

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 1667, AFSCME, AFL-CIO**

and

**VERNON COUNTY**

Case 120  
No. 58777  
MA-11056

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Appearances:

**Mr. Daniel R. Pfeifer**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Klos, Flynn & Papenfuss, by **Attorney Jerome J. Klos**, appearing on behalf of the County.

**ARBITRATION AWARD**

Local 1667, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Vernon County, hereinafter referred to as the County, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Union made a request, with the concurrence of the County, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over a verbal disciplinary warning. The undersigned was so designated. Hearing was held in Viroqua, Wisconsin, on June 8, 2000. The hearing was not transcribed and the parties filed post-hearing briefs, which were exchanged on November 27, 2000.

**BACKGROUND**

The County's nursing home, Vernon Manor, had a need for additional staff to fill two shifts and it posted a notice on September 7, 1999 indicating the shifts and asking staff to volunteer to fill in. The grievant, who is also the Union president, wrote comments on the posting as follows:

“Management needs to get help in here if that means hiring, that means hiring. It is not the staffs (sic) problem. It is managements (sic). The team of C.N.A.s and nurses is doing the very best job, that management is allowing us to do. We are all tired. Sincerely, J.C.”

On June 9, 1999, the 300 hall was falling behind in its work. The grievant, who was assigned to 300 hall at that time, stated to the other employees on 300 hall they would not ask for help. Management, when notified, reassigns staff to areas that need assistance. The grievant was given a verbal warning for her actions. The matter was grieved and appealed to the instant arbitration.

### **ISSUE**

The parties stipulated to the following:

Did the County violate the collective bargaining agreement by giving the grievant, Judy Clark, a verbal disciplinary warning?

If so, what is the appropriate remedy?

### **PERTINENT CONTRACTUAL PROVISIONS**

#### **ARTICLE II**

##### **Management's Rights**

2.01 Subject to the provisions of this Contract and applicable law, the County possesses the right to operate the Manor and all management rights repose in it. These rights include, but are not necessarily limited to, the following:

. . .

D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

## **POSITIONS OF THE PARTIES**

### **County's Position**

The County contends that it has a duty under the law to properly staff and to manage that staff to provide proper care of the residents. It points out that the grievant had filed three previous grievances claiming staff shortages and management presented adequate evidence that staffing was sufficient and exceeded state and federal rules. According to the County, the Union presumably conceded the issue as it failed to appeal the grievances. It submits the grievant was improperly interfering with management's duty to manage the staff. It claims that the grievant's statement to other staff recognized that the ward was falling behind in services to the residents and by telling staff not to ask for help with knowledge that management shifts personnel from other wards, especially coming from the Union president, constituted an order contrary to management's policy.

It submits that the grievant's annotating the official notice to solicit volunteers to work is a direction to employees not to sign up. It concludes that the grievant has acted insubordinantly and overstepped her function as the Union's president by trying to make or impair management decisions. It argues that the grievant's unwarranted interference is insubordination which certainly provide just cause for an oral disciplinary warning.

### **Union's Position**

The Union contends that the grievant is and has been President of the Union for the past seven years and an employee for the past twenty-six years with no previous discipline. It claims that the Manor has attempted to discipline her in the past for her Union activities but the discipline has been overturned by the Manor's Board of Trustees. It observes that the grievant testified that she took the actions involved in this case as President of the Union and not as an individual employee. It notes that this case is not a prohibited practice proceeding but cites Section 111.70 (3)(a), Stats., on the rights of a Union officer.

It argues that on June 9, 1999, the grievant reported a staff shortage to the Director of Nurses and nothing was done, so out of frustration the grievant wrote the comments on Exhibit 3. It states that somehow management misinterpreted the grievant's actions as a recommendation that employees not sign up for extra work but this is misplaced and there is no documentation or testimony to support this contention. It points out that the grievant testified that she never advised any employee not to sign up. The Union also contends that what the grievant wrote was true and not necessarily inflammatory.

The Union points out that a second incident which occurred shortly after June 9, 1999, involved a shortage of CNA's and the grievant allegedly stated: "We will not ask for help." It notes the grievant admits to making a statement which can be construed to be similar to the quoted statement. It claims that the grievant is being singled out as Union president, as it was the nurse in charge who was aware of the shortage and was responsible for obtaining additional staff, not the grievant.

It maintains that the Manor is interfering with the grievant's actions on behalf of the Union and she was disciplined for seeking additional staff in one instance and not seeking additional staff in the second instance, an untenable position.

The Union rejects the County's argument that the grievant's actions constituted insubordination as there is no evidence that she was ever given a direct order and refused to implement it. It states that there is no evidence of what alleged order the grievant did not follow. It concludes that the County did not have just cause to issue the grievant a verbal warning, and it requests that all references to this discipline be removed from all of her personnel records.

### **DISCUSSION**

It is undisputed that the grievant wrote on the notice posted by the County. This is clearly defacing County property. The Union argues that the grievant was acting as the Union's president and her conduct was protected. There are appropriate methods for the Union to address staffing problems such as filing a grievance and seeking redress to the Manor Trustees. The grievant has been Union president for seven years and should be well aware of the proper procedure to address perceived problems. She is not entitled to take actions which are in the nature of self-help. She surely understands the adage, "Work now, grieve later." Furthermore, arbitrators have upheld the discipline of Union officials who have encouraged work stoppages, slow downs, or sabotage. The grievant's conduct is not as serious as those offenses, but neither is the discipline here, a verbal disciplinary warning. The grievant's conduct was not protected activity and her deliberate defacing the notice constituted grounds for discipline.

The second instance of misconduct was the grievant's announcement to other staff that even though they were behind in their work, they would not ask for help. The Union argues that this is not insubordination as there was no direct order which the grievant refused to obey. Insubordination is not limited to the refusal to obey a direct order. Arbitrator Brisco stated in TWIN COAST NEWSPAPERS, 89 LA 799 (1987) as follows:

“The concept of insubordination encompasses not only willful disobedience to a direct order, but also . . . deliberate acts of disrespect toward supervision. . . Such behavior would create costly chaos in any workplace. Employee behavior of this sort cannot be sanctioned.”

The grievant was aware of the procedures to call for assistance and told her co-workers not to ask for assistance. This type of behavior has only one purpose and that is to undermine supervision and create chaos in the workplace. The grievant's conduct cannot be justified and is found to be insubordinate.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned makes the following

**AWARD**

The County did not violate the collective bargaining agreement by giving the grievant a verbal disciplinary warning, and therefore, the grievance is denied.

Dated at Madison, Wisconsin this 5th day of December, 2000.

Lionel L. Crowley /s/

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Lionel L. Crowley, Arbitrator

