BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA SCHOOL BUS DRIVERS AND MONITORS INDEPENDENT UNION

and

LAIDLAW TRANSIT, INC.

Case 9
No. 66771
A-6217

(Legler Grievance)

Appearances:

Weber & Cafferty, S.C., 704 Park Avenue, Racine, Wisconsin, by **Attorney Robert K. Weber**, for the labor organization.

Jackson Lewis LLP, 320 West Ohio Street, Chicago, Illinois, by **Attorney Michael R. Flaherty** and **Attorney Neil H. Dishman**, for the employer.

ARBITRATION AWARD

The Kenosha School Bus Drivers and Monitors Independent Union and Laidlaw Transit, Inc., are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the employer concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to work schedules. The Commission designated Stuart D. Levitan as the impartial arbitrator. Hearing in the matter was held in Kenosha, Wisconsin, on June 13, 2006; a stenographic transcript was made available to the parties by June 28. The parties submitted written arguments and replies, the last of which was received on October 9, 2006.

ISSUE

There is some dispute as to the statement of the issue. It appeared at the hearing that the parties agreed that the issue before me was whether the employer violated the collective bargaining agreement when it denied Cynthia Legler's request for a morning-only assignment.

That is how the employer states the issue in its brief. However, in its brief, the labor organization states the issue as:

> Was the company's decision not to accommodate Ms. Legler's request to work part time unreasonable in light of the particular circumstances of this fact situation, and if so, what is the appropriate remedy?

I frame the issue as:

> Did the employer violate the collective bargaining agreement when it denied Cynthia Legler's request to change her assignment to drive only morning routes? If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

4. The union hereby recognizes that the management of the Company has the right to control the direction of working forces, including the right to direct, plan, and control bus operations; to establish and change working schedules; to hire, transfer, suspend, or discharge employees for just cause, to layoff employees because of lack of work or for other legitimate reasons, including medical reasons or to change existing methods if agreeable by both the union and the company; and to manage the properties. Further, the Company agrees that the exercise of the management function must not be in conflict with or in violation of the existing Agreement.

31. Route Packages

The Company will start each school year by assigning routes based on seniority. The Company will make every effort to assign routes to meet the same route volume assigned to a driver at the end of the previous school year.

Route packages will be developed by management. Route packages will be defined as a series of routes for A.M. and a series of routes for P.M.

32. Route Package Assignments

Prior to the beginning of the school year, driver requests, availability, and route package preference will be documented based on documentation received. Management will assign packages and buses in

> order of seniority. The company shall assign routes for up to two (2) weeks or ten (10) working days after school begins. After the end of this two week period any additional routes shall be handled as defined below. . . .

BACKGROUND

Laidlaw Transit, Inc., provides bus transportation services to a variety of clients, including the Kenosha School District. David Wildes is the manager of the Kenosha branch, which had approximately 128 bus drivers during the 2005-06 school year. This grievance concerns the decision by Wildes to deny a demand by one of those drivers, Cynthia Legler, to abandon part of her assignment, and the aftermath of that decision.

Prior to the start of each school year, the school district informs Wildes how many morning and afternoon routes it expects, after which the company sets its staffing needs. Pursuant to paragraphs 31 and 32 of the collective bargaining agreement, employees submit bids for the routes they want, whether the same or new, which requests are generally honored. In anticipation of the 2005-06 school year, the district notified Wildes that it would need drivers for 91 morning routes and 94 routes. Wildes seeks to have "bench strength," or reserve drivers, of at least ten percent of the routes needed to be covered. Based on training and licensure requirements, it takes about fifteen working days from date of hire for a new driver to be road-ready, a process Wildes testified costs the company about $974.

In a timely manner during the early summer of 2005, Cynthia Legler, a six-year veteran of the company, completed her return to work survey in which she requested to continue her all-day schedule (AM, PM and mid-day shifts). "I have had these routes for 2 yrs and I like them if you can add to them," she wrote. Wildes approved her request. At roughly the same time, Wildes also approved requests from six drivers for morning-only route packages, and from eight drivers for afternoon-only route packages.[1] At that time, Wildes had fifteen extra drivers for the afternoon routes.

During the early months of the new school year, the number of afternoon routes increased to 102, even as the number of afternoon drivers was decreasing. At times, the shortage of drivers available for afternoon routes became such that Wildes himself had to drive some routes, along with three mechanics and a field supervisor who also held the necessary licensure.

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[1] Two of the morning-only drivers had been hired with that status, two had been hired as full-time but had previously switched to mornings-only, and two were seeking morning-only status for the first time (one of them, Cheryl Hanson, switching to mornings-only after the start of the school year, consistent with a request made prior to the start of classes).

Sometime in December, full-time driver Sheila Russell requested to drop her Friday afternoon route to meet the needs at her other job cleaning offices. Wildes refused that request, but told her she could have the afternoon off on Wednesday. When Russell's employer maintained she needed the added time on Friday, Russell asked for Friday morning off, which Wildes agreed to.

Shortly thereafter, on December 21, Legler informed Wildes that she would not be available for her afternoon routes starting in January because she had enrolled in real estate classes which met at that time. Legler had not discussed this matter with Wildes prior to enrolling in the class. Wildes informed Legler that she could not do that, due to a shortage of drivers on the afternoon routes and the difficulty he perceived in hiring a driver for only an afternoon shift. At that time, given the imminence of the winter holidays, there were only four or five working days prior to the start of the second semester.[2] Legler testified she felt that "was plenty of time for him to be able to cover my afternoon routes," and that it was "not my job to need to know all of the office's business."

As Wildes was explaining his position, Legler walked out of his office, unilaterally ending the conversation. [3] Later that day, Legler presented Wildes with the following hand-written note:

> Dave
>
> I am not asking for a just a leave or time off from my PM Routes/Midday's. I am requesting a schedule change. I will be starting classes in January and will no longer be able to work afternoons. I will be in for my AM Routes.
>
> Thank you.

Legler and Wildes discussed the matter again on December 22. When Legler informed Wildes she would only be available for her morning routes, Wildes informed her that she either had to work her full schedule, or would be considered to have quit her job. When union president Suzanne Rizzo discussed the matter with Wildes on January 2, 2006, he reiterated this point. Rizzo thereafter advised Legler that she had been terminated and should not report for work.[4]

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[2] In January 2006, Wildes hired two new full-time drivers, both of whom subsequently asked for and received afternoon-only route packages.

[3] The record is unclear whether Legler walked out on Wildes during the first discussion on the 21st or a second encounter on the 22nd. That she did so on one of these two dates is undisputed, so the precise chronology is insignificant.

[4] In fact, Legler was not terminated, but was rather placed on leave, which status she still held as of the hearing in this matter.

On or about January 3, 2006, Rizzo submitted the following grievance on Legler's behalf:

> Nature of Grievance: The collective bargaining agreement states "the union hereby recognizes that the management of the Company has the right to control the direction of working forces, including the right to direct, plan, and control bus operations; to establish and change working schedules; to hire, transfer, suspend, or discharge employees for just cause, to layoff employees because of lack of work or for other legitimate reasons, including medical reasons or to change existing methods if agreeable by both the union and the company; and to manage the properties. Further, the Company agrees that the exercise of the management function must not be in conflict with or in violation of the existing Agreement." On Dec. 21, 2005, Cynthia presented a statement in writing to Dave Wildes notifying him that she would no longer be able to work her entire schedule of both A.M. and P. M. routes. Cynthia is starting schooling and classes will interfere with her work schedule. She specifically states that she would like to continue working her A.M. routes. Dave notified her that he would no longer require her to work at all, since he did not have the ability to accommodate A.M. only drivers. The union contends that this is a wrongful termination. Cynthia in no way violated any work rules and there is no requirement to work a full A.M. and P.M. schedule to retain employment. In fact there are many drivers working A.M. or P.M. only schedules. Cynthia is in her sixth year with the company and has more seniority than numerous drivers being allowed to continue employment. There is no just cause for this separation of employment.
>
> Desired Settlement: The Union desires Cynthia be made whole with reinstatement of employment, seniority and compensation for any missed work.

