BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OUTAGAMIE COUNTY HIGHWAY DEPARTMENT EMPLOYEES UNION, LOCAL 455, OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

and

COUNTY OF OUTAGAMIE, WISCONSIN

Case 276
No. 63854
MA-12730

Appearances:

Mary B. Scoon, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 807 Saunders Road, Kaukauna, Wisconsin 54130, appearing on behalf of Outagamie County Highway Department Employees Union, Local 455, of the American Federation of State, County and Municipal Employees, AFL-CIO, referred to below as the Union.

James R. Macy, Davis & Kuelthau, S.C., Attorneys at Law, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54903-1278, appearing on behalf of County of Outagamie, Wisconsin, referred to below as the Employer or as the County.

ARBITRATION AWARD

The Union and the Employer are parties to a collective bargaining agreement, which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Employer and the Union jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin, a member of its staff, to serve as arbitrator to resolve a grievance filed on behalf of Michael Lillge, who is referred to below as the Grievant. Hearing was held on December 2, 2004, in Little Chute, Wisconsin. Connie Jacobs filed a transcript of the hearing with the Commission on December 21, 2004. The parties filed briefs and reply briefs by February 15, 2005.

ISSUES

The parties were unable to stipulate the issues for decision. The Employer states the issue thus:

> Did the County have proper cause within the meaning of Article I of the collective bargaining agreement when it issued a written reprimand to the Grievant dated January 16, 2004?

The Union states the issues thus:

> Did the County have just cause to discipline the Grievant?
>
> If not, what is the appropriate remedy?

I have adopted the Union's statement of issues as that appropriate to this record.

RELEVANT CONTRACT PROVISIONS

ARTICLE I - MANAGEMENT RIGHTS

1.01 Except as herein otherwise provided, the management of the work, and the direction of the work forces, including the right to . . . discipline for proper cause . . . is vested exclusively in the Employer. In keeping with the above, the Employer shall adopt and publish reasonable rules which may be reasonably amended from time to time. The Employer and the Union will cooperate in the enforcement thereof.

1.02 Proper cause shall be defined to include the drinking of alcoholic beverages while on duty or loitering while on duty. In the above cases, a first offense shall be discharge and dismissal from the service. The Employer agrees that any conference or reprimand regarding an employee's job performance or any matter which will become a part of the employee's personnel file shall be done after working hours to permit an employee union representation if so desired by the employee.

BACKGROUND

The grievance form challenges a written reprimand issued to the Grievant "for not being available for work." The grievance seeks that the County "Remove letter from file & any reference to it." The reprimand, issued on January 16, 2004 (references to dates are to 2004, unless otherwise stated), states:

> At 6:05 p.m. on January 15, 2004, Randy Roloff called (the Grievant's) home to ask him to report to work at 8:00 p.m., to plow snow on the overnight shift on USH 41. (The Grievant's wife) told Mr. Roloff that her husband was not available for work, as he was bowling. It has been a longstanding practice based on (the Grievant's) current assignment, that if conditions warrant he would be available for work at 8:00 p.m. and be able to work a 12-hour shift.

Roloff is the County's Patrol Superintendent and the Grievant's immediate supervisor.

The County has a service contract with the State of Wisconsin to maintain certain roads, including Highways 41 and 441. Both are busy and are the County's highest priority roads concerning snow removal. Pursuant to long practice, the County assigns specific sections of roads to its employees for winter maintenance. Some employees are not given specific section assignments so that they are available if an employee assigned a specific section is unavailable. For the past six to seven years, the Grievant has been assigned to plow the North section of Highway 41. Kevin Techlin shares the assignment. When snowplowing outside of regular hours is necessary, the County typically calls in one, but not both of them, to plow the section. The other employee is then available if plowing the section extends beyond a twelve hour shift.

On January 15, the Grievant's normal shift ended at 3:30 p.m. It was snowing when he left work and Techlin was plowing their section. Weather forecasts provided through Wisconsin's Department of Transportation had predicted snow for January 15 and 16. The amount predicted had risen through the course of the day on January 15 from one-half inch to from one to three inches. When the Grievant left work, he was not specifically instructed to wait for a call-in.

The Grievant is a member of a bowling league. On January 15, between 6:00 p.m. and 6:30 p.m., Roloff phoned the Grievant's home. The Grievant's wife answered the phone. Roloff informed her that he was looking for the Grievant because he wanted to relieve Techlin, who would have put in at least twelve hours by 8:00 p.m. She informed Roloff that the Grievant was bowling. When Roloff asked if there was a number at which the Grievant could be reached, she responded that he had been drinking. Roloff asked her to contact the Grievant or have him call back. The Grievant did not. After waiting as long as he thought advisable, Roloff called another operator to relieve Techlin. That operator's section is not Highway 41. Roloff called a number of operators to plow snow on January 15 and January 16. The Grievant was the only operator who did not call back and did not report for work.

On January 16, the Grievant reported for work at the start of his normal shift. He was directed to get a Union representative. He did so, and was asked why he was unavailable to plow snow the prior evening. That afternoon he received the written reprimand noted above.

The Position Description for Equipment Operator II states the following:

Duties and Responsibilities

. . .

- Plows snow from highways, spreading salt and sand as necessary.

. . .

Knowledge, Skills, and Abilities

. . .

- Demonstrated reliability in attendance and flexibility to work hours, especially in adverse weather conditions.

The County currently uses a form for the interview of applicants for the position of Equipment Operator I. Included among those questions is the following: "Would you mind being on call 24 hours during winter?" The County uses an outline to address the topics covered during the orientation of new employees. Included among those topics is, "Be Available for Winter Maintenance (no drinking, etc.)". The County's Employee Handbook states the following as Item 8 under the heading "**EMPLOYEE RESPONSIBILITY**": "Be available for emergencies and winter maintenance duties."

The County has disciplined employees for not being available for snow plowing. The Grievant received a written warning dated January 26, 1997, which states:

> (The Grievant) was given a direct order that if it snowed late on Sunday or early Monday morning, he would be called to work. At 8:09 p.m. Sunday, his supervisor called him and there was no answer.

The form notes no prior discipline "on this Matter". The County issued Jay Curtiss a written warning, dated January 27, 1997, for failing to be available to plow snow. Gary Mattson received warnings in February and in November of 1995 for failing to be available to plow snow.

The Grievant has worked for the County for roughly twenty-five years. He has received satisfactory or better evaluations as an Equipment Operator. He received an oral warning dated June 17, 2003, for backing a truck into a roller. On March 14, 2001, he

received a written warning for running a skidsteer loader into a pressure washer. He received an oral reprimand, confirmed in a written notice dated September 1, 1998, for abusing sick leave. He received a warning notice dated November 15, 1996, for raising a wing of a truck causing damage to its door. He received a warning notice dated December 21, 1993 for working on the shoulder of Highway 41 without a safety vest, and received a warning notice dated April 4, 1989 for damaging hydraulic hoses to a truck while removing its plow.

The balance of the background is best set forth as an overview of witness testimony.

Randy Roloff

Prior to becoming the County's Patrol Superintendent, Roloff served as an equipment operator for Marathon County. In his experience, operators understood that they had to be available for a call-in throughout the snowplowing season. Plowing is extremely important for public safety, and is the Highway Department's reason for being. He confirmed that candidates for County positions are informed during their interview that "7 x 24" availability during snowplowing season is part of the job. This point is addressed to existing employees during safety meetings.

The section plowed by the Grievant and Techlin is vital to transport within and through the County, and the County keeps it open twenty-four hours a day. Roloff typically calls Techlin first, but he, as other drivers, is not expected to work beyond twelve hours except in extreme situations. The Grievant fills in the next twelve hours if around-the-clock plowing is necessary. Experience as a driver is important to the maintenance of this section, and the County assigns sections so that a driver can develop an understanding of a specific piece of equipment and a specific section of road.

During the January 16 interview, the Grievant explained his unavailability thus: "Said he was bowling and he wasn't going to sit around home waiting for me to call him" (Transcript at 38). He views the Grievant as a good snowplow operator, and added that his failure to relieve Techlin on January 15 led to some friction between the two operators. He acknowledged that he phoned one operator on January 15 three times without getting an answer. However, the operator returned the call and reported for work.

He acknowledged that the County does not discipline every operator every time the operator is unavailable for a call-in. In Roloff's view, any employee who fails to be available for a call-in is counseled by a supervisor even if discipline is not imposed. The County tries to accommodate the personal lives of its employees, but needs the entire crew to make itself available for emergency call-in, particularly in winter. He believed that the entire crew shared this view, and that discipline to enforce the view is a rare event.

Alvin James Geurts

Geurts has served as County Highway Commissioner since 1998, and served as Patrol Superintendent for six years prior to that. Snowplowing is the Department's reason for being. During job interviews, the County stresses the need for "7 x 24" availability for winter maintenance. In his view, a candidate that did not affirm a willingness to meet that availability would not be hired. During the orientation of new employees, he highlights the need for full-time availability in winter. This point is also periodically covered in safety meetings and in employee notices.

The County does not discipline an operator for every instance of unavailability. Rather, the County disciplines on a case-by-case basis, which turns on the need for the call-in and the reasonableness of an employee's explanation for unavailability. Typically, an employee will be informally counseled at least once before the County considers a formal reprimand. In his view, the Grievant was aware of the need to make himself available to plow on January 15. Geurts once went to the Grievant's home when he believed the Grievant was deliberately not answering the phone. Combined with the Grievant's disciplinary record, the absence of a satisfactory explanation for the unavailability on January 15 made the written reprimand necessary.

The Grievant

The Grievant was not informed of the need for "7 x 24" availability when he interviewed to become a County employee. He did not, however, question the County's need to have employees available for a call-in. Rather, he did not believe there was any reason to believe he would be called in when he left for bowling. It was snowing when he left work at 3:30 p.m., and Techlin was out plowing their section, but weather reports called for the snow to taper off. When he left to go bowling, it was not snowing. When he returned home from bowling at about 9:30 p.m., it was not snowing. His wife informed him that Roloff had called, and that she had informed Roloff that he was bowling. She did not mention that Roloff wanted a call back. He went to bed after watching the news, reported to work the next morning and was shocked to find out that he faced discipline.

He believed that the County was able to cover for him with little difficulty. He was surprised to learn the County thought his section required an experienced operator, since he was assigned to it during his first winter. He was aware the County needs operators to be available to plow snow. He has waited during snow storms for call-ins that never came. He has volunteered to plow snow while on vacation. If the County has a policy regarding availability for call-in, he is unaware of it. Not all employees who are unavailable for call-in are disciplined. He has never been informally counseled regarding the need to make himself available for a call-in, and could not recall prior discipline on the point or Geurts having to

come to his house to check his availability. He summarized his view of the need to be available on a "7 x 24" basis thus:

> If it's snowing, I'll be available on a need-be basis, but a thirty percent chance of snow, I'm not gong to sit home waiting for the phone to ring when it's going to be snowing up in Shiocton or if it's a – whatever percentage of snow you want to talk about. If it's not going to be around here, and if it's not going to be anything more than six inches, you know, I got things I want to do, too. (Transcript at 86-87).

Al Hansen

Hansen has served the County as an Equipment Operator III for roughly eight years. He stated that unit members understand that they must be available to respond to emergency call-ins, but the County has never pushed a "7 x 24" view. The County does not typically give employees notice of the need to be available, outside of deer season, when it requires employees to leave a phone number where they can be reached if necessary. The County tries, during deer season, to give the ten most senior employees leave time, with the balance of the unit being permitted to hunt on a "weather-permitting" basis. Employees, including Hansen, have been unavailable for call-in without being disciplined. He was unaware of the County informally counseling any employee on this point. Typically, the County will not ask an employee who is unavailable by phone to return the call. One employee owns a cabin in the north, visits it virtually every winter weekend, and has never faced a reprimand for failing to call back after getting a phone message that it was snowing and employees were being called-in. Hansen heard that another employee received a call on January 15, was not available to take it, then returned the call only to find out the County had the number of employees it required. Like the Grievant, he was surprised to learn of the January 16 reprimand.

He was informed during the hiring process that he was expected to be available to plow snow when needed in the winter.

Jim Bennin

Bennin is a Mechanic, and has worked for the County for thirty years. He serves the Union as its Grievance Chairman, and wrote the grievance on behalf of the Grievant. He was aware that the County required employees to be available to plow snow, but the grievance questions whether the County has the unlimited right to discipline an employee who is not available when a call comes in.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The Employer's Initial Brief

After a review of the evidence, the Employer argues that the labor agreement clearly and unambiguously gives it the right to call in employees to plow snow. Article I grants the Employer the authority to implement reasonable rules and to manage the work force. Plowing snow is essential to the existence of the Highway Department. From the point of hire, the Employer alerts its employees to the requirement that they be available, on-call, whenever roads must be plowed or that they communicate their unavailability to the Employer. Each employee is aware that the rule is reasonable and can be enforced through progressive discipline.

A review of the record establishes that the Grievant has received prior counseling regarding the need "to make himself available for snowplowing duties." Beyond this, he has received discipline for a variety of offenses, including failing to make himself available for snowplowing duties. The "employer's burden in establishing cause regarding a written reprimand" is, under arbitral precedent, "a more relaxed standard than for greater forms of discipline." Here, the Employer "has been more than fair", since the Grievant knowingly made himself unavailable, and deliberately refused to return the Employer's phone call. As other employees, the Grievant has been counseled prior to any reprimand. More specifically, he has received a series of reprimands, and this makes the issuance of a written reprimand appropriate.

Arbitral precedent establishes that an arbitrator "is not permitted to substitute his personal judgment for that of management". The function is "that of a reviewing authority, not of a principal." Because the "written reprimand was not an abuse of discretion", the "grievance should be denied."

The Union's Initial Brief

After a review of the evidence, the Union contends that the "primary reason" for the grievance "is that the County's application of the rule, 'Be available for emergencies and winter maintenance duties', is unreasonable and inconsistent." That it was snowing when the Grievant left work obscures that the weather report called for clearing skies, and that it was not snowing when the Grievant left to bowl and returned home. The Employer did not instruct him to wait by the phone when he left work. The Grievant and other employees have not been available to plow snow in the past, yet received no discipline. The Employer typically does not ask an employee to return their call. Only during deer season does the Employer require employees to leave a number where they can be reached. That employees must be available for call-in does not mean they are answerable to the Employer on a "7 x 24 x 365" basis for

purposes of discipline. In fact, the Employer has not uniformly disciplined employees for unavailability when called.

That weather is variable means that "employees use their best judgment when they may or may not anticipate a call to plow snow." Contrary to the Employer's assertion, the Grievant is a long-term employee with a good work record. This makes the inconsistency of the Employer's actions even more evident, since short-term employees have been unavailable to plow snow, yet have not been disciplined.

The Union concludes that the evidence demands that "the Arbitrator sustain the grievance and order the County to remove the written reprimand, as well as any and all references to same, from the Grievant's personnel file(s)."

The Employer's Reply Brief

The Union's brief points to "no evidence to support" its claim that "the County's rule requiring highway employees to be available for snowplowing is unreasonable." The evidence establishing the need for the rule is thus unchallenged. Beyond this, "the Union also fails to put forth any evidence to suggest that the rule was unreasonable as applied to this Grievant." The evidence shows the Grievant should have known a call-in was likely. That the Grievant chose bowling over responding to the call-in establishes the need for discipline. He could have made himself available for a call, and still gone bowling. He chose instead to ignore the Employer entirely. This action caused hardship for the Employer and for the Grievant's fellow employees.

The Union's assertion that the Employer does not always discipline employees for failing to be available misses the point that discipline under the rule must proceed on the facts of each case. That all employees were called in on the evening the Grievant chose to bowl distinguishes this matter from those cited by the Union. The evidence establishes that "when employees could reasonably anticipate being called to plow snow, and they did not remain available, they were disciplined." The Union's arguments miss this point, and their assertion that the Grievant's work record can address it fundamentally misreads the evidence. The decision in WAUPACA COUNTY, MA-12708 (McGilligan, 02/2005) supports the Employer's reprimand of the Grievant.

The Union's Reply Brief

The Employer's characterization of the Grievant's disciplinary record is inaccurate. The cited incidents either have no bearing on a call-in, or are distinguishable. The prior warning regarding unavailability involved a situation where the Employer directed the Grievant to be available for plowing. In this case, the Employer gave no such order. Under the terms

of the reprimands issued the Grievant, additional discipline turns on "incidents of this type". Here, the prior discipline is not of the same type.

Evidence that the Employer counsels employees prior to discipline regarding unavailability fails to show counseling is uniformly applied. In fact, the evidence shows many cases where employees unavailable for a call-in were neither counseled nor disciplined. Employer evidence regarding weather reports falls short of demonstrating that considerable snow was probable. Rather, those reports show no more than the likelihood of less than two inches of snow. Thus, the evidence fails to establish that the Employer has applied its rules on availability to plow consistently or reasonably. Thus, there is no cause for the reprimand.

DISCUSSION

I have adopted the Union's statement of the issues. The County's is better rooted in the language of the labor agreement, but I have adopted the Union's to clarify that I do not see any practical difference between them. Defining agreement terms is within the parties' control. There is, however, no evidence that they used "proper cause" in Section 1.01 to mean something other than its commonly understood meaning in labor relations, which is to treat references to "just cause" or "proper cause" as synonymous. Arbitration commentators have noted this usage, see for example, *Management Rights*, Hill & Sinicropi, (BNA, 1986) at 99: "The term 'just cause' is generally held to be synonymous with 'cause,' 'proper cause,' or 'reasonable cause.'" See also *How Arbitration Works*, Elkouri & Elkouri, (BNA, 2003) at 931-932.

Thus, the issue for decision is whether the County had proper cause to issue the written reprimand of January 16. In my view, unless the parties stipulate otherwise, two elements define proper cause. The first is that the County must establish conduct by the Grievant in which it has a disciplinary interest. The second is that the County must establish that the discipline imposed reasonably reflects its disciplinary interest.

Application of the first element is, in a sense, simple. On the broadest level, there is no dispute that Department operators are expected to be available on an as-needed basis for winter snowplowing. Witness testimony from each party confirms this, as does the governing position description. Whether or not the Grievant received the interview questions or orientation of current applicants, it is evident that the County stresses availability for winter plowing to candidates and new hires.

What dispute there is on the first element turns on the application of this mutually understood but ill-defined requirement to the events of January 15. More specifically, the issue is whether the County has a disciplinary interest in the Grievant's conduct on that evening. The facts afford little support for the Grievant. It was snowing when he left work at

3:30 p.m., and he knew Techlin was plowing their section. After twelve hours, if there was a continued need for plowing, Techlin would need relief. Knowing this, the Grievant went bowling. He took no action make himself available for a call-in at or from his home, and took no action to notify the County of his unavailability. He made no attempt to return Roloff's call.

Union arguments that these facts are less than clear are belied by the Grievant's conduct on January 15 and his testimony. For example, Roloff testified he left a call-back message, and the Grievant testified that his wife did not convey it. There is, however, little ambiguity in the evidence. Roloff testified that the Grievant, on January 16, explained his unavailability on January 15 by stating he did not want to sit around and wait for a call. The Grievant's testimony on what availability for call-in means, which is quoted above, tracks Roloff's testimony. Thus, the evidence establishes that the Grievant's unavailability rested on personal choice.

This starkly poses whether the County has the disciplinary authority to enforce employee availability to plow snow. Viewed in the abstract, as a matter of contract this poses little interpretive difficulty. Section 1.01 grants the County the authority to manage and direct the work force. This authority is limited by the proper cause standard, which grants the Union the ability to shield employees from unreasonable application of the County's authority to manage.

This shield can be applied only on a case-by-case basis. In this case, the facts show no more than that the Grievant chose bowling over availability to plow snow. This affords the Union no factual basis to shield the Grievant. The conclusion that his discipline lacks proper cause, if extended to all employees, means the County lacks any authority to call-in its workforce. As a matter of contract, this would improperly use the proper cause standard to render the express authority of Section 1.01 meaningless. Viewed more practically, every employee who reports to work overtime hours gives up some part of their personal life. There is no contractual basis for the assertion that the Grievant can use the proper cause standard to make his personal choice more significant than that of any other employee. In sum, the evidence establishes the County has met the first element of proper cause.

As noted above, resolution of the first element is simple "in a sense." The Union's arguments, coupled with Hansen's and Bennin's testimony, show that the grievance questions the scope of the County's authority to enforce availability to plow snow. This is not a simple point. The Union forcefully argues that the County's authority is not policy-based, and, if unconstrained, could reflect less the need for an employee than management's attitude toward the employee. Underlying these arguments is an implicit questioning of whether the County is acting toward the Grievant in a sense beyond his availability to plow snow in January. Beyond this, the Union questions how much of an employee's personal life can be considered subject to the possibility of a call-in.

These arguments are well-stated and have persuasive force. Availability for call-in could be subject to a written policy. Authority to make such policy is not, however, within an arbitrator's authority. Nothing in Section 1.01 or 1.02 restricts County authority to discipline to conduct governed by policy. Beyond this, specifying when an employee is subject to call-in during a Wisconsin winter strains the ability of any drafter. Witness testimony from each party indicates how widely conditions vary within the County. The Grievant's assessment of the need for a call-in varies widely from Roloff's. Drafting a policy to address the basis for this variance is a formidable task. For example, to set availability for call-in at one inch of snow ignores that a one-half inch dusting of powdery snow on a one-half inch base of ice is not the same as an inch of snow. If policy is to be made, it must be written by the parties, not by a grievance arbitrator.

The most forceful point raised by the Union is that County discipline to enforce "7 x 24" availability risks less than even-handed treatment of employees. The strength of this point must be acknowledged, as discipline reflects case-by-case discretion. Contractually, the proper cause standard is the means to hedge the risk. The strength of the Union's arguments focuses, however, on points regarding future action toward the Grievant or other employees. As noted above, the proper cause standard must be applied case-by-case, based on established fact. Here, the evidence of abuse is weak. The assertion that the Grievant was not informally counseled ignores the January 26, 1997 reprimand and Geurts' visit to his home. The Union attempts to avoid this by noting that in 1997 the County told him to be available when he left work, while it failed to do so here. Whatever force this argument might have on other facts, it is belied here by the Grievant's testimony. He chose not to be available and chose to believe he could get away with it. The County could have made their case stronger by reminding him at the close of his shift that he needed to be available, but the weakness in the facts is traceable to the Grievant's conduct more than the County's. Beyond this, the Grievant's inability to remember any prior warnings underscores the County's belief that a forceful reminder was necessary.

Hansen's and Bennin's testimony underscores a legitimate concern that the County could abuse its authority. Determining such abuse in grievance arbitration demands evidence rather than speculation. The possibility that another employee called in on January 15 only to find that the County had all the workers it needed indicates potential for questioning the need for County discipline of the Grievant, since it successfully got the number of employees it needed. However, the fact remains that the other employee called in. This conduct can be extended unit-wide without undermining the County's authority to manage under Section 1.01. This highlights the type of fact through which the shield of proper cause can be invoked. More closely focusing on the type of conduct at issue here, an employee who notifies the County of personal business that may make the employee unavailable makes it possible for the County to plan a call-in, and sets up the type of conduct that can be extended unit-wide. If the County is aware of personal business that can make an employee unavailable and is aware that it will not

need the entire unit for a call-in, it is in a position to accommodate the personal business of the employee. This is essentially the situation regarding deer season, in which notice of personal business makes a unit-wide accommodation possible.

The Grievant's conduct is not like this. He made no effort to call-in at any point, thus attempting to make his personal choice of activity binding regarding the call-in. Extending his action unit-wide undermines the ability of the County to deploy a team of workers. Closely related to the Grievant's conduct is that of an employee who spends weekends at a distant cabin. There is no persuasive evidence that the County condones this conduct. That one employee has gotten away with making himself unavailable does not afford a shield to the Grievant. As with the Grievant's conduct on January 15, extending the shield of proper cause to this type of conduct grants the personal wishes of one employee a significance denied to other employee wishes. This conduct cannot be extended unit-wide without undermining the County's authority under Section 1.01.

Under the proper cause standard, whether or not the County has an eye on the Grievant's conduct beyond January 15 must be left to the future. The proper cause standard proceeds case-by-case on proven fact, and this reprimand concerns the events of January 15. The reprimand does not question whether he is generally a good employee. His evaluations confirm Roloff's observation that he is a good snowplow operator. That he is assigned a significant State section confirms this. More to the point, the existence of future incidents is in the Grievant's control. Availability for call-in need not be a cat-and-mouse game. The Grievant has to do no more than make himself available for call-in on evenings when he is directed to be available or when conditions at the close of his shift make call-in a reasonable probability. Beyond this, to hedge the risk of unavailability, he has to do no more than make the County aware of potential unavailability either prior to or in response to a call-in. The issue concerning the reprimand is not whether the Grievant is a "good employee" but whether he needs to modify his conduct during conditions in which a call-in is probable. A higher level of discipline or discharge will become an issue only if he fails to modify his conduct. To a significant degree, that issue lies within his control.

Union concerns regarding how much of an employee's personal life must be sacrificed to address availability for winter call-in cannot be answered in the abstract. Here again, the answer under the contract must be made on a case-by-case basis in which the reasonableness of the County's and an employee's conduct is assessed under the proper cause standard. The reasonableness of the County's conduct can turn on the basis for the call-in. A reprimand regarding unavailability is different regarding a unit-wide call-in to face a blizzard than for an employee or two to "chase drifts." An employee who leaves home to face a medical emergency of a family member poses a different case than an employee who leaves home to bowl. Similarly, an employee who leaves home to bowl after notifying the County is on a different footing than an employee who does not. The Union's concerns, although forceful,

cannot be addressed in the absence of actual fact. Like the Grievant's, the County's exercise of discretion becomes more reasonable to the extent it can be applied unit-wide. Here, the unreasonableness of the Grievant's conduct is highlighted by noting that it cannot be made unit-wide without undermining the County's ability to get roads plowed. If the County were proven to be disciplining the Grievant for conduct condoned from other employees, the unreasonableness of the action is demonstrated in the impossibility of unit-wide application.

The second element does not pose a significantly disputed point. As discussed above, the evidence shows the Grievant has a prior warning regarding similar conduct. The Union persuasively notes that the balance of the Grievant's disciplinary history is dated and related to dissimilar conduct. The fact remains that the Grievant was aware of the County's disciplinary interest in his availability to work during winter snowfalls. The County has established a disciplinary interest in his unavailability on January 15. Against this background, the County's issuance of a written reprimand for his conduct on January 15 is reasonable.

Since the County has met each element of the proper cause analysis, I have denied the grievance.

AWARD

The County did have just cause to discipline the Grievant.

The grievance is therefore, denied.

Dated at Madison, Wisconsin, this 25th day of April, 2005.

Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

RBM/gjc
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