



The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union or practice any discrimination or interference or restraint against any employees who are not members of the union.

### ARTICLE 3

#### MANAGEMENT RIGHTS RESERVED

Unless otherwise herein provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, 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 exclusively in the Employer.

#### BACKGROUND:

Since 1988, the County has had a program of administering performance evaluations to employes included in the Union's bargaining unit. The County has used the same evaluation form, the same format, the same criteria and the same interview process since 1988. The County has also allowed employes, dissatisfied with their reviews, to place rebuttal documents in their personnel files. The evaluation format is listed on the evaluation form as follows:

1. Employee Completes Self Assessment.
2. Supervisor Completes Performance Evaluation.
3. Formal Appraisal (face to face meeting).
4. Discussion of Development Plan.

The evaluation rating scheme (from 1 to 5) is listed as follows on the form: (1) Well above expectations; (2) Above Expectations; (3) Meets Expectations; (4) Below Expectations; (5) Does Not Meet Expectations. Four areas are covered by the evaluation form: "Job Knowledge and Application", "Job Functioning", "Communication" and "Other Skills Affecting Job Performance". Under each of these areas are categories covered by the area.

Grievant Diane Schmahl has been employed by the County for the past five years. Ms. Schmahl has been a Union official for at least the last three years, during which time she has served as Local Union Vice President and Chief Steward. Ms. Schmahl is currently employed by the County as an Income Maintenance Worker (IM Worker) in the Economic Support Unit of the Division of Social Services in the County's Department of Human Services. Ms. Schmahl is one of eight such IM Workers who report to Economic Support Supervisor Carol Hazlewood. The Economic Support Unit has one other Economic Support Supervisor, Betty Boyle, one Quality Control/Training Supervisor, Liz Mahloch, and one Fraud Investigator, Dennis O'Malley. Boyle, Mahloch, Hazlewood and O'Malley are all on the same managerial level in the Unit. Ms. Boyle has seven IM Workers under her supervision; Ms. Mahloch has five employes under her supervision; Mr. O'Malley has no one to supervise. Above this supervisory level is Sharon McCormick, Economic Support Manager and above her is Division Manager, Ann Wondergem.

In 1990, Schmahl was supervised and evaluated by her supervisor at that time, Betty Boyle, for the calendar year 1990. In this evaluation (using the same evaluation form, rating system and format as was used by Hazlewood in 1992), Schmahl received ratings of 2-3 in the two categories under "Job

Knowledge and Application"; she received ratings of 3 in seven categories in the "Job Functioning" area and a rating of 2-3 in "Analyzing problems and developing appropriate solutions". Schmahl received a 3 rating in one of the "Communication" categories and a rating of 1-2 in the other "Communication" category -- "Effectiveness of oral expression includes both informal and formal discussion". Schmahl received a rating of 3 in seven categories under "Other Skills Affecting Job Performance", one of these 3's was on the low end of the 3 rank in the category "Effective management of time." Schmahl received a 2-3 rating in the two other categories of this area. Overall, on this 1990 evaluation, Boyle ranked Schmahl as having "(p)erformance which exceeds the requirements of the position. Employee has applied extra effort in certain areas." Boyle placed comments in the area "Individual Development" including the following:

. . .

Specific Development Needs:

Diane may need assistance in the area of time management to enable her to complete assignments within the normal work week.

**ACTION PLAN (PERFORMANCE GOALS THAT ARE CLEARLY MEASURABLE):** The Plan is to continue weekly conferences with supervision to review specific case situations. This time may include a review of the overall method used to complete assignments and to develop a plan with supervision to complete the work within the normal work week. This plan will be reviewed at a time agreed upon by Diane and her current supervisor.

. . .

FACTS:

On May 19, 1992, Ms. Schmahl received her performance evaluation for the period from January 1, 1991 to May 19, 1992 from Supervisor Hazlewood in a meeting at which Schmahl and Hazlewood were present. This evaluation showed that Schmahl was rated overall as having demonstrated "performance which meets the expectations of the position." In the "Job Knowledge and Application" area, Schmahl was rated 3 in the two categories therein. In the eight categories under "Job Functioning" Schmahl received a 3 rating in seven categories and a 4 rating in one category: "Keeping supervisor and appropriate involved co-workers informed of case progress". In the area of "Communication" Schmahl received a 3 rating in one category and 4 rating in the category: "Effectiveness of oral expression includes both informal and formal discussion". Relating to this category, Hazlewood wrote down the words "Professional/Peer" and "Client" she drew the line to divide the category in half. Hazlewood rated Schmahl a 3 in "Professional/Peer" Communication and gave Schmahl a 4 rating in the "Client" Communication. In the area of "Other Skills Affecting Job Performance," Schmahl received 3 ratings in all nine categories thereunder. The evaluation form also contained an "Individual Development" section where Hazlewood wrote extensive comments regarding Schmahl in each area: "Strengths", "Specific Development Needs", "Action Plan (Performance goals that are Clearly Measurable)" and "Comments by Evaluator." Hazlewood's written comments in each "Individual Development" area were as follows:

INDIVIDUAL DEVELOPMENT

STRENGTHS:

Diane continues to increase her knowledge of the complex programs that she deals with . . . . She consistently works independently, Diane's good knowledge and understanding of program and agency requirements allows her to execute them in a timely and efficient manner. Diane has a good ability to identify, discuss and clarify issues on a professional level in the training and staff/peer settings.

SPECIFIC DEVELOPMENT NEEDS:

As interactive interviewing becomes more a part of the management of cases, Diane will need to allow ample time for client contact and communication. The development of client trust and openness requires time spent in listening and explaining to the clients, but, results in increased accuracy and understanding in turn, requires that non-client time be managed efficiently.

Diane needs to feel free to discuss case problems with her supervisor whenever necessary.

ACTION PLAN (PERFORMANCE GOALS THAT ARE CLEARLY MEASURABLE):

Diane is invited to meet regularly with her supervisor to discuss any necessary case situations and decision.

Diane is encouraged to develop ways to balance her client and non-client time in a manner that clients feel they have had a (sic) opportunity to adequately express themselves and still have their cases processed in a timely fashion. Prompt acknowledgement of correspondence and messages is often needed to alleviate anxiety by clients. Carol will meet with Diane on a case-by-case basis when questions arise.

It is anticipated that Diane will continue to use her knowledge base and problem solving skills in making good judgments in her decision. Continued use of narration in case records is needed in an effort to make case handling easier, it would be good to split rounds on a more frequent basis.

Diane is a very valuable employee who has great potential to grow in the challenging area of Economic Support. Her commitment and strength will continue to be an asset to the agency and the unit. It is a pleasure to have the opportunity to work with such a committed and capable member of the ES team.

Although there was a space for "Comments by Employee" on this form, Schmahl did not place comments on the form. Sometime in August, 1992, Schmahl submitted a single-spaced typewritten document of slightly over two pages in length entitled "Rebuttal to Performance Evaluation Issued 5/19/92 Diane Schmahl." The County placed this document in Schmahl's personnel file along with the

performance evaluation in dispute here.

The record was undisputed that Hazlewood had received several calls from clients during the evaluation period complaining that Schmahl had not spent enough time with them explaining their benefits to them, or that they felt Schmahl had not been listening to them. Hazlewood revealed and discussed this information with Schmahl at Schmahl's May 19th performance review meeting. Hazlewood had rated Schmahl 4 in "communication, effectiveness of oral expression" because of these complaints. Hazlewood admitted to Schmahl that she had not kept a log of these client calls and that there may have been up to 10 calls but that she could not remember exactly how many calls there had been.

Hazlewood also assured Schmahl that if she received any further client calls she would talk to Schmahl about them immediately. 2/

Upon Schmahl's contesting another area where she received a 4 rating, Hazlewood changed that 4 rating to a 3 rating during their May 19th evaluation meeting. This was the 4 rating that Schmahl had received in the "Job Functioning" area in the category "Keeping supervisor and appropriate involved co-workers informed of case progress." Hazlewood changed this rating after Schmahl explained (in essence) that she did not need supervision, given her experience and seniority.

The Union asserted that evidence existed to show that Schmahl was treated differently on her 1992 performance evaluation because she engaged in activity on behalf of the Union as a Union official. Evidence regarding restrictions placed on access to the jail made effective in February, 1992 by the Sheriff were due to general security concerns and the restrictions were applicable to all County employes employed outside of the jail complex. These restrictions did not adversely affect Schmahl's ability to process grievances for Sheriff's Department employes because Schmahl was allowed to enter the jail on Union business even after the Sheriff had posted a notice in February 1992, apparently restricting access to the jail. 3/ Thereafter, other facilities for Sheriff's Department grievance meetings were consistently made available to Schmahl.

The fact that Schmahl was required to use either comp time, flex time or leave without pay for a meeting regarding the performance evaluation of Sheriff's Department employe M-S is the subject of a grievance heard by the undersigned on the same date that the instant grievance was heard. That case involved whether Schmahl should have been allowed to use paid Union activity time for the one hour she represented M-S at a monthly performance evaluation of M-S held on May 15, 1992. Schmahl used leave without pay to attend M-S's performance review.

Evidence regarding Schmahl's request (in February or March, 1992) to have a different supervisor (other than Hazlewood) assigned to supervise her, showed that Schmahl requested this change of McCormick who indicated such a change could not be accomplished and who encouraged Schmahl to speak directly to Hazlewood about her problems. Although there is a dispute regarding whether Schmahl asked McCormick to keep her request in confidence and whether McCormick told Schmahl she (McCormick) would have to discuss Schmahl's request with the other supervisors in the Unit, it is clear that Schmahl did speak to Hazlewood about her concerns prior to Hazlewood having completed her evaluation of

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2/ Schmahl stated that Hazlewood has informed her of client calls since May 19, 1992.

3/ The Union did not offer a copy of this notice into the record.

Schmahl in May, 1992. Thereafter, McCormick granted Schmahl's transfer request. Since approximately October, 1992, Betty Boyle has been Schmahl's supervisor. (Boyle is the supervisor who evaluated Schmahl, covering 1990, in 1991).

Finally, the Union submitted evidence regarding Supervisor Hazlewood's alleged lack of supervisory experience and Hazlewood's having allegedly told Schmahl on May 19th that she (Hazlewood) could not rate above a 3. The Union also submitted five employe performance evaluations, four of which were completed by Hazlewood and one of which was completed by Supervisor Betty Boyle, covering various other employes and various periods of time, from January, 1991 through June, 1992.

#### POSITIONS OF THE PARTIES:

##### County:

The County urged that Schmahl was not disciplined in her May 19th performance evaluation, that she was rated fairly by her supervisor who applied the same criteria and used the same evaluation form and format as Schmahl's two prior supervisors had used to evaluate Schmahl. The County observed that although Schmahl's prior supervisor, Boyle, had given Schmahl a higher overall rating than did Hazlewood, Boyle's completed evaluation of Schmahl showed Schmahl was generally performing at a 3 level in most of the evaluation areas just as Hazlewood had done. However, Boyle gave Schmahl an above average overall rating, while Hazlewood gave Schmahl an average overall rating. This, the County asserted, was appropriate based upon each supervisor's personal observations and discretion.

The County strongly disagreed with the Union's contention that Schmahl's performance review had been below standard because of Schmahl's activities as a Union steward. On this point, the County noted that no mention was made in Schmahl's evaluation of her Union activities. Hazlewood testified that she had been a Union steward in a previous position with another employer, which the County asserted, would make Hazlewood more understanding of Schmahl's Union duties. In addition, the County urged that Schmahl was never denied time to represent M-S at the jail - only that the County had denied Schmahl paid time to do this. The County observed that Hazlewood had first spoken to Schmahl in early May about her evaluation, before the situation at the Sheriff's Department occurred. This issue, the County also pointed out, was the subject of a separate grievance between the parties.

Finally, the County contended that its having allowed Schmahl to attach a lengthy rebuttal to her May, 1992 performance evaluation, some three months after the evaluation was given, buttressed its assertions that it had been fair to Schmahl throughout the evaluation process. Therefore, the County urged that Schmahl's May 19, 1992 evaluation had been fair, that it had not been disciplinary in any way and that the grievance should be denied and dismissed in its entirety.

##### Union

The Union urged that Hazlewood's May 19, 1992 evaluation of Schmahl had been "disciplinary in nature and a form of reprisal for her Union activities". In addition, the Union asserted that Hazlewood had retaliated against Schmahl for having requested a change in supervisors, away from Hazlewood.

The Union argued that because Hazlewood (assertedly) could not and did not tell Schmahl what she "did wrong and how to correct it" and because Hazlewood did not state why she scored Schmahl differently than Boyle had or

why she scored other employes higher than Schmahl, Schmahl's evaluation must necessarily constitute discipline. The Union also noted that no satisfactory reason was given by Hazlewood for having added to the evaluation form and scored Schmahl differently in the Communication Category "C". The Union contended that Hazlewood's refusal to allow Schmahl to review her performance as a supervisor and Hazlewood's unexplained reference to "non-client" time showed that Schmahl was treated differently all because of the "non-client" time she spent processing grievances for the Union.

The Union conceded the Employer's right to perform evaluations on employes but asserted that here the Employer had been arbitrary and capricious and had acted in bad faith in performing Schmahl's May 19, 1992 evaluation. The Union noted that the County's evaluation forms have a box which can be checked indicating "that performance at the level will lead to initiation of corrective action." Thus, the Union urged, any decline in performance ratings for employes must be deemed to constitute discipline and must be subject to the just cause provision of the labor agreement.

The Union urged that because the Employer has failed to prove just cause for disciplining Schmahl by issuance of the May 19, 1992 performance evaluation, the undersigned must therefore set aside the evaluation, expunge all reference to it from Schmahl's record and order the County to cease and desist from harassing Schmahl and from treating Schmahl differently from other employes.

#### DISCUSSION:

The Union has argued that the May 19, 1992 evaluation of Schmahl had a disciplinary effect and that therefore a grievance properly lies to challenge the contents of that evaluation and to have the evaluation expunged from Schmahl's record. Article 25 of the labor agreement provides that ". . . any grievance or misunderstanding which may arise between the Employer and an employee (or employees) or the Employer and the Union . . ." may be processed to arbitration as a grievance. Thus, this case, which essentially involves a dispute over Diane Schmahl's May 19, 1992 performance evaluation, is properly before me.

In regard to whether Schmahl's evaluation could be deemed as discipline, I note that the Union proffered no evidence to show that Schmahl in fact received any discipline because of or in conjunction with this evaluation. The only evidence that such a "meets expectations" evaluation might affect Schmahl's future work experience with the County was Schmahl's statement that, in her experience, prior evaluations have had an influence on promotions applied for by employes. Although I note that the evidence was undisputed that the County has consulted prior performance evaluations in determining whether an internal candidate will receive a promotion, Schmahl's statements, without more, are insufficient evidence to bootstrap this case into one involving the actual discipline of Schmahl. Thus, the record in this case fails to prove that Schmahl was disciplined as a result of the May 19, 1992 evaluation.

Certain of the Union's arguments are basically criticisms of the form and content of the County's evaluation form as applied to Schmahl and of Hazlewood's exercise of her supervisory discretion in rating Schmahl. 4/ As a

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4/ The logical extension of the Union's argument on this point would essentially convert the evaluation process into a comparison/competition among employes of the type that can occur when several employes apply for a promotion. Clearly, the parties did not intend such a result.

general matter as well as under the terms of the effective labor agreement, the contents of the evaluation form as well as Hazlewood's exercise of her supervisory discretion in filling it out are not matters that the Union may properly control.

In addition, I disagree with the Union's arguments that Hazlewood failed to explain what Schmahl had "done wrong" and how she could improve. In this regard, I note that contrary to the Union's assertions the record showed that Hazlewood had objective evidence to substantiate what Schmahl had "done wrong", that she discussed this evidence with Schmahl and she gave Schmahl adequate reasons for her ratings during the May 19th review session. Hazlewood also indicated in the "Activity Plan" section of the evaluation, her thoughts on how Schmahl could improve her work, apparently leaving specifics to Schmahl and to the individual conferences Schmahl would have with Hazlewood, according to the Plan. A more in depth analysis or comparison, from one evaluation to another of Schmahl or as compared to other employes was neither required by the labor agreement nor is it required by general principles of equality and fairness. I also note that the evaluation form and format have been used by the County for several years and that Schmahl apparently did not grieve the evaluation/ratings given her by Supervisor Boyle in 1991, using the same form and format.

The fact that Boyle rated Schmahl differently than did Hazlewood does not mean Hazlewood's ratings were necessarily unfair. Regarding Boyle's evaluation of Schmahl, I note that although Boyle gave Schmahl an overall rating of "Above expectations," Boyle noted that during the year 1990, Schmahl had some of the same problems which Hazlewood found, and placed Schmahl on an Action Plan similar to the one Hazlewood put Schmahl on in 1992. Thus, under the Section, "Specific Development Needs", Boyle wrote that Schmahl ". . . may need assistance in the area of time management to enable her to complete assignments within the normal work week." In the Action Plan Section, Boyle recommended:

. . . weekly conferences with supervision to review specific case situations. This time may include a review of the overall method used to complete assignments and to develop a plan with supervision to complete the work within the normal work week. This plan will be reviewed at a time agreed upon by Diane and her current supervisor.

Thus, Boyle's evaluation of Schmahl regarding time management was very similar to Hazlewood's evaluation of Schmahl on that point.

In addition, the evidence showed, contrary to the Union's claims, that Hazlewood had objective factual bases for her 1992 ratings of Schmahl. Hazlewood stated that she had received a number of telephone calls from clients complaining that Schmahl had not explained their benefits to them properly, that Schmahl had not listened to them or that she had not spent enough time with them. Although Hazlewood did not keep a log or any other record of these calls, the Union offered no evidence which would require a finding that Hazlewood did not in fact receive such calls complaining about Schmahl's work performance. Indeed, Schmahl stated that at their May 19th meeting, Hazlewood promised to tell Schmahl immediately if Hazlewood received any additional client calls. Schmahl also admitted that Hazlewood had come to her and discussed subsequent client calls received by Hazlewood after May 19th. In these circumstances, I believe there is ample record evidence to show that clients complained to Hazlewood about Schmahl's communication skills prior to May 19th and that these complaints constituted objective, factual evidence upon which Hazlewood reasonably based her concern about Schmahl's client communication skills, as reflected in the May 19th performance review.



The Union's argument that Schmahl was treated differently on her performance evaluation because she had engaged in Union activity was unsupported by any evidence of County actions or statements constituting or containing animus, threats or coercion of Schmahl which could be connected with Schmahl's Union activities. 5/ As noted above, Schmahl's ability to process grievances for Sheriff's Department employes was in no way adversely affected by the Sheriff's restrictions on access to the jail which were applicable to all those employed outside of the jail complex and which were undisputedly taken for security reasons. In addition, I have specifically found in Sheboygan County, Case 170, No. 48017, MA-7479 (Gallagher, 2/19/93), that Schmahl's having requested and been denied paid Union activity time to attend a performance evaluation meeting regarding Sheriff's Department employe M-S was based solely upon the County's correct interpretation of Articles 6 and 21 of the labor contract.

The fact that Schmahl was apparently not given the opportunity to evaluate Hazlewood's supervisory abilities (as other employes had done) could have had no affect upon Hazlewood or her evaluation of Schmahl. Therefore, this fact is not material to the issues in this case. Finally, I do not find it significant that Schmahl stated that Hazlewood told her on May 19th that she (Hazlewood) could not rate Schmahl above a three. Even assuming this statement is accurate, I note that Hazlewood, in fact, rated Schmahl above a three in one area (Peer Communications).

Regarding Schmahl's request for a change of supervisors, I note that the evidence failed to demonstrate that because of this request Hazlewood harbored any animus against Schmahl or that Hazlewood, in fact, treated Schmahl differently from other employes due to Schmahl's request for a supervisory change. Indeed, Schmahl admitted that she had a good working relationship with Hazlewood during the relevant period and that she (Schmahl) spoke to Hazlewood about her request for a supervisory change. In these circumstances, I do not find it significant that Manager Ann Wondergem apparently did not keep Schmahl's request for a supervisory change a secret and that she spoke to the Department supervisors about Schmahl's request. Finally, I note that since her request, Schmahl has been transferred to Supervisor Boyle's team.

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5/ The Union argued that Hazlewood's reference to "non-client time" is a reference to her Union activities. This is not necessarily so. Income Maintenance Workers do not meet with clients all day long. Hence, Hazlewood's reference to non-client time may have been a reference to time spent by Schmahl processing benefit requests outside the presence of a client. In any event, the Union failed to connect up this reference in Schmahl's evaluation to Schmahl's Union activity time.

Based upon the relevant evidence and argument herein, 6/ I find that Hazlewood's May 19, 1992 evaluation of Schmahl was based upon objective evidence and Hazlewood's reasonable observations, that it was not disciplinary and that it was not arbitrary, capricious or discriminatory.

In light of the fact that the County allowed Schmahl to place a lengthy rebuttal to her May 19, 1992 evaluation in her personnel file, I issue the following

AWARD

The Employer did not violate the contract when it gave Diane Schmahl the evaluation dated May 19, 1992.

The grievance is therefore denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 17th day of March, 1993.

By \_\_\_\_\_  
Sharon A. Gallagher, Arbitrator

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6/ Even assuming that the argument that Hazlewood was an inexperienced supervisor is relevant, it was unsubstantiated on this record. In addition, I find that the performance evaluations of other employes performed by Hazlewood and Boyle are neither relevant nor material to this case. As such, they have not been considered in reaching this Award.