

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**COLUMBIA COURTHOUSE EMPLOYEES,
LOCAL 2698-B, WCCME, AFSCME, AFL-CIO**

and

COLUMBIA COUNTY

Case 208
No. 58832
MA-11072

Appearances:

Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, for Columbia Courthouse Employees, Local 2698-B, WCCME, AFSCME, AFL-CIO, referred to below as the Union.

Murphy & Desmond, S.C., by **Attorney Daniel G. Jardine**, 2 East Mifflin Street, Suite 800, P.O. Box 2038, Madison, Wisconsin 53701-2038, for Columbia County, referred to below as the County or as the Employer.

ARBITRATION AWARD

The procedural background to this matter is set forth in detail in THE COUNTY OF COLUMBIA ET. AL., DEC. NO. 30197-A (McLAUGHLIN, 11/01), and will not be repeated here, except to note that each proceeding is guided by the Stipulation executed by the parties on May 21, 2001, and taken into evidence as Joint Exhibit 5. The Stipulation states:

1. The parties, Columbia County, Erica Raddatz, and the Wisconsin Council 40, AFSCME, agree that all of Ms. Raddatz's grievances against Columbia County, and the Union's prohibited practices complaint against Columbia County, can be consolidated and are to be consolidated before Arbitrator Richard McLaughlin, in one proceeding.
2. Specifically, the grievances include all three grievances filed by Ms. Raddatz on April 17, 2000 (relating to alleged wrongful discharge, denial of job opening in Treasurer's office, and denial of use of sick leave donation), and case number 212 (no. 59234; MP-3683) filed with the State of Wisconsin's Wisconsin Employment Relations Commission.

3. For mutual consideration, the parties agree that neither of them will contend that the aforementioned matters should be conducted separately, and none of the parties will object to Arbitrator Richard McLaughlin deciding the merits of the grievances and the complaint in one proceeding.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Grievance No. 00-AC-005

Did the County have cause, under Section 15.1 D), to discharge Erica Raddatz?

If not, what is the appropriate remedy?

Grievance No. 00-AC-004

Did the County violate Section 7.6 by denying Erica Raddatz the position of Deputy County Treasurer/Accounting Assistant?

If so, what is the appropriate remedy?

Grievance No. 00-AC-003

Did the County violate the Side Letter Agreement Re: Sick Leave Donation when it denied employee requests to donate sick leave to Erica Raddatz?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 7 – SENIORITY RIGHTS

...

7.6 Selection of applicants to fill job vacancies or new positions shall be determined by the employee's skill, ability as reflected in his/her personnel file, and seniority. Where all factors are comparatively equal, the employee with the greatest seniority shall be entitled to preference. The Employer retains the right to establish necessary qualifications for all positions.

...

ARTICLE 15 – MANAGEMENT RIGHTS

15.1 The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

. . .

D) To suspend, demote, discharge, and take other disciplinary action against employees for cause, and subject to the procedure of Article 5 of this contract . . .

. . .

SIDE LETTER AGREEMENT

Re: Sick Leave Donation

Donation of Sick Leave: In the event extraordinary circumstances arise under which an employee has depleted all of his/her sick leave (including catastrophic account) and is still unable to return to work, individual employees may voluntarily donate a portion of their accrued sick leave, in increments of one (1) day, not to exceed five (5) days per donator, to the employee. It is understood that the donation will be on a day-for-day basis, without regard to any difference in the hourly rate of pay between the donor and the receiver.

BACKGROUND

This litigation spans a complaint and four grievances, three of which must be resolved here. The background to each culminates in Raddatz's termination on April 13, 2000. References to dates are to 2000, unless otherwise noted.

The April 13 letter reads thus:

Please be advised that your employment with Columbia County, Wisconsin, is hereby terminated, effective immediately, pursuant to Article 15 (Management Rights) of the Collective Bargaining Agreement between AFSCME Local 2698-B and Columbia County, Wisconsin, and Sections 7.18 and 7.19 of the Columbia County Personnel Policies and Procedures Manual. The decision to terminate your employment was made after consultation with the Columbia County Corporation Counsel and Columbia County Board Chair.

The specific grounds for the termination of your employment include, but are not necessarily limited to, gross insubordination, misconduct and unsatisfactory performance, as evidenced by:

1. Abusive behavior and language toward department supervisors.
2. Inappropriate and unprofessional conduct such as violently slamming office doors and angrily throwing objects in the office.
3. Disrupting and interfering with normal department operations and preventing other department employees from completing their work.
4. Failure to complete assigned tasks within specified deadlines, failure to perform tasks within departmental performance standards and transferring assigned tasks to other employees rather than completing work as assigned.
5. Refusal to comply with departmental rules regarding punctuality, appropriate professional attire, limiting personal telephone calls and not conducting personal business during normal office hours.
6. Refusal to comply with specific direction of department supervisors to return county property, specifically, office key.
7. Refusal to comply with work assignments issued by department supervisors and instead arguing with department supervisor, demanding right to audio tape record all conversations with department and repeatedly threatening to bring legal action against department supervisors if department supervisors did not comply with your demands regarding work rules and assignments.

Pursuant to Section 7.25 of the Personnel Policies and Procedures Manual, you are directed to immediately return all county property in your possession including keys, and parking sticker(s).

On April 17, the Union filed Grievance No. 00-AC-005 to challenge whether the County had just cause for the termination. The Union also filed two other grievances on that date. The background stated here will first address points common to all the grievances, then deal specifically with each.

The County hired Raddatz as an Accounting Assistant on May 4, 1998. She worked in that position until her discharge. Lois Schepp is the County's Comptroller and the head of the Accounting Department. Catherine Schmit serves the County as an Accounting Supervisor. Schepp is Schmit's immediate supervisor, and Schmit is Raddatz's immediate supervisor. Cindy Devine is the Office Manager of the Accounting Department. Schmit began work for the County in mid-April of 1998. Carole Lyons works for the County as a Deputy Register of Deeds. She has worked for the County for sixteen years, and serves as the Union's President.

Grievance No. 00-AC-005

The County maintains a Personnel Policies and Procedures Manual, referred to below as the Manual. Section 7.18 of the Manual is entitled “Misconduct-Unacceptable Performance.” Subsections (a), (b), (c) and (d) of Section 7.18 enumerate State law and County rules of conduct that can prompt discipline by the County, and state other more general considerations concerning conduct in which the County has a disciplinary interest. Subsection 7.19(a) of the Manual is entitled “Disciplinary Procedures”, and contains the following provisions:

- (1) The following disciplinary procedures shall be employed in disciplinary matters of County employees, unless these procedures are superseded by more specific procedures contained in a current employment or collective bargaining contract, whenever rules and policies of the County are broken or an employee performs unsatisfactorily. In each instance, the disciplinary action taken is to be fair, just and in proportion to the seriousness of the violation.
- (2) Whenever an employee violates any of the rules and regulations outlined in this Personnel Manual, the County may begin progressive disciplinary action in any of the steps listed below, depending on the seriousness of the offense committed and provided that immediate discharge is not warranted by the seriousness of the violation. . . .

Subsection 7.19(b) of the Manual is entitled “Classification of Misconduct,” and states:

- (1) **Minor Offenses.** Violations or conduct which are unacceptable if repeated, but for which the employee will not be discharged for the first offense.
- (2) **Serious Offenses.** Willful or deliberate violations or conduct of such a nature that the first offense may indicate that continued employment of the employee may not be in keeping with the best interest of the County.

Subsection 7.19(c) of the Manual is entitled “Disciplinary Considerations,” and states the following:

- (1) Prior to taking disciplinary action, the Personnel Director, the employee's supervisor or other authority reviewing the violation should give full consideration to the following guidelines:

- a. Do the reviewing officials know all the facts accurately?
- b. Is the rule that has been violated reasonable?
- c. Did the employee know the rule or should he/she reasonably have known it?
- d. Has the rule been strictly enforced in the past? If not, what recent notice to employees warned of enforcement on violations of certain rules?
- e. In this instance, is the rule being applied reasonable?
- f. Is this employee personally guilty of the violation or is he/she guilty by association with another?
- g. Can the employee's guilt be proved by direct, objective evidence, or is the evidence circumstantial or hearsay?
- h. Does the employee have a reasonable excuse for the infraction of this rule or not following a direction of his/her supervisor(s)?
- i. What is the employee's record of past violations, warnings, disciplinary action, etc.?
- j. What is his/her length of service?
- k. Is the employee receiving the same treatment others received for the same offense?
- l. Does the discipline fit the offense?

Section 7.19(d) governs “Progressive Disciplinary Procedures,” and specifies a four step system consisting of oral warning, written warning, suspension and dismissal for those matters in which “immediate discharge is not warranted by the seriousness of the violation.” Section 7.19(e) governs “Serious Violations” and states:

The County is not required to go through all the steps (Steps One - Three above) involved in this disciplinary procedure. Discipline may begin at any step in the procedure depending on the seriousness of the offense committed. Any discipline should be commensurate with the offense committed. In addition, the County may repeat any of the first three steps of this procedure when it feels it is necessary, so long as the discipline is commensurate with the offense committed.

Section 7.19(g) of the Manual notes that the “requirements of the Wisconsin Statutes or any collective bargaining contract shall supersede the provisions of this Section when in conflict.”

The Accounting Department maintains, among its policies, a “Dress Code” which reads thus:

The Accounting Department is a professional office within the Columbia County government. Accordingly, all employees will dress in appropriate office work attire. Jeans, “after-hour wear”, and overly casual clothes are not acceptable. Adequate grooming is also expected.

The balance of the background to Grievance 00-AC-005 spans a considerable period of time.

The Early Evaluations

Schmit gave Raddatz her first performance evaluation on July 27, 1998. The County uses a printed evaluation form that requires a supervisor to evaluate an employee's performance in eleven separate areas. Each area is to be evaluated on the following scale: Outstanding; Exceeds Job Requirements; Meets Job Requirements; Below Job Requirements; and Poor Job Performance. Schmit checked the "Exceeds Job Requirements" entry for each of the performance areas.

In November of 1998, Schmit completed the same form for Raddatz's six-month evaluation. Schmit checked the "Meets Job Requirements" for each of the performance areas. With this evaluation, Raddatz passed her probation period.

On June 22, 1999, Schmit met with Raddatz for Raddatz's annual evaluation. Schmit gave Raddatz the evaluation form, on which she had checked the "Exceeds Job Requirements" entry for three of the performance areas, and the "Meets Job Requirements" for eight of the performance areas. Sometime prior to this evaluation, Schmit became concerned with the time Raddatz spent on breaks, her compliance with the departmental dress code and with the number of personal phone calls made to and from Raddatz's phone. Schmit attached the following written supplement to the June 22, 1999 evaluation form:

Good Work Qualities:

1. Erica is willing to take on any assigned tasks. She consistently completes all tasks as per expectations and meets all deadlines.
2. Demonstrates a positive attitude, initiative, and timeliness on new project assignments.
3. Maintains positive professional relationships with co-workers and demonstrates the ability to communicate effectively with staff of various county departments.
4. Asks questions when necessary.
5. All work and work area are neat, clean, and organized.

Goals for Future:

1. Continue positive support to Highway Dept., assist new staff when possible.
2. Monitor assigned grants on a monthly basis, reconciling to ledger.
3. Assist Supervisor with account reconciliations.
4. Reconcile payroll taxes and fringe benefits on a quarterly basis.
5. Per conversations with supervisor June 10 and 11, practice punctuality when returning from breaks and lunch.

6. Log all deadlines on calendar to ensure they are met.
7. Always follow office dress code and conduct yourself in a professional manner that is a positive reflection of the Accounting Department.
8. Continue to expand knowledge of overall county system.
9. Continue to pursue continuing to achieve advance degree.

Item 5 in the “Goals” section refers to events starting with Raddatz’s morning break on June 10, 1999. The following three paragraphs afford an overview of witness testimony on those events.

Schmit testified that Raddatz informed her at 9:50 a.m. that she was going on break. Schmit stated that she had informally counseled Raddatz prior to this against taking too long at break. At some time around 10:20 a.m. Schmit left the accounting office to summon Raddatz back to work. She went to the break room, and asked Raddatz if she would be coming back to work soon. When Raddatz responded in the affirmative, Schmit returned to the accounting office. Schmit was aware other employees were in the room. Later that afternoon, Raddatz came to Schmit’s office, and shouted at Schmit in a belligerent manner. Schmit remained calm.

Raddatz testified that she had, as was her custom, taken her break with Jessica Koss, the Corporation Counsel’s Executive Secretary, and with a number of employees from the Child Support Department, including Linda Kay Samsel. She stated that between ten and fifteen minutes into the break, Schmit came into the break room. Schmit asked, in a sarcastic tone, whether Raddatz intended to come back to work or to break all day. Raddatz did not respond in kind, but returned to the Accounting Department. She stated she was embarrassed, and that other employees noted how sarcastically Schmit had treated her. She and Schmit discussed the incident the following day, but neither of them raised their voices.

Samsel testified that Raddatz had not overstayed her break, and that Schmit’s request that she return to the Accounting Department was very sarcastic, designed to publicly embarrass Raddatz.

Raddatz testified that Item 7 in the “Goals” section refers, at least in part, to an incident in which David McClean, then County Corporation Counsel, advised Schmit and Schepp that Raddatz was wearing a skirt that was too short. Schmit and Schepp discussed the matter with Raddatz, who was disappointed neither attempted to defend her with McClean, and believed Schmit and Schepp treated her as an embarrassment to the department. Raddatz did not believe her skirt was shorter than those worn by other departmental employees.

The Deteriorating Relationship From June, 1999 Through February, 2000

Schmit and Raddatz agree that their relationship deteriorated markedly from the June, 1999 evaluation and the incidents it encompasses. Schmit did not believe Raddatz was conforming her conduct regarding break time usage and work attire with County policy. From

June of 1999 through February of 2000, Schmit observed and documented what she felt was a continuing series of violations by Raddatz of the departmental dress code and of the contractual break period. On June 28, 1999, Schmit instructed Devine to observe and to document Raddatz's breaks and her clothing. Schmit also documented her own observations, including five file entries for late June and July of 1999 concerning what Schmit viewed as inappropriate attire and three violations of break time usage. Schmit's file includes an entry summarizing a meeting on July 8, 1999 at which Schmit met with Raddatz to address the violations noted in Schmit's file. The summary states that at the close of this meeting Schmit advised Raddatz "that any future violations of either the break or dress code policies will be addressed with formal written disciplinary action." Raddatz acknowledges that she met with Schmit at some time to address her compliance with the dress code, but denies that Schmit warned her that future violations would result in discipline.

Tension between Raddatz and Schmit heightened during and after the July 8, 1999, meeting. Schmit continued to maintain a file on Raddatz's compliance with the dress code and break schedule. The file contains ten entries between October 4, 1999 and February 4, 2000. The entries concern a number of items of clothing, but each contains a reference to either a flannel or denim shirt.

The Events of February

On February 18, 2000, Schmit observed Raddatz and Koss visiting during work hours in the morning, and then observed Raddatz return late from lunch. Schmit's file summarizes the events of that afternoon thus:

Was late arriving back from lunch. On passing thru her office after lunch, found her visiting with Jessica again. Asked Jessica to go home to her office as Erica had a lot of work to get done. (*Left office area Jessica was still there.*)

1:45 P.M. Erica approached me in a hostile manner, and in a raised voice stated that she did not appreciate how I treated her. I asked that she be specific. She shouted that she did not appreciate my sending Jessica from her office. She should be free to visit as she pleases, just as I do. That she is not afraid to file a grievance or harassment suit. I stated that this did not surprise me. She stated that my work performance was not a good example to her that I do not meet the standards to which she is held. I responded that my performance is an issue for my supervisor to address, not her. At this time she stomped out of the office and slammed the door. Staff from the front accounting office heard the shouting and slamming of the door and were concerned enough to come back to the office to verify that everything was O.K.

3:00 P.M. After waiting for her to complete personal phone call (*I love you . . .*) suggested to Erica that she go home for the day as she has since been unproductive and spent subsequent time on personal phone calls. Erica refused the opportunity to leave as she did not want to use her sick leave or vacation time. I told her to consider it paid leave as she was obviously having trouble being productive in her present state of mind. She again declined. I stated that if she stayed she was expected to be productive. She then shouted in a (raised) voice that “she was working and just leave her alone!” I walked out of her office with no response.

Raddatz believes she was doing homework during her break period, since she had stopped leaving the office to take breaks due to the ongoing difficulties between her and Schmit. Raddatz believes Schmit never attempted to determine if she was on break, and chose to address her sarcastically, by asking whether she needed more work to do. On February 18, Raddatz had lunch with Koss, who learned during lunch that another courthouse employee had just been killed in a car accident. Koss and Raddatz were discussing the death at lunch, and after lunch when Schmit approached Koss at Raddatz’s desk to send Koss “home” to work. Raddatz acknowledges she went to Schmit’s office to discuss the matter. Raddatz denies approaching Schmit in an angry or hostile fashion, and believes she did no more than try to make Schmit understand that Koss was upset over a friend’s death. Raddatz believes she tried to highlight to Schmit that supervisors including Schmit were discussing the death in the office and that Raddatz was continually being singled out by Schmit for spurious reasons. Raddatz denies slamming the door, and asserts she left the office to speak with Lyons about her difficulties with Schmit. Raddatz testified that she received a call from her mother after she returned to the office, and made no personal calls. She denies raising her voice to Schmit.

Devine testified that she heard Raddatz say something “really loud” (Tr. at 275) to Schmit, and then heard a door slam. Devine did not hear Schmit raise her voice. She was sufficiently startled to go to Schmit’s office, finding the blinds on the door still rattling. Devine asked Schmit what had happened, and Schmit responded that Raddatz “flipped out” (Tr. at 275).

On a form dated February 21, 2000, Raddatz filed Grievance No. 00-AC-002. This grievance and the events related to it are discussed at length in DEC. No. 30197-A, and will not be discussed here except to note the events related to Grievance No. 00-AC-002 heightened the continuing deterioration in the relationship between Raddatz and her supervisors.

The Events of March

Sometime in early March, Raddatz prepared a spreadsheet for Rowe concerning funds available under a program by which the Sheriff’s Department was to be made an independent network, separate from the mainframe to which other departments were connected. The program

spanned at least two fiscal years and involved the expenditure of from one to one and one-half million dollars. The accounting department would periodically prepare spreadsheets for Rowe that detailed the expenditures made and the funds available for the program. Schepp maintains the ledger that tracked the actual expenditures of the program. The spreadsheets were to be reconciled to the ledger. The spreadsheet prepared by Raddatz showed a negative balance of \$15,480.41. Rowe tracked the program closely, and believed he had a positive balance in February and March. He had made purchase orders based on that belief. When he saw the negative balance on the spreadsheet, he went directly to the Accounting Department. He first saw Devine, who reported the matter to Schmit. Schmit then reported to Schepp.

Rowe testified that when they arrived at Raddatz's desk, Raddatz was on the phone. Ultimately, Schmit or Schepp instructed Raddatz to get off the phone to discuss the problem. Rowe waited at the desk until it became evident that no resolution could come until the spreadsheet had been reviewed. He left Raddatz's office, and terminated all expenditures under the program. Rowe stated that the mistake brought the program to a stop for from two to three weeks, and led to further problems between his department and the County Board. He thought the ultimate ramifications of the error placed him three years behind the original projected completion of the program. It was the first mistake he had encountered in his dealings with the Accounting Department.

Schmit testified that Raddatz sent the spreadsheet to Rowe prior to having a "second set of eyes" within the Accounting Department review it. Rowe arrived at the Accounting Department extremely upset. She and Schepp went to Raddatz's desk, only to find her on the phone. She terminated the phone call by saying "I love you." Schmit instructed her to speak to Rowe, who was still at the front desk, about the spreadsheet. Raddatz did so, essentially telling Rowe that the spreadsheet was accurate. She then returned to her desk. Schepp, Schmit and Rowe discussed the matter, then returned to Raddatz's desk. Raddatz was again on a personal phone call, and would not terminate the conversation until Schepp instructed her to. Schmit ultimately reviewed the spreadsheet, found the errors made by Raddatz, and gave a corrected spreadsheet to Rowe. The corrected spreadsheet showed a positive balance of \$5,042.19.

Schepp testified that Raddatz failed to reconcile the spreadsheet to the ledger and failed to have the spreadsheet verified within the department before sending it to Rowe.

Raddatz testified that she prepared spreadsheets for Rowe on a weekly basis. She would prepare the spreadsheet, then give it to Schmit, who would review it and return it after verifying its accuracy. Raddatz would keep a copy for her file, for Schepp and for Rowe. She gave the spreadsheet that showed a negative balance to Schmit who "handed it back to me . . . like it's okay" (Tr. at 533). She added that when she noted the balance in Rowe's account was negative, she discussed the matter with Schepp, who "didn't say anything to me" (Tr. at 535). She learned of the problem when Schepp, Schmit and Rowe came to her office to ask her to discuss the matter. She was, at the time they arrived, speaking on the phone with an Accounting Assistant at

another building. She verified her opinion of the accuracy of the document with Rowe, then returned the phone call to the Accounting Assistant. She denied that the phone calls were for personal business, and that she had to be directed to get off the phone to discuss the matter.

Sometime on or about March 10, Schmit issued a "verbal counseling verification" to Raddatz. The warning was one of four separately headed sections of a one-page form document entitled "Progressive Discipline Notification System For Employees." The four sections are entitled: "verbal counseling verification"; "written warning notification"; "second written warning or work suspension"; and "employee termination notification." Schmit filled in the "summary" section of the verbal counseling verification section thus:

According to the Accounting Office Policies and Procedures Manual: "if an employee believes he/she may miss a deadline, the supervisor must be notified immediately."

Attached to the verbal warning, were attached two memos from Schmit to Raddatz. One memo, dated March 6, states:

This is to confirm our conversation of this morning and to reiterate Accounting Department policy regarding job responsibilities and deadlines. You stated that you had given Mark Zimmerman Register of Deeds A/P to reconcile and were reconciling A/R yourself, but that neither account was "coming out". During fiscal year 1999 it was your responsibility to reconcile these accounts on a monthly basis. Your deadline for having these and all balance sheet accounts reconciled and ready to close was 3/1/00. Office policy dictates that in the event that your work is incomplete or a deadline can not be met, your supervisor is to be notified immediately. I have never been notified that you had not reconciled these accounts monthly as required. Neither had I been notified that you would be unable to meet your year-end close reconciliation deadline. In addition, neither your supervisor nor the Department Director were notified of your efforts to reassign your job tasks to a co-worker.

The second memo, dated March 9, states:

The schedule of outstanding Register of Deeds receivables that you prepared and presented to me yesterday was in error. I have prepared a corrected analysis. Please revise the attached schedule and forward it to me by noon today. I will then review it before forwarding it to the Comptroller.

Schmit continued to document what she perceived as continuing violations by Raddatz of the departmental dress code. Her file includes four such entries between March 1 and March 13.

On the morning of March 16, Raddatz approached Schmit, and gave her a physician's statement to excuse Raddatz from work for a two week period. Schmit's notes detail what happened after this point thus:

At 8:45 A.M. she approached my desk and laid a copy of a Dr.'s excuse on my desk and said, "This is a copy of my Dr.'s excuse, I am waiting for personnel to complete my paperwork." She then went to her office. I asked, "What is this for?" She stated, "Stress." I responded, "Then we should all get one." I reviewed the document and made note that it excused her from work for two weeks and was dated 3-15-00. I went to Erica's office where she was writing on notepaper, and told her she could leave the office and wait in personnel for her paperwork. She said no, that she would wait here. I stated that as long as she was on leave, she did not need to be in the office and could wait in personnel for any paperwork. She said, "I will go over there when I am ready. Leave me alone! You can just stand there and stare at me as long as you want!" I gave her several moments to leave, and then said again, "I am asking you to leave the office and wait in personnel for your paperwork." She then snatched up her notes, grabbed her purse out of the drawer, gave me a dirty look and said "gladly" directly into my face. She then retrieved her coat and exited the accounting office through the front entrance in a hostile manner.

Raddatz does not dispute the essential accuracy of Schmit's description of the events of March 16. On March 17, Raddatz returned to the accounting department to remove certain items from her desk. Schmit approached her. Schmit asserts she asked whether Raddatz had a key to the office, and when Raddatz responded in the affirmative told Raddatz to return it. Schmit asserts Raddatz refused, and made a statement to the effect that she was not quitting. Raddatz denies that Schmit told her to return the key, and asserts she responded that she was not quitting in response to Schmit's questioning whether she was coming back. Raddatz denies being ordered to return the key, or refusing to return it. She acknowledges she left the accounting office without returning the key. She took a leave of absence from March 16 until April 13.

Sometime after Raddatz left on leave, Schmit completed the "written warning notification" of the "Progressive Discipline Notification System For Employees" form noted above. She dated the form March 20, and completed the "summary" portion of that section of the form thus:

1. Speaking to Supervisor in a raised voice; disrespectful manner.
2. Abuse of County property.
3. Failure to obey directives of immediate supervisor.
4. Failure to return County property at the direct request of immediate supervisor.

Schmit did not give this form to Raddatz until Raddatz returned to work.

The Events of April 13

The events of the day on which Raddatz returned from leave are best set forth as an overview of witness testimony.

Schmit's Testimony

Schmit stated that when Raddatz arrived at work, she instructed Raddatz to get settled, then report to the conference room for instructions to get her integrated into the work flow. As Schmit approached the conference room, Raddatz confronted her with a tape recorder and asked whether she should record their conversation or request to have a Union representative present. Schmit responded that "she could do either as she wished" (Tr. at 95). Raddatz summoned Lyons, and the meeting did not start until Lyons arrived.

After Lyons arrived, Schmit asked Raddatz for a physician's statement to return to work. Raddatz supplied it, but the meeting then devolved to a discussion of who would make the copies for the file. Schmit then asked Raddatz to return her office key. Raddatz questioned why, and became "very argumentative" (Tr. at 97) on the point, as did Lyons. The discussion, in Schmit's view, bogged down into minutiae. Schmit then presented Raddatz with the March 20 discipline form. Further discussion ensued. Schmit then gave her the following memo, dated March 15:

The following tasks for which you had responsibility and turned over to other office staff to complete for you, are being returned to you and are to be completed according to the time line as indicated:

- | | | | |
|----|---|---|---------|
| 1. | Register of Deeds - Accounts Receivable | : | monthly |
| 2. | Register of Deeds - Accounts Payable | : | monthly |
| 3. | Health Insurance Payable | : | monthly |
| 4. | Life Insurance Payable | : | monthly |

In addition, be aware that it is still your responsibility to reconcile all Payroll Deductions Payable accounts.

Any questions or concerns regarding problems you have while doing any project should be referred directly to me. Should it be necessary I can defer to other office staff at my discretion.

Any discrepancies found in your daily work that may involve communication with other department staff, is also to be brought to my attention first. There may have been prior communications or insight on my part that may reconcile the matter without disturbing others unnecessarily.

The memo was discussed in some detail, and Schmit then gave Raddatz the following memo:

As always, you are to be at your workstation and prepared to work at 8:00 A.M. and shall remain at work until 4:30 P.M. It is your responsibility to open the office blinds in the morning before you start work, and close the blinds in the evening after you finish work.

In addition, your breaks shall be from 10:00 – 10:15 A.M. and 2:45 – 3:00 P.M. Your lunch break will begin at Noon and end at 1:00 P.M. If you do not leave on time for your break, you will still be expected to return on time. There will be no exceptions unless there is prior approval from your supervisor. All personal business, visiting, phone calls, etc. are to be conducted at this time. Any family or friends that may find it necessary to contact you on a daily basis, should be notified that this is the time you are available for non-emergent communication.

Schmit prepared this memo, after consulting the County's Corporation Counsel, in the hope it would clarify a number of potential areas of dispute, including personal phone calls. No other Accounting Department employees are on such a schedule. Schmit hoped that the documentation would clear the air and permit them to have a functional working relationship. Lyons took the position that Schmit was behaving in a discriminatory fashion toward Raddatz.

Schmit then attempted to outline for Raddatz the unfinished tasks that she needed to complete, and to explain that another employee needed to use Raddatz's office to complete some work before Raddatz could work out of her office. Schmit directed Raddatz to use the conference room until her office became available. Raddatz argued the point. Raddatz also questioned why the County failed to advise her of some computer training that took place during her leave of absence. Lyons assisted Schmit in explaining why that could not be done. At some point during this aspect of the discussion, Raddatz made a statement to the effect that there are some people she could not work with. Either expressly or by implication this statement put Schmit in the category of people Raddatz could not work with. The meeting then ended. Schmit returned to her office, and Raddatz turned to her work.

Schmit testified that Raddatz went onto break without advising her. When Raddatz returned, Schmit attempted to advise her that she needed to inform Schmit when she left for break. Raddatz responded, in a "(v)ery confrontational and hostile" (Tr. at 105) manner, that she had been on break as dictated by the memo, and this should have been sufficient notice to Schmit regarding where she was.

Schmit believes Raddatz received a series of personal phone calls during the morning of April 13. Schmit's notes state the calls came at 10:07 a.m., 10:20 a.m., 11:50 a.m., and 12:05 p.m. Schmit became convinced that she and Raddatz could not work together without disruption, and reported the events of the morning to Schepp. Schmit played no role in drafting the termination letter, but was consulted regarding the discharge decision.

Schmit characterized the morning meeting as "awful" (Tr. at 814), and that Raddatz behaved as if she wished to lose her job or did not care if she kept it.

Schepp's Testimony

Schepp noted that Raddatz was originally well-liked in the department, and there was considerable hope that when she returned things could go back to normal. Schepp did not participate in any face-to-face meeting with Raddatz until the end of the day on April 13. Raddatz returned while the County was closing the books on its fiscal year, and it was a busy and chaotic time. Schmit reported the events of the morning to Schepp, who then conferred with the Finance Committee and the Corporation Counsel. Schepp considered Schmit's characterization of Raddatz's behavior to constitute a serious offense under the Manual. Schepp, in consultation with the Corporation Counsel, made the decision to discharge Raddatz. Ruf conducted the final meeting, at which the County gave Raddatz her termination letter, and stated the reasons for it. Neither Lyons nor Raddatz attempted to discuss the matter in any detail. From Schepp's perspective, Raddatz had behaved in a sufficiently insubordinate fashion that it was impossible for her and Schmit to have an effective working relationship.

Raddatz's Testimony

Shortly after Raddatz reported for work on April 13, Schmit approached her and stated she wanted to talk over some points to bring Raddatz "up to speed" on work issues. Before settling into the conference room, Raddatz displayed a tape recorder, then asked if Schmit wanted Raddatz to record their conversation or to call Lyons to attend the meeting. Schmit responded that Raddatz should do whatever she wanted. The meeting did not start until Lyons arrived. Schmit started the meeting by presenting the March 20 discipline and two memos stating new work rules for her. Schmit then asked for the office key. Raddatz confirmed that they discussed each of these points, as well as the other issues noted in Schmit's testimony. She acknowledged that there was discussion on each of these points, but the discussion was business-like and did not involve raised voices.

She acknowledged receiving two calls in the morning from a prospective employer. The third call noted in Schmit's records may have been from Raddatz's mother. Raddatz made no personal calls on April 13. She acknowledged that she left for break without noting it to Schmit, and was counseled on the point by Schmit when she returned from break. The conversation was unremarkable to Raddatz, who felt the memo covered the issue. She did not confront Schmit on the point. When Raddatz returned from lunch, she found her belongings packed up, in a box in the conference room. The conference room is next to Schepp's office, and Raddatz watched as County Board members entered and left the office throughout the afternoon. Sometime around 4:00 p.m., Schmit, Schepp and Ruf came to her and told her they wanted to meet with her. Raddatz asked for Lyons, and the meeting started when Lyons arrived. Ruf went over the termination letter. Raddatz and Lyons did call a Union representative, but there was little discussion at the meeting. The other employees had been sent home, and a police officer waited outside the conference room. At the end of the meeting, Ruf and Raddatz took care of some personnel details, and Raddatz left.

Lyons' Testimony

Lyons responded to Raddatz's request for a representative at the meeting. Schmit started the meeting by handing Raddatz some paperwork, including the two memos and the disciplinary memo noted above. She could not recall in what order Schmit addressed the paperwork. She could recall Schmit requesting an office key from Raddatz, and Raddatz questioning why. Raddatz did turn the key over to Schmit. Lyons noted the parties discussed a series of issues, and did so without rancor or hostility. She acknowledged she took the position that the break memo discriminated against Raddatz. Neither she nor Raddatz threatened Schmit with a lawsuit, although Lyons counseled Raddatz that some of the problems pointed to by Schmit would be addressed in a complaint of prohibited practice.

Grievance No. 00-AC-004

The grievance form states the "Circumstances of Facts" thus:

Grievant denied opportunity for opening in treasurer's office. Posting dated March 21, 2000, position advertised Daily Register 4/5/2000.

The form alleges the County's action violates Article 7, Paragraph 6, and seeks that the "Grievant receive opportunity of employment in treasurer's office."

The County posted the vacancy on March 21. Raddatz and one other unit employee signed the posting. The other employee did not meet the minimum qualifications to be considered for the position. In a letter to Raddatz dated April 3, Raimer stated:

You recently applied for the Accounting Assistant position in my office. Unfortunately, I can not offer you this position because you do not meet the required criteria. Specifically, I refer you to items 7, 9, 12 and 19 in Section III of the enclosed Position Description. . . .

The cited portions of the position description read thus:

III. Knowledge, Skills, Licensure and Experience Required.

. . .

7. Ability to handle large amounts of cash and checks efficiently.

. . .

9. Ability to meet deadline and work effectively under pressure.

. . .

12. Ability to establish and maintain effective, ethical public working relationships and maintain positive co-operative attitude with public and staff members.

. . .

19. Must be willing to work considerable additional hours when necessary.

. . .

This position carries the same pay rate as that occupied by Raddatz when she signed the posting.

Raddatz's Testimony

Raddatz testified that her prior experience establishes she meets each of the posted requirements. She currently works as a cost accountant. Since High School, she has worked during tax season at a CPA firm in Portage. She also worked in the accounting department at Wal-Mart and at Pritchard Construction Company prior to being hired by the County. She has an Associate's Degree in Accounting. Each of her jobs required her to meet the requirements stated above. She handled large sums of money at Wal-Mart, and has worked under deadline pressure at each of her positions. She never declined the opportunity to work extra hours at the County, and completed her schooling while working. Her ability to establish and maintain favorable working relationships is demonstrated by favorable recommendations from prior employers as well as County employees.

Lyons' Testimony

Lyons stated that in her experience the County posts openings, then gives those applicants meeting the stated qualifications a test. Of those employees who successfully complete the test, the County selects the most senior unit member to fill the vacancy.

Raimer's Testimony

Raimer has served as County Treasurer since 1985. She noted that the posted position is titled Deputy County Treasurer/Accounting Assistant and is the main accounting position in her office. Raimer is not an accountant. She relies heavily on the position for accounting expertise, and for working without significant oversight. Unlike the Comptroller's office, her Accounting Assistant is the sole degreed accounting position, not one of several. The incumbent of the position must regularly deal with clients, including members of the public as well as County officials and employees. She deputizes the position because the incumbent has the authority to sign Raimer's name on documents and to act in her absence.

She knew Raddatz prior to the March posting. She viewed Raddatz as less than

professional in her dress, and prone to visiting with other County employees during work hours. The sole other unit applicant had a criminal record, and thus could not meet the minimum qualifications for the position.

When Raimer learned of Raddatz's interest in the position, she contacted Schepp. She did not have a favorable impression of Raddatz, but felt those impressions had to be tested. With Schepp, she reviewed Raddatz's work history. She was not impressed with Raddatz's history of sick leave usage. Her Accounting Assistant position is a high stress position, particularly at the times of year when property taxes are paid. Her office is not staffed to a level that can withstand absence during this period. Raddatz's difficulties with the dress code also concerned Raimer, who administers a similar code for her office to project a professional image to the public. Raimer also became aware of the difficulty involving Rowe, and the strained working relationship between Schmit and Raddatz. Raimer regards her office as considerably more stressful than Schepp's and was concerned with Raddatz's ability to manage that stress. She did not interview Raddatz.

Schepp's Testimony

Schepp noted that Raimer approached her to assess Raddatz's qualifications. Schepp noted that Raimer's Accounting Assistant is one of a three person office, and the sole member with accounting expertise. Raddatz rarely worked a month in which she did not use sick leave, and was the only person Schepp flexed time for. Schepp did not think Raddatz had a good history of cooperation with employees in other departments, and did not give Raddatz a favorable recommendation to Raimer.

Grievance No. 00-AC-003

The grievance form states the "Circumstances of Facts" thus: "Grievant was denied the opportunity to use sick leave donation."

Raddatz's Testimony

When Raddatz left on medical leave, she thought the leave would be for two weeks. She did not, however, return to work until four weeks had passed. She had a small balance available to her at the start of her leave, but it was insufficient for even the originally intended two week leave. Raddatz's mother works for the County, and was willing to donate sick leave to her. Lyons also volunteered to do so. Raddatz contacted the Corporation Counsel's office and Personnel Department to determine how the donation could be made. She understood that she needed to have her mother and Lyons execute some form of writing to confirm their willingness to donate sick leave. Ultimately, someone in Personnel advised her she could not receive a donation. She did not file a form for the donation, since the County has no such form.

When Raddatz left County employment, she still had a small balance of sick leave. She worked for the CPA firm during her leave, and the County did not think it appropriate that she use sick leave during her leave of absence to the extent she was able to work. Raddatz looked for other employment during her leave.

During her leave, on or about March 21, Raddatz filed a worker's compensation claim with the State of Wisconsin, stating the "type of injury or illness" thus: "Migraines, Nosebleeds, High Blood Pressure, Loss of Appetite, Stress, Anxiety, fatigue, hemorrhoids, Digestive Problems, Diarrhea, Depression, Sleep Problems, Mental Anguish."

Lyons' Testimony

At the time of Raddatz's request, no County department required the execution of a form for a sick leave donation. A secretary in the Personnel Department informed her that Raddatz would not receive donated sick leave because the County did not consider her situation to constitute extraordinary circumstances. Lyons received no more detailed explanation.

Lyons testified that she had sought to obtain a sick leave donation for another employee, Cathy Manthe, who was off work due to surgery. Lyons spoke with Manthe, and understood her to be concerned about her ability to make ends meet financially due to her absence. Lyons informed Manthe about the possibility of sick leave donation, and believed Manthe wanted to pursue it. Lyons sought and received donations from various employees, and passed the information to the Personnel Department. Manthe returned to work, and the Union filed a grievance to secure the donated sick leave, as backpay, for Manthe. The Union did not secure Manthe's consent to the grievance prior to filing it. Manthe did not want to pursue the grievance, and so informed Lyons and the Personnel Department. Lyons withdrew the grievance, but did not agree with what she understood Manthe's reasons for the withdrawal. Lyons believed supervisory personnel informed Manthe that the pay would constitute a financial hardship for the department.

Further facts will be set forth in the **DISCUSSION** section below.

THE PARTIES' POSITIONS

The County's Brief

The County contends that "the only grievance . . . that can survive summary dismissal is the grievance relating to alleged wrongful discharge." The background surrounding that action establishes that for "all practical purposes, Ms. Raddatz gave the County a 'me or her' ultimatum." To accept the Union's position would "make a mockery of Wisconsin county and municipal governments' ability to operate a work place."

The sick leave grievance "fails for several reasons." Raddatz "never *actually*

submitted a request for sick leave donation.” Beyond this, any evidence on which employees wished to donate sick leave and in what amounts “is anecdotal, at best.” Most significantly, however, Raddatz’s leave for stress is insufficient to trigger the operation of the side letter, which demands “extraordinary circumstances.” Raddatz in fact worked for another employer during this period, demonstrating that granting “the side letter such a liberal interpretation would essentially make it meaningless, and would result in the CBA being amended by the arbitrator to allow persons to receive donated sick leave under virtually all circumstances.” Lyons’ testimony establishes that the Union seeks to apply the side letter even to employees who do not wish to accept the donation.

Acknowledging that Raddatz “was the only Union employee to submit a timely application for the position that would not be automatically disqualified for reasons such as a criminal record” cannot change the fact that the agreement requires a determination of “skill, ability as reflected in her personnel file, and seniority.” Raimer was the County employee authorized to make that determination. She appropriately determined that the “position is one of great responsibility” and that Raddatz “was not qualified for the very important County position for which she applied.” Schmit’s opinion of Raddatz played no role in this determination, which was “simply based upon (Raimer’s) own observations of Ms. Raddatz.” The record of absenteeism is established in Raddatz’s personnel file, and the problems of excessive personal phone calls, dress code violations and accounting errors were readily apparent in Raimer’s investigation. A review of the record establishes that Raimer’s determination cannot be characterized as arbitrary or capricious, and thus “should not be upset or punished at arbitration.”

Even if a violation of the labor agreement could be found, the Union has failed to present “any evidence of any amount of wage loss or other lost income that might have been incurred by Ms. Raddatz.” Thus, the only possible remedy available in the event a contract violation exists is the issuance of a cease and desist order, since “there is not a basis in the record for an award of any monetary relief.”

This turns the analysis to the discharge, which “is the only one that has even a potential legal justification.” The Union’s case is a “shotgun” approach to litigation, by which the Union asserts “a number of claims into the mix in hopes of subconsciously convincing the eventual arbitrator that a finding of a violation by the County” on any one claim will constitute an “‘easy compromise’ to the matter.”

That the County did not follow the Manual’s progressive discipline system manifests no more than that the County “is not alleging that there were a series of minor infractions” that support the termination. Rather, the County asserts Raddatz’s conduct is “willful and deliberate” thus constituting a major infraction. Beyond this, Raddatz’s provocative behavior should not be rewarded.

Evidence concerning minor rule violations demonstrates that a series of minor incidents became a basis for Raddatz’s willful acts of insubordination. The insubordination was evident on

the day Raddatz left on sick leave and on the day she returned. Her first act on her return from sick leave was flagrantly confrontational. If the threat to tape all conversations did not make the confrontation plain, Raddatz's statement that she could not work with Schmit did. Raddatz effectively gave the County "a 'her or me' ultimatum" which "resulted in an 'impossible situation' for Ms. Schepp." Standing alone, this ultimatum establishes cause for the discharge.

To the extent doubt exists on this point, it is resolved by an analysis of witness credibility. Schmit answered questions directly and candidly, unlike Lyons or Raddatz. Raddatz's attempt to portray Schmit as a liar is unsupported by the testimony of other witnesses.

That the Union began preparing its complaint of prohibited practice before the County acted on the requested sick leave donation and job posting matters establishes how little merit exists to the non-discharge grievances. An examination of the evidence concerning the discharge establishes that Raddatz brought the termination on herself. The grievance should be dismissed.

The Union's Brief

After a review of the evidence, the Union contends that it "is axiomatic in grievance arbitration that the Employer has the burden of establishing 'just cause' for discipline it has imposed." Noting that arbitral definitions of just cause vary, the Union contends that the seven standards of ENTERPRISE WIRE CO., 46 LA 359 (DAUGHERTY, 1966) establish a useful statement of just cause. This statement is often made simpler by arbitrators who prefer the following two element analysis:

- a. Is the grievant guilty of the alleged "crime(s)"?
and
- b. Is the punishment reasonably proportionate to the seriousness of the *proven* offense(s)?

An analysis of arbitration precedent establishes that most arbitrators demand that an employer meet its burden of proof by "clear and convincing evidence."

The basis for the discharge rests on the seven numbered paragraphs of the April 13 letter. The evidence falls far short of establishing that Raddatz treated Schmit abusively on April 13. Raddatz never "demanded" to tape record her conversations with Schmit. Schmit's testimony on the final day of hearing strayed beyond that given on the first day. Her notes fail to underscore the more strident testimony on the final day, and in fact underscore that Raddatz did no more than ask to have Lyons present or to tape record the conversation. This evidence shows no more than an "exaggeration of the incident over time" and Schmit's "hostility and lack of objectivity" regarding Raddatz.

Nor is there any indication that Raddatz behaved abusively during the discussion

concerning the office key. An examination of the evidence shows Raddatz “may have been curt, and she may have been terse.” This fails, however, to establish she was abusive. Even less persuasive is the assertion that the passing mention of a complaint of prohibited practice on April 13 can constitute abusive behavior. Significantly, if Raddatz was defensive on April 13, “she had good cause.” Schmit’s assertion that she wanted to start with a “clean slate” on April 13 is belied by her delivering a “sucker punch” to Raddatz through “written reprimands for past incidents.” There is, then, no solid evidence of abusive behavior.

Nor is the next numbered paragraph well rooted in the evidence. The record “is devoid of *any evidence whatsoever* that the grievant threw any objects in the office, angrily or otherwise.” At most, the evidence regarding the February 18 door slamming incident is “conflicting.” That Schmit neglected to mention the emotional background to the incident is revealing. Whether Schmit sought to make her actions appear more reasonable or simply did not consider the co-employee’s death important cannot obscure that her testimony is unreliable.

The next alleged area of misconduct is “astounding.” That the County would assert a disciplinary interest in an individual employee’s attempt to seek help or direction from supervisors or other employees “flies in the face of reason.” Schmit’s testimony that Raddatz “somehow disrupted the office simply by being at work” is speculative and unsupported.

The fourth numbered allegation concerns the timeliness of Raddatz’s reconciliation of the Register of Deeds account. The evidence establishes that the problem in the Register of Deeds office predated Raddatz’s employment, and that Raddatz was not “solely responsible for this function.” Since she was not solely responsible for the reconciliation, Raddatz cannot be held solely responsible for the task not being timely completed.

Raddatz’s failure to comply with departmental policies is subject to “significant dispute.” Significantly absent from the evidence on this point is any effort on Schmit’s part to determine Raddatz’s view of the problem. The “guidance” afforded Raddatz regarding the dress code was “singularly unhelpful.” Lyons’ testimony establishes that Raddatz wore clothing “little different from what is worn by employees throughout the Courthouse.” That Schmit’s notes allege numerous violations cannot obscure that she “never followed through with any discipline.”

Record evidence concerning personal phone calls or performing schoolwork on work time is flawed by Schmit’s consistent refusal to seek any information from Raddatz prior to documenting the allegation.

The sixth allegation turns on “a claim of insubordination.” Analysis of this claim in light of arbitral precedent establishes that “Raddatz was not insubordinate when she failed to return her office key.” Schmit never made a direct order, and requested the key when Raddatz was cleaning out her desk. Raddatz did no more than declare her desire to return to work.

The final allegation restates earlier allegations and is “lacking merit of any kind.” Read as

a whole, the April 13 letter establishes no conduct warranting discharge. The letter in fact constitutes “double jeopardy” since it seeks to terminate Raddatz for conduct subject to earlier reprimands.

The termination is further flawed by the County’s refusal to undertake “a full and fair investigation” prior to imposing the termination. This undercuts “(o)ne of the most important procedural precepts of the just cause standard.” Raddatz was never consulted as County management conferred with each other to justify the termination.

The Union characterizes Raimer’s selection process as “biased.” Lyons’ testimony establishes that arguably qualified internal applicants receive a test prior to the award of a position, and that “the position is given to the senior applicant who passes the test.” Raddatz was never afforded this opportunity, since Raimer rejected her application “out of hand.” A detailed examination of the stated bases for the denial establishes a “degree of bias . . . so extreme as to render the decision-making process corrupt.” It follows that the County’s refusal to grant Raddatz’s request to transfer violated the labor agreement.

The side letter states “two conditions which must be met for an employee to have a contractual right to receive donated sick leave.” The first is that “the employee must have depleted all sick leave” and the second is “the employee must still be unable to return to work.” Since Raddatz meets both conditions, she should have received donated sick leave from Lyons and from Raddatz’s mother. It follows that “the County violated the contract when it denied her the ability to receive donated sick leave.”

The Union concludes that each grievance should be granted, and that Raddatz should be returned to work at the County with “the option of taking the Accounting Assistant” position in the Treasurer’s Office. Beyond this, the Union seeks that Raddatz “be made whole for all losses suffered as a result of the violations of the contract by the County.”

DISCUSSION

As noted above, three grievances demand resolution. Fundamental among them is Grievance No. 00-AC-005. It is fundamental because Raddatz’s claim to employment is the most basic issue posed, and because the factual determinations it requires impact the other two.

Grievance No. 00-AC-005

Section 15.1 D) demands the County have “cause” to discharge. “Just cause” and “cause” are synonymous: “The term ‘just cause’ is generally held to be synonymous with ‘cause,’ ‘proper cause,’ or ‘reasonable cause.’” Hill & Sinicropi, *Management Rights*, (BNA,

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1986) at 99. See also Bornstein, Gosline & Greenbaum, *Labor and Employment Arbitration*, (Matthew Bender, 1999) at Section 14.01. My statement of the issue posed by Grievance 00-AC-005 thus turns on whether cause exists for Raddatz’s discharge on April 13.

In my opinion, two elements define the cause analysis where the parties have not stipulated the standards defining it. First, the employer must establish the existence of conduct in which it has a disciplinary interest. Second, the employer must establish that the discipline imposed reasonably reflects the interest. This does not state a definitive analysis to be imposed on contracting parties, such as the seven tests posited by Arbitrator Carroll Daugherty in ENTERPRISE WIRE. It does state a skeletal outline of the elements to be addressed and relies on the parties' arguments to flesh out that outline. As the Union notes, the Daugherty standards afford persuasive guidance. In the absence of a stipulation, however, they do not bind the parties.

The first element is troublesome, since the conduct in which the County asserts a disciplinary interest is difficult to isolate. The termination letter outlines a course of conduct culminating in the events of April 13. The course of events reflects an ongoing personality conflict between Raddatz and Schmit. However the specific allegations of the April 13 letter are viewed, it essentially asserts that the conflict reached a point where Schmit and Raddatz could not maintain a functional work relationship. The April 13 letter holds this against Raddatz. The Union asserts a cause analysis precludes this.

The April 13 letter is vague and broad regarding the conduct on which the County based the discharge. The letter lists "specific grounds," but declines to rest the discharge on them, individually or collectively. The Union analyzes the seven numbered items as the basis for the discharge, but the letter cites them as evidence for the "specific grounds" which are "gross insubordination, misconduct and unsatisfactory performance." The Union's analysis is forceful and persuasive on a number of points. For example, there is no persuasive evidence Raddatz engaged in the "unprofessional conduct" of "angrily throwing objects in the office." Nor does the evidence support the assertion that Raddatz threatened "legal action against department supervisors", assuming such action constitutes a threat.

The April 13 letter manifests a weakness the County attempts to use against the Union's position. It states a "shotgun" approach to the discharge, casting a wide range of arguments to increase the likelihood that any one of them will find its mark. What is gained in spread is, however, lost in focus.

In any event, analysis of the first element must turn on the stated grounds for the discharge and on whether those grounds have a proven basis. The allegation of "gross insubordination" lacks persuasive evidentiary support. "Insubordination" is a term of art in labor relations, and connotes the "deliberate defiance of . . . supervisory authority." *Labor and Employment Arbitration*, at Sec. 20.04. It is not uncommonly treated as a terminal offense, accordingly demanding some strictness in its usage. The severity of the sanction is rooted in the willful nature of the offense, which connotes the deliberate undermining of work place management.

opinion, to establish insubordination, the County must demonstrate that Raddatz understood and deliberately defied a clear, work-related order issued by a known supervisor. See, for example, *Roberts' Dictionary of Industrial Relations*, (BNA, 1986); and *Labor and Employment Arbitration* at Section 16.04. The record will not support applying this against Raddatz. The evidence falls short of establishing Schmit clearly demanded the office key on March 16 or 17. It is undisputed Raddatz returned the key on April 13. Schmit's direction that Raddatz leave the Accounting Department and return to the Personnel Department on March 16 is similarly oblique. Nor will the record demonstrate Schmit clearly ordered Raddatz not to wear a specific item of clothing. Ultimately, the weakness in the County's position on insubordination is that it asserts Raddatz engaged in a continuing pattern of conduct of an insubordinate nature, rather than any specific act of gross insubordination that itself warrants discharge.

The asserted conduct supporting the County's disciplinary interest thus focuses on a continuing pattern of misconduct of an insubordinate nature and on unsatisfactory work performance. The County has established persuasive evidence of unsatisfactory work performance. Raddatz's role in the preparation of the March spreadsheet constitutes conduct in which the County had a disciplinary interest. The evidence affords no basis to doubt that Raddatz made an error that Schmit had to correct. More significant to the County's disciplinary interest is Raddatz's response. That Raddatz showed poor judgement in responding to the error is evident in her testimony. Even if Raddatz was not on a personal phone call when Rowe came to the Accounting Department, it is evident she took only a passing interest in a significant account that had shown its first negative balance. Her own testimony establishes she left the phone call, summarily informed Rowe the spreadsheet was accurate and then returned to the phone call. It is evident that Rowe was sufficiently angered by the spreadsheet that he had the undivided attention of the supervision of the Accounting Department. Raddatz's casual response is inexplicable.

More significantly, while her testimony on other points is credible and persuasive, it is notably unpersuasive on this. Raddatz contends she showed the spreadsheet to Schmit and to Schepp, receiving either an approval or no response. Whatever is said about the conflict in testimony, Schmit's and Schepp's attention to detail and to the reputation of their department is unchallenged and unequivocal. That they would attach no significance to a spreadsheet showing the first negative balance in a significant account defies belief. Their deference to other department heads was evident throughout their testimony, and makes it unpersuasive to conclude that they took no more interest in the negative balance than to have Raddatz pass it on without comment to Rowe. Their conduct after learning of the error underscores this. Unlike Raddatz, they felt the problem required an immediate and sustained response.

This prefaces the most troublesome aspect of the County's allegations, which is that Raddatz engaged in a pattern of willful conduct undermining Schmit's authority. As is noted below, the more troublesome aspects of this evidence concern the application of the second

element of the cause analysis. The record supports County assertions that Raddatz engaged in

a “Chinese water torture” pattern of conduct by which individual acts of little independent significance came to acquire a crushing weight.

That Raddatz occasionally extended breaks or made personal phone calls poses no significant dispute. Devine’s testimony credibly corroborates Schmit’s regarding breaks. The ill-will between Schmit and Raddatz is palpable, but there is no reliable basis to doubt Devine’s testimony. Of greater significance to the County’s case is Raddatz’s conduct and testimony regarding compliance with the dress code.

The Accounting Department’s dress code is, at best, vague. Little greater clarity emerges from Schepp’s or Schmit’s attempts to specify it for Raddatz. To admonish Raddatz not to wear clothes on which she had a doubt presumes she has the sensibilities that, if actually present, make the admonition unnecessary. An admonition that she dress like her supervisors may offer to lead by example, or may simply highlight that she does not share the wardrobe or taste of her supervisors. In any event, the admonition affords no guidance.

This is not, however, a matter of taste in clothing. Raddatz’s testimony highlights that compliance with the dress code became a significant issue when Schmit and Schepp passed on a complaint from the then incumbent Corporation Counsel that Raddatz wore too short a skirt. Raddatz took the admonition personally, feeling her supervisors had inappropriately failed to defend or to guide her. She characterized her response, after a ten to fifteen minute discussion of the point with Schepp and Schmit, thus:

I guess I really didn’t know how to feel. I didn’t think that I did anything wrong. I was hurt that they didn’t defend me to him since they had known me for, you know, over a year at this time. (Tr. at 463)

This incident is coupled in the June 22, 1999 evaluation with the conflict over the June 10, 1999 break. These incidents mark a sort of watershed in what was to become an ongoing deterioration in her relationship with management. The focus on feelings in the cited testimony is a troublesome backdrop to the problems that were to follow. Notably absent from the statement is any indication that Raddatz understood that, however any of them felt about the issue, the behavior of wearing a specific item of clothing had caused trouble, and would do so again if repeated.

This is remarkable because the record establishes that however vague the dress code or her supervisors’ counsel on the code might be, she refused to modify her behavior. She responded thus to questions concerning clothing worn roughly a year after the incident noted above:

Q . . . would you agree that what you wore on March 1 of 2000, you wore again on subsequent days?

A No. I'm not going to agree to that. (Tr. at 622)

. . .

Q Okay. So is it fair to say that the attire . . . the attire that you were wearing on March 1 that they said was inappropriate, you wore an outfit similar to or identical to it roughly a week later?

A I was told by the Union it wasn't inappropriate. (Tr. at 624).

This inconsistency crystallizes a consistent pattern in her testimony on this point. It is evident she did not agree with Schepp's and Schmit's directives, and acted to ignore or to subvert them. This conduct stands without regard to the vagueness of the policy.

This pattern is not isolated. On March 16, she and Schmit sparred about whether she should wait in the Accounting Department while the Personnel Department processed matters relating to her leave. On March 17, she and Schmit sparred concerning the office key. It is unnecessary to address issues of credibility to note that in each case, she had only to comply with Schmit's requests to avoid the confrontation. The February 18 incident mirrors this. That issue poses credibility issues, since Raddatz contends there was no more than a businesslike discussion of how Schmit treated her and Koss. Devine's testimony, however, stands uncontradicted, and establishes that voices were raised and a door slammed. Whether Schmit behaved insensitively or patronizingly to Koss and Raddatz, it is evident Raddatz provoked the confrontation. Significantly, there is no dispute that Raddatz initiated the controversy on April 13 concerning the tape recorder. The evidence leaves no doubt that Schmit was prepared to take the meeting to issues of discipline without regard to any issues of work assignment. There is, however, no dispute that Raddatz started the confrontation, without provocation.

Nor, in my opinion, does it pose significant issues of credibility to characterize the April 13 meeting as confrontational. I do not agree with the County's assertion that Lyons failed to testify credibly. This cannot, however, obscure that under any view of the testimony of April 13, the matters discussed had notably little to do with getting Raddatz back to work. This is not solely traceable to Raddatz, since Schmit had prepared to start the "clean slate" by delivering, early in the meeting, formal discipline. Whether or not this was well-advised, it is evident that Raddatz came prepared to fight. What possible bearing the computer training that occurred in her absence had to do with returning to work is a point that Lyons' credibility cannot address. No less evident is that it took Schmit's and Lyons' combined efforts to get Raddatz off the point.

In sum, the County has established that Raddatz engaged in a pattern of misconduct from June of 1999 through April. This pattern concerns a series of events, arguably

insignificant independently, but manifesting a consistent pattern of willful conduct challenging Schmit's assertion of authority. During this period, Raddatz also committed acts involving unsatisfactory work performance. The County has then, established conduct on her part in which it has a disciplinary interest.

The more difficult issue is whether discharge reasonably reflects that interest. This issue, contrary to the County, is a close one. The closeness of the issue turns less on any particular issue of credibility than on whether the County's unwillingness to follow its stated procedures outweighs its proven disciplinary interest in Raddatz's conduct.

The County accurately states that by April 13 the tension between Raddatz and Schmit had reached a point where it faced an all or nothing decision regarding Raddatz's employment. The tension, palpable at hearing, is beyond dispute. Raddatz took a leave of absence on March 16, yet worked in an accounting position during that leave and looked for other employment. She also applied for a transfer to free herself from the Accounting Department. The existence and source of the stress is unmistakable. Raddatz acknowledged on April 13 that she could not work with Schmit. It is, then, established that the work environment posed an extremely high level of tension traceable to a personality conflict between Schmit and Raddatz.

The problem posed under the second element is whether this dilemma can be resolved against Raddatz. There are difficulties with doing so. That the conflict between Raddatz and Schmit strayed beyond issues of behavior or, more importantly, work performance, is not traceable to Raddatz alone. Under the Manual, the County's disciplinary interest in workplace misconduct is to be investigated and acted upon based on proven conduct. Schmit's visit to the breakroom on June 10 hardly meets this standard. If Schmit believed she had a disciplinary interest in Raddatz's conduct, under Sec. 7.19(c) of the Manual, she had a duty to determine the facts. Presuming she determined the facts adversely to Raddatz, the Manual calls on her to identify the wrongful behavior, state the appropriate sanction and the implications of repeating the behavior. Presumably, this is a process requiring a one-on-one meeting between supervisor and employee. Schmit chose, instead, to make a sarcastic response that humiliated Raddatz in front of her friends. This determination poses no issue of credibility. On this, as well as the events of February 18 and March 16, Schmit's use of sarcasm as a vehicle for the exercise of authority is apparent in her notes and her testimony.

Section 7.19(d) of the Manual states a system that, if applied as written, should preclude "Chinese water torture" patterns of behavior. Minor incidents are highlighted as they occur and should seldom number greater than four in number: oral warning, written warning, suspension and discharge. However uncomfortable the disciplinary process may be, the Manual's system isolates wrongful behavior, and sanctions it in a way to assure that an employee has the opportunity and the incentive to modify it. In spite of this, Schmit's notes highlight at least sixteen dress code violations, nine break violations, and a number of personal

call violations. It is less than clear if Raddatz was specifically advised of all of these allegations. It is evident that no progressive discipline resulted, unless an informal discussion,

such as that of July 8, 1999, is treated as an oral reprimand. Doing so, however, does not meet the requirements of Sec. 7.19(d)(1) of the Manual.

The Manual's provisions are written to set a blueprint by which behavior modification can be achieved with a minimum of personality conflict. In this case, however, Raddatz's request for clarity on the dress code was not even met with a "whatever you wear, don't wear that" type of warning documented under the Manual's requirements. Rather, the personality conflict between Raddatz and her supervisors predominates. The testimony reflects broad personality judgements less than detailed assessment of observable behavior. Any personnel decision, including discharge, should reflect an assessment of workplace behavior, not of personal worth.

These considerations cannot, however, obscure that by April 13 Raddatz could not work with Schmit. Raddatz said so on April 13, and acknowledged this in her testimony. Her behavior on April 13 confirms this. Raddatz, not Schmit, provoked the confrontation. Had Raddatz not joined the fray, the memos, including the disciplinary memos, would have been noted in passing. Objections to them could have been left to the grievance procedure, with work time being left for work. Beyond this, Schmit's failure to follow the Manual's demands did not prejudice Raddatz. Rather, it extended the time available to move beyond the personality conflict. Ultimately, Raddatz's best defense against what she perceived as Schmit's personal attack on her was the quality of her own work. As the controversy with Rowe underscores, this response was flawed. Most significantly, Raddatz's behavior affords no persuasive basis to believe that progressive discipline could resolve the personality conflict. Her testimony affords little basis to undercut this conclusion. She assumed responsibility for few of the confrontations, and none of the performance-based issues.

Ultimately, the strength of the County's case is that the events of April 13 manifest not a minor offense, but a serious offense. The difference, under the Manual, is the "(w)illful or deliberate" nature of the offense, and that difference, under Sec. 7.19(e) opens the possibility of sanctions other than progressive discipline. These provisions are not, in my view, inconsistent with the contractual cause standard. The record establishes that Raddatz's behavior, up to and including April 13, was willful. The record also establishes that on that date, after a four-week leave, Schmit and Raddatz interacted as if there had been no separation. The Union forcefully notes that Schmit displayed a high level of hostility toward Raddatz. For example, two of the four "personal" calls Schmit documented against Raddatz fell within the time slots Schmit's March 30 memo reserved for such calls. The difficulty with the Union's defense is that however hostile Schmit may have been, there is no persuasive evidence she interfered with Raddatz's work. The difficulty in getting Raddatz focused away from the personality conflict and onto work cannot persuasively be held against Schmit. This makes the County's determination that it faced an either/or choice that warranted Raddatz's discharge reasonable. Thus, the County has met both elements of a cause analysis.

The depth and breadth of the personality conflict posed by this record is unlike any in my experience. The conclusions stated above resolve that conflict as I interpret the contract in light of the evidence. This should not be taken for more than that. The evidence affords no

reason to believe Raddatz cannot be an effective employee. The recommendations received into evidence underscore this. The evidence manifests a regrettable conflict that overshadowed everything else in the work relationship. The case is close for the reasons noted above. Raddatz's defense fails ultimately because its persuasive force is rooted in her work response, not on the County's or an arbitrator's assessment of responsibility for the personality conflict. The conflict colored Raddatz's work performance to the point the County could reasonably perceive an all or nothing dilemma.

It is worthy of some note that the videotape submitted by the County plays no role in the conclusions stated above. The dress code issue does not involve the interpretation of the propriety of any particular piece of outerwear or underwear worn by anyone other than Raddatz. With regard to Raddatz the issue is not the propriety of any particular piece of clothing, but whether she deliberately wore clothing her supervisors informed her violated the dress code. As noted above, this is not a matter of taste in clothes. Nor is it a matter of Lyons' or Raimer's credibility as witnesses. The videotape, even if considered evidence, is irrelevant.

Grievance No. 00-AC-004

The personality conflict colors each grievance. As noted above, Raddatz applied for the opening in Raimer's office to free herself from the Accounting Department. Raimer knew of Raddatz prior to the posting and learned more of her by consulting with the supervision within the department she sought to leave.

Resolution of the dispute turns on Section 7.6. That section demands that the "(s)election of applicants to fill job vacancies . . . shall be determined by the employee's skill, ability . . . and seniority." Raddatz was the sole unit applicant who met the requirements of the posting on its face, and thus seniority plays no role. If Raddatz was qualified, the position, under Section 7.6, was hers, since she had the greatest seniority.

Raimer's letter of April 3 stated that Raddatz was not qualified under Items 7, 9, 12 and 19 in Section III of the governing job description. The Union contends that County practice demands that Raddatz be tested and that her performance be evaluated in an unbiased fashion. Raimer's brief discussion with Schepp cannot meet this standard.

The Union's arguments have persuasive force as a contractual matter, but lack a solid evidentiary basis. Lyons' testimony establishes that the County has tested in the past, but falls short of establishing any consistent pattern that could establish a binding practice. Section 7.6 demands that her "skill (and) ability as reflected in her personnel file" be evaluated. Testing can do this, as can an interview. This cannot, however, obscure that Raimer consulted Schepp to assess Raddatz's skill and ability as reflected in her personnel file.

Raimer's April 3 letter stands in marked contrast to the April 13 letter of discharge. It is specific and focused. The Union's arguments cannot rebut the evidentiary basis that focus reflects. The Union appropriately notes that Raddatz's work experience demonstrates she can

handle large amounts of cash and checks efficiently. However, Raimer learned of the incident involving Rowe. Her knowledge of Raddatz's role in the incident is limited. Schepp's knowledge of the incident was not so limited, and the impact of her adverse assessment of Raddatz has a proven basis. At a minimum, this casts some doubt on Raddatz's ability to meet Item 7.

More significantly, the dispute regarding Item 7 prefaces the application of Items 9, 12, and 19. The evidence casts doubt on Raddatz's ability to meet deadlines in the Accounting Department. More significantly, the evidence leaves little doubt that the pressure of the adverse personal relationship with Schmit adversely affected the quality of Raddatz's work performance. At a minimum, Raimer had substantial reason to question how the pressure of her office would affect Raddatz's performance.

There is no evidence to cast doubt on Raddatz's ability to maintain, under Item 12, an ethical working relationship with other employees or the public. However, it is not necessary to place fault on Raddatz for her conflict with Schmit to note that the existence of that conflict is unmistakable. Beyond this, the impact of that conflict on her work performance is evident. Raimer became aware of it through her conversation with Schepp. However brief that conversation was, the conflict it covered has a proven basis as well as a proven effect on Raddatz's work.

Raimer had substantial basis to question Raddatz's willingness to work considerable additional hours. This is not an issue of Raddatz's stated willingness to work additional hours. Rather, it is an issue of Raddatz's ability to do so. As Raimer discovered, Raddatz had a history of using her sick leave. This is not improper, but affords a reasonable basis to question her ability to work as needed during the "crunch times" in Raimer's office. That Raddatz would act as the sole degreed accountant accentuates the significance of this point. Unlike the Accounting Department, there is no backup available in the Treasurer's Office.

Against this background, Raimer's conclusion that Raddatz could not meet the listed qualifications cannot be dismissed as unreasonable. The evidence establishes that she considered Raddatz's skill and ability as reflected in her personnel file in light of the job requirements of the position of Deputy Treasurer/Accounting Assistant. There is, then, no demonstrated violation of Section 7.6.

Grievance No. 00-AC-003

The language of the side letter is directed to "individual employees" who wish to become donors of sick leave to another employee. The donation is possible if: (1) "extraordinary circumstances arise"; (2) the other employee "has depleted all of his/her sick leave" and (3) the other employee "is still unable to return to work."

As preface to the application of the side letter to the grievance, it is appropriate to touch on what has no persuasive bearing on the dispute. It is evident the Union and Lyons believe

the side letter should be interpreted broadly and that the County believes it should be interpreted narrowly. This affords no basis to draw any inference on Lyons' credibility. The Manthe grievance has no bearing on this one. Nor is the record unclear on the request for the donation. Lyons and Raddatz's mother hoped to donate sick leave, and understood the County's position to be that such a donation was not possible. Raddatz did not deplete her sick leave balance, but this affords no basis to resolve the grievance. The County did not believe her use of sick leave during the leave of absence was appropriate. This mirrors its contention that, under the side letter, Raddatz cannot demonstrate "extraordinary circumstances." The interpretation of the side letter cannot, however, turn on County denial of sick leave without posing the risk that the County could read the side letter out of existence by denying employee use of sick leave.

Thus, the application of the side letter turns on whether Raddatz was, during the period from March 16 through April 13, "unable to return to work" due to "extraordinary circumstances." The Union's contention that the side letter permits the County no discretion over the matter once an employee has exhausted sick leave and cannot return to work is a plausible reading of the disputed language. Under this view, the donation is a matter involving an employee exchange between donor and donee. This has some support in the language of the provision, since there is no specific mention of a County role in the exchange.

The weakness of the Union's contention is that it fails to give meaning to "extraordinary circumstances." Under the Union's view, the willingness of a donor to give and a donee to receive the sick leave defines the exchange. This view cannot be accepted without reading "extraordinary circumstances" out of existence, since the donor and donee are free to agree on the exchange without regard to the circumstances prompting it.

Thus, the interpretive issue is whether Raddatz's leave, from March 16 through April 13 constitutes "extraordinary circumstances." As noted above, the circumstances are unique in my experience, but this is not a persuasive means to interpret the contract. Any leave from work is unique in some sense. "Extraordinary" presumes that some circumstances exist that will not prompt the operation of the side letter. As the County persuasively argues, interpreting Raddatz's circumstances to meet the side letter effectively reads it to apply to any request. Raddatz continued to work during her leave and took the opportunity to look for another job. This does not necessarily make the leave improper, but does make it a poor vehicle for a County subsidy.

To conclude that Raddatz's circumstances are "extraordinary" puts pressure on the "unable to return to work" reference. If the circumstances were extraordinary, was Raddatz "unable" or "unwilling" to return to work? The documentation for the leave affords little insight on the basis for the request. Raddatz told Schmit "stress" was the cause. Stress is, in a sense, a constant in a workplace. The issue becomes whether the "stress" in this case resulted

from extraordinary circumstances. As noted above, the circumstances were unique, but the stress arose from a personality conflict in which Raddatz played an active role. This cannot,

on the evidence posed here, trigger the side letter unless the side letter is interpreted to cover any request.

In sum, the County's refusal to permit the sick leave donation did not violate the side letter.

AWARD

The County did have cause, under Section 15.1 D), to discharge Erica Raddatz.

Grievance 00-AC-005 is, therefore, denied.

The County did not violate Section 7.6 by denying Erica Raddatz the position of Deputy County Treasurer/Accounting Assistant.

Grievance 00-AC-004 is, therefore, denied.

The County did not violate the Side Letter Agreement Re: Sick Leave Donation when it denied employee requests to donate sick leave to Erica Raddatz.

Grievance 00-AC-003 is, therefore, denied.

Dated at Madison, Wisconsin this 7th day of December, 2001.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

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