BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between LOCAL 150, SERVICE AND HOSPITAL EMPLOYEES INTERNATIONAL UNION, AFL-CIO and MERITER HOSPITAL, INC.	Case 88 No. 54482 A-5524

Appearances:

Mr. Todd Anderson, Business Agent, appearing on behalf of the Union.

Axley Brynelson, Attorneys, by Mr. Michael J. Westcott and Ms. Leslie A. Fiskey, appearing on behalf of the Employer.

ARBITRATION AWARD

The Employer and Union above are parties to a 1996-98 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the discharge grievance of Terry Roach. The undersigned was appointed and held a hearing on January 10, 1997 in Madison, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on March 10, 1997.

Issues:

The Union states the issue in the following terms:

> Whether the Employer violated the collective bargaining agreement when it suspended and terminated Terry Roach commencing July 12, 1996.

The Employer uses the following terms:

1. Whether the grievant, Terry Roach, was discharged for just cause.

2. If not, what is an appropriate remedy?

Relevant Contractual Provisions:

ARTICLE XXII. TERMINATION OF EMPLOYMENT

Section 1. Termination Notice

It will be the employee's responsibility to give the Employer at least two (2) weeks' advance written notice of termination or, without a reasonable explanation of his/her action which is acceptable to the Hospital, she/he will be liable to forfeiture of any accrued Earned Time or other benefits. No unscheduled absence for illness shall be paid to an employee during the last two (2) weeks of employment unless such illness is verified by the Hospital's Employee Health Service physician or Emergency Services' physician. If such verification cannot be made by Health Service, it is the employee's responsibility to receive certification of illness from his/her personal physician. Failure to provide such verification may result in forfeiture of accrued benefits as stated above.

It is the policy of the Hospital to give two (2) weeks' notice to an employee upon termination, or two (2) weeks' pay in lieu of notice. However, this will not prevent the Hospital from terminating an employee without two (2 weeks' notice and without pay in lieu of notice if the discharge is for just cause, subject only to the grievance procedure outlined in Article XXIV of this Agreement. A termination for such cause will also result in forfeiture by the employee of any accrued Earned Time and other benefits, except in extenuating circumstances as determined by the Hospital or where prohibited by law. This policy will also apply in cases where several lesser offenses committed by an employee over a period of one (1) year culminate in the need for termination. Three written warnings relating to the same conduct in any twelve (12) month period will result in termination.

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ARTICLE XXV. DISCHARGE AND DISCIPLINE

Section 1. Authority

The Hospital may discharge, suspend or otherwise discipline for just cause any employee who has completed his/her probationary period, subject to the grievance procedure. Prior to any discharge disciplinary meeting, employees will be advised of their right to have a steward present.

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Section 4. Sequence of Disciplinary Action

Any employee may be disciplined for just cause or for performance which is less than satisfactory. Ordinarily, such discipline would include the sequence of verbal warning, written warning, suspension, and termination. Certain actions by the severity of their nature will require immediate progression to more severe discipline including suspension or termination. In all cases, written notification shall be provided to the employee which will indicate the current step of the disciplinary process and the reasons for the disciplinary action. In the cases of written warning, suspension, and termination, the Union shall be notified in writing by the Hospital at the same time the information is provided to the employee, and a copy of these disciplinary actions will be placed in the employee's personnel file, and a copy will be provided to the Union Segment President.

In the cases of discipline for performance reasons, the supervisor will assist the employee in developing an action plan to alleviate the performance deficiencies. Should this plan not result in the correction of the deficiencies, further disciplinary steps will be taken. Continued failure by the employee to correct the performance deficiency may result in suspension or termination, subject to Article XXV, (sic) Grievance and Complaint Procedure. Unsafe practice will result in appropriate, immediate action.

Facts:

Grievant Terry Roach was employed as an emergency services technician from August, 1991 until July, 1996. The grievant was discharged, following a period of suspension during investigation, after an incident in which he was found to have drawn up into a syringe a mixture of medications and left it unmarked, for use on a patient by a medical student. The dispute between the parties centers on whether the grievant could reasonably be held to have known that this act was beyond his job description and was improper for him to perform.

The record contains evidence of several previous incidents in which the grievant performed work beyond his job description. On December 11, 1993 the grievant had received a "verbal warning" (the first step in the grievance procedure, but reduced to writing and kept on file) for treating a patient on the hospital's premises without authorization. It is undisputed that a friend of the grievant had come into the emergency room, had sought assistance from the grievant, the grievant had assisted him, and the visitor had been observed by a nurse on his way out. The grievant was given a verbal reprimand for seeing or treating a friend in Meriter's emergency room. The reprimand includes the following statement:

> The expected behavior is that no advice, counseling and/or medical TXX. be done by Terry on Meriter's premises. (The exception being PTS. assigned to him in the E.R. while on duty).

The grievant, in testimony, averred that on that occasion the patient in question merely wished to borrow an inflatable splint which Roach kept in his car. But there is no dispute that he received the warning, and did not grieve it.

In October of 1994, according to assistant nurse manager Cheryl Lueth, the grievant was "counselled" following his applying a plaster splint to a patient. Lueth wrote a handwritten memorandum to nurse manager Bonnie Stamm which stated as follows:

> Bonnie -
>
> For your records. - Terry Roach and I did discuss his applying a splint to Gen's foreign exchange child last month. He said he did it to "help move things along" and he was told to do so by Dr. Chickering. I told him it was not part of his job description - He argues that it "came after other duties as required". I again reiterated what could happen if this occurred again. I did not feel confident that Terry would comply.
>
> Cheryl

The grievant, in his testimony, did not explicitly deny being warned by Lueth at this time not to apply plaster splints, but stated that at no time did his discussions with Lueth or other supervisors about performing work beyond his job description become stated in broad terms. The grievant testified that he was only told not to apply plaster splints.

It is undisputed, however, that on May 4, 1996 the grievant once again applied a plaster splint to a patient. On this occasion, the grievant admits that he performed this work despite knowing that he was not authorized to do it. Though the reason is not clearly stated in the record, there is evidence that Dr. Tom Ferrella, then in charge of the patient involved, was not in the

room when the splint was (properly) being prepared by the grievant, and the grievant became concerned that the splint would be unusable by the time he returned. Ferrella saw the patient leaving wearing the splint, called him back, examined the splint carefully, and released the patient. Ferrella then initiated a discussion with Roach and separately with charge nurse Judy Priske concerning this. Ferrella testified that Priske approached him already knowing that the grievant had put on the splint, and that Ferrella told her he had already spoken with Roach and did not think he would ever do it again. Ferrella also testified that he was sensitive to the potential litigation involved in a malfunctioning plaster splint, because he had had a malpractice suit against him and several other physicians that lasted four years, which turned on the question of whether the patient involved was injured by a splint or a cast. Ferrella described a number of complications that could happen if a splint was applied improperly, and further testified that the application of a plaster splint was work for which physicians were specifically trained and emergency services technicians were not. (It is undisputed that a less complex type of splint known as a frog splint is within the training of an emergency services technician, and that EST's do apply these splints to patients).

The grievant was given a three day disciplinary layoff as a result of this incident. The form used by the hospital contains a number of check boxes under the heading "nature of discipline". On the form involved in this incident, the term "final warning (with suspension)" is checked. The following commentary was added as a separate page to the form:

> On 5-4-96 you wrote me a note that you were being asked repeatedly to apply splints by physicians and asked that I would talk with them.
>
> On 5-9-96, at my request, you came in to talk to me regarding your note. You admitted that you were putting on plaster splints and requested that I speak to the physicians.
>
> As a follow-up to your concerns, I interviewed several physicians. Dr. Tom Ferrella was asked if he ever requested you to apply a plaster splint to a patient. He stated no, he knows you are not supposed to do this. He did say that on 5-4-95 you applied a plaster splint to a patient without his knowledge which the charge nurse also witnessed. He also stated that he approached you as to why you did this. You then asked him to tell the charge nurse that you had been asked by him to apply the splint. Dr. Ferrella stated that he refused to do that. The charge nurse was asked what occurred and she also stated she saw you apply a splint to a patient and later asked Dr. Ferrella if he had asked you to do that. Again, Dr. Ferrella said no.

> It is outside your job description as an E.S. Technician, to apply a plaster splint to a patient, even with an order from a physician. In this case you were not asked by that physician to apply the splint. In addition, when I talked to Dr. Ferrella he stated that you were angry with him when he would not "lie" for you when the charge nurse saw you put on the splint.
>
> You admitted that you have been applying splints and this is confirmed by two physicians. You have been counseled in the past
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> for this action and counseled to refuse to do tasks that were not appropriate or in your job description.
>
> Terry, this is a serious situation. Even when this has been discussed specifically with you in the past, you repeated the behavior by splinting a patient. It is inappropriate to work outside the boundaries of your job description. Failure to follow your job description and to work outside the boundaries may result in further disciplinary action up to and including termination. It is also important to note that retaliation as a result of this suspension is not acceptable in any form.

The grievant, in his testimony, admitted applying the splint knowing he was not supposed to, but denied asking Ferrella to take the responsibility. Ferrella's testimony confirms that the grievant asked him what he had told Priske but did not ask Ferrella to misrepresent what had occurred.

The incident which led directly to the grievant's discharge occurred on July 11, 1996. It is undisputed that on that day the grievant prepared a mixture of lidocaine and bicarbonate for administration as an anesthetic to a patient who had skin lacerations. The grievant was alone with the patient at the time. Two nurses, Cheryl Lueth and Judy Priske, were in a nearby patient cubicle, not in direct view but within earshot. Both testified that they overheard the grievant telling a medical student that he had drawn up and mixed that medication himself and that it was ready. Priske and Lueth immediately went to see nurse manager Stamm, had a brief conversation about this incident, and returned to retrieve the medicine. But by the time they returned, the medical student had administered the injection. The grievant was suspended the next day pending investigation. The notice of suspension was couched in the following terms:

> On July 11 at approximately 1500, you were overhead (sic) by Cheryl Lueth, Assistant Nurse Manager stating to the medical student that you had prepared a syringe containing a mixture of

> lidocaine and bicarbonate for a patient to be administered for anesthesia during suturing and that the syringe was on the suture tray. When asked if you did the above, you stated, "yes." I asked you if you had received an order from a physician or anyone to do this and you stated that you had not, that you were preparing the patient for suturing. Cheryl then checked in the room and found the syringe, unmarked, on the suture tray. You also stated you had done this on many occasions for several physicians.
>
> This is not a procedure that is listed in your job description nor is it something that you have been trained by this hospital to do. Your direct supervisor is the charge nurse in Emergency Services and your job description states that you perform your duties under his or her direction. Your job description as an Emergency Services Technician does not allow you to take verbal orders from a physician and prepare medications or any anesthesia for administration. Again, this situation in which you are practicing beyond your job description and hospital policies may place the patient as risk.
>
> As a result of your actions you are suspended pending further investigation.

Following investigation, the discharge was effected on July 25.

Ferrella testified that there are a number of possible permutations and combinations of anesthetic used to treat lacerations, and that deciding which medication is appropriate is exclusively within a doctor's domain of expertise. Ferrella also testified that in such cases, 80 to 90 percent of the time a mixture of lidocaine and bicarbonate is used at Meriter.

The grievant testified that he had been trained to draw up medications into syringes by two other physicians, who had specifically requested him to perform that work and trained him for it. Neither of the two testified, but written statements in support of the grievant from both were admitted. A letter from Dr. Will Chickering, dated August 8, 1996, states as follows:

> I personally taught Terry Roach to draw up a 10:1 solution of Xylocaine:Bicarbonate and explained to him the different indications/contraindications for use of Xylocaine with epinephrine. I supervised him several times and was confident that he knew what he was doing. This did not prevent me from double-checking him, principally as to the use of the correct Xylocaine solution, but I do that to myself as well.

> From personal experience, I know that these and similar tasks are routinely performed elsewhere by personnel with considerably less intelligence and/or preparation than Terry.
>
> I personally solicited his help the first time and encouraged it thereafter because I believed it to speed up the suturing process, hence improve patient care.

The grievant testified that at the time of the hearing, Dr. Chickering was in Guatemala. A second letter was forwarded to Bonnie Stamm from Dr. David Athas. It is not clear from the record why Dr. Athas did not testify. This letter states as follows:

> I'm writing this letter in support of Terry Roach. I was surprised to hear of his recent dismissal from the emergency department.
>
> Terry always worked hard and was helpful with patient care. I have heard of two areas of controversy within his work. First is the issue of splinting orthopedic patients. First, to my knowledge, whatever splints were done on my patients they were placed under my order and direct supervision. His technique was excellent and helped patient flow in the department. With regards to suture setup, Terry was one of the most thorough assistants we had in the department. I was not aware that he was not supposed to fill the local anesthetic syringe. In each case, however, it was under my supervision and I had no problem with his helping.
>
> There may have been other reasons for his dismissal that I am not aware of. Overall I have enjoyed working with Terry. He is eager to help, skilled in his techniques and good with patients. I am hopeful that his record can reflect these attributes and would welcome his re employment.

Both documents were admitted over the Employer's objection, but the Employer did not offer any indication to the effect that either letter was not authentic.

It is undisputed that the grievant had received some training as a result of involvement in the University of Wisconsin's Sports Medicine Department, and that this involved learning how plaster splints were applied. The grievant testified that it had actually been he who instructed Dr. Chickering in their use, and that Chickering had told him that the matter was sketchily treated in physicians' training. The grievant denied ever having been told by any Meriter supervisor or in his training that he was not authorized to draw up medications. But none of the other Union or

Employer witnesses testified to the effect that he or she was ever under the impression that mixing medications and drawing up medicine into a syringe were within the competence or job description of an emergency services technician. Other witnesses testified that in prior years, emergency services technicians had at times been used to apply plaster splints, but that this practice had been stopped some years previously. The duties and responsibilities of an emergency services technician listed in the hospital's job description for that position, dated September 30, 1993, specify as follows:

EMERGENCY SERVICE TECHNICIAN
DUTIES AND RESPONSIBILITIES

1. After initial assessment by triage nurse and under supervision of a nurse: E.S. technician may assist in gathering initial chief complaint, vital signs and record this information on the chart, report and record on-going concerns/conditions as witnessed by the ES Tech.

2. Under the supervision of the nurse, may:

   a. Cleanse abrasions, lacerations, avulsions using sterile technique with appropriate solution.
   b. Assist physician/nurse/physician assistants with procedures requiring sterile technique such as suturing, I & D's, etc.
   c. Apply cold packs to extremity injuries.
   d. Fit and teach crutch walking and chart patient ability to use.
   e. Apply dressings and steri-strips to lacerations, abrasions, avulsions.
   f. Perform Snellen eye exam.
   g. Irrigate eyes.
   h. Obtain throat cultures on adult patients.
   i. Perform electrocardiograms.
   j. Set-up oxygen therapy with a nasal cannula.
   k. Assist physician with splinting of extremities.
   l. Apply ace bandages to extremities.
   m. Perform CPR as required.
   n. Perform and record pulse oximetyr.
   o. Apply sterile solution to burns.

3. Provide patient comfort, assist with positioning, record vital signs as needed during procedures in the Emergency

Services Department such as:

a. Splinting
b. Lumbar puncture
c. Physical examinations
d. Casting
e. Suturing
f. Other minor procedures as assigned by charge nurse.

4. Assist with pelvic examinations and sexually transmitted disease collection.

5. Maintain oxygen and nitrogen tanks, change flow meters.

6. Facilitates in the distribution of signed discharge instructions after teaching by MD or RN.

ADDITIONAL RESPONSIBILITIES:

1. Requisitions unit supplies and stocks SPD equipment/supplies.

The grievant testified that as far as he understood, "assisting in suturing" included drawing up medicines into a syringe, and "splinting" included plaster splints. No other witness testified to such a belief.

It is undisputed that the syringe in question on July 11, 1996 was left unlabeled in the patient's cubicle. Ferrella testified, contrary to the grievant, that unlabeled loaded syringes were not to be found in the hospital emergency room. Ferrella also testified that the "golden rule" of injections was "if you draw it, you use it". The Employer adduced testimony concerning the legal liability of a hospital which permitted unlicensed and untrained personnel to mix medications or apply plaster splints, or perform other functions beyond the specified parameters of that person's particular job description and individual training. There is no dispute that the grievant had not been trained by Meriter Hospital personnel to perform mixing of medications or plaster splinting. The record does, however, reveal that the grievant was under the impression that physicians working in the Meriter emergency room were employes of Meriter and that he was to take instructions from them. Several witnesses testified to the effect that the physicians are contracted from an outside service, and that they are not part of line supervision within the emergency room.

The Employer's Position:

The Employer contends that the evidence demonstrates that the grievant's training never included training in preparation of medications, and that the evidence is that every other emergency services technician knows that preparation of medications is not within their job description. The Employer argues that the grievant knew or should have known that he works

under the supervision of a nurse, not a physician, and that his responsibility was to the hospital's chain of command, not to follow the personal preferences of any physician he happened to be working with. The Employer points to the counselling and disciplinary documents the grievant received for applying plaster splints and argues that the language of these warnings applies broadly, and refers to acting outside of his job description in all circumstances, not just application of plaster splints. The Employer points to evidence that nursing management was neither aware of nor condoned the grievant's preparation of medication, despite the Union's attempt to prove that management had known the grievant was doing this before. The Employer argues that the most the Union can establish is that a charge nurse, who is a bargaining unit employe and not a supervisor, may have known that the grievant had previously drawn up anesthetic medication into a syringe.

The Employer contends that regardless of whether the grievant actually knew that he could not act outside his job description, he presented a safety hazard that could no longer be tolerated, citing Kings Daughters Medical Center. 1/ The King's Daughters case, argues the Employer, demonstrates that a hospital environment requires a higher standard of care than most employment, and that discharge for failure to perform work properly may be necessary and meet the requirements of just cause under circumstances whose equivalent might not justify such a penalty in a factory environment. The Employer contends that the grievant's actions exposed the hospital to potential civil liability and placed its reputation and accreditation at risk. Contending that the grievant's further employment exposed patients and the hospital to an unreasonable risk of harm, the Employer contends that he constituted, by July 1996, a liability risk and a danger to patients which could not be assumed by the hospital any longer. The Employer requests that the grievance be denied.

The Union's Position:

The Union contends that the grievant is not alone in believing that the job description lists only in a general sense the things the emergency services technicians can do, citing testimony by technician Perry Steichen. The Union contends that the grievant's drawing up of medicine into a syringe was not clearly outside his job description, because that description called for him to "assist doctors with suturing" and that he had been trained to perform this work by two physicians working in the emergency room. The Union argues in this respect that the distinction between contractors and employes is hardly one which emergency services technicians should be expected to be familiar with, and that routine practice in the emergency room involves emergency services technicians taking orders from doctors. The Union also notes that there is no written policy at the hospital concerning this issue. The Union cites Blue Cross and Blue Shield United of Wisconsin 2/ to the effect that "nevertheless, in the absence of a specific and published written rule, just cause

1/ 96 LA 609 (Arbitrator Edward Curry, 1991).

2/ WERC Case A-5310, Arbitrator Marshall L. Gratz, 1995.

requires the company to take particular care to assure that employes are informed of what is expected of them before it imposes discipline for a violation of an unwritten standard, and to assure that it applies the unwritten standard in an even-handed manner."

The Union contends that the grievant did not have notice that his actions could result in discipline. The Union further contends that with respect to the grievant's application of a splint in May, 1996, the record does not support the contention in the disciplinary notice issued at that time, that the grievant had asked Dr. Ferrella to lie for him, noting Ferrella's testimony to the effect that he did not know if Roach asked him to lie for him regarding that incident. The Union further notes that physicians who testified admitted that the medical student who administered the injection to the patient on July 11 was free to decline to administer that particular combination of drugs. The Union also contends that the actions of Cheryl Lueth and Judy Priske on that occasion are contrary to the alarm registered by the Employer, because instead of immediately going to the patient's cubicle involved to retrieve the loaded syringe, they first detoured to talk to the nursing manager, and arrived back only when it was too late to prevent the injection from being made. Similarly, the Union contends, the atmosphere of alarm which the Employer is attempting to relate is belied by the fact that another charge nurse on another occasion observed the grievant preparing medications and did not consider this worthy of comment or prevention. The Union also points to testimony from emergency services technician Ilene Marking, who originally precepted Roach (i.e., gave him basic instruction) to the effect that she does not recall if she ever informed Roach that he could not prepare medications. The Union notes that Stamm testified that she never received a preceptor check-off list back from Marking for Roach, and that Roach testified that his orientation consisted of a two hour meeting about insurance and being shown around the emergency room for the rest of the day.

The Union contends that while the collective bargaining agreement provides that an employe may be discharged for just cause, it also requires that where discipline is applied for performance reasons, the supervisor will assist the employe in developing an action plan to alleviate performance deficiencies. The Union argues that no action plan is visible relating to any of the grievant's prior performance deficiencies, and that this failure to follow contractual procedure is reflected further in the Employer's discharge of the grievant after three disciplines, which were not within twelve months as required by Article 22, Section 1 of the Agreement.

The Union requests that the discharge be overturned and the grievant be made whole for losses suffered.

Discussion:

With respect to how the issue should be phrased, I note that a clause argued as primarily relevant by the Union (Article 22, Section 1) is headed "termination notice", and concerns itself primarily with how much notice is required and whether earned time may be forfeited by failure to provide such notice. The reference to discharge for three lesser offenses within one year within

this clause appears to be present there because of its relevance to the standard therein applied for loss of accrued earned time, rather than as an independent and free standing determinant of what constitutes the standard for discharge. That, by contrast, appears to be determined by Article 25, Section 4. In its reference to "certain actions by the severity of their nature will require immediate progression to more severe discipline including suspension or termination" this clause provides for the possibility that immediate termination may be appropriate under some circumstances. Furthermore, the reference to the sequence of discipline in that article contains no requirement that the entire sequence relied upon by the Employer occur within the preceding twelve months. It is evident, meanwhile, that the grievant's record does contain at least a verbal warning and a suspension. The question squarely presented by this case is therefore whether the grievant's actions on July 11, coupled with his prior actions, were severe enough to render the Employer's decision to discharge a matter of just cause under Article 25, or not.

Upon review of the record, I conclude both that the Employer's actions have been less than perfectly clear and consistent, and that the grievant is not without his merits as an employe. Yet for the following reasons, I also conclude that the Employer was within its permissible discretion under this Agreement in discharging him following the July 11 incident.

To begin with, it is evident from the grievant's handling of his employment generally as well as from others' reactions to his work that the grievant is relatively bright and energetic. These qualities generally operate in an employe's favor. But when coupled with a certain lack of judgment and restraint, which I find evidenced by the grievant's record here, those qualities appear to have led the grievant to an attitude towards his work which was not consistent with the tightly regulated world of a hospital.

It is evident that the grievant's intelligence and willingness to learn, and also his willingness to do more than he is required to do, have won him supporters among the physicians as well as dismay among the nursing staff. But I do not credit the grievant's contentions that he never knew what the boundaries of his job were supposed to be in the relevant respects, or that he was warned only narrowly not to exceed them. While he was initially employed only at 20 percent, this grew over a period of time to 50 percent employment. Consequently, for a substantial period of time before his discharge the grievant had put in many hours a month at the hospital. Training at the hospital may not have been ideal. But there is sufficient evidence that other emergency services technicians understood that they were neither to administer plaster splints, nor to draw up and mix medications, to render highly questionable the grievant's contentions that he read his job description permissibly, in concluding that the general language of that description permitted these functions or even required them. At the same time, I do not read Article XXV's reference to an "action plan" as setting a requirement on the Employer which it has failed in this case. Most "performance deficiencies", in the terms used in that clause, refer to employes who do not "come up to the mark." Here, the grievant was technically capable or more than capable, but repeatedly exceeded his job's boundaries. Repeated warnings would appear a reasonable equivalent to the apparent intent of an "action plan" under these circumstances.

There is merit in the Employer's contention that it is impossible to write a job description in negative terms, because there are so many procedures, techniques and work functions which would have to be explicitly described to make the list complete. The grievant had been employed in a hospital environment for quite long enough to understand that the general rule was not to engage in actions for which he had not been properly trained.

And I do not accept the grievant's equation, that the preference of certain doctors that he perform this work substituted for a formal hospital training program and a hospital requirement that these functions be included within his job. At one time, it might have been possible for the grievant to be confused about this. But after receiving a written copy of a "verbal" warning about performing work beyond his job description in 1993 and a "counselling" in 1994, it is evident that the grievant not only continued to perform work beyond his job description, but on at least one occasion engaged in exactly the same conduct which had occasioned an earlier warning. The application of a plaster splint in May of 1996 is significant, because it demonstrates that the grievant took lightly the instruction of nurse managers not to engage in work beyond his job description. It also casts doubt on his reasons for subsequently engaging in other work beyond his job description (preparing medication) because the repetition of the exact same violation suggests that something other than ignorance or misunderstanding was at work. I also agree with the Employer that the warnings the grievant received spoke in more general terms than just about splinting, particularly the last paragraph of the May suspension notice. Management had every right to expect the grievant to take such language seriously, especially in a document marked "final warning."

Based on the grievant's course of action as revealed by the entire record, it appears that the grievant's intelligence and willingness to learn may have resulted in his becoming a little bored with the limitations of his position. This is not a trait which would gather him condemnation throughout the wider world of employment, and I note specifically that in some other forms of technical employment an employe who is willing to "just do it," and take on more responsibility and more work than he or she has specifically been trained for, may be regarded with enthusiasm by employers these days.

But a hospital, and in particular this hospital, is not such a setting. The Employer has reason, testified to by Dr. Ferrella, for its concerns about liability and patient safety. The fact that the hospital has not been able to maintain a perfect level of consistency in its attitudes among nursing staff, particularly non-supervisory nursing staff, does not eliminate the concern. 3/ And

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3/ There is, as the Union argues, evidence that the nursing staff were in the habit of dispatching the grievant and others to pick up medications from the pharmacy, which required the dispatched employe to sign a form clearly intended only for nurses. Picking up and signing for a sealed container, however, is a degree of working beyond job description clearly distinguishable from applying potentially dangerous splints or mixing

the grievant's repetition and expansion of working outside of his job description could properly give rise to great concern by management.

The Union has, indeed, established that the physicians differ in their preferences and that there is something of an attitude of deference to them in the emergency room environment. If the grievant's action in mixing medications had been the specific result of a specific order from an identified physician on that occasion, this case might have had a different result. But the grievant cannot claim to be deferring to either a specific doctor's order, or even his or her general preferences, in either the May or July incidents. When the grievant, alone among employes in his classification, gave the widest conceivable application to the general language of his job description, the Employer could justifiably ask, as it has, "What will it be next time?" Furthermore, the 1994 "counselling note" makes clear that the grievant had been expressly warned not to follow every preference or instruction of a physician if it was beyond his job description. The note names Dr. Chickering in that context. The grievant did not deny that the note accurately reflected the "counselling."

I find the discharge ultimately to be warranted on this record not because the grievant was a "bad employe" all around, nor because of specific harm suffered by any identifiable patient as a result of the grievant's actions. In the environment in which it must operate, this Employer has defensibly argued that it must be able to trust that emergency room staff will stick to their business even if they cannot be closely supervised at all times. The Employer has also demonstrated that it is not, in fact, possible to have supervision constantly in a position to observe an emergency services technician at work. The grievant's repeated actions deprived him of the trust which this form of employment particularly requires the Employer to have in the safety of its operation, the restraint and judgment, and the consistency of behavior of its emergency room staff. For that reason, I find that this discharge cannot be overturned despite the grievant's merits on several grounds.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the grievant was discharged for just cause.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 20th day of June, 1997.

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medications.

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator