

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 2698, AFSCME, AFL-CIO

and

COLUMBIA COUNTY

Case 166
No. 53125
MA-9241

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Donald Peterson, Corporation Counsel, Columbia County, appearing on behalf of the County.

ARBITRATION AWARD

The Union and County named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned arbitrator to hear the grievance of Lisa Dvorak in an expedited procedure. A hearing was held on November 3, 1995, at which time the parties presented their evidence and arguments, and the record was closed. The parties ask whether the County had just cause to terminate the Grievant, and if not, what is the appropriate remedy? The Grievant, Lisa Dvorak, was a unit assistant at the County Home for four years. She was put on an indefinite suspension on February 21, 1995 and discharged on September 5, 1995.

In December of 1994, the Director of Environmental Services at the County Home, Jane Hanna, realized that one of the Home's vacuums was missing. It had been kept in an unlocked closet. Hanna received a call from Chris Hogquist, who worked at the Home at that time. Hogquist is the Grievant's nephew, and he told Hanna that he knew that the vacuum was at the Grievant's residence.

In February of 1995, Pam Siepel, a cook at the Home and the Grievant's sister-in-law, came to the office of the Home's Administrator, Lisa Olejniczak, and told her that she had seen the vacuum in the Grievant's house. Siepel also said that she had seen other items that belonged to the facility in the Grievant's house, and that she once saw the Grievant walking out with ice cream taken from the facility. Olejniczak contacted the Sheriff's Department.

The Grievant denies stealing the vacuum, ice cream or anything else from the Home. She admits that she had the vacuum in her possession, and that she bought it for \$75 from another former employee, Leonard Sundsmo. The Grievant said Sundsmo brought the vacuum to the Home in his car, took it out of his trunk, and the Grievant put it in her car and took it home. Sundsmo was also a unit assistant but no longer works at the Home.

According to the Grievant, the trouble all started after she kicked her nephew and her sister, Chris and Ann Hogquist, out of her house. Chris is Ann's son, and Chris and Leonard Sundsmo were good friends. The Grievant testified that Chris was stealing things from the Home, and that both her nephew and sister are liars and told lies to the detective from the Sheriff's Department who investigated the theft of the vacuum. The detective's report indicates that Ann Hogquist told him that the Grievant said she acted as a lookout while Sundsmo stole the vacuum cleaner and put it in the trunk of her vehicle.

The district attorney brought charges, and the Grievant eventually pled "no contest" to a charge of receiving stolen property, but this plea was entered after the County decided to discharge the Grievant.

The County contends that the case is pretty clear -- that the Grievant was either in possession of stolen property or that she stole it. The County believes that the evidence is incriminating, where a big red vacuum cleaner went into her trunk from a person that has stolen things in the past. The district attorney found it odd, too, and thought he had enough evidence to bring a charge. The County can discharge employees for stealing or receiving stolen equipment, or it might as well unlock its doors. The County finds it odd that the Grievant claims not to have recognized the vacuum as being from the Home, where it said "Commercial" on it and had a red bag with a blue base.

The Union believes that if the County had witnesses that corroborated its findings, its failure to bring them forward should be held against it. The letters "Commercial" on the vacuum cleaner do not mean much -- it could mean that it's a heavy duty vacuum. The Union notes that admittedly, the Grievant has family problems and it could not bring them forward as witnesses, and Sundsmo was a friend of the person accusing the Grievant -- Chris Hogquist. However, the Union argues that the Employer cannot sustain a discharge on evidence like this, which is so tainted by the strange family relationships. The Union cannot cross examine a police report, so there is no evidence to sustain the suspension and discharge, and the Grievant should be reinstated.

DISCUSSION:

Both parties dispute the weight of the Grievant's conviction following her plea of no contest. However, that is largely irrelevant because the County made its decision to discharge the Grievant before she made the plea and the guilty conviction was entered into the record. Thus, the evidence has to stand or fall on events and evidence up to September 5, 1995, when the County discharged the Grievant.

This case turns on the credibility of the Grievant herself, and she lacks credibility. She is forced to call former employees and her own relatives thieves or liars or both in order to discount their stories against her. While neither party was too anxious to bring this cast of characters forward for direct testimony, the fact alone that the Grievant calls several others thieves and liars undermines her own credibility. In order to clear her own name, the Grievant must discount all

accusations made against her by several people, most of them her own relatives. Sometimes blood is not thicker than water.

The County had just cause to suspend and discharge the Grievant. It conducted an investigation during which other employees accused the Grievant of stealing or having stolen property in her house. It turned the matter over to law enforcement authorities, who continued to find evidence against the Grievant in sufficient amount to continue to prosecute a case against her. The County does not have to prove beyond a reasonable doubt that the Grievant stole the vacuum cleaner or received it knowing it was stolen property from the Home in order to sustain this discharge. It needs to have sufficient evidence to provide it with just cause for discharge, and for the reasons noted above, particularly with the lack of the Grievant's own credibility, it has met the standards needed for just cause.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 14th day of November, 1995.

By Karen J. Mawhinney /s/
Karen Mawhinney, Arbitrator