

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 918, AFSCME, AFL-CIO

and

GRANT COUNTY

Case 56
No. 52902
MA-9148

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO,
appearing on behalf of the Union.

Mr. Jon Anderson, Godfrey & Kahn, Attorneys at Law, appearing on behalf of the
County.

ARBITRATION AWARD

The Union and the County named above are parties to a collective bargaining agreement that provides for final and binding arbitration. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator and the undersigned was appointed. A hearing was held on January 8, 1996, in Lancaster, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties filed briefs and reply briefs and the record was closed on June 13, 1996.

ISSUE:

The parties ask:

Did the Employer violate the labor contract when it imposed a one-day and/or a three-day suspension upon the Grievant? If so, what is the appropriate remedy?

BACKGROUND:

The Grievant is Carla Groom. She has worked for the County since 1977, and she is part of the Social Services Department support staff which provides clerical services, bookkeeping, etc. Her position used to be called Clerk II, but is currently called Office Assistant. (Same job, new title.)

The Grievant's current supervisor is Jim Hoehl, who has been with the County for the last six years. He is familiar with her work through his observations of her, conferences with her, and reports of hers and other co-workers. Hoehl had been concerned about the Grievant's performance, and he has imposed the disciplinary measures that are at issue in this grievance.

The Grievant's duties have remained more or less the same over the eighteen and one-half years of her employment, except the volume of work has grown. The Grievant prepared a list of her daily, week, monthly, quarterly duties in July of 1993. Her daily tasks include sorting, stamping, making copies and distributing state mail as well as other incoming mail. She makes up cards and labels for about 20 new cases a month for the Economic Support unit (ES), the Service Unit. She notes name changes or adds people onto master index cards and files. When files are too thick, the Grievant splits them and types up new labels and changes labels on all the files for that client, which occurs about ten times a month. She closes both ES and Service files, and checks them against a check in/out list and the inventory list and places them on those lists if they are not on them. There are usually less than 100 ES files per month to be closed, but there have been over 100 a month on the Service unit. She also files loose paper in the ES and Service files, and runs outgoing mail through a meter.

The Grievant's weekly duties include filing about 20 news cases a month for juvenile court intake, and filing Pony Express materials that come from the state on a weekly basis. She files materials for Jan and Robin, two social workers in the guardianship area (Robin was no longer there at the time of the hearing). She files decision letters from the state. The Grievant also records cash and check receipts in a special notebook, receiving about 200 receipts or more a month.

Monthly duties include filing fiche materials from the state for medical assistance, SSI and EDS. The Grievant makes a quality check of ES files, which verifies that what the inventory says is in the file is actually there. She purges part of the records of ES files and shreds entire records of those files, although she was not purging files at the time of the hearing. There is also an end of month recording from the check in/out list to the inventory book/add on list, done manually at the beginning of a new month, then entered on the computer. On a quarterly basis, the Grievant handled bulk mailing of a newsletter. And as needed, she worked at a food pantry.

The ES case load has gone down to about 150 cases from 600 in 1986. However, in social services, referrals for abuse are up, prosecutions are up, while juvenile delinquency cases are down. Paperwork required by the state has expanded, and a computer program that should eliminate most of the paper being filed currently will not be in full service for a few years. The number of employees in the support staff has not changed between 1993 and 1995, the period of time that Hoehl tracked the Grievant's work and disciplined her for incomplete work.

Between 1993 and 1995, Hoehl tried various methods to increase the Grievant's productivity. He found that some of her tasks not getting done, and he thought that if she ever

caught up with her work, she could stay caught up. In 1993, he assigned other employees in the unit to help her. For example, Marie Specht spent almost 15 hours in March of 1993 working on files -- opening them, closing them, splitting them when they got too thick, etc. -- for the Grievant, in addition to her regular work load. The Grievant was gone from work during 1993 for maternity leave, and when she returned on July 6, 1993, there was no backlog of work.

When the Grievant came back to work in 1993, Hoehl asked her to give him a report each month to show what work was not completed at the end of the month. She reported on July 29, 1993 that certain tasks were not done -- loose paper filing, the quality check, purging of files, end of month inventory, and Jan and Robin's filing. On July 30, 1993, she reported that the quality check of ES files was half completed, and the purging of files and loose paper filing were not completed in July. On August 25, 1993, she reported items not done as: ES loose paper filing, shredding ES files for July and August was half done, logging in receipts, and juvenile court intake half done.

Hoehl meets with everyone on his staff twice a month to see if employees are having trouble. He was meeting twice a month with the Grievant and had additional meetings for specific things. On September 14, 1993, Hoehl and the Grievant worked out certain goals and agreed upon them. Her goal for September was to get completely caught up except for loose paper filing, and her goal for October was to be completely caught up with all work. Hoehl described those goals as ambitious, but not impossible, and he thought they were realistic based on assurances given by the Grievant.

The Grievant suggested to Hoehl that she could skip taking her morning, afternoon or lunch breaks as well as ask for help in order to accomplish her work in a timely manner. Hoehl told her that skipping her breaks was not an option. Vicki Lee had time available in September to help the Grievant, and she spent more than 15 hours in the middle of September backing up the Grievant. Hoehl also asked the Grievant to identify others who could help her out with the work load. The Grievant was not the only person who needed help.

The Grievant did not meet the goal of getting all work done except for loose paper filing by the end of September 1993. Her memo to Hoehl on September 24, 1993, indicated several matters not completed -- shredding closed files for August, Jan and Robin's filing, binders two week supply, updating master index cards for shredded files, logging in receipts, closing cases, and loose paper filing. On October 4, 1993, Hoehl sent the Grievant a memo warning the Grievant of the seriousness of the situation and that incomplete work might result in discipline.

Hoehl also observed the Grievant at work for several hours during October of 1993, spending three hours at a time on several different dates and hours of the day. He saw no tangible reason that she could not get her work done. He described her as a diligent worker, and he found nothing specific that she was doing wrong or that she should have been doing differently. By October 29, 1993, the Grievant's report to Hoehl on work not completed included the following:

Jan and Robin's filing, master index cards, receipts, LTS binders, Pony Express filing, ES closed cases, Service closed cases, ES and Service loose paper filing. Hoehl felt that by the end of October, the situation was getting worse. He had a meeting with the Grievant on November 1, 1993, to check on the status.

On November 2, 1993, Hoehl issued a verbal reprimand to the Grievant, which was not grieved and is not at issue here. 1/ Hoehl warned the Grievant in that reprimand that progressive disciplinary action would result if her work continued to be incomplete.

During November of 1993, Vicki Lee provided back up again for about four hours. By the end of November, the Grievant's work was completed, as well as by the end of December of 1993. She also met the Employer's expectations for January of 1994. However, by the end of February of 1994, the tasks not completed included ES and Service loose paper filing, quality check of ES files, new Service files, closing Service and ES files. In early March, Hoehl told the Grievant she had two weeks to complete tasks not finished because of her week of vacation in February, and that she should give him another report on March 14, 1994, and that he expected all work for March to be caught up by March 31st. On March 31, 1994, the Grievant reported that ES and Service loose paper filing and purging was not completed.

Hoehl considers Service files more important than ES files, because Service files are abuse and neglect complaints. If loose papers are not with the file, social workers looking at the file cannot get a complete picture in deciding whether to open a case or not. Hoehl wants the loose papers placed in that file within a month.

On April 5, 1994, Hoehl issued a written reprimand to the Grievant, which also was not grieved and not at issue here. He again warned her that continued incomplete work by the end of April of 1994 might result in continued progressive discipline which could include termination. By the end of April of 1994, the only tasks not done were master cards which were not logged, or half of them not done. All her work was done in May and June of 1994.

By the end of July of 1994, several tasks were not completed, such as the quality check, shredding, loose paper filing for Service and ES, old case files for Service, new case files for ES and Service. It was reasonable to skip the quality check and shredding work because certain reports for July had not been run by someone else, and while those reports would not have prevented this work being done, it would have added time to those tasks. At the end of August of 1994, only loose paper filing for Service was not completed. At the end of September of 1994,

1/ Although the Union had been certified in March of 1993, there was no collective bargaining contract in existence until September of 1994. Accordingly, there was no grievance procedure available when the Grievant received the first verbal reprimand, as well as the following written reprimand.

several tasks were not done -- ES loose filing, close ES and Service cases, loose paper filing for Service cases, and master index cards. Only loose paper filing for Service and ES remained undone by the end of October of 1994. The same was true for the end of November of 1994.

By December 20, 1994, the Grievant had not completed shredding, updating master index cards for shredded files, new cases, splits, filing Pony Express, filing micro fiche, closing binders into pocket folders, guardianship filing, juvenile court intake filing, and the quality check was half done. However, the loose paper filing work was done. Hoehl noted on January 13, 1995, that progress was made on several of those items. On January 31, 1995, the Grievant reported that the work not done for that month was Service loose paper filing, closing binders in pocket folders, closing Service files, closing GMIS's, and half of the ES loose paper filing was done. She noted on that report that some of those items were incomplete because she was trying to get the quality check, shredding and master index updated for December of 1994 and January of 1995 finished by January 31, 1995.

Also, around February 1, 1995, Hoehl told the Grievant that he needed to get four more hours a week out of her position. The purging work needed to be done. He told the Grievant that if she could do all her work plus four hours of receptionist back up, she could do all her work plus four hours of purging. The Grievant did not believe she could accomplish this. Hoehl felt he had been holding off for years from functioning with that position at the level it should be.

On February 28, 1995, the Grievant reported that work not completed included closing Service and ES files, closing GMIS's, filing Service loose paper, ES new cases, and ES loose paper filing half done.

On March 6, 1995, Hoehl issued a one-day suspension, which is part of this grievance. The disciplinary letter states:

I met with you on March 1 to discuss the incomplete work for February. Based on the facts of the incomplete work and the responses given, the incomplete work (attached list) is unacceptable job performance.

Since previous disciplinary actions have not brought about the required changes in job performance, you are being placed on a one-day suspension without pay on Tuesday, March 7, 1995. You may want to contact an Employee Assistance Program (EAP) counselor to discuss any factors adversely affecting your job performance.

Carla, as we've discussed many times, you are expected to have all work complete by the end of each month, which includes

receptionist and any other unit backup responsibilities and special assignments.

Continued monthly incomplete work may result in continued progressive discipline up to and including discharge.

We have scheduled conferences on March 10 and 31 to discuss progress and you may schedule any other times to meet with me as circumstances warrant throughout the month.

If you disagree with this disciplinary action, you may appeal it through the grievance procedure.

During March of 1995, the Grievant accomplished a lot of work, and by the end of that month, only the Service loose paper filing was not done. However, Hoehl sent her a memo on April 3, 1995, pointing out that the Service loose paper filing of some four inches thick was not in compliance with her job requirements. At the end of April, the loose paper filing for ES and Service was not completed, nor were other tasks such as juvenile court intake filing, guardianship filing, binders, ES new cases, two splits, seven new GMIS, and Service files to be closed. Hoehl found the report for the end of April of 1995 to be significant, and issued a three-day suspension on May 9, 1995, which is part of this grievance, and which states:

I met with you on May 2 to verify the serious nature and extent of the incomplete work for April. Based on the reasons given and the ongoing facts beginning with the 11/2/93 verbal reprimand and performance and other disciplinary actions to date, the continued incomplete work (see attached memos dated 3/31/95, 4/3/95, and 5/1/95) is unacceptable job performance.

Therefore, you are being placed on a three-day suspension without pay beginning on Wednesday, May 10, 1995, and extending through May 11 and May 12.

You may want to contact an EAP counselor to discuss any factors adversely affecting your job performance.

This Department, as well as myself, have provided support in the accomplishment of your job responsibilities. I have continued to offer whatever assistance and support (short of reducing the assigned workload) during these extended periods of unacceptable job performance.

Continued incomplete work will result in further disciplinary action up to and including termination of employment.

We have scheduled conferences on May 12 and 26 to discuss progress and any concerns. You may schedule any other times to meet with me as circumstances warrant.

An updated job description for the Grievant's position of Clerk II was prepared and signed in June of 1995. Hoehl transferred some work of the position out of it to save time, such as taking mail to the post office on a daily basis. Those daily trips took about 15 minutes each day. He also transferred work of shredding, ICN balance sheets, protective payee checkbooks, typing pool, ES purging, special projects coordinator, backup in filing when absent for vacation.

Hoehl believes that his expectations of the Grievant are reasonable, based on his prior experience and based on the fact that the Grievant has performed all the tasks on a sporadic basis.

When the Grievant is on vacation or absent, others are assigned to do her work. Hoehl finds that others do that work more efficiently, even though the Grievant tries very hard and works diligently.

The Grievant's previous supervisor told her that work had to be done on a timely basis, although the Grievant could not recall any prior warnings or threats regarding discipline. The Grievant had no prior discipline in her record.

THE PARTIES' POSITIONS:

The County:

The County asserts that the work standards established by the Department are reasonable and were developed in accordance with management rights. Management has the right to plan, direct and control operations, to determine the amount and quality of work needed, and to make and enforce reasonable rules and to discipline employees for cause.

The County has communicated the expectations for performance to employees. The County's expectations requiring a consistent approach to necessary record keeping and documentation within the Social Services Department are reasonably related to the orderly, efficient and safe operation of the Employer's business. The Grievant continually failed to meet those job expectations, despite accommodations made by the County. The Grievant and her supervisor held numerous meetings to correct the Grievant's deficient work product. She was forewarned that progressive disciplinary action would begin.

The fact that the Grievant was able to complete all necessary job duties during certain times

proves that the Grievant is capable of performing the job functions on a monthly basis and that the standards established were reasonable and equitable. Despite the prior verbal and written warnings, the Grievant still did not complete the requisite work assignments in several months. By March 6, 1995, Hoehl was compelled to issue the one-day suspension without pay. The Grievant continued to leave work undone, which was unacceptable and resulted in the three-day suspension on May 9, 1995. The County has shown that the Grievant failed on numerous occasions to meet the Department's work standards.

The County submits that it has sufficient cause to discipline the Grievant as a result of her continued failure to comply with the job performance standards within the Department. The Grievant knew or should have known of the work product standards. The level of discipline imposed is commensurate with the degree to which the Grievant failed to meet job expectations. Progressive discipline was followed and assistance and support was offered.

The Arbitrator should not substitute her discretion for that of the Employer in its determination of the appropriate penalty in this case. Management determined that the Grievant was seriously deficient in her performance of her basic job duties. The Employer determined that a one-day suspension was the appropriate penalty, and further substandard work resulted in the three-day suspension. The Employer did not abuse its discretion in taking this action. There is nothing to suggest that the Employer acted arbitrarily and capriciously or in a discriminatory manner towards the Grievant. The discipline flows from the gravity of the offense and is reasonable under the circumstances.

The Union:

The Union submits that the reprimands issued to the Grievant before the implementation of the initial labor agreement should not be considered as part of the progressive disciplinary record. The Grievant had no effective means by which to challenge the just causes basis for the 1993 and 1994 reprimands before the collective bargaining agreement was available to her. She was an "at will" employee, and the Employer was not obligated to establish just cause before imposing discipline. The Grievant had no way to have a neutral third party hear her case. Therefore, the Employer cannot now hold those disciplinary actions against the Grievant to support two suspensions.

The Union asserts that the discipline imposed is plainly unfair. First, the Grievant's workload has increased. The County has argued that the Grievant is not able to timely complete her work assignment, and it assumes that this is because she is incompetent to do so. There is another equally valid explanation -- the workload imposed on the Grievant is beyond what can be reasonably expected of any employee. The County has the burden to prove that the Grievant is incompetent, and there's little evidence to support that, while the preponderance of evidence supports the explanation that the workload is too heavy.

The workload of the Grievant increased substantially over the past several years. Case loads swelled since 1993, requiring more files to be created and maintained by the Grievant. Although it would seem that the reductions in the economic support case load would compensate for the social service case load increase, Hoehl said that those changes had not translated into a reduction in support services from the Grievant. Thus, one significant element of her work load is increasing, while the other remains unreduced. The expectations of what should be completed each month are unreasonable.

The Union also states that the Grievant received no effective support from her supervisor. The Grievant established the monthly work goal expectations herself, and the goal set in September of 1993 was ambitious, according to Hoehl. He also rejected her ideas of how to improve her performance, without offering any alternatives. His own observations did not reveal anything that the Grievant should change. The Grievant is a nearly 20 year employee who had no record of performance problems before 1993. Instead of giving her training, the Employer sought to punish her.

The Union points out that the reprimands did not take into account certain mitigating circumstances, such as the fact that the Grievant did not work the full month of September 1993 and had a week of vacation in February of 1994. The Grievant finished all or nearly all of her work for several months. Yet the Employer failed to recognize that in giving the one-day suspension. When handing out the three-day suspension, the record does not show how much work was left unfinished or whether it was finished within the first several hours of the following month.

The Union concludes that the Employer failed to show it had just cause for either the one-day or three-day suspension, and it submits that the grievances should be sustained, the discipline rescinded, the Grievant made whole, and the employee's record expunged of all references to the discipline.

In Reply:

The County objects to the Union's attempt to discredit the prior reprimands issued before the first labor contract was in place. Those reprimands served as a foundation for more severe discipline, and the slate is not wiped clean every time an initial bargaining agreement is negotiated. The County contends that the Union's assertion that the Grievant's workload increased is not true, and the County reviewed the job duties to ensure that its expectations were realistic. The County even applied a generous factor of 2.5 for each necessary task. This was not an uncaring employer loading up work on an already taxed employee, but a patient employer with clear expectations. The County also objects to the Union's statement that the Grievant did not receive effective support from her supervisor, where the record reveals an almost continuous dialogue between the Grievant and her supervisor about performance. Moreover, the Union focuses on only a few months of work instead of the whole record of substandard performance. Just cause essentially

requires fair dealing, and the Grievant has been treated fairly, the County states.

The Union responds by stating that the just cause standard implies that work quantity and quality standards be reasonable if enforced by discipline, and the County's expression of its dissatisfaction with the quantity of work produced is not evidence that the required workload was reasonable. The Union also objects to the County's contention that the Grievant continually failed to meet job expectations set by the County, because the work was completed on many occasions. The only reasonable conclusion that can be reached from the record is that the work load is quite variable and not easily subject to standardization. The Union states that there is no evidence that a time management study was ever done by the County or that Hoehl is a time study expert, and the 2.5 factor means nothing if the base estimate is nonsense. The Union finds no fair dealing where the Grievant was asked to establish her own standards and then held to them even when her supervisor knew that she was setting the mark too high.

DISCUSSION:

The collective bargaining agreement in Article 6 states that the Employer shall not suspend or discipline employees without just cause. The just cause standard is also seen in Article 2, which also gives management the right to determine the amount and quality of work needed, among other things.

This is somewhat of an unfortunate case, because here we have an employee who has worked for the County for a very long time. And she is a diligent worker by the Employer's own admission. Yet, for some reason, she can't get the work done.

The Union says there is too much work. The County says not so. There is no way that I can determine whether the work load here is reasonable or not. The County has made its expectations known to the Grievant, and there are times when the Grievant can get all the work done. When the Grievant is absent on vacation, others doing her work can get it all done. Apparently, while the Grievant works diligently, she does not work efficiently enough to complete the tasks. At least not consistently.

Whether the early reprimands -- before a labor contract with a grievance procedure was in place -- would have been overturned or not is not an issue before me. What is important to note about those prior reprimands is that the County took less severe disciplinary measures before moving to progressively severe disciplinary measures. What is very important to note is that the County made its expectations known to the Grievant and made the Grievant aware of the consequences of not meeting those expectations. That is exactly what the County should have done.

The County has also tried various other methods. It had other employees assigned to help out with the Grievant's work load to get her caught up. Hoehl met frequently with the Grievant

and they discussed the problem. He observed her at different times. There was no need for additional training -- after all, the Grievant had been doing the same job, or substantially the same job, for 18 and one-half years.

The County has shown that it had just cause to discipline the Grievant and the grievance is denied.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 20th day of June, 1996.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator