

James R. Meier  
Chairperson  
A. Henry Hempe  
Commissioner  
Paul A. Hahn  
Commissioner



Mailing Address:  
14 West Mifflin Street  
P. O. Box 7870  
Madison, WI 53707-7870  
Telephone: (608) 266-1381  
Fax: (608) 266-6930

**State of Wisconsin  
Wisconsin Employment Relations Commission**

November 18, 1997

Ms. Mary Lou Andresen  
Representative  
City of Superior  
Superior City Hall  
1407 Hammond Avenue  
Superior, WI 54880

Mr. James Mattson  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
1701 East Seventh Street  
Superior, WI 54880

Re: City of Superior (Parks Department)  
Case 152 No. 54785 MA-9792  
(Grievance of Michael Peters)

Dear Ms. Andresen and Mr. Mattson:

The parties have indicated they have a dispute as to what my Award in this matter requires or permits, and have requested that I clarify the Award in those regards. Based upon the City's letter of November 7, 1997, and the attached "Agreement - Conditions of Continued Employment", it is my understanding that the City is proposing that Mr. Peters be required to sign what is known as a "last chance agreement" before he will be reinstated. Pursuant to that agreement, Mr. Peters would be subject to immediate discharge without recourse if he breached any provisions of that agreement, including failing an alcohol or drug screen test. The City is also concerned that the Union views the Award as precedent setting as to appropriate discipline in future cases involving violations of the City's Drug and Alcohol Testing Policy. Finally, the City is under the impression the Union is disputing the rate of pay Mr. Peters is to receive during the course of his treatment.

The Union, by its letters of November 7 and November 17, 1997, has indicated that it objects to requiring Mr. Peters to sign such a "last chance agreement", but that it has not taken a position on whether the Award should be viewed as a precedent in future cases, that it does not object to Mr. Peters receiving the Laborer I rate of pay while he is in the course of his treatment, and that it does not object to the City making clear its expectations as to Mr. Peters' job performance.

**SUPPLEMENTAL AWARD**

The Award issued by the undersigned in this matter on October 31, 1997, neither authorizes, nor permits, that Mr. Peters be required to sign such an agreement as the City has proposed before he may be reinstated. The City is entitled to make it clear to Mr. Peters what it expects from him and what action could or will result if he fails to meet those expectations; however, if disciplinary action is taken against Mr. Peters, my Award in no way limits his right to grieve that action. The reference to a "third chance" in the Award and the remedy awarded was only intended to make clear to Mr. Peters the perilous position in which he has placed himself, and was not meant to authorize automatic discharge without any recourse under the labor agreement.

Whatever occurs in a future situation involving Mr. Peters or other employees, is dependent upon the arbitrator's view of the facts in that case. The parties are free to argue what weight, if any, my Award should be given in future cases.

The City is again directed to offer Mr. Peters immediate reinstatement, without any requirement that he sign any agreement.

I will continue to retain jurisdiction in this matter pursuant to my original Award.

Dated at Madison, Wisconsin this 18th day of November, 1997.

David E. Shaw /s/

David E. Shaw, Arbitrator

DES/gjc  
5585.WP1

Ms. Mary Lou Andresen  
Representative  
City of Superior  
Superior City Hall  
1407 Hammond Avenue  
Superior, WI 54880

Mr. James Mattson  
Staff Representative  
Wisconsin Council 40,  
AFSCME, AFL-CIO  
1701 East Seventh Street  
Superior, WI 54880