BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 97

and

CITY OF WAUKESHA

Case 165
No. 64927
MA-13057

Case 166
No. 64928
MA-13058

Appearances:

Mr. John P. Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 44316, P. O. Box 044316, Racine, Wisconsin 53404-7006, appearing on behalf of AFSCME Local 97.

Ms. Donna Whalen, Assistant City Attorney, City of Waukesha, 201 Delafield Street, Waukesha, Wisconsin 53188-3688, appearing on behalf of the City of Waukesha.

ARBITRATION AWARD

On July 1, 2005, Local 97, of the American Federation of State, County, and Municipal Employees, AFL–CIO and the City of Waukesha filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, serve as a grievance arbitrator to hear and decide a dispute pending between the parties. A hearing was conducted on September 29, 2005 in Waukesha, Wisconsin. No formal record was taken. Post-hearing briefs and reply briefs were filed and exchanged by November 17, 2005.

This Award addresses the 5 day suspension and subsequent discharge of employee D.D.

BACKGROUND AND FACTS

The grievant, D.D., has been employed by the City since August of 2000. Mr. D. has held a number of positions with the City, the last of which was as a Motor Equipment Operator II. These positions require the job holder to possess a Commercial Drivers License. At the time of his discipline the grievant did possess such a license.

The Union and the City are signatories to a collective bargaining agreement, the relevant portions of which are set forth below. Notably, the contract permits the employer to discipline or discharge employees for just cause. The employer also has promulgated Personnel Policies, two of which are directly relevant to this dispute. Personnel Policy E-8, set forth below, is based on Wis. Stat. Sec. 346.63 (7). Personnel Policy E-10, also set forth below, is based on the federal Omnibus Transportation Employee Testing Act of 1991.

Personnel Policy E-8 was initially enacted on or about November 20, 1992, and was subsequently revised. Personnel Policy E-10 was initially enacted on, or about November 8, 1994, and has also been revised on a number of occasions. Since 1995, the City has randomly tested employees for alcohol and controlled substances pursuant to the requirements of the federal law, and in accordance with Rule E-10. The employer has tested approximately 45 employees per year since 1995, without challenge from the Union.

On or about February 22, 2005 D.D. was randomly selected for a test. He was escorted to a Hospital, and given a breath alcohol test, administered by a medical assistant who is certified to administer such tests. The test was administered in accordance with procedures established in the U.S. Department of Transportation regulations, 29 CFR Part 40. The test produced a reading of .026 g/210L. The confirmatory test produced a reading of .019 g/210L. The results were submitted to the City.

As a consequence of this test result, the grievant was given a 5 day suspension, per the following letter:

> March 4, 2005
>
> Dear Mr. D:
>
> This letter constitutes a formal notification of the results of the Department's investigation and assessment of the events which occurred on February 22, 2005. You have admitted that you drove a City of Waukesha sewer flushing truck on February 22nd.
>
> On February 22, 2005, you were selected for random drug and alcohol testing pursuant to the policies of the City of Waukesha. Your test results indicated an alcohol level of .02g/210-1 with a later confirmatory test level of .019g/210-1.

You have provided no facts which would explain the existence of this alcohol level or mitigate any contemplated disciplinary action.

. . .

The City of Waukesha work rules and human resources policies prohibit an employee with a CDL license from operating a commercial motor vehicle or being "on duty time" while having a measured alcohol level above 0.0.

. . .

Because this is the first instance of a positive test result for you and you have no prior formal discipline in your record, the Department has determined that a five (5) day suspension is appropriate, along with several other conditions of continued employment:

1. You will not be permitted to operate a City vehicle for a three month period from the date of this notice.

2. During that time you will be subject to periodic, unannounced testing for alcohol and/or drugs.

3. A positive test result for either alcohol or drugs during this three month period of time or at any time thereafter will result in immediate termination of your employment.

4. You will schedule an assessment at the Addiction Resource Council, W228 N683 Westmound Drive on or before March 11, 2005 or as soon thereafter as their schedule will permit. . . .

5. If the assessment determines that you have alcohol dependency, you will need to successfully complete a program recommended by the Addiction Resource Council in order to continue your employment with the City of Waukesha.

6. Your suspension will include the following dates: February 24th, 25th and 28th and March 1st and 2nd. You will be paid for March 3rd and March 4th. Any time you were absent on February 22nd and February 23rd you may be covered by leave time you have available because it involves the 24 period "Out of Service Order" pursuant to the City of Waukesha Human Resources Policy E-8.

7. You are to report for work on Monday, March 7th. At that time, your assignment will be provided to you by Tom Fell.

. . .

The Union filed a grievance over the suspension. The grievance was denied. The Step II denial letter summarizes the views of the parties:

Gentlemen:

. . .

The union stated that the incident which occurred on February 22, 2005, in which Mr. D.D., during a random drug and alcohol test, tested positive for alcohol, resulted in the 5-day suspension, without pay, which the union considered to be unreasonable. The union's position is that the level of alcohol, .02g/210-1 with a confirmatory test level of .019g/210-1, should not cause the level of discipline which was administered to Mr. D. This position is based on the Federal Highway Administration Drug and Alcohol Testing Regulations Policy which refers to reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater.

I have based my decision on the fact that the City of Waukesha Policy E-8 Commercial Drivers License Policy and Procedure, prohibits an employee with a CDL license from operating a commercial motor vehicle or being "on duty time" while having a measured alcohol level above 0.0.

Paul A. Feller, P.E.
Director of Public Works

D. returned to work from his suspension. On March 17, 2005, he was summoned to take a return to work alcohol test. D. was driven to the test by Tom Fell, the City Streets Superintendent. Fell approached the grievant at approximately 7:45, and drove him to the hospital. Fell testified that the test was conducted at approximately 8:00 a.m. The same medical assistant administered the same test, which measured .016g/210L. No confirmatory test was conducted because "U.S. Department of Transportation regulations do not require a confirmatory test for readings below .02g/210L".

It was Fell's further testimony that the grievant had the smell of alcohol on his breath.

Based upon the prior discipline and the test results, the City terminated the grievant by letter dated March 22, 2005:

> D.D.
>
> This letter constitutes formal notification of the results of this Department's investigation and assessment of the events which occurred on March 18, 2005. On that date you were tested for the presence of alcohol during the time that you were "on duty time" and in accordance with the letter that was given to you on March 4, 2005 in which a condition of continued employment was that you would be subject to periodic, unannounced testing for alcohol and/or drugs.
>
> The test results indicated that you had an alcohol level of 0.016g/210-1. In a subsequent meeting on March 21, 2005, you did not provide any facts which would explain the existence of this alcohol level or mitigate any contemplated disciplinary action. You are therefore in violation of the City of Waukesha Human Resources Policy E-8 (Commercial Drivers License). Your employment with the City of Waukesha is hereby terminated effective as of March 18, 2005 based on the above information.
>
> Paul A. Feller, P.E.
> Director of Public Works

A grievance was filed, leading to this proceeding.

ISSUE

The Union believes the issue to be:

Did the City have just cause to suspend D.D. for 5 days as a result of his alcohol test results of February 22, 2005?

If not, what is the appropriate remedy?

Did the City have just cause to terminate D.D. as a result of his alcohol test result of March 18, 2005?

If not, what is the appropriate remedy?

The City believes the issue to be:

Did the Employer have just cause to issue a five-day disciplinary suspension to the Grievant?

If not, what is the appropriate remedy?

Did the Employer have just cause to terminate the employment of the Grievant?

If not, what is the appropriate remedy?

Given the facts underlying the dispute, I believe the questions posed to be essentially stipulated. The Award will address each.

RELEVANT WORK RULES **E-8**

The City of Waukesha, in the interest of it's tax paying citizens and in the interest of it's employees, diligently acts to keep liability exposure to a minimum and in doing so complies with the Commercial Motor Vehicle Safety Act of 1986.

. . .

Employer Notification Program – ss. 343.245(2), Wis. Stats.:

Employees who operate commercial motor vehicles must notify the State Department of Transportation and the City of any traffic conviction, other than parking violations, within thirty (30) days after conviction. Employees who operate commercial motor vehicles must notify the City of any suspension/revocation or out-of-service order before the end of the first business day after receiving such notice. Failure to timely notify may result in a fine of up to $2,500.

Any employee who does not comply will subject him/herself to disciplinary action up to and including termination.

. . .

Out-Of-Service Order – ss. 346.63(7), Wis. Stats.:

No person may operate a commercial motor vehicle or be "on duty time" while having any measured alcohol concentration above 0.0 or within four hours of having consumed or having been under the influence of an intoxicating beverage. Violators of ss. 346.63(7) are given a 24 hour out-of-service order.

Employees who are given a 24-hour out-of-service order will subject him/herself to disciplinary action up to and including termination.

Disqualifying Offense and Serious Traffic Violations – ss. 343.315(2) Wis. Stats.:

Disqualifying Offenses and Serious Traffic Violations are those committed while operating a commercial motor vehicle for which employees will be disqualified from operating a commercial motor vehicle from sixty (60) days to life. No occupational license is available for a disqualified operator.

. . .

If an Employee Reports to Work Impaired or Becomes Impaired While at Work – ss. 346.63(7)(a) Wis. Stats.

No person may operate a commercial motor vehicle or be "on duty time" while having any measured alcohol concentration above 0.0 or within four hours of having consumed or having been under the influence of an intoxicating beverage.

No supervisor may knowingly allow any employee to operate a commercial motor vehicle if the supervisor suspects that the employee is in an impaired state; under the influence of alcohol or other drugs. The supervisor shall confront the employee and have another supervisor confirm and document the suspicion of impairment. The supervisor shall have the right to utilize every means possible to determine the employee's condition including drug testing. If the employee is determined to be under the influence, the employee is suspended without pay pending an investigation where appropriate disciplinary action up to and including termination could be imposed.

Discharge of Drunk Drivers – ss. 346.64 Wis. Stats.:

The City shall discharge from employment any operator of a commercial motor vehicle convicted of operating while intoxicated committed while operating a commercial motor vehicle.

CDL – occupational license ss. 343.10 Wis. Stats.:

Should a City of Waukesha employee be convicted of an offense in their private motor vehicle which would result in suspension or revocation of their commercial driver's license, the employee would be placed on an unpaid leave

of absence for a period of sixty (60) calendar days and be subject to the disciplinary process.

. . .

Drug and Alcohol Testing (FHA) E-10

I. Policy Statement

The Omnibus Transportation Employee Testing Act of 1991 mandates alcohol and drug testing of City of Waukesha employees who operate commercial motor vehicles beginning January 1995. The objectives of the mandate and the City is to provide a safe drug and alcohol free working environment for all employees and to provide services to the citizens of Waukesha in the safest manner possible. This objective will be met by deterrence, detection, and intervention of drug and alcohol related issues. The objective of this policy is to outline employee and management responsibilities and to underscore the City's commitment to these issues.

II. Safety-Sensitive Positions Subject to Drug and Alcohol Regulations

A safety-sensitive function is defined for the purposes of the City of Waukesha as including duties of: Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License; This includes:

- ❖ All time spent at the driving controls of a commercial motor vehicle
- ❖ All time, other than driving time, spent on or in a commercial motor vehicle
- ❖ All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- ❖ All time spent performing the driver requirements associated with an accident
- ❖ All time spent repairing, obtaining assistance or remaining in attendance upon a disabled vehicle

. . .

V. Prohibited Behavior

The following alcohol and controlled substance-related activities are prohibited by the Federal Highway Administration's drug use and alcohol misuse rules for drivers of commercial motor vehicles (CMV's):

- ❖ Reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater.

- ❖ Being on duty or operating a CMV while the driver possesses alcohol. This includes the possession of medicines containing alcohol (prescription or over the counter), unless the packaging seal is unbroken.

- ❖ Using alcohol while performing safety-sensitive functions.

- ❖ When required to take a post-accident alcohol test, using alcohol within eight (8) hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.

- ❖ Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow up testing requirements.

- ❖ Reporting for duty or remaining on duty, requiring the performance of safety sensitive functions, when the driver uses any controlled substance, . . .

- ❖ Reporting for duty, remaining on duty or performing a safety sensitive function, if the driver tests positive for controlled substances.

. . .

VI. Circumstances for Testing

The following are the types of testing required to be performed:

- ❖ Pre-Employment Testing

- ❖ Post-accident Testing

- ❖ Reasonable Suspicion

- ❖ Return to Duty – Each employer shall ensure that before a driver returns to duty requiring the performance of a safety sensitive functions, after engaging in prohibited conduct regarding alcohol or controlled substance misuse, the driver shall undergo a return to duty alcohol test indicating a breath alcohol concentration of less than 0.02 or a drug test indicating negative drug use.

- ❖ Follow Up Testing – Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to announced follow-up alcohol and/or controlled substances testing as directed by the substance abuse professional. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

- ❖ Alcohol Follow-Up Testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions.

- ❖ Random Testing – Employers must ensure that their programs are testing drivers at a minimum 50% rate for drugs and at a minimum rate for alcohol. . . . Employees will be randomly breath alcohol tested only when performing safety sensitive functions as defined in Section II of this policy.

. . .

IX. Testing Procedures

Breath Alcohol Testing Procedures

Alcohol testing will be performed by the City by employees designated and trained as Breath Alcohol Technicians or by the City's medical services provider.

Tests shall be administered using an evidential breath testing device approved by the National Highway Traffic Safety Administration.

. . .

Test result of less than 0.02

No further testing is necessary. The form is completed as described below.

Test result of 0.02 or greater

The technician shall instruct the driver not to eat, drink, not put any object or substance into the driver's mouth and not to belch. The driver shall wait for 15 minutes for a confirmation test. If the driver puts something in their mouth or belches before the next test, the test will be given and the technician will note the fact on the form.

. . .

[The final rule attaches consequences only to the confirmation test result.]

. . .

Transmission of the Results

The technician shall transmit all results to the EMPLOYER in a confidential manner. Transmission may be in writing, in person, or by telephone or other electronic means. Test results of 0.02 or greater shall be transmitted immediately to the employer to ensure prompt removal of the driver from safety-sensitive duties.

Consequences

Employees with rest results of between 0.02 and 0.04 will be immediately removed from safety sensitive functions for a minimum of twenty four (24) hours and placed on an unpaid suspension pending investigation and will subject themselves to discipline up to and including termination.

Employees with alcohol test results of 0.04 or greater shall be referred to the substance abuse professional and immediately terminated from employment with the City of Waukesha.

Employees who refuse (See VII.) to participate in an alcohol breath test and/or a confirmation test shall be immediately terminated from employment with the City of Waukesha.

Drug Testing Procedures

. . .

RELEVANT PROVISIONS OF
THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 2 – MANAGEMENT RIGHTS

2.01 The Union recognizes that except as specifically limited by this Agreement, the City has the right to manage and direct the work force which includes but is not limited to the right to hire, promote, layoff, demote or transfer employees, discipline or discharge employees for just cause; . . .

. . .

ARTICLE 6 – GRIEVANCE AND ARBITRATION PROCEDURE

6.01 Definition: A grievance is a claim or dispute raised by a City employee, or by a group of employees (with respect to a single common issue) concerning the interpretation or application of this Agreement.

6.03 Arbitration: . . .

The arbitrator so appointed shall hear the case, and his/her decision shall be final and binding on both parties. The arbitrator shall have no authority to add to, delete from, or modify the terms and conditions of this Agreement or to decide on issues not submitted.

. . .

ARTICLE 9 -

9.10 Training and Performance. The City agrees to assume the responsibility for training employees under the guidance of qualified personnel in the work to which they are assigned when such work is significantly changed. . .No regular permanent employee shall be discharged except for just cause.

. . .

POSITIONS OF THE PARTIES

The City contends that it had cause to discharge the grievant. It points to Personnel Policies E-8 and E-10 and asserts that the policies provide detailed notice that any alcohol level on duty time will subject the grievant to discipline, up to discharge. The employee was warned that testing positive for alcohol could lead to discipline by both the policies and the specific provisions of the suspension letter.

The City contends that the policies at play are drawn from the State and Federal law regulating the workplace, and as such must be regarded as reasonable. The City contends that a thorough investigation was conducted before administering discipline.

The grievant has no prior disciplinary record. This is the first time he has been disciplined. There is no one else who has been disciplined under these work rules. That is to say, no one else has ever tested positive under the testing procedures. Without an internal pattern of discipline to reference, the City points to other arbitration awards, including a number that I have issued, and contends that its actions are reasonable if measured against the standards established in those Awards.

The City notes that the standards set in the DOT Regulations are minimum standards. The fact that the City disciplined the grievant under the circumstances of these test results do not violate the DOT standards, even though the DOT standards do not require discipline.

The City points to E-8, and corresponding State law as support for its 0.00 tolerance threshold, and contends that it is free to demand an alcohol-free workplace, and enforce that policy through the disciplinary process.

The Union does not believe there exists cause for discharge. The Union notes that it was not a party to the formulation of either of the work rules that form the basis of the discharge. It is the view of the Union that both disciplines must fail because neither of the tests are positive under DOT standards.

Under City policy E-10, prohibited conduct is "having an alcohol concentration of 0.02 or greater." D. did not. Under the "Consequences" section of Policy E-10:

> Employees with test results of between 0.02 and 0.04 will be immediately removed from safety sensitive functions for a minimum of twenty four (24) hours and placed on an unpaid suspension pending investigation and will subject themselves to discipline up to and including termination.
>
> Employees with alcohol test results of 0.04 or greater shall be referred to the substance abuse professional and immediately terminated from employment with the City of Waukesha.

These sanctions are drawn from the DOT regulations. Neither the policy nor the DOT rule indicate any consequence for an employee who tests below 0.02.

The Union points to City Policy E-8 and regards it as contradictory. It prohibits persons from operating a motor vehicle "under the influence of an intoxicant." The Union contends that the City has not established that D. was operating under the influence. The Union also cites sub. (5) where the policy states "no person may drive or operate a commercial motor vehicle while the person has an alcohol concentration of 0.4 or more but less than 0.08." The Union regards the policy as confusing.

The suspension document references "a positive test result for either alcohol or drugs during this three month period of time or at any time thereafter will result in the immediate termination of your employment." The Union contends that the March 18 test was negative. That is why there was no confirmatory test.

D. did not lose his CDL as a result of the test results.

The Union concedes that D. did evidence alcohol use, albeit not to the level of a positive under DOT regulations. The Union acknowledges the behavior as foolish under the circumstances. In the view of the Union, it is not foolish enough to warrant discharge.

DISCUSSION

Two core questions are presented here. The first is whether or not the City can enforce a 0.00 alcohol tolerance level to the point of suspension/discharge. The second question is whether or not D.D. knew, or should reasonably be held to know that he faced discipline if he showed up to work having alcohol in his system?

As to the first question, the collective bargaining agreement has a just cause provision, applicable to the discipline of bargaining unit members. The City work rules and actions are measured against the contractual standard. That includes Drug and Alcohol tolerances, and the sufficiency of notice to the employees and to the Union. The advent of CDL's and the DOT regulation of CDL's has intervened to preempt a good deal of the just cause analysis. Where a CDL is required as a condition of employment, and the employee tests positive for alcohol use under DOT standards, the license is ultimately revoked for a period of time. This significantly narrows the scope of the analysis submitted to the Arbitrator. Some variation on this theme is the typically adjudicated case, and forms the factual base for much of the caselaw cited by the City in this matter.

That is not the case presented here. Under DOT regulation, much of which has been adopted as workrule E-10, the grievant tested negative on both February 22 and March 17. He did not lose his CDL. Under both DOT standards and Rule E-10 D.D. is authorized to return to work. It is here that the City contends that it has promulgated a parallel standard more

stringent than that established by DOT, and adopted as City Rule E-10. Rule E-8, derived from excerpts of the Wisconsin Statutes, sets the 0.00 tolerance level. It, like E-10, has existed for years, and the City asserts the right to enforce the 0.00 tolerance level through the use of significant discipline, including discharge. The text of Rule E-8 authorizes as much.

Rule E-8 has a number of directives to employees relative to the Rules of the Road. The violations of certain of these directives subjects the individual to "..disciplinary action up to and including termination..." Thus defined, the Rule vests the City with a wide discretion as to the discipline to be imposed. However, any discipline must comply with the just cause provision of the labor agreement. Under Rule E-8, termination is not automatic for failure to notify of a traffic conviction, or for being given a 24 hour out of service order, or even for being under the influence while at work. The rule contemplates the exercise of discretion in issuing discipline under each of these circumstances. This is in contrast to the Discharge of Drunk Drivers (ss.346.64 Wis. Stats.) Rule which mandates discharge following conviction of operating a commercial vehicle while intoxicated.

D.D. is the first person disciplined under these Rules. There is therefore no history or practice as to how the discretion has been exercised. Similarly, there is no experience as to how the provisions of Rule E-8 interact with those of Rule E-10.

Rule E-8 was first issued on 11/20/92, and amended into its current form on 9/10/99. Rule E-10 was first enacted on 11/8/94 and subsequently amended a number of times, the latest of which occurred on 4/14/04. Rule E-10 parallels Rule E-8 in a number of respects, but is far more detailed and specific. The Drug testing procedure used by the City derives from Rule E-10. Rule E-10 establishes certain Prohibited Behavior, which includes "Reporting for duty or remaining on duty while having an alcohol concentration of 0.02 or greater." The City promulgated this standard two years after issuing a rule that declared 0.00 to be the acceptable standard. The City could have reconciled the two standards at the time it issued Rule E-10. By failing to do so, it created an ambiguity as to the tolerance, which persists to date.

Rule E-10 defines the Circumstances for Testing. D.D.'s February test was a Random test; his March test was a Return to Duty test. Both are authorized under Rule E-10. The testing procedure was that described by the Testing Procedures provision of Rule E-10. The testimony and Affidavit provided by the technician who conducted both tests indicates that the tests were conducted in accordance with the procedures of the U.S. Department of Transportation. That portion of the City Work Rule indicates that "The final rule attaches consequences only to the confirmation test result." The confirmation test result of the February 22 test was 0.019. The test result of the March 17 test was 0.016. There was no confirmation test. There are no consequences set forth in Rule E-10 for those who test below 0.02. To the contrary, the definition of the Return to Duty test authorizes a return to duty under circumstances where the "...return to duty alcohol test indicating a breath alcohol concentration of less than 0.02..."

I do not believe that the City has established a 0.00 tolerance level. The two Rules are lengthy and complex. As implemented, they conflict meaningfully, and in ways relevant to this dispute. D.D. was suspended and terminated under Rule E-8 for a breath alcohol level that permits his return to work under Rule E-10. The Drug testing has been conducted under DOT (Rule E-10) standards. The DOT standard balances the tolerance against the sophistication and precision of the test. The same is not true when 0.00 is substituted as a standard. The City knowingly promulgated Rule E-10, implementing the DOT testing protocol and standards after it set the lower standard. Rule E-10 was renewed on several occasions. I do not believe the City is free to exercise the disciplinary discretion reserved in Rule E-8 to repeal the provisions of Rule E-10.

As to the second question, I believe Mr. D.D. was on notice that he could not be at work under the influence. He either drank in the morning before work or he drank heavily the night before. The Rules have been on the books for years. The DOT standard is well known, and the City has tested for years. The letter of suspension leaves little to the imagination. He has placed his livelihood in jeopardy. Had the test results been at, or above, 0.02 I would have sustained the discipline.

AWARD

The grievances are both sustained.

REMEDY

The City is directed to reinstate the grievant, remove the discipline, and make him whole for all losses. The City is free to offset its obligations with interim earnings, including Unemployment Compensation, if any.

JURISDICTION

I will retain jurisdiction for a period of sixty (60) days, which may be extended as needed, to resolve backpay issues.

Dated at Madison, Wisconsin, this 11th day of May, 2006.

William C. Houlihan /s/
William C. Houlihan, Arbitrator

WCH/gjc
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