BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OZAUKEE COUNTY

and

OZAUKEE COUNTY LASATA CARE CENTER EMPLOYEES LOCAL 905, LABOR ASSOCIATION OF WISCONSIN, INC.

Case 61
No. 62739
MA-12424

Appearances:

Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South Arlington Street, Appleton, Wisconsin, and **Benjamin M. Barth**, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin, appearing on behalf of the Union.

John R. Kuhnmuench, Jr., Human Recourses Director, Ozaukee County, 121 West Main Street, Port Washington, Wisconsin, appearing on behalf of the County.

ARBITRATION AWARD

Ozaukee County, hereinafter referred to as the County, and Ozaukee County Lasata Care Center Employees, Local 905, Labor Association of Wisconsin, Inc., hereinafter referred to as the Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the discharge of an employee. Hearing on the matter was held in Cedarburg, Wisconsin on March 15, 2004. A stenographic transcript of the proceedings was prepared and received by the Arbitrator on March 24, 2004. Post-hearing written arguments were received by the Arbitrator by April 27, 2004. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties agreed on the following issue:

“Did the County have just cause to terminate the grievant on June 13, 2003?”

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

. . .

ARTICLE IV – MANAGEMENT RIGHTS

Section 4.01 – Management Rights: The Employer reserves and retains solely and exclusively all of its common law, statutory and inherent rights to manage its own affairs. Such rights include, but are not limited to, the following:

A) To determine the business practices of the County, and the Lasata Care Center, including the purchase and utilization of equipment;

B) To manage and direct the work force;

C) To make job assignments;

D) To determine the size and composition of the work force;

E) To train or retrain employees;

F) To determine and schedule the work to be performed by the work force;

G) To determine the competence and qualifications of employees;

H) To establish and revise job descriptions;

I) To establish the manner and method of selection of new employees;

J) To determine the methods, means and personnel, and the location where by which the operations of the County and the Lasata Care Center are to be conducted;

K) To take the necessary action in situations of emergency;

L) To hire, promote and transfer employees;

M) To lay off employees;

N) To suspend, demote, discipline or discharge employees for just cause;

O) To schedule and assign overtime;

P) To make promotions and assignments to non-bargaining unit supervisory positions;

Q) To create new positions or departments; to introduce new or improved operations and work practices, to terminate or modify existing positions, departments, operations or work practices, and to consolidate existing positions, departments, or operations;

R) To issue and amend reasonable work rules, provided the Employer shall first furnish each employee with a copy of same.

. . .

ARTICLE VII – DISCIPLINE AND RESIGNATION

Section 7.01 – Just Cause Definition: No employee who has completed his or her initial probationary period, as provided in Section 5.01, will be suspended, demoted, disciplined, or discharged except for just cause. Any discipline of an employee shall be reduced to writing and a copy shall be given to the employee, the local Association president and a copy shall be sent to the Labor Association of Wisconsin.

. . .

PERTINENT WORK RULES (Employee Handbook)

RULES OF CONDUCT

Whenever and wherever people work together, certain standards of reasonable conduct need to be established in order to maintain an orderly and efficient work atmosphere.

Corrective discipline is not intended to inflict punishment. Lasata wants to take measures, which are designed to correct whatever problem the employee has, and to make the employee aware of the importance of abiding by our operating policies and procedures. In some cases, it may be necessary to dismiss an employee because of the seriousness or continuation of an offense.

The following types of conduct are unacceptable in our workplace. It is not possible to list every conceivable infraction. Lasata can amend these guidelines within its total discretion.

. . .

- Use or possession of drugs or alcoholic beverages on company premises or off company premises while on duty.

. . .

- Possession of weapons or firearms on company premises.

BACKGROUND

The County operates a health care center in Cedarburg, Wisconsin whereat it employed Patricia Rady, hereinafter referred to as the grievant, as a Certified Nursing Assistant (CNA) for approximately two years. On May 24, 2003 the grievant completed her work shift at 11:00 p.m., and, with CNA Natalie Brumfield, went to Health Care Center's parking lot, got into their cars, and proceeded to go to Milwaukee. Brumfield, in her vehicle, followed the grievant's vehicle and noticed the grievant was weaving in the road and that the grievant was driving too fast. Brumfield attempted to attract the grievant's attention by flashing her lights but was unsuccessful. In Mequon, Wisconsin, the grievant's driving was noticed by Police Officer Mark Riley. Riley followed the grievant's vehicle and noticed she was driving in a jerky fashion, drifting over the center line and when she approached a red light, thought she wasn't going to stop, when the grievant braked and came to a stop, stopping with her vehicle in the center of the

crosswalk. When the light turned green, Riley continued to follow the grievant and activated his squad car's emergency lights.

Riley observed the vehicle's brake lights come on and then the vehicle accelerated. The grievant's vehicle continued to weave in its lane and when it crossed the center lane into the on-coming lane he activated the squad car's siren. The grievant then stopped her vehicle. At the hearing, Riley testified this was at approximately 11:23 p.m. (Tr. p. 7) Brumfield continued around the block and when she returned to the grievant's stopped vehicle, there were three squad cars there.

When Riley approached the grievant's vehicle he noticed she was alone in it. He advised the grievant of why she was being stopped. Riley observed the grievant's eyes were bloodshot, smelled an odor of intoxicants on her breath, and that her speech was slurred. The grievant then failed three field sobriety tests and tested at .173% on a field breathalyzer (field breathalyzer results are not admissible in court). The grievant was then placed under arrest at 11:40 p.m. and her vehicle was searched. The search resulted in finding a Skol vodka container with a straw in it and a plastic sippy cup that was empty but smelled of alcohol.

At the Mequon Police Department at 12:06 a.m. the grievant voluntarily submitted to an evidentiary chemical test of her breath. At 12:15 a.m. she tested at .18%. Riley also testified that the grievant informed him she had gone into Cedarburg on her lunch break and had a few drinks (Tr. p. 18) At 12:55 a.m. the grievant was released to Brumfield and they both went to Brumfield's home.

On May 28, 2003 Lasata Care Center Administrator Ralph Luedtke received a telephone call informing him of the grievant's arrest at 11:40 p.m. on May 24, 2004. Luedtke concluded that given the timing of the arrest of the grievant and the length of time taken to get to that level of intoxication that the grievant had been drinking while on duty. Luedtke then decided to investigate the matter.

Luedtke first reviewed the grievant's personnel file. The grievant had received oral warnings on February 2, 2002 (Safety violation), June 9, 2003 (Safety violation), May 19, 2003 (Unauthorized break), and a written reprimand on May 28, 2003 (Unauthorized break on May 23, 2003 and Safety violation on May 23, 2003). Luedtke then met with Registered Nurse Nancy Ritter. Ritter informed Luedtke that the grievant had exhibited a change in behavior over the last several weeks and that the grievant would not admit she was doing anything wrong.

Luedtke and Ritter then met with Stephanie Eron, D.O.N., the grievant and Union Steward Audrey Renner. The grievant was given the May 28, 2003 written reprimand and they discussed her recent behavior. Ritter left and County Human Resource Director John Kuhnmuench joined the meeting. The grievant was asked if she had been drinking at work on

May 24, 2004 and if drinking at work was the reason she was having job performance problems. The grievant denied ever drinking at work and stated she had gulped vodka in the parking lot before leaving and, given she is a small woman, was the reason why the alcohol metabolized so quickly to make her drunk in twenty (20) minutes. The grievant also claimed she had not had a drink in about twenty (20) years and claimed she was not an alcoholic.

Thereafter, Kuhnmuench asked to search her locker and her vehicle. The grievant allowed her locker, purse and water bottle to be checked for alcohol but refused to allow her vehicle to be searched. Luedtke then informed the grievant she was suspended with pay pending the completion of the investigation.

CNA Heather North was interviewed and informed the County she had never seen the grievant drink on or off the job. Registered Nurse Adrianne Luft was interviewed and informed the County she did not smell alcohol on the Grievant's breath on May 24, 2004. CNA Natalie Brumfield was interviewed, informed the County she did not see the grievant consume any alcohol, described the events leading up to the grievant's arrest, and informed the County she did not know how the grievant got drunk so quickly. CNA Mary Thoreaux informed the County she had gone out once, at Thanksgiving, drinking with the grievant. CNA Jeanne Gebhart informed the County she was aware the grievant goes out drinking and had urged the grievant to get some help.

Luedtke concluded the grievant, having admitted to drinking in the Health Center's parking lot, had violated the County's work rules. On June 5, 2003 Luedtke offered the grievant a Last Chance Agreement that provided for a thirty (30) day suspension with a requirement the grievant contact the County's Employee Assistance Program (EAP) Counselor or a professional of her choice to seek counseling. This was declined by the grievant. The County then offered to reduce the suspension to fifteen (15) days. This was also declined by the grievant. The Union then offered to have the grievant voluntarily resign; however, the grievant also declined this. On June 11, 2003 the County sent the grievant the following termination letter:

June 11, 2003

VIA Certified Mail

Ms. Patricia Rady
N5762 Thornton Court
Fond du Lac, WI 54935

Dear Mrs. Rady;

I have just been advised this morning by your Union representative, Mr. Bauer, that you no longer wish to have him represent you in the matter of your discipline for the events of May 24, 2003. As you will recall, Lasata Care Center offered to impose a 30 day unpaid suspension in lieu of a termination as a result of your possession and consumption of alcoholic beverages at work on May 24, 2003. That offer was predicated upon your entering into a last chance agreement, which among other things required you to contact the County's EAP counselor or another professional to seek counseling. Since you have refused to acknowledge responsibility for your actions of May 24, 2003, in fact, you have denied doing anything at all that evening and have terminated your Union representation, Lasata Care Center must now advise you that, based upon its investigation of your actions of May 24, 2003, you are hereby terminated from employment effective **June 5, 2003** for your violations of County rules regarding use or possession of alcoholic beverages on County premises while on and off duty.

Your final pay check will be forwarded to you next week.

Very truly yours,

John R. Kuhnmuench /s/
John R. Kuhnmuench
Human Resources Director
Ozaukee County

cc: Ralph Luedtke
Thomas Bauer

On June 20, 2003 the following memo was sent to Union Representative Ben Barth:

DATE: June 20, 2003

TO: Ben Barth

FROM: Ralph G. Luedtke, NHA Ralph /s/

RE: GRIEVANCE 2003 – 11D (Rady – Step 1)

A complete investigation was done to review the allegations that Pat Rady drank alcohol on County property at Lasata and while on duty at Lasata. A copy of the investigation was given to Pat Rady and to Thomas Bauer of LAW.

Pat was given the option of a 30-day unpaid suspension, which included seeking counseling as part of a Last Chance Agreement or be terminated. She turned down the suspension and last chance agreement.

Mr. Bauer then attempted a compromise with John Kuhnmuench, Human Resources Director, to lower the 30-day unpaid suspension to a 15-day unpaid suspension.

Mr. Bauer then offered to have Pat voluntarily resign if we paid our her vacation and floating holidays that were still unused. We agreed that this would be acceptable.

Mr. Bauer then told John Kuhnmuench that Pat was not accepting any deals and he was no longer representing her.

Therefore, John sent Pat the termination notice dated June 11, 2003.

Grievance denied. Termination was for cause.

Cc: Rosalie Kraus
John Kuhnmuench
Pat Rady
Wendy Stencel
Stephanie Eron

On July 22, 2003 Kuhnmuench sent the following letter to Barth denying the Grievance:

July 22, 2003

Mr. Benjamin Barth
Labor Consultant
Labor Association of Wisconsin, Inc.
N116 W16033 Main Street
Germantown, WI 53022

Re: Grievance 2003-11D (Patricia Rady – Step 2)

Dear Ben:

After reviewing the statements and facts presented, I will deny the grievance and let the termination stand for possession and use/consumption of alcohol on County property.

The employee admitted to having possession of a bottle of vodka in her auto in the Lasata parking lot and drinking in the Lasata lot after work.

The statement of her fellow employee, Natalie Brumfield who observed her driving in an erratic fashion after leaving work and the subsequent investigation and arrest of the employee a short time after she left the premises, all confirm that she consumed enough alcohol on County premises to become so intoxicated as to operate her motor vehicle in an unsafe and reckless manner which caused her to be arrested and charged with operating a motor vehicle under the influence of an intoxicant and possession of open intoxicants.

The employee has previously received a written warning for failure to follow work rules in May of 2003 on two separate occasions as well as an oral warning in May of 2003 for violation of a work rule.

The employee has refused to accept responsibility for her actions, or seek help for her drinking despite being offered an opportunity to enter into a last chance agreement by the County or an opportunity to resign.

Very truly yours,

John R. Kuhnmuench /s/
John R. Kuhnmuench
Human Resources Director
Ozaukee County

cc: Ralph Luedtke

Thereafter, the matter was processed to arbitration in accord with the parties' grievance procedure.

The record also demonstrates that on two previous occasions employees were disciplined for similar conduct. The first, an employee came to work under the influence of alcohol, was sent home, arrived to work the next day under the influence and was sent home, given a Last Chance Agreement that included seeking counseling and a two (2) day suspension, came to work again under the influence of alcohol and was terminated. The second, an employee came to work intoxicated, was sent home, given a Last Chance Agreement that included seeking counseling and a suspension, sought treatment and came back to work after receiving treatment.

POSITIONS OF THE PARTIES

County's Position

The County contends the grievant was properly terminated and that the County had just cause to terminate her for violation of rules by her possession and consumption of alcohol on County premises.

The County points out it employs approximately two hundred and twenty (220) employees at the Health Care Center and has approximately two hundred (200) residents. The County stresses patient care is of utmost importance and work rules prohibiting the consumption of alcohol are necessary because of the safety of the residents. The County also points out other employees have been terminated for similar offences.

The County notes the Health Care Center is a State regulated nursing home and is required to maintain certain standards. The County argues its work rules are reasonable and designed to ensure the standards are met and that employees are aware of their responsibilities. The County points out the grievant was aware of the work rules and was made aware of them when she commenced her employment. The County stresses the grievant was not disciplined for drinking on duty but was disciplined for possession and consumption of alcohol on County premises. The County points out the grievant acknowledged she possessed and drank alcohol in the County's parking lot.

The County points to the testimony of Officer Riley who stopped the grievant only twenty-three (23) minutes after the completion of her shift. Riley observed the grievant's driving, turned on his emergency lights and had to use the vehicle's siren to get the grievant to stop her vehicle. Riley's observations of the grievant were that she was intoxicated and she failed a series of field sobriety tests. The preliminary breath test was a .17. Riley found vodka and a sippy cup that smelled of alcohol in her vehicle. At 12:15 a.m. she tested .188 and .191. She also informed Riley she had consumed alcohol during her lunch break at a bar in Cedarburg.

The County contends Officer Riley was a credible witness and that there can be no question the grievant was intoxicated on the night in question. The County also asserts the

grievant acknowledged she had drank on County premises and had possession of alcohol on County premises. The County also asserts Officer Riley had no vested interest in the proceedings and that the grievant informed him she had been drinking on her lunch hour. The County argues this supports an inference the grievant had been intoxicated while she was at work during the balance of her shift.

The County does note this information came to light at the arbitration hearing and that the decision to terminate the grievant was based on her admission that she had been drinking on County premises and had possession of alcohol on County premises. The County stresses it is not charging the grievant with drinking while on duty, even though the physical facts suggest otherwise. The County does argue it is physically impossible for her body to have absorbed the amount of alcohol she claimed to have drank in the parking lot in less than twenty (20) minutes and to have the intoximeter register the alcohol level in that time frame.

The County argues the grievant was forewarned of the need to abstain from misbehavior as expressly counseled in the employee handbook. The County argues the rule against possession and consumption of alcohol on County premises is necessary for the orderly, efficient and safe operation of the County's business and conduct the County can properly expect of an employee. The County also argues it made a reasonable inquiry into whether the grievant violated or disobeyed a rule or order of management. The County contends it made a fair and objective investigation and during this investigation it obtained substantial evidence that the grievant was guilty.

The County also contends it has applied its rules, orders and penalties even handedly and without discrimination. The County points out that in the two previous similar type incidents the employees involved agreed to Last Chance Agreements that included seeking counseling. Herein, the County argues, the grievant was offered a Last Chance Agreement that included seeking counseling and the grievant declined the offer. The County asserts the grievant declined the opportunity to modify her behavior and seek counseling and therefore she was terminated. The County also points out there was an increase in the grievant's discipline prior to her termination.

The County concludes that the degree of discipline was reasonably related to the seriousness of the grievant's offense and her work record. The County argues the grievant has failed to show any insight into the seriousness of her offense and continues to resist any implication that she in any way was at fault. The County points out the grievant, at the hearing, changed her story to claim she didn't commence drinking in her vehicle until after she left the County's premises and that she was also on medication. However, the County points out she failed to provide any information that demonstrated she was on medication on May 24, 2003, nor did she inform Officer Riley when she was arrested that she was on medication, nor did she inform Luedtke during his investigation that she was on medication.

The County would have the undersigned deny the grievance.

Union's Position

The Union contends the County has failed to demonstrate the grievant used or possessed alcoholic beverages on the County's premises while on duty on May 24, 2003. The Union points out that Luedtke testified no one he interviewed said the grievant drank any alcohol while on duty. (Tr. pp. 42-43) The Union argues that the only way Luedtke can conclude the grievant was drinking while on duty was the time of her arrest, 11:40 p.m. on May 24, 2003. The Union contends the County has failed to demonstrate the grievant was drinking while on duty because it can provide no witnesses that saw her consume any alcohol on that day, the grievant interacted with residents, employees and supervisors and no one reported to a supervisor the grievant had been drinking. The Union, acknowledging the grievant had informed Luedtke she had been drinking in the parking lot, argues that the grievant had been taken by surprise by the discussion of the Operating While Intoxicated (OWI) incident. (Tr. p. 74) The Union also points to Brittinger's testimony that she believed the grievant was caught off guard when asked about the OWI arrest and that the grievant was surprised and upset about the question. (Tr. p. 65)

The Union argues that the County has not proven the grievant consumed alcohol anywhere near the Health Care Center's premises and asserts the grievant took her first drink while she was on the roadway. The Union also argues that the grievant could have consumed enough alcohol between 11:05 p.m. when she left the Health Care Center's premises to 11:40 p.m. when she produced a .18 Intoxilyzer test. The Union argues the grievant's testimony, that she drank twenty-five percent (25%) of the bottle of Vodka after pulling out of the parking lot, a period of eighteen (18) minutes elapsed prior to her being pulled over at 11:23 p.m. by Officer Riley. The Union points out it was not until 12:15 a.m. that the Intoximeter test was given, a total of one (1) hour and five (5) minutes had elapsed since she began drinking. The Union points out Officer Riley acknowledged that if the grievant had drank an amount of alcohol equivalent to five (5) shots in a fifteen minute period, it was possible for her to test at .18 at 12:15 a.m. (Tr. p. 33)

The Union also argues Officer Riley's testimony that the grievant informed him she had been drinking in Cedarburg during her lunch period (Tr. p. 18) is not supported by his official follow-up report or supported by any other witnesses. The Union concludes this information was therefore a complete fabrication and should not be allowed by the Arbitrator.

The Union also argues the bottle of vodka in the grievant's vehicle does not constitute possession or consumption on the County's premises. The Union points out the vodka was in the grievant's vehicle and remained in her vehicle at all times. The Union argues that the County's work rule prohibits possession and consumption of alcohol on the County's premises while on

duty. The Union argues there is only a violation if the alcohol is taken out of the vehicle and into the building (which she did not) and/or if it is consumed while sitting in the vehicle in the parking lot (which she did not).

The Union also argues the decision to terminate the grievant is not consistent with discipline meted out to other employees. The Union points out in one instance an employee reported for duty twice while intoxicated and only received a two day suspension, and, it was not until she reported a third time to work while intoxicated that she was terminated. The Union points out in the second instance there is no documentation to support the County's claim the employee ever completed the EAP program prior to her leaving the County's employ. The Union stresses that in the instant matter the County first offered a thirty (30) day suspension and a Last Chance Agreement. The Union argues that when the grievant challenged the reasonableness of the discipline the County terminated the grievant. The Union concludes the decision to terminate the grievant in the instant case is inconsistent with other disciplinary actions of employees involved in allegations of possession and/or consumption of alcoholic beverages. The Union argues the grievant's discipline is extreme when compared to the discipline of other employees who were actually intoxicated on the County's premises and therefore the County's actions are unreasonable and lack just cause.

The Union would have the Arbitrator reinstate the grievant with full back pay and benefits and direct the County to expunge her personnel files of all documentation related to the grievant's termination on June 5, 2003.

DISCUSSION

The record demonstrates there is no dispute the grievant had a container of alcohol in her vehicle while it was on the County's premises. The County's Rules of Conduct specifically provide that use or possession of alcohol on County premises is grounds for discipline. Contrary to the Union's assertions, this does not mean the employee has to be on duty when the infraction occurs. While the grievant may have kept the alcohol in her vehicle, her vehicle was on County property. Thus she violated the County's rules and the County clearly had grounds to discipline the grievant. The Union, in effect, has argued that since the grievant did not consume the alcohol on County premises the rule, in and of itself, is unreasonable. However, given the nature of the County's business, health care, the Arbitrator finds the rule to be consistent with the Health Care Center's mission to provide safe and efficient care of its residents. Given the grievant was aware of the County's Rules of Conduct the grievant was aware that when she placed the alcohol in her vehicle and parked it in the Health Care Center's parking lot she was aware she was violating the County's rules of conduct.

The Union did raise the example in its brief that this would be no different than a hunter, preparing to leave on a hunting trip directly from work, placed their hunting rifle in their vehicle. However, the County's Rules of Conduct also prohibit the bringing of weapons onto County

premises and if a hunter did so they would be violating the County's work rules. Thus, the fact the alcohol was in the grievant's car does not absolve the grievant of the fact she brought alcohol onto the County's premises.

The record also demonstrates that Luedtke interviewed Brumfield and Brumfield informed him she noticed the grievant was driving erratically immediately upon leaving the Health Care Center's parking lot. The grievant was then observed by Officer Riley as driving erratically, in fact she failed to notice his emergency lights and did not stop until he turned on the squad car's siren. She was pulled over at 11:23 p.m., just twenty-three (23) minutes after she concluded her shift. Given Officer Riley's testimony of his observance of the grievant's driving, it is clear to the Arbitrator the grievant was already under the influence of the alcohol she had consumed when he first observed her driving her vehicle and this was less than twenty minutes (20) after she left the Health Care Center's parking lot. Thus the Arbitrator finds no merit in the grievant's claim she didn't commence drinking until after she drove out of the parking lot or the Union's argument that because the Intoxilyzer test was done until 12:15 a.m. that there was a possibility the grievant did not commence consuming alcohol until she had left the parking lot.

The Arbitrator notes here the grievant acknowledged to the County she had consumed alcohol in the parking lot. Given the grievant's almost immediate driving behavior the Arbitrator finds it more reasonable to conclude the grievant, at a minimum consumed alcohol in the parking lot. Particularly because both Brumfield and Officer Riley noted her problems driving her vehicle prior to 11:23 p.m.

The Arbitrator also finds the instant matter is distinguishable from the two previous actions concerning employees and alcohol consumption. In those instances the employees reported to work under the influence. In this instance the employee brought the alcohol to the County's premises and consumed the alcohol while on the County's premises. There is a difference between the acts of an employee who, under the influence, wrongly believing they are still able to carry out their duties and report to work and the actions of an employee, knowingly violates the employer's work rules by bringing alcohol onto the employer's premises and then consuming the alcohol while on the employer's premises. The Arbitrator therefore finds no merit in the Union argument that the discipline in the instant matter is extreme when compared to other disciplinary actions involving possession and/or consumption of alcohol. The instant matter involves possession and consumption on the County's premises. Neither of the previous two matters involve possession or consumption of alcohol on the County's premises.

The Arbitrator also finds that when the grievant, by her actions, refused to participate in the EAP Program, the County had just cause to terminate the grievant's employment. As noted above, the Health Care Center is charged with the care and safety of its residents. It is therefore required to ensure that employees can provide this care and safety. Once the County became aware of the OWI incident its actions to ensure the care and safety of residents must be within

reason. To require the grievant to participate in an EAP Program is a reasonable response given the grievant's recent performance problems and her acknowledgement she consumed alcohol in the Health Care Center's parking lot. Had the grievant informed the County she would participate in the EAP Program or would consult with a professional a different result could be reached. There is also no evidence the County has ever allowed any employee who allegedly reported to work under the influence or who consumed alcohol on the County's premises to continue working without requiring the employee to participate in an EAP Program. Therefore, the Arbitrator finds the County had just cause to offer the grievant a fifteen (15) day suspension and a Last Chance Agreement that included she participate in the County's EAP Program or consult with a professional. When the grievant declined the discipline she, in effect, also declined to participate in the County's EAP Program or to consult with a professional. Absent the grievant's willingness to participate in the EAP Program or to consult with a professional, and given the Health Care Center's mission, the Arbitrator finds that the County had just cause to terminate the grievant's employment.

Therefore, based upon the above and foregoing and the testimony, evidence and arguments presented the Arbitrator finds the County had just cause to terminate the grievant's employment. The grievance is denied.

AWARD

The County had just cause to terminate the grievant on June 13, 2003.

Dated at Madison, Wisconsin, this 9th day of July, 2004.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

EJB/gjc
6699