

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 SAWYER COUNTY (SHERIFF'S DEPT.) : Case 107  
 : No. 49454  
 and : MA-7959  
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 SAWYER COUNTY LAW ENFORCEMENT :  
 DEPARTMENT, LOCAL 1213-B, :  
 WCCME, AFSCME, AFL-CIO :  
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 In the Matter of the Arbitration :  
 of a Dispute Between :  
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 SAWYER COUNTY (SHERIFF'S DEPT.) : Case 108  
 : No. 49544  
 and : MA-7982  
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 SAWYER COUNTY LAW ENFORCEMENT :  
 DEPARTMENT, LOCAL 1213-B, :  
 WCCME, AFSCME, AFL-CIO :  
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Appearances:

Ms. Kathryn Prenn, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law,  
 715 South Barstow, P.O. Box 1030, Eau Claire, WI 54702-1030, on  
Mr. Gordon E. McQuillen, Cullen, Weston, Pines & Bach, Attorneys at Law,

behalf  
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ARBITRATION AWARD

According to the terms of the 1991-92 collective bargaining agreement between Sawyer County Sheriff's Department (hereafter County) and Sawyer County Law Enforcement Department, Local 1213-B, WCCME, AFSCME, AFL-CIO (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to hear and resolve a dispute between them regarding the discharge of Wendy Wise. The Commission appointed Sharon A. Gallagher arbitrator. Hearing was held at Hayward, Wisconsin on October 26, 27, and December 14 and 15, 1993. No stenographic transcript of the proceedings was made. The Employer filed its post-hearing brief on February 3, 1994, and the Union filed a responsive brief on March 28, 1994. The Employer responded thereto on April 20, 1994, whereupon the record was closed.

Issues:

The parties stipulated that the following issues should be decided herein:

Did the County have just cause to discharge Grievant Wendy Wise?

If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE II - MANAGEMENT RIGHTS

The County possesses the sole right to operate the Law Enforcement Department and all management rights repose in it, subject to the provisions of this contract and applicable laws. These rights include the following:

- A. To direct all operations of the Department;
- B. To establish reasonable work rules and regulations. The County shall confer with the Union either before the rules or regulations become effective or within a reasonable time thereafter, but the right to establish such rules or regulations resides with the County, subject to the terms of this Agreement;
- C. To hire, promote, schedule and assign employees to positions within the Department in accordance with the terms of this Agreement;
- D. To relieve employees from their duties subject to other provisions in the contract;
- E. To maintain efficiency of Department operations;
- F. To take whatever reasonable action is necessary to comply with state or federal law;
- . . .
- L. To suspend, demote, discharge or take other disciplinary action against the employees for just cause.

The reasonableness of County action taken pursuant to this Article is subject to the grievance procedure.

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ARTICLE IX - DISCIPLINARY PROCEDURE

- A. Purpose. The following disciplinary procedure is intended as a legitimate management device to inform employees of work habits, etc., which are not consistent with the aims of the Employer's public function, and thereby to correct those deficiencies.
- B. Disciplinary Action. An employee may be demoted, suspended or discharged or otherwise

disciplined for just cause. The sequence of disciplinary action shall be oral reprimands, written reprimands, suspension, demotion, and discharge. A written reprimand or other disciplinary action sustained in the grievance procedure or not contested shall be considered a valid warning. Any disciplinary action shall be grievable.

- C. Immediate Suspension or Suspension Pending Discharge. The above sequence of disciplinary action shall not apply in cases which are cause for immediate suspension or suspension pending discharge. Theft of personal or public property, drinking on the job, being drunk on the job or other incidents of similar gravity are hereby defined as cause for immediate suspension pending discharge.
- D. Appeal of Suspension. Any suspended or suspension-pending discharge employee may appeal such action through the grievance procedure and shall initiate grievance action by immediate recourse in accordance with Step 1 within ten (10) days notice of suspension or suspension pending discharge.
- E. Notice of Discharge or Suspension. Notice of discharge or suspension shall be in writing and a copy shall be provided the employee and the Union at the time the action is taken.

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#### ARTICLE XXV - UNIFORM ALLOWANCE

- A. Initial Allowance. Initial uniforms (3 trousers, 2 long sleeve shirts, 3 short sleeve shirts, winter jacket, summer jacket, winter hat, summer hat, ties and leather) shall be provided for all personnel. Any employee who leaves the service of the Employer within one (1) year shall return the clothing provided by the County. Any employee who leaves the service of the Employer shall return the equipment (weapons, badges, handcuffs, insignia, leather, nightstick) provided by the County. The Union shall make reasonable efforts to encourage an employee to comply with this provision, but shall not be held liable for the failure of an employee to so comply.
- B. In addition to the initial clothing allowance, each officer shall receive a clothing, cleaning and authorized equipment allowance of three hundred fifty dollars (\$350.00). Cooks/matrons shall receive an annual clothing allowance of two hundred dollars (\$200.00). Any items damaged in the line of duty will be replaced upon the approval of the sheriff or his designee.

- C. On August 1st of each year, the Employer shall post a list of each employee and the amount of his/her uniform allowance that has been used.
- D. An employee may annually carry over up to one hundred dollars (\$100.00) of his/her clothing allowance for uniform expenditures in the following year.

Background:

Sometime during the mid-1970's Wendy Wise was hired and employed in the County as a Deputy County Clerk in the County Treasurer's office. In this position, Wise handled cash up to \$500, she was bonded, the accounts she handled were all audited and no discrepancies or shortages were ever found in those accounts. Wise was then a member of the courthouse employes' bargaining unit. In September, 1983, pursuant to the Courthouse labor contract, Wise transferred into a non-sworn position as secretary to the Sheriff. Wise remained in the Courthouse unit after her transfer to the Sheriff's department.

On August 1, 1987 Wise's secretarial position in the Sheriff's Department was transferred out of the Courthouse bargaining unit into the Sawyer County Law Enforcement Employees bargaining unit by agreement of the County, Wise and the labor unions involved. In a written agreement thereon, the parties agreed upon Wise's wage rate effective August 1, 1987 and the increases she would receive on August 1, 1988 and thereafter and that all of Wise's seniority from the Courthouse unit would be transferred to the Law Enforcement unit.

In September, 1987 after Wise had become a member of the Law Enforcement bargaining unit, Sheriff Sheehan (Sheriff since 1982) informed Wise that she would be expected to wear a uniform blazer to work so that she looked official. Thereafter, Wise normally wore a uniform blazer, blouse and trousers to work. Sheriff Sheehan stated that he could not recall what the Cook/Matron clothing allowance was in 1987 but that the Cook/Matron amount would have applied to Wise. Sheehan stated that he never authorized Wise to get an initial clothing allowance (usually \$300 or more) as the sworn personnel got upon their hire. 1/ Wise stated that the Sheriff told her to buy what she needed but she did not recall the Sheriff mentioning that she would get an initial clothing allowance.

Sheehan stated that sometime after 1987, the Cook/Matron annual allowance was raised to \$200 2/ and that Department Secretary Wise should have received a \$200 allowance thereafter because she filled in from time to time as a Matron. Sheehan stated that at this time, sworn officers received \$350 per year in clothing allowance. Cook/Matron Josie Rizzo corroborated the Sheriff on these points. Rizzo stated among other things that she was hired by the County in

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1/ Wise stated that in September, 1987, Sheehan told her that she was entitled to a clothing allowance as a member of the Sheriff's union, that Sheehan specifically told her that her annual clothing allowance was \$200.00. Wise also stated (and Sheriff Sheehan denied) that Sheehan initially told her to go out and buy whatever she needed. Wise took this to mean that she was entitled to an initial clothing allowance outlay, although Wise admitted, the Sheriff never referred to an initial clothing allowance during their conversation. Wise stated that it cost her about \$150.00 for a blazer, two blouses and two pairs of pants. She stated that she never bought a coat with her clothing allowance funds.

2/ The Union conceded in its brief that the clothing allowance amount for Cook/Matrons was \$165 for 1987. It was apparently in 1988 that the clothing allowance amount was raised to \$200 per year.

1975; that in 1980 she was placed in the Sheriff's department bargaining unit in her position, and given a clothing allowance of \$75.00 per year. Sometime thereafter, Rizzo confirmed that her annual clothing allowance went up to \$200.00. Rizzo also stated that she always understood and she had been told that the clothing allowance was to be used for clothing items she needed and used at work. Rizzo stated that Union President Jim Nicodmen told her about the \$200.00 clothing allowance at the time it was put in place and that Nicodmen told her that the Department Secretary would receive \$200.00 also. Rizzo stated that during her tenure, Cook/Matrons have not received the initial clothing allowance that sworn personnel have received and that the deputies have always received more on their annual allowance than Cook/Matrons. Sheriff Sheehan confirmed that he never authorized an initial clothing allowance for a Cook/Matron and they are not eligible for such an initial outlay. 3/ Sheriff Sheehan, Detective Sergeant Parker, Sergeant Ornberg also confirmed Cook/Matron Rizzo's testimony that employes are told and have been made aware that clothing allowance monies were to be used exclusively for clothing and equipment necessary to perform Department work. Only Wise testified that she did not understand that items purchased with clothing allowance monies had to be items needed/used for work. Wise stated that prior to her discharge she had thought she could buy almost anything she wanted with her clothing allowance.

In addition to Article XXV, the Department had an unwritten clothing allowance policy until May 4, 1993. From 1987 until May 4, 1993, 4/ there was a separate non-audited account for clothing allowance expenditures which Wise was expected to administer -- to collect, copy and organize receipts submitted by employes and to create and keep current tally sheets of each eligible employes' balance with copies of receipts attached thereto in separate files kept in a filing cabinet in the office. Each month after Wise's transfer to the Department in 1987, Wise prepared the monthly bills, vouchered them and charged them to the correct account. Wise also prepared (either by typing or later on computer) a summary sheet known as a "Schedule of Vouchers," showing what had been purchased from each vendor (sometimes also listing employe's name), for each department with the amount of money and description of the item or account charged. In the area of the description of the item or account, the Schedules often listed "Clothing Allowance." Wise was also responsible for drafting the initial copy of the Sheriff's annual budget in which she placed

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3/ However, Sheehan also stated that he has never authorized an initial allowance for a deputy -- that that has been handled by Wise and the deputies involved as described herein.

4/ On May 14, 1993 Wise was suspended with pay pending the investigation of her clothing allowance account purchases and balances. On May 4, 1993 Sheriff Sheehan posted the following notice to all personnel:

POLICY STATEMENT REGARDING THE USE OF THE UNIFORM ALLOWANCE

THE UNIFORM ALLOWANCE SHALL BE USED FOR WORK-RELATED UNIFORMS AND EQUIPMENT AUTHORIZED BY THE SHERIFF.

EACH OFFICER RECEIVES AN ANNUAL CLOTHING ALLOWANCE OF \$350.00 PER YEAR; COOK/MATRONS RECEIVE \$200.00 PER YEAR. AN EMPLOYEE MAY ANNUALLY CARRY OVER UP TO \$100.00 OF HIS/HER CLOTHING ALLOWANCE FOR UNIFORM EXPENSES IN THE FOLLOWING YEAR.

DOCUMENTATION OF ALL UNIFORM ALLOWANCE PURCHASES SHALL BE DONE BY PURCHASE ORDER, WITH APPROVAL FROM THE SHERIFF.  
A COPY OF EACH PURCHASE ORDER SHALL BE FORWARDED TO THE CLERK'S OFFICE WITH A COPY OF THE VOUCHER.

one line item total for patrol officers' clothing allowance and a separate line item total for jailer/dispatchers' and cook/matrons' clothing allowance, which amounts the Sheriff indicated he did not check closely. Wise stated that in drafting the annual budgets, she decided to add her clothing allowance amount into the line item total for patrol officers from 1987 forward.

Prior to 1990, the County had a four or five member combined Finance, Property and Sheriff's Committee which met once a month for County business including approving vouchers for clothing allowance purchases. As a general matter, this Committee dealt with and approved vouchers of the Sheriff's Department (as well as other County departments) at the end of these monthly meetings. At this time, most departments attached a summary sheet to the top of their voucher packets, bound the stacks of vouchers together with rubber bands and attached receipts thereto. County Clerk Mayberry stated that prior to 1990, there were sometimes eight inches of vouchers in total to approve at these meetings. The Committee members would open one pack at a time and pass each voucher to the next committee member who would initial it unless there was a question regarding it and then discussion would occur regarding the item(s) and the Committee members might then look at the receipts attached to the voucher to decide the questions.

In 1990, the County Committees were re-organized. The Finance Committee was created as a separate Committee and a Public Safety Committee was also created as a separate Committee. After this, the Public Safety Committee (PSC) dealt with Sheriff's Department vouchers; the PSC members ceased initialing approved vouchers; and the PSC required summary sheets to be attached to the packs of vouchers. After Committee approval, the approved vouchers were sent to the Deputy County Clerk who made up a list of voucher numbers, amounts and dates paid with the County's check number for County records. As official custodian, the County Clerk filed all original vouchers, summary sheets and receipts and made them available to the public as public records. After vouchers/expenditures were approved by Committee action, the County Clerk did not re-check the vouchers or the Committee's work before the checks were signed and issued.

From at least 1987 until her suspension, Wise took minutes of meetings for Finance Property and Sheriff's Committee (before 1990) and for the PSC (after 1990) as part of her job. Wise typed lists of clothing allowance balances available for each eligible employee's use for departmental posting approximately twice a year. Wise kept running tallies of each employee's clothing allowance balance and employees frequently asked her to give them their balances if they needed a more accurate figure than the posted balances. It was well-known in the department that if an employee had a question regarding whether an item would be eligible for reimbursement through the clothing allowance, he/she could ask the Sheriff or Wise. Ultimately, the Sheriff would either approve or deny these requests. Such questions arose after 1987 on several occasions and in some instances, Wise herself asked the Sheriff if an item should be approved or not and the Sheriff then either approved or denied it.

At all times relevant hereto, when deputies were hired onto the Department, they were entitled to an initial clothing allowance outlay, not capped at \$350.00, so that they could purchase the uniforms, weapons, badges and the equipment necessary to be properly attired and ready for deputy work as soon as possible. Such initial outlays (often \$300.00 or more) were handled by Wise and the new employe -- the employe would fill out an order and Wise would purchase the items directly from vendors or through catalogs so that the deputy would not have to purchase items and wait for reimbursement.

Wise stated that the initial outlay amounts were not always used up within the officer's first year of employment. Sheriff Sheehan stated, in contrast, that as soon as a new deputy was hired they were expected to use

their initial outlay to order necessary uniforms and equipment; that it would be very unusual if a new deputy failed to use up the initial outlay within his/her first year of employment. However, the unwritten clothing allowance policy provided in the past that employes could carry over the unused portion of their clothing allowance into any new year and they could also carry over a negative balance from one year into the next year (if they had over-spent their allowance), so long as they made up the negative balance in the second year.

According to Wise, in early 1990, the Sheriff told her that her clothing allowance would thereafter be \$350 per year. Wise stated this came about when she was present in the Sheriff's office during a telephone conversation he was having with attorney Kathryn Prenn in which the Sheriff asked Wise the amount of her annual clothing allowance, she responded and the Sheriff then stated that Wise's clothing allowance would henceforth be \$350. The Sheriff stated that he did not recall authorizing a \$350.00 clothing allowance amount for Wise and he did not recall talking to Ms. Prenn about Wise's clothing allowance. The Sheriff also stated he never approved Wise getting a \$350.00 clothing allowance.

Facts:

Wendy Wise was employed as the Sheriff's Department Secretary from her transfer thereto in September, 1983, until her suspension with pay effective May 14, 1993. Wise was never disciplined by the County prior to her suspension, according to the record herein.

Sometime before employees received their Christmas holiday pay at the end of 1992, Wise had a conversation with Cook/Matron Rizzo. Wise and Rizzo's testimony regarding this conversation is contradictory. Rizzo stated that she asked Wise if Wise would like to go Christmas shopping with her and some other friends in Eau Claire, Wisconsin. Rizzo stated that Wise responded that she was going to go shopping at the "Mall of America" and that she intended to buy her son a boombox there. Wise testified that she never made this statement to Rizzo; that she did not go to the Mall of America after receiving her holiday pay in 1992; that she did not socialize with Rizzo and never went shopping with her and that she did not recall Rizzo asking her to go to Eau Claire to shop.

In February, 1993, County Board Supervisor and Chair of the Public Safety Committee, Nate DeLong, spoke to Sheriff Sheehan. DeLong stated that another County Board member, Tom Poss, had searched the County's public records and approached DeLong. Poss showed DeLong copies of receipts from items purchased by Wise with her clothing allowance which Poss felt were inappropriate. DeLong asked the Sheriff to check into the matter. Therefore, on February 24th, the Sheriff assigned Detective Sergeant Donald Parker to investigate the situation. Also in February, 1993 Wise was called into the Sheriff's office along with the Union President. The Sheriff told Wise that County Board member DeLong had requested an investigation of Wise's clothing allowance after being contacted by Board member Poss who had told DeLong that Wise had bought a boombox and hair dryer with clothing allowance funds. The Sheriff also told Wise that Sergeant Parker would investigate the allegations.

Parker, a 13 year veteran of the Department, thereafter reviewed all vouchers, invoices/receipts contained in Wise's clothing allowance file maintained by the County Clerk. Parker also contacted stores to confirm the amounts of purchases as well as the items purchased.

On or about early May, 1993, Parker asked if he could question Wise regarding items purchased from her clothing allowance funds. Wise agreed and spoke to Parker. Also in May, 1993, Wise was called in by the Sheriff for questioning and given her Miranda warnings. Present were Wise, the Sheriff,



Parker, Ornberg and a Union representative. At this time, Wise refused to answer questions on advice of Counsel and the meeting was adjourned. Thereafter, Wise agreed to talk to Parker on one or two other occasions prior to May 26, 1993.

Prior to May 12th, the Sheriff informed Wise that he intended to take the results of Parker's investigation before the Law Enforcement Committee, to suggest that Wise be returned to work, upon her acceptance of a written reprimand and her agreement to make restitution for the inappropriate items she purchased. Wise admitted that at this meeting, the Sheriff specifically asked her if there was anything more he should know about. Wise stated she did know what the Sheriff was talking about.

On or about May 12, 1993, County Board Member DeLong came to the Sheriff's Department and met with the Sheriff, Sergeant Ornberg and Detective Parker. DeLong stated that he wanted the Sheriff to check further into overspending by Wise; that he had received information that Wise had used over \$800 in clothing allowance funds in one year. Again, the Sheriff asked Parker to investigate the matter. Later, Wise asked Sergeant Ornberg what was discussed at this meeting but Ornberg refused to discuss it.

On May 13, 1993, Parker prepared the following list as a result of his additional investigation:

	<u>Date Paid</u>	<u>Amount</u>	<u>Account</u>	<u>Year</u>
	09/15/87	\$16.00		1987
	*09/21/87	\$66.00		1987
	*04/21/88	\$15.00		1988
	05/14/88	\$43.97		1988
	*05/14/88	\$24.99		1988
	*09/16/88	\$30.50		1988
	10/15/88	\$66.87		1988
	11/15/88	\$49.99		1988
	02/15/89	\$63.31		1989
	03/15/89	\$35.53		1989
	04/15/89	\$55.99		1989
	05/15/89	\$40.98		1989
	07/15/89	\$51.99		1989
	12/16/89	\$38.90		1989
	02/17/90	\$213.11		1990
	04/13/90	\$63.30		1990
	06/16/90	\$47.98		1990
	10/15/90	\$72.15		1990
	12/16/90	\$108.28		1990
	02/16/91	\$142.90		1991
	04/26/91	\$183.84		1991
	05/31/91	\$92.08		1991
	10/15/91	\$95.76		1991
Paid on	01/15/92	\$329.74	for yr 91	1991
	06/15/92	\$106.38		1992
	01/15/93	\$315.48		1993

\*Voucher and check made out to Winona Knits

Grand total of checks:	\$2,371.02
Grand total of checks for 1987 (all charged to 1987):	\$ 82.00
Grand total of checks for 1988 (all charged to 1988):	\$ 231.32
Grand total of checks for 1989 (all charged to 1989):	\$ 286.70
Grand total of checks for 1990 (all charged to 1990):	\$ 504.82
Grand total of checks for 1991:	\$ 514.58
Grand total of checks charged to 1991:	\$ 844.32
Grand total of checks for 1992:	\$ 436.12
Grand total of checks charged to 1992:	\$ 106.38

Grand total of checks for 1993 (all charged to 1993): \$ 315.48

On May 26, 1993, Parker met with Ornberg, Wise and her Union representative. At the start of the meeting, Wise was given her Miranda warnings again. Parker then reviewed the evidence from Parker's investigation.

Among Wise's purchases were a lamp, a hair dryer and a boombox. At this meeting, Wise did not state that she had used the lamp at home for work or that she had used the hair dryer or boombox at the office. Wise stated that all the receipts were attached to her vouchers for their investigation.

Sometime around the end of May, the Sheriff asked Sergeant Ornberg (a 12-year veteran of the Department) to investigate clothing allowance vouchers and tallies. Ornberg pulled the tally records on 22 Sheriff's department employes for periods during the years 1987 to 1993 and checked them for errors.

Ornberg then went to the County Clerk's vault and pulled a random sampling of 100 clothing allowance vouchers and receipts from the year 1987 forward to check the math and to see if the vouchers matched the receipts and tallies. Ornberg checked approximately 425 transactions which constituted approximately 25% of all vouchers filed for the period. Ornberg found four math errors. Two of these had small amounts incorrectly added or subtracted; one of these showed that \$7.00 had not been carried over correctly; on one of these, one item had been added twice.

On June 15, 1993, Sergeant Parker issued the following document regarding his investigation of Wise's uniform allowance account:

. . .

FOR THE YEAR OF 1987: WENDY'S RECORD SHOWED A TOTAL OF \$172.73 (INCLUDING THE AMOUNT OF \$90.73) WHICH DID NOT APPEAR IN THE INITIAL TOTAL AMOUNT SHOWN BY THE COUNTY CLERK'S OFFICE. THIS AMOUNT WAS LATER CONFIRMED PAID BRINGING THE 1987 TOTAL PAID TO \$172.73 INSTEAD OF \$82.00.

FOR THE YEAR OF 1988: WENDY'S RECORD SHOWED A TOTAL OF \$223.66 (INCLUDING THE FIGURES \$16.99 AND \$25.34 WHICH DID NOT SHOW IN THE INITIAL TOTAL AMOUNT SHOWN BY THE CLERK'S OFFICE). THE COUNTY CLERK'S OFFICE WAS NOT ABLE TO CONFIRM THE \$16.99 FIGURE BUT DID CONFIRM THE \$25.34 AMOUNT AS BEING PAID TO J.C. PENNEY CO. VOUCHER # 04119. THUS BRINGING THE COUNTY TOTALS TO \$256.66 INSTEAD OF

\$231.32, A DIFFERENCE OF \$33.00. THE \$49.99 FIGURE VOUCHER #4355 WAS NOT SHOWN ON WENDY'S RECORDS. WENDY DID INDICATE THE \$49.99 FIGURE SHOULD HAVE BEEN INCLUDED WITH HER INITIAL CLOTHING ALLOWANCE.

FOR THE YEAR OF 1989: WENDY'S RECORD SHOWED A TOTAL OF \$154.20  
THE COUNTY CLERK'S OFFICE SHOWED A TOTAL OF \$286.70 A DIFFERENCE OF \$135.50  
THE FIGURES OF \$35.53, \$55.99 AND \$40.98 DID NOT APPEAR ON WENDY'S RECORDS.  
WENDY DID INDICATE THIS WAS AN OVERSIGHT ON HER BEHALF AND THAT ALL THE RECEIPTS WERE IN HER FILE FOR THESE AMOUNTS. SHE STATED THIS WAS NOT DONE INTENTIONALLY.

FOR THE YEAR OF 1990: WENDY'S RECORD SHOWED A TOTAL OF \$478.34 WHICH INCLUDED A FIGURE OF \$45.37 THAT DID NOT APPEAR ON THE CLERK'S OFFICE INITIAL TOTALS BUT WAS LATER CONFIRMED AS BEING PAID (VOUCHER # 09454) BRINGING THE COUNTY TOTAL TO \$550.19 A DIFFERENCE OF \$71.85.  
THE FIGURE OF \$72.15 DID NOT APPEAR ON WENDY'S RECORDS.  
WENDY INDICATED THIS WAS ALSO AN OVERSIGHT AND THAT THE RECEIPT WAS IN HER FILE. SHE STATED THIS WAS NOT INTENTIONALLY DONE.

FOR THE YEAR OF 1991: WENDY'S RECORD SHOWED A TOTAL OF \$279.63. THE CLERK'S OFFICE TOTALS WERE \$514.58 WITH GRAND TOTAL CHARGED TO THE 1991 ACCOUNT OF \$844.32. (\$329.74 OF THAT AMOUNT WAS PAID IN JANUARY OF 1992 AND WAS CHARGED TO THE 1991 ACCOUNT). SHOWING A TOTAL DIFFERENCE OF \$564.69. THE FIGURES OF \$142.90, \$92.08 AND \$329.74 DID NOT APPEAR ON WENDY'S RECORDS. WENDY INDICATED THE \$329.74 FIGURE SHOULD HAVE BEEN CHARGED TO HER 1992 ACCOUNT INSTEAD OF 1991. WENDY INDICATED THERE MAY HAVE BEEN AN ERROR IN THE YEAR ON THE VOUCHER #3824 BECAUSE OF THE END OF THE YEAR. IN REFERENCE TO THE \$142.90 AND \$92.08 FIGURES, WENDY INDICATED THE RECEIPTS WERE IN HER FILE AND THIS WAS NOT INTENTIONALLY OMITTED.

FOR THE YEAR OF 1992: WENDY'S RECORDS SHOWED A TOTAL OF \$259.24. THE COUNTY CLERK'S OFFICE TOTAL CHARGED TO THE 92 ACCOUNT WAS \$106.38 AND TOTAL OF CHECKS ISSUED IN 92 AS \$436.12 WITH THE \$329.74 FIGURE WHICH WAS CHARGED TO THE 91 ACCOUNT INCLUDED. THE CLERK'S OFFICE REPORT INDICATED THE TOTAL AMOUNT CHARGED TO 1992 WAS \$106.38 THUS INDICATING A DIFFERENCE OF \$152.86. REFERENCE THE \$152.86 FIGURE THAT APPEARED ON WENDY'S RECORDS, WENDY STATED THERE WERE TWO SHEETS OF RECEIPTS IN HER FILE, THE FIRST SHEET ADDED UP TO \$152.86 (WHICH SHE HAD CLAIMED) AND THE SECOND SHEET WOULD HAVE MADE UP THE DIFFERENCE TO TOTAL THE \$329.74 FIGURE. WENDY INDICATED THE SECOND SHEET OF RECEIPTS WAS NOT SUBTRACTED FROM HER RECORDS. SHE FURTHER INDICATED THIS WAS NOT INTENTIONALLY DONE.

FOR THE YEAR OF 1993: WENDY'S RECORDS SHOWED A TOTAL OF \$340.14 INCLUDING A FIGURE OF 24.66 WHICH DID NOT APPEAR ON THE COUNTY CLERK'S TOTALS. THIS FIGURE (\$24.66) TO DATE, HAS NOT BEEN CONFIRMED BY THE CLERK'S OFFICE. THE CLERK'S OFFICE REPORT INDICATED A TOTAL OF

\$315.48 SHOWING A DISCREPANCY OF \$24.66.

THE COUNTY CLERK'S OFFICE TOTAL EXPENDITURES CONFIRMED FROM 1987 THRU 1993 SHOW THE AMOUNT OF \$2532.46. WENDY'S RECORDS FROM 1987 THRU 1993 SHOW A TOTAL AMOUNT CLAIMED OF \$1907.94 WHICH SHOWS A DIFFERENCE BETWEEN THE TOTALS OF \$624.52.

On June 17, 1993 a disciplinary hearing was held of which Wise was properly notified and at which she was represented by Attorney McQuillen. The disciplinary committee was comprised of nine County Board members and the Corporation Counsel. This committee took documentary evidence and heard the testimony of four witnesses including Wise. The disciplinary committee then made and issued the following written findings and conclusions:

1. That Wendy Wise did knowingly and intentionally purchase unauthorized and inappropriate items with her clothing allowance, specifically a hairdryer, a boom box, and a lamp. Vote: 6-2.
2. That Ms. Wise did knowingly and intentionally prepare uniform allowance reimbursement claims in excess of her authorized allotment commencing with year 1989 until the present. Further, she filed such claims for payment with the Clerk's office and received payment for the same. Vote: 7-1.
3. That Ms. Wise did knowingly and intentionally prepare clothing allowance tally sheets for the Department files which misrepresented her clothing allowance balances and disbursements. Vote: 6-2.
4. That the actions taken by Ms. Wise evidenced that she no longer can be trusted to carry out her duties as secretary in the Sawyer County Sheriff's Department.
5. That the actions of Ms. Wise constitute just cause for the termination of said employee.

The Committees, after making the above findings, voted seven to one, through ballot, to terminate her employment, effective immediately.

Wise appealed this decision through the grievance arbitration procedure. In the instant proceeding, Wise admitted purchasing the boombox, lamp and hair dryer from clothing allowance funds. Her explanations for doing so herein were as follows. She stated that her actions were inadvertent. She also stated that she had made inadvertent mathematical errors in her clothing allowance tallies due to the press of other business. She further stated that she had not intentionally purchased unauthorized items with clothing allowance funds -- that one could buy almost anything they wanted with these funds under Department policy.

Positions of the Parties:

County Position:

The County urged that the key facts underlying the grievance are not disputed. The County noted that Ms. Wise was the only secretary in the Department, that the Sheriff had undisputedly authorized her to administer the clothing allowance and that employees were clearly aware of Wise's authority as was Wise. In addition, the County observed that every witness who testified,

except Wise, knew, pursuant to clear past practice, that the phrase in Article XXV (B), "authorized equipment" meant items which employes were required to buy that were used on the job. All witnesses including Wise, stated that if they had any questions regarding whether an item was authorized, they knew they should go to the Sheriff for official authorization. The County noted that the written clothing allowance policy merely codified the past practice regarding using clothing allowance funds for work related items only.

The County asserted that Wise's admission that she purchased the boombox, lamp and hair dryer with clothing allowance funds and that she never used any of these items on-the-job demonstrated that Wise knowingly defrauded the County by making unauthorized purchases. The County noted that Wise's admission that she should not have purchased the lamp with clothing allowance funds, supports its case because none of the three items would have appeared to be appropriate clothing allowance purchases to any other Department employe and Wise was the only employe who purchased items which would not be used on the job.

The County asserted that Wise also over-spent her clothing allowance by a substantial amount during the period 1987 to 1993. In this regard, the County observed that its investigation of Wise's annual clothing allowance (hereafter C.A.) totals revealed that Wise submitted clothing allowance claims in the amount of \$2,532.46. In fact, even assuming that Wise's testimony herein is credited so that she could have properly received clothing allowance funds of \$200 for 1987 through 1989 and \$350 (for a total of \$2,000.00) there was a difference of more than \$500 between what she actually received and what she was entitled to, under this theory. Under the County's theory and assuming Sheriff Sheehan's testimony is credited over Wise's, Wise received more than \$1,100 in C.A. funds over what the Sheriff had authorized for her during the period 1987 through 1993.

In addition, the County observed, Wise knowingly prepared tally sheets which seriously misrepresented her C.A. balances and the prior disbursement of clothing allowance funds to her. In this regard, the County argued that in 1988 through 1992, Wise omitted listing nine disbursements on her tally sheets for which she had put in claims and received payment in the total amount of \$996.23.

The County further contended that just as none of Wise's explanations for mishandling her clothing allowance account are persuasive, neither is her testimony logical or believable. In this regard, the County noted that the evidence showed that Wise was not too busy to perform clothing allowance duties with accuracy nor was she prone to making simple errors. The evidence showed on this point that Wise made just four minor errors on other employe's clothing allowance accounts in 435 transactions checked by Sergeant Ornberg for the period 1987 through 1993. Ornberg's cross-check of tally sheets against a sample of 100 vouchers drawn from the same time period also showed that Wise only made one minor error on these 100 vouchers, which constituted 25 percent of all vouchers for the relevant period. The County further argued that Wise's excuses that the receipts were in her file and that County managers had approved her claims prior to payment begged the real questions here: Wise knowingly claimed payments far in excess of what she was due for items which were clearly inappropriate. Wise knew she could get away with these acts based on County procedures and her control of the Departmental C.A. account. Furthermore, the County urged, Wise's claims that employes could buy virtually anything they wanted with C.A. funds is belied by the overwhelming record evidence including Wise's admissions that she went to the Sheriff to ask for authorization for questionable purchases and that she never used the lamp, boombox or hair dryer on the job. Wise's extensive search of County files for this case produced no evidence of any other employes having made inappropriate purchases. The County pointed out that even if the County's managers had looked closely at Wise's C.A. vouchers and receipts, they would not have known on the face of the receipts, that Wise had purchased a boombox, lamp and hair dryer.

The County argued that the termination penalty is, therefore, supported on this record which showed the depth of dishonesty Wise had engaged in over a

long period of time while Wise was employed in a position of trust in the Sheriff's Department. The County noted that Wise offered no facts to support mitigation of the discharge penalty. The County therefore sought denial and dismissal of the grievance in its entirety.

Union's Reply:

The Union noted that in 1987, Wise received C.A. reimbursements of \$172.73, in excess of the \$165 clothing allowance for deputies that year. Then in 1988 and 1989, Wise listed an opening amount of \$200 at the beginning of each annual clothing allowance period. The Union asserted that Wise's account of Sheriff Sheehan's authorization of a \$350 per year amount beginning in 1990 should be credited. However, even assuming that Wise's testimony regarding the increase in her annual clothing allowance is discredited, the Union urged, the fact that the County allowed Wise to use the \$350 annual amount for 1990 through 1993 without acting, amounted to condonation.

The Union also criticized the County's assertions that it overpaid Wise by \$1,167.46 or \$567.46 (depending on the theory used) over the period from 1987 through 1993. The Union observed that the County failed to take into account in its analysis, Wise's statement that she had been granted an initial C.A. outlay (normally in excess of \$300) and it failed to take into account the County's practice of allowing employees to go "into the hole" for up to the entire clothing allowance amount for the next year. Given these facts, assuming she was due \$350 per year from 1990 forward and assuming that Wise could "go in the hole" for the \$350.00 due her in 1994 clothing allowance funds, she was actually under the total she could have used for the period 1987-1994 (\$2,615).

The Union disputed the County's assertions that Wise actually "administered" the C.A. account. The Union implied that one County Board member's wish for revenge against the Department and another County Board member's wish to place his daughter in a Department job, actually worked to bring about Wise's discharge. The Union emphasized that Wise cooperated fully in the investigation of her C.A. account, that all of her receipts were on file as she stated, that all items could have been used by Wise on the job and that disbursements to her had been approved by several layers of County managers over a seven year period.

The Union argued that the Arbitrator should apply the seven tests of just cause, created and applied by Arbitrator Carroll Daugherty in Enterprise Wire Co., 46 LA 359 (3/66). In this regard, the Union asserted that the County had failed to forewarn Wise of the possible or probable disciplinary consequences of a violation of C.A. policies/rules. The Union stated, "(i)t is plain from all of the evidence in this case that there were neither rules nor policies in effect which had any impact, whatsoever, on Grievant's conduct." On this point, the Union argued that the collective bargaining agreement was silent regarding a C.A. amount for the Departmental secretary; that Wise never worked as a Cook/Matron; and that her salary and professional appearance were more akin to those of the deputies.

The Union further observed that as early as February 1991, Wise had posted a C.A. summary showing her balance at \$243.80. Thus, the Sheriff had notice of Wise's error and he should have corrected her. The Union observed that there was no clearly written or clearly understood C.A. rule or policy and that in the Union's view, Wise's statement that employees could buy almost anything they wanted with C.A. funds rang truer than the various descriptions of the alleged C.A. rule/policy attempted by the County's witnesses. Wise's statement was also supported, in the Union's view, by the Sheriff's admitted willingness to approve almost any purchase request made to him.

The Union asserted that the County failed to fairly and effectively

investigate Wise's alleged rule violation. The Union contended that the County's investigation was "incomplete and biased" and unfairly focused upon Wise when there were other purchases, such as a tape recorder, and a road atlas, which were equally questionable but remained uninvestigated.

The Union claimed that County Board members became improperly involved in the investigation and that the Sheriff should have assigned an outside agency to fully investigate C.A. account questions. On this point, the Union noted that the District Attorney, such an outside agent, reviewed the evidence gathered by the Department regarding Wise's C.A. account and found no criminal violation.

The Union argued that the County failed to prove that Wise was "guilty as charged." In this regard, the Union urged that the County should be required to meet a higher burden of proof -- clear and convincing evidence -- in this

case where the County discharged Wise in essence for criminal wrongdoing. The Union also contended that "all of the evidence introduced by the Employer rests on speculation." The Union asserted that not only did Wise stay under the total C.A. amounts allowable for 1987 through 1993, the County failed to prove that the items she purchased were in fact inappropriate. The Union observed that the County failed to prove that all other items purchased by other employes with C.A. funds that were presented in evidence had actually been used on the job. The Union claimed that the County, after the fact, manufactured arguments to try to show that Wise's purchases had been inappropriate.

The Union contended that the County discriminated against Wise in applying its alleged rules/policies. The Union asserted that the action taken against Wise runs contrary to the preamble of Article IX Disciplinary Procedure which implies using discipline in a non-punitive fashion; and that Article IX (B) fails to list unintentional acts, like Wise's, as cause for immediate discharge. The Union argued therefore, that the Arbitrator should reverse the County's decision regarding Wise and impose on Wise, at most, a short suspension followed by reinstatement with any backpay due.

County's Reply:

The County noted that Sheriff Sheehan stated that "cook/matron" meant cook or matron and that the latter applied to Wise. The County asserted, contrary to the Union's contentions in its brief, that it charged Wise with intentionally over-spending her C.A. account from 1988 through 1993 and that the County found such a violation had occurred from 1989 forward. The County also contended that the Union misrepresented the Sheriff's testimony in its brief: In fact, the Sheriff clearly denied raising Wise's C.A. to \$350. The County also strongly disputed the Union's arguments that it had condoned Wise's use of the \$350 amount for nearly four years. Wise's over-spending, the County urged, was not apparent from the summary sheets drafted and posted by Wise because of the allowable \$100 carryover policy. These summary sheet amounts for Wise, by the County's analysis, over the years in question were as follows:

11/10/87	0
3/11/88	\$ 200.00
8/10/88	\$ 99.05
2/20/89	\$ 113.03
9/20/89	\$ 61.04
4/ 1/90	\$ 159.03
2/ 1/91	\$ 243.80
12/13/91	\$ 35.80
6/24/92	\$ 54.96
2/12/93	\$ 64.82

In addition, the County noted, Wise's annual tally sheets were not checked by the Sheriff and the evidence showed that Wise over-spent her C.A. account significantly year after year after year. Even assuming Wise was entitled to an initial allowance in 1987, the evidence showed that she spent \$172.73 in 1987 and \$49.99 in 1988 by her own admission, not \$300.

The County argued that the Union entirely failed to demonstrate any political motivation or impropriety surrounding either the internal investigation, the decision to discharge Wise or the hiring of Wise's temporary and (later) her permanent replacement. The County also urged that it would be inappropriate to apply the Daugherty "Just Cause Tests" in this case and that Act 53 should not be applied to Wise because Wise clearly engaged in dishonest acts. The County observed, in addition, that the Union not only failed to show how the County's investigation was unfair, it also failed to demonstrate the relevance of the D.A.'s decision not to charge and prosecute Wise for criminal activity. Whether Wise could have used the boombox, hair dryer and lamp at



work did not, in the County's view, diminish the fact that Wise admitted she never used these items on the job. The County observed that Wise had essentially created and maintained the record evidence upon which she was terminated. The County urged that Wise could have been terminated on any one of the charges brought and proved against her, which showed that there was ample basis to support her discharge.

Discussion:

The language of Article XXV, Section A, of the effective labor agreement appears to provide an initial C.A. outlay for officers only. Although that Section does not specifically limit itself to officers, the list of examples of what would constitute "initial uniforms," would only be applicable to County officers, not to Cook/Matronns or to Department secretary Wise. In this regard, Wise stated that she normally wore slacks, a blouse and a blazer to work; Cook/Matron Rizzo stated that she normally dressed very informally for work. Article XXV, Section A also gives examples of "equipment" to be purchased as part of an officer's initial outlay. Again this equipment: "weapons, badges, handcuffs, insignia, leather, nightstick," would not be used by or needed for the Departmental secretary job (a non-sworn position). In addition, it is undisputed on this record that Wise did not use any of the equipment listed in Article XXV, Section A.

Article XXV, Section B, also states that the initial C.A. outlay is for "officers" who are also entitled to \$350 for a "clothing, cleaning and authorized equipment allowance." Although Section B does not specifically state that this \$350 amount is an annual amount, that is strongly implied by the nature of the benefit and by the remainder of the section which currently sets an "annual" "clothing allowance" amount of \$200 for Cook/Matronns. Section B also does not specifically provide for Cook/Matronns to choose to clean their clothing or to purchase authorized equipment with C.A. funds.

Nowhere in Article XXV is the Departmental Secretary mentioned, although there is no dispute that Wendy Wise also acted as a Matron for the Department as needed during her employment there. Also, Article XXV does not address what if any consequences will flow from a violation of the Article. Given the silence of the contract regarding the full details of the County's C.A. rules/policies applicable to Wise, evidence regarding past practice is relevant in this case.

Beyond the language of Article XXV, the past practice of the County in administering C.A. accounts showed that employes could not only carry over unused funds into the next year (as stated in Article XXV, Section D) but that they had also been allowed to overspend their accounts and could carry a negative balance from one year into the next so long as they made up the negative balance in the second year. Indeed, the policy appears to have allowed for carrying over unused balances in excess of \$100 into any successive year, despite the Section D limit thereon. Section D does not address negative carryovers.

The central question directly posed by the parties' evidence and argument in this case is whether Wendy Wise's story is believable. In my opinion, Wise's testimony is incredible in the context of this case. In this regard, I note that Wise had different excuses for her "mistakes" which she offered at different times. Wise stated that she had made inadvertent errors on her tally sheets and vouchers due to the press of other business. Yet, Sergeant Ornberg's investigation revealed that Wise was not generally prone to making errors on other employes' C.A. accounts: Ornberg found that Wise had made only four minor errors on other employes' C.A. accounts in 425 transactions completed between 1987 and 1993. In addition, Ornberg found only one math error on a sample of 100 vouchers Wise prepared for other employes during the relevant time period. The County also proved that between 1988 and 1992, Wise omitted listing nine disbursements (worth over \$900) on her own tally sheets for which she had put in claims and received payments. Thus, her claim that she made inadvertent errors simply does not ring true and this evidence tended to show that Wise's actions were intentional.

Wise's attempts to shift responsibility to the Sheriff and to the County officials who approved her C.A. payments begs the question. The record showed that the Sheriff had delegated almost complete control of the C.A. account to Wise, that she knew it was an unaudited account, and that she played a major role in setting annual budgetary levels for the C.A. account by her involvement in drafting the Departmental budget. On the latter point, Wise stated she alone made the decision to add her annual C.A. amount to the patrol officers' total rather than to the cook/matron's total. These facts, when judged in conjunction with the detailed evidence regarding the practices and procedures regularly followed by County management for authorizing C.A. payments, show that the County did not normally check the vouchers against the receipts and the tally sheets and that Wise was fully aware of this as secretary to the Sheriff and recording secretary for the authorizing County Committees. In all of these circumstances, Wise's arguments that her responsibility for her own actions should be shifted away from her to the County are unjustified: Even assuming the County should have been more careful in administering C.A. funds, the County's alleged lack of diligence does not excuse or explain away Wise's actions.

The County's argument that Wise purchased items which she never used at work also supports a conclusion that she intended to defraud the County by knowingly purchasing inappropriate items with C.A. funds. In this regard, I note that Wise was the only witness who appeared to be unaware that items purchased with C.A. funds should be items used on the job. It is significant that Wise admitted that her purchase of the lamp was inappropriate. 5/ I wonder, in this context, as did the County, how Wise could justify her purchase of the hair dryer and boombox when she admitted the lamp was inappropriate. Wise also admitted that she never actually used the lamp, boombox or hair dryer

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5/ I note that Wise stated without corroboration that she sometimes took work home and could have used the lamp to complete her work. The Sheriff specifically stated that he never authorized Wise to take work home. In addition, Wise did not state that she, in fact, used the lamp at home to perform Departmental work.

at work. In regard to the hair dryer, I note that no employe showers were available for Wise (or any other employes) to use at work. In any event, Wise would not have needed or used such facilities, based upon her regular duties.

In regard to the purchase of the boombox, the County argued that the testimony of Ms. Rizzo proved that Wise previously admitted purchasing a boombox for her son. It is clear that Ms. Rizzo had nothing to gain by testifying in this case. Despite the Union's attacks on her credibility during cross-examination, Ms. Rizzo appeared to be a straight-forward, honest witness whose statements shall be credited over those of Wise for what they are worth.

Therefore, I believe that in 1993, Wise admitted to Rizzo that she planned to buy a boombox for her son for Christmas. However, the evidence failed to show that the boombox Wise spoke of purchasing for her son was the same boombox she admittedly purchased with C.A. funds. Despite this lack of proof on this point, Wise's purchase of the boombox cannot be excused. In addition, I disagree with the Union's assertions that the County is obliged to prove that all of its other Sheriff's Department employes were blameless in requesting and using C.A. funds from 1987 forward, before the County can properly discharge Wise who had, in my view, clearly violated the County's C.A. policy/rules.

The excuse which Wise gave that one could buy almost anything one wanted with C.A. funds seriously undermined her credibility. Even assuming for the sake of argument that Wise was covered by Article XXV, Sections A and B, but was not fully aware of all of the C.A. rules, 6/ she knew, as did all other employes, that the allowance was called a uniform or clothing allowance in Article XXV of the labor agreement. Wise knew that she could not have worn a lamp, a boombox or a hair dryer to work and that these items were not listed among the equipment items in Article XXV, nor were the items Wise purchased similar to the listed equipment items. In addition, Wise admitted that she never used any of these items on the job so that her purchases of these items with C.A. funds were per se inappropriate.

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6/ The evidence clearly showed that Wise knew that the Sheriff had to approve any questionable C.A. purchases under the labor agreement as well as the County's unwritten C.A. policy/rules because she assisted the Sheriff in administering the C.A. policy/rules. She even asked the Sheriff on several occasions whether certain purchases requested by other employes would be approved and she received the Sheriff's approval before vouchering those items.

In any event, Wise was fully aware that if employees wished to make an "authorized equipment" purchase with C.A. funds, they should ask the Sheriff for his authorization or approval of the item(s). I note that Article XXV, Section B, requires that all equipment purchases must be "authorized." The record shows that Wise never sought the Sheriff's approval for any of the equipment purchases she made, listed in the County Disciplinary Committee's Finding Number 1.

The Union has argued that Wise's testimony should be credited over that of the Sheriff regarding his alleged authorization of an initial C.A. amount for Wise in 1987. I credit the Sheriff, whose testimony and demeanor remained unshakable throughout extensive cross-examination. In addition, the external facts tend to support the Sheriff's testimony, not Wise's. Thus, Sheriff Sheehan's statement that he never authorized an initial C.A. outlay for Wise is bolstered by the language of Article XXV, Sections A and B, which strongly implies that the parties intended that only "officers" should receive initial C.A. outlays. I note that Wise also admitted that she did not recall the Sheriff stating that she would get an initial C.A. outlay. Also, Wise did not order her own initial uniforms directly from vendors as she normally did for newly hired officers. In addition, Wise did not list an "initial outlay" for herself on the summary balance sheets posted at least annually, as she had done for at least one officer during the period relevant here. All of these facts tend to support Sheehan's statement that Wise was not entitled to nor was she given an initial C.A. outlay.

Wise's assertion that in 1990 the Sheriff authorized an increase in her C.A. from \$200 to \$350, again, is not to be believed based upon this record. I note that Sheriff Sheehan, whose testimony I have found credible, specifically denied ever approving such a change in Wise's C.A. amount. Sheehan also stated that he did not recall talking to Attorney Prens about Wise's C.A. In contrast, Wise's version of how this alleged authorization occurred was uncorroborated by any disinterested witness or by any documentary evidence. In addition, Wise's account of Sheehan's authorization of her C.A. increase simply does not comport with how such matters are normally handled in a labor relations context or in business in general. Budgets normally have to be drafted, justified and approved in advance -- even an executive employe as powerful as a County Sheriff could not, on his own motion, increase an employe's clothing allowance at any time he chose. In addition, such an action would generally be handled at contract negotiations where the Employer would wish to "get credit" for such an increase by folding the increased C.A. amount into total package labor costs for the unit. No evidence was proffered by the Union on these points.

An analysis of the record evidence shows that Wise "knowingly and intentionally" made C.A. reimbursement claims in excess of the appropriate allotment amount for 1989 through 1993 and that she "knowingly and intentionally" prepared tally sheets which misrepresented her C.A. balances and disbursements, as the County found in its Findings 2 and 3. On this point, I note that the record herein and the County's investigation undisputedly showed, for the period 1989 through 1993, the following facts:

1. Under the County's argument, if a \$200 allowance for 1989-93 is assumed appropriate, Wise should have received a total of \$1,000 for the period.
2. Under the Union's argument Wise should have received \$200 for 1989 and \$350 for each year from 1990 through 1993 for a total of \$1,600.
3. Wise actually spent \$2,103.07 during 1989-93 period.

4. Wise's records show that she recorded having spent \$1,081.55 during this period of time. 7/
5. The difference between what Wise actually spent and what she recorded spending was \$1,021.52.
6. Assuming the Union's approach (number 2 above) is correct, Wise nonetheless overspent her C.A. by \$503.07. 8/
7. Assuming the County's approach (number 1 above) is correct, Wise overspent her C.A. by \$1,103.07 for the relevant period.
8. In 1990, Wise actually received \$550.19 in C.A. funds and in 1991 she received \$514.58 in C.A. funds, either \$364.77 over the \$700 she asserts she was due for those years or \$664.77 over what the County asserts she was due in those years. Given the fact that Wise had actually overspent her 1989 allotment by \$86.70 and that she had overspent her 1992 allotment by either \$86.12, (Union) or \$236.12 (County), Wise could not and did not make up these large, consecutive overages in the years following each negative balance, as the unwritten C.A. policy required.

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7/ I note that in 1987, Wise recorded the correct amount on her tally sheets --- \$172.73. However, for 1988 she failed to report a \$33.00 item for which she was paid. Beginning in 1989, the discrepancies between Wise's tally sheets and the amounts she received generally increased except for 1993:

<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
\$132.50	\$71.85	\$234.95	\$176.88

The above-listed amounts are the amounts which Wise failed to report on her tallies but for which she received "reimbursement." In 1993, Wise's records showed that she spent \$340.14 in C.A. funds before her May, 1993 discharge. County records showed that Wise was paid \$315.48 in C.A. funds in 1993.

8/ In 1993, Wise spent only \$315.48. Therefore, I have subtracted \$34.52 from the overall total of overspending under the Union's approach, for the stated period of time.

Even under the Union's approach, Wise significantly overspent her C.A. allotments. In addition, she significantly under-reported amounts she claimed and received payment for from the County. This evidence, when considered in conjunction with undisputed County evidence which showed that Wise administered the unaudited C.A. account and that Wise made very few errors in handling other employes' C.A. accounts and records, leads to the reasonable conclusion that she did knowingly and intentionally prepare her reimbursement claims in excess of her proper allotments for the years 1989 through 1993. This is so in my view, despite her claims that her actions were unintentional.

The Union has attempted to argue that the County's investigation was tainted by politics and that its replacement of Wise was motivated by nepotism. I am not convinced. I note that no matter what his underlying motives may have been, County Board Member Poss had every right, as did any member of the public, to search and copy public records, including County C.A. records, and to report his findings to the County Board. In addition, it was entirely appropriate for County Board member DeLong to report Poss' findings to the Sheriff.

The fact that the Sheriff chose not to employ an outside agency to conduct an investigation into Wise's C.A. account does not necessarily mean the investigation conducted was unfair, biased or poorly done. On the contrary, the record showed that both Sergeants Ornberg and Parker were capable, experienced law enforcement investigators and that their investigations were fair and adequate. The fact that the DA chose not to prosecute Wise is not relevant to this proceeding. 9/ The Union was unable to find any errors in the County's investigatory techniques or in their findings other than its conclusory assertions, which showed it did not like the outcome of that investigation. In this regard, I note that Wise personally searched through County C.A. records. In its brief, the Union argued that two equipment items, a road atlas and a tape recorder, purchased by other employes were inappropriate purchases. However, as Wise admitted, she had no idea whether or not these items were actually used on the job and there was no evidence offered by the Union to show that these items were not, in fact, used by the employes on the job. Indeed, Wise herself offered explanations which might have justified these purchases based upon her knowledge of the duties of the purchasing officers. As I have observed infra, the fact that a few other inappropriate purchases may or may not have been made 10/ does not absolve Wise from, inter alia, purchasing three inappropriate items, misrepresenting her C.A. balances and disbursements and significantly overspending her C.A. allotments.

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9/ The record here showed that at the time it decided to discharge Wise, the County possessed clear and convincing evidence that Wise had engaged in the acts listed in County Findings 1 through 3.

10/ The Union did not call the purchasing officers to inquire whether they had received authorization from the Sheriff for their purchases and/or whether they had, in fact, used the items on the job.

In all of the circumstances of this case, the County properly investigated Wise's misconduct and, pursuant to Article XI, Section C, the County properly concluded that it could immediately suspend Wise and then discharge her for the intentional acts she had engaged in which were "similar in gravity" to the "theft of . . . public property." 11/ Therefore, I issue the following

AWARD

The County had just cause to discharge Wendy Wise.

The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 11th day of July, 1994.

By Sharon A. Gallagher /s/  
Sharon A. Gallagher, Arbitrator

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11/ Contrary to the Union's assertions, I find that Act 53 is not applicable to this case.