

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**COLUMBIA COUNTY COURTHOUSE AND HUMAN SERVICES
EMPLOYEES' UNION, LOCAL 2698-B, AFSCME, AFL-CIO**

and

COLUMBIA COUNTY

Case 201
No. 58400
MA-10944

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Joseph Ruf III, Corporation Counsel, and **Mr. Brent R. Miller**, Human Resources Director, appearing on behalf of the County.

ARBITRATION AWARD

Columbia County Courthouse and Human Services Employees Union, Local 2698-B, AFSCME, AFL-CIO, hereinafter referred to as the Union, and Columbia 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 disciplinary matter. The undersigned was so designated. Hearing was held in Portage, Wisconsin on August 15, 2000. The hearing was transcribed and the parties filed briefs which were exchanged on November 2, 2000. The parties reserved the right to file reply briefs but only the Union filed a reply brief and the record was closed on December 4, 2000.

BACKGROUND

The grievant has been employed by the County since February 5, 1990 and in 1999 was an Administrative Secretary in the Planning and Zoning Department. In 1999, the grievant signed for and accepted a position in the office of Register of Deeds and on March 1, 1999

returned to her position in the Department of Planning and Zoning. On March 18, 1999 the grievant met with her Supervisor, Jeanine Baertsch and Michael Stapleton, the acting director of the Planning and Zoning Department. The grievant was given a letter which informed her to be on time or call in before 8:15 a.m., to proofread her work to ensure it was accurate, to provide correct information to the public but not to give advice, to carry out oral and written instructions and to refer questions to her supervisor. It also informed the grievant that errors would be brought to her attention so they could be corrected and not repeated and if the grievant needed additional training or support, she should advise her supervisor. The letter also stated that they would meet every other week to discuss her performance and any concerns she may have.

On April 13, 1999, the grievant was given a letter by Jeanine Baertsch which was a follow up to the March 18, 1999 letter and discussion. It noted that the grievant was reliable in being to work on time and then listed a number of errors, many of which were minor, and explained why certain procedures should be followed and ended with Ms. Baertsch stating that she would meet with the grievant again in two weeks to review the grievant's progress in improving the quality of her performance.

On May 12, 1999, the grievant was given a letter concerning disciplinary review by Mr. David A. McLean, Personnel Director, which listed certain misconduct and deficiencies in her work and concluded that in the event the grievant was unable to perform her work as expected, Mr. McLean would recommend to either suspend or terminate the grievant's employment. On May 14, 1999, the grievant filed a grievance alleging that the correspondence date March 18, 1999, April 13, 1999 and May 12, 1999 lacked just cause. The grievance was denied and appealed to the instant arbitration.

ISSUE

The parties agreed to the following:

Did the employer have just cause to issue the documents dated March 18, 1999, April 13, 1999 and May 12, 1999?

If not, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE 15 – MANAGEMENT RIGHTS

15.1 The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

...

D) To suspend, demote, discharge, and take other disciplinary action against employees for cause, and subject to the procedure of Article V of this contract;

COUNTY'S POSITION

The County contends that the March 18, 1999 letter (Jt. Ex-3) informed the grievant that successful performance in her position would require her to meet certain expectations set out therein and that there would be a follow up to discuss these concerns. It submits that the April 13, 1999 letter (Jt. Ex 4) documented the follow up and is a fair assessment of the grievant's failure to comply with certain basic performance expectations and standards required of her. The County argues that the letter of May 12, 1999 (Jt. Ex-5) fairly and accurately reflects the grievant's performance. It claims that it memorializes the Department's expectations and chronicles those instances where her work performance failed to meet the Department's expectations. It concludes that as stated in the May 12, 1999 letter, the grievant, as an employee in the Department for six and one-half years, was expected to possess the necessary experience, training and know-how to perform her assigned duties in a competent fashion. It concludes that it had just cause to issue the letters. (Jt. Exs-3, 4 and 5).

UNION'S POSITION

The Union contends that the County bears the burden of establishing just cause for discipline imposed. It notes that the March 18, 1999 letter is not a disciplinary letter and just cause need not be established. It maintains that both the April 13 and May 12, 1999, letters are clearly disciplinary and must meet the requirements of just cause.

It asserts the April 13, 1999 letter lacks just cause. It observes that at least 14 allegations of performance deficiencies and/or misconduct are raised in the letter. It points out that the author of this letter did not testify and the County offers no explanation for this failure. It submits that there was a lack of evidence in the record to support any of these assertions and they must be considered unproven.

1. It states that the typing error on the purchase order did not show up in the extension so there was no danger the County would pay an incorrect amount and the purchase order was never put into evidence.

2. The Robert Dates matter is not supported by any testimony that the grievant gave him incorrect information.

3. The Monday 29, 1999 error was allegedly on a document which was not introduced plus the correct date is indicated in three places, so no possibility of a problem exists.

4. Spelling errors on messages were not supported by any documentation and no proof that the grievant wrote the messages.

5. Date/Day Mismatch is unsupported by any documentation or testimony.

6. The Stozinski receipt was not placed in the record and no witness testified about the observation of this receipt.

7. The Baumgartner Permit was not placed in evidence and there was no testimony that the grievant was guilty of anything improper.

8. As to the Guetschow matter, there was no evidence that the grievant gave Guetschow incorrect information.

9. On Receipt Procedures, there was no testimony to support this allegation and no evidence that the grievant filled out these receipts.

10. The Purchase order allegedly left by grievant in Land Information Director's Office was not established by any testimony.

11. The grievant was supposedly unable to locate the Herbert Bock file but no testimony supports this allegation.

12. The Randy Thompson matter was unsupported by any testimony and the County's witness did not know how this was the grievant's fault and had no evidence that the grievant made any mistakes.

13. The John Barth Zoning Certificate allegedly involved a call to Land Conservation by the grievant rather than her supervisor but this was not supported by any testimony.

14. Erroneous paperwork was allegedly being removed by the grievant, however there was no testimony that the grievant was removing erroneous paperwork or making any department information public.

It concludes that the County failed to prove even a single allegation and thus failed to meet its burden of proof, so there is no just cause and the April 13, 1999 letter should be expunged from the grievant's file.

With respect to the May 12, 1999 letter, the Union notes it was written by Mr. McLean, the County's Personnel Director at that time. It also observes that the County's only witness, Mr. Stapleton, testified he did not discuss the letter with Mr. McLean prior to its issuance. It observes that the letter contains twelve paragraphs.

The first two paragraphs are erroneous, according to the Union, as the March 18 letter discusses expectations and not deficiencies and the April 13 letter is not supported by any evidence, so there is no prior discipline and Mr. Stapleton offered no evidence of any reference to prior discipline. The Union argues that the third paragraph is not supported and Mr. Stapleton testified that he had no facts to support the allegations in paragraph three. The Union avers that the record is unclear as to what McLean was reviewing and there is no foundation for the derogatory comments set forth therein. It notes that paragraph five expresses concern over the large number of errors which continue to plague the grievant's work and the rest of the letter is assumed by the Union to identify those errors. The Union observes that paragraph six which states the grievant made errors in the zip codes of the Certified Surveyors List was unproved and Mr. Stapleton did not know if the grievant was responsible for maintaining the list and who was responsible for verifying the accuracy of the zip codes. The Union points out that paragraph seven is nothing more than a statement that typos make one look bad and does not allege the grievant made any.

The Union observes that paragraph eight refers to a Brenner zoning permit application and claims the grievant filled in "no" in the blank seeking flood plain or wetlands information. It refers to Mr. Stapleton's testimony that he did not know if the grievant filled this in or if Mr. Brenner did and he had no information whether the "no" was accurate or not. It submits there isn't a scintilla of evidence to support this charge. The Union points out paragraph nine refers to a zoning application by Mr. and Mrs. Blum which is incomplete but again, Mr. Stapleton knew nothing about this accusation and it is unsubstantiated. According to the Union paragraph ten refers to the Randy Thompson matter addressed in the April 13, 1999 letter already discussed by the Union.

The Union argues that paragraphs eleven and twelve merely summarize and restate the points previously addressed and Mr. Stapleton testified that he had no evidence that it accurately reflected the grievant's performance in the Department. Given the lack of evidence, the Union concludes that the document must be found to lack just cause and it should be expunged from the grievant's record.

COUNTY'S REPLY

The County did not file a reply brief.

UNION'S REPLY

The Union argues that the County, to establish a prima facie case of just cause, must offer evidence that the matters referenced in the letters did in fact occur and demonstrate unacceptable error on the grievant's part. It asserts that the County is of the belief that the mere existence of the letters are proof of the allegations therein. It claims this is erroneous and the only support for the documents was the testimony of a single witness who neither wrote nor was consulted about writing the documents and with respect to the May 12, 1999 letter, was "out of the loop" and knew next to nothing about the allegations contained therein. It refers to this witness' testimony that he had no evidence of any of the allegations but trusted the judgment of his co-workers that the allegations occurred and this is the only evidence offered. It submits that the County's arguments are nothing but empty rhetoric. It questions whether the County had evidence to support its allegations, and if so, why did it not present it.

It concludes that simply put there is no evidence against the grievant of anything. It asks that the grievance be sustained.

DISCUSSION

The grievance involves three documents. The first document is dated March 18, 1999. This letter is not disciplinary as it does not accuse the grievant of any wrongdoing nor does it find that any behavior of the grievant is improper. It does not provide a penalty nor does it threaten or predict any penalty for any alleged violation. It is merely a list of expectations, such as: be on time, type error free in final form, don't give advice, etc. This is not disciplinary action. The Union in its brief conceded that the March 18, 1999 letter is not a disciplinary letter and just cause need not be established. Inasmuch as this letter is not disciplinary, Article 15, Section D is not applicable, so no violation of the agreement occurred and the letter need not be removed from the grievant's file.

With respect to the April 13, 1999 letter, it is somewhat ambiguous. It appears to be similar to an evaluation in that it contains a positive matter such as the grievant has proven to be reliable in terms of attendance but the bulk of the letter contains instances where behavior could be improved. It does not state it is a disciplinary letter and does not contain a penalty. It neither threatens nor predicts a penalty. From the four corners of the April 13, 1999 letter it appears to be a review of performance as the last sentence speaks to another meeting to assist in improving the quality of the grievant's performance. The County is entitled to evaluate an employee and point out areas of needed improvement and such evaluation does not constitute discipline. It is concluded that this letter is not discipline but rather an evaluation. It cannot be used as a step in any disciplinary action in the future. As the April 13, 1999 letter is not disciplinary, the County is not required to demonstrate just cause for it and there is no violation of Article 15, Section D.

As to the May 12, 1999 letter, it is clearly a disciplinary letter. It states that it is a disciplinary review. It accuses the grievant of acts of wrongdoing and unacceptable work and states that further misconduct will result in suspension and/or termination. (Ex-5) The letter is subject to the cause requirement of Article 15, Section D and the County has the burden of proving that just cause exists for the letter of reprimand.

A review of the record establishes that the County offered no evidence to support the letter of reprimand. The author of the letter did not testify and not a single document was offered to support the allegations of errors or deficiencies on the part of the grievant. The County's sole witness testified that he had no facts to support the allegations that the grievant responded in a false and untruthful manner. (TR-90). He further testified that he had no evidence to support the allegations in the May 12, 1999 letter. (TR-95, 97, 99). In short, the County failed to prove any of the allegations set forth in the May 12, 1999 letter and it lacked cause for it.

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

AWARD

The documents dated March 18, 1999 and April 13, 1999 are not disciplinary and need not be removed from the grievant's personnel file. The County did not have just cause for the May 12, 1999 document and it is directed to expunge this document from the grievant's records.

Dated at Madison, Wisconsin this 19th day of December, 2000.

Lionel L. Crowley /s/

Lionel L. Crowley, Arbitrator