BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF OSHKOSH EMPLOYEES UNION, LOCAL 796B, AFSCME, AFL-CIO

and

CITY OF OSHKOSH

Case 336
No. 61717
MA-12041

(Rebecca Berndt Grievance)

Appearances:

Mr. Richard C. Badger, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Davis & Kuelthau, S.C., by **Mr. William G. Bracken**, Employment Relations Services Coordinator, on behalf of the City.

ARBITRATION AWARD

At all times pertinent hereto, the City of Oshkosh Employees Union, Local 796B, AFSCME, AFL-CIO (herein the Union) and the City of Oshkosh (herein the City) were parties to a collective bargaining agreement covering the period July 1, 2001, to June 30, 2003, and providing for binding arbitration of certain disputes between the parties. On October 23, 2002, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration on the grievance of Rebecca Berndt (herein the Grievant) concerning a 35-day disciplinary suspension which was imposed on her by the City, and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on October 29, 2002. The proceedings were transcribed and the transcript was filed on November 13, 2002. The parties filed briefs on December 17, 2002, and reply briefs on January 2, 2003, whereupon the record was closed.

ISSUES

The parties were unable to stipulate to the framing of the issues. The Union would frame the issues as follows:

> Did the City violate the collective bargaining agreement when it required the Grievant to waive her rights to the grievance procedure as a condition of her continued employment with the City?
>
> If so, what is the appropriate remedy?
>
> Did the City violate the collective bargaining agreement when it suspended the Grievant for 35 days?
>
> If so, what is the appropriate remedy?

The City would frame the issues as follows:

> Is the grievance arbitrable?
>
> If the grievance is arbitrable, did the City violate the agreement when it suspended the grievant for 35 days for violating department rules, regulations and policies?

The Arbitrator frames the issues as follows:

> Is the grievance arbitrable?
>
> If so, did the City violate the collective bargaining agreement when it suspended the Grievant for 35 days?
>
> If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE I

MANAGEMENT RIGHTS

SECTION 1. Except to the extent expressly abridged by a specific provision of this agreement, the City reserves and retains, solely and

exclusively, all of its Common Law, statutory, and inherent rights to manage its own affairs, as such rights existed prior to the execution of this or any other previous agreement with the Union.

ARTICLE III

RULES AND REGULATIONS

SECTION 1. The employer may adopt and publish rules and regulations concerning the operation of its facility and conduct of employees. Such rules and regulations may be amended periodically, provided reasonable notice is given to affected employees and the local Union president.

ARTICLE XX

WAIVER OF RIGHTS

SECTION 1. Each party to this Agreement expressly retains the rights and authority possessed by it or them under Wisconsin or Federal Laws, regulations or statutes. In the event that any clause, provision, or portion of this Agreement is held invalid or inoperative such invalidity or inoperativeness shall not affect other clauses, provisions, or portions of this Agreement. The parties hereby declare their intent that all clauses, provisions, and portions of the Agreement are severable.

. . .

ARTICLE XXI

GRIEVANCE PROCEDURE

. . .

Step 1. The aggrieved employee or the Union may present the grievance orally to his management's supervisor. The employee or the Union and the supervisor shall attempt to resolve the grievance. The supervisor shall state his position to the employee and the Union within three consecutive work days. Within three consecutive work days after the supervisor has stated his position, the employee shall advance his grievance to Step 2, or the matter shall be considered settled by all parties.

. . .

Step 4. If the Union does not consider the grievance to be resolved, it may request that the grievance be submitted to arbitration. The Union shall give written notice of its request for arbitration within ten (10) days after the receipt of the City Manager's statement. Upon receipt of such notice, the Union and the employer shall endeavor to select an impartial arbitrator by mutual agreement. In the event the parties are unable to agree upon an arbitrator, they shall each select three (3) arbitrators from the Wisconsin Employment Relations Commission staff. From those six (6) arbitrators, five (5) names shall be drawn. The parties shall then proceed to alternatively strike from that panel until an arbitrator is selected. The striking order shall be determined by a coin toss. The decision of the arbitrator shall be final and binding. The arbitrator shall have no right to amend, modify, ignore or add to the provisions of this Agreement. The decision of the arbitrator shall be based solely upon his interpretation of the "express language" of the Agreement.

If the WERC or its successor agency no longer provides arbitrators from its staff the following language shall apply:

Step 4. If the Union does not consider the grievance to be resolved, it may request that the grievance be submitted to arbitration. The Union shall give written notice of its request for arbitration within ten (10) days after the receipt of the City Manager's statement by requesting the Wisconsin Employment Relations Commission to furnish a panel of independent arbitrators from which the parties shall select one arbitrator to hear the matter set forth in the grievance. The parties shall proceed to alternately strike from that panel until an arbitrator is selected. The striking order shall be determined by a coin toss. The losing party, based on the decision of the arbitrator, shall pay all costs of the arbitrator. The Employer will be deemed the losing party if the grievance is sustained in whole or in part. The decision of the arbitrator shall be final and binding. The arbitrator shall have no right to amend, modify, ignore or add to the provisions of this Agreement. The decision of the arbitrator shall be based solely upon his interpretation of the "express language" of the Agreement.

OTHER RELEVANT LANGUAGE

PERSONNEL POLICY MANUAL

SECTION 13. DISCIPLINE

The purpose of discipline is to correct job behavior and performance problems of employees. Employees shall be informed of standards of conduct and performance. Rules and regulations shall be fairly and consistently applied.

Penalties shall be uniform and shall match the infraction. Persons administering discipline shall systematically document the case. Records of verbal reprimands shall be maintained in the department files. Copies of written reprimands, demotions, suspensions and terminations shall be provided to the employee, the Director of Personnel, the employee's supervisors or Department Head and placed in the employee's file. Demotions, suspensions or terminations shall be discussed with the Director of Personnel before such actions are taken. In the event that immediate dismissal action is required and the Director of Personnel cannot be reached, the employee shall be suspended pending investigation.

SECTION 14. GROUNDS FOR DISCIPLINARY ACTION

A. Dishonesty or falsification of records.

B. Insubordination (refusal to obey reasonable orders, insolence, talking back, arguing, verbal abuse or assault of a supervisor).

C. Theft or destruction of City equipment or property.

D. Unauthorized use or abuse of City equipment or property.

E. (1) Use of intoxicants while on duty
(2) Intoxication to a degree which would make continued presence a menace to safety or production or interfere with discipline or efficiency.

F. (1) Use of drugs while on duty, other than prescribed by a physician.
(2) Abuse of prescription or other medications
(3) Condition brought about from use of drugs away from work which interferes with job performance, efficiency or discipline.

G. Fighting or creating a disturbance among fellow employees, resulting in an adverse effect on morale, production or maintenance of proper discipline.

H. Disorderly or immoral conduct:
(1) Notorious off-duty conduct which brings disrepute or which reflects on the City as an employer.
(2) Conviction of a felony.
(3) Unavailability for work because of incarceration.

I. Absence without leave (any absence from work which has not been approved).

J. Leave used for a purpose other than for which it was requested and granted.

K. Disregard of the public's interest.

L. Habitual tardiness or abuse of sick leave.

M. Refusing or willfully neglecting to contact or try to make arrangements with creditors after being directed to do so by management which is consistently receiving complaints that an employee will not attempt to reach a solution regarding indebtedness.

N. Use of official position or authority for personal profit, sexual purposes or political advantage.

O. Disregard or repeated violation of safety rules and regulations.

P. Sexual harassment.

Q. Discrimination or abusive conduct because of race, color, creed, national origin, ancestry, age, marital status, sex or other criteria protected by equal employment opportunity laws.

R. Knowingly make false or malicious statements with intent to harm or destroy the reputation, authority or official standing of individuals or organizations.

S. Acceptance of any gift, favor or service that might reasonably tend improperly to influence an employee in the discharge of their official duties.

T. Any employee who is found to be in violation of this personnel policy.

U. Failure to perform assigned work in an efficient manner.

V. Being wasteful of material, property or working time.

W. Failure to carry liability insurance on a private vehicle used for City business.

X. Failure to report work injuries.

Y. Other circumstances may warrant disciplinary action and will be treated on a case by case basis.

EMPLOYEE HANDBOOK

DISCIPLINARY PROCEDURE

It is expected that you will work in a competent and conscientious manner which will reflect favorably upon you, your department, and your employer. Instances

> may occur, however, when an employee has exhibited questionable behavior and corrective action is necessary. The purpose of discipline is to correct job behavior and performance problems of employees. The action taken to discipline and employee may include a verbal reprimand, a written reprimand, suspension without pay, demotion, and discharge. Rules and regulations will be fairly and consistently applied and penalties shall be uniform and will match the infraction.

BACKGROUND

The Grievant has been a Telecommunications Officer for the Oshkosh Police Department since September 17, 2000. In that capacity, she is responsible for, among other things, processing and communicating information received from the public to department officers and civilian employees for further action. In so doing, she is frequently exposed to sensitive and confidential information.

On May 5, 2001, the Grievant, while on duty, received a report from a member of the public, whose daughter attended the high school, that there were to be two upcoming post-prom parties at which underage drinking was likely to occur. The Grievant then called her father, passed on the information about the parties to him and warned him to prevent her brother, who was underage and also a high school student at the time, from attending the parties. The Grievant's father passed the warning on to her brother, who, in turn, warned his friends, with the result that no underage drinking was discovered at the parties in question.

Later, on prom night, the Grievant's brother and his friends allegedly appeared, with alcoholic beverages, at another party also attended by the daughter of the woman who had made the initial report. The brother there supposedly revealed that the other parties were cancelled because he had been warned by a relative who was a police dispatcher that the parties were to be raided. The girl reported this to her mother, who subsequently contacted school officials about the incident. Ultimately, the Principal of Winneconne Middle School contacted the police department with the information.

The department conducted an investigation which revealed the Grievant's conduct. On June 5, 2001, the Grievant was interviewed by Captain Randy Van Ness and Captain Jay Puestohl about the incident. She admitted her conduct and stated she felt she had a moral obligation to warn her brother if she felt he was in danger. Van Ness and Puestohl reported the results of the meeting to Police Chief David Erickson, who initially considered a summary discharge. Erickson met with the Grievant on June 13, 2001, to discuss the incident, at which time she also admitted her conduct to him. At that time, she acknowledged that her actions were wrong and stated that under the same circumstances she would not do the same thing again. On the basis of this interview and further consultation with his officers, Erickson decided not to discharge the Grievant, but to issue a suspension instead. On Friday, June 15,

2001, Erickson and Van Ness met with the Grievant again. The Grievant, at her request, was accompanied by Geraldine Haverty, a fellow employee and bargaining unit member**,** at all the meetings. At that meeting, Erickson informed the Grievant that he had determined to suspend her for 35 days. He also gave the Grievant a document summarizing the incident and setting forth the discipline (Joint Ex, #3). The document also included an acknowledgment to be signed by the Grievant and witnessed, which included a waiver of grievance rights under Article XXI of the collective bargaining agreement. Erickson asked the Grievant to review and sign the document. The Grievant and Haverty met alone for 15 to 30 minutes, during which time they unsuccessfully attempted to contact the Union President and Union Representative for advice. At the end of that time, they signed the document and returned it to Erickson.

On June 29, 2001, Union President Paul Poeschl filed a grievance on the Grievant's behalf, alleging that the discipline administered to her was too severe and asking that it be rescinded and the Grievant be made whole. The City denied the grievance and the matter proceeded through the steps of the contractual grievance procedure to arbitration. Additional facts will be referenced, as necessary, in the discussion section of the award.

POSITIONS OF THE PARTIES

The City

The City argues at the outset that it was justified in disciplining the Grievant due to her wrongful conduct. The Grievant admitted her acts and there is no question that a breach of confidentiality such as she committed warrants discipline. Furthermore, although in this case discipline would be warranted under a just cause standard, the collective bargaining agreement only applies a just cause standard to discharge cases. Thus, the City's decision here must be judged by whether it was arbitrary and capricious, a much higher standard. Under this standard, there is no question the City was justified in its action.

The City also asserts that it was justified in the severity of the discipline imposed. The Grievant breached confidentiality and compromised an ongoing police investigation, which is a very serious matter, warranting the lengthy suspension imposed. Furthermore, there are numerous reasons why the arbitrator should not substitute his judgment for that of the employer. First of all, the level of punishment is within the City's discretion and the Arbitrator's inquiry should only be whether the City acted in good faith and conducted a fair investigation and did not act arbitrarily or capriciously. Also, the 35-day suspension was in keeping with the seriousness of the Grievant's offense. Any lesser penalty would trivialize the serious nature of her actions, which is borne out by the level of discipline upheld by other arbitrators under similar circumstances. It should also be noted, in considering the severity of the penalty, that the Grievant was only an eight-month employee, not a longtime employee with an exemplary record, and that, in fact, she was permitted to use compensatory time to mitigate part of the suspension, reducing it, in effect, to 27 days.

The Union

The Union maintains that, although the Grievant concededly committed a rule violation, a 35-day suspension was unwarranted under the circumstances. At the outset, the Union maintains that just cause is the appropriate standard for evaluating employee discipline. This standard is implied in the contract and the City's Personnel Manual and Employee Handbook and should be applied by the Arbitrator. Further, the Arbitrator's authority is not bound to merely reviewing whether the City acted in good faith, but extends to review of the relative severity of the discipline, as well. The arbitrator should exercise that power top remit the discipline in this case.

The City engaged in speculation in predicting the possible consequences of the Grievant's acts. In fact, there is no evidence that the information she released led to the teenagers moving their party elsewhere and, indeed, her action may have served to prevent the parties from taking place, thus serving a laudable purpose. Arbitrators have tended to categorize offenses into extremely serious, which usually merit summary discharge, and less serious, which merit lesser, progressive disciplinary action. This case falls clearly into the second category and should, therefore, warrant a much less severe penalty.

Some other factors should also be considered in mitigation of the Grievant's acts. First, the City failed to conduct a thorough investigation, resulting in errors regarding several factual matters. An improper or inadequate investigation usually undercuts an employer's credibility in assessing fault. Also, the Grievant, although a relatively new employee, had an excellent work record, which should serve to mitigate her penalty. Finally, the evidence shows that the employer has not consistently applied the rules regarding confidentiality in the past. Under the circumstances, therefore, imposing a 35-day suspension on the Grievant was unreasonable.

The City in Reply

The City disputes the propriety of the just cause standard. The collective bargaining agreement restricts that standard to discharge cases and places no limitation on the City's authority in other disciplinary actions. The appropriate standard is whether the City's actions were arbitrary and capricious. Further, most arbitrators hold that determining the appropriate level of discipline is a management function, therefore, even if the Arbitrator would have handled the matter differently, he should not substitute his judgment for the City's and reduce the penalty.

The penalty in this case was appropriate to the offense. The Union attempts to argue that no harm resulted from the Grievant's action, so the penalty should be minor. What is important is the potential harm caused by the act, for which a 35-day suspension was warranted. Other arbitration awards support similar discipline, and even discharge, under like circumstances and the Grievant's discipline is mitigated by the fact that her suspension was, in effect, reduced by eight days. The Arbitrator should also take into account her relatively short period of employment.

Contrary to the Union's contention, the City performed a thorough investigation, involving no less than three meetings between the Grievant and management personnel. As a result, the Grievant acknowledged her wrongdoing. Any errors in the investigation report are, therefore, irrelevant. Further, there is no evidence that the City ever discriminated against the Grievant or applied its rules differently in other like cases. The Grievant compromised an ongoing police investigation. The only other case cited by the Union did not involve release of confidential information, nor is there evidence that management was aware of the matter. Finally, the Union wrongly asserts that the Arbitrator ruled that the City acted inappropriately by asking the Grievant to sign a waiver. The Arbitrator made no such ruling, but only held that the waiver was not effective.

The Union in Reply

The Arbitrator should rule according to facts, not speculation. The fact is that there is no evidence that lawbreakers were able to avoid arrest because of the Grievant's actions. She made an error, but there is no indication that any harm resulted. Further, most arbitrators imply a just cause standard into collective bargaining agreements that don't contain them and that should be done here. Also, arbitrators often reserve to themselves the authority to review the severity of discipline as well as the justification for it, to prevent unjust or unreasonable penalties even where some level of discipline is deemed appropriate. In this case, a 35-day suspension was too severe and must be reduced.

The penalty imposed in this case is excessive for a number of reasons. The offense was not sufficient to merit such a harsh punishment. If the City wished to "send a message" that the offense was serious, a lesser suspension of two or three days would have been sufficient. As it is, no suspension of this length has been issued against a member of this bargaining unit, demonstrating its unnecessary severity. Further, the cases cited by the City are not on point and should not be used to support the discipline issued here. The City's position is untenable and the grievance should be sustained.

DISCUSSION

Arbitrability

The grievance is arbitrable. At the hearing, the City argued that by signing the acknowledgment and waiver on June 15, the Grievant had effectively waived her right to grieve the discipline. The Union argued that the waiver was coerced and, therefore, was ineffective. At the hearing, the Arbitrator ruled that there was no evidence of coercion, but that the waiver was nonetheless ineffective. The basis for the ruling is that at the time she signed the waiver, the Grievant reasonably believed she was under pressure to do so and was unable to obtain assistance from the Union prior to making her decision. Her decision was

based, in part, on the fact that her superiors impressed on her the feeling that there was some urgency to resolving the matter quickly and that, being a new employee, she was vulnerable and in an unequal position of power. She attempted to reach members of the Union leadership for advice, but they were unavailable and so she was required to decide the matter alone. Thus, she acted in what she believed to be her best interests, but without, perhaps, a complete appreciation of her rights or the potential consequences of her acts.

An equally important question in this regard is whether, under these circumstances, an employee can waive the Union's grievance rights. I find that they cannot. A collective bargaining agreement is a contract between the Employer and the Union. The individual bargaining unit members are not parties to the contract and are not in privity with either the Employer or the Union. Thus, a collective bargaining agreement may create rights for individual bargaining unit members, but it does not generally give the members power to waive the Union's rights under the agreement. In the current agreement, Article XXI sets out the grievance procedure, which bestows authority on both the employees and the Union, disjunctively, to process grievances. Thus, arguably, under certain circumstances an employee could waive his or her individual grievance rights under the contract, but this would have no effect on the Union's rights to grieve the same event, especially where, as here, the Union has no notice of the waiver beforehand, nor has it joined in it. The Union has interests separate from those of the individual members which it, alone, must decide whether to enforce or not. An employee cannot, therefore, by waiving his or her individual grievance rights, bind the Union to the waiver absent its knowledge or consent.

The Merits of the Grievance

In this case, the Grievant's conduct is not in dispute. Nor is the fact that her conduct warrants some level of discipline. The Union conceded as much at the hearing and in it's briefs. What is in dispute is the level of discipline imposed upon her, which includes a number of sub-issues, such as the appropriate standard of review to be applied to the City's decision and whether a 35-day suspension was warranted under all the surrounding circumstances. These include the seriousness of the offense, the thoroughness of the investigation, the Grievant's work history and the City's handling of discipline issues in other cases.

The Union argues that the City's action must be evaluated under a standard of just cause, on the premise that a just cause standard is implied in the contract and other City employment policies and that, even if it is not, arbitral precedent supports imposing such a standard in the interest of justice. The City argues that the correct standard is whether its decision was arbitrary and capricious. It points out that the contract only imposes a just cause standard in discharge cases. Other arbitrators have refused to imply a just cause standard in such cases and rules of contract interpretation limit such language to its terms.

I decline to read a just cause standard into the contract in this case. I am mindful that some arbitrators will imply a just cause standard for discipline where the contract is silent, but this is not such a case. Article V, Section 1 of the contract states that discharge of an employee may only be for good cause, but makes no reference to standards applicable in other discipline cases. Pursuant to Article III of the contract, the City may unilaterally adopt rules and regulations concerning the conduct of its employees as it sees fit. Accordingly, lesser forms of discipline, such as verbal and written reprimand and suspension, are referenced in the Police Department Policies and Procedures Manual and the City Employee Handbook. These make no reference to a just cause standard, but simply state that "(r)ules and regulations will be fairly and consistently applied and penalties shall be uniform and will match the infraction." (Jt. Ex. 20, p.3) This, in my mind, does not equate to a just cause standard, but merely requires that enforcement of the rules by the City not be arbitrary, discriminatory or done in bad faith. The fact that the contract specifies a just cause standard in discharge cases indicates that the issue has been addressed in bargaining, but suggests that the Union was unsuccessful in negotiating a more comprehensive provision. Under the circumstances, therefore, I am unwilling to extend by fiat what the parties have limited by contract.

The question then remaining is, was the City's issuance of a 35-day suspension to the Grievant so unreasonable under the circumstances as to be arbitrary and capricious? I find that it was not. The Union contends that the nature of the offense did not merit such severe discipline, pointing out that no harm resulted from her offense, but I disagree. The evidence indicates that her warning to her brother may have resulted in the underage drinking parties being moved, since the report to the department indicated that the Grievant's brother and his friends showed up, with alcohol, at another party and announced that they moved the parties because they had been warned about the possibility of a raid (City Ex. #4, Tr. pp. 103-105). Whether or not it did happen, however, it could very likely have happened. At the very least, her act compromised an ongoing police investigation. At worst, it could have put either the officers or the teenage youths at risk, or both. In either event, she violated department rules and disclosed confidential information. While it is true, as the Union points out, that the incident did not have a tragic result, this was a function of good fortune rather than design. Once the information was released, the Grievant lost control of how it would be used or what results would follow. Apart from the possible consequences listed above, once the disclosure became known to the informant the department's reputation and credibility became suspect, impairing its ability to obtain and utilize sensitive information in the future. The person who filed the original report did so with the reasonable expectation that the information would be forwarded to the responsible authorities and acted upon appropriately. The knowledge that it was used instead to warn and protect the possible offenders predictably damaged the department's credibility with the informant and, presumably, with anyone else who became aware of the incident. Indeed, when Captain Puestohl attempted to follow up on the report, he was unable to obtain the name of the informant or speak directly to her because she feared further breaches of confidentiality and didn't want her daughter to experience reprisals from other students so she wished to remain anonymous. Clearly, this was a serious breach of security meriting significant discipline.

The Union argues that the discipline should also be remitted on other grounds. First, it maintains that the City failed to conduct an adequate investigation. I disagree. The basis for this claim is that some of the facts contained in the disciplinary report and waiver about the relocated post-prom party were incorrect, notably that the Grievant was the aunt of one of the youths, rather than his sister. I would note that the reference in the report merely indicates that this was the information received second hand after the post-prom party. At that point, knowing the name of the youth, an investigation was done and it was determined through a records check and interview process that the Grievant was the youth's sister. The Grievant was interviewed on three different occasions by members of management and admitted that she committed the acts in question and that at the time she considered her duty to protect her brother from possible arrest to supercede her duty to follow departmental rules. She later admitted her mistake and stated that she would not make the same choice again. The City's discipline decision, therefore, was made after a satisfactory investigation and was based upon true and salient facts.

The Union further points to the Grievant's good work record as a mitigating factor in assessing the appropriateness of the discipline imposed on her. This was, apparently, her first rule infraction since being employed by the City. It should be noted, however, that she had only been employed for eight months at the time and had only been off probation for two months, so she hadn't had a lengthy career within which to establish a positive work history. Given the short term of her employment, I give no weight to the fact that she had not been subjected to prior discipline. I acknowledge that the discipline imposed was steep for a first-time offense. Ordinarily, discipline proceeds through a graduated progression beginning with lesser penalties, such as an oral or written reprimand. In this case, however, as previously noted, the City's authority is not limited by contract or practice to either a just cause standard or a progression of discipline. Absent a finding that its conduct was arbitrary, capricious or in bad faith, therefore, which I decline to make, the suspension must stand.

Finally, I am not persuaded that the Grievant's suspension was a departure from the City's policy in dealing with similar work rule violations in the past. The Union cited one instance where a former employee had been in the habit of informing his father, who was a photographer, when there were traffic accidents so that he could photograph the accident scenes. So far as the record shows, the employee was never disciplined for this practice. However, it was also not established that management was made aware of this conduct, nor that it was necessarily a violation of City work rules. Assuming the facts to be true, the employee was giving his father no more information than he could have received listening to a police band radio and nothing that would have hampered the police in their efforts to interdict criminal activity. That is a significantly different case than the situation here and does not support a claim for greater leniency to the Grievant.

For the foregoing reasons, and based upon the record as a whole, I hereby enter the following

AWARD

1. The grievance is arbitrable.

2. The City did not violate the collective bargaining agreement when it suspended the Grievant for 35 days and the grievance is, therefore, denied.

Dated at Fond du Lac, Wisconsin, this 28th day of April, 2003.

John R. Emery /s/
John R. Emery, Arbitrator

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