

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF GREEN BAY

and

**BAY AREA MUNICIPAL EMPLOYEES UNION,
LOCAL 1889, AFSCME, AFL-CIO**

Case 283
No. 56710
MA-10385

(Kramer Grievance)

Appearances:

Mr. Bob Baxter, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2065 East Baraboo Circle, DePere, Wisconsin 54115, on behalf of the Union.

Mr. James M. Kalny, Human Resource Director, City of Green Bay, 305 East Walnut Street, P.O. Box 23600, Green Bay, Wisconsin 54305, on behalf of the City.

ARBITRATION AWARD

Pursuant to the terms of the 1998 collective bargaining agreement between the City of Green Bay (City) and Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute between them regarding the discharge of grievant James Kramer. The hearing was held at Green Bay, Wisconsin on December 15, 1998, at which time the parties were afforded a full opportunity to present relevant testimony, exhibits and other evidence and arguments. A stenographic transcript of the proceedings was made and received by January 12, 1999. The parties submitted their initial post-hearing briefs directly to each other with a copy to the arbitrator postmarked February 26, 1999. The parties reserved the right to file reply briefs and those were received according to the parties' agreement on April 26, 1999. Thereupon, the record was closed.

STIPULATED ISSUE

The parties stipulated that the following issue should be determined in this case:
Did the Employer have just cause to terminate the Grievant? If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 7

SENIORITY

- (A) The Employer agrees to the seniority principle.
- (B) Definition: Seniority shall commence upon an employee's most recent date of hire in the bargaining unit for purposes of layoff and/or job posting; however, seniority shall commence on the employee's most recent date of hire and membership in AFSCME Local 1889 for purposes of vacation, overtime and sick leave.
- (C) Termination of Seniority: Seniority shall be deemed to have been terminated when:
- (1) An employee resigns in writing.
 - (2) An employee is discharged for just cause.
 - (3) An employee retires.
 - (4) An employee who is able to work fails to do so for three consecutive work days unless due to circumstances beyond his/her control.
 - (5) A laid-off employee fails to notify the City of his/her interest to return to work within one week of receipt of notice of recall or fails to report within two weeks of said notice. These time periods may be modified by mutual consent between the employee and the City.
 - (6) An employee on leave of absence accepts other employment without permission from the employer.

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ARTICLE 16

DISCIPLINARY PROCEDURE

(A) The following disciplinary procedure is intended as a legitimate management device to inform employees of work habits, etc., which are not consistent with the aims of the Employer's public function, and thereby to correct those deficiencies.

(B) No employee shall be reprimanded, suspended or discharged except for just cause.

(C) The progression of disciplinary action shall be: 1) oral, 2) written, 3) suspension, 4) dismissal. However, this should not be interpreted that this sequence is necessary in all cases, as the type of discipline will depend on the severity of the offense. Both written warnings and disciplinary suspensions shall be maintained in effect for twelve (12) months during which time a repetition of the offense can result in more serious disciplinary action. In all such cases, the employee shall have the right of recourse to the grievance procedure. The grievance committee chairman or his/her designated representative shall be present during all disciplinary hearings and shall receive copies of all communications concerning disciplinary action.

(D) Suspension: Suspension is defined as the temporary removal without pay of an employee from his/her designated position. The Employer may, for disciplinary reasons, suspend an employee. Any employee who is suspended, except probationary employees, shall be given written notice of the reasons for the action, and a copy of such notice shall be made a part of the employee's personnel record, and a copy shall be sent to the Union. No suspension shall exceed thirty (30) calendar days. Suspended employees shall appeal directly to Step 2 of the Grievance Procedure.

(E) Dismissal: No employee shall be discharged except for just cause. Any employee who is dismissed, except probationary, shall be given a written notice of the reasons for the action and a copy of the notice shall be made a part of the employee's personnel record and a copy sent to the Union. Any employee who has been discharged may use the grievance procedure by giving written notice to his/her steward and his/her supervisor within ten (10) working days after dismissal. Such appeal shall go directly to arbitration. If the cause for

discharge is dishonesty, intoxication on the job or drinking on duty, use of drugs on the job, and/or if any employee is convicted in the illicit sale or distribution of drugs, the individual may be dismissed immediately from employment with no warning notice necessary.

. . .

ARTICLE 26

MANAGEMENT RIGHTS

(A) The Union recognizes the prerogative of the City to operate and manage its affairs in all respects in accordance with its responsibilities, and the powers and authority which the City has not officially abridged, delegated or modified by this Agreement are retained by the City, including the power of establishing policy to hire all employees, to determine qualifications and conditions of continued employment, to dismiss, demote and discipline for just cause, and to determine reasonable schedules of work and to establish the methods and processes by which such work is performed. The City further has the right to establish reasonable work rules

BACKGROUND

The City has had a collective bargaining relationship with the Union for many years. The Union represents all regular full and part-time employes of the City of Green Bay employed in the City Hall and associated departments including the Parking Utility involved herein. The City has issued a training manual to parking ramp cashiers which reads, in relevant part, as follows:

JOB DESCRIPTION

PURPOSE

Under general supervision; performs work of routine difficulty in the collection of cash; performs related work as required.

DUTIES AND RESPONSIBILITIES

Operates a computerized cash register to compute parking fees.
Receives currency and checks in payment and gives correct change.

Performs daily accounting of receipts through the preparation of tally slips,
Counting of tickets received and preparation of bank deposit slips.
May keep record of the number of vehicles entering and leaving the parking
ramp.
Provides information and direction to the public as requested.

...

EXPERIENCE AND TRAINING

High school diploma or equivalent.
Previous experience in working with the handling of moneys and or using a cash
register.

...

WORKING CONDITIONS

Typical Parking Utility environment. Usually works in an enclosed booth.

...

MISCELLANEOUS CASHIER INFORMATION

1. You represent the Parking Utility to our customers. Courtesy is a must,
be pleasant, say please, thank you and smile.
2. Keep your money in the cash drawer until you are ready to make a
deposit.

...

5. Any switching of shifts must be put in writing, signed by both cashiers
and submitted to the Parking Utility Supervisor.
6. Your breaks start from when your relief cashier enters the booth and
ends (sic) when you are back to the booth, remember to be on time as
the break person has a schedule to follow.
7. Cashier booth doors **MUST** be closed and locked at all times.

...

DRESS CODE

There is no specific dress code, but you are expected to come to work clean, hair combed and neatly attired. If you are sent home to correct a deficiency in the above, it will be on your own time.

BREAKS

You may not leave your cashier booth unless there is someone to relieve you. Your break starts when the relief person arrives. Below is the length of the break you are to receive:

SHIFT	BREAK
Less than four hours	no break
Four to six hours	15 minutes
Seven hours	two 15 minute breaks (either back to back or one morn. And one after noon (sic))
Eight hours	two 15 minute breaks and a 30 minute lunch.

...

According to City records, Kramer's supervisor spoke to him in 1989 regarding his responsibility not to leave work early. In 1995, Kramer's supervisor went over a verbal policy that cashiers maintain custody of money bags at all times. In March, 1997, Kramer's supervisor spoke to him about his appearance and hygiene. 1/

1/ It is undisputed that there is no formal dress code at the Parking Utility, but that employes are expected to come to work clean and neatly attired. If an employe does not appear appropriately dressed and groomed, that employe is sent home on their own time to remedy the situation. In regard to custody of money bags, Union steward Scanlon stated that if employes abandon their money bags, this does not always result in discipline; that sometimes if a money bag is left in a booth by an employe, that employe is simply reminded not to do that and no discipline is issued.

During the investigation of the instant grievance, the City could find only one other situation somewhat similar to the Grievant's. That situation can be summarized as follows. On July 14, 1997, the City issued part-time Parking Utility cashier Patti Stowe a three-day suspension for having an unapproved absence from work on July 1, 1997, and failing on June 27, 1997 to set up a mandatory employee assistance meeting as well as failing to call the EAP as required on July 2, 1997. In arriving at this penalty, the City also took into consideration a 1996 warning received by Stowe. Ms. Stowe did not grieve her three-day suspension, and she voluntarily quit her position thereafter, having worked for the City as a cashier from 1988 until her voluntary termination in 1998.

FACTS

The Grievant, James Kramer, had worked for the City as a parking ramp cashier for 16 years when he was terminated on July 14, 1998. At the time of his termination, Kramer's work record was clean. The facts surrounding his discharge are relatively straightforward. Although some of the facts are disputed, I find the facts of this case are as follows.

On Wednesday, July 1, 1998, the Grievant was scheduled to work from 10:00 a.m. to 5:00 p.m. at the Adams Street ramp. After twelve noon, Kramer's wife came to his parking booth and told him that she was going to give away his dog. The Grievant became very upset over this news. When Nancy Meyer, an enforcement attendant for the City, arrived to give Kramer his contractual mid-day break, Meyer observed that Kramer was quite upset about his dog. Kramer made a telephone call, and then left on his break. During his conversation with Meyer prior to leaving for break, Kramer was mumbling, and Meyer heard him state that he would be going home, and that he was not sure if he would return.

After observing Kramer's demeanor, Meyer was concerned that Kramer might not return from his break and flagged down another Parking Utility employe (Shirley -----) who was driving by at the time. Shirley told Meyer to give Kramer time to return from his break, and that if he was late, to give him extra time; that if he still did not come back from the break, Meyer should call the office and report Kramer's failure to return.

Kramer returned early from his break, although he seemed even more upset than he had been before he left. Kramer told Meyer that during his break, Kramer had attempted to go home and pick up his dog so that his wife could not give the dog away. Kramer, however, had not found the dog at home, and returned to the Adams Street parking ramp booth. At this point, Kramer punched out on his time card, and threw the card on the counter. He left, mumbling to himself, leaving his money bag in the booth. Kramer did not tell Meyer he was quitting his job. Meyer remained in the booth. Kramer admitted that he forgot the money bag, being so upset about his dog.

After Kramer left the Adams Street booth, he went home to attempt to take care of the situation there and pick up his dog. At approximately 3 o'clock on July 1, Kramer went to the Parking Utility office to pick up some personal things from his money bag which Meyer had returned to the office for safekeeping. At this time, he spoke to Mary Scanlon, the union steward for the Parking Utility. Scanlon advised Kramer that his walking off the job and failing to return could result in severe discipline. At this time, Kramer was still quite upset and mumbling to himself. At no time during his conversation with Scanlon did Kramer state that he was quitting or resigning his position with the City.

On July 1, in the afternoon, after Kramer left his parking booth without permission, Parking Utility Director Pirlot spoke with Mary Scanlon regarding what would occur if Kramer attempted to report to work again. Scanlon questioned Pirlot regarding whether the City would pay the back-up employe who had covered Kramer's shift if he appeared for work. Pirlot responded that Kramer would be allowed to work if he reported prior to July 5th. However, before the close of business on July 1, Pirlot spoke to representatives of the Human Resources Department of the City. Pirlot was told that he should not allow Kramer to work if he appeared prior to July 5th. Pirlot's discussion with Human Resources resulted in the following letter being mailed to Kramer which he received by certified mail, on July 2, 1998:

...

On Wednesday, July 1, 1998 you were assigned to cashier at the Adams Street Lot from 10:00 a.m. to 5:00 p.m. At 1:56 p.m. you stated that you quit, punched out and left the work site.

Be advised that, at this time, the City considers you to be absent without approved leave. If you do not show up for any of your scheduled work shifts prior to the start of your shift at 11:00 a.m. on Sunday, July 5, the City will consider you to have voluntarily resigned your position.

...

Kramer received the City's July 1, 1998 letter prior to the 4:00 p.m. starting time of his scheduled work shift on July 2. The letter led Kramer to believe that he had been given until July 5th to report to work. At this point, Kramer decided to take some time to consider his problems. Therefore, Kramer did not report to work on July 2, 1998, nor did he call in to explain his absence, in reliance on his interpretation of the City's letter dated July 1st.

However, Kramer later reread the City's July 1st letter and concluded that it could be interpreted two ways. Therefore, he decided to report to work on July 3rd. Because he did not know when he was scheduled to work that day, some time after 11:00 a.m., Kramer called

Parking Utility booth cashier Linda Hefner to ask her what his work schedule was that day. Hefner told Kramer that he was scheduled to work beginning at 11:00 a.m. at the Cherry Street ramp. Kramer immediately drove to the Cherry Street booth, arriving at approximately 11:30 a.m. There, he found Parking Utility employe Bernice Delano. Delano observed that Kramer was upset. Delano told Kramer that he was to report to the Parking Utility office.

Kramer left the booth and went to the Parking Utility office, arriving at approximately 11:50 a.m. (Kramer was not wearing any socks or shoes at this time.) When he arrived at the office, he stated that he intended to work that day and then asked office employe Lois Terry why he could not go to work. Terry explained to Kramer that he was not to go to work, that she had an envelope from City Manager John Derenne which she then delivered to Kramer. 2/

2/ On July 3rd, no City managers were present at the Utility, due to celebration of the July 4th holiday.

Kramer stated that he already had a letter from City Hall. Terry explained that there was nothing she could do, that she was merely following instructions. Terry asked Kramer where his shoes were and he said they were in his van. Kramer opened the letter from Derenne 3/ and left before Terry could tell him that if he had any questions, he could call John Derenne.

3/ The City failed to offer into this record any letter from John Derenne to Kramer.

On July 7, Kramer was asked to appear at an investigatory interview with members of management as well as his union steward. At this time, the City managers indicated that they were investigating the situations which occurred on July 1 through 3, 1998. Notes taken by the City on the interview document indicate that although Kramer admitted he intended on July 1st to resign, he never quit or formally resigned on July 1, 1998. Kramer also told City managers that he forgot his money bag; that his actions on July 1 had been prompted by the fact that his wife had told him that she was going to give his dog away; that the certified letter he received on July 2nd, he believed meant that he had until July 5th to report to work; that after receiving that letter on July 2, he (Kramer) thought that the letter might be interpreted differently and decided to report to work on July 3rd; that he did not have his shoes and socks on when he spoke with Parking Utility employes on July 3rd; that he was reporting to work when he arrived at the Parking Utility offices on July 3rd and he had his socks and shoes in his van; that he did not know why the City

was conducting an investigation when it appeared they had already decided to fire him. 4/ Also on July 7th, Kramer admitted that he was aware on July 1st that leaving his

4/ At the July 7th interview, Kramer made several admissions regarding statements he made to non-supervisory employes on July 1st concerning his intentions. It is clear that Kramer was in a highly emotional state of mind on July 1st caused by the situation concerning his dog. However, it is equally clear from the facts herein that, whatever Kramer's intentions may have been, he did not formally resign or quit his employment on July 1st.

work site, reporting for work late, and not reporting to work are rule violations for which he could be disciplined by the City; and that he should keep his cash bag with him at all times, according to department policy.

Between July 7 and July 14 when the City issued its termination letter, the City managers did not speak with Kramer. Kramer stated herein that although he did not tell anyone from the City the reason he had to leave work on July 1, he did discuss his situation with Nancy Meyer on July 1st and that she was fully aware that he had a personal crisis involving his dog which Meyer could have conveyed to City managers.

The City next sent Kramer a letter dated July 14, 1998, terminating his employment, which read, in relevant part as follows:

. . .

On Wednesday, July 1, 1998 you were assigned to cashier at the Adams Street lot from 10:00 a.m. to 5:00 p.m. At 1:56 p.m., you left the work site without approval, stating, "That's it, I quit. I'm 'outta' here". You left your money bag in the booth. You returned later in the day to collect some personal belongings. At that time, union representative Mary Collier-Scanlon warned you that what you had done could result in severe discipline.

We notified you by certified letter the next day that we considered you to be absent without approved leave, and advised you that we would consider you to have voluntarily resigned your position if you did not appear at your scheduled work shifts.

On Thursday, July 2, 1998, you were scheduled to work from 4:00 p.m. to 10:30 p.m. You did not appear for work and did not call in.

On Friday, July 3, 1998, you were scheduled to work at 11:00 a.m. You appeared at the Parking Utility office at approximately 11:50 a.m. on that day. You were barefoot and your pants were wet to the ankles and therefore you were not appropriately attired for work. At that time you were placed on administrative leave pending an investigation of these incidents.

On Tuesday, July 7, 1998, we met with Interim Director of Public Works Dick Hall, Assistant Director of Public Works Frank Dadam, Traffic Engineer Chris Pirlot, and Personnel Analyst Cheryl Lindsley to discuss this matter. Also present were union representatives Mary Collier-Scanlon and Dawn Ligocki. At that meeting, you stated, among other things, that it had been your intention to resign, and that you were aware that leaving your work site, not reporting for work, and reporting for work late are violations of rules for which you would be subject to discipline. You also stated that you were aware that it is department policy to take your cash bag with you when you leave your work site for the day.

Chapter 14 of the City's Policies and Procedures Manual 5/ states that an employee may be dismissed for the following:

5/ The City has a Policies and Procedures Manual which appears to contain work rules. These rules are neither incorporated into the labor contract nor negotiated with the Union.

Chapter 14(B) Attendance and Punctuality

- (1) Constant failure to report promptly at the starting time of a shift or leaving before the scheduled quitting time of a shift without the specific approval of the supervisor.
- (2) Unexcused or excessive absenteeism.
- (4) Failure to notify the supervisor promptly of unanticipated absence or tardiness.

Chapter 14(B) Personal Attire and Appearance

- (7) Inappropriate dress or lack of personal hygiene which adversely affects performance or constitutes a health or safety hazard.

We attempted to reach you by telephone on July 9, 1998 to discuss the disposition of this matter but were unable to reach you, and subsequently scheduled a meeting with you on July 14, 1998.

Leaving your work site without approval, not reporting for work, reporting for work late, and inappropriately attired, and not appropriately securing your cash bag are serious rule violations that cannot be tolerated. After careful review of the above, we have determined to terminate your employment effective July 14, 1998.

During the July 7, 1998 meeting and on previous occasions, you have stated your belief that one of the Parking Utility supervisors was involved in the 1994 death of your dog and has made contact with your wife regarding your position. You also stated that you felt other employees of the Parking Utility are "out to get you". We obviously do not believe that any supervisor or employees were involved in the incident with your dog, have spoken to your wife, or have conspired against you. We want you to understand that the City cannot and will not tolerate any retaliation by you against co-workers or supervisors as a result of this job action.

We also want you to know that, although we have no alternative to dismiss you for such serious work violations, we will make the Employee Assistance Program available to you and your family for the next two-month period.

...

POSITIONS OF THE PARTIES

City

Initially, the City urged that based on conversations which Kramer had with non-supervisory employees on July 1, 1998, the City reasonably believed that Kramer had quit when he left work without permission, which belief was later confirmed when Kramer returned to pick up his personal effects. Therefore, the City sent Kramer its letter of July 1st by registered mail which indicated that the City believed Kramer was on an unapproved absence when he left work on July 1st. Thereafter, on July 3rd, Kramer arrived at work at least 30 minutes late, inappropriately attired for work which gave the City further justification for his discharge. In a July 7th interview with City officials, Kramer failed to explain his conduct or show any remorse for his actions and refused to attend the Employee Assistance Program. The

Employer therefore terminated Kramer by letter dated July 14th for having committed five violations of the City's rules: (1) leaving work without permission on July 1st; (2) leaving his money bag in the parking booth unattended on July 1st; (3) failing to appear for work on July 2; (4) appearing late for work on July 3rd; (5) appearing for work inappropriately attired on July 3rd.

Based upon this evidence, the City urged that it had just cause to terminate Kramer. In this regard, the City argued that Kramer had been given advance warning of the possible and probable disciplinary consequences of the conduct he engaged in from July 1st through July 3rd. Specifically, the City noted that Kramer was aware of its rules. In this regard, Kramer admitted that he was not to leave work without permission; that he was expected to wear proper attire to work; that he was expected to keep control of his money bag at all times; and that he should arrive in a timely fashion for work. In addition, the City pointed out that its Policies and Procedures Manual at Chapter 14 lists causes for dismissal including attendance, punctuality and personal appearance, all of which Kramer engaged in during July 1st through 3rd.

