BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL 2430, AFSCME, AFL-CIO	Case 17 No. 49608 MA-8005
and	
KENOSHA CITY & COUNTY JOINT SERVICES BOARD	

Appearances:

Mr. John Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

Mr. Frank Volpintesta, Corporation Counsel, Kenosha County, appearing on behalf of the Employer.

ARBITRATION AWARD

The Union and Employer named above jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned arbitrator to hear the grievance of Carol Mallegni and Sue Zapp regarding their suspensions. A hearing was held in Kenosha, Wisconsin, on February 14, 1994, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by June 9, 1994.

ISSUE:

The parties ask the following:

> Did Carol Mallegni and Sue Zapp violate Joint Services' policies? If so, was there just cause for discipline? If so, was the discipline imposed reasonable? If not, what is the appropriate remedy?

BACKGROUND:

The Employer, also called Joint Services, provides dispatching and record keeping services for law enforcement agencies in the Kenosha area. The records department of Joint Services is responsible for maintaining all arrest and investigation records or records pertaining to operations for the Kenosha County Sheriff and Kenosha City Police Departments. The records concerning arrest warrants and the jail are public records which are often used in court proceedings when procedures are called into question.

The Grievants, Carol Mallegni and Sue Zapp, are both records clerks. Zapp started working for Joint Services in September of 1984, Mallegni in November of 1982. Neither has been disciplined before the incident leading to their five-day suspensions and the grievance.

Mallegni had recommended a change in procedures regarding paperwork to a second shift supervisor, Rhonda Contrearas. Often, each employee would have to sign an individual notice acknowledging policy and procedure updates. Mallegni recommended that in order to save paperwork, employees could initial a policy change on one piece of paper and the policy change could be filed where employees would have access to a policy manual. The dispatching side of the operation uses a procedure similar to that proposed by Mallegni.

Contrearas checked with the Records Manager, Terry Markowski, who said that anyone could sign another person's initials. Mallegni was surprised that Markowski would say that, since employees may be held accountable for their work according to their initials. They often initial warrant entries, receipts, release of public documents, and other data entry work.

On April 19, 1993, Mallegni and Zapp were working the third shift from 11:00 p.m. to 7:00 a.m. Supervisor Eileen Hanson gave Mallegni and Zapp a revised jail filing procedure and a revised warrant label procedure, with procedure acknowledgement forms for them to sign. The form looks like this:

PROCEDURE ACKNOWLEDGEMENT FORM

> Attached is revised **JAIL FILING PROCEDURE** dated 04/17/93, a copy of which has been placed in the Records Procedure Manual. After reviewing this procedure, please date and sign this form. Your signature will serve as acknowledgement that you have read and fully understand the procedure. Any questions regarding this procedure should be forwarded to your Supervisor.
>
> This Procedure Acknowledgement Form will be returned to the Records Manager signed and dated by 04/27/93.
>
> I, _____, have received and read the
> Signature
> **JAIL FILING PROCEDURE**
>
> Date:_____

Zapp and Mallegni had been discussing the amount of paperwork they were getting with policies and revisions, more policies and more revisions, as well as Markowski's comment that anyone could sign anyone else's initials. Zapp said to Mallegni, "Let's just sign each other's name" (to the jail filing procedure and warrant label procedure acknowledgement forms). Mallegni agreed, and they signed each other's name to the procedure acknowledgement forms and put them in Markowski's bin.

The supervisor, Hanson, was nearby and overheard Zapp and Mallegni discuss signing each other's name on the forms. According to Zapp and Mallegni, Hanson laughed and said, "Oh, you girls," or something to that effect. According to Hanson, she told them that it would probably get them in trouble. It is not

certain whether Hanson ever actually saw them sign the documents or not. She did not review the documents when Zapp and Mallegni put them in Markowski's bin, and she did not consider their remarks about signing each other's name to be serious.

The first shift supervisor, Malissa Dunn, spotted the signatures and gave them to Markowski. When Zapp came in to work on April 21st, Hanson gave her the form to re-sign in Hanson's presence and asked Zapp to provide an explanation for signing Mallegni's name. Zapp signed her own name and told Hanson she would prepare an explanation. Mallegni did not work until April 25th, when she was asked to re-sign with her own name, which she did.

On April 26th, Zapp and Mallegni provided Markowski a written explanation of signing each other's names:

> AS YOU MAY RECALL, IT WAS SUGGESTED TO RHONDA THAT WHENEVER A NEW POLICY/PROCEDURE IS ISSUED THAT WE SIMPLY INITIAL THIS NEW POLICY INSTEAD OF EACH EMPLOYEE RECEIVING THEIR OWN COPY AND SIGNING A RECEIPT. A COPY OF A SAMPLE WHICH WAS USED BY DISPATCH AND THE KPD WAS GIVEN TO THE SUPERVISOR TO ILLUSTRATE THIS IDEA.
>
> WE WERE TOLD THIS WAS NOT A GOOD IDEA BECAUSE ANYONE COULD SIGN ANYONE ELSE'S INITIALS. THAT REASONING JUST SEEMED INCONSISTENT WITH THE PROCEDURES WE'VE BEEN FOLLOWING FOR THE PAST TEN YEARS WHEREIN WE INITIAL JUST ABOUT EVERYTHING WE DO, AND TO OUR KNOWLEDGE, NO ONE HAS EVER BEEN ACCUSED OF USING SOMEONE ELSE'S INITIALS.
>
> IN ORDER TO CELEBRATE "EARTH WEEK", A SECOND REQUEST IS MADE THAT WE TRY TO ELIMINATE UNNECESSARY PAPER USED BY GIVING THIS IDEA ANOTHER CHANCE. PERHAPS ONLY TWO COPIES OF EACH NEW POLICY/PROCEDURE BE ISSUED. ONE COPY COULD BE PLACED ON OUR BULLETIN BOARD SO THAT ALL EMPLOYEES READ IT AND THE SECOND COPY COULD BE GIVEN TO THE 1ST SHIFT SUPERVISOR. AFTER SHE HAD ALL HER CLERKS INITIAL AND DATE THIS NEW POLICY, IT COULD BE FORWARDED TO THE SECOND SHIFT SUPERVISOR AND SO ON UNTIL ALL AFFECTED EMPLOYEES HAD THE OPPORTUNITY TO INITIAL THE NEW POLICY/PROCEDURE. THIS SINGLE COPY COULD THEN BE FILED WITH THE DOCUMENTATION THAT ALL EMPLOYEES HAD READ AND UNDERSTOOD THE NEW POLICY/PROCEDURE AND THEN BE PLACED IN THE APPROPRIATE PROCEDURE BOOK. JUST THINK OF ALL THE TREES WE COULD BE SAVING!! ALSO, THIS COULD BE COST EFFECTIVE IN SAVING TIME FOR THE SUPERVISOR WHO HAD TO MAKE ALL THE COPIES, STAPLE THEM TOGETHER, PUT EVERYONE'S NAME ON EACH ONE AND THEN MAKE SURE SHE GETS THEM ALL BACK!!

Attached was a list of the procedures which had been issued or revised from January 19, 1993 to May 8, 1993, showing a total of 86 pages. Since there are 22 clerks and supervisors, the Grievants figured the total number of pages was 1,892, which would cost $946.00 at $.50 a page.

On May 4, 1993, The Director of Joint Services Board, Raymond Gram, advised Mallegni and Zapp that a pre-disciplinary hearing would be held on May 12th. Gram wrote them the following:

> It has come to my attention that you are alleged to have committed a serious violation by intentionally signing another clerk's name on two procedure receipt

> forms and allowing another clerk to sign your name to a receipt form. In that on April 17, 1993 procedures were revised concerning jail filing and warrant labeling and copies of said procedures were passed out to all Joint Services records clerks along with a form for each clerk to sign confirming that he/she received and reviewed the procedures and further confirming that their signature would service as acknowledgement that they read and fully understood the procedures.
>
> . . .
>
> Signing another employee's name to two public documents used in conjunction with public safety record keeping functions and being a part to the act of another clerk signing your name to a document are deliberate acts intended to defraud management. Said conduct jeopardizes the integrity of the records functions and could impact the validity of the procedures if challenged either legally or internally in the future. This is a serious violation, the elements of which meet the definition of a felony crime under the state law regarding forgery. This act will have far reaching implications by jeopardizing the integrity of the entire Joint Services records operation especially in regard to the veracity of your record functions of which will now always be suspect and open to challenge.
>
> . . .

In a memo asking Gram to extend the May 12th day, Zapp and Mallegni gave a further response for their actions:

> We contend that by acting as one another's agent with full permission and authority we signed each other's name on a personnel procedure receipt.
>
> We contend that there was no intent to defraud Management inasmuch as we complied by providing Management with the signed acknowledgement that we had read and fully understood the procedure. In addition, Management made a second request for us to sign said policy receipt form, which request we complied and provided a written explanation of the situation.

Zapp and Mallegni provided a more complete response on May 21, 1993. They wrote:

> 1. By Management's own admission in its 05/04/93 letter, it was aware that permission and authorization was given by said employees to sign another's name to a policy/procedure form. Management received said signed procedure form and both employees, as evidenced by their signatures, acknowledge that they read and fully understood the procedures. At that time, Management had every right to expect that the new procedures for Jail Filing and Warrant Labeling were understood by both employees and both employees would be responsible for its application. MANAGEMENT WAS NOT DEFRAUDED NOR WAS MANAGEMENT DEPRIVED OF EITHER CLERK'S RESPONSIBILITY FOR THE FUTURE APPLICATION OF SAID PROCEDURES.
>
> 2. After receiving said signed acknowledgements, Management made an immediate second request, through the third shift supervisor, that we resign the procedure acknowledgement forms and provide an explanation. We promptly complied by signing the forms and provided Management with an explanation (see copy of 04/26/93 letter to Terry Markowski). AGAIN, MANAGEMENT WAS NOT DEFRAUDED NOR WAS MANAGEMENT DEPRIVED OF EITHER CLERK'S RESPONSIBILITY FOR THE FUTURE APPLICATION OF SAID PROCEDURES.
>
> 3. The procedure acknowledgement form is not a public document, but a personnel record. The signed acknowledgement is filed in a separate personnel file which is kept separate and apart from public records and are kept confidential according to Joint Service Policy Manual (revised 03/90). AT NO TIME WAS SAID ACT INTENDED TO DEFRAUD MANAGEMENT. Said conduct in no way jeopardized the integrity of the Records function or the validity of the procedures as each signed form would stand on its own merit. The only challenge would be if either Sue Zapp or Carol Mallegni would accuse the other of signing said document without permission or consent. THIS CERTAINLY IS NOT THE CASE. As a matter of fact, it was only the last couple of years that signing for policy and procedures were established. Prior to that time, dissemination of new policy and procedures were haphazardly done through bulletin board posting, clip board posting or by word-of-mouth done from supervision. What recourse would management have if said policy and procedure dissemination was challenged either legally or internally for the first eight years of Joint Services existence, before clerks had to sign for said policy?
>
> 4. According to Wisconsin State Statutes Section 943.38 as it applies for Forgery, two elements must be met: (1) without permission or authority; and (2) with an intent to defraud. First of all, our actions were with one another's permission and authority and secondly, there was no intent to defraud. We offer the following examples of consensual authority to sign

someone's name which is current practice in Records.

> It has been a long practice that clerks and members of management have signed both the Chief of Police and Sheriff's actual name to the monthly Uniform Crime Report which is submitted to Madison. This public document which contains all reportable crimes occurring in Kenosha County and which information is used to compute crime statistics, is signed by someone other than the Chief of Police or Sheriff. This practice has never been challenged, nor does it invalidate the entire Records operation as consent has been given to those preparing or submitting said report.
>
> Also, from time to time, clerks have authorized and permitted another individual to act as their agent to (1) sign for job postings and (2) sign for anticipated overtime. This practice has always been accepted by Joint Services and in fact is stated in our contract. These acts were consensual and there is no intent to defraud management in these personnel matters.

5. This act does not jeopardize the integrity of the entire Joint Service Records operation as Sue Zapp and Carol Mallegni both understand the procedure for Jail Filing and Warrant Labeling. In the past ten plus years, the veracity of our record functions have never been suspect nor open to challenge and this incident should have no bearing on our future performance as to honesty and integrity.

WE WOULD LIKE TO OFFER THE BACKGROUND OF WHICH LEAD TO THIS INCIDENT.

In early February or March, a request was made to Rhonda Contrearas, the second shift supervisor, that perhaps we could eliminate the need for each clerk receiving their own personal copy of any new or revised policy and procedure due to the overwhelming amount of paper flow since the first of the year. It was suggested that all clerks be responsible for initialing one copy and that would satisfy Management that all involved would be responsible for any policy change. An example of a current Dispatch procedure utilizing this method was given to the supervisor, per her request, so that she could discuss this matter with the Records Manager Terry Markowski. Terry Markowski did not think this new procedure would work, as she stated, according to Rhonda, that anyone could sign someone else's initials.

Terry Markowski's statement could do more to jeopardize the integrity of the entire Records

operation inasmuch as clerks initial the following public records:

> (1) documentation of release and sale of all permitted public records;
>
> (2) documentation of reports submitted to the District Attorney's office;
>
> (3) Warrant entry, cancellation and validation;
>
> (4) all incident report and arrest coding;
>
> (5) all in-house data entry, including case and arrest updating;
>
> (6) bond transactions including balance/ verification of Joint Services receipts.

Our initials have always been considered viable documentation and acknowledgement for any work performed on all of the above-described work in Joint Services. We could, therefore, not understand why initials could not be considered documentation for acknowledgement of any personnel policies and procedures. In the past ten plus years since Joint Services' inception, no Clerk has had the integrity of their work questioned or challenged as to the initialing of any document.

Does Management's statement as made by Terry Markowski, now invalidate all work performed by Clerk's since the vast majority of all work performed is documented by the Clerk's initials? By our written explanation to Terry Markowski on 04/24/93, it was obvious that we were confused by her statement and again asked that she reconsider our request for a single policy issuance rather than the customary 22 plus. Clerks have the option of referring to two separate binders with all new and revised policy and procedures. Since January of 1993, in excess of 1,892 copies have been made of new or updated policy and procedures at a cost of $946.00. We still contend that this would be a practice to be considered as we all must do what we can to be ecologically responsible.

Both Mallegni and Zapp received a five-day suspension without pay for what the Employer described as misconduct by falsifying signatures on official documents. The suspensions were never served and held in abeyance until the outcome of the grievance. The Grievants received notice of the disciplinary action pursuant to a May 26th letter to them from Gram, as shown in the following one to Mallegni:

> The act of signing Sue Zapp's name to two official procedure receipt forms and allowing Sue Zapp to sign your name to a receipt form which were then turned into management under the pretext that the signatures were genuine is a serious violation. After management

> discovered the false signatures on the three documents, your response was that you signed each other's signatures to prove a point to management, that signatures as well as initials on documents could be forged. You stated this was done in an effort to promote what you considered was a better method for receipting procedures than the current procedure, and one which you stated would save ("trees") i.e., paper.
>
> Your explanation of the reasons does not in any way justify the act but, in fact, further demonstrates the recklessness and irresponsibility of the conduct. Signing another employee's name to two official Joint Services' documents used in conjunction with public safety record-keeping functions, and being a party to the act of another clerk signing your name to a document, and returning the documents to management with the false signatures, was a deliberate and irresponsible act which was conspired to misrepresent the facts to management. Said conduct jeopardizes the integrity of the entire Joint Services public safety records functions and could have impacted the validity of these procedures had the act not been discovered by management and had your signatures on the documents been challenged either legally or internally in the future. Because of this act, the veracity of your future records functions will now always be suspect and open to challenge.

Gram testified that he felt that Zapp and Mallegni had committed a serious violation that had an impact on the integrity of the record keeping function, because the reputation of having employees that would falsify their signatures on documents could have a far reaching effect into the agency's integrity. Records clerks must testify in courts as to the validity of their signatures or the records manager must testify as to the validity of signatures on documents that are called into courts. Gram was also concerned about the Grievants' reasons for signing each other's name -- that they did not like the policy and procedure and they wanted to show that their names could be forged. Gram also felt that the Grievants never understood what they had done was wrong, and that they maintained that they acted as one another's agent.

Mallegni is the Union President. Gram testified that he would consider the actions taken by the Grievants to be serious, and it is possible that Mallegni's position as Union President could send a message to other employees if she were able to sign someone else's name. Zapp holds no Union office.

The documents for which the Grievants were asked to sign acknowledgement forms were basically internal documents. The warrant label procedure is a set of computer instructions or commands to print labels for warrants, and the jail filing procedure is another set of computer instructions to print labels for files for released inmates. Actually, the instructions were incorrect and were later corrected, following Zapp's discovery that the procedures did not work. Zapp was training a new employee and found that the computer commands for printing labels as stated in the April 19th procedures did not work. A new label printer had been put in place, and the procedures had not been updated to accommodate the new printer. On June 26, 1993, Contrearas put a memo on the bulletin board as well as behind the printer to inform employees how to print jail and warrant labels. No one was required to sign the June 26th memo.

Policy and procedure changes may be distributed in different ways. Some

are posted on the bulletin board, some are put by a teletype machine, some are put in a policy manual. A supervisor may simply tell employees of a change in procedure or policy.

The collective bargaining agreement provides that a steward may sign a job posting on behalf of an absent employee. There is a practice that employees may sign other employees up for available overtime. On one occasion, Dunn signed up several employees for flu shots by signing names, including Mallegni's, to a memo.

The State Department of Justice requires that a monthly report be filed for the Crime Information Bureau and National Crime Information Center. The report asks that agencies acknowledge that all inactive records have been cancelled, all incorrect records have been modified, and all records on computerized data files entered by the agency are correct and accurate. If the monthly report is not filed, all data for the agency will be cancelled.

Lisa Kopesky worked at Joint Services between 1982 and 1993 as a records counter clerk. Kopesky signed her name to the monthly report, under the direction of Supervisor Dunn, knowing that not all items had been validated. She was assigned to validate warrants, and that work was usually done, but she knew that validations were not done for items such as vehicles, boats, guns, securities, or other articles. After Kopesky attended a course on validation in the early part of 1993, she raised her concerns with Markowski about her signature on the monthly report. Markowski told her that the Crime Information Bureau understood that due to the volume of entries, the work could not get done and it was okay to send the report signed. Kopesky did not fill out the monthly reports during most of her tenure at Joint Services, and only did it out four or five times in 1993.

Sandra Whiteside currently works at Joint Services as an identification technician. During her 11 years as a records clerk, she was the validation officer for warrants. She received a monthly printout from the Crime Information Bureau and validated all the warrants. Kathy Bach was assigned to validate other items, such as vehicles, boats, guns, securities or articles. Whiteside signed the monthly validation report, under instructions from Markowski and Dunn. Both Markowski and Whiteside knew that Bach was behind in her work validating items. Bach never signed the form.

The agency is ultimately responsible for the information to the Crime Information Bureau, no matter who signs the monthly reports. Markowski understood from the Crime Information Bureau that the reports need to be mailed back even though every record is not validated, as long as the agency is in the process of validating the records and nearing completion.

Clerks also sign the names of the Sheriff and Police Chief to a form called the Uniform Crime Reporting report.

THE PARTIES' POSITIONS:

The Union:

The Union argues that the Employer did not properly notify the Grievants of the consequences of their actions, because Hanson never told them not to carry out their stated intentions of signing each other's name nor did she tell them that they could be disciplined for such conduct. The Grievants discussed signing each other's name in Hanson's presence and she laughed about it. If she had told them to sign their own names, they would have done so. The Union submits that the Employer would have the Arbitrator believe that the Grievants did not come clean in this case. However, the Grievants informed Gram that

they acted as each other's agent when signing the procedural change and submitted a written explanation. But the matter got out of hand when the Employer accused them of committing a felony.

The Union asserts that the Employer has not given equal treatment to the Grievants. Clerks have signed Crime Information Bureau reports with the knowledge that work is not accurate, under the direction of supervisors. Gram was elusive regarding other disciplinary actions given to other employees. There are several situations where employees sign other employees' names, such as job postings and overtime opportunities. While the Employer tries to justify the importance of signing internal procedural changes, some are posted on a bulletin board or put in a memo to employees or put in the policy manual.

Mallegni, as Union President, fell victim to anti-union animus, says the Union. Gram stated that she could set a dangerous precedent in this case in her capacity as Union President. Unfortunately, Zapp went along for the ride. The

Union finds it ironic that when management updated the procedure that started this mess, employees were not required to sign an acknowledgement of the updated change. Zapp found that the procedure did not work when she was training new employees.

Finally, the Union asserts that the suspension is not justified even if the Employer has just cause for discipline. The Grievants have clean work records, and complied with instructions to re-sign the acknowledgement forms as well as provide a written explanation. The documents were internal procedural changes, and the penalty does not fit the crime. The Union asks that an oral reprimand be issued instead.

The Employer:

The Employer asserts that the Grievants' actions were a slap at management's face and an attempt to embarrass and ridicule management. The Grievants admitted that they signed each other's name to procedure acknowledgement forms, which are the documents that management relies upon to show just cause for discipline, in that the employees had notice of the department's rules and policies and procedures. Moreover, the Employer gave forewarning of possible disciplinary consequences, based on both the policy manual itself as well as Hanson's comment that the Grievants' conduct would probably get them in trouble. The rule forbidding false entries in official records and forbidding untruthfulness are directly related to maintaining credibility and integrity of records of two major law enforcement agencies.

The Employer maintains that the investigation was conducted fairly and objectively, the Grievants were given a chance to give their side of the story, and there was substantial evidence that they were guilty. The fact that they later claimed they were acting as agents of one another was not reflected in their signatures nor communicated to management through their signatures.

The Employer objects to the Union's reliance on Crime Information Bureau reports as being irrelevant and full of hearsay problems. Records Manager Markowski provided a reasonable and credible explanation for the manner in which these reports were signed and sent to the state, and the state was aware of the practice the agency was using in compiling the reports. Also, the lack of an acknowledgement form to be signed in an updated memo is irrelevant to this case. The Employer takes offense to the Union's suggestion of anti-union animus, and states that to suggest that there is anti-union animus in Kenosha County government "is a little bit like suggesting that down deep the Pope is really a die-hard atheist."

The degree of discipline was reasonable because the Grievants compromised the integrity of the Employer's operations and the Grievants fail to appreciate the gravity of their acts. Furthermore, it is not just a question of honesty but also a slap at management. The Employer would ask the Arbitrator to consider such matters as: was the acknowledgement form a necessary document important to management; can management tolerate a departure from the practice of having employees sign their own names; what was the intent of the Grievants' actions; were other avenues available to the Grievants to voice their concerns, etc. Finally, the Employer asks that the Arbitrator not substitute her judgment without evidence that the Employer abused its discretion. The Employer concludes by noting that labor-management relations have degenerated to the lowest level, and wishes that an arbitrator could craft a remedy that heals rather than divides.

In its reply brief, the Union shares that wish.

The parties' briefs were exceptional in their content and style.

DISCUSSION:

The collective bargaining agreement provides in Section 1.2 that the Employer has the right to suspend or discharge or discipline for just cause. Under that same section, the Employer has the right to adopt reasonable rules and regulations. The labor contract states in Section 3.5 that employees may be disciplined for violation of work rules, but only for just cause and in a fair and impartial manner. The Employer's policy manual states that employees may be disciplined for making a false statement or entry in any official records and untruthfulness, among other things.

The Arbitrator finds that there is just cause for discipline for two reasons: (1) the basic act of untruthfulness, and (2) insubordination.

There is an admission of the phony signatures. The Grievants try to justify their actions on several grounds, but the fact remains that when the Grievants were asked to sign their own names to an acknowledgement form, a simple statement that they had received the document of a procedural change, they did not sign their own names to that form. They signed each other's name. It was an untruthful act and it was meant to be so.

When the Employer realized that the signatures were not true, it was forced to wonder what other signatures might not be true and correct, and what jeopardy had the Grievants put the agency in. This particular Employer relies on the sanctity of its documents, and these Grievants know that.

Which brings me to one of the excuses used -- that Supervisor Hanson did not tell them not to do it, or did not warn them of the consequences. A supervisor does not have to tell employees not to do many things. Basic honesty is to be expected in the job. Must a supervisor say, -- here, sign these documents with your own name and not someone else's name? Must a supervisor tell an employee -- now, don't lie to me? I don't think so. The Grievants were well aware of the "mischief" of signing each other's name instead of their own. They knew it was wrong but they proceeded to do it anyway. Therefore, they took the risk of the consequences from their own misconduct. Blame cannot be shifted onto a supervisor under the circumstances of this case.

Even if the Grievants' version of Hanson's conduct were accepted, Hanson never put her stamp of approval on their statements about signing each other's name. Hanson did not condone or acquiesce in the scheme. Mallegni said Hanson was treating them as misbehaving children. The key word here is "misbehaving." The Grievants are not children. They have both worked for Joint Services for

about 10 years or more. They know that they might be called to testify in court regarding records they help to maintain. They fully understand the special interest their employer has in the integrity of its records.

The fact that both Zapp and Mallegni authorized each other to sign the other one's name to the acknowledgement form has no bearing in the determination of just cause for discipline. It may have some bearing in some other forum, but the issue before the Arbitrator is not whether the Grievants committed an act of forgery, but whether ultimately there was just cause for discipline. The Employer was not aware of them signing as agents, because the signatures did not say "as agent for" so and so.

The fact that a steward may sign the names of employees for job postings in their absence is not relevant. The contract provides for this. And the Employer has an accepted past practice of allowing employees to sign others up for overtime. Neither of these two situations absolves the Grievants for signing each other's name on documents which clearly asked for their own signature as an acknowledgement of receipt of documents.

The way the Employer handles Crime Information Bureau validation reports is also not relevant. The employees sign their names to the reports with the permission and direction of management to do so. The Union attempts to show that employees have signed these reports with the management's knowledge that the reports are not "truthful" or accurate. The "misrepresentation" to the state is thus condoned by management. However, the Employer and the state have apparently discussed the problem in validating all the items asked for, and both parties have agreed that the agency's ongoing effort to update its records is sufficient and reasonable. Nothing here would condone the Grievants' action in signing each other's name to documents.

Not much needs to be said regarding the Union's allegation of unequal treatment or anti-union animus. Zapp and Mallegni got identical suspensions, although Zapp holds no union office. There is no evidence that Mallegni was considered a trouble maker due to her union activities. Her insistence that policy be handled in the manner in which she suggested caused the trouble, not any union activity. There are no other cases with comparable conduct in order to determine whether all employees would have received the same discipline for the same type of conduct.

The documents containing computer instructions or commands for printing warrant labels and jail filing labels are not the type of important public documents which the Employer keeps for law enforcement purposes. Neither are they sign-up sheets for a picnic. They are part of the procedures kept by the Employer in its regular business. The fact that they are not significant public documents, and the fact that the instructions in them were wrong, have no bearing on this case. The Grievants are not being disciplined for their lack of the knowledge in these documents -- they are being disciplined for signing each other's name to the acknowledgement form.

Neither the Grievants nor the Union seem to understand this point. Mallegni testified that she was being "hung out to dry" for a procedure that was not correct, and the Union notes that Zapp found the error in the procedure when
training a new employee. The Grievants were not disciplined for their lack of knowledge of the procedures regarding warrant labels and jail filing labels -- they were disciplined for signing each other's name to the procedure acknowledgement form. The form asks employees to date and sign the form after reading it, and it states that the employees' signature will serve as acknowledgement that they have read and fully understand the procedure. The signature line starts: "I, _____ have . . ." The expectation is that

the person signing the form is the person identified as "I." The signing of someone else's name to the form was a dishonest act.

The credibility of the Grievants has been called into question. They do not seem to understand that this bit of "horseplay" amounts to a serious violation, where their initials and signatures are deemed important to their employer. Must the Employer now go back and analyze every initial and signature to insure that it is authentic, on either public documents or internal documents? While there is good reason to believe that the Grievants have not done this stunt in the past and will not in the future, the fact that they did it once raises questions about the Grievants' credibility with this Employer. This bit of horseplay, childish mischief, whatever you call it, gives the Employer just cause for discipline.

The real reason behind their conduct is more than horseplay. It is insubordination. It was a slap at management and it was meant to be so. The Grievants had complained about the amount of paperwork generated by these policy and procedure updates, along with separate sheets of paper for acknowledging them. They suggested a less cumbersome method. Management did not agree. The Grievants did not like the response management gave about their suggestion of having all employees initial one sheet of paper, and they responded by trying to show management that someone could sign someone else's name as easily as someone could sign someone else's initials. In other words, they wanted to show management what was wrong with its reasoning.

In fact, they continued to object to management's reasoning in their letter of explanation regarding their own misconduct. Instead of explaining their misconduct, they continued to object to the current method of acknowledging changes and continued to push their position in the April 26, 1993 letter of explanation.

It is admirable for public employees to attempt to save paperwork and money. The Grievants may have good ideas and the agency may be well served by listening a little. However, the manner in which the Grievants continued to push their ideas is what put them in trouble.

When Markowski responded, apparently through Contrearas, that she did not like the idea of all employees initialling one sheet because people could sign other people's initials, the Grievants were a bit stunned because of the work they do that gets initialled. But the Grievants never went to Markowski to get her reasoning straight from her or to debate the point with her. Instead, they decided to show management that its reasoning was faulty -- by signing each other's name to the acknowledgement forms.

This was clearly an insubordinate and defiant act designed to object to management's policy and the refusal to change its policy. It was a slap at management's face, as if to say, you're stupid and here's why. Even if the Grievants' idea was wonderful and management's response nonsensical, the Grievants' response was inappropriate and insubordinate.

There is just cause for discipline. The only question left is whether the disciplinary action of a five-day suspension was appropriate under all the circumstances. I find that it is.

If the Grievants had signed each other's name on the more critical public documents kept by the Employer, the records with which it is charged to keep for law enforcement agencies, the Grievants could have been discharged, and such discharges would most likely have been upheld.

Therefore, it is not outside of the realm of reasonableness for the

Employer to impose the disciplinary measure of a suspension upon the Grievants for their conduct regarding documents of lesser importance. While a five-day suspension might not have been my first choice, it is not necessarily out of the realm of reasonableness, once having determined that some discipline is appropriate and that a suspension of some sort is also reasonable. Should the Arbitrator be now second-guessing whether a one-day, two-day, three-day suspension is more appropriate than a five-day suspension? While the Union prefers an oral reprimand if any discipline is imposed, it is reasonable for the Grievants to serve a suspension, and a five-day suspension is reasonable under all the facts and circumstances.

An arbitrator should not second-guess every disciplinary action taken by an employer. If arbitrators were to always impose their own idea of the appropriate discipline when discipline is in fact warranted, unions would take every disciplinary case to arbitration, hoping to get a reduced penalty. The discipline should stand, unless it is clearly excessive, unreasonable, or management has abused its discretion.

The parties ask for some wisdom from the Arbitrator in fashioning a remedy that heals rather than divides....would that she had such wisdom.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 27th day of July, 1994.

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