

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OZAUKEE COUNTY LASATA CARE CENTER EMPLOYEES, LOCAL 905

and

OZAUKEE COUNTY

Case 66
No. 64422
MA-12894

(Godersky Grievance)

Appearances:

Mr. Thomas A. Bauer and Mr. Benjamin M. Barth, Labor Consultants, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin, appearing on behalf of the Ozaukee County Lasata Care Center Employees, Local 905.

Mr. John Kuhnmuensch, Human Resources Director, Ozaukee County, 121 West Main Street, P.O. Box 994, Port Washington, Wisconsin, appearing on behalf of Ozaukee County.

ARBITRATION AWARD

Ozaukee County Lasata Care Center Employees, Local 905, hereinafter "Union," and Ozaukee County, hereinafter "County," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators to the parties in order to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on May 11, 2005, in Port Washington, Wisconsin. The hearing was transcribed. The parties submitted post-hearing briefs, the last of which was received August 2, 2005, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated that there were no procedural issues in dispute, but were unable to agree to the substantive issues. The parties affirmatively authorized the Arbitrator to frame the substantive issues.

The County proposed the following as the substantive issues:

Did the County violate the expressed or implied terms of the collective bargaining agreement when it accepted the Grievant's resignation letter? If so, what is the appropriate remedy?

The Association proposed the following as the substantive issues:

Did the Employer violate the expressed or implied terms of the collective bargaining agreement when it accepted the Grievant's resignation letter that was not processed according to Section 7.03? If so, what is the appropriate remedy?

Having considered the evidence and arguments of the parties, I frame the issues as:

Whether the County violated the collective bargaining agreement when it accepted the Grievant's letter of resignation on September 14, 2004? If so, what is the appropriate remedy?

BACKGROUND AND FACTS

The Grievant, Caron Godersky, was a 19 year employee of the County. Godersky began her employment with the County as a Certified Nursing Assistant, then worked as a Unit Secretary and most recently held the position of Nursing Clerk. The last day the Grievant worked for the County was September 20, 2004, although she was paid through October 15, 2004. The Grievant's supervisor was Stephanie Eron, Director of Nursing. There were no work performance deficiencies noted in the Grievant's annual evaluations, although she received an oral warning in August 2004 for punching another employee's time card.

As Nursing Clerk, the Grievant was responsible for preparing and maintaining a three shift, twenty-four hour per day, seven days per week, nursing unit assignment schedule for approximately 140 County employees. This included finding replacement staff for vacation requests and absences. Godersky held the Nursing Clerk position for about five years until her resignation letter was accepted by the County in September

2004. The Grievant's general work hours were from 6 a.m. to 3 p.m., Monday through Friday.

On August 20, 2005, Pat Coraggio, Labor Consultant, sent a letter to Ralph Luedtke, Lasata Care Center Administrator, regarding the Grievant. The letter alleged that the Grievant was not capable of handling the scheduling and recommended that the Grievant be relieved of the assignment.

During the latter part of August, 2004, Barb Schlosser went to Luedtke and told him that the Grievant was receiving threatening telephone calls at her home. Luedtke initiated a meeting with the Grievant. The Grievant reported that she began receiving harassing and threatening telephone calls at her home residence on August 23, 2004. The callers told the Grievant that she should quit her job and that if she did not quit, they would see to it that she would no longer work for the County. The callers inquired as to whether she was comfortable with her babysitter which the Grievant concluded was a threat to harm her children. The callers warned the Grievant against notifying the police stating that if she did, she would not be around to find out the identity of the callers. As a result, the Grievant did not consult law enforcement. Luedtke referred the Grievant to the County Employee Assistance Program, told her to take a couple days of work off, without pay and recommended that she contact law enforcement. The Grievant did not contact EAP or any law enforcement representatives. Luedtke telephoned the County Sheriff regarding the telephone calls. The Sheriff referred Luedtke to the Port Washington Police Department since the Grievant resided in the City's jurisdiction. Luedtke filed a report with the police department on behalf of the Grievant.

After the County became aware of the threatening telephone calls, John Kuehnmuensch, County Human Resources Director, sent an e-mail communication to Ben Barth, Association Labor Consultant, which informed him that Godersky was receiving threatening telephone calls and requested the Association's assistance in investigating and preventing any future threatening calls. Kuehnmuensch considered it a possibility that members of the Association were responsible for making the telephone calls.

The Port Washington Police Department interviewed the Grievant on September 1 and recommended that she get a trace on her telephone line. The Grievant contacted the telephone company and initiated the line trace on September 3, 2004. The telephone company installed tracing equipment for a 21 day trace on her home telephone line.

The Grievant prepared a letter of resignation on or about September 1, 2004, which she placed in an envelope and left on Schlosser's time card with a note asking Schlosser to deliver the resignation to Eron with the following note:

Barb,

Please give the enclosed to Stephanie and explain for me. I can't deal with the calls anymore, physically or emotionally. You probably think I'm a coward, and maybe I am, but I'm tired of trying to fight battles I may never win. Besides in a few weeks, it will give Ralph, Stephanie and Rosie a few less things to have to deal with the union about. Hope you can understand what I'm feeling and that we can remain friends.

Carron

Schlosser did not deliver the resignation letter to Eron because the Grievant had second thoughts, although Eron and Luedtke were aware of the letter.

The Grievant prepared a second letter of resignation on September 13, 2004, indicating the reason for her resignation was "personal" and that the effective date was October 15. The Grievant placed the signed letter of resignation underneath her inbox on her desk. The Grievant left work on September 13, 2004 at approximately 2:45 p.m.

The County and the Association met on September 13 for the purpose of bargaining a successor agreement. During the meeting, Association Labor Representative Pat Coraggio communicated to Luedtke that the Association membership was dissatisfied with the manner in which the Grievant was performing her job duties. When Luedtke returned to his office at approximately 5 p.m., that day, he found the Grievant's second letter of resignation in his work mailbox.

Coraggio left a note on the Grievant's locker indicating that he wanted to speak with her regarding the complaints from bargaining unit members.

Luedtke arrived at work on September 14 at approximately 7:30 a.m., because he had an 8 a.m., Board meeting. Luetke had received a voice mail message from the Grievant at 5:45 a.m., which he listened to before his Board meeting. The Grievant requested that Luedtke return her call, but he did not do so prior to his meeting. After the meeting, Luedtke telephoned the Grievant and informed her that the County was accepting her letter of resignation and that, as a result of her resignation, the County was not pursuing the investigation initiated by information received from Coraggio.

The Grievant told Luedtke that the resignation letter was not real because she did not intend to resign, that it was part of a plan and that he should contact Schlosser. The Grievant showed Luedtke where she had left the resignation letter the evening before and requested the letter back. Luedtke did not return the letter.

The Grievant met with Kuehnmuensch on September 15, 2004 regarding the complaints. During the meeting, the Grievant explained why the resignation letter had been prepared. Kuehnmuensch informed the Grievant that he did not believe someone would submit the Grievant's letter of resignation. Kuehnmuensch inquired whether the Grievant was interested in vacating the Nursing Clerk position and returning to one of her previous positions.

Luedtke informed the Grievant on September 20, 2004 that the County was accepting her letter of resignation effective immediately, although she would be paid through October 15, 2004. The Grievant was directed to clean out her desk and office and leave immediately.

The Grievant was assaulted on September 24, 2004 by a male at her residence.

POSITION OF THE PARTIES

Association

The Association maintains that the County violated the collective bargaining agreement when it unreasonably accepted the letter of resignation that was not submitted by the Grievant.

The letter of resignation was not tendered by the Grievant. No one saw the Grievant submit the letter to Luedtke or any other management staff member. The Grievant told Luedtke she did not submit the letter, but Luedtke failed to investigate how he received the letter.

The Grievant was severely stressed from the harassing telephone call at her residence and the internal investigations. Luedtke admitted that the Grievant was upset. In fact, she was so upset that Luedtke offered her the EAP services and initiated a complaint on her behalf with the Police Department. The Grievant's "trap" attempt was the result of her stress.

The County used the resignation as a way to get rid of the Grievant. There were complaints filed against the County due to the Grievant. The Grievant has a relatively clear personnel record and a good work performance record.

The Association asks the Arbitrator to order the County to reinstate the Grievant with full back pay and benefits from the date of termination.

County

The County maintains that the Grievant resigned her position and then concocted an unbelievable story to try and withdraw her letter of resignation.

The County received the Grievant's letter of resignation on September 13, 2004. She changed her mind and created the "sting operation" scenario. The County investigated the Grievant's concocted story. It interviewed all witnesses, including the Grievant, and determined the "sting operation" did not make sense. The Grievant claims of receiving harassing telephone calls were meant to deflect attention away from the Grievant's performance issues. Neither the police department nor the telephone company found any evidence of threatening calls.

Section 7.03 of the labor agreement provides employees with the right to voluntarily resign at any time. The Grievant did not offer any evidence to establish that her resignation was not voluntary.

The Grievant prepared a letter of resignation, submitted the letter and then changed her mind. She then concocted the "sting operation" scenario. The Grievant is not credible.

The County submits that the evidence does not establish that a violation of the contract has occurred and therefore, the grievance should be dismissed.

DISCUSSION

This is a disturbing case. An employee receives menacing telephone calls which cause her to fear for the safety of her children. The telephone calls are directly related to her employment with the County and are possibly initiated by the Association membership. Concurrently, the Association membership lodges complaints against her and she is characterized by her Union representative as an "ill tempered disgruntled ex-AFSCME steward." Exhibit 11. The employee informs her employer of the situation, including her belief that Association members are responsible, and is referred to the police and to EAP, but no internal investigation is opened even though the nature of the threatening telephone calls arises out of her employment. The employee is ultimately assaulted. This is but an excerpt of the facts of this case which I offer so as to assure the parties that I recognize the nuances presented and the various motives and interests at stake. In the end, my job is limited to determining whether the parties have violated the collective bargaining agreement.

The Grievant is no longer working for the County. The County asserts that the Grievant resigned. The Association disagrees in as much as the Grievant did not tender an authentic letter of resignation, but rather was attempting to “trap” the person she believed was threatening her. The Association acknowledges that the Grievant’s behavior was irrational, caused by her stress, and asserts that her resignation should have been rejected by the County given the circumstances.

Did the Grievant voluntarily tender her letter of resignation?

Article 7.03 of the parties’ collective bargaining agreement provides that an employee may:

...resign voluntarily at any time. However, such resignation must be submitted in writing stating reasons thereof. Notice shall be given at least fourteen (14) calendar days prior to the date the employee leaves, and shall be tendered to a department head or supervisor.

There is no question that the Grievant prepared the letter of resignation dated September 13, 2004. There is also no question that she placed the letter under the inbox in her office for a time period during that day. Ultimately, the letter surfaced in Luedtke’s office by 5 p.m., that same day. The question is whether she voluntarily submitted the letter of resignation. I conclude that based on the immediacy of the recession of the “resignation” and the circumstances surrounding the Grievant at the time, the resignation was not voluntarily tendered.

The letter of resignation was received by Luedtke by 5 p.m., on September 13. If I accept Luedtke’s testimony, the Grievant notified him at 5:45 a.m., on September 14 that she did not intend to resign. If I accept the Grievant’s testimony, she informed Luedtke at approximately 11 a.m., on September 14 that she did not intend to resign. Regardless of whether Luedtke knew at 7:30 a.m., when he listened to his voice mail or at 11 a.m., when he heard it from the Grievant, less than 24 hours had elapsed since the letter of resignation was received by the County. This is a relatively short time period and evidences a lack of intent on the Grievant’s part to resign.

With regard to the Grievant’s mental capacity to form an intent to resign, I find she was influenced by outside sources that sufficiently negate the voluntary nature of the resignation. The Grievant had received harassing telephone calls, was involved in an on-going police investigation and was the subject of job-related internal complaints. It is clear to me that the Grievant was in the midst of a highly emotional and stressful situation. She feared for the safety of her children. Luedtke recognized this when he

recommended that she contact the County EAP and when he told her to take a couple of days off. All of these factors, support a finding that her “resignation” was involuntary.

The evidence indicates that the County received a letter of resignation for the Grievant. The Grievant communicated her desire to rescind the resignation within 24 hours. The Grievant was emotionally stressed and distraught. The County did not allow her to rescind the resignation or to work the Article 7.03 additional two weeks. The County did not rely on the Grievant’s resignation to its detriment. As such, I conclude that the Grievant’s resignation was involuntary; caused by the mental effects of all that had occurred to her in the preceding month, and that the County improperly denied the Grievant the chance to rescind the resignation in advance of its effective date.

I do not address whether the Grievant’s “sting operation” was a concoction as the County maintains because regardless of whether it was premeditated or an after-thought, it does not change the fact that the Grievant’s resignation was properly rescinded.

AWARD

1. The Grievant did not voluntarily resign her employment so as to lose her seniority under the collective bargaining agreement.
2. The County constructively terminated the Grievant in violation of the collective bargaining agreement.
3. The Grievant is hereby reinstated to her former position without loss of seniority, but no back pay or accrual of benefits. Her personnel file shall be expunged of any documents that reference a quit or resignation by the Grievant on September 13, 2004.
4. I will retain jurisdiction for a period of thirty (30) days for the purpose of assisting the parties in the administration of this award.

Dated at Rhinelander, Wisconsin, this 8th day of November, 2005.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

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