

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139

and

GREEN LAKE COUNTY (HUMAN SERVICES)

Case 72
No. 55246
MA-9944
(Cross Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by
Ms. Andrea F. Hoeschen, appearing on behalf of the Union.

Mr. Daniel D. Sondalle, Assistant Corporation Counsel, Green Lake County, appearing on
behalf of the County.

BENCH ARBITRATION AWARD

Pursuant to a request by International Union of Operating Engineers, Local 139, herein the Union, and the subsequent concurrence by Green Lake County (Human Services), herein the County, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission on July 13, 1997, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on August 27, 1997, at Green Lake, Wisconsin. The hearing was not transcribed. The parties made oral argument at the close of hearing.

The parties stipulated that there were no procedural issues, and that the instant dispute was properly before the Arbitrator for a decision on the merits pursuant to the terms of the parties' collective bargaining agreement. The parties also stipulated to a "bench arbitration decision with limited rationale." The parties further stipulated that the "limited rationale" would be in summary form and follow the bench decision in the form of a written Award.

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

DISCUSSION:

The parties stipulated to the following issue:

Whether or not the Grievant, Gary Cross, was discharged for just cause?

If not, what is the appropriate remedy?

The County terminated the Grievant effective April 7, 1997 for the following reason: "the employee has been employed for approximately 1 1/2 years and has still not met the primary purpose of his job, and that is the certification of the Community Support Program."

At hearing the Arbitrator issued a "Bench Decision" based on the entire record and the parties' arguments. The Arbitrator sustained the grievance in part, and denied the grievance in part. The Arbitrator found that the Grievant was not discharged for just cause and reduced the discharge to a written warning and a thirty (30) day suspension. The following represents the Arbitrator's rationale for the aforesaid decision:

1. The record does not support a finding that the Grievant was hired for the primary purpose of accomplishing the certification of the Community Support Program.
2. The County sent mixed messages to the Grievant regarding the importance of certifying its Community Support Program. On the one hand, the Grievant knew as early as January 31, 1995, that he needed "to get our program into compliance by" May of 1995. In addition, the County made extensive efforts to assist the Grievant in accomplishing this job. On the other hand, the County failed to set firm deadlines, failed to enforce deadlines, failed to relieve the Grievant of other work as necessary to accomplish this job, failed to adequately supervise him in this job and failed to review the materials he sent to the State for certification.
3. The County failed to follow progressive discipline in discharging the Grievant.
4. The County failed to give the Grievant clear notice that his failure to obtain certification of its Community Support Program could lead to his discharge.
5. The Grievant's discharge was converted to a written warning and thirty (30) day suspension without pay. This will put the Grievant on notice that his continued failure to complete the necessary tasks in order to obtain recertification of the County's Community Support Program could lead to further discipline up to and including discharge.
6. The County is ordered to reinstate the Grievant and to make the Grievant whole for any wages and benefits lost because of the discharge. The County shall also deduct from the amount to be paid the Grievant, an amount equal to thirty (30) days wages.
7. A copy of this Award shall serve as the written warning and the County shall place a copy of same in the Grievant's personnel file.

By terms of this Award I am confirming the foregoing Bench Arbitration Decision and closing the file on the above case.

Dated at Madison, Wisconsin this 15th day of September, 1997.

By Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator