BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**LAFAYETTE COUNTY PROFESSIONAL EMPLOYEES UNION
LOCAL 678, AFSCME, AFL-CIO**

and

LAFAYETTE COUNTY

Case 82
No. 59523
MA-11321

(Nancy Disbrow Grievance)

Appearances:

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Lafayette County Professional Employees Union, Local 678, AFSCME, AFL-CIO.

Brennan, Steil, Basting & MacDougall, S.C., Attorneys at Law, by **Mr. Howard Goldberg**, on behalf of Lafayette County.

ARBITRATION AWARD

Lafayette County Professional Employees Union, Local 678, AFSCME, AFL-CIO, hereinafter referred to as the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Lafayette County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on April 19, 2001, in Darlington, Wisconsin. There was no stenographic transcript made of the hearing and post-hearing briefing was completed by August 9, 2001. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Employer have just cause to discipline the employee? If not, what is the appropriate remedy?

CONTRACT PROVISIONS

The following provision of the parties' Agreement is cited:

Article III – Employee Discipline

Non-probationary employees shall not be disciplined, suspended, disciplinarily demoted or discharged without just cause. Written notice of the suspension, discipline, disciplinary demotion or discharge or the reason for the action shall be given to the employee with a copy to the local Union within five (5) working days after such disciplinary action is taken.

BACKGROUND

The City maintains and operates the Lafayette County Human Services Department. The Grievant, Nancy Disbrow, currently holds the position of CAN Investigator/Case Manager, in the Department.

In early 1999, the Grievant responded to an advertisement the Department had placed in an area newspaper, which stated, in relevant part, as follows:

CASE MANAGER/CAN INVESTIGATOR

Qualifications: Graduation from an accredited college with a degree in social work, guidance and counseling, psychology, or relevant field of study. A minimum of one year of work-related experience, preferably in association with a community-base social/human services program. Knowledge of Chapter 48, Family Systems theory, and eligibility for a social work license is beneficial.

Responsibilities: Will perform all phases of child abuse and neglect investigations; provide case management for families receiving voluntary or court-ordered services using family systems theory; provide crisis and emergency counseling and intervention as a member of the agency's on-call network; and perform other duties as assigned by administrative personnel.

. . .

The job description for that position stated, in relevant part:

Qualifications:

Graduation from an accredited college with a degree in social work or other related field of study. A minimum of two years of work-related experience, preferably involved in association with a family-based social/human services program. Knowledge of, and experience with, Chapter 48 and Family Systems theory is necessary.

Responsibilities:

With appropriate supervision from the Family Services Supervisor, will perform the following:

a. Perform all phases of child abuse and neglect investigations (approximately 50% of time);
b. Interview, assess, and evaluate individuals and families who present themselves for on-going services;
c. Serve as case manager for purpose of developing social/human service plans for those clients to whom he/she has been assigned;
d. Provide crisis and emergency counseling and intervention on behalf of all agency population groups as a member of the agency's on-call network;
e. Provide outreach, aftercare, follow-up, and community liaison where appropriate;
f. Provide professional consultaton (sic) and community education programs upon request;
g. Participate in continuing education and perform other duties as assigned by administrative personnel;
h. Ability to work flexible hours.

Additional Requirements:

Possess basic knowledge and understanding of:
a. Human growth and behavior with special emphasis on family systems, abuse, and neglect;
b. Current social and economic problems, and the manner in which these problems affect children and families;

c. Knowledge of range of available services for children and families;
d. Laws, regulations, and practices pertaining to federal and state social/human services programs;
e. Approved social work principles, methods, and practices;
f. Eligibility for Wisconsin Social Work License;
g. Valid driver's license and is subject to county and agency policies;

The Grievant has a B.A. degree in Social Work and is certified as a social worker by the State of Wisconsin. She has prior experience as a Juvenile Probation Officer and Intake Worker in Rock County, Client Services Worker for the Office of the Public Defender, Social Worker II and III for Marathon County, and as a Human Services Professional for Lutheran Social Services.

As part of her duties when hired by Lafayette County, the Grievant was the "back up" CAN Investigator. According to the Grievant, she was told she would get training in that function from the person who was the primary investigator, but she was only able to go out with her twice before that person became ill and went on a leave of absence in October of 1999. By that time, the Grievant had been assigned eight CAN investigations, at least two of which were "substantiated". At that time, the Grievant became the primary CAN Investigator in the Department, with other Social Workers serving as backup investigators.

CAN is an acronym for Child Abuse and Neglect. When the Department is notified of an allegation of possible juvenile abuse or neglect, one of the Department's CAN Investigators is assigned to investigate the matter and prepare a report of his/her findings. Per state statute, the time lines for completing interviews, completing the investigation and issuing the report are established by the Child Protective Services "investigation standards" issued by the State's Department of Health and Social Services. Those standards also establish the procedures to be followed and the documentation required, depending on the situation. In summary, the standards require that an assessment be completed within a maximum of five (5) days of receiving the report of possible abuse or neglect, i.e. whether the report is "unsubstantiated" or "substantiated", and that the investigation and report be completed within 60 days of the receipt of the report of possible abuse or neglect. In more detail, the standards require that:

> The investigation must be completed within sixty days of the receipt of the report. At completion of the investigation, the record must contain:
>
> - Documentation of all decisions and information gathering, as described above
>
> - Documentation of closure with the family, including discussion of the results of the investigation and decisions regarding ongoing service provision and referral, if appropriate

- Documentation of feedback to the mandated reporter, if applicable

- DCS-40 form

- Supervisor signature indicating approval of the process and decision making, including any deviation from the Standard.

. . .

Within sixty days, the investigating agency must forward a report containing the following to the home agency:

- Any safety issues to be addressed

- Any unmet service needs for the child

- Any unmet service needs for the foster parents which result in risk of maltreatment

- Any licensing issues to be addressed

- Documentation of all decisions and information gathering, as described above

- DCS-40 form containing the investigation activity; as described in the Numbered Memo on Independent Investigation of Child Abuse and Neglect Cases

- Supervisor signature indicating approval of process and decisions, including any deviation from the Standard

The person who does the investigation must also do the report.

The Grievant's current supervisor, Brenda Poss, was hired as the Department's Family Services Manager in December of 1999. Poss is the Grievant's fifth supervisor since she was hired in April of 1999. The Department had been going through transition and had an acting director for a time. All of the Grievant's former supervisors are still in the Department and one of them, Thomas MacDonald, is now the Department's Director.

In October of 1999, the Grievant became the "primary" CAN Investigator in the Department when the person with that responsibility went on a medical leave of absence. Three other employees in the Family Services Unit also did, and do, CAN investigations. In addition to her CAN investigation responsibilities, the Grievant is also assigned cases as case manager. Such case manager assignments are limited to 10 at most and Poss has tried to make sure they are "low activity" cases, but that is not always possible.

When Poss became the Grievant's supervisor she was informed by MacDonald that the Grievant's overdue CAN reports was a concern. Poss met with the Grievant in January of 2000 to discuss the 20 overdue reports the Grievant had at the time. According to Poss, the Grievant indicated she felt the causes were a lack of supervision, a lack of training or guidance on the process and case overload. Poss offered the Grievant a computer and was advised the latter did not know how to type and the Grievant refused the offer of a typing program to learn. Poss told the Grievant she should consider flexing her hours so she could work on the reports in the evening, or on weekends when she would be bothered less, but the Grievant said she would not do that unless she got compensatory time at time and one-half. Poss also offered to have the Grievant's handwritten notes transcribed to assist her.

The Grievant continued to have more reports become overdue. In February of 2000, the Department was audited by the State. Due to a backlog of overdue reports from 1999, the State developed a "fast track" program county agencies could use to do "unsubstantiated" reports from 1999 and only on a one-time basis. The "fast track" is a minimized version (2 pages) of a regular report (average of 4-6 pages).

On March 9, 2000, Poss again met with the Grievant to discuss overdue reports. They worked out an "action plan" that included a schedule designating "protected periods" during which the Grievant could work on reports without interruptions, during the following week. The Grievant told Poss she would complete and submit four CAN reports to Poss by March 17, 2000. The Grievant was again offered a tutorial program for typing and using the computer, but rejected the offer, choosing to continue to write the reports by hand.

The Grievant only submitted three CAN reports by March 17th and was given a "verbal warning" regarding her overdue reports. Another plan that included "protected time" was agreed to, and the Grievant was advised she would receive a written reprimand if she did not successfully complete the plan. According to Poss, the Grievant was "tearful" and stated "I just can't do it, not with all the assessments that come in."

Poss testified that the Grievant had been assigned 17 of the 27 CAN cases that were received from October through December, 1999, and was assigned 13 such cases from January 1 to March 6, 2000. The Grievant continued to schedule "protected time" to do her reports. In May, the Grievant went on a leave of absence under the FMLA to care for her ill

mother. The Grievant had 10 reports overdue when she left on leave and three more that became overdue while she was gone. She submitted two overdue substantiated reports while she was on the leave of absence. Four more reports became overdue when the Grievant returned to work in June of 2000.

In July of 2000, the Grievant was given an annual performance evaluation by Poss. The evaluation noted the continuing problem with overdue CAN reports. At this time, the Grievant still had three overdue reports from 1999 and 17 overdue reports from 2000, despite efforts to become current. The evaluation also stated that the Grievant was still in the "learning stages" with regard to CAN assessments and report writing. Poss and the Grievant established annual objectives which included completing overdue assessments and spending 2-4 hours daily to work on overdue reports, as allowed by CAN assessment demands, by not trying to submit "perfect" reports, utilizing the computer typing skills program, and attending more training. There were to be no overdue reports as of January 8, 2001, a date selected by the Grievant, and she was to remain current on reports and assessments once the overdue reports were completed. The Grievant indicated on the evaluation that she offered to work overtime to complete the overdue reports, but was denied that option. As part of the objectives, the Grievant was to complete at least one overdue report a week while remaining current on present reports and to increase that output to completing three overdue reports per week, with the understanding that the Grievant was to give priority to court disposition cases and "substantiated" reports.

On July 20, 2000, Poss met with the Grievant to discuss how she was taking her breaks and a problem of being habitually late to work, as well as the fact that she was not complying with plan. She asked the Grievant if she could do anything to assist her, and was told, "No." The week of July 14, 2000 the Grievant completed one overdue unsubstantiated report, two substantiated overdue reports the following week, one not overdue substantiated report the following week, (but no overdue reports), no reports on August 4, one overdue report on August 11, and two overdue reports on August 17. On August 25, the Grievant submitted no reports, and one became overdue, as was also the case on September 1, 2000.

On or about August 27, Poss received a telephone call, and subsequently a memorandum, from the County's Juvenile Intake Worker, Laurie Hodgson, regarding the timeliness of a substantiated report done by the Grievant. The matter was referred on October 5, 1999, so that the report was due on December 5, 1999. Hodgson received the completed report on August 14, 2000. This was a substantiated case and Hodgson wanted to pursue a higher level disposition, but was precluded from doing so because the timelines for doing so had passed. Hodgson also had sent Poss a memorandum on August 21 noting her concerns regarding CAN investigation reports she had not received. Of the 19 missing reports, 16 were reports that were overdue from the Grievant. Hodgson's memorandums were forwarded to MacDonald by Poss, along with a memorandum detailing the Grievant's failure to comply with the action plan.

On September 7, 2000, MacDonald issued the Grievant the following written warning:

This memo shall serve as your official notice that you are being disciplined for the following reasons:

1) Failure to complete your work in a timely manner. You currently have 15 overdue Child Abuse and Neglect Reports. One additional report will become overdue in the next two weeks if it is not completed soon. (Attachment A).
2) Failure to complete substantiated CAN reports in the time frame outlined in the State statute, which has resulted in a difficult situation for the Juvenile Court Intake person and made it difficult for the District Attorney to complete her job in a timely manner. (Attachment B).
3) Placing a child in a vulnerable position by not completing an investigation according to the Child Protective Services Investigation Standards. (Attachment C).

(For specific information regarding the identified issues see the attached documentation.) (Omitted)

The course of discipline will follow the guidelines from the Union contract and will be progressive in nature. You have already received a verbal warning for the tardiness of your reports. Your supervisor established an agreed upon resolution to the problem and you have failed to comply with plan (sic) in a number of points. Therefore, this shall be considered a final warning. As part of your discipline you will confine yourself to your office for a period of one week (five working days) to commence on the following Monday, September 11, 2000. By 4:30 pm on Friday, September 15, 2000 you are to have turned in all reports due to your supervisor. During this time you will be relieved of all your duties outside completing the over due reports and any report that may become over due in the mean time.

You will not be allowed to utilize flex-time, over-time, compensatory time, vacation, personal leave, or any other form of time off other than in the case of illness. If an illness ensues during the ~~two~~ one week time frame the termination date of the discipline will be extended one hour for every hour of work that is missed due to the illness. This does not change any standardized policies regarding sick leave.

> If you fail to complete all over due reports, including any that come due during the disciplinary period you will be terminated. If your (sic) able to complete the assigned tasks on or before Friday September 15, 2000 your other duties will then be returned to you. You will begin receiving new cases to investigate and any other duties that would be deemed appropriate to your position and job description. Also, you are hereby
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> notified that if **any subsequent report** is turned in late (past the 60 days) you will be further disciplined, including but not limited to termination. If this problem persists beyond that point you will be terminated for not complying with the requirements of the laws which govern the role of a Child Abuse and Neglect Investigator.

The Grievant was given the entire week of September 11 as "protected time" to complete the reports. Poss and the Grievant agree that it takes approximately 1 hour/page to do a report.

Of the matters for which the Grievant received the written warning, 3) was regarding a fast-tracked unsubstantiated report the Grievant and Poss did regarding a December 13, 1999 referral alleging sexual abuse of a young girl by a stepfather. The Grievant concluded it was unsubstantiated, however, there is a dispute as to whether the Grievant mentioned to Poss when they were doing the report (Poss asks the form questions and Grievant gives answers) that there had also been an allegation of abuse by a stepbrother in the girl's father's home. Poss testified the Grievant did not mention the stepbrother to her in doing the report, while the Grievant testified that she had and that Poss even responded it was Illinois' problem, not theirs. The Grievant's notes from her investigation did mention alleged abuse by the stepbrother, and the original allegation also included the stepbrother.

On September 11, 2000, the Grievant was 55 minutes late for work, arriving at 8:55 a.m., and was given a verbal warning for being tardy. The Grievant had been allowed to flex her hours and come in at 8:30 a.m., but the September 7th warning had stated she could not use flex-time during the week she was given to catch up on her work. The Grievant testified she had went to bed at 5:30 a.m. and overslept that morning.

The Grievant requested additional time to complete her overdue reports and MacDonald granted her request on September 15th by the following memorandum to the Grievant:

> In reply to your request for leniency your supervisor and I have come to the following agreement:

1) You will have all reports done and in typing for final draft by Tuesday, September 19, 2000 at 4:30 pm. In other words, they must have been written, typed, and edited by your Supervisor.

2) All paperwork (CFS-40, HSRS, etc.) must be completed and turned in to Brenda by September 19, 2000.

3) The other conditions of the original agreement will re-main in effect.

4) The final typed reports you are not be (sic) held responsible for them not being through the entire process for the "Official Case Record".

The Grievant completed all of her overdue reports to the extent required by September 19th. However, she failed to timely file a report due on September 23, 2000, a Saturday, filing a draft of it on Monday, September 25. Because of the 60-day time limit, the report would have had to be completed and filed on Friday, September 22. The Grievant testified she had miscalculated when it was due. On September 27, 2000, the Grievant was given a one-day unpaid suspension for not timely filing a completed CAN report. The suspension was served on October 3, 2000.

The written warning and suspension for not timely filing her CAN reports and the verbal warning for tardiness on September 11 were all grieved in a written grievance filed by Disbrow on September 27, 2000. The parties attempted to resolve their disputes, but were unsuccessful, and proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

County

The County notes that the Agreement requires just cause for discipline. It then cites the following definition of "just cause":

> *"**Just Cause:** Proper or sufficient reasons for disciplinary measures imposed on workers by management. The term is commonly used in agreement provisions to safeguard workers from disciplinary action which is unjust, arbitrary, capricious or which lacks some reasonable foundation for its support. Disciplinary action also may be held to be lacking "just cause" if the penalties bear no reasonable relationship to the degree of the alleged offense."*
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> Public Sector Labor Relations, by Mulcahy & Wherry, at page 6-5.

The County asserts that the significant facts in this case are not in dispute and that the record demonstrates that the CAN investigations must be completed within sixty (60) days of referral. As early as January of 2000, Poss spoke to the Grievant about her large backlog of overdue reports. The State did an audit of the County's report log and found it in violation of the requirements, granting the County a one-time opportunity to "fast track" unsubstantiated reports. Poss attempted to work with the Grievant to reduce her backlog by giving her "protected time" and setting up an action plan, which required the Grievant to complete a certain number of overdue reports by a date certain.

Failing to comply with the plan, the Grievant was given a verbal warning. The Grievant was given a second action plan after an annual evaluation, which required her to complete one overdue report each week in addition to keeping current with her present work. The plan was agreed to by the Grievant. In the span of the next seven weeks, the Grievant failed to complete at least one overdue report in four different weeks. Because of the Grievant's delinquency in preparing her CAN reports, the County was unable to prosecute a substantiated case of child abuse, the report being submitted over 10 months after the allegations were first reported. In another instance, the Grievant failed to set forth the facts in a report regarding sexual abuse to a young girl, resulting in the child being placed back in a place of jeopardy. Upon being advised of these facts, the Director gave the Grievant a written warning, and directed her to eliminate her report backlog by a date certain. The Grievant was warned that failure to complete this work within the allotted time would result in her termination. He also warned her that any future failure to complete reports within the time period would result in further discipline. The Grievant then failed to report to work on time during the period she was given to complete her backlog, acknowledging that she had over overslept. Having been previously warned by Poss that she had to correct her "habitual lateness to work", the Grievant was given a verbal warning for tardiness. While the Grievant was able to eliminate her backlog as directed, she was late in completing the very next assessment report when it became due. The Grievant was then given the one-day suspension. The Grievant admitted the report was late, but explained that she had miscalculated the time it was due.

According to the County, the foregoing demonstrates that it has been exceedingly patient with the Grievant. The rules regarding the preparation of the reports are established by the State, and the County is required to obey them. The subject matter of child abuse and neglect is extremely serious, and it is important that they be dealt with in a timely fashion. It is appropriate for the County to require its employees to comply with the law and to impose discipline when they fail to do so, after being warned. In this case, the County has followed progressive discipline consistent with the "just cause" standard. The County did not lack a reasonable foundation for the discipline imposed, and the penalties were appropriate.

In its reply brief, the County asserts that the Union incorrectly stated the issue to be decided in this case in its brief. Stating that the issue to be resolved is limited to the discipline imposed on September 7 (written warning) and September 11 (verbal warning for tardiness), the Union makes no mention of the September 27 suspension. The record shows that the Grievant grieved the written warning for failure to complete her overdue CAN reports, the verbal warning for tardiness on September 11, and the one-day suspension on September 27 for failure to timely prepare her CAN reports. The grievance, dated September 27, 2000, expressly refers to all three of the above events.

The County also asserts that while the Grievant does not dispute that she failed to timely prepare her CAN reports, nor that she was almost an hour late on September 11, she attempts to divert criticism from herself onto the County. The Union argues that she was being required to perform a volume of work that could not be accomplished, criticizes her "lack of training" and the number of supervisors she has had, and even criticizes the State for its time lines. The Grievant was an experienced social worker who applied for a job that required her to do CAN assessments. She was either able to do that job when she applied, or she could not. There is nothing in the record that shows the Grievant requested more training or a change in supervisors.

There is also nothing in the record to reflect that the Grievant's case load was oppressive. The Union provided statistics from 1998 through 2000 showing the number of CAN reports handled during each of those years. Those exhibits show that the caseload assigned to the Grievant was consistent with, or a little less than, the number of cases handled in prior years.

The assertion that the problem she faced was statewide is not supported by any evidence in the record. The record shows that the County was audited by the State for its abuse compliance in the Spring of 2000 and that Poss was able to convince the State auditor to permit the County to use a "fast track" procedure to allow it to catch up. The Grievant was thus given a unique "one-shot" opportunity to catch up. That opportunity does not reflect either the volume of the Grievant's workload or any type of state-wide trend such as is argued by the Union.

While the Grievant acknowledged that her reports were overdue, she blames her supervisor because the latter was aware the Grievant was behind in her work. That does not justify the Grievant's failure to perform her work; rather, it reflects the fact that the supervisor was trying to help her, rather than punish her. Further, the Grievant was not disciplined for being behind in her reports. It is undisputed that Poss and the Grievant sat down in July of 2000 to discuss the time deadline problem and that they mutually devised a strategy designed to

eliminate the backlog. The Grievant agreed to the plan whereby she would stay current with her new cases and eliminate the backlog reports. The Grievant acknowledges that it only takes her one hour per page to prepare the reports and that they average six pages in length. Thus, had the Grievant spent just six hours per week to complete one delinquent report, she would not have received her first discipline. It was her failure to abide by the program that resulted in the discipline. At that same time, the Grievant had been very sloppy in the way she handled two investigations. Thus, that and the subsequent discipline for tardiness and for being late in the preparation of her CAN reports were the result of her continued failure to abide by reasonable work directives.

The County concludes that the Grievant failed to adequately perform the job she was hired to do, that supervision attempted to work with her to solve the problem, and that in spite of those efforts, the Grievant still failed to adequately perform her duties, resulting in her being disciplined. Progressive discipline was followed, and both the reason for the discipline and the penalties imposed were appropriate. Given the importance of the job the Grievant performs and that the Grievant has acknowledged that she missed all of the deadlines that are involved, without offering an adequate reason to overturn the discipline, the grievance should be denied. 1/

1/ The County also notes that the Union's brief was filed after the mutually-agreed upon deadline without the Union ever requesting an extension of time. The County asserts that the Union's brief should therefore be disregarded. As it appears this was due to an oversight and no harm was done to the County, this request is rejected.

Union

The Union asserts that the issue is whether the County had just cause to discipline the Grievant on September 7 and 11, 2000, and takes the position that the disciplinary actions should be removed from her personnel file and she should be made whole for all lost wages and benefits.

By way of background, the Union notes that the Grievant was initially hired to do juvenile mental health commitments and handle the overflow of CAN assessments, as well as additional responsibility for ongoing juvenile cases (CHIPS and JIPS). Another person was primarily responsible for the CAN assessments at the time, and the Grievant was only a backup until October, 1999, when the other person went on a medical leave of absence, leaving the Grievant to be the primary person to do CAN assessments. Until that time, the Grievant had only handled two substantiated CAN cases and had not received any formal training. Further, the Grievant was still responsible for handling many of the cases she had previously been assigned. When the person who was originally primarily responsible for the CAN assessments returned, she transferred to a different position and the Grievant became the CAN case

manager. During that period and through December, the Grievant was supervised by a succession of temporary department managers, none of whom gave much attention to the issues arising in the unit. When Poss was hired in December of 1999, she was informed of the concern about the overdue CAN reports and met with the Grievant in January of 2000 and discussed the status of the overdue reports. The Grievant indicated that she would work on clearing up the backlog, and some effort was made to suggest ways to speed up the process, however, the Grievant continued to manage a full caseload.

In early 2000 the State established the "fast track" method allowing for the use of abbreviated formats in order to help clear up the backlog. This process was utilized throughout the state. The Grievant was on family leave from mid-May until mid-June, although it had been expected to be longer. During that time, she continued to submit CAN reports.

Regarding the reports, Poss related that the Grievant did a very complete report, which could possibly take longer than the average of one hour per page, and that she did them longhand, whereas Poss did hers on a computer. Poss further testified that the Grievant had good interviewing skills and generally did very good work. The Grievant received her first performance appraisal in July of 2000 and while the appraisal noted the continuing problem with overdue reports, it also noted that the Grievant was "still in the beginning stages regarding CA/N assess & report writing." The appraisal also showed that the Grievant "does meet face-to-face timelines consistently in every case." In general, except for the backlog of CAN reports, the appraisal indicated the Grievant was performing well.

By way of argument, the Union asserts that the Grievant has been placed in a position of being required to perform a volume of work that cannot be accomplished. This is evident by the information presented at hearing. Most telling, was the fact that the State found it necessary to provide a "fast track" for CAN reports, not only for this County, but throughout the state. This demonstrates a recognition that the specified process for investigating and completing CAN reports exceeds the ability of a primary CAN investigator to meet. While the County asserts that it made efforts to permit the Grievant to catch up, they were insufficient to achieve the specified goals. The one primary way to accomplish the goal of catching up on reports was to allow overtime, but this option was denied to the Grievant.

The Grievant made extraordinary efforts to catch up on the overdue reports, including working on them while on family leave, weekends and nights, and this in fact resulted in her being late to work on September 11. Rather than recognize her efforts, the Grievant was disciplined for tardiness despite the fact she did not have a record of excessive tardiness.

According to the Union, the September 7 discipline is a clear case of "cover your ass" by the County. It was only after receiving a letter from the court that the Grievant was cited

for her part, although it is not clear why. The County was fully aware that CAN reports were overdue, and it was also clear that the supervisor was involved in reviewing the case in question early on. The County is using circumstances which occurred subsequent to the period during which the Grievant was actively investigating the matter, to make the allegation that a child was put in jeopardy. While it appears that the system did not work as well as it should have, it is clear that the Grievant did nothing of a negligent nature. Her only problem was that this report, along with many others involving unsubstantiated matters, did not get completed within the ideal time frame.

The Union concludes that the Grievant was placed in an untenable position, lacking adequate training and lacking consistent supervision, and was left to sink or swim on her own. While Poss eventually made an effort to help resolve these issues, it was too little too late, and when the pressure began to close in, the Grievant was used as a scapegoat. While the Grievant had some inadequacies regarding typing skills, etc., her overall level of performance was very good. Except for the after-the-fact second guessing on one incident, there is no dispute that the Grievant is very proficient, the main complaint being that she does too good of a job perfecting her reports. The Union concludes that the Grievant should have been given more support instead of being blamed. The Union requests that the disciplinary actions be removed from her personnel file, and that she be made whole for all lost wages and benefits.

DISCUSSION

With regard to the issues, as noted above, the parties stipulated to the statement of the issues as:

> Did the Employer have just cause to discipline the employee? If not, what is the appropriate remedy?

The parties also submitted as a joint exhibit the Grievant's written grievance of September 27, 2000, which states it is a "grievance regarding disciplinary actions" and which references the disciplines imposed on September 7, September 11 and September 27, 2000. The parties also litigated all three of those disciplinary actions at hearing. Thus, all three actions are deemed to be before the Arbitrator in this case.

As to the merits of the discipline, the parties' Agreement requires in Article III that the County have just cause to discipline an employee. To establish that it had just cause, the County must establish in this case that the Grievant engaged in actions in which the County, as an employer, has a disciplinary interest, and that the penalty imposed was appropriate under the circumstances.

As to the Grievant's conduct, with certain exceptions, most of the facts in this case are not in dispute. It is not disputed that the Grievant's original position for which she was hired included being a backup CAN Investigator and that she did not have an opportunity for a lot of on-the-job training in that regard before she was placed in the position of having to be the primary CAN Investigator. It is also undisputed that until Poss became her supervisor in December of 1999, that she did not have the same supervisor much longer than two months at a time.

From the statistics submitted, it appears that the Grievant's predecessor was assigned 81 CAN assessments in 1998 and 53 at the time she went on a medical leave of absence in October of 1999. The Grievant was assigned 26 in 1999, eight of which had been assigned by the time her predecessor went on leave that year, and was assigned 60 in 2000. At least as compared to her predecessor, it does not appear that the Grievant's case load was higher than normal, and was in fact less than that of her predecessor.

