

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

FOND DU LAC COUNTY

and

**FOND DU LAC COUNTY INSTITUTIONAL
EMPLOYEES LOCAL 1366A, AFSCME, AFL-CIO**

Case 160
No. 56903
MA-10454

(Grievance of Shirley Liegl)

Appearances:

Mr. James E. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 639 West Scott Street, #205, Fond du Lac, Wisconsin 54937, appearing on behalf of the Union.

Mr. Richard J. Celichowski, Director of Administration, Fond du Lac County, 160 South Macy Street, Fond du Lac, Wisconsin 54935, appearing on behalf of the County.

ARBITRATION AWARD

Fond du Lac County, hereinafter referred to as the County, and Fond du Lac County Institutional Employees, Local 1366A, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the discipline of an employee. Hearing on the matter was held in Fond du Lac, Wisconsin on January 7, 1999. Post hearing written arguments and reply briefs were received by the undersigned by March 16, 1999. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties where agreed upon the following issue:
“Did the County have just cause to verbally reprimand the grievant?”

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

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ARTICLE VI. DISCIPLINE, DISCHARGE AND SUSPENSION

6.01 No regular employee shall be disciplined or discharged except for just cause. Written notice of the suspension, discipline or discharge and the reason or reasons for the action shall be given to the employee with a copy to the employee and the Union within twenty-four (24) hours if reasonably possible. Any grievance that may result from such action shall be considered waived unless presented in writing within ten (10) calendar days of the receipt of the notice by the employee and the Union. The grievance may be started at Step 2 or Step 3 by mutual agreement.

6.02 An employee who has no disciplinary incidents for a period of two consecutive years shall have his/her personnel file cleared of all documents relating to past disciplinary actions.

6.03 An employee may be subject to discipline including discharge for excessive unapproved leaves of absence. Unapproved leaves of absence shall be defined as any unpaid leave of absence from scheduled employment for which the employee has not received prior approval from the employer in accordance with Article XV. Included in the definition of unapproved leaves of absences are any unpaid leaves which would have qualified for paid sick leave had the employee had accrued sick leave at the time of the absence. This policy shall be administered in a fair and consistent manner.

BACKGROUND

The County, amongst its various governmental functions operates a health care center (hereinafter referred to as the Center) where at it has employed Shirley Liegl, hereinafter referred to as the grievant, as a Licensed Practical Nurse (LPN) since 1973. The grievant is also the

president of the local union. During 1997 and 1998 the grievant's supervisor, Director of Nursing Kerry Schumacker, met with her on a number of occasions to discuss her work performance. These meetings were as follows (Employer Exhibit No. 2):

Shirley Liegl's, counseling record demonstrates the supervisor's need to rationalize (explain) why Shirley, as the unit nurse, is expected to do something in regards to resident cares. Other nurses just do it when told it needs to be done.

9/11/98: Informed that if an employee attempts to discuss personal work business or union business when she (Shirley) is delivering resident care, she is to redirect them to a different time, different place.

9/3/98: Discussed careplan development and her responsibility as the unit nurse.

7/6/98: Did not update a resident careplan after being told to in the careplan conference. When questioned stated, "I was going to do it but didn't have time." The p.m. nurse was instructed to do it and did.

6/25/98: Did not return an employee 3 month evaluation as assigned. Discussed the employee's performance at this time. Instructed she is to return these completed in the future.

5/6/98: Informed to receive permission to leave the unit for union business. On 5/5/98 she left the unit 20 minutes early for union business, and on 5/6/98 was off the unit for one hour and 25 minutes without informing a supervisor. That was also for union business.

3/25/98: Discussed ulcer area on resident's ankle and I questioned the need for an OT or PT involvement to assist in treating and healing. I felt this needed to be done sooner than it occurred. Shirley indicated she would discuss this with the p.m. nurse to have the doctor involved at the end of the week if there was no improvement.

8/19/97: Informed not to meet with Jim Miller in the medication room. They were going over notes in preparation for a grievance hearing that afternoon.

7/16/97: Informed to instruct and make sure CNA's follow expectation of careplan review.

3/7/97: Discussed resident care issue's and need for improved communication with other departments/staff. There was a fall without an incident report that

Shirley should have made sure was completed and should have documented a nurse assessment. Shirley also changed a resident's custom made w/c without communicating the need for repairs. She states, when questioned, that she forgot.

1/28/97: Informed that she needs to complete the resident monthly summaries as assigned.

The instant matter arose when on July 12, 1998 the night LPN noticed a reddish area with dry skin on the right heel of a resident and marked it in the unit's log. When Physical Therapy Assistant Lyn Wolf read the Center's log book she approached the grievant and indicated she wanted to order an "E-Z boot" for the resident and wanted slippers used instead of shoes to help heal the heel. The grievant indicated the doctor was coming in that day and felt he should be consulted before the boot was ordered and disputed the use of a slipper noting the shoe fit well. The doctor examined the resident that day and directed an "E-Z boot" be placed on the resident during nighttime hours. On July 15, 1998 Wolf asked about slippers again and demonstrated to the grievant how the shoe was irritating the resident's heel. The grievant informed Wolf the doctor had not directed that a slipper be used but did direct the employees on the unit to begin putting a slipper on the resident's foot instead of a shoe. However, no notation was put in the resident's Care Plan and the grievant was responsible for making such a notation. Thereafter the matter was reported to Schumacker, who on August 12, 1998, when the grievant returned from a vacation, gave the grievant a verbal reprimand. The grievant grieved the verbal reprimand and the matter was processed to arbitration in accord with the parties' grievance procedure.

County's Position

The County contends it was unrefuted that Wolf and Physical Therapist Barbara Flaherty suggested the use of slippers to the grievant. The County asserts the normal practice would be for the grievant to incorporate the removal of the shoe and replacing it with a slipper into the resident's Care Plan. The County stresses it was the grievant's responsibility to maintain the Care Plan, to instruct staff on resident care, and, to ensure the care is carried out. The County points out the facts herein demonstrate that everyone agreed the resident's heel needed treatment. However, the County contends the grievant did not agree with the use of slipper treatment initially, or if she did, did not follow through to ensure that this treatment was followed. The County asserts her failure demonstrates substandard work and conduct. The County concludes the grievant did not have the best interest of the resident in mind, did not function as a team leader by developing an appropriate care plan, and did not fulfill her responsibility as the unit nurse. The County contends it therefore had just cause to issue a verbal reprimand to the grievant. The County would have the undersigned deny the grievance.

Union's Position

The Union points out it is unusual to grieve a verbal warning but stresses that the County has been observing the grievant's actions, both work related and non work related as demonstrated by Employer Exhibit 2 (Counseling Record). The Union points out the Counseling Record also identifies comments concerning the grievant's responsibilities as Union president. The Union contends at no time was the grievant informed these counseling meetings were to be considered discipline. The Union also stresses that the only apparent disagreement between the grievant and Wolf was that the grievant was aware the doctor was coming and wanted the doctor to be consulted before the "E-Z boot" was ordered. The Union also points out the grievant directed the nursing assistants to put slippers on the grievant. The Union also points out the grievant was preparing to go on vacation and that the only procedural thing she forgot was to place on the resident's Care Plan the use of slippers. The Union points out there is no evidence the staff failed to use the slippers after the grievant directed them to do so nor is there evidence there was any problem with the resident's heel.

The Union questions whether the real issue herein is a lack of resident care or a perceived lack of cooperation between different disciplines within the Center. Wolf, Flaherty, and the grievant all have professional opinions on how to accomplish the goals established for the resident's care. The Union contends the use of discipline is not the best way to deal with conflict that may arise from time to time.

The Union concludes the County did not have just cause to discipline the grievant.

County's Reply Brief

In its reply brief the County points out that contrary to the Union's assertions the grievant has been disciplined in the past but by argument acknowledged there has not been any during the last two years. The County also stresses that Schumacher's counseling sessions with the grievant were not disciplinary in nature but discipline did result when the grievant ignored the counseling. The County also points out that while the grievant was scheduled to leave for vacation on July 20, 1998, her failure to write the order in the resident's Care Plan to use slippers is in and of itself grounds for discipline. The County also points out that even if the grievant directed staff to use slippers, two days later Barbara Sotello noticed shoes were on the resident and directed staff to remove the shoes.

Union's Reply Brief

The Union points out there are two separate incidents herein, the ordering of the "E-Z boot" and the directive to use slippers. In the ordering of the boot, the Union stresses the grievant was aware that unless a doctor ordered the "E-Z boot" there would be problems in

paying for it, that the grievant told Wolf she would tell the doctor, and the doctor did order a boot. In directing the use of a slipper the Union points out it is unclear who had the authority to make such a directive and that the County has no chain of command established as to how directives or suggestions from the physical therapist are to be followed. The Union concludes that the County has not demonstrated it had just cause to verbally reprimand the grievant.

DISCUSSION

The burden herein is on the employer to demonstrate it had just cause to discipline the grievant. The record demonstrates that when the grievant was initially approached about the resident's heel she determined that the doctor would be there that day and he should prescribe the "E-Z boot" for the patient. The record also demonstrates the doctor did examine the resident and did order the "E-Z boot" for the resident. The undersigned finds no basis to include this in the grievant's discipline. If the Physical Therapist and Assistant Physical Therapist were concerned about how this was handled the place to take the matter up is with the employer on how future matters such as this one are to be handled.

The undersigned also finds that how the grievant responded to the therapist concerning the use of slippers also did not rise to the level of discipline. The fact the grievant stated that the doctor had not directed the use of slippers in treating the resident's heel does not lead to a conclusion the grievant failed to have the best interests of the resident in mind. While Wolf may have told the grievant initially that an "E-Z boot" and slippers should be used, the doctor did examine the resident and only directed the use of the boot. When Wolf raised the issue a second time and the grievant then orally directed the staff to use slippers the matter should have been resolved. However, the grievant's failure to properly place into the Care Plan the instruction to use slippers is grounds for discipline. The record demonstrates that this is not the first time the County has discussed the proper upkeep of Care Plans with the grievant. The record also demonstrates that the grievant is responsible for properly maintaining the Care Plan. Her failure to properly update the plan may have resulted in not using slippers to be placed on the resident. The undersigned therefore concludes the County had just cause to verbally reprimand the grievant.

Therefore, based upon the above and foregoing, and the testimony, evidence and arguments presented the undersigned finds the County had just cause to verbally reprimand the grievant. The grievance is therefore denied.

AWARD

The County had just cause to verbally reprimand the grievant.

Dated at Madison, Wisconsin, this 18th day of October, 1999.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

