

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2223, AFSCME, AFL-CIO**

and

**EAU CLAIRE COUNTY**

Case 212

No. 63273

MA-12534

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**Appearances:**

**Steve Day**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

**Keith Zehms**, Corporation Counsel, Eau Claire County, appearing on behalf of the County.

**WRITTEN CONFIRMATION OF BENCH AWARD**

The Union and Employer named above are parties to a 2003-2004 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested the Wisconsin Employment Relations Commission to appoint the undersigned as the arbitrator to hear the grievance of Deb Svik. A hearing was held on April 6, 2004, in Eau Claire, Wisconsin. At the conclusion of the hearing, the parties argued their case and the Arbitrator issued a bench decision, denying the grievance. This document is a confirmation of that bench decision.

The parties stipulated that the issue was whether there was just cause for the Employer on November 10, 2003, to issue the Grievant a written warning and an unsatisfactory "special performance evaluation" for her breach of confidentiality on October 23, 2003. The parties stipulated that the Arbitrator could not separate the warning and performance evaluation.

The parties also stipulated to all relevant facts. The Grievant, Deb Svik, is a certified social worker who began her employment with Eau Claire County as a social worker on June 16, 1999, in an LTE capacity. She became a permanent social worker on June 1, 2000. She received training regarding confidentiality and ethics. All her performance

evaluations before October 23, 2003, were satisfactory. Due to supervisory concerns in her June 25, 2003 performance evaluation, a plan for corrective action was put in place. On September 18, 2003, the Grievant received an oral warning for not meeting the plan's objectives, and on October 2, 2003, a new plan for corrective action was agreed to. On October 23, 2003, the Grievant broke client confidentiality and reported it to her supervisors. As a result, on November 10, 2003, she was given a written warning and an unsatisfactory "special performance evaluation."

The Grievant believed the breach of confidentiality to be necessary to protect an infant child. One of her clients had a young child of about four to five years of age with violent tendencies. The client called the Grievant between 9:00 and 10:00 a.m. on October 23, 2003, and said she was dropping off her child with her sister, who had a four-week old baby. The Grievant asked for the sister's phone number but the client refused to give it to her. The Grievant felt that some action needed to be taken so that the sister could watch for behavior that might endanger her own baby. About 1:30 that afternoon, the Grievant met with another client who was a cousin to the first client. She asked the cousin for the sister's phone number, which was a breach of confidentiality. Later, she reported the breach to both her supervisor and to another supervisor. Under the code of ethics for social workers, social workers are to protect the confidentiality of all information except to prevent serious, foreseeable and imminent harm to another person.

The Arbitrator hesitates to second-guess a professional decision such as this. The fact that someone may later deem the breach to be unnecessary should not always result in discipline or it would have a chilling effect on professional work. However, of great importance is *this case* is the gap of time between the conversation that led to the concern for the infant and the breach of confidentiality itself. If the standard for the exception to the general rule of confidentiality is that the breach of confidentiality is necessary to prevent serious, foreseeable and imminent harm to another, then it would appear in *this case* that the breach must occur in a fairly quick manner. This is because the Grievant believed that the child with violent tendencies was in the home of the infant by 9:00 a.m. but the breach of confidentiality did not occur until several hours later.

The Arbitrator believed that the Grievant had legitimate concerns, that she recognized that her conduct breached confidentiality, and that she properly reported it, all to her credit. However, the Grievant was under scrutiny at the time for performance, and given the lapse of some hours, she should have consulted with supervisors or peers before breaching confidentiality, which is described as the cornerstone of social work. This is a fairly minor infraction and was met with an appropriately low level of discipline. Accordingly, the grievance was denied.

**AWARD**

The grievance is denied.

Dated at Elkhorn, Wisconsin, this 15<sup>th</sup> day of April, 2004.

Karen J. Mawhinney /s/

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Karen J. Mawhinney, Arbitrator