While it appears from her July, 2000 evaluation of the Grievant that Poss considered her still to be in the learning stages regarding CAN investigations, it is also noted that the Grievant was an experienced social worker and by that time had been performing such investigations for at least a year. It is further noted that Poss had offered training to the Grievant to enhance her typing and computer skills to allow her to do the reports quicker, which the Grievant rejected, and had arranged for her to have "protected time" for her to work undisturbed to catch up on her overdue reports. Poss and the Grievant had agreed in July, 2000 to a plan whereby the latter was to stay current and to submit a minimum of one overdue CAN report each week, with a goal of being completely caught up by January 8, 2001.

By September 1, 2000, the Grievant was not only not submitting any overdue reports, she was having more reports come overdue. The Grievant had previously received a verbal warning in March of 2000 for not catching up on overdue CAN reports. The written warning received on September 7, 2000 was based, in part, on the Grievant's continued failure to do so. While the Grievant claims she was too busy doing current CAN assessments to keep up, given the efforts to assist the Grievant, as well as her apparent agreement that the plan agreed to in July was reasonable, a written warning was not unwarranted at this point.

As to the second basis for the September 7th written warning, it is also not unreasonable to hold the Grievant responsible for the consequences of not filing timely reports. The report that was so overdue that Hodgson could not pursue the case at a higher level, was due on December 5, 1999 and was completed on August 14, 2000, more than eight months overdue.

As to the third basis for the September 7th warning, it is the Grievant's word against Poss' as to whether the former mentioned the stepbrother when she and Poss were doing a "fast track" version of the report on that case. The record indicates that the original allegation in that case included the girl's stepbrother, as well as her stepfather, and that the Grievant's investigation notes referred to such an allegation from the girl. It is noted that one of the observations made by Poss of the Grievant was that she was very detailed and thorough in her reports, perhaps too much so. It would then seem out of character for the Grievant to omit any reference to the stepbrother from the report. Further, the Grievant not only testified that she mentioned it to Poss, but that Poss responded to the effect that it was Illinois' problem, not their agency's. The Grievant is found to be more credible on this point. Therefore, that matter is not considered a valid basis for the discipline. That said, the first two matters are a sufficient basis to raise the level of discipline to written warning.

On September 11 the Grievant overslept and was 55 minutes late for work and received a verbal warning for tardiness as a result. There is not much that needs to be said. Employees are responsible for being at work on time and, absent some sort of exigent circumstances not present here, oversleeping is not a reasonable excuse for being late. It is therefore concluded that the County had just cause to impose the lowest level of discipline, a verbal warning.

Regarding the suspension, it is again undisputed that the Grievant filed another CAN report late on September 25. The Grievant had been given the week of September 11 to complete her overdue reports and, at her request, that time had been extended to the end of the day on September 19. In the written warning received on September 7, the Grievant was warned that "if any subsequent report is turned in late (past 60 days) you will be further disciplined, including but not limited to termination." The Grievant's defense is that she miscalculated the time line, thinking that she could file the report on the following Monday, since it was due on Saturday. That defense is not persuasive. Presumably, the Grievant was familiar by this time with the time lines and how they are applied. Further, the report filed on the Monday was apparently not put in final form until the next day. It is also noted that the County imposed the minimum penalty of the next level of discipline – a one-day unpaid suspension. Under the circumstances, the County was justified in moving to that next level of discipline in this regard.

In summary, the Grievant does not present an unsympathetic case. Her job is difficult and stressful, and it appears that with the one exception (found unmerited), there is no complaint with the quality of the CAN investigations she performs, nor with the quality and thoroughness of her reports. The one overriding complaint is that she is unable to meet the required time lines for filing the CAN reports. As has been shown, her not doing so can have a substantive impact on the Department's ability to take the appropriate action on behalf of a child in need of protection. However, given the degree to which her supervisors have gone to assist her in getting timely, and her refusal to accept some of that assistance that might enable

her to more quickly complete her reports, the Grievant must bear the responsibility for being untimely. Given the foregoing, and the serious consequences that can result from her failure to file her reports on time, it is concluded that the City had just cause to discipline the Grievant on September 7, September 11, and September 27, 2000.

Based upon the above and foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 19th day of November, 2001.

David E. Shaw /s/
David E. Shaw, Arbitrator

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