BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**CALUMET COUNTY**

and

**CALUMET COUNTY COURTHOUSE EMPLOYEES LOCAL 1362, AFSCME, AFL-CIO**

Case 102
No. 56848
MA-10434

(Lisa Fox Grievance)

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Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Attorney Bruce F. Ehlke**, 217 South Hamilton Street, Suite 400, P.O. Box 2155, Madison, Wisconsin 53701-2155, appearing on behalf of Calumet County Courthouse Employees Local 1362, AFSCME, AFL-CIO.

Davis & Kuelthau, S.C., by **Attorney James R. Macy** and **Attorney Tony J. Renning**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54902-1278, on behalf of Calumet County.

## SUPPLIMENTAL AWARD

The original award regarding Grievant Lisa Fox Roberts' (hereafter Roberts) termination was issued by the undersigned on August 20, 1999. Thereafter, on January 27, 2000, Calumet County Courthouse Employees Local 1362, AFSCME, AFL-CIO (hereafter Union) filed a prohibited practice complaint alleging that Calumet County (hereafter County) had failed and refused to implement the August 20, 1999 award in violation of Sec. 111.70(3)(a)1 and 5, Stats.

On June 6, 2000, the County filed a cross-complaint alleging that the Union had refused to cooperate in Roberts' treatment and return to work and that it thereby refused and failed to implement the August 20, 1999 award in violation of Sec. 111.70(3)(b)4 and 6, Stats. After a

full hearing and opportunity to brief the prohibited practices, on May 4, 2001, WERC Examiner David E. Shaw issued his decision wherein he found that the August 20, 1999 award was "ambiguous as to the conditions of Roberts' reinstatement and continued employment with the County is silent with respect to areas of dispute regarding the manner of implementation of those conditions."

The complaint case file, transcripts and briefs were thereafter transferred to the undersigned. By letter dated July 25, 2001, the undersigned indicated that she believed that the record was complete but inquired whether the parties wished to file additional briefs and advised the parties that if they wished to filed further briefs, these should be postmarked August 30, 2001. As the parties advised the undersigned by August 4, 2001, that they did not wish to submit any additional briefs or to have any additional hearing, the record herein was closed on August 4, 2001.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

## ISSUE

The essential issue in this case is, did the County comply with the terms of the Award issued August 20, 1999? If not, what is the appropriate remedy?

## FACTS

Following the August 20, 1999 Award, 1/ the parties met on August 26 to discuss the implementation of that award. At this time, Roberts stated she would enter treatment if the assessment required it. On August 30, the County sent the following letter to Counselor Patricia Moede at Theda Care Behavioral Health Services (TCBHS):

. . .

> Please be advised that Calumet County has referred an employee to you for an alcohol and other drug assessment. In the event Ms. Roberts health insurance doesn't cover the assessment, Calumet County will be responsible for the cost of the assessment. I have enclosed for your review, a copy of the arbitration decision with respect to this employee. I believe it will be helpful to you in implementing your assessment.
>
> Ms. Roberts will shortly be signing a release so that Calumet County will be in contact with you to discuss treatment issues, if needed. I thank you for your anticipated cooperation.

. . .

The County then arranged for Roberts' alcohol assessment at TCBHS to be done on September 2. At this time, neither Roberts nor the Union objected to the assessment being done by TCBHS. Roberts thereafter was ill and could not attend the September 2nd assessment and the County rescheduled it for September 7th. The Union was notified of this as was Roberts (and neither objected).

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*1/ All dates hereafter refer to 1999 unless otherwise indicated.*

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Roberts was then assessed by TCBHS Counselor Patricia Moede based upon an initial interview between them on September 7th, AODA diagnostic testing, and a total of approximately 2.75 hours of interviews between Moede and Roberts as well as Moede's contact of Roberts' daughter regarding the issue of alcohol in the family. Roberts stated that at their September 7th meeting after evaluating her AODA test, Moede told her she saw no indication therein of any alcohol problem. 2/ Roberts stated that it was not until their third meeting that Moede stated Roberts had a problem with alcohol and that Moede admitted she and her supervisor had conferred on the case and that she had read portions of the transcript. On September 27, Moede issued an intake/diagnostic summary 3/ regarding Roberts' AODA assessment which read in relevant part as follows:

. . .

> **Presenting Problems/Symptoms:** Client requested an arbitration hearing after she was terminated from her job with Calumet County. As a result of that arbitration hearing, client was directed to complete an AODA assessment. The assessment consisted of diagnostic testing as well as an interview with the client and collateral. It may be noted that client, at no time, indicated that she had a problem with alcohol use. In fact, until the end, client denied that her alcohol use had been a problem in any area of her life. Client's daughter was briefly interviewed by phone and client's daughter also states that she did not see her mother's drinking as problematic. However, client's daughter did acknowledge that client, on occasion, drank to intoxication. The overwhelming evidence in determining whether or not client did and does have a problem with alcohol was presented in the 470 pages of typed testimony from the arbitration hearing. There were too many instances of abusive drinking and too much testimony indicating episodes of intoxication to ignore. Client scored a 39 on the Alcohol Use Profile with no clear evidence of alcohol dependence. Based upon everything available to this assessor, client is diagnosed alcohol abuse, continuous with strong suspicion of alcohol dependence.

**Impression:** Client appeared very emotional and appeared as a victim of the system. She states she feels misjudged. Client was cooperative throughout this assessment. Client seems to lack insight regarding how her use of alcohol has contributed to her problems.

**Plan:** UPC criteria indicates a need for Level II treatment. When treatment recommendations were processed with client, she decided she would not follow the recommendations.

**DSM IV – Diagnosis:**

**Axis I:** 305.1, Alcohol Abuse, continuous. Suspected alcohol dependence.

. . .

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*2/ I have credited Roberts account herein, giving her the benefit of any doubt.*

*3/ On September 9, Corporation Counsel Buchinger sent the transcript and exhibits from the arbitration award of August 20th to Moede, at Roberts' request.*

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On October 12, the parties met regarding TCBHS's recommendations that Roberts enter Level II treatment and regarding Roberts' employment status. At this time, Roberts' stated she was willing to participate in treatment. However, Roberts wanted to receive treatment during the day because she wished to continue to work in her legal process serving business at night. 4/ At this meeting (and as confirmed in an October 19th County letter), the County requested that Roberts complete and sign a "computer access request" form from the State of Wisconsin in order to gain computer access to the "KIDS" program that she needed to use as a child support worker. The County advised Roberts in its October 19th letter, as follows:

. . .

. . . You will not be able to return to work in the Child Support Agency until you have clearance from the state which may take from 2-4 weeks.

Please notify me of your intentions regarding your willingness to proceed with the treatment program and reinstatement as an employee of Calumet County by October 22, 1999.

If you proceed with reinstatement, you will be placed on an authorized leave of absence during the approximate five week primary treatment program and will be eligible to use any of your accrued paid time off. When your paid time off

has been used, you will be eligible for unpaid time until the program is completed. At the end of the primary treatment program, you will be allowed to return to work.

You will be required to participate fully in the program and comply with all aspects of the treatment, both during the primary program and any recommended follow-up treatment. The county will be notified of your compliance with the program. If, at any time, you fail to comply or leave the program, your employment with Calumet County will be terminated in compliance with the arbitration decision.

. . .

When you begin the treatment program, you will be reinstated as an employee of Calumet County with your health insurance being effective at that time. The employee's share of the premium for Touchpoint Health (formerly United) is $8.59 per month for single and $23.69 for family coverage. Since we deduct the premium prior to the mouth of coverage, your share of the premium will be based on the month you are reinstated. Please make your choice as to which coverage you choose and notify the Payroll and Benefits Manager. These premiums will be deducted from any paycheck for which you will be eligible as soon as you are in a paid status.

Sick leave that you had accrued prior to your termination will be credited to your account. It is currently at 83.5 hours. In addition, you are eligible for 11.3 hours of floating holiday for 1999.

Vacation for 1999 was paid out to you. Therefore, you are not eligible for vacation for the remainder of 1999. Your vacation for 2000 will be prorated on the number of hours you were in a paid status during 1999. This is in accordance with the arbitration decision that does not allow you any back pay for the period you were off work.

. . .

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***4/ Initially, there were issues regarding who would pay for the AODA assessment and when Roberts could attend her treatment, but later it was determined and agreed that Roberts could attend treatment during the day and that the County would pay for the assessment, so that these issues became non-issues at least by the parties' meeting on October 27th.***

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On October 27th, the parties met again and resolved the issue of daytime treatment and that the County would pay for the assessment, in accord with Roberts wishes. Also discussed at this meeting, were the questions of the completion and submission of the State "computer access request" form and the County's request that Roberts grant her permission to attach a copy of the arbitration award to the computer access request form when submitted. The Union also raised irregularities with Moede's assessment, Corporation Counsel Buchinger's alleged attempted tainting of the assessment process and TCBHS's alleged refusal to allow Roberts to view her file there. 5/ At some point during this meeting, Roberts also wondered aloud whether she should seek a second AODA assessment.

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***5/ These collateral issues, in my view, were not relevant to the issues regarding Roberts' employment status with the County and her reinstatement thereto.***

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On October 28th, Roberts went to Recovery-Works Counseling Services for a second AODA assessment, (without first notifying either the County or her Union Representative thereof). This assessment was done by Counselor David Schrieter, who gave Roberts normal diagnostic testing and interviewed her. Schrieter did not contact any collateral witnesses such as family members and friends and he did not receive or consider a copy of the arbitration award or any other documents connected therewith. Schrieter issued the following "progress report" dated October 28th:

. . .

> Initial AODA Assessment: Patient on time for her scheduled appointment. Problems with work due to incident at bar. Patient required to take an AODA assessment. Patient signed all necessary admit forms and release of information. Assessment consisted of oral interview and SUDDS-IV (Substance Use Disorders Diagnostic Schedule-IV) which uses the DSM-IV (Diagnostic & Statistical Manual-IV) 7 criteria's for determining and diagnosing alcohol and drug dependency. In order to be found to be dependent, 3 of 7 categories need to be checked in the last year. Patient answered all of the questions put to her. There was no diagnosis evident on the SUDDS-IV. Unless collateral information can be found to support a different finding, no treatment for alcohol, drug dependence issues would be warranted. No further action is needed at this time, nor taken. Case is closed. If symptoms do begin to appear, patient may well benefit from AODA education. If symptoms persist, some individual counseling may well help patient resolve any problems she is incurring.

. . .



Roberts did not submit this assessment to the County until she wrote a letter dated November 17 dated to Calumet County Administrator Coordinator John Keuler, which read in relevant part as follows:

. . .

> I have enclosed a copy of the results of a alcohol assessment that I completed on October 28, 1999 through Recovery-Works Counseling Services, located in Green Bay, WI. In review of the results you will find that I do not have a drinking and or drug problem.
>
> I have also enclosed the Computer Access Request form for the state of Wisconsin. Under no circumstances do I give you or anyone authorization to release any of my medical and or any other of my personal records to the State of Wisconsin.

. . .

On November 23, the County responded to Roberts' November 17th letter as follows:

. . .

> I am in receipt of your November 17, 1999, letter with attachments; however, we have a reliable assessment that concludes you need treatment for alcohol dependency.
>
> I will reiterate the County's position on this matter. You were advised on October 19, 1999, that you needed to complete a Level II treatment program with ThedaCare. You were given until October 22, 1999, to respond whether you were in treatment. You asked for a meeting. On October 27, 1999, we met to answer your questions about the October 19, 1999, letter. You were advised that you needed to complete a Computer Access Request Form and begin the treatment program before you could return to work. You were further advised that the County was no longer insisting upon evening treatment, that any Level II treatment offered by ThedaCare, or any other approved treatment provider, would be sufficient. You would be eligible to use available sick leave to supplement pay for time worked.
>
> Lisa, this matter has to be resolved immediately. It has been over three months since Arbitrator Gallagher ruled on your case. You must provide me with a certificate or other written statement from the ThedaCare, or any other treatment provider approved by Calumet County, showing that you are enrolled in a Level II treatment program. All other terms of the October 19, 1999, letter are still in

effect.



> Further, you failed to complete the Computer Access Request Form. We need your mother's maiden name. I believe this is a security device employed by the State of Wisconsin. Please contact my office with that information, and I will fill in that area.
> In addition, I note that you stated that you did not want your "medical" or other "personal" information released to the State. I intend to send a copy of the arbitration award with your application. Per your request, I will not advise the State of the results of your assessment nor the fact that you are in treatment. This may slow down the process since they are likely to ask whether you have completed the treatment. However, we will deal with that issue when, and if, it arises. The immediate concern is that you enter treatment at once.
>
> If you have not enrolled in a treatment program on or before December 1, 1999, we will assume that you have no intention of complying with the terms of the arbitration award. We will close your employment file at that time.
>
> . . .

It should be noted that in testimony herein, Roberts stated that when she received the County's November 23rd letter, she thought she had already submitted a completed Computer Access Request Form with her November 17th letter. Roberts also admitted herein that she had not started treatment by December 1st and that she did not believe she needed the treatment that had been recommended by Moede. (Roberts did not contact the County to give them her mother's maiden name, and complete the Computer Access form, until December 9th.)

On December 1, the Union wrote to the County regarding its (and Roberts') position concerning Roberts' employment status with the County, as follows:

> . . .
>
> I called you to ask if Ms Roberts could go to a treatment sessions [sic] in the morning, be paid sick leave etc. under the FMLA and work in the afternoon. <u>You called me later to deny this request and state she must finish treatment before she can return to work.</u> You said that without her having access to the computer system there was little for her to do. You were not willing to approach the personnel committee again. Do not misunderstand that offer to go to treatment- the purpose was to mitigate while trying to properly straighten out this matter- not that we are in agreement that she go to treatment. The Union has always taken the position that the arbitrator's award requires that:
>
> 1. That Ms Roberts get an assessment before she can go to work and that she "complete the assessment" where upon she can return to

work.



3. If the assessment had a recommendation for treatment, she must successfully complete the treatment, however she is to be working in the meantime.

As of this date, you have not allowed her to return to work, although she has had two assessments. Since the award you have forced her to go to a [sic] assessor of your selection, outside of the coverage of her insurance. The award only requires a "successful completion of treatment" notice to the employer. Prior to her participation at Thedacare, you required she sign certain releases from the therapist to the County. The County Administrator, the Corporation Council, (her supervisor) and you have all had contract [sic] with the therapist. It is my understanding that all contract [sic] was initiated by you. Ms Roberts was denied the ability to review her file at Thedacare. In those contacts, you have expand [sic] beyond the scope of these releases, and so tainted the therapeutic process, and the initial assessment, that another assessment was gotten by Ms Roberts. We believe that this latter assessment, by a creditable therapist, which indicated no treatment was necessary, should be honored.

We therefore demand that Ms Robert be returned to work immediately.

. . .

On December 9, Roberts called the County Personnel office, stated her mother's maiden name and spelled it for Ms. Davey, Personnel Director. Roberts also stated that everything she had written in her previous letter still applied and she did not want anything from her personnel file sent to the State of Wisconsin with her Computer Access Request Form. Davey stated that the County intended to send the arbitration decision with that form and Roberts stated she considered the award part of her personnel file. 6/

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***6/ The County submitted testimonial evidence regarding Roberts activities after the issuance of the Award. I find this evidence irrelevant.***

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Thomas Meier, a Department of Workforce Development, Division of Economic Support employee, stated herein that he told Buchinger to send the Arbitration Award along with Roberts' completed Access form. Thereafter, Meier stated that he found the Award on the internet. Meier stated that he did not recall whether he told the County that he already had the Arbitration Award. Furthermore, Meier stated that no decision was ever made by the State of Wisconsin whether to grant Roberts a security clearance to use the "KIDS" program,

because DWD never received a completed Computer Access Request form from Roberts or the County. Finally, Meier stated that based on the Arbitration Award herein, he had concerns about granting "KIDS" access to Roberts.

## POSITIONS OF THE PARTIES

As Examiner Shaw accurately described the briefs of the parties in the underlying case and because the parties chose not to file any additional briefs before me in this forum, I conclude that the description of the briefs by Examiner Shaw is fair and reasonable and I am quoting it in its entirety herein:

. . .

**Union**

The Union asserts that the Award is clear that Roberts' reinstatement was conditioned only on her "completion of assessment for alcoholism" and that no other condition on her reinstatement was mentioned. Roberts underwent two assessments, and even though the first assessment was a sham, she satisfied the condition for reinstatement. The County imposed conditions on Roberts' reinstatement that were in addition to those established by the Arbitrator, and thereby failed to implement the Award. Further, the first assessment was based on a selective review of the testimony from the arbitration hearing, rather than on the SUDDS-IV schedule and DSM-IV criteria, and thus was not a medically-supportable basis for the diagnosis and recommended treatment. On the other hand, the second assessment was performed based upon the appropriate criteria and did not result in a finding of alcohol abuse or need for treatment, but was ignored by the County.

The County also imposed additional conditions to Roberts' reinstatement, requiring that she first complete five weeks of preliminary treatment and that she receive a favorable response from the State to the filing of a Computer Access Request, before she would be permitted to return to work. The County then insisted on submitting a copy of the Award along with the request in order to sabotage her ability to receive a positive response from the State.

In its reply brief, the Union disputes the County's factual assertions. Roberts and Isferding did not meet with the first assessor for the purpose of persuading her to change her assessment; rather, they went there to discuss the treatment and obtain a copy of the records that were used in doing the assessment. Also disputed is the assertion that Roberts had a right to appeal the

first assessment, but elected not to, when Roberts was never informed she had



such a right. The Union also disputes the assertion that the second assessment was less credible than the first and that the Union did not discuss the possibility of having a second assessment with the County's representatives prior to obtaining the results from the second assessment. Last, the Union denies that Roberts refused to participate in the treatment. Roberts' conduct and her efforts to reach agreement on the treatment and when she would participate in such treatment evidenced her willingness to cooperate.

The Union again asserts the first assessment was unreliable and that Roberts' behavior does not meet the established criteria for diagnosing alcohol abuse. Conversely, the assessment performed by the second assessor utilized those criteria and was valid, finding no diagnosis of alcohol abuse and that treatment was not warranted. Again, the County added conditions for Roberts' reinstatement beyond what the Arbitrator imposed.

The Union requests that the County be ordered to reinstate Roberts immediately and pay back wages, plus interest, from the date of her discharge (pursuant to the parties' Agreement) or in the alternative, from the date she completed the first assessment, to take all steps necessary to have Roberts' Computer Access Request approved by the State, and to accept the second assessment, or in the alternative, participate in good faith with the Union in selecting a third assessor to obtain a reliable "tie-breaker" assessment.

**County**

The County asserts that the Award clearly and unambiguously provides that Roberts must agree to an assessment and treatment as a condition precedent to her reinstatement. The Arbitrator expressly used the word "and", rather than "or", thus, a strong argument exists that Roberts was required to actually complete the "assessment and all necessary treatment" prior to being reinstated. However, after agreeing to, and undergoing, the first assessment, Roberts refused to accept the results and during the assessment itself, made clear to the assessor she would not attend any treatment. It is the Union and Roberts that have frustrated the County's efforts to implement the Award. Thus, the Union's complaint is without merit.

Next, the County asserts it did not violate Sec. 111.70(3)(a)1, Stats., by not returning Roberts to work, as she failed to comply with the conditions precedent to her return set forth in the Award. Further, even where employer action may have a tendency to interfere with an employee's exercise of their rights under Sec. 111.70.02, Stats., the Commission has not found a violation where the action was based on a valid business reason. Here, the County's

actions were based on the Award, which clearly constitutes a valid business reason.



The County also asserts it has not violated Secs. 111.70(3)(a)5 and 7, Stats., by not returning Roberts to work, again, because she failed to comply with the conditions set forth in the Award for her being returned to work. The Union has the burden of proving by a clear and satisfactory preponderance of the evidence that the County has failed to accept and implement Arbitrator Gallagher's Award in violation of Secs. 111.70(3)(a)5 and 7, Stats. 1/

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1/ The Union alleges violations of both Secs. 111.70(3)(a)5 and 7, Stats. Similarly, the County alleges violations of both Secs. 111.70(3)(b)4 and 6, Stats. However, Sec. 111.70(3)(a)7, Stats. and 111.70(3)(b)6, Stats., pertain only to interest-arbitration awards issued pursuant to 111.70(4)(cm), Stats.

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The Union failed to meet that burden. Upon receipt of the Award, the County immediately arranged for an assessment to be conducted. Neither the Union or Roberts objected to the assessor selected to do the assessment, nor to the results of the assessment. The County made every effort to ensure that the assessment was fair and objective and upon receipt of the results of the assessment, offered to reinstate Roberts contingent upon her agreeing to the initial steps of the recommended treatment (as required by the clear language of the Award) and her completing the application for the required security clearance in order to access the computer system.

It is the Union, not the County, that has refused to accept and implement the Award by its refusal to cooperate with the County as relates to Roberts' treatment and return to work. In that regard, Roberts refused to agree to any treatment and she and Isferding inappropriately attempted to persuade the person who had performed the assessment to change her assessment and recommended treatment. Further, Roberts failed to complete the application for security clearance to use the computer system, which is required in order to perform her job. Roberts also refused to authorize the County to submit a copy of the Award, as requested by the State agency responsible for granting the security clearance. Despite already having a credible assessment, and without discussions, negotiations or input from the County, Roberts sought and obtained a second assessment in an attempt to frustrate the County's attempts to implement the Award. Further, Roberts continues to abuse alcohol and convey confidential information to the public.

In its reply brief, the County first asserts that Davey and Buchinger should be dismissed as parties to the Union's complaint. The Union amended

its complaint at hearing to remove Davey as a respondent. As to Buchinger, the



evidence shows that she was, at all times, merely acting as a representative of the County and there is no evidence to support the Union's allegations that she inappropriately attempted to influence the first assessment. The County reiterates its assertions that the Award clearly required Roberts to agree to both an alcohol assessment and treatment as a condition precedent to reinstatement and that Roberts refused to do so. Conversely, the County made a good faith effort to implement the Award.

With regard to the Union's requested relief, the County asserts that an award of backpay would be contrary to the Award. As to taking steps to ensure Roberts obtains the required security clearance, the County could not have done more than it did. Finally, the second assessment lacks credibility and the County need not accept it.

. . .

**DISCUSSION**

The parties have both argued in the prohibited practice complaint cases that the Award issued by the undersigned on August 20, 1999, is clear and unambiguous. However, the parties interpret the language of my award in conflicting ways. It is significant that neither party requested that I retain jurisdiction herein in the underlying arbitration case.

For purposes of clarity herein, I quote, as follows from the Discussion and Award sections of that August 20, 1999 decision:

. . .

I turn now to the appropriate level of punishment for Fox's breaches of confidentiality and her mistreatment of fellow employes. This Arbitrator has rarely disturbed an employer's determination, in its discretion, of the level of discipline to be meted out. However, in this case, where Fox's work record was clean and she had been employed for 13 years, I believe termination is too harsh a penalty even for the serious misconduct she engaged in. In my view, Fox deserves another chance, the chance the County should have given her, (similar to the chance it originally offered her, and which she rejected) to complete assessment and treatment for her problems with alcohol and to return to work. Given Fox's proven misconduct, however, I have not ordered any backpay and I have made the reinstatement conditional upon her completion of assessment for alcohol addiction. I have also made it clear in my Award that any further breach of confidentiality by Fox after her return to work can result

in her immediate discharge. Furthermore, if Fox refuses to complete assessment and treatment for her problem with alcohol, the County need not reinstate her, as her reinstatement and continued employment are also expressly conditioned upon her completion of such assessment and all necessary treatment. This award represents a last chance for Ms. Fox.

Based upon the relevant evidence and argument herein, I issue the following

**AWARD**

The County violated the collective bargaining agreement when it terminated Lisa Fox. Fox shall be reinstated, without backpay but with full seniority, to her former position or a position substantially similar thereto conditioned upon her completion of assessment for alcoholism. Fox's reinstatement and continued employment after her return to work are also expressly conditioned upon Fox's successful completion of any recommended treatment for her problem with alcohol after her reinstatement. In addition, should Fox commit any breach of confidentiality after her return to work, the County may discharge her forthwith pursuant to this Award. If Fox refuses to agree to assessment and treatment, her discharge shall stand.

. . .

The Award herein states that Roberts should first be assessed for alcoholism before she could be reinstated with full seniority but without back pay. The record facts here show that Roberts was allowed to reschedule the assessment due to illness and that thereafter she was assessed at TCBHS without any objection being lodged thereto. Buchinger's August 30th letter to Moede indicated that the County would pay for the assessment if Robert's insurance would not.

The Moede assessment, dated September 27, essentially concluded that although Roberts tested at 39 points (with no clear evidence of alcohol dependence), the 470 page transcript of the arbitration proceeding contained "too many instances of abusive drinking and too much testimony indicating episodes of intoxication to ignore." Moede also considered a contact with Roberts' daughter in which the daughter admitted that Roberts often drank to intoxication but that the daughter did not feel her mother's drinking was a problem. Moede concluded that Roberts was in need of Level II treatment, based on all of the information available to Moede.

The Union has objected to Moede's assessment as "a sham," "not medically supportable" and "unreliable." I note that the Award did not provide for Roberts or the Union to make or pursue any objection to the assessment done. In all of the circumstances of this

case and as neither the Union nor Roberts objected to the assessment being conducted by TCBHS or requested to discuss other agencies to perform the assessment prior to TCBHS performing the assessment, the County's selection of TCBHS as the agency (which was within



its insurance coverage) to do the assessment was reasonable and constituted an appropriate interpretation of the Award. Thus, Roberts satisfied the Award requirement of completing an AODA assessment.

The Union objected to Corporation Counsel Buchinger's contacts with Moede. In my view, the record does not show that Buchinger had improper contact with Moede as alleged. Indeed, Moede did not recall any such contact from Buchinger. Also, Buchinger's contacts were later limited by the County. Buchinger's sending Moede the underlying arbitration award was appropriate to explain the reason for the assessment. Further, the award could constitute collateral information appropriately considered on a regular basis by AODA assessors. 7/

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***7/ Indeed, Roberts' chosen counselor, Schreiter, admitted that collateral information is appropriately considered in AODA assessment (although he considered none in Roberts' case). Schreiter also admitted herein that he might reconsider his diagnosis based on collateral information. In addition, Schreiter stated that it is normal for AODA counselors to confer with their supervisors about their cases, as Moede did in this case. I note that Schreiter, in his assessment, stated: "unless collateral information can be found to support a different finding, no treatment for alcohol, drug dependence issues would be warranted." I note that Schreiter never attempted to obtain and in fact rejected collateral information offered by Roberts.***

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As the Award did not address contacts between the County and the AODA assessment agency and as the contacts made were not unreasonable, I do not find that the County violated the Award herein by contacting TCBHS as it did.

The Union objected to the fact that TCBHS refused to give copies of Roberts' records to the Union or Roberts after Moede completed her assessment. The Award does not address this issue and it is not relevant to this case. 8/ Other issues, including treatment time and payment for the assessment and treatment, were all resolved in Roberts' favor so that these issues also became non-issues as early as October 27th. These issues also were not addressed in the Award.

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***8/ I note that neither the Union nor Roberts requested the County's help in gaining these records nor took any other action to compel TCBHS to release these records. I find this issue to be completely collateral to this case and it was not a reason to discount TCBHS's assessment of Roberts.***

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I note that the Union objected to the County's refusal to immediately and fully reinstate Roberts to her job as soon as she completed the TCBHS assessment. In my view, this is a point on which the parties have a legitimate disagreement regarding when reinstatement should have occurred because the Discussion section of my decision could be construed to conflict with the Award section in light of evidence revealed herein but not proffered in the Arbitration

case.



On this point, I note that at both the October 12th and 27th, meetings between the parties, the County expressed its fear that there would be a problem gaining security clearance for Roberts to work with the "KIDS" program. Indeed, the record is clear that it is necessary for the State to approve all child support agency workers in advance if they are to work with the "KIDS" program. It is also clear that the County has no control over how and under what conditions the State will approve a child support worker's access to "KIDS."

In my view, the County's action in partially reinstating Roberts was not unreasonable and did not violate the terms of the Award herein. As is always the case, the details of reinstatement may not be known fully to anyone until the attempt to reinstate is made, making a detailed award in this area extremely difficult to express. As the full reinstatement of Roberts to a child support job required that she first be granted security clearance to the "KIDS" program, I find that the County's approach to partially reinstate Roberts was reasonable, under the circumstances as the granting of security clearance under "KIDS" is not within the County's control in any way.

As I have previously found, it was reasonable for the County to select the AODA assessment agency. In my view, Roberts' decision to seek a "second opinion" can have no effect on this case given the fact that the Award did not provide for a "second opinion" AODA assessment if Roberts was unhappy with the first assessment done. Therefore, the evidence regarding the Recovery-Works AODA assessment is not relevant.

The Union has also objected to the attachment of the Award to Roberts' Computer Access Request form. Whether or not the County made it clear to the Union and Roberts that DWD required the Award to be attached to Roberts' Access form for DWD consideration, the County had no choice but to submit the Award, as the State's requirements in this area are totally out of the County's control. The Award herein did not address this issue, there being no record evidence thereon. In all the circumstances here, I cannot find that the County acted unreasonably or that it violated the Award by its position on this point.

It is clear that Roberts and the Union became concerned with two issues not addressed or reasonably anticipated by the Award which were not resolved to their satisfaction with the County: the value of a second opinion AODA assessment and the attachment of the Award to the Access form. It is also clear that the County was reasonably concerned with how to properly "reinstate" Roberts given the DWD requirement that the Access form (which Roberts inadvertently failed to complete) be completed and submitted to DWD. It is in the context of these disputes between the parties, that Roberts failed to comply with Moede's assessment that she enter Level II treatment and she failed to complete the Access form (which was necessary for her re-employment as a child support worker).

Roberts stated herein that when she received the November 23rd letter from the County "I thought to myself I don't know what they're talking about. I filled out the form. I handed it in with my cover letter. Nobody said I only have an "H" in here. I did not do this

intentionally." (Tr. 291). Roberts also stated that she did not need treatment but that if Moede's assessment were to be the final word on the matter, she would have no problem getting treatment. (Tr. 288) I note also that Roberts told the County on October 12, that she was willing to enter treatment.

The Award section of the August 20, 2000 decision states that Roberts should have been "reinstated without backpay . . . upon her completion of assessment for alcoholism." Roberts completed AODA assessment at TCBHS. However, the County could not accomplish Roberts' full reinstatement until Roberts completed the Computer Access Request From and she was okayed by DWD to use the "KIDS" program, facts not anticipated or considered in the Award and out of the County's control.

The question then arises whether, pursuant to the Award, the County was privileged to terminate Roberts because she failed to submit the completed Access form and enter treatment by December 1, 2000. In the circumstances of this case, I do not believe the County was privileged in this way. The facts here demonstrate that Roberts was unaware she had failed to properly complete the Computer Access Request form prior to December 1st and she stated that she never intended to submit an incomplete Access form. In these circumstances, and given the fact that sever disputes had existed between the parties which were not (and could not have been addressed by the Award), it is fair to give Roberts one last chance.

It should be clear from this Supplemental Award that no second opinions may be sought and no other objections may be lodged by Roberts or the Union. The intent of this Supplemental Award is to give Roberts one opportunity to enter Level II treatment (either at TCBHS or any other treatment provider approved by the County) within 14 calendar days after the date of this Award. If Roberts fails to enter treatment as described herein, the County can terminate her pursuant to this Supplemental Award without recourse to the contractual grievance procedure.

To assure that there are no lingering questions, it should be noted that the County can append the original Award in this case to Roberts' Computer Access Request form and that upon Roberts' approval to use the "KIDS" program, she shall be fully reinstated to her former child support position or to one substantially similar thereto. 9/ If the County no longer has Roberts' completed DES-10, Roberts must complete another form for the County to submit to DWD. It is clear that the County has no control over DWD's procedures or decisions to grant or deny "KIDS" access. Therefore, if Roberts is denied "KIDS" access, the County has no obligation to reinstate Roberts to a child support worker position.

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***9/ As no issue of Roberts' possible reinstatement to any other County positions was before me in the original grievance, I make no finding herein and have no jurisdiction over such a claim.***

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It is my belief that this Supplemental Award has dealt with all issues raised by the parties regarding how to properly implement the original Award. 10/ I will, however, retain



jurisdiction over the remedy only for 30 calendar days after the date of this Supplemental Award should any further questions arise.

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***10/ The County proffered evidence in the complaint case that Roberts had revealed confidential information relating to child support cases after her discharge which I have found irrelevant. It has, therefore, not been considered herein.***

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Based on the above, I issue the following

## SUPPLEMENTAL AWARD 11/

The County failed to comply with the terms of the August 20, 1999 Award by discharging Roberts effective December 1, 1999.

If Roberts enters Level II treatment either at TCBHS or any other provider approved by the County within 14 calendar days after the date of this Supplemental Award, she shall be reinstated to her former position in the Child Support Agency or a substantially similar position with full seniority but no backpay. If Roberts fails or refuses to timely enter treatment as described above, the County can terminate her employment pursuant to this Supplemental Award without recourse to the contractual grievance procedure. In addition, if Roberts is denied access to "KIDS," the County will have no obligation to reinstate her to a child support worker position. Roberts must enter and complete Level II treatment, as Roberts' reinstatement and continued employment are expressly conditioned thereon. Finally, as stated in the original Award, should Roberts "commit any breach of confidentiality after her return to work, the County may discharge her forthwith pursuant to this Award."

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***11/ I hereby retain jurisdiction of this case for 30 calendar days from the date of this Supplemental Award regarding the remedy herein only.***

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Dated at Oshkosh, Wisconsin, this 24th day of October, 2001.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

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