as to whether the work assignment does or does not fall within the employee's classification. The duty of obedience to orders may well be extended to such instances of reasonable dispute. But it cannot be extended to assignments of work in admittedly different trade groups constituting different seniority groups. The company does not have the same right of transferring or loaning skilled tradesmen from one classification to another that it has with respect to employees in production classifications...." (Ford Motor Co., 3 LA 782 (Shulman, 1946) at page 783).

None of these exceptions appear to apply to the grievant. Signing for receipt of the notice is related to the orderly operations of the Company, and it posed no danger to her safety, health or dignity. She is not a Union official attempting to police the contract, and in any event Rogstad made it clear to her that signing for the notice would have no impact on her rights under the collective agreement. The fact that she was relying on her interpretation of the Union's advice may explain her actions, but it also puts her at risk if the advice is bad or if she follows the advice to the point of absurdity. There was no legitimate reason for the grievant's stubborn refusal to sign for the envelopes, and thus the weighing of conflicting interests referred to by Arbitrator McCoy is decidedly one sided in this case. The grievant was guilty of insubordination.

D. Corrective Discipline and Just Cause for Discharge

Although the grievant committed a fairly clear act of insubordination by refusing Rogstad's direct order to sign for the notice of reprimand, the Company is not blameless in this situation. Indeed, Rogstad's course of action after the first notice was refused was easily as unreasonable as the grievant's. She foolishly refused to acknowledge any of their attempts to serve her with an envelope containing a notice of reprimand. For his part, Rogstad doggedly attempted to force her to accept the subsequent notices, without ever telling her what the envelopes contained or just giving her the envelopes without a signature. He did this, knowing after the attempts to deliver the written reprimand that she would not sign for the envelopes absent a steward. As a result of this test of wills, he moved her through the progression of discipline from a clean record on Monday afternoon to a discharge on Wednesday morning, without her ever knowing for sure that she had been disciplined at all. 2/

The purpose of corrective discipline is to modify employee behavior, by imposing progressively heavier sanctions when conduct is repeated. This gives the employee an opportunity to conform to employer expectations before forfeiting his or her job, and essentially makes additional discipline a matter of employee choice. Although the progression in this case, from reprimand to short suspension to longer suspension to discharge, is superficially consistent with these principles, in practice it bears no resemblance whatsoever to corrective discipline. Secret discipline cannot modify behavior, and the sight of a sealed envelope does not put an

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Thus Arbitrator Shulman recognized a balancing of interests on the issue of whether "obey now, grieve later" was applicable, even where the order directly involved production, and struck the balance in favor of the bargaining unit's integrity as a craft unit.

2/ The discipline letters were copied to Union Steward Coney and Secretary-Treasurer DeHahn. Coney was out on sick leave, and DeHahn testified that he received the notices in Wednesday's mail, by which time she had already been discharged.

employee on notice about his or her behavior. Without minimizing the foolishness of the grievant's conduct, it bears noting that the escalation of discipline here could almost certainly have been avoided by the simple expedients of either telling her she was receiving discipline for not signing for the notices or arranging to have a Union representative present when the notices were served. If she then chose additional discipline over signing the receipts, the Company in turn could have chosen to move her through the progression of discipline. Instead, the supervisors stood as stubbornly on their right to insist that she obey the order to sign for the envelope's contents sight unseen as she stood on her conviction that she would not.

The Company's failure to explain that discipline was being imposed also presents a notice problem with regard to the discipline after the Monday attempt at delivering the envelope. The grievant clearly understood that Rogstad was ordering her to sign for the envelope on Monday afternoon, and he had assured her that signing would not prejudice her rights. She refused and, as discussed above, this refusal was insubordination. Her subsequent refusals have been treated as independent acts of insubordination, each meriting a heavier measure of discipline. Viewing the subsequent refusals as separate transactions might be justified if the Company had informed her verbally that she had received discipline for the former refusal and that the new delivery was a different document. By way of example, if a supervisor gives an employee an order to move a bus from one point to another on one day, and the employee refuses, the employee is guilty of insubordination. If the employee subsequently refuses to follow an order to drive a particular route, the employee is guilty of another distinct act of insubordination. These are different transactions. However, if the supervisor repeats the order to move the bus four times, and the employee refuses each time, there are not four separate acts of the insubordination. Instead, it would be treated as the same act of insubordination, confirmed by the employee when given repeated opportunities to recant. The Company's silence about what was going on in this case brings it much closer to the "single order" example. The grievant was continuing her initial refusal to sign for the envelope. Treating each refusal as a separate act when the Company knew full well that she was unaware of the discipline being imposed on her amounts to pyramiding discipline for the same basic act. This is not consistent with the principles of just cause. 3/ For these reasons, I conclude that the grievant's two refusals to sign for the envelopes on Tuesday must be treated as part and parcel of the insubordination committed on Monday.

Conclusion

The grievant's Weingarten rights are not implicated in this grievance. The meeting on

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3/ There is a point at which the lapse of time between an initial refusal to follow an order and the subsequent repetition of the order might constitute separate transactions for discipline purposes. It is not necessary in this case to articulate some precise formulation of how long a lapse would be required.

Saturday night may properly be treated as an investigative interview, since discourtesy is a basis for discipline under the work rules. She did not assert a right to representation in the meeting with Serwatka until just before she walked out, and when she did assert the right, he agreed that she could have a steward present in the future. The attempts to deliver the envelopes to her on her bus and in the drivers' room were not investigative interviews, and thus the right to representation does not arise in those instances.

The grievant was not guilty of insubordination on Saturday for her conduct during the meeting with Serwatka. Her behavior was rude and abrupt, but was not markedly different than on the past occasions. She had not been disciplined for this conduct in the past, and she was not given any type of warning that her behavior in this instance could lead to discipline. Given this, and in light of the fact that she did not raise her voice, use profanity or vulgarities, or refuse any direct order from Serwatka, I cannot conclude that there was just cause for discipline rising out of the Saturday meeting.

On Monday, she refused a direct order from Rogstad to sign for the envelope Serwatka was attempting to deliver. She did this based on her interpretation of the Union's advice. It appears that she may have been taking the Secretary-Treasurer's caution farther than he had intended. To the extent that she was correctly interpreting the Union's advice, it was bad advice and cannot protect her from the general principle of "obey now and grieve later". Rogstad's order was legitimate, work related and posed no threat to her physical well-being or her rights under the contract. Her refusal was therefore clear insubordination, and provides just cause for discipline. However, the Company's refusal to explain to her that discipline was being imposed, even though it knew or should have known that she was not aware of the discipline, prevents the Company from imposing greater measures of discipline for the two subsequent refusals on Tuesday. Corrective discipline is not effective where the initial sanctions are not known to the employee. Moreover, given the lack of effective notice of discipline, the series of refusals to sign for the envelopes is more properly treated as a single transaction for discipline purposes than as three distinct acts of insubordination.

The grievant was guilty of one act of insubordination. According to the progression of discipline under the work rules, she was subject to a written reprimand. The suspensions and the discharge are accordingly not supported by just cause. The appropriate remedy is to immediately reinstate her to her position, make her whole for her losses, and adjust her discipline records to remove any reference to the suspensions or the discharge.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The Company had just cause to reprimand the grievant for insubordination. It did not have just cause to suspend or discharge the grievant. The appropriate remedy is to:

1. Immediately reinstate the grievant to her former position, without loss of seniority or benefits from the date of the discharge;

2. Make her whole for her losses;

3. Remove any reference to the suspensions and discharge from her personnel file.

Dated at Racine, Wisconsin this 18th day of June, 1996.

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Arbitrator

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