

BEFORE THE ARBITRATOR

 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 SHAWANO COUNTY (HIGHWAY DEPARTMENT) :
 :
 and : Case 113
 : No. 45955
 : MA-6818
 LABOR ASSOCIATION OF WISCONSIN, INC. :
 :

Appearances:

Mr. Thomas A. Bauer, Labor Consultant, 206 South Arlington Street,
Mr. Dennis W. Rader, Godfrey & Kahn, S.C., 333 Main Street, Suite 600,
 P.O. Box 13067, Green Bay, Wisconsin 54307-3067

Appleton, Wis

ARBITRATION AWARD

According to the terms of the collective bargaining agreement between Shawano County Highway Department (hereafter County) and the Labor Association of Wisconsin, Inc. (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving a five day disciplinary suspension given to the Grievant. The undersigned was designated arbitrator and made full written disclosures to which no objections were raised. Hearing was originally scheduled for November 14, 1991 but on that date the parties worked out a tentative settlement prior to the opening of the record. The settlement, however, was not ultimately accepted and the parties requested a new hearing date. The hearing herein was held on February 17, 1992 at Shawano, Wisconsin. A stenographic transcript of the proceedings was made and received by February 25, 1992. The parties filed their written briefs by April 1, 1992. which the undersigned thereafter exchanged.

ISSUES:

The parties stipulated that the following issues should be determined in this case:

Did the Employer violate the terms and conditions of the labor agreement when it suspended the Grievant without pay for five days for the period March 5, through March 11, 1991, for an alleged violation of County policy?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

SECTION III
VESTED RIGHT OF MANAGEMENT

3.01 The right to employ, to promote, to transfer, discipline and discharge employees for just cause, and the management of the property and equipment of the Highway Department is reserved by and shall be vested exclusively in the Shawano County Board of Supervisors through its duly elected Highway Committee and through its duly appointed Highway Commissioner. The Highway Commissioner, through authority vested in him by the Highway Committee of the County Board, shall have the right to determine how many people there will be employed or retained together with the right to exercise full control and discipline in the proper conduct of Highway Department operations. The County Board, through its Highway Committee and Highway Commissioner, shall have the sole right to contract for any work it chooses, direct its employees to perform such work wherever located in its jurisdiction. They shall have the exclusive right to determine the hours of employment and the length of the work week consistent with the terms of this Agreement set forth in Section 14 and to make changes in the details of employment of the various employees from time to time as it deems necessary for the efficient operation of the Highway Department, and the Association and the members agree to cooperate with the Board and/or its representatives in all respects to promote the efficient operation of the Highway Department.

. . .

3.05 No employee shall be disciplined, suspended or discharged, except for just cause.

EXHIBIT "B"
REGULATIONS AND SAFETY RULES

Both parties to this Agreement hold themselves responsible for the mutual cooperative enforcement of the safety rules and regulations contained in this section.

It is the aim of this program to eliminate accidents, and increase the efficiency of the Shawano County Highway Department, and to obtain the maximum life and service of the equipment operated by the Highway Department. Employees shall be careful and avoid abuses of the equipment they are operating.

Should an employee complain that his/her work requires him/her to be in an unsafe or unhealthy situation, in violation of acceptable safety rules, the matter shall be reported immediately to the Highway Commissioner. If the matter is not adjusted satisfactorily, the complaint shall be processed according to the Grievance Procedure of this Agreement.

RULES AND REGULATIONS

. . .

18. Time cards must be submitted to the Patrol Superintendent no later than Monday following the end of the work week. All employees will complete their own time card. In an emergency situation, the Patrol Superintendent, Shop Superintendent, Office Manager or Highway Commissioner may complete a time card for a subordinate employee. Submission of a false time card will be cause for Step II in Penalties for violation on 1st offense. Second offense will be cause for automatic discharge.

. . .

21. Penalties for violations of any item of this code will be as follows:

- A) For the first offense, employees shall receive written notice as a warning of his/her offense;
- B) For the second offense, employees shall receive suspension for ten (10) working days;
- C) For the third offense, employees shall be discharged.
- D) This paragraph is subject to a three (3) year time limit from the date of the first violation. However, if a second violation has occurred within this time upon the expiration of three (3) years from the date of the first violation, the second violation shall become the first violation, as of the date it occurred.

BACKGROUND:

The County has its main Highway Department Shop in Shawano, Wisconsin, with outlying shops at Angelica, Eland and Tigerton, Wisconsin. The Grievant was hired on July 17, 1989, by the County to work in the Highway Department. The undisputed evidence showed that at the time of hire, neither Highway Commissioner Christianson nor Patrol Superintendent Mitchell instructed the Grievant in County policies, procedure or work rules, and the Grievant was not put through any kind of employment orientation. 1/ The Grievant currently works as a Patrolman helper.

During the Winter months, the Grievant snowplows, sands and cares for his own section: Highway 32 in Pulaski and Highway 156. During the Summer months, the Grievant does brushing and grooming of highways, highway construction and maintenance work and other duties as assigned. Often Summer work is done in crews of 2 or 3 men working together who are assigned by the Patrol Superintendent. The Grievant reports daily at or before 7:00 a.m. to the Shawano shop for his assignments. Before starting time, and at their morning break and at their lunch break, employees have an opportunity to chat about personal as well as work matters. Most employees engage in these conversations. However, the Grievant stated that he generally has not spoken to other employees about their personal lives, work problems or about gossip.

County Highway Commissioner Christianson stated that prior to March 27, 1991, the County had allowed County employees and County retirees to use County shops, water, and equipment to wash and polish their personal vehicles on non-work time. Employees and retirees were allowed to work on and repair their own personal vehicles at County shops on non-working time. County employees were also allowed to take County tools and equipment home with them so long as they asked permission from their supervisor before borrowing the items and so long as they eventually returned the items to the Department. As Christianson stated "I guess it was a loose -- we call it a loose situation. We frowned on it, but yet there was certain areas where it was allowed." (Tr. 36). No employees received any discipline for using County Shops, tools or equipment in these ways.

In the Summer of 1990, Office Supervisor Priscilla Zahn discovered that another Department office employe, Joyce Hohn, had been making long distance phone calls from the Department office to her daughter who lived in Milwaukee. Ms. Zahn discovered this because she had overheard Ms. Hohn on the telephone one day and she (Zahn) had realized that Hohn was making a personal call. Ms. Zahn made note of the date and time of the call and later asked the telephone company to do a trace to determine what number had been called and to whom it belonged. Upon confirmation that the call had been placed to Ms. Hohn's daughter in Milwaukee, Ms. Zahn then investigated past telephone bills and discovered that Ms. Hohn had made long distance phone calls from County phones over a period of a year which calls totaled a value of \$395.50. On August 20, 1990, Ms. Hohn was issued a 5 day suspension for "theft of employer assets by unauthorized use of phone by making long distance calls of a personal nature, since start of employment" Ms. Hohn did not grieve her suspension and made full restitution to the County for the value of the phone calls she had

1/ Union official Robert Reiter, hired in approximately February, 1989, stated that he received no County orientation at hire and that no Department Manager explained County policies, procedures or work rules to him at hire. Reiter stated that he was given a copy of "Exhibit B", quoted above in the Relevant Contract Language section hereof. The Grievant did not testify regarding receiving a copy of Exhibit B.

made.

Several Department employes, called to testify by the County stated that 2 or 3 weeks after Hohn served her suspension, they heard rumors about what had happened to Hohn and that she'd been disciplined for making long distance calls without paying for them, although it is undisputed that the County's arrangement with Hohn for her suspension and restitution was intended to be a "private resolution". The County did not post any notice or speak to employes about the Hohn matter and the County did not instruct or notify employes in any way regarding what they should do in the future if they wished or needed to make long distance calls on the County's phones. It was only by word-of-mouth and rumors that Department employes found out about what had happened to Hohn and what they were expected to do if they made long distance phone calls from County phones.

After the Hohn incident, Office Supervisor Zahn put in place informal procedures for employes to notify her and later pay for their long distance calls. This procedure involved the employe writing the date of the call on his or her time card, on a note to Zahn or to otherwise verbally inform Zahn that the employe had made a call, the date of the call and the number called. Zahn thereafter would write down these communications and later search County telephone bills for the number(s) and bill the employes for their calls by placing a note and/or a copy of the phone bill in their pay envelopes.

Zahn stated that employes generally knew that these procedures should be followed but she admitted that these procedures had never been formally explained to employes. Zahn stated that she trusted employes to tell her about their long distance calls using the above-described procedure. Zahn also stated that if an employe does not pay for his/her long distance calls within three months of receiving the initial "bill" in their pay envelope, Zahn sets up a separate "accounts receivable" number and issues a formal County bill to the delinquent employe.

At least from the Grievant's hire until March 27, 1991 (after he was given the 5 day suspension at issue here), the County had no work rule, no stated or posted policy, specifically dealing with employes making long distance phone calls from Department phones. Notably, Highway Commissioner Christianson and Highway Department office Supervisor Zahn stated that prior to March 27, 1991 but at a time unknown and for a period unknown, the County had posted a policy at its shops pertaining to employes doing work at the shop and doing personal work with shop tools. The County could not locate a copy of this policy for the instant hearing. The policy did not address employe phone calls in any way.

County employe Skalmusky stated that prior to the Joyce Hohn incident "it was pretty lax," that employes could use the County's equipment and that "everything was available" (Tr. 48). 2/ Union official Reiter and the Grievant both hired at approximately the same time, stated that they had had no knowledge of any County policy regarding long distance phone calling prior to the Grievant's receiving his suspension. The Grievant stated he did not listen to shop gossip. However, the Grievant admitted on cross-examination that it was possible he heard about the Hohn situation but had forgotten about it. He also testified that he did not recall hearing about the Hohn incident.

2/ Skalmusky stated that after he found out through the grapevine about Hohn, he made sure he notified Ms. Zahn of any long distance calls he made on County phones, using the procedures Zahn described.

FACTS:

The Grievant was issued a written warning on January 18, 1991 for "poor work ethic - leaving job site early; card playing on county time" on January 17, 1991. He did not grieve this warning. Noted on the written warning was a reference to a previous oral warning, allegedly concerning a November 27, 1990, incident where the Grievant had been "instructed playing cards would not be tolerated."

On March 4, 1991, the County issued a 5 day suspension to the Grievant for "theft of employer assets by unauthorized use of phone by making long distance phone calls of a personal nature, amounting to \$14.79" The Grievant served his suspension from March 5 through March 11, 1991 and paid full restitution for the calls he had made. The thirty-one calls the Grievant made were placed either to his home or to his wife's workplace over a period of 15 months (from November, 1989 through February of 1991) and each call ranged in length of time from 13 minutes down to 1 minute. The Grievant stated that he was not aware of any County policy regarding long distance calling prior to his being suspended. The Grievant stated that he had not intended to steal from the County or to defraud it by using the County telephones. When asked why he did not notify the County he had made the calls, he stated:

"I thought maybe they would be noticed that they were my phone calls and she (Zahn) would have just reminded me" (Tr. 52).

The Grievant admitted he did not attempt to notify the County of his calls over the 15 month period he made them.

Office Supervisor Zahn stated that she "caught" the Grievant because she noticed on the February, 1991, bill that there were quite a few calls from the Angelica Shop to the same Shawano number. Zahn checked employe phone numbers and discovered that the telephone number belonged to the Grievant. Zahn then checked the phone bills over the prior 15 months and found the 31 calls that the Grievant has admitted making without attempting to use a credit card or to pay for the calls. Zahn admitted that she had expected employes to report long distance phone calls to her and that she did not discover the Grievant's calls earlier because she was not looking for them. At the time Zahn discovered the Grievant's calls, Zahn stated, other employes were giving her proper notice of their long distance calls, using the above-described procedures that Zahn had set up.

The Grievant served his five day suspension and filed the instant grievance. On March 27, 1991 the County discontinued its "loose situation" by posting the following "Notice to Employees" at its Shops, signed by Highway Commissioner Christianson:

Please be advised that effective March 27, 1991 misuse of County equipment will subject employes to disciplinary action. Any previous practice of condoning such misuse of County equipment shall be completely discontinued.

Specifically, and for example, no personal long distance telephone calls shall be charged to the County, no personal vehicles shall be washed, polished or worked on while on County premises, and no County equipment or tools or supplies shall be removed from the premises for personal use.

Highway Commissioner Christianson stated that the reasons why the County posted the above-quoted Notice were because of the Grievant's situation and because prior to March 27th, the County had passed an Ethics Code applicable to all County officials and employes. Since the Notice was posted, no employes have been allowed to use County tools equipment or facilities in violation of the Notice, Christianson stated.

The County proffered evidence of a five day suspension given to Duane Spiegel to show its actions regarding the Grievant were fair and appropriate. Spiegel had received a five day suspension for having been out of his County work section, on County time, with a County vehicle visiting at a house construction site without permission. The suspension notice was dated June 3, 1991, three months after the Grievant received his five day suspension. The only other five day suspensions placed in the record here were the Grievant's and Ms. Hohn's.

POSITIONS OF THE PARTIES:

County

The County contended that the Grievant must have known about the Hohn situation, as did employes Skalmusky and Spiegel (who regularly worked with the Grievant on crews). The County noted that these other Department employes also stated that they had followed Ms. Zahn's notification procedures after the Joyce Hohn incident. The County urged that these procedures were well-known among employes after Hohn was suspended. The County further asserted that its March 27, 1991 written notice to employes merely codified and confirmed the procedures used by Zahn, and no change in these procedures occurred after March 27th.

The County asserted that as a matter of sheer common sense, the Grievant should have known what he was doing in making 31 long distance calls amounted to theft and lack of actual intent should not excuse his acts. In this regard, the County noted that the record evidence demonstrated that Department working hours are from 7:00 a.m. to 12:00 Noon and from 12:30 p.m. to 3:30 p.m. Therefore, according to the record evidence, the County observed, at least 13 of the Grievant's calls were made by the Grievant during hours he should have been working, as follows:

1/04/90	7:31 AM	\$.08	1 Minute
1/23/90	8:34 AM	\$.45	4 Minutes
1/26/90	7:44 AM	\$.40	6 Minutes
2/01/90	7:51 AM	\$.15	2 Minutes
12/03/90	12:37 PM	\$.86	5 Minutes
12/04/90	11:27 AM	\$1.34	8 Minutes
12/15/90	11:46 AM	\$.15	2 Minutes
12/15/90	1:25 PM	\$.28	4 Minutes
1/11/91	7:35 PM	\$.08	1 Minute
1/11/91	2:03 PM	\$1.18	7 Minutes
1/14/91	7.45 AM	\$.15	2 Minutes
1/14/91	11.35 AM	\$.22	1 Minute
2/29/91	8:32 AM	\$.21	3 Minutes

Even assuming a mid-morning or mid-afternoon break is properly taken on the clock, the above calls do not appear to fall within the appropriate time frame to be considered as having been taken on the Grievant's break time.

In addition, the County analyzed the transcript and asserted that the Grievant never denied that he knew about Zahn's long distance telephone policy.

The County noted that at first the Grievant stated that he did not believe he had heard about it; later he stated that he did not recall hearing about it;

finally he stated that it was possible that he had heard about the Hohn incident but that he had forgotten that he had heard about it. The Grievant also admitted that he could have heard about the Hohn incident through rumors.

Furthermore, the County contended, the Grievant's attempt to lay the blame on the County for his failure to pay for his long distance calls did not stand up to scrutiny. The County observed that even if the Grievant could have properly expected the County to remind him to pay for his calls, he let the matter go himself and said nothing about it for a period of 15 months. The County implied that the Grievant's assertion that he "guess(ed)" he had not heard about the Hohn incident through shop gossip supports a conclusion that the Grievant's testimony is not to be believed.

The County urged that the five day suspension given to the Grievant here, was fair and comported with the County's contractual progressive disciplinary procedures. The County observed that the Grievant had received an oral warning and later a written warning for incidents which occurred on November 27, 1990 and January 17, 1991, respectively, which involved the Grievant's playing cards on County time and leaving the job site early. Both of these incidents involved "stealing" time from the County, the County noted, just as the long distance calls the Grievant had made involved a type of theft. The County defended its suspension of the Grievant for 5 days by pointing out that Hohn had previously received a 5-day suspension for the same offense and that one other County employe had received a 5-day suspension for a similar offense -- stopping at a construction site without permission outside his assigned section of County time, with a County vehicle.

Finally, the County asserted, the circumstances of this case necessitate that the grievance be denied and that the County's actions be sustained. However, the County stated that it is willing to rewrite the disciplinary notice to delete any reference to "theft of employer assets" and to indicate that the Grievant "violated County policy" regarding long distance phone calls, so long as the discipline is otherwise sustained in its entirety.

Union

The Union asserted that the Employer lacked "just cause", as required by Article III, Section 3.05, for giving the Grievant a five day suspension. In this regard, the Union contended that the County had failed to meet its burden of proving that the Grievant "committed theft" of the County's assets by making long distance phone calls. Even assuming arguendo that the County proved the Grievant's acts amounted to theft, the Union urged, the County failed to prove that the punishment of five days off without pay suited the "crime" of making calls worth a total of less than \$15.00. Thus, the Union argued that the discipline was "excessive and unreasonable" and that it should, in fairness, be reduced by the Arbitrator.

The Union pointed out that no clear and reasonable rule existed prohibiting the Grievant's conduct at the time the Grievant was disciplined. In fact, the County at that time and for some years prior thereto, had condoned conduct similar to the Grievant's and had failed to enforce its own rules regarding the use of County shops, equipment, supplies and tools by County employes as well as County retirees.

The Union argued that the case of Joyce Hohn was different in seriousness from the Grievant's. There, Hohn had run up a phone bill of \$395.50 for long distance calls from County telephones, while the Grievant's calls had only cost the County \$14.79. In addition, the Union asserted that by the very value of the calls Hohn made, she must have intended to make them without any intention of reimbursing the County. This was not true of the Grievant. Indeed, the

Union noted that the Grievant testified essentially that he thought his calls would be noticed by the office and that the office would remind him of them and bill him for them. Also, the Union noted that the County admitted that it never publicized the Hohn incident. Nor did the County use the Hohn incident to formally warn employes about making long distance calls.

The Union observed that Office Supervisor Zahn admitted that even after the Hohn incident she did not notice the Grievant's long distance calls on County bills until February, 1991, six months after Joyce Hohn had been disciplined. The Union urged that given the Grievant and Reiter's testimony that they knew nothing of the Hohn incident, the Hohn incident could not have been as widely talked about and known by employes as the County claimed. Furthermore, Zahn's failure to detect the Grievant's conduct demonstrated that even after the Hohn incident, the County continued its lax enforcement of its rules including its new "rule" regarding phone calling, as well as its old "rules" regarding use of County shops, equipment, tools and supplies. The Union further noted that the County failed to prove it had posted rules regarding even its old rules.

Only after the Grievant was suspended did the County post written rules covering long distance phone calls as well as use of County shops, tools, etc. The Union noted that if the Hohn incident had been so serious to the County, it should have posted a rule or a notice to warn employes to follow County-approved procedures in making long distance calls from County telephones.

Thus, the Union asserted that the evidence showed that the Grievant did not in fact commit the offense charged by the Employer, that the grievance should be sustained and that an award be issued making the Grievant whole and expunging his record. In the alternative, the Union urged that even if the undersigned found that the Grievant committed the misconduct as alleged, the penalty meted out to the Grievant should be reduced to a reasonable level in all the circumstances of this case.

DISCUSSION:

The Grievant admitted making 31 long distance phone calls from County telephones over a 15 month period without attempting to repay the County for those calls. Where an employer has reasonable, consistently applied and enforced rules prescribing such conduct and where employes are made aware of the rules and the consequences for breaking them, discipline for rule infractions is appropriate. There is no question that as a general matter employes should know that using their employer's long distance service for personal calls without attempting to pay for the calls made is at least morally wrong. However, if an employer has been lax in enforcing its rules, has failed to make and post rules and/or has condoned known employe misconduct in the past, this can lead employes to reasonably believe that conduct even though morally wrong, will not result in discipline.

In the instant case, the County did not have a specific rule to cover the Grievant's misconduct. Notably, even after the Joyce Hohn incident, the County did not adopt or post a rule regarding employe long distance phone calls. Nor did the County meet with employes to discuss phone calls. Rather, the County relied upon gossip and word-of-mouth to inform employes what procedure they should follow when making long distance calls. 3/ However, even in the absence

3/ I note, in addition, that the County failed to prove that the Grievant knew of the Hohn incident before he was disciplined. The County also failed to show that the Grievant knew about the long distance phone call procedure Zahn had put in place after the Hohn incident occurred. I note

of a specific rule or rules dealing with long distance phone calls, employes should realize that long distance calls cost money and that employes should not make personal long distance calls on their employer's telephones over a long period of time without attempting to pay for the calls. Without a clear, affirmative statement from the County indicating that employes were permitted to make personal long distance calls without paying for them, the Grievant was proceeding at his own risk in making the 31 calls he made. Clearly, the Grievant knew that the calls he made cost the County money because he admitted he thought the County would remind him and later bill him for his calls. On the other hand, after the Hohn incident, the County should have notified employes that they would have to report their calls and pay for them. The County failed to do this.

The Union urged that the County had condoned the Grievant's acts by its lax approach over many years to employe use of the County's garage, tools, equipment and resources. The evidence showed that the County had in fact approved of employes washing and repairing their cars at the County shops and of their taking County tools and equipment home with their supervisor's permission. One could not say, however, that such approved use of County resources (which would clearly cost the County relatively little money) is the same as the conduct engaged in by the Grievant. Hence, these examples of employe use of County resources must be distinguished from the Grievant's use of County telephones such that the County's approval of the former usage may not stand as condonation of the latter.

I do not believe, however, that the Grievant's conduct rose to the level of theft, as the County has claimed. Although as a general rule, people know that long distance calls cost money, the County had no policy or rule either approving or prohibiting the making of personal long distance calls. 4/ It is significant that the value of the Grievant's calls was so low -- only \$14.79 -- and that in the past, the County had generally taken a lax approach to employe use of its resources. 5/ In all of these circumstances, I do not believe that the Grievant intended to steal from the County by making personal long distance phone calls.

The County has urged that it applied progressive discipline when it decided to give the Grievant a five-day suspension. 6/ The County pointed to

on this point that Union Official Reiter, hired at approximately the same time as the Grievant, stated that he had heard nothing about the Hohn incident until after the Grievant was suspended.

4/ Although the County Highway Commissioner Christianson stated that the County had posted a policy at its shops relating to employes doing work at County shops and doing personal work with County tools, the Highway Commissioner stated that he did not know how long the policy had been posted or when it had been taken down, and that that policy could not be located for the instant hearing. This policy was not placed in evidence and no evidence was offered to show what this policy had included, (except that it did not prohibit or address long distance calls). It is clear that over a longer period of time employes and retirees were allowed to use County resources as described, no matter what the County's policy might have said.

5/ The County argued that because the telephone bills showed that the Grievant had made 13 calls during non-break times. The County failed to prove that any of the Grievant's calls had, in fact, occurred during work time by the evidence proffered.

6/ I note that in none of the cases cited herein (Spiegel, Hohn or the

the warning given Joyce Hohn and one given to Duane Spiegel both requiring five day suspensions, to show its suspension of the Grievant was reasonable. As noted above, the Hohn suspension was given on August 20, 1990 while the Spiegel suspension was given on June 3, 1991. Because the Spiegel suspension was given approximately two months after the County posted its March 27 "Notice to Employees", I believe that suspension cannot serve as evidence of the fairness or appropriateness of the Grievant's suspension. Furthermore, Spiegel's acts were in clear violation of the County's old rules as well as its new rules. In this regard, I note that the Grievant's January 18, 1991 written warning showed that conversion of County paid time to an employe's personal use had never been allowed or approved by the County. Spiegel's acts clearly rose to the level of such misconduct. Thus, a five day suspension was appropriate in Spiegel's case, in my view.

Similarly, a five day suspension also appeared to be appropriate in the Joyce Hohn case. The high monetary value of the calls Hohn had made tended to prove that Hohn intended to make the calls without paying for them. Hohn must have known her calls would be expensive, given the amount of time she must have spent on the telephone. Nonetheless, Hohn continued to make calls over a long period of time without seeking to pay for them. In contrast, the Grievant's 31 calls, although spread over 15 months, cost only \$14.79. In my opinion, this difference in monetary value is significant. The County, therefore, should have moderated the penalty given the Grievant on this basis, especially in light of the County's failure to notify employes of its long distance calling policy after the Hohn incident occurred. 7/

Although no amount was ever stated regarding the Grievant's loss of pay and benefits during his five day suspension, it appears from the effective labor agreement that as a Patrolman helper who had been employed more than 18 months, the Grievant's hourly wage rate as of March 4, 1991 was \$10.13. The contract also contemplates (but does not guarantee) a normal work week of 40 hours. Thus, the Grievant's suspension meant that he lost \$405.20 in gross pay alone. This penalty is excessive in light of the \$14.79 worth of calls the Grievant made. On the other hand, the Grievant's conduct in making personal calls over a 15 month period without questioning their payment cannot be completely excused or adequately explained. Therefore, based upon the relevant evidence and arguments in this case the Grievant's suspension should be reduced to a two day suspension without pay but he should be made whole for

Grievant's), herein did the County follow its progressive discipline procedures listed in Exhibit "B" of the effective labor agreement.

7/ A different conclusion is not required by the January 18, 1991 written warning received by the Grievant, for leaving his job site early and playing cards on County time.

the loss of three days pay and benefits. 8/ Having found that the County failed to properly notify its employes of its new long distance calling policy following the Hohn incident and having compared the misconduct of Hohn and Spiegel to that of the Grievant, as discussed above, I also find that the documentation of the Grievant's suspensions, in fairness, should delete any reference to theft and be amended to show that the Grievant "violated County policy" by his acts. I therefore, issue the following

AWARD

The Employer did not violate the terms and conditions of the labor agreement when it suspended the Grievant without pay for a violation of County policy.

However, the five day suspension originally given to the Grievant shall be reduced to a two day suspension and the Grievant shall be made whole for three days pay and benefits. The written notice of suspension he received shall be amended to reflect that he received a two day suspension for violating County policy.

Dated at Madison, Wisconsin this 16th day of June, 1992.

By _____
Sharon Gallagher Dobish, Arbitrator

8/ A suspension of some duration was appropriate for the Grievant, given all of the circumstances here. That suspension, shall stand on the Grievant's record until it is automatically removed pursuant to Exhibit B, 21(d), by the passage of time, if that provision is deemed applicable by the parties.