

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**SHEBOYGAN COUNTY HEALTH CARE CENTER EMPLOYEES,  
LOCAL 2427, AFSCME, AFL-CIO**

and

**SHEBOYGAN COUNTY**

Case 334  
No. 60052  
MA-11502

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Appearances:

**Ms. Helen Isferding**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1207 Main Avenue, Sheboygan, Wisconsin 53083, on behalf of the labor organization.

**Ms. Louella Conway**, Personnel Director, Sheboygan County, 615 North Sixth Street, Sheboygan, Wisconsin 53081, on behalf of the municipal employer.

**ARBITRATION AWARD**

Sheboygan County Health Care Center Employees, Local 2427, AFSCME, AFL-CIO (“the union”) and Sheboygan County (“the county”) are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The union made a request, in which the county concurred, for the Wisconsin Employment Relations Commission to designate a member of its staff to hear and decide a grievance over the application and interpretation of the terms of the agreement relating to discipline. The commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Sheboygan, Wisconsin on September 6, 2001; it was not transcribed. The parties submitted written arguments, the last of which was received on October 26, 2001.

**ISSUE**

The union states the issue as follows:

“Did the employer have just cause to give Linda Skelton a one-day suspension? If not, what is the appropriate remedy?”

The employer states the issue as follows:

“Did the employer violate the labor agreement when it disciplined the grievant, and if so, what is the appropriate remedy?”

I state the issue as:

“Did the employer violate the collective bargaining agreement when it issued Linda Skelton a one-day suspension? If so, what is the appropriate remedy?”

### **RELEVANT CONTRACTUAL LANGUAGE**

#### **Article 3**

#### **Management Rights Reserved**

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested exclusively in the Employer. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due to him/her for such period of time involved in the matter.

...

In keeping with the above, the Employer may adopt reasonable rules and amend the same from time to time, and the Employer and the Union will cooperate in the enforcement thereof.

### **OTHER RELEVANT PROVISIONS**

#### **SHEBOYGAN COUNTY INSTITUTIONS**

#### **PERSONNEL POLICIES**

#### **XVII. Progressive Discipline**

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C. IMPLEMENTATION

2. Examples of Work Rule Infractions

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- i. Creating a disturbance on work premises by fighting or other conduct which adversely affects morale, production or maintenance of proper discipline.

...

4. Discipline Recommended: For consistency in administering discipline County-wide, the following discipline standard should be considered for violation of the above examples:

**The following recommended sequence of steps may be altered by the Administrator depending upon the severity of the infraction.**

Creating a disturbance on the work premises by fighting or other conduct which adversely affects morale, production or proper discipline:

1<sup>st</sup> offense – 1 day off without pay

2<sup>nd</sup> offense – 5 days off without pay

3<sup>rd</sup> offense - Discharge

**BACKGROUND**

Among its other activities, Sheboygan County operates a 183-bed skilled care facility known as Rocky Knoll Health Care Facility. The grievant, Linda Skelton has worked there since November 6, 1975, the first 15 years as a nurse's assistant, the last 11 or so as a housekeeper. This grievance arises out of an incident at the facility on September 15, 2000,

involving Skelton, maintenance worker Scott Ruh and maintenance supervisor Richard Tarman.

A day or two earlier, Skelton, Ruh and another housekeeper had discussed their need to move furniture in one resident's room to accommodate personal furniture the resident's family would be bringing in on Friday. Since the other housekeeper would be off on the 15<sup>th</sup>, it was agreed that Ruh and Skelton would see to the task of moving the bed. 1/

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*1/ Ruh testified the earlier conversation took place on the 14<sup>th</sup>; Skelton had it occurring "at the Wednesday afternoon break," which would have been the 13<sup>th</sup>. This discrepancy has no bearing on the outcome of this grievance.*

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As it happened, Ruh and a nurse moved the bed, without any involvement by Skelton. Because they did not take care to put the bed on wheels when they moved it, the bed scratched the floor.

There is no dispute that Skelton was not involved in the damage to the floors. The parties do dispute, however, how and when that came to be, and what happened next.

Ruh testified that "late in the afternoon," near the end of his shift, he was "called by the nurse" to move the furniture "as soon as possible." He acknowledges that he could have paged Skelton for assistance, but he chose not to; the nurse, he said, "told me now," because the end of the shift was looming.

Ruh also testified that he felt Skelton had been creating "a very hostile environment" for him at work, giving him "looks and everything," and making problems for him with various work orders.

The union challenges this narrative, both in substance and spirit. The truth, the union says, is that it wasn't near the end of the shift, so there was no rush, and that it was Ruh rather than the nurse who set the assignment in motion. After Ruh foolishly did the work without calling for Skelton's help and damaged the floor, the union asserts, he then picked a fight with her when she confronted him on it. Simply, the union claims the essential culprit is Ruh, whose personal and professional inadequacies created the incidental, and whose own testimony exposes him as lacking in credibility and bearing the brunt of the blame for the incident.

The union notes that Ruh's written account of the ensuing encounter in the shop room was time-coded at 1:23 p.m. (see below) Since the encounter itself took place *after* the furniture had been moved, setting the encounter at 1:23 means that Ruh and the nurse moved

the furniture hours before the end of the shift. Ruh's own writing, the union states, rebuts his sworn testimony on a critical point in his narrative.

The union also challenges Ruh's testimony that it was the nurse who had directed him to act expeditiously to move the furniture. Skelton provided hearsay testimony that the nurse in question had said that it was Ruh who asked her for assistance, a scenario the union suggests is much more likely. And the fact that Ruh admittedly avoided asking Skelton for assistance, the union suggests, is but another manifestation of his paranoia and hostility towards her.

The undisputed narrative continues with Skelton's discovery that the bed had been moved and the floor scratched, whereupon she went to talk with Tarman in his maintenance shop area. Skelton found him there with Ruh, which is where the narratives again diverge.

Ruh testified that Skelton "came through the door, hands out, red in the face and looking really mean. She had a very mean demeanor. She barged right into the room where I was talking with my supervisor. She was beet red, and she slapped her hands down on the table. She asked if I moved the bed and I said I had, because we needed the bed moved. She asked if we'd seen that we had put scuff marks in the floor, and I said yes. I told her all the floors looked bad."

Ruh further testified that the supervisor, Tarman, "didn't say a word during the meeting," and that when he "went to walk around her, she grabbed his shirt when he tried to get out of the room. She said, 'don't go anywhere, I'm not finished.'"

Ruh testified that he reported the incident to the assistant director of nursing on his own initiative, and that he received a one-day suspension for creating a disturbance in the workplace, discipline he grieved but accepted short of arbitration.

Skelton doesn't recall it like that at all. She says she was looking for Tarman only to tell him about the scratched floor, when she "saw him in the maintenance shop across the hall talking to Scott. I went up to discuss what had happened. I asked Scott why he moved the bed and put a big scratch in the floor, and he just went off on me, yelling and screaming, and using vulgar language."

Skelton does agree with Ruh that Tarman just "stood there and didn't say a word," and then started to leave. But then, the recollections again differ.

“I just put my finger on his shoulder and said, ‘please don’t leave,’” she testified, demonstrating at hearing by placing a single forefinger out. It was then, Skelton said, that Ruh said, “all the floors look like hell anyway, what’s one more.” Skelton said she then “said to Dick I would like to see you before you leave today, and he said ok.”

Skelton said Tarman later explained the flare-up: “Dick said Scott’s under a lot of stress,” she testified, adding, “I asked Dick if I did anything wrong and he said no.” Ruh, she said, “was the one that blew up and started yelling. When he didn’t stop, I just left.”

Tarman, who started in the maintenance department in 1979, became the maintenance supervisor in 1987 and retired in April 2000, testified that he and Ruh “were discussing equipment failures in the maintenance shop when Linda came in and started talking to Scott with a raised voice. Then Scott came back in a raised voice. I said, ‘excuse me, I’m going to leave.’ Then Linda put her hand on my shoulder and said she wanted to talk to me. I left. She wasn’t trying to restrain me, but said don’t leave.”

Tarman testified he did not see Skelton with her hands balled up angrily as described by Ruh, but that “she was upset,” and that “she came in with a raised voice.” He also testified that he never heard Ruh use vulgar language, as testified to by Skelton.

Tarman said he neither told Skelton to be quiet at the time nor reported the incident later. Excluded from the bargaining unit as a supervisory employee, Tarman also received a one-day suspension, which he accepted. “It was my position to see that there were not any disruptions in the workplace, and I did not do that,” he testified.

Following the incident, Ruh prepared the following hand-written note:

Friday  
9-15-00

13:23 Linda came in maint(enance) and verbally abused myself in front of my supervisor.

When Richard went to walk around her she grabbed his l(eft) shoulder and told him not to move or go anywhere. Then she continued to belittle myself and the maint(enance) dept.

Scott

On October 2, 2000, Rocky Knoll Administrator Dale Pauls issued Skelton a one-day suspension without pay, explained in the following Employee Report:

On September 15, 2000 between 1:00 p.m. and 1:30 p.m. a confrontational discussion occurred between Linda and Scott Ruh, Maintenance Worker. It led to raised voices. Linda was confrontational in her approach to Scott. She used a raised voice and would not listen to a response from Scott. Linda requested the Maintenance Supervisor remain in the room. She did so, by placing her hand on his shoulder and telling him not to leave. Linda did not conduct herself appropriately during this meeting. Her actions contributed to a disturbance that adversely affected the morale and production in the workplace.

Skelton appended the following response to Pauls' report:

I am in total disagreement with this suspension and do not agree with the above statement of incident.

On October 13, 2000, the union filed a grievance on Skelton's behalf. The grievance listed as the "applicable violation" that there was "unjust, unfair treatment in the workplace," and as "adjustment required," that Skelton "be made whole." On October 16, administrator Pauls denied the grievance, as follows:

Denied. Employee engaged in a conversation with another employee in which words were exchanged and tones of voices displayed that were inappropriate and led to a disturbance in the workplace.

On March 29, 2001, County Personnel Director Luella Conway wrote union staff representative Helen Isferding as follows:

The above mentioned grievance was heard at the Personnel Director step on Friday, March 16, 2001.

After review of the information presented, the grievant engaged in inappropriate discussion with another employee and her supervisor. All parties involved were disciplined regarding the incident.

The discipline is appropriate. The grievance is denied.

If you have any questions, feel free to contact me.

On May 15, 2001, Conway wrote to Isferding as follows:

The Personnel Committee at their meeting of Tuesday, May 1, 2001 considered the above referenced grievance.

The information presented indicated that a verbal discussion between the supervisor and two employees was disruptive to the individuals involved and all acted inappropriately with regard to this issue.

All three individuals were disciplined based on the improper behavior, which was appropriate. There is no violation of the labor agreement, the Personnel Committee carried a motion to deny the grievance.

If you have any questions, feel free to contact me.

#### **POSITIONS OF THE PARTIES**

In support of its position that the grievance should be sustained, the union asserts and avers as follows:

The employer did not suspend Linda Skelton for just cause. The crux of this case is whether the employer can prove the accusation that her actions contributed to a disturbance that adversely affected the morale and production in the workplace and whether Skelton is a more creditable witness than the employer's witnesses.

No one ever told Skelton she was causing a disturbance in the work place. If she did cause the alleged disturbance, the supervisor should have put her on notice at the time of witnessing the incident. In reality, what she did was question a fellow employee in the presence of her supervisor. Common sense would dictate that she can question why a plan to move furniture without scratching the floor failed. There is no rule or notice as to questioning why some work project went wrong. The supervisor, who has been a supervisor since 1987, had the responsibility of putting Skelton on notice that she was causing a disturbance, which the union maintains she was not. No testimony was offered that the supervisor made any attempt to intervene. The employer thus failed the notice test.



The employer has also failed to meet its burden of proof. That the supervisor did not immediately report the incident attacks the credibility of any testimony that any wrong-doing ever happened. The supervisor didn't report the incident because it was nothing that adversely affected the morale and production in the workplace. This is the first, most glaring, weighty piece of evidence that the incident was just being blown up by Mr. Ruh. The supervisor never reported the alleged incident, nor made any attempt to intervene; indeed, he was walking away when Skelton asked him to stay by touching his shoulder. Supervisors don't just walk away in the middle of two employees fighting. Sounds like there was no fight.

Further, the credibility of maintenance man Ruh is suspect, in that he gave strange, paranoid-like testimony on the activities of Skelton. He believed she was "checking up on him," submitting work orders as part of a plot against him. His feelings seem exemplified by his parting shot to Skelton that "all the floors look bad." The administrator testified that this was not the first time Ruh had come to him complaining about Skelton. Here, he saw a chance to get her in trouble, and he took it.

Ruh's credibility is further damaged by his failure to follow the furniture removal plan and his testimony containing an inaccurate time frame.

Further, Skelton's demeanor, as testified to by both Tarman and Ruh, was not a demeanor to cause a disturbance that adversely affected the morale and production in the workplace. Ruh never said she raised her voice but sounded "annoyed." Tarman never told her to lower her voice. There was no testimony that anyone other than the individuals involved heard the conversation in the workplace. There was no motive for Skelton to be angry, since she wouldn't even have to do the work to repair the floor damage.

There is no testimony in the record of how or who's morale and production was adversely affected by the conversation. The incident only lasted one to two minutes.

It is clear that Ruh is biased against Skelton, and his testimony is not credible. There is a difference in causing a work disturbance and questioning why a job was performed badly. An employee who has pride in her work area should not be punished for asking what went wrong. The supervisor saw nothing to act upon, and he has the first responsibility.

The grievance should be sustained and the grievant made whole.

In support of its position that the grievance should be denied and the discipline sustained, the employer asserts and avers as follows:

There are seven tests to establish the basic elements of just cause. The county answered all those tests affirmatively, establishing that it had the "proper cause" to discipline as provided for in the collective bargaining agreement.

The test for notice was satisfied because the employer has an established policy and procedure manual which outlines the disciplinary procedure. This policy indicates that a disturbance in the workplace is cause for a one day suspension.

The test for reasonableness was satisfied because the employer expects certain behavior. Raised voices and physical touching of a supervisor are not acceptable.

The test for investigation was satisfied because the administrator conducted an investigation and interviewed all three participants in the incident. After obtaining their statements, it was determined that an incident occurred.

The test for fair investigation was satisfied because the administrator gave all three the opportunity to tell their side of the story. It was a fair and complete investigation.

The test for proof was satisfied because the statements indicated that the incident did occur, there is no question about that.

The test for equal treatment was satisfied because the employer followed the rule precisely. All three employees, including the supervisor, received the same discipline of a one day suspension.

The test for reasonableness of the penalty was satisfied in light of the policy manual and the seriousness of the issue.

The employer's actions were not arbitrary or capricious. The facts respond affirmatively to the test for just cause. The one day suspension for Ms. Skelton for a disturbance in the workplace is appropriate and does not violate the collective bargaining agreement. The grievance should be denied.

In response, the union posits further as follows:

Discrepancies in Ruh's account of the time and manner in which the bed was moved challenges his credibility and taints his testimony. Further, the fact that it was Ruh and not Tarman who reported the incident shows that Tarman didn't report the incident because it was not inappropriate. Tarman felt free enough to even leave the area.

In response, the employer posits further as follows:

The union errs in suggesting that Skelton was not given notice that it was improper to cause a disturbance in the workplace. The policy manual is clear that such action warrants a one-day suspension.

While it may be true that Tarman never told Skelton to stop her behavior, it is also true that after the investigation Tarman also received a suspension because the administrator felt he had not handled the situation properly. All three involved in the incident received a one-day suspension.

The testimony of Ruh and Tarman is nearly identical in describing how Skelton came into the room red faced and upset. There is no reason to believe these statements were made to get back at the grievant. While there may not have been the best relationship between Ruh and Skelton, the testimony bears out the fact that an incident occurred. The statements are true and credible.

The time of the incident was clearly established. In his testimony, Ruh indicated he moved the furniture around 1:30 p.m. His statement of the incident was written at 13:23 on September 15, after the furniture had been moved and after Skelton confronted him in the shop about the incident. There is no reason to question the time frame when both testimony and documentation clearly establish when the incidents occurred.

The statement that just cause has not been established is not justified in the brief of the union. The seven steps are clearly outlined in the brief of the employer and clearly satisfy the reasons discipline was appropriate. The grievance should be denied.

## DISCUSSION

In theory, this is a fairly straightforward grievance, unencumbered by complex analyses of language or complicated histories of past practice. The collective bargaining agreement clearly gives the employer the ability to discipline “for proper cause.” The relevant personnel handbook, which the union does not challenge, assigns a one day unpaid suspension as the proper discipline for the first offense of “creating a disturbance on the work premises by fighting or other conduct which adversely affects morale, production or proper discipline.”

The parties have both explicitly cited the “seven tests” of arbitrator Carroll Daugherty. Under that analysis, the employer has easily proven six of the elements without much effort. (1), Ms. Skelton had **notice** of the rule against creating a disturbance; (2), the rule was **reasonably related** to the proper administration of a nursing home staff; (3), management made a reasonable **investigation**, through interviewing all participants; (4), management conducted a **fair investigation**, with no evidence in the record of bias; (5), the rules were applied to **all employees** involved, including both represented and supervisory; (6), the one day suspension was **reasonable discipline** because it was set by a proper rule.

The only question remaining would be the most critical -- was there **substantial proof** that the event charged had occurred? What really matters is whether or not Skelton created a disturbance which adversely affected the morale, production or proper discipline. If she did, I must deny the grievance; conversely, if I determine that her actions did not have that result, the grievance should be sustained.

Thus, I need to do determine the truth of an event that I did not witness.

Credibility is therefore a key element in the analysis. Not surprisingly, each witness has certain strengths and weaknesses.

I agree with the union that the pieces don't add up in Ruh's accounts. He wrote a note that Skelton came into the shop room at 1:23 p.m. to complain about the way he moved the furniture, an event he testified happened “late in the afternoon,” near the end of the shift. Simply, those two events could not have both happened when Ruh said they did. Ruh's sworn testimony thus conflicts with his contemporaneous written account on this critical point. The fact that Ruh gave false testimony about how and why he moved the furniture when did doesn't *necessarily* mean he's not telling the truth about other aspects of the encounter, but it certainly doesn't *help* his credibility when he describes what happened next.

I also agree with the union that the nature of the incident – Ruh acting rashly, Ruh foolishly not calling on Skelton, Ruh damaging the floor – sketches a scene which could very well lead to Ruh picking a fight with Skelton. By adding to Ruh’s motive in having Skelton look as bad as possible, this aspect further complicates his credibility.

I disagree with the union, though, on the extent to which Ruh’s loose way with the truth means that Skelton didn’t do essentially what the employer alleges.

Skelton’s problem is that her account runs counter to not only Ruh’s, but Tarman’s as well. Clearly, Skelton has a distinct motive in advancing a narrative that downplays her involvement in creating a disturbance; Ruh has both general and specific motive in making Skelton look as bad as possible. But I can find no similar motive explaining why Tarman would be anything other than honest in his account.

Tarman testified that he and Ruh were discussing equipment problems “when Linda came in and started talking to Scott in a raised voice. Then Scott came back in a raised voice.” He testified that Skelton “was upset,” and that “she came in (to the maintenance shop) with a raised voice.”

Ruh’s lack of credibility, and Tarman’s lack of verification of such points as the “balled fist incident,” leaves me inclined to accept the union’s argument that Ruh exaggerated somewhat in describing Skelton’s actions and demeanor. But the essential aspect of Tarman’s testimony – that an upset Skelton came in and started speaking to Ruh in a raised voice – is all the employer needs.

When Party A unexpectedly comes through the shop door, upset and speaking sharply to co-worker Party B, we may reasonably expect there to be an incident – especially when there is an ongoing bad relationship between the parties, as is here the case. So it’s not surprising that that’s what happened.

By definition, the incident that arose was a disturbance which adversely affected proper discipline. Indeed, all three participants in the encounter – two municipal employees, one supervisor – were disciplined, all given one day suspensions without pay.

Tarman was quite candid in acknowledging his role in the affair, and in explaining why he agreed with the one-day suspension the administrator imposed on him as well as Ruh and Skelton. “It was my position to see that there were not any disruptions in the workplace, and I did not do that,” he testified.

On the deeper level of blame, I don't know who is more at fault. The length of Skelton's service with the county is in the record, but there is nothing to tell me what kind of employee she's been over the last 26 years. Nor do I find anything in the record regarding Ruh's level of performance in his six years on the job.

And ultimately, I cannot determine exactly what happened that afternoon. Skelton may have merely sought to discuss the incident with Ruh and been taken aback by his explosive reaction; she may have respectfully asked Tarman to stay, and gently put a single finger on his shoulder. Or she may have burst into the room, fists formed and accusations flying, badgering both her coworker and putative supervisor. Only Skelton, Ruh and Tarman could really know the truth.

All I can do is come to a conclusion on the broad outline of the incident, which is that Skelton came through the door in an upset attitude and with a raised voice, challenging the work of someone she knew to be suspicious of and hostile toward her. It is hard to see how that would *not* "create a disturbance on the work premises by ... conduct which adversely affects morale, production or proper discipline."

Indeed, that is what it did. So that is what she did, as well. Skelton may well have had cause to be upset; any employee with pride in her work and concern over waste and abuse would rightly be upset at the poor, even destructive, performance and attitude of Ruh. The union is right when it says that without Ruh's cavalier attitude toward the time and manner in which the bed was moved, none of this would have happened.

But Ruh's damage to the floor and the incident in the shop room were distinct and separate events. It was Skelton, not Ruh, who initiated the encounter in the shop annex. In so doing, Skelton was guilty of creating the disturbance which soon consumed Ruh and Tarman as well.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

**AWARD**

That the grievance is denied.

Dated at Madison, Wisconsin, this 24th day of January, 2002.

Stuart Levitan /s/

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Stuart Levitan, Arbitrator