

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	
WISCONSIN INDIANHEAD TECHNICAL	:	
COLLEGE EDUCATION SUPPORT	:	
PERSONNEL ASSOCIATION,	:	Case 48
LOCAL 4019, WFT, AFT, AFL-CIO	:	No. 49048
	:	MA-7808
and	:	
	:	
WISCONSIN INDIANHEAD VTAE BOARD	:	
	:	

Appearances:

Ms. Patricia Underwood and Mr. William Kalin,
Representatives, Wisconsin Federation of Teachers,
appearing on behalf of the Union.
Weld, Riley, Prenn & Ricci, by Mr. Stephen L. Weld, appearing
on behalf of the Employer.

ARBITRATION AWARD

The Employer and Union above are parties to a 1991-1993 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the discharge grievance of Alice Rauterkus.

The undersigned was appointed and held a hearing on November 15, 1993 in New Richmond, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on February 28, 1994.

ISSUES:

The parties stipulated to the following:

1. Did the Employer terminate the grievant without cause?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS:

ARTICLE VII - Discipline and Dismissal

- A. It shall be the policy of the Board not to discharge, discipline, or suspend employees who have completed their probationary period except for cause.

ARTICLE VIII - Evaluation

Evaluation Procedures

- A. The evaluation procedure is recognized to be a cooperative effort between the employee and his/her immediate supervisor with the purpose of achieving excellence in the area of employment.
- B. Evaluations shall be made in an open and forthright manner. The supervisor shall make arrangements with the employees being evaluated for a meeting to be held for the purpose of discussing the evaluations. Should a written evaluation be filed by the supervisor, the employee shall be presented with a copy of same.
- C. It shall be the responsibility of the employee and employer to secure whatever additional assistance or training is needed.

DISCUSSION:

Grievant Alice Rauterkus was employed as a clerical employee by the institute's New Richmond campus from November, 1987 until December 11, 1992. On that date she was terminated, based on the Employer's view of the quality and quantity of her work performance. The grievant timely filed a grievance as to the discharge, which gave rise to the present proceeding.

Up to the end of 1991, the grievant's work focused on word processing. During that time, she received several evaluations from two different supervisors in turn, and while the evaluations noted some areas of deficiency, they were generally adequate overall. The Employer introduced evidence, however, that in March, 1991 the grievant was called into a meeting with her then supervisor Angie Kobs and two other secretaries, the subject of which was a complaint by the two other secretaries that the grievant was not doing her fair share of the overall workload. The grievant, in testimony, stated that she did not recall this meeting, but did not deny that it took place.

In December, 1991, the District as a whole underwent a reorganization, as a result of which a number of changes were made in work assignments and supervision, which affected the grievant as well as many others. Among the changes were that the grievant became responsible for backing up the regular switchboard operator during morning and afternoon breaks and the lunch hour; her former supervisor Kobs was reassigned to other work; and Kelly Sylte became the new supervisor of the grievant as well as other

employees in the area. Sylte testified that one impact of the reorganization was that the support staff were expected to treat professionals and management personnel at the campus more like customers than had been true in the past, and that the sharing of duties made it more important that employees generally look out for uncompleted work, pay attention to deadlines and to the quality of output, and in general be more cooperative. Sylte testified that by March or April, she began to have concerns about the grievant's performance in this respect.

Sylte testified extensively concerning incidents, which she documented, in which she felt that the grievant either allowed work to sit too long, failed to seek help in order to get the work out on time, or did not perform the work with an adequate standard of care. Sylte testified that in April, she met with the grievant concerning these aspects of her performance, and following that discussion she was still dissatisfied because of missed deadlines and lack of support of other staff. A second meeting with the grievant was held on June 4, and this immediately followed a week during which the grievant had been on vacation and another employe had filled in for her. Sylte testified that the other employe involved had turned in a log of work assigned to the grievant's position, which demonstrated that the position was not overstressed. Sylte testified that in the meeting with the grievant on June 4, she gave the grievant a two-page summary of her concerns together with a number of pages of supporting material and documentation of particular incidents she was concerned about, and that she advised the grievant that she expected to see a noticeable improvement in areas including error-free work, seeking help promptly when it was necessary, identification of due dates, and having work done on time. Sylte testified that she warned the grievant that if the standards were not met, termination was a possibility.

Sylte stated that over the ensuing several weeks the grievant's performance did improve, and on June 30th she sent a memo to the grievant saying so. But by the time of the grievant's annual review, on July 22, she was once again concerned about the grievant's work overall. The grievant's evaluation shows work as either "needing improvement" or "unacceptable" in 10 of 13 enumerated characteristics, including quality of work, dependability, verbal communications, customer service, knowledge of work, cooperation, initiative, attitude towards work, industriousness and organizational skills. A review of the observations and comments under these many segments of the evaluation leads to a conclusion that the general criticisms leveled in writing were the same as those testified to by Sylte and referred to in the documents used in the meeting three months earlier: there are repeated references to quality of work, lack of timeliness, and lack of cooperativeness with other employes. As one among a number of examples in her testimony, Sylte cited an instance in which the grievant had refused to run a particular copying job, because she felt it was too lengthy for the

department's copying machine and she did not know how to operate the "risograph" high-volume duplicator. Sylte testified that when she herself subsequently attempted to operate the risograph and it jammed, the grievant turned out to know how to unjam and re-load it so that it would operate correctly.

By September, 1992, Sylte, following earlier discussions with campus Administrator Marilyn McCarty and Human Resources Director Wayne Sabatke, requested a meeting with Sabatke, McCarty, the grievant, and two Union representatives. Sylte and the other management witnesses testified without contradiction that at this meeting the management in attendance advised the grievant that management's assessment of the grievant's performance was that there had been no improvement from June 4 to that date, and that there would be a further evaluation of her performance over the following ten weeks. In his letter summarizing the meeting, Sabatke stated as follows:

On September 29, 1992, we met to discuss your work performance and continued employment as an Office & Technical Support employee. The following persons were involved in addition to yourself and me: Bill Kalin, Margie Metzdorff, Marilyn McCarty, and Kelly Sylte. At this meeting, you were presented with information pertaining to unsatisfactory job performance. This unsatisfactory job performance was summarized in a letter to you dated June 4, 1992, from your supervisor, Kelly Sylte. Her expectations were also outlined at this time.

The assessment of your work by your supervisor from June 4 to September 29, 1992, was that there has not been any improvement. You were provided with additional information supporting our concerns. It was agreed by the parties involved that we would allow you to continue working, during which time we would assess your performance. We have identified that this assessment would take place over the next 10 weeks, through December 4, 1992. We consider this letter to be our last warning on the quality of your work performance.

On December 11, 1992, we will meet at the New Richmond campus to give you our decision on your continued employment based upon this assessment. The following work expectations will be assessed:

1. An increase in the quality of work

performed;

2. All work orders are to be completed by or before the date and time noted;
3. Completed work orders are to be returned to the person submitting the requests by or before the date and time noted;
4. Planning will be required and shown on work orders requiring other employees' involvement to meet deadlines, i.e., duplication and assembly;
5. Projects are to be completed as per instructions. If unclear, evidence should show an effort to clarify the directions, but assistance has been requested in a timely manner;
6. Projects are to be error-free.

We will be looking for acceptable improvement in all areas as specified. Ms. Sylte will work with you to assist you in clarifying our expectations and giving assistance and direction to improve. It should be understood that if, in our assessment, your work deteriorates further, we reserve the right to decide your continued employment prior to December 4, 1992.

In addition to the discussion on September 29, Sylte had earlier, at the time of the grievant's evaluation, requested that the grievant turn in her logs, already kept by the grievant, showing dates of input and output of all work assignments. It is undisputed both that Sylte requested that these logs be turned in to her on a monthly basis by the grievant, and that the grievant failed to comply with this request even after being reminded of it. The grievant, in her testimony, testified that distrust of Sylte led her to withhold these logs until December 10, 1992.

In a further meeting on December 11, the grievant was informed that she was suspended with pay pending termination. The District Board subsequently considered the issue and determined to terminate the grievant, and she was so informed by a letter of discharge dated December 22, 1992.

The grievant, in testimony, stated that the reorganization of December, 1991 resulted in her having only three to four hours per day for performing word processing and related work, because of the new switchboard assignments. The grievant stated that her word processing workload was not reduced as a result. The grievant testified that after her August 10 evaluation, Sylte never tried to help her get her work done, and the only time she came back to talk to her was to drop off jobs for her to do. The

grievant testified that when she turned in the logs of her work performance on December 10, the logs identified 398 separate jobs.

Of these, 349 had due dates; and among those, 220 were completed on the due date and 113 were completed before the due date. The grievant testified that 98.5 percent of the jobs she performed between September 28 and December 29 were completed on or before the due date, and exactly two jobs were completed after the due date. The grievant testified that as to those two projects, one she did not recall at all, and on the other date she was unable to complete all of the work she was assigned that day because of a high workload and a two-hour meeting that particular day, and that she had warned the person who submitted that work that the job would not be finished on time. The grievant testified that she felt she had been treated unfairly in the evaluation process and by Sylte in other encounters generally.

On cross-examination, the grievant conceded that she had decided unilaterally not to turn in the logs because of her distrust of Sylte, and that she had not checked either with the Union or with and other member of management as to the propriety of this action. The grievant also conceded that when Kobs, in an earlier evaluation, had criticized the grievant's interpersonal skills and had in 1991 used the phrase "strongly encouraged" in recommending that the grievant take courses on interpersonal skills at work, she did not follow up on this request and did not take any such training.

The Employer contends first that its standards of performance are reasonable, because the purpose of the department is to provide fast and accurate clerical support for numerous managers, department heads, supervisors and teachers on the campus. The Employer contends that other level 3 employees in the same department were subject to the same performance standards, but had none of the same problems, and that this is evidence of the reasonableness of the standards themselves. The Employer argues that the grievant was made fully aware of those standards, and was repeatedly warned that the District considered her performance inadequate. The District points to a period of improvement in her work as demonstrating that she was in fact capable of performing, but argues that she chose not to do so. The District contends that the upshot is that the grievant repeatedly failed to meet the performance requirements of the job she held. The District argues that under longstanding arbitral precedent, the arbitrator must defer to the District's determination as to the proper level of discipline to be imposed on the grievant, and requests that the grievance be denied.

The Union contends that the grievant made significant improvements in her performance after June 4, 1992, which were reflected in Sylte's June 30th memo. The Union points to the difference between that memo and the grievant's evaluation a month later as demonstrating that Sylte was being unfair to the grievant

by passing harsh judgment on her "in every way possible," demonstrating that this evaluation was not fair because it paid no attention to the improvements registered so recently. The Union contends that the grievant's subsequent work log demonstrates that 98.5 percent of the jobs expected of the grievant were completed on or before the due date, and that the expectations listed in Sabatke's letter following the September 29 meeting were in fact met by the grievant. The Union points also to a series of surveys requested of her customers by the grievant herself, which included many favorable comments. The Union contends that Sylte never evaluated the grievant's workload, but that the testimony and Employer exhibits reveal a trail of unfair judgments and criticisms directed at the grievant, resulting ultimately in her discharge. The Union requests that the Arbitrator find the discharge to be without just cause, and award reinstatement and backpay.

Upon review of this record, I find that even giving the grievant's testimony and the Union's arguments the most favorable possible interpretation, the volume and level of detail of the evidence presented by the Employer simply overwhelm them. The Union has not been able to rebut the cumulative affect of the many examples of slow, inaccurate or uncooperative work performance by the grievant over a significant period of time. I note in particular that there were signs of these traits in the evaluations, and particularly in complaints by other employes, even before the reorganization led to a new supervisor and a changed workload. Contrary to the grievant's testimony, the persuasive evidence in the record is that the grievant's workload was no heavier than any other employe's, and that it was not unreasonable as a whole. Two facts in particular support this interpretation: the memo supplied by another employe replacing the grievant temporarily, which clearly demonstrates an opinion that the workload assigned to this position was not particularly heavy; and the failure of the grievant to turn in the logs demonstrating her actual level of workload on a timely basis as requested. I find, moreover, that the offer of these logs as evidence supporting the grievant is entitled to very little weight when they were supplied to the District only on the eve of her discharge.

Meanwhile, the evidence is unmistakable that the grievant's supervisor, and in turn upper-level members of management, busied themselves to a considerable extent with attempts to get her to improve her performance over a period of many months. Contrary to the grievant's assertions, there is nothing in the record save her opinion to demonstrate that these attempts were made in bad faith or that Sylte was being unfair in the selection of work items which she found inadequate. While the grievant was able to obtain some evidence of customers' satisfaction with her work, the sum and substance of the Employer's case is that an employe who was capable of producing good work on a timely basis appeared to be

unwilling to do so consistently. The record is replete with examples of these failures, and there is nothing in the record to rebut the Employer's fundamental contention that consistency is something it is entitled to in the performance of adequate clerical work. Simultaneously, there is nothing in the record to rebut the Employer's evidence that other employes with similar workloads performed to a significantly higher standard, and that this demonstrates that the workloads and requirements were reasonable.

I conclude that the record as a whole amply demonstrates that the grievant's failures in the areas of consistency, attention to quality concerns, and cooperativeness were exacerbated by the change in workloads and working methods resulting from the reorganization, but that the Employer was not acting unfairly or unreasonably in seeking to make its clerical operations more responsive and more efficient. The record thus demonstrates that the grievant did not perform adequately under conditions in which the Employer was entitled to expect adequacy. Since the grievant was repeatedly warned that her performance was sub-standard, and since the Employer made significant efforts to try to secure improvements, I cannot find that the penalty exacted was too severe for the circumstances.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Employer did have cause to terminate the grievant.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 2nd of June, 1994.

By Christopher Honeyman /s/

Christopher Honeyman, Arbitrator