

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 986-A, AFSCME, AFL-CIO

and

MANITOWOC COUNTY

Case 383

No. 61692

MA-12037

Appearances:

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

Mr. Steven Rollins, Corporation Counsel, Manitowoc County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and Employer named above are parties to a 2000-2001 collective bargaining agreement that provides for final and binding arbitration of certain grievances. The parties jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned to hear and resolve the grievance of Kathleen Stahl. A hearing was held on June 3, 2003, in Manitowoc, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. At the conclusion of the hearing, the parties gave oral arguments in lieu of filing briefs. The record was closed upon the conclusion of the hearing on June 3, 2003.

ISSUE

The parties did not stipulate to the framing of the issue. The issue is:

Did the Employer have just cause to suspend the Grievant on June 17, 2002? If not, what is the appropriate remedy?

BACKGROUND

The Grievant is Kathleen Stahl, who is a site manager at Manitou Manor Apartments, which is a housing apartment building owned by the City of Manitowoc for elderly and disabled people who qualify to live there. She serves as a manager of a meal site for the elderly and disabled clients. She has worked for the County for 24 years and has been at Manitou Manor since 1999. On June 17, 2002, the Grievant was given the following notice of discipline from Judy Rank, the Aging Resource Director:

This letter confirms our conversation of June 14, 2002, in which I offered to meet with you to gain any additional information you would like to have me take into consideration prior to making a final decision of what disciplinary action should be taken in connection with your removal of dinner rolls from a meal site for your personal use, and your falsification of records. You had been informed of the allegations of misconduct and my preliminary decision to suspend you for two weeks in response to this misconduct via a letter dated June 10, 2002. In our conversation of June 14, 2002 you refused this opportunity to offer additional information.

I offered to meet with you again to discuss this situation so that you would have one final opportunity to offer any additional information as to why you reported that the leftover food had been thrown away when in fact you were freezing the leftover dinner rolls, or as to why you thought it was acceptable for you to take these rolls from the meal site.

Having received no additional information, I have decided to impose a two week suspension for the offenses listed in my preliminary letter of June 10, 2002. These dates of suspension will be served on Tuesday, July 2, Wednesday, July 3, Tuesday, July 9, Wednesday, July 10, Friday, July 12, Monday, July 15, Tuesday, July 16, Thursday, July 18, Friday, July 19 and Monday, July 22. Any future instances of similar misconduct may lead to continued progressive discipline, up to and including discharge.

Bonita Wilker is the nutrition program coordinator and is the Grievant's supervisor. Wilker asked the Grievant to document the number of meals served and to show whether there was too much of one item or not enough of another item sent for the meal program. The Grievant is expected to keep records, such as the number of meals ordered and the number of meals that were actually served. The Grievant also documents what happens to the meals and has stated on records that food has gone down the disposal when she has more food than needed for the number of meals served. Wilker told the Grievant that she should log that difference in the number of people being served to what is being ordered. The County was required to document that information for state and federal regulations. The funding for the meal program is developed from such records, and Wilker noted that it is important for the records to be accurate.

Wilker sent a letter to the Grievant on June 4, 2001, noting that documentation was not being done in a manner to satisfy requirements. Wilker gave examples of how to document meals and leftover food, and she also warned the Grievant that failure to follow that procedure could result in disciplinary action.

There is a meal site manual for Manitou Manor which was given to all the site managers, including the Grievant. The manual states that leftover food must be thrown out, except for milk and margarine. The Grievant could not locate her site manual when asked about it during the investigation of the disciplinary action noted above. Wilker also could not find a manual at the site. The manual was distributed at a meeting on December 1, 1999, and the Grievant was at that meeting. Rank stated that they went through the manual page by page.

On July 11, 2001, the Grievant attended a site managers meeting. They discussed the state and federal regulations and compliance with them, as well as the policy on taking food out of the site. The site managers were told that participants that come to the site are allowed to take milk, bread and dessert home if they are unable to finish it and if the food is a first serving. Second servings have to be consumed at the site, according to regulations. All other food has to be thrown down the disposal. Also during that meeting, a sheet was given to the site managers regarding that policy and it was posted. (Wilker did not find this sheet posted when she investigated the incident in question in this case.) Only participants are allowed to remove food as part of their first serving and staff is not permitted to remove food from the site. The regulations are designed to protect the participants from having food that could spoil.

On Monday, May 13, 2002, Wilker visited Manitou Manor and parked next to the Grievant's car in the parking lot. As she got out of her van, she noticed a package of 12 dinner rolls in a Konop package that was in the back seat of the Grievant's car. She told the Grievant that there was a package of Konop dinner rolls in her car, and the Grievant said something about taking it home to feed the animals. Wilker later reported this to her supervisor, Judy Rank.

When Rank investigated the matter, she talked to the Grievant, who admitted that she had rolls in the freezer, and since the freezer was getting full, she decided to take them home to feed to the geese. Rank stated that the Grievant had been writing on her production slip that all leftover food was being thrown away. Rank considered this a falsification of records as well as taking the Employer's materials without authorization. Rank was concerned that the Grievant showed no remorse and did not recognize the seriousness of the offenses. Rank also considered the past disciplinary record of the Grievant in her decision to impose a two-week suspension. The record since 1998 shows three written warnings, four verbal warnings, and one suspension.

The Grievant was trained at Manitou Manor by previous employees and volunteers. When she started at that site, she noticed bread and rolls in the freezer. Another employee explained that some of the clients would ask for an extra slice of bread to make a sandwich if

they were being served meatloaf. So she kept bread Monday through Friday, then disposed of it on Friday. The Grievant was bothered by throwing packages of rolls away, so she took one for her geese and put in the back seat of her car, leaving it in her car several days to harden. The Grievant testified that it never occurred to her to mark down the bread when documenting the leftovers. She told Wilker several times that they were overstocked on vegetables and other things but did not mention the extra bread or rolls.

After the incident, the Grievant was told to freeze leftover dinner rolls. Wilker now picks them up and they are re-used by sending them out with frozen meals. Manitou Manor is close to the senior center, and Wilker transports it to the senior center. Wilker was not previously aware that the extra bread was being kept from Monday through Friday, then thrown away.

Personnel Director Sharon Cornils stated that the County has a personnel policy and procedure manual that says that people cannot convert County supplies or materials for their own use. She noted that the Employer should not have to tell people to not steal from them. The County has given other employees similar disciplinary measures. It gave one employee a two-week suspension for theft of some sand and another employee a two-week suspension for theft of some dirt. One employee was given a 30-day suspension for theft of food from the Sheriff's Department kitchen, and another was given a 30-day suspension for theft of food from the jail kitchen.

THE PARTIES' POSITIONS

The County

The County submits that there are two questions in this discipline – one, did the Grievant have notice of what she should be doing, and two, is the discipline fair. As to whether the Grievant had notice, there is clear evidence that the Employer had counseled her, had disciplined her, and had stressed the importance of keeping good records. Despite that, the Grievant did not report about the bread and the method for disposal. While the Grievant claims she took the bread because she didn't like to see it wasted, she told her Employer about the vegetables being wasted. Moreover, the Grievant's failure to properly document the amount of bread meant that the Employer did not have notice of the waste going on at that site. The removal of a usable product from the Employer's work place is a serious problem. Even the theft of scrap is grounds for discipline in many arbitration decisions. This Employer has disciplined other employees for minor items taken from its premises. The amount of material converted to personal use is not the issue – it's the fact that property was converted to personal use. The County asserts that the two-week suspension is proportionate to the offense. Other employees have been given two weeks to 30 days for taken items of little value. The rolls here were taken without any authorization. The federal rules governing the program require that food be disposed of and not removed from the site.

The Union

The Union asserts that the disciplinary actions taken in other cases are not similar to this case. At the point when the Grievant took the dinner rolls and put them in her car, they were garbage. The Grievant made a reasonable decision to find a way to recycle those materials. The Union disputes the claim that the Grievant falsified records, as there was no intent to misrepresent anything. The Grievant simply omitted the rolls on the records. The Union also objects to the term theft. The Grievant was handling bread the way she had been trained. The County is entitled to establish work rules, but it has an unreasonable rule and it is an unreasonable way to interpret the rule when the Grievant was doing nothing more than recycling garbage.

DISCUSSION

The collective bargaining agreement provides a just cause standard for discipline. The record clearly shows that the Grievant knew or should have known the rules about disposing of all left over food. She attended meetings where the matter was discussed and she was notified by a personal letter from her supervisor, Wilker, about proper documentation. Despite the fact that former employees of Manitou Manor put left over bread and rolls in the freezer, the Grievant should have known that such a procedure was not proper and could have brought it to the attention of her Employer. Moreover, the Grievant should have known that she was not keeping correct documents when she did not report anything about the bread and rolls. Further, the Grievant had to know that removing food from the site was a violation of the rules.

While the Union asserts that the rule is unreasonable, it is not the County's rule but apparently state or federal regulations that require all food to be consumed or thrown away. The Employer administrates the program while other entities make the rules. Thus, whether the rule regarding disposal of food is reasonable or not is irrelevant where the Employer cannot control the rules and requirements of this program.

The Union further contends that the County's enforcement of the rule is unreasonable under the circumstances, where the Grievant is simply recycling garbage. However, the Grievant first failed to properly document the use and disposal of food. Then the Grievant took food off the premises knowing full well that she was not to take food from the site. She did so without any authorization and without anyone's knowledge. While the Grievant does not appear to have any malicious intent to steal food from the County, the Grievant shows a flagrant disregard for the Employer's policies and procedures and rules.

Under many circumstances, a two-week suspension would be excessive, but in this case, the Grievant has already been disciplined eight times in the last four years, including one prior suspension. The Employer properly used progressive discipline and treated the Grievant

fairly. The Grievant was not treated more severely than other employees who appropriated materials or food for their own use. The Grievant's own disciplinary record weighs heavily against her in determining the appropriate level of discipline.

Accordingly, I find that the Employer had just cause to issue a two-week suspension to the Grievant.

AWARD

The grievance is denied and dismissed.

Dated at Elkhorn, Wisconsin this 18th day of August, 2003.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator