

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:
of a Dispute Between	:
	:
THE CITY OF MUSKEGO	:
(POLICE DEPARTMENT)	: Case 53
	: No. 44579
and	: MA-6349
	:
MUSKEGO AREA PUBLIC EMPLOYEES,	:
LOCAL 2414, COUNCIL 40, AFSCME,	:
AFL-CIO	:
	:

Appearances:

Lindner and Marsack, S.C., 411 East Wisconsin Avenue, Suite 1000, Milwaukee Wisconsin 53202, by Mr. Jonathan T. Swain and Ms. Lisa M. Leemon, appearing on behalf of the City of Muskego.

Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53706

ARBITRATION AWARD

The City of Muskego (hereinafter referred to as the City) and Muskego Area Public Employees, Local 2414, Council 40, AFSCME, AFL-CIO (hereinafter referred to as the Union) jointly requested the designation of Daniel J. Nielsen of the Wisconsin Employment Relations Commission as arbitrator of a dispute concerning the suspension of employe Laura Becker. The undersigned was so designated and a hearing was held in the city of Muskego on November 28, 1990 at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. A stenographic record was made of the proceedings, a transcript of which was received by the undersigned on December 4, 1990. The Union was advised of the availability of the arbitrator's transcript for use in preparation of their written arguments. The parties submitted post-hearing briefs which were exchanged through the undersigned on January 7, 1991, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant contract language and the record as a whole, the undersigned makes the following Award.

I. ISSUE

The parties stipulated that the following issue was to be determined herein:

Did the City violate the collective bargaining agreement when it suspended the grievant from work for one day without pay? If so, what is the appropriate remedy?

II. PERTINENT CONTRACT PROVISIONS

ARTICLE I - MANAGEMENT RIGHTS RESERVED

Section 1.01. Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, demote, or suspend, or otherwise discharge for proper cause, and the right to relieve employees from duty because of lack of work or other legitimate reason is vested in the Employer.

. . . .

Section 1.03. The Employer may adopt reasonable rules and amend the same from time to time.

III. PERTINENT DEPARTMENT RULES

DEPARTMENT RULE 3.20(4)(028) - INSUBORDINATION

Members shall treat their superior officers with respect and shall obey any lawful orders of a superior officer promptly.

DEPARTMENT RULE 3.20(4)(02) - PERSONAL RELATIONS

Members of the Department shall be respectful in the performance of their duties towards the public and in their relationships with each other.

DEPARTMENT RULE 3.20(4) (031) - UNSATISFACTORY PERFORMANCE

Unsatisfactory performance may be demonstrated by . . . an unwillingness or inability to perform assigned tasks.

. . .

3.21 PENALTY CODE.

1. The following list of penalties shall be a guide for recommendation by the Police Board of Inquiry in the interests of uniformity and fairness.
2. All penalties recommended by the Police Board of Inquiry for offenses listed shall be within the prescribed limits.
3. Offenses not included in the following list shall result in penalties similar to those specified for listed offenses of comparable seriousness.
4. The "Reckoning Period" as used in this section is that period of time during which an employee is expected to have a record free of the same type of offense he was found guilty of previously.
5. All "Reckoning Periods" shall be computed from the date the first offense was committed. Second, third, and subsequent violations of the same type during the "Reckoning Period" shall be treated as second, third and subsequent offenses.
6. The same type of offense committed after the "Reckoning Period" expires, counts as a first offense.
7. Code key for penalties:
 (a) Reprimand (written) R
 (b) Number of days off without pay. #
 (c) File charges with police and Fire Commission. . . . FCPF
8. Recommended penalties for 3.20 (Rules of Conduct).

SECTION	CHARGE	1st	2nd	3rd	Reckoning	
		OFFENSE	OFFENSE	OFFENSE	PERIOD	
3.20(4) (02)	Personal Relations		R-5	R-10	FCPF	1 year
3.20(4) (028)	Insubordination		R-5	R-10	FCPF	1 year
3.20(4) (031)	Unsatisfactory Performance		R-10	3-	FCPF	FCPF 1 year

IV. PERTINENT BACKGROUND FACTS

The City is a municipal corporation providing general governmental services to the people of Muskego, in southeastern Wisconsin. Among the services provided is police protection, through a police department employing, among others, personnel in the classification of Telecommunicators. The Union is the exclusive bargaining representative for all Telecommunicators/clerical employees of the Department. The grievant, Laura Becker, has been employed as a Telecommunicator with the City since August of 1986.

Telecommunicators work in three shifts, each consisting of eight and one-quarter hours. When an employee calls in sick on one of these shifts, the City's practice is to hold over the Telecommunicator from the prior shift for four hours and to call in the scheduled Telecommunicator for the following shift four hours early. The City maintains a formal policy prohibiting any employee from working more than twelve consecutive hours, exclusive of the fifteen-minute roll call, without an eight-hour rest period.

On March 22, 1990, the grievant worked her normal second shift beginning at 2:45 p.m. Approximately one hour later, the third shift Telecommunicator called in sick. Consistent with the City policy, the grievant was advised that she would be held over for four hours until 3:00 a.m. and that Sally Schultz,

the third shift Telecommunicator, would report early at 2:45 a.m.

At 2:22 a.m. Schultz called in and reported that she would be late, as a power outage had caused her alarm to malfunction. At 2:54 a.m. the grievant contacted Sergeant Paul Geiszler who was in charge of the third shift. Using the radio, she told Geiszler that Schultz would be late and stated: "I will be going home at 3:00." Geiszler acknowledged the transmission. Shortly after 3:00 a.m., the grievant again contacted Geiszler by radio and asked if anyone was coming in to relieve her. Geiszler responded that he was on his way and would be in in five minutes.

Geiszler arrived at the station at approximately 3:05. He asked the grievant if there was any emergency which would prevent her from staying until Telecommunicator Schultz arrived. The grievant responded that there was no emergency, and Geiszler instructed her to remain on duty until Schultz reported. He also told her that she should refrain from giving him orders over the police car radio. The grievant claims that at this point she responded by saying that she was tired, and that she was sorry. She also states that she advised him that requiring her to work past 3 a.m. was a violation of the department policy and that she would be writing a report to her superiors about the incident. Geiszler denies that any apology was made at this point.

The grievant was upset and crying during this discussion with Geiszler.

Schultz arrived at about 3:15 and the grievant logged herself off duty and Schultz on duty at that time. She told Schultz that Geiszler had failed to relieve her at 3:00 and that she felt any other sergeant would have relieved her at that time. She remained crying and upset during this conversation. She also referred to Geiszler as an "asshole". Geiszler was not present for this conversation and did not hear the reference to him.

As the grievant left the station she passed by the lieutenant's office where Geiszler was working. She told him in a loud voice that he had treated her unfairly and that any other sergeant would have relieved her at 3:00. Geiszler twice asked her to come into the office and discuss it behind closed doors and she indicated that she was already late in going home and that she was leaving.

After the grievant left the station Schultz and Geiszler spoke and Schultz indicated that she found it unbelievable that the grievant had spoken to him in that way. She also told him that the grievant had referred to him as an "asshole" during a conversation with her.

At 3:30 p.m. on March 23, the grievant filed a written report with her superiors complaining that Geiszler had failed to relieve her in violation of the hours of work procedures manual after she had worked for twelve continuous hours. The next day Geiszler submitted a "contact report" charging the grievant with insubordination. He recommended a one to two-day suspension. The report was reviewed by various superior officers, and on April 6, Police Chief John R. Johnson issued a letter of suspension to the grievant:

April 6, 1990

Ms. Laura A. Becker
Muskego Police Department
W183 S8150 Racine Avenue
Muskego, WI. 53150

Dear Ms. Becker:

On March 30, 1990, I received a contact report from Sgt. Geiszler regarding your conduct on March 23, 1990, at approximately 2:50AM (see attached report).

The contact report charges you with insubordination, a violation of Department rule .028, Insubordination: "Members shall treat their superior officers with respect and shall obey any lawful orders of a superior officer promptly." In addition, I am modifying the contact report to include a violation of rule .02, Personal Relations: "Members of the Department shall be respectful in the performance of their duties towards the public and in their relationships with each other;" and a violation of rule .031, Unsatisfactory Performance: "Unsatisfactory performance may be demonstrated by . . . an unwillingness or inability to perform assigned tasks. . ."

Specifically, you showed an unwillingness to perform your duties until your relief would arrive; you showed

disrespect by calling Sgt. Geiszler an "asshole" in front of Telecommunicator Schultz; and insubordination by continuing to shout at Sgt. Geiszler from across the room in the presence of Telecommunicator Schultz after being advised by the Sergeant to come into his office.

This type of attitude or behavior by you has been brought to your attention in the past. It not only has been directed at fellow employees, but also towards the general public. Behavior, such as yours that evening, can not be tolerated by any organization. Order and respect of your fellow employees and the public are essential to the mission of this department.

Therefore, I am ordering a one (1) day suspension. The exact day will be selected by Lt. Gifford.

Any further violation of these rules will result in increased discipline.

Sincerely,

John R. Johnson /s/
John R. Johnson
Chief of Police

JRJ/cs
cc: Lt. Gifford

The instant grievance was filed on May 16 protesting the one-day suspension as inconsistent with the just or proper clause standard in the management rights clause of the collective bargaining agreement. The following day the grievant submitted a revision to her previous report indicating that she had apologized to Geiszler when he came into the station saying "I'm sorry, but I'm tired", to which Geiszler replied "I'm tired too." The matter was not resolved in the lower steps of the grievance procedure and was referred to arbitration for resolution.

Additional facts as necessary will be set forth below.

V. POSITIONS OF THE PARTIES

A. THE POSITION OF THE CITY

The City takes the position that the one-day suspension should stand unless the arbitrator determines that it was excessive, unreasonable or an abuse of discretion. The City adamantly asserts that the record in the case demonstrates that the Department had proper cause for issuing the suspension.

The City has a series of rules designed to insure the orderly and efficient operation of the Department. Among them are rule 3.20(4)(028) requiring that all employees treat superior officers with respect and obey the lawful orders given by their superiors; rule 3.20(4)(02) requiring employees to conduct themselves in a respectful manner in the performance of their duties towards the public and in their relationships with co-workers; and finally rule 3.20(4)(031) defining as unacceptable conduct any demonstration of an unwillingness or inability to perform an assigned task. The City asserts that a fair and complete investigation of the grievant's conduct reveals violation of all three of these rules on March 23, 1990.

The grievant's initial statement over the radio "I will be leaving at 3:00 a.m." was given in a tone which indicated she was issuing an order to the sergeant over the public airwaves. This was confirmed by other officers on duty who heard the transmission. The issuance of an order to a superior officer under these circumstances demonstrates an unwillingness to perform her duties in direct violation of the work rule.

After Geiszler returned to the station, the grievant continued her disrespectful attitude, going so far as to refer to him an "asshole" in the presence of a fellow employee. This is obviously an act of disrespect in violation of the work rule.

Finally, the grievant was insubordinate in yelling at the sergeant while he was seated in the lieutenant's office and ignoring his requests to come into the office and close the door if she wished to discuss the matter. Instead she continued to yell at him in a voice loud enough for Schultz to hear the entire exchange even though she was seated in the other room.

The grievant's conduct is not excused by the fact that she felt her rights under department policy were violated by being held over in excess of twelve hours. The twelve hour policy allows exceptions in the discretion of the supervisors, and sergeant Geiszler exercised that discretion in determining

that the grievant would hold over until her relief arrived. That the grievant disagreed with this decision is irrelevant, given both the discretionary language of the policy and the general principle of "obey now, grieve later." Rather than follow the reasonable avenue of filing a later complaint, the grievant chose to respond in an insubordinate, disrespectful and truculent manner, all in violation of department rules. Her conduct provides ample justification for the imposition of discipline.

The City asserts that a one-day suspension is clearly reasonable given the grievant's conduct. The Police Chief indicated that he had considered her prior work record in arriving at the discipline. That record includes verbal warning on May 16, 1987 springing from a citizen complaint about the grievant's sarcastic attitude. It also includes an April 23, 1989 verbal warning for a negative attitude towards fellow employees, and an August 1, 1989 written warning for displaying a lack of respect towards a fellow officer and a superior officer. In light of the written warning on August 1, a one-day suspension is the next logical step in a system of progressive discipline. It is also supported by the Department's discipline code, which plainly provides for further discipline including a one-day suspension, for second violations of the rules.

For all of the foregoing reasons, the City urges that the discipline be upheld and the grievance be denied.

B. THE POSITION OF THE UNION

The Union takes the position that the grievant's conduct during the morning of March 23 did not provide "proper cause" for discipline. The problem on that morning was created by Geiszler's failure to follow Department rules concerning work hours, as well as the precepts of common courtesy. The grievant's initial radio call to Geiszler indicated that her responsibility ended at 3:00 a.m., at which point she would have worked the full twelve hours and fifteen minutes allowed by Department policy. It is a common practice for officers, including sergeants to fill in for Telecommunicators. Common courtesy and Department policy dictated that Geiszler, as the shift commander, take some action to relieve the grievant of her duties. While Geiszler may have interpreted the grievant's tone in her initial radio communication as conveying the sense of an order, his immediate superior on listening to the tape had the impression that the grievant spoke in a normal tone of voice. Even if the grievant had been snappish to Geiszler over the radio, the Union notes that she did apologize to him when he came in and complained and that this should have dispelled any notion in his mind that she intended any disrespect. Furthermore, the Union notes that the grievant performed satisfactorily all of the duties required of her by the Department on the morning in question without any interruption of service. She may have expressed a desire to leave her post at the end of her shift, but when ordered to continue working she complied. The Union asserts that an employee cannot be disciplined simply for expressing a desire to be relieved from duty at the end of her shift.

As for the City's allegation that the grievant was disrespectful in referring to Geiszler as an "asshole" in her conversation with Schultz, the Union contends that this was a comment that the grievant essentially muttered to herself. Furthermore, it is uncontested that rough speech and profanity are common and accepted in the Department. The fact that the grievant used a relatively mild term expressing her exasperation with her superior officer hardly constitutes inappropriate conduct in violation of any work rule.

As to the exchange between Geiszler and the grievant as the grievant was leaving work, the Union notes that the grievant was justifiably upset by Geiszler's treatment of her. She was crying during the exchange and stated her belief that any other sergeant would have relieved her. While Schultz may have overheard the conversation, it can hardly be considered misconduct.

In closing, the Union argues that there is absolutely no misconduct on March 23. However, even if the arbitrator should determine that some discipline was merited, a one-day suspension is grossly excessive. The grievant had a clean disciplinary record prior to this incident, since the three prior incidents cited by the City were never communicated to the grievant as being disciplinary acts. Even if the three negative salients in the grievant's records are considered verbal reprimands, proceeding to a suspension for the innocuous events on March 23 is plainly unreasonable.

For all of the foregoing reasons, the Union asks that the grievance be upheld and that the grievant be made whole for all of her losses.

VI. DISCUSSION

The discipline in this case flows from a series of events during a 20-minute period in the early morning of March 23, 1990:

- (1) The grievant's radio conversation with Geiszler at 2:54 a.m. during which she stated "I will be leaving at 3:00", which the City takes to be an

indication that the grievant was unwilling to perform her duties.

- (2) The grievant's statement during a conversation with Telecommunicator Schultz: "He's is such an asshole", referring to Geiszler, which the City asserts constitutes a failure to respect a superior officer; and
- (3) The grievant's loud comments to Geiszler on her way out of the building that any other sergeant would have relieved her at the communications console and allowed her to go home, and her refusal to come into the lieutenant's office to discuss the matter, despite twice being told that it should be discussed behind closed doors rather than in Schultz's presence, which the City interprets as insubordination.

The level of discipline was decided on the basis of all three incidents and the grievant's past record. Each of these issues is discussed in turn.

A. The Radio Call at 2:45 a.m.

The City asserts that the grievant's tone when saying "I will be leaving at 3:00" suggested that she was delivering an ultimatum to Geiszler, and intended to leave whether she was relieved or not. The undersigned finds little in the record to support this charge. Her actions do not indicate an unwillingness to perform her duties. The grievant remained on duty until Geiszler returned to the station slightly after 3:00 a.m. and stayed at her post for an additional fifteen minutes until her relief arrived. That she was unhappy about staying was clear and she made her unhappiness known by her demeanor and subsequent conversations with both Geiszler and Schultz. On the grievant's side of things, she had been working for twelve hours straight as of 3:00 a.m., which is the maximum allowed by City policy. Furthermore, she quite likely had a reasonable expectation that she would be relieved at the console by Geiszler, since uniformed personnel are trained to operate the console, and taking over for a Telecommunicator was apparently a fairly standard courtesy on the Department when a relief worker was late. The fact that the grievant was unhappy at being held over is not a sufficient basis for concluding that her comments on the radio expressed an unwillingness to continue to perform her duties. This conclusion is buttressed by the testimony of the lieutenant in charge of support personnel, who listened to a tape of the radio call and found nothing out of the ordinary in the grievant's tone. The undersigned finds the record evidence insufficient to sustain the charge that the grievant refused to perform or indicated an unwillingness to perform her duties.

B. The Reference to Geiszler as an "Asshole"

The City charges that the grievant showed a lack of respect for her superior officer in violation of the Department's rules on interpersonal relations, when she referred to Geiszler as an "asshole" in her conversation with Schultz. The Union asserts that the comment was not directed to Schultz but rather that this was a case of the grievant muttering to herself out of frustration at having worked such a long shift and at his failure to relieve her.

The City concedes that profanity is not unusual in the workplace, but stresses that it must be placed in context. The undersigned agrees, and common sense suggests that vehemently referring to a superior as an "asshole" is not respectful conduct. Neither, however, is it the type of comment that would normally call for a strong disciplinary response. The degree of offense is mitigated by the fact that the comment was not made to the supervisor as a challenge to his authority, nor to a member of the general public, nor in the presence of a member of the general public. Rather, it was uttered in a moment of frustration, by a tired and distraught employee in private conversation with another employee, and in response to what the grievant viewed as both a breach of City policy and a failure of commonly accepted courtesies in the Department.

The use of a relatively mild vulgarity in private conversation between two employees is not normally the stuff of which strong disciplinary actions are made.

The undersigned is persuaded that the grievant showed a lack of respect to the sergeant by referring to him as an "asshole" in her private conversation with Schultz, and thus committed a technical violation of the rules. I cannot find, however, that a first instance of this conduct would sustain a suspension even in the para-military setting of a police department. It may be factored in with other conduct in arriving at the appropriate measure of discipline, and this will be addressed below.

C. The Conversation At The Lieutenant's Office

As the grievant was leaving the building, she stopped at the door to the lieutenant's office, some distance from where Geiszler was sitting, and loudly told him that he was unfair and that any other sergeant would have relieved her. She was upset and crying during this statement. He told her twice that if she wanted to discuss the matter she could come into the office and close the door, but she said that she was already a half hour late and was going home. The City charges that the grievant's use of a loud voice and her continuing the conversation from the hall rather than going into the office is insubordination.

The undersigned is satisfied that the grievant's decision to engage in a gratuitous "dressing down" of her superior officer does fit in the category of insubordination. Regardless of how justified she felt she was in complaining about his decision not to relieve her, she clearly was not attempting to engage in some sort of dialogue with him about the problem. She was quite simply yelling at him because she was angry. Unlike the reference to him as an asshole in her private conversation with Schultz, this was a direct challenge to his authority in front of another employee.

In summary on the substantive allegations of misconduct, the undersigned finds no support for the City's claim that the grievant showed unsatisfactory performance by stating that she would be leaving at 3:00 during her radio call to Geiszler. While it is possible to read this broadcast as stating an intention not to perform her duties, it is susceptible to other interpretations as well. The fact is that the grievant continued to perform her duties until her relief arrived, and never gave her superiors reasonable cause to believe that she would not. With respect to her reference to Geiszler as an asshole, this was a minor technical violation of the rules regarding personal relations in that it did show a lack of respect for her superior officer. The grievant also violated the rules regarding insubordination in directing an angry diatribe at Geiszler as she was leaving the building. Thus the undersigned concludes that there was some basis for imposing discipline on the grievant, and the question becomes whether the one-day suspension imposed was excessive, unreasonable or an abuse of management's discretion.

The decision to suspend the grievant for one day was made by the Chief of Police. In arriving at the penalty, the Chief considered the three offenses and the allowable penalties under the City's penalty code, as well as the grievant's prior disciplinary record. Under the penalty code, violations of the rules regarding personal relations may result in anything ranging from a verbal reprimand to a five-day suspension for a first offense, and up to a ten-day suspension for a second offense. Insubordination carries the same range of penalties. Unsatisfactory performance is considered a potentially more serious violation with penalties ranging from a verbal reprimand to a ten-day suspension for a first offense and from a three-day suspension to dismissal for a second offense.

The prior instances of discipline considered by the Chief in arriving at the penalty include three verbal reprimands for what he considered to be similar conduct. The first was from May of 1987 involving a complaint from a citizen about the grievant's sarcastic attitude during a call for assistance. The second was a verbal reprimand in April of 1989 for a negative attitude towards fellow workers. Finally, the grievant received a "negative salient" (the Department's terminology for a reprimand) from her lieutenant for a confrontation with the lieutenant and another officer over the propriety of an order given to one of her fellow dispatchers:

8/01/89

TO: Sgt DVW
FROM: LT FRG
RE: Salient Becker

On Monday, 7/31/89 between 2:45PM and 3:00PM Officer Kaebisch asked Ann Wissing to run a record check for him as Sally was very busy with the phones. I was in the radio room with maintenance personnel and heard Laura tell Officer Kaebisch "You think we should jump everytime you ask us something. Thats not her job in the first place" or words to that effect. I told her that we, meaning myself and other command personnel will be the judge of that. She proceeded to state that "Here we go we'll have it out right here". Sgt. Meeks also heard the remarks to Officer Kaebisch and Laura's comments to me because he asked her who she was talking to. She pointed at me and stated "Him." meaning me.

The officer was not talking to her in the first place, he did ask Ann in a nice way, and it is Ann's job to assist when needed in these areas. It was not Laura's business and her attitude was way off base.

I do feel that she came very close to insubordination in her comments to me at the time. I feel that this deserves a negative salient. I also feel that she has had enough warnings about this problem. Any further incidents along these lines I feel should be written as contact reports with the possibility of time off.

In your monthly meeting it should be discussed and explained as to our action on future violations. If she has a problem with the officer, as far as not liking him or whatever, she still has to control her actions in dealing with that person in a professional way. You may also want to restate what the position of telecommunicator/clerk is and what the jobs entail. I got the impression from her statements that she feels she does not have to do what she is told or asked by the officers to do. She works for this Department, comes under the Rules and Regulations of this Department, and is here for the sole support and assistance of the Operations Division of this Department. That is Services job and our goal is to do it with a professional attitude and to the best of our ability.

The grievant submitted a written response to this reprimand on August 2, 1989:

August 2, 1989

TO: Lt. Gifford
FROM: Dispatcher L. Becker

This letter is in reference to my negative salient which I received on 08/01/89.

First, I feel this matter could have been handled in a professional manner by speaking to me on a one-to-one basis. But, instead, was discussed with my Sgt.

Second, Officer Kaebisch asked Ann to write-up a cover sheet for a Case Report, that by the way, was already taken care of by Dispatcher Schultz, if only Officer Kaebisch would have waited for approximately 2-3 minutes, until Dispatcher Schultz was off the phone.

In your salient you stated that I do not do what I'm asked or told to do by the officers, which I can truly prove you are totally wrong. I feel I am an excellent dispatcher and am very professional at my job and can handle situations in a professional manner. You have to have control and authority in this type of

job due to being a very stressful position. And yes, I know what my duties are as a telecommunicator. I want you to know that their (sic) are several incidents where we, dispatchers, are very busy with the phones, with officers, with citizens walking into the Department, whatever the situation may be, and many officers on this Department understand what it is like and have the patience to wait for whatever information they need.

Also, you insinuated that I did not like this certain officer or that I had a problem with him. Lt. Gifford, no, I do not have a problem with any certain officer and no, I do not dislike any officer on this Department. I personally feel I have a very good rapport with all of the Officers/Department personnel.

To my knowledge, Officer Kaebisch, has a problem with Dispatcher Schultz and if this is the case, I believe a Matter Of should be directed to this problem.

As far as my attitude toward Officer Kaebisch, I guess I said the wrong thing at the wrong time, not realizing that he was under stress. As you know, we all have are (sic) bad days.

Lt. Gifford, I'm willing to discuss this matter with you due to the fact I feel you came down pretty hard on me. I believe this could have been discussed together.

Respectfully,

Laura A. Becker /s/
Laura A. Becker
Telecommunicator

The City maintains a policy of leaving reprimands in effect for a one-year period. Thus the 1987 citizen complaint about sarcasm should not have been considered in arriving at the measure of discipline in this case. The two reprimands in 1989, on the other hand, were still fresh at the time of this incident. While the City characterizes the second of these as a written reprimand in its arguments, the Chief testified that he treated it as a verbal reprimand. The August 1 memo from the lieutenant to the grievant's sergeant states in pertinent part: "I do feel that she came very close to insubordination in her comments to me at the time. I feel that this deserves a negative salient. I also feel that she has had enough warnings about this problem. Any further incidents along these lines I feel should be written as contact reports with the possibility of time off." On its face, this appears to be a notice to the grievant's immediate supervisor that she was being subjected to a reprimand, as opposed to being a written reprimand in and of itself. Given the Chief's testimony that he treated this as a verbal reprimand, and the apparent distinction between a reprimand in the form of a "negative salient" and a written reprimand in the form of a "contact report", the undersigned concludes that the prior measures of discipline against the grievant which may be considered for the purposes of determining the appropriate measure of discipline in this case, are two verbal warnings. 1/

Having concluded that the prior acts of discipline consist of verbal warnings, it remains true that the penalty code of the City allows for suspensions without pay even for first offenses for all three of the cited rule violations. As discussed above, however, the most serious of the allegations - - unsatisfactory performance -- is not proven in this proceeding. A second violation, flowing from her use of a vulgarity in referring to a supervisor in

1/ While the Union contends that the grievant was not informed that these negative salients were a form of discipline, the undersigned has some difficulty in believing that they could be interpreted in any other way. In particular, the August 1, 1989 memo makes express reference to the issuance of a negative salient, the fact that she had been warned previously about her attitude problem, and plainly puts her on notice that future conduct of this type puts her in jeopardy of a written reprimand or time off. The fact that the grievant responded the following day expressing her disagreement with the lieutenant's conclusions does not in any way alter the nature or character of the August 1 memo.

a private conversation, is minor and technical, and is entitled to very little weight in arriving at a penalty. If the leap from a verbal reprimand to a one-day suspension is to stand, it must be based on the charge of insubordination for her conversation with sergeant Geiszler on her way out of the building.

While it is broadly accepted that arbitrators have the authority to modify discipline, this authority should be exercised sparingly. The Employer has the right to determine measures of discipline and is entitled to some latitude in arriving at a proper penalty. The undersigned is persuaded, however, that this case presents a rare instance where modification of penalty is the appropriate response. The severity of the penalty as determined by the Chief was premised on three rule violations, one of which is found not to have occurred, and another which was found to be trivial. He also considered three prior rule violations one of which was two years old and was thus stale under the City's own penalty code.

Despite the defects in the City's determination of a penalty, the grievant's complete loss of control on March 23rd and her resultant insubordination should not be left unaddressed. The City has a legitimate concern about maintaining discipline in its police department and about the grievant's apparent attitude problem. Balancing these considerations, the undersigned concludes that, while the City may not have had proper cause to impose a one-day suspension on the grievant, the appropriate remedy is to modify the penalty to a written warning rather than to clean the grievant's record entirely.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The City violated the collective bargaining agreement when it suspended the grievant from work for one day without pay. The City had just cause to impose discipline on the grievant, but a one-day suspension was excessive. The appropriate remedy is to modify the original penalty to a written warning and to make the grievant whole for lost wages and benefits.

Dated at Madison, Wisconsin this 5th day of June, 1991.

By Daniel J. Nielsen /s/
Daniel J. Nielsen, Arbitrator