

Scenario 1: TRUE CONFESSION

Arbitrator Kathy Fragnoli

Bill Smith, a 20-year-old truck driver for a soda company, was making a delivery to a small country store one afternoon. After bringing in some boxes to load the shelves, he went to the restroom at the back of the store. The restroom had a sign that said “employees only” but delivery people were permitted to use it.

Inside the restroom, Bill found a small white paper bag on the floor. He looked in the bag and found a wad of bills that totaled approximately \$400. The bag belonged to the woman who ran the store’s meat counter but Bill did not know this.

Bill put the bag and the money into his pocket, left the restroom, and returned to the store to finish loading soda bottles on the shelves. He did not tell anyone in the store about the bag and the money he found. About 30 minutes later he left the store.

After returning to the company’s warehouse later that day, he started to complete his paperwork for the end of his shift. While doing this, Bill’s supervisor approached and asked if Bill had found any money during the day. Bill admitted that he had, took the money from his wallet, and gave it to the supervisor. In talking to the supervisor, Bill admitted that if he had not been asked about finding money, he would have kept it for himself.

After making the discovery, the supervisor spoke with the owner and Bill was fired for dishonesty. Bill had been working for the company for about a year. He had been a good employee and had not been involved in any wrongdoing until this incident. Six months before Bill’s firing, the company had fired another delivery driver who had taken a bottle of champagne from the back of a supermarket storeroom.

- Would you sustain the grievance and reinstate Bill?

Scenario 2: AN EXCITING JOB

Arbitrator Howell Lankford

Tom, a city utility worker, was found asleep in a remote part of the lawn utility shed. It was the slow season so there were fewer employees than usual on the grounds crew. Tom was found with his eyes shut, his shoes off, with an alarm clock and blanket. It was not a scheduled break time for him.

Tom was a 22-year employee with no prior discipline. He admitted he had been drowsy but denied being asleep. All Public Works employees were interviewed, and they indicated that they had never seen Tom or any other employee asleep on the job.

The city dismissed Tom for theft of city time. The union grieved. At the arbitration hearing, the union offered evidence that grounds crew workers occasionally sleep in this area during meal periods and rest breaks. In fact, some supervisors do it too. Moreover, Tom had worked late the night before at his supervisor's direction to lay the new sod for the next day's football game.

- Will you sustain the grievance and reinstate Tom?

Scenario 3: “Me Too??”

Arbitrator Audrey B. Eide

2021-2023 Collective Bargaining Agreement (CBA) negotiations took place in a time of economic hardship for the employer. The employer came to the table with the position there would be no increases for anyone in 2021 or 2022.

Under the last CBA the union had taken furloughs in exchange for step increases and COLAs. Most bargaining unit members had topped out of the step pay scale and only about one-third of the bargaining unit was eligible for step increases in 2021. The union proposed a “Me Too Clause” in return for an agreement that there would be no step increases or COLAs in 2021 or 2022.

The employer drafted a “Me Too Clause”: If any other bargaining unit of the employer or non-represented employees should receive a COLA under the contract period, all represented employees in the bargaining unit shall receive the same.

The union became aware that on January 1, 2022, the employer had added steps to the salary schedule for non-represented employees. The additional steps were implemented, and all non-represented employees were moved up by a step which resulted in a 3 % across the board increase. (The step schedule provided that non-represented employees graduated through the steps on their anniversary dates.) The union requested the employer implement the “Me Too Clause” in the CBA and afford the members of the bargaining unit the same increases received by non-represented employees. The employer denied the request based on the fact the step increases were not a COLA. The union grieved.

- Will you sustain the grievance and award “Me Too” increases for the bargaining unit members?

Scenario 4: The Missing Wash-Up Time

Arbitrator Kathy Fragnoli

For many years; the employees of Grade A Company have been allowed to wash-up 15 minutes prior to the end of their shift. There is nothing in the contract about wash-up time, although there is language, which states:

Hours of Work:

Regular working hours are from 9:00 AM to 5:00 PM. Time worked in excess of 40 hours in a week shall be paid at time and one-half (1.5) times the regular rate of pay.

Beginning January 1, 2000, the employer installed two timeclocks without bargaining with the union. The timeclocks are located at the main entrance of the plant. Because there are approximately 150 employees who are on one shift, long lines have resulted at the time clock at the end of the shift. Waiting time in line has been approximately 15 minutes. Employees have not been granted additional time, prior to the 15 minutes waiting to clock out, before the end of their shift to leave their work area to wash-up.

The union filed a grievance protesting both the institution of the time clock system and the denial of wash-up time.

- Would you sustain the grievance?
- What is the remedy?

Scenario 5: THE FINAL STRAW

Arbitrator Howell Lankford

George is a nice guy who has been a Company employee for 12 years. As an employee, George is not a prize. The company hires at the bottom of a career ladder and expects every employee to advance up that ladder one way or another. George failed to advance in the usual fashion. Ordinarily, such an employee would be dismissed but George is a nice guy, and the Steward convinced the manager to create another path for George. The company agreed to place George in a permanent oiler position (where he is responsible for regular maintenance routes on all the company's capital equipment).

Three months ago, George opened a "hot line" without depressurizing it and the oil in the line encountered an ignition source and very nearly burned down the building. The manager finally could not be talked out of at least a Last Chance Agreement. The LCA, between the union (and George) and the company provided that if George's performance caused further damage to company property or injury to personnel the company could discharge George without just cause, establishing only that he had caused the alleged damage or injury.

A month later, the company's outside counsel received a call from the manager who said that it was the final straw with George.

George had set out to move a forklift through the parking lot and had substantially damaged three cars, two belonging to customers and one belonging to the manager. The manager immediately interviewed George and promptly dismissed him. The union grieved.

- Will you sustain the grievance and reinstate George?
- If so, what more could the company have done to pave the way toward dismissal under these circumstances?

Scenario 6: TIMELY FILED?

Arbitrator Audrey B. Eide

The Grievant was a part-time employee. She applied for a full-time position February 6, 2018. She received a letter April 12, 2018, announcing an outside candidate had been awarded the position.

The Collective Bargaining Agreement states a grievance related to salary is timely if filed within two years of the incident that gave rise to the grievance:

The adjustment of grievances shall be accomplished as rapidly as possible in order to resolve the grievance promptly.

To expedite resolutions, the grievance shall be initiated within sixty (60) days following the events or occurrences upon which it is based, except that grievances related to salary may be filed within two (2) years of when the situation occurred.

The union filed a grievance on July 15, 2018, alleging the appointment to an outside candidate rather than the Grievant was a violation of the promotion article in the collective bargaining agreement.

The employer argued that the grievance filed on July 15, 2018, was untimely. The union disagreed and maintained that the grievance was timely as it related to salary.

- Will you find that the grievance was “related to salary” and timely filed?

Scenario 7: IS TEN DAYS SOMETIMES ELEVEN OR TWELVE?

Arbitrator Kathy Fragnoli

The Collective Bargaining Agreement for the police department provides that "A grievance must be presented to the Police Chief within 10 calendar days of the date the union knew or should have known of the alleged occurrence."

Officer Dan and the police officer's union received a written notice of Officer Dan's dismissal on December 11, 2024. Ten calendar days from December 11 would have been December 21, which was a Saturday.

Although city offices are closed on Saturdays and Sundays, the Police Department's offices, are open 24 hours a day, seven days a week, 365 days a year. The union's attorney filed Officer Dan's Dismissal grievance on Monday, December 23, which was 12 calendar days after receipt of the notice of Officer Dan's dismissal.

The city argues the grievance was filed too late. The union argues that of course if the deadline for filing falls on a weekend, a filing is timely if it is made on the following Monday.

- Will you find the grievance was timely filed?

Scenario 8: KEEPING THE SCRAPS

Arbitrator Howell Lankford

Able, Baker and Charlie were maintenance workers for the County. Their work sometimes included teardowns. One Monday, the maintenance supervisor told the three workers that the next day they were to remove a condenser unit from the roof of a county building (a job far larger than their usual duties) and to recycle as much of the unit as possible.

The next day it was alternatively raining, sleeting, snowing and freezing. Able, Baker and Charlie finally got the condenser down from the roof and took it to Pacific Recycling where the county has an account. On the way to Pacific, they called their supervisor and asked if they could keep the money from the unit because it was not their usual work and the weather had been ghastly. The supervisor said that in addition to the horrible weather and since they had saved the county over \$50,000 in removal costs, they could keep the recycling money if he got a small cut.

The three workers asked Pacific to send the check for recycling to Able's home address, rather than to the county. They decided to hold the check for a little while to let things settle down and "make sure no one asked any questions". Then Able cashed the check and divided it between him, Baker, Charlie and the supervisor.

Charlie soon felt bad about taking the money, so he donated his share to the county's general fund. That unusual donation triggered an investigation and the whole story came out. The county dismissed Able and Baker citing many policies in the handbook prohibiting personal use of county property. The Union grieved.

- Will you sustain the grievance and reinstate Able and Baker?

Scenario 9: WHAT THEY WROTE OR WHAT THEY ARE DOING?

Arbitrator Audrey B. Eide

Additional compensation for special education teachers and educational staff associates has been paid for caseloads above the negotiated ratios for the last 10 years and through three or four collective bargaining agreements. The caseload overages for the two classifications have never been paid the same way. Special education teachers have been paid caseload overages for each month throughout the school year. Educational staff associates have been paid for caseloads at least two above the negotiated average only for the one month that they have their highest caseload in the school year. The Collective Bargaining Agreement (CBA) provides:

When a special education teacher goes above their negotiated caseload numbers, they will receive additional compensation of \$75 per independent education plan. Any educational staff associate who has a caseload, at least two above the average caseload for their respective field, will also be entitled to the additional compensation of \$75 per independent education plan.

A new union staff representative was assigned to this local. They filed a grievance after reviewing the CBA and learning how payments for caseload overages were made. The union argued the language in the agreement is clear and unambiguous and the educational staff associates should be paid the same as special education teachers which is every month they have caseload overages during the school year.

The employer argued that there has been a longstanding and enforceable past practice that established how educational staff associates are paid for caseload overages, which prevails in this case.

- Will you find that the language of the collective bargaining agreement is clear and unambiguous and sustain the grievance?