It is conceivable the employer might be estopped to deny the existence of the settlement agreement.[1] Estoppel can be asserted against a municipal corporation to prevent manifest injustice. *Beggs v. City of Pasco*, 93 Wn.2d 682, 689 (1980). The elements of equitable estoppel are "(1) an admission, statement, or act inconsistent with a claim afterward asserted, (2) an act by th[e] party [arguing estoppel] in reasonable reliance on the admission, statement, or act of another, and (3) injury to the relying party if the court allows the first party to contradict or repudiate the earlier admission, statement, or act." *Ellis v. Wm. Penn Life Assurance Co.*, 124 Wn.2d 1, 15 (1994). If Ms. Bradley-House told the union the settlement would be final with Brown's and Pugh's approval,[2] the first element would be present. The employer's present contention the settlement never came to fruition satisfies the second element. But the union is in no way worse off than it was before the settlement negotiations began. The grievance is still alive; it has not been withdrawn; no deadlines for necessary action appear to have passed. The mistaken reliance on Ms. Bradley-House's reference to Brown and Pugh has done no injury to the union beyond delaying the ultimate resolution of the grievance.

AWARD ON UNION'S MOTION

Based on the foregoing and the record as a whole, it is the award and decision of the Arbitrator on the stipulated issue that the parties DID NOT reach a settlement agreement on this grievance. Accordingly, the union's motion is DENIED.

INLAND EMPLOYEES FEDERAL CREDIT UNION —

Decision of Arbitrator

In re INLAND EMPLOYEES FEDERAL CREDIT UNION and UNITED STEELWORKERS OF AMERICA LOCAL 3127-13, Case No. 94-4, October 4, 1994

Arbitrator: Lamont E. Stallworth

LEAVES OF ABSENCE

— Emergency personal leave ▸116.203 ▸118.6363

Grievant should not have been penalized day's pay for taking emergency personal leave because her car was inoperable due to accident in family driveway, even though employer determined that transportation problems cannot be considered emergency, unless employee is in accident on way to work, since what constitutes emergency cannot be categorized but must be determined on case-by-case basis; grievant is single parent who needs car to transport her children to day care and to school, and to get herself to work, and there is neither taxi nor bus service from her home city to workplace, so that lack of car was real emergency.

— Emergency personal leave ▸116.203 ▸93.4665

Union did not timely challenge management's requirement that all emergency leave requires verification when it filed grievance protesting denial of personal leave to specific individual and questioning requirement more than 30 days after policy announcement, where announcement was event giving rise to grievance, and agreement requires that union file grievance within 30 days of such event; employer has right to inquire into basis of employee's emergency personal leave day, since employer has legitimate business need to establish reasonable policy to prevent personal leave abuse.

Appearances: For the employer — Thomas C. Granack, attorney; Robert Jansen, vice president of operations. For the union — Joe E. Gutierrez; Mary Williams, chairperson of grievance committee.

PERSONAL LEAVE

The Issue

STALLWORTH, Arbitrator: — The Parties have agreed that there are two issues involved in the instant grievance. The Parties submitted the following issues to the Arbitrator:

1. Does the Employer have the right pursuant to Article 6, Section 7 to inquire into the basis of an employee's request for an emergency personal day?

2. Whether the Grievant was disciplined for just cause? If not, what shall the remedy be?

Relevant Contract Provisions:

ARTICLE III

[1] The union did not advance this argument.

[2] The Arbitrator notes that the most the union asserts is that these were the only two persons whose names Ms. Bradley-House mentioned as needed to approve the settlement; at no time did the union contend Ms. Bradley-House had affirmatively represented the approval of other officials was not needed.

MANAGEMENT

Section 1 — Except as limited by the provisions of this Agreement, the Management of the operations and the direction of the working forces, including the right to direct, plan and control operations, to hire, recall, transfer, promote, demote, suspend for cause, discipline and discharge employees for cause, to lay off employees because of lack of work or for other legitimate reasons, to introduce new and improve methods or facilities, and to change existing methods or facilities, and to manage the properties in the traditional manner are vested exclusively in the Employer, provided, however, that in the exercise of such functions the Employer shall not discriminate against employees because of membership in or legitimate activity on behalf of the Union.

* * *

ARTICLE 5
HOURS OF WORK

* * *

Section 7 — Each employee shall have three (3) paid personal business days per calendar year. Said personal business days are not to be used as an extension of vacation or holiday and would require advance notice to the employer of at least two (2) working turns in advance (except in emergency situations.) If all or any part of said personal business days are not used by employee by end of the calendar year, the employee shall be paid at his/her rate of pay at the end of the year for said personal days. The granting of the personal business days is subject to causing minimum interference with the employer's operations.

* * *

ARTICLE 9
ADJUSTMENT OF GRIEVANCE

* * *

Section 2 — "Grievance" is defined as a request or complaint by an Employee or Union which involves the interpretation, application or violation of the terms of this agreement. All grievances shall be processed under the procedures of this Article.

Section 3 — Should any employee or the Union have a grievance, an earnest effort shall be made to resolve the grievance in the following manner:

Step 1: The Employee who believe (sic) he or she has a justifiable complaint or request shall within thirty (30) days from the date the cause of the complaint occurred discuss such with their immediate supervisor, with or without the Grievance Committeeperson, in an attempt to settle same.

* * *

Step 4: If a satisfactory settlement cannot be reached by the parties in Step 3, the Union may submit such grievance for arbitration, within (10) days of such meeting. The arbitrator's decision shall be final and binding on the parties.

The parties shall agree upon the selection of a single Arbitrator in accordance with the American Arbitration Rules and Regulations who will have jurisdiction and authority only to interpret, apply or determine compliance with the provisions of this Agreement.

The Arbitrator shall not have jurisdiction to add to, detract from or alter in any way the provisions of this agreement. The Arbitrator shall render his decision within thirty (30) days from the date of the hearing unless circumstances warrant additional time.

Background

The Grievant, Ilia Powell, has been with the Company for eight (8) years. She is employed by the Company as a loan clerk. On Monday, April 18, 1994, the Grievant's son had an accident with the Grievant's car in the family driveway at approximately 7:00 p.m. The car was rendered inoperable and left the Grievant without a means of transportation for the next day. The Grievant called her supervisor at home on the evening of Monday, April 18, 1994, and explained the situation. The Grievant informed Ms. Collins that she would not be in to work the next day. Ms. Collins, the Branch Manager, approved the absence. The Grievant then called the Recorder to leave a message in compliance with the Report Off procedure.

On Tuesday, April 19, 1994, the Grievant spent the day taking care of the accident report for her damaged vehicle and arranging for a car rental. The Grievant rented a car at approximately 1:00 p.m. on April 19th. She ultimately had to rent the car for a total of eighteen (18) days because of the amount of damage to her vehicle. Car transportation was the Grievant's only viable means of travel. There is no taxicab or bus service between the Grievant's residence in Gary, Indiana, and her place of employment. The Grievant also must take her four year old daughter to day care before going to work each day. The Grievant's seventeen year old son must also be driven to school. The Grievant stated that it takes her twenty-five (25) minutes to chauffeur her children before going to work.

The Grievant reported to work as scheduled on Wednesday, April 20, 1994. On Thursday, April 21, 1994, the Grievant submitted her request for payment for emergency personal leave for her Tuesday, April 19, 1994, absence. The request was approved by Brenda Collins and was then mailed to the East Chicago office.

The Employer has a Personal Day leave policy that allows employees to take three (3) personal days with notice of two (2) working turns, except in emergency situations. This provision is found in Section 7 of Article 5. On

Friday, April 8, 1994, the Employer had distributed a notice to all bargaining unit employees that there had been a recent rash of emergency paid personal business day absences in the last three months. Management notified all employees on Friday, April 8, 1994, that in the future all emergency leaves will require verification upon the employee's return to work. The Union did not challenge this unilaterally established rule made by the Employer until the instant grievance was filed. The Employer notes that the attendance policy has been upheld twice in arbitration.

The Human Resources Supervisor, Wally Hartman, asked the Grievant for verification of her emergency absence after she filed her request for payment. The Grievant complied with Mr. Hartman's request and submitted her car rental receipt. The Grievant's request for payment for her absence on Tuesday, April 19, 1994, was denied by Mr. Hartman on the grounds that her absence was not due to an emergency.

On Thursday, April 28, 1994, the Grievant wrote Mr. Hartman a letter requesting his definition of an emergency and the reason for the denial of her request for payment for an emergency personal day. Mr. Hartman replied on Monday, May 2, 1994. He sent the Grievant a memo that stated transportation to the Grievant's workplace is the Grievant's sole responsibility. The Grievant's statement in her request that her vehicle had been in an accident and that she said "this is surely an emergency" on the answering machine were unacceptable as an emergency to the Employer. Mr. Hartman took the position that the Grievant's son running into the side of the garage door frame causing damage to the car did not constitute an emergency. Mr. Hartman also stated that Emergency Personal Paid Days will be decided on a case by case basis. Accordingly, the Grievant's request for payment for emergency leave was denied.

On Friday, June 10, 1994, the Employer issued discipline against the Grievant for her absence on Tuesday, April 19, 1994. The Grievant received a third warning for absenteeism and one eight hour suspension without pay.

On Tuesday, June 21, 1994, the Union filed a grievance on the Grievant's behalf. The grievance challenged the Grievant's discipline and questioned the verification policy. The Employer denied the grievance on the grounds that it was untimely. The grievance progressed through the various grievance steps. The Parties were unable to resolve the instant grievance and the matter proceeded to arbitration. It is within this factual context that the instant dispute arises.

The Union's Position

The Union contends that the instant grievance is not untimely. The Union contends that the Employer's April 8, 1994, letter regarding verification for emergency leave merely indicated that the Company is initiating a new policy. The Union asserts that it could not file a grievance in anticipation of an action—it must wait until it happens. The Union waited until the Grievant's request was denied and the policy was put into action before it challenged the Employer's new verification policy for emergency leave. The Union argues that the Grievant's discipline letter was issued on Friday, June 10, 1994, and the grievance was filed on Tuesday, June 21, 1994. The Union contends that this is within the thirty (30) day time required by the Parties' collective bargaining agreement. Accordingly, the Union requests that the instant grievance challenging the Employer's new verification policy be considered as timely.

The Union also argues it did not waive its right to grieve the Employer's policy. The Union states that, just because a grievance was not filed regarding the directive, it does not mean the Union waived its right to challenge the Employer's directive. The Union maintains that there was no "event" or "incident" to grieve. The Union argues that it would be a stumbling block to deem grievances untimely.

With respect to the policy itself, the Union contends that the contract does not require an employee to provide "emergency" requests. The Union asserts that the negotiated agreement between the Employer and the Union does not give the Company the right to determine what is and what is not an emergency. The Union argues that verification of an emergency is simply a restriction the Employer incorporated into its own interpretation of Article 5, Section 7. The Union maintains that the verification requirement is an attempt by the Employer to restrict the bargaining unit employees' right to use their personal days as provided in the contract.

The Union submits that the Employer's interpretation of Article 5, Section 7 is based on restrictions that the Parties did not negotiate. The Union states that the instant grievance presents the same contract interpretation issues as found in the case

decided by the undersigned Arbitrator in Arbitration Case No. 1991-1 Grievance 11-91. In addition, the Union relies on *Inland Employees Federal Credit Union and United Steelworkers of America, Local 3127-13*, (East Chicago, Ill.) (L. Stallworth, January 31, 1992) Case No. 1991-2 Grievance No. 33-91 for the proposition that an arbitrator's authority is expressly limited under the contract. Specifically, Article 9, Section 4 of the Parties' Agreement provides that the arbitrator will have "jurisdiction and authority only to interpret, apply or determine compliance with the provision of this agreement. The Arbitrator shall not have jurisdiction to add to, detract from or alter in any way the provisions of this agreement."

The Union states that it is in wholehearted agreement with the Arbitrator in the above-referenced case when the Undersigned refused to fill in "gaps" because to do so would have constituted contract making rather than interpretation or application as the contract requires.

The Union also maintains that the Employer should use negotiations as the appropriate avenue for adding to or detracting from the Agreement rather than attempting to change the Agreement via arbitration. The Union requests that the Arbitrator sustain the Union's position with regard to the Employer's verification requirement for emergency personal leave.

With respect to the Grievant's discipline, the Union maintains that the one day suspension without pay was not for just cause. The Union agrees that the problem of absenteeism is prevalent. The Union asserts that the Employer's submission of the high number of emergency leaves show a pattern of "bad weather" that is not unique to the credit union. However, the Union argues that the numbers went down after the Employer instituted the verification policy in April because employees just did not ask for leave.

The Union submits that in the Grievant's situation, the Grievant was forced to rent a car to get to work. She paid $357.00 to rent the car for eighteen (18) days while her car was being repaired. The Union asserts that when the Grievant lost transportation everything in her household was disrupted. It was essential that the Grievant get her car fixed. The Union contends that there is no taxi service between Gary and Schererville. The Union states that most of the women employees live from check to check and that money is tight. Accordingly, the Union argues that it was imperative that the Grievant took the time to get an accident report on file and get her car repaired. The Union submits that there is nothing in the contract which gives the Employer the right to require verification of an emergency. Rather, the Grievant appropriately requested emergency paid leave and instead received discipline. The Union submits that this is unjust under the contract.

Based on the foregoing, the Union requests that the instant grievance be sustained and the Grievant be made whole.

The Employer's Position

The Employer asserts that it had just cause to impose the one day suspension without pay upon the Grievant. The Employer further asserts that the Grievant did not experience an emergency on Tuesday, April 19, 1994, and thus, was not entitled to an approved absence with pay. Instead, the Employer asserts that the Grievant had an unexcused absence for that day and the Employer, thus, had just cause for meting out the one day suspension.

The Employer asserts that Employer Exhibit No. 1 clearly shows that there was a drastic decrease in emergency personal days taken after the Employer instituted its verification policy on Friday, April 8, 1994. Employer Exhibit No. 1 is the monthly count of emergency days taken from January, 1994 to July, 1994. In January, there were seventeen (17) emergency days taken and in July there were two (2) emergency days taken. The Employer asserts that there is only one explanation for this, i.e. requiring employees to verify an emergency reduces the number of emergency days taken and reduces abuse of the emergency paid personal day policy by employees.

The Employer notes that there are three aspects to the instant dispute. First, the Employer's notice on April 8, 1994, that it would begin to require verification for emergency days was not grieved by the Union within the thirty day time period. Therefore, the Union's challenge to the policy in the instant grievance is untimely. Second, it is the Employer's position that it has the right to request verification for emergency leave. Third, the Employer asserts that the verification policy will not be abused. The Employer states that verification is subject to the grievance procedure and may be challenged pursuant to the contract.

With respect to the Grievant's situation, it is the Employer's position that

the Grievant did not experience an emergency. Mr. Hartman, Human Resources Supervisor, stated that if someone is on their way to work and has an accident the Employer would consider that scenario an emergency. However, according to the Employer, not having transportation to work is not a legitimate emergency. It is the employee's responsibility to get to work somehow.

The Employer argues that the case cited by the Union in *Inland Employees Federal Credit Union and United Steelworkers of America, Local 3127-13*, East Chicago, Illinois) (L. Stallworth, January 31, 1992) Case No. 1991-2 Grievance No. 33-91 involved a completely different issue. The issue in that case was whether the Employer was justified in denying personal leave days because it interfered with the Employer's operation. In the instant case, the issue is whether the Grievant was entitled to an emergency paid personal day because her car was inoperable. The Employer asserts that the Grievant was not entitled to a paid emergency personal day because she did not experience an emergency. Accordingly, the Employer requests that the instant grievance be denied.

Opinion

This is a case involving the discipline of an employee for missing work after attempting to take an emergency paid personal day because her car was in an accident. The Parties submitted the following issue(s) to the Arbitrator:

> Does the Employer have the right pursuant to Article 6, Section 7 to inquire into the basis of an employee's request for an emergency personal day?
>
> Whether the Grievant was disciplined for just cause? If not, what shall the remedy be?

The Arbitrator has considered the testimony, other evidence and arguments presented by the Parties in this case and concludes that the Employer has the right to inquire into the basis of an employee's emergency personal day but was not justified in denying the Grievant her paid emergency personal day. The Arbitrator's findings, conclusions and reasoning are set forth below.

The Union argues that with regard to the emergency paid personal verification policy that the instant grievance is not untimely. The Union contends that because no employee was actually affected by the policy at the time it was announced that there was no basis to file a grievance. The Arbitrator disagrees. The change in policy by the Employer is an "event" in itself which can be grieved. The Employer notified the employees of the policy change on Friday, April 8, 1994. The Union failed to challenge the policy until it filed the instant grievance on Tuesday, June 21, 1984. The Parties' Agreement requires that the Union file a grievance within thirty (30) days of the occurrence of the event giving rise to the grievance. The Union failed to do so. Consequently, the Union waived any right to file a grievance challenging the Employer's policy. Accordingly, the Arbitrator must deny that portion of the grievance relating to the Employer's verification requirement for emergency paid personal days.

The Arbitrator notes, however, that it is generally accepted that an employer has the right to establish "reasonable rules" in order to efficiently run its business as long as the rules are not inconsistent with law or the collective bargaining agreement. In *How Arbitration Works*, by Frank and Edna Elkouri (4th ed. BNA, 1985) the authors note:

> Thus, when the agreement is silent upon the subject, management has the right to formulate and enforce plant rules as an ordinary and proper means of maintaining discipline and efficiency and of directing the conduct of the working force, (citations omitted)

(*How Arbitration Works*, at pg. 553). In the instant grievance, the Employer was concerned about the apparent abuse of emergency paid personal days. The Arbitrator believes that the Employer had a legitimate business need to establish a reasonable policy to prevent personal leave abuse.

While it is important to note that the Employer retains the right to make reasonable work rules, it is equally important to point out that the rulemaking right of an employer is not absolute. The Employer does not have unfettered power to apply rules in an arbitrary or discriminatory manner. The Employer may not abuse the right to make rules by applying them in a capricious fashion. The grievance procedure is available as a means to make certain the Employer's right to create reasonable rules is not abused.

In the instant grievance, the Employer attempted to categorize what type of incidents constitute an emergency. The Employer determined that transportation problems cannot be considered an emergency, unless an employee is in an accident on the way to work. It is the Arbitrator's opinion that this is too neat and tidy a definition of what does not fall within the category of "personal emergency". It is

the Arbitrator's opinion that what constitutes an emergency cannot be categorized but must be determined on a case by case basis. What might be a non-personal emergency for one employee might well be a personal emergency for another. A fact-based analysis is therefore required to determine whether an emergency situation is present.

In the instant grievance, the Grievant is a single parent with at least two children. She lives in Gary and must use a car to transport her children to day care and to school, and to get herself to work each day. There is no taxi service from Gary to the Grievant's workplace nor is there a bus service available. It takes the Grievant approximately twenty-five (25) minutes to transport her children to their school or care facilities before the Grievant drives to work. For the Grievant, car transportation is essential. When the Grievant's car became inoperable after her son had a driveway accident with it, lack of transportation posed a real problem for the Grievant. She could not take her children where they needed to be and she could not get to work. Obviously, this would not have posed a problem for someone who did not have children or who lived close to work and had access to other modes of transportation. However, as far as the Grievant is concerned the lack of transportation was a real emergency for the Grievant. She relied on her car and had to rent another in order to take care of her children and to get to work.

Arbitral authority on what constitutes an emergency is discussed in *How Arbitration Works*, referenced above, at page 530. While some arbitrators are reluctant to offer a generalization as to what constitutes an emergency, preferring a case by case analysis of the facts and circumstances at hand, other arbitrators have offered guidance as to what they consider to be an emergency. For example, in *Canadian Porcelain Co.*, 41 LA 417, (Hanrahan, 1963), the arbitrator defined the term "emergency" as "an unforeseen combination of circumstances which calls for immediate action."

It is the Arbitrator's opinion that in the instant grievance, an emergency occurred because the Grievant could not have foreseen her son's accident with the car and her need for transportation required immediate action. Consequently, under the facts presented, the Arbitrator finds that the Grievant did not abuse the emergency personal leave policy and that the Grievant established that a personal leave emergency existed. The Arbitrator, therefore, must conclude that the Grievant should not have been penalized for a day's pay but instead should have received payment for her emergency personal day. Accordingly, that part of the instant grievance regarding the Grievant's discipline must be sustained and the Grievant should be made whole.

AWARD

Grievance denied in part and sustained in part per Award.