

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 LOCAL 569-A, AFSCME, AFL-CIO : Case 21
 : No. 46904
 and : MA-7098
 :
 CITY OF MAUSTON :
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Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40,
 AFSCME, AFL-CIO, appearing on behalf of the Union.
Mr. Jon Anderson, Godfrey & Kahn, S.C., Attorneys at Law,
 appearing on behalf of the City.

ARBITRATION AWARD

The Union and the City named above jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned to resolve a grievance of Susan Bosgraaf regarding a letter of unsatisfactory performance. Hearings were held in Mauston, Wisconsin, on June 16, July 23, and October 28, 1992, at which time the parties were given full opportunity to present their evidence and arguments. The parties completed their briefing schedule on June 8, 1993.

ISSUE:

The Union frames the issue as follows:

Is the disciplinary letter to the Grievant dated August 22, 1991, for just cause? If not, what shall the remedy be?

The City frames the issue as follows:

Did the City violate Article II, Section 1, of the 1991-1992 labor agreement when it issued the notice of unsatisfactory performance to the Grievant? If so, what is the appropriate remedy?

The Arbitrator will address the following issues:

Does the letter to the Grievant dated August 22, 1991, constitute discipline? If so, did

the City have just cause to issue that letter?
If not, what is the appropriate remedy?

CONTRACT LANGUAGE:

ARTICLE II - MANAGEMENT RIGHTS

Section 1 - Management Rights: Except as expressly and precisely provided in this Agreement, the management of the City and the direction of the working forces shall remain vested exclusively in the City. Such management and direction shall include all rights inherent in the authority of the City, including among others, rights to hire, recall, transfer, promote and relieve employees from duty because of lack of work or for any other reason. The City shall have the right to discipline or discharge for just cause. Further, the City shall have exclusive prerogatives with respect to promulgation of reasonable work rules, classification of occupations and employees, assignments of work including temporary positions.

BACKGROUND:

The Grievant, Susan Bosgraaf, has worked for the City as a utility clerk for 14 years. She filed a grievance over a letter given to her by City officials regarding unsatisfactory performance. On August 22, 1991, Personnel Committee Chairman Virgil Gulley and Public Works Director Kenneth Tulley signed and sent the following letter to the Grievant:

The purpose of this document is to provide you with notice of your unsatisfactory performance in the operation of the new computer system. As you know, this computer system was first discussed by the Council in late 1988. In October of 1989, the City signed a purchase agreement and the computer began to arrive in December, 1989. On December 4-5, PCS provided training, which included Utility Billing Setup. They provided some more training on January 10-11, 1990.

In late January, 1991 (more than one year after the Unisys Computer was installed) you had not completed getting the Utility Billing on the computer. By letter dated January 31, you were instructed by Mr. Tulley to have the bills on the computer by March 22, 1991. You were unable to meet that date, and so the Administrator extended the date to April 22. You were also unable to complete this project by April 22.

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Based upon the Committee's conversations with Mr. Tulley, Mr. Bierma and PCS, the Committee has determined that your performance in getting the Utility Billing on the Unisys Computer was totally unsatisfactory. It took far too long. The experience of PCS is that it takes approximately 3-4 months to install Utility Billing. In Mauston's case, it took approximately 16-18 months. Not only was your performance extremely slow, but PCS found an unusually high number of errors in reviewing the work which you had performed.

The City believes that you were given adequate training, support and time to perform this task. We believe that your failure to complete this task faster and with fewer mistakes, justifies the giving of this notice to you.

Tulley did not consider the above letter to be disciplinary in nature.

The Unisys computer arrived in late 1989. Precision Computer Systems, Inc. (PCS) contracted with the City to write the software for utility billing and accounting and payroll. PCS specializes in software for city government utilities and community banks. In the last 10 years since Curt Brown co-founded the company, PCS has installed about 140 utility billing systems in the upper Midwest.

The company's experience is that it normally takes about three to four months to get the job done before going on-line, or making a full run of billing from the new system. Brown has seen the job completed in two or three months and up to six months, but the average is three or four months. Brown estimates that his company generally spends between 30 and 40 hours in on-site training, and quoted this City 34 hours for training of utility billing, payroll and budgeting. PCS sells its software to cities with populations varying anywhere from 1,000 to 150,000, but a lot of its business is with cities of approximately the same size as Mauston, with two to four people performing general office duties and who continue to perform their regular responsibilities while taking on the additional work of getting on a new computer system. PCS hopes to

be able to have employees' undivided attention while training them but finds interruptions to be typical in a small office.

PCS supplied two people -- Nancy Youngers and Dean Ackermann -- to train City employees on the computer system. The first training took place on December 4 and 5, 1989, working partly on setting up utility billing, which involved typing in account information such as names and addresses and balances, as well as sewer and water information and tax codes. The PCS trainers also worked on payroll and budgetary setup during that time and came back on January 10 and 11, 1990, when the City first went "live" or on-line with the payroll and budgetary runs. Brown's intent was for the City to be on-line with utility billing by the end of March of 1990. However, that did not happen until the end of May of 1991. Youngers and Ackermann returned briefly in November of 1990, and Youngers spent several more hours with the City in May of 1991. The total training hours used by the City by the end of May of 1991 amounted to 72 and a half hours.

On May 31, 1991, Brown sent the following letter to former City Administrator, Bruce Bierma:

I'm writing you because of my concern about your utility billing installation. It has taken your staff approximately 1 1/2 years to get this installed. Based on our experience of installing over 100 utility billing systems, the normal time to install utility billing is 3 - 4 months. The attached sheet summarizes when we were in your office and what items we covered.

The lengthy delay has put a burden on fellow staff members and PCS has had to spend twice the amount of training hours than normal. Unfortunately for the city, PCS will have to charge you for this extra training and retraining.

My main concern is that the City of Mauston is pleased with the utility billing and that you have appropriate staff to get the work done in a timely fashion.

Following the above letter, PCS spent another 24 hours in three days in June of 1991, and another 24 hours in three days in October of 1991, all on utility billing.

The Grievant is responsible for handling the utility billing and is the secretary to the Director of Public Works. She started

working on the Unisys computer in the early part of 1990. She received her training from Ackermann. During her training, she continued to perform other functions in the front office, such as answering telephones or waiting on citizens coming to the front desk, and she considered her training to be largely interrupted by such other functions. The Grievant estimates that Ackermann spent about 10 and 1/2 hours attempting to train her.

The Grievant received specific instructions about the City's expectations of her for getting the utility billing done on the new system in January of 1991. Tulley, then the DPW Director, asked her to estimate how long it would take her to be on the Unisys system. On January 16, 1991, the Grievant sent Tulley the following letter:

Below is the information you requested. You must remember this is all estimated time based on very few and minor interruptions. This is all that I am aware of at this time that needs to be done.

- 1.) Approx 1 week to finish entering basics and figuring out account numbers. (If Dave is available to go thru book to see if routes should be changed.)
- 2.) Approx 1 week to figure out and enter sewer flat charges (would include the accounts Patty entered)
- 3.) Approx 2-3 days to scan what Patty entered and make corrections or adjustments.
- 4.) Approx 3-5 days to enter previous readings
- 5.) Approx 1 wk to enter landlord information
- 6.) Approx 2 wks to figure out and calculate consumption average and to enter.
- 7.) Current reads

If I can be of further assistance, please let me know.

Where the Grievant estimated under number one above that it would take one week to enter basics and figure out account numbers, it actually took four weeks. Dave Bosgraaf, a Water Works Operator

I, was not available to work with the Grievant as she had noted above. His input would have helped her with vacant land for new buildings where account numbers needed to be left blank for future accounts. The Grievant's estimates of other items were close to the actual time spent, and varied only by actual time of three days on number two instead of one week, as well as actual time of one week on number six instead of two weeks.

On January 31, 1991, Tulley sent the Grievant the following note:

I have reviewed your proposed schedule with Bruce on getting the sewer and water bills on the Unisys computer. Bruce has indicated that based on your schedule March 22, 1991 would be an end date.

Please arrange your schedule so that we can accomplish getting sewer and water bills on the Unisys computer no later than March 22, 1991.

I understand that we will be out of the current water bills by then and we do not want to order additional bills for the old system.

On February 5, 1991, the Grievant wrote Tulley the following to advise him of problems she was having with the computer:

You wanted to be made aware of any problems with the computers. The IBM had a disc error. It was accidently turned off in the middle of a program. I had to have a disc sent up from Portage and another call to Portage. Now there is another disc error, which is a corrupted file. I am waiting for a call back from Portage.

The new computer starts to do my report printing and then the printer jams in the middle of my long reports. This has happen (sic) before and again today on two different reports. I can not get my reports printed to check for discrepancies.

Eileen has called our maintenance co. Kevin is to be here today, late this afternoon.

At one time you told me not to make corrections to the information that Patty had put into the new computer. Does this still stand or do you now want the corrections made?

The reference to Portage in the above letter is a reference to the company based in Portage that sold the software on the older computer used by the City, the IBM system.

The Grievant asked for two days of vacation leave for the middle of February, which was granted by Tulley on February 7, 1991, with a handwritten reminder that the deadline for being on the new computer was still March 22, 1991.

On February 20, 1991, the Grievant sent Tulley the following letter:

I have spent Monday and Tuesday this week answering questions and complaints regarding the water and sewer bills which were mailed out last week. Also preparing payments to be entered on the IBM along with changes, finals and adjustments.

What are your priorities for me to do? Do you want me to work on the IBM to keep current on all day to day changes, finals, adjustments and payments, or do you want me to work on the Unisys entering the accounts and name and addresses and meter information.

Your immediate written response is needed to comply with your instructions to be on the Unisys by March 22. Until I receive your response I will continue on the Unisys as previously instructed.

On the bottom of the memo from the Grievant, Tulley wrote a notation which states:

2/21/91
Discussed w./Sue the need to continue on both subjects. Getting on Unisys is still #1 however other utility work must also be completed. If she has a problem or complaint she cannot handle she will tell us...also explained that not every direction or assignment will be put in writing.

Tulley's recollection as recorded in his calendar is that he talked to the Grievant about her memo, and the Grievant's recollection is that Tulley did not talk to her about her memo.

The March 22nd deadline passed without the utility billing being completed on Unisys. The Grievant testified that she was unable to meet the March 22nd deadline because she was trying to put the billing on the new system while still keeping up the day-

to-day work on the old system, plus handling changes and complaints that come into the office. On March 27, 1991, the Grievant had a conversation with Bierma and the next day sent Tulley the following letter regarding that conversation:

You asked me to jot down my conversation with Bruce Bierma on March 27, 1991, for you.

On February 6, 1991 I explained to you that the Unisys does not print the sewer base charges. That indicated I would have to call up each account # and go through three (3) screens to verify that the sewer charges have been correctly entered. At this time Bruce Bierma called Precision and said we would have a disk to correct that within two (2) weeks.

Bruce Bierma called me into his office yesterday, March 27th. He wanted to know how much longer I would be getting all information on the Unisys for billing? I told him I couldn't tell him. All my previous goals have not been able to be met. I figured 1 week to finish entering books and it took 4 weeks. (There are 3 screens to go through for every acct verses one screen on the IBM) There are 1500 accounts. I am always waiting for the Unisys, its slow. I also told Bruce Bierma that I asked Patty on 3-12-91 to calculate consumption averages. She had 23 pages done out of 510 pages.

I have been working on the Unisys for two (2) months straight. I will continue to do so as previously instructed until done.

Bruce Bierma called and told Precision I would be ready in two (2) weeks for them.

The help that was promised was not there, the disk has not arrived (2 Months), and today the yearly maintenance is being done, which takes about 4 hours.

Bierma set a new deadline of April 22nd to have the utility billing running on the Unisys system.

On May 14, 1991, Tulley sent Bierma the following letter:

As a follow up to our meeting with Susan this morning regarding getting on the computer. Susan was directed by letter on January 31, 1991 to have all of the required

information for the new water bills and to be on the new computer by March 22. Susan did not make that date. At another meeting you extended that date to April 22. She did not make that date either. There has been very little communication as to what the problems seem to be. When I ask Susan when the work will be completed she cannot give me or you a definite answer. I have repeatedly asked that someone from Unisys be brought in to supervise what Susan is doing and assist her in getting this task completed. Neither you nor I know exactly where she is or how much time is required to finish up.

This is the 14th of May and the timing is now critical again. We need to generate a water bill for the past month. I need to know what the timing is so as to coordinate with the Public Service Commission to get the Step II rate increase into place. According to the auditors the water utility is in need of the additional revenue these rates will generate. I think we need to take some positive steps to get this work done as soon as possible.

Bruce, I have complained to you and the Personnel Committee on many occasions that the front office needs work. We need cross training and better communications to make things work and to avoid this happening again.

On another note, Susan requested an hour of personal leave today. I have denied that leave as I believe we need to concentrate on the work at hand of getting water bills out. It is my understanding that the time was needed for a hair appointment.

Tulley usually did not deny requests for personal leave.

The Grievant was off work during part of May for a worker's compensation injury and did not participate in the training provided by Youngers in May, from May 20 through May 29, 1991. The utility bills ran on the new system at the end of May. The Grievant came back to work on May 30th, reviewed a printout and found a lot of errors on the printout, errors regarding information which she had not entered. The Grievant had entered information for fire protection amounts on 10 to 15 accounts, which she understood was later deleted by Youngers.

The Grievant suffered a workers' compensation injury (a type of repetitive stress injury) which was first reported as of April

19, 1991, when the Grievant was absent for two hours. The following Friday, April 26, the Grievant was absent eight hours with the workers' compensation injury. The Grievant was absent for four hours on May 7th, for eight hours on May 17th, for three hours on May 21st, for eight hours May 22nd, eight hours on May 23, and eight hours on May 24th, all for the workers' compensation injury. May 27th of 1991 was the Memorial Day holiday, and the Grievant missed the next two full days with the injury, and returned on May 30th. Her absences following May dates are not relevant in this case.

Other absences during the early part of 1991 are the following: eight hours sick leave on February 13th, 16 hours vacation leave on February 14th and 15th, two hours sick leave February 21st, two hours sick leave February 22nd, 16 hours sick leave March 14 and 15, two hours floating holiday leave on March 29th, eight hours floating holiday leave on April 1st.

Eileen Powers, the deputy treasurer, works in the front office with the Grievant. Powers was trained on the Unisys system by Youngers in December of 1989, and the first payroll ran off the new system in January of 1990. Powers had to continue with her regular work while training and working on the new system. In May of 1991, when the Grievant was off for injury, Powers assisted in getting the utility billing out with Youngers' help. Another employee in the office, Patty Wilke also helped with the project.

The Grievant received an employee performance review in June of 1990, signed by Bierma, in which she was rated good or outstanding in all categories except one, where she was rated acceptable. No reference was made about getting work done on the Unisys system on the performance review form.

THE PARTIES' POSITIONS:

The City:

The City submits that there is no basis for the grievance under the labor contract as the Grievant was not disciplined. The August 21, 1991 letter from the City to the Grievant expressed the City's displeasure with the Grievant's performance in getting the utility billing onto the new computer system. Employers give employees feedback all the time on their performance, and that letter is nothing more than such feedback. This type of feedback is not disciplinary and is the employer's method of letting an employee know of its observations. The letter contained no warning to improve performance, no threat of discipline, and it simply states that the City was not happy with the Grievant's performance on one particular task.

The City submits that there is no proof as to why the letter should be considered discipline. While one may sympathize with some of the reasons advanced by the Grievant for her delay once

she had definite deadlines, those factors do not justify the Grievant taking 14 to 15 months longer than average to put utility billing information into the new computer. Thus, the City's letter expressing its displeasure is warranted.

Even if the letter were to be considered disciplinary in nature, the City asserts that it had just cause to impose such discipline. The normal installation of a utility billing system for cities of a similar size takes from two to six months, with three or four months being the average. It took the Grievant 18 months -- 14 to 15 longer than average. Even after the City set a deadline and extended it, the Grievant missed those two deadlines.

The setting of a deadline came over a year after the new equipment was on site.

The Grievant's reasons for not getting the work done included being interrupted while being trained, not knowing when the City wanted the task done until January of 1991, having unclear priorities, not getting required input from fellow workers, computer problems, poor training, and errors made by other people.

Although the City did not establish a clear deadline until early 1991, the equipment was on site for a full year. The budget and financial parts of the Unisys system were up and running in a few weeks after the equipment was installed, and the Grievant must work in a vacuum to be oblivious to the City's need to get the utility billing on the new system. After the Grievant finally realized that she had to meet certain deadlines, it took her about the average amount of time usually required, even with all the problems she claims to have encountered. Moreover, the Grievant did not offer any reason for not completing the task in the 14 months prior, except that she did not know that the City wanted the task completed before that. The City finds that reason unbelievable.

The Union:

The Union asserts that common sense dictates that the letter in question is discipline. The content contains disparaging allegations about the Grievant's performance on the job and it is plainly a chastisement. If the letter were not considered discipline, the Grievant would have no effective way to challenge the validity of the allegations through the grievance procedure.

The Union argues that there was no just cause for the disciplinary letter of August 22, 1991. In her 14 years with the City, the Grievant received many accolades regarding her performance. The City Administrator gave the Grievant a performance evaluation on June 20, 1990, in which she was rated "good" in seven out of ten categories, "acceptable" in one category, and "outstanding" in two categories, which were for job knowledge and dependability. "Dependability" is defined as "the degree to which the employee can be relied upon to get the job done." The "outstanding" rating means that performance is

consistently outstanding, and far exceeds the requirements of the job on most every level.

The Grievant's training on the new computer system was inadequate, according to the Union, as the training environment differed from that of other City employees receiving the training from PCS. Eileen Powers, the Deputy City Treasurer, received her training in the computer room which is separate from the front office. The Grievant had to answer telephone calls and receive walk-ins during her training, which resulted in frequent interruptions. The Grievant estimated that the total time for training was not more than ten and a half hours. Also, the trainer had given the Grievant some erroneous information, and that caused extra work to re-enter such information.

The Union notes that the City failed to lay out any expectations for accomplishing the changeover to the new system until January 31, 1991. When the Grievant asked the Public Works Director or the City Administrator to provide her with the priorities, she did not get definite answers. The Union points out that there were numerous problems which affected the Grievant's ability to get the utility billing up and running on the new system, such as software errors in the Unisys stem which she reported on February 5, 1991. On March 28, 1991, the error was still not corrected, and while the City Administrator had stated that the replacement software would arrive in two weeks, it took months to receive it. This forced the Grievant to use a slow method for checking for name, address, and account number discrepancies, because rather than reviewing a printout, she had to go through three computer screens for each account. Moreover, the Unisys system is relatively slow in moving through screens.

The Grievant was off work due to a workers' compensation injury in the spring of 1991. She missed work on April 26, May 7, May 17, part of May 21, May 22 through May 29, and while she returned to work on May 30 and May 31, she was off work again from June 3 through June 12. As a result of those absences, other employees entered some of the data on the Unisys system. The Union claims that much of this data was previously entered by the Grievant, but had to be re-entered due to improper instructions from PCS personnel. The errors referred to in the City's disciplinary letter at issue here were not errors made by the Grievant, but errors made by others in her absence.

The Union asks that the grievance be sustained and that the letter of August 22, 1991, be expunged from the Grievant's records.

The Parties' Replies:

The City contends that the record refutes the Union's position that the letter in question is discipline, where Tulley, the Grievant's immediate supervisor, testified that the letter was

not disciplinary nor was it intended to be disciplinary. The letter is feedback on the Grievant's performance, and the City took no affirmative action adversely affecting her employment relationship with the City.

The City points out that the Grievant may avail herself of the provisions of Section 103.13, Wis. Stats., to set the record straight if she disagrees with the letter. The state law allows an employee to attach a written statement to the disputed portion of the personnel record. The City submits that the Union's reliance on the Grievant's past performance record is irrelevant. The letter is directed to one task and not the total job of the Grievant.

While the Union claimed that the Grievant received less than adequate training, the City notes that Curt Brown testified that the Grievant received more training than others with contracts with PCS, and she has performed the job of utility clerk for over 14 years. All she had to do was to learn the new system.

The Union objects to the City's characterization of the August 22nd letter as "feedback," and says the more honest approach is to call it a reprimand. Otherwise, the City could later decide that discipline is warranted to future instances of unsatisfactory performance and use the August 22nd letter as prior notice. While state law allows employees to attach statements to personnel files, this does not offer the same level of defense provided through the grievance procedure.

The Union also finds that the City has misrepresented Brown's testimony about training. Other City employees were trained without interruptions, while the Grievant had to respond to citizens at the window and answer telephones. This was not the "devoted attention" expected by PCS. Further, the Union questions why the City Administrator gave the Grievant a glowing performance evaluation if the City expected the utility billing to be up and running within three or four months of the arrival of the new system, when that billing would have been two or three months overdue at the time of the performance evaluation.

The Union asserts that for the City to prevail in this case, it must establish that an instruction was given, and after the instruction was given, it took the Grievant an inordinately long period of time to complete the task, absent a reasonable excuse. There was no instruction given until January 31, 1991.

The Union takes issue with the City's estimate of the amount of hours of training received by the Grievant. Rather than 16 or 18 hours as stated by the City, the Grievant could not have received more than 10 and a half hours, since Ackermann, the only person to train her, was present in City Hall for only 10 and a half hours. Furthermore, Ackermann's bad instructions created fundamental errors and software problems.

DISCUSSION:

The first issue to be determined is whether the letter to the Grievant dated August 22, 1991, constitutes discipline. The City states that the letter is simply performance evaluation, feedback, without a warning to improve performance and no threat of discipline, and therefore, it should not be considered disciplinary in nature or grievable. Further, City officials who drafted it did not consider it to be disciplinary.

However, the letter may be considered to be disciplinary in nature for several reasons. An employer may discharge an employee for poor performance, and incompetency and inefficiency may serve as just cause for discharge. A letter documenting poor performance lays the ground work for more severe action. An employee need not wait until he or she is discharged before grieving, when that employee has had advance notice.

Also, this particular letter is out of the chain of the normal evaluation process. It was a letter drafted by the City's elected officials, the Personnel Committee, and signed by the Personnel Committee Chairman, Gulley, as well as the Grievant's supervisor, DPW Director Tulley. The exceptional action of the City in notifying the Grievant of unsatisfactory performance outside of a regular performance review or evaluation process adds weight to the Union's position that this letter is indeed disciplinary.

There are no magic words that need to be written on every disciplinary document. Reasonably intelligent people get the message that poor work performance puts their jobs in jeopardy. The Grievant understood the letter to be in the nature of a reprimand, and it is. It is a reprimand for unsatisfactory performance. Left unchallenged, it certainly could provide the framework for more severe disciplinary action should such unsatisfactory performance continue.

Further, the City was dissatisfied with the Grievant's inefficiency rather than an incompetence. The City felt she was inefficient at her task, taking too long to get the job done. An employee who is simply incompetent to perform a job will not necessarily benefit from advance notice or progressive discipline, but one who is inefficient but competent may well change his or her behavior upon such progressive discipline. Arbitrators often require that employers give employees advance notice of inefficiency before discharging them. 1/

1/ For examples, see Daniel Construction Co. of Alabama, 74-2 CCH ARB Para. 8635 (Arb. Williams, 1975), and Photo Color, Inc., 76-1 CCH ARB Para. 8178 (Arb. Cohen).

The City points out that the Grievant has the right under state law to attach a statement to her personnel file. As a bargaining unit member, she has a further right to file a grievance regarding the letter of unsatisfactory performance put in her personnel file, and if she were to be successful in her grievance, the letter would be removed. While the law attempts to provide a method of balance, it provides no remedy or relief as sought here. Employees at-will have no rights to grieve, unless the employer provides such an avenue, and employees' statements in personnel files do not have the effect of expunging the materials placed there.

The Arbitrator finds the letter at issue here to be in the nature of a reprimand, and as such, is subject to the test of just cause under Article II, Section 1 of the labor contract. And the Arbitrator finds that the City had just cause to issue its letter regarding unsatisfactory performance, based on the record in this case.

No one claims that the City put any unreasonable demands on the Grievant to get the utility billing on the Unisys computer system. In fact, the City was more than lax about making demands during one whole year -- the lost year of 1990. When the City did finally establish the first deadline of March 22, 1991, to complete the project, it was with the Grievant's own proposed schedule to do the work. Tulley then asked the Grievant to arrange her schedule to meet that deadline. The City had a reasonable basis for imposing a deadline -- it lacked bills to continue on the old system. The Grievant was well aware of the impending deadline, as noted in her memo to Tulley dated February 20, 1991, where she advises him of problems and states that she will continue to work on the Unisys as previously told.

The record does not show that the Grievant was ever concerned at this point about inadequate training to do the project.

Despite the impending deadline before her, the Grievant took two days of vacation on February 14 and 15, 1991, with Tulley's approval and notation that the deadline was still March 22nd. When the Grievant failed to meet that deadline, the City obviously expressed its distress as she met with Administrator Bierma and wrote a memo to Tulley about that conversation. Her main reasons for not completing the deadline was that she was trying to keep up with the day-to-day work on the old system while putting the billing on the new system and handling changes and complaints as they came into the office. The experience of PCS is that cities the size of Mauston expect their regular employees to continue to do their regular work while making an extra effort to switch over to a new computer system. Powers continued to do her regular work while making the switch over to the new computer system.

Bierma set a new deadline of April 22nd to have the utility

billing running on the Unisys system, and the Grievant failed to meet that one. And again, despite the second deadline looming before her, the Grievant took 10 hours of floating holidays on March 29 and April 1. On two occasions, the Grievant used time off during a time when a critical project needed to be done, and she was the only person assigned to do it. There is nothing in the record to explain the Grievant's use of time off during this period of time when a project needed to be completed.

The Grievant suffered a workers' compensation injury, a repetitive stress wrist injury, which would have mitigated these circumstances significantly but for the fact that the injury occurred after the March 22nd deadline and only three days before the April 22nd deadline. The first absence for the workers' compensation injury appears to be two hours on April 19th, then eight hours on April 26th, well after the second deadline had passed. The Grievant does not claim that this injury played any significant role in her inability to complete the billing on the Unisys system, and its main impact in this case is that in her absence, others completed the task and may have made errors in the system for which the Grievant should not be held accountable.

The City was able to finally accomplish the task about four months after it gave the Grievant a firm deadline, which is about the average estimated by PCS. Thus, if the whole year of 1990 were not considered, the City would have no complaint with the Grievant's performance. And the Union has attempted to discount the year of 1990 and argued that the City can only prevail in this case by showing that the Grievant took an inordinately long period of time to complete the task once the instruction was given on January 31, 1991.

It would be unreasonable to ignore all of 1990 as simply a lost year for the City. The Grievant testified that she did work on the Unisys system during 1990. Apparently she did not do much work on it. But she knew that the City expected her to put the utility billing on the new Unisys system, due to the fact that the City obtained training for her to do so, as well as her knowledge that the City's other budget and financial information was transferred onto the new system. The Grievant works in a small office, which increases one's awareness of the total picture. While the City was lenient in making certain demands of the Grievant, the Grievant knew that her responsibilities included getting the utility billing on the new system. The Grievant alone was responsible for utility billing in general. No one else did that work. The Grievant is a bright and articulate employee. Surely she knew what was expected of her, despite the City's lethargy. It is common and perhaps preferable for management to operate without a heavy hand when employees are performing their jobs and getting the work done. The Grievant received a performance review which rated her mostly good or outstanding, further indicating that management had no prior need to give the Grievant extra guidance in setting standards, goals or

expectations. This was not a problem employee that needed watching.

Given the record before me, it is somewhat unusual to find that the Grievant neglected her task during all of 1990 and seemed to do it reluctantly after being forced to. Many employees have been gun shy of new computer technology; however, the Grievant was skilled in the use of computers. While she preferred the old system over the new one, she must have been aware that her personal preference would not stop the City from continuing to use the new system.

The City had a chance in June of 1990 to alert the Grievant to its concern for her performance in a performance evaluation. The City should have had its utility billing on the new system up and running by that time but did not note anything about it in the Grievant's evaluation. The City has offered no explanation for this. Bierma, who signed the evaluation, was no longer with the City at the time of the hearing. The City offers no explanation for its failure to monitor the project during 1990, and the Grievant offers no explanation for her failure to do it.

Just as noted before that reasonably intelligent employees understand the meaning of letters of unsatisfactory performance without the need to state a threat, so should reasonably intelligent employees understand the expectations of them in certain circumstances without direct orders and deadlines being established before they start to perform those jobs. The City's failure to give a direct order until January 31, 1991, is not fatal to its case. The Grievant had nearly a year and a half to complete a task normally done in four months time. If the lack of adequate training had been a problem, the City would have had time to get additional training. If the software problems had appeared early in 1990, the City would have had time to get them corrected.

All the excuses do not add up to the extra time taken by the Grievant. Therefore, the City had just cause to issue the letter of August 22, 1991, regarding her unsatisfactory performance.

AWARD

The grievance is denied.

The letter to the Grievant dated August 22, 1991, constitutes discipline, and the City had just cause to issue that letter.

Dated at Elkhorn this 5th day of August, 1993.

By Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator