BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 150	Case 2 No. 45982 MA-4806
and	
THE WOMEN'S CENTER INC.	

Appearances:

Mr. Steve Cupery, Union Representative, Local 150, Service Employees International Union, AFL-CIO, CLC, 6427 West Capitol Drive, Milwaukee, Wisconsin 53216, appearing on behalf of Service Employees International Union, Local 150, referred to below as the Union.

Mr. John H. Zawadsky, Whyte & Hirschboeck, S.C., Attorneys at Law, One East Main Street, Suite 300, Madison, Wisconsin 53703, appearing on behalf of the Women's Center Inc., referred to below as the Employer.

ARBITRATION AWARD

The Union and the Employer are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance regarding the Employer's Policy for Client/Staff Relationships. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on October 2, 1991, in Milwaukee, Wisconsin. The hearing was not transcribed. The parties filed briefs by November 6, 1991. On November 13, 1991, the Employer filed an objection to the consideration of the Union's brief. The Union responded in a letter filed on November 15, 1991, in which the Union objected to any consideration of an article attached to the Employer's brief. In a letter dated November 21, 1991, I overruled the Employer's motion to strike the Union's brief from the record, and the Union's motion to strike the article submitted by the Employer from the record. I also afforded the Union "one week (from) receipt of this letter" to "file (a) response to the article." The Union filed that response on November 29, 1991.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issue:

> Does the definition of "client," as applied by Items 2 and 6 of the Policy, violate Section 7.3 of the collective bargaining agreement?

RELEVANT CONTRACT PROVISIONS

ARTICLE VI, GRIEVANCE PROCEDURE

. . .

6.7 Authority of the Arbitrator. The arbitrator

shall not have the power to add to, ignore or modify any provisions of this Agreement.

. . .

ARTICLE VII, DISCIPLINE AND DISCHARGE

. . .

7.3 Reasonable rules. The Employer shall have the right to establish and enforce reasonable work rules and rules of conduct. All such rules and their application shall be consistent with the principles of just cause.

BACKGROUND

The Employer is a non-profit agency founded in 1977 to provide services to women and children who are victims of domestic abuse. Funded by a combination of government grants, private and corporate contributions, the Employer provides services from a number of sites. Among the services afforded by the Employer are: Sister House, which provides confidential, short-term housing and support for women and children in imminent danger of domestic abuse; the Legal Advocacy Project, which provides assistance to women seeking temporary restraining orders to protect themselves and their children in their own homes; Transitional Living, which provides affordable housing and counseling for up to two years for women and children who are attempting to move from an abusive environment to independent living; Family Support Project, which provides classes and care-givers to families "who are experiencing stress, have a medical emergency, or who just need some 'time out'"; the Employment Program to assist women seeking to enter or re-enter the job market; and group and individual counseling for women seeking to cope with domestic abuse.

The Union has been certified by the National Labor Relations Board as the exclusive representative of certain of the Employer's non-professional staff. On February 6, 1991, Mary Kriofske, then employed as a Legal Advocate by the Employer, filed a letter on behalf of the Union, which challenged the reasonableness of a Policy for Client-Staff Relationships (referred to below as the Policy) announced by the Employer in a memo to its staff dated January 23, 1991. That memo noted that an in-service regarding "setting boundaries within the context of therapy" would be conducted by the Employer, and detailed the background to the Policy thus:

> Attached is The Center's policy on client-staff relationships. While The Center has operated on the basis of having had a policy inclusive of all that is detailed in the attached policy, it became clear that not all staff were fully aware of these expectations of TWC employees.

The Policy reads thus:

> The intent of this policy is to promote and encourage effective interaction between clients and staff. This policy clarifies and further defines expectations and provides consistency throughout The Women's Center. This policy helps prevent staff burnout and minimizes

risk to staff.

This policy is not an attempt to exaggerate the differences between staff and clients nor is it an attempt to create a distance in client-staff relationships. In our mission it is critical that we offer nonjudgmental, caring, empathetic and nurturing support that fosters client independence. Developing personal client-staff relationships risks building a "special" client status, creates expectations that The Women's Center cannot meet, builds dependency, blurs boundaries and may jeopardize staff safety.

The policy is as follows:

1. Professional ethics state that we never counsel friends or relatives. If a friend or relative requests Women's Center services she/he should be referred to another staff person or resource. This does not preclude sheltering a friend or relative of a Women's Center staff person or volunteer.

2. Six months must lapse after the client is no longer using Women's Center services before the client-staff relationship can change to a different type of relationship, such as a friend-ship. This period of time allows for the client and staff to change to roles that are of a more equal and balanced nature.

3. Home phone numbers and addresses of staff may not be given to clients. This provides respect for the personal space and privacy of staff and eliminates client expectations that The Women's Center is unable to meet.

4. Clients are not allowed to visit staff in their homes, nor will staff visit clients in their home, whether for personal or work related matters. These situations could be potentially dangerous and The Women's Center does not want to jeopardize anyone's safety. If a work related situation warrants an exception it should be brought to the attention of the staff person's supervisor prior to making any arrangements. There are some existing situations, such as ESL tutoring, where such visits are not problematic. However, all such exceptions should be reviewed in advance with one's supervisor.

5. If staff is called/visited at home by a client she should explain that The Women's Center policy does not allow this. If the client is in a crisis, staff may make necessary referrals and assist her in a reasonable manner. Staff should report any occurrence of such a

call/visit to her supervisor.

6. If a client and staff member determine that they want a relationship after the six month period that client must be free of any abusive relationship.

7. Unusual circumstances may justify exceptions to this policy. Contact your supervisor if you believe a situation warrants an exception.

Employees found to be in violation of this policy are subject to progressive disciplinary action.

*Though the term "staff" is used throughout, the policy also applies to TWC volunteers.

For purposes as defined in this policy, a client is a person who is currently receiving services and/or a person who has received services within the previous six months.

As noted above, the Union filed a grievance regarding the reasonableness of the policy. Steve Cupery issued a letter dated February 16, 1991, to Marie Kingsbury, the Employer's Executive Director, which detailed the Union's concerns thus:

. . .

1. Definition of a client. There are many individuals who may come to the Center for assistance and may not be seen again for months. This may be due to pending court dates or may be due to intermittent problems. In the latter case it may not be clear when the relationship with the Center ceases to exist.

The purpose of the policy as so stated is one of protecting to reduce risks for staff safety, and preclude development of special client status and dependencies. Some services provided by the Center do not involve heightened safety risks to employees as exist in programs servicing those physically and sexually abused. In such cases there exists no safety risk to employees and much less if any tendency for development of a "special relationship" or "dependencies." We see no need for "clients" in these programs to be covered by the policy. Furthermore, a client of one Center employee that has no business relationship with other staff, should, in almost all cases, not be considered a client of the staff with whom there is no relationship. What purpose is served if the contrary is true?

2. How are employees to determine who is and who is not a client of the Center other than by first hand knowledge of working with a client? We believe it is unreasonable to request employees to ask everyone they meet in a public or private place, whether or not they are a client of the Center. In some cases this might disclose private information and endanger clients and staff.

3. What are prohibited relationships or changes in relationships. We presume casual meetings in public places by chance or in the back yard with neighbors would not be prohibited is that correct? We should walk through the types of situations with which you have a concern.

4. There are some relationships we believe are productive (such as providing baby sitting services) that if notice is served to the employer and approval given, serve to benefit both the Center, employees, and clients so long as they do not interfere with the Center's business operations. I for example use employees at our Day Care for baby sitting because I know and trust them as does our daughter. Other situations that are similar might be the staff attendance at client relative funerals or weddings.

5. Generally, we will object to any prohibitions over regarding employee relationships with individuals who are ex-clients. We would be open to a six month prohibition on sexual relationships for this period of time.

6. We will also need to discuss the application of items 1, 3, 4, and 5 in the context of persons who are already friends with Center employees at the time they become a client. With respect to item 1, we note that this may not be possible given the small numbers of people that work in certain programs.

We are not opposed to the concept of this policy in general, but rather specific aspects of it that we believe are or may be unreasonable. Look forward to meeting with you on this matter.

Kingsbury responded thus:

The policy states "for purposes as defined in this policy, a client is a person who is currently receiving services and/or a person who has received services within the previous six months."

We recognize that it would be impossible for all staff to know who may be a client of The Center in another

program, and there may be occasions when a staff person has a relationship with someone who is a client of another TWC service and not even be aware of it. We do not expect a staff person to terminate a friendship with someone who decides to make use of one of our services. We do expect, however, that staff not counsel friends or relatives.

Purpose of the policy: Although safety is an overriding concern, given the kinds of services we deliver, there are other reasons for adhering to a client-staff relationship policy. These include: providing equal and fair service delivery to all of our clients. One problem in developing "special" or "friendship" relationships with clients, is that by singling some clients out for special treatment (i.e.; giving staff home phone numbers to a particular client, making special arrangements such as babysitting or visiting clients in their homes) is that it may communicate a very negative message to clients who are not singled out for the same treatment. Furthermore, it may give a message to the "special" client that a particular TWC staff person is available 24 hours a day to her for support and/or assistance. It may also give the message that other staff are similarly available, which may infringe on the boundaries other staff have chosen to set up. This can be an expectation that a particular staff person cannot meet consistently, and can certainly lead to burnout if she attempts to meet that expectation. Although we recognize equality between staff and clients, we need to be aware that most of our clients come to us in a vulnerable and needful position. They come here seeking safety and answers. Frequently, clients project power onto staff because they feel powerless in their situations. By giving a client a "special" status by befriending her, we may be inadvertently giving them the message that their situation is out of their control and that they can't change their situation without this special care (not a very empowering message).

Friendship, almost by definition, is a mutual meeting of people's needs in which the power is essentially equal. By moving from a professional relationship where we are employed to help clients' meet their needs to a friendship relationship, we risk using a client to meet our own needs. This is unfair to our clients.

Certainly in a community the size of Waukesha, casual meetings in stores or other public places are unavoidable, and we are not expecting the staff be rude or ignore a client in these settings.

The exchange of services, bartering and other similar agreements between staff and clients blurs the boundary lines the policy addresses, opens the door for disagree-ments that could result in a client not seeking our services when she needs to, and raises

special treatment issues.

The policy is intended to define boundaries for staff/ client relationships -- sexual or otherwise. A distinction is not made in the policy because the same concerns and potential problems could develop whether the relationship is sexual or not.

The parties met regarding the dispute, and failed to resolve all of the points posed above, thus setting the stage for this grievance.

The balance of the evidentiary background will be set forth as brief summaries of witness testimony.

Colleen Carpenter

Carpenter is presently employed by the Women's Resource Center of Racine. She was once employed by the Employer as a Volunteer Coordinator. She noted that her current employer addresses staff/client relationships in two policies, one of which addresses sexual involvement, and one of which addresses the solicitation of money or other compensation from clients. Her current employer maintains no policies governing staff relationships with former clients. She stated staff/client friendships were a rare phenomenon, but that she felt such relationships could be healthy.

Mary Kriofske

Kriofske is presently employed as a Legal Assistance Coordinator for Friends of Abused Families, Inc., which is referred to below as "FRIENDS". She worked for the Employer for about five years prior to accepting a position with FRIENDS. Kriofske stated there was little precedent for the provisions of the Policy. She further stated she felt the Policy served to further victimize clients by artificially separating the client and employe, and implying the client was sick, and incapable of basic human friendship. Beyond this, she noted that the Policy arrogated to the Employer an unwarranted degree of interference in an employe's off-work relationships. She further questioned how the termination of the client/employe relationship could be clearly defined. She noted that some of the cases she was involved in while working for the Employer lasted more than a year, and involved court appearances widely separated in time. Although she had roughly one and one-half years of college, she noted she had no formal training in therapy or counseling.

Kriofske specifically noted that her present employer regulates staff/client relationships through a code of confidentiality. That code, among other points, precludes staff disclosure "under any circumstances, (of) information of any kind, about any women and their children who are in contact with the agency . . . without the expressed written consent (of) the woman." The code also precludes disclosing any information regarding the shelter's location, or regarding the names, addresses or phone numbers of staff members. The code notes that staff members are not to share their home address or phone number with clients "to ensure professional distance and objectivity in dealing with the clients." Kriofske testified that FRIENDS does not regulate staff/client relationships after the provision of services from FRIENDS to a client has ceased.

Lynn Sylver

Sylver has been employed by the Employer since September of 1984. She presently serves as the Employer's Shelter Coordinator. She noted that the Policy was largely unprecedented in its detail and scope. The Policy changed a number of prior practices. For example, she had, for three to four years prior to the Policy, hosted a summer get-together of clients at her home. She stated that the in-service noted above stressed the impropriety of even incidental contact, such as giving clients rides or sharing a lunch or coffee break. She testified that changing a relationship could work to assist a client. As an example, she noted that she offered residence in part of a vacant duplex she owns to a former client whose entitlement to temporary shelter through the Employer had been exhausted. She also noted an anonymous contribution made to cover the legal fees of a client seeking to emerge from a history of domestic sexual abuse.

Carole Bartz

Bartz gave the in-service noted in the January 23, 1991, memo. She presently works as a Psychotherapist for the Phoenix Clinic of Milwaukee, which she helped to found. She received a Masters Degree in Social Welfare from the University of Wisconsin/Milwaukee in 1981. She noted that she had reviewed the Policy at Kingsbury's request, and found it to be reasonable. The six month limitation on staff/client relationships was, in her opinion, too short a period. The Policy serves, in her opinion, to promote the definition of effective boundaries by an abused person, whose abuse has served to destroy those boundaries. Because the Employer's staff contacts clients at an especially vulnerable period, those clients are readily susceptible to the influence of a staff member, who can come to be viewed by the client as a rescuer. Bartz stated that such a dependent form of relationship is readily amenable to abuse and can serve to defeat the client's reestablishment of effective personal boundaries which can serve as the threshold to independence. She felt the Policy also worked to protect the safety of staff members, who can be viewed by an abuser as the cause for the change or dissolution in the abusive relationship by which the abused partner is subjugated. She acknowledged she has not worked in a shelter, and acknowledged the difficulty of defining the beginning an end of a client relationship, given the often repeated use of shelter care.

Lynne Ketchum

Ketchum serves as the Employer's Family Empowerment Coordinator. She has a Masters Degree in Rehabilitative Counseling. She has worked for the Employer since 1978, and noted that the Employer has, since that time, experienced a tremendous expansion. Ketchum played an active role in the development of the Policy, which took roughly six months of work to compile. Ketchum recommended to Kingsbury that the Employer create a policy governing the relation of client to staff. Ketchum's work with a women's support group concerned with sexual abuse within the therapeutic relationship prompted her concern. She based the need for a policy on staff safety, based on the ill-will abusers hold for the Employer, and on the need to keep the Employer's activities confidential. This confidentiality is essential, Ketchum stated, to break into the cycle of isolation by which an abuser keeps an abused partner controlled. Beyond this, Ketchum stated the Policy helped to avoid staff burn-out, and helped to avoid creating a new cycle of dependence based on the abused client's need for the

staff member. She stated she disputed the wisdom of staff gifts to clients, for such gifts sent the wrong message to clients who did not receive such gifts. While acknowledging the difficulty of defining "client," she noted the need to separate clients and staff for a period after the cessation of services to avoid problems associated with repeat users of the Employer's services, and to avoid problems which could arise if a care-giver could unilaterally set the date client status ended. She felt that the Policy was not unprecedented, but was rooted in oral policies which were not universally understood by staff.

Marie Kingsbury

Kingsbury has a Masters Degree in Community Development, and has worked in a number of capacities for various shelter facilities since 1978. She had authored personnel policies for shelter facilities before her involvement with the Employer. She stated that she and other staff members surveyed seven to eight women's care agencies regarding their policies on staff/client relationships. She stated that they found roughly half of those agencies had unwritten policies on the point, but none had a written policy. She testified that toward the end of the survey process, she became aware that certain staff members were cultivating personal relationships with the Employer's clients. In one instance, she received a phone call from a relative of a former client who stated that one of the Employer's staff was continuing to see the client, and had invited the client to the staff member's home.

Kingsbury specifically articulated the seven bases underlying the Policy, which are summarized in "THE EMPLOYER'S POSITION" below. She noted that the difficulty of defining the beginning and end of the client relationship and the difficulty of enumerating the many ways by which a relationship can change prompted the inclusion of Item 7 of the Policy, which served to make the broad policy statements amenable to more specific examination on a case by case basis. She also noted the Policy was designed less for the crisis intervention line type of encounter than for face to face staff/client involvement.

Further facts will be set forth in the DISCUSSION section below.

THE UNION'S POSITION

The Union phrases the issues for decision thus:

> Whether or not those aspects of the employer's policy addressing the definition of a client and those prohibiting changes in relationships and relations with former clients violate the contract?
>
> If so what should the remedy be?

After an extensive review of the factual background to the grievance, the Union notes that "it is necessary to address a procedural dispute." This dispute centers on the reference in the January 23, 1991, memo to a set of prior policies which were codified into the Policy. Concerned that the existence of such prior policies "might . . . call into question the union's motives for grieving this rule," the Union argues that the evidence demonstrates "the disputed portions of this rule were not in existence prior to the issuance of the disputed rules of conduct." Any other conclusion, the Union asserts, ignores the weight of witness testimony; ignores that the Employer researched other agencies to develop the policy; and ignores that the Union has never

received a copy of any policies which preceded the Policy. The Union concludes nothing stated in the January 23, 1991, memo "should have (any) prejudicial value against the union."

Turning to the merits of the dispute, the Union argues that "parts of the rule governing client staff relations are unclear and others are unreasonable." More specifically, the Union asserts that the Policy contains no clear definition of the term "client," and concludes that "the employer should clarify its meaning." The Union specifically urges that the definition contain a reference requiring employe knowledge of the existence of the continuing provision of WCI services to an individual as a condition to the operation of the Policy. The Union also urges that the Policy be clarified to establish that it does not extend to crisis-line services in which clients typically retain anonymity. Beyond this, the Union urges that friends and family of staff members not be defined as clients "as it pertains to the application of items three . . . and four."

Beyond this, the Union "takes exception with the limitations placed upon employees" regarding Items 2 and 6 of the policy. The six month prohibition on changes in relationships and the prohibition on any relationships with former clients remaining in abusive relationships are, according to the Union, "paternalistic" and "an unwarranted intrusion into the personal lives of employees." Arguing that such contact can be either positive or negative, the Union concludes that the "Employer has not established that the failure to obtain permission for such positive changes in relationships is just grounds for discipline." Arbitral authority, the Union contends, strictly curtails the Employer's interest in off-the-job employe conduct. Since the Employer bases its assumption of adverse results from changes in relationships on "mere speculation," it follows, the Union concludes, that the rule on this point is unreasonable. Any other conclusion would, according to the Union, permit the Employer to take a disciplinary interest in the laudable efforts of employes such as Sylver, who undertake "personal sacrifices in helping those with whom she had worked."

Turning to the Employer's Step 2 response, the Union notes that the grievance does not question the Employer's right to issue a document such as the Policy. Beyond this, the Union questions whether the Employer has offered anything more than "an unsubstantiated fear" of legal liability for post-service contact between employes and former clients. Such an ungrounded fear can not be used, the Union claims, as any basis for concluding the Policy is reasonable. Noting the absence of "change in relationship" type of rules in other homes, the Union concludes the Employer's fear of legal exposure is greatly exaggerated. Beyond this, the Union asserts that even if the term "client" can be clearly defined, the Employer has no right to base a rule on the safety of its employes where that safety is called into question regarding non-job related conduct for which the Employer has no liability. If the Employer had chosen to regulate conduct "adversely (a)ffecting the employer's business or clients," the Union would not have grieved the matter. The difficulty here, according to the Union, is that the Employer has attempted to regulate conduct which has no proven relationship to the interests of the Employer or of its former clients. Finally, the Union acknowledges the difficulty of specifically defining every adverse type of contact the Policy seeks to avoid. No such complete definition is necessary, according to the Union, which concludes that this difficulty can not, in any event, form the basis for an unreasonable rule.

The Union concludes that the NASW Code of Ethics states the principle essential to an evaluation of the Policy. The Code provides:

> The private conduct of the social worker is a personal matter to the same degree as any other person's except when such conduct compromises the fulfillment of professional responsibilities.

The Union also cites the policies of Regional Domestic Abuse Services, Inc., as an appropriate guide to the evaluation of the Policy. Noting that the Union "did not reject the employer's policy outright and in its entirety," the Union seeks the following remedy:

> (I)tems 2 and 6 (of the Policy should) be found unreasonable as written and therefore in violation of the agreement. We ask that the arbitrator either instruct the Employer to adopt the proposed definition of client [noted above] or in the alternative find the present policy with respect to this definition to violate the agreement and retain jurisdiction with an unspecified instruction to modify it.

THE EMPLOYER'S POSITION

The Employer phrases the issue for decision thus:

> Does the Women's Center's policy on client/staff relationships violate (Section) 7.3 of the Contract?

After an extensive review of the evidentiary background to the grievance, the Employer asserts that the Union "presented no evidence that the Women's Center rule was unreasonable in any respect." The Employer contends that the Union's case states no more than a philosophic dispute "regarding whether and/or how client/staff relationships should be regulated." The distinction is significant, the Employer contends, for the focus in this matter must be on "whether or not the rule is reasonably related to a legitimate objective of management."

The Union's case, the Employer asserts, failed to address the reasonableness standard stated above. More specifically, the Employer contends that Carpenter's testimony established no more than that a different employer maintains a different policy. More significantly to the Employer, her testimony affirmed the legitimacy of the concerns which prompted the Policy. Kriofske's and Sylver's testimony, the Employer contends, acknowledged that the dispute is philosophic in nature. The Employer then asserts that this testimony should not be given controlling weight since both Kriofske and Sylver lack the training of those who compiled the Policy and since neither Kriofske nor Sylver had fully complied with its terms. The Employer asserts that in Sylver's case, this non-compliance reflects "testimony from an individual who chose to violate the policy since its implementation."

Responding to arguments raised at hearing, the Employer notes that the Union's November 17, 1988, request for "all current personnel policies" has no bearing here, since the "absence of and need for such a policy is precisely why the instant policy was drafted and implemented." The Employer also specifically challenges the relevance of Union proposals during bargaining; the confidentiality policy of FRIENDS of Abused Families, Inc.; and the March 14,

1991, letter from its Executive Director.

Apart from any flaws in the Union's evidence, the Employer contends that the Policy is reasonable. Reasserting that the test of reasonableness is "whether or not the prohibitions contained in the rule have a reasonable relationship to legitimate management objectives," the Employer notes that the Policy rests on seven objectives:

> Safety of staff; avoidance of staff burnout; avoidance of "special client status;" avoidance of client dependency on staff; prevention of staff exploitation of client; avoidance of potential legal liability; and preservation of The Women's Center's reputation.

The Employer asserts that the Union's case rests, in part, on Kriofske's philosophic position that the Policy "erects a barrier in which women are victimized and blamed for the violence perpetrated on them." This opinion must, in the Employer's view, be rejected based on the superior credentials of those women who created the Policy; on the absence of documentary support for Kriofske's opinion; and on the presence of persuasive documentary support, such as the NASW Code of Ethics, and such articles as Dr. Marcia Hill's On Creating a Theory of Feminist Therapy. It follows, the Employer concludes, that the Union's philosophic argument with the Policy must be rejected.

The balance of the Union's case rests, according to the Employer, on "the restrictions on relationships 'after' the client/staff relationship is ended." Initially, the Employer notes that the Policy does not affect the maintenance of an existing relationship, but rather focuses on a "'change' to a different type of relationship." Beyond this, the Employer contends the six month prohibition can persuasively be grounded on the fact that many clients return to the Employer for services; that clients of the Employer are vulnerable and require protection from transferring their dependence from an abuser onto a care-giver; that staff can be exposed to burnout if their relationship to a client spills over into their non-work lives; and that staff do not have an unlimited privacy interest which guarantees their right to associate with former clients on any level they choose.

The Employer "strongly disagree(s)" with the Union's assertion that the Policy constitutes an unwarranted intrusion into employes' personal lives. Because of the unique nature of the therapeutic services it offers, the Employer asserts that its employes' off-duty conduct has a direct bearing upon work performance. Arbitral authority establishes, the Employer asserts, that an employe can be disciplined for "off-duty misconduct which causes harm or which has a tendency to cause harm to the (employer)." Such authority also establishes, the Employer argues, that an employer has the right "to regulate employee conduct with . . . customers and the public away from the work-place," and that such regulation need be based only on "a reasonable belief that harm might occur as a result of employee off-duty misconduct." A review of the record establishes, according to the Employer, that each of the seven management objectives the Policy seeks to effect have been proven. This, together with the flexibility built into the Policy through Item 7, must be weighed against "the amorphous 'privacy' interest promoted by the Union."

The Employer concludes that "the grievance should be denied."

The Parties' Positions Regarding "On Creating a Theory of Feminist Therapy"

As noted above, the Employer submitted the article noted above with its brief. The article addresses, among other points, "the problem of boundary violations as an example of a current issue in feminist therapy that can be explored from an experiential perspective." Among other points made by Hill in the article is the following:

> The therapeutic relationship is one in which the therapist, as caregiver in an emotionally charged and intimate exchange, has inherently greater power than the client . . . As a result, the therapist is responsible for maintaining a clearly defined role, or boundaries, with the client. Failure to maintain this clarity of boundaries is a replication of the incest paradigm. In this situation the person in power (parent or therapist) uses the trust, dependence and idealization felt by the person with less power (child or client) to reverse the caretaking role in some way. With such a significant power difference, the client is not able to give freely; the therapist who allow the client to caretake her in this way can be thought of as taking something from the client without any meaningful consent on the client's part.

The Employer contends the Policy recognizes and avoids this dilemma by staking out as clear a boundary between client and staff "therapist" as possible.

The Union responds that the article addresses issues in therapy, but the Policy does not govern therapists. Beyond this, the Union points out that the article covers therapist/client issues, while much of the Union's difficulties with the policy is "over relationships with nonclients." Finally, the Union contends the article affords no guidance on the labor law issues here, which focus on "the reasonableness of rules that are vague and subject to abuse."

DISCUSSION

I have drawn on the parties' conflicting statements of the issues posed. My phrasing draws on the Union's statement to the extent it specifically identifies the areas in dispute. As the background set forth above indicates, the dispute has ranged over a number of points, and I have attempted to focus the dispute as narrowly as possible. This recognizes that the Union has not challenged the Policy in itself or the Policy as a whole. My phrasing of the issue draws on the Employer's statement to the extent it specifically identifies the governing contract provision.

The Union has posed a threshold issue regarding the reference in the January 23, 1991, memo that "The Center has operated on the basis of having had a policy inclusive of all that is detailed" in the Policy. The evidence establishes that this reference indicates no more than that the Policy is based in the spirit of prior unwritten policies. The Employer's brief acknowledges that the creation of the Policy was a deliberate, creative effort which involved lengthy research and considerable discussion. Whatever unwritten policies preceded it afford no guidance to assessing the reasonableness of the Policy.

As preface to an examination of the Policy provisions at issue here, it is necessary to touch on what constitutes the reasonableness standard established in Section 7.3.

First, it must be stressed that the contract does not envision any review on my part of whether the Policy constitutes the best means to regulate the provision of therapeutic services. It would be presumptuous to assume the Employer or the Union want or need my opinion on therapeutic issues on which any one of the testifying witnesses have more expertise. The reasonableness standard of Section 7.3 focuses on the labor relations aspect of the Policy. That aspect is posed by the paragraph following Item 7, which notes that "(e)mployees found to be in violation of this policy are subject to progressive disciplinary action." Section 7.3 underscores this point by requiring "rules and their application" to be "consistent with the principles of just cause." Thus, the focus here is on whether the Policy states a principle which can form the basis for discipline which, on appropriate facts, can withstand scrutiny under a just cause standard.

Second, it must be stressed that there are no facts affecting an individual employe posed here. The reasonableness standard thus focuses on whether the Policy provisions at issue here are capable of being reasonably applied to the facts of a particular case.

The reasonableness standard has been persuasively stated by the Employer. As modified to fit this record, the standard can be generally stated thus: The reasonableness of the items of the Policy at issue here will be tested by whether or not the prohibitions contained in the specific item have a reasonable relationship to legitimate management objectives.

Items 2 and 6 are in issue. Because each of those items regulate client/staff relations, the definition of a "client" which appears as the final paragraph of the Policy must also be addressed.

The definition of "client" and Item 2 establish a six-month period during which a staff/client relationship is not to change "to a different type of relationship." This requirement builds a period of time during which a client can move from a provider/provided-for type of relationship to a more independent relationship characterized by effective boundaries between the client and those with whom the client associates. Threshold to an examination of the reasonableness of this six month requirement is the Union's objection that "client" must be defined to state that the employe must realize the person with whom the staff member has a relationship is a "client."

The Union's argument on this point is persuasive. A progressive disciplinary system is not designed to simply mete punishment to employes who do not meet a given standard of conduct. Rather, such systems are designed to constitute a means of behavior modification, by which an employe is sanctioned for inappropriate conduct, and thus given an incentive to modify that conduct. Essential to the modification of inappropriate conduct is effective notice that the conduct is inappropriate. An employe could not be sanctioned, with just cause, for changing a relationship with a person the employe did not realize was a client of the Employer.

It is unlikely the Policy contemplated such discipline, but the fact remains that the Policy is silent on the point. This silence does not in itself make the definition unreasonable, for the definition is capable of being applied only to an employe with knowledge of a person's status as a client. That the definition's silence leaves open the possibility of discipline for conduct in cases where an employe had no notice that the conduct was inappropriate is troublesome, but the contract does not empower an arbitrator to rewrite rules.

The Union has urged the definition should be amended to apply only where an employe knew or should have known of a person's status as a client. Thus modifying the policy would address the concern noted by the Union and Kingsbury regarding the impact of the policy regarding crisis line callers. Such callers typically retain their anonymity. There is no reason to attempt to distinguish

between the impact of the Policy on clients who receive face to face, or crisis line, types of services once the element of employe knowledge has been added to the definition of "client".

Including an element of employe knowledge in the definition of "client" would enhance the confidentiality of the Employer's services, and would address the Union's concerns regarding the difficulty of clearly defining "client." The confidentiality of Employer provided services would be enhanced since staff members who seek to avoid the application of Item 2 will not be given an inducement to unnecessarily seek to learn the identity of persons who may or may not be clients of the Employer. The inclusion of a "should have known" type of qualifier on the element of employe knowledge avoids the creation of an incentive for a staff member to feign ignorance of client status to mask the initiation of a changed relationship. Thus modified, the term "client" should alert staff members that if they have reason to know a person was, and may or may not continue to be, a client, they should inquire further to avoid application of the Policy. Whatever specificity the definition lacks would thus be cured.

The Union has also sought to clarify that Items 3 and 4 do not apply, through the definition of "client," to friends or relatives of staff members. No such clarification is necessary. The reasonableness of Item 1 is not at issue. Thus, a staff member will not be in a position to counsel a friend or a relative. The staff member would have, then, no opportunity to give an address, phone number or in-home visit in violation of Items 3 or 4. Friends and relatives would have access to such information or such contact as a pre-existing, on-going function of the friendship or familial relationship. Nothing in the Policy indicates its provisions seek to modify existing friendship or familial relationships. Rather, the Policy seeks to assure that Employer-provided services are afforded by a staff member who can act with professional detachment.

Resolution of this threshold point squarely poses the reasonableness of the six month waiting period for a "change in relationship." The Union's assertion that these terms are unduly broad is unpersuasive. The term "relationship" does not extend to incidental, not staff-initiated contact. Nor does the Policy affect existing relationships. Friends and family members continue to be friends and family members, without regard to their status as "clients," since there is no "change in relationship." Finally, it must be acknowledged that the complexity of a changing world and changing relationships will ultimately overcome the most carefully crafted words. The reference to "change in relationship" alerts an employe to an area of conduct. That area of conduct can be more specifically examined through the case by case inquiry established at Item 7. Thus, the "change in relationship" reference is more than a definition, it is a procedure by which areas of doubt can be addressed. The reference is not unduly broad.

The Employer has persuasively demonstrated a reasonable relationship between at least six of the stated management objectives and the six month prohibition in changes in relationship. Those objectives have been fully addressed in witness testimony and in the Employer's brief and need not be elaborated on here. The exception referred to above is that no clear relationship has been established between the prohibitions of Item 2 and the Employer's legal liability. The prospect of liability under Sec. 895.70, Stats., which governs sexual exploitation by a therapist, could more readily be addressed by the type of exploitation policy the Union has already conceded the reasonableness of. The more problematic point concerns the potential of tort liability cited by the Employer. Extending the Employer's interest in the

client for six months beyond the cessation of services may only expose the Employer to a duty of due care to police the Policy during that period. The balance of the tort theories cited by the Employer extend directly to the Employer's provision of services, and would seem to be implicated whether the Employer implemented the Policy or not. Whatever the extent of the Employer's exposure to civil suit may be, no clear relationship between that liability and the Policy has been demonstrated.

Item 2 does not pose the type of privacy issues asserted by the Union. Item 2 does not alter a staff member's private or familial relationships. Rather, Item 2 extends only to a relationship which would not exist but for the connection between the Employer and the client. Thus, the Union seeks not to vindicate a privacy interest so much as it seeks the freedom to expand a working relationship into a private relationship. The difficulty with this position is that the end of the working relationship in a shelter-type setting is difficult to define. Repeat use of Employer services is common, and the dysfunctional nature of the relationship which caused the need for the Employer's services does not necessarily disappear with the cessation of such services. Beyond this, the undisputed vulnerability of the client during this period of time creates a significant probability that the private and the therapeutic relationship can not be separated. That many clients must return for services exposes the client and the staff member to the literal and emotional risks of a friend counseling a friend. The sort of relationship the Union seeks to protect here is as readily characterizable as a staff member's personal involvement in an ongoing course of treatment as it is characterizable as the casual formation of a private relationship.

It must be stressed that the analysis here is not whether Item 2 represents the best policy on the point. Kriofske and other witnesses took strong exception to this item, stressing that friendship can help a client and that the erection of barriers between staff and clients may reinforce a pattern of isolation. Beyond this, it is apparent a number of shelter facilities think the better policy is to restrict the regulation of staff/client relationships to the period of time for which services are being provided. It may be that this line of thinking represents sound policy. The contract does not, however, put an arbitrator in a position to resolve this philosophic dispute. The issue posed is whether the Policy articulated by the Employer at Item 2 bears a reasonable relationship to a legitimate management objective. Item 2 serves to distance care givers from clients in a vulnerable period for the client; to separate the stress of an employe's work, from the employe's personal life; to enhance the confidentiality of the Employer's services; and to insulate employes from abusers. The policy can not be dismissed as unreasonable.

The six month limitation on changes in relationships and in the definition of "client" thus stands as reasonable. This conclusion dictates, however, the rejection of the reasonableness of Item 6 as it is written. To give effective notice to employes of the appropriate standard of behavior, it is essential that the articulated standard be internally consistent. Item 6, by its terms, governs staff/client relationships beyond the six month period which establishes client status through the operation of the final paragraph and of Item 2. By definition, however, a client has ceased to be a "client" at the expiration of six months from her last receipt of Employer services. Item 6 thus seeks to regulate client/staff relationships regarding two people, neither of whom meet the definition of a client. This inconsistency precludes Item 6 from giving effective notice.

This definitional point can be remedied by replacing the reference to "client" with "ex-client" or "former client," and, in any event, skirts the

merits of the parties' dispute.

Because the point has been fully litigated, it is appropriate to address the merits of the parties' dispute regarding Item 6. Not doing so would only force the unnecessary processing of a second grievance.

The policy analysis supplied by the Employer to ground the reasonableness of Item 2 is also applicable to Item 6. Its application to Item 6 is, however, problematic since Item 6 seeks to establish a principle generally valid for an indefinite period of time. This makes the privacy interest articulated by the Union more compelling, since Item 6 seeks to permanently dictate the course of ex-client/staff relationships. The existence of Item 7, which permits exceptions to the operation of Item 6 in "(u)nusual circumstances," does nothing to ameliorate the unlimited duration and scope of Item 6. Rather, it implies only that an exception is theoretically possible at an indefinite point in the future.

To stretch the policies which grounded the reasonableness of Item 2 into a generally applicable principle good for all time is simply too great a stretch. The policies which were sufficiently persuasive to support a six month limitation on changes in relationships for a particularly vulnerable class of women are not sufficiently persuasive to make ex-clients and staff members permanent wards of the Employer.

The unlimited scope and duration of Item 6 undercut the persuasive force of the relationship between the prohibitions of that item and the underlying objectives sought by the Employer. The tenuous nature of the link between the Employer's liability to civil suit and Item 6 is more apparent here than with Item 2. Item 6 may or may not impose a duty of due care on the Employer regarding the enforcement of its terms. However, the unlimited duration of the rule increases whatever exposure the Employer may have in this area. That the rule is not limited to sexual or exploitative relationships also weakens the link between Item 6 and potential issues of liability.

Presumably, the greatest threat to the Employer's ability to raise funds is the occurrence of a sexual or exploitative relationship between a staff member and an ex-client. Such relationships would be the most noteworthy, and thus damaging, from a publicity standpoint. Item 6 does not, however, limit itself to such relationships, but generally addresses "a relationship." This unlimited reference places the exchange of Christmas cards on the same footing as an exploitative relationship. The relationship of the latter to the Employer's ability to raise funds is apparent. The relationship of the former to fund-raising is not. Item 6 does not attempt to make any distinction. This lack of distinction, coupled with the unlimited duration of Item 6, magnifies the difficulty of linking Item 6 to the Employer's fund raising ability. This is not to say employes can not be considered to have a continuing duty to avoid certain relationships with ex-clients. The Code of Ethics of the National Association of Social Workers recognizes that care-givers may be considered to have a continuing duty of indefinite duration regarding the avoidance of certain types of relationships. The Union has not challenged the reasonableness of the imposition of such a duty, if limited in scope to relationships of a nature adverse to an ex-client. Item 6 is, however, far broader. Its unlimited scope and duration magnify the weakness of the relationship between the Policy and the Employer's interest in maintaining its reputation.

The client/staff safety concerns persuasively articulated by the Employer regarding Item 2, strain beyond the breaking point regarding Item 6. As the Employer/client relationship recedes in time, the more tenuous becomes the link between the work-related nature of the Employer's interest in the client and in the staff member. The difficulty of defining the end of client status, coupled with a high rate of return visits, served to establish the reasonableness of Item 2. The same policies are not implicated to the same degree where, by definition, there has been no return visit for a period of not less than six months. As the gap between the provision of Employer service and the "relationship" grows, the work-related nature of the Employer's concerns weakens. That Item 6 makes those concerns unlimited in duration renders the underlying policy link more dubious. At some point, employes and clients cease to be employes and clients and become private individuals. Similar considerations apply to the Employer's objective to prevent staff burn-out.

In sum, the unlimited scope of Item 6 stretches the work relationship farther into a staff member's or an ex-client's life than is reasonable. The rule could arguably be made more reasonable by limiting its scope in time. This would, however, pose the difficult, if not unresolvable, issue of what period of time is sufficient to render changes in the relationships governed by Item 6 "safe." More persuasively, in my opinion, the unrestricted scope of Item 6 could reasonably be limited by replacing the "must" reference with "should." The impact of this change is to leave Item 6 as a general statement of Employer policy regarding the changing of relationships between staff and ex-clients who remain in abusive relationships. The deletion of the "must" reference would, however, strip Item 6 of its unlimited scope. This conveys to staff that the Employer may retain a disciplinary interest in staff conduct with ex-clients, but clarifies that any such interest would have to be evaluated in the context

of each case. The final sentence of Section 7.3 operates to assure that this evaluation, if it resulted in discipline, could be tested through a just cause determination.

Section 7.3 establishes that the reasonableness of Employer made rules is subject to arbitral interpretation. Section 6.7 specifically denies an arbitrator the authority to rewrite the Agreement. Accordingly, the AWARD entered below states only my conclusions on the Policy items in dispute. This makes the decision, in effect, a declaratory ruling on whether the disputed items are enforceable as written. The elaboration offered above has been stated to clarify the changes I believe would make each of the disputed items withstand the reasonableness test, or would address specific concerns raised by the parties. I have not included any reference to those suggestions in the AWARD. The weight, if any, that should be given to my suggestions, I must leave to the parties.

AWARD

The definition of "client," as applied by Item 2 of the Policy, does not violate Section 7.3 of the collective bargaining agreement if it is applied to a "change to a different type of relationship, such as friendship" involving a staff member and a person the staff member knows or should have known is a "client" within the meaning of the final paragraph of the Policy.

The definition of "client," as applied by Item 6 of the Policy, does violate Section 7.3 of the collective bargaining agreement. It is unreasonable on its face, for it purports to regulate conduct between a staff member and a client, neither of whom meet the definition of "client" set forth as the final paragraph of the Policy.

Dated at Madison, Wisconsin, this 29th day of January, 1992.

By _____
Richard B. McLaughlin, Arbitrator

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