BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GENERAL TEAMSTERS UNION LOCAL 662

and

SAPUTO CHEESE USA, INC.

Case 1
No. 57943
A-5795

(Ciolkosz Grievance)

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by **Mr. Jonathan M. Conti**, on behalf of General Teamsters Union Local 662.

Foley & Lardner, Attorneys at Law, by **Mr. Bernard J. Bobber**, on behalf of Saputo Cheese USA, Inc.

ARBITRATION AWARD

General Teamsters Union Local 662, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Saputo Cheese USA, Inc., hereinafter the Company, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The Company subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on November 18, 1999, in Thorp, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by January 7, 2000. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties agreed to waive the contractual time limit for the issuance of an award and stipulated to the following statement of the issues:

> Did the Company violate the Collective Bargaining Agreement by relieving the Grievant from duty for non-compliance with its Good Manufacturing Practices? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited in relevant part:

ARTICLE 8
DISCHARGE

Section 8.1 The Employer shall not discharge nor suspend any employee without just cause and shall give at least one (1) warning notice of the complaint against the employee to the employee in writing and a copy of the same to the Union affected, except that no warning notice need be given to any employee who is discharged or suspended if the cause of such discharge or suspension is dishonesty or drunkenness or use of non-prescription drugs while on duty or recklessness resulting in serious injury or other flagrant violations. Discharge or suspension must be by proper written notice to the employee and the Union affected. Written warning notices shall be effective for nine (9) months from the date of notice.

. . .

ARTICLE 28
MANAGEMENT RIGHTS

Section 28.1 Management of the Company and direction of the work force is vested solely in the Company, subject to the terms and provisions of this Agreement. Such rights include, but are not limited to: determine size and makeup of the work force, hire, discipline, and discharge for just cause, transfer and relieve employees from duty due to lack of work or for other legitimate reasons, prescribe reasonable rules of conduct, and change methods of operation of design of product.

. . .

BACKGROUND

The Company owns and operates a number of cheese manufacturing plants in the state, including the plant in Thorp, Wisconsin it purchased from Stella Foods, Inc., in late 1997. The Thorp plant was previously owned by Dean Metropolis from 1990-1993. Stella Foods owned the plant from 1993 until late 1997, when it was purchased by the Company. The Union represents the non-supervisory production and maintenance employes at the Company's plants, including the Thorp plant. There are three buildings at the Thorp location: the whey plant, the dairy and packaging. In May of 1999, Dale Paul was the Dairy Manager, Tony Farr was the Packaging Manager, Duane Woods was, and is, a supervisor in packaging and Matthew Wirth was, and is, the Company's Human Resources Manager. The Grievant has been employed at the Thorp plant since May of 1985. Farr left the Company's employ shortly before the arbitration hearing and Paul was made Plant Manager at Thorp.

The Company and its predecessors at the Thorp plant have had "Good Manufacturing Practices" (GMP's) in force that are personal hygiene and sanitary practices employes are to follow. In the 1970's and 1980's, there were no written policies in that regard. Metropolis introduced some practices regarding the use of hair nets and not allowing the wearing of jewelry, but did not enforce them very stringently. When Stella Foods purchased the plant, it started enforcing the practices set forth in the GMP's in a pamphlet issued to each employe sometime after 1993. The GMP's did not permit the wearing of jewelry, including rings. Stella's GMP manual, in force since 1993, read in relevant part as follows:

> **Introduction**
>
> All employees must follow specific personal hygiene and sanitary practices to avoid physically, chemically or biologically contaminating the foods produced by Stella Foods, Inc. and to comply with the laws, rules and regulations of Federal, state, and local government agencies.
>
> These practices apply to **all** employees in plants and facilities where food is prepared, processed, packaged and stored. Consider these practices to be the least you can do to prevent contamination. Go beyond the requirements if situations occur at your facility that require more restrictive hygiene and sanitary practices to avoid product contamination.

. . .

