BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LOCAL 310, AFSCME, AFL-CIO

and

RACINE COUNTY

Case 162
No. 52839
MA-9123

Appearances:

Mr. John P. Maglio, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 624, Racine, Wisconsin 53401-0624, appeared on behalf of the Union.

Mr. Victor J. Long, Long & Halsey Associates, Inc., 8338 Corporate Drive, Suite 500, Racine, Wisconsin 53406, appeared on behalf of the County.

ARBITRATION AWARD

On July 7, 1995, the Wisconsin Employment Relations Commission received a joint request from Local 310, AFSCME, AFL-CIO and Racine County to appoint William C. Houlihan, a member of the Commission's staff, to hear an arbitration pending between the parties. On July 31, 1995, the Commission appointed the undersigned to hear and decide the matter. An evidentiary hearing was conducted on October 11, 1995 in Racine, Wisconsin. The proceedings were not transcribed. Briefs were submitted and exchanged by November 14, 1995.

This arbitration addresses the discharge of employe Laura Andreucci.

BACKGROUND AND FACTS

Prior to her discharge on January 5, 1995, Laura Andreucci had been employed by the Racine County Ridgewood Care Center since May, 1990 as a Licensed Practical Nurse. Andreucci was discharged for a number of incidents which occurred immediately prior to January 5, all of which are outlined in her discharge letter, which is set forth below. It was Andreucci's uncontradicted testimony that she had not previously been disciplined for any of the offenses or kinds of offenses, which led to her discharge. It was the testimony of Brenda Danculovich, Ridgewood Administrator, that Andreucci had been previously disciplined, and that she was, at best, an average worker.

The first incident contributing to Ms. Andreucci's termination occurred on the night shift of December 31, 1994, New Year's Eve. The evening of December 31st, Ridgewood Care Center had secured the services of Caroline Wieselmann, RN, a pool nurse. Ms. Wieselmann was the only registered nurse assigned to 2 West, Ms. Andreucci's work area. Ms. Wieselmann had brought food to work, left the food in the employe lounge, and had essentially sponsored an

informal party. Certain employes, excluding Andreucci, gathered around the food for some period of time that evening. During the course of this gathering, Andreucci approached Wieselmann and indicated that she had not gotten her previous break and that she intended to leave the floor early, in order to get dressed for her anticipated evening out. Wieselmann neither approved nor objected to Andreucci's remarks.

At approximately 10:50 p.m. Andreucci left her work area, went to the women's room, and dressed in evening attire. Ms. Andreucci remained in the women's rest room from 10:50 until immediately before her shift ended at 11:30 p.m.

Ms. Andreucci testified that she has previously combined breaks under circumstances where she was not able to get a scheduled break, but did so under circumstances where she asked and received permission. She also testified that a co-worker had previously changed her clothes at the end of her shift, beginning at approximately 11:15 or so. It was the testimony of all witnesses, including Ms. Andreucci, that employes are not free to use missed or skipped breaks in order to leave the facility early.

The second incident giving rise to Ms. Andreucci's termination occurred on January 1, the next day. On that date, Ms. Andreucci made a series of phone calls, two or three of which were deemed personal. Andreucci acknowledges making two personal phone calls, each of which she indicated lasted 15 minutes. The third call she indicated was to a co-worker, and the subject of the call was work-related. One of the phone calls was to Jay, who was employed by Roeschens, a food supplier to the Ridgewood Care Center. Jay is a personal friend of Ms. Andreucci and it appears that she asked Jay to bring her food for her meal break that evening.

It was Ms. Andreucci's testimony that she had previously placed and received personal phone calls in the presence of supervisory personnel. While these calls appear to have been of concern to supervisory personnel, Ms. Andreucci had not previously been disciplined for making or receiving these calls.

The third basis for Ms. Andreucci's termination essentially focuses on the Employer's belief that Andreucci usurped Ms. Wieselmann's supervisory authority on the evening of December 31. Wieselmann testified that early in the evening of December 31, Andreucci indicated that she was in charge, and thereafter directed others into work assignments. Wieselmann testified that she understood that in the absence of a Registered Nurse Supervisor, she was in charge but at times she worked under circumstances where she was not in charge. That evening, Donna Huff, the Registered Nurse Supervisor, was on call, but not physically present on the unit.

Andreucci disputes Wieselmann's characterization of the conversation, and instead indicates that she suggested a rearrangement of assignments. Andreucci claims that she suggested that due to her knowledge of the patients in the unit, it would be easier for her to do the charting work (normally that of a Registered Nurse) and for Wieselmann to assume her task of passing medicine. Sara Clay, a co-worker, testified on direct examination, that Andreucci told her to pass

medicine. This task was normally Andreucci's job, and Andreucci took on the charting work. On cross-examination, Clay attempted to recall the conversation that transpired, and testified as follows: ". . .Since you're new to the area and you're a pool. . .easier if I take the lead, and you pass meds. on one side and Sara the other. . ." According to Clay, the pool nurse agreed with this suggestion.

The second facet of the Employer's concern is a contention that Andreucci answered the phone "Laura Andreucci, RN Charge Nurse." Andreucci denies doing so. Nancy Kauffman, CNA, overheard this telephone conversation. At the evidentiary hearing, Kauffman testified that there was a pause after Andreucci gave her name but before she said "Charge Nurse, RN". She indicated she did not know the context, and admitted on cross-examination that someone may have asked an intervening question such as "Who's in charge?" Donna Huff testified that when Kauffman reported the incident, she did not report a pause.

The fourth basis for Ms. Andreucci's termination was Nurse Wieselmann's report that Andreucci instructed her to give Thorazine to a patient who had already received his medication. Wieselmann testified at the hearing that Andreucci instructed her to give a resident, who had been combative, medications. Upon checking the charts, Wieselmann discovered that she had previously administered the medication to that patient. Had the patient been remedicated, it would have constituted an overdose of the drug. Andreucci indicated that she was simply attempting to point out to Wieselmann that PRN authority existed for that patient and that medication was available should it be needed. When advised that Wieselmann had just administered the medication, she said "Okay."

The fifth grounds for termination occurred during Ms. Andreucci's meal break on the evening of January 1, 1995. In essence, the Employer's contention is that earlier in that evening, Ms. Andreucci talked to her friend Jay, and asked that he bring food for her later that evening. Later that evening when Jay showed up with food at approximately 9:15 p.m., Ms. Andreucci had left the facility to eat with another man. The staff remaining on the floor made excuses and covered for her absence. Shronda Green, the RN in charge, understood that Ms. Andreucci had left at 8:45, and was across the street eating dinner with another man at the time. Green told Jay that Andreucci was involved in an emergency, that Jay should leave, and that Green was being called to the same situation. Green thereafter walked Jay to the door, and returned to the floor. She paged Andreucci and got no answer.

Andreucci testified that she left the facility at 9:00 p.m. on her lunch break and indicated to co-workers that she was going across the street to the Olive Garden restaurant. She subsequently realized that she did not have time to eat at a restaurant and she ate with her friend in the parking lot, never leaving the facility grounds. She indicated that she returned at 9:45 p.m., that she realized that she was late, and that she apologized. Co-workers informed her of the Jay incident and all parties laughed about the incident.

Ms. Kauffman testified that she cannot recall anyone being reprimanded for taking an extended break. Ms. Clay testified that employes could extend and/or combine breaks with approval. Andreucci testified without contradiction that there was never a discussion of discipline nor was her conduct described as "disciplinable" on the evening of January 1.

The sixth, and final, basis for Ms. Andreucci's discharge occurred on the evening of January 3, 1995. It was the testimony of Kathleen Adi, RN in charge, that Jay from Roeschens arrived at the facility; that he and Ms. Andreucci met and that she thereafter left on break at 8:40 p.m. Ms. Adi testified that a patient call light went on on Ms. Andreucci's floor without response. Adi indicated that she believed Andreucci had previously taken her thirty-minute meal break. She testified that the call light went on at 9:10 p.m. and that Andreucci returned at 9:20 p.m.

It was Andreucci's testimony that Adi told her to take a break. Andreucci indicated that she had not previously had a lunch break, and that this break constituted her lunch break. Andreucci testified that Kathy subsequently called her in the conference room and told her to end her break.

Donna Huff conducted the investigation that ultimately led to Ms. Andreucci's termination. Huff did not talk with Ms. Andreucci during the course of this investigation. Following her investigation, Huff met with Danculovich and they determined that Andreucci should be terminated. Following that meeting on January 5, 1995, Andreucci, accompanied by Kauffman, her Union representative, was called in, advised that she was terminated, and provided the following document:

RACINE COUNTY
Employee Discipline Report

. . .

1. On 12-31-94, at 10:15 pm, you told the RN that since you hadn't taken any breaks, you would take the time to prepare for your evening out. Staff reported that you applied your make-up and changed clothes during work hours and that you were absent from your duties from 10:15 to 11:30 pm. This is unacceptable; you were unavailable to the residents on 2 West during your scheduled duty time. Breaks are to be taken as scheduled.

2. Also on that date, you spent at least 1/2 hour on personal telephone calls. Two calls were to your boyfriend and another call was to a girlfriend. This is against Ridgewood policy which prohibits use of facility phones for personal reasons. Calls are to be made on public phones during break times.

3. On 12-31-94, you directed the RN from Personnel World pool to take

another assignment so that you would act in the RN position. In fact, you answered the telephone: "Laura Andreucci, RN Charge Nurse". An LPN does not give an RN direction nor does an LPN state that she is an RN. You also changed Sara Clay's assignment to pass meds. You were practicing beyond the scope of your license.

4. You instructed the pool RN to give a PRN medication to a resident who had just received his 8 pm dose of meds which include Thorazine, 100 mg. The PRN med was Thorazine 100 mg. The RN refused to do that because the 8 pm medications had not had time to be effective and the PRN would have meant that he would be getting Thorazine, 200 mgs, all at once. This demonstrated poor clinical judgement and would have jeopardized the health of the resident.

5. On 1-1-95, you left the unit at 8:50 pm and did not return until 10:00 pm. You told the staff on the unit that you were going to eat with your friend, M. When you returned, you said that you had been at the Olive Garden eating ravioli. Your time card does not reflect that you left the building. This is time card fraud and grounds for termination. You also left the building without supervisory permission; this, too, is grounds for dismissal.

6. Finally, on 1-3-95, Jay from Roeschens came onto the unit at 8:30 pm. You were told to take a break at 8:40. You didn't return until 9:10 pm when the RN called for you to return to the unit.

Your conduct, behavior and performance as an LPN is unacceptable. You wantonly disregarded Ridgewood policies and professional practice. Your frequent absences from the unit placed a burden on your co-workers and endangered the safety of our residents.

Effective immediately, you are terminated from employment with Racine County.

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The termination was grieved and appealed through the grievance procedure, culminating in this arbitration step.

ISSUE

The parties stipulated to the following issue:

Did Racine County have just cause to terminate Laura Andreucci? If not, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE XVII

DISCIPLINE AND DISCHARGE

17.01 No employee who has completed his/her probationary period may be disciplined, suspended, or discharged except for just cause. If the employee believes that he/she was disciplined, suspended or discharged without just cause therefore, the case shall be treated as a grievance subject to the grievance arbitration provisions of the Agreement. In any such case, if the Arbitrator finds that the disciplinary action was not for just cause, he/she may revoke or modify the discipline or may reinstate the employee with or without backpay and seniority benefits in his/her discretion. A union representative shall be present at the time any employee is given notice of discipline or dismissal.

17.02 All warnings, including verbal warnings, shall be reduced to writing and a copy will be given to the employee and union representative. The County will furnish the Union with written notification of all suspensions, which will include the reason for the suspension. Written and verbal warnings, with the exception of those cases involving patient abuse, will be removed from an employee's records after two (2) years. The County recognizes the concept of progressive discipline. Any discharge or disciplinary action may be reviewed by use of the grievance procedure. Suspensions with the exception of those cases involving patient abuse, will be removed from an employee's personnel record after two (2) years if no further discipline (either formal or informal) were given to the employee for any related or non-related incidents.

POSITIONS OF THE PARTIES

It is the position of the County that the six specific rule violations leading to the County's decision to discharge Andreucci constitute just cause. With respect to the first grounds for discharge, the Employer contends that Andreucci was not free to leave the unit, to dress and prepare herself for an evening out. The Employer's brief points to the testimony of numerous witnesses who testified that it was inappropriate to skip and/or combine lunch and breaks to end a work shift early. The Employer denies that Andreucci could receive authorization from Wieselmann to leave her shift early. The Employer notes that Wieselmann indicated that

Andreucci told her that she (Andreucci) was in charge. Having asserted authority, Andreucci is not now free to take the position that she secured authorization from Wieselmann for her early departure. The Employer points to the ambiguous nature of Wieselmann's status as a pool nurse, and indicates that she was in no position to claim authority. The Employer acknowledges that its 10:15 reference was in error, and asserts that the violation continues to remain a serious one.

With respect to the second grounds for discharge, the Employer acknowledges that the date listed on the termination document was incorrect. The Employer maintains that the behavior outlined in the discharge document did occur, however, on January 1, 1995.

With respect to the third basis of discharge, the Employer relies upon Wieselmann's testimony that Andreucci indicated that she, Laura Andreucci, was in charge. Wieselmann indicated that as an RN she would normally be in charge except for the fact that Andreucci proclaimed herself to be so. The Employer contends that Kauffman's statement to the Employer relative to the telephone greeting contains no reference to a pause. The Employer points out that Kauffman was Andreucci's union representative during the disciplinary meeting, and speculates that Kauffman's union status may have been what prompted her memory of a pause in the telephone conversation. The Employer points to Wieselmann's testimony that there are times that LPN's are assigned Charge Nurse status.

With respect to the fourth incident leading to discharge, the Employer points to Wieselmann's testimony that Andreucci told her to administer a PRN medication of Thorazine. It is only through Wieselmann's diligence and double-checking the chart that a serious incident was averted. The Employer characterizes Andreucci's behavior as ordering a medication to be administered that may have done serious harm to a resident.

With respect to the fifth incident in the discipline report, the Employer points to the testimony of Shronda Green, RN who indicated that Andreucci left the unit at approximately 8:50 p.m. and told her, Green, that she was going on a lunch break. At about 9:15 p.m., Jay from Roeschens showed up on the unit with food for Andreucci. Green could not locate Andreucci. Another aide, Sara Clay, indicated that Laura was out in the car with another man. To avoid an incident, Green walked Jay out of the facility and upon her return paged Andreucci. There was no response to the page. Andreucci returned to the unit at approximately 10:10 p.m. and when questioned regarding her whereabouts, indicated she was across the street eating at a restaurant with another man. Green had performed two resident treatments that should have been done by Ms. Andreucci.

With regard to the sixth item contained in the disciplinary report, the Employer relies upon the testimony of Kathy Adi, the registered nurse who indicated that Andreucci left the unit at 8:40 p.m. and returned at approximately 9:20 p.m. The County acknowledges error in the termination document.

In the Employer's view, there are no mitigating circumstances that would reduce the discipline imposed. It is the view of the Employer that there are no due process issues pending before this Arbitrator. The parties stipulated that the issue for me was the existence of just cause for the discipline, and the propriety of the penalty. The contract itself provides for due process through the grievance procedure, and there are no other due process procedures specified in the Agreement. The Employer conducted an extensive investigation prior to reaching its decision, which also operates to refute any claim that the discharge lacked due process.

The Employer believes that discharge is appropriate because the very timing of the rules violations made it virtually impossible for the Employer to deal with them individually. All of the behavior complained of occurred within a span of three days over the New Year's holiday. It is therefore appropriate to examine the totality of incidents and conclude that discharge was the appropriate action. The Employer reasons that had these violations occurred over a longer interval, and been subject to a progressive discipline process, the final violations would have resulted in discharge. Finally, the Employer cautions me that leniency is a management, and not an arbitral, prerogative.

It is the position of the Union that the Employer lacks just cause. Andreucci was neither consulted nor advised that her behavior placed her job status in jeopardy. It was not until January 5, 1995, when she was advised that she was terminated, that she was ever apprised of the County's concerns. The Union contends that she had never been disciplined for like infractions in the past. The Union contends that Andreucci was terminated without the opportunity to answer the various charges.

With respect to the first charge, the Union contends that there exists a glaring discrepancy in that Andreucci left for break at 10:50 p.m. and not 10:15 p.m. as alleged. It was in the context of Wieselmann's New Year's Eve party for residents and staff that Andreucci advised Wieselmann of her intent to prepare for her own evening. Wieselmann did not deny Andreucci's request. Neither did Wieselmann indicate that the request was inappropriate. Andreucci indicated that, as in the past, and with full knowledge of the charge nurse, she was consolidating previously lost lunch break and lunch periods into a single break.

With respect to the second disciplinary charge, Andreucci testified that she had both received and placed personal phone calls in the past, with supervision present, and had not previously been disciplined. The Union points out that there is a factual error in charge 2 with respect to the date.

With respect to the third charge, Andreucci steadfastly rejected the accusation that she had ever identified herself as Charge Nurse. The Union points to Andreucci's testimony which was that she never told the pool nurse she was in charge, but rather, suggested changing routine to reflect her familiarity with the unit. The Union points to Wieselmann's testimony that she had previously worked at Ridgewood on ten occasions, and admitted that she knew RN's were in

charge when assigned to a unit. Wieselmann also admitted she knew that Andreucci was an LPN. The Union points to Kauffman's testimony that she heard a pause following Andreucci's answering the phone. The Union speculates that the caller may have been asking Andreucci who was in charge.

With respect to the fourth charge, the Union indicates that Andreucci never instructed the pool nurse to administer a PRN medication to the resident in question. It was her testimony that she regarded the resident to be in a combative mood and wanted to make sure the pool nurse was aware that Thorazine was available on a PRN basis. When the nurse told Andreucci she already administered the same, Andreucci acknowledged it, and said "Okay."

With respect to the fifth charge, Andreucci claimed she left for her break at 9:00 and not at 8:50 as charged. She did not punch out for lunch because she did not leave the grounds. Upon her return to her assignment at 9:45, not 10:00 p.m. as contained in the report, Andreucci realized that she had come back late and apologized. To make up for the misunderstanding, she skipped her second break. Green admitted that she did not threaten Andreucci with discipline or in any manner correct her.

With respect to the final charge, Andreucci met Jay at an entrance to the facility. Adi directed Andreucci to go on break. Andreucci advised Adi that she had not taken a meal break, and thereafter took her thirty-minute lunch break. The charge states her absence to be for thirty minutes, the length of her break.

The Union contends that the County's failure to afford the grievant minimal due process rights prior to termination constitute a fatal flaw in this termination proceeding. Many of the allegations contained in the discharge document are wrong. Andreucci offered reasonable explanations for others. The Union cites arbitral authority for the proposition that these due process failures invalidate the legitimacy of the discharge.

The Union argues that if grounds for discipline existed, a reprimand was the appropriate device. The Union points to 17.02 and the County's commitment to the concept of progressive discipline. There was no progressive discipline in this proceeding. Andreucci worked for the County for nearly five years when terminated. She had never, prior to January 5, 1995, been disciplined for the violations alleged in the employe discipline report. The Union contends that Andreucci had to be put on notice that her conduct was unacceptable prior to summary discharge.

DISCUSSION

Laura Andreucci was terminated for her cumulative behavior spanning an approximate four-day period. Some of her actions and behavior during this time frame were inappropriate, less than could reasonably have been expected, and disciplinable. However, I believe discharge was

too severe a sanction for the conduct proven. I further believe this discharge is inappropriate for a lack of progressive discipline and for the failure to confront Ms. Andreucci with the charges and afford a reasonable opportunity for explanation, prior to discharge.

The Employer relies upon six incidents to support its determination to discharge. They shall be dealt with individually. The first allegation is one of the more serious. In essence, it contends that Ms. Andreucci abandoned her work to leave early. A number of witnesses, including Ms. Andreucci, testified that employes were not free to combine breaks to leave the facility early. There is no serious claim employes are free to leave the facility early. By leaving the floor to dress and prepare herself for the evening, Andreucci effectively left her job early. By her own admission, she understood that her actions fell outside work break norms.

A number of factors mitigate against the imposition of substantial discipline for Andreucci's conduct the evening of December 31st. First, Andreucci approached Wieselmann and either asked or indicated that she intended to do precisely what she did. Wieselmann did not respond. In a disciplinary context, Wieselmann's non-committal is at a minimum, acquiescence. Wieselmann testified that she did not know the break rules. While this may be true, I suspect Wieselmann understood that it was inappropriate for an employe to spend the last 40 minutes of her shift in the bathroom preparing herself for an evening on the town. The Employer argues that having declared herself in charge Andreucci is in no position to now claim that she secured Wieselmann's permission to take time from the floor. The argument has no merit. Wieselmann was hired as an RN, and placed in charge of the floor. Assuming Andreucci declared herself to be in charge, that does not make it so. As a practical matter, no one was in charge. Andreucci filled the void, and took advantage of the situation.

The second mitigating factor is the significant error contained in paragraph 1 of the discipline document. 10:15 is significantly wrong. The correct time was 10:50 p.m. The document declares that Andreucci abandoned her post for 75 minutes. The reality is she was gone for 40 minutes. 40 minutes at least corresponds to alleged missed breaks. The 75 minutes is extreme. The Employer's decision to discharge was predicated upon a 75 minute absence from the job. By failing to include Andreucci in the investigation, or confront her with the evidence collected prior to discharge, the Employer not only denied her an opportunity to be heard, but also proceeded on a seriously mistaken fact. The consequence of this error is now for me to weigh.

The third mitigating factor concerns the circumstances under which all of this transpired. Andreucci testified, without contradiction, that her conversation with Wieselmann occurred during a "party" sponsored by Wieselmann. Andreucci indicated that the gathering lasted for approximately 45 minutes. Wieselmann claimed that she had brought snacks such as cheese and crackers into the facility for staff and some patients, that people took cheese and crackers, and that no one really milled about the food. Wieselmann claims to have spent approximately 5 minutes at the food. It is essentially Andreucci's claim that the fact that it was New Year's Eve, coupled with a somewhat festive gathering, created a more relaxed atmosphere on the floor that evening.

I believe that there was a more relaxed atmosphere on the floor that evening. I also believe that, as a practical matter, there was no one in charge. Andreucci stepped into a leadership void and took advantage of the situation to take some time to prepare herself for a planned evening out. While her behavior in this regard is hardly exemplary, the Employer is not positioned to impose significant discipline for this action. She announced her plan to Wieselmann. Her behavior was tolerated. When the administration subsequently discovered what had occurred and attempted to remedy the situation the investigation was meaningfully flawed. I do not believe the Employer is positioned to issue more than a written warning for the events which occurred on December 31.

The second disciplinary event was the phone calls made on January 1. The Union complains that the date cited is erroneous. The Union is accurate in this claim, however, I find the error to be harmless. Andreucci made the phone calls. She was aware of that fact. She also knew when she made the phone calls. She was not compromised either procedurally or substantively by the date error. She testified without contradiction, and at times with corroboration, that she had previously made personal phone calls in the presence of supervision and had not been disciplined. If her use of the facility telephone is inappropriate, or if she takes too much time on the telephone, she should be told. If she fails to modify her behavior, the Employer should invoke progressive discipline. This is the type of behavior classically remedied through progressive discipline. This is particularly so in light of Article 17.02's acknowledgement of the progressive discipline concept.

I do not believe the Employer is free to use Ms. Andreucci's misuse of the telephone as a dischargeable offense until such time as the Employer puts her on notice that her behavior is inappropriate, and invokes a lower form of discipline. It is my view of the facts in this dispute that the Employer is free to invoke no more than a written warning.

The third allegation with respect to Ms. Andreucci is that she took charge of the unit and identified herself as an RN Charge Nurse. I do not believe the Employer sustained its burden of proof with respect to this charge. Wieselmann and Andreucci's testimony conflict with one another with respect to what was said. According to Andreucci, she no more than suggested a change in assignments to reflect the reality of her experience on the floor. Ms. Clay's testimony essentially corroborates Andreucci's. I suspect the relatively aggressive Andreucci made her suggestion in a manner the passive Wieselmann found compelling. I do not regard Ms. Wieselmann as a persuasive witness. Her testimony was somewhat confused. She displayed comprehension problems.

With respect to Andreucci's answering the telephone there were only two direct witnesses, Andreucci and Nancy Kauffman. Andreucci denied the allegation. Kauffman's testimony was that there was a pause following Andreucci's self-identification and her use of the term "Charge Nurse, RN". Kauffman testified that she did not know the context in which the words were uttered. Had Andreucci identified herself as the RN Charge Nurse, it would constitute

disciplinable behavior. I do not believe the Employer established that she did so.

The fourth basis of discipline is the Employer's contention that Andreucci directed the pool nurse to give medication inappropriately. Wieselmann's testimony was that Andreucci directed her to give a certain patient medication, PRN. It was her testimony that she had already medicated that patient. Accepting her testimony on its face, I fail to see disciplinable conduct. There is nothing in this record that suggests Andreucci knew the patient had previously been medicated. Furthermore, it is the RN, and not the LPN, who bears primary responsibility for patient care including the administration of medication.

Ms. Andreucci's behavior on the evening of January 1, 1995 was entirely inappropriate. I credit Ms. Green's testimony that Andreucci left the unit at approximately 8:50 and returned at approximately 10:10 p.m. There is a good deal of record confusion as to whether she ate in a restaurant or in the parking lot. I find that distinction irrelevant. The point is, she absented herself from the unit and from the residents to whom she was assigned for a protracted period of time. She did not punch out. She left her work for others to perform. She did so under circumstances where she had previously called Jay and told him to bring her food later that evening. Her telephone call to Jay created a further problem, and complicated the consequences of her absence. Ms. Andreucci left a mess for her co-workers to deal with.

What I find disturbing is that no one said anything to her on the evening of January 3rd. Andreucci realized she had been gone too long. Upon her return she apologized and thereafter went to work. Co-workers, including her supervision, reacted to the incident with laughter. Someone should have confronted her with her behavior.

Ms. Andreucci's behavior the evening of January 1 warrants discipline. She ignored the needs of her job. She abused her break time, was grossly insensitive to her co-workers and the residents assigned to her care. She knowingly abused her break privileges. However, her egregious behavior was greeted by laughter from her colleagues, including her supervisor. The incident combined elements of unacceptable behavior previously exhibited without disciplinary consequence. A three-day suspension for her behavior on the evening of January 1 is justified. To invoke less is to ignore the serious misconduct of the grievant. To impose more does a disservice to Article 17.02's commitment to progressive discipline. Andreucci is entitled to fair warning that her attitude toward her job is intolerable.

The final grounds for discharge was Andreucci's break on January 3, 1995. It is worth noting that the termination letter is in error. On its face, the letter is critical of Andreucci for taking a thirty-minute break. In fact, it appears she may have taken a forty-minute break. The termination letter indicates that she was told to take a break. That is consistent with Andreucci's testimony that Adi told her to take a break. Adi testified that she believed that Andreucci had already taken her meal break. Andreucci testified that she had not had her break, and that her 8:40 break was her meal break. This is a fact that could have been cleared up had Andreucci been

made a part of the pre-termination investigation. I credit Andreucci's testimony that she had not previously taken a meal break, since she is in a much better position to know that fact. Nothing supports Adi's testimony to the contrary.

Jay's presence as a social visitor was accepted, or at least tolerated, by Adi. There is no indication that Jay was told to leave or that Andreucci was told not to have social visitors during work hours. At most, she stretched her break. I do not believe the Employer is free to treat this as dischargeable behavior, even in part, until such time as Andreucci is put on formal notice, accompanied by some form of progressive discipline, if necessary, with respect to the timing of her breaks. If it is the desire of the facility to restrict outside visitors, then steps in that direction should be taken.

The Employer contends that due process-type arguments are inappropriately made to me. I disagree. The termination document contained mistakes of fact, some of which bear directly upon the propriety of discharge as an appropriate disciplinary measure. The Employer's failure to confront Andreucci denied her the opportunity to respond to the allegations which led to her discharge.

I disagree with the Employer's perspective relative to the penalty. While I agree that all of the behavior complained of occurred within a four-day period, I disagree that the Employer had no time to react and advise the grievant that her various actions were deemed inappropriate. The Employer tolerated behavior that it now claims to be intolerable. Some of this behavior, i.e., the use of the telephones and the extension of breaks are behavior that I believe occurred over a period of years, not days, and which was tolerated by this Employer. Other incidents, such as Andreucci's leaving her work station on December 31 and leaving the facility on January 1 are regarded by the County as so serious as to warrant discharge. However, no such message was communicated by front line supervision. While Ms. Andreucci's actions, particularly on the two evenings in question, was inappropriate, it does not rise to the level justifying immediate discharge without warning. The County has committed to a progressive discipline approach and is bound to honor that contractual agreement. Much of the behavior complained of is behavior for which progressive discipline was designed.

I have a conceptual disagreement with the Employer's contention that had the violations occurred over a longer period of time, and been subject to progressive and cumulative discipline, they would have ultimately resulted in discharge. That flies in the face of my view of the purpose of progressive discipline. The very purpose of progressive discipline is to tell the employe that certain behavior is unacceptable or inappropriate. It is to increase the discipline in measured amounts so as to correct the behavior. I disagree with the Union's contention that either no discipline or a reprimand is appropriate. Andreucci's behavior on the evening of January 1 was grossly inappropriate, notwithstanding the Employer's tolerance.

AWARD

The grievance is sustained.

REMEDY

The Employer is directed to reinstate Laura Andreucci and to make her whole for the loss of wages and/or benefits she suffered as a result of her discharge. The Employer is free to offset this backpay with any unemployment compensation and/or interim earnings Ms. Andreucci has earned since her discharge. This relief is also subject to the Employer's right to invoke discipline consistent with that outlined as appropriate in this Award. For purposes of Article 17.02 any such discipline shall be treated as issued on the date of this Award.

JURISDICTION

I will retain jurisdiction of this matter for a period of thirty (30) days from the date of this Award to resolve any dispute that arises over the remedy.

Dated at Madison, Wisconsin, this 8th day of July, 1996.

By William C. Houlihan /s/
William C. Houlihan, Arbitrator