On or about January 4, 2006, Wildes denied the grievance, as follows:

> I am denying the grievances at Step A, for the reasons listed below.
>
> The grievance states that there many drivers working AM and PM only schedules. There are currently 5 AM only drivers, 2 of them were hired "as is," meaning that is the schedule they were available for upon hiring and hired based on that information. 1 driver made the request for AM only on the return to work survey submitted in June of 2005. Of the remaining 2 AM only drivers, one has had that schedule for at least the past 2 school years and the other for at least the past 6 school years. Prior to the start of this school year, there was 1 driver that requested and was granted an AM only schedule. That driver later

was able to work both shifts for an extended period of time, with the understanding that the commitment was to the AM only. This driver is no longer employed here. Prior to the start of the last school year, 2 drivers requested an AM only schedule and were denied because of the staffing need. 1 of those drivers chose a PM only schedule and 1 chose to work the full schedule. During the month of November 2005, another driver had requested to not work the Friday PM schedule. I denied that request and asked that driver to consider not working the Friday AM schedule beause we are adequately staffed in the morning and have a staffing shortage in the afternoon. The driver accepted that alternative and currently is working that schedule. There are currently 8 PM only drivers. These schedules have been granted because of staffing and route volume needs. There are currently 97 AM routes and 102 PM routes; also there is a higher demand for Field Trips during the afternoon schedule, which makes it advantageous to accept the PM only schedules.

The grievance states that Cynthia was terminated. She was not terminated; she was given a choice, either be available for her full schedule or not at all. It was left up to Cynthia to accept this or not. She did not report for work, therefore she made the choice not to accept the work that was offered and assigned to her. As of the date of this memo, she has not been terminated, she has however been recorded as not reporting for assigned schedules.

It is unfortunate that Cynthia did not approach me prior to signing up for her classes to inquire about the possibility of having this schedule. Her "request" was submitted to me after she had committed herself to this schedule.

On or about January 9, 2006, Rizzo advanced the grievance to Area Manager Don Pederson, as follows:

Attached is a grievance for your consideration. Please consider these points before responding with your answer.

1. There is nothing in the C.B.A. that says schedules must be kept the same for the entire year. In fact, it addresses the possibility of changes in the first sentence of Article 4.
2. On January 2, 2006, I called Dave to discuss the situation with him. I asked him if he was going to accept the fact that Cynthia has the ability to change her schedule and informed him of her willingness to be at work Tuesday for her morning routes. He instructed me to inform her that unless she was going to work <u>both</u> A.M. and P.M. routes, she should not report to work at all. I reiterated that she was unavailable for P.M. routes. He said she would not be allowed to work A.M. only. Therefore I informed Cynthia she had been terminated and should not report for work.

3. In his response Dave refers to others that have been denied their requests to alter their schedules. While this may have occurred, it doesn't change the fact that a schedule change is allowed and has occurred. In fact special arrangements are often made for people to retain their employment while working limited schedules, such as Dave Anderson, George James and Fred Keyes. I wonder why this sort of option has not been offered to Cynthai.
4. The Union realizes the greater need for P.M. drivers verses (sic) A.M. drivers. A reasonable solution is to reduce the number of A.M. drivers by seniority. This is how this has been addressed in the past and is in accordance wit the C.B.A.

If you have any questions or would like a meeting to discuss this further, you may reach me at ..... Thank you for your time in considering this grievance.

On or about February 13, 2005, Pederson replied to Rizzo as follows:

I am writing in response to our step 2 meeting of January 30, 2006, regarding Cynthia Legler.

I have thoroughly reviewed all of the information you sent me, as well as, my notes from our meeting and have discussed this all with our Human Resource Department and have concluded the following:

In your letter you stated the CBA does not state a driver has to keep their schedule for the entire year and Article 4 addresses change. **The CBA addresses change relating to the company having the right to control the direction of working forces, including the right to direct, plan and control bus operations; and establish and change working schedules.**

You also stated Cynthia Legler was terminated. Cynthia was given a choice to reschedule her day to work in the PM where the need was for drivers and was unable to do that. That was not your job to terminate an employee, it was Cynthia's choice to make that decision.

And last, you mentioned three drivers that are working AM only. Dave Wildes explained at our meeting that two of the drivers are on an on call basis and will drive AM or PM as needed. The third individual is a monitor.

Therefore I support the decision that was made by Dave Wildes. However, because of our occasional need for AM drivers due to absenteeism, we can offer Cynthia to work in the AM on an **"on call basis"** which means we would call her in on an as needed basis. (**emphases** in original)

On February 28, 2006, Rizzo wrote to Al Bollinger, the company's Area Director of Human Resources, as follows:

I have enclosed a grievance for your consideration.

The Union would like to reiterate its opinion that it is arbitrary and unreasonable exercise of management rights to deny this employee a schedule change where others have been allowed to do so in the past. In his response to Step A, Dave Wildes refers to a driver that was granted an A.M. only schedule as recently as the start of this school year and another that worked the entire day at the beginning of the school year with the understanding that she would be allowed to reduce her schedule after the start of the school year.

Management continues to argue its lack of need for A.M. only drivers and the difficulty of hiring P.M. only drivers. In fact, 2 of the 9 drivers hired since Ms. Legler was denied her change were given a P.M. only schedule. The company could accommodate Ms. Legler by keeping one extra stand-by or laying off one of the new hires in the morning only, with the understanding that they would be given the on call basis that was offered Ms. Legler by Don Pedersen in his Step B response. This would stay in accordance with seniority and is allowed in the collective bargaining agreement.

Finally, the Union would like to express its intent to carry this out to its fullest capabilities, up to and including arbitration. I believe that a reasonable solution is offered in the preceding paragraph and look forward to receiving your response.

On or about March 20, 2006, Bollinger replied to Rizzo as follows:

Issue: The grievant and the union allege the Company violated Page 1, Article 4 of the current labor agreement when it denied Cynthia Legler to change her work schedule after it was assigned and she had been working it since the beginning of the school year.

Discussion: Cynthia was assigned her AM and PM route schedule as requested at the beginning of the school year and had been working it since the beginning of the school year. On or about 12-21-05, she advised the company that she will be starting classes and will no longer be able to work afternoons' and will be in for her AM route only.

Dave Wildes advised her that she was given a choice, either to be available for her full schedule or not at all. It was left up to her to accept this or not. She did not report for work, therefore she made a choice not to accept the work that was

offered and assigned to her. As a compromise and an attempt to accommodate her, the company offered her an opportunity to become an AM call-in driver that she did not accept. At no point did the Company terminate her. For more detail relating to the Company's business situation and position, please refer to Dave Wildes response to this grievance at Step A, dated 1-04-06, that gives more detail.

Company Position: The intent and purpose of Page 1, Article 4 is the "Management Rights Clause" which gives management the right to "establish and change working schedules," for business reasons. It is not intended and should not be used by employees or the union to accommodate an employee's personal schedule such as attending school or any other personal reason. It should also be noted that the company has a history of needing more PM drivers than AM drivers.

The Company did not terminate Cynthia Legler's employment. However, she did refuse to continue to work both her AM and PM selection for personal reasons. If she now refuses the company offer to work AM On-Call, we will assume she has quit her job and will process the termination. Please advice Dave Wildes at your earliest convenience as to whether or not she would like to work AM On-Call, so we can change her work status, or we will assume she has quit and will process her termination.

Disposition of Grievance: For the reasons stated above, we are denying this grievance.

The matter was thereafter advanced to arbitration in a timely manner.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

The company's unreasonable and arbitrary denial of Legler's request to go from full time to part time for educational purposes constituted a constructive discharge that must be remedied through back pay and reinstatement to a morning-only route package. Assuming, *arguendo*, that the contract permits the company the right to make decisions regarding work schedules, it still has the duty to make such determinations in a fair manner. The employer cannot

exercise residual rights in an unreasonable manner or rely on a business justification that is mere pretext. Here, the employer did not attempt to accommodate the grievant's legitimate request for a schedule change. And the fact that the employer was able to hire two afternoon drivers within a short period renders its business justification pretextual. Leave or schedule change requests for educational purposes have uniformly been determined to be legitimate, and the employer's pretextual denial thereof to be unreasonable. Moreover, the record evidence of the branch manager's hostility toward the grievant establishes this as a motivating factor in the employer's denial.

In support of its position that the grievance should be denied, the employer asserts and avers as follows:

Laidlaw exercised its management rights in accordance with the collective bargaining agreement. Contrary to the union's argument, the issue is not whether the company acted reasonably or fairly toward Legler; rather it is whether the company violated the collective bargaining agreement. Yet Legler cannot identify any provision of the agreement the company violated, and invokes only the management rights clause.

Under the collective bargaining agreement, the company's power to establish and change working schedules is limited only by the general provision that the company cannot violate the agreement in exercising its management rights. That is, the grievance cannot succeed unless Legler shows that the company's decision violated some other provision of the agreement. She has not met and cannot meet this burden.

Legler's argument – that the company's contractual right to set schedules somehow gives her the unilateral right to change her schedule as she sees fit – turns the agreement on its head, changing a management-rights clause to a union-rights clause.

Even if Legler were right in her erroneous proposition that the company must meet some phantom standard of reasonableness, her grievance is still without merit. Laidlaw denied her attempt to change her schedule for legitimate business reasons, as it lacked the staff necessary to cover the shortage her request would create. Further, the comparisons Legler offers with other employees to show she was treated unfairly do not support that conclusion; the other employees and their situations are not comparable.

Legler's complaint that the company's denial of her schedule change was unfair is double flawed. First, the burden is not on the company to show it acted fairly, but on the grievant to show the company violated the collective

bargaining agreement. Second, since the company had legitimate business reasons for its actions, Legler's claim of unfairness, even if wrongfully found relevant, is simply incorrect.

In reply, the Union posits further as follows:

The company has a duty to exercise management discretion in a fair and non-arbitrary manner, and failed to do so. Its somewhat histrionic reserved rights defense ignores a long line of precedents.

The company failed to meaningfully consider Legler's request to work only in the mornings, despite having a number of other employees who worked only mornings or afternoons, and at least one employee who had her route changed from full time during the course of the school year. The company's contention that employees who got morning or afternoon routes did so by annual posting ignores the hiring of two afternoon drivers in January 2006. The real issue is whether the supervisor reasonably or meaningfully considered the request, or, instead, imposed his will rather than his judgment. It is clear that the branch manager simply refused to consider the matter.

The manager also failed to adduce ay evidence demonstrating the company's difficulty in covering Legler's afternoon route even before the two new afternoon drivers were hired. It is respectfully submitted that a reasonable response would have been to explain the difficulties the request might cause and/or advise Legler that she would have to wait until a replacement could be obtained. A summary denial was a *per se* unreasonable exercise insofar as the decision was motivated, at least in part, by the manager's apparent hostility toward Legler.

In reply, the employer posits further as follows:

Despite agreeing at the hearing that the issue was whether the company violated the collective bargaining agreement, Legler in her brief fails to even identify any provision of the agreement Laidlaw allegedly violated. She claims the company's decision was "unreasonable," but does not identify what provision of the agreement creates that purported standard of reasonability.

The only clause of the agreement that Legler has identified is the management-rights clause, which grants the company the right to establish and change working schedules provided doing so does not violate any other term of the agreement. Legler's attempt to turn the management-rights clause into a union-rights clause is an attempt to gain through arbitration what could not be obtained through bargaining, and must be rejected.

The cases which Legler cites in support are inapposite, because they all dealt with specific clauses of the respective agreements that entitled the grievant to a specific benefit; here, there is no clause granting employees any right to change their schedule in the middle of the school year. Legler essentially seeks to have a "reasonableness" standard regarding schedules written into the contract, in violation of the agreement itself and well-accepted arbitral practices.

Even if the agreement did impose a standard of reasonableness, the grievance would still fail, because Laidlaw's decision to deny Legler's schedule change was entirely reasonable.

DISCUSSION

In December 2005, Cynthia Legler decided to improve her employment options by taking a real estate class. While a desire for greater education and professional ambition are ordinarily positive attributes, Legler unfortunately did so at the expense of her existing employment driving a school bus.

The collective bargaining agreement under which Legler worked clearly entrusts to the management of Laidlaw Transit, Inc. "the right to control the direction of the working forces, including the right to direct, plan, and control bus operations; to establish and change working schedules...." Contrary to the union's assertion, these are not residual rights, but explicit and affirmative rights that are an inherent part of management, limited only by other provisions in the agreement.

There are, in fact, two other clauses in the agreement which restrict management's freedom in setting working schedules. Paragraphs 31 and 32 provide for route packages, developed by management, to be assigned by seniority, and detail how additional route assignments are handled after the start of the school year. Nothing therein provides for unilateral changes to route packages or schedules as initiated by an employee, as Legler contends.

Were there a demonstrated past practice providing for such employee-initiated amendments, clearly enunciated and extending over a period of years, the employer's denial could, in certain circumstances, be found to be improper. In such a situation, evidence of managerial hostility toward the grievant would certainly be relevant. But the record here falls far short of establishing either such a past practice, or any hostility on the part of Wildes toward Legler.

The union cites several arbitration cases standing for the proposition that management must exercise its discretion in a reasonable and fair manner. However, as the company correctly notes, all these cases involve challenges to the employer's handling of specific benefits (vacation, leaves, or other scheduling aspects) explicitly provided for in the collective

bargaining agreement. They are thus not persuasive in evaluating the employer's administration of a management prerogative which the contract clearly assigns to management and management alone.

A grievance which cites the management rights clause as its only contractual basis is on shaky foundation to start; here, the union seeks to go so far as to turn the management rights clause into an employee rights clause. There simply is no legal basis for converting the explicit phrase "management … has the right to … establish and change working schedules" to "employees can unilaterally change their working schedule for a legitimate purpose." Yet that is what Legler seeks to do.

Moreover, I also agree with the company that, if "reasonableness" were the standard, its actions would satisfy that test far better than Legler's. It is simply not reasonable for an employee to march into her boss's office four days before Christmas and announce that, four or five working days hence, she would abandon half her work duties, but would insist on retaining the rest of her job. That Wildes had prior to the school year approved six morning-only shifts, or that he was subsequently able to hire drivers for afternoon-only shifts does nothing to minimize the unacceptable burden Legler's action placed on the company in seeking to meet its legitimate operational needs.

Legler contends that she was "at least constructively discharged as that term is defined in Wisconsin law." But the leading state case defining that term only reinforces how unconvincing her argument is.

In STROZINSKY V. SCHOOL DISTRICT OF BROWN DEER (2000 WI 97), a payroll clerk sought to apply the proper Social Security and Medicare withholding from the superintendent's annual bonus check, which the superintendent resisted. This was not the first dispute to roil the business office; a previous bookkeeper, fearing she would be held personally liable, had refused to sign federal tax forms she considered untruthful, while another employee also refused to sign tax documents because she believed materials accompanying the superintendent's tax-sheltered annuity were fraudulent.

When Strozinsky, believing the federal government would hold her personally liable for the amount owed, penalty and compounded interest, first attempted to deduct the proper amount, the superintendent, Moe, told her he didn't care about the proper application of the tax laws, threw the check at her, and demanded that she reissue it. When Strozinsky voided the check and issued one without withholding, Moe refused that as well; concerned this would look too obvious, he asked for a check with partial withholding. But the computer system prevented Strozinsky from changing the withholding percentages. As she and the business manager – who had earlier, at Strozinsky's request, signed a statement taking responsibility for any errors – struggled with the computer software, Moe approached them and conceded that he was indeed required to pay the taxes as Strozinsky had held.

The court recounted what happened next:

> Moe, however, addressed Strozinsky's decision to ask Amundson to sign the statement insulating her from potential liability, stating, "I'm offended by this memo [that you] documented something, and that you [ ] impl[ied] that I'm doing something illegal here when I'm not," Moe screamed as his veins bulged and spittle came out of his mouth. Strozinsky stated that Moe leaned over the desk red-faced, pointed to the door, and warned that if Strozinsky engaged in similar behavior in the future, she would be "out of here." Strozinsky attempted to justify her conduct; Moe told her, "it was your responsibility – It's your responsibility to advise me about tax." . . . Strozinsky explained that this incident left her shaken. She cried, hyperventilated, and vomited. Id., at 32.

Moe later told Strozinsky that if she did not trust him, she should not work for him. Amundson later told her, "if this is what you think pressure is, you're working for the wrong guy, and perhaps you shouldn't be working here." Strozinsky did in fact resign, which the Supreme Court held to be a constructive discharge under this "stringent" standard:

> that conditions were so intolerable that a reasonable person confronted with same circumstances would have been compelled to resign. The level of intolerability must be unusually aggravating and surpass isolated incidents of misconduct, injustice or disappointment. Id., at 66-67.

I reject the notion that an employee who unilaterally and without advance notice abandons half her work assignment to pursue outside interests but insists on keeping the rest of her job – and suggests that another employee be laid off as part of that process -- satisfies the STROZINSKY standard. Legler was not constructively discharged.

AWARD

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, the grievance is DENIED.

Dated at Madison, Wisconsin, this 5TH day of January, 2007.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator
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SDL/gjc