The City argued that it had fairly and appropriately investigated the situation involving Kramer and that no evidence of bias was offered by the Union regarding the investigation. The City further argued that the reasons or excuses that Kramer came up with for his activities in early July, 1998 were either insufficient or not grounded in logic. In this regard, the City noted that it should be no excuse for leaving work or leaving the money bag in the booth that another employe happened to be present at the time. In addition, there was no excuse for Kramer's lack of appropriate attire when he reported to work. Furthermore, the City noted that as Kramer's personal crisis over his dog was over by 3:00 p.m. on July 1st, that he should have reported back to the City at that time.

In regard to its letter of July 1, 1998, the City argued that this letter gave Kramer the opportunity to return to work but that Kramer misinterpreted the clear language of the letter. The City urged that each incident beginning with his leaving work without permission on July 1st, failing to return to work in the afternoon of July 1st when he came to pick up his personal effects, failing to report for work or call in on July 2nd and being late for work on July 3rd should each be considered separately by the arbitrator. As such, Kramer's actions buttress the City's argument that it had full just cause to discharge Kramer.

The City further argued that it had applied its rules without discrimination, pointing to a prior case wherein an employe (Patti Stowe) had received a written warning on the first incident, similar to Kramer's and a three-day suspension when the second incident of willful abandonment occurred. Given Kramer's five rule violations, therefore, the City argued that the grievance should be denied and dismissed in its entirety.

Furthermore, the City argued that the degree of discipline meted out against Kramer was reasonably related to his work record as well as to the seriousness of the proven offenses. In this regard, the City noted on July 7th that Kramer not only failed to explain his actions, he showed no remorse, appeared antagonistic, expressed no interest in correcting his behavior and he refused the City's offer of entrance into the Employee Assistance Program. Kramer's attitude, in the City's opinion, aggravated the seriousness of his conduct and should affect the penalty in this case. The City noted that the Parking Utility employees who testified at the hearing each thought that leaving the money bag and appearing improperly attired for work should be punished. The City then asked how it could be expected to enforce its work rules if the Arbitrator allows Kramer to avoid the consequences for the violations of rules which he committed.

The City urged that the Union failed to prove that Kramer had a clean work record or even an average work record and that without this evidence, in the City's opinion, Kramer's record should not be considered as a positive factor in this case. In regard to Chapter 14 of the City's Policies and Procedures Manual, the City argued that Chapter 14 of that Manual could easily be read together and without conflict with Article 16 of the collective bargaining agreement. In regard to the Union's argument that Article 16 (E) lists the sole reasons for immediate termination, the City noted that Article 16 (C) indicates that the City can skip progressive disciplinary steps if an employee's actions are serious enough, and that Kramer's violation of five work rules certainly justified his immediate discharge. Finally, the City urged that it would undermine the morale of Utility employees to put Kramer back to work and it urged that the grievance be denied in its entirety.

Union

The Union argued that the Employer did not have just cause to terminate Kramer. The Union noted that the Employer did not follow progressive discipline as required by Article 16; that Kramer was not guilty of any of the various activities which would have sanctioned his immediate dismissal (as listed in Article 16E) and that the five alleged rule violations the Employer claims occurred in Kramer's case were insufficient to support Kramer's immediate termination.

The Union argued that Kramer had good reasons and mitigating circumstances for leaving his workplace on July 1 in order to take care of the crisis concerning his dog. In regard to the fact that Kramer left his money bag in the booth on July 1, the Union noted that the bag was never in fact left unattended and that the City's work rules do not provide that employees will be disciplined for such activity. In regard to Kramer's failure to report to work on July 2, the Union asserted that it was perfectly reasonable for Kramer to believe, based on the Employer's July 1st letter, that he did not have to report to work until July 5th. In regard to

the claim that Kramer was late arriving for work on July 3rd, the Union noted that the City asserted Kramer's lateness in reporting to the Parking Utility office (not his normal work station) and that in any event the City never intended to allow Kramer to work on July 3rd. In regard to Kramer's lack of proper attire on July 3rd, the Union noted that Kramer was not on the clock at the time he appeared and that he had had no contact with the public during this period. Thus, in the Union's view, these alleged violations of the City's work rules should not be considered in this case.

The Union argued that Kramer was not guilty of any offense that required immediate discharge and that as his personnel file was clear of prior discipline as of the date of this hearing, if the City was going to contend that it was discharging him for stale disciplinary actions, Kramer's termination on such a basis should be overturned. Furthermore, the Union noted that the contract does not provide for a meeting such as the one held on July 7th; that neither the Union nor Kramer was ever given copies of the questions which Kramer was asked on July 7, nor were they allowed to review the answers recorded by a management official at that July 7th meeting. Thus, the Union urged that the July 7th meeting was not an attempt to provide due process to Kramer, but an attempt to bolster the Employer's discharge decision. In any event, the Union urged that evidence from the July 7th interview should be discounted as the City had made its decision to terminate Kramer prior to the July 7th meeting.

The Union argued strongly that the City's reliance on Chapter 14 of its Policies and Procedures Manual was misplaced and absurd in the circumstances of this case. In this regard, the Union noted that Chapter 14 of the Policies and Procedures Manual conflicts specifically with Article 16 of the collective bargaining agreement which narrowly limits the causes for immediate discharge. The Union urged that as a matter of general procedure, most arbitrators give little or no weight to employer-issued booklets that have not been negotiated or agreed to by the collective bargaining agent, and therefore, the Union urged that Chapter 14 of the City's Policies and Procedures Manual should be disregarded in this case.

The Union contended that the City violated Kramer's due process rights in processing his discharge. Specifically, the Union noted that management never spoke to Kramer from July 1st through July 5th and that no member of management ever inquired regarding the circumstances surrounding Kramer's abandonment of his workplace on July 1st. Instead, the City chose to issue a letter to Kramer dated July 1st which was reasonably susceptible to more than one interpretation. When Kramer responded in a reasonable manner by failing to report to work on July 2, the Employer chose to type a letter for delivery to Kramer indicating he was on administrative suspension. As the Employer never intended to allow Kramer to work on July 3rd, the Union asserted that the evidence showed that at the very least the Employer had decided to suspend Kramer on July 1st. The Union noted that no written policy regarding

the abandonment of a money bag existed at the City, and that Kramer should not have been disciplined for this violation as he had not been disciplined for a previous violation of this policy in 1995.

The Union asserted that the events surrounding Kramer's crisis and his reaction thereto (which occurred from July 1st through July 3rd) should all count as one instance rather than be separately counted, as the City has urged. The Union observed that the Employer's confusing letter of July 1 arrived at Kramer's residence prior to the start of his shift on July 2. The Union therefore asserted that Kramer should not be considered a "no call/no show" on July 2nd as he was essentially excused from work that day due to the inartful drafting of the City's July 1st letter and because he was still taking care of the crisis regarding his dog. After giving Kramer until July 5th to appear for work, the Employer then placed Kramer on administrative leave by its letter dated July 2nd without first contacting him or inquiring regarding his circumstances. Whatever problems Kramer had on July 3rd (tardiness, inappropriate attire) the Union urged that these should be disregarded, as the Employer never intended to allow Kramer to work on July 3rd. In any event, the Union observed, Kramer was not on the clock at the time his inappropriate attire was noted. In sum, the Union urged, as Kramer was unjustly discharged, the grievance should be sustained in its entirety, and an order issued that Kramer be reinstated with full back pay.

Reply Briefs

The parties reiterated many of their arguments stated in their initial briefs. These arguments have not been restated here.

Employer

The City asserted, contrary to the Union, that the July 7 interview with Kramer was not a "trap" and that there was nothing improper about it. Kramer changed his story from July 7th to the date of hearing, as evidenced from the notes of the July 7 interview. Kramer's credibility should be doubted based upon this shift.

When read as a whole, the City's July 1st letter is clear, and not subject to any different interpretation. The City argued that Kramer should have known based upon the July 1st letter, that the City had placed him on an unapproved absence, and believed that he had quit his employment. It was up to Kramer, at that point, to advise the City to the contrary. As the City believed Kramer had quit, delivery of the July 2nd letter to Kramer when he arrived at the Parking Utility office on July 3rd was reasonable, and did not violate Kramer's due process rights. The City had a right, after Kramer's actions of July 1st and 2nd to investigate his misconduct.

Kramer's failure to appear at work or call in on July 2nd cannot be excused because the City placed Kramer on administrative leave on July 3rd. The City noted that Kramer's personal emergency was over by 3:00 p.m. on July 1st and he had no excuse for not returning to work on July 1st after that emergency was over. The fact that Kramer went to the Parking Utility office and picked up his personal effects in the afternoon of July 1st shows that he quit his job.

The Union's assertion that Kramer had a good work record is not supported by the evidence in this case and such an allegation should not be considered in his favor. The City argued that Article XVI of the labor agreement can easily be read together with Chapter 14 of the City's Policy and Procedures Manual. In this regard, the City noted that the reasons listed for immediate discharge in Chapter 14 are there so "all employees are on notice". On the other hand, Article 16 of the labor agreement provides the procedure which the employer must follow with unit employees on disciplinary matters. The record evidence failed to show that the City was anxious to discharge Mr. Kramer, contrary to the Union's assertions. The City noted that Kramer showed absolutely no remorse and refused two offers to go to the Employee Assistance Program. Therefore, the City urged that Kramer should not be reinstated.

Union

The Union noted that Mr. Kramer never quit or resigned in writing as required by Article VII of the collective bargaining agreement (in order to terminate seniority) and that Kramer did not tell any employees then present at the Parking Utility on July 1st that he was going to do so, contrary to the City's claims. Furthermore, the Union argued that the Employer must have known that Kramer did not resign when it put him on administrative leave as of its letter of July 2, 1998. Further, contrary to the City's arguments, the Union noted that Kramer's personal crisis took more than one day to take care of, and that it was not until the afternoon of Friday, July 3, 1998 that Mr. Kramer stated in his testimony that the crisis involving his dog had subsided.

The Union argued that the July 7th meeting between management, the Union and Kramer constituted a "hostile environment". In this regard, the Union noted that the Employer tried to use prior disciplinary actions which the contract prohibits it from considering in arguing that Mr. Kramer should not be reinstated. The Union urged the arbitrator to admonish the Employer for making these arguments. Furthermore, what other employees felt should be cause for discipline is not relevant to this case. In all the circumstances, and relying upon its prior arguments, the Union urged the arbitrator to sustain the grievance and reinstate Kramer with full back pay and benefits.

DISCUSSION

Article 7, Section C, indicates that seniority shall be deemed to have been terminated when, among other things, an employe resigns in writing or fails to report to work for three consecutive work days when the employe is able to work, unless circumstances are beyond the employe's control. Article 16, Section B, provides that employes shall not be reprimanded, suspended, or discharged except for just cause. Section C of Article 16 specifically lays out the progression for disciplinary action, and states that such progression "shall be oral, written, suspension and dismissal, although the type of discipline may depend upon the severity of the offense." Section C also provides that both written warnings and disciplinary suspensions may only be maintained in effect for 12 months, during which time a repetition of the offense can result in more serious disciplinary action. The language of this sentence requires that any written warnings or disciplinary suspensions must be expunged from the employe's file 12 months after they are issued if the employe has not engaged in a repetition of the offense involved. Section D of Article 16 also states that no suspension shall exceed 30 calendar days. Section E of Article 16 specifically provides that "if the cause for discharge is dishonesty, intoxication on the job or drinking on duty, use of drugs on the job, and/or if any employee is convicted in the illicit sale or distribution of drugs, the individual may be dismissed immediately from employment with no warning notice necessary."

James Kramer worked for the City as a parking ramp cashier for 16 years prior to his discharge on January 14, 1998. The City submitted evidence that in 1989, Kramer's supervisor spoke to him regarding Kramer's responsibility not to leave work early; that in 1995, Kramer's supervisor also reviewed a verbal policy regarding cashiers maintaining custody of their money bags at all times; and that in March, 1997, Kramer's supervisor spoke to him about his appearance and hygiene. As the City failed to submit any evidence that Kramer received any written warnings or suspensions regarding any of these incidents, I have assumed that Kramer was, at most, counseled or given verbal warnings regarding these incidents. Therefore, I disagree with the City's argument that the fact that Kramer was counseled three times during his 16 year employment with the City constituted a "bad" work record. Rather, I find that Kramer's work record was generally a good one, although not perfect.

The facts of this case indicate that on July 1st, James Kramer responded to what he perceived to be an emergency situation when he left work to take care of his dog. Although Kramer could have reacted differently, and should have advised the City of his predicament before he left, the facts surrounding Kramer's response to his wife's actions support a conclusion that Kramer responded to what he viewed as a true emergency.

In this regard, I note that Nancy Meyer was present at Kramer's parking ramp booth when he departed for home to try to find his dog. Meyer testified that Kramer was extremely upset over the news that his wife was going to give his dog away. Meyer was concerned enough about Kramer's state of mind when he left for lunch, that she flagged down another Parking Utility employe who happened to be driving by at the time to ask advice. Although Kramer returned from his break in a timely fashion (to Meyer's relief) he was still very upset, and he left again shortly thereafter, mumbling to himself and forgetting his money bag in the booth, leaving Meyer to take care of matters there. It is therefore clear from the record facts that Kramer perceived there was a crisis regarding his dog on July 1 and that he needed to respond to that crisis immediately. This is not to say that Kramer was unaware that his conduct could be severely disciplined. Rather, it is clear on this record that when Kramer returned to the Parking Utility office during the afternoon of July 1st, Union Steward Scanlon told him that his actions could result in severe discipline and Kramer acknowledged this.

I disagree with the City's contention that Kramer's crisis regarding his dog was over by 3 o'clock on July 1st. Rather, it is clear from the evidence in this case and Kramer's testimony (which I credit), that the situation with Kramer's dog was not resolved until the afternoon of July 3, 1998. Also, although the Employer attempted to elicit such testimony, neither Union steward Scanlon nor Parking Utility employe Meyer confirmed that Kramer had told them that he was quitting his position when they spoke to him on July 1st. In any event, such conversations with non-supervisory employes would not be binding upon Kramer. Given the language of Article 7, Section C(1), Kramer would have had to resign in writing for the Employer to have been reasonable in terminating his seniority as of July 1st.

Although the point is arguable, I agree with the Union's contention that the City's July 1st letter was misleading and could have been interpreted as Kramer interpreted it. Although Kramer's interpretation may not be the most reasonable interpretation, I note that no evidence was presented to show that Kramer had ever before received a letter like the City's July 1st letter. It is also clear that Kramer's position with the City did not involve regular exposure to business letters or any usage or awareness of labor relations terminology. In addition, although the City's letter indicated that it considered Kramer to be "absent without approved leave", the City failed to indicate that Kramer's abandonment of his work station on July 1st would be disciplined upon his return to work and that any failure to call in and appear for work on time would also be punished in the future. Therefore, in all of these circumstances and in light of Kramer's good work record, Kramer's failure to report to work or to call in on July 2nd was due to Kramer's initial misrepresentation of the City's July 1st letter which should not be counted against him.

However, the fact that the City failed to include sufficient detailed warnings in its July 1st letter does not require a conclusion that the City is forever barred from disciplining Kramer for his improper actions. In regard to Kramer's actions in leaving his money bag in the parking ramp booth, I note that the Parking Utility's training manual states that cashiers are to keep their money in their cash drawer until they are ready to make a deposit. In addition, cashiers (including Kramer) are aware of a verbal policy at the Parking Utility that cashiers should maintain custody of their money bags at all times. In 1995, Kramer was specifically reminded of this policy by his supervisor. Thus, both Kramer's leaving work without permission on July 1st (which he knew was prohibited) and his forgetting his money bag in the booth were actions for which the City could have reasonably disciplined him.

Regarding Kramer's lack of proper attire when he arrived late for work on July 3rd, the evidence showed that the City never gave Kramer the opportunity to report to his work station on that day. Rather, the City had already decided that it would not allow Kramer to work on July 3rd. In these circumstances, the fact that Kramer appeared without his shoes and socks on July 3rd should not have been a reason for the Employer's immediate discipline of Kramer. Rather, it is clear from the record evidence that it has been a practice in the past that employees who appear attired improperly for work are generally given the opportunity to go home in non-paid status and become properly attired and to report back to work without any further discipline being meted out. Thus, Kramer's improper attire on July 3rd could not properly form a basis for discipline.

In regard to Kramer's tardiness on July 3rd, the City was justified in using Kramer's tardiness as a reason for disciplining him. Kramer had no viable excuse for being late on July 3rd. He admitted herein that he had not checked his schedule to determine his starting time that day.

The City has argued that its Policy and Procedures Manual should control this case. The City's Policy and Procedures Manual, a document which is similar to a set of work rules can appropriately be considered in this case. However, the real issue in this case is, given Kramer's good work record during his 16 years of employment and the contractual requirement that progressive discipline be applied, whether the City had just cause to terminate Kramer.

The Union has argued that the City may only discipline employees without prior warning for actions expressly prohibited by Article 16, Section E. I disagree. Article 16, Section E states grounds for immediate discharge, and if one of these were proved against an employee, just cause for immediate discharge of that employee would be maintainable. However, not all such grounds are stated in that Section, nor could they be. For example, the fact that Article 16, Section E does not list as one cause for immediate discharge an employee's attacking his/her supervisor does not mean that such an attack, if proved, would not fairly support the immediate discharge of the employee involved. The record in this case shows that Kramer did not engage in any of the

conduct listed in Article 16, Section E as cause for immediate discharge. In addition, Kramer's actions, although serious, do not rise to the level of those prohibited by Article 16, Section E.

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The prior case which the City claims supports its actions regarding Kramer fails to do so, in my opinion. Rather, the Patti Stowe case showed that Ms. Stowe was warned for the first offense of failing to report properly to work, and that she then received a three-day suspension for her second offense. Thus, the Stowe case is not at the same level as Kramer's, a more serious case and it is not particularly helpful to the inquiry here.

The Employer has argued that Kramer's work record, along with the seriousness of his offenses and his lack of remorse justified the level of discipline herein. As stated above, I do not find that Kramer's work record was a bad one. As Kramer's lack of remorse and refusal to go to the Employee Assistance Program were not part of the basis for his discharge, I do not find these facts material or relevant. In addition, I note specifically that the City admitted that attendance at the Employee Assistance Program when offered, was voluntary for Kramer.

In all of the circumstances of this case, I find that the City lacked just cause for its termination of James Kramer given his 16 years seniority with a good work record. I will therefore reinstate Kramer with back pay. However, the fact that Kramer left his Parking Utility position first without advising the employer of his predicament, and the fact that he left his money bag in the booth and that he appeared late for work on July 3rd cannot be condoned. As noted above, Article 16, Section D indicates that no suspension shall exceed thirty calendar days. Given the seriousness of Kramer's offenses and using Section D as a guideline, I shall suspend Kramer for thirty calendar days (from July 14, 1998 through August 12, 1998) and order him reinstated effective August 13, 1998. The City shall make Kramer whole for the period from August 13, 1998 forward and it shall immediately place him in a position substantially similar to the one from which he was terminated.

AWARD

The Employer did not have just cause to terminate the Grievant. The Employer shall immediately offer James Kramer employment as a parking ramp cashier or a substantially similar position and make him whole from August 13, 1998 forward. 6/

Dated at Oshkosh, Wisconsin this 18th day of June, 1999.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

6/ I shall retain jurisdiction in the case regarding the remedy only for a period of ninety (90) days after issuance of this Award.

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