

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**CITY OF GREEN LAKE EMPLOYEES UNION,
GENERAL CITY EMPLOYEES LOCAL 514, AFSCME, AFL-CIO**

and

CITY OF GREEN LAKE

Case 10
No. 57105
MA-10519

(Bill Wagner Grievance)

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Godfrey & Kahn, S.C., by **Mr. Edward Williams**, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein “Union” and “City”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in the City of Green Lake, Wisconsin, on March 11, 1999. The hearing was not transcribed and I there issued a “bench” decision, which this Award augments.

ISSUES

1. Is the grievance arbitrable?
2. If so, did the City have just cause to issue a verbal reprimand to grievant Bill Wagner?

DISCUSSION

Director of Public Works Jim Bradley on September 22, 1998 (unless otherwise stated, all dates hereinafter refer to 1998), issued grievant Wagner the following verbal warning:

...

This memorandum constitutes a verbal warning confirmed in writing. On Tuesday, September 15, 1998 you were assigned the duty of reading water meters. At 12:50 I observed your truck and the truck of a friend of yours (Gary McConnel who had no city business) parked at the shop. At 1:20 I observed that your truck was still parked at the shop. I called you on the radio and asked why you were at the shop and not reading water meters. You stated that you were taking a break.

It is unfair for the other employees to do extra work that has been otherwise assigned to you. It is also unfair to other employees to have them working when you are taking extra breaks.

You are not authorized to take unscheduled work breaks or extra breaks when they are not authorized by law.

Bill, henceforth you are not to take unscheduled breaks (or extra breaks) without prior approval from me.

...

Upon receiving it that day, Wagner told Bradley he would be grieving it. Thereafter, the instant grievance was filed on September 29 and received by the City on September 30.

Bradley responded to the grievance via an October 1 memo that stated:

...

I am in receipt of your grievance number 1998-1 dated September 29, 1998 which I received on September 30, 1998. I have carefully reviewed this grievance. I am denying the grievance because:

1. Procedural Defect – Section 4.6 Step 1 of the grievance procedure requires the employee, alone or with his representative, to discuss the grievance with the employee's supervisor no later than five (5) work days after the grievance occurs. This was not done. The grievant never

discussed the grievance with me in a timely fashion. Furthermore, the grievance was presented at Step 2. Because the Union has by-passed Step 1 and failed to present the grievance no later than five days of the verbal warning, the Union has not complied with the provisions of the grievance procedure in the contract.

2. Merits – The City of Green Lake did not violate any terms of the Agreement.

For both of the above reasons, your grievance is denied.

The City asserts that the grievance was untimely filed under Article 4 of the contract which provides in pertinent part:

...

4.4 Time Limitations: Time limits set forth in this Article may be extended by mutual agreement in writing. Any grievance not complying to the time limits set forth in this Article shall be null and void.

4.5 Settlement of Grievance: Any grievance shall be considered settled at the completion of any step in the procedure, if all parties concerned are mutually satisfied. Dissatisfaction is implied in recourse from one step to the next.

4.6 Steps in Procedure:

Step 1. The employee, alone or with his representative, shall take the grievance up with the employee's supervisor no later than five (5) work days (excluding Saturdays, Sundays and holidays) after he knew or should have known of the event giving rise to the grievance. In the event of a grievance, the employee shall perform his assigned work task and grieve his complaint later. The supervisor shall attempt to make a mutually satisfactory adjustment of the matter, if possible. Failing to do so, the supervisor shall, within two (2) work days, orally inform the employee and the representative of his decision.

Step 2. If the grievance is not settled at the first step, the employee and/or his representative shall prepare a written grievance on the form attached as Exhibit B and present it to his/her department head within five (5) work days of the supervisor's response in Step 1. The department head will further investigate the

grievance and submit his decision to the employee and his representative in writing within five (5) work days after receiving written notice of the grievance.

Here, while the grievance was not presented to the City within five days after Wagner received his September 22 oral reprimand, it also is true that Bradley did not get back in touch with Wagner within two days after Wagner told him on September 22 that he would be filing a grievance over his verbal warning. That being so, it is unfair to hold Wagner to the strict language of the contract. As a result, and because the City was not prejudiced in any way, I find the grievance to be timely.

As for its merits, the record shows that Wagner on September 15 took a break that lasted about thirty (30) minutes. While Wagner claimed he did so to rest his bad back, he should have taken sick leave to do so if his back hurt him that much.

Wagner also claimed that he did not take his authorized 15 minute coffee break that morning because he responded to a fire call. However, since Wagner never made that claim prior to the instant hearing, and since Wagner never wrote on his September 15 time card that he had missed his morning break (as he was required to do), this claim is without merit.

Wagner also claimed that he was treated unfairly because another employe also took a long break on September 15 and that he was never disciplined. In fact, the record fails to clearly establish the duration of the other employe's break. Hence, there is no basis for finding that Wagner was the victim of disparate treatment.

Furthermore, the record shows that Wagner previously had been warned in his January 15, 1996, evaluation: "You take too long on breaks." Given that prior admonition and the undisputed facts here showing that he took an unauthorized thirty-minute break, the City had just cause to issue Wagner a verbal warning when he took too long a break on September 15.

In light of the above, it is my

AWARD

1. That the grievance is arbitrable.
2. That the City had just cause to issue a verbal warning to grievant Bill Wagner.

3. That the grievance is hereby denied.

Dated at Madison, Wisconsin this 16th day of March, 1999.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

