

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 2414

and

THE CITY OF MUSKEGO

Case 71
No. 62442
MA-12286

(Grievance of Laura Becker)

Appearances:

John P. Maglio, Staff Representative, P.O. Box 624, Racine, Wisconsin 53401-0624, appeared on behalf of the Union.

Jonathan Swain, Esq., Lindner & Marsack, S.C., 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, appeared on behalf of the City.

ARBITRATION AWARD

On June 5, 2003, AFSCME Local 2414 and the City of Muskego filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, as Arbitrator to hear and decide a dispute pending between the parties. A hearing was conducted on August 14, 2003 in Muskego, Wisconsin. A transcript of the proceedings was made and distributed by August 26, 2003. Post-hearing briefs were submitted and exchanged by November 7, 2003.

This Award addresses a written warning issued to employee Laura Becker.

BACKGROUND AND FACTS

The City of Muskego and Local 2414 of the American Federation of State, County and Municipal Employees, are signatories to a collective bargaining agreement, the relevant

portions of which are set forth below. Laura Becker, the grievant, has been employed by the City as a Dispatcher since 1986. Ms. Becker is the Treasurer of Local 2414, and in that capacity periodically attends certain Union-sponsored meetings. During the course of her employment, Ms. Becker has received a series of disciplines, including letters of reprimand and suspensions. The subject matter of those disciplines include insubordination, performance and unprofessional conduct. There is a theme of anger outbursts throughout the disciplinary history. The disciplines occurred during a time frame beginning in late 1987 through May of 1999.

Sgt. John P. Mesich was promoted to Sergeant in February, 2003, several days before the incident giving rise to this dispute. Mesich had previously been a Patrol Officer, employed by the City of Muskego. In that capacity, he had, on June 23, 2001 written an extensive memo critical of Dispatcher Becker.

On February 13, 2003, Mesich was confronted by two police department clerks, who pulled him aside to express concern that they were being abused by Dispatcher Becker. According to Mesich, they advised him that they were being pulled away from their regular work to assist Becker. They characterized this as unnecessary and abusive of their time. Becker has for years had the authority from the Chief of Police, to call upon clerks to assist her. Following this conversation, Mesich met with Cpt. Geiszler and Sgt. Rens, the Dispatch Supervisor, and the three concluded that the clerks were to be given the authority to decide whether or not to assist Becker if requested.

Mesich spoke with Becker later that evening. His summary of that conversation is reflected in a memorandum dated 2-15-03, whose content was consistent with his testimony at hearing. Mesich's recollection of that conversation includes the following:

. . .At approximately 7:45pm, 02-13-2003, Dispatcher Becker arrived back at the City of Muskego Police Station. At that time, I requested that Dispatcher Becker join me in the primary upstairs conference room. Only Dispatcher Becker and I were present. I immediately explained to Dispatcher Becker that this was not a disciplinary meeting and that we just needed to clarify some issues.

During the meeting, I covered the following:

I explained to Dispatcher Becker that if she had any concerns regarding this meeting, she would need to follow the proper "Chain of Command".

That Dispatcher Becker's attendance at her monthly Union Meeting was a privilege and not a right. I explained that the meeting was to be done on her

personal time and that I reserved the right to deny her permission to leave depending on circumstances on that given day. I further explained that Dispatcher Becker could not use her final 15-minute break to cover her travel time due to liability concerns. Dispatcher Becker replied that she had permission from Chief Johnson to do this and she explained that Administrative Staff needed to all “get on the same page”. I explained that from this point on, she should discontinue this practice.

I briefly spoke to Dispatcher Becker about the tone and word choice when she spoke to me earlier in the hallway. I told Dispatcher Becker that it appeared to everyone that she was giving me an order and according to Capt. Geiszler it was inappropriate. Dispatcher Becker told me that she did not mean to reflect poorly upon me and that she was sorry for any miscommunication that had followed. I accepted her explanation of this.

I then spoke to Dispatcher Becker about appropriate use of clerical personnel in the Dispatch Center. Several weeks prior, I had been approached by clerical personal (sic) requesting some guidance on when they could refuse to give assistance to Dispatcher Becker. I was told that there were times that Dispatcher Becker requested assistance and there was, in their opinion, no need for it. For example, . . .

I went on to explain that setting the shift commander aside, all other personnel were to be considered co-worker’s with differing responsibilities. I told her that she was not in a position to order any clerical staff; rather, that was reserved for the shift commander or OIC.

. . .

I also told Dispatcher Becker that her tone over the air was sometimes harsh and rude. I explained that I have had comments from other officer’s from other agency’s stating that they could not believe that we let her talk on the air in the manner that she did. Dispatcher Becker then demanded times and dates of these conversations, and I merely explained that this was not offered as discipline, rather I was offering it as constructive criticism in hopes of making her a better team member.

Throughout the meeting, Dispatcher Becker was visibly emotional when speaking to me. Dispatcher Becker was crying and making statements that insinuated that people were just “against her.” I then ended the meeting.

After the meeting, Dispatcher Becker was visibly upset. I observed Dispatcher Becker “stomp” around and she was very short in responses to employees.

Becker offers a similar account of the conversation that occurred on February 13. It confirms Mesich advised her that she would no longer be permitted to use her 15-minute break to travel to Union meetings. Becker went on to testify:

and then he (Mesich) went on to state how I was, you know, how the clerks who are also dispatchers – and I’ve been told by Chief Johnson that at any time I needed help in the dispatch room, that the clerks would be used to assist me anytime that I felt, you know, it was under my own discretion that I could, you know, call them into the room if I needed assistance, whether it be for help with traffic stops that the officers do, 9-1-1 calls, phone calls. And all of a sudden this policy was going to be changed. That I was – I was told that I was more or less abusing the clerks.

Q: Okay. Did you – after that – after he made those statements, did you say anything else?

A: I kind of advised him that, why is this coming to a different policy when I’ve been told by the Chief that I can use my discretion at any time?

Q: Did you indicate to him, based upon your belief, that this was somewhat of a change in procedure, that you were going to talk to his superiors?

A: Yes. I more or less said that, “I would like to talk to the Chief, reference this matter.” And this is when Sgt. Mesich more or less sternly said to me that, “You will not go above the, ‘above and beyond the chain of command.’”

Q: And what did you think he meant by that?

A: That if I went above and over him, that something was going, he was going to more or less discipline me for this.

Q: You felt threatened?

A: Threatened.

The next morning, February 14, Becker telephoned Lt. LaTour. She recounted the conversation to LaTour, and relayed her frustration and concern over the change in office protocol.

LeTour and Mesich spoke later that day. As a result of their conversation, Mesich was directed to clarify departmental expectations of Becker. Mesich testified to the following conversation which he indicates began at approximately 3:30 p.m.:

Q: All right. And tell me what happened from the beginning of the meeting, as you can best recall.

A: I clarified the point that I was trying to make. I explained to her that Lt. LaTour had spoke to her and that Lt. LaTour specifically wanted me to clarify the situation with the clerical staff, that what I had discussed before, the next day, nothing had changed.

At that point, Dispatcher Becker, or Laura, was replying snidely. She called me a hypocrite. She said I don't understand the pressure she's been under as far as working in the dispatch area. And she talked over me at points.

And at that point, after I got my point across with the clerical staff, she was starting to talk over me. I had explained that I did not want a repeat of past events as far as her slamming doors in the dispatch area, being rude to other employees, including officers, clerks, she was to conduct herself in a professional manner as we expect of all employees, especially in the dispatch area.

Dispatcher – or Laurie – replied to me that the Dispatch Center is her work area, she has a right to blow off steam. At that point I re-emphasized the fact that the conduct that I had described to her would not be tolerated and I expected all the members to be treated with equal respect.

Q: What, if anything occurred at that point?

A: At that point she started asking me questions. She wanted specific incidences where employees felt that she was putting them on standby too much. She kept on saying, "Give me something in writing. I want something specific."

At that point, I addressed the “matter of” that I had written about a year or so prior concerning dispatcher’s conduct towards, not only me and the other officers, but also her radio conduct and the inordinate amount of stand-bys that we were subject to when she was dealing with her dispatching duties as opposed to the other dispatchers.

Q: This was a “matter of” you had written in 2002?

A: Correct. 2002 or 2001.

Q: All right. In which the same kind of conduct had been complained of?

A: Correct.

Q: All right, go ahead.

A: At this point she began barraging questions at me. She was asking me different types of questions, she wasn’t letting me finish a complete thought. And I began answering her questions, but as I was in mid-sentence answering the question, she would move off and ask me another question.

At one point, she got up and she began, she said, “This meeting is over,” and those were her exact, “This meeting is over.” She got up, started walking toward the door, I asked her to sit down, that the meeting was not over, she wouldn’t listen to me. And several more times I told her, “Sit down, sit down.” And as I’m finally around the third, fourth, fifth time, my voice got stern. I pointed at her, I said, “Laura, sit down. Laura, sit down now. The meeting is not over.” It took five, six times for her. Finally she said, “I see how it is, Sergeant Mesich,” but the emphasis on the word “Sergeant” was very snide, very terse, “I see how it is, Sergeant Mesich.”

Q: What did she mean by, “I see how it is, Sergeant Mesich”? What was that a reference to as you understood it?

A: I could only give what my opinion would be. I don’t know what was in Laura’s mind when she had said it.

Q: How did you take it?

A: My impression was that I am a relatively new Sergeant, I had just gotten promoted about a, you know, few weeks prior, three, four weeks prior, and the emphasis was that I basically am now, just using my authority just to use it and now I am actually giving her orders, whereas, when I was an officer, it wasn't an issue.

Q: How else would you describe her conduct during this discussion?

A: Childish, very insubordinate, very disrespectful. Because after she finally complied, when she finally sat down, she began asking me all these questions again. And I'm trying to emphasize certain points and she would never let me finish a thought.

It would be as if you are talking to me asking me a question and I'm talking just like I am now and I'm talking over you and not allowing you to finish your point. And it got to a point where she's not listening and I told Laura to be quiet. She wouldn't be quiet. I kept on telling her several times, "Laura, your attitude is disrespectful, very insubordinate. I don't appreciate this type of attitude." She kept on talking over me, she would not let me finish a thought.

And finally, it got to a point where I knew I was continually trying to answer each question she would bring up, not finishing a thought, because I wasn't being allowed to finish, and it finally got to a point where, in my opinion, I lost control of that meeting. And at that point I stopped the meeting, I pointed at Laura, I told her at this point she probably would want Union representation, because now I would be considering discipline. . .

Q: Okay. Do you recall whether or not she ever laughed at this meeting?

A: She laughed repeatedly. As she's talking over, she's repeatedly laughing. It was just – I mean, it was just a laugh. And if at any time I was responding, she was like, "Well, I see how it is. You forget where you, you know, you forgot where you came from. You are a hypocrite. You tell us that we have the hardest job, that you can't do our job, yet now you are changing all these rules on me. Why are these rules changing?" And she's laughing, continually laughing, not letting me finish any thought.

Ms. Becker has a different version of the conversation. Becker testified, that having talked to Lt. LaTour, she was concerned that the meeting was disciplinary in character. She testifies that when Mesich asked her to come into a meeting, she felt threatened. Becker testified to the following conversation:

Q: Did you ask for a Union representative at that point in time?

A: Yes.

Q: Once again, why?

A: Because I felt threatened.

Q: When you asked for that Union representative, what did Sgt. Mesich say to you?

A: He said, "No, it wasn't disciplinary."

Q: Okay. And based upon that, what conclusion did you draw?

A: That it was just going to be like a one-on-one conversation.

Q: Okay. Now, did you then follow him into a meeting room?

A: Yes. . . .

Q: Do you recall what he said?

A: He was going to clarify what had stemmed from the night before on how I was going to utilize the clerks, stating that they are only going to be used in an emergency situation. And at that point I wanted clarification as far as what did administration feel was an emergency situation.

Q: Did you indicate to him that prior directives had been given to you for the use of back-up?

A: Yes.

Q: And did you indicate to him who gave you that instruction?

A: I advised him, I was told by the Chief, that anytime I wanted to have assistance in the room for whatever reason, that it was my own discretion, that I could, you know, be in charge of the position that I hold as a dispatcher.

. . .

Q: Now, when you work your shift, are you the only person on that shift?

A: Yes.

Q: Are there times when it gets hectic?

A: Yes.

Q: In these. . .did the Chief ever tell you that he was changing the directive?

A: No.

Q: . . .Did he say anything else to you at that time?

A: Well, I asked him, you know, as far as I kind of stressed as far as what they do consider an emergency, you know. And then he – this is where he went on and started bringing up things in the past. “Matter of” that he had written.

. . .

Q: Did he talk about any other things that indicated issues involving you that had happened in the past?

A: Oh, he, he just told me how I’m not a team player.

. . .

Q: What do you think he meant by that?

A: That I don’t join in with the other co-workers in, as far as like, conversations that they have on a, what they call the MDC, which is called the Mobile Data Computers.

. . .

Q: What kind of conversation did he tell you you were supposed to be having with people?

A: I really didn't know. I mean, this was all coming up and, like I said, I was in disbelief.

Q: So this all hit you as being new subject matter; is that what your feeling was?

A: Correct.

Q: When he gave you the directives for the use of back-ups, did you refuse any order he gave you?

A: No, I did not.

Q: Did he, was anything said concerning your demeanor at work?

A: Yes.

Q: What was that?

A: He told me that he knows what kind of a day I'm going to have when I walk through the back door entering into the Police Department.

Q: What was your response to that?

A: I just said, "This is just amazing." I said I, I couldn't understand why this was being all brought up.

Q: What was his response to that?

A: He said that it's been noted by the staff sergeant also that, you know, he said the same thing, that he could tell what kind of day I was going to have. And I just said, "You know," I said to them that, "You know", I said to them, to Sergeant Mesich, that, "That's amazing. You guys, you know, it must be that you have ESP."

. . .

Q: What was your reaction to his comments?

A: I, at that point I laughed in disbelief.

Q: How would you characterize your laughter?

A: I just went, John, what are you talking about? . . . It was like in disbelief of, you know, why is this being all brought up? I don't understand this.

Q: Were you laughing at Sergeant Mesich?

A: No.

Q: Now, after you put your hands up in disbelief and nervously laugh, can you tell us what happened next? Did you stand at that point?

A: I think I – I asked him if, you know, the meeting was over, and at this point, yes, this is when I did get up and I turned towards the door and I grabbed for the door handle.

Q: What did he say?

A: And that's when he said, "You know, Laura, I want you to sit."

Q: Was there any finger pointing?

A: Yes, he pointed his finger in a stern voice and then again said to me that he wanted me to sit down. And I said - at that point I said, "I'm not a dog", or "I'm not an animal."

Q: Did you remain standing at that point?

A: It might have been for a few seconds, and then I sat down.

Q: Why did you feel that way?

A: Because I just felt kind of threatened by him. And the reason why I did get up was because I wanted to go and get some – another Union rep in there because the meeting was getting out of hand.

Q: Did you, at that point in time, attempt to get a Union representative?

A: No. I sat there.

Q: At that point in time, did Sergeant Mesich leave the room?

A: Somewhere in the conversation that we were having back and forth as he was kind of bashing me about just about my job procedures and things that I did in the past, you know, to him at one point and then when we were talking about me not being a team player and not having conversation on the MBC. . . That's when he more or less said to me, pointed to me, because I was in disbelief, I said, "John why is this, you know, going on?" And he goes, "You are being insubordinate to me" and he pointed his finger and that's when he said to me, "You know, I guess at this point you are going to have somebody in here because you are going to be disciplined."

Discipline was recommended. Sergeant Rens conducted an investigation and essentially concluded that Mesich's version of the conversation was accurate. In reliance upon the investigation, Chief of Police John R. Johnson issued a letter of reprimand, dated March 12, 2003, which indicates ". . .you did not conduct yourself in a professional manner." That reprimand was grieved and ultimately led to this proceeding.

ISSUE

The parties stipulated to the following issue:

Did the City have just cause to issue the grievant a written reprimand on 3-12-03; if not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE I – MANAGEMENT RIGHTS RESERVED

Section 1.01 Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, 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 in the Employer.

Section 1.02 If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due the employee from such period of time involved in the matter.

. . .

POSITIONS OF THE PARTIES

Employer

The Employer, relying upon the testimony of Mesich, concludes that the discipline was appropriate. The Employer contends that it is axiomatic that proper discipline, respect for authority, and the ability to calmly discuss work-related issues with one's supervisor, even where the employee does not agree with the supervisor, is essential to good order and discipline in any workplace. The Employer reviews the grievant's behavior at the meeting and concludes that it is inappropriate. The Employer contends that it was cautious in the administration of discipline, forbearing in the face of inappropriate conduct. As to the discipline itself, it is the minimum penalty under the Employer's rules. This is no more than a written warning that instructs the grievant as to the type of conduct that is expected of her.

Union

The Union, relying on Becker's testimony, comes to the opposite conclusion. The Union contends that Becker was never warned that any of the behavior allegedly demonstrated, could be the basis for discipline. The Union points out that Becker never refused an order. Finally, the Union finds fault with the investigation conducted. Chief Johnson, who administered the discipline, relied upon the statements of others.

DISCUSSION

If the conversation was as reported by Mesich, Becker was out of line, insubordinate, and rude. A written warning was appropriate to the behavior described. If the conversation was as described by Becker, Mesich was on a vendetta and her surprised reaction would not be a basis for any discipline.

The Employer argues that Becker admitted that she stood up and that she laughed. The Employer also notes that she never denied telling Mesich that he was a hypocrite and that he didn't understand. The Employer also notes that Becker never denied the "so that's how it is Sgt. Mesich" remark. The Union notes that Mesich never denied that he pointed his finger at Becker and spoke in a raised voice and that Mesich admitted that he never warned Becker that her behavior was leading to a disciplinary consequence. All of this is addressed by Mesich and Becker in their respective accounts of the conversations.

I doubt that Mesich was as calm and collected as he depicts himself in the earlier stages of the conversation. I further doubt that Becker was confronted by a supervisor who jumped from accusation to insult without any prompt or conversational invitation. Each of them contributed to the conversation spiraling out of control.

The purpose of the meeting was for Mesich to tell Becker that LaTour had miscommunicated to Becker on the topic of use of clerical staff. Mesich went on to expand the discussion to her behavior in the office, to her job performance, to a reference to a 20-month old memo he wrote critical of her performance. The employer contends that Becker misbehaved in the meeting. Mesich did little to diffuse the situation. He initiated or at least permitted the scope of the troubled meeting to expand and become more contentious. He did not terminate the meeting after he had accomplished its purpose. He conducted the session alone, rejecting a request that would have led to a third party observer.

Rens conducted an investigation in which he talked to the involved parties. He concluded that the essence of Mesich's version of the events occurred. Given the totality of this record, I credit that conclusion. I would have mitigated more severe discipline significantly because of the way the conversation was handled.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 22nd day of June, 2004.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

WCH/gjc
6689

