

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 67, AFSCME, AFL-CIO

and

CITY OF RACINE

Case 476
No. 53283
MA-9291

Appearances:

Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 67.

Mr. Guadalupe G. Villarreal, Assistant City Attorney, on behalf of the City of Racine.

ARBITRATION AWARD

Local 67, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the City of Racine, hereinafter the City, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The City subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on February 29, 1996, in Racine, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by May 14, 1996. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to agree on a statement of the issues and agreed the Arbitrator will frame the issues to be decided.

The Union would state the issues as being:

Did the City have just cause to suspend the Grievant on August 4, 1995? If not, what is the appropriate remedy?

The City would state the issues as follows:

Did the Employer violate the Collective Bargaining Agreement when it disciplined Rodney McCoy for the incident of July 19, 1995?

If so, what is the appropriate remedy?

The Arbitrator frames the issues to be decided as follows:

Did the City violate Article II, Section E. Management Rights, of the parties' Agreement when it suspended the Grievant Rodney McCoy, for one day without pay on August 4, 1995? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' 1995-1997 Agreement are cited:

ARTICLE II

Management and Union Recognition

. . .

1. Management Rights. The City possesses the sole right to operate City government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract and the past practices in the departments covered by the terms of this Agreement unless such past practices are modified by this Agreement, or by the City under rights conferred upon it by this Agreement, or the work rules established by the City of Racine. These rights which are normally exercised by the various department heads include, but are not limited to, the following:

. . .

2. To hire, promote, transfer, assign and retain employees in positions with the City and to suspend, demote, discharge and take other disciplinary action against employees for just cause.

...

- 8. To determine the methods, means and personnel by which such operations are to be conducted.

...

ARTICLE III

GRIEVANCE PROCEDURE

...

- H. Arbitration Hearing. The Arbitrator shall use his best efforts to mediate the grievance before the final arbitration hearing. The parties shall agree in advance upon procedures to be used at the hearing and the hearing shall follow a quasi-judicial format. The Arbitrator selected shall meet with the parties as soon as a mutually agreeable date can be set to review the evidence and hear testimony relating to the grievance. Upon completion of this review and hearing, the Arbitrator shall render a written decision as soon as possible to both the City and Union, which shall be final and binding upon both parties.

...

- J. Decision of the Arbitrator. The decision of the Arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract area where the alleged breach occurred. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement.

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BACKGROUND

The City maintains and operates a Department of Public Works. Among that Department's functions is conducting street sweeping operations during the summer months on the City's streets. The Union is the recognized exclusive bargaining representative of the employees in the City's Public Works system in specified job classifications. The Grievant, Rodney McCoy,

has been employed by the City since 1978 and at the time in question and for two years prior, held the position of Street Sweeper Operator.

During the summer months, the Sweeper Operators work from 2:00 a.m. till 10:00 a.m. and have a 15-minute break at 4:00 a.m. There are five Street Sweepers and each has a different route to cover. The Grievant is assigned to Route 1. The Sweepers begin on the North side of the City on Monday and work their way south on their assigned routes during the week. From week to week, a sweeper will be in the same area on a given day of the week, e.g., each Wednesday, the Grievant is on the same part of his route that he was on the preceding Wednesday. On Wednesdays, the Grievant's route includes that area around Summit Avenue between High Street and St. Patrick Street. The Grievant normally takes his 4:00 a.m. break on St. Patrick Street west of Summit and facing east.

The grievance in this case involves the one-day suspension the Grievant received for the alleged incident of Wednesday, July 19, 1995. There is a dispute as to what occurred on that date. The Grievant denies that anything occurred; he worked his eight-hour shift and took only his authorized breaks, including his regular fifteen-minute break from 4:00 a.m. to 4:15 a.m. while parked on St. Patrick Street since it was a Wednesday. The City, relying on the report of a citizen, A, and A's testimony, alleges that the Grievant was parked there and apparently sleeping for approximately one hour, 3:30 a.m. to 4:30 a.m.

A lives, and has for seventeen years, on Carlisle Street, which is one block east of Summit Avenue, and there is an alley running between Summit and Carlisle. A testified that she has flex hours where she works and that she arose at 2:00 a.m. the morning of July 19th because she planned on being at work by 4:00 a.m. so she could leave early. According to A, after bathing and drying her hair, she was sitting at her kitchen table in the dark having coffee at about 3:30 a.m. when she saw a Street Sweeper on Summit turn off onto a little side street and go approximately 75 to 100 feet before it made a U-turn in a driveway, pulled up by some bushes, parked and turned off the lights. According to A, although she guesses she has seen a Sweeper in the neighborhood from one to three times per week, she had never seen one stop before on St. Patrick Street. A testified she saw the silhouette of a person get out of the Sweeper and appear to relieve himself on the bushes, then get back in the Sweeper and sit down, and after a few minutes, slouch back in the seat, where he stayed for approximately one hour. At 4:02 a.m., A called the Police Department and reported that a Street Sweeper has been parked "over here on Summit by the water tower" for a half an hour and that she did not know if something was wrong with the person, or if he was sleeping, but she had not seen any movement.

The Police Department dispatcher then radioed a police officer patrolling in the area to check the welfare of a street sweeper at Summit and High who has been parked there for half an hour, and did not mention it was near the water tower. Another officer monitored the call and indicated he would make the check. Officer Munoz traveled west on High Street, crossed Carlisle Street, and arrived at the intersection of High and Summit at approximately 4:07:45 a.m. He

looked south, and then north, on Summit and saw nothing, continued west one block on High and then turned north and circled the block and reported at 4:07:54 that he saw no sweeper. Officer Munoz did not check St. Patrick Street which intersects Summit one block south of High Street by the water tower. (Northwest corner of Summit and St. Patrick).

According to A, she did not see a police car respond and around 4:45 a.m., she went out and got in her truck and drove around and came up Summit and then pulled alongside the Sweeper. Seeing movement, she drove up the side street (St. Patrick) and turned around and again pulled up alongside the Sweeper, looked, and saw a man sitting up and looking back at her. A testified that she could only see that it was a black man with short hair wearing a white T-shirt and that she could not identify the person beyond that. A then went down St. Patrick to Carlisle, turned south and then saw a police car coming toward her and then turn. A decided to see what the police would find, thinking it was a response to her call. A turned and went down Summit and, finding the Sweeper gone, made a right turn on High Street to go to Carlisle, and head back towards her work. Before she made the right turn onto Carlisle, A saw the Sweeper sitting on Carlisle, at the corner of High and Carlisle. A testified she proceeded past the Sweeper and that she and the person inside the Sweeper looked at each other. A testified that, as it was now lighter, she could see the man sufficiently to identify him. This was approximately 4:55 a.m., according to A. A identified the Grievant by pointing him out at the hearing.

A testified that she subsequently called the City to report that the Street Sweeper operator appeared to have been sleeping on the job. A General Foreman in the Department of Public Works, Jeff Fidler, called A and asked to meet with her at her home. Fidler then met with A at her home and she described to him what she had seen and drew a map of the area locating her home and where the Sweeper had been parked. At Fidler's request, A wrote up what she had seen. In that report, A stated that she had also seen the Grievant two days later on Wright and Lathrop and that he looked at her and that she felt he would think she was watching him.

The Grievant testified that on the morning of July 19, 1995, he took his fifteen-minute break, and no more, from 4:00 a.m. to 4:15 a.m., and as was his practice on Wednesdays, parked his Sweeper on St. Patrick Street. The Grievant also testified that by 4:55 a.m. on that date, he would have been already across Northwestern Avenue, south of where A claimed she saw him at the corner of High and Carlisle. The Grievant also testified that A never drove by and looked at him that morning when he was parked on St. Patrick. He testified that a week later, while in that vicinity, he thought a car was following him and that a couple of months later, a supervisor came out to him and said someone had reported seeing a Sweeper drinking on the job in this area.

The Grievant acknowledged that someone looking down Summit at its intersection with High Street would not have seen him parked on St. Patrick since he had his strobe light and headlights turned off. He also agreed that he does not always follow the same route in covering his route and that the time it takes to do a particular stretch may vary depending on conditions. He also testified that when a Sweeper finishes his assigned route, he will normally help another

Sweeper, normally one with a route next to his.

The Grievant was questioned about A's allegations which he denied. On August 4, 1995, the Grievant was given written notice of a one-day suspension to be served on August 7th, which notice stated, in relevant part, as follows:

THE ABOVE ACTION WAS TAKEN AGAINST YOU TODAY FOR THE FOLLOWING REASONS. (GIVE A STATEMENT OF THE FACTS CAUSING THIS ACTION, INCLUDING THE TIME & PLACE, ACTS AND NAMES OF PERSONS INVOLVED, THE WORK RULES AND/OR ARTICLES OF THE CONTRACT VIOLATION):

WE RECEIVED A COMPLAINT FROM A RESIDENT, IDENTIFYING YOU AS THE EMPLOYEE SHE OBSERVED SITTING IN SWEEPER #98 FROM APPROXIMATELY 3:30 A.M. UNTIL APPROXIMATELY 4:45 A.M. ON WEDNESDAY MORNING JULY 19, 1995. THE COMPLAINT FURTHER STATES THAT SHE OBSERVED YOUR HEAD DROP BELOW THE STEERING WHEEL WHICH INDICATED TO HER THAT YOU WERE EITHER HAVING A MEDICAL PROBLEM (POSSIBLE HEART ATTACK) OR YOU WERE SLEEPING.

THIS COMPLAINT WAS ORIGINALLY RECEIVED BY ALDERMAN ROBERT TURNER WHO IN TURN PASSED IT ALONG TO THE COMMISSIONER OF PUBLIC WORKS RICK JONES. MR. JONES INSTRUCTED ME TO INVESTIGATE AND REPORT BACK TO BOTH HE AND THE PERSONNEL DIRECTOR JAMES C. KOZINA. AS A RESULT OF THIS INVESTIGATION IT HAS BEEN DETERMINED THAT THIS IS A CREDIBLE RESIDENT THAT WOULD HAVE NO REASON TO FABRICATE A STORY SUCH AS THIS. IT HAS FURTHER BEEN DETERMINED THAT YOU WERE APPARENTLY SLEEPING ON THE JOB DURING THIS TIME FRAME.

THIS IS A VIOLATION OF WORK RULE "Q". WORK PERFORMANCE, SEC b) SLEEPING". AND WILL RESULT IN A 1-DAY SUSPENSION (MONDAY, AUGUST 7, 1995). PLEASE BE ADVISED THAT ANY FURTHER VIOLATIONS OF THIS NATURE WILL RESULT IN THE APPROPRIATE

DISCIPLINARY ACTION.

The Grievant served the one-day suspension and thereafter filed the instant grievance challenging that discipline. The parties attempted to resolve the dispute, but were unsuccessful, and proceeded to arbitrate the grievance before the undersigned.

POSITIONS OF THE PARTIES

City

The City takes the position that it had just cause for the discipline imposed on the Grievant based upon the seriousness of the offense. First, the Grievant did not do any work for the City for one hour. Secondly, the Grievant was very likely sleeping the entire time or loafing, and those actions caused a resident, A, to become concerned to the point that she called the Police Department to report his lack of movement. By its questioning of A, the Union implied that she had an ulterior motive to falsely accuse the Grievant, however, it presented no proof of any bias or ulterior motive.

The City asserts that the real issue in the case is whether or not the Grievant remained at his location on St. Patrick Street for approximately one hour. It asserts that the credible evidence is that the City resident called the Police Department to inform them of a safety concern for a City employee. That call was recorded and clearly shows that A was a concerned citizen calling to advise them of a possible problem on Summit Avenue by the water tower. The City notes that the Grievant's job is basically unsupervised and asserts that he took the opportunity to grab some extra sleep and was caught by an alert citizen who became involved through her concern for his welfare, rather than to have him disciplined. The matter was complicated by the Police Department dispatcher's failure to transmit all of the information A had provided to the patrol officer who responded. The officer went to the location given by the dispatcher, Summit Avenue and High Street, and never was advised to check by the water tower, as A had emphatically indicated. The City asserts that it was the police officer's failure to locate the Sweeper that encouraged the Grievant and the Union to deny the incident ever happened and to imply that A simply made it up.

The City concludes that based upon the totality of the evidence presented, the grievance should be denied and the discipline upheld as reasonable based on the offense. The City asserts that the Grievant was on notice that sleeping on the job is an offense that involves time off and the Grievant conceded that he recalled other Street Sweepers being similarly disciplined for such an offense.

Union

The Union initially notes that this case revolves around the testimony of a seemingly uninterested party, A, and the Grievant, who has suffered the discipline by the loss of a day's pay, and asserts that too often in these types of cases, the burden of proof somehow shifts to the Grievant to explain his way out of it. The Union asserts that a review of the testimony throws serious doubt on the City's case. Although A did not appear vindictive, a review of the testimony shows significant fluctuations in accuracy, a behavioral pattern that begs interpretation, and confusion that shifts the burden to the City where it belongs.

The Union notes that A testified she has lived in her home on Carlisle Avenue for 17 years, that it was dark at the time she first saw the Sweeper parked, and that the distance between her kitchen window and the parked Sweeper was more than 300 feet. A stated she thought it was odd that a Sweeper parked on St. Patrick Street and that it was the first time she had ever seen the Sweeper parked at that location; however, the Grievant testified that is where he always takes his Wednesday morning break. A testified that she saw the door of the Sweeper open and thought that the driver was urinating on the bushes. The evidence establishes that the Sweeper was more than 300 feet away, that it was dark out and that her line of vision was blocked by the Sweeper door. A testified that she then saw the driver's head slump. According to the Union, that would indicate phenomenal eyesight on the part of A.

The evidence indicates A called the Police Department and in her conversation with the dispatcher stated three times that the Sweeper was parked on Summit Avenue. A testified she had reported the location incorrectly even though she had lived in that neighborhood for 17 years. A police squad car was dispatched to the area indicated and found no Sweeper. A was also unable to accurately describe the supervisor from the City that came to her home after she had called and complained, describing him as a "large man with reddish hair". A conceded, after seeing the supervisor at hearing, that he had brown hair. Further, A drew a diagram of what she saw for the supervisor and stated that it represents the exact location where everything was located when she called the police. That diagram locates A's house on the east side of Summit and she admitted that was incorrect and that there were inconsistencies in the diagram. A's diagram shows the Sweeper turning northbound onto Summit when it left St. Patrick Street, but the Grievant testified that he always proceeds southbound on Summit when he is done with his Wednesday morning break. The Grievant also testified he would never have proceeded to the area A claimed to have seen him at 4:55 a.m. that day. A testified that she called the Police Department between 3:50 and 3:55 a.m., but the dispatch report indicates she called at 4:02 a.m. Thus, the Grievant was on his contractual morning break of 4:00 to 4:15 a.m. when A called the police. Further, A testified she uses four different clocks, two in her home, one in her truck and the time clock at work, and admitted that all four are "off".

A claimed that she passed the Grievant at 4:55 a.m. and also testified that it takes her 12 minutes to get to her work, if she does not hit the stop lights, and 15 to 16 minutes to get to work if she does, and that it takes her about one minute to clock in when she parks in her employer's parking lot. Therefore, one would add between 13 and 17 minutes to the 4:55 a.m. at which she reportedly saw the Grievant in order to determine when she arrived at work that day, i.e., between 5:08 and 5:13 a.m. A's log that she keeps of when she begins working (Employer Exhibit 1) shows that on the day in question, she logged in at 5:04 a.m.

A also claimed she sees Sweepers in her area up to three times a week, while the Grievant testified he only sweeps the area once per week. A also admitted calling the City regarding broken glass in the alley way and stated that if Sweepers would keep up with the broken glass, she would

not need to complain. The Union asserts that since A called the Police Department while McCoy was on his break, it might be that the thought of the parked Sweeper, even on the break, upset A. A also testified that when she saw the Grievant two days later, that if she were him, she would have felt she was being watched. The Grievant testified that a week after the alleged incident, and again on another Wednesday while in A's neighborhood, he felt he was being followed. On yet another Wednesday, the Grievant was approached by a supervisor and questioned about drinking on the job, and although vindicated, that incident raises a suspicion about who made the allegation. The Union also notes that there are four additional Sweepers that could have been in the Grievant's area helping him out.

In conclusion, the Union notes that the Grievant is an 18-year employe of the City and has never been disciplined for extending breaks before this. Further, he realizes that the Sweeper is difficult to hide and easily recognizable. On the other hand, A was unsure of the name of the street the Sweeper was parked on when she reported the matter to the Police Department, giving an incorrect location, and the Grievant was on a permitted break at the time. A's call to the Police Department at 4:02 a.m. does not establish that he was out of service longer than the permitted 15 minute break guaranteed by the contract. A was unable to correctly recall the color of the supervisor's hair and conceded that the diagram she drew was inaccurate, but one is to believe that she could make out the figure of a man slumping over on top of a 12-foot high street sweeper from more than 300 feet away in the dark. The Union contends that the City has not met its burden and has not established that it had just cause to suspend the Grievant for a day.

DISCUSSION

There are two aspects to establishing just cause for discipline: (1) that the Grievant engaged in the misconduct for which he was disciplined, and, (2) that the misconduct merits the degree of discipline imposed. The dispute in this case involves the first part of the test, i.e., did the Grievant park and sit in his Sweeper for an hour or more the morning of July 19, 1995? The City has the burden of establishing that fact in the record.

To meet its burden of establishing that the Grievant took an extended break on July 19th, the City relies upon the testimony and report of A, a resident of the City who lives within the area through which the Grievant's route takes him on Wednesdays. A review of the record indicates there are a number of facts that are not in dispute. The Grievant's Sweeper was parked on St. Patrick Street near the water tower the morning of July 19th, at least from 4:00 to 4:15 a.m., and was approximately 300 feet from A's home. There was a well-lit building west of the Sweeper, which would be beyond the Sweeper as A viewed it from her kitchen window. A called the Police Department at 4:02 a.m. on July 19th, and reported that a Sweeper was parked "on Summit by the water tower", that it had been there for about half an hour at the time, and that she did not know if something was wrong with the driver but she had not seen any movement. The dispatcher who took A's call asked her "Summit and what?" and A responded uncertainly "High Street". The dispatcher radioed a Police Department squad car that the Sweeper was at "Summit

and High" and the police officer who responded arrived at the intersection of Summit and High at 4:07:45 a.m. That officer looked up and down Summit and saw no Sweeper, then circled the area and seeing no Sweeper, called that in and left the area. The Grievant turned off the Sweeper's headlights and the strobe light on top of its cab when he parked on St. Patrick and it is not likely that someone at the intersection of Summit and High would have been able to see the Sweeper in the dark where it was parked. The Grievant was parked on St. Patrick at the time the officer reported not seeing a Sweeper in the area of Summit and High.

The Union notes several inaccuracies in the diagram A drew for the supervisor from the City's Department of Public Works and in her call to the Police Department. Those inaccuracies, such as not including the alleyway between A's house and Summit and describing the Sweeper's location as Summit and High to the dispatcher, are minor and not so at variance with the facts as to make A's descriptions totally, or even substantially, inaccurate and, therefore, suspect. While A's diagram located her house further west than it actually is and her call described the Sweeper as being at Summit and High, A did indicate several times that it was by the water tower. Although A seems to have been somewhat confused about the streets, there is no dispute that the Grievant was parked on St. Patrick Street by the water tower at the time that A called the Police Department.

The Union also questions A's claim that she could see the operator of the Sweeper well enough that she could tell he had slumped down in his seat, noting that it was dark at the time and A was at least 300 feet away from the Sweeper. The record establishes that the building beyond the Sweeper was well lit and would serve to silhouette the Sweeper when viewed from A's kitchen window. Three hundred feet is not all that far and A testified that her eyesight is good and she does not wear glasses. A's claim that she could see the operator slump down is not incredible. The Union also notes that A initially described Fidler as having "red" hair and after seeing him at the hearing, conceded he had "brown" hair. The Arbitrator would only note that he would have described Fidler's hair as being reddish-brown.

The critical issue in dispute is how long the Grievant was parked on St. Patrick Street -- when did he park there and when did he leave. A reported in her written statement, in her call to the Police Department, on the diagram she drew, and in her testimony, that the Grievant parked at approximately 3:30 a.m.; a half an hour earlier than when the Grievant testified he first parked on St. Patrick that day. Again, as the Union has pointed out, there are some inconsistencies in A's testimony and written statement with regard to when certain events occurred, e.g., A reported she called the Police Department at 3:55 a.m. and the Department recorded the call as received at 4:02:22 a.m.. There is also a possible four to nine-minute discrepancy as to when A said she last saw the Grievant on July 19th and when she would have then arrived at work, per her estimation of how long it takes her to get to work, and when her log showed she did arrive at work. However, A's estimation was based upon her starting for work from her home, not where she said she again saw the Grievant, and was, after all, an estimation.

The discrepancies the Union has noted as to times are at most minor, and if there is a problem in that regard, it is that A attempted to be too precise in stating the times at which things occurred. A's testimony is generally consistent and her estimation of the time at which she called the Police Department is sufficiently close to the time the Department recorded the call as being received that it does not raise a question as to either her credibility or her accuracy. In that latter regard, it is noted that A did not claim that the Grievant was parked for 20 or 25 minutes (five or ten minutes longer than he should have been), but from 3:30 until approximately 4:45 a.m., when she then got in her truck and drove past him. Even if A's estimations or recollection were off by ten to fifteen minutes, that would still have the Grievant parked on St. Patrick Street at least an hour.

The Grievant is a long-time employe of the City who has not previously been disciplined for extending his breaks and who denies he was parked on St. Patrick Street that morning before 4:00 a.m. or after 4:15 a.m. There is no presumption that the Grievant is not credible simply because he is the one who stands to gain or lose. However, the City, as is now the Arbitrator, was faced with a citizen who had called the Police Department, called the City, met with a foreman from the Streets Department at least once to give a statement of what she said took place, gave a written statement in that same regard and who was willing to come to a hearing and testify as to what she claims took place. The Police Department's records verify that A made the call at roughly the time she claimed and reported the Sweeper as being where it in fact was at that time. Despite the Union's best efforts, there is no evidence in the record of any motive for A to have fabricated a story in order to get the Grievant in trouble. She does not know the Grievant at all, did not know who was in the Sweeper when she called the Police Department or reported the matter to the City, and there is nothing to indicate she had it in for City employes in general or Street Sweepers in particular. 1/ For these reasons, A's testimony is credited over that of the

1/ The Union's attempt to get A to state she was dissatisfied with the job the Sweepers were doing resulted only in the following admission from A:

Q All right. Did you ever think, well, maybe instead of this guy sitting there parked on whatever street he was and potentially urinating that if he was sweeping my alley I wouldn't have to make this call to the City and get this cleaned up?

A Usually we just take and do it ourself.

Q The question was --

A I know.

Q And what's your answer?

Grievant. It is therefore concluded that the Grievant did park his Sweeper on St. Patrick Street the morning of July 19, 1995 for approximately an hour -- far in excess of the fifteen-minute break to which he was entitled.

With regard to the second aspect of whether the City had just cause, it must be determined whether the Grievant's misconduct merited a one-day suspension. For the following reasons, it is concluded that it did. The un rebutted testimony of the City's Personnel Director establishes that other employes in the Department, including Street Sweepers, have been similarly disciplined for sleeping on the job or otherwise being "out of service". The Grievant also testified he was aware that other Sweepers have been disciplined for sleeping on the job. Further, in these circumstances where employes are, for all practical purposes, left unsupervised during their shift, it is not so unreasonable for the City to respond with this level of discipline when an employe takes such advantage of the lack of close supervision that it would violate the principle of corrective discipline. Therefore, it is concluded that the City had just cause to suspend the Grievant and did not violate Article II, Section E, of the parties' Agreement when it imposed that discipline on the Grievant.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 18th day of September, 1996.

By David E. Shaw /s/
David E. Shaw, Arbitrator

A My answer to that would be yes. If he was doing it, coming daily, then we wouldn't have to make the call. (Tr. p. 64.)