

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

1199W/UNITED PROFESSIONALS FOR  
QUALITY HEALTH CARE,

Complainant,

vs.

STATE OF WISCONSIN,  
DEPARTMENT OF EMPLOYMENT RELATIONS,  
DEPARTMENT OF CORRECTIONS,  
and STEPHEN SARGEANT,

Respondents.

Case 343

No. 49320 PP(S)-198

Decision No. 27708-B

Appearances:

Ms. Helen Marks Dicks, Attorney at Law, 124 West Broadway Avenue, Madison, Wisconsin, 53716-3092, appearing on behalf of 1199W/United Professionals for Quality Health Care, referred to below as the Union.

Mr. David J. Vergeront, Legal Counsel, State of Wisconsin Department of Employment Relations, 137 East Wilson Street, P. O. Box 7855, Madison, Wisconsin, 53707-7855, appearing on behalf of the State of Wisconsin, Department of Employment Relations, Department of Corrections, and Stephen Sargeant, collectively referred to as the State.

ORDER AFFIRMING IN PART AND  
AMENDING IN PART EXAMINER'S FINDINGS OF FACT  
AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

On January 23, 1995, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he concluded that Respondent State of Wisconsin had committed certain unfair labor practices within the meaning of Secs. 111.84(1)(a), (c), and (d), Stats. and therefore ordered the State to take certain action. He dismissed those portions of the complaint which alleged a violation of Sec. 111.84(1)(e), Stats.

On February 10, 1995, Respondent State of Wisconsin filed a petition with the Wisconsin

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Employment Relations Commission seeking limited review of the Examiner's decision pursuant to Secs. 111.07(5), and 111.84(4), Stats. The parties thereafter filed written argument in support of and in opposition to the petition, the last which was received June 9, 1995.

On November 6, 1996, the Commission met with Examiner McLaughlin to hear his impressions of witness demeanor.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

ORDER<sup>1</sup>

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<sup>1</sup> Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if

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- A. Examiner Findings of Fact 1-3 are affirmed.
- B. Examiner Finding of Fact 4 is affirmed as amended to reflect that Jack Kestin is employed by the Department of Corrections.
- C. Examiner Findings of Fact 5-6 are affirmed.

(Footnote 1 continued from page 2)

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the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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- D. Examiner Finding of Fact 7 is affirmed as amended by the following addition at its conclusion:

To the extent that the Registrar's April 8 memo incorrectly reflects that Janssen was scheduled to work Thursday, April 8, 1993, Thomas was not a source of that inaccurate information.

- E. Examiner Finding of Fact 8 is affirmed as amended by the following addition at its conclusion:

To the extent the April 12, 1993, memo incorrectly states that Janssen was scheduled to work Thursday, April 8, 1993, Thomas was not a source of that inaccurate information.

To the extent Sondalle's April 16, 1993, letter to Janssen incorrectly reflects that Janssen was scheduled to work Thursday, April 8, 1993, Thomas was not a source of that inaccurate information.

- F. Examiner Findings of Fact 9-16 are affirmed.  
G. Examiner Conclusions of Law 1-6 are affirmed.  
H. Examiner Order is affirmed.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of November 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

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1199W/UNITED PROFESSIONALS FOR  
QUALITY HEALTH CARE

MEMORANDUM ACCOMPANYING  
ORDER AFFIRMING IN PART AND  
AMENDING IN PART EXAMINER'S FINDINGS OF FACT  
AND AFFIRMING EXAMINER'S CONCLUSIONS OF LAW AND ORDER

The Petition for Review

Respondents' Petition states:

Please be advised that the State of Wisconsin, pursuant to Section 111.07(05), Wis. Stats., hereby petitions the Commission to review the following findings of facts, conclusions of law, order and/or Memorandum and modify them as requested:

1. At page 13, first paragraph, Mr. Kestin is a Department of Corrections (DOC) employe, not a Department of Employment Relations (DER) employe.
2. At page 53, in the last full paragraph, lines 5 and 7, the references to DER should be DOC.
3. At page 52, second from the last paragraph: "Thomas was the source of that [Ms. Janssen was scheduled to work April 8] information" which "was inaccurate:"
  - a. Resp. Exh. 60, p. 2 (copied to Gloria Thomas) states: "The nursing staff...do not expect Nurse Janssen to return until monday (*sic*) although she is scheduled today (April 8) and friday (*sic*) (April 9). There is some type of disagreement with the new supervisor [Gloria Thomas] as to the scheduling." (Emphasis added.)

Clearly, that language attributes the source of information that Ms. Janssen was scheduled to work April 8 to someone other than the "new supervisor"--Gloria Thomas. Additionally, Resp. Exh. 60 was copied to Central Office administrators--

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Ken Sondalle and Sharon Zunker. It must be noted that Ms. Thomas was not the author of Resp. Exh. 60 and Mr. Sondalle was the author of the April 16, 1993, letter (Resp. Exh. 55) which referenced "You were absent from work from April 8 to April 12."

b. Compl. Exh. 29, a memo from Gloria Thomas states: "On April 9, 10, 11, 1993, Ms. Janssen was absent." There is no mention of an absence on April 8, 1993.

The record is totally void of any credible evidence that Ms. Thomas ever stated to anyone that Ms. Janssen was scheduled to work on April 8 but was absent. In fact, the evidence is absolutely clear that the source was the April 8, 1993, memo (Resp. Exh. 60) authored by Pamela Knick, which was sent to Sharon Zunker and Ken Sondalle. That memo makes it clear that the "source" was the nursing staff, not their supervisor, Ms. Thomas. Resp. Exh. 61, from Robert Cohen to Ken Sondalle, via Sharon Zunker, specifically references "the April 8 memo from Pam Knick. That April 12, 1993, memo (Resp. Exh. 61) was followed by Resp. Exh. 55 from Mr. Sondalle to Ms. Janssen.

Since there is no credible evidence whatsoever to attribute misinformation (as to April 8 being a scheduled work day for Ms. Janssen) to Ms. Thomas, any such reference in the Findings of Fact, Conclusions of Law, Order and/or Memorandum must be deleted.

#### Complainant's Response

Complainant's responded to the Petition as follows:

In paragraph #1 the Employer requests that the finding of fact be changed to refer to Mr. Kestin as a Department of Corrections employee and not a DER employee. We agree that Mr. Kestin is an employee of the Department of Correction.

In paragraph #2 the Employer requests that certain references be changed from DER to DOC. We agree.

In paragraph #3 the Employer argues that Ms. Gloria Thomas was not the source of the higher ups believing that Mary Janssen was scheduled to work on April 8. They argue that there is no credible evidence to support that finding. However Ms. Thomas herself testified that not only was Mary Janssen scheduled to work on April 8, but that she did so. (T-840). As late as January 25, 1994, Thomas still believed that April 8th was a day in contention. (Id.). At the hearing on that day Thomas was asked where Bob Cohen had gotten the information that Nurse Janssen was scheduled to work on the 8th and called in sick. Ms. Thomas admits that she is the source of that information. (T-874-875). Thomas also testifies about R-61 and testifies that it is erroneous. Thomas admits to being the source of the information about the 8th. This was the Employer's own witness and the very person whose acts are in question.

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The Employer relies on R-60 to support his argument that Thomas is not the source of this information. This requires a very imaginative leap from the written word. What the memo says on the first page is that Mary Janssen told Pamella (sic) Knick she would not be back to work until Friday, April 9th. Later in the memo it is stated that the nursing staff did not expect Janssen to return to work until Monday. That is true, since between the time that Knick saw Janssen on the 7th and the 8th, Janssen has both gone to the doctor and called in sick. (T-990). She calls in sick on the 7th. (T-990). Where Knick gets the impression that Janssen was scheduled to work on the 8th is unclear. The following sentence about the disagreement with the new supervisor about scheduling appears to be a non-sequitur, but we will never know since Knick did not testify. However, if you read this memo along with the April 12, 1993 memo from Zunker, confusion abounds. (R-61). That memo from Zunker to Ken Sondalle orders Janssen into work on the 9th to sign some papers. This appears to be a re-telling of the events which are in the Knick memo. Each of these memos calls into questions the credibility of the other.

Thomas testified that she was the source of the information that Janssen was scheduled to work the 8th. One would presume that the Employer would rely on the credibility of his own witness. The Commission should rely on the testimony elicited in direct and cross examination of Ms. Thomas and uphold this finding of fact.

#### Respondents' Reply

Respondents replied:

During the hearing, it became quite clear through both the type and tone of cross examination that Complainant and some of its members extended hostility and animosity toward Ms. Thomas. That was on the heels of some at work hostility where employes anonymously left Ms. Thomas with inappropriate messages and comments -- "You had better watch your back." or "Watch out who's foot you step on. You may be kissing their ass." (T-851) Complainant's objections further that hostility.

A fair reading of the record (especially pages 840, 874 & 875) makes it clear that Ms. Thomas was not the source of the misinformation. Ms. Thomas was without any information as to why Mr. Cohen used April 8 -- "I don't know why those particular days are there." (p. 875) In fact, Ms. Thomas stated: "If I would have provided the information, I would have gotten the schedule and looked at the exact date." (Emphasis added: p. 874) The end result is that the memo (Resp. Exh. 61) reveals that someone other than Ms. Thomas was the source of the information.

In the absence of any direct testimony that Ms. Thomas was the source, there can be no finding to that end, especially with all the evidence to the contrary, including that of Ms. Thomas herself.

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## Discussion

As reflected in the above noted argument from the parties, their dispute is a narrow one. The issue presented is whether the Examiner erred when he stated the following at page 52 of his decision:

The depth of hostility involved on Thomas' part is significant. On April 13, Thomas made allegations against Janssen which could have cost Janssen her nursing license. Those allegations had not, however, been significant enough to warrant any discipline. Beyond this, it is apparent some of the information passed from Thomas to DOC management was inaccurate. The Registrar's April 8 memo, Zunker's April 12 and Sondalle's April 16 memos all assume, wrongfully, that Janssen was scheduled to work April 8. Thomas was the source of that information.

There is no dispute between the parties as to whether Janssen was scheduled to work on Thursday, April 8. She was not. There is also no dispute between the parties that Janssen was scheduled to work on April 9, 10, and 11, and that on separate occasions, Janssen had angrily advised Thomas, her supervisor, and the Chief of Nursing and Ancillary Services, Linda Kleinsteiber, that she would not work the Easter weekend (April 9-11).

The factual context becomes more complex because of difficulties experienced during the period of April 5-9 in getting Janssen to sign certain legal documents. Those difficulties are summarized from the perspective of Ms. Knick, Registrar, Waupun Correctional Institution, in an April 8 memo to a paralegal in the Department of Justice as follows:

Date: April 8, 1993

To: Linda Bredeson, Paralegal  
Department of Justice

From: Pamela S. Knick, Registrar  
Waupun Correctional Institution

Subject: David Hatch v. Gary McCaughtry & Mary Janssen  
Case No. 93-CV-41

I received the responses to plaintiff's first request for production of documents and first set of written interrogatories for Warden McCaughtry and Nurse Janssen to sign on April 2, 1993. Warden McCaughtry reviewed and signed them on that date.

On April 5, 1993 I went to the health services unit to have Nurse Janssen read and sign the documents. She was scheduled to work but was not there. On April 6, 1993 I called over to see if she was at work and she was. I took the documents to

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her to review and sign. She was busy when I arrive (sic) and asked if I could leave them for her to review and she was to call me when she was ready to sign them. She didn't call that day. I went to the health services unit on April 6, 1993 to copy some records on another case. I talked to Nurse Janssen regarding the Hatch case. She had taken the documents home to review and had forgotten to bring them back with her. I told her the following day would be fine. I again called the health services unit on April 7, 1993 to see if she was at work. She was and I went over for her to sign the documents and get them to mail back to you. She had the answer to the first request for production of documents. She thought she had left the response to the first set of written interrogatories in her car. I had her sign what was there and told her to call when she returned for her car. I didn't here (sic) from her but called later in the day. She did check her car and found they were not there. She gave a message to Jann Johnston that she couldn't find them and they must be at home. I later saw her in the lobby. She said that she didn't know what to do, that she was going to the doctor and would not be back to work until friday (sic).

I called Mr. Oestreich and told him about the situation. I thought we could stop after work at her house or before coming to work on the 8th to get the papers and her signature. He thought of Cpt. Garro who lives close to Nurse Janssen and is also a notary. Cpt. Garro stopped at her home the evening of the 7th and found no one home. She then stopped before work today to have her sign the documents and would bring them to me to send to you. Nurse Jansses (sic) told Cpt. Garro that she could not find them in her house, that they had been lost.

The nursing staff at the health services unit do not expect Nurse Janssen to return until monday (sic) although she is scheduled today and friday (sic). There is some type of disagreement with the new supervisor as to the scheduling.

I then called you to see if we could use the copy you sent. Warden McCaughtry is in today and he can re-sign the copy. Either Cpt. Garro or myself can drive to Nurse Janssen's home and have her sign the copy. This could be mailed out later today and you should have it by monday (sic) as these documents are due to be filed in Dodge County on monday (sic), April 11, 1993.

At this point, this is all that we can do to meet out (sic) deadline. Believe me, I'll never let originals out of my sight again.

If there is a continuing problem, I will call

cc: Ken Sondalle - Administrator DPS  
Sharon Zunker - Director CHS  
Gloria Thomas - Supervisor HSU  
Gary McCaughtry (sic) - Warden WCI

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File

The following portion of this April 8 memo is the first document which incorrectly suggests that Janssen was scheduled to work on April 8:

The nursing staff at the health services unit do not expect Nurse Janssen to return until monday (sic) although she is scheduled today and friday (sic). There is some type of disagreement with the new supervisor as to the scheduling.

As quoted above, the Examiner concluded Thomas was "the" source of the inaccurate information in Knick's memo that Janssen "is scheduled today" (i.e., April 8).

Knick did not testify. Thomas did testify, but was not asked whether she spoke to Knick. Thomas' testimony as a whole, and particularly the testimony recited in footnote 2/ below,

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2/ Thomas' testimony at Tr. 844 was as follows:

Q. Was there another disciplinary matter involving Ms. Janssen?

A. There was another matter related to her signing some legal documents.

Q. Okay. Could you relate that, your knowledge and information about that?

A. I had received a memo from Bob Cohen relating the incident surrounding her failure to sign these documents and I was to investigate it.

Thomas' testimony at Tr. 872-874 was as follows:

Q. Were you involved in any communications with Mary Janssen about getting these written interrogatories signed while she was absent from work?

A. Was I involved? No.

Q. You personally did not have any discussion with Mary Janssen?

A. I believe it was Bob Cohen that had discussions with her regarding those documents.

Q. Isn't it accurate that another employee at the -- am I correct that Mary Janssen had seen her doctor on April 7th?

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creates a persuasive inference that Thomas had no contact with Knick on April 8. Neither does her testimony suggest any direct knowledge of the document incident events. She was merely to "investigate" the incident.

The text of the Knick memo itself does not create any inferences contrary to the ones we have drawn from Thomas' testimony.

On its face, the Knick memo attributes the source of the information to "The nursing staff at the health services unit." This reference could include Thomas although it could also refer only to Janssen's co-workers. The memo is quite specific and detailed as to the individuals Knick spoke with and contains no reference to Thomas. The generic reference to the "new supervisor" as opposed to "Thomas" creates an inference that there was no contact between Thomas and Knick.

(Footnote 2 continues from page 10)

Complainant correctly notes that the Knick memo is internally inconsistent on the issue of

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A I don't know if it was April 7 or April 8 but somewhere around that time period.

Q Are you aware of the fact that another employee at the institution offered to take those legal documents out to Mary Janssen when she was home sick and get them signed and bring them back that very day?

A I believe there was some discussion of how they were going to get those documents signed and there was a discussion of whether one of those employees would take it to Mary Janssen's house and get them signed. Now, I think there was some problems with that. I don't recall what happened, but I believe that was one suggestion of how they could get those documents.

Q Isn't it true that Mary Janssen was not even scheduled to work on the day that the issue about the unsigned documents came up, that she was home that day without a car?

A I believe so. I believe from my understanding that was the last day that they had to get those documents signed from her and get them in in a timely manner and she had had those documents for at least several days, that she had had them at least since the beginning of the week.

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Janssen's work schedule. Janssen is reported to have told Knick that she "would not be back to work until friday (sic)." Had Janssen's work schedule on Thursday, April 8 been of paramount importance to Knick, it seems probable that she would have pursued the seeming inconsistency between Janssen's April 7 remark to Knick (i.e., "would not be back to work until friday (sic)") and the "staff" information that she was scheduled to work "today" (i.e., Thursday, April 8). However, it must be remembered that Knick was reporting on her efforts to get documents signed. The detail of Janssen's work schedule was not the focus of her memo. In that context, the seeming inconsistency as to Janssen's schedule is understandable.

Given the foregoing, we conclude the record does not warrant a determination that Thomas was the source of the information which led Knick to include a remark in her memo to Department of Justice Paralegal Bredeson that Janssen "is scheduled today." Thus, we hereby modify the Examiner's decision to that extent.

The second document which incorrectly states Janssen was scheduled to work April 8 is the following April 12 memo:

DATE: April 12, 1993

TO: Ken J. Sondalle, Administrator  
Division of Program Services

VIA: Sharon Zunker, Director  
Bureau of Correctional Health Services

FROM: Robert C. Cohen, Assistant Director  
Bureau of Correctional Health Services

SUBJECT: Insubordination - Mary Janssen, Registered Nurse

On April 9 about 10 a.m. Steve Kronzer, acting for you, came to me and asked that I order the subject person into work at Waupun Correctional Institution (WCI), so that she could sign some legal papers that needed to be at the Department of Justice by April 12. These papers had been given to Nurse Janssen to sign earlier in the week, but she somehow had failed to take care of them. The papers involve an inmate legal action in which the WCI Warden and Ms. Janssen are named.

Nurse Janssen was scheduled to work April 8 and April 9, but called in sick on April 8 and said she wouldn't be back at work till April 12. I apprised Steve of this and he asked that I order Ms. Janssen in to sign the papers. The attached copy of an April 8 memo from Pam Knick details prior attempts to get the papers signed.

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I called Nurse Janssen at home at or about 10:30 a.m., and spoke to her. Valerie Clemen was sitting in my office and heard both sides of the conversation because I used the speaker phone. I told Nurse Janssen that we were on speaker and that Ms. Clemen was with me. I explained the reason for the call, and asked if she would go to WCI to sign the papers. She said she thought someone would bring them to her, that she was under a doctors care and that her husband had the car and was not home. I then gave her a direct order to report to Pam Knick's office by 1 p.m. on that day to sign the papers. I told her that failure to do so would be insubordinate and that discipline could result. I informed her that she was responsible for getting to the work site. I repeated the order, made certain that she knew who I was and that I had the authority to issue the order.

It is my understanding from later conversations with Warden McCaughtry, his assistant, and with Steve Kronzer that Nurse Janssen called the Warden's office later in the day and offered to sign the papers if someone brought them to her and notarized them, or drove her to WCI. When I was told this by the Warden's Assistant, I said that it was up to them if they wanted to send someone to Nurse Janssen's home since I had no one that I could reasonably send. Nurse Janssen did not report to WCI at 1 p.m. as ordered. Later in that day, someone from WCI went to her home to get the papers signed.

ER was aware of the situation because Helen Dicks, apparently acting as a Union Rep., called Mike Frahn, who then spoke to me.

It is my belief that Nurse Janssen was insubordinate, and that we should follow through with the corrective process.

RCC:lm

Attachment

cc: Robert Cohen  
Linda Kleinsteiber  
Gloria Thomas  
Jack Kestin  
Sharon Zunker/file

Cohen and Sondalle did not testify. Zunker did testify, but was not asked about the inaccurate reference to April 8. Thomas was asked if she was the source of the April 8 information and stated at Tr. 874-875:

Q And then look at R59. In the second paragraph of R61 I see a statement in there, "Nurse Janssen was scheduled to work April 8 and April 9, but called in sick on April 8 and said she wouldn't be back at work till April 12."

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When I look at the schedule, though, on R59 for April 8th, I do not see Mary Janssen scheduled to work at all on April 8th, is that correct?

A That's correct.

Q So it would appear that the second paragraph, that statement on R61 is erroneous?

A It would appear that that statement is incorrect.

Q And were you providing any information to these individuals in terms of Mary Janssen's work schedule?

A I don't recall providing this information in that time frame. If I would have provided information, I would have gotten the schedule and looked at the exact dates.

Q Well, where else would Robert Cohen have gotten that information that Nurse Janssen was scheduled to work on April 8th and called in sick?

A He could have got it from me in the discussions of what days she wasn't there, whether she was sick or not. Why he put those particular days, I can't say. I can't say whether it was a mistake when he went to write it down. I don't know why those particular days are there.

Thomas' testimony indicates she had some discussion with Cohen about the dates Janssen was to have worked. From the existence of that discussion, it can be inferred that the discussion occurred prior to the April 12 memo, although Thomas "doesn't recall providing this information in that time frame." Given the foregoing, it can also be inferred that Thomas had discussions with Cohen prior to April 12 which provided Cohen with inaccurate information regarding Janssen's April 8 work schedule.

However, the April 12 memo itself references the April 8 Knick memo. Sondalle and Zunker had already been copied on the April 8 Knick memo. From this it can be inferred that the April 8 inaccuracy in the April 12 memo is simply a carryover detail drawn from the April 8 Knick memo. We have previously determined that Thomas did not play a role in the April 18 inaccuracy of the Knick memo.

On balance, we conclude the record best supports a determination that the inaccuracy was a carryover detail drawn from the Knick memo and shows that Thomas was not the source of the inaccuracy in the April 12 memo. We hereby modify the Examiner's decision to that extent.

The third document which inaccurately suggests Janssen was scheduled to work April 8 is the following April 16 letter:

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Dear Ms. Janssen:

You were absent from work from April 8 to April 12. The week prior to that you told several people including Gloria Thomas and Linda Kleinsteiber that there was no way you were going to work that weekend because it was your mother's birthday. You also stated you would call in sick for your scheduled days to work.

All staff were notified that sick call in's for that weekend would be questioned and a medical excuse would be required from all persons calling in sick. You brought a brief note from your physician indicating you should be excused from work until April 13, 1993.

Due to the fact that you stated to your supervisor and others that you would not report to work that weekend and that you would call in sick, we do not view this medical excuse as valid and your use of sick leave is not approved.

The time you missed work between April 7, 1993 and April 13, 1993 will be viewed as unauthorized leave without pay.

Sincerely,

Ken J. Sondalle, Administrator  
Division of Program Services

KSJ:lm

cc: Ken Sondalle  
Robert Cohen  
Linda Kleinsteiber  
Gloria Thomas  
Sharon Zunker/file

Kleinsteiber, Chief of Nursing and Ancillary Services, testified that she drafted this memo for Sondalle's signature and that she relied on her "firsthand" knowledge and verbal information from Thomas when drafting the memo. As to this memo, there thus is evidence from which it can reasonably be inferred that Thomas was a source of the inaccuracy.

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However, Kleinsteiber was also a recipient of the inaccurate April 8 and April 12 memos and testified she had some "firsthand" knowledge. On balance, we conclude the record best supports a determination that the inaccuracy was carried over from the April 18 and April 12 memos and thus that Thomas was not the source of the April inaccuracy in the April 16 memo. We hereby modify the Examiner's decision to that extent.

Given under our hands and seal at the City of Madison, Wisconsin,  
this 19th day of November 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

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