BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

DODGE COUNTY PROFESSIONAL EMPLOYEES
LOCAL 1323-A, AFSCME, AFL-CIO

and

DODGE COUNTY (DEPARTMENT OF HEALTH AND HUMAN SERVICES)

Case 204
No. 57669
MA-10716

(5-20-99 grievance, No. 99-1 – 2-day suspension of Grievant D__ P__)

Appearances:

Mr. Sam Froiland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 944, Waukesha, WI 53187, appearing on behalf of the Union and Grievant.

Davis & Kuelthau, S.C., by **Attorney Roger E. Walsh,** 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-6613, appearing on behalf of the County.

ARBITRATION AWARD

At the joint request of the County and Union, above, the Wisconsin Employment Relations Commission designated the undersigned Arbitrator, Marshall L. Gratz, to hear and decide a dispute concerning the above-noted grievance which arose under the parties' 1997-99 collective bargaining agreement.

By agreement of the parties, the record was submitted by stipulation in lieu of a hearing. The stipulated record consists of a set of documentary exhibits and a set of stipulated facts. The parties then submitted written arguments on the basis of that record, consisting of initial briefs and a reply brief by the County. The Union chose not to submit a reply brief. Briefing was completed on October 9, 1999, marking the close of the record.

The stipulated documents make it clear that the parties jointly chose to submit this dispute to the undersigned with knowledge of the fact that the Arbitrator had actively mediated the parties' agreement to the Grievance Settlement Agreement at issue in this case.

Notwithstanding the Arbitrator's participation as mediator in the creation of the Grievance Settlement Agreement, this Award is based exclusively on the record evidence and arguments submitted by the parties in the current grievance arbitration proceeding.

ISSUES

The Union brief contains the following statement regarding the issues for determination by the Arbitrator in this matter:

> The parties, in a September 8, 1999 telephone conversation, stipulated to the following issue: The only issue to be decided in this case is whether under the provisions of a May 3, 1998 Grievance Settlement Agreement, the County could impose a suspension on [the Grievant]? If not, what is the appropriate remedy?

The County brief contains the following statement concerning the issues for arbitration in this matter:

> In a September 8, 1999 telephone conversation, the parties stipulated to the following issue: The only issue to be decided in this case is whether under the provisions of Section B(5) of a May 3, 1998 Grievance Settlement Agreement, the County could impose a suspension on [the Grievant]. If not, what is the appropriate remedy.
>
> It is the County's understanding that the Union claims that under Section B(5), the County could only impose a written warning on [the Grievant].
>
> It is also the understanding of the County that neither the length of the suspension, or whether there was cause for the discipline is at issue between the parties.

It is clear from the stipulated record and from the balance of their briefs that the parties' respective references to a "May 3, 1998 Grievance Settlement Agreement" were intended to refer to the "March 3, 1998 Grievance Settlement Agreement" that was included among the stipulated documents.

Except for correcting the date of the Grievance Settlement Agreement, the Arbitrator finds it appropriate to address the issues as they were quoted in the Union's brief. Accordingly, the issues for determination in this matter are as follows:

1. Under the provisions of the parties' March 3, 1998 Grievance Settlement Agreement, could the County impose a suspension on [the Grievant]?

2. If not, what is the appropriate remedy?

PERTINENT PROVISIONS OF THE MARCH 3, 1998 GRIEVANCE SETTLEMENT AGREEMENT

. . .

B. The Union and [the Grievant] agree:

. . .

(3) [The Grievant] understands that he has an obligation to report for work in a timely manner. Tardiness occurs if [the Grievant] arrives at work one or more minutes after 9:00 a.m. on Monday or after 8:30 a.m. on any other scheduled work day.

(4) [The Grievant] will stop at the front desk immediately upon arrival to and departure from work and note his exact arrival and departure time according to the time clock located at the receptionists (sic) desk. This notice of arrival and departure time shall remain with the receptionist. In the event, that the receptionist is not available, [the Grievant] shall proceed directly to his office and telephone his supervisor, Mr. Edward Ormont, with the exact time of his arrival and departure. If Mr. Ormont is not available, [the Grievant] shall leave a voicemail message identifying this information.

(5) In the event [the Grievant] is tardy on two occasions within a rolling one month period, the County may impose discipline on [the Grievant], provided however, that the parties agree that the first instance of discipline for such tardiness after the date of this Agreement will be a written warning letter. Each additional occasion of tardiness within this rolling one month period shall subject [the Grievant] to additional discipline.

. . .

BACKGROUND

The facts are undisputed.

On March 3, 1998, the County, the Union and the Grievant entered into the Grievance Settlement Agreement referred to in ISSUE 1 and quoted above.

On June 16, 1998, Grievant received a warning letter from his supervisor for being tardy on May 13, 1998, and May 19, 1998. Between May 19, 1998, and May 5, 1999, there were no instances when Grievant was tardy on two occasions within a rolling one month period. On May 6, 1999, and May 13, 1999, Grievant was tardy. As a result of being tardy on May 6 and 13, 1999, the County, on May 20, 1999, issued Grievant a two-day suspension.

On May 20, 1999, Grievant filed Grievance No. 99-1 asserting, in pertinent part, that the suspension be rescinded with back pay on the ground that the Grievance Settlement Agreement limited to a written warning the discipline the County could impose in the circumstances.

The Grievance was denied and ultimately the parties agreed to submit the ISSUES to the Arbitrator for final and binding determination, as noted above.

POSITIONS OF THE PARTIES

The County

The language of B(5) of the Grievance Settlement Agreement is clear and unambiguous. To be disciplined for tardiness, Grievant must be tardy on at least two instances within a rolling one-month period. Once there are two instances of tardiness within that rolling one-month period, the County may impose discipline. For the first situation that two occasions of tardiness occurred in a rolling one month period after the date of the Grievance Settlement Agreement (March 3, 1998), the discipline that could be imposed is limited to a written warning -- not a verbal warning, but not more severe than a written warning. After a written warning is properly issued in that first situation following March 3, 1998, the language limiting discipline to a written warning has no further application. The last sentence of B(5) applies only in cases of three or more occasions of tardiness within any rolling one-month period, which is not what happened in this case.

B(5) does not limit the circumstances in which the County can suspend the Grievant for tardiness to situations in which Grievant is tardy on more than two occasions within a one-month period. That interpretation is contrary to the clear language of the Grievance Settlement Agreement on its face and in the context of its bargaining history. That interpretation must also be rejected as a harsh and nonsensical outcome because it would allow the Grievant to repeatedly be tardy on two occasions in multiple successive rolling one-month periods with the County limited to issuing no more than a written warning in each of those periods.

Accordingly, the Arbitrator should deny the grievance by concluding that under 5(B) of the Grievance Settlement Agreement, the County had the authority to impose a two-day suspension for Grievant's tardiness on May 6 and 13, 1999, and that the County's discipline was not limited to a written warning.

The Union

The language of B(5) plainly indicates that Grievant's pattern of tardiness is to be assessed by a rolling one-month period of time. In effect, the County has agreed to forgive Grievant one instance of tardiness in any rolling month. If, however, more than one instance of tardiness occurs for the Grievant in a rolling month, ". . . the parties agree that the first instance of discipline for such tardiness after the date of this Agreement will be a written warning letter." Additionally, if but only if instances of tardiness beyond two in a rolling month occur, the final sentence of B(5) provides that "[e]ach additional occasion of tardiness within this rolling one month period shall subject [the Grievant] to additional discipline."

The Grievant went almost one year between his most recent instances of two tardinesses within rolling one month periods. While Grievant's tardiness on May 13, 1999, triggered the County's right to discipline him, the language of B(5) clearly spells out that the first instance of discipline shall be a written warning. The County's interpretation of the written warning limitation as applying only to the initial tardiness discipline imposed after the date of the Grievance Settlement Agreement ignores the rolling one-month concept, and must therefore be rejected.

Accordingly, the suspension issued on May 20, 1999, should be rescinded and purged from any and all personnel files, and Grievant should be made whole for all wages and benefits lost by reason of the County's imposition of the suspension. The County should be allowed to replace the rescinded suspension with a written warning as regards his tardinesses on May 6 and 13, 1999. However, for the reasons noted above, the County exceeded its rights under the Settlement Agreement by imposing the more severe disciplinary action of suspension.

DISCUSSION

The Arbitrator finds the meaning of the language of B(5) on its face to be clear and unambiguous, making reference to the bargaining history unnecessary.

As the Union correctly asserts in its brief, under the language of B(5), "[i]n effect, the County has agreed to forgive [the Grievant] for one instance of tardiness in any rolling month." The first sentence of B(5) so provides by stating, "[i]n the event that [the Grievant] is tardy on two occasions within a rolling one month period, the County may impose discipline on [the Grievant] . . ." The Grievance Settlement Agreement language thereby limits a tardiness-related offense for which Grievant can be disciplined to a situation in which more than one tardiness in a rolling one-month period occurs. As a result, the County is precluded from imposing discipline of any kind for an occasion of tardiness that is preceded and followed by at least a month free of tardiness. In that way the rolling one-month concept set forth in B(5) is given its full and meaningful effect by the County's proposed interpretation of that language.

The Union is also correct when it asserts that, "[a]dditionally, in the event that instances of tardiness beyond two in a rolling month occur, the final sentence of paragraph B(5) provides that '[e]ach additional occasion of tardiness within this rolling one month period shall subject [the Grievant] to additional discipline'" beyond the discipline imposed by the County on account of the first two occasions of tardiness in that rolling one-month period.

However, the Arbitrator does not agree with the Union's further assertion that B(5) unconditionally protects Grievant against being disciplined more severely than a written reprimand where, as here, two occasions of tardiness within a rolling one-month period are followed by at least a month free of tardiness and then by another two occasions of tardiness within a rolling one-month period.

The only part of B(5) that limits tardiness-related discipline of Grievant to a written warning is the clause in the first sentence which reads, "provided however, that the parties agree that the first instance of discipline for such tardiness after the date of this Agreement will be a written warning letter." That clause is expressly made applicable to "the first instance of discipline for such tardiness after the date of this Agreement." It follows that the clause does not apply to the second or subsequent instance of discipline for such tardiness after the date of the Grievance Settlement Agreement. The parties' express specification of a situation to which the clause applies clearly indicates that the parties intended to exclude its application to all other situations.

Furthermore, the Union's interpretation treats the "provided however . . ." clause as if it did not contain the words "after the date of this Agreement" at all. Such an interpretation is contrary to the well-established standard of contract construction that, if possible, all parts of an agreement should be given some effect rather than rendered entirely meaningless.

The "first instance of discipline for such tardiness after the date of [the Grievance Settlement Agreement]" was the written warning issued as regards Grievant's being tardy on May 13 and 19, 1998. Therefore, the discipline issued by the County as regards Grievant's being tardy on May 6 and 13, 1999 was not "the first instance of discipline for such tardiness after the date of [the Grievance Settlement Agreement]." Accordingly, the limitation to a written warning contained in the "provided however . . ." clause did not govern the discipline imposed for the May 6 and 13, 1999 tardinesses.

The concluding sentence of paragraph 5 clarifies that the provisions authorizing the County to impose discipline for a second tardiness in a rolling one month period do not preclude the County from imposing additional discipline for a third or additional instance of tardiness occurring within a single rolling one-month period -- a situation not involved in this case. Neither that sentence nor the Grievance Settlement Agreement as a whole wipes Grievant's disciplinary record clean of tardiness-related discipline after the passage of a month without another tardiness.

For those reasons, the Arbitrator finds it necessary and appropriate to reject the Union's proposed interpretation of paragraph B(5) in favor of the County's, which gives effect to all parts of the paragraph, including the rolling one-month period. Therefore, the Grievance Settlement Agreement did not prohibit the County from imposing a suspension in the circumstances of this case.

The Union has also pointed out that "[the Grievant] went almost one year between May 19, 1998 and May 6, 1999 in between his most recent instances of tardiness." Such an argument would have been appropriately considered if the issues submitted for determination had included whether the two-day suspension penalty imposed in this case exceeded the County's rights under the general standard for discipline set forth in the parties' 1997-99 Agreement. However, in this case, the parties expressly agreed that "the only issue to be decided in this case . . ." by the Arbitrator was, in effect, whether the Grievance Settlement Agreement precluded the County from imposing a suspension in the circumstances.

The Arbitrator has concluded that the Grievance Settlement Agreement did not preclude the County from imposing the instant suspension. Accordingly, consideration of factors bearing only on the general propriety of the penalty under the 1997-99 Agreement is neither necessary nor appropriate in resolving the issues submitted for arbitration by the parties in this case.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the issue submitted that:

1. Yes. Under the provisions of the parties' March 3, 1998 Grievance Settlement Agreement, the County could impose a suspension on [the Grievant].

2. The subject grievance is denied.

Dated at Shorewood, Wisconsin, this 22nd day of December, 1999.

Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator

MLG/ans
5996.doc