

BEFORE THE ARBITRATOR

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In the Matter  
of the

Arbitration of a Dispute Between

**ST. CROIX COUNTY**

and

**WISCONSIN COUNCIL OF COUNTY  
AND MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO**

Case 157

No. 55047

MA-9878

*(Grievance of Susan Khalar)*

Appearances:

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Weld, Riley, Prenn, and Ricci, S.C., by **Mr. Stephen L. Weld**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the County.

**Mr. Steve Hartmann**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of the Union.

**ARBITRATION AWARD**

St. Croix County, hereinafter referred to as the County, and Wisconsin Council of County and Municipal Employees, 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 employment of an employe. Hearing on the matter was held in Hudson, Wisconsin on August 26, 1997. Post hearing arguments and reply briefs were received by January 12, 1998. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

**ISSUE**

The parties agreed upon the following issue:

"Did the County have just cause to terminate the employment of Sue Khalar on February 18, 1997?"

"If not, what is the appropriate remedy?"

**PERTINENT CONTRACTUAL PROVISIONS**

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**ARTICLE 3 - GRIEVANCE PROCEDURE**

Section 3.01 Definition and Conciliation. A grievance is defined as a dispute regarding the meaning or application of the terms of this Agreement.

The letter and spirit of this Agreement encourage informal resolution of differences which may arise between represented employees and the Employer. Accordingly, a good faith effort should be made to settle disputes before the filing of grievances.

To avoid surprise, the Union and the Employer shall make a good faith effort to disclose all facts, evidence, and arguments prior to arbitration of any issue. [Emphasis added].

In the event of a grievance, the employee shall perform his/her immediate assigned work task, if any, and grieve the dispute later unless health or safety is directly and immediately endangered. Health and safety grievances which possess a direct and immediate danger to employees shall be presented immediately and need not be submitted in writing.

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**ARTICLE 4 - DISCIPLINARY PROCEDURE**

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Section 4.02 Just Cause Notification. Employees shall not be disciplined or discharged without just cause. If the County feels there is just cause for suspension or discharge, the employee shall be notified in writing within twenty-four (24) hours following the suspension or discharge that the employee has been suspended or discharged and the reason(s) therefor.

Section 4.03 Procedure. The normal procedure for discipline shall include only the following:

- a. Oral Reprimand
- b. Written Reprimand
- c. Suspension
- d. Discharge

The number of written warnings and the length of suspension shall be determined by the County in accordance with the gravity of the violations, misconduct, or dereliction involved, taking into consideration that such steps are intended as corrective measures.

Section 4.04 Personnel Records. Personnel records including remarks, warnings, and disciplinary measures taken shall be dated. Employees may request to see their own personnel records (including electronic files) and reasonable access to same shall be made available. Upon employee's request, notice of disciplinary action shall be removed from the employee's record after a four (4) year period, assuming no further infraction. Expunged records of discipline shall not be used as a basis for progressive discipline and shall not be used as evidence in grievance arbitration hearings.

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### **ARTICLE 13 - PERSONAL TIME OFF (PTO)**

Section 13.01 Definition. Personal Time Off (PTO) is a benefit which combines traditional sick leave, vacation time, and a floating holiday into a singular package known as PTO. The employee can use hours from his/her PTO bank at his/her discretion, provided that the Supervisor or Department Head has approved the request. A Supervisor or Department Head may ask for a physician's documentation when PTO is taken due to illness and there has not been prior approval of the time off.

Section 13.02 Multiplier. Each employee earns PTO for every pay period based upon the number of regular hours (not overtime hours) that an employee is paid during the pay period. The payroll hours are tied to a multiplier, based upon years of service, and a new actual amount is added to each pay period. For employees working a forty (40) hour/week schedule, the number of hours paid each pay period would be eighty (80). For an employee working a twenty (20) hour/week schedule, the number of hours paid each pay period would be forty (40). The PTO is determined by taking the number of hours paid each pay

period, excluding overtime, multiplied by a pre-determined multiplier. This results in the amount of PTO time earned. The multiplier varies with years of service, as noted below:

Years of Service	Multiplier Used
0-4	.0885
5-14	.1077
15+	.1269

Section 13.03 Personal Sick Leave Bank. Prior to entering a PTO program, an employee who has accrued sick leave time places that time in his/her Personal Sick Leave Bank. An employee who is sick uses the PTO account for the missed time. However, an employee can tap into his/her Personal Sick Leave Bank anytime that a single occurrence illness/injury results in the loss of more than three days time. When that option is selected, the deduction reverts back to the first day, so that the first three days are deducted from the Personal Sick Leave Bank, plus the additional sick days used. To utilize the Personal Sick Leave Bank, the employee may be asked to submit documentation from a physician to verify illness or injury.

Section 13.04 PTO Accumulation. The PTO accumulation of hours cannot exceed 320 hours for a full-time employee and 240 hours for a part-time employee. Full-time employment is defined as working an average of 20 to 34.9 hours per week.

Anytime the total number of accrued PTO hours is in excess of what is permitted, the excess hours are automatically subtracted from the total and the employee remains at 320 hours (full-time) or 240 hours (part-time).

Section 13.05 Personal Sick Leave Bank Accumulation. An employee can add to his/her Personal Sick Leave Bank annually, as defined in 13.06. There is no cap on the accrual of hours into the employee's Personal Sick Leave Bank.

Section 13.06 Annual PTO Options. The Personal Sick Leave Bank can be replenished annually. At the end of each calendar year, the employee has the option of taking up to 96 hours (full-time) or 48 hours (part-time) out of his/her PTO account and placing the hours into his/her Personal Sick Leave Bank.

Also at this time the employee can take up to 48 hours (full-time) or 24 hours (part-time) out of his/her PTO account and convert it into cash, based upon his/her hourly rate of pay on December 31. For Highway Union employees, the rate of pay for PTO and the Personal Sick Leave Bank shall be the employee's regular classified straight time.

The employee also has the option of carrying over all of his/her PTO hours into the new year. If the employee does not choose either of the other two options, the PTO hours will automatically be carried forward into the new year.

Section 13.07 Termination in Good Standing. When an employee leaves St. Croix County in good standing, s/he is paid for all PTO hours that remain in his/her account. There is no pay-out for the Personal Sick Leave Bank unless the termination is a retirement.

Retirement is defined as any employee who, upon retirement from St. Croix County, will immediately receive a pension from the Wisconsin Retirement System. When an employee retires from St. Croix County, s/he has the option of receiving a pay-out of one-half (1/2) of his/her accumulated Personal Sick Leave Bank, to a maximum of 360 hours pay for full-time or 180 hours for part-time OR the employee may elect to convert all of his/her Personal Sick Leave Bank accrued time into a cash-equivalent to be used to pay monthly premiums of health insurance. To be eligible for this, an employee must have been participating in the County's health insurance program for a minimum of twelve (12) full months prior to the retirement date. If an employee elects this option s/he may incur an annual tax liability if IRS deems this health insurance payment to be taxable income.

If health insurance funds remain at the time of death of the former employee, the spouse may continue coverage under the same regulations until the fund is depleted. However, if there is no spouse at the time of the former employee's death, or if the spouse also dies while funds remain, those funds revert to the County. Once the health insurance funds have been depleted, the former employee can continue health insurance coverage providing that s/he pays the appropriate premium to the County in a timely manner.

An employee who chooses the cash pay-out at the time of retirement can also elect to continue the County's health insurance plan provided that s/he begins making the monthly premium payments immediately.

Section 13.08 Restrictions. PTO hours and the Personal Sick Leave Bank are for the personal use of the employee only. PTO hours cannot be "borrowed" or "given away".

Should the PTO balance fall below "0", the employee will immediately receive deductions in his/her pay to compensate for any PTO time taken in excess of the accrued hours. Should this happen, the employee must take action immediately or be subject to the disciplinary procedure.

An employee cannot be paid for time at work and receive PTO pay at the same time.

PTO is designed to provide for effective planning of work hours and time away from work. Although the PTO plan encourages employees to maximize time spent on the job, it should not be construed as serving to limit vacation time or sick leave time. Employees who are ill should not report to work. Department Heads or Supervisors have the right to judiciously assess the health of an employee and, if the employee is deemed to be "too sick" to work, the Department Head or Supervisor can send the employee home.

If the departmental workload makes it necessary to limit the number of employees using PTO at the same time, the employee with the greatest seniority shall be given his/her PTO choice; this is provided that no employee may use seniority to displace another employee from scheduled PTO less than eight (8) weeks before the PTO is scheduled.

An employee asking for Unpaid Leave must use all of the hours s/he has accumulated in his/her PTO account before the request will be considered. An employee asking for Unpaid Leave because of a lengthy illness is required to use the hours in his/her Personal Sick Leave Bank before the request will be considered. Employees are encouraged to utilize PTO hours prior to requesting time off under the Family and Medical Leave Law.

Employees can use PTO in increments of not less than one-half (1/2) hour. Because the nature of the work varies within departments, some Department Heads or Supervisors may stipulate that all PTO must be used in increments that are substantially greater than one-half (1/2) hour. Review the applicable Union Appendix or departmental rules to determine specific restrictions.

Section 13.09 Advance Notice. Employees shall be allowed to use PTO as requested, provided that supervisory approval is received. When an employee is requesting PTO time for a personal illness or injury, the employee must report

the need for same at least one (1) hour before the start of the work day/shift, except in case of emergency or development of illness during working hours. Employees designated as providing uninterruptible services -- direct patient care in the Nursing Home and Telecommunicator in the Communications Center -- should report personal illness or injury time off at least two (2) hours before the start of the work day/shift, except in case of emergency or development of illness during working hours.

As a condition of granting PTO time for a request that was not pre-approved, the Employer reserves the right to require the employee to submit a physician's statement of illness or injury.

In the event that an employee is aware in advance that an illness or injury will result in time away from work, it shall be the duty of the employee to notify his/her supervisor, in writing, as far in advance as possible of the anticipated time and duration of the time away from work. An employee on extended medical leave (i.e. using Personal Sick Leave Bank), may be required to present a physician's statement to return to work.

When confronted with issues of life and/or safety, the Employer may, at its discretion, require a medical examination by a physician of its choice to substantiate the need for leave or fitness to return to work. If there is a conflict of opinion between the employee's physician and the County's physician, the County will pay for an independent medical examination and opinion from a third physician; the physician to be mutually-selected.

During this period of time, when the employee has secured a work release from his/her physician, s/he will be paid his/her regular wages from the County until such time as additional examinations have been performed and the review is completed. The employee must make reasonable efforts to schedule and complete the necessary examinations.

Section 13.10 Duty-Related Death. If an employee is killed in the line of duty, the spouse is permitted to remain on the health insurance plan, using the employee's accumulated sick leave (per Article 13, Section 13.05) to pay for monthly insurance premiums. The health insurance options would be the same as for retirement, as noted in Section 13.07.

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## BACKGROUND

Among its various governmental operations the County operates a Human Services Department wherein it has employed Susan Khalar, hereinafter referred to as the grievant, since March 8, 1988. The grievant commenced employment as a Typist II, in 1988 moved into an Income Maintenance Assistant position, in 1989 moved into a Public Assistance Specialist I position, in 1990 into an Economic Support Specialist I position, and in 1992 into a Economic Support Specialist II position which she held until her termination by the County on February 18, 1997. In her first performance evaluation on November 30, 1988 the grievant was informed that she needed to improve her attendance and that her time off without pay seemed excessive. In 1989 she was given a "Not Satisfactory" rating with respect to her use of sick leave. In 1993 Economic Support Supervisor Marilyn Fruit and Director of Human Services John Borup met with the grievant to discuss her absenteeism. The grievant was informed that she needed to be at work and they suggested she seek counseling. On March 8, 1994 Fruit met with the grievant because her attendance problems had not abated. The grievant was given explicit instructions to verify her absences and to be in attendance 90-95% of the time. On March 14, 1994 the grievant received a written reprimand for failure to request personal leave for a four (4) hour absence on March 3, 1994 and an eight (8) hour absence on March 4, 1994. The grievant's May 17, 1994 evaluation again emphasized the grievant's severe attendance problems. On January 17, 1995 Fruit again met with the grievant regarding her attendance, informed the grievant her absenteeism was almost triple the unit's average, and placed her on notice she would be out of a job if she ran out of Personal Time Off (PTO). The grievant's absenteeism continued and in her June, 1996 evaluation she was informed the County had received complaints from clients that they could not contact the grievant and that the grievant did not return phone calls. The grievant was directed to improve her attendance. The grievant was also directed to contact either of the two (2) Economic Support Lead Workers when requesting time off. When the grievant failed to follow these procedures and her absenteeism continued she received a three (3) day suspension in October, 1996. On January 16, 1997 the grievant called a co-worker to report she was snowed in and could not report to work. Fruit contacted the grievant at home and informed her she had exhausted her PTO and would be out of a job if she failed to report to work by 9:00 a.m., which the grievant did. On February 11, 1997 the grievant contacted Economic Support Lead Worker Mary Squyer at approximately 10:00 p.m. and informed her she would not be coming into work the next morning as her father was having surgery in the Twin Cities first thing in the morning. At approximately 11:30 a.m. Squyer was contacted by a member of the grievant's family, told the family did not know where the grievant was and was informed the grievant's father was scheduled for 1:30 p.m. surgery. Squyer contacted the grievant who was still at home and admonished her for not coming into work when she had a 10:00 a.m. client appointment which had to be canceled.



At the hearing the grievant testified she let her children go to school at 7:00 a.m. with the intent to pick them up at 9:00 a.m. to leave for the Twin Cities. However, she received a call from her sister requesting a ride to the hospital and was waiting her arrival prior to leaving. After Squyer's call the grievant left to go to the Twin Cities.

On February 13, 1997 the grievant met with County officials and thereafter received the following letter:

February 13, 1997

Susan Khalar  
927 240th Street  
Baldwin, WI 54002

Dear Sue:

Per our meeting this morning, this letter confirms your suspension from employment with St. Croix County. The suspension is effective at 8:00 AM today and is without pay.

As we mentioned to you, we will move quickly to put closure to this suspension in terms of re-instatement or termination.

Sincerely,

John M. Borup /s/  
John M. Borup, Director

Marilyn Fruit /s/  
Marilyn Fruit, Economic Support Supervision

cc. Diane Northrup  
Deb Kathan

On February 18, 1997 the grievant was sent the following termination letter:

February 18, 1997

Susan Khalar  
927 240th Street  
Baldwin, WI 54002

Dear Ms. Khalar:

We are terminating your employment in the Economic Support Unit of the St. Croix County Department of Health and Human Services effective immediately.

Sincerely,

John M. Borup /s/  
John M. Borup, Director

Marilyn Fruit /s/  
Marilyn Fruit, Economic Support Supervision

cc. Debra Kathan, Personnel Director  
Diane Northrup, Union President

Thereafter the instant grievance was filed and processed through the parties grievance procedure. On March 4, 1997 Personnel Director Debra Kathan sent the following letter to the grievant and the Union:

To: Sue Khalar  
Diane Northrup, Union President

From: Debra Kathan, Personnel Director

Re: Grievance 2, 97/B/01

Per my discussion with Steve Hartmann and Diane Northrup, I have pursued options to resolve the above-noted grievance with HHS Director John Borup and ES Supervisor Marilyn Fruit. I have also reviewed the Khalar personnel file. The record indicates an extensive listing of absences, some covered by accumulated leave time, many unpaid because of no remaining leave time.

The issue of Ms. Khalar's high usage level for leave time dates back several years. The record also indicates that progressive discipline was instituted as a remedy for the excessive absenteeism.

The County remains convinced that termination was the appropriate action to take in this matter. If the union wants to propose a specific remedy, I will take that under advisement, however, it should be noted that the management team is not inclined to return Ms. Khalar to employment with the County.

The County would waive any further reviews of the grievance at the local level. We wait to hear from the union regarding any further action it wishes to take on behalf of Ms. Khalar.

cc: Steve Weld  
Steve Hartmann  
John Borup  
Marilyn Fruit

#### County's Position

The County contends that just cause means that an employer, acting in good faith, has a performance related reason for disciplining an employee, which reason is supported by the evidence. The County asserts the grievant's false request for time off for the morning of February 12th, in the context of her excessive absenteeism over a nine year period, was just and sufficient cause for termination. The County argues the record demonstrates the vast majority of the grievant's absences were of short duration and short notice. The County asserts this created serious client service and morale problems.

The County points out the grievant's performance evaluations and discipline record reflect that her use of paid and unpaid time off was not acceptable. The County also points out the grievant was allowed time off without pay (TOWP) when she exhausted her banked vacation, sick leave and then PTO time: 1988, 79 hours of TOWP; 1989, 89 hours of TOWP; 1990, 21 hours of TOWP; 1991, 7 hours of TOWP; 1992, 8 hours of TOWP; and in 1996, 24 hours of TOWP.

The County points to the grievant's testimony whereby she acknowledged she knew the County was concerned about her absences. The County also points out the grievant acknowledged receiving numerous documents between 1994 and 1997 about her absenteeism and that she was aware her co-workers were upset about having to frequently cover her appointments.

The County argues that shortly after the grievant's termination it received a letter requesting that a new support worker be assigned for one of the grievant's clients and learned that because of the grievant's failure to properly process a form a client was disqualified from receiving medical assistance. The County also uncovered evidence the grievant's absenteeism had impacted on her ability to complete year end file reviews of Social Security information and that she had four instances of failing to find where incorrect Social Security income information was entered into the system. The County also points out that Squyer testified numerous clients were not using the Medical Assistance Transportation Program administered by the grievant because phone calls were not being returned, paperwork was not being processed and drivers were not being paid. The County contends this information corroborates the County's contention the grievant's excessive absenteeism was negatively impacting on her work. The County asserts that if the grievant had been diligent in performing her duties the errors and deficiencies would not have occurred and the post-discharge evidence reinforces the County's position that the grievant's absenteeism contributed to a decline in her effectiveness and performance as an Economic Support Specialist II.

The County points out that even the Union characterizes the grievant's attendance record as atrocious. The County stresses the grievant was repeatedly warned about her excessive absenteeism. The County concludes the absenteeism created performance deficiencies. The County also points out the grievant had received a verbal reprimand for personal use of phones and one suspension for inaccurate time reporting. The County argues it is clear it had just cause to terminate the grievant.

The County also asserts it did not violate Article 13 when it terminated the grievant for just cause. The County points out the Union does not dispute the grievant was absent excessively. The County argues the Union contends the County jumped the gun because the grievant had PTO time left. However, the County asserts the grievant has used more time than she has earned and has only accrued time because she was awarded 66.6 hours when the parties implemented the PTO system. The County asserts it has a legitimate concern in preventing sick leave abuse and that efficiency can not be maintained if employes cannot be depended upon to report to work with reasonable regularity. The County asserts the grievant had exhausted all, or nearly all, of her PTO. Further, she had been allowed to take TOWP. The County points out the grievant was in the hole or close to it when she was terminated even though she had been artificially credited with hours when the PTO system was implemented.

The County also argues that even though an employe's sick leave is excused and not in excess of the maximum allowed under the collective bargaining agreement excessive sick leave behavior which adversely affects business operations is grounds for discipline. The majority of the grievant's absences were sporadic, short term and unplanned. The County asserts these frequent absences had a significant and adverse impact on the County's ability to run its programs and to service clients. The County also stresses that this is not a case where the employer has adopted a no fault attendance policy. The County contends the grievant was

disciplined for cause only after looking at the circumstances triggering the February, 1997 event and the totality of her absences over a nine (9) year period. The County points out the grievant had over two hundred absences in a nine (9) year period. The County also contends the grievant did not intend to leave for the hospital first thing in the morning or she would not of sent her children to school at 7:00 a.m. The County argues the grievant could have made her 10:00 a.m. appointment with a client and still made it in time for the 1:30 p.m. surgery for her father. The County concludes that in the context of her attendance record and the efforts to correct the situation the County had just cause to terminate the grievant's employment.

The County also contends it did not violate Article 4 when it terminated the grievant for just cause when no written reasons for the suspension and termination where given to the grievant. The County points out the grievant was fully aware at the February 13th meeting as to the reasons for her termination. The County argues the Union can not claim surprise and the grievant was not adversely affected. The County asserts the grievant was counseled for nine years about her excessive absenteeism, that progressive discipline was applied, that a meeting was held to discuss the February 12, 1997 incident, and therefore the grievant can hardly claim to have been prejudiced by the County's failure to put the reasons for the suspension and termination in the written notice.

The County would have the undersigned deny the grievance.

#### **Union's Position**

The Union contends the County did not have just cause to terminate the grievant's employment. The Union asserts the County failed to comply with the clear language of Article 4, Section 4.02, when it failed in the suspension letter of February 13, 1997 or the termination letter of February 18, 1997 to inform the grievant of the reasons for her termination. The Union points out that in previous disciplines the County has complied with this provision. The Union also points out that prior to the hearing in the instant matter it did not receive any written reason for the termination. Nor did the County identify any other facts other than excessive absenteeism as the reason for the grievant's termination. In support of this position the Union points to Personnel Director Debra Kathan's March 4, 1997 letter to the grievant and the Union. The Union points to Article 3, section 3.01 which requires the parties to make a good faith effort to disclose all facts, evidence and arguments prior to arbitration of any issue. The Union asserts the County has failed to act in good faith and the Union objects to all evidence and testimony not directly related to absenteeism.

The Union does not dispute the grievant has a deplorable absenteeism record and that this is a burden on the other members of the bargaining unit. However, the Union asserts the grievant's use of approved PTO time to attend to a family matter does not constitute a triggering basis for termination for excessive absenteeism.

The Union stresses there is no dispute the County was aware the grievant's father had a serious health condition. The Union points out the hearing on the this matter had to be rescheduled because of the death of the grievant's father. The Union argues the grievant appropriately requested time off and this time off was approved for February 12, 1997 and that the grievant had PTO time available for use. The Union asserts the grievant appropriately used her PTO for this matter and argues that if employees cannot use their PTO for such matters it would constitute a significant reduction of a contractual benefit. The Union also avers such a use of PTO cannot be a triggering event for discipline and that the grievant had no reason to believe such use would trigger discipline.

In its reply brief the Union points out that a review of the grievant's performance evaluations reveals that the County believed her work performance was very good. While her absenteeism was considered a problem the Union asserts there is no evidence of diminished performance allegations until after her termination. The Union also points out that at the hearing Economic Support Supervisor Marilyn Fruit testified the grievant entered Social Security information incorrectly in December, 1996, and, that this was a basis for her belief there was a significant performance problem. The Union stresses the information was entered incorrectly by the State and the conclusion reached by the supervisor demonstrated the supervisor's lack of understanding of the grievant's job. The Union argues that the attempt by the County to assert that the real problem was the failure of the grievant to check the client records for errors created by the State was also proven to be false. The Union points out the errors created by the State had been corrected, but, the County then argued they were not corrected fast enough and that four out of a case load of almost three hundred (300) were not corrected retroactive to January, 1997. The Union stresses the County acknowledged the matters were correctable, was corrected yet produced no evidence to demonstrate this was a high or low incidence of error or timeliness relative to caseload or to other workers performing similar duties. The Union also asserts the one client complaint introduced at the hearing about the grievant's attitude, and the only one received by the grievant during her employment, does not demonstrate poor performance. The Union argues the County assertion the grievant allowed a client to chose a method of receiving benefits over another which may of benefited the client more at a later time does not recognize the client made the choice, not the grievant, and the client can alter their choice.

The Union argues the County's ignoring of Section 4.02 is not waived by the fact they spoke with the grievant on February 13, 1997. The Union also points out that the County was angry with the grievant because she did not leave the first thing in the morning on February 12, 1997. The Union points to Squyer's testimony where she acknowledged that the client appointment the grievant had on February 12, 1997 could not have been completed by the grievant because of the length of time required for the interview. The Union concludes the grievant took the PTO time to be with her family in a time of crisis, using the time appropriately and accomplishing things as fast as possible.

The Union would have the undersigned sustain the grievance and direct the County to make her whole for all losses with interest and no deductions for any interim unemployment or wages due to bad faith conduct of the County with all references to this matter removed from any County files.

### DISCUSSION

Neither party disputes that the grievant has had a high and excessive absentee record. A review of the grievant's performance evaluations during her term of employment with the County demonstrates the County has consistently informed the grievant she should improve her attendance. However, contrary to the arguments presented by the County, these same performance evaluations have generally indicated the grievant's performance of her duties have been satisfactory or better. A careful review of these evaluations demonstrate that the grievant has performed her duties sufficiently and the record also demonstrates that during her term of employment she has received promotions and advancements. The undersigned finds the County claim that the grievant's absences have had an impact on her ability to perform her duties is not supported by the record. Clearly the County has consistently informed the grievant her job performance, except for her attendance record, has been satisfactory.

The parties' agreement also requires the County to inform the grievant in writing as to the reasons for her discipline. The only written notification for the reasons for the grievant's discipline are contained in Kathan's March 4, 1997 letter stating the grievant's attendance record where the rational for the discipline. There is nothing in the record that demonstrates the grievant's performance of her duties was considered at the time the County made the determination to terminate her employment. Further, the performance matters presented at the hearing by the County do not lead to a conclusion that the grievant's absences had a negative impact on the County's delivery of services. The County only presented one letter of complaint from a client. The letter stressed the grievant's attitude as the problem, not her availability. It is the opinion of the undersigned that one letter of complaint does not demonstrate the grievant had a performance problem. The County also attempted to demonstrate the grievant incorrectly entered social security data into the system. The record demonstrates it was the State that incorrectly entered the data and that the grievant corrected all but four of the State's errors. The County presented no evidence which would demonstrate whether this was a high, low or an unacceptable level of performance, or, more importantly, how the grievant's actions on correcting the State's errors differed from the times she had done this activity in the past. The County also presented two other examples of the grievant's performance, one dealing with a client being disqualified for medical benefits and the other dealing with a medical assistance transportation program. At the time the County made the determination to terminate the grievant the County was unaware of either example. Neither example leads to a conclusion the grievant was unsatisfactorily performing her duties because of her absenteeism. Given the above, and the agreement's requirement that the County identify the reasons in writing why the grievant was

disciplined, the undersigned concludes that the record does not support a conclusion the County had just cause to discipline the grievant for her work performance.

The record does demonstrate that the grievant received a three (3) day suspension for her excessive absenteeism and her failure to follow procedures when requesting time off on October 8, 1996. The record also demonstrates the only LWOP the grievant has had since the parties' changed to the PTO system in 1993 was her suspension in 1996. Thus the County claim the grievant has consistently taken time off with out pay is not supported by the record as she has not requested LWOP since the parties changed to a PTO system. Further, the one time when the grievant would of had to take LWOP, in January, 1997, she was informed she would be terminated if she failed to report to work and the grievant subsequently reported to work. Thus the undersigned concludes the record demonstrates the grievant has not taken LWOP since 1993 and since her October 1, 1996 suspension she has followed the County's procedures for requesting time off with pay.

The record also demonstrates that in the instant matter the grievant complied with the County's directives when she requested PTO time for February 12, 1997, and, that she was granted the time off. The County has argued if effect that the grievant could have more judiciously used her time had she reported to work, met with her 10:00 a.m. client, and then gone to the hospital for her father's 1:30 p.m. surgery. Given the fact the grievant informed Squyer on February 11, 1997 she was leaving first thing in the morning for the Twin Cities the County has in effect concluded the grievant has abused the system for getting time off. However, Squyer testified the grievant could not of completed her interview with the client and still have got to the hospital in the Twin Cities by 1:30 p.m. for her father's surgery. Thus, even if the grievant had reported to work she would of had to have someone else do the client interview. Further, the fact grievant changed her traveling plans on February 12, 1997 does not alter the fact she had properly requested and received the time off. The grievant's defense, that her sister had called and requested a ride to the hospital and that she let her children go to school at 7:00 a.m. and she picked them up at 9:00 a.m. with the intent of leaving for the Twin Cities at that time was not refuted by the County. The burden herein is on the County to demonstrate the grievant violated her work directives or the collective bargaining agreement. The record demonstrates the grievant properly requested the time off, was granted the time off and that she had the accumulated time to take off. The grievant's defense for altering her plans do not seem implausible nor has the County demonstrated the grievant did not pick her children up at their school at 9:00 a.m., that she never went to the Twin Cities, or that the grievant was aware when she requested the time off that her father's surgery was scheduled for 1:30 p.m. Had the County demonstrated any of the above the fact the grievant informed Squyer she intended to leave first thing in the morning because her father was undergoing surgery could be demonstrated as a falsehood and the County would have had grounds to discipline the grievant.



Therefore, based upon the above and foregoing and the testimony, evidence and arguments presented the undersigned concludes the County did not have just cause to terminate the grievant's employment. The County is directed to reinstate the grievant, make the grievant whole for any lost wages and benefits, and to expunge her record of this matter. The undersigned will retain jurisdiction of this matter for sixty (60) days for the sole purpose of resolving any matters concerning implementation of this award.

**AWARD**

The County did not have just cause to terminate the employment of Sue Khalar on February 18, 1997. The County is directed to reinstate the grievant, make her whole for any lost wages and benefits and to expunge her record of this matter.

Dated at Madison, Wisconsin, this 16th day of February, 1998.

Edmond J. Bielarczyk, Jr. /s/

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Edmond J. Bielarczyk, Jr., Arbitrator

