BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between CHIPPEWA COUNTY HIGHWAY DEPARTMENT EMPLOYEES, AFSCME LOCAL 736 and CHIPPEWA COUNTY	Case 188 No. 51376 MA-8587

Appearances:

Mr. Steve Day, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of the Union.

Ms. Margaret McCloskey, Personnel Director, on behalf of the County.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "County", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Chippewa Falls, Wisconsin, on December 8, 1994. The hearing was not transcribed and both parties filed briefs which were received by January 18, 1995.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

The parties have agreed to the following issues:

1. Is the grievance arbitrable under the last chance letter of understanding dated March 24, 1994?

2. If so, did the County have just cause to discipline grievant Mark Wellsandt for the June 1, 1994, incident and, if not, what is the appropriate remedy?

DISCUSSION

Following extensive discussions, the parties on March 24, 1994, 1/ entered into a "Letter of Understanding", involving grievant Wellsandt -- who is classified as a Mechanic and who had been employed about four and a half years -- which stated:

> Chippewa County, Chippewa County Highway Department Local 736, AFSCME Council 40, and Mark Wellsandt agree to the following:
>
> 1. Mark Wellsandt will receive a two-week (80-hour) unpaid suspension for the incident involving the Highway Department chain saw.
>
> 2. The suspension will commence when Wellsandt has been released by his doctor for return to work from Worker's Compensation.
>
> 3. Wellsandt will be paid for the time he was suspended from work pending investigation of the incident, on March 15, up to the time he was placed on Worker's Compensation, on March 17, 1994.
>
> 4. A "last chance" letter of understanding will be agreed to, signed by the parties, and placed in Wellsandt's personnel file.
>
> 5. No grievance will result from this disciplinary action.

This letter was signed by Wellsandt and representatives of the parties. The same individuals that date also signed a "Last Chance Letter of Understanding" which stated:

> Chippewa County and Chippewa County Highway Department Local 736, AFSCME Council 40, and Mark Wellsandt agree to the following:
>
> 1. Mark Wellsandt has been disciplined for a serious

1/ Unless otherwise stated, all dates hereinafter refer to 1994.

breach of County policy. As part of the discipline this "last chance" agreement is entered into.

2. Wellsandt will be returned to his regular County Highway Department position following a two-week unpaid disciplinary suspension.

3. Any future instances of serious breach of County/Highway policies/work rules (i.e., a breach that would normally lead to a formal letter of reprimand or more severe discipline) will result in Wellsandt's discharge.

4. Should such discharge occur, it will not be subject to, nor will Wellsandt have recourse to grievance procedures.

. . .

Wellsandt on June 1 was working in the County's Highway Department garage when Sheriff Deputy William Glass dropped off his squad car for maintenance work and an oil change at about 8:30 a.m. Wellsandt subsequently began to work on the car and drained its oil, but did not replace it. Glass telephoned at about 10:30 a.m. and asked Wellsandt whether his squad car was ready to be picked up. Wellsandt replied that it would be ready by the time Glass got to the garage, even though he had not yet replaced the oil. Wellsandt then returned to the squad car to finish the oil change. But before he could finish, he was asked by a fellow Mechanic to help him fix a clutch. Wellsandt suggested that others help out because he was busy, but he finally acceded to that request.

While he was involved with the latter chore - which took about an hour and a half - Glass came to the shop; saw his squad car which had its hood down; removed the shop keys and used his own keys to drive the car away without telling Wellsandt. Glass was able to do so because there are no set procedures in the shop for picking up a car that was being worked on.

Glass drove the car for several minutes before it began to make a very loud noise caused by the fact that there was no motor oil in the engine. The entire engine subsequently had to be replaced at a cost of about $3,789.

There is a testimonial conflict over what Wellsandt told Shop Superintendent Carl Miller and County Personnel Director Margaret McCloskey about this incident. The latter two claimed, and Wellsandt denied, that he suggested to both of them that the engine could be fixed under warranty if the County claimed that the oil pump had broken.

The County terminated Wellsandt effective June 9, hence leading to the instant grievance.

In support thereof, the Union mainly argues that there is no proof that Wellsandt was guilty as charged; that the County has treated its employes in a disparate manner in regards to discipline; and that the discipline imposed was too harsh. As a remedy, it seeks a traditional make-whole remedy which includes Wellsandt's reinstatement and an award of back pay.

The County, in turn, maintains that the grievance is not arbitrable; that Wellsandt "committed a serious act of negligence in his work when he failed to replace the oil in the deputy's squad car"; that he compounded that negligence when he released the car; that he further erred when he proposed to falsely report that the damage to the car was covered under the car's warranty; that Wellsandt in the past had been previously disciplined over similar work errors; and that the degree of discipline was appropriate.

The first issue to be resolved here is arbitrability. As to that, I ruled at the hearing that the grievance is arbitrable even though the March 24 "Last Chance Letter of Understanding" stated that: "Should such discharge occur, it will not be subject to, nor will Wellsandt have recourse to the grievance procedures." This language, in my mind, means that no grievance can be filed or heard over whether discharge is an appropriate penalty and that the only question left open under this language is whether Wellsandt, in fact, was guilty of a "serious breach of County/Highway policies/work rules (i.e., a breach that would normally lead to a formal letter of reprimand or more serious discipline). . ." (Emphasis added). In other words, any such grievance must be narrowly focused on whether a letter of reprimand is warranted, rather than the broader question of whether discharge is appropriate.

The record establishes that Wellsandt, in fact, did deserve at least a letter of reprimand over telling Glass that the work on his squad car had been finished -- even though he had yet to fill it with oil -- and causing Glass to believe that it was all right to drive the car away when he came back to the garage to pick it up. 2/

To be sure, Wellsandt's actions were hardly deliberate and it is readily understandable as to why he left Glass' car to help out another Mechanic fix a clutch on another vehicle. That is why this incident, standing alone, might not have been enough to warrant his discharge under normal circumstances.

2/ While Wellsandt said at the hearing that he told Glass that the car would be ready by the time that he, Glass, picked it up, I find that Wellsandt, in fact, told him that the work already had been completed - a distinction which does not, in any event, alter the result of this case.

But, this incident does not stand alone: it followed a "Last Chance" agreement which expressly stated that Wellsandt would be fired if he engaged in conduct warranting a letter of reprimand. The County here certainly has sufficient grounds for issuing such a letter since Wellsandt, more than anyone else, was responsible for the events which eventually led to the $3,789 worth of damage to Glass' car. To say otherwise is to, in effect, say that the County was utterly helpless in trying to prevent such damage in the future. I do not subscribe to that view.

It therefore is immaterial whether Wellsandt has been disciplined or otherwise cautioned over his work in the past since the very narrow issue herein does not turn on whether the County had to follow progressive discipline before it could advance to the discharge step but, rather, only on whether a letter of reprimand was called for here.

In this connection, the Union argues that Wellsandt is the victim of disparate treatment because the County in the past failed to discipline employes Kostick, Sheminauer and other employes for their work mistakes. This record does, indeed, establish that the County did not issue discipline in these instances. However, all those situations are materially different because none of them involved a mistake resulting in $3,789 worth of damage. Furthermore, it does not appear that Kostick was entirely at fault regarding his incident since he was told that the grinder was ready to go. Moreover, the "Last Chance" agreement here said absolutely nothing about these prior accidents and instead, pegged itself to one issue and one issue only: Wellsandt's future conduct, not the past conduct of his fellow employes.

Lastly, the Union argues that the "discipline imposed was too harsh". For an employe with a clean record, yes. For an employe who signed a "Last Chance" agreement calling for his discharge if a letter of reprimand was warranted, no.

In light of the above, it therefore is my

AWARD

1. That the grievance is arbitrable.

2. That the County had just cause to discipline grievant Mark Wellsandt; the grievance is therefore denied.

Dated at Madison, Wisconsin this 7th day of April, 1995.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator