

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 67, AFSCME, AFL-CIO

and

CITY OF RACINE

Case 696

No. 63411

MA-12578

Appearances:

Michael Wilson and Thomas Berger, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Guadalupe Villarreal, Deputy City Attorney, appearing on behalf of the City.

ARBITRATION AWARD

The Union and the City named above are parties to a collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and decide the grievance of Rene Ortiz. The undersigned was appointed and held hearings on November 9 and 18, 2004, in Racine, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on July 19, 2005.

ISSUE

The parties ask:

Did the Employer violate the collective bargaining agreement when it imposed a 10-day suspension on November 21, 2003, for the Grievant's violation of the work rules on October 8, 2003? If so, what is the appropriate remedy?

BACKGROUND

The Grievant, Rene Ortiz, has been an employee of the City for over 29 years. For the last several years, he has been a bridge tender. On October 8, 2003, he was on duty when a pedestrian fell to his death from the bridge as it was raised. The City imposed a 10-day suspension on the Grievant, which was grieved and moved to arbitration.

The Grievant had worked at both the Main Street bridge and the State Street bridge for 16 years. The bridges are located over the Root River and are raised during the season for boaters coming in and out of the river to Lake Michigan. The accident that occurred on October 8th was at the Main Street bridge. There is a west (or north side) tower that is manned and an east (or south side) tower that is unmanned. There is only one person on duty at a time. The tower sits at the base of the bridge leaf that opens. The bridge span that opens is not very long, and pedestrians and traffic can quickly cross it in a matter of some seconds. The bridges are opened every 20 minutes — on the hour, 20 and 40 minutes after the hour — if there is a boater that signals to come in or out. They could be opened more frequently for an emergency.

On October 8, 2003,¹ the Grievant arrived for work before 7:00 a.m. It was a sunny day. The Grievant did not carry a lunch box to work (as later reported by another witness, the boater) and relieved Tom Love from duty. Love told the Grievant that he had a boat for his 7:00 o'clock lift, and the Grievant noticed the boat waiting, a cruiser called the "Phantom." The Grievant went through his usual routine, making sure the monitor was the way he wanted it with a wide view of the whole bridge, and that both the marine and land radios were on. The marine radio is to communicate with all boaters, the Sheriff and the Coast Guard. The land radio picks up Police, DPW, and the Parks Department. There is also a microphone to communicate with pedestrians on the bridge and boats, and the Grievant's routine includes checking the microphone buttons to make sure they are on and set at the right volume. In the north or west bridge tower, the bridge tender stands so that he looks south with a console with instruments in front of him. There is box on the console to the right to adjust the volume to communicate with boaters and pedestrians. The box obstructs the view of the bridge somewhat.

The Grievant then proceeded with the 7:00 a.m. lift. He looked at the monitor, and checked the street by leaning over to his left to see that street level and the entrance of the door were clear. He took a couple of steps to the left to look to the north, then stepped back to the console. He did not see anything. At the console, he blew the horn and activated the gates, then turned the key. That does not bring the gates down automatically, and the Grievant has to hold the handle for the gates to come down. At that point, he watched the console and glanced to his left and glanced at the monitor. He watched for cars because the gates were not down or pedestrians to might try to cross. He saw nothing. During the process of lowering the gates,

¹ The year of 2003 will be the year of dates mentioned after this, unless otherwise noted.

he checked to his left and saw a woman wearing a yellow jacket on the other side of the gates. She was secure, out of harm's way on the north side of the gates. One cannot see the base of the building of the bridge tower or the cove by the building when looking down from the top of the tower but part of the sidewalk is visible.

As the gate went down, the span and tail locks started unlocking, and the bridge started to rise. The Grievant was at the console as the bridge started going up, he saw the woman in the yellow jacket still behind the gates, and then he received a call from the "Phantom" on the emergency channel, Channel 16. The Grievant heard the boater say: "Phantom calling the Main Street bridge, calling the Main Street bridge." A few seconds passed and the boater called the bridge again in the same manner. The correct procedure is to continue the lift unless the call from the boater was an emergency. He did not perceive the boater's call to be an emergency. During October, as boaters put their boats away for the winter, they will often call the bridge to say something like — see you next season — as they go in or out of the river. The fact that the boater called on Channel 16 did not alert the Grievant that it was an emergency. The Grievant did not answer the boater until the boater made three calls.

The Grievant waited until the bridge was all the way up until he answered the boater, because he was concentrating on the panel and making sure that everything was going correctly. Brakes can malfunction or problems can occur. The procedure calls for the bridge tender to keep on the monitor and not answer the phone or anything unless there is a broadcast saying it is an emergency. If there were an emergency, the bridge tender can hit the emergency stop button which shuts the bridge lift procedure down. When the bridge stopped moving, the Grievant called the boater, who asked the Grievant if he saw a person hanging around the bridge. The Grievant asked him if he was referring to the woman in the yellow jacket, and the boater replied — no. That was the first indication to the Grievant that something was wrong. The Grievant would have hit the emergency button if the boater had sent him a distress call. He followed all his normal procedures and did everything the way he had been trained to do.

The Grievant then lowered the bridge and saw the Police and Fire Departments were already there. After the bridge was secure, he ran down to let them inside. They had received a telephone call that someone fell off the bridge or in the bridge. The Grievant went out on the deck of the bridge with an officer and a fireman and looked in the water but no one was in the water. The Grievant thought that a person might have fallen into the pit, an area under the bridge which is open when the bridge goes up. The pit is also the area where the base of the leaf goes down and under the street level during a lift. The policeman, fireman and the Grievant found the man lying in the pit area in the machine room.

The boater is James Karaszewski, who was going out to the lake to do some fishing on October 8th. Karaszewski keeps his boat on the west side of the bridge, the second slip from the bridge, which is about 250 feet away from the bridge. He has gone under the bridge between 100 to 150 times in a five-year period. He thought that the bridge opened on the hour and every half hour, and he would signal the bridge tender with one long and one short blast of

the horn. He found the weather to be breezy and partly cloudy. As Karaszewski maneuvered his boat around in the river, he saw a car pull up and park behind the first car where the bridge tenders park. He testified that he saw the bridge tender with a lunch box and figured there was a shift change. The other bridge tender had already acknowledged his presence with a blast of the horn back to him.

Karaszewski sounded the horn again at about 7:01 a.m. and then the bells for the gates started going off. The wind had blown his boat toward the tower, so he pulled out into the river to make a turn and swing around and go under the bridge. When Karaszewski turned to head under the bridge, he saw a person walking south on the bridge — he thought the person was about halfway out on the first part or leaf of the bridge. He expected to hear the bridge tender get on the loud speaker to tell the pedestrian to get off the bridge, but that didn't happen and the man kept walking toward the south. The pedestrian was about at the middle of the leaf when it started to go up.

Karaszewski testified that he called: "Bridge tender, bridge tender, you have a person on the bridge." He was approximately 120 feet from the bridge, just finishing his swing turning in the river to straighten the boat out and run under the bridge. He called a second time, about 75 feet from the bridge, with the same message. When he didn't get a response, he thought his radio wasn't working, so he turned the other radio on and made the same call. At that point, he was under the bridge. He could hear his call on the other radio, so he knew both radios were working, but he still did not get a response. At the second call, he estimated that the pedestrian was within three or four feet of the middle, where the bridge leaves divide. The pedestrian did not seem to know what to do — Karaszewski thought that he was going to jump over to the other side of the bridge at first, but then he turned and started to walk back northbound toward the bridge tower. Karaszewski saw the pedestrian fall and grab a prong or structural brace, either the second or third one down on the railing. He lost sight of the pedestrian as his boat moved toward the bridge and passed under it. He made one more call when he was coming out the other side of the bridge and when he was about 50 or 60 feet past the bridge, the bridge tender responded and asked if there was a person wearing a yellow jacket. He told the bridge tender no. He thought the pedestrian was wearing dark clothing. By that time, his boat was by the Chartroom and the bridge was almost all the way up.

The Grievant testified that if he had heard the message that Karaszewski claims to have said — that there was a person on the bridge — he would have considered it to be an emergency and should have responded to that call.

Karaszewski continued to go out fishing and was hailed on the radio by the Racine County Sheriff's Department and told to come by when he was done fishing. When he returned about mid morning, he walked over to the Sheriff's Department and talked to the water patrol office. Later, he got a phone call from a detective who met him at his house. The detective's incident report states that Karaszewski saw the man walk south to the middle of the bridge as it was going up, then turn and walk northbound, then stop and go back south to

the center of the bridge. Then the report states that Karaszewski saw the pedestrian turn again and walk north but the bridge was at such an angle that he fell and was hanging onto the railing as the bridge went up. Karaszewski found the report to be inaccurate in the respect that it said "northbound" at one point where it should have been "southbound." It was also inaccurate as to the time that he arrived at his boat, and his name was spelled with a "C" instead of a "K."

The Grievant gave statements to an officer and later to a detective. Joe Golden, the Superintendent of Public Works, went down to the bridge along with another supervisor, William Folstrom, upon hearing about the accident. The decedent was still lying in the pit area when Golden and Folstrom arrived. Golden testified that his first concern was for the Grievant, who was shook up. They removed him from duty. The Grievant was taken back to the DPW field office. The detective asked if the Grievant would go to the hospital for a blood test and he agreed to go. After he came back, Golden told him to take the rest of the day off as well as the next day. The Grievant gave Jeff Fidler, the General Supervisor in DPW, a report, and Fidler wrote it down for Golden. Fidler's report states:

On Wednesday October 8, 2003, a man fell to his death from the Main Street Bridge during a lift which occurred at 7:00 A.M. The bridge tender (Rene Ortiz) stated he never saw the man at anytime preceding or during the lift. Rene said a boater was in the river waiting for the bridge to open at 7:00 A.M. when he reported for work. After he relieved Tom Love from duty, Rene said he checked the bridge for pedestrians, and after seeing no one on the bridge, he proceeded to sound the horn, and activate the signals to stop vehicular traffic. He then checked the monitor and the mirror once again looking for any pedestrian traffic on the bridge. Rene said he did see a woman wearing a yellow jacket standing behind the gate control on the Northwest sidewalk area of the bridge. Seeing she was secure behind the gate, Rene proceeded to lift the bridge. At some point during the lift Rene received a radio call from the boater who was passing underneath the bridge. He did not answer him right away as he could not divert his attention from the control panel until the bridge span fully opened. Rene said he answered the 2nd call from the boater who asked him if he saw the person hanging around the bridge. Rene said he looked around and saw the woman in the yellow jacket still standing outside the gate. He answered "you mean the lady in the yellow coat?" The boater said no, someone else. Rene said he looked around again, checked both the monitor and the mirror, and still did not see anyone. He then proceeded to lower the bridge. Upon completing the lift, Rene ran down to see if anyone was in the river. He did not see anyone. He then went down below the bridge to check the pit area. It was here he discovered the body laying at the bottom of the north pit. Rene went back up to street level and by that time, the Racine Police Department was at the scene.

The Grievant went to counseling the day of the accident and continued in counseling for a period of time. He had a long weekend after the accident and came back to work the following Tuesday night for third shift work on the bridge. He continued to work on the bridge until the first Sunday in December when it closed for the end of the season. On November 21st, he was given a disciplinary notice for a 10-day suspension. The disciplinary notice stated:

On Wednesday October 8, 2003 you were the bridge tender on duty at the Main Street bridge when a man fell to his death during a lift. There has been a thorough investigation conducted by the District Attorney's office and they have determined that the death was accidental. However, the final report does contain numerous statements from witnesses that place this person on or near the middle of the bridge just prior to and during the actual lift. I, along with the Assist. Commissioner, the Assist. City Attorney and the Assist. Human Resources Director have conducted our own investigation. We find that had you been performing your job duties in a proper manner you should have seen this person either prior to or shortly after the beginning of the lift and subsequently aborted the lift. This is a violation of work rule "Q. Work Performance, Sec.e) Negligence in Performing Assigned Duties." Consequently you will be suspended without pay for 10 working days beginning on Tuesday December 2, 2003 and continuing thru Tuesday December 16, 2003. Please be advised that any further violations of this nature will result in the appropriate disciplinary action including possible termination.

The Grievant has lifted the bridge thousands of times without incident before October 8th. He has always used the same procedure as he did on October 8th. During some lifts, cars or vehicular traffic attempt to go through the gates or the bridge tenders have to chase people back from the bridge. People will sometimes continue to walk even though the gates are down to watch boats go by. The bridge tenders use the microphone to tell people to get off the bridge in those circumstances.

The bridge tender is not always able to see the middle of the bridge where the two leaves meet because there was a box on the console. If the bridge tender moved to the right or left, he could see the middle of the bridge. The bridge tender's first responsibility is to see that there are no pedestrians on the bridge before he touches any buttons and lowers the gates.

With the monitor set as a wide screen, the bridge tender should have been able to see a person walking on the bridge through the monitor. The Grievant testified that if the decedent had been in the location that the boater put him, he could have seen him if he was looking right there at that time. However, when he looked at that location, he did not see anything. The Grievant would be able to see the middle of the bridge when it splits for a short time as it rises, then it goes over the top of the tower and is out of sight.

No one actually saw the decedent in the blind spot behind the bridge tower. It is possible for a person to be behind the tower and the cameras and mirrors would not show him. It is fairly easy to duck under or climb over the gates when they are down.

Fidler handles scheduling and training and any other problems with the bridges. The Main Street bridge is eight years old. Fidler explained the procedure for lifting the bridge at hearing. First, the bridge tender would make sure the bridge is clear of all pedestrian and vehicular traffic. He then activates overhead traffic signals that turn red and bells go off to get traffic to stop. The bridge tender's view is through the windows on the tower, mirrors to see the sidewalk area by the tower, and a camera on the other tower across the bridge that pans the whole bridge area and sidewalk area under the manned tower. Once the bridge tender is sure that there is no vehicular or pedestrian traffic on the bridge, he lowers the gates — first the on-coming gates to stop traffic, then the off-going gates. Before lowering the off-going gates, the bridge tender is to check again for any kind of traffic. Pedestrians could duck under the gates and have done so in the past. The bridge tender starts the lift by facing south in front of the console with the controls. The camera on the opposite tower shows through a monitor to the right of the bridge tender. To start to raise the bridge, the bridge tender would hit a knob that would activate the bridge. There is a 20 second delay after he hits the knob before the bridge starts to go up. Once the bridge is raised, it is supposed to go up to its highest position. Then the boat traffic is to come through. After the boat traffic clears, the bridge tenders sounds a horn and lowers the bridge. When the tip and tail locks engage, the gates are opened and the bells deactivated. The sequence for opening and closing the leaves of the bridge take approximately 4 minutes and 45 seconds altogether. The procedure and approximate time frames are as follows: (City Ex. #10, Fidler's timing)

(1) Blow horn	5 sec
(2) Turn "Bridge Control" key switch to on position	8 sec
(3) Set Traffic signals to Red (this will activate warning bells)	16 sec
(4) Lower On Coming Gates	24 sec
(5) Lower Off Going Gates	32 sec
(6) Turn the "Full Auto" control switch to Auto Raise	45 sec
(7) Span and Tail Locks draw – Bridge starts to raise	56 sec
(8) Bridge is in Fully Open Position	2:15 sec
(9) Bridge begins to close	2:25 sec
(10) Bridge is in down position	3:55 sec
(11) Span and Tail Locks drive – Brakes are set	4:32 sec
(12) Gates are opened – Traffic Lights switch to green	4:45 sec

Fidler estimated that the bridge is lifted between 1,000 and 1,500 times a year, with most of the lifts on the first shift between 7:00 a.m. and 3:00 p.m. Procedures call for warning anyone within the gates to get back behind the gates and to not lift the bridge unless everyone is behind the gates. There is a big red button on the console called the emergency stop button which will stop the bridge.

A person's height could affect his or her vision, with a shorter person having less vision to see below the tower. Fidler, who is 6'1" (about 4 inches taller than the Grievant) found that he could see about 45 feet from the middle of the bridge to the back of it. The bridge tender also has to watch the river traffic to make sure all boats are clear of the bridge before lowering it.

Fidler recommended a ten-day suspension as discipline, based on the fact that there was a fatality involved, that there were means to observe people on the bridge, that the Grievant was experienced and had many years of bridge tending, that the boater attempted to stop the incident, and that there was no response until it was too late. The Assistant Manager of Human Resources, Terry Parker, served as the Interim Director of Human Resources during October and November, the months of the accident and the following discipline. Parker took part in the determination of the disciplinary action, and noted that the Grievant's length of employment and work record was taken into consideration. The Grievant was a long-term employee with no major record of discipline. He had never had an episode on the bridge, had not missed work, or done anything that was cause for discipline while he was a bridge tender. Golden was also involved in the discipline and found that the Grievant should have seen the pedestrian from the large window in the tower. The Assistant Commission of Public Works, Tom Eeg, was also involved in the City's investigation of the incident. Eeg, Parker, Fidler and Golden made the disciplinary determination, and they discussed it with the Assistant City Attorney. Golden felt that the boater was the best witness because he had the best view of the bridge and was a credible witness. Golden testified that when the boater called the Grievant in the tower, the Grievant should have been scanning the entire bridge, and if there was any doubt in his mind that someone was on the bridge, he should have pressed the emergency button.

The Union met with management in November. Former Union President Doug Dresen was present along with current President Scott Sharp and the Grievant, and Golden and Fidler were there for management. Dresen recalled the Grievant saying that he heard something such as "bridge tender, bridge tender" but there was no SOS or emergency call, so the Grievant continued the process of raising the bridge. Sharp had the same recollection.

The Medical Examiner for Racine County, Thomas Terry, decided that the death of the pedestrian was accidental, that he died as a result of hitting his head on the concrete wall. He noted that the railing on the bridge can be used like a ladder when the bridge goes up and becomes vertical. One could climb up or down and use the railing like an extension ladder. However, the distance between the prongs on the railing is about five feet.

The Grievant attended yearly meetings involving the bridge tenders and management. The bridge tenders had complained in the past about a mirror by the console on the west tower and told management that if it could be bigger, they could get a better view down the street to pick up blind spots directly below the tower. There is a little cove just to the north of the door to the tower and the bridge tenders noted that somebody could be there and they could not see

him or her. The mirror was changed after the accident and replaced with a larger mirror that improved the visibility of the blind spots. Another mirror was also added after the accident. The bridge tenders also complained about the monitor, which was hard to see when it rained and got shadows when the sun was out. With the shadows on the monitor, the bridge tenders could not detect what was on the bridge at crucial points. They watch the monitors for pedestrians and traffic on the bridge. They also move back and forth in the tower to monitor traffic.

The Arbitrator was given a tour of the bridge tower during the hearing. She was asked to observe the outside of the north and south towers, the console in the tower, the location of the camera on the south tower, the monitor for that camera in the north tower, the control buttons including the emergency button, the north and south leaves of the bridge, the mirror on the east side of the north tower, the location of the bathroom in the north tower, the north leaf as it moved from its down position to the upright position as well as the entire sequence from start to finish with various bells and lights going.

DISCUSSION

The City has cited a violation of the work rule regarding negligence, which states that negligence in performing assigned duties is prohibited conduct which may result in disciplinary action ranging from written and oral reprimands to immediate discharge, depending on the conduct and number of infractions. It is the City's contention that the Grievant was negligent because he did not see the pedestrian on the bridge and should have seen him. No one disputes the fact that the Grievant did not see the pedestrian. All agree that if the Grievant had seen someone on the bridge, he would have hit the emergency button and stopped the lift.

The City believes that the Grievant should have seen the pedestrian either in the mirror or the monitor or by his own observation from the window of the tower. The City asserts that the Grievant should have seen him when he started the lift sequence because the pedestrian was in the middle of the bridge and within the Grievant's direct sight or also on the monitor. Moreover, there was Karaszewski's call to alert him that someone was on the bridge. While the Grievant claimed that Karaszewski only said "Phantom to Main Street Bridge," the Grievant asked Karaszewski on the last call whether it was the woman in the yellow jacket. Thus, the Grievant must have heard warnings about a person on the bridge because he inquired about the person that he admits to have seen, a woman wearing a yellow jacket, according to the City.

However, the Arbitrator finds that the Grievant's version of the boater's call must have been correct – that the boater said "Phantom calling the Main Street Bridge, calling the Main Street Bridge" – and that the boater did not indicate there was an emergency.² It must be the

² It makes no difference whether Karaszewski said "Phantom calling the Main Street Bridge" or whether he prefaced his call by saying "Bridge tender, bridge tender," because, as noted, had the communication indicated an emergency, the result would have been different. The essential finding is that there was no emergency indication from the boater during the initial calls to the bridge tower.

correct version because everyone agrees that had there been an emergency, the Grievant would have hit the emergency stop button. If Karaszewski had said that there was a pedestrian or person on the bridge, the Grievant would have considered it to be an emergency. Then he would have hit the stop button. Everyone agrees on that. It was not until the bridge stopped moving that the Grievant could call Karaszewski back. It was then that Karaszewski asked him if he saw someone on the bridge, and they had the discussion about the woman in the yellow jacket.

The City maintains that the Grievant should have seen the decedent at some point along the process before he lifted the bridge, or at various points during the incident. The City believes the Grievant should have seen him as he walked toward the middle of the bridge or when he was nearly at the middle of the bridge or when the Grievant started the lift.

At first blush, the City's contention appears to make good sense. A bridge tender is physically present to prevent people and vehicles from being on the bridge. Otherwise, the bridge could be opened by some computer manned somewhere else. So it is easy to assume that the Grievant should have seen the decedent.

However, *the Grievant did nothing wrong!* He followed all the correct procedures, and the City cannot point to anything that the Grievant did wrong. He took normal precautions, looked for pedestrians, saw the woman in the yellow jacket safely behind the gates. The bridge is not long, and someone in a blind spot when the bridge tender made his check could have easily been out on the bridge in a few seconds. The bridge tender has much to look at – the monitors, the panel controls, the river traffic, and the bridge itself. Between those checks, it is possible to miss something on the bridge due to the blind spots near the base of the tower and the base and top of the bridge as the lift proceeds, as well as shadows in the monitors.

The timing of the sequence also shows that there is plenty of time for a person to both get into and out of harm's way during the sequence. The horn goes off first and it is loud and can be heard easily for some distance from the bridge itself. Then there are 56 seconds before the bridge actually starts to lift. During that minute, a person could get out to the middle or more or get off the bridge easily, as the bridge is not very long. It is impossible to determine where the decedent was when the sequence was played out, and at what point he walked onto the bridge, or at what point the Grievant looked at the bridge, when his sight would have been hindered by the box on the console, or when the decedent escaped detection because of the blind spots or shadows. Karaszewski could not place the time when the decedent went out on the bridge because he did not see him until he turned his boat around to make the run under the bridge. The Arbitrator's tour of the bridge tower and view of the lift convinces her that a person can quickly move from being out of the bridge tender's sight to the middle of the bridge in a few seconds. It is possible for the accident to have happened just as the Grievant said it happened, without the Grievant doing anything wrong.

Whether or not the decedent was mentally compromised is irrelevant for the purposes of looking at negligence, because the same duty of care is owed to everyone on or near the bridge during the lift procedure. The only relevance of the decedent's mental state is that it

could provide an explanation for why the decedent did not act like a reasonable person would be expected to act under the circumstances. A reasonable person would have gotten off of the bridge as quickly as possible or never gone out there when he heard the horn, bells, or gates coming down. However, it is not the decedent's conduct that is being weighed in this proceeding, it is the Grievant's conduct that is at issue.

The Grievant followed the procedure perfectly – the City cannot find fault with his procedures. The City knew that he had checked the monitors and windows for pedestrians and had seen the woman in the yellow jacket. The bridge tenders continue to check during the lift but the controls at the panel and the boats in the river become the focus during the lift. There are lights and colors to indicate the position of the span locks, tail locks, brakes, span, traffic gates and lights. There are bells and horns. Fidler's memo to Golden indicated that the Grievant did not answer the boater right away as he could not divert his attention from the control panel until the span fully opened. Nothing wrong with that – because there was no indication of an emergency. Had there been any indication of an emergency, everyone agrees that the Grievant would have hit the emergency stop button. The system is designed for safety, but no one can guarantee that something will not go wrong at some point.

There is no evidence that the Grievant was negligent. There is no evidence that he did anything wrong. Thus, there is no just cause for discipline.

This is a very sad case. But not every case involving injury or death of a citizen under the watch of a public employee must result in discipline. Many do. This one does not deserve to because there is no just cause for discipline. There is no proof of negligence and there is every indication that the Grievant acted correctly at all times. Therefore, the discipline should not stand.

AWARD

The grievance is sustained.

The City did not have just cause to discipline the Grievant, Rene Ortiz, for the incident occurring on October 8, 2003. The City is ordered to make the Grievant whole by paying to him the sum on money lost for the days of suspension and to remove the disciplinary suspension notice from his personnel file.

Dated at Elkhorn, Wisconsin this 9th day of August, 2005.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator

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