

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFSCME, LOCAL 556, AFL-CIO**

and

**PIERCE COUNTY**

Case 138

No. 64646

MA-12963

(Holtz Grievance)

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**Appearances:**

**Mr. Steve Hartmann**, Staff Representative, Wisconsin Council 40, AFSCME, AFL CIO, P.O. Box 364, Menomonie, Wisconsin, appearing on behalf of Local 556.

**Mr. Nicholas J. Vivian**, Attorney, Bakke Norman, S.C., 1200 Heritage Drive, P.O. Box 308, New Richmond, Wisconsin, appearing on behalf of Pierce County.

**ARBITRATION AWARD**

Local 556, AFSCME, AFL-CIO, hereinafter "Union," and Pierce County, hereinafter "County," requested that the Wisconsin Employment Relations Commission assign one of two staff members to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was assigned to arbitrate the dispute. The hearing was held before the undersigned on July 14, 2005, in Ellsworth, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs and reply briefs, the last of which was received on October 6, 2005, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

**ISSUE**

The County raised a procedural issue and the parties were unable to agree to the substantive issue. The parties affirmatively authorized the Arbitrator to frame the issue.

The County framed the issues as:

1. Whether paragraph one of the Grievance is arbitrable?
2. Whether the County had just cause to transfer the Grievant from Data Processing to Public Health? If not, what is the appropriate remedy?

The Union framed the issues as:

1. Did the Employer have just cause to terminate the Grievant?
2. If not, what is the appropriate remedy?

Having considered the arguments, I frame the issues as:

1. Whether the Union's Article 8, Section 1, paragraph 3 grievance is arbitrable?
2. Whether the County had just cause to terminate the Grievant from the Data Processing/Software Support Specialist position?
3. If not, what is the appropriate remedy?

**RELEVANT CONTRACT LANGUAGE**

**ARTICLE 3 – MANAGEMENT RIGHTS**

Section 1. The County possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to the following:

. . .

- D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
- E. To relieve employees from their duties for lack of work, lack of funds or other legitimate reasons;

...

## **ARTICLE 8 – DISCIPLINARY AND DISCHARGE PROCEDURE**

Section 1. Disciplinary Action. It is the County’s responsibility to offer and provide reasonable training and supervision and to establish reasonable work rules.

Disciplinary action may only be imposed on an employee for failing to fulfill his/her responsibilities as an employee. Any disciplinary action or measure imposed upon an employee may be appealed through the regular grievance procedure.

If the county has sufficient reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public.

Section 2. Just Cause Notification. Employees shall not be disciplined or discharged without just cause. If the County feels there is just cause for suspension or discharge, the employee and his/her steward shall be notified in writing within twenty-four hours (24) following the discharge or suspension that the employee has been discharged or suspended and the reasons thereof.

Section 3. Procedure. The normal procedure for discipline and/or discharge shall include only the following:

- a) Oral reprimand;
- b) Written reprimand;
- c) Suspension;
- d) Discharge.

The number of written warnings and length of suspensions shall be determined by the County in accordance with the gravity of the violations, misconduct or dereliction involved, taking into consideration that such steps are intended as corrective measures. The County may, when the employee’s conduct makes it appropriate, deviate from the corrective discipline cycle.

Section 4. Personnel Records. Personnel records, including remarks, warnings and disciplinary measures taken, shall be dated. Employees may request to see their own personnel record and reasonable access to the same shall be made available.

## **ARTICLE 9 – GRIEVANCE PROCEDURE**

Section 1. Definition. A grievance shall mean a dispute between the County and Union concerning the interpretation or application of the terms of this contract.

Section 2. All grievances must be presented promptly and no later than fifteen (15) workdays from the date the employee(s) knew or should have know of the cause of such grievance.

In the event of a grievance, the employee shall perform his/her assigned work task and grieve his/her complaint later, except in cases potentially affecting the employee's health or safety.

...

Section 5. Decision of the Arbitrator. The decision of the Arbitrator shall be limited to the subject matter of the grievance. The Arbitrator shall not modify, add to or delete from the express terms of the Agreement. The decision of the Arbitrator shall be final and binding upon both parties.

...

## **BACKGROUND AND FACTS**

The Grievant, Janet Holtz, is an eight and one-half year employee of the County currently working in the Public Health Department. In April 2001 she began performing the Data Processing/Software Support Specialist position under the supervision of Janet Huppert. Huppert is the County Director of Information Services and has held this position for eight and one-half years. The Grievant and Huppert did not have a good working relationship. The Grievant filed a complaint against Huppert which resulted in the County issuing discipline to Huppert.

The job description, in relevant part, for the Data Processing/Software Support Specialist position reads as follows:

### **Purpose of Position**

The purpose of this position is to manage data processing center activities, perform center equipment and data maintenance tasks and provide data processing technical advise and support to computer network users for Pierce County, including PC and mainframe environments.

## Essential Duties and Responsibilities

Monitors and performs job runs including bi-weekly payroll, payroll reports, monthly and annual accounts payable closings, accounts payable checks, and other data processing reports on mainframe (HP3000) computer. Processes media for state reporting.

Provides technical resource services for all County departments, including general ledger, payroll, accounts payable/receivable.

Loads magnetic and digital data storage tapes on computers. Loads and aligns