STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration of a Dispute Between

THE RACINE COUNTY STAFF ATTORNEYS ASSOCIATION

and

RACINE COUNTY

Case 171
No. 55364
MA-9994

Appearances:

Weber & Cafferty, S.C., by **Attorney Robert K. Weber**, 2932 Northwestern Avenue, Racine, Wisconsin 53404, appearing on behalf of the Association.

Mr. William R. Halsey, Long & Halsey Associates, Inc., 8338 Corporate Drive, Suite 500, Racine, Wisconsin 53406, appearing on behalf of the Employer.

ARBITRATION AWARD

Pursuant to the provisions of their collective bargaining agreement the Racine County Staff Attorneys Association (hereinafter referred to as the Association) and Racine County (hereinafter referred to as the Employer or the County) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as arbitrator of a dispute concerning the reasonableness of certain work rules applicable to Association members. A hearing was held on October 28, 1997, in Racine, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, and the record was closed on November 24, 1997.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties stipulated that the following issue should be determined herein:

Are the three work rules reasonable? If not, what is the appropriate remedy?

BACKGROUND FACTS

The Employer provides governmental services to the people of Racine County, in southeastern Wisconsin. It employs, among others, attorneys in the offices of the Corporation Counsel, Family Court Commissioner and Child Support Agency, who are represented by the Association. This grievance concerns attorneys in the Child Support Agency, which is headed by Director Mark Vanucci.

The grievance challenges three work rules. The first is a rule that requires attorneys to keep their office doors open, unless they get prior permission to close them. The second is a rule that prohibits attorneys from meeting with anyone in their offices, and instead requires them to meet in an interview room. The third is a policy requiring employes to be civil and courteous to one another.

According to Vanucci, the rule requiring open doors was an effort to avoid dissension that might have been created by the difference in the office space made available to attorneys and that provided to other staff members when the Child Support Office moved to new quarters in December of 1996. Most non-attorney employes have cubicles for their work space, while attorneys have private offices. Vanucci prohibited closing the doors on the attorneys' offices in order to minimize jealousy flowing from the disparity between the staff's accommodations.

Vanucci imposed the rule requiring client meetings to be in the interview room in order to minimize the foot traffic through the office, cutting down on noise and protecting against breaches of confidentiality. Vanucci testified that he planned this very carefully before the move to the new offices, and pointed out that each of the five interview rooms was right off the lobby, and had a computer, a printer and a telephone in it. When he was informed at the hearing that no outside calls could be made from the conference room, he expressed the opinion that this could easily be fixed.

The rule requiring employes to be respectful of one another and of clients was imposed as part of an overall effort to promote civility and customer service. Vanucci testified that this was in part a response to complaints about discourteous behavior to customers.

Child Support Attorney Cheryl Wentland, testifying on behalf of the Union, stated that the rule against closing doors on private offices made the attorneys' offices loud, and made it difficult to concentrate. Wentland acknowledged that there was technically an exception to the rule if an attorney sought prior permission to close the door, but said that past experience with such rules indicated that permission would be denied.

Wentland noted that the rule against meeting with clients in the attorneys' private offices created operational problems, since outside calls could not be made from the interview rooms. If an attorney needs to confirm information offered by a client during an interview, or needs to call for any other reason, the attorney must break off the meeting and go to their private office to make the call.

Finally, Wentland objected to the rule against discourtesy because it was vague and did not apply uniformly. She expressed the opinion that department supervisors made discourteous and unflattering comments about staff members, and that it was not reasonable to impose a courtesy rule on employes when managers exempted themselves from the behavior the rule supposedly promotes.

Additional facts, as necessary, will be set forth below.

THE POSITIONS OF THE PARTIES

The Position of the Association

The Association asserts that the rules promulgated by the County are unreasonable in that they unduly burden employes relative to the benefit realized by the County. The rule against closing the doors to private offices ignores the confidential work of the attorney relative to that of other employes. Staff attorneys negotiate with other attorneys and handle confidential client information. They have a legitimate need for privacy in performing this work. Moreover, the noise resulting from the open door creates more difficult working conditions for staff attorneys, in that it is harder to concentrate. This is at odds with the County's interests in increasing productivity. Thus the hardship on employes is great, relative to the small or non-existent benefit realized by the County. This same analysis applies to the requirement that client meetings be held only in the interview rooms. The inability to even make a telephone call during an interview creates inconvenience for the attorney and interferes with productivity, while at the same time offering no discernible benefit to the County.

The courtesy rule is unreasonable in that it is completely vague and incapable of even-handed enforcement. It is fundamental that an employe must be able to conform to a rule, yet the courtesy rule lends itself to subjective interpretations and opens employes to discipline for offenses such as "bad attitude." An overly broad rule cannot be enforced under a just cause standard, and the courtesy rule is accordingly unreasonable on its face.

The Position of the County

The County takes the position that the rules are reasonable on their face, and that none of the evidence from the hearing detracts from that conclusion. A rule is reasonable if it reasonably relates to a legitimate objective of management. The rule requiring attorneys to meet with clients in the interview rooms rather than their offices is designed to provide a quiet work environment in the office area. That is a legitimate objective of management, and the rule clearly promotes that objective.

Turning to the rule against closing office doors without permission, the County asserts that this rule is likewise reasonable and promotes a legitimate objective -- fairness among employes. The rule is also an extension of the fundamental managerial right to control the

physical plant. The County notes that there is no evidence that the County has refused any legitimate request by any attorney who wished to close their door.

The rule requiring civility and professionalism is a matter of common sense. It directly responds to customer complaints about perceived discourtesy by department employes in the past, and is thus related to an actual business concern of the employer. As for the Association's complaints that it will trigger discipline for vague or groundless offenses, there is no proof of that.

Inasmuch as the Association has failed to show any defect in the purpose, structure or implementation of the new rules, there can be no merit to the grievance. Accordingly it should be denied.

DISCUSSION

The issue before the arbitrator is whether three work rules are reasonable. Each of the rules is addressed in turn:

A. Rule Requiring the Use of the Interview Rooms

The Association's objections to the use of interview rooms for meeting with clients are largely based on the possibility that it will prove inconvenient. The County's justification is that it cuts down on noise and traffic in the office area. Both are legitimate concerns. The policy represents a balancing of possible inconveniences -- the inconvenience of not having every amenity of an office during an interview, against the inconvenience of having higher traffic, greater noise and the attendant disruptions in the office area. The County's right to make and enforce reasonable work rules entitles it to some deference when it decides between two options, and its decision need not be perfect in order to be reasonable. In the case of this rule, the County's choice has a reasoned and legitimate basis. While it may be an inconvenience, it is not a serious impediment to the work of attorneys who must meet with their clients somewhere other than their private offices. On the record before me there is no basis for finding that this rule is unreasonable.

B. Rule Requiring That Attorneys Not Close Their Doors

The rule requiring attorneys to keep their doors open unless they get prior approval to close them is supposedly designed to prevent the non-attorney staff from feeling resentment because they do not have private offices. It is possible to say that this too is a balancing of inconveniences, but the inconvenience to the non-attorney staff is apparently to their psyches, while the inconvenience to the attorneys is to their ability to work with the degree of privacy one would normally associate with the private office of a professional employe. The notion that an egalitarian workplace is created by giving one group of employes better office space and then denying them the full use of it is, on its face, somewhat unusual. The County's approach to this issue also assumes that the rest of the staff is sensitive to the point of being irrational.

The County correctly notes that it could choose to exercise its right to control the physical plant by removing the doors from the offices, and the arbitrator agrees that it has this right, subject to the provisions of labor law regarding such matters as impact bargaining and retaliation. This right is not relevant to the reasonableness of the instant rule. As it stands, the County has designed these premises to include private offices with doors. The offices have been assigned to professional employes who, in the normal course of their duties, will have a need for private conversations. The rule regulates the people who occupy the offices, not the offices themselves. It seeks to prevent them from enjoying the benefits of a private office by very visibly forbidding them from doing something that would, from time to time, be a natural

or even a necessary step for most professional employes. In essence, the County's approach seeks to empower the non-attorney staff at the expense of the attorneys. Without a more concrete justification than the unsupported suspicion that other employes would be upset if attorneys are allowed to close their doors, the arbitrator cannot say that this rule is reasonable.

C. Rule Requiring That Employes Be Courteous

The final rule is a policy requiring employes to treat one another and clients with respect and courtesy. Without going on at undue length, courtesy among employes and by employes to customers, vendors and others is fairly fundamental to the operation of any enterprise. This is a rule that would normally be enforceable even if it was unwritten, merely as a matter of common sense. The Association objects to it on the grounds that it is vague and does not give employes adequate notice of what is expected. Certainly the rule is very broad and open to interpretation, and the County is taking a chance if it chooses to take disciplinary action under the rule in an arguable case. That is no different than a host of other rules dealing with matters such as insubordination, lack of effort, and even dishonesty. All of these rules encompass gray areas, where conduct may be excused or explained.

The County is not required to write out a litany of rules saying "don't yell at other employees," "don't insult judges," "don't demean clients," etc., in order to enforce its demands for appropriate behavior by its staff. The Association consists of professional employes, and the respect accorded to professionals is earned in part by their professional skills, but more so by the fact that they can generally be expected to conduct themselves in a professional manner. The addition of a rule setting forth what would usually go without saying cannot be termed unreasonable.

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

AWARD

1. The rule requiring that meetings be conducted in the interview rooms is a reasonable work rule. The grievance with respect to this rule is denied.

2. The rule forbidding attorneys from closing the doors to their private offices without prior permission is not a reasonable work rule. The grievance with respect to this rule is sustained.

3. The rule requiring employes to be civil and courteous to other employes and to customers is a reasonable work rule. The grievance with respect to this rule is denied.

Dated at Racine, Wisconsin, this 21st day of May, 1998.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

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