Foreign Material Prevention

Employees, visitors and outside contractors must take all necessary precautions to prevent contamination of foods with microorganisms or foreign substances, including but not limited to perspiration, cosmetics, tobacco, chemicals and medication.

* Wearing of jewelry, including but not limited to pins, bracelets, necklaces, wristwatches, rings and earrings is prohibited, since jewelry presents both a sanitary and safety hazard.

. . .

Employes asked Stella's management whether wearing wedding rings would be permitted and were told they could do so if they wore gloves.

After Saputo purchased the plant in late 1997, the Company held a meeting of employes in January of 1998, including the Grievant, where they were instructed as to how to follow the GMP's. At the meeting, the Company's instructor advised employes that no jewelry at all, including rings, would be allowed. The GMP pamphlet was read to the employes, and all were given a copy. The Company used the same GMP pamphlet that Stella had in force. Paul testified that there were also subsequent plant meetings at which the GMP's were discussed, including the "no jewelry" requirement. Paul also testified that upon observing another employe wearing a ring, he ordered the employe to remove his ring and the employe did so.

The Company at some point rewrote the GMP pamphlet, keeping essentially the same "Introduction", and adding somewhat to the "Foreign Materials Prevention" section:

Foreign Material Prevention

Employees, visitors and outside contractors must take all necessary precautions to prevent contamination of foods with microorganisms or foreign substances, including but not limited to perspiration, cosmetics, tobacco, chemicals and medication.

* Wearing of jewelry, including but not limited to pins, bracelets, necklaces, wristwatches, rings, earrings and other jewelry (including ornaments in exposed pierced body areas) is prohibited, since jewelry presents both a sanitary and safety hazard.

The Grievant's supervisor, Duane Woods, testified that as the packaging supervisor in the packaging plant, he had attempted to enforce the GMP's with the Grievant in the past regarding his failure to wear a hairnet and his continuing to wear a ring. He testified that he would make a point of waiting at the base of the stairways to remind the Grievant to put his hairnet on or about wearing a ring. Woods testified that he has told the Grievant on several occasions that he had to get the ring off and that when the Grievant stated that he would wear a glove, he told him that that was not enough, that the ring had to come off. Further, according to Woods, the supervisor in the dairy told him that when the Grievant was working over there on a trial basis, he had to talk to the Grievant about him still wearing his ring, although Woods could not say whether the supervisor had told the Grievant he could wear a glove over it. Woods further testified that the Grievant had not said anything about his religious beliefs about removing the ring until the grievance was filed and that he had not previously stated that he could not physically remove the ring. While Woods testified that he had reminded the Grievant verbally a number of times of the need to remove the ring, he conceded that he did not put the earlier warnings in writing. Woods testified that he was present with Farr when he talked to the Grievant and told him that he had to remove the ring.

On the afternoon of May 17, 1999, Woods issued the following notice of suspension to the Grievant:

> To: James Ciolkosz
> Subject: Violation of Good Manufacturing Practices
> Date: May 17, 1999
>
> Jim, you have been spoken to on many occasions about the wearing of a ring on your finger. You have been told that it is a violation of the Saputo Cheese USA, Inc. Good Manufacturing Practices Policy to wear your ring while on the job. I have asked you to remove it, and on Friday, May 14 Tony Farr spoke to you about this matter. While you were working at the Dairy, Jim Quelle spoke to you about this issue.
>
> Jim, As you have repeatedly ignored all previous requests to remove your ring I must regrettably take more serious steps and inform you that I am suspending your employment until you remove the ring from your finger while on the job.
>
> You may return only when you have removed the ring.
>
> Duane Woods
> Duane Woods /s/
> Packaging Supervisor

Woods testified that the Grievant told him that Farr had said he would be in compliance with the GMP if he made an appointment to have the ring removed, and that when Woods asked the Grievant if he had made an appointment, he was told that the Grievant's doctor was on vacation, and that he (the Grievant) would get back to them when he did make an appointment.

The Grievant testified that he weighed approximately 180 pounds when he was first married and that he now weighs approximately 225 pounds. The Grievant testified that when Stella first came out with the GMP's that said no jewelry, those with wedding rings without stones were permitted to wear gloves. He testified that the first time he was told that he could not wear a glove over it and would have to remove the ring was on May 14th when Farr spoke to him. At that time he told Farr that he could not physically remove it and Farr replied that he knew that, but the Grievant should make an appointment. When the Grievant asked Farr when, he was told "just not a year." The Grievant testified that he was not told by Farr that he had to do it immediately, or by the following Monday at the latest, although, Farr did tell him that he should consider this his official verbal warning. The Grievant also testified that when he came to work on Monday, he called his doctor on the noon hour to make an appointment for June 9 or 10, as he did not sense any urgency. The Grievant was told that the doctor was on vacation until after Memorial Day, and that his first week back was pretty well booked up. The Grievant testified that he then returned to work bagging cheese and saw Woods, who told him to come to the office, and then gave him his suspension letter. The Grievant testified he asked Woods why, as Farr had told him it was okay as long as he had made an appointment. Woods responded by asking whether he had made an appointment and the Grievant said "yes", at which time Woods told him he was suspending him anyway. The Grievant testified that his relationship with Woods was "shaky at times." The Grievant testified that he could not get his ring past his knuckle and that in the past, when Woods had seen his ring he had pointed to it and said, "Get a glove on it", which the Grievant did not consider a warning or that he had to take the ring off. According to the Grievant, he was not told until May 17 that he either had to remove the ring or leave work. The Grievant did concede that he may have been told by either the instructor from the company or by Farr that there would come a time when the ring would have to come off, but that it was not until May 14 when Farr spoke to him that the Grievant was made to understand it would have to come off, but it was his understanding that there was not any immediate problem as long as he got an appointment to have it removed. The Grievant further testified that when he came in to discuss his grievance with Wirth and Farr that they then made it clear to him that it was urgent that he have the ring removed as soon as possible, and that he then called the clinic and, having explained the situation, got an earlier appointment for June 1st.

On May 21st, the instant grievance was filed. In the grievance, the Grievant alleged that the suspension was unjust because wearing a wedding ring was not an issue under OSHA or USDA, that it was discriminatory because it was his religious belief to wear the ring, that it had been okay in the past to wear the wedding band with a glove, and that he had not had his ring off since he was married and was not given ample time to see if he could have a doctor remove it. A conference was held that date with Wirth, Farr, Woods, the Grievant and the local steward, at which time it was made clear to the Grievant that it was necessary to have the ring removed as soon as possible.

On May 25, 1999, Wirth sent the Grievant the following letter giving him until May 28 to return to work:

May 25, 1999

Mr. Jim E. Ciolkosz
12600 Hwy 27
Cadott, WI 54727

Dear Mr. Ciolkosz:

Following our phone conversation of Friday, May 21, 1999 the company has determined that you are fully capable of returning to work. Thus, you are expected to return back to work on Friday, May 28, 1999 at 8:00 p.m. You will be required to be in compliance with all Saputo Cheese USA "Good Manufacturing Practices" upon your return to work.

Failure to return to work on May 28th, will be considered as your voluntary resignation from Saputo Cheese USA – Thorp.

If you have any questions, do not hesitate to call me at (920) 929-8060.

Sincerely,

Matthew R. Wirth /s/
Matthew R. Wirth
Regional Human Resources Manager

The Grievant testified that he called Farr on May 27 after receiving the letter and was told that Wirth was out until after Memorial Day and gave him the telephone number of the Company's Corporate Director of Human Resources. The Grievant called that individual and explained the situation and was told that he could come back on June 1st instead of May 28th. The Grievant reiterated that when Farr told him on May 14 to get the ring off, he did not tell him or else he would be suspended.

The Grievant had the ring removed on June 1st and returned to work that day.

The parties were unable to resolve the grievance, and proceeded to arbitration of the dispute before the undersigned.

POSITIONS OF THE PARTIES

Company

The Company alleges that the Grievant has a history of non-compliance with the Company's GMP's and that in March, April and May of 1999, Woods spoke to him about his non-compliance and instructed him to remove his ring on approximately five separate occasions. Having refused to remove his ring despite these warnings, the Grievant was accordingly relieved of his duties until he complied with the rules by removing his ring, when he appeared at work on Monday, May 17. Instead of removing his ring, the Grievant filed the instant grievance on May 21.

The Company first asserts that it acted within its contractual rights by relieving the Grievant of his duties until he complied with the GMP's. The Grievant was repeatedly verbally warned in the prior two months about his non-compliance and was instructed to remove his ring. Consistent with his past behavior, the Grievant resisted compliance and in fact was the only employe in the entire facility who failed or refused to remove his jewelry as required. The Company's action is expressly sanctioned by the Agreement, which states that the Company may "relieve employes from duty due to lack of work or for other legitimate reasons. . ." The Grievant's ongoing failure to comply with the GMP's is obviously a "legitimate reason." The GMP's are not a matter of convenience; rather, they are serious sanitary and safety rules to protect the health and safety of the consumers of the Company's products. The Company makes it very clear in the GMP's themselves that they are minimal requirements imposed on all employes and are necessary to comply with the law and to minimize risk to health contamination or damage to the food product.

The Union's argument that the action of relieving the Grievant is actually a disciplinary suspension that is unjust because it was not preceded by written notice, should be rejected for several reasons. First, the action here was not the equivalent of a standard disciplinary

suspension of the type referred to in Article 8 of the Agreement. Unlike a disciplinary suspension for a set period of time, the Grievant was not required to miss any time at all in this case. Even the Grievant concedes he could have returned to work on May 17 had he simply removed his ring. He further concedes that he did not even try to remove the ring at home, nor call any type of clinic to get advice on how to remove the ring or go to a hospital emergency room to have the ring removed or even try a jeweler. In reality, he imposed the lost work time on himself by failing to comply with the GMP and by failing to make even a minimal attempt to comply. The fact that the notice uses the word "suspension" does not, in and of itself, substantively convert the action into the equivalent of a disciplinary suspension.

Even assuming that the action constituted a disciplinary suspension, the Company complied with Section 8.1 of the Agreement. The Company did not have to predicate any disciplinary suspension upon prior written notice under the terms of that provision because of the Grievant's ongoing and repeated refusals to comply with the GMP's which constituted "flagrant violations", as they were open, repeated, ongoing, and committed despite seven verbal warnings from supervision, in violation of the express written GMP's. Further, even if the violations are not considered to be flagrant, the Company still complied sufficiently to meet the requirements of 8.1, since it did give written notice of the complaint against the employe as he was being relieved from his duties. Section 8.1 does not include a specific amount of time by which a written notice must precede the disciplinary action, or give the employe an express right to cure. The Agreement only requires that the Company give at least one notice of the complaint against an employe in order to impose a suspension or discharge. The May 17, 1999 memo to the Grievant is such written notice of the complaint, and warns him that he will not be permitted to work until he complies with the GMP. In the context of this case, the employe was fully and exclusively in control of his own compliance with the GMP's and thus, his ability to return to work, and the written notice should be deemed sufficient to comply with Section 8.1 In addition, the Union's "hypertechnical arguments" about the alleged lack of prior written notice is merely grasping at straws. Even the Grievant concedes that once he was informed by Farr that he was required to remove his ring, he understood the requirement and did not need written notice to help him understand further or to motivate him to comply.

The Company asserts that it was not until the arbitration that the Grievant claimed for the first time that he was never informed prior to May 14 that he was required to remove his wedding ring. That new story is simply not true. Woods told the Grievant on some five prior occasions that he was required to remove his ring, consistent with the Company's application of the GMP's, and as the Grievant was expressly instructed at the training session in January of 1998. The Grievant never claimed in the grievance process or his written grievance that he was not told before May 14 that his ring had to come off. This new story can only be true if Woods is lying. Not only does Woods not have any incentive to lie about this, the substance of his other testimony and candor at the hearing confirms that he has told the truth. On the other hand, the Grievant has played the system by staying out of work until June 1st and is now

attempting to recover backpay. The allegation that Woods would lie about these things due to some vague tension between he and the Grievant is "just plain nonsense". Further, the fact that the Grievant is spinning new tales is made clear by his testimony about former Packaging Manager Farr. The Grievant's stories about his conversations and understandings with Farr are not credible, since the Union apparently made no effort whatsoever to require Farr's presence at the hearing. Acknowledging the importance of Farr to his story, the Grievant claims he asked Farr to attend the arbitration, but there is no indication in the record of any attempt whatsoever by the Union to subpoena Farr. On the other hand, the Company did not subpoena Farr because, until it heard the Grievant's new story at the hearing, it had no indication that he was claiming that Farr's comments were important. Further, the Grievant's attempt to shift responsibility to Farr is inconsistent with his written grievance. While the Grievant claims that Farr expressly told him on May 14 that he would be in compliance if he simply made a doctor's appointment, that is contradicted by the Grievant's confession that Farr unequivocally told him that the ring had to come off. If the Grievant truly believed that the May 17 removal was unjust based on Farr having expressly told him he would be considered in compliance if he simply made a doctor's appointment, the Grievant would have so stated in his written grievance, but he did not do so. This is especially telling, as the Grievant did specifically enumerate several different arguments he thought would show the Company's removal to be unjust. Moreover, the story is further contradicted by the fact that Farr is the manager who rejected and signed the grievance. If Farr had really told the Grievant he only needed to make an appointment in the relatively near future, why would he have rejected the grievance and upheld the May 17 removal of the Grievant from work until he complied with the GMP's? Just as Farr did not say any such thing, it is similarly untrue that the Grievant had no idea prior to May 14 that he was required to remove his ring.

The Union also seems to be critical of the Company for not escalating the matter more rapidly into an adversarial proceeding by overtly disciplining him with written warnings prior to his removal. The Company, however, has not had to discipline any employe to obtain compliance with the GMP's. Anyone with common sense who works in a food manufacturing facility understands the critical importance of full and strict adherence to the rules regarding personal hygiene and sanitary conditions. As explained in the testimony of both Paul and Woods, in all other instances of non-compliance, the Company has merely had to verbally inform the employe of such and the employe has immediately complied.

The Company concludes that it had a legitimate reason to relieve the Grievant from his duties on May 17th until he complied with the Company's GMP and requests that the grievance be denied.

Union

The Union asserts that Stella had previously allowed those employes who did not want to, or were unable to, remove their wedding bands to comply with the GMP by wearing gloves over the rings, and that Saputo continued that policy when it bought the plant in 1997. Even after the safety meeting in January, 1998 regarding the prohibition against jewelry, Farr told the Grievant that he could comply with the no jewelry rule by wearing a glove over the ring. Between March and May of 1999, the only mention the Grievant heard from any of his supervisors regarding the wearing of his wedding ring was the occasional statement that he needed to "get a glove on it". It was not until May 14, 1999, that Farr approached the Grievant and told him that wearing a glove over the ring was no longer acceptable, and that he needed to remove it. The Grievant told Farr that he was not physically capable of removing it, and Farr replied that he was aware of that. The Grievant stated that he would call his doctor to set up an appointment to have it removed, and Farr stated that was acceptable, provided that it was not a "year from now". The Grievant's understanding then was that as long as he had an appointment scheduled and continued to wear the glove, he was in compliance with the GMP. At no time during their conversation did Farr tell the Grievant that if he did not remove his ring by Monday, he would be suspended, nor did Farr give the Grievant a written warning about the ring at this time. The Grievant reported for work on Monday, May 17 and during his lunch break telephoned his doctor and the earliest appointment the Grievant was able to schedule was for June 9 or 10. When the Grievant returned from his lunch break, Woods approached him and told him that he was being suspended for wearing his wedding ring. The Grievant informed Woods that Farr had told him that if he scheduled a doctor's appointment to have the ring removed and wore a glove over the hand, he would be in compliance. Woods asked the Grievant whether he had an appointment, to which the Grievant replied that he did, but Woods nonetheless suspended him. Woods never issued a written warning to the Grievant prior to the suspension.

After the Company sent the Grievant a letter on May 25 stating he had to return to work by May 28, the Grievant called his doctor on May 27 and was able to move his appointment up to June 1. The Grievant informed the Company on May 28 that he had moved up his appointment, however, the Company refused to permit him to return to work. The Grievant had the ring removed on June 1. The Union asserts that it was common knowledge in the plant that the Grievant was not physically capable of removing the ring from his finger and that at no time did anyone from the Company inspect the Grievant's finger to determine how tight the ring was.

As to the alleged contractual violation, the Union asserts that the Company did not have just cause to suspend the Grievant. Section 8.1 of the Agreement requires the Company to have just cause before discharging or suspending an employe. In this case, the Grievant had never been disciplined in any manner for wearing his wedding ring until his suspension and the

Company has been lax in enforcing its rule against wearing jewelry at work. Like Stella, Saputo permitted employes, including the Grievant, to comply with the rule by wearing a glove over the wedding ring, and continued that policy until May 14, 1999, when Farr informed the Grievant he would no longer be in compliance with the rule by simply wearing a glove over the ring. Until that point, the only time the Grievant had been warned about the ring was the occasional reminder that he needed to "get a glove on it (his ring hand)". When Farr finally informed the Grievant that he needed to remove the ring, and that a glove was not sufficient, he did not direct the Grievant to remove the ring immediately, nor did he warn him that failure to remove it by the following Monday would result in his suspension. Rather, he lulled the Grievant into believing that scheduling an appointment to have the ring removed in the near future and continuing wearing a glove would suffice in the interim. The Grievant was not physically able to remove the ring himself and therefore the scheduling of an appointment to have it removed was not some kind of delaying tactic, but rather a medical necessity.

The Union asserts that arbitrators will disturb penalties imposed by an employer "assessed without clear and timely warning where the employer, over a period of time, had condoned the violation of the rule in the past" leading employes "reasonably to believe that the conduct in question is sanctioned by management." Elkouri and Elkouri, *How Arbitration Works*, (Fifth Edition, 1997) at 933. When Woods suspended the Grievant on May 17, the Grievant had done nothing to warrant the suspension, but had merely followed what a Company supervisor had told him to do, i.e., schedule an appointment to have the ring removed and continue to wear the glove over the ring. Woods and the Company nonetheless deemed the Grievant's conduct to be in violation of the work rules. At some point between May 14 and May 17, the Company determined without warning that the Grievant was no longer in compliance with the rule. The Union concludes that the Company did not have just cause because the Grievant had never been warned that he could be suspended and because he was in compliance with Farr's May 14 instructions.

Next, the Union asserts that the Company violated Section 8.1 of the Agreement by failing to issue the Grievant a written warning prior to his suspension. Assuming, *arguendo* that the conversation between Farr and the Grievant can even be considered a verbal warning, Woods did not have the authority to suspend the Grievant on May 17 because the Company never previously issued him a written warning as required by Section 8.1. Even assuming that Farr's directions on May 14 constituted a verbal warning, Woods should have issued the Grievant a written warning rather than a suspension for wearing his ring to work on May 17. The Company clearly did not follow the progressive discipline required by the Agreement in this case since the suspension was not the result of "dishonesty, drunkenness or use of non-prescription drugs while on duty or recklessness resulting in serious injury", nor can his failure to remove his ring immediately on May 17 be considered a "flagrant violation". The Union cites arbitration awards in which, under contract language similar to that in Section 8.1,

arbitrators held that the employe who had been terminated was entitled to a written prior warning and therefore ordered the company to reinstate the employe and make him whole. In one case involving similar progressive discipline language, an arbitrator found that the offense did not fall within those specifically listed in the agreement for which there could be discharge without a prior warning and rejected the employer's argument that it could discharge the employe without warning because the employe handbook stated that such conduct would not be tolerated. The arbitrator concluded the language in the labor agreement takes precedence over the unilateral employe handbook. Similarly, although the company's Handbook in this case prohibits the wearing of jewelry while working, the Agreement requires the Company to issue a written warning prior to suspending an employe for this type of offense. Also, the Handbook makes no mention of the possible consequences of wearing jewelry at work. Section 8.1 of the Agreement therefore controls this case.

Lastly, the Company attempts to argue that it allegedly gave the Grievant a number of verbal warnings prior to the suspension such that they somehow collectively amounted to the equivalent of a written warning. That argument is without merit. Woods' alleged verbal warnings issued between March and May simply consisted of reminders to the Grievant that he needed to keep a glove on his ring at all times. At no time during these very brief exchanges did Woods ever tell the Grievant that he needed to remove the ring and that failure to do so would result in discipline. Further proof Woods did not issue the Grievant "verbal warnings" is the fact that not any of these verbal warnings was memorialized in writing, as was Woods' normal practice. Thus, the Company violated Section 8.1 by suspending the Grievant without prior warning.

The Union asserts that the Grievant was indefinitely suspended on May 17. The fact that his doctor's appointment was initially scheduled on June 9 or 10 was due to the doctor's unavailability prior to that. Regardless, the appointment was not so far in the future as to be unreasonable, and thus was in compliance with Farr's instructions on May 14. After the Grievant was suspended, he filed his grievance on May 21. While the Grievant was eventually able to move his appointment up to June 1, the Company nonetheless refused to let him resume working prior to that date. Thus, the Grievant did not unnecessarily delay his return to work and the Company played a role in that delay. Further, any allegation that the Grievant did not have the ring removed earlier because he wanted to get some farming done in the interim is without merit. He did no more farming work during the time he was suspended than he normally would have while working full-time. For all of the foregoing reasons, the Union asks that the suspension be rescinded and the Grievant be made whole.

DISCUSSION

The first issue is whether the Company's actions on May 17, 1999 involving the Grievant constituted a "suspension" within the meaning of Section 8.1 of the Agreement, or whether it was non-disciplinary in nature, as the Company asserts. The maxim, "If it quacks, it's a duck" applies in this case. While it is true that the Grievant had some control over how long he would be off the job, he was nonetheless involuntarily suspended from his work without pay for being in violation of a work rule. The purpose behind this particular work rule does not distinguish this case from any other involving a suspension without pay for violating a work rule. Therefore, it is concluded that Section 8.1 of the Agreement applies.

Section 8.1 requires that the Company have just cause to suspend or discharge an employe and that the employe has been given "at least one (1) warning notice of the complaint against the employe in writing. . ." unless the cause of the suspension or discharge is "dishonesty or drunkenness or use of non-prescription drugs while on duty or recklessness resulting in serious injury or other flagrant violations."

The Company first argues that if Section 8.1 is found to apply, a written warning was not required in this case because the Grievant's actions constituted a "flagrant violation". That term is preceded by examples of conduct that the parties have agreed justifies the immediate imposition of severe discipline without the need for prior warning. The conduct is of the type that is generally recognized as being so serious and so obviously wrong that one is assumed to know that if he/she engages in such conduct, severe consequences will follow. The Grievant's conduct in this case does not fall within that category. Also, although the Grievant openly failed to comply with the Company's "no jewelry" rule as written, it was not a "flagrant violation" within the meaning of Section 8.1. There is evidence that even after the training session in January of 1998, employes were permitted to wear a wedding ring as long as a glove was worn over it. Even according to Woods' log of his contacts with the Grievant about wearing his ring, Woods said nothing to him about it until March 8, 1999.

The record also indicates that the Grievant was not given adequate warning of the consequences of not removing his ring. While Woods testified that he told the Grievant on each of those occasions that the ring had to come off, the Grievant testified that Woods only told him to "get a glove on it", or something similar. That factual dispute aside, Woods conceded that he did not warn the Grievant prior to May 17th that he would be suspended if he did not remove the ring, although he felt that the Grievant was aware of that possibility from the GMP pamphlet. That pamphlet does not, however, make any statements about potential disciplinary consequences for violating the GMP's. The record also demonstrates that Woods was not averse to issuing disciplinary warnings to the Grievant for violating GMP's, and in fact had issued a verbal warning (with written confirmation) to the Grievant in February of 1997 for not wearing a hair net after being previously spoken to about it. (Company

Exhibit 5). Other than claiming it tries to obtain compliance with the GMP's short of disciplining employes, the Company does not explain why, if the Grievant had been verbally warned on numerous occasions about wearing his ring, the warnings were not confirmed in writing and why he did not receive a written warning prior to the suspension.

With regard to what the Grievant was told on May 14th by Farr, it appears Woods accompanied Farr on that date, and he did not contradict the Grievant's testimony as to what Farr said. The Grievant testified that Farr told him he was giving him a verbal warning, but did not tell him to have the ring removed by Monday or he would be suspended from work; rather, he acknowledged that the Grievant could not remove the ring himself and indicated it would be enough to make an appointment to have it removed in the near future. The Grievant's unrebutted testimony was that he reiterated to Woods on May 17th what Farr had told him on May 14th and that Woods said he was suspending him anyway. Woods was present for that testimony and was not called to rebut it.

The Company also asserts that Section 8.1 does not provide a time frame by which written notice of the complaint against the employe must be provided, and that therefore the May 17th notice of suspension satisfies that requirement and further, that the requirement is just a technicality. Neither of those arguments is persuasive. The purpose of requiring a written warning prior to imposing such severe discipline is to place the employe on notice of the seriousness of his conduct and the likely consequences, and to provide the employe an opportunity to correct his/her conduct, and thereby avoid the more serious discipline. Those purposes are obviously not served by permitting the employer to give the written warning at the same time the more severe discipline is imposed. For the same reason, the requirement of a prior written warning is not a mere technicality. Further, Section 8.1 also requires additional written notice of the suspension or discharge. The parties obviously did not intend then that the earlier written warning notice and the notice of suspension could be one in the same.

The burden of providing a prior written warning is not onerous, and could easily have been met by the Company in this case. It is concluded from the above that the Grievant was not given adequate warning of the consequences of not having his wedding ring removed by Monday, May 17th, and that the Company failed to provide the written notice in that regard required by Section 8.1 of the Agreement prior to imposing a suspension.

For the foregoing reasons, it is concluded that the Company violated Section 8.1 of the parties' Agreement when it relieved the Grievant from his duties without pay on May 17, 1999

for not complying with the Company's Good Manufacturing Practices. As to remedy, the evidence demonstrates that the Grievant took steps to move up his appointment to have his ring removed and did not unreasonably delay his complying with the GMP's and return to work. Therefore, the usual make whole remedy is deemed appropriate in this case.

Based upon the foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is sustained. The Company is directed to immediately make the Grievant, James Ciolkosz, whole by paying him all pay and benefits he would have received under the parties' Agreement, but for the Company's action in removing him from work from May 17, 1999 until June 1, 1999.

Dated at Madison, Wisconsin this 25th day of February, 2000.

David E. Shaw /s/
David E. Shaw, Arbitrator

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