

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 990, AFSCME, AFL-CIO**

and

**KENOSHA COUNTY**

Case 167

No. 54684

MA-9759

(Dolly Fitch - Clarification of the Remedy)

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Appearances:

AFSCME Council 40, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, WI 53717, by **Mr. Michael Wilson**, Staff Representative, appearing on behalf of Local 990.

Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn, Suite 1400, Milwaukee, WI 53202, by **Mr. Mark Olson**, appearing on behalf of Kenosha County.

**SUPPLEMENTAL ARBITRATION AWARD**

On September 3, 1997, the undersigned issued his Award resolving a grievance involving Local 990, AFSCME, AFL-CIO (hereinafter referred to as the Union) and Kenosha County (hereinafter referred to as the County) over the County's October 14, 1996 discharge of Dolly Fitch from her position as a Social Worker II with the Department of Human Services. The Award directed that Fitch be reinstated effective September 8, 1997, with back pay to April 1, 1997, and included the following provisions:

...

1. The grievant shall receive backpay to April 1, 1997; in addition to the amount of backpay, she shall be paid two months of wages as compensation for health insurance expenses.

...

1. There shall be no loss of seniority or credit for service to the grievant by virtue of the discipline.

...

1. A copy of this Award will remain on the grievant's record until December 31, 1998, and will be treated as a first step in the disciplinary progression for neglect of duty. Any further discipline must be supported by the traditional notions of just cause, progressive discipline and proportionality.

...

Jurisdiction was retained to resolve any disputes over the remedy. The parties contacted the Arbitrator, and invoked his retained jurisdiction to resolve questions concerning Ms. Fitch's entitlement to vacation, casual days and flex account on reinstatement. Written arguments were submitted, the last of which was received on October 9<sup>th</sup>. The County asserted that Ms. Fitch was only entitled to receive one week of vacation, the same as a new employe, and prorated credit for casual days and flexible spending based upon her reinstatement on September 8, 1997. The Union argues that benefits must be calculated on the same basis as backpay, which ran from April 1<sup>st</sup>.

Now having reviewed the materials and arguments submitted by the parties, and being fully advised in the premises, the undersigned makes the following Supplemental Award.

### **DISCUSSION**

The confusion in this case comes from the specification of two different dates in the Award. The grievant, having been off work for nearly one year, was reinstated to her position effective September 8, 1997. Backpay was ordered to April 1, 1997. The Award did not clearly state which of these dates should be used for calculating benefit entitlements.

The specification of September 8<sup>th</sup> as the date of reinstatement was intended to allow a short period of time between the issuance of the Award and the reinstatement, to minimize the disruption caused by her return to the work force. April 1<sup>st</sup> was set as the backpay date, and it was intended that the grievant be treated as having returned to payroll on that date. It necessarily follows that the other economic benefits of employment would be calculated as of that date as well, except as otherwise specified in the Award.

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

### **SUPPLEMENTAL ARBITRATION AWARD**

Dolly Fitch is to be credited with 75 percent of what she would normally be entitled to under the contract by her years of service for vacations, casual days and flexible spending based upon her return to the payroll as of April 1, 1997.

Dated at Racine, Wisconsin this 13<sup>th</sup> day of November, 1997.

Daniel Nielsen /s/

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Daniel Nielsen, Arbitrator

DN/rb  
5581.WRD

