BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DODGE COUNTY

and

DODGE COUNTY HEALTH FACILITIES EMPLOYEES UNION, LOCAL 1576, AFSCME, AFL-CIO

Case 189
No. 50792
MA-8386

Appearances:

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, WI 53202-3101 by **Mr. Roger E. Walsh**, Attorney at Law, appearing on behalf of Dodge County.

Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 944, Waukesha, WI 53187 by **Mr. Sam Froiland**, Staff Representative, appearing on behalf of Local 1323-A.

## Arbitration Award

Dodge County (hereinafter referred to as the County) and Local 1323-A, AFSCME, AFL-CIO (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute over a change in training reimbursement policies. The undersigned was designated. A hearing was held on August 4, 1994 in Juneau, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted post-hearing briefs, and reply briefs. The reply briefs were exchanged on October 21, 1994, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the undersigned makes the following Award.

### I. Issue

The parties stipulated that the following issue was to decided herein:

"Did the County have the appropriate cause under the collective bargaining agreement to discharge the grievant on December 30, 1993? If not, what is the appropriate remedy?"

## II. Relevant Contract Language

### ARTICLE III
### MANAGEMENT RIGHTS

Except as hereinafter provided the Employer shall have the sole and exclusive right to determine the number of Employees to be employed, the duties of each of these Employees, the nature and place of their work and all other matters pertaining to the management and operation of the facilities including the hiring, promotion, transferring, demoting, suspending or discharging for cause any Employee. This shall include the right to direct and assign Employees, to schedule work and to pass upon the efficiency and capabilities of Employees and the Employer may establish and enforce reasonable work rules and regulations. Further, to the extent that the rights and prerogatives of the Employer are not explicitly granted to the Union or Employees, such rights are retained by the Employer. However, the provision of this section shall not be used for the purpose of undermining the Union or discriminating against any of its members.

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### ARTICLE XIV
### LEAVES OF ABSENCE

14.2 **Medical Leave**

14.21 An Employee who has exhausted his/her sick leave accumulation and is unable to return to work due to illness or injury shall be granted, upon written request accompanied by a doctor's or chiropractor's certification stating that the leave is necessitated by the disability of the Employee, a leave for a period not to exceed six (6) months.

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14.23 Employees on a medical leave of absence shall be entitled upon expiration of such leave to be reinstated to the position in which they were employed at the time the leave was granted.

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### ARTICLE XVII
### DISCIPLINARY PROCEDURES

17.1 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:

A. For the first offense, the Employee may receive an oral written warning, not to be placed into any personnel file.

B. For the second offense, the Employee may receive a written warning to be placed into the personnel file.

C. For the third offense, the Employee may be subject to disciplinary action.

D. For the fourth offense, the Employee may be subject to further disciplinary action, including discharge.

17.2 The above sequence of disciplinary action shall not apply in cases which Management feels are just cause for suspension or immediate discharge.

17.3 A disciplined Employee may appeal a demotion, suspension, discharge or written reprimand taken by the Employer beginning with the third step of the grievance procedure except that oral/written warnings shall begin with the first step of the grievance.

17.4 Notices to the Employees regarding this procedure shall be in writing with a copy provided to the Employee and the Union President.

17.5 **Community Health Center Employees**: Any disciplinary action sustained in the grievance procedure, or not contested, shall be considered a valid action. All documentation of such action will be removed from the Employee's personnel file at the end of a six months period and will no longer be considered valid, with the exception of those actions relating to resident care. These shall be retained in the Employee's personnel file for a period of nine (9) months and will then no longer be considered valid.

**Clearview Nursing Home Employees**: Any written notice sustained in the grievance procedure, or not contested, shall be considered a valid warning. No valid warning shall be considered effective for longer than a nine (9) month period.

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**II**I. Background

The County operates the Dodge County Health Facilities. The Union represents the non-exempt employees at the facilities, other than the clerical employees at the Clearview Nursing Home. From April of 1984 until her discharge in December of 1993, the grievant, Penny Rueckert, was employed at the Health Facilities. At the time of her discharge, she was working in the environmental services department.

The County has a sick leave policy, which requires a call-in at least one hour before the start of the first shift and two hours before the second and NOC shifts. It also requires a doctor's slip for absences of more than 3 days, use of leave for family illness and where the employee has no sick leave. When an employee has no sick leave, he or she may seek a medical leave of absence. The policy for medical leaves requires that the employee submit a form requesting the leave, together with a physician's statement verifying the illness. The request form is completed by the employee and is on the front of the page, and the physician's statement is on the back of the page. The written policy requires that the form, including the physician's statement, must be submitted in advance. Prior to August of 1992, the County had been lax in requiring advance approval of leaves. That summer, the County posted a notice announcing that, as of August 1st, there would be strict enforcement of the advance approval requirement. The full policy was posted throughout the Facilities in October of 1992, and an in-service was held on the topic of medical leaves, call-ins and absenteeism on November 18, 1993. The grievant was in attendance at the in-service.

In practice, the County allows employees to submit the medical leave request form before the end of their first regular shift of absence. The County also allows employees who cannot secure a physician's statement before the end of their shift to submit the written request pending a later submission of the doctor's slip. The County treats failure to secure a leave in accordance with the procedures as an unauthorized leave under its absenteeism policy. The absenteeism policy imposes progressively more severe discipline for each incident of unauthorized absence in a six month period -- an oral warning for the first, a written warning for the second, a final written warning for the third, and a discharge for the fourth.

The grievant worked the morning shift, from 5:30 a.m. to 2:00 p.m. as a housekeeper. On October 20, 1993, she called in at 7:15 a.m. to say that she was out sick. She was given an oral reminder (the first step in the progressive discipline cycle) that the Facilities' Absenteeism Policy required a call-in one hour before the shift if an employee was going to be absent. She did not grieve the reminder.

On Wednesday, November 17th, she asked to have her schedule changed, explaining that the weekend of November 20-21 was the opening of deer hunting, and that she did not have a babysitter to stay with her children. She said that she had no leave time, and that if her request was denied she would have to call in sick. Her request was denied, and she said that she would do what she had to do. On the 20th, she left work at 6:36 a.m., explaining that her child had called and was ill. She called in the next day, and said that she would not be in because her child was still sick.

On December 6th, the grievant had a meeting with County officials over her absences in November. She explained that her son had called twice to say that her daughter was vomiting all over the floor, and that when she got home, she found that her daughter was indeed very ill. She was given a written warning for her absence on November 20th and a final warning for her absence on November 21st. The warnings cited the denial of her request for time off on those days, and noted that this was a specific example of sick leave abuse cited in the Absenteeism policy. They required her to provide doctor's slips for any absences in the next six months, and cautioned that a future occurrence could lead to "[possible] further discipline in accordance with County policy and Union contract, which can include suspension or discharge." She was also given forms for physician's statements for future absences, leave of absence forms, and a copy of the County's absenteeism policy. Mark Luebke, the Personnel Specialist responsible for the Health Facilities, also discussed the absenteeism policy with her. No grievance was filed over these warnings.

On December 29th, the grievant called in before the start of her shift, and said that she would not be in due to illness. Since she had only one hour of sick leave, she knew that she had to secure a medical leave of absence. At between 9:00 a.m. and 9:30 a.m., she called Mark Luebke and said she wanted to be sure she knew the exact requirements for the leave. He told her that she needed to submit the request form by 2:00 p.m. She told him that she had a doctor's appointment in the afternoon and would be unable to provide the doctor's statement by the end of the shift. Luebke told her to submit the first page before the end of the shift and bring in the doctor's slip later.

At 2:00 p.m. Luebke called the grievant's supervisor to check whether the grievant had submitted her request. He was told that she had not. When he came in to work the next day, he found the form waiting for him. His secretary had noted the time of receipt as 2:45 p.m.

Later on the 30th, Director of Environmental Services Gerald Schoppe phoned the grievant, and told her that her request for a medical leave had been denied because she failed to follow the proper procedures, and that she was being discharged for the unexcused absences following on the heels of a final warning, and because of her "use patterns", "abuse of accrued sick leave", and "work history". She responded that her doctor's appointment wasn't until 2:00 p.m., and Schoppe told her that she should have brought in the request form as she had been instructed. The instant grievance was thereafter filed, challenging the discharge. It was not resolved in the lower steps of the grievance procedure, and was referred to arbitration. At the hearing, in addition to the facts stated above, the parties presented evidence that the absenteeism policy had been discussed with the Union before its implementation in February of 1993, and that the Union did not raise any objections to its reasonableness at that time. They stipulated that another employee had requested a medical leave in October of 1993, submitting the form before the end of her first shift of absence. The Union presented the testimony of another employee who submitted a request in February of 1994, and was allowed to present it after the end of her first shift covered by the leave. That employee was granted the leave. The parties also stipulated that a third employee had been discharged for calling-in less than one hour before the beginning of his shift while he was on a final warning.

Additional facts, as necessary, will be set forth below.

## IV. Arguments of the Parties

### A. The County's Brief

The County takes the position that it had just cause to discharge the grievant. Analyzing the case by using the seven questions posed by Arbitrator Daugherty in his famous Enterprise Wire Co. award (46 LA 359 (1966)), the County argues that the grievant was amply forewarned of the consequences of excessive absenteeism, because of the numerous postings and wide distribution of the policy, the training program for all employees on the terms of the policy, and her own personal experience with absenteeism. The grievant had previously submitted timely requests for leave, and was given one-on-one counseling on the policy when she was discipline on December 6th, less than four weeks before her discharge.

The County asserts that the policy is reasonable, since it is clearly related to the business purposes of the County and establishes objective standards for handling employee absences. The County has a responsibility to provide care for its residents, and regular attendance by its employees is a necessary prerequisite for the provision of that care. The objective standards used by the County in administering its policy are similar to those which have been upheld as reasonable in countless arbitration awards. These standards were reviewed by the Union, and the County notes that no challenge was ever lodged to the reasonableness of the policy.

The County's disciplinary actions was undertaken on the basis of objective evidence that the grievant was in violation of the absenteeism policy. The grievant had been disciplined three times before for violations of the policy, and the fourth violation on December 29th was the occasion for imposing the discharge. This is consistent with the progressive discipline provisions of the collective bargaining agreement.

The County asserts that it acted in a fair and non-discriminatory manner when it imposed discipline on the

grievant. The whole purpose of clarifying the need to submit leave requests prior to the end of the shift on the first day of leave was to avoid confusion and suspicions of favoritism. The County has strictly enforced the policy since its adoption, including discharging one employee who called in sick 45 minutes prior to his starting time, rather than one hour as required by the rules. The Union provided no evidence to suggest that any similarly situated employee had ever been treated differently than the grievant.

The penalty of discharge was, the County argues, reasonably related to the grievant's conduct, since a fourth violation requires discharge under the terms of the policy, and since discharge is contemplated for a fourth offense under the progressive discipline provisions of the contract. The grievant's long history of absenteeism and sick leave abuse aggravated her offense, and provided further support for the decision to discharge her. The County notes that she was a ten year employee, but had no accumulated sick leave when she was fired.

For all of these reasons, the County asks that the grievance be dismissed.

B.The Union's Brief

The Union takes the position that the County's medical leave policy as applied in this case is unreasonable and inconsistent with the terms of the contract. The grievant cannot reasonably have been expected to comply with the demand that her completed leave request form be submitted before the end of the shift, since the form calls for a physician's statement and she was unable to get a doctor's appointment until 2:00 p.m. on the 29th, the same time that her shift ended. Although the County claimed at hearing that it would have accepted partially completed forms, and would defer decision until later receiving the doctor's statement, that position is not reflected by the language of the policy, nor is it sensible in the grievant's case. The grievant was very ill, with a doctor's statement confirming her flu-like symptoms. In order to partially complete the form, and then submit the doctor's statement, she would have been required to take two trips from her home in Beaver Dam to the County offices in Juneau, rather than simply waiting until after her appointment to submit the complete form. Given her illness, the County's insistence on having the form before the end of the shift rather than 45 minutes later is patently unfair.

While the requirement that a leave request form be submitted prior to the end of the shift is workable in those instances when an employee becomes ill at work, it breaks down where an employee becomes ill or is injured while off the job. In a subsequent case involving a request by an employee who was away from work when the need for a medical leave request became apparent (to extend a leave covered up to that point by accumulated sick leave), the County allowed the employee to submit the form through another employee the day after the leave commenced. That employee, like the grievant, had informed the supervisor beforehand that a leave was necessary and, like the grievant, submitted the request promptly but not by the end of the shift. Unlike the grievant, that employee was not disciplined. This inconsistency demonstrates the County's own understanding that its policy is not workable or fair when applied to employees who are already sick and away from the job site.

The Union rejects the County's claim that the grievant engaged in sick leave abuse, asserting that there is no credible evidence to support the charge. While the grievant had no accumulated sick leave, the record shows that she had suffered a series of legitimate medical problems, including a car accident, stomach

surgery, ovary surgery, migraine headaches and on-going back trouble. These maladies, rather than any type of abuse, were the reason for her lack of sick leave accumulation.

Inasmuch as the County has failed in its obligation to establish "reasonable" rules, and because the punishment in this case is so clearly out of proportion to the 45 minute delay in submitting the request form, the Union asks that the grievant be reinstated and made whole for her losses.

C. The County's Reply Brief

The County argues in response to the Union that it too late in the day to raise a challenge to the reasonableness of the absenteeism and medical leave policies. The policies were discussed with the Union before they were implemented, and the Union never raised any question of reasonableness. As noted in the County's original brief, the objective standards employed in its policy have been found reasonable in past cases, and the Union cites no authority for its belated challenge to the policy.

Contrary to the Union's arguments, the County asserts that the grievant had alternatives available which would not have required her to personally appear twice at the County's offices. Employees had been given the County's fax number, and also had the option of having a co-worker bring in the form. The County has allowed the submission of partial forms in those cases where a doctor's statement could not be secured before the end of the shift. Thus the grievant had options that she chose not to take advantage of, and her choice to proceed in the most difficult manner does not somehow make the policy unfair or unreasonable.

The County urges that the arbitrator disregard the Union's attempt to show an inconsistent application of its policies because the employee cited by the Union took her leave after the date of the grievant's discharge. The Union cannot use a single subsequent act to show disparate treatment or inconsistency. The County notes that the evidence concerning this subsequent leave request would have been excluded under the Federal Rules of Evidence, and argues that it should be disregarded by the arbitrator.

Finally, the County asserts that the Union may not attempt to explain away the grievant's past record of sick leave abuse, since it did not challenge the findings of abuse when discipline was imposed for them before this incident. The failure to grieve or challenge the discipline for sick leave abuse leaves the discipline subject to a conclusive presumption of validity, and the arbitrator must treat the grievant as a proven sick leave abuser in considering her discharge.

C. The Union's Reply Brief

The Union takes issue with the County's attempt to reinterpret the grievant's attendance record as abuse in

its brief, noting that if the County believed it was dealing with sick leave abuse, it should have acted when the sick leave was used. Throughout its brief, the County seeks to exaggerate and misrepresent the grievant's sick leave usage in order to make her appear to have been a bad employee. The record shows that she was simply an employee who suffered a series of health problems beyond her control.

The Union disputes the County's claim that it acquiesced in the absenteeism and medical leave policies, and somehow waived its right to challenge their reasonableness. The parties never contemplated a case in which the need for leave came up when the employee was away from the job, and the Union cannot have waived its right to challenge a situation that was never considered by the parties. Although a policy may be reasonable in the abstract, the Union notes that its application in any specific case must still meet the contractual requirement of just cause for discipline. That standard has not been met in this case, and the grievance should be granted.

## V. Discussion

The principal question in this case is whether the County's policies covering medical leaves and absenteeism are reasonable as applied to this grievant's request for leave on December 29th and 30th. 1/ It is clear that the grievant failed to follow the existing policy for requesting a medical leave, in that she submitted her request after the end of her first shift of absence, even though she knew what the policy was and had been specifically instructed earlier in the day to bring in the first portion of the leave request form before 2:00 p.m.

The County has the right, under the Management Rights clause, to "establish and enforce reasonable work rules and regulations". By implication, the County may not enforce unreasonable rules and regulations. While the Union challenges the reasonableness of both the absenteeism and medical leave policies, the absenteeism policy itself is only tangentially at issue. It was the vehicle for the discharge, because the failure to comply with the medical leave policy triggered an unauthorized absence and, being the fourth incident in six months, yielded a discharge. The text of the relevant portions of the absenteeism policy are not, on their face, unreasonable. The four step discipline procedure tracks the progressive discipline provisions of the contract, and the imposition of discipline for an unauthorized absence is hardly novel. The question here is what constitutes an unauthorized absence, and the dispute is actually over the requirement in the medical leave policy that the request for a leave be submitted before the end of the first shift of absence if an unauthorized absence is to be avoided.

The County's unilateral policy establishes the procedures by which Article 14.2 of the collective bargaining agreement will be implemented. That provision establishes the right of employees who are out of sick leave to seek an unpaid medical leave of absence:

> 14.2 **Medical Leave**
>
> 14.21 An Employee who has exhausted his/her sick leave accumulation and is unable to return to work due to illness or injury shall be granted, upon granted, upon written request

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1/ While the County mentioned a pattern of sick leave abuse as an aggravating factor, that issue is not presented in this grievance. At the hearing, the County objected strongly to the Union's attempts to draw the grievant's previous disciplines into question, asserting that her failure to grieve them acted as a waiver of a challenge at this point. I agreed with the County's position at the hearing. The County's belated effort to show a pattern of sick leave abuse by this grievant falls into the same category. If the County believed that certain of the grievant's leave usage demonstrated abuse, it should have disciplined her for it at the time the pattern became apparent and given her a chance to challenge their conclusion through a timely grievance. It cannot now look back and attempt to prove abuse as an add-on to this case. The precipitating event for the discharge was a failure to follow procedures for requesting a medical leave, resulting in an unauthorized absence while on final warning. There has been no allegation of sick leave abuse on December 29th and 30th, and there is no proof of such abuse.

> accompanied by a doctor's or chiropractor's certification stating that the leave is necessitated by the disability of the Employee, a leave for a period not to exceed six (6) months.

The contract is silent as to the procedures for securing the leave of absence. There is a right to such leaves where a written request is submitted and a medical professional has certified the necessity of the leave. The County has the right to flesh out this provision so long as its procedures are not so onerous or restrictive as to defeat the underlying benefit.

In most cases, a requirement that the request for a medical leave be submitted by the end of the first shift for which the leave is effective is not unreasonable. The language of the contract suggests that the parties were primarily concerned with illnesses or injuries where the recovery period is of some length, and sick leave becomes exhausted during the course of the recovery (i.e. "..is unable to return to work"). Normally the need for a medical leave would be apparent before the sick leave bank was exhausted, and advance submission of the request would not be a problem. The parties have also used this provision for shorter term illness where employees do not have enough sick leave to cover a day or two for unanticipated illnesses. If the employee is at work and becomes ill, he or she may complete the first portion of the form before leaving. The employer's written policy does not accommodate such situations since a doctor's statement could not be secured before the leave, but the policy as it is understood by the employees and administered by the County allows for later submission of the doctor's statement so long as the request form is brought in before the end of the first shift of absence. Again, in the overwhelming majority of cases, this would not be a problem, and is not an unreasonable requirement.

The reasonableness of the deadline for submission does become more questionable where the employee suffers an unanticipated illness or injury while away from the jobsite. The Union correctly notes that an employee may be so incapacitated by illness or injury that she will be unable to submit the form before the end of the shift. To take an extreme example, an employee who is seriously injured in a traffic accident on the way to work will probably be in no condition to bring or fax a leave request to the County. In such a case, the County could not discipline the employee for her failure to comply with the letter of the rule, so long as she fulfilled her obligations as soon as possible afterwards. In the example cited, it is not the rule itself that is unreasonable, but the strict enforcement of the rule. This does not invalidate the rule, but it does allow an employee, on a case by case basis, to be excused from strictly complying with her obligations due to impossibility of performance.

Having determined that there may be circumstances in which an employee may be excused from strict compliance, it must be said that there is nothing in this record to suggest that the grievant could not reasonably have submitted her leave request by 2:00 p.m. on December 29th. She was suffering from the flu, but was able to make the trip from her home in Beaver Dam to the Health Care Facilities in Juneau. She simply chose to make the trip after her doctor's appointment rather than before, so that she would not have to make arrangements for the doctor's statement to be submitted separately. This may have been a more efficient and convenient course of action for her, but for someone who was on final warning for absenteeism, knew that discharge was the next step, understood that 2:00 was the deadline under the policy, and had been specifically ordered earlier in the day to bring the request in by 2:00, it was not a wise choice.

At a minimum, if the grievant wanted to submit the form after 2:00 p.m. to eliminate the inconvenience of submitting the doctor's slip later, she should have contacted the County to persuade them to make an exception. She said that she tried to call Mark Luebke, but found that he was gone for the day and his answering machine was on. She did not leave a message. Luebke testified that he left his office at 2:00 p.m. after checking to see if the grievant had submitted her leave request on time. Even assuming that she did call before 2:00 p.m., when she failed to reach Luebke she had the option of calling her

supervisor or someone else in a position of authority. The obligation to act reasonably runs both ways, and given where the grievant stood under the absenteeism policy, her decision to ignore both the medical leave policy and Luebke's instructions seriously undermines her challenge to the reasonableness of the County's actions.

At the time of this incident, the grievant was subject to discharge under the absenteeism policy for a further unauthorized absence, and she knew that failure to submit the leave request form before the end of her shift would result in the County charging her with an unauthorized absence. She knew and understood the policy on medical leaves, was capable of complying with it, and chose not to comply. The County's decision to discharge her for being forty-five minutes late with her request is rather hard-nosed, but the County has the right to insist on compliance with the rules rather than treating them as mere suggestions open to ad hoc reinterpretations by each employee in each instance. The sole factor mitigating in favor of the grievant is the case of Cheryl Lininger, an employee who, six weeks after this discharge, submitted a leave request after the end of the first shift for which leave was required and was not charged with an unauthorized absence.

At the hearing, the Union presented Lininger's testimony over the vigorous objections of counsel for the County. In admitting the testimony, I cautioned that I did not view an after-occurring incident as relevant to an argument of inconsistent application, nor one occurrence as persuasive proof of a pattern of disparate treatment. On reflection, I believe that I erred in suggesting a blanket principle of finding after-occurring events irrelevant. Certainly something that happens after a discharge cannot be introduced to show that a grievant was misled about the meaning of a policy or a rule. Neither would it have relevance if the issue was the existence, at the time of the grievance, of a custom or past practice. An after-occurring event, reasonably close in time to the discharge may, however, raise questions as to whether the grievant was subjected to discriminatory treatment. Even though it is but a single case that raises the question, the County has some obligation to explain the disparity in the treatment.2

Lininger was out with bronchitis, influenza and an adverse reaction to medication from January 30th through February 9th. While she had originally anticipated a return to work by the 7th, the reaction to the medication required an extension of the leave. She had already called in sick for the 7th, and went to the doctor on that day for a change in the medication. After seeing the doctor and having him complete a slip for her, she called into the County to inform them that she would need some additional time, that she had already seen the doctor and that she had obtained a certificate from him. When she called in, she spoke with Mark Luebke, who told her that she would run out of sick leave that day and would need to request a medical leave. Luebke told her to get the form in before the start of her shift on the following day. She gave the form to a co-worker, who dropped it off before the start of the shift on February 8th. The leave was granted.

It is a familiar axiom that similarly situated employees who engage in the same conduct cannot be treated differently for disciplinary purposes under a just cause standard. I cannot conclude that the grievant and Lininger were similarly situated. Lininger was out for over a week with what had already been certified as a legitimate medical condition and the additional leave time was necessitated by the unanticipated continuation of this illness. Luebke knew this when he spoke with Lininger. She was not aware before calling Luebke that she needed a medical leave for that day. When told what had to be done to secure the leave, she complied with Luebke's instructions. The County could reasonably have viewed her request as

posing much less of a prospect for abuse than the grievant's, both because of the known duration of the illness to that point and the fact that a doctor's excuse was already in hand.

The grievant had been disciplined for sick leave abuse twice a month before this request, and was calling in sick for the day. She had not yet secured any medical verification of the illness when she called Luebke. In contrast to Lininger, she was well aware of her need for a medical leave and checked on what precisely would be required. Despite being at the brink of discharge for her attendance record, she then ignored those instructions.

The evidence establishes that zeroing out a sick leave bank is not an unusual occurrence for employees at the Dodge County Health Care Facilities, and that medical leaves are regularly utilized. The single instance in which an employee was allowed to secure a leave which was retroactive to a portion of the preceding day raises questions about the County's course of action in this case. On balance, however, there are sufficient grounds for distinguishing between the circumstances of the grievant's request and those of Lininger's to preclude a finding of discrimination or disparate treatment in the County's refusal to grant a leave to the grievant on December 29th.

On the basis of the foregoing, and the record as a whole, I have made the following

**AWARD**

The County had just cause to discharge the grievant. The grievance is denied.

Signed this 3rd day of March, 1995 at Racine, Wisconsin:

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator