

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

FEDERATION OF NURSES & HEALTH
PROFESSIONALS, LOCAL 5001, AFT, AFL-CIO

and

MILWAUKEE COUNTY

Case 400
No. 51596
MA-8661

Appearances:

Ms. Carol Beckerleg, Field Representative, appearing on behalf of the Union.

Mr. Timothy R. Schoewe, Deputy Corporation Counsel, appearing on behalf of the County.

ARBITRATION AWARD

Pursuant to a request by Federation of Nurses & Health Professionals, Local 5001, AFT, AFL-CIO, herein the Union, and the subsequent concurrence by Milwaukee County, herein the County, the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission on January 1, 1995, pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on February 24, 1995, in Milwaukee, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on March 28, 1995.

After considering the entire record, I issue the following decision and Award.

ISSUES:

Since the parties were unable to jointly agree upon the issues, I have framed them as follows:

1. Did the County have cause to suspend the grievant, Vernadine Wilkerson, for violating its civil service and work rules?
2. If not, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

PART 5

5.01 DISCIPLINARY SUSPENSIONS

(1) In cases where an employe is suspended for a period of 10 days or less by the employe's department head, pursuant to the provisions of sec. 63.10, Wis. Stats., the Federation shall have the right to refer such disciplinary suspension to the arbitrator who shall proceed in accordance with the provisions of Section 4.03(2)(a). Such reference shall in all cases be made within 60 working days from the effective date of such suspension. The decision of the arbitrator shall be served upon the Department of Labor Relations and the Federation. In such proceedings the provisions of Section 4.03(2)(c) shall apply.

. . .

5.02 REPRESENTATION AT DISCIPLINARY OR DISCHARGE HEARINGS/MEETINGS

(1) At meetings called for the purpose of considering the imposition of a suspension or the filing of charges for discharge, the employe shall be entitled to Federation representation but only at the administrative level at which suspension or discharge may be imposed or effectively recommended, i.e., at the level of the appointing authority or designee for such purposes.

(2) It is understood and agreed that such right is conditioned upon the following:

. . .

(c) Recognizing that discipline is most effectively imposed as contemporaneously as possible with the incident leading to such action, it shall be the obligation of the employe to make arrangements to have employe's Federation representative present at the time the meeting is set by the appointing authority or their designee to consider the imposition of such discipline.

. . .

6.02 ENTIRE MEMORANDUM OF AGREEMENT

(1) The foregoing constitutes the entire Memorandum of Agreement between the parties by which the parties intended to be bound and no verbal statement shall supersede any of its provisions.

All existing ordinances and resolutions of the Milwaukee County Board of Supervisors affecting wages, hours, and conditions of employment not inconsistent with this Agreement are incorporated herein by reference as though fully set forth. To the extent that the provisions of this agreement are in conflict with existing ordinances or resolutions, such ordinances and resolutions shall be modified to reflect the agreements herein contained.

PERTINENT CIVIL SERVICE RULES:

-----RULE VII-----

SEPARATIONS; SUSPENSIONS

Section 1 - DEMOTION AND DISMISSAL; SUSPENSIONS; PROCEDURES.

Whenever a person possessing appointing power in the county, as to employes under their respective jurisdictions, believes that an employe in the classified service in his department has acted in such a manner as to show him to be incompetent to perform his duties or have merited demotion or discharge, he shall report in writing to the Civil Service Commission, setting forth specifically his complaint, and may suspend the officer or employe without pay at the time such complaint is filed. Nothing in this section shall limit the power of the department head to suspend a subordinate for a reasonable period not exceeding 10 days. In case an employe is again suspended within 6 months for any period whatever, the employe so suspended shall have the right of hearing by the Commission on the second suspension or any subsequent suspension within said period the same as herein provided for in demotion or dismissal proceedings. All suspension shall be immediately reported in writing to the Commission. The Commission may, in its discretion, investigate any such suspension and in the case of its disapproval the suspended employe shall be immediately reinstated, and any part or

all of the pay which he may have lost may be restored to him by order of the Commission.

Section 2 - WHO SHALL OR MAY FILE CHARGES. (1) It shall be the duty of the superior officer to file charges against any officer or employe subordinate to him and in the classified service if there by cause for demotion or discharge of such officer or employe.

Section 3 - FILING; NOTICE; HEARING. (1) In cases involving the filing of charges for discharge or demotion, the commission shall appoint a time and place for the hearing of said charges, the time to be within three weeks after the filing of the same, unless further time be granted by the commission for cause shown, either upon the application of the complainant, the employe or his attorney before the expiration of said three weeks. Notice shall be given the complainant and the employe or his attorney of the time and place of said hearing. In cases where an employe is suspended a second time within six months for any period whatever, the employe so suspended shall have the right of a hearing by the commission on the second suspension or any subsequent suspensions within the said period, the same as herein above provided for in demotion or dismissal proceedings.

(2) The complaint shall state specifically the facts alleged to constitute cause for suspension, demotion or discharge, and shall refer to the paragraph or paragraphs in Section 4 of this rule under which said charges are brought.

CIVIL SERVICE RULE VII, SECTION 4 June 2, 1987

Section 4 - CAUSES FOR DISCHARGE, SUSPENSION OR DEMOTION AND/OR RE-EVALUATION

(1) The following are declared to be cause for discharge, suspension or demotion and/or the approval of or the imposition of an employe re-evaluation period as provided in Rule VI, Section 8, of the rules of the Milwaukee County Personnel Review Board, of any officer or employe from the classified service of the County of Milwaukee, though charges may be based upon

causes and complaints other than those here enumerated, namely:

. . .

(i) Violation of rules or practices relating to safety.

. . .

(r) Leaving place of work during working hours without authorization, wasting time or loitering.

. . .

(u) Substandard or careless job performance.

. . .

(x) Interference with normal work flow or departmental procedures.

PERTINENT STATUTORY PROVISION:

63.08 County and City Civil Service 91-92 Wis. Stats.

. . .

63.10 Demotion; dismissal; procedure. (1) Whenever a person possessing appointing power in the county, the chief executive officer of a department, board or institution, the county park commission, county election commission, civil service commission, and county board of welfare as to officers and employes under their respective jurisdictions, believes that an officer or employe in the classified service in that person's, commission's or board's department has acted in such a manner as to show the officer or employe to be incompetent to perform the officer's or employe's duties or to have merited demotion or dismissal, the person, commission or board shall report in writing to the civil service commission setting forth specifically the complaint against the officer or employe and may suspend the officer or employe at the time such complaint is filed. It is the duty of the director of personnel . . . charges against any officer or employe in the classified service upon receipt of evidence showing cause for

demotion or discharge of the officer or employe in cases where a department head or appointing authority neglects or refuses to file charges. Charges may be filed by any citizen against an officer or employe in the classified service where in the judgement of the commission the facts alleged under oath by (the) citizen and supported by affidavit of one or more witnesses would

if charged and established amount to cause for the discharge of the officer or employe. The commission shall forthwith notify the accused officer or employe of the filing of the charges and on request provide the officer or employe with a copy of the same. Nothing in this subsection shall limit the power of the department head to suspend a subordinate for a reasonable period not exceeding 10 days. . . .

DISCUSSION:

At issue is whether the grievant was suspended for three (3) days for cause under the terms of the parties' agreement. 1/

Contrary to the Union's assertion, the grievant left her workplace without proper authorization on the evening of July 19-20, 1994. In this regard the record indicates that while staff nurses may have allowed her to leave and be on standby no supervisor released her from duty. Only her Clinical Supervisor (Val Sternig) or the House Supervisor (John Riegert) are empowered to do this, and they did not give the grievant permission to leave work.

The record is also clear that the grievant did not leave a phone number where she could be reached while on standby or take a beeper with her as required by work rules. In fact, the grievant admitted that she was unavailable for an extended period of time; that she forgot to call her unit with a phone number as promised and that when she contacted the department she was told that people had been trying to reach her and she should come in because one patient had just been admitted and there had been phone calls from other prospective patients. The type of patient seen in this unit (Labor/Delivery) includes primarily high risk moms, predominantly poor inner city teenagers.

The Union argues that the County did not suspend the grievant in a timely manner as

1/ Section 6.02 of the agreement incorporates applicable County civil service rules. Rule Seven, Section 3, paragraph (2) requires a showing of "cause for suspension, demotion or discharge."

required by Section 5.02(2)(c) of the agreement. However, the aforesaid contract provision is very general in its requirement "that discipline is most effectively imposed as contemporaneously as possible with the incident leading to such action," and there has been no showing by the Union that the procedure followed by the County (investigation followed by a disciplinary hearing) in suspending the grievant was unduly delayed or resulted in a flawed outcome. The Union argues a second incident which occurred in late August or early September, 1994, prompted the County to take the action it did for the earlier incident that occurred on July 19-20,

1994. However, the grievant testified that her disciplinary hearing took place on August 31, 1994 with the suspension letter following on a timely basis on September 8, 1994. There is no persuasive evidence in the record that the second incident had anything to do with the grievant's three-day suspension.

The Union also argues that the grievant initially understood she would receive a lesser form of discipline (have something written up about the incident, loose standby pay or not be allowed to substitute other paid time off for the three hours she was gone). It is true that supervision spoke with the grievant on August 11, 1994 about losing pay for her standby time as alleged by the Union. However, this was early in the County's investigation of the incident and no promises were made regarding possible disciplinary action later.

Finally, the Union offered testimony from the grievant that on other occasions she had left work without calling the supervisor and had called the supervisor for co-workers who had left without first notifying the supervisor. The grievant also testified that it was often difficult to contact the supervisor for permission to leave work. The County, on the other hand, offered at least equally persuasive evidence, that an appropriate supervisor had to give permission to leave work, that such a supervisor was normally available and that, the grievant's examples notwithstanding, this was the procedure required to be followed. Based on the following, the Arbitrator rejects this argument of the Union as well.

The Union maintains in support of mitigation of the penalty that the grievant did not mislead anyone at the hearing regarding her past discipline record and that she has not received any other discipline in her six years of employment with the County. The County, on the other hand, contends that the grievant conveniently forgot prior reprimands just after testifying under oath that she had never been the subject of discipline. Assuming arguendo that the grievant has a good work record, the Arbitrator is of the opinion that said work record is not material with respect to the three (3) day suspension imposed on the grievant due to the relatively short period of time she has been employed by the County.

In view of the foregoing, the Arbitrator concludes that the answer to the issue as framed by the undersigned is YES, the County had cause to suspend the grievant for violating its civil service and work rules for leaving work without proper permission and for being unavailable while on standby on the evening of July 19-20, 1994. Having reached this conclusion, it is unnecessary to make a determination regarding the County's allegation that the grievant was improperly clothed for her work shift on the aforesaid date. The Arbitrator also finds no persuasive evidence in the record to impose a more stringent form of discipline as argued by the County. Presumably, the County considered all appropriate factors (risk to patients and fellow nurses as well as the grievant's response to the allegations against her) at the time it decided to impose a three (3) day

suspension on her.

Based on all of the above, and the record as a whole, it is my

AWARD

That the grievance of Vernadine Wilkerson is hereby denied and this matter is dismissed.

Dated at Madison, Wisconsin this 21st day of June, 1995.

By Dennis P. McGilligan /s/
Dennis P. McGilligan, Arbitrator