

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

OUTAGAMIE COUNTY (HUMAN SERVICES)

and

OUTAGAMIE COUNTY PROFESSIONAL
EMPLOYEES UNION, LOCAL 2416, WCCME,
AFSCME, AFL-CIO

Case 242
No. 54883
MA-9820

Appearances:

Davis & Kuelthau, S.C., by Mr. Roger E. Walsh, 111 East Kilbourn Street, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on behalf of the County.

Mr. Richard C. Badger, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 2825, Appleton, Wisconsin 54913, appearing on behalf of the Union.

ARBITRATION AWARD

Outagamie County (Human Services), hereinafter referred to as the County, and Outagamie County Professional Employees Union, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties 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 Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the termination of an employee. Hearing on the matter was held in Appleton, Wisconsin on April 29, 1997. A stenographic transcript of the proceedings was prepared and received by the undersigned by May 8, 1997. Post-hearing arguments and reply briefs were received by the undersigned by July 16, 1997. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties were unable to agree upon the framing of the issue and agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

"Did the County have just cause to discipline and to terminate the grievant?"

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

ARTICLE I - MANAGEMENT

1.01 - Except as herein otherwise provided, the management of the work and the direction of the working forces, including the right to hire, promote, transfer, demote or suspend or discharge or otherwise discipline for just cause, and the right to relieve employees from duty or to layoff employees, is vested exclusively in the Employer. In keeping with the above, the Employer shall adopt and publish reasonable rules which may be reasonably amended from time to time. The Employer and the Union will cooperate in the enforcement thereof.

. . .

ARTICLE XXVI - DISCIPLINARY PROCEDURE

26.01 - The following disciplinary procedure is intended as a legitimate management device to inform employees of work habits, etc., which are not consistent with the aims of the Employer's public function, and thereby to correct those deficiencies.

26.02 - Any employee may be disciplined, suspended or discharged for just cause. The sequence of disciplinary action shall be oral reprimands, written reprimands, suspension or discharge. A written reprimand sustained in the grievance procedure or not contested shall be considered a valid warning. A valid warning shall be considered effective for not longer than a six (6) month period.

26.03 - The above sequence of disciplinary action shall not apply in cases which are cause for immediate suspension or discharge, for example, theft of personal or public property, drinking intoxicants during working hours, being drunk on the job, willful dereliction of duty and other similar offenses.

26.04 - Any discharged employee may appeal such action through the grievance procedure and shall institute grievance action by immediate recourse to Step 3 within ten (10) days of notice of discharge.

26.05 - Any suspended employee may appeal such action

through the grievance procedure and shall initiate grievance action by immediate recourse to Step 2.

26.06 - Suspensions shall not be for less than two (2) days, but for serious offense or repeated violation, suspension may be more severe. No suspension shall exceed thirty (30) calendar days. Notice of discharge or suspension shall be in writing and a copy shall be provided to the employee and the Union.

BACKGROUND

Amongst its various governmental functions the County operates a Human Services Department wherein it had employed Thomas Parnell, hereinafter referred to as the grievant. The grievant commenced his employment with the County in 1980, he is licensed as a Social Worker by the State of Wisconsin, and for a majority of his employment with the County he was classified as a Social Worker V, the County's highest classification for a social worker. As a part of his job duties the grievant was responsible for providing professional social work services to clients with personal, family, health and economic problems. He was required to have direct contact with clients and to complete required paperwork. The grievant has had problems with timeliness in meeting deadlines and fulfilling paperwork and these deficiencies have been noted in his evaluations and in memorandum sent to him by his supervisor, Mary Resch. By the end of January the grievant's backlog had reached the level of seventy (70) cases with over thirty-five (35) overdue contingency plans. Resch and the Manager of Children, Youth, and Family Division, Lylas Tremble, sent the following memorandum to the grievant:

HEALTH AND HUMAN SERVICES

M E M O R A N D U M

DATE: January 30, 1996

TO: Tom Parnell

FROM: Mary Resch
Lylas Tremble

RE: Caseload Backlog

We have completed a review and identified a backlog of cases in the Youth Services Unit which require completion and closing. These are cases which are now sixty (60) days or more beyond the date on which they were to be closed. Additionally, there are cases that require the completion of an over-due permanency plan(s).

It is our expectation that all backlog cases and over-due permanency plans will be completed by June 1, 1996. To assure completion of your responsibilities within this time frame, overtime on a straight-time basis will be made available.

We have determined that there are 70 backlog cases and 35 over-due permanency plans on your caseload. A list of these cases is attached.

A priority will be placed on the completion of permanency plans for current cases. The expectation is that, on average, at least two (2) such permanency plans will be completed per week.

Closing backlog cases will require:

- Completion of the Closing Supervisory Report
- Completion of HSRS
- Completion of a permanency plan(s) if necessary

The expectation is that, on average, at least four (4) backlog cases will be closed per week.

Mary will review each permanency plan/backlog case that is completed. Your ongoing progress toward the completion of this responsibility will be reviewed on the first work day of each month.

If, for some reason there is a problem with completing the expected average number of permanency plans/backlog cases, please discuss this with Mary immediately.

Failure to comply with these expectations will result in progressive disciplinary action.

If you have any questions, or would like further clarification, please contact Mary or myself.

Thank you.

On March 12, 1996 Resch gave the grievant the following memorandum concerning trips out of the office:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: March 12, 1996

TO: Tom Parnell, Social Worker V

FROM: Mary Resch, Supervisor

RE: Attendance at Unit Meetings

This comes as a follow-up to our conversation on 3/7/96, regarding attendance at unit meetings and appropriate use of time.

In regard to unit meetings, you are expected to attend. If there is some reason why you cannot, you need to clear it with me.

In regard to the trip to Eau Claire, I am directing you to clear all future out-of-county trips with me except for trips to Rawhide, Green Bay, and school districts which are bordering or overlapping our county. You are directed to inform me in a timely manner; i.e. not at the last minute. If I am not available, leave me a note explaining your business.

This directive is given for purposes related to your time management issues.

On May 23, 1996 Resch gave the grievant the following memorandum concerning timely completion of administrative review notices and following agency procedures:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: May 23, 1996

TO: Tom Parnell, SW V

FROM: Mary Resch, Supervisor
Youth Services Unit

RE: Agency Procedure and Requirements

This comes as a follow-up to our meeting of May 21, 1996, and is basically intended as an instruction, warning, and written record in anticipation of potential disciplinary action.

On May 21, 1996, we discussed two specific issues. The first was the fact that you did not send out notices for Peter M's review on May 10, 1996. As a result, the reviewer was uncertain as to how many reviews were being done and whether or not she needed to get coverage at her job.

Reviewers are providing a free service for the agency. They certainly deserve to be treated with respect and courtesy. Your actions were not at all respectful or considerate of the reviewer in particular.

We also discussed agency procedure as it relates to events outside the agency, such as the meeting of secure detention teachers on May 10, 1996. Attendance at all such events must be authorized by your Supervisor. You attended the meeting on May 10, 1996 without such authorization. In addition to other factors, available time is a factor in authorization of attendance at such events. Given your time management problems, your current backlog, and your workload, I would not have authorized this event for you.

Based on this memorandum and those of March 12, 1996, November 14, 1995, and October 25, 1995, as well as concerns expressed in your most recent evaluation, it is expected that:

1. You will follow all agency procedure including, but not limited to, sign out, event authorization, administrative review requirements, etc.
2. You will attend Division Meetings unless excused by the Division Manager or your Supervisor.
3. You will be timely with your work.
4. In addition to usual sign-out procedures, you will list telephone numbers for any homes which you go to, and will clear all out-of-county trips with me before you schedule them. The only exceptions are: Rawhide, Green Bay and bordering school districts.

Again, you are expected to be timely in all of your work, and follow all agency procedures. If you do not know the agency procedure, there is a policy manual on my bookshelf and DHS Administrative Memo Series. Failure to comply will result in disciplinary action.

cc: Mary Jo Keating, Manager, Div. of Youth & Family Services
Personnel File

On August 12, 1996 the grievant received the following written reprimand:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: August 12, 1996

TO: Tom Parnell, SW V

FROM: Mary Resch, Supervisor
Youth Services Unit

RE: Work Performance Written Reprimand

This is to serve as a written reprimand in regard to several issues which we discussed on August 7, and August 8, 1996, those being the following:

1. Disrespect to foster parents as demonstrated by two missed appointments at the J and J G foster home with no call to cancel and no immediate follow-up to explain why you did not show. This is a violation of work rules and an act which is very discouraging to foster parents.
2. Failure to have service "docs" in place on all active cases by June 1, 1996. Only ten were in place as of August 7, 1996. This is unacceptable work productivity and failure to follow procedure.
3. Failure to follow agency sign-out procedure as per specific directive to call in if not returning at the specified time. Specifically, on August 5, 1996, you signed out to Rawhide at 12:30 p.m., and were to return at 3:30 p.m. As per our conversation on August 7, 1996, you acknowledged that you returned late and then went directly to the intake office without checking in. When I last checked your office at

4:35 p.m., you were still not there.

A work plan to correct the above problems and several additional areas of your work is attached. Compliance with this work plan will be reviewed as per specific dates noted. In addition, appointments, work activities, and service "docs" will be reviewed on a weekly basis.

Continued failure to comply with agency policies, procedures, work standards and work rules could result in further disciplinary action up to and including discharge.

I would remind you that the Employee Assistance Program is available should you desire to pursue those services.

Attachment

cc: Mary Jo Keating, Manager, Div. of Youth & Family
Services
Personnel File

Thereafter, Resch and the grievant met on August 22, September 11, September 19, and September 25, 1996. On October 18, 1996 the grievant received the following memorandum from Resch:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: October 18, 1996

TO: Tom Parnell, SW V

FROM: Mary Resch, Supervisor
Youth Services Unit

RE: Third Disciplinary Step/Disciplinary Suspension

This is to serve as a third step disciplinary notice for not having made contact with an assigned client and/or his parents for over three months from when the case was assigned to you.

This case (V.M.) was assigned to you on July 12, 1996. On about October 10, 1996, I received information that the parents were

indicating to another service provider that they had not yet had contact from a Social Worker.

In checking your Service Docs on October 15, 1996, I noted one undated entry. In our meeting on October 16, 1996, you indicated that you made the entry about three weeks ago after contact with someone at school. You were not remembering exactly who that person was. You indicated that you had made several attempts to call the house, but you did not remember whether you had gone to the house. You didn't think so. You also did not send a letter.

This third step disciplinary notice is being given to you because of the following:

1. You are already on the second level of discipline.
2. Timely initiation of contact in a new case is basic Social Work practice, especially in working with youth in the Juvenile Justice System. Sufficient effort to initiate contact would definitely go beyond attempts to call, and would quickly move to sending a letter and leaving your card at the house with a note.
3. On September 17, 1996, in the course of monitoring your Corrective Work Plan, we dealt with two recent complaints regarding lack of face-to-face contact. You were given corrective action with very specific expectations as to client contact.
4. This is part of an ongoing pattern of lack of timeliness which is impacting the service area of your work.

Corrective action regarding V.M. is to make every effort to initiate contact immediately. This will be reviewed at our meeting on Tuesday, October 22, 1996, at 2:30 p.m. Compliance is expected.

This third step disciplinary notice is being given to you in lieu of a disciplinary suspension. You need to understand, however, that this notice has the same effect as a suspension for purposes of progressive discipline. Further failure in the areas of client contact, compliance with Agency and Division Policy and Procedures, work standards, or work rules will result in the termination of your employment.

cc: Human Resources
Rosemary Davis, Deputy Director
Mary Jo Keating, Supervisor
Personnel File

Outagamie Co. Professional Employees Union Local 2416

On October 22, 1996 the grievant grieved the above memorandum. The County does not have any written policies concerning contacting clients nor does it have a policy requiring employes to document when they attempt to contact a client and no one answers the telephone call.

On October 22, 1996 Resch met with the grievant to discuss his not meeting with a client. On October 23, 1996 Resch sent the following memorandum to the grievant:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: October 23, 1996

TO: Tom Parnell, SW V

FROM: Mary Resch, Supervisor
Youth Services Unit

RE: Disciplinary Meeting

This serves as follow-up to our meeting of October 22, 1996 regarding the V.M. case. It is decided that the next disciplinary step will not be taken at this time. You should know, however, that there are two matters of serious concern which came to the fore during our meeting. They are as follows:

1. You were almost a half hour late for a 4:00 p.m. meeting with V.M., thus leaving the family as well as another Service Provider wondering if you were coming. In fact, the Service Provider called the Department at 4:15 p.m. wondering if he should leave. You then left here shortly after 4:15 p.m. This is yet another example of disrespect to a family and another Service Provider.
2. You indicated that you were late for the 4:00 p.m. appointment because you were on the phone with Mike Robinson for about twenty minutes. I immediately called Mike Robinson, and asked him if he had talked with you for about twenty minutes on the phone in the afternoon of October 21, 1996. He stated he had not, but that there had been voice mails

back and forth.

Although the decision is not to terminate your employment at this time, you need to know that continued activity of this nature or any failure to carry out your work in a manner consistent with that which has been defined in previous memorandums dating back to October 25, 1995, can result in the termination of your employment. A Corrective Work Plan will be worked out when we meet on October 24, 1996.

cc: Human Resources
Personnel File
Mary Jo Keating, Mgr., Div. of Youth & Family Services
Rosemary Davis, Deputy Director
Professional Employees Union Local 2416

On October 30, 1996, Resch met twice with the grievant to discuss his work performance and after the meeting she sent the following memorandum to the grievant:

HEALTH AND HUMAN SERVICES DEPT.

MEMORANDUM

DATE: October 30, 1996

TO: Tom Parnell, SW V

FROM: Mary Resch, Supervisor
Youth Services Unit

RE: Work Expectations
Modification of Corrective Work Plan

As a follow-up to our meeting today, it is expected that you will turn in all Service Docs which were due on 10/14/96, 10/21/96, and 10/28/96, by Friday, November 8, 1996. Attached is a list of Service Docs which are due November 8, 1996.

Everything else needs to be up-to-date. All other expectations remain the same as spelled out in previous memorandums dating back to October 25, 1995.

Again, you need to know that continued failure in these areas mentioned above, as well as in the areas of client contact,

timeliness, compliance with Agency and Division Policy and Procedures, work standards or work rules, can result in the termination of your employment.

If I can be of assistance, please let me know. I would also remind you that the Employee Assistance Program is available to you.

cc: Human Resources
Personnel File
Mary Jo Keating, Mgr., Div. of Youth & Family Services
Rosemary Davis, Deputy Director
Professional Employees Union Local 2416

On November 4, 1996, Resch met with the grievant to discuss work performance. Afterwards Resch made the following notes of the meeting:

**PROGRESS NOTES REGARDING TOM PARNELL
NOVEMBER 6, 1996**

I met with Tom Parnell on 11-4-96 regarding his Corrective Work Plan and several cases.

Initial discussion was about the Activity Log and how Tom could be briefer, yet more descriptive, in doing the log. Specifically, I requested that Tom specify on the Activity Log what he's reading, or what paperwork he's doing. I also pointed out examples of information on the Activity Log that actually belonged on the service docs. It was explained that the main purpose of the Activity Log is to get a picture of where one's time is going and what adjustments might be made. A sample Activity Log will be attached to these progress notes.

It should be stated that it was noted in previous discussions, that the Activity Log is to be filled out as one progresses through the day, not at the end of the day or the next day.

Service Docs were also discussed. I showed Tom a copy of one of his docs which was concise but not word for word describing the conversation which was being documented. Four guidelines were given for service docs: 1) Information should be accurate and concise; 2) It should be explained how it relates to the service plan; 3) The worker's response or activity should be noted; 4) Any new or modified plan of action should also be documented.

In regard to Tom's previous request to dictate onto a tape, I informed him that Claudia had adjusted the "playback," on his phone from three seconds to 15 seconds. I also suggested that Tom put any other problems with the Dictation System in writing to submit to Claudia.

In our last meeting, Tom asked for overtime or comp time to do the Service Docs or other paperwork. I told Tom that it would take some time to analyze his Activity Logs and appointment patterns in order to respond to this. I noted that I have an ongoing concern about his comp time and would be reluctant to see that increased. I also need to find out more about overtime. It is permissible and in fact, advisable for Tom to take an extra ten minutes or so after his evening appointments to do Service Docs for those appointments.

Also discussed were specific issues regarding time management. These issues were the amount of time at Rawhide, and going to schools and looking for clients. In the latter instance, a phone call should be made first unless Tom is at the school to see someone else.

We briefly touched on case plans. Tom noted that he is three behind the three per month Division requirement. That is not excessively out of compliance, but Tom needs to keep in mind that all cases need a case plan by 12/31/96. Three per month is the minimum expectation, and will not result in all case plans being done by 12/31/96, as required.

We then discussed several cases.

Another meeting will be set after 11-8-96.

Submitted by: Mary Resch, Supervisor
Youth Services Unit

cc: Tom Parnell
Human Resources
Personnel File
Mary Jo Keating, Mgr., Div. of Youth and Family Services
Rosemary Davis, Deputy Director
Professional Employees Union Local 2416

On November 14, 1996 Resch met with the grievant and after the meeting made the following notes:

NOTES REGARDING THE NOVEMBER 14, 1996 MEETING WITH TOM PARNELL

At 3:45 p.m. today I met with Tom Parnell regarding the modified corrective work plan which he had been given on 10/30/96. Also present for this meeting were Teri Metropulos, representing Professional Union Local 2416, and Mary Jo Keating, Manager of the Youth & Family Services Division.

I started the meeting by referencing the memorandum dated 10/30/96 and a list of overdue service docs attached to it. Tom had a copy of this memorandum and list with him as he had been informed we would be discussing the service docs which should have been copied to me by 11/8/96. I asked Tom what was his understanding regarding these service docs, specifically as to when they were due. Tom acknowledged they were due on November 8, 1996 and further stated that I had received them. I explained to Tom that I had received the docs which were due on 11/4/96 and 11/11/96 and several which were due on 11/8/96. I noted, however, there were 25 outstanding docs due on 11/8/96 which were not yet received. I asked Tom which list he used as the check. He referenced the list of which we were both holding copies.

Tom stated that when I called him "last night" (I actually called in the afternoon) and said I wanted to meet with him regarding the matter, he checked further and found some missing service docs but not close to 25. I explained to Tom that I had double checked everything he submitted and there were indeed 25 entries missing. I asked why the service docs were not completed. Tom said, "I don't know. The same thing as last time. Nothing new. They are on separate sheets of paper and I didn't have them copied onto service docs yet." (It should be noted that as recently as our November 4th meeting and on other occasions, Tom had been advised to simply use service docs and not to copy from notes or pieces of paper.)

At that point I informed Tom that I felt there was no option but to terminate his employment. Tom said he did not believe that statement. I then gave him, the Union representative, and Mary Jo Keating copies of the termination memorandum. I explained to Tom that he had the option to resign if he so chose. I then read to him the conditions which would comprise the agreement the county would be willing to make with him if he chose to resign. Tom asked for clarification on one of the items; i.e. the letter he could send out. He then asked to be given the document. I asked Tom if

he wanted to sign the agreement today. He did not want to sign anything today, but wanted to take it with him because he did not trust me and that I could change it before Monday.

Tom asked if I was aware he had been offered and accepted another job in Child Protection. I indicated that Lylas Tremble had talked with me about that, but that I wasn't sure exactly where that was at and that it was a separate issue. Tom asked to be allowed to transfer to Child Protection today indicating that would satisfy my desire to "get rid of him". I responded that the purpose of all of this was not to get rid of him, but to keep him in line with work expectations.

I stated that for now Tom's employment was terminated. If he wants the resignation option, he is to call Human Resources by noon on Monday, November 18, 1996. I stated that a written copy of the resignation agreement would be available to him at Human Resources to read before signing.

Tom stated, "if it is not in writing now, it's not real or official. I don't have a choice." I again stated to Tom he has a choice between termination and resignation. Tom insisted he has no choice. I told him "that is a question between you and Human Resources."

I then asked for Tom's access card and I.D. and told him we would escort him to his office to pack and then escort him out of the building.

Tom was out of the building by 4:30 p.m. He insisted on keeping his last comp time form. He was also going to take his payroll form to turn into Human Resources himself. He did eventually give that to Teri Metropulos, Union representative, to turn in for him.

Submitted by,

Mary L. Resch /s/
Mary L. Resch, Supervisor, Youth Services Unit
11/14/96

cc: Human Resources
Rosemary Davis, Deputy Director
Mary Jo Keating, Manager
Personnel file

Thereafter, the grievant received the following termination memorandum:

HEALTH & HUMAN SERVICES

M E M O R A N D U M

TO: Thomas Parnell, Social Worker V
FROM: Mary Resch, Supervisor, Youth Services Unit
DATE: November 14, 1996
RE: Termination

This is to inform you that as a result of your ongoing and current disciplinary status; i.e., third disciplinary step and your failure to submit a backlog of service docs by November 8, 1996, as per memorandum dated October 30, 1996, your employment with Outagamie County Department of Health & Social Services is hereby terminated as of today, November 14, 1996.

cc: Human Resources
Rosemary Davis, Deputy Director
Mary Jo Keating, Manager, Youth & Family Services
Division
Personnel File
Professional Union Local 2416

On November 14, 1996 the termination was grieved and processed to arbitration in accord with the parties grievance procedure.

County's Position

The County contends it had just cause to issue a third step disciplinary notice to the grievant for not having made contact with an assigned client and/or his parents for over three months from when the case was assigned. The County contends his discipline was issued solely for his failure to make actual contact, not for his failure to make attempts to contact. The County points out the grievant was disciplined with a written warning which he did not grieve for his failure on two separate occasions to meet with foster parents. The County asserts it was pointed out to the grievant that untimely contact was unacceptable and would lead to the clients becoming discouraged and further failure to comply would lead to more discipline. The County points out it became aware that the grievant had not contacted two more clients, one for four (4) months and one for twelve (12) months and points to a September 19, 1996 corrective work plan in support of its position. The County points out that the grievant had identified the client he failed to contact as requiring monthly contacts. The County asserts that after all the warnings the grievant received he did not contact the client in a timely manner. The County points out that after it confronted the grievant with the matter it took him only two days to make contact with the client.

The County argues unsatisfactory performance is generally considered to provide grounds for employe discipline. The County points out that the grievant did not attempt any alternative methods to contact the client. The County asserts the bottom line is despite any attempts made by the grievant his performance was unsatisfactory because actual contact was never achieved. The County asserts the grievant was directed to make actual contact at least monthly and his failure to comply with this directive was just cause for discipline.

The County also argues the memorandum issued to the grievant on October 18, 1996 clearly informed the grievant the next step was discharge. The County also asserts that giving the grievant unpaid time off would be detrimental to correct his deficiencies of untimeliness. The County points out that an actual suspension would not correct the grievant's performance but could of placed him further behind in his paperwork. The County also asserts that it has been evenhanded and did not act with discrimination when disciplining the grievant.

The County also asserts just cause existed when the County terminated the grievant's employment. The County points out the grievant failed to submit a backlog of documentation as he had been directed to do. The County argues there was no dispute the County had the right to initiate the paperwork requirement. Further, there is no dispute he failed to submit the complete list of paperwork. The County contends that since the grievant was at the third step of discipline it proceeded to the forth step. The County asserts it had counseled the grievant about his conduct many times. The grievant's evaluations conveyed this concern. He was placed on notice about his conduct and the grievant knew he was expected to submit all documentation in a timely manner. The County points out the grievant failed to submit them on time despite the written reprimand he received and did not grieve. The County asserts a corrective work plan had been implemented with weekly supervision and he failed to meet agency paperwork requirements. Thus, as he had already received a third step disciplinary notice the next level was discharge.

The County asserts it had gone to great lengths to get the grievant to comply with administrative procedures. The County argues that when an employer makes extra efforts to assist an employee in complying with the requirements of the job at some point it must be able to determine that no improvement is occurring and that discharge is appropriate. The County also contends that even if no notice had been issued, the willful and deliberate noncompliance with supervisory directives will result in discipline. The County asserts the grievant was given a directive to comply with and he failed to do so.

The County contends it has applied its rules even-handedly to other employees. Two (2) months prior to the grievant's discharge it discharged another employee for failure to complete paperwork. The County concludes it was applying its rules in a non-discriminatory manner and therefore it had just cause to discharge the grievant.

Union's Position

The Union contends the grievant should not have been terminated. The Union argues the County was aware of the grievant's late paperwork problem and to go from written reprimand to termination in three (3) months for a seventeen (17) year employee is too little time to correct a problem it had always been aware of. The Union points out the grievant was a well respected professional and that late paperwork was the norm rather than unusual in social work.

The Union points out that the implementation of "service docs" in May of 1996 was confusing at first and remained ambiguous for a period of time. Professionals were unaware of what was to be listed and what wasn't. The Union asserts it is unfair to punish an employee for ambiguous guidance. The Union also asserts the corrective work plans assigned to the grievant in effect gave the grievant additional duties when he was already struggling to keep up and then disciplined him when he failed.

The Union contends the grievant's suspension in October of 1996 was not justified and did not follow the clear language of the parties' agreement. The Union asserts the punishment does not fit the crime. The Union points out a three (3) month delay in not contacting a client is not unusual and his attempts to contact the client should have been considered as marginally adequate. The Union also points out that the parties' agreement clearly identifies that a suspension shall not be for less than two (2) days, nor more than thirty (30). The Union acknowledges the County may have been doing the grievant a favor by not imposing time off, but, the Union contends, the clear language of the agreement must prevail and the grievant actually remained at the second step of the disciplinary process.

The Union also asserts that the grievant's supervisor, Resch, did not like the grievant and this animosity probably accelerated the process. The Union also points out the grievant had seen the writing on the wall and had signed a posting for a transfer. The Union contends the County had the opportunity to allow the grievant to transfer to another position in the department except that Resch had determined to see the grievant terminated prior to her retirement.

The Union also points out that of the twenty-five (25) "service docs" claimed he had not completed, at most only six (6) were not completely filled out. The Union also points out the impact of the grievant's failure to be timely had no financial impact on the County. The Union points out employees had missed appointments, court dates, and lost funding and none had received the punishment the grievant had. The Union contends this is clear evidence of disparate treatment.

County's Reply Brief

The County contends it had given the grievant ample opportunity to change his improper conduct and that he failed to do so. The County asserts, contrary to the Union's claims, it began attempting to change the grievant's performance over a year prior to his termination. The County also asserts the grievant's untimely conduct caused problems for others, including clients, the County District Attorneys, and judges. The County argues the grievant was well aware of the work he was required to complete and he did not do it. Again, the County points out the grievant was disciplined for not making an actual contact with a client for over three months and he was disciplined for failing to follow the written request of his supervisor.

The County asserts the three month delay in contacting the client or his parents was inexcusable. The County contends the Scott Jansen testimony that he was unable to contact a client for over two (2) months is an exception because Jansen was carrying a higher caseload, the case had been transferred to him, and, Jansen generally had his reports in on time. The County points out the grievant was directed to contact clients weekly, biweekly or monthly by his supervisor and he failed to do so. The County concludes the record does not support the Union claim that a three month delay in contacting a client is not unusual. The County also asserts the corrective work plan is a legitimate method of attempting to modify undesirable behavior and not, as argued by the Union, an attempt to set the grievant up for failure. The County points out the Union argument flies in the face of the intent of a progressive discipline system and fails to help modify behavior. The County also points out that neither the Union nor the grievant ever filed a grievance over the corrective work plan.

The County asserts that the Union did not file an objection to the use of a third step disciplinary notice in a previous matter and stresses the notice informed the recipients that the notice had the same effect as a suspension. The County asserts both the letter and spirit of progressive discipline were being maintained by the County's disciplinary notice. The County also argues that the Union claim an actual suspension would of corrected the grievant's behavior is spurious at best.

The County also argues the grievant's improper conduct would have continued in another department so a transfer was not an appropriate remedy. The County points out Resch had spent a substantial amount of time in trying to correct the grievant's behavior and, as the grievant chose not to correct his behavior, he would of been a problem employe for another supervisor and Resch did not want this to happen. The County also asserts that the grievant failed to follow the written directive of the November 8th deadline and thus failed to comply with his supervisor's directive. The grievant did not complete his assigned task on time. The County also asserts there did not

have to be a financial loss to the County to justify termination and the Union claim that the grievant's strengths outweighed his weaknesses is without merit.

The County would have the undersigned deny the grievance.

Union's Reply Brief

The Union asserts the County has not demonstrated it had just cause to suspend and terminate the grievant. The Union also disagrees with the County on certain facts. The Union contends the grievant was not directed to document attempted unsuccessful contacts pointing out no other employe was required to document attempted unsuccessful contacts. The Union points out there was no written or unwritten rule on how quickly an employe was to contact a client. The Union also asserts that the third step discipline is identified in the parties' collective bargaining agreement and the Union argues the County does not have the right to waive the suspension step of the agreement. The Union also argues that the final meeting between the grievant and his supervisor did not give him the opportunity to explain why only six or less "service docs" were unfinished, that this meeting was orchestrated with a predetermination to terminate the grievant's employment and that this predetermination was demonstrated by the fact the County had pre-typed a voluntary resignation letter and had undercover sheriff's deputies in the next room.

The Union stresses there is no written rule concerning client contact and argues it is unfair to discipline the grievant if the County has no policy on this matter. The Union also points out that although the grievant was to complete a risk assessment on each client with a new requirement of meeting with clients at least once per month, this requirement was established on September 25, 1997, was applied to no other employe, and he was disciplined less than three weeks later for failure to contact a low risk client once per month. The Union claims such a system was designed to have the grievant fail. The Union also asserts that rules that just apply to the grievant and no other employe do not give the County just cause to discipline the grievant.

The Union also contends that if the County desires to change the third step suspension it is free to bargain with the Union or seek a case by case exception with the Union. The Union argues the County choose neither and asserts the County can not be allowed to change clear contract language whenever it sees fit. The Union concludes without a defined unpaid suspension the discipline is a written warning.

The Union concludes there is clear evidence the County created exclusive rules for the grievant. The Union also asserts that because the County unfairly treated another employe and that employe resigned does not create a past practice. The Union argues the grievant was singled out unfairly and subjected to different work requirements than other employes.

The Union would have the grievance sustained and have the undersigned direct the County to reinstate the grievant and make him whole for all lost wages and benefits.

DISCUSSION

There are two actions for which the grievant was disciplined. The County issued the first action on October 18, 1996. This action, a third disciplinary step/disciplinary suspension was progressive discipline. The grievant had not grieved a written reprimand issued on August 12, 1996. The second action, the termination of the grievant, was issued on November 4, 1996 and was also progressive discipline. Therefore, as both actions were progressive disciplinary actions the undersigned finds that the County must demonstrate that it had just cause to discipline the grievant for both instances in order for it to prevail in its decision to terminate the grievant from his employment. The undersigned notes here that the County did not contend at any time during this matter that the second action was an action that, in and of itself, warranted the termination of the grievant.

The record demonstrates that on September 19, 1996 Resch met with the grievant and gave him a corrective work plan. The work plan directed him to make a list of his clients by September 25, 1996, identify their risk level, and determine whether they should be contacted weekly, bi-weekly or once a month. On October 18, 1996 the grievant was disciplined for failure to make contact with a specific client. The record demonstrates this directive applied to no other current employe.

The County has asserted the work plan directive was fair and reasonable because of the grievant's work performance problems. Further, the County has stressed the failed contact was the grounds for the discipline, specifically pointing out contact with the client had not occurred for three (3) months. The record demonstrates that Resch never discussed the matter of failure to contact clients at staff meetings, that there is not a written work rule which mandates a specific level of contacts with clients, nor did the County dispute Scott Jansen's testimony (Tr. p. 341-352) that he had failed to contact clients, had not even tried to contact a client for two (2) months, had informed Resch of the matter, and that Resch never disciplined him. The record also demonstrates that it was Resch who established the frequency of contacts, that frequency of contact was established for only one other employe, and, as the Union has pointed out, she disciplined the grievant prior to one (1) month elapsing from the date he was required to establish the frequency of contact for each client. The undersigned also notes the September 19, 1996 corrective work plan states as follows:

"Corrective Action: By September 25, 1996, make a list of clients and write their risk level; i.e., high, medium, low. Note planned frequency of contact accordingly; weekly for high, twice a month for medium, once a month for low." (Employer Exhibit 14)

A review of this document demonstrates the grievant was directed to identify what his plan of contact was, not a directive that he was to have a minimum specific contact with any client. Thus the undersigned finds the fact the grievant attempted to contact the client, which the County does not dispute, is sufficient to meet the directive given by Resch on September 19, 1996. If the County desired to have a minimum number of contacts made by the grievant it had the opportunity to request such in its written directive to the grievant. However, the above is a plan of action.

The undersigned also finds such a directive requires Resch to be consistent with her directives to other employees. The County can point to no example where it disciplined an employee for failure to contact a client when the employee had made unsuccessful attempts to do so. It did give a directive to employee Gordon Underwood (Employer Exhibit 22, August 26, 1996, page 2, number 5) directing Underwood to have a minimum face to face meeting once a month with reasons for less contact documented. However, the two directives are distinguishable. The directive to the grievant is to establish a plan of action. The directive to Underwood specifically stated to contact clients a minimum of once a month and directed Underwood to explain why if lesser contact occurred. The undersigned also finds if such minimum contact was mandatory, there is no explanation in the record why such mandatory contact only applied to the grievant when it is clear from the record Resch was aware other employees had not even attempted to contact a client, Resch had never discussed the matter with employees at staff meetings and she allowed Underwood to explain when the minimum of once a month contact was not made. The County has offered no explanation why Resch allowed Underwood the opportunity to explain why lesser contact was being made and it did not offer the same opportunity to the grievant. The undersigned therefore concludes the County did not have just cause to discipline the grievant on October 18, 1996.

Article 26.02 of the parties collective bargaining agreement specifically states the sequence of discipline shall be oral reprimands, written reprimands, suspension or discharge. Article 26.06 specifically states that a suspension shall not be less than two (2) days. Resch, a supervisor and agent of the County, does not have the authority to alter the clear terms of the collective bargaining agreement. Thus Resch did not have the unilateral right to determine that the grievant was at the third step of progressive discipline when no suspension of the employee occurred. The County has argued that to suspend an employee who is already behind in their duties would not be corrective. However, the parties collective bargaining agreement specifically states in clear and unambiguous language that a suspension "... shall not be for less than two (2) days . . .". While the record does demonstrate Resch gave the same discipline to Underwood on May 17, 1996 and, the County has pointed out, Underwood did not grieve the matter, one instance does not demonstrate a mutual agreement between the parties to alter the clear terms of the agreement. Further, at the hearing the Union contended it was unaware of the third step disciplinary notice to Underwood. A review of that notice, unlike the notice to the grievant on October 18, 1996, demonstrates no copy of Underwood's discipline was sent to the Union. The undersigned concludes there is no evidence the Union agreed to alter the progressive discipline procedure in this matter. Thus the County can not suspend an employee for less than two (2) days without the mutual agreement of the Union to alter the clear terms of the collective bargaining agreement.

The record also demonstrates on October 30, 1996 Resch gave the grievant a directive to have a specific number of "service docs" completed by November 14, 1996. The record also demonstrates that the grievant had requested the approval to use overtime to complete this assignment and he again requested the use of overtime on November 4, 1996. While Resch did acknowledge the importance of completing the "service docs" she did not approve overtime at that time nor is there any evidence she contacted the grievant at any time to indicate that overtime was available if the grievant needed it to complete the assignment. The grievant did not complete this directive, although he did dispute the number of incomplete entries. The record also demonstrates

the grievant was attempting to transfer to a different division and that Resch was aware of this. The twenty-five (25) incomplete "service docs" entries the grievant failed to complete were not introduced as an exhibit, so the question of how many were actually incomplete can not be resolved. The grievant did acknowledge he did not complete the directive in its entirety. At no time did the grievant allege the directive was unreasonable. While the grievant requested the use of overtime to complete the assignment and Resch responded she would have to analyze the matter prior to responding to his request, there is no evidence the grievant's failure to comply with the October 30, 1996 directive was because the directive was unreasonable. The record therefore demonstrates the grievant was given a directive and he failed to comply with it. The County therefore had grounds to discipline the grievant for his failure to complete the directive.

The undersigned has concluded, based upon the above and foregoing, that the County did not treat the grievant in a manner that was consistent with how other employes were treated. Therefore the County did not have just cause to discipline the grievant on October 18, 1996. In addition the undersigned has concluded the County does not have the unilateral authority to issue a suspension for less than two (2) days. The undersigned also concluded the County did have just cause to discipline the grievant for his failure to comply with the October 30, 1996 directive to complete a specific set of "service docs" by November 8, 1996. Above the undersigned noted the County must prevail on both disciplines in order for the County's termination of the grievant to prevail. Having found the County did not have just cause to discipline the grievant on October 18, 1996 but that the County had cause to discipline the grievant for his failure to complete the "service docs" by November 8, 1996, the undersigned directs the County to reinstate the grievant, to reduce his discipline to a two (2) day suspension and make him whole for all other lost wages and benefits, and to cleanse his record of all matters pertaining to the discipline issued on October 18, 1996. The undersigned will retain jurisdiction of this matter for sixty (60) days pending the implementation of this award.

AWARD

The County did not have just cause to terminate the grievant's employment. The County is directed to reduce the grievant's discipline to a two (2) day suspension and to make him whole for all other lost wages and benefits. The County is also directed to cleanse the grievant's record of the discipline issued on October 18, 1996.

Dated at Madison, Wisconsin, this 16th day of September, 1997.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator