BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LEER DIVISION,
ONEIDA COUNTY SOCIAL WORKERS
LOCAL 358

and

ONEIDA COUNTY

Case 121
No. 53751
MA-9450

Appearances:

Cullen, Weston, Pines & Bach, Attorneys at Law, by Ms. Linda Harfst, appearing on behalf of the Association.

O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, by Mr. John O'Brien, appearing on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and the County or Employer, respectively, are signatories to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to hear a grievance. A hearing, which was not transcribed, was held on May 14, 1996, in Rhinelander, Wisconsin. Afterwards, the parties filed briefs and reply briefs which were received by July 12, 1996. Based on the entire record, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the issue to be decided in this case. The Association framed the issue as follows:

> Was the Employer's discipline of grievant Mary Meier reasonable, when it placed a "Record of Corrective Action" in Meier's personnel file on August 11, 1995 without completing its investigation of the allegation or providing her an opportunity to respond to it?
>
> Answer: No

If so, what is the remedy?

Answer: The Employer shall remove the "Record of Corrective Action" from the grievant's file, and no record of this action shall be retained by the Employer.

The County framed the issue as follows:

Did the County act reasonably and in accordance with the collective bargaining agreement when it issued a "Record of Corrective Action" to Mary Meier following the incident of August 7, 1995?

Having reviewed the record and arguments in this case, the undersigned finds the County's proposed issue appropriate for purposes of deciding this dispute. Consequently, the County's proposed issue will be decided herein.

PERTINENT CONTRACT PROVISION

The parties' 1995-97 collective bargaining agreement contains the following pertinent provision:

ARTICLE 7 - VESTED RIGHTS OF MANAGEMENT

Section A: The right to employ, to promote, to transfer, to discipline and discharge employees, and to establish work rules is reserved by and vested exclusively in the Oneida County Board through its duly appointed Personnel Committee and duly appointed department heads. (The reasonableness of the exercise of the aforementioned vested rights shall be subject to the grievance procedure).

BACKGROUND

Mary Meier and Dawn Winquist are co-workers in the County's Department of Social Services. Meier has been with the Department for 13 years and Winquist for 11 years. Meier is a lead social worker and Winquist is a social service aide. In the Department's organizational structure, a social worker is higher than a social service aide. Thus, Meier works in a higher-rated position than Winquist and is paid more than Winquist. Meier is in the social worker bargaining unit represented by the Association. Winquist is not in that bargaining unit. While Meier and Winquist are in different bargaining units, they have the same supervisor - Tara VandenBerg.

There is a history of hostility between Meier and Winquist. They have exchanged words

with each other on a number of occasions for a variety of reasons.

The record indicates that the disciplinary history of Meier and Winquist is as follows. Meier received two written warnings from a former supervisor about ten years ago. Meier's current supervisor (VandenBerg) has counseled her about 40 times about her temper, her demeanor and her conduct toward other employes. VandenBerg testified this counseling was necessary because Meier often explodes (against her co-workers), apologizes, and is remorseful afterwards. Insofar as the record shows, Winquist gets along with her co-workers and has not received any discipline.

When the parties negotiated their current collective bargaining agreement, they revised the work day/work week provision to allow employes to work an alternate work schedule. The Department's normal work schedule is 8:00 a.m. to 4:30 p.m. As the name implies, the alternate work schedule allows employes to vary the normal work schedule to meet their personal needs. The alternate work schedule was explained to employes at an inservice on March 29, 1995. Employes were told during this meeting that if they wanted to use the alternate work schedule, they were to fill out a schedule request form and submit it to Winquist by 8:30 a.m. on the Monday preceding the week for which the alternate work schedule is requested. Winquist then uses these forms to prepare the alternate work schedule. Meier attended the above-referenced inservice.

Employes began using the alternate work schedule in June, 1995, 1/ Meier used it regularly because she felt it suited her needs better than the 8 to 4:30 schedule. Meier testified that in late July, she told Winquist that henceforth she always wanted to use the alternate work schedule, to which Winquist responded "sure -- no problem". Winquist testified that prior to the incident in question here, she never had any discussion with Meier about the alternate work schedule. Meier testified she had problems remembering to get the alternate work schedule request forms in to Winquist. Winquist testified that other than the incident involved here, she does not recall Meier ever turning in an alternate work schedule request form late.

FACTS

This case involves the discipline meted out to Meier for her involvement in a workplace incident with Winquist on Monday, August 7, 1995. About 8:30 a.m. that day, Winquist collected the alternate work schedule request forms that were in her mailbox and prepared the alternate work schedule. Meier had not submitted an alternate work schedule request form. Later that morning, Winquist left the office for a field visit. At 11:30 a.m., while Winquist was still gone, Meier put an alternate work schedule request form on Winquist's desk. Winquist returned

1/ All dates hereinafter refer to 1995.

to the office about 11:45 a.m. and found the alternate work schedule request form from Meier on her desk. After finding it, she wrote the following note to Meier and put it in her mailbox: "Mary -- I have already done the schedule. Sorry. They are due by 8:30 a.m." This note essentially informed Meier that her request had been denied because the alternate work schedule was already done.

Meier found Winquist's note in her mailbox later that day. She was greatly irritated by the rejection of her request. Meier then went to Winquist's office where the two exchanged words. What was said during this verbal exchange is disputed, but the general subject matter was the 8:30 timeline for filing alternate work schedule request forms. There were no eyewitnesses to the incident other than those involved.

Meier's account of the verbal exchange is as follows. Meier testified that because of her previous "misunderstandings" with Winquist, she mentally rehearsed what she was going to say to Winquist in advance. She testified she said the following: "Dawn, why didn't you remind me about the (alternate work) schedule deadline because you saw me at 9:30? Why did you screw me? I don't understand this!" Meier testified that Winquist responded by saying that the 8:30 deadline was set by (Director of Social Services) Paul Spencer, not her, and if she had a problem with it, she should see him about it. Meier testified that during this verbal exchange she was not emotional and did not yell, scream, shake or cry, although she acknowledged that her voice was stern. Meier testified it was Winquist, not her, who was very upset. Meier further testified that as she was walking out of the office, Winquist called her a bitch.

Winquist's account of the verbal exchange is as follows. Winquist testified that Meier came in to her office and shook a piece of paper in her face, screamed at her for rejecting her (alternate work schedule) request, said she had never heard of the (request) forms being due by 8:30, and said she had ruined her (Meier's) birthday. Winquist testified she responded to Meier that the 8:30 deadline was not her decision; it was a policy decision made by Paul (Spencer). Winquist testified that during this verbal exchange, Meier was redfaced and crying. Winquist admits that as Meier was leaving her office, she called her a bitch. Winquist testified that the reason she called Meier a bitch was because she was upset with her.

The remaining facts are essentially undisputed. Immediately after Meier left Winquist's office, Winquist got a copy of the minutes from the March 29, 1995 inservice which had addressed the (new) alternate work schedule. She then highlighted two sections of the minutes: 1) the part which indicated that employes who want an alternate work schedule are to submit their paperwork to Winquist by Monday at 8:30 a.m.; and 2) the part which indicated Meier was in attendance at that meeting. Winquist then took the highlighted minutes into Meier's office, showed it to her, called her a bitch again, and said Meier owed her an apology. Meier testified that Winquist's exact words concerning the latter were as follows: "You are the rudest bitch I have ever known. You can apologize to me any time you want."

Later that day, Meier wrote out the following note for Winquist:

> Dear Dawn:
>
> I was mistaken about the time the request was due. I apologize for that. You had no responsibility for my having my request in on time. You are under no obligation to mention that I haven't turned a request in. I had no right to ask that of you weeks ago. I apologize for my rudeness.
>
> Mary.

After she wrote the note, she left her office to go put it in Winquist's mailbox. As Meier was walking to the mailboxes, she saw Winquist coming out of a co-worker's office. Winquist was crying at the time. Meier went up to Winquist and gave her the written note just referenced and said: "Dawn, I'm sorry; I apologize. I didn't mean to upset you." From Meier's perspective, her apology was the end of the incident.

From Winquist's perspective though, Meier's apology was not the end of the matter. Winquist then wrote the following memo to VandenBerg and gave it to her:

> TO: Tara VandenBerg, Lead Social Work Supervisor
>
> FROM: Dawn Winquist, Social Service Aide
>
> RE: Mary Meier
>
> DATE: August 7, 1995
>
> On today's date I returned from a home visit at approximately 11:45 A.M. Mary Meier had placed a copy of an Alternate Work Schedule Request on my desk in my absence. I returned it to her with a note attached that said, "Mary, I have already done the schedule. Sorry. They are due by 8:30 A.M."
>
> At approximately 1:15 P.M. Mary came into my office carrying the request form. She began shaking it at me and stated that "this is bull. I have never heard of them being due at 8:30. You are just making this up. You have screwed me over one too many times, and now you've ruined my birthday." I tried explaining that the 8:30 deadline was not my decision, that it was a policy decided by Paul. Mary just mumbled something and walked towards the door. As she was leaving, I stated to her that she was a bitch.

> I then found the staff meeting minutes which clearly state requests are due to SS Aides by 8:30 A.M. I highlighted the part which listed her name as being in attendance, and also the part which stated they were due at 8:30. I took it into her office and gave it to her, told her she was a bitch, and that she owed me an apology.
>
> Before I was even back in my office Mary stopped me in the hall and handed me an envelope. Inside was a note which stated "Dear Dawn - I was mistaken about the time the request was due. I apologize for that. You had no responsibility for my having my request in on time. You are under no obligation to mention that I haven't turned a request in. I had no right to ask that of you weeks ago. I apologize for my rudeness. Mary."
>
> Mary Meier has instigated this type of altercation with me several times in the past few years. I am sick and tired of her rude, obnoxious behavior and am requesting that something be done about it.
>
> Thank you.

After getting Winquist's memo about 4 p.m., VandenBerg went to see Winquist. When VandenBerg walked into Winquist's office, Winquist was visibly agitated, upset and crying. VandenBerg then asked Winquist what happened, to which Winquist replied "everything that happened is in the memo." Winquist did not elaborate any further. VandenBerg testified this was the first time she had ever seen Winquist visibly agitated and crying.

The next morning (August 8), Meier went into Winquist's office and apologized to her again. Additionally, Meier told Winquist that although she and Winquist had had problems in the past, she (Meier) had been trying hard to get along. Meier testified that Winquist responded by laughing and saying she didn't care. Winquist then told Meier that the previous day's incident was the fourth time in 11 years that Meier had really pissed her off. When Meier asked what the other three incidents were, Winquist responded that it did not matter because what was done was done. Winquist then told Meier she had given VandenBerg a memo about the incident.

Later that day, Meier wrote the following note to VandenBerg:

> I was upset and accused Dawn of not treating me fairly. Within 15 minutes I apologized verbally and in writing. This morning I talked to her and explained that I took responsibility for the incident and that she works hard and has too many details of her own caseload to track without watching for me. I apologized. She said that she did

> not think she would ever forget it. She said she doesn't hold grudges, but this is the 4th time in 11 years that I have really upset her and she didn't think she would ever get over it. I am really concerned and think we need help to solve this impasse.
>
> 8/8/95

Over the course of the next several days, VandenBerg conferred with her supervisor (Paul Spencer) and County Personnel Director Carey Jackson about the above-referenced matter. Both told her to investigate the matter. VandenBerg then reviewed the records she has kept of meetings with Meier wherein job performance and case status matters have been discussed. During this time period VandenBerg did not speak to Winquist, Meier or any other employe about the incident which occurred between Winquist and Meier on August 7.

On August 11, VandenBerg called Meier into her office for a disciplinary meeting. As is her regular practice for such meetings, VandenBerg had prepared a written reprimand in advance of the meeting. The written reprimand VandenBerg had prepared was on her (VandenBerg's) desk where Meier could see it. VandenBerg started the meeting by telling Meier that Winquist had filed a written complaint with her about Meier's behavior on August 7. VandenBerg then gave Meier a copy of Winquist's memo, and told her to read it, which she did. After reading it, Meier told VandenBerg that the allegations made by Winquist in her memo were not true. VandenBerg then asked Meier for her side of the story to which Meier responded by saying that she had done nothing to intimidate or physically threaten Winquist. She also told VandenBerg that the reason she had gone to see Winquist was to ask her why she (Winquist) had not reminded her of the alternate work schedule deadline. VandenBerg then asked Meier why she had apologized to Winquist if she had not said and done the things referenced in Winquist's memo. Meier responded that the rudeness for which she apologized was her expectation that Winquist would keep track of her (Meier's) schedule. Meier cried throughout the 10-15 minute meeting and was extremely upset. During the course of the meeting, Meier told VandenBerg that Winquist had set her up because Winquist had not given her a warning in advance that the (alternate work schedule) request forms were due by 8:30 a.m. Meier also told VandenBerg that Winquist hated her. After listening to Meier's account of the incident and comparing her version to what was contained in Winquist's written account, VandenBerg decided to credit Winquist's account over Meier's. VandenBerg testified she based this decision on the following factors: 1) the written apology Meier gave to Winquist; 2) the fact that VandenBerg had never seen Winquist upset before; 3) the fact that VandenBerg had seen Meier upset numerous times before; and 4) Winquist's admission that she called Meier a bitch. VandenBerg also decided that Meier deserved a written reprimand for her behavior on August 7 because she had not admitted she was wrong and accepted some blame. About three-fourths of the way through the meeting, VandenBerg gave Meier the following written reprimand which had already been typed up:

Date 8/11/95

ONEIDA COUNTY

RECORD OF CORRECTIVE ACTION

Name of Employee Mary Meier

Classification Lead Social Worker **Department** Social Services

Reason for Corrective Action On 8/7/95, rude and disruptive behavior was used in an unprovoked confrontation with a co-worker. (See attached). The behavior was unprofessional, offensive and inappropriate. Future conduct of this nature will result in further disciplinary action, up to and including discharge. The Employee Assistance Program is available for your use by calling 1-800-677-7692.

Type of Corrective Action

1. ____ **Oral Counseling (Date, time, place and nature of counseling):**

2. XX **Written Reprimand (Date of reprimand):** 8/11/95

3. _____ **Suspension (Number of days suspended and dates of suspension):**

4. ____ **Discharge (Date of discharge:)**

Tara VandenBerg /s/ 8/11/95
Supervisor's Signature **Date** **Signature of Witness to Incident**

Mary refused to sign 8/11/95
Employee's Signature **Date** **Signature of Witness to Incident**

Mary feels this is unjustified - This did not happen as stated.

Signing this form does not indicate agreement, but only signifies you have been informed of the above action and have received a copy of

Distribution of Form:
Department Head's File
Employee Copy
Department of Personnel File

this form.

> We discussed complaint. I asked if she had questions. She didn't. She read reprimand.

The bold type face contained in this document was pre-printed. The regular type face contained in the document was what VandenBerg typed in or wrote in. Winquist's memo to VandenBerg was attached to this document. At the end of the meeting VandenBerg asked Meier if she had anything else to say or if she had any questions. Meier said nothing in response. As is indicated on the document, Meier refused to sign the form.

On August 17, Meier wrote the following account of the above-referenced events:

> August 17, 1995
>
> On July 24th, I forgot to request an alternate work schedule. Dawn and I discussed this fact on July 27th when I turned in a later request for alternate work schedule. I remember saying that it is sometimes confusing which week is being requested (if the request is made Wed. and Fri. it's two weeks in the future -- if on Monday it is for the next week). I told her I always plan to request alternate work schedule as it works extremely well for me. She agreed that I use it every week. I said that if I ever forgot if she would remind me I would get it to her right away. She said she would be able to do that because I always request the alternate schedule.
>
> I placed a request on Dawn's desk for alternate schedule on Monday morning, August 7, at about 11:30. I found it in my mailbox at 1 P.M. denied. Over the months I had forgotten 8:30 A.M. was the deadline and not Noon. I went to Dawn's office with the request in my hand. I asked Dawn why it was denied. She said it had to be in at 8:30 A.M. I showed her a copy of the memo for alternate work schedule and said there was no time frame (8:30) mentioned in it. She replied that Paul had thrown it at her that it was 8:30 and if I had a problem to go talk to him. I said "Dawn, you were in my office at 9:00 and you never mentioned this. Why not? You said you would. Why would you screw me over again?" I said, it wouldn't matter but my birthday is Thursday and some things are planned. At that she began to berate me and ridicule me, laughing at me -- mocking me -- At that point, I turned and left. I never raised my voice -- never moved toward her. She became very angry and called me a bitch as I turned to leave. Leaving I

said, "I don't understand."

I walked to my office. I wasn't angry -- more wondering why Dawn wouldn't remind me as she had said. By the time I got to my office I realized that she didn't have to remind me and that I was rude to expect her to do that. I was also responding to her degree of anger and thinking she must really be stressed to "lose it" over this issue. In no way was it my intention to cause her such anger.

I immediately took out a note card and wrote an apology taking responsibility for my request for alternate schedules. The rudeness I held myself accountable for was my expecting her to remind me if I forgot. I believed and still believe I owed her an apology for that.

Before I could take the note to her she knocked on my door. I responded by saying "Come in". She burst through the door loudly yelling "You are a real bitch" as she threw a piece of paper at me. She turned and as she left she shouted "And you can apologize to me whenever you want to." She walked out slamming the door behind her. I sat at my desk, embarrassed and stunned. I wondered if I should give her the note or try to talk to her. I decided I would give her the note.

I left my office to go to the mailboxes. At that moment she came out of Sheila Guski's office and saw me. I walked to her, handed her the written apology and said, "Dawn, I was wrong. I apologize." Her entire body seemed to relax and she took the note from my hand and said, quite softly "OK". I didn't say anything more and went to my office feeling I had done the best I could do with the situation. I honestly believed she was OK and accepted my apology.

I gave no thought to any correction of her behavior in any way, although I believed it was terribly hostile, embarrassing and inappropriate. To me the bottom line was that I had asked her to do something for me as a colleague, if not a friend, but that nothing in her job description required her to respond to that request. To do anything further to her would only increase her agitation and anger. I had, and have, no desire for that to happen.

By the next morning I was made aware that I was the third person to say something to her about the alternate schedule - one of whom was Paul. I was also told that she had been observed "sobbing" and had been upset throughout the afternoon. I asked her at 8 AM if I could talk to her. She said she was on her way to meet with Tara. Later in the morning, I went to her office and asked if I could talk to her. She said I could but she was not going to say anything to me. I took that to mean that she had no intention of apologizing to me. I immediately told her I did not expect her to say anything. I explained that I had heard that she had been upset all afternoon and had been crying. I reiterated that I was at fault for expecting her to do any reminding of me regarding the alternate time schedule. I told her that I had been working very hard to cooperate with her in all of my contacts with her. I told her that all I could do was apologize again. She told me she really didn't care what I did or how I tried because she wasn't ever going to forget this. She then said, "I'm not one to hold grudges but this is the 4th time in eleven years that you have really pissed me off." She continued on about not being able to ever forget this. I tried to tell her this would never happen again but it was useless. The last thing she told me was that everything was out of her hands now and she didn't "care what happened next". She again called me a real bitch. Her anger toward me and her hatred of me was very surprising to me and I just left her office.

Over the next couple days I would speak to her (recognize her) as I do for anyone else. She would turn away to avoid me and refuse to speak to me.

Tara asked to see me on 8/15/95. She said she had to give me a written discipline over this incident. She handed me Dawn's typed statement of the incident. I read the first paragraph and looked up and said it wasn't accurate. She told me just to read it. When I read the quote of my note I questioned its accuracy as I wasn't sure the last sentence was correct. I'm thinking about it I thought I probably had added that sentence at the end.

I again told Tara that her account wasn't accurate. Tara then said that Dawn had been so upset that day that she cried and Dawn isn't a person that ever cries. She also told me that Dawn said she was physically shaking because she was afraid I was going to hurt her. That was unbelievable to me. I told her I never raised

my voice and mostly I asked her questions -- like why did you do this? Tara said I intimidated her.

I asked Tara if she had talked to anyone else about this incident. She seemed surprised that I would ask and said she had talked to no one. I asked her if I was allowed to say anything about what happened. She said I could if I wished.

I told her the things I said to Dawn and insisted I was not aggressive toward her. I never really accused her of anything but questioned why. She asked me why I wrote the apology. I told her because I shouldn't have expected her to look out for me. In her eyes, it seemed Tara believed my apology was for the things of which Dawn was accusing me. I was shocked that an apology as specific as this one could be construed to be for anything other than for the reasons stated.

Tara then handed me the written reprimand to read. She never mentioned the memo I had written her asking for her assistance with the impasse I had with Dawn. I told her this incident did not happen as it was stated. I told her this reprimand was not justified.

My shock that this incident could be evaluated and judged based upon the typed statement by Dawn without any kind of verification except a note of apology and memo for assistance written by me was total. The obvious anger and lack of professionalism and common courtesy by Dawn toward me is certainly indicative of her deep dislike, possibly hatred, for me. Those attitudes of Dawn toward me have been brought to Tara's attention at other times.

In the past week Dawn has exhibited continued antagonism toward me. Although I have made every attempt to treat her as I treat anyone, she has shunned me. That she chooses to do this means nothing to me. It does, however, indicate to me that she is the person who has the problem, not me. Not only do I not really understand her and the reasons for her attitude toward me, I can't even be angry with her. It really doesn't seem to have any real relationship to me.

My only concern is that my behavior has been determined to

be as described by Dawn. I resent being disciplined with no chance to defend my behavior, my character, my ethics. That is wrong. I believe Dawn's accusations and the department's handling constitute more harassment.

Mary Meier
8/17/95

Insofar as the record shows, the Employer did not see this document until the arbitration hearing.

Meier subsequently grieved the written reprimand and the grievance was processed to arbitration.

Insofar as the record shows, the incident with Meier on August 7 was the only problem Winquist had that day; nothing else happened that disturbed her. The record indicates that after the incident involved here occurred, Winquist was counseled by VandenBerg about using the term "bitch".

POSITIONS OF THE PARTIES

Association's Position

The Association's position is that the County did not act reasonably and in accordance with the collective bargaining agreement when it gave Meier a written reprimand for the August 7 incident with Winquist.

The Association asserts at the outset that although the contract does not contain a just cause standard for reviewing discipline, one should nonetheless be applied. Thus, it asks the arbitrator to read a just cause standard into the contract. It makes the following arguments to support this premise. First, it asserts that arbitrators regularly infer just cause standards into labor agreements when none exist. It invites the undersigned to do likewise. Second, the Association calls attention to the fact that the County's personnel policies which apply to unrepresented employes provide a cause standard for separation and demotion. The Association asks rhetorically why represented employes would bargain a standard which gives them less protection than the Employer gives to unrepresented employes. Third, it contends that the language found in Article 7(A) is simply another way to describe a just cause standard. In its view, reasonableness is one of the fundamental components of just cause. It therefore argues that no substantive difference exists between a just cause standard and a reasonableness standard.

The Association contends that the County did not meet its burden of proof to show that the discipline which it imposed on Meier conforms to either a just cause standard or a reasonableness standard. According to the Association, the County's action in disciplining Meier was irrational,

arbitrary and capricious, and cannot be allowed to stand. It makes the following arguments to support this contention.

To begin with, the Association argues that the discipline imposed on Meier fails to meet even minimal due process protections. According to the Association, Meier's due process rights were violated as follows: 1) Meier was not told of the charge against her; 2) the Employer's investigation into Winquist's charge was flawed; 3) Meier was never given the opportunity to respond to Winquist's charge; and 4) VandenBerg improperly used her weekly progress meeting notes as a basis for Meier's discipline. Each of these due process contentions is addressed below.

First, notwithstanding the Association's contention to the contrary, the Association submits that Meier was not told of the charge made against her by Winquist until after the Employer had already decided to discipline her. The Association disputes the Employer's contention that Meier's August 8 report to VandenBerg demonstrates that Meier knew what the problem with Winquist was. The Association then characterizes Meier's August 8 report to VandenBerg about the incident with Winquist as a "request for assistance in resolving an impasse between two co-workers."

Second, the Association contends that the County failed to make a complete and objective investigation into the underlying circumstances surrounding the incident and instead simply took the word of one employe (Winquist) over another (Meier). The Association argues that the Employer's investigation was flawed in the following respects. First, it notes that the County failed to learn whether there were any witnesses to the incident. Second, it asserts that VandenBerg never inquired whether there was a valid reason for Meier's questioning of Winquist. The Association submits that had the County properly investigated, it would have learned that Winquist had promised to remind Meier to turn in her alternate work schedule request forms, and that Winquist had not followed through as promised. Third, the Association avers that had VandenBerg spoken with Winquist about the incident, she (VandenBerg) might have learned of other matters which contributed to Winquist's emotional behavior on the day in question. Finally, the Association contends that had the County properly investigated Winquist's charge, it would have seen the credibility gaps and inconsistencies that exist in Winquist's story and found her charge to be incredible, or at best, exaggerated.

Third, the Association asserts that Meier was never given an opportunity to tell her side of the story at the August 11 meeting with VandenBerg. As the Association sees it, VandenBerg already had made up her mind at the start of the August 11 meeting to discipline Meier because she (VandenBerg) already had the written reprimand prepared. The Association submits this shows that VandenBerg was not open to hearing new information to the contrary during their meeting.

Fourth, the Association contends that the Employer incorrectly based its decision to discipline at least in part on various prior incidents for which Meier had not been disciplined. To

support this premise, the Association notes that before imposing the discipline VandenBerg reviewed the notes of her weekly progress meetings with Meier. According to the Association, VandenBerg should not have reviewed those notes because they were not disciplinary in nature and were unrelated to the matter involved here. The Association submits that VandenBerg's discussions of her concerns with Meier's work should not be the basis for subsequent discipline. The Association therefore contends that what the Employer did was rely on unverified excerpts from Meier's work record which were not disciplinary and which were unrelated to this matter and use it as a basis to justify a foregone conclusion to discipline. The Association also asks the arbitrator to not give any weight to Meier's past disciplinary record because the Association believes the exhibit which purports to document same (i.e, Employer Exhibit 1) contains numerous errors and misstatements.

In addition to the due process arguments just noted, the Association also makes the following arguments concerning the merits. With regard to the incident itself, the Association asserts it was Winquist who should bear responsibility for same -- not Meier. According to the Association, Meier was not guilty of intimidating or threatening behavior. The Association characterizes Winquist's behavior toward Meier that day as "similar to that of a bully who knows there will be no checks on her behavior." The Association speculates that Winquist initiated the written complaint against Meier with VandenBerg to deflect attention from her own behavior (i.e., twice calling Meier a bitch). With regard to Meier's written apology, the Association notes that the apology makes no reference whatsoever to behavior, but only to Meier's expectation that Winquist will keep track of Meier's schedule. The Association also submits that had Winquist been intimidated or threatened by Meier's behavior, one would think she would have been in tears during the initial contact. The Association notes however that did not happen; instead, Winquist became progressively more upset as the day wore on. The Association paints this as not being credible. Finally, the Association implies that Winquist should be disciplined for making false and malicious statements about Meier.

In sum then, the Association asks that the grievance be upheld and the written reprimand removed from Meier's record.

County's Position

The County's position is that it acted reasonably and in accordance with the collective bargaining agreement when it gave Meier a written reprimand for the August 7 incident with Winquist.

The County notes at the outset that the only section of the contract which addresses discipline is Article 7. The County calls attention to the fact that the standard established therein for arbitral review of discipline is a "reasonableness" standard; not a "just cause" standard. The County urges the Arbitrator to reject the Association's contention that a "just cause" standard should be read into the contract. Given the existence of the contractual "reasonableness" standard,

the County asserts that all it has to show in this case for the warning to be upheld is that the discipline imposed was "reasonable". It then goes on to cite various dictionary definitions of "reasonable", to wit: "not extreme or excessive" and "not arbitrary, capricious or confiscatory."

The County argues that the written reprimand which it gave to Meier falls within any of the definitions of reasonable just referenced. Thus, the County contends VandenBerg's written reprimand was not extreme or excessive, nor was it arbitrary, capricious, or discriminatory. It makes the following arguments to support this premise. First, the County characterizes the incident in question as more than just a casual disagreement between two employes. According to the County, Meier threw an inexcusable temper tantrum which left Winquist in tears for the rest of the day. In the Employer's view, Meier was both threatening and intimidating to Winquist and interfered with both her work and that of the Department. The Employer notes that it has a policy prohibiting the use of abusive language, and it believes Meier's outburst violated that policy. The Employer also submits that the fact that Meier later apologized to Winquist for her behavior should not excuse her inappropriate conduct. Second, the Employer contends that if this had been the first time Meier had an altercation with a co-worker, that would be one thing. The County emphasizes however it was not. According to the County, Meier had been previously counseled numerous times about her temper and getting along with co-workers.

Responding to the Association's due process argument, the County asserts that since no procedures for discipline are set out in the contract (except a reasonableness standard), nothing more than minimal (due process) standards are necessary. Thus, the Employer believes the due process requirements owed Meier are minimal at best. As the Employer sees it, Meier was entitled to three due process protections: first, the opportunity to know what she was charged with; second, a sufficient investigation by the Employer to warrant the discipline; and third, an opportunity to be heard. The Employer argues all three of these due process protections were satisfied here. With regard to the first protection, the Employer submits that since Meier precipitated the incident, gave an oral and written apology to Winquist, and filed a report with her supervisor over the incident, Meier must have known what the problem was. With regard to the second due process protection (a sufficient investigation by the Employer to warrant the discipline), the Employer notes that VandenBerg received a complaint from a worker (Winquist) that Meier had verbally abused her. The Employer emphasizes that VandenBerg knew that Meier had a lengthy history of difficulties with her temper and in working with other people whereas while the complaining individual (Winquist) did not have a history of either discipline problems or not getting along with co-workers. After VandenBerg reviewed the written documentation she had received (Winquist's complaint and Meier's written response), VandenBerg discussed the situation with both her immediate supervisor and the Personnel Director. As a result of reading the reports, VandenBerg knew that Meier had apologized to Winquist. With regard to the third due process protection (the opportunity to be heard), the Employer notes that VandenBerg met with Meier on August 11 and gave her the opportunity to respond to Winquist's allegations and to tell her side of the story. After Meier told VandenBerg her side of the incident, VandenBerg decided to credit Winquist's account of the incident over Meier's. VandenBerg then wrote the following on the

bottom of the written reprimand: "We discussed complaint. I asked if she had questions. She didn't. She read reprimand."

Finally, with regard to the level of discipline which was imposed, the County contends a written warning was appropriate under the circumstances. It notes in this regard that Meier has been counseled numerous times concerning her anger and her inability to get along with co-workers. In the County's opinion, this counseling put Meier on notice that she could be disciplined for such behavior. The Employer believes that the degree of discipline it imposed was reasonably related to the grievant's misconduct. The County therefore contends that the grievance should be denied and the written reprimand upheld.

DISCUSSION

The Standard for Reviewing the Discipline

Inasmuch as the parties' dispute what standard is to be utilized by the Arbitrator to review the grievant's discipline, it follows that this, by necessity, is the threshold issue. The standard which is set forth in many labor contracts is that there be just cause for discipline. However, this particular contract does not contain a just cause standard for reviewing employe discipline. That fact notwithstanding, the Association asks the Arbitrator to read such a standard into the parties' contract. In other words, to simply infer it. I decline to do so. In so finding, the undersigned is well aware there are arbitrators who have inferred just cause for discipline into labor agreements. However, a review of the arbitration decisions cited for this proposition in *Elkouri* 2/ (which is what the Association cites to support this premise) reveal that most of the contracts being interpreted did not set a standard for reviewing employe discipline. That is not the case here. In this contract, Article 7(A) specifically references discipline and discharge and sets forth the following standard: "The reasonableness of the exercise of the aforementioned vested rights shall be subject to the grievance procedure". With this language, the parties agreed to a specific standard for reviewing employe discipline, namely a reasonableness standard. Had the parties wanted to specify a just cause standard for reviewing employe discipline, they certainly could have done so. For whatever reason though, they did not. That was their call to make. Since the parties specifically incorporated a reasonableness standard into their contract, the undersigned cannot simply read it out of existence and replace it with a just cause standard. To support their contention that a just cause standard should nonetheless be applied, the Association cites the fact that the County's personnel policies provide a cause standard for certain disciplinary matters (namely separation and demotion). By its express terms though, the County's personnel policies apply to unrepresented employes. Since the employe who was disciplined herein is a represented employe covered by a collective bargaining agreement, it is that particular contract's language that controls here - not the language provided in the County's personnel policies for unrepresented

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2/ Elkouri and Elkouri, How Arbitration Works, 4th Ed., p. 652 (BNA, 1985).

employes. Consequently, the undersigned will not bootstrap the cause standard contained in the County's personnel policies for unrepresented employes to the represented employe involved herein.

Having held that a reasonableness standard will be applied to the discipline at issue here, the focus turns to an examination of the components of same. The Association contends that reasonableness is simply another way to describe just cause. In order to determine if that is the case, it is obviously necessary to first determine what constitutes just cause. Even when the term "just cause" is found in labor contracts, it ordinarily is not defined. Be that as it may, a widely-understood and applied analytical framework for determining just cause has been developed through the common law of labor arbitration. That analytical framework consists of two basic elements: the first is whether the employe is guilty of the misconduct with which they were accused and the second, assuming this showing of wrongdoing is made, is whether the discipline which the employer imposed for the misconduct was justified under all the relevant facts and circumstances. The relevant facts and circumstances which are usually considered are the notions of progressive discipline, due process protections and disparate treatment. While the term "just cause" is a term of art in labor relations with a universally accepted meaning or analytical framework, that is not the case with the term "reasonable". The term "reasonable" is not a term of art in labor relations because it does not have a universally accepted meaning or analytical framework. Nor is the term defined in this particular contract. That being the case, it is left to the undersigned to define "reasonableness". The undersigned has decided to utilize the dictionary definitions of "reasonable" cited by the Employer in their initial brief (i.e., "not extreme or excessive" and "not arbitrary and capricious") because the Association essentially concurred with those definitions in their reply brief. After comparing the definitions of reasonable just noted with the previously-referenced notions of just cause, it is apparent that a reasonableness standard gives employes less protection than does a just cause standard. If that was not the case, the Association would not be asking the Arbitrator to infer a just cause standard into the contract. An employer's decision to impose discipline on an employe can be reasonable even if it does not comport with the notion of just cause referenced above.

The Merits

Meier's written reprimand indicates she was disciplined for engaging in "rude and disruptive behavior . . . in an unprovoked confrontation with a co-worker." It is noted at the outset that employers have a legitimate and justifiable interest with preventing employes from engaging in rude and disruptive behavior toward their fellow employes. This is because such conduct is detrimental to the working environment. Additionally, employers who fail to intervene when such conduct occurs are at risk for failing to do so.

Attention is now turned to the question of whether Meier did what she was charged with doing, namely engaging in "rude and disruptive behavior . . . in an unprovoked confrontation with a co-worker." This call obviously turns on the facts involved.

It is undisputed that after Meier found Winquist's note denying her request for an alternate work schedule, she went to Winquist's office where the two exchanged words over same. What was said during this verbal exchange is disputed. Their testimony conflicts and cannot be reconciled.

Meier testified she said the following: "Dawn, why didn't you remind me about the (alternate work) schedule deadline because you saw me at 9:30? Why did you screw me? I don't understand this!" Meier further testified that when she questioned Winquist about denying her request for an alternate work schedule she was not emotional and did not yell, scream, shake anything or cry. According to Meier it was Winquist, not her, who was very upset during the encounter. Meier also testified that Winquist called her a bitch as she was walking out of the office.

Winquist testified that Meier screamed at her for rejecting her (alternate work schedule) request, shook a piece of paper in her face and said she had never heard of the (request) forms being due by 8:30. Winquist further testified that she called Meier a bitch as she was leaving the office.

After weighing this conflicting testimony, the undersigned credits Winquist's account of the incident for the following reasons. First, within hours after the incident occurred, Winquist had documented her version of it in a memo to VandenBerg. Winquist's written account was contemporaneous with its occurrence while the facts were still fresh. Although Meier also made a written account of her version of the incident, her account was written up ten days after the incident occurred and six days after she was disciplined. Insofar as the record shows, the Employer did not see this document until the arbitration hearing. Second, I interpret Meier's written apology to Winquist to be an admission by Meier that she was the one at fault in the matter and that her conduct was inappropriate. Even if this interpretation of Meier's written apology is overly broad and the written apology is read as proposed by the Association (i.e., as not referring to behavior, but only to Meier's expectation that Winquist would keep track of Meier's schedule), the fact remains that Meier twice apologized verbally as well. These verbal apologies certainly dealt with her behavior. Third, VandenBerg testified that when she saw Winquist visibly agitated and crying at 4 p.m. that day, this was the first time she had ever seen Winquist do so. The inference which I draw from this is that since Winquist had never previously been seen at work visibly agitated and crying, Meier's conduct must have caused Winquist more anguish than anything else she had previously experienced in the workplace. Moreover, it is noted that people have different reactions to workplace conflict and confrontations. Some people are able to put such matters behind them quickly and move on, while others cannot do so. In this case, Winquist apparently became progressively more upset about the incident with Meier as the day wore on. However, contrary to the Association's contention, the fact that she responded to the incident in this particular fashion does not undercut her credibility. Finally, Winquist's credibility as a witness was strengthened, not harmed, by her admission that she twice called Meier a bitch.

Generally speaking, employes are loath to admit to engaging in conduct for which there may be adverse consequences. Sometimes there are adverse consequences for using harsh language with a fellow employee. The fact that Winquist admitted to using inappropriate language enhanced the credibility of her account of the incident.

Having credited Winquist's account of the incident, the next question is whether Meier's conduct constitutes "rude and disruptive behavior" as alleged by the Employer. I find that it does. Meier's verbal abuse of Winquist crossed the line of appropriate workplace conduct. It was especially inappropriate when one considers that Meier is higher than Winquist in the Department's organizational structure. I further find that it was Winquist alone who bears responsibility for the incident. It is therefore held that Meier's conduct constituted misconduct which warranted discipline.

Due Process Considerations

Attention is now turned to the Association's due process contentions. As previously noted, due process is one of the components of just cause. Many labor agreements specify that before an employer can impose discipline, it must comply with certain procedural due process protections. This particular contract however does not contain any such explicit protections or standards. Be that as it may, the Association argues that the Employer failed to follow four due process protections in this particular instance which, in its view, are nonetheless implicit. These four contentions are addressed below.

First, the Association asserts that Meier was not told of the charge Winquist made against her until the Employer had already decided to impose discipline. While Meier did not actually see Winquist's written charge until the August 11 meeting, she knew that Winquist had filed it because Winquist told her so. Meier could no doubt surmise that Winquist's written charge dealt with the August 7 incident she had with Winquist. Moreover, Meier's memo to VandenBerg the next day demonstrates that she knew what Winquist's complaint was because her memo begins thus: "I was upset and accused Dawn of not treating me fairly. Within 15 minutes I apologized verbally and in writing." Given this acknowledgement, Meier was not blindsided about the subject matter that was going to be addressed when she walked into the August 11 meeting with VandenBerg. The undersigned is therefore satisfied that if the Employer is contractual required to apprise an employe of the charge against them, the Employer did so here.

Second, the Association contends that the Employer's investigation into Winquist's charge was flawed in the following respects. To begin with, it asserts that had the Employer properly investigated, it would have seen the credibility gaps and inconsistencies in Winquist's story. However, as previously noted, the undersigned has reviewed the conflicting versions of the incident and reached the same conclusion as the Employer did concerning whose version to credit. Next, the Association contends that if the County had properly investigated, it would have learned that Winquist had promised to remind Meier to turn in her alternate work schedule request form. This scenario is obviously premised on Winquist actually making such a promise to Meier. Had Winquist made this specific promise to Meier as alleged, the undersigned can certainly understand why Meier would feel sandbagged. However, Meier expressly denied ever having any discussion with Meier about the alternate work schedule. Consequently, the record evidence does not establish that Winquist ever made such a promise to Meier. Additionally, the record evidence does not establish that Meier had a history of turning in her request forms late. Next, the Association contends that if the County had properly investigated, it would have learned of other matters which contributed to Winquist's emotional behavior on the day in question. The Association speculates that other (unidentified) events may have set Winquist off emotionally. Had the Association presented some proof that other events occurred that day that caused Winquist's emotional reaction, the Association's point would be well taken. However, insofar as the record shows, the incident with Meier was the only problem Winquist had on August 7. That being the case, the causal connection which I make is that the distress which Winquist exhibited on the

afternoon of August 7 was directly connected to one source, namely Meier's conduct earlier that afternoon. Finally, the Association essentially contends that VandenBerg's investigation was simply not thorough enough. In my view though, VandenBerg's investigation was sufficient because it identified the same basic facts that were subsequently adduced at the arbitration hearing. Given the foregoing, the undersigned is satisfied that if the Employer is contractually required to conduct a thorough investigation into a charge before judgement is rendered, the Employer did so here.

Third, the Association asserts that Meier was never given the opportunity to respond to Winquist's charge and tell her side of the story. The problem with this contention is that Meier acknowledged at the hearing that she was, in fact, given the opportunity by VandenBerg to tell her side of the story at the August 11 meeting before discipline was imposed. This admission obviously undercuts the Association's contention to the contrary. The Association also makes much of the fact that VandenBerg had prepared a written reprimand for Meier in advance of the meeting and had it sitting on her desk during the meeting. The inference which I draw from this is that VandenBerg believed before the meeting started that Meier's conduct warranted discipline. Otherwise, she would not have prepared the document in advance of the meeting. Be that as it may, what is more important is that VandenBerg did not give Meier the written warning until after she had heard Meier's full account of the incident. It is therefore held that if the Employer is contractually required to give an employe a meaningful opportunity to respond to the charge before judgement is rendered, the Employer did so here.

Fourth, the Association asserts that VandenBerg improperly relied on the notes she has kept of her various meetings with Meier. The record indicates in this regard that before VandenBerg met with Meier on August 11, she reviewed the detailed records she has kept of her meetings with Meier. The topics which have been addressed at these meetings have ranged from case status reviews to job performance concerns. In the opinion of the undersigned, there was nothing wrong with Meier reviewing these notes before deciding what action to take in this matter. In fact, had she not done so, the Association could have claimed that VandenBerg took disciplinary action without getting a complete picture of Meier's total work record. Consequently, VandenBerg's review of the notes just referenced did not constitute a due process violation.

In sum then, it is held that if the Employer is contractually required to provide the due process protections noted above, it did so in this particular case.

Summary

Having so held, the final question is whether the discipline imposed on Meier for her misconduct (i.e., a written warning) was reasonable. I find that it was. The record indicates that VandenBerg has counseled Meier numerous times about her temper and her conduct toward other employes. These warnings put Meier on notice about what conduct and behavior was appropriate in the workplace. These warnings also put Meier on notice that if she engaged in inappropriate

workplace conduct, she faced disciplinary action. On August 7, Meier engaged in conduct toward Winquist which constituted inappropriate workplace conduct. The Employer's subsequent decision to give Meier a written reprimand for same was reasonable. That being so, the undersigned finds no basis for overturning the Employer's discipline.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the County acted reasonably and in accordance with the collective bargaining agreement when it issued a "Record of Corrective Action" to Mary Meier following the incident of August 7, 1995. Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 27th day of December, 1996.

By Raleigh Jones /s/
Raleigh Jones, Arbitrator