BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF SCHOFIELD

and

GENERAL TEAMSTERS UNION LOCAL 662

Case 4
No. 64009
MA-12777

Appearances:

Mr. Ronald Rutlin, Attorney at Law, Ruder Ware, 500 Third Street, P.O. Box 8050, Wausau, WI 54402-8050, on behalf of the City.

Ms. Andrea F. Hoeschen, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North Rivercenter Drive, Suite 202, P.O. Box 12993, Milwaukee, WI 53212, on behalf of Local 662.

ARBITRATION AWARD

According to the terms of the 2004-06 collective bargaining agreement between the City of Schofield (City) and General Teamsters Union, Local 662, IBT (Union), the parties jointly requested that Arbitrator Sharon A. Gallagher hear and resolve a dispute between them regarding the discharge of Crew Chief Jarrod Zilisch. A hearing in the matter was held at Schofield, Wisconsin on December 1, 2004. A stenographic transcript of the proceedings was made and received by the Arbitrator on December 16, 2004. At the hearing, the parties agreed to arrange between themselves when briefs would be submitted to the Arbitrator for her exchange and that they would waive the right to file reply briefs herein. The Arbitrator received both parties' briefs on January 24, 2005, whereupon the record was closed.

ISSUES

The parties stipulated that the following issues should be determined herein:

Did the City violate the collective bargaining agreement when it discharged Grievant Jarrod Zilisch?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 8 - ARBITRATION

SECTION 1. If an employee's grievance is not satisfactorily settled, either party may take the matter to arbitration by informing the other party, in writing, within ten (10) days, that the dispute be submitted to the Wisconsin Employment Relations Commission.

SECTION 2. The Wisconsin Employment Relations Commission shall have the authority to determine issues concerning the interpretation and application of all articles or section [sic] of this Agreement. They shall have no authority to change any part; however, they may make recommendations for changes when in their opinion such changes would add clarity or brevity which might avoid future disagreements.

. . .

ARTICLE 9 - DISCHARGE

SECTION 1. No employee who has completed his/her probationary period shall be discharged or suspended without one (1) warning notice of the complaint in writing to the employee with a copy to the Union and steward, except no warning notice is required for discharge due to dishonesty, being under the influence of intoxicating beverages while on duty, carrying unauthorized passengers in a company vehicle, recklessness resulting in a chargeable accident while on duty or other flagrant violations. Warning notice to be effective for not more than one-hundred eighty (180) days from date of notice. Discharge or suspension shall be in writing with a copy to the Union and the employee affected.

SECTION 2. Any employee desiring an investigation of his/her discharge, suspension or warning must file his/her protest in writing with the Employer and the Union within five (5) working days, exclusive of Sundays and Holidays, of the date the employee received such discharge or warning notice. The discharge, suspension or warning notice shall then be discussed by the Employer and the Union as to the merits of the case. Should it be found that the employee has been unjustly discharged or suspended, he/she shall be reinstated and compensated for all time lost at his/her regular rate of pay plus such overtime as he/she may have worked.

ARTICLE 22 - PAID FOR TIME

SECTION 1. All employees covered by this Agreement shall be paid for all time spent in the service of the Employer. Time shall be computed from the time the employee registers in and until the time he/she is effectively released from duty.

ARTICLE 23 - REST PERIOD

SECTION 1. Employees shall be granted a fifteen (15) minute break in the morning and ten (10) minutes in the afternoon.

ARTICLE 27 - MANAGEMENT RIGHTS

The City possesses the sole right to control its operations and all management rights repose in it, subject only to the express terms of this contract. These rights include, but are not limited to, the following:

To direct all operations.

To hire, promote, transfer, assign and retain employees in positions with the City and to suspend, demote, discharge and take other disciplinary action against employees for just cause.

To maintain efficiency of City operations.

To introduce new or improved methods or facilities.

To change existing methods or facilities.

To determine the methods and means by which such operations are to be conducted.

To take whatever action is necessary to comply with state or federal law and regulations including, but not limited to, the Americans with Disabilities Act (ADA).

To establish reasonable work rules.

To establish schedules of work and hours of employment.

To determine the number, structure and location of departments and divisions within the City; the kinds that [sic] amount to services to be performed by the City; and the numbers and kinds of positions that [sic] job classification is needed to perform such services.

When work direction, instructions, or direct orders are given by the Public Works Director or his designee, employees may ask for clarification but once understood, the orders will be followed regardless of previous past practices related to the given situation, unless the order would be unsafe or unlawful. This applies to job assignments only.

BACKGROUND

The City employs five bargaining unit employees in its Department of Public Works (DPW): three in the Streets Division and two in the Sewer and Water (SW) Division; one of the two SW employees and one of the three Street Division employees acts as Division Crew Chief and is paid approximately $0.60 per hour more for the lead-man duties involved. From January, 2003, to July 27, 2004, the Grievant (JZ) acted as SW Crew Chief. JZ's fellow employee in the SW Division was Utility Operator Rick Stoviak.[1] Prior to January, 2002, the City had not employed a Public Works Director for some time, from approximately 1998 until January, 2002 when DPW Director Mahoney was hired. During this period, the two Crew Chiefs oversaw the operations and employees of the DPW.

After Mahoney became DPW Director/Zoning administrator, he issued the following memo, memorializing a March 20, 2002 Staff Meeting at which "Work Expectations" were discussed:

> A staff meeting was held on March 20, 2002 to discuss work expectations with the Public Works and Sewer/Water Utility crews. Those present included Jarrod Zilisch, Mark Thuot, Virgil Wenzel, Kevin King, Rick Stoviak and Dan Mahoney. Work expectations reviewed with staff included the following:
>
> 1. Be on time for work. If you are late you will receive a verbal warning the first time you are late and a written warning if you are late a second time.
> 2. Keep accurate track of the hours you work to ¼ hour (15 minutes).
> 3. Salesman [sic] will only be allowed to call from 12:30-1:00 p.m. and from 3:00 to 3:30 p.m.
> 4. No unauthorized persons are allowed in the public works garage and sewer/water utility garage. Persons who are allowed in these facilities must be approved by the Public Works Administrator. Former employees in good standing with the City are allowed. Unauthorized persons are not allowed because of liability issues if they should get injured while in either garage.
> 5. No personal business is to be conducted during work hours. You may conduct personal business between 12:00 p.m. and 12:30 p.m. because this

[1] Stoviak was hired into the SW Division in February, 2001, in the entry-level position of Utility Operator. Stoviak remains employed at the City. Stoviak did not receive any discipline for his actions on May 28, 2004.

time is not designated as part of the work day. Minor items, such as dropping off a personal vehicle for repair may be permitted if approved by the Public Works Administrator.

6. No personal cell phones may be used or carried on one's person during work hours (Personal cell phones may be carried between 12:00 p.m. and 12:30 p.m.).
7. No unauthorized persons allowed in City vehicles. Persons must be authorized by the Public Works Administrator. Permitting unauthorized persons to ride in a City vehicle could lead to immediate termination.
8. Dishonesty (including lying and stealing) is not acceptable and will lead to immediate termination.
9. Being under the influence of intoxicating beverages and/or drugs while on duty is not acceptable and could lead to immediate termination.
10. Recklessness resulting in a chargeable accident while on duty is not acceptable and could lead to immediate termination.
11. Borrowing City tools and/or equipment for personal use will no longer be allowed, unless approved by the Public Works/Zoning Administrator.
12. Appointments during work hours will be allowed, but must be approved by the Public Works Administrator. As was done in the past, I will keep track of appointment time and will use time worked through breaks and/or lunch or extra time worked to offset time taken for appointments.
13. All supervisory issues will be handled by the Public Works Administrator. Personal matters, vacation requests and approvals, disciplinary matters and other related items will be handled by the Public Works Administrator.

Items 1-13 were read to staff. The employees were then given the opportunity to ask questions on work expectations. All employees informed me that they had a clear understanding of the work expectations as presented.

Approximately one year after his hire as DPW Director/Zoning Administrator, Mahoney quit and then-SW Crew Chief Kevin King was selected as Mahoney's replacement. Due to his other duties, King has not supervised the day-to-day operations of the Streets and SW Division employees. King leaves these duties to his Division Crew Chiefs. Normal working hours in the DPW are 7:00 a.m. to 3:30 p.m.

The SW Division is responsible for the maintenance and operation of the City's Sewer and Water Utilities, to test water and provide fresh water and sewer services to City residents and to do the record-keeping thereon. Both SW employees has his own City truck which is stored at the City Shop where SW employees come to punch in and pick up their trucks.

The City has seven sewage pump sites scattered across the City, including the main Lift Station located on Schofield Avenue. The two SW employees rotate to provide on-call services on the weekends and whenever one of them is on-call, that SW employee must also perform

morning rounds during the workweek they are on-call. Morning rounds require the SW employee to check all seven Lift Stations in the City, to run clean water tests, to take clock readings, to add fluoride and to periodically chlorinate one City well. Morning rounds are normally performed after the 7:00 a.m. morning meeting conducted by DPW Director King, in which King makes work assignments and receives information regarding any special circumstances or events which may have occurred overnight or will be occurring during that workday. The City Streets Division is responsible to maintain and patch City streets, to mow grass and maintain City hall and City parks, to fix street lights, and to provide bridge and dam maintenance in the City. The Streets employees plow, salt and sand City streets in winter. SW employees are also called upon to plow, etc. in the winter, and to maintain streets and to mow as needed.

After Kevin King became DPW Director/Zoning Administrator, he issued a memo dated May 14, 2003, concerning "Work Expectations" in which he adopted some of the provisions of Mahoney's prior memo entirely, but King made changes in paragraphs 4, 5, 10, 11 and 13, as follows:

. . .

4. No unauthorized persons are allowed in the public works garage and sewer/water utility garage. Person who are allowed in these facilities must be approved by the Public Works Administrator. Unauthorized person are not allowed because of liability issues if they should get injured while in either garage.
5. No personal business is to be conducted during work hours. You may conduct personal business between 12:00 p.m. and 12:30 p.m. because this time is not designated as part of the work day. No personal cell phones may be used or carried on one's person during work hours (Personal cell phones may be carried between 12:00 p.m. and 12:30 p.m.).

. . .

10. There will be No Borrowing of City tools and / or equipment for personal or business use. Without the permission of the Public Works Administrator.
11. Appointments during work hours will be allowed, but must be approved by the Public Works Administrator. I will keep track of appointment time and will have the Clerk subtract this time from, vacation, personal or sick leave time you have available.

. . .

13. No personal cell phones may be used or carried on one's person during work hours (Personal cell phones may be carried between 12:00 p.m. and 12:30 p.m.).

Items 1-13 were read to staff. The employees were then given the opportunity to ask questions on work expectations as presented. All employees informed me that they had a clear understanding of the work expectations as presented.

JZ was hired by the City and employed in the Streets Division for 10 years until his selection (pursuant to a posting) as SW Crew Chief in early 2003.[2] JZ was employed as SW Crew Chief at the time he was terminated by the City on July 27, 2004.

The City issued JZ disciplinary warnings on several occasions for various reasons.[3]

King has only disciplined one other employee since his hire as DPW Director/Zoning Administrator. In the Winter of 2004, King issued a written reprimand to a current employee of the Streets Division for making a statement that if he (the employee) were called in again (to work overtime he would bring a gun to work and shoot King and a co-worker. It is undisputed that the City has never disciplined/discharged any employees for taking breaks on City time or for dishonesty.

In regard to past practice, Sarah Kamke, who had been a City Alderwoman for 22 years before she served as Mayor of Schofield from 1987 to 1998, stated that she was aware that employees were not required to gain approval if they went to breakfast at a restaurant or took an extended break after working overtime; (Tr. 185-6) and that on two occasions, DPW employees asked her if she would like to accompany them to breakfast on the clock. Other witnesses herein, including JZ, former Crew chief Ostroioski and current employees Daniel Burns and Mark Thuot, confirmed Mayor Kamke's statements and they also corroborated each other that if employees went to breakfast on City time, they would take their two contractual paid breaks in addition thereto.[4]

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[2] The SW Crew Chief job became available after King was selected as DPW Director/Zoning Administrator in January, 2003.

[3] As detailed more particularly in the Discussion Section of this Award because the City invoked the automatic discharge provision of Article 9 - Discharge, this Arbitrator has not considered any of the warning notices issued to JZ prior to his discharge on July 27, 2004, in reaching her decision on the merits herein.

[4] Mayor Krause denied any past practice existed and stated that former Mayor Kamke was not telling "the entire truth" because she was "not fully aware of the situation as it happened" (Tr. 262). In the opinion of this Arbitrator, Mayor Kamke was a very credible witness — straight-forward and well-informed. Mayor Krause stated no reasons why Mayor Kamke would not have been "fully aware" of the City's practices when she was the Chief Executive thereof. Therefore, this Arbitrator has credited Kamke. In addition, this Arbitrator has discounted Virgil Wenzel's testimony as he was only employed by the City for four years at the time of the instant hearing and his experience (admittedly) did not include the type of situation where employees plow snow on overtime but finish by 6:30 a.m.

FACTS

On May 28, 2004, the City had to shut down all sewer Lift Stations so that it could connect with a new sewer main in the city of Wausau, which would then service Schofield customers. As a result, both JZ and Stoviak were assigned to work the project and both had to come in early (before 7:00 a.m.) that day. Stoviak's timecard shows that he punched in at 2:16 a.m. on May 28th and that he punched out at 3:29 p.m. that day (Er. Exh. 16). Stoviak did not record his "in" and "out" times on his timesheet nor did he list his trip to Wausau that day or any hours for the May 28th sewer connection project. Stoviak was assigned to perform rounds the week of May 28th as he was on-call on the weekend. Stoviak and JZ agreed in advance that Stoviak would arrive at work first on May 28th in order to shut down all of the Lift Stations in the City before the project began at 3:00 a.m.[5] JZ arrived and punched in on May 28th at 2:48 a.m.

Just before 3:00 a.m. on May 28th, two private sewer haulers arrived at the City's main Lift Station where Stoviak and JZ were waiting. Tim Behnke of Green Valley Septic arrived first and hooked his truck up to the sewer main in order to clean it out and/or receive Schofield sewage while Wausau finished making the connection to the new main, which would thereafter collect Schofield sewage and convey it to Wausau to be treated. After Behnke's truck was full, Stoviak and JZ went into the manhole and disconnected the hoses to Behnke's truck. Behnke then drove to the Wausau sewer plant and pumped the sewage out of his truck. At this point, Stoviak and JZ hooked up the truck of the other sewer contractor (Jerry ___ of Modern Sewer) to the sewer main and pumped sewage until the truck was full. Behnke then returned from Wausau and JZ and Stoviak hooked his truck up again and it filled until it was almost full. At 4:22 a.m. the Wausau plant called to say that sewage was flowing into the Wausau plant from Schofield at a normal level and Schofield Lift Station pumps should be turned on again.

At this point, Stoviak and JZ disconnected the hoses, closed everything up and cleaned up the sewage that had spilled (Tr. 132). Behnke asked JZ and Stoviak if they would like to go with he and the other sewer contractor "for coffee at the Log Cabin" (Tr. 173). Stoviak stated there was work to be done and that he would finish it up.

Behnke stated herein that he believed that the project was over when he got into his truck at 5:00 a.m. to go to the Log Cabin, as follows:

. . .

By Mr. Rutlin:

Q. All right. Well, if I told you that the – the all clear was signaled at about 4:20 a.m. that day, would that refresh your recollection about what time that project ended?

[5] King stated that JZ and Stoviak made this agreement before May 28th (Tr. 55).

By Mr. Behnke:
A. Well, it ended at 5:00 a.m. when I was relieved from my job.
Q. And how do you know it was 5:00 a.m.?
A. Because it was 5:00 a.m. when I crawled in my truck and said let's go to the Log Cabin. We flushed the manhole. The hose is hooked in above where the manhole bottoms out, and we washed it out and sucked the solids out and put the hoses on the truck, and we left at 5:00 a.m.
Q. Did you look at your watch?
A. Yeah. It was 5:00 a.m. when we left.
Q. Who left first?
A. I did. Jerry from Modern followed me.
Q. And the two Wausau employees were still on-site at that time?
A. Those two boys were still there at that point in time.
Q. And you went right to the Log Cabin. Isn't that true?
A. Yes, sir.

. . .

(Tr. 177-178)

Behnke and the other sewer contractor[6] then drove their (full) sewer trucks to the Log Cabin parked their trucks and went in for breakfast. Behnke stated that he and the other contractor arrived at the Log Cabin at about 5:00 or 5:05 a.m. and that JZ arrived after them at 5:05 or 5:10 a.m. Behnke stated that JZ stayed with them at the Log Cabin for about 25 minutes and that all three of them left the Log cabin (and went their separate ways) at about 5:30 a.m.

JZ stated herein, without contradiction, that during the project, between 4:15 and 5:00 a.m. on May 28th, he went down into the Lift Station manhole to unhook the hoses from the assembly and sewer trucks and he got sewage on his clothes from a leaky hose. JZ stated that he went to the shop to wash up more thoroughly after 4:20 a.m.[7] JZ stated that he then crossed the street to Lift Station 2 to check to make sure the pump was working properly there. JZ stated that he found the pump working properly. JZ then drove his City truck to the Log Cabin and joined Behnke and Jerry shortly after 5:00 a.m. JZ stated that he ate breakfast at the Log Cabin and that he was there for 20 to 25 minutes, not 10 minutes. JZ stated that he left the Log Cabin and drove back to the shop where he did paperwork. JZ then worked straight through his regular shift, from 7:00 a.m. to 3:30 p.m.

After the project was completed, Stoviak stated that he drove to each Lift Station in his City truck and started up all of the City pumps and in the process of doing this, he passed by the Log Cabin twice. The first time he passed by the Log Cabin was shortly after the project

[6] Jerry _____, the Modern Sewer contractor, did not testify herein.
[7] Stoviak was not asked herein whether JZ got sewage sprayed on him from a leaky hose during the project.

ended when he drove from Lift Station 2 to Lift Station 5 and the second time was about 45 minutes later when he drove from Lift Station 5 to Lift Station 3.[8] Neither Stoviak nor JZ attended King's 7:00 a.m. departmental meeting that day. Stoviak stated that after he turned on and checked all of the City Lift Stations he went to the Wausau Waste Water Treatment plant "to make sure everything was A-OK" and "to observe what they had done" (Tr. 141). Stoviak then performed his morning rounds.[9]

On June 14, 2004, the City received an anonymous letter (dated June 10, 2004), stating that on May 28th, JZ had accompanied Green Valley and Modern sewer contractors at the Log Cabin restaurant from 4:00 a.m. to 5:00 a.m. using his City truck. The letter queried whether this had been done on City time (Er. Exh. 11). The City later found out that this letter had been sent by Utility Operator Rick Stoviak and King questioned him regarding it. Stoviak told King he had sent the letter because JZ had been leaving him to do much of the Utility work alone and he was fed up with it.

King then conducted a preliminary investigation, contacting the Wausau Sewer Plant, the two sewer contractors who worked on May 28th, and the telephone company. King did not interview any of the Log Cabin employees or customers during his investigation.

In early July, 2004, the Personnel Committee held a meeting to interview JZ and Stoviak about the events of May 28th. No one told JZ the purpose of this meeting; he believed the Committee was investigating sewer contractor work time. Personnel Committee member Ken Fabel asked several times what employees had done on the sewer conversion project which occurred on May 28, 2004 (Tr. 68). Stoviak responded first, stating what he did but saying nothing about his having seen JZ's truck at the Log Cabin. Fabel then asked JZ the same question several times, which JZ answered stating what he had done on the project. Finally, JZ asked Fabel why he was asking the questions and Fabel responded that there had been an allegation that one of the Utility workers had been seen somewhere he should not have been that day. JZ then stated that he had stopped at the Log Cabin that day, but that he had only stayed 10 minutes, that he did not sit down to eat breakfast and that he just had toast and juice. Pressed regarding whether he sat down for breakfast, JZ admitted that he did sit down to eat that day (Tr. 70). During this interview, JZ also stated that he and Stoviak split up the duties that morning.[10] At no time during this meeting did City managers tell JZ his conduct was being investigated, nor did the City offer JZ Union representation at this meeting.

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[8] Employer Exhibit 1, a map of City Lift Stations, showed that Stoviak drove out of his way to drive past the Log Cabin twice on the morning of May 28th. Neither drive-by was a "short cut" as Stoviak told King in June, 2004 (Tr. 60). Stoviak drove out of his way twice on May 28th to pass by the Log Cabin.

[9] There was some notation apparently whited-out on the copy of Stoviak's timesheet placed in the record herein (Er. Exh. 16) under the category "Sewer main Maint." No questions were asked regarding this fact in this case.

[10] At the instant hearing, JZ stated herein that he did not believe he was at the Log Cabin very long on May 28th and this is why he told the Personnel Committee he had stayed at the Log Cabin only 10 minutes. Also JZ stated herein that he only checked the pumps at Station 2 (when he went to the shop to wash up after the project was over). JZ stated that Stoviak must have been there first, as the pumps were running when he checked them.

After this meeting, King continued to investigate the events of May 28th. By a letter dated July 27, 2004, King terminated JZ "for dishonesty." The Union then timely filed the instant grievance. The City issued a Step 2 response dated September 3, 2004, in which it elaborated on its reasons for terminating JZ, as follows:

. . .

> The City of Schofield Personnel Committee has considered all of the arguments you presented on Jarrod's behalf at the Step 2 Grievance Meeting held on August 23, 2004. In addition as you suggested, current and former Council members and former Mayor Sarah Kamke were contacted relative to the issue of an established past practice with respect to employee breaks when working overtime. In addition, other current employees in the Department of Public Works were questioned regarding their understanding of when and under what circumstances paid breaks were authorized.
>
> First of all, all current and past Council members that were contacted indicated that they were not aware of any practice relative to paid breaks in overtime situations and were only aware of the two paid breaks that were provided for under the contract.
>
> Former Mayor Kamke, as well as current City employees, indicated that occasionally, when employees were assigned to work significant overtime hours, supervisors have authorized a longer morning break or, at times, they have combined morning break with lunch, depending upon the number of extra hours that were being worked by the employees. In these situations, the supervisor specifically authorized such breaks for legitimate reasons based upon concerns of fatigue and/or safety, and typically the supervisor has taken the break along with the employees. These occasional breaks specifically authorized by supervisors do not establish a practice that would justify the unauthorized one (1) hours paid break that Jarrod took on May 28.
>
> Moreover, it is the Committee's belief that if a practice actually existed as you and Jarrod contended at the Step 2 Grievance Meeting that would justify the paid break taken by Jarrod on May 28, there would have been no reason for Jarrod to cover up the fact that he actually took a one (1) hour paid break when he was originally questioned about it by the Committee.
>
> Considering all of the arguments you presented at the Step 2 Grievance Meeting and after further investigating the claims of an alleged past practice, the Committee has decided to deny the grievance. The Committee's decision to discharge Jarrod will not be modified. Jarrod was discharged for dishonesty which included: (1) falsification of his time card, which included a one (1) hour

unauthorized paid break; (2) Jarrod's failure to truthfully account for his activities on the morning of May 28, when confronted by the Personnel Committee including stating that he participated in doing morning rounds, driving to the Wausau transfer station on at least two occasions, and splitting the Lift Station checks with the other Water/Sewer employee on duty. When finally confronted regarding the break situation, Jarrod only admitted that he took a short break of no more than ten minutes when the evidence clearly establishes that the break was at least one hour in length.

Based on the above, Jarrod is clearly guilty of dishonesty which under the terms of the contract is a dischargeable offense without the need of a prior warning. In addition, the Committee does not find that there are any circumstances that mitigate against the discharge of Jarrod. Therefore, the Committee is unwilling to modify the discharge to some lesser discipline.

. . .

At the instant hearing, King stated that he terminated JZ for the following reasons:

1. JZ lied to the Personnel Committee when he failed to tell them immediately that he went to the Log Cabin on City time for breakfast on May 28th;

2. JZ lied when he told the Personnel Committee that he and Stoviak split up the duties following the project on May 28th and when he said that he spent only 10 minutes at the Log Cabin;

3. JZ lied on his timesheet when he wrote that he had done morning rounds for two hours on May 28th and listed the time of the May 28th project as .75 hours.

POSITIONS OF THE PARTIES

The City

The City argued that the labor agreement gives it the absolute right to discharge employees for dishonesty and to consider employees' complete employment records to determine the appropriate level of discipline. In this regard, the City urged that there are two inconsistent and conflicting provisions in the effective labor agreement, Article 9 - Discharge, and Article 27- Management Rights. The City noted that Article 9 specifically states that the City may discharge employees without issuing a prior warning if they engage in (listed) prohibited conduct including "dishonesty" while Article 27 states that the City must have a

"just cause" to discipline employees. In the case of such conflict, the City urged the Arbitrator to read the contract as a whole and to harmonize the conflicting provisions, giving effect to all provisions yet rendering none meaningless, while giving effect to specific provisions (like Article 9) over general provisions (like Article 27).

Applying this type of analysis, the City argued, leads to a conclusion that the City has an absolute right to discharge an employee for dishonesty. This conclusion is further supported by Article 27, which also contains a caveat, that the management rights listed therein are "subject to the express terms of this Agreement." Given that the evidence showed that JZ was dishonest, the City contended that the only appropriate use of the just cause provision of Article 27 is to determine whether JZ's prior work record (in its entirety) mitigates against discharge. The City asserted, contrary to the Union's claims herein, "[t]here is no proposition by which an Arbitrator cannot analyze an employment record, including a disciplinary record, in determining a proper penalty unless first brought forth by the Union" (Er. Brief, p. 17). The City argued that Article 27 requires the Arbitrator to consider JZ's prior disciplinary record in its entirety, as the City did prior to discharging him, in determining whether to grant or deny the grievance.

In addition, the language of Article 9 does not require the Arbitrator to disregard JZ's prior disciplinary record as the 180-day limitation therein does not apply to automatic discharges for dishonesty. The City urged that JZ's prior record "is relevant to whether there are any mitigating circumstances to the Grievant's discharge under the 'just cause provision' of Article 27."

As the City had an absolute right to discharge JZ for dishonesty, the fact that he was dishonest with the City more than once regarding the events of May 28, 2004, was sufficient basis for his immediate discharge. In this regard, the City noted that JZ was dishonest when he failed to disclose to the Personnel Committee that he had been at the Log Cabin after the special project ended on May 28th; that JZ also lied when he stated that he spent only 10 minutes at the Log Cabin and when he initially stated he did not sit down to breakfast. JZ's excuse that he was only asked by the Personnel Committee about his activities regarding the special project was contrary to the testimony of King, Stoviak and Fabel and JZ's own testimony on cross-examination (Compare Tr. 65, 149, 230; Tr. 230-1; and Tr. 234). The City urged that Stoviak, Fabel, and King were sequestered and had no reason to lie, and that they should be credited over JZ on this point.[11] The City queried, why JZ told the Personnel Committee that he checked Lift Stations after the project was over if the Personnel Committee never asked JZ about what he did after the project was completed and why, if there was a past practice of going to breakfast in similar situations, did JZ lie about the time he spent at the Log Cabin and about whether he sat down to eat breakfast. JZ's excuse that he was "caught off guard" by the Personnel Committee's questions is insufficient to explain away his dishonesty.

[11] The City also argued that Fabel and King, because they are public officials, should be presumed to be telling the truth, citing OAK CREEK-FRANKLIN JT. S.D., BENSON, CASE NO. 99-CV-8859 (MILWAUKEE COUNTY, 5/10/00).

In addition, the City contended that the evidence showed that JZ spent more than the 20 to 30 minutes he stated herein he spent at the Log Cabin on May 28th. The City asserted that JZ arrived at the Log Cabin at 4:45 a.m., not shortly after 5:00 a.m. This assertion is supported by the phone log and by Stoviak's testimony, which the City urged should be credited over JZ and Behnke. Indeed, the City observed that JZ lied herein when he stated that he checked one Lift Station on May 28th at approximately 5:00 a.m., yet Stoviak stated he saw JZ's City truck at the Log Cabin when he passed by at 4:30 a.m. The City urged that Stoviak should be credited as he had no reason to lie. Finally, the City contended that JZ also lied when he recorded 4.5 hours of overtime work on May 28th when he should have recorded a maximum of 1.75 overtime hours to complete the project.

The City argued that the Union failed to prove that there is a past practice sanctioning JZ's breakfast break. But even if the Arbitrator finds that such a practice exists, JZ should nonetheless be discharged because he was repeatedly dishonest to the Personnel Committee, as the alleged past practice is only relevant to JZ's notation of overtime hours on his time sheet. In addition, the City argued that the Union's witnesses who testified concerning the past practice were inconsistent, incredible, or their testimony was inapplicable to this case because the facts surrounding this case are distinguishable from situations where the alleged practice would be effective. At best, the City observed, the record evidence proved that "a past practice exists to allow a break around 6:30 a.m. after plowing snow for long hours (four or five hours) . . .to ensure the safety of City employees and its residents" (Er. Brief, p. 30). But JZ did not take this kind of break on May 28th.

The City asserted that JZ's discharge "was not subject to mitigation under the just cause standard" given the Grievant's discipline history (Er. Brief, p. 31). In this regard, the City noted that JZ had been disciplined six times from January, 2002, until his discharge. Even if the Arbitrator recognizes only the two disciplinary warnings which occurred 180 days before JZ's discharge as effective, these warnings, which were considered by the City in deciding to terminate JZ, support the City's discharge decision and show that JZ "could not work with others and take directions from his supervisor . . ., challenged authority and made extremely inappropriate comments to his supervisor . . ." (Er. Brief, p. 32). Based on this record, the City urged the Arbitrator to deny the grievance in its entirety.

The Union

The Union argued that JZ violated no rule or policy by going to breakfast on May 28th. In fact, there was a past practice of going to breakfast on the clock when employees had worked overtime starting before their regular shift and no advance supervisory permission was necessary. The City could have disavowed this practice by establishing an explicit policy prohibiting such breakfast breaks but it never did so. The Union then analyzed the evidence regarding past practice which it asserted supports its claims herein.

The Union asserted that the City's termination of JZ for dishonesty constitutes disparate treatment as this was the first time the City discharged an employee for such conduct and the first time an employee was discharged for taking a paid breakfast break. The fact that the City treated JZ differently than others necessarily means that it did not have just cause to terminate JZ, undercutting management's decision. The Union noted that even where a labor contract allows an employer to summarily discharge employees, it cannot exercise its power in a disparate fashion. In addition, JZ had no advance notice of the disciplinary consequences of taking a paid meal break after working overtime.

The Union noted that where, as here, supervisors take employees to breakfast on the clock and no rules exist regarding when such conduct is permissible and when it is prohibited, employees have no reason to believe that taking breakfast on the clock is condemned and that doing so would subject the employee to discipline. The fact that some employees have at times returned home if they finished their overtime work before their regular work hours started does not mean that JZ and other employees were thereby put on notice that employees must punch out if they finish their work at some point before 7:00 a.m. The Union urged that given the record evidence herein, the City should have created "a bright line rule" indicating exactly when employees will be disciplined if they do not clock out after overtime.

The Union urged that the City's conclusion that JZ was at breakfast for one hour on May 28th was unfounded. In this regard, the Union observed that Sewer Contractor Behnke's testimony must be credited regarding how long JZ was at breakfast. Even if Stoviak saw JZ's truck at the Log Cabin, Stoviak's testimony that JZ was at the restaurant for one hour is incredible. In this regard, the Union argued that Stoviak's motives for writing the anonymous letter against JZ had nothing to do with any alleged violation of a City rule prohibiting meal breaks on City time. Rather, Stoviak was angry because he perceived that he was doing more of the Utility work than JZ. Yet Stoviak never complained to the City about his issue. Stoviak also either drove out of his way to check out the Log Cabin that morning or he lied about the route he took (Tr. 135, 137). The Union noted that other reliable evidence showed that JZ was at the Log Cabin for 15 to 20 minutes, having arrived shortly after 5:00 a.m. The Union pointed out that Stoviak admitted that he wrongly stated (in his letter) the time JZ was at the Log Cabin and he conceded that he did not make notes of his observations of JZ.

The Union urged that the City failed to prove that JZ had been dishonest about his whereabouts on May 28th. In this regard the Union observed that JZ did not lie to the Personnel Committee — he simply was unable to divine what answers they wanted to their vague questions. Although Stoviak knew the reason for the meeting — whether JZ should be disciplined — Stoviak simply stated what he did that day without mentioning that he had seen JZ's truck at the Log Cabin on May 28th. The Union asserted, "A questioner (Fabel) who is less than honest about his motives and the information he seeks, can hardly expect to receive honest answers" (U. Brief, p. 15). Nonetheless, the Union observed, JZ volunteered that he had gone to the Log Cabin. He never lied about it and he never refused to answer any questions.

Finally, the Union urged the Arbitrator to disregard the prior warnings more than 180 days old issued to JZ pursuant to the express language of Article 9, Section 1. The Union asserted that the City has completely misunderstood the concept of mitigation by attempting to use prior discipline to bolster its decision to terminate JZ. Therefore, the Union urged the Arbitrator to sustain the Grievance and make JZ whole.

DISCUSSION

The crucial question in this case is whether a past practice existed whereby DPW employees who had worked overtime during the night could go to breakfast on City time without getting prior authorization from a supervisor. The record in this case demonstrates that a past practice has existed allowing such breakfast breaks for many years. In this regard, I note that former Mayor Sarah Kamke stated that she and other City officials knew and in fact they encouraged employees to take breakfast breaks on the clock after coming to work during the night to work overtime before their regular shift began, without getting authorization in advance from a supervisor.

The City argued that Kamke's testimony should be discredited. I disagree. On this point, I note that the City failed to impeach Ms. Kamke herein and it failed to offer any specific documentary or testimonial evidence to support a conclusion that Ms. Kamke was not telling the truth herein, as asserted by current-Mayor Krause. Mayor Krause's statement herein that he did not believe Kamke was aware of the facts regarding the disputed past practice while she was mayor was unsupported by any evidence. In addition, I observed Ms. Kamke to be a straight-forward, well-informed, candid and articulate witness. Furthermore, the employees and one former employee who testified herein generally corroborated Kamke, and the one employee who did not specifically do so had not had the experience of being assigned overtime on a non-weekend night, ending before 6:30 a.m.[12]

In addition, a comparison of Administrator King and Mayor Krause's testimony showed that they did not agree on what the City's policy has been or should be regarding taking breakfast breaks on the clock. In these circumstances, it would be unfair to hold an employee responsible for taking a breakfast break in contravention of a policy that City managers cannot clearly articulate and do not agree upon. Finally, I note that there is no zipper clause in the effective agreement that might affect the continued existence of past practices.

[12] Former employee Ostrowski and employees Thout and Burns stated that they have gone to breakfast on the clock after working overtime without getting supervisory approval and that they always took their morning break in addition to a paid breakfast break. Thout also stated that King took paid breakfast breaks with him and other employees when King was a unit employee. (King was not asked about this statement.) Only employee Wenzel stated that he had never been in the situation of taking a paid breakfast break as described herein by the other employees.

Given this proven past practice, the question arises whether the City ever repudiated the practice or otherwise notified employees whether and under what circumstances employees would be subject to discipline or discharge if they took a breakfast break on the clock. It is clear from this record that the City never repudiated the practice or attempted to do so. In addition, no evidence was proffered to show that the City ever notified employees that taking a paid breakfast break would result in discipline/discharge. In this regard, neither the Mahoney nor the King memos regarding work expectations (quoted above) referred to or addressed the practice involved in this case.

Therefore, if JZ simply took a paid breakfast break on May 28, 2004, as other employees had done in the past with impunity, then the City would not be privileged to discharge JZ for allegedly being dishonest about doing so. But JZ was not discharged for taking an unauthorized breakfast break. He was discharged for "dishonesty" pursuant to Article 9, Section 1.

The definition of the word "dishonesty" is to show "a disposition to lie, cheat or steal . . ." to engage in "fraud."[13] Hence, to be dishonest in contravention of Article 9, Section 1, an employee must intend to deceive, cheat or steal. The discharge letter in this case did not specify the conduct that JZ had engaged in which the City found to be dishonest. Nor did the letter state what if any factors (including JZ's prior work record) the City had considered in reaching its decision to discharge JZ without a prior warning for dishonesty. Significantly, the City has never discharged any employee for taking an unauthorized break or for being dishonest prior to this case. Nor has the City ever disciplined any employees for failing to accurately record their work tasks and times on their timesheets.

It is in this context that one must analyze the arguments in this case. Article 9, Section 1, does not define "dishonesty" except by reference to the other specific offenses that are listed as grounds for immediate discharge in that Section: ". . . being under the influence of intoxicating beverages while on duty, carrying unauthorized passengers in a company vehicle, recklessness resulting in a chargeable accident while on duty or other flagrant violations." All of the specific offenses listed are serious and describe prohibited acts which must be committed during the ordinary course of the employee's work for the City. Thus, based upon this language, it is reasonable to conclude that the type of dishonesty that the parties intended to trigger immediate discharge was on-the-job dishonesty.

In this case, King stated that he discharged JZ (in part) because JZ lied to the Personnel Committee in July, 2004, regarding how long JZ stayed at the Log Cabin on May 28th and because JZ failed to immediately tell the Personnel Committee that he had gone to breakfast at the Log Cabin on May 28th. I do not believe that the City proved that JZ lied to the Personnel Committee in these areas as alleged by the City.

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[13] Random House Dictionary of the English Language (College Ed., 1968), p. 380.

In the circumstances of this case, it is not remarkable that JZ failed to immediately tell the Personnel Committee he had gone to the Log Cabin on May 28th. The evidence showed that JZ was completely unaware that the true purpose of the July, 2004, meeting with the Personnel Committee was to investigate JZ's whereabouts that day with an eye to issuing him discipline. Therefore, JZ had no idea what information the Committee was seeking, and he therefore could not have intended to deceive the Committee by his initial failure to reveal that he went to the Log Cabin on May 28th.

Fabel stated that he asked both Stoviak and JZ the same questions, to describe the events which occurred on May 28th from the project until they started their shifts. I do not believe that Fabel was as specific as he stated he was in his questioning for several reasons. I note that Stoviak responded to Fabel's questions first, stating what he had done on the project, but failing to indicate that he had seen JZ's truck at the Log Cabin and failing to state that he had gone to the Wausau Waste Water Treatment Plant to check on the project at that end after the project was over (Tr. 67-68). After Stoviak answered in this limited manner, JZ answered Fabel's questions in a similar manner, stating what he did on the project. In my view, if Fabel's questions were as clear as he testified they were, there would have been no need for Fabel to ask them repeatedly and no reason for JZ to ask why Fabel kept asking about May 28th. In addition, King failed to corroborate Fabel's account of his questioning herein (Tr. 68-69).

After JZ asked why Fabel was continuing to ask about May 28th, Fabel finally revealed that it was because someone had reported that a Utility employee had been somewhere he should not have been that morning. At this point, JZ freely admitted, without hesitation, that he had gone to the Log Cabin on May 28th. In my view, JZ's delay in telling the Committee about his visit to the Log Cabin did not constitute a lie as the City failed to prove that JZ possessed the intent to deceive the Committee.

The City has also asserted that JZ lied to the Committee about how long he stayed at the Log Cabin and whether he sat down to eat that day. Regarding the latter allegation, I note that JZ corrected his initial wrong statement that he had not sat down to breakfast on May 28th at the meeting with the Committee. In regard to the former allegation, JZ satisfactorily explained herein that he did not spend very much time at the Log Cabin so he estimated the time at 10 minutes, which was incorrect. Under accusatory questioning, JZ became flustered, a normal human reaction.[14]

In regard to the allegation that JZ failed to accurately record information regarding his activities on May 28th on his timesheet, I find it very significant that Stoviak listed nothing on his timesheet concerning the time of the project, that he did not state thereon that he had traveled to Wausau and the amount of time he spent in Wausau on May 28th, and that Stoviak

[14] It is interesting that Stoviak did not recall JZ telling the Committee the amount of time that he spent at the Log Cabin on May 28th.

recorded that he had worked 4.75 hours of overtime that day. Stoviak was not disciplined in any way for the manner in which he filled out his timesheet, yet JZ was terminated, in part, for failing to accurately fill out his timesheet. This is a classic case of disparate treatment.

The Union has urged that the fact that Stoviak and JZ were treated differently concerning their conduct on May 28th shows that the City unfairly targeted JZ for discipline. I agree. One employee cannot be assessed the ultimate penalty for misconduct (failing to accurately record his work time on his timesheet), while another employee is given "a pass," receiving no discipline for violating the same rule. In addition, I note that the only other employee who has been disciplined by the City according to this record received a warning letter for threatening to bring a gun to work and shoot King and a fellow employee. This evidence further supports a conclusion that JZ was treated disparately.

The City has argued that there was no reason for Stoviak to lie regarding his knowledge of the events of May 28th and therefore his testimony should be credited in its entirety. An analysis of Stoviak's part in this case shows that Stoviak wrote the anonymous letter which caused the City to investigate JZ's conduct on May 28th and therein, that Stoviak wrongly stated the time period JZ was at the Log Cabin (4:00 a.m. to 5:00 a.m.). Stoviak also admitted herein that he did not keep records of the times he saw JZ's truck at the Log Cabin on May 28th; that he was angry with JZ because he felt JZ had been leaving him to do most of the work of the SW Division and this is why he sent the letter to the City. Stoviak further admitted that he never complained to JZ or the City about the division of work at the SW Division. In addition, it is clear that Stoviak drove out of his way twice to check on whether JZ had gone to the Log Cabin on May 28th. Finally, JZ stated without contradiction that after the July, 2004, Personnel Committee meeting, JZ asked if Stoviak had sent the anonymous letter and Stoviak denied doing so.

In all of these circumstances Stoviak's conduct and statements on and after May 28th undermined his credibility in this case. This Arbitrator has therefore not credited Stoviak's account where it differs from JZ's. The City also argued that King and Fabel's testimony should be credited based upon a presumption that government officials would tell the truth. In this Arbitrator's view, each witness' testimony must, in fairness, be evaluated in light of all of the relevant evidence and argument, and this is what the Arbitrator has done in this case.

The City has argued that JZ spent an hour at the Log Cabin on May 28th as demonstrated by Stoviak's testimony and by the phone logs. On this point, this Arbitrator notes that neither Stoviak's testimony nor the phone logs proved that JZ spent one hour at the Log Cabin on May 28th. The most reliable evidence on this point came from disinterested witness, Tim Behnke, one of the two private sewer contractors who pumped sewage for the City on May 28th. Behnke stated clearly that the project ended at 5:00 a.m. after they had cleaned up the manhole and put the hoses away; that he (Behnke) and the other contractor then went to the Log Cabin and that JZ joined them after 5:00 a.m.; and that all of them left at

about 5:30 a.m. Behnke stated that JZ was at the Log Cabin for about 20 minutes. Behnke's testimony was not undermined by any other evidence and his testimony was not impeached. This Arbitrator has credited him entirely.

The City has argued that JZ's disciplinary record, from 2002 forward should be considered in this case despite the language of Article 9, Section 1. Article 9, Section 1, states that a "warning notice" will be "effective for not more than" 180 days from the date of the notice. This portion of Section 1 clearly addresses the use of prior disciplinary warnings where a later warning is issued. This language states that prior warnings will only be "effective" for 180 days for purposes of the application of progressive discipline.[15] However, in this case the City has not applied progressive discipline; it has terminated JZ without having issued a prior warning based upon the language of Article 9, Section 1, which allows for immediate discharge in cases of dishonesty, etc. Significantly, the discharge letter in this case does not mention that the City considered JZ's prior work record in deciding to terminate him.

Therefore, the City's proffer of prior warning notices issued to JZ since 2002 has no relevance to the City's decision to terminate JZ for dishonesty. Put another way, the City cannot have its cake and eat it too — it cannot immediately discharge an employee claiming no prior warning is necessary due to the severity of the offense and then offer that employee's prior work record in an attempt to show that the employee was, in any event, a bad employee. As there is no question that the City discharged JZ for dishonesty regarding his conduct on May 28th, this Arbitrator has not considered JZ's prior disciplinary record in reaching her conclusion whether that decision was justified.[16]

The City argued that Article 9, Section 1, conflicts with Article 27. Again, this Arbitrator disagrees. Article 27 specifically states that the City must have "just cause" to discipline employees and that it has retained all management rights "subject only to the express terms of this contract." However, Article 9 is one of the "express terms" of the labor agreement which takes precedence over the more general language of Article 27. Therefore, in the case of dishonesty and the other offenses listed in the same series of items in Article 9, Section 1, immediate discharge is possible. For all other offenses (not listed in Article 9, Section 1), the just cause standard of Article 27 must be applied.

However, the record facts clearly showed that JZ did not split up the duties with Stoviak on May 28th as he told the Personnel Committee and JZ did not perform morning rounds as he stated on his timesheet on May 28th. The question then arises what consequences should fairly flow from JZ's dishonesty on these two points. Under both the King memo and Article 9, "dishonesty" is punishable by immediate discharge. As discussed above, Article 9, Section 1, defines "dishonesty" only by association – by listing dishonesty in a series of offenses which involve serious, intentional on-duty misconduct engaged in in the ordinary

[15] The meaning of the word "effective" is "actually in operation or in force; functioning." Random House Dictionary of the English Language (College Ed., 1968), p. 421.
[16] As discussed below, I have only considered JZ's past disciplinary record in deciding the remedy herein.

course of City business. One could reasonably argue that JZ's statements to the Personnel Committee do not fit into the series of specific offenses listed in Article 9, Section 1, because his statements to the Committee were not made in the ordinary course of his City duties. However, JZ's indication on his timesheet that he did morning rounds on May 28th would fit into the series of offenses contained in Article 9, Section 1.

As a general matter, arbitrators try very hard not to disturb employers' decisions concerning the appropriate level of discipline for employee misconduct. However, where an employer has discharged one employee while giving another employee no discipline for the same type of conduct, while another employee has been given a written warning for uttering a threat of violence toward his supervisor and a fellow employee, such arbitral restraint is insupportable. Where the penalty issued for misconduct is excessive, unreasonable and amounts to an abuse of managerial discretion under the circumstances, the discharge should not be upheld.

Article 9, Section 1, allows discharge for dishonesty, but Section 1 does not mandate discharge and it does not expressly prohibit the arbitrator from modifying or reducing the discharge penalty. Rather, Article 9, Section 2, recognizes that an arbitrator has the authority to reduce a discharge or suspension as that Section specifically states that where an employee has been "unjustly discharged or suspended" the employee must be "reinstated and compensated for all time lost . . . plus such overtime as (the employee) may have worked."

Here, there is no doubt that JZ wrongly recorded on his timesheet[17] that he had performed morning rounds on May 28th. It is also clear that JZ also lied to the Personnel Committee in July, 2004, about splitting up the duties on May 28th.[18] In attempting to determine the appropriate level of discipline for JZ's misconduct, it is significant to note that but for the City's failure to appropriately recognize the past practice regarding paid breakfast breaks, JZ would not have been called before the Personnel Committee and he would likely have never been interviewed by Fabel. Although these facts cast further doubt on the fairness of the City's decision to discharge JZ for statements he made to the Personnel Committee, as JZ's statement regarding splitting up the duties was clearly dishonest, I have considered it herein in reaching my conclusions regarding the appropriate remedy. In addition, I note that JZ was issued a written warning for "dishonesty" on November 27, 2002. Although as discussed above, the contract prohibits use of this warning in progressive discipline, this 2002

[17] I have found that the past practice alleged by the Union existed on May 28, 2004. That practice did not include any requirements to record breakfast breaks on timesheets.

[18] Concerning splitting up the duties, I note that JZ stated without contradiction that he was sprayed with sewage from a leaky hose during the project on May 28th and that he went to the shop after the project was completed to wash up; and that then he crossed the street to the Lift Station closest to the shop and checked the pump there, which had already been turned on. Thus, the duties were not technically split up as JZ told the Personnel Committee. Indeed, as Stoviak was on-call that week, Stoviak was responsible to complete morning rounds, not JZ. Also, according to King, JZ and Stoviak had agreed in advance on how the project work would be split up and Stoviak volunteered to start up all of the pumps after the project was over as he stated he would do when he declined to go to the Log Cabin that morning.

written warning is instructive concerning the appropriate level of discipline to be used in this case because JZ was disciplined with a written warning for the same type of misconduct he has been accused of herein. Therefore, in all of the circumstances, I find that in fairness, JZ should serve a 2-day suspension for his proven misconduct, one day for each instance of dishonesty. This conclusion is further supported by the fact that in June, 2003, JZ was given a 5-day suspension for five instances of misconduct (none of which involved dishonesty).

Based upon the record evidence and argument in this case, the Arbitrator therefore issues the following

AWARD[19]

The City violated the collective bargaining agreement when it discharged Jarrod Zilisch and the City is ordered to expunge Zilisch' record of any and all references to his July 27, 2004 discharge. However, Zilisch shall serve a 2-day unpaid suspension for two instances of dishonesty. Zilisch shall then be reinstated with backpay at his regular rate of pay plus overtime he would have worked, pursuant to Article 9, Section 2.

Dated at Oshkosh, Wisconsin, this 21st day of April, 2005.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

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[19] I shall retain jurisdiction of the remedy only for 60 days after the date of this Award.