

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GREEN LAKE COUNTY

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 139

Case 79
No. 61658
MA-12026

Appearances:

Baum, Sigman, Auerbach, Neuman & Katsaros, Ltd., by **Attorney Pasquale A. Fioretto**, 200 West Adams Street, Suite 2200, Chicago, IL 60606-5231, on behalf of Local 139.

Mr. John B. Selsing, Corporation Counsel, Green Lake County, 120 East Huron Street, Berlin, WI 54923, on behalf of Green Lake County.

ARBITRATION AWARD

Pursuant to the 2001-03 collective bargaining agreement between Green Lake County (County) and the International Union of Operating Engineers, Local 139 (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve two disputes between them regarding the suspension and discharge of Javier Dimas. The hearing on the matter was held on November 20, 2002, January 8 and 31, 2003 and March 5, 2003. No stenographic transcript was made. The parties agreed to submit letter briefs post-marked March 21, 2003. The Arbitrator received the Union's letter brief on March 24, 2003, and received an untimely brief from the County on April 24, 2003, due to the illness of County Counsel. The record was closed on May 2, 2003, when the Undersigned received a letter from the Union stating no objection to my consideration of the County's untimely brief.

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

ISSUES

The parties stipulated that the following issues should be determined by the Arbitrator in this case:

Did Green Lake County Department of Health and Human Services violate the labor agreement when it disciplined Grievant Javier Dimas without just cause to do so on July 23, 2002, when it issued him a one-day suspension and then ultimately when it terminated Dimas on August 16, 2002? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 - MANAGEMENT RIGHTS

The Employer and Green Lake County retain and reserve the sole right to manage its affairs in accordance with all applicable laws, resolutions, ordinances and regulations. Included in this responsibility, but not limited thereto, is the right to determine the number and classification of Employees; the services to be performed by them; the right to manage and direct the work force; the right to establish qualifications for hire and to test and judge such qualifications; the right to hire, promote and retain Employees; the right to transfer and assign Employees; the right to demote, suspend, discharge for cause, or take other disciplinary action subject to the terms of this Agreement and the grievance procedure; the right to release Employees from duties because of lack of work or lack of funds; the right to maintain efficiency of operations by determining the method, means and personnel by which such operations are conducted, including the right to contract out provided that the exercise of this right shall not result in layoff of permanent personnel; and to take whatever actions are necessary and reasonable to carry out the duties and responsibilities of the Employer. In addition to the foregoing, the Employer and Green Lake County reserve the right to make reasonable rules and regulations relating to personnel policies and matters relating to working conditions, giving due regard to the obligations imposed by this Agreement. The Employer shall give reasonable notice of new rules and regulations or changes therein as promulgated by it to the Employees and the Union. Any disagreement over the meaning or application of such rules and regulations may be the subject of a grievance; however, the Employer reserves total discretion with respect to the function or mission of the County, its budget, organization, and the technology of performing the work. These rights shall not be abridged or modified except as specifically provided for by the terms of this Agreement.

PERSONNEL POLICES AND PROCEDURES

The County has a manual regarding personal policies and procedures which is designed to “acquaint employees with Green Lake County and provide them with information concerning their employment. . . . The policies and procedures outlined in this manual shall apply to all employees of Green Lake County except where collective bargaining agreements have specific provisions that conflict. In this instance, the collective bargaining agreement shall prevail for those employees affected by that agreement only.” The County’s personnel policies and procedures manual contains a provision, regarding employee discipline, amended in June, 2001, to include the following provisions:

SECTION 16 - EMPLOYEE DISCIPLINE

Section A - Discipline

A.01. The purpose of discipline is positive and intended to correct unacceptable job performance. Disciplinary action is intended to be administered in a corrective fashion concentrating on employee rehabilitation, rather than on punishment. The County will attempt to inform the employee of standards of conduct and performance, which are expected. Because every conduct or performance criteria which may make disciplining an employee necessary cannot be listed, each employee is expected to conduct him/herself in a manner that is appropriate to the workplace setting. However, the following examples are offered below to help clarify the types of issues that constitute grounds for disciplinary action. They are, but not limited to:

- A. incompetence or unacceptable work productivity;
- B. Dishonesty or falsification of records;
- C. failure to follow safety procedures;
- D. theft, disorderly or immoral conduct which brings disrepute or which reflects on the County as an employer including, but not limited to, conviction of a felony, misdemeanor or violation involving moral turpitude;
- E. use of intoxicants while performing assigned duties, or misuse of intoxicants while not at work which interferes with job performance or efficiency;
- F. use of drugs (other than prescribed by a physician) while performing assigned duties, or use of drugs while not at work which interferes with job performance or efficiency;

- G. willful misconduct or insubordination;
- H. unauthorized use or abuse of County equipment or property including carelessness or negligence in handling or control of equipment or property;
- I. discourteous, insulting, abusive or inflammatory conduct toward the public, a fellow employee or fellow employees;
- J. absence without leave or authorization, including habitual tardiness;
- K. acceptance of any gift, favor or service that would improperly influence an employee;
- L. leave used for a purpose other than for which it was requested and granted;
- M. personal appearance of such a nature which causes discredits to the position held and to the department to which the employee is employed in accordance with Sec. 103.14(2) of the Wisconsin Statutes;
- N. violations of this Personnel Policy Manual or Departmental Rules;
- O. harassment;
- P. publicizing confidential matters;
- Q. other circumstances warranting disciplinary action;
- R. discrimination against members of the public or fellow employees based on race, color, creed, sex, national origin, or handicap;

Section B - Discipline Procedure - Discipline shall be applied to all County employees. Normally, when disciplinary actions are required, the concept of progressive discipline will be followed; however it must also be understood the degree of disciplinary action will match the severity of the infraction. **Therefore, depending upon the severity of the offense, the action chosen by management may involve immediate application of one or more of the progressive steps including immediate discharge, if warranted.** Repeated infractions of even minor offenses can and will result in increasingly severe disciplinary actions. Unless there are mitigating circumstances, the normal sequence of discipline will be:

- A. First offense** - the employee will be given a verbal reprimand in private. The Department Head or immediate supervisor shall give the employee the reason for being disciplined and also the manner in which the employee shall correct their problem in the future.
 - B. Second offense** - the employee shall be given a written reprimand with a copy to the Administrative Coordinator. The written reprimand shall be signed by the Department Head or immediate supervisor and by the employee who is acknowledging receipt. A copy shall be provided to the employee and will give the rule or policy violated and a manner to improve performance. Written reprimands shall be placed in the employee's personnel file.
 - C. Third offense** - the employee shall be suspended for up to three (3) days without pay by the Department Head. Suspensions shall be discussed with the Administrative Coordinator, Governing Committee Chair/Personnel Representative for that governing committee and the Corporation Counsel/Assistant Corporation Counsel, before such actions are taken.
 - D. Fourth offense** - the employee may be discharged by the Department Head, followed by a letter to the terminated employee and placed in his/her personnel file. Before any person is discharged, the matter shall be reviewed with the Administrative Coordinator, the Governing Committee Chair/Personnel Representative and Corporation Counsel/Assistant Corporation Counsel. The County Personnel Committee will be informed of suspensions and terminations. In the event that immediate dismissal action is required and the Administrative Coordinator and the Chair of the Governing Committee cannot be reached, the employee shall be suspended pending investigation.
- B.1. In situations involving Department Heads, the Governing Committee Chairperson and the Administrative Coordinator shall administer the disciplinary procedures as outlined in this section.

BACKGROUND

Javier Dimas (hereafter Dimas) was first employed by Green Lake County, Department of Health and Human Services (hereafter Department or County) as a limited-term employee in the position of Alcohol and Drug Abuse Counselor, on September 27, 1999. Dimas was paid \$17.96 per hour in his LTE position and the County paid him no other benefits/compensation. Dimas had responded to a newspaper advertising for the limited-term position which described it as follows:

ALCOHOL AND DRUG ABUSE COUNSELOR

Green Lake County has a vacancy for a Limited-Term Alcohol and Drug Abuse Counselor position (14 hours per week) within the Department of Health & Human Services. Duties include doing alcohol and drug assessments, individual and group counseling, case management and some mental health counseling. Must have a Bachelor's Degree in a Human Services related field and certified as an Alcohol and Drug Counselor in Wisconsin. Wage is \$17.96 per hour. Successful applicant will be required to undergo County-paid physical exam and drug screen prior to final appointment. Applications must be obtained from the County Clerk's office, 492 Hill St., P.O. Box 3188, Green Lake, WI, 54941-3188, (920) 294-4005, between 8:30 a.m. and 4:30 p.m., Monday through Fridays. Applications must be returned to the County Clerk no later than 4:00 p.m. on August 25, 1999 for consideration. Equal Opportunity Employer.

Dimas worked in the above LTE position until January 26, 2002, when the County sent Dimas a letter hiring him for regular full-time employment in the position of Alcohol and Drug Counselor at the County with a starting hourly wage of \$16.78 per hour, a Class V under the labor agreement's pay scale. The letter also stated that Dimas would receive this pay rate until he got his Master's degree, at which time he would be eligible to move to a Class VII of the pay scale. The letter of employment also stated "the position still requires a Master's degree in Social Work, Counseling or related fields." 1/

1/ At the time of his hire by the County, Dimas did not have a Bachelor's or a Master's degree. The County was aware of this when it hired Dimas. Dimas had had experience as a counselor since August of 1990 in various positions and he was certified in AODA counseling.

The position description for Alcohol and Other Drug Abuse Counselor at the County read in relevant part as follows:

PURPOSE OF POSITION: Provides outpatient AODA assessments, case management, counseling and education to individuals, families and groups.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. Essential Functions:

About 20% of this position's time is spent providing alcohol and drug abuse assessments (voluntary, intoxicated driver program, underage drinking

violators, etc.) for individuals referred to the clinic and provide for appropriate treatment and aftercare services. This includes the development of treatment plans.

Approximately 25% of this position's time is spent providing individual and group counseling (Intensive Outpatient Treatment), Aftercare programming or mental health counseling).

Approximately 50% of the time is spent providing case management services to alcohol and other drug abuse or mental health clients. This includes functioning as a member of the Crisis Intervention Team by providing 24 your [sic] a day coverage on a rotating basis approximately every 6th week for mental health, alcohol and other drug emergency situations.

The remaining time is spent attending clinic and crisis weekly staffings and meetings with the CSU Manager/Clinical Supervisor to discuss client treatment goals and objectives. Also includes maintaining accurate and timely Clinical records on client contacts and training.

B. Marginal or Non-essential Functions: None.

WORKING CONDITIONS WHILE PERFORMING ESSENTIAL FUNCTIONS: Over 75% of the work done is inside. In unusual circumstances, situations may develop where there is a threat of physical attack or injury from clients.

EQUIPMENT USED TO PERFORM ESSENTIAL FUNCTIONS: Telephone, copy machine, calculator, computer terminal and related software, fax machine, dictation equipment and automobile.

QUALIFICATIONS NEEDED (EDUCATION SKILLS): A Master's Degree in a Human Services field required with an emphasis in alcohol and drug abuse counseling; Wisconsin certification as an Alcohol and Drug Counselor required and Intoxicated Driver Program required; additional certification as an Independent Clinical Social Worker preferred; the ability to understand, follow and provide directions; reading, writing (reports) is necessary. Additionally, it is important to have considerable clinical experience and communicate effectively with staff, community professionals, agencies and general public. Must have a valid Wisconsin Driver's License and access to an insured vehicle.

This position description has been prepared to assist in defining job responsibilities, physical demands, working conditions, and needed skills. It is not intended as a complete list of job duties, responsibilities and/or essential

functions. This description is not intended to limit or modify the rights of any supervisor to assign, direct, and control the work of employees under supervision. The county retains and reserves any and all rights to change, modify, amend, add to or delete, from any section of this document as it deems, in its judgment to be proper.

Dimas stated that his initial meetings with either adult or minor clients for AODA assessment and his Intoxicated Driver Program (IDP) assessment, the latter conducted for adults only, usually take 1.5 hours. As a general rule, the intake is done by the Receptionist (Roxanne Haedt) so that general information is provided to Dimas prior to the start of the initial meeting. Dimas then calls in the adult or minor client together with their significant other or family and explains his position, what he will do, what they are expected to do as clients/family and he explains confidentiality laws and releases. Dimas then talks to the client alone, employing certain assessment tools. Dimas stated herein that he regularly used a Youth Assessment Tool, Union Exhibit 16, which he had used at a prior employer to complete assessments for minors and adults regarding AODA issues. This tool has a section entitled "Family Information" which asks the minor child's family:

Has child suffered any of the following?

- sexual abuse
- emotional abuse
- verbal abuse
- physical abuse
- neglect
- other trauma
- n/a

(Page 2, Union Exhibit 16)

Under the section "Social Adjustment," the form asks:

Child's sexual orientation:

- heterosexual
- bisexual
- homosexual
- asexual

None of the questions seeking sexual information on this form is addressed to the minor child; all such questions are addressed to family members. Dimas stated that in his initial interviews with clients, he always asks more questions than those listed on Union Exhibit 16 of both minor and adult clients; that he asks all clients, including minors, about their sexual activity and their sexual orientation because this is "standard procedure in AODA." However, Dimas

stated that if a client tells him that he/she is seeing another counselor, Dimas will cease inquiring further regarding sexual relationship issues. Dimas also admitted herein that the State of Wisconsin does not mandate sexual orientation questions to complete its mandated AODA assessments.

After interviewing the client, Dimas then sends the client out to the reception area to fill out the "SASI tool" in the lobby area. Dimas then calls in the family or significant other of the minor/adult client and speaks to them for 20 or 30 minutes, asking them questions using Union Exhibit 16. Dimas stated after his meeting with the family, he brings the client back in and he makes recommendations, receives releases from the family and makes a treatment plan recommendation. 2/ Dimas stated that he does not tell his clients or their families that he cannot decide upon the treatment plan on his own, but he does explain that he is "involved in staffings." Dimas then fills out a copy of Union Exhibit 16. Dimas also stated that at the end of these meetings, he dictates the necessary information for a staffing of the case with Case Manager Lynn Marsh and Dr. Amba, the psychiatrist in charge of County mental health programming. This staffing document includes Dimas' recommendations for a treatment plan for the client.

2/ Dimas stated that he asks the client and family to sign the treatment plan, apparently at the end of the initial meeting with the client and family.

In his AODA position, Dimas also regularly taught Underage Alcohol Education Program classes for persons under 18 years of age who had been referred/mandated by a court or a school to attend. Dimas held these classes one-night per week for four weeks, 2.5 hours per meeting. Dimas usually had 10 students per class. Dimas would require two or three male students per night to submit to a urine test in the bathroom in his presence. A County female employee would conduct urine tests of the female students. When Dimas taught these Underage Drinking classes, he assigned homework to the students and completed all paperwork for these classes, but he was not a counselor or expected to take and maintain file notes on the clients in the classes. Dimas admitted he always tried to make his students feel at ease in class.

Dimas stated that every Tuesday, staffings would be conducted by Dr. Amba regarding his recommendations for AODA client treatment plans, at which time Dr. Amba would ask questions and authorize same. If the client was to be referred outside the County, Dimas was expected to arrange for the referral; if the client was scheduled to see Dimas or another County employee for counseling, Dimas would then schedule an appropriate appointment for the client.

FACTS

Dimas received several disciplinary warnings as well as a suspension prior to his termination on August 16, 2002. The first incident involving Dimas occurred on February 5, 2002. County Health and Human Services Deputy Director LeRoy Dissing (Dissing) received a phone call from Mrs. Loomans, the mother of a young man mandated to take Dimas' Underage Alcohol Education Program beginning in early February, 2002. Mrs. Loomans was upset; she told Dissing that her son felt demeaned by Dimas' treatment of him on February 5, 2002. According to Dissing, Mrs. Loomans described the incident to Dissing as described below in a letter her son sent to Judge McMonigal 3/, as follows:

. . . I went to the first class with Mr. Javier Dimas on February 5th, 2002. He then informed everyone that a urine sample [sic] given. He stood behind me as I tried to give him the sample, but could not as he was standing right behind me. When I explained to him that I couldn't urinate with him standing right behind me, he replied "that he would help me if he could find a tweezers for my small penis." I want to point out that everyone else in the class had their own stall, except for me. He then told me that if I could not urinate, I must be "dirty". I informed Mr. Dimas that I was not dirty, but that I couldn't urinate with someone standing right behind me. He then replied, "Thanks for the \$50, because if you can't piss for me then I won't let you back in my class, and I will have a warrant put out for your arrest". I stayed after class to try to give him a urine sample, but I was still unable to. . . .

I feel Mr. Dimas humiliated me in front of other people with, his sexual comment about my penis. I am hoping that this matter can be taken care of, and there will not be a warrant put out for my arrest. Thank you again for your time.

. . .

In her conversation with Dissing, Mrs. Loomans told Dissing that her son refused to complete the Underage Program until Dissing assigned a different counselor.

3/ Judge McMonigal had ordered Mrs. Loomans' son to attend an Underage Alcohol Education Program as part of a court case against him.

Dissing asked Dimas about this incident. Dimas admitted making the penis comment as alleged and apologized for his remarks. Dissing told Dimas the comment was inappropriate

and he did not expect Dimas to make such comments again. On February 26, 2002, Dissing received a copy of a letter from the Judge (enclosing Loomans' letter) who asked Dissing to respond to Mr. Loomans' complaint. 4/

4/ Neither Mrs. Loomans nor her son testified herein.

On March 4, 2002, Dissing responded to Loomans' written complaint to Judge McMonigal (including Dissing's findings after hearing Dimas' side of the story) as follows:

. . .

In response to the letter you sent to Judge W. M. McMonigal expressing concerns over Mr. Javier Dimas, I did discuss those with Mr. Dimas and found that the remarks he made were inappropriate. I can assure you it will not be repeated. The understanding relayed to me by Mr. Dimas was that you were given at least four opportunities over a 2 and a half hour period to produce a urine sample. You were allowed to use a bathroom stall and there were two other juveniles in the bathroom when Mr. Dimas, in frustration, made the remarks stated in your letter.

Mr. Dimas apologized to your mother over the telephone on February 6th and it was my understanding that you and your mother were going to meet with Mr. Dimas and myself on February 13th to discuss how you were going to meet the educational requirements for the Underage Drinking citation you received. I had discussed with your mother the possibility of her attending the meetings with you that Mr. Dimas was offering. Short of that, I believe we might have discussed other potential possibilities. However, neither you nor your mother appeared for the meeting. Furthermore, it is my understanding that you failed to keep several appointments for community service work.

. . .

Dimas stated herein the following regarding Mrs. Loomans' son's attendance at his February 5, 2002 Underage Alcohol Education Program class:

1. Dimas requested a urine sample from Loomans and another male in the bathroom at the first of two breaks during the class and Loomans could not give a sample at that time. Dimas gave Loomans water to drink.
2. At the second class break, Dimas took Loomans to the bathroom again. No one else was present. Dimas again requested a urine sample of Loomans. Loomans could not urinate. Dimas had Loomans drink more water.

3. Dimas give Loomans a third chance to urinate on February 5th. No one else was present in the bathroom. Still, Loomans could not urinate. Dimas give Loomans more water.
4. At 9:00 p.m. Dimas took Loomans again to the bathroom. Dimas admitted that he made the penis/tweezers statement (quoted above) while he stood behind Loomans. Dimas stated he did so in an effort to motivate Loomans to give a urine sample. Two other males were in the bathroom at the time.
5. On August 3, 2002, Dimas apologized to Loomans for his comment.

On April 11, 2002, Janelle Kahn called Dissing to complain about inappropriate sexual comments Dimas made to her during an initial meeting with Dimas on an Intoxicated Driver Program assessment. 5/ Dissing asked Kahn to put her complaint into writing. On April 12, 2002, Kahn wrote Dissing the following letter:

...

On April 3rd, I had an appointment with Javier Dimas for an AODA individual Assessment. I don't know how this talk or behavior has to do with alcohol assessment. Javier ask [sic] me if I had a boyfriend or if I was married? I answered no! So he ask [sic] if I liked women? No, I said. He told me I did too. That I also was a lesbian. I told him I wasn't. He also told me that my husband left me because I cheated on him and that also wasn't true. Then he asked how I get my knees bent. (How do I get off.) I told him I didn't think it was any of his business. He also commented that I take strays home from the bars. I don't. I finally broke down and told him I've got a friend I can call.

I don't find his behavior appropriate. I'm very disturbed by this. I left his office and went down by Nancy with jobs. She was going to get me a ride to Life Skills where I had an appointment with my counselor. I was asking Nancy about what kind of person Javier was. I went to my counselor. I told her what happened. I sat with her for an hour crying. This man is sick and needs help. I know he's been doing this at least 2 years. And thats to [sic] long. He also said Jerry was going to leave me. Whatever that ment [sic].

...

5/ Dimas admitted herein he had no authority to revoke Kahn's driver's license or otherwise adversely affect Kahn in the processing of her IDP assessment.

Dissing stated that he interviewed Kahn regarding her complaint and that he then spoke to Dimas about it on April 22nd. At this time, Dimas admitted asking Kahn about her sexual orientation as part of her AODA assessment, but he denied making any other statements Kahn

alleged he had made in her complaint. Dissing then decided to investigate Kahn's complaint further. Dissing spoke to Kahn's counselor, Wendy Reha of Life Skills Behavioral Services on May 1, 2002, and he made notes of their conversation. Dissing's notes of his May 1, 2002, conversation with Reha were submitted into the record in this case (Union Exhibit 25). Dissing's notes confirmed Reha's file notes of her April 3, 2002, counseling session with Kahn (County Exhibit 7). Reha's notes indicate that Kahn reported to her that on April 3, Dimas:

1. Asked if Kahn had a man in her life;
2. How she got her _____ _____;
3. Asked if Kahn played with herself or was a lesbian;
4. Called Kahn a drunk and a liar.

Reha also testified herein and confirmed the above statements were made by Kahn to her in a counseling session on April 3, 2002, and that she (Reha) told Dissing that Kahn was very upset and distraught, visibly tearful and crying when she recounted the above to Reha. Reha stated that she had counseled Kahn for approximately five months prior to April 3, 2002; that she (Reha) had not known Kahn to make up stories; and that she believed Kahn's responses to her on April 3rd were true. Reha stated that Kahn's not regularly taking her medication would not have affected Kahn's recall of a contact with Dimas, in Reha's opinion. Reha stated that she did not recall Kahn making a statement to her regarding getting her knees bent or needs met on April 3. Reha also stated herein that during her later counseling sessions with Kahn, Kahn's conversation with Dimas came up because, Reha believed, Dimas' comments were still bothering Kahn. Reha also stated that in her professional opinion, Dimas' comments were unprofessional and inappropriate. 6/

6/ Reha was referring to Dimas' comments 1, 3 and 4 above.

When Dissing issued the discipline to Dimas, he had Reha's file notes (County Exhibit 7), his interview notes and Kahn's letter of complaint (County Exhibit 5) before him. Dissing also interviewed Kahn's employment counselor, Jackie Westover. Dissing's notes of their conversation showed that Westover (who did not testify in this case) refused to comment on Kahn's credibility stating that Kahn had shown poor judgment. Dissing stated herein that Dimas' comments to Kahn were, in his professional opinion, degrading and inappropriate and should not have been made in the context of an AODA assessment. 7/

7/ Dissing is not a certified AODA counselor.

Sometime in March or April, 2002, Mrs. Jeffers called Dissing to complain about Dimas' treatment of her minor daughter, J.V. 8/ Mrs. Jeffers complained to Dissing that her daughter told her that Dimas had made the following statements to J.V. during an AODA assessment and/or during after-care counseling following J.V.'s 21-day residential treatment program: 9/

1. Dimas stated that J.V. was well-developed and attractive for her age;
2. Dimas asked her if she was sexually active, whether she used protection and who were her partners;
3. Dimas stated that J.V. should not settle down with one guy until she reached 18 so that older guys could have a chance with her;
4. Dimas stated that J.V. wanted to have sex with her mother's boyfriend who was a "bad seed;"
5. Dimas offered to take J.V. to an AA meeting and then out for coffee afterward.

8/ Mrs. Jeffers' minor daughter's initials will be used to protect her identity. Both Mrs. Jeffers and J.V. testified herein.

9/ During this time, Dimas saw J.V. 8-10 times (2 times per week for 4 weeks) in March and April, 2002 for after-care following residential treatment.

J.V. confirmed herein that Dimas made the above-listed comments to her during her counseling session with him. J.V. also stated herein that when Dimas asked her out for coffee it made her very uncomfortable because she felt he was asking her for a date. J.V. stated that she told her boyfriend about Dimas' comments and her boyfriend told her that they were not appropriate. J.V. stated that she saw Dimas for one more session after he had asked her to meet him at the AA meeting and go out for coffee. J.V. stated she did not show up for the "date."

J.V. stated that Dimas never used vulgar language with her, never got angry at her (even after she failed to show up for AA/coffee), that he never threatened her and never touched her although he had brushed up against her once. J.V. stated that she thought she had to go to counseling meetings with Dimas because of the supervision she was under for her alcohol and other drug problems. Mrs. Jeffers stated herein she did not believe that Dimas got any releases which would have allowed him to talk to J.V. about her boyfriend, who had been one of Dimas' clients in the past.

After Dissing received the complaints from Mrs. Jeffers, J.V. and Kahn, he spoke to Dimas about them. Dissing told Dimas that the people involved were upset and that Dissing believed the complaints that had been lodged against Dimas. 10/

10/ The record facts do not indicate Dimas' response to Dissing concerning the assertions of Mrs. Jeffers and J.V., however, he testified regarding this incident herein.

Dimas stated herein that during their after-care counseling sessions, J.V. told him she had been sexually abused. Dimas also stated that J.V. discussed her stressors at home, including the conduct of her mother and her mother's boyfriend. Dimas said that although he was required by law to report child abuse, he did not report J.V.'s being sexually abused. Dimas stated that he did not remember discussing J.V.'s mother and her boyfriend with J.V. and that he did not remember if he had releases from the mother and the boyfriend in J.V.'s file. Dimas admitted he asked J.V. to go to an AA meeting with him (intending to introduce her to other women there) but he denied that he asked her to go out for coffee afterward. Dimas denied comments 1, 3 and 4 above. Regarding comment 2 above, Dimas stated he asked J.V. only about her sexual orientation, as was his practice.

Dissing issued the following written reprimand to Dimas on May 21, 2002, 11/:

. . .

Since the beginning of this year, the Department has received two complaints from clients that you have counseled in which you made inappropriate comments towards them. These clients were significantly upset because the comments were viewed as sexually inappropriate. When the first complaint came to my attention, I discussed with you how inappropriate and unprofessional your comment was. You apologized to the individual. However, I had to send a letter to the client with a copy to the Court formally apologizing on behalf of the agency for the comment you made. I provided you with a copy of the letter as well so that you would know how serious this matter was being taken. Nevertheless, I received another in April in which the client alleges you made inappropriate sexual comments to her. I have shared with you her complaint and find no reasonable explanation as to why you made the comments.

This Department **cannot** and **will not** tolerate inappropriate comments being made to clients. As a professional, you should be very aware of what is appropriate vs. inappropriate behavior. Clients come to this agency because they need some kind of assistance. Your conduct in these instances was definitely more detrimental than helpful. Your behavior not only reflects badly on you as an employee but on the agency as a whole. You are being reprimanded for having made inappropriate comments and you will cease from making them in future. If the Department should receive any additional complaints of this nature, you are hereby put on notice that you will at minimum be suspended without pay for three days and/or discharged from employment. Management takes these types of complaints very seriously.

In an effort to prevent this from re-occurring, you are directed: (1) to attend a Boundaries and Ethics training on June 21st, 2002 from 8:30 a.m. to 12:30 p.m. in the basement of the Green Lake County Sheriff's Department; (2) apologize to the client whom you made inappropriate comments to, and (3) review HFS 94 Client Grievance procedures. These tasks should be completed by the end of June. Documentation will be attached to this memo verifying completion.

. . .

On May 31, 2002, Dissing sent Dimas an e-mail which read in relevant part as follows:

. . .

Additionally, you are not to have any involvement with the cases in which I have received client complaints regarding you. This includes discussion of these cases with other workers who might continue to have involvement (Marsh & McGlone). I am also warning you to cease from making statements that could be construed as retaliatory or insubordinate (see examples highlighted below).
12/ Further statements of this nature may result in disciplinary action.

. . .

Dimas filed a grievance contesting the amended May 21, 2002 written reprimand. The County, by Corporation Counsel John B. Selsing, denied the grievance at Step 3 on July 15, 2002, as follows:

. . .

The Green Lake County Personnel Committee denies Mr. Dimas' request to have the reprimand stricken and removed from his record. It was clear that there was an initial client complaint, which Mr. Dimas admitted to and apologized to. This initial complaint alone could have warranted a reprimand based upon the seriousness of Mr. Dimas' conduct. Mr. Dimas is a professional within our Department and needs to conduct himself in that manner at all times. He is working with individuals that come to him with problems and expect to receive some professional help. In addition, client number two's complaint was given initially orally to Mr. Dissing and was later given in writing. This individual gives some very clear and detailed accounts of comments made by Mr. Dimas, which were grossly inappropriate. It was also pointed out that this client saw her counselor immediately after leaving Mr. Dimas, and the counselor's records indicate how upset his client was and made reference to Mr. Dimas' inappropriate comments.

As you are aware, there has now been subsequent complaints from clients regarding comments or actions by Mr. Dimas. The purpose of the reprimand was to point out inappropriate conduct and direct the employee to stop this type of conduct. If Mr. Dimas would have simply accepted the reprimand and altered his conduct, I'm sure that would have taken care of the situation. It appears that Mr. Dimas is not taking the reprimand as intended, which is a warning or wake-up call to alter his conduct.

I also feel an obligation to advise you and Mr. Dimas that this subsequent group of complaints will be dealt with and, if it is felt they are substantiated, will result in additional discipline.

. . .

11/ Dissing had originally issued this written reprimand, including the J.V. incident, but after the Union complained that Dissing failed to investigate Mrs. Jeffers' oral complaint until early June, Dissing withdrew the J.V. incident, rewrote the reprimand and issued it on May 21st, as quoted above.

12/ There were no "examples highlighted below" on the record copy of this e-mail.

The next complaint, dated June 20, 2002, regarding Dimas' work came from the Meyer family and it read in relevant part as follows:

We are writing to file a formal complaint against your employee: Javier [sic] Dimas AODA counselor. Our 15-year old daughter, J.M. 13/, who is currently under the supervision of Lynn marsh [sic], was referred to him for an assement [sic].

On May 20, 2002 our daughter had an appointment with Javier for an assessment. She was called into his office, and after talking to him he sent her out to the waiting room and had us, her parents come in and he told us he was going to have her admitted to Libertas in Green Bay. Has he felt she needed a rehab atmosphere? Before he brought her in he told us he was going to have her admitted to Libertas as he felt she needed a rehab atmosphere.

Before he brought her in his office he told us he did not want us to tell her until about one week before she left because he was afraid she might run. After she came in the first thing he told her was that she was going to be admitted to Libertas, after he had just told us not to tell her.

I believe it was on June 4th or 5th 2002 when he contacted me (her mother) and told me he was setting the admission date for June 10th 2002 to Libertas. We were to have her there at

2 P.M. to do the admittance paperwork.

J.'s dad, Dan is disabled. We also have three other children, two with minor disabilities, and we do not have any type of child care available, so therefore not only did we have to drive to Green Bay, we had to bring along our other three children.

When we arrived we went into the admittance office and within 10 minutes we found out J. was not going to be admitted, because Javier never set up the admittance through our Medical Assistance. We also found out at this time that she would not have been admitted anyway due to the fact that she did not have any previous out-patient treatment for drugs and alcohol.

13/ The minor's initials will be used herein.

Mr. and Mrs. Meyer also characterized Dimas' error as "big" and "crucial," in their letter of complaint and they asked that the County take "some disciplinary action" against him and to reimburse them for gas and their daughter's lost work time caused by Dimas' failure to properly complete the referral to Libertas.

Dimas stated herein that he met with the Meyer family on May 20, 2002, for an initial meeting, at which time he followed his usual procedure for an initial meeting described herein. Dimas stated that at the end of the initial meeting with the family, he recommended that the Meyer daughter enter a 28-day residential program at Libertas located in Green Bay, Wisconsin. Dimas asked Mrs. Meyer what kind of insurance she had and she said Medical Assistance. Dimas then completed the paperwork, got releases and explained that he had to call Libertas to see if a bed was available for the residential program and that the family would get a call from the director of Libertas to confirm the arrangements. Dimas completed the Youth Assessment/Diagnostic Summary form (i.e., Union Exhibit 18) used by the County for the client and submitted this to a staffing with Dr. Ambas and Lynn Marsh on May 31, 2002. Dr. Ambas approved the 28-day residential treatment recommended by Dimas for the Meyer daughter.

Dimas stated that Receptionist Roxanne Haedt filled out the top portion of the treatment plan form, but that he completed the form in his handwriting. On the form (Union Exhibit 20), were sticky notes from Roxanne to Dimas indicating that the form "needs to be filled out in order to get 5/20/02 visit paid" and that Roxanne had given the form back to Dimas on 5/23/02 "to fill out." Also, Dimas admitted that on or about May 28th, he received a memo from Case Worker Lynn Marsh which stated that the Meyers ". . . need MA qualifier of 30 days for payment." 14/ Dimas was responsible to prepare the paperwork and arrange the details of the client's admission to Libertas after approval by Dr. Ambas.

14/ "MA" refers to Medical Assistance.

On June 28, 2002, Dimas received an e-mail from Dissing indicating that there would be a meeting on July 1 to discuss a client complaint which had been filed against Dimas. Dissing did not mention who had filed the complaint in the e-mail. Dimas stated herein that he had a feeling it was the Meyer family who had complained, so he called them at home several times but no one answered. Dimas stated that Mrs. Meyer eventually answered the telephone. Dimas asked if they had filed a complaint against him, and if so, with whom and why. Mrs. Meyer replied that they had filed a complaint with Dissing because their daughter was refused admission to Libertas and they believed it was due to Dimas' failure to properly complete the referral forms; and that they were seeking reimbursement for their mileage to Green Bay for the wasted trip. Dimas asked if the family would attend a staffing on their complaint that he would arrange at Green Lake County at approximately 1:30 p.m. on July 1st. The family agreed. On Saturday, June 29th, Dimas stated that he went then to the Meyer home unannounced to discuss their complaint again and try to get it resolved. The Meyer family let Dimas in and discussed their complaint again with him.

On Monday, July 1, there was a morning staffing among Department employees at which Dimas indicated that the Meyers had filed a complaint against him and that they had agreed to come in for a staffing at 1:30 p.m. that day to discuss it. Dimas also told Dissing that he had gone to the Meyer home on Saturday and that they had agreed to attend the staffing regarding their complaint that day.

Later in the day, Dimas met with Dissing and Linda Van Ness, at which time Dissing stated that he had canceled the meeting with the Meyer family and that he and Van Ness were investigating the Meyer complaint. Dissing then asked Dimas about the referral process, why Dimas had not followed through on the denial of the Meyer daughter's referral. Dimas explained that he had talked to Lynn Marsh and because Marsh was the case manager there was nothing that he could have done about the failure of the referral to go through and that the Meyer's were upset with Marsh for not contacting them.

Mrs. Meyer testified herein that she believed that Dimas had failed to follow through and properly set-up the recommended treatment at Libertas in Green Bay for her daughter; that Libertas told her that Dimas had called them with an admission date and they had received paperwork, but that Dimas had done nothing to get Medical Assistance to approve her daughter's residential treatment at Libertas. Mrs. Meyer stated that she did not hear from Dimas again until he called approximately 3.5 weeks after the incident that led to her complaint. Mrs. Meyer recalled that Dimas asked her if he could come to the Meyer home to talk about their daughter's case. Mrs. Meyer agreed and Dimas visited them that Saturday. Mrs. Meyer stated that her daughter never received the treatment that Dimas recommended and that the County ultimately reimbursed the Meyer family \$38 for gas to Green Bay.

Dissing stated herein that Dimas should have contacted the Medical College of Wisconsin (the insurer for the Meyers) about the Meyer daughter's treatment to determine coverage; that he (Dissing) scheduled a meeting with Dimas regarding a complaint for July 1st,

without identifying the complaining parties; that Dissing then learned that Dimas had called the Meyer family and had gone to the Meyer home on June 29th without authority from the County. Dissing noted that Dimas' job description does not authorize him to make home visits. Dissing admitted, however, that there is no written rule at the County that states that employees cannot visit client homes.

On July 25th, County Child Welfare Supervisor Susan Sleezer called Dissing at home and asked if minor T.P. 15/ was in Dimas' Underage Alcohol Education Class; Sleezer stated that Case Manager Lynn Marsh had told her that on June 28th, she (Marsh) had heard Dimas ask T.P. (Dimas' nephew) if he (T.P.) wanted some "candy" referring to a bowl full of condoms that Dimas kept in his office. Dissing stated that he then called Lynn Marsh to confirm Dimas' actions/statement as reported to him by Sleezer and after having done so, he called the Berlin Police Department to get a copy of a police report which indicated that T.P. had been charged with sexual assault of young females on June 28th, which report indicated that T.P. admitted he had gotten the condoms from his uncle, Javier Dimas.

15/ The initials of the minor are being used herein.

Dissing stated that although there was no County Policy against counseling a relative, in this opinion, it is not appropriate professional practice to do so. Dissing also stated that there was no professional reason for Dimas to give condoms to his clients; that these are available through the County Health unit Nurses' office which requires some health education regarding condoms prior to distributing them.

Dissing stated herein that on July 30th, he and Dr. Amba counseled Dimas about giving out condoms to his nephew. Dimas showed Dissing where he kept the bowl of condoms in his office. Dimas stated that he had gotten the condoms from Planned Parenthood in Milwaukee and that he had distributed condoms at his prior employer. Dissing and Dr. Amba stated that they both told Dimas to remove the condoms from his office, and that Dimas' distribution of condoms was inappropriate. (Dimas stated that only Dissing, not Dr. Amba, told him to remove the condoms from his office.)

Dimas stated that he did not think there was a conflict of interest in his teaching his nephew's Underage Alcohol Education classes; that the County had no policy against keeping and/or distributing condoms. Dimas stated that when T.P. was in his office, Dimas noticed T.P. staring at the bowl of condoms on his bookcase. Dimas asked T.P. if he wanted some condoms but T.P. said no. Dimas denied herein he ever gave his nephew condoms.

On July 3, 2002, two days after his meeting with Department Director Van Ness and Dissing regarding the Meyer complaint, Dimas stated that he called Jody Halfon at the Medical College of Wisconsin (MCWI). Dimas stated herein that he called to inquire regarding the

proper protocol for getting a residential treatment facility referral approved under MCWI insurance. In his conversation with Halfon, Dimas indicated that he had received a complaint from clients who had been refused a referral to residential treatment by MCWI; Dimas asked that the Medical College put in writing the real reason for the denial of the referral (which he believed was because MCWI believed that the Meyer daughter did not need services). According to Dimas, Halfon stated that she needed a copy of the client complaint and she would be happy to put in writing the reason for the denial of the referral.

On July 23, 2002, Dissing issued the following written reprimand and one-day suspension notice to Dimas:

. . .

On Wednesday, June 26th, 2002 I received a client complaint regarding what the parents' felt was your lack of follow through on their daughter's admission to an inpatient treatment facility in Green Bay on June 4th. The fact that their daughter had the type of insurance that required pre-authorization and that this was not gotten prior to June 4th (and it in all likelihood would not have been approved by the insurance company anyways) resulted in their daughter not being admitted. Nevertheless, the family (parents and all three children) made the trip to Green Bay when they did not have to. They and their daughter were inconvenienced in a number of ways. They are requesting reimbursement for their expenses.

In reviewing their complaint, discussing it with them, their child welfare case manager (Lynn Marsh), the outpatient clinical supervisor (Jim Hill) at the treatment facility in Green Bay, Roxanne Haedt (our Account Clerk), a review of the daughter's chart and discussion with you, the following facts come to light:

- 1) Lynn Marsh referred the adolescent female to you for an alcohol and drug assessment in May 2002
- 2) You performed the alcohol and drug assessment on May 20th, 2002 recommending residential treatment
- 3) On May 25th, 2002, you signed an insurance form indicating you had done an assessment. This was to bill the insurance company for the assessment. That form indicated that the Medical College of Wisconsin (MCW) covered the client, which is an HMO for Medicaid.
- 4) You arranged for admission to the residential treatment facility for your client by discussing the admission with Jim Hill, faxing up to them your assessment and other paperwork. You told Mr. Hill that the family was on Medical Assistance but not on an HMO.
- 5) You told the family that their daughter was ready for admission on June 4th, 2002.

- 6) After you learned from Lynn Marsh that the facility did not admit her, you called Mr. Hill and he informed you of the reasons for denying the admission.
- 7) Lynn Marsh told you that the family was unhappy with how you had setup the admission and that they did not feel their daughter probably warranted inpatient treatment.
- 8) I informed you on Friday, June 28th that I had a client grievance that I wanted to discuss with you on Monday, July 1st at 1:30 p.m. I did not provide you with the name of the client.
- 9) You did not contact the family until June 28th, 2002 at 6 p.m. by telephone to discuss with them their concerns. You setup a meeting for Monday, July 1st at 2 p.m. to try to resolve their complaints. You told them the meeting would involve Lynn Marsh and his [sic] supervisor (LeRoy Dissing), neither of which was consulted regarding this. In fact, Ms. Marsh was on vacation July 1st.
- 10) You went to the client's home on Saturday, June 29th, unannounced after calling them three times unsuccessfully, because you wanted to discuss with them their complaints before Monday.

I deliberately did not provide you the name of the client on June 28th so that I could discuss with you in detail the client's complaint on July 1st. I did not want you contacting the client, as this is not the process for handling client complaints. This process was given to you and your union representative in May and I again gave you another copy July 1st. While you accept little culpability in these issues, you did state it was your responsibility to ensure that admission to the facility was in order, including getting the approval for funding. I realize that you may not have known about their particular HMO for Medicaid, but I expected that you would have found out about it prior to them making the trip to Green Bay, especially since you signed an insurance form (stating who the HMO was) for reimbursement of the assessment you did.

I find it inappropriate that you waited until June 28th to finally contact the family regarding their displeasure over the failed admission to the Green Bay facility. I think it more than coincidental that you waited until June 28th to contact the family, the very day I told you I had a client complaint. I would have expected that since you had recommended residential treatment, arranged for it and then to not follow up with the family when it failed is a gross disservice to the client. You stated yesterday that you felt the client still needed treatment but then waited to follow up nearly three weeks after you knew she was not accepted into residential treatment. This is not acceptable.

Furthermore, to go to the client's home unannounced on a Saturday without any approval was inappropriate. Your work hours have been repeatedly told to you: 8 am. to 4:30 p.m. Monday thru Fridays with the exception of Tuesdays. You

may claim this was your own time, but you were representing the agency in a case where the client brought a complaint against you. Your involvement could have been viewed as retaliatory and intimidating. This was inappropriate and should not have occurred. You have been told before in other client complaints to stay away from the clients and their caseworkers until there is resolution. Nevertheless, you took it upon yourself to attempt to resolve what was a formal complaint.

This is the fifth client complaint received this year regarding your performance in working with individuals/families. You have been warned and reprimanded regarding inappropriate statements made toward clients. This latest complaint continues to illustrate the need to act appropriately in providing services and follow through with clients, especially in a timely manner. I am suspending you for not following up with this client in an appropriate time (nearly four weeks after the client was denied admission) and manner (meeting with the family unannounced on a Saturday at their home). You will serve a one day unpaid suspension on Wednesday, July 24th. When you return we will discuss a corrective action plan that you will be required to complete that will address not only the above but also other performance issues. Further instances involving substantiated client complaints will result in progressive discipline to include additional suspension or dismissal.

Dimas grieved this reprimand/suspension. Dimas stated that he never received a copy of the Meyer complaint from the County and therefore, on or about July 23, 2002, Dimas sent Halfon the following letter:

. . .

As per our phone conversation on 07/03/2002 and today here is the complaint by the patient as a result I was suspended from my work for one day. I truly believe that the referral was done to the best of my abilities and overlooked you as the gatekeepers.

Initially I had inquired on the referral process; Dx, authorization for this diagnosis as parents and staff at Libertas had stated that they were questioning the referral due to history, per parent's information to this writer on 06/29/2002. Writer went to client's residence this day to inquire because I have been in a lot of scrutiny for political reasons and wanted to get to the core issue of the complaint. This is what parents had told me.

I did contact the Libertas Tx. Program on 07/01/2002 and spoke to the intake person of Libertas LINDA ALTMAN and followed a phone call to you on 07/03/2002. At that time and after speaking with Lynn Marsh of this agency it

appeared that the chief complaint was the referral process; Dx. And appropriateness, and lack of communication on our end to these parents and client.

Now, it has turned into a different complaint as you will review my reprimand and suspension dated 07/23/2002.

Please respond to my earlier complaint [sic] only of appropriate referral and meeting criteria as well your denial due "they don't do their own assessments", "treatment of dual diagnosis" and client having a treatment history for mental health issues, which would contradict what case manager Lynn Marsh and parents statements.

I know your response would really support my initial inquiry on 07/03/2002. Please call me before you may fax a report on this, as I would like to keep this confidential.

. . .

Dimas stated that Halfon never sent him anything regarding the proper protocol and never responded to his letter.

Dissing stated that on or about August 12, he received a call from Jody Halfon of MCWI, the gatekeeper for individuals covered by the Medical Assistance HMO of the Medical College. Halfon stated that Dimas had called her on July 3rd to discuss protocol, asked if she had received a complaint regarding the Meyer referral and requested a copy of same. Halfon told Dissing that she felt that she was being set up or placed in the middle by Dimas. Halfon stated that on or about July 29th, Dimas called her again and then he faxed his letter (quoted above) and a copy of the reprimand/one-day suspension he received from the County also quoted above. Halfon told Dissing she did not believe it was appropriate for Dimas to share his reprimand/suspension with outside agencies. Dissing indicated that Dimas' contact of Halfon had neither been authorized nor did the County have any knowledge of it.

On that same day, August 12, Halfon sent the following letter to Dimas and copied Dissing as well as other members of the County management team:

. . .

This letter serves as formal notification that the Medical College of Wisconsin-Behavioral Health Services (MCW-BHS) is terminating the contractual provider agreement with you, without cause, as provided for under Section 2.02 of the MCW Provider Agreement.

This termination will become effective 90 days after your receipt of this notice or on November 12, 2002. All of the obligations set forth in the Provider Agreement will continue in effect until completion of this time period.

Any services that you are currently delivering to our members will continue to be authorized and reimbursed based on medical necessity and the terms of our Contractual Agreement during this 90 (ninety) day transition period.

If a member requires care beyond the transition period, please call or have the member phone one of our case managers prior to discharge so an alternative referral can be arranged or you may provide us with a list of those individuals requiring on-going care and we will follow-up directly with them to coordinate services.

We appreciate your assistance and continued care of our members during this transition period. If you have any questions or concerns you may contact me directly at 456-5859. Thank you for the services you have provided and best wishes in your future endeavors.

...

On August 9, 2002, Dissing sent the following Step 1 response to Dimas' grievance regarding his reprimand and one-day suspension:

...

This grievance is being denied because progressive discipline has been followed in response to a series of client complaints received by this agency regarding Mr. Dimas' inappropriate statements/actions. The following is a summary of client complaints and the action taken:

<u>Date of Client Complaint</u>	<u>Complaint</u>	<u>Action</u>
February 6, 2002	Inappropriate Statements	Handled Informally/Warned
April 2, 2002	Unprofessional Comments	Discussed with Mr. Dimas
April 11, 2002	Unprofessional Comments	Reprimand
April 15, 2002	Inappropriate Comments	Pending
June 6, 2002 16/	Inappropriate Follow up	Suspension (1 day unpaid)

I am willing to discuss in more detail the nature of each of the complaints above. His suspension was for lack of follow through with a client he had recommended inpatient treatment for and also the manner in which he did

attempt to resolve the complaint. This is outlined in the suspension letter he received. If you need a copy, please let me know. Given the nature and number of complaints received regarding Mr. Dimas, it is my opinion that the suspension given to him was an appropriate level of discipline and was progressive.

...

16/ This date should read July 6, 2002.

On August 12, Dissing discussed Halfon's call with Department Director Linda Van Ness and they pulled all contracts that the County had with the Medical College of Wisconsin, finding that there were five Department employees who had provider agreements with this HMO. Thereafter, Dimas came to Dissing and asked for the Medical College of Wisconsin provider agreement. Dissing asked Dimas why MCWI had canceled his (Dimas) provider agreement. Dimas told Dissing that he did not know why he had received the letter from Halfon terminating his services and that he was trying to call Halfon but he could not reach her. 17/

17/ It should be noted that the contract between the County and Medical College of Wisconsin allowed the Medical College to terminate services with the County or any of its employees without cause.

Halfon testified telephonically herein, but refused to answer questions regarding why the Medical College had terminated Dimas' provider contract with the Medical College. Rather, Halfon submitted a January 7, 2003, affidavit regarding the Medical College's termination of its contract with Dimas:

...

Jody Halfon, being first duly sworn on oath, deposes and says as follows:

1. I am the program Coordinator III for the Psychiatry department of the Medical College of Wisconsin. I make this Affidavit based on such personal knowledge.

2. On or about July 29, 2002, I spoke with Mr. Javier Dimas via telephone. In this conversation, Mr. Dimas requested the Medical College of Wisconsin's assistance in drafting a letter to his employer on his behalf. Mr. Dimas followed up our conversation with an updated letter sent to me. On this date, Mr. Dimas also sent me a copy of his reprimand/suspension dated July 23, 2002.

3. I did not ask for nor did I seek a copy of this July 23rd reprimand/suspension. I believed his sharing of this document with me was inappropriate.

4. On or about August 9, 2002, I had a telephone conversation with Mr. LeRoy Dissing concerning Mr. Dimas. In this conversation, I indicated that Mr. Dimas had contacted me and asked for my assistance. I had also told Mr. Dissing that Mr. Dimas had shared his reprimand/suspension letter with me.

5. On or about August 12, 2002, I sent a notice of termination letter dated August 12, 2002 to Javier Dimas at Green Lake County Department of Health and Human Services. This letter terminated his participation in the Medical College of Wisconsin's Behavioral Health Services network effective November 12, 2002 or within 90 days of his receipt of that letter.

6. After November 12, 2002, Mr. Dimas was no longer authorized to receive patient referrals or to provide health care services to Medical College patients. As a result of this termination, Green Lake County would no longer being [sic] able to receive reimbursement from the Medical College for Mr. Dimas' health care services after November 12, 2002

. . .

Halfon stated herein that in her opinion, it was inappropriate for Dimas to share with her his personal issues with Green Lake County, that no provider had ever shared such information with her before and that she felt uncomfortable with Dimas' sharing his personal information with her. However, Halfon stated that this was not part of the basis for the termination of the contract with Dimas — as the contract between the Medical College and providers such as Dimas requires no reason for termination and Halfon gave none.

Dissing stated herein that Halfon notified him on August 12, that the Medical College would be terminating the provider agreement with Dimas because she felt that Dimas had problems that extended beyond protocol; that he had shown poor judgment and a lack of discretion and that the Medical College would be terminating his provider agreement without cause.

The County requested a meeting on August 16, 2002, with Dimas and his Union Representatives. This meeting was conducted by Attorney James Macy on behalf of the County. There is great dispute regarding what was said and by whom at this meeting. The Union submitted a CD of a portion of this meeting that Dimas had taped without permission. This CD was admitted into this record over objection of the County based upon an in-depth brief submitted by the Union to show that under Wisconsin law it was not grounds to refuse to admit evidence that a tape was made without the permission of all parties being taped so long as the tape was made by a person present in the room (Dimas).

In regard to the CD, the Arbitrator listened several times to the CD submitted into the record here and found its quality extremely poor, such that a great deal of the commentary on the tape (mostly Mr. Macy's statements) could not be heard no matter the volume of the CD player. In addition, it is undisputed that Mr. Dimas only taped a portion of the August 16th meeting, the initial approximately 30 minutes, yet the meeting lasted for approximately an hour or longer. Based on the above, I find that the tape is neither a complete nor reliable recording of what was said on August 16th. Rather, I have relied for the most part upon the parties' testimony regarding the content of the August 16th meeting.

Attorney Macy testified herein that he stated the purpose of the meeting was to get Dimas' side of the story regarding recent incidents the County was investigating that arose after the prior disciplinary actions were issued against Dimas. Macy stated he asked Dimas about his failure to earn B.A. and M.A. degrees, that he asked Dimas about the Medical College referral for the Meyer daughter and about Dimas' contact with the Medical College and the Meyer family after the Meyer family complained. Macy stated that Dimas responded to some of his questions and then began to read a prepared statement. Macy then requested responses to his questions, wishing Dimas to cease reading from his prepared statement. Dimas then asked where the meeting was going. Dimas stated that he needed to know, that he was not going to answer anymore questions, he wanted his Miranda Rights and his attorney. Macy responded that this was not a criminal investigation and that Dimas had his Union Representatives present to assist him. Dimas reasserted that he wanted to speak to his attorney. The parties then took a break in order for Dimas to contact Mr. Theodore Mazza, Dimas' attorney. The call was placed to Dimas' attorney who was not present at his firm and Mr. Mazza's partner stated on speaker phone that he was uncomfortable trying to counsel Dimas regarding what he should do at the August 16th interview because he was unaware of all the issues.

Both Macy and Union Representative Bartel stated that Macy told Dimas during the interview that this was Dimas' opportunity to answer questions regarding inappropriate statements allegedly made by him. At approximately this point, the tape Dimas had running ceased to function so that there is no recording of the following exchanges between the parties.
18/

18/ The description herein is based upon a compilation of Macy and Union Representative Bartel's as well as Dimas and Dissing's testimony on these matters.

Macy stated the County had questions regarding liability, specifically concerning Dimas' distribution of condoms and the treatment of his nephew, as well as teaching the nephew's Underage Alcohol Education class and then contacting the nephew to try to get him to change his story, to state that he had not received condoms from Dimas used in a sexual

assault. Dimas refused to answer these questions. Dimas also refused to answer questions regarding the Meyer complaint and his visit to the family at their home. Macy stated again that this was Dimas' chance to tell his story. Dimas stated that he had something else to do. Macy said this was important and that the County may have to make a decision without getting Dimas' answers. Dimas responded that that was fine and he left the room. 19/

19/ Dimas stated that Macy never asked him about the incidents with Kahn, J.V., his nephew and the condoms or the Loomans incident.

Union Representative Barry Bartel stated that he was previously aware of the Kahn, Loomans, and J.V. incidents as of July 23, and he knew that Dimas had been orally warned and received two written reprimands before he received a one-day suspension on July 23. Bartel admitted being told by County managers that there were additional complaints which had occurred from May to July 23rd. Bartel also stated that Dissing had talked to him about the situation with Dimas' nephew prior to August 16th. On August 16th, Bartel stated that Macy listed all of the incidents concerning Dimas and the County's deliberations after Dimas refused to answer and left the room.

Dissing stated that on June 30, he went over everything with Dimas (after their meeting with Dr. Ambas) regarding his nephew, the condoms and the allegation that Dimas had asked the nephew to change his statement to the police that he (T.P) had gotten the condoms from his Uncle Dimas. Dissing also stated that the meeting on August 16th centered around the Medical College of Wisconsin situation and the Meyer complaint, as well as Dimas' education but that Macy brought up other issues including those surrounding Dimas' nephew and that Dimas refused to answer questions thereon. Dissing stated that the meeting centered on the incidents that led to the one-day suspension for the most part and not so much regarding prior disciplinary actions and that the meeting also concerned more recent incidents not previously acted upon by the County.

Macy confirmed that after Dimas left and County Representatives had spoken with Dimas' Union Representatives, the County discussed the matter in separate caucus and decided to terminate Dimas. After August 16th, Macy attempted to settle the matter with Dimas' attorney, Mazza, so that the termination letter did not issue until August 20, 2002. That letter read as follows:

. . .

This letter is to confirm that Green Lake County has determined to terminate your employment with the Green Lake County Department of Health & Human Services effective Friday, August 16, 2002. This decision follows our investigation regarding several significant performance matters, and follows prior progressive discipline in attempts to cure your performance deficiencies.

The reasons for this termination include the following:

1. You have inappropriately attempted to have one of our Department's providers, Medical College of Wisconsin - Behavioral Health Services, intervene into your confidential personnel matters at the County. By your letter of July 29, 2002, on County letterhead, you unilaterally shared your confidential personnel discipline with this provider, noting you "... have been in a lot of scrutiny for political reasons...", and sought this provider's assistance to defend your discipline. Such unilateral communication to an outside provider has jeopardized the Department's standing with this provider.

2. As a follow-up to your unilateral communication with the Medical College of Wisconsin - Behavioral Health Services, this provider has given you formal notice to terminate its provider agreement with you. This means that you will no longer be eligible to receive any client referrals from this provider. Maintaining provider eligibility is an important qualification for our counselors since it directly impacts our ability to fund our services. In addition, we do not believe you were honest with the County when asked about this provider's decision to terminate its agreement with you. You purposely failed to disclose your inappropriate unilateral communication with this provider directly preceding your removal.

3. You unilaterally engaged in an inappropriate counseling arrangement with a minor representing a significant conflict of interest. As you acknowledged, as part of your employment with this Department, you elected to counsel a sixteen year old minor regarding underage drinking of alcohol, without disclosing that this minor was your nephew. It is simply not appropriate to counsel a family member, a matter well understood in the profession, this Department and as a matter of common sense.

4. In the course of counseling your nephew, you engaged in an inappropriate discussion of his sex life, and made condoms available to him from your office. Following the receipt of condoms from your office during your counseling session with this sixteen year old, this minor engaged in sex with a thirteen year old resulting in his arrest for sexual assault. Your conduct was well beyond the scope of your employment to counsel regarding alcohol matters and has placed the County in a position of potential liability. Your conduct is in gross disregard for the County's interests.

5. Following the providing of condoms to this minor, you were told by this Department not to have contact with this minor. You have violated that directive by contacting this minor on at least two occasions. In addition, you have inappropriately threatened this minor by attempting to have him change his story as to where he received the condoms. Again, your conduct is in gross disregard for the County's interests.

6. You have failed to correct your conduct despite past progressive discipline. As you know, you have received significant progressive discipline in attempts to correct your performance, which has included:

A. In February, 2002, you received a reprimand for commenting to a minor, male client during the course of an alcohol test regarding the use of a tweezers to find his small penis; alleging that the minor's urine must be "dirty", since he was having trouble urinating; and threatening this minor with an arrest. This matter generated a client complaint, and Court intervention resulting in apology from this Department.

B. In April, 2002, you were reprimanded for again speaking inappropriately to a client. In the course of counseling a minor, female client, you asked about her sex life and further commented to the minor about this minor's mother, and the mother's personal life.

C. In April, 2002, you were reprimanded for again speaking inappropriately to a female client being counseled for an alcohol assessment. You asked her if she liked women, and if she was a lesbian. You asked her if her husband left her because she cheated on him. You asked her if she took strays home from the bar and how she gets her knees bent, a perceived sexual reference. Despite past progressive discipline, you continued these inappropriate personal references to clients, well beyond the scope of your duties as an alcohol counselor.

D. In July, 2002, you received a one day disciplinary suspension for your failure to make proper arrangements for a minor client's admission for inpatient treatment. Your failure to make proper arrangements resulted in this client and her family traveling unnecessarily to Green Bay without the ability to be admitted to the recommended facility. Following your inappropriate handling of the admission process, you failed to follow-up with this family in any way, until they filed a complaint against you with the agency. In addition, once the family filed a complaint, you inappropriately went unannounced to their residence on a Saturday, a visit which is totally inappropriate under the circumstances.

For the reasons noted herein, you have seriously jeopardized the public's confidence in our agency and have acted well beyond the scope of your employment, despite past warnings to you. We are left with no alternative but to terminate your employment

Dr. Felipe Ambas, the consulting psychiatrist who oversees and reviews all Green Lake Health and Human Services cases and approves all treatment plans, also testified herein telephonically. Dr. Ambas stated that he initially could not believe that County clients would complain about Dimas as they did but when more complaints were lodged about Dimas' work, Dr. Ambas implied he began to suspect problems. Regarding the issuance of condoms, Dr. Ambas thought it inappropriate for Dimas to distribute condoms given the scope of his job description and the setting of his work as an AODA counselor of young people. Dr. Ambas stated that he never consented to Dimas' distributing condoms or to Dimas' inquiring regarding clients' sexual activity. 20/ Dr. Ambas stated he agreed with the County's decision to terminate Dimas — that he had reviewed the complaints from Kahn, Loomans and Mrs. Jeffers as well as the facts concerning Dimas' distribution of condoms to his nephew, T.P., and he (Dr. Ambas) concluded that the County could be liable for damages if more complaints were received regarding Dimas' work at the County.

20/ Dimas admitted herein he is not qualified to ask questions about his clients' sexual relationships and that Dr. Ambas never told him to ask those questions.

In addition, Dr. Ambas stated he believed it was not within Dimas' job description to talk to clients about their sexual activities. Dr. Ambas stated that questions about childhood sexual abuse are not relevant for an AODA assessment; that only if Dimas was expected to do an in-depth assessment of a minor following court intervention and the parents had stated they were concerned about sexual promiscuity, would questions on the topic of sexuality with a minor be appropriate. Dr. Ambas stated that he told Dimas to remove the condoms from his office. Dr. Ambas stated that if he had known Dimas was distributing condoms, he would never have allowed it. Dr. Ambas stated that Dimas never told him that he was asking clients about their sex lives during AODA assessments.

The Union called a witness, William R. Olcott, to give evidence regarding what types of questions are appropriate in AODA assessments, based on his education and his teaching experience as well as Olcott's certifications. 21/ Olcott's testimony herein was mixed. Although Olcott stated that it is common to ask young adults and adults questions about their sexuality during AODA assessments, this must be done carefully and the counselor must set up a counselor/client relationship before venturing into the area of sexuality. Olcott stated that it is not normal to get into these issues in a first session with a client.

21/ The County submitted evidence to show that Olcott's vita misstated his education. In fact, Olcott never received a BS degree in Sociology from Indiana University and he never received a MA degree in Community Psychology from UW-Green Bay. The fact that Olcott apparently lied on his resume is significant to this Arbitrator. This fact significantly detracts from Olcott's credibility. (Union Exhibit 7 and County Exhibits 20 and 21)

Olcott stated it is common for counselors to have a bowl of condoms in their offices and to make them available to clients, though in his opinion, this would not be relevant to an AODA assessment. Olcott stated that it is not unethical according to the codes of conduct applicable to AODA counselors for AODA counselors to perform AODA assessments of their own family members, especially in rural areas where there may be no other counselor to make the assessment. However, Olcott stated that assessing a family member is a concern because there is a prior relationship between the counselor and the client.

Regarding the alleged penis/tweezers statement, the statement regarding J.V. being well-developed, and the “knees bent” statement, Olcott stated that the first comment was neither normal nor appropriate in a professional setting, the second comment was not typical and the third comment was extreme. Olcott stated that he would not ask a client to go out for coffee but that this is not a violation of the counselors’ code of ethics. Olcott stated that it might be appropriate for a counselor ask a client if she had cheated on her husband or was a lesbian but that he would not start out by asking about sex with a client. Olcott stated that he did not know under what circumstances a counselor would ask a minor if they wanted to sleep with their mother’s boyfriend.

POSITIONS OF THE PARTIES

The parties agreed to submit their post-hearing summary briefs postmarked to the Arbitrator on March 21, 2003, which the Arbitrator would then exchange for the parties. The Union’s brief was timely received. However, the County’s brief was not received in a timely fashion due to an emergency illness of County Corporation Counsel Seling and his office’s failure to timely mail the County’s brief herein. On April 24, the Arbitrator received a letter of explanation from County Counsel and on May 2, 2003, Union Counsel advised in writing that it agreed that the County’s brief could be considered herein despite its untimely receipt.

The County

The County urged that the discipline and discharge of Dimas was based on timely and progressive discipline and supported by sufficient misconduct by the Dimas which included client complaints and failure to set up in-patient treatment properly as well as inappropriate communications with an MCWI employee. The County summarized the evidence as follows. The County noted that the LeRoy Dissing testified to all of the complaints made against Dimas, that he (Dissing) investigated them and determined the action to be taken thereon. The County contended that the testimony of private citizens as well as the documentary evidence supported its conclusions that Dimas engaged in inappropriate conduct regarding the Loomans incident. In this regard, the County noted that Dimas admitted making inappropriate comments about the penis of the client during a urine sample test and that Dimas later apologized therefor.

In addition, the County observed that regarding the Kahn incident, Dimas' comments and questions about Kahn's private sexual life in a first session for an IDP assessment were entirely inappropriate. In addition, the testimony of J.V. and Mrs. Jeffers regarding comments made to the minor client, J.V., regarding her sexual activity and relationships were completely inappropriate for the age of the client as well as the counseling situation. In addition, the County argued that Dimas had breached confidentiality by discussing J.V.'s mother's boyfriend's case and J.V.'s mother without getting proper releases. Finally, the County asserted that it was totally inappropriate for Dimas to ask J.V. out for coffee given his counselor relationship with her. On this point, the County noted that Dimas did not testify herein concerning the incidents surrounding J.V.

Concerning the Meyer family complaint, the County urged that Dimas' contact of the Meyer family after they had filed a complaint went specifically against Dissing's prior instruction to Dimas not to contact clients when a complaint had been lodged. The County also noted that the Meyer's were quite upset that their daughter had not been accepted in the Libertas residential treatment program recommended by Dimas and they sought reimbursement for their gas to Green Bay and their trouble. In addition, the County argued that Dimas made inappropriate comments to Jody Halfon of MCWI, seeking her assistance in dealing with his (Dimas') suspension and causing the Medical College to terminate Dimas' provider contract with MCWI.

Finally, the County noted that Dimas' counseling of his nephew (T.P.) and distributing condoms to his nephew were entirely inappropriate and had subjected the County to potential liability. All of these incidents, the County urged, Dissing fully investigated and considered before he issued progressive discipline to Dimas. The County noted that the testimony of J.V., Mrs. Jeffers, Janelle Kahn and Mrs. Meyer was disinterested and should be credited.

In addition, the County urged that the testimony of Attorney James Macy also supported the County's case and the conclusion that Dimas was suspended and terminated for just cause. In this regard, the County noted that on three occasions, Macy asked Dimas to explain his conduct regarding the Medical College, the Meyer family and to discuss a pattern of sexual comments Dimas had made to his clients. Macy also mentioned County liability and told Dimas that he was going to recommend that he (Dimas) be terminated. In these circumstances, the County urged that Dimas had been given a full opportunity to respond to the charges against him on August 16, yet he had refused to do so without fault by the County.

The County noted that Dimas' Union Representatives were present on August 16th and that a member of his attorney's law firm was made available to him by telephone on August 16th. In addition, the County noted that Union Representative Bartel's testimony supported the County's case. In this regard, the County noted that Bartel confirmed Macy's testimony in many respects and that everyone present on August 16th was aware of the prior misconduct that Dimas had engaged in and that the August 16th meeting was intended to discuss Dimas' recent conduct. Bartel confirmed that Macy stated to Dimas several times during the

August 16th meeting that this was Dimas' opportunity to give his side of the story and respond to the complaints. Bartel also stated that Macy discussed progressive discipline at the August 16th meeting and that Dimas refused to answer questions. Bartel stated that he believed the T.P. incident was discussed when Dimas had already left the room, but that Bartel and his supervisor, Mr. Kane, were present for the discussions with the County regarding T.P.

The County also noted that Wendy Reha confirmed Janelle Kahn's emotional condition the day that Dimas made the sexual comments to her, as Reha had a counseling session with Kahn shortly after Kahn's session with Dimas. The County further observed that the documents of record supported its case, pointing specifically to the letters regarding the Loomans matter from Mr. Loomans as well as Judge McMonigal, the notes of Wendy Reha, the written complaints from Kahn and the Meyer family, as well as Dimas' letter to MCWI and MCWI's letter terminating Dimas' provider agreement.

In addition, the testimony of William Olcott, the County urged, should be found incredible due to his having lied about his educational credentials in his testimony herein. In any event, the County noted that Olcott admitted that counseling regarding sexual-related issues must be done with great sensitivity and that breaches of confidentiality with clients are strictly forbidden. In regard to Dimas' testimony herein, the County urged that Dimas had essentially made blanket denials of the conduct he was alleged to have engaged in, except for the statements to Loomans. In addition, Dimas admitted herein that he was not qualified to counsel clients on sexual relationships and yet he admitted asking clients about their sexual lives. The Union offered no explanation why Kahn, Jeffers, J.V. and Mrs. Meyers would lie about their contacts with Dimas. Finally, the County noted that Dimas' CD of the August 16th meeting was incomplete and was made without the consent of the parties in the room at that meeting.

The County contended that Dimas' discharge was consistent with prior cases of discharge in the County, placed in the record herein. The County asserted that Dissing, Macy and Dr. Amba's testimony confirmed that the County had just cause to suspend and discharge Dimas. In regard to Dr. Amba's testimony, the County noted that Dr. Amba stated that he had never given Dimas permission to discuss sexual issues with his clients and that Dr. Amba had never given Dimas permission to distribute condoms and that Dr. Amba told Dimas to stop it upon discovering that Dimas was distributing these. The County cited two cases but did not attach these to its briefs, MENASHA BOARD OF EDUCATION AND MENASHA TEACHERS UNION LOCAL 1166, GRIEVANCE NO. W-1-98-99 and OSHKOSH TRUCK CORPORATION AND UAW LOCAL 578, GRIEVANCE NO. 97-1-35. 22/

22/ The numbers given by the County do not identify the cases sufficiently for the Arbitrator to find them. Therefore, the Arbitrator has not considered these cases in reaching her Award.

The Union

The Union argued that the County should not be allowed to rely on any prior misconduct involving Dimas because such misconduct was not mentioned at the August 16th termination meeting. The Union contended that Dissing's testimony should be discounted as he contradicted himself on several points and that Macy's testimony should also be discounted as it was sketchy at best and his notes do not contain a list of complainants' names discussed on August 16th. As Macy gave nothing to the Union or Dimas at the end of the August 16th meeting, the County should not be allowed to argue now that all of the incidents regarding Dimas are linked together because they show he exercised poor judgment.

In contrast, the Union argued that Dimas and Bartel's testimony was more consistent and should be credited herein. In this regard, the Union noted that Bartel stated that the questions that Dimas refused to answer had nothing to do with T.P., Kahn or other incidents involving complainants. Rather, those questions Dimas refused to answer had to do with the MCWI issues only.

Thus, the Union urged that the County lacked just cause to suspend Dimas for one-day and that the County had failed to conduct a proper investigation thereon, which denied Dimas due process. The Union asserted that Dimas was essentially given a one-day suspension by mistake; that Dissing issued the suspension because Dimas went to the Meyer home unannounced on a Saturday. However, the Union argued that the evidence showed that the Meyer's had caller ID so they knew that Dimas was calling them on Friday, June 28th and that Dimas had permission to enter the Meyer home on Saturday, June 29th. The Union noted that Mrs. Meyer's admitted that Dimas had been to her home before his visit on the Saturday prior to July 1. Thus, the Union urged that Dimas' conduct could not have been intimidating or retaliatory as the County alleged. In addition, the Union noted that the County never told Dimas not to go to a client's home and that there was no County policy against it. Furthermore, the Union noted that Lynn Marsh was not disciplined for her part leading up to the Meyer complaint.

Regarding Dimas' contact of Halfon at MCWI, the Union contended that the County offered no justification for the termination of Dimas on this basis. In this regard, the Union observed that MCWI did not give any reason for terminating Dimas' provider agreement; that Halfon in her testimony herein did not confirm Dissing's assertions in his testimony that MCWI terminated Dimas' provider contract with MCWI because Dimas had had contact with Halfon; and there was no evidence submitted to show that any financial impact was felt by the County due to the termination of Dimas' provider contract with MCWI.

Regarding the T.P. incident, the Union observed that this was one of the allegations of misconduct raised by the County to which the Union had objected herein. The Union urged the Arbitrator to disregard the evidence regarding T.P. because the County offered no direct evidence to support its allegations that Dimas gave condoms to T.P. Rather, the County's

evidence consisted of hearsay, double-hearsay and even triple-hearsay on this point. In addition, the Union noted that there is no County rule extant against counselors counseling their relatives and Dissing admitted that there is nothing in the Code of Ethics against it. Furthermore, there is no County policy or rule against Dimas' distributing condoms or maintaining a bowl of condoms in his office.

Regarding the Loomans incident, the Union noted it objected to this evidence at hearing as it was unrelated to the one-day suspension and termination of Dimas. The Union noted in this regard that Dissing never talked to the client, but only to his mother. The Union noted that Dissing took this approach repeatedly regarding complaints against Dimas and the Union felt that this approach was procedurally unfair to Dimas.

In regard to the Kahn incident, the Union noted it also objected to the admission of this evidence as it was unrelated to the one-day suspension and/or termination of Dimas. Regarding the Kahn incident, the Union again noted that Dissing decided to discipline Dimas before he heard Dimas' explanation, because Dissing simply believed Kahn. However, after he met with Dimas, Dissing decided to investigate the case further and spoke with Westover, who indicated that Kahn was untrustworthy and Westover refused to comment on Kahn's actions. Dissing also interviewed Nancy Meyer who told Dissing that when she drove Kahn to her appointment with Reha, Kahn said nothing to her about her previous session with Dimas. Reha's notes of her interview with Kahn failed to show that Kahn was upset, crying or had broken down during her session as Kahn claimed in her testimony herein. The Union also noted that the Reha's notes indicated that Kahn often blames others for her own problems, has a bad memory and does not regularly take her medications which affects her memory, her ability to concentrate, and causes mood swings. Furthermore, Dissing's notes of his conversation with Reha cast further doubt on Kahn's testimony. As Dimas denied all of the allegations Kahn made against him, the Union urged that this complaint should be disregarded herein.

Regarding the J.V. incident, the Union noted that it again objected to this evidence as not being relevant to either the one-day suspension or termination actions against Dimas. Regarding this incident, the Union argued that the County failed to prove that Dimas had engaged in any misconduct. Here, the Union noted that J.V.'s testimony was not detailed, that Mrs. Jeffers did not hear the complaint from her daughter but rather from her daughter's boyfriend so that Mrs. Jeffers had no direct knowledge of the complaint. The Union noted that Dimas denied all of J.V.'s allegations against him except telling J.V. about an Alcoholics Anonymous meeting that she should attend. The Union noted that J.V. stated that Dimas never touched her with his hands, that he was not threatening or angry and that he was always polite during the 8-10 sessions Dimas had with J.V. The Union argued that Dissing talked to Mrs. Jeffers and not J.V. until after Dissing had decided to issue discipline to Dimas, thus denying Dimas due process. The Union asserted that J.V. had many problems and that Union Exhibit 24 indicated that sexually transmitted diseases should be inquired about in AODA assessments because of the vulnerable state of many of the clients who require such assessments. The Union noted that the County offered no evidence to contradict this.

In general, the Union described Dimas' approach to AODA assessments and stated that Dimas had been trained to ask about sexual relationships and that he had done so for three years at the County without any problems prior to the complaints filed against him. The Union noted that neither Dissing nor Reha have any AODA training or experience but that the Union's witness, William Olcott, is an expert in AODA and his testimony was largely uncontradicted in the record and should be found credible. Specifically, the Union noted that Olcott stated that he generally asks about sexual relationships in a first AODA meeting and that he has condoms in his office although he has never distributed them.

In regard to prior disciplinary cases submitted in the record (Union Exhibits 26-28), the Union noted that the County has never discharged another employee for failing to properly process a referral as they did with Dimas. In addition, all of the employees involved in the prior disciplinary actions were allowed to resign in lieu of being terminated, unlike Dimas. In two cases (Union Exhibit 26 and 27), one employee was found guilty by the County of stealing client property (Union Exhibit 27) and another of making sexually explicit statements to clients (Union Exhibit 26). The Union noted that these employees were given corrective action plans by the County before further action was taken against them while Dimas was not.

The Union urged that Dimas had an exemplary employment record with the County and that the County was "out to get Dimas all along" since he refused to admit misconduct he did not in fact engage in. As the conduct Dimas engaged in was less serious than that engaged in by other employees, the Union urged that the Arbitrator should sustain the grievance and reinstate Dimas with full back pay and benefits.

DISCUSSION

The effective County Policy, Section 16, Employee Discipline, indicates that "incompetence" . . . (A), "willful misconduct or insubordination" (G) and "discourteous, insulting, abusive or inflammatory conduct toward the public . . ." (I), can be grounds for disciplinary action. The County's Policy at Section B, also states that normally progressive discipline will be applied, that is, verbal, then written warnings will be given before a three-day suspension is issued, followed by termination. The Policy states that ". . . depending upon the severity of the offense, the action chosen by management may involve immediate application of one or more of the progressive steps including immediate discharge if warranted."

This case involves two separate disciplinary actions against Javier Dimas, his one-day suspension on July 23, 2002, and his termination on August 20, 2002. I will deal with Dimas' one-day suspension first. In determining whether Dimas' suspension was appropriate, it is necessary to look at the discipline Dimas received prior to July 23, 2002.

On February 6, 2002, Dimas was verbally counseled by Deputy Department Director LeRoy Dissing against making inappropriate comments to clients. This counseling took place as a result of Mrs. Loomans' call to Dissing to complain about Dimas' treatment of and comments to her son regarding the size of her son's penis at her son's Underage Alcohol Education Class on February 5, 2002. Dimas admitted to Dissing during the counseling that he made the statements alleged regarding Loomans' penis during the class. Dissing told Dimas his comments to Loomans were inappropriate and Dissing warned Dimas not to engage in such comments in the future. 23/ In addition, Dissing copied Dimas on a March 4, 2002, response to Loomans written complaint to Judge McMonigal regarding the incident. In this letter, Dissing wrote, *inter alia*, that he had discussed Loomans' written complaint with Dimas, that Dimas had admitted making the comments, that Dissing found the comments were "inappropriate" and that Dissing assured Loomans such comments "will not be repeated." Dissing also apologized for Dimas' remarks on behalf of the County. 24/

23/ Given Dimas' admission to Dissing during the counseling session, a more in-depth investigation of the Loomans complaint was unnecessary in my view.

24/ Dimas did not grieve his verbal counseling regarding the Loomans' incident.

It is significant that Dimas has consistently admitted making the comments alleged by Loomans and his mother. Therefore, the fact that neither Mrs. Loomans nor her son testified herein is not grounds to disregard the evidence concerning this complaint. In addition, the remarks admittedly made by Dimas to Loomans are telling of Dimas' character, personality and proclivities, in the Arbitrator's view. Loomans was a young man (18 years old) court-ordered to attend an Underage Alcohol Education Class taught by Dimas, as part of Loomans' punishment for engaging in unlawful activities. 25/

25/ Loomans' court-ordered punishment also included 30 hours of community service.

Dimas' comments to such a client in the presence of other clients were sexual, demeaning and threatening. There can be no reasonable or logical excuse for Dimas' treatment of Loomans on February 5, 2002, even assuming Loomans was on drugs at the time as Dimas stated herein. Even extreme frustration with Loomans' inability to produce a urine sample on February 5th should not have caused Dimas to make the statements he made to Loomans that evening. Dimas was not Loomans' counselor on February 5th. Rather, Dimas was simply the teacher of an Underage Alcohol Education Class. Clearly, Dimas could have notified authorities of Loomans' failure to give a urine sample on February 5th and Dimas' observation

of Loomans' physical condition that evening, rather than making the statements that he made to Loomans. There is no evidence in this record that Dimas either considered or took either of these steps regarding Loomans' inability to produce a urine sample on February 5th.

On April 11, 2002, Dissing received another complaint from client Janelle Kahn in which Kahn complained about comments Dimas made to her on April 3, 2002, during her initial meeting with Dimas to have an Intoxicated Driver Assessment as ordered by the Court. It is significant that the IDP assessment form (Union Exhibit 15) does not contain any reference to sexual orientation or relationships.

Dissing requested that Kahn put her complaint into writing and Kahn did so dated April 12, 2002. Kahn also testified herein to the specific comments that Dimas made to her on April 3rd. Kahn stated herein that the comments Dimas made to her greatly upset her, made her angry and made her cry. Kahn's Life Skills Counselor, Wendy Reha, confirmed in her testimony herein that Kahn was very upset and visibly tearful at their session on April 3rd, which took place shortly after Kahn had met with Dimas; that Kahn was truly upset and honest in her comments to Reha about what Dimas had said to her that day; and that Reha had not known Kahn to be untruthful since beginning counseling with Reha in December, 2001. Kahn and Reha stated herein that they did not believe Kahn's inconsistency in taking her prescribed medications would affect her memory of Dimas' comments on April 3rd. Reha did not recall herein that Kahn recounted to her the alleged "knees bent" comment at their counseling session on April 3rd, but Reha's counseling notes and Dissing's notes of his conversation with Reha support Kahn's testimony in all other respects.

In these circumstances and despite Dimas' denial, I credit Kahn. I found Kahn to be an honest and straight-forward witness whose testimony and allegations were largely corroborated by Reha and Dissing. 26/ In addition, the Union failed to prove that Kahn had an ax to grind against Dimas. Therefore, I find Dimas made inappropriate comments to Kahn as she alleged on April 3rd. In addition, I credit Kahn when she stated herein that Dimas asked her how she got her knees bent. Kahn recounted this comment to Dissing in her telephone conversation with him and then wrote this comment into her written complaint and she testified thereon herein. Also, Dimas' admission that he made inappropriate sexual comments to Loomans tends to support a conclusion that he would make inappropriate sexual comments to Kahn.

26/ I note that the Union did not call Jackie Westover, who may have given testimony in support of Dimas.

Dimas asserted herein that HFS 75, Wis. Admin. Code requires that he ask questions about clients' sexual activities and sexual orientation. I disagree. The document submitted by the Union in support of Dimas' testimony on this point (Union Exhibit 24) indicates that

“AODA outpatient treatment services are required to conduct a risk assessment for sexually transmitted diseases (STD’s), human immuno deficiency virus (HIV), hepatitis B and C, and tuberculosis (TB). The evaluation/assessment must be conducted by the AODA outpatient treatment service and may include onsite testing, performed by trained medical personal. Those patients testing positive must be referred to the local public health agency for appropriate follow up.” Nowhere in Union Exhibit 24 does it state that an AODA counselor must ask clients about their sexual relationships.

The Union asserted herein that it was normal and accepted professional practice for AODA counselors to ask their clients about their sexual orientation at AODA assessments. The record is varied regarding this assertion. However, the type of sexual comments made by Dimas to Kahn go far beyond a simple inquiry into her sexual orientation (as he asserted herein). Dimas’ use of confrontational, vulgar and accusatory language — that Kahn was a lesbian, that she played with herself, that her husband left her because she cheated on him, that she took strays home bars — are certainly not the kinds of comments that would put an AODA client at ease during an assessment. Given the fact that IDP assessments do not require an in-depth counseling session by the AODA counselor doing the assessment, Dimas’ comments to Kahn cannot be explained away on that basis. 27/ In the Arbitrator’s view, Dissing did a full and fair investigation of Kahn’s complaint and found that Dimas had made the offensive comments (based largely on Dissing’s belief in Kahn’s veracity). I find that the evidence herein fully supported Dissing’s conclusions and that the County had just cause to issue Dimas the May 21, 2002, written reprimand.

27/ The State of Wisconsin does not require AODA counselors to ask sexual orientation questions at IDP assessments.

In his written reprimand, Dissing made clear that any future inappropriate comments would draw a suspension, that Dimas would have to attend Boundaries and Ethics Training and that he must apologize to Kahn and review the client grievance procedures (mandated by Wis. Stats. Sec. 51.61(1) and HFS 94, Wis. Admin. Code). It is undisputed that Dimas took these actions required by his written reprimand.

I note that the County’s client grievance procedure has been summarized in a pamphlet by the County (County Exhibit 18), lists “Client Rights”:

...

PERSONAL RIGHTS

- You must be treated with dignity and respect, free from any verbal, physical, emotional or sexual abuse.

...

GREIVANCE PROCEDURE AND RIGHT OF ACCESS TO COURTS

- Before treatment is begun, the service provider must inform you of your rights and how to use the grievance process. A copy of the Program's Grievance Procedure is available upon request.
- If you feel your rights have been violated, you may file a grievance.
- You may not be threatened or penalized in any way for presenting your concerns informally by talking with staff, or formally by file a grievance.

...

It is significant that Dimas handed out this pamphlet to clients in every case he handled for the County. Based on Dimas' prior work in the area of AODA as well as his County employment and the County's requirement that he review the above procedures, it must be presumed that Dimas was aware of client rights regarding counseling and treatment by County employees.

The next allegations herein concerns J.V. Although these allegations were investigated by Dissing to some extent and they were apparently included in the original written reprimand issued to Dimas along with the Kahn complaint, the J.V. allegations were not included in the May 21, 2002, reprimand apparently due to a Union objection that J.V.'s complaint had not been investigated fully and fairly before the discipline issued. It is significant that no discipline was every issued by the County regarding Dimas' treatment of J.V.; and that these allegations were not used as part of the reason of Dimas' suspension. I note, however, that some of the allegations against Dimas regarding J.V. were listed in Item 6 of Dimas' discharge letter at section B. In my view, this use of the J.V. evidence was inappropriate as Dimas had never been reprimanded regarding the allegations of J.V. and her mother based upon the record in this case. The Arbitrator has therefore not considered these allegations in reaching this Award.

The final incidents which lead to Dimas' termination involved a complaint by the Meyer family, Dimas' response thereto and Dimas' counseling his nephew and offering him condoms. Dimas interviewed the Meyer's daughter on May 20, 2002, and he filled out forms for her to be admitted to a 28-day residential treatment program at Libertas in Green Bay, Wisconsin, on June 4, 2002.

It is clear on this record that it was Dimas' responsibility to arrange for and draft the paperwork for the Meyer's daughter's admission to Libertas, following a staffing and approval by Dr. Amba. This conclusion is based upon the insurance document (Union Exhibit 20), Dissing's testimony and Dimas' admissions. Also, Dimas stated herein that he received Union Exhibit 19 on or about May 28, 2002, from Lynn Marsh, which stated that the Meyer's "need MA (Medical Assistance) qualifier for 30 days for payment." Dimas' description of his work

and the requirement of drafting the paperwork for his clients makes clear that he was indeed responsible for the Meyer's daughter's admission papers to Libertas. Therefore, Dimas' failure to make sure that the Meyer daughter would gain admission to Libertas on June 4, 2002, as planned was Dimas' error.

In regard to Dimas' contact of the Meyer family, I note that Dimas admitted calling the Meyers on Friday, June 28, on the same day that Dissing e-mailed Dimas that another complaint had been received on which a meeting would be held July 1, 2002. Dimas stated that although Dissing did not identify the complainant(s), he felt that complaint had to have come from the Meyer's and Dimas decided to call them. Dimas called the Meyer's several times but no one answered the telephone. Finally, Mrs. Meyer answered and spoke with Dimas. Mrs. Meyer answered Dimas' questions, admitting that she had filed a complaint against Dimas with Dissing due to the failure of the referral for her daughter to Libertas. On Saturday, June 29th, Dimas stated that he went to the Meyer home unannounced because he was concerned about his conversation with Mrs. Meyer and he wanted to get their complaint resolved.

In my view, at this point, Dimas should have discontinued his contact with the Meyer family based on Dissing's May 31, 2002, e-mail warning Dimas "not to have any involvement with cases" in which the County had received a complaint and that Dimas should "cease making statements that could be construed as retaliatory or insubordinate." Dimas also clearly disregarded Dissing's warnings by appearing at the Meyer home, unannounced (as he admitted) on Saturday, June 29th and speaking to the Meyers about their complaint against him. The fact that Mrs. Meyer invited Dimas into her home on June 29th and agreed to speak to him, does not detract from Dimas' insubordination in ignoring Dissing's e-mail warnings.

In addition, looking objectively at Dimas' unannounced visit to the Meyer home, it would be difficult to believe that the Meyer's were not at least somewhat intimidated thereby. The fact that Dimas convinced the Meyer family to attend a staffing he intended to arrange at Green Lake County on July 1, to discuss their complaint, indicates at the very least that the Meyer family was interested in placating Dimas. Such a staffing with the complainants present was neither contemplated nor required by the County's grievance process for clients (Union Exhibit 18). In these circumstances, I believe the County's decision to discipline Dimas for his having pursued contact with the Meyer family after Dissing warned him not to do so, justified his being disciplined by the County. 28/ It is undisputed that the Meyer family was inconvenienced by Dimas' failure to follow through to get Medical Assistance to pay for their daughter's treatment, that Dimas never called or contacted the Meyer family until after they had filed their complaint and that the Meyer daughter never received the treatment recommended by Dimas and Dr. Ambas.

28/ The broad language of Dissing's warning in his e-mail to Dimas supports this conclusion.

Thus, the one-day suspension which Dimas received for not following up with the client in an appropriate time after denial of admission to Libertas and for contacting and then meeting with the Meyer family at their home on a Saturday after Dimas had been told not be involved with cases after a complaint had been filed, was based on just cause and is sustained herein.

The evidence in this case is extremely thin regarding the allegations concerning T.P., Dimas' nephew. I note that neither T.P., County employee Sleezer nor the involved Police Officers were called as witnesses regarding the allegations on this point. In addition, the County did not attempt to submit the Police Report regarding T.P.'s alleged arrest. The only evidence the County submitted on the T.P. allegations was the testimony of LeRoy Dissing. Dimas was the only witness on behalf of the Union that spoke to these issues.

It is significant that the County submitted no evidence to show that Dimas had received any training regarding the distribution of condoms nor did the County provide any policy to show that its AODA Counselors had been told not to distribute condoms. In addition, Dimas never received a prior warning regarding the distribution of condoms at the County. Indeed, Dimas stated that in his prior job he had distributed condoms without incident.

Although I find that LeRoy Dissing was a very credible witness, this type of allegation against an employee is so serious that the employer has a burden to prove such allegations by more than hearsay evidence of the direct line supervisor. Given the fact that Dimas stated that he had distributed condoms in his prior work, I find that the distribution of condoms is not the type of activity that Dimas would know was prohibited by the County without the County having properly notified him of same. In short, there simply is insufficient evidence on this record to show that T.P. received condoms from his Uncle Dimas which T.P. used in an alleged sexual assault. 29/

29/ I note that after June 30th when Dr. Amba and Dissing counseled Dimas that it was inappropriate for Dimas to distribute condoms and that he should remove the condoms from his office, Dimas removed the condoms and there is no evidence that Dimas violated the directive of Dr. Amba and Mr. Dissing thereafter.

Furthermore, it is clear that the County does not have a policy or rule against counselors counseling or teaching their family members. In addition, the evidence on this record failed to demonstrate that such a rule is universally applied. 30/ Based on the evidence regarding this point, the County failed to prove that Dimas engaged in inappropriate conduct for which he had been previously warned or upon which there was a County policy. Finally, as stated above, there was insufficient evidence to support the allegations stated in paragraphs 4 and 5 of the August 20, 2002, termination letter. Those allegations have not been considered herein.

30/ It is the Arbitrator's view that Dimas should not have been involved in assessing his nephew's alcohol and other drug problems as there might have been an appearance of impropriety in his recommendations regarding such an assessment. However, the fact that Dimas taught T.P.'s Underage Alcohol Education Program does not necessarily mean that an appearance of impropriety would arise therefrom.

In regard to paragraph 1 and 2 of the termination letter, I note that Dimas admitted herein contacting MCWI's Jody Halfon and sending her a copy of his suspension letter. Halfon stated herein that Dimas shared personal issues with her concerning the denial of the Meyer daughter's 28-day treatment program by MCWI which Halfon stated was inappropriate and made her feel uncomfortable. Halfon also stated that no one in Dimas' position had ever shared such issues with her before in her position at MCWI.

Although Halfon's testimony did not demonstrate that she felt intimidated by Dimas' contact or his letter and enclosure, the fact that Dimas sent Halfon (a third party) a letter soliciting her support and enclosing his personal disciplinary document, certainly ran afoul of Dissing's May 31st e-mail warning Dimas not to have any involvement in cases in which the County had received a complaint, that is, the Meyer complaint. Dissing's May 31st warning should have at least caused Dimas to inquire whether contacting Halfon by letter and enclosing his suspension would be appropriate. Dimas did not do this. Dimas' request that Halfon keep their contract confidential also tends to support a conclusion that he knew the County would not have approved of his soliciting Halfon's assistance as he did. Thus, Dimas' contact of Halfon and his letter to her enclosing his suspension violated Dissing's prior e-mail warning and supports a conclusion that the County had just cause to discipline Dimas for these actions.

MCWI's decision to terminate its contract with Dimas and Dimas' failure to disclose his contacts with Halfon prior to MCWI's termination of his provider agreement with them were further bases for the County's decision to discharge Dimas. On the latter point, I note that Dimas admitted to Dissing that he called Halfon on July 3, 2002, and that thereafter but prior to July 23, 2002, Dimas did not speak to Dissing about any contact he had had with MCWI. Indeed, it was not until the investigatory/termination meeting held by Attorney Macy on behalf of the County on August 16, 2002, that Dimas admitted he had sent MCWI a copy of his suspension notice. When Macy asked whether he had released internal information to the outside, Dimas stated that he responded with a question, asking Macy where the meeting was going and Dimas stated that he then refused to answer anymore questions, requested his Miranda rights and asked for his attorney.

Thus, it is clear that even though Dimas had contacted Halfon previously, even at his suspension meeting on July 23, 2002, he did not indicate to the County that he had contacted Halfon. In fact, Dimas admitted herein that on July 23rd he wrote his letter to Halfon enclosing his suspension notice. In these circumstances, it is clear that Dimas did not keep the County

abreast of his contacts with MCWI regarding the Meyer complaint and that therefore, the County's assertions that Dimas had failed to disclose his contacts prior to his termination meeting were justified. Again, Dimas' pursuit of his contacts with MCWI and Halfon through the month of July violated the directive Dissing gave him in the May 31st e-mail.

Very little evidence was submitted regarding the affect of MCWI's cancellation of its contract with Dimas. The County provided no evidence to show that it had suffered any monetary loss due to the cancellation of that contract. In addition, the cancellation letter from Halfon did not indicate any reason for that cancellation, as the contract between MCWI and the County did not require cause to be stated for termination. However, Halfon's testimony indicated she was uncomfortable when Dimas contacted her and submitted his personal employment document to her, stating that such activity was inappropriate and unique in her experience. It is also clear that Dimas had never dealt with MCWI before he submitted the documents regarding the Meyer daughter's 28-day treatment program. As such, it is difficult to believe that there was any reason other than how Dimas dealt with the Meyer referral and the aftermath thereof, for MCWI's termination of its contract with Dimas. Therefore, the County's conclusion that it was Dimas' conduct which caused MCWI to terminate its contract with him was a reasonable conclusion for the County to reach based on the facts that the County possessed in mid-August, 2002.

The Union has put forth several arguments which go to the question whether Dimas was given due process during the processing of the disciplinary actions regarding his suspension and termination. In this regard, the Union urged that Dimas was disciplined for several different types of misconduct and therefore, progressive discipline was not applied because each type varied from the other. I disagree. The type of misconduct engaged in by Dimas essentially involved his inability to properly deal with his cases and his clients and they could reasonably be considered together in the scheme of progressive discipline which the County applied herein.

The Union contended that the August 16th meeting conducted by Attorney James Macy demonstrated that Dimas was never notified of the charges against him for which he was to be terminated and the County failed to properly investigate several of the more recent charges against Dimas because the County never heard Dimas' side of the story. The Union urged that the County thereby violated Dimas' right to due process. In addition, the Union contended that the Arbitrator must determine credibility based on a comparison of the testimony regarding what occurred during the August 16th meeting and the tape which was submitted by the Union, made surreptitiously by Dimas.

In regard to the latter point, I find that there is no reason why I must determine credibility regarding what occurred at the August 16th meeting. This is so because even assuming that Dimas' version of that meeting was entirely true and correct, Dimas was not denied due process in the meeting.

On this point, I note that Dimas admitted on August 16th, Union Rep. Bartel stated that other issues were understood and that the focus of the meeting on August 16th would be on the most recent acts as alleged by the County. Bartel also stated that during the August 16th meeting, Attorney Macy stated three times to Dimas that the meeting would be Dimas' opportunity to give the County information and to speak on his own behalf. Bartel stated that when Macy tried to discuss progressive discipline with Dimas and asked about prior misconduct and that Macy also told Dimas that they were going to decide his case on August 16th and that nonetheless, Dimas refused to answer questions and left the room. Bartel stated that Macy specifically told Dimas that he (Macy) would recommend immediate termination if Dimas did not take this opportunity to speak on his own behalf.

Dimas admitted herein that at the point that Macy asked him if he had released internal information to the outside, Dimas asked Macy where this (the meeting) was going and that he refused to answer any more questions. Dimas stated he requested his Miranda right and asked for his attorney. Dimas stated that Macy told him that this was not a criminal proceeding and that Miranda rights were not appropriate, but it was at this point that Macy took a break so that Dimas could try to get his attorney on the speaker phone so that Dimas could be represented by his personal attorney during the August 16th meeting. Finally, when Macy stated that he would recommend immediate termination, Dimas admitted that he told Macy he should do what he had to do and Dimas left the room.

This factual scenario demonstrates that Dimas refused to answer questions during the investigatory phase of the meeting and after having been warned several times that he would be terminated if he did not speak on his own behalf, Dimas decided not to speak, to refuse to answer questions and to leave the meeting. Therefore, it was Dimas who terminated the meeting and refused to give the County information he may have had which might have caused the County to rethink its determination to impose the discharge penalty. However, absent Dimas' answering questions and cooperating, the County was free to determine that the information it had was correct and that it could proceed to discipline Dimas based on the evidence before it.

The Union urged that the County failed to timely send Dimas its discharge letter with reasons for his termination. I disagree. It is clear based on this evidence that Mr. Macy and Dimas' attorney attempted to settle the discharge prior to Macy's issuance of the termination letter and that Macy did so out of deference to Dimas' attorney. 31/ Obviously, no settlement occurred and the discharge letter was in fact appropriately issued on August 20, 2002.

31/ There is absolutely no evidence in this record to contradict Mr. Macy on this point.

Finally, there were other cases of prior discipline submitted into the record in this case (Union Exhibit 26-28). In each of the three cases of past discipline submitted herein, each employee was allowed to resign under a written agreement with the County rather than be terminated for their misconduct. That misconduct ranged from personal use of the County long distance phone system in the amount of several hundred dollars while on work time at the County (Union Exhibit 28) and misuse of sick leave in order to attend a cruise; to the alleged theft of a client's personal property, insubordination and entering a client's home after being warned not to do so without a supervisor present (Union Exhibit 27) to use of sexually explicit and obscene language causing discomfort to a student worker as well as to a client (Union Exhibit 26).

In regard to the offensive language case, the Union noted herein that the subject employee had been given a corrective action plan and had been allowed to resign rather than be terminated and that Dr. Amba had separately investigated the allegations of sexual comments made to a client. Here, Dimas was never offered a corrective action plan or allowed to resign and Dr. Amba had not investigated. In regard to the corrective action plan (CAP), Dissing explained that no such plan was created for Dimas because too many incidents happened to quickly for the County to have created such a plan. In regard to the allegation that Dr. Amba should have personally investigated the allegations that Dimas used sexually explicit language to clients, in the prior case, the client had been suicidal and mentally disturbed and that this was the reason (according to Dissing) that the County decided it would be appropriate for Dr. Amba (a psychiatrist) to investigate the allegations against the other employee. None of the clients who alleged that Dimas made sexually explicit comments to them had such a medical history and therefore it was reasonable for the County to proceed as it did in this case.

In all the circumstances of this case, 32/ the evidence demonstrated that Dimas committed the misconduct as analyzed and listed herein and that these were sufficient to support his termination. 33/ Therefore, I issue the following

32/ Although the Union asserted in its brief that the County was "out to get" Dimas, it failed to submit any evidence to support this assertion.

The Union attached 20 cases for consideration herein: 5 awards of this Arbitrator, 7 awards of other W.E.R.C. arbitrators, 7 awards of Ad Hoc arbitrators and a Supreme Court decision regarding a Wisconsin Personnel Commission decision. I have reviewed all of these cases. Each case turned upon its specific facts including, for example, the number and type of allegations made against the grievant, the credibility of witnesses and the specific language of the contract.

33/ I have not considered prior tardiness warnings against Dimas (County Exhibit 23 and 24) nor have I considered his warning for his adjusting his own work schedule without permission (County Exhibit 25) in reaching my decision herein because these misconducts are of a different type and level than those for which Dimas was suspended and discharged.

AWARD

Green Lake County, Department of Health and Human Services did not violate the labor agreement when it disciplined Grievant Javier Dimas on July 23, 2002, by issuing him a one-day suspension. Green Lake County, Department of Health and Human Services did not violate the labor agreement when it terminated Dimas on or about August 16, 2002. Therefore, the grievances are denied and dismissed in their entirety.

Dated in Oshkosh, Wisconsin, this 4th day of September, 2003.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator