

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 CITY OF BROOKFIELD PUBLIC EMPLOYEES :
 LOCAL 20, DISTRICT COUNCIL 40, :
 AFSCME, AFL-CIO : Case 89
 : No. 47095
 and : MA-7175
 :
 CITY OF BROOKFIELD :
 :

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME,
 AFL-CIO, on behalf of the Local Union.
Mr. Roger E. Walsh, Davis & Kuelthau, S.C., on behalf of the City.

ARBITRATION AWARD

According to the terms of the 1990-92 collective bargaining agreement between the City of Brookfield (hereafter City) and City of Brookfield Employees Local 20, District Council 40, AFSCME, AFL-CIO (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 two day disciplinary suspension issued to Grievant, Ronald Braunsky. The undersigned was designated arbitrator and made full disclosures to which no objections were raised. Hearing was originally held in abeyance and then scheduled for May 19, 1992, but that hearing date was postponed to July 8, 1992, all due to the illness and necessary recuperation of the City's chief witness. Hearing was held in Brookfield, Wisconsin on July 8, 1992. No stenographic transcript of the proceedings was taken. The parties filed their written briefs and reply briefs by August 25, 1992 which the undersigned exchanged for them.

ISSUES:

The parties were unable to stipulate to an issue or issues in this case. The City's suggested issues are as follows:

Did the City have proper cause to suspend the Grievant for two days without pay? If so, what is the appropriate remedy?

The Union's suggested issues are as follows:

Did the City violate the contract when it suspended the Grievant for two days without pay? If so, what is the appropriate remedy?

Based upon the relevant evidence and argument in this case and upon the specific language of Article I, I conclude that the City's proposed issues shall be adopted and determined.

RELEVANT CONTRACT LANGUAGE:

ARTICLE I - MANAGEMENT RIGHTS

1.01. Unless otherwise herein provided, the

management of the work and the direction of the working forces, including the right to hire, promote, demote or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested in the Employer. The Employer may discharge an employee serving an initial probationary period pursuant to Article III without regard to proper cause.

1.02. If any action taken by the Employer is proven not to be justified, the employee shall receive all wages and benefits due him for such period of time involved in the matter, except as may be modified in the grievance and arbitration procedure established hereunder.

1.03. The Employer may adopt reasonable rules and amend the same from time to time.

1.04. Any rights or privileges not specifically delegated or modified herein shall be deemed to be retained by the Employer.

STIPULATIONS OF THE PARTIES:

1. There is no issue regarding the timeliness of the grievance.
2. After the meeting on November 20, 1991, Braunsky submitted material to the City which made it clear that from May 9, 1991 to July 29, 1991, Braunsky had insurance. Therefore, the issue of Braunsky's insurance from May 9 to July 29, 1991 was not a basis for the discipline he received and was not considered in meting out that discipline. The reference to "36 working days "is to a period" when Braunsky did not have a valid driver's license from October 26, 1990 through December 18, 1990, it does not refer to the period May 9, to July 29, 1991.
3. November 25, 1990 was a Sunday.

BACKGROUND:

The Grievant has worked for the City in the Parks Department since September, 1966. For all but six months of his 26 years, Braunsky has been employed as a crew chief. Currently, the Parks Department employs five bargaining unit employes (including Braunsky) and a Parks Supervisor, Joe Leonard who is not a member of the bargaining unit. Above Leonard is the Director of the Parks Department, Tom Belton who has held that position since 1979.

The currently effective job description for the Crew Chief position reads as follows:

PURPOSE:

To serve the residents by working in the park system to maintain and improve parkland facilities, and to provide support service for recreation programs.

RESPONSIBILITIES:

1. Assist the Park Supervisor in planning and

- operations.
2. Supervise and work with assigned crew or crews during work projects.
 3. During the Supervisor's absence from work, assign and supervise employees for work on projects approved by the Supervisor or Director.
 - a. Report to work fifteen minutes early to get ready for the day.
 - b. Consult with the Director each day.

EXAMPLES OF DUTIES:

1. Enforce personnel rules and guidelines, keep records, and write reports.
2. Instruct employees in the operation of equipment.
3. Make sure work crews you supervise have necessary tools and equipment for the job before leaving the garage.
4. Make sure tools and equipment used during jobs under your supervision are transported, used, and returned properly.
5. Repair or report tools and equipment used during your supervised projects that are damaged or in need of repair.
6. Work as a single maintenance man, or work with and supervise one or more crews, or directly assist the Supervisor.

STANDARDS:

1. Set a good example of work habits to other personnel.
2. Work effectively and harmoniously with others.
3. Willingness to participate in a program of performance evaluation by the Supervisor.

QUALIFICATIONS:

1. Possess those qualifications and experiences listed in the job description and qualifications for a Park Maintenance Worker and Equipment Operator dated 3-16-90 (copy attached)
2. Ability to lead men effectively and make decisions for problems that may arise.
3. Must be available for overtime call for emergencies.
4. Must be a current employee of the Department.
5. Possess an understanding of the purpose and goals of the City's Park System.
6. Ability to work effectively and harmoniously with others, and willingness to participate in cooperatively (sic) planning.
7. Ability to work effectively, assign and supervise the work of men while working with them at the job site.
8. Knowledge of working hazards and safety precautions.
9. Knowledge of equipment and supplies, and methods for proper use and maintenance thereof.
10. Knowledge of trees and shrubbery, grass,

buildings and structures, and methods for maintenance thereof.

During the time period relevant here, the Department had rules covering conduct of its employes and the City had a separate set of "Safety Rules" which also applied to Parks Department employes. Relevant Department rules read as follows:

The following rules are to be issued to each employee, reviewed by the supervisor with the employees, and a copy posted at the park garage.

Most of these rules are not new or surprising, and have been policy or in practice in the past. These rules are issued to assist the employee in understanding City standards for personal conduct, operational procedures, and safety for the employee and others. Mutual cooperation in carrying out these rules is essential. It is a policy of this department to achieve that end.

1. LAWS & RULES: All lawful regulations and department rules must be followed, and infractions thereof will result in corrective action. (Refer to #17 for kinds of action)

. . .

6. AUTHORITY: Employees will report to and receive orders from the Park Supervisor. In the absence of the supervisor, employees will report and receive orders from the crew chief. The crew chief has authority to give orders in the field, not however to be in conflict with any orders given by the supervisor.

. . .

17. KINDS OF DISCIPLINE:
 - A. Corrective. To eliminate any misunderstanding between supervisor and worker regarding assignment, method of fulfilling task, etc.
 - B. Oral warning. To advise employee of dissatisfaction and expected improvements.
 - C. Reprimand
 - D. Suspension
 - E. Discharge

18. SAFETY: Refer to "Safety Rules for Municipal Employees" attached. If situations arise for which there does not appear to be a rule, the employee is expected to do the best he can, follow known good practice of the past and use common sense. These rules are subject to change as the need may arise. Some rules are covered in the bargaining agreement between the City and the Union (example: sick call).

. . .

Relevant portions of the City's "Safety Rules", referred to above, read as follows:

- 1.1 All employees, when operating a City vehicle, shall comply with the State of Wisconsin Motor Vehicle Laws, particularly Chapter 346, "Rules of the Road."
- 1.2 Every precaution shall be taken to prevent accidents. Employees shall do their work and drive vehicles with all possible regard for their own safety and for the rights and safety of others.
- . . .
- 1.5 The supervisor and crew chief are responsible for safety of work under their direction. The supervisor shall instruct his men, or cause the instruction thereof, in the safe use of tools and in safe methods of work and are responsible for seeing that the work is done safely.
- 1.6 Reporting of all accidents and injuries required:
 - a. All accidents involving City equipment, whether in the shop or on the road, and all injuries, however small, shall be reported to the supervisor.
 - b. Any employee who is involved in an accident with a City owned vehicle shall immediately, after rendering aid to any injured, summon a sworn law enforcement officer to the scene. In addition, the employee shall report the incident, in detail, in writing, to his/her immediate supervisor and/or department head.

. . .

On March 3, 1983 an additional work rule was given to all employees and posted on the Department bulletin board. The posting remained on the bulletin board during all times relevant here. It read as follows:

A valid driver's license is required as a condition for becoming an employee in Park Maintenance with the Brookfield Park and Recreation Department. If a Park employee should have his driver's license revoked for any reason, the employee is required to notify Joe Leonard (Park Supervisor) immediately. This applies to full time and part time employees, and is effective immediately.

Ronald Braunsky possessed a work record free of any disciplinary actions until he received the two day suspension at issue here.

FACTS:

In September of 1991, Parks Supervisor Leonard informed Department Director Belton that Braunsky had reported to Leonard that Braunsky had received a speeding ticket while driving a City vehicle. On October 24, 1991, Braunsky had an accident with a car while driving a City vehicle. There was substantial damage to the car and to the City vehicle although no one was injured. Braunsky reported the accident to his supervisor Leonard who later reported it to Parks and Recreation Director Belton. Belton then began an investigation by writing to the State Department of Transportation (DOT) on October 31, 1991 and requested a transcript of Braunsky's complete driving record for the years 1990 and 1991.

On November 7, 1991, the DOT responded with a letter enclosing the requested transcript. The letter stated in relevant part: 1/

On October 26, 1990, Mr. Braunsky's operating privilege was suspended for 9 months for operating while intoxicated. On December 19, 1990, Mr. Braunsky was issued an occupational license. . . ."

This DOT letter/transcript also (erroneously) stated that Braunsky had no valid drivers license or insurance from May 9, 1991 through July 28, 1991. It stated that Mr. Braunsky's regular license was reinstated on July 29, 1991, after he completed his nine month suspension. DOT records for 1991 also showed that after his regular license was reinstated, Braunsky received a speeding ticket on September 30, 1991 while driving a City vehicle 19 miles over the speed limit. Regarding the October 24, 1991 accident, Braunsky had while driving a City vehicle, his DOT transcript showed that he was ticketed for failure to yield the right of way. Braunsky lost another four points for this incident. On November 6, 1991, Braunsky was convicted on the September 30th speeding ticket, after pleading "no contest." Four points were deducted. On November 7, 1991, Braunsky was convicted on the failure to yield ticket arising out of the October 24th accident, again, after pleading "no contest."

As a result of his initial inquiry, Belton met with Braunsky and the Union on November 19, 1991 to seek information regarding Braunsky's knowledge/view of the contents of the November 7, 1991 DOT report. At this meeting, Braunsky stated that he had a driver's license "except for a period of a few days" 2/ and that the report was wrong regarding his not having a license from May 9 through July 28, 1991 and that he would prove it. Belton stated his concern with Braunsky's lack of a license (if that were the case) as well as with other matters regarding the speeding ticket conviction and accident ticket conviction he had received while driving city vehicles.

On December 11, 1991, Belton held a meeting with Braunsky, his Union representatives and management. At this meeting, Braunsky submitted documents to show he had a valid license for the period May 9, through July 28, 1991 and therefore that the DOT report had been incorrect on that point. However, the record still reflected that Braunsky did not have a valid license for the period from October 26, 1990 through December 18, 1990 and that he had received

1/ The transcript also showed that Braunsky had received a speeding ticket on March 11, 1990 (4 points deducted) and on January 28, 1990 Braunsky had been convicted of operating while intoxicated.

2/ At the instant hearing, Braunsky specifically denied making this statement on November 19, 1991.

the two tickets and been convicted on them in 1991, as described above.

On December 23, 1991 Belton notified Braunsky in writing that he would be suspended for two days. Belton stated the reasons for the suspension as follows:

On October 26, 1990 your license was suspended by the state for nine months. You continued to drive City vehicles without proper licensing for approximately 36 working days. You also failed to notify the City that you were not licensed. You exposed the City to unnecessary liability by this failure. In addition, you entered a no contest plea to speeding with a City vehicle on September 30, 1991 and an accident on October 24, 1991 which you also pleaded no contest.

These actions will not be tolerated. Therefore, you are being suspended for two working days without pay.

. . .

Any further violation of these rules will result in further disciplinary action up to and possibly including discharge.

On December 24, 1991 another meeting between management, the Union and Braunsky was held. At this meeting, Belton made clear the basis for Braunsky's suspension, as stated in Belton's December 23 notice. A follow-up meeting was held on January 3, 1992 at which the Union presented Braunsky's proof that he lacked a valid drivers license for only 16 days in 1990 prior to December 19, 1990, when he received a permanent occupational license, valid for use until his regular license was reinstated on July 29, 1991. The Union submitted Braunsky's 30-day temporary occupational license received on October 25, 1990, which showed that Braunsky's temporary permit had lapsed on November 24, 1990 and that he had not renewed it for the period November 24th through December 18th.

The City offered telephonic testimony 3/ from the Administrative Office Manager for the Waukesha County Clerk of Courts, Susan Van Abel who stated that in 1990 it was her normal business practice and that of her office staff to tell people who applied for an occupational license due to regular license suspension, that the initial license was only temporary and valid for only 30 days; that if they did not receive their new permanent occupational license in 30 days they should call DOT in Madison and return to the County to renew their temporary occupational license; that the permanent licenses were often delayed in Madison for six weeks; and that if they did not renew their temporary license they would not have a valid license unless and until they received their permanent occupational license from Madison. Ms. Van Abel did not recall waiting on Mr. Braunsky in 1990. However, Van Abel testified without contradiction regarding the above-described normal business procedures in effect in the latter part of 1990.

Regarding the Braunsky' suspension, Mr. Belton testified that in his opinion Braunsky in his position as crew chief, had a greater duty to set an example for the men he lead, as evidenced by the crew chief job description. Belton noted that he had reviewed the contents of Braunsky's job description

3/ The Union did not object to the telephonic questioning of the witness.

with him in October of 1990. In addition, Belton noted that Departmental and City rules as well as the drivers license rule posted in the Shop all supported the discipline decision. Belton explained that he did not immediately investigate Braunsky's September, 1991 speeding ticket because it was not until after Braunsky's October, 1991 accident that convictions on both tickets appeared in DOT records (on November 6 and 7 respectively). By this time, Belton was in the midst of his investigation of Braunsky's accident and driving record. Belton and Personnel Director Toby confirmed that no prior incidents of this severity have occurred and been documented at the City -- that is, no other City employe has received speeding tickets or tickets arising out of an accident while driving City vehicles and no other employe has operated City vehicles without having a valid driver's license.

However, Mr. Belton also indicated that he believed that his Park Supervisor, Joe Leonard, had been in an accident in a City vehicle and that Leonard had to go to Court on the case. Belton stated that at that time, Leonard was a supervisor (not a member of the bargaining unit) and that Leonard went to Court over the matter, but Belton did not know the outcome of the case. Belton did not recall whether Leonard had been disciplined for the incident. Belton admitted that City employes have been in accidents with City vehicles but as far as he knew none of them was found at fault or ticketed therefor.

In his defense and regarding the issue of Braunsky's awareness of the meaning and usage of the temporary occupational license issued him on October 24, 1990, Braunsky stated that he had been represented by an attorney at his OWI hearing where he pleaded no contest. Braunsky stated that his attorney told him how to obtain and what would be necessary for him to get an occupational license. On October 25, 1990, Braunsky stated that he went to the Waukesha County Clerk of Courts office but no one there told him any policy or procedure or explained the difference between temporary and permanent occupational licenses. Braunsky admitted however, that although the form he signed on October 25, 1990 stated it was an application for a "temporary" license, he thought that meant it would be effective for the period of his nine month license suspension. 4/

Braunsky further explained that in October of 1990, he separated from his wife and moved into an apartment with his fiance; that at the time he received his temporary occupational license he listed his address as that of his wife, although he was no longer living with his wife; that his wife did not forward his mail regularly after their separation; that his fiance had a Post Office Box where his mail was forwarded; that even after forwarding he did not read his mail regularly but his fiance would throw mail in a box at their residence and Braunsky would look through the box from time to time; that it was not until December of 1991, that Braunsky's fiance found the letter from DOT in Madison, enclosing Braunsky's permanent occupational license. Braunsky explained that this was the first he knew of the permanent license or that he had not had a license for the period November 24, 1991 through December 18, 1991. Braunsky also stated that he took vacation during deer hunting season in November, 1991 (from Thursday, November 22 until Tuesday, November 27, 1991) in further explanation of his failure to realize he did not have a permanent occupational license at that time.

Braunsky further asserted that Mr. Belton had a habit of "butting into" Braunsky's "personal business", that Belton had "picked on" him and that Belton

4/ I note that at the top of the form entitled "Order of Issuance and Temporary Occupational Operator's License", in bold type, it states "Expires 30 Days after Date of Issuance."

had had a "vendetta" against Braunsky. Braunsky asserted that it was none of Belton's business that Braunsky had received two speeding tickets while operating his own vehicle. 5/ An incident had occurred in the Fall of 1989 which Belton spoke to Braunsky about at that time. This incident involved a report that Braunsky (then married) had been seen sitting in his girlfriend's car with his arm around her during his lunch break in a City park. Braunsky stated this incident was none of Belton's business, yet Belton had spoken to Braunsky about this incident. Belton did not discipline Braunsky regarding the incident in the park. Finally, Braunsky stated that Belton at one time, discussed with Braunsky the possibility that Braunsky had extended his weekend or vacation time by using sick leave. Braunsky described this discussion, which did not end in discipline, as being a part of Belton's habit of picking on him.

The Union offered evidence regarding several incidents that it asserted showed that other City employes had been involved in accidents but they had not been disciplined. Union witnesses testified about accidents in City vehicles by Brad Braunsky, Joe Leonard, Mike Vinovich, Ray Putchinski, Dick Paul, Ralph Reinders and Ken Dable. None of these incidents involved speeding tickets received by the employes. None of these incidents was supported by evidence to show that the employes had received a citation or ticket for being at fault for an accident. Several of these incidents involved part-time, seasonal workers or other non-unit employes, while some involved snow plowing accidents, incidents where the employes were clearly not at fault, incidents where the employe was responding to a City emergency alarm, or incidents where the employe had received only a police warning (and no citation) or where the employe had contested a citation received.

POSITIONS OF THE PARTIES:

City:

The City argued that it had proper cause for suspending Braunsky for two days for his failure to possess a valid driver's license for a period of time in 1990 and for his having received and plead "no contests" to two traffic citations issued to him while driving City vehicles in 1991. In this regard, the City urged that it was Braunsky's responsibility to make sure he had a valid license at all times, according to Departmental and City rules and his failure to maintain a valid license violated these rules no matter what the reason. The City implied that Waukesha County employe Van Abel's testimony regarding her office's normal business practice should be believed over Braunsky's explanations and claims regarding his understanding of what his temporary occupational license meant.

The City also noted that Braunsky's position as a crew chief further justified the City's discipline. The City observed that one of Braunsky's tickets had been for speeding up to 19 miles over the posted limit in a City vehicle. The fact that an important part of Braunsky's crew chief job was to drive vehicles for the City combined with the speeding ticket and the failure to yield ticket arising from the accident, demonstrated in the City's view, that it had proper cause to suspend him for two days.

In a different vein, the City contended that the undersigned should nonetheless allow the discipline meted out to stand unless there is "compelling evidence" that the employer abused its discretion or that it acted in an arbitrary, capricious or discriminatory manner. On this point, the City asserted, the Union failed to show any evidence of such an abuse of discretion,

5/ Braunsky was not disciplined for these personal vehicle tickets.

or that it had engaged in any arbitrary, capricious or discriminatory conduct. The City therefore urged the undersigned not to substitute her judgment for management's regarding the level of punishment due Braunsky, based on the record evidence.

Union:

The Union asserted that Braunsky did everything necessary in each instance at issue and that therefore the discipline is unreasonable and should be set aside. The Union noted that on October 29, 1990, the first work day after October 26th, Braunsky told Joe Leonard that he had a temporary occupational license issued to him on October 25, 1990 as a result of a ticket for OWI which Braunsky received while driving his own car on off-duty time. Braunsky showed Leonard the license. The Union asserted that because Leonard was familiar with occupational licenses, Leonard should have warned or instructed Braunsky regarding the temporary nature of the license initially issued to him on October 25, 1990. Leonard said nothing to Braunsky on this point. The Union insisted that Braunsky was unaware of the temporary nature of his occupational license and that he was unaware that he had driven without a license for a period of 16 work days between the expiration of the temporary occupational license and the December 19, 1990 effective date of his permanent occupational license. The Union pointed to Braunsky's contention that he was not told by Waukesha County officials that his initial occupational license was temporary or what his license meant; and that he had not been receiving his mail regularly due to his separation from his wife.

On September 30, 1991 Braunsky reported to Leonard that he had received a speeding ticket while driving a City vehicle. Nothing more was said or done by the City on this incident at this time. On October 24, 1991 Braunsky was involved in an accident while operating a City vehicle. Braunsky immediately reported this to Leonard. The City did not act on any of these incidents until November 19, when Director Belton held the first meeting regarding Braunsky's driving record. It was not until December 23, 1991, that the City issued Braunsky a two day suspension. Thus, the Union asserted, Braunsky had acted with all candor while the City had untimely pursued and investigated Braunsky's "misconduct".

The Union asserted that the City's actions did not meet the "proper cause" standard of the labor agreement. The Union contended that through no fault of the Grievant his temporary occupational license expired and this fact was used by the City, one year later, to discipline the grievant. Because Braunsky's conduct could not be construed to amount to willful misconduct and the City proved no damage occurred due to Braunsky's lack of a license, the City's discipline of Braunsky on this count was "grossly unfair", "unwarranted, excessive and untimely."

Regarding the September 30, 1991 speeding ticket and the October 24, 1991 failure to yield ticket which Braunsky received while driving City vehicles, the Union asserted the City's discipline of Braunsky for these incidents was "just as faulty" and untimely. The Union noted here that Braunsky had paid for the September 30th and October 24th tickets, yet the City unfairly sought to make him "pay" a second time by its discipline of Braunsky two to three months after the incidents without giving Braunsky any notion at the time he reported the tickets to Leonard that he might be subject to discipline therefor.

In all of these circumstances the Union urged that no proper cause existed for the discipline and no progressive discipline scheme had been followed here. The Union therefore sought full back pay for all losses suffered due to the suspension, expungement of Braunsky's record and an order that Director Belton "issue a written apology to Braunsky for his (Belton's)

unwarranted actions."

Reply Briefs

The Union chose not to file a reply brief. The City timely filed its reply.

City:

The City asserted that it was in fact Braunsky's lack of attention to detail and irresponsibility that lead to the expiration of his temporary occupational license without his having it renewed. The City pointed out that the license itself clearly stated that it would expire in 30 days, that Waukesha County employes and most likely Braunsky's attorney had advised Braunsky of the temporary nature of the occupational license initially issued to him. To blame Supervisor Leonard, who had no responsibility to counsel Braunsky regarding the use of his temporary license, would be uncalled for, according to the City. Similarly, in the City's view, for Braunsky to blame his fiance, merely showed Braunsky's repeated inability to take the blame for his own irresponsible actions.

In addition, the City contended that it is insignificant that Braunsky misunderstood that his lack of a license for the period May 9, 1991 until July 29, 1991 was no longer an issue as of November 20, 1991. The City observed that Braunsky had received Mr. Belton's November 20th letter and that Belton had used the same words essentially in a joint meeting on December 11, 1991, to explain that the May 9 to July 9, 1991 period was no longer in issue.

The City further contended that the Union's statement that its reason for disciplining Braunsky was his lack of a valid license during 1990. The City stated this statement was untrue because the City made it clear that Braunsky's two tickets received while driving City vehicles were the impetus and major reason for his being suspended, as stated in City documentation.

The Union's assertion that the City faced no increased liability due to Braunsky's failure to maintain a valid license, the City asserted, is inconsistent with Wisconsin law which indicates that it is negligence per se to drive without a valid license and under the respondeat superior doctrine, the City could have been held responsible for Braunsky's torts. The City also urged, contrary to the Union, that its discipline of Braunsky was timely due to the pendency of its investigation and of the outcomes of the two proceedings involving Braunsky's tickets. The City also asserted, contrary to the Union, that Braunsky (as a driver/member of public) had a responsibility to pay fines for his two tickets and that he had a responsibility to act properly as an employe or risk discipline.

The City took issue with the Union's claims that no employe had ever been disciplined for the items that prompted Braunsky's suspension. The City urged to the contrary and in detail, that no employe has been guilty of the serious conduct which Braunsky engaged in.

Finally, the City strongly disagreed with the Union's insistence that the discipline meted out against Braunsky was not progressive and that it should therefore be set aside. The City noted that there was no contractual or work rule requirement that discipline must be progressive; that the seriousness of Braunsky's conduct taken into consideration with his record, prompted the City to suspend Braunsky for two days. This action, the City contended was reasonable in the circumstances and reasonably within the City's discretion. In all the circumstances, the City urged that the grievance be denied and dismissed in its entirety.

DISCUSSION:

The central issue in this case is whether pursuant to Article I, the City had proper cause to issue Braunsky, a twenty six year employe with a clean work record, a two day suspension for having received two citations while driving City vehicles and for lacking a valid driver's license for a period of time prior to receiving the citations (November 24, 1990 through December 18, 1990).

Although the undersigned might not have issued this level of discipline to the Grievant had the decision been hers, based upon this record, insufficient evidence exists to show that the City's decision was reached in an arbitrary, capricious or discriminatory manner. Therefore, the suspension must stand.

In reaching this decision, I can find nothing improper in the manner in which Director Belton investigated Braunsky's October 24, 1991 accident and the failure to yield citation. In this regard, I note that it was the October 24, 1991 accident in the City vehicle in which a citation was issued to Braunsky that motivated Belton to investigate the status of Braunsky's driving record. In doing so, Belton then discovered, by chance, that Braunsky had driven City vehicles without a license for a period of time.

The fact that there was some confusion, due to incorrect DOT records, regarding the exact period during which Braunsky drove without a license is not significant here. On this point, I find that the record showed that Belton worked to investigate the matter and to clarify the point. Upon receiving clarification, Belton notified Braunsky that the only period involved in the decision to discipline Braunsky was the period after October 26, 1990, when Braunsky had, in fact, driven without a license. Belton promptly notified Braunsky of this clarification both orally and in writing. In my view, driving without a license for any period of time is very serious.

In addition, the delay between the start of Belton's investigation and Belton's December 23, 1991 notice of suspension was due in large part to various inescapable delays in receiving DOT documents and in receiving documents from Braunsky and from Braunsky's insurance carrier. Also, I note that Braunsky's convictions on the September 30, 1991 speeding ticket and on the October 24, 1991 failure to yield right of way ticket were not of record until November 6 and 7, 1991 respectively. In all of the circumstances, it is clear that Belton carefully and fairly investigated Braunsky's driving record following the serious matter of Braunsky's October 24, 1991 accident in a City vehicle which resulted in his being issued a citation.

The Union's arguments that Braunsky was innocently unaware that he lacked a valid driver's license from November 24 through December 18, 1990 and that he had done everything he believed to be necessary to maintain his license, entirely misses the thrust of our State driving laws which do not generally require intent. Thus, the old legal adage, "ignorance of the law is no excuse", is applicable here. The temporary occupational license issued to Braunsky on October 25, 1990 stated in bold type that it was temporary and that it would expire in 30 days. Even assuming arguendo that neither Braunsky's own attorney nor any employe of Waukesha County had properly explained Braunsky's rights and duties under the "Temporary" license issued to him, Braunsky had a duty as a member of the public and as a City of Brookfield Park Department employe to read and understand the entire contents of the Temporary license document he signed.

Furthermore, I am not persuaded that Supervisor Leonard should be held to a duty of care and disclosure toward Braunsky which is higher than that to which the law holds Braunsky himself and every other individual driver who is

given the privilege to operate vehicles on Wisconsin roads. Rather, Braunsky was responsible to ensure he had and maintained a valid driver's license at all times. Similarly, the various other excuses Braunsky gave for being unaware of his responsibilities -- i.e. not receiving his mail regularly due to his living arrangements and going on vacation over deer hunting season -- do not constitute sufficient evidence to excuse Braunsky's failure to act responsibly regarding his driver's license.

As the City properly observed, both City and Departmental rules and policies also independently required that Braunsky exercise greater care and responsibility than he did to ensure that he had and maintained a valid driver's license. On this point, I note initially that there were both City and Departmental rules and requirements that Braunsky maintain a valid driver's license at all times. In addition, Braunsky's Crew Chief job description indicated that as Crew Chief, Braunsky was expected to "set a good example," "enforce personnel, rules and guidelines" and to "supervise" work crews. Thus, in all of the circumstances and especially in light of the potential for extensive liability to which the City would have been subject had Braunsky had a major accident while driving without a license, it was not unreasonable for the City to hold him to its general requirement that he maintain a valid driver's license.

Braunsky's assertions that Belton had a habit of picking on him and butting into his life were belied by the record. The incident regarding parking in the City park and Braunsky's use of sick leave, I note, were related at least in part to Department business and/or to public relations. In any event, it is significant that Belton did not discipline Braunsky regarding these incidents. Regarding Belton's raising Braunsky's driving record in general in November of 1991, I note, that Braunsky's record was then being investigated and it was at issue. None of the driving record items that were wholly personal were used or considered in disciplining Braunsky.

Finally, the Union attempted to prove that by suspending Braunsky, the City treated Braunsky more harshly than it had treated other employes who had had accidents in City vehicles. However, Braunsky's situation was distinct from the others mentioned because he not only had an accident but he was also issued a citation therefor for failure to yield the right of way. In addition, Braunsky had earlier received a speeding ticket while driving a City vehicle. Braunsky was then convicted (after pleading "no contest") on both citations. None of the examples involving other employes submitted by the Union, involved multiple citations and convictions for incidents which occurred while driving City vehicles. Thus, the Union failed to prove that Braunsky's case was like any other in the history of the City. On the contrary, the record demonstrated that Braunsky's situation was significantly different from any situation that had arisen before 6/, allowing the City some discretion regarding the level of punishment.

6/ The record failed to show that Supervisor Joe Leonard had been convicted regarding the accident he had had. In any event, the City's treatment of its unrepresented management employes who have accidents is not relevant to this case which must be defined and directed by the collective bargaining agreement.

In all of the circumstances of this case, I believe that driving without a license for a period of time, receiving a speeding citation while driving a City vehicle, receiving a citation for failure to yield after getting into an accident while driving a City vehicle and being convicted on both tickets after pleading "no contest", constituted proper cause for the City to suspend Braunsky for two days. I therefore issue the following

AWARD

The City had proper cause to suspend the Grievant for two days without pay.

The grievance is, therefore, denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 19th day of October, 1992.

By _____
Sharon A. Gallagher, Arbitrator