

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**WOOD COUNTY COURTHOUSE, SOCIAL SERVICES AND UNIFIED SERVICES
EMPLOYEES, LOCAL 2486, AFSCME, AFL-CIO**

and

WOOD COUNTY

Case 163
No. 63667
MA-12664

(Laura Markus Grievance)

Appearances:

Mr. Gerald Ugland, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 35, Plover, Wisconsin 54467-0035, on behalf of the Union.

Ruder Ware, **by Attorney Dean R. Dietrich**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the County.

ARBITRATION AWARD

Wood County Courthouse Employees, Local 2486, AFSCME, AFL-CIO (herein the Union) and Wood County (herein the County) have been parties to a collective bargaining relationship for many years. At the time of the events chronicled herein, the collective bargaining agreement in effect until December 31, 2001, had expired and the parties were negotiating a successor agreement. On May 19, 2004, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over an oral reprimand issued to bargaining unit member Laura Markus (herein the Grievant). The Undersigned was appointed to hear the dispute and a hearing was conducted on October 18, 2004. The proceedings were not transcribed. The County filed its initial brief on November 29, 2004, and the Union filed its initial brief on December 1, 2004. On December 29, 2004, the Union notified the Arbitrator it would not be filing a reply brief. On January 10, 2005, the County filed a reply brief, whereupon the record was closed.

ISSUES

The parties did not agree to a statement of the issues. The Union would frame the issues as follows:

Did the Employer violate the collective bargaining agreement when it issued a verbal reprimand of Laura Markus on or about October 17, 2003?

If so, what is the remedy?

The County would frame the issues as follows:

Whether the County violated the Labor Agreement when it disciplined the Grievant for failing to have her paperwork up to date on October 1, 2003?

If so, what is the appropriate remedy?

The Arbitrator frames the issues as follows:

Did the County violate the collective bargaining agreement when it reprimanded the Grievant for not having her paperwork up to date on October 1, 2003?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

Article 1 – Management’s Rights

- 1.01 Except as otherwise specifically provided in this Agreement, the Employer retains all rights and functions of management that it has by law.
- 1.02 Without limiting the generality of the foregoing, this includes:
 - 1.02.01 The management of the work and the direction and arrangement of the working forces, including the right to hire, discipline, suspend or discharge for just cause or transfer. The right to relieve employees from duty because of lack of work or for other legitimate reasons is left exclusively to the

Employer, provided that this will not be used for the purposes of discrimination against any member of the Union because of union activity;

. . .

1.02.06 The determination of financial policies including general accounting procedure;

. . .

1.02.10 The right of the Employer to determine and enforce standards of work production is fully recognized, and continued failure of an employee to produce on the basis of Employer standards will be due cause for discipline, including discharge;

1.02.11 The Employer may enforce work rules and regulations now in effect and which it may issue from time to time not in conflict herewith.

1.03 It is agreed that disputes which arise from the application of Management's Rights are grievable.

BACKGROUND

Laura Markus, the Grievant herein, has been a Social Worker for the Wood County Department of Social Services and a member of the bargaining unit represented by Local 2486 since 1998. She works as a Child Protective Services Investigator, working out of the County's Marshfield office. The Grievant's duties are set forth in her position description, in pertinent part, as follows:

. . .

GENERAL FUNCTION:

This social worker position provides assessment, counseling, and case management in the provision of Protective and Juvenile Court Services to juvenile clients and their families of the Agency.

REPORTS TO:

Social Work Supervisor.

RESPONSIBILITIES:

A. ESSENTIAL FUNCTIONS

1. Use Social Work Methods, principals, and interviewing techniques with parents and/or children to develop treatment plans to meet established objectives and goals. The social worker will need to establish rapport with the parents and family to obtain information adequate to determine the scope of the problems and to effectively work with the clients family. The social worker must develop a cooperative working relationship with other community systems involved with treatment of the child and his family. The social worker will be assisting the family to obtain optimum benefit from these systems.
2. Provide services to delinquent, truant, uncontrollable youth and children at risk of abuse and neglect. Juvenile court preparation and testimony is required.
3. Manage workload to assure adequate compliance with required paperwork and establish accountability procedures.
4. Function as a team member with Social Work Assistant, volunteers, and other support staff.

B. OTHER JOB DUTIES

1. Attend agency staff meetings, appropriate training and education, and supervisory conferences. Demonstrate the ability to constructively utilize training and education provided and administrative consultation.
2. Responsible to know and practice the Safety policies of the County. Perform all job tasks in a safe and prescribed manner.
3. Any other duties as may be assigned.

...

Her duties include conducting investigations into allegations of child abuse or neglect. These investigations entail, among other things, preparation and filing of various reports, including an initial assessment of abuse or neglect and a follow-up concerns narrative.

In order to expedite case processing and to comport with standards determined by the Wisconsin Department of Health and Family Services, the Department has established a Paperwork/Dictation Policy, which has been in effect since at least 1989, as follows:

. . .

The agency standard is that paperwork, regular dictation and reviews are done on schedule.

The priorities for dictation are: Child Protective Services Intake; Court, including custody investigations; Aid to Families with Dependent Children – Foster care, group care and child caring institutions dictation, i.e., opening and reviews; COP, COP-W; Permanency Planning; funded programs; other opening dictation; all other reviews.

The work on review lists will be done in a timely manner starting with the earliest date and proceeding chronologically.

Review dates will be established six months after the supervisors sign the Action Sheet, or the date written on the Action Sheet, whichever is less. A review date due 3/15/89 is established as 3/89.

If the work is not complete within two months of the established due date, the worker will receive:

- 1) a verbal reprimand
- 2) a request to establish a plan to accomplish completion
- 3) notification that comp time, vacation, committee meetings or board involvement will not be allowed until work is timely.

If still not complete, a written reprimand will follow, to be placed in the personnel file.

Prior to April, 2003, State guidelines mandated that investigations be completed within 60 days of case opening and follow-up paperwork be completed within another 60 days. In April, 2003, pursuant to a change in State guidelines, the policy was revised, as follows:

. . .

The agency standard is that paper work, regular dictation, and reviews are done on schedule.

Dictation refers to Child Protective Services Intake, Court, foster care, group care and child caring institutions dictation. It includes opening and reviews, Community Options Program, COP waiver; Permanency Planning; funded programs; other opening dictation; all other reviews. Economic Support workers will follow the “Economic Support Processing Deadlines Policy” found in Section III of the Wood County Social Services On-line Policy Manual.

The work on review lists will be done in a timely manner starting with the earliest date and proceeding chronologically.

Review dates will be established three months after the case opening.

If the worker has not completed dictation within three weeks of the established due date, the worker will receive:

- 1) A verbal reprimand
- 2) A request to establish a plan to accomplish completion
- 3) A notification that compensatory time, vacation, committee meetings or board involvement will not be allowed until dictation work is timely.

(Note: This policy covers the date of dictation, not the date that the work is typed up or reviewed by supervisors.

If still not complete, a written reprimand will follow, to be placed in the personnel file.

At a staff meeting on July 1, 2003, CHIPS Units Supervisor Charles Price gave the Department staff a directive that all case paperwork was to be caught up no later than September 1, 2003. By September 1, all CHIPS Investigators, with the exception of the Grievant, were caught up. On September 2, Price sent the Grievant an email in which he advised her that he was extending her deadline to October 1. He also stated that he would authorize protected time and overtime to help her get caught up, that he would not authorize vacation or leave time until she was caught up and that a failure to meet the October 1 deadline would result in a verbal warning.

By September 29, 2003, the Grievant had not yet completed her overdue paperwork. On that day, she was assigned a new, high priority case involving a battered child. She decided to defer working on her paperwork backlog to work on the new case and informed Price that she would probably not have her cases caught up by the October 1 deadline, which she, in fact, did not. On October 31, Price examined the Grievant's pending case listing and determined there were 17 cases still not completed. On November 11, he issued a verbal reprimand to the Grievant for failure to meet the October 1 deadline. The Grievant grieved the discipline, which was processed through the contractual grievance procedure with resolution, resulting in this arbitration. Additional facts will be referenced, as necessary, in the discussion section of this award.

POSITIONS OF THE PARTIES

The County

The County asserts that under the contract, the County may discipline employees for just cause. The County's burden is to establish the existence of just cause for discipline by a preponderance of the evidence. Arbitrators have made determinations of just cause by applying a two prong test which essentially asks, first, if the employee committed an act of misconduct and, second, if so, whether the discipline imposed was reasonable under all the circumstances. [See: CITY OF LACROSSE, CASE 269, No. 51798, MA-8742 (JONES, 12/1/95); COLUMBIA COUNTY, CASE 233, No. 63355, MA-12560 (MCLAUGHLIN, 10/7/04)]

Discipline was justified in this case because the Grievant clearly violated agency policy and a time directive from her supervisor. The violation hinders the agency in the processing of cases and also violates State mandated deadlines. Under the contract, the County has the right to set expectations for employees and to discipline employees if they do not meet those expectations. The County's Paperwork/Dictation Policy sets standards for completion of paperwork within three weeks of established due dates, although the workers have been typically given 30 days, and specifies that a verbal reprimand will be issued for failure to meet the timelines. There is no question the Grievant missed the deadline and received the indicated penalty. The penalty itself was a verbal reprimand, which is the lowest form of discipline available. Thus, if discipline is warranted at all there can be no question that the discipline here was unreasonable.

The new policy was introduced to the case workers at a meeting on July 1, 2003, which the Grievant attended. At that time, all workers were told that paperwork had to be caught up by September 1, 2003. The Grievant was aware of the deadline. In early September, Unit Supervisor Charles Price gave the Grievant a 30-day extension to October 1 to complete her work and offered her overtime and protected time to help her complete it. He also warned her that failure to meet the October 1 deadline would result in discipline. All other employees had their paperwork caught up by September 1. The Grievant failed to meet the October 1 deadline.

Arbitral precedent supports issuance of discipline for failure to meet paperwork deadlines. Especially where the employer has made an effort to assist the employee and the employee has refused the assistance it has been held that the employee must bear the responsibility for being untimely. CITY OF MAUSTON, CASE 21, NO. 46904, MA-7098 (MAWHINNEY, 8/5/93) Here, the Grievant was given notice of the deadline well in advance, was given an extension and was offered overtime and protected time which she did not utilize. Clearly, discipline was warranted.

The Grievant's explanations for her failure to meet her deadlines do not mitigate her actions. While she claimed to not be aware of the revised paperwork policy, there is no dispute that she was at the July 1 meeting and was aware of the deadlines imposed by her

supervisor. She claimed to have a heavier caseload than her co-workers, but this is not supported by the record. She also argued that she would have completed the work, but for a major case that was assigned at the end of September that sidetracked her. Even if true, it doesn't explain why the Grievant's paperwork was not completed by the end of September. Further, she should have anticipated such a possibility and not have waited to the last moment to get her remaining cases done. What is revealed is a time management problem, which the record indicates has persisted throughout her career.

The Union

The Union asserts that the Grievant experienced an unusually high workload in the summer of 2003 that mitigates her inability to complete her paperwork by October 1. One of the other workers in the unit left in April, causing the Grievant to have a higher caseload. Further, a new case worker began in August and the Grievant was required to assist her in addition to her own work. This also hindered her ability to use protected time. The Grievant was also extremely thorough in preparation of her reports, causing the process to take more time. Her supervisor commented on the thoroughness of her reports after the discipline was issued. Further, the investigations were complete by the end of October; only the paperwork needed to be finished.

The County claimed that the Grievant had 17 incomplete cases as of October 1, but actually the supervisor misread her pending case list and only 2 cases remained to be completed at the end of September. There is no indication that the County would have disciplined her had they correctly calculated her caseload. On September 29, she was assigned a new case involving a child with multiple bone fractures. She contacted her supervisor on September 29 and told him that she could not complete her paperwork due to the complexity and importance of the new case. He indicated acknowledgement and approval.

During the summer of 2003, the Grievant worked 15-20 hours of overtime per week, which was unusually high, in order to get her paperwork done. In addition, she was handling a higher than average caseload and helping a new employee. She made a good faith effort to meet the deadline and was only prevented from doing so by an extremely difficult, high priority case, which her supervisor acknowledged. She only had 2 overdue cases at the time, not 17 as the County contended and should be commended for doing so well under extremely trying circumstances. Under the circumstances, the grievance should be sustained.

The County in Reply

The County asserts that the number of cases the Grievant had overdue on October 1 is irrelevant. She acknowledged having 2 cases overdue. This was in violation of the directive to have all overdue case paperwork completed by that date. Thus, the discipline was

warranted. Further, the case workers maintain their own pending case lists. Therefore, if the Grievant's list was so confusing that the supervisor could not decipher it, he cannot be blamed for misreading the number of cases she had not completed. Also, there is no evidence that the number of cases overdue played any part in the discipline decision. The important fact is that she was not up to date by October 1, not how many cases were incomplete.

The Union also mischaracterizes the Grievant's use of overtime. While she may have worked an average of 15-20 hours of overtime per week during the summer of 2003, there is no evidence this time was spent catching up on paperwork. Rather, she testified that she had an unusually high caseload and was spending time helping a new staff member get oriented. However commendable that may be, the Grievant violated a written directive from her supervisor, which she knew could lead to discipline, and was appropriately disciplined for it. Likewise, it is of no importance that the supervisor may have commended the Grievant for the thoroughness of her paperwork after the fact. There is no evidence that he ever told her to sacrifice quality for punctuality, or that he believed it was not possible to be both thorough and timely.

The Union also mischaracterizes the evidence when it suggests that the supervisor gave the Grievant approval to be late in completing her paperwork due to the battered child case assigned on September 29. Mr. Price did not testify to such a conversation and the Grievant's memory on the point is hazy, at best. The Grievant testified that when she told Mr. Price that the battered child case might prevent her from completing her paperwork on time, she believed that he stated that he understood. Her vague recall should not lead to a revocation of the discipline. Further, urgent cases do come up, which the Grievant should have been prepared for. By waiting until the last minute to complete her work, she ran the risk that such a case could come up and prevent her from getting her work done.

DISCUSSION

Article 1, Section 1.02, Paragraph 1.02.01 of the contract gives the County the authority to “. . . discipline, suspend, or discharge for just cause . . .” Furthermore, in the contract the standard is further clarified in Paragraph 1.02.10, which states: “The right of the Employer to determine and enforce standards of work production is fully recognized, and continued failure of an employee to produce on the basis of Employer standards will be due cause for discipline . . .”

In discipline cases such as this one, where the alleged wrongdoing does not rise to the level of criminal conduct, it is the employer's burden to establish by a preponderance of the evidence the existence of just cause for the discipline issued. As has been generally accepted among arbitrators, the determination of the existence of just cause involves the consideration of two factors. First, it must be shown that the employee committed an offense for which discipline is warranted. Second, if the allegations of the offense are established, the ensuing punishment must be appropriate in degree to the wrongdoing.

The undisputed facts of the case establish that the County had a policy requiring case paperwork to be completed by a date certain after the opening of the case file in order to comply with State standards. The policy specifies that case workers who do not comply with the deadlines will be disciplined. On July 1, 2003, the Unit Supervisor, Charles Price, issued a directive to the staff to get all paperwork caught up by September 1 and informed the staff that report deadlines were being reduced to 30 days. The Grievant was present at the staff meeting when the directive was issued. By September 1, all members of the staff, except the Grievant, were caught up with their paperwork. On September 2, Price advised the Grievant via email that he would extend her deadline 30 days until October 1, but that if she failed to have her paperwork caught up by then she would receive a reprimand. Price also offered the Grievant overtime and protected time to complete her work. Nevertheless, by October 1, she had not completed her work and a reprimand was issued on November 11.

For its part, the Union cites several factors in mitigation of the Grievant's failure to meet the deadline. These include a higher than average caseload during the summer of 2003, as well as extra time spent during the summer helping to get a new employee acclimated to her position. It further asserts that deadlines were not previously enforced and that the Grievant only had 2 cases overdue on October 1, rather than the 17 mentioned in the reprimand. Finally, the Grievant was assigned a high priority case on September 29, which prevented her from completing her paperwork. She explained this to Price on September 29 and believes she received his permission to postpone completing the reports.

This case is similar to LAFAYETTE COUNTY, CASE 82, NO. 59523, MA-11321 (SHAW, 11/19/01). In that case, the Grievant was also a Child Abuse Case Manager/Investigator for the County, who was disciplined and ultimately suspended for a number of infractions of Departmental rules, including the timely filing of case reports. The Department presented evidence that the Grievant was put on notice that her failure to meet deadlines would result in discipline and was offered assistance in completing her work which she declined. In sustaining the discipline, Arbitrator Shaw stated:

The one overriding complaint is that she is unable to meet the required time lines for filing the CAN (Child Abuse and Neglect) reports. As has been shown, her not doing so can have a substantive impact on the Department's ability to take the appropriate action on behalf of a child in need of protection. However, given the degree to which her supervisors have gone to assist her in getting timely, and her refusal to accept some of that assistance that might enable her to more quickly complete her reports, the Grievant must bear the responsibility for being untimely. Given the foregoing, and the serious consequences that can result from her failure to file her reports on time, it is concluded that the City [sic] had just cause to discipline the Grievant.

Here, likewise, the problem that resulted in discipline was a persistent failure on the Grievant's part to meet specified reporting deadlines. It additionally appears that this has been a historical problem, because the Grievant's performance review from October, 2002, which was entered into evidence, makes specific reference to time management problems and difficulty meeting dictation deadlines as areas of concern. Indeed, the Grievant herself, in the employee comments section of the review, acknowledged the difficulty of simultaneously conducting investigations and managing the attendant paperwork.

With respect to the Grievant's mitigation arguments, the County disputes that she had a higher caseload than other workers and Unit Supervisor Price testified that her caseload was similar to the other workers in the unit, who were able to complete their case reports on time. There is also no evidence in the record that prior to receiving the discipline the Grievant ever reported to her supervisor that her caseload or her work assisting the new employee were preventing her from getting caught up, even after receiving the September 2 email warning her of the possibility of discipline. While the Union places emphasis on the fact that only 2 cases were overdue, rather than 17, as the reprimand states, there is no evidence that the number of overdue cases was a determining factor in the decision to issue discipline. Rather, Price's September 2 email makes it clear that all cases were to be caught up to avoid discipline.

As to the September 29 case, the County does not dispute that the case was a serious one demanding high priority, but does dispute that Price gave the Grievant permission to miss the deadline on that basis. As far as the record shows, the Grievant decided to forego completing the reports in order to handle the new investigation and told Price on September 29 that the case would make completing her reports on time difficult, to which he allegedly responded, "I understand." She assumed from this that he agreed with her decision, but no information was offered or asked for concerning how many case reports had yet to be completed or what the expected date of completion was. My assumption and expectation would be that if the conversation was intended to elicit an extension of the deadline, that type of information would have been exchanged, especially if, as the Grievant testified, she only had 2 cases left to finish, requiring six to seven hours to complete.

Ultimately, the record reflects that the County had the contractual right to establish work production standards for its employees and to enforce them. The record also indicates that the production standards imposed here were not unreasonable, arbitrary or capricious. The timeliness standards were in accordance with State mandates and all the other Social Workers in the unit, with the exception of the Grievant, were able to meet them. Under the County policy, the Grievant could have been reprimanded for failure to meet the initial September 1 deadline, but instead she was given an extension of an additional 30 days, but was also specifically told that failure to meet the second deadline would result in discipline. There is no evidence that she disagreed with the reasonableness of the extended deadline. Despite this, she was unable to complete her work on the date set. Notwithstanding the assignment of a difficult case at the end of September, the evidence is insufficient to establish that she either sought or obtained an extension of the deadline on that basis. I find, therefore, that under the circumstances discipline was justified.

As the County notes, a verbal reprimand is the lowest possible level of discipline available. Once a determination has been made that discipline is appropriate, therefore, it is difficult to conclude that a verbal reprimand is too severe a penalty and I decline to do so here.

For the reasons set forth above, and based upon the record as a whole, I hereby enter the following

AWARD

The County did not violate the collective bargaining agreement when it reprimanded the Grievant for not having her paperwork up to date on October 1, 2003, and the grievance is, accordingly, dismissed.

Dated at Fond du Lac, Wisconsin, this 21st day of April, 2005.

John R. Emery /s

John R. Emery, Arbitrator