

## BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LOCAL 990, AFSCME, AFL-CIO**

and

**KENOSHA COUNTY**

Case 167 No. 54684 MA-9759 (Dolly Fitch)

### Appearances:

AFSCME Council 40, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison WI 53717 by **Mr. Michael Wilson**, Staff Representative, appearing on behalf of Local 990.

Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn, Suite 1400, Milwaukee, WI 53202, by **Mr. Mark Olson**, appearing on behalf of Kenosha County.

### **ARBITRATION AWARD**

The undersigned was jointly selected by Local 990, AFSCME, AFL-CIO (hereinafter referred to as the Union) and Kenosha County (hereinafter referred to as the County) to hear and decide a number of disputes concerning the October 14, 1996 discharge of Dolly Fitch from her position as a Social Worker II with the County Department of Human Services.

The parties to this action, having devoted substantial time and resources to the litigation of the action, and being desirous of a prompt and final resolution of the dispute between them, have requested that the undersigned issue an expedited award based upon the evidence submitted to him during the presentation of the County's evidence on January 13 and 14, February 18, March 6, 11, 12, and 13, May 12, 13 and 30, and June 3, 4, and 20, 1997. The parties have further stipulated that the Award should consider and resolve all employment-related claims between the parties and Dolly Fitch, whatever their basis and however the claims are constituted, and have stipulated that the Award will bind them with respect to all such claims. Having considered the evidence, and the relevant contract language, and being fully advised in the premises, the undersigned makes the following Findings and Award.

### **FINDINGS**

1. Certain of the grievant's actions in processing and monitoring her cases fell below the County's reasonable expectations for job performance for an experienced Social

Worker.

2. Many of the charges leveled against the grievant do not support a finding of just cause for discharge. Certain of the County's charges are barred as untimely; others are not supported by evidence that the grievant had reasonable notice that discipline might result from her action or inaction; others are not proved.

3. Neglect of duty and failure to perform assigned duties adequately are just cause for counseling and progressive discipline;
4. Given that the grievant has over twenty years of service with the County and a clean disciplinary record, and given that many of the charges are either not proved, are time barred or suffer from a defect of notice, discharge is too severe a penalty for the grievant's actions and inactions.

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

### **AWARD**

1. The grievant shall be reinstated to her former classification and will be assigned to a position as a Social Worker II in the Department of Human Services. In order to allow the parties to make appropriate arrangements for her return, the reinstatement will be effective as of September 8, 1997;
2. The grievant shall receive backpay to April 1, 1997; in addition to the amount of backpay, she shall be paid two months of wages as compensation for health insurance expenses.
3. There shall be no precedent or prejudice to the rights of other workers by virtue of this Award.
4. There shall be no loss of seniority or credit for service to the grievant by virtue of the discipline.
5. The employer may condition the assignment of normal duties and normal caseload on the grievant's participation in a training program or training sessions to be determined at the employer's discretion. Participation in these programs or sessions will be considered part of the grievant's normal work duties.
6. A copy of this Award will remain on the grievant's record until December 31, 1998, and will be treated as a first step in the disciplinary progression for neglect of duty. Any further discipline must be supported by the traditional notions of just cause, progressive discipline and proportionality.
7. Pursuant to the stipulation of the County, the Union and the grievant granting the arbitrator authority over all employment-related disputes involving the grievant, this Award completely resolves any and all employment related claims between the parties related to the grievant's discharge, and between the County and the grievant, including but not limited to discipline, unemployment, discrimination, prohibited practices, reimbursement claims however constituted, backpay claims however constituted, and all of the grievant's pending grievances.
8. The Arbitrator will retain jurisdiction over this matter for the purpose of resolving disputes over the interpretation and application of this Award.

Dated this 3<sup>rd</sup> day of September, 1997 at Racine, Wisconsin:

Daniel Nielsen /s/

Daniel Nielsen, Arbitrator

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