

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

AFSCME LOCAL 310

and

RACINE COUNTY RIDGEWOOD CARE CENTER

Case 213

No. 64881

MA-13043

(Bell Grievance)

Appearances:

Mr. Thomas G. Berger, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 044635
Racine, Wisconsin, appearing on behalf of Local 310.

Mr. Victor J. Long, Long and Halsey Associates, Inc., 8330 Corporate Drive, Racine,
Wisconsin, appearing on behalf of Racine County Ridgewood Care Center.

SUPPLEMENTAL AWARD CLARIFYING ARBITRATION AWARD

AFSCME Local 310, hereinafter "Union," and Racine County Ridgewood Care Center, hereinafter "County," requested that the Wisconsin Employment Relations Commission provide a panel of arbitrators 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 and issued the following Award on February 20, 2006:

AWARD

1. No, Racine County did not have just cause to terminate Eureka Bell.
2. The County had just cause to issue a ten (10) suspension to Eureka Bell for violating performance and conduct/behavior standards of the facility when she failed to comply with her supervisor's directive.

3. The appropriate remedy is to remove all reference to the termination in her personnel files and to make Bell whole by paying her all wages and benefits she would have earned, less any amounts she earned or received that she would not have received but for her termination excluding those dates of suspension.

In an email sent to the arbitrator on August 8, 2006, the parties jointly requested that the arbitrator clarify the Award on the issue of overtime pay. In follow-up emails dated August 11 and August 14 respectively, the parties stipulated to the following issue:

Did the arbitrator intend to uphold the grievance and did that include lost overtime earnings?

The Union was afforded until August 31 and the County until September 15 to file briefs in support of their positions. Having not received any briefs by September 15, 2006, the arbitrator concludes that the case is ripe for a decision.

DISCUSSION

There are two distinct questions contained in the stipulated issue. The first is whether the arbitrator intended to uphold the grievance. The grievance filed in this matter alleged that the Grievant was disciplined without just cause seeking reinstatement, rescission of the discipline and to be made whole. I concluded that the Grievant had engaged in behavior that deviated from the acceptable performance and conduct/behavior standards, but that the level of discipline imposed by the County was excessive. Thus, the grievance was upheld in part and denied in part.

The second question contained in the stipulated issue is whether overtime was intended as part of the make whole remedy. The Initial Award states that the Grievant was to be made whole for "all wages and benefits she would have earned." Article 17.01 of the labor agreement limits employee's remedies in cases where the employer lacked just cause to "back pay and seniority benefits." Article X of the parties' collective bargaining provides employees of Local 310 with overtime wage benefits. Thus, had the Grievant been employed during the time of her termination, she would have been eligible to earn overtime.

Both the County and the Union declined to file briefs or stipulate to additional facts and no evidence was introduced at hearing regarding lost overtime. There is no evidence available to ascertain whether this Grievant regularly worked overtime or regularly declined overtime. Nor is there any evidence as to the availability of overtime work, although the fact that there is a dispute leads me to conclude that there must have been some overtime available and paid. Finally, there is no evidence as to the manner in which overtime is assigned. As such, this Supplemental Award is posited on some level of supposition.

The County violated the labor agreement when it terminated the Grievant. That termination prevented the Grievant from earning overtime compensation. The Initial Award ordered a make whole remedy. Make whole is designed to put the aggrieved in the same financial position that she would have been in had the termination not occurred. The Grievant was eligible to earn overtime compensation, therefore make whole includes overtime.

On the basis of the foregoing, and the record as a whole, I have made the following

SUPPLEMENTAL AWARD

The Award dated February 20, 2006 provides that the Grievant would be made whole for all wages and benefits she would have earned, but was denied, exclusive of her dates of suspension, as a result of her termination. This includes overtime. The County is obligated to compensate the Grievant for all overtime hours she reasonably would have earned in the absence of her termination, exclusive of her dates of suspension.

Dated at Rhinelander, Wisconsin, this 26th day of September, 2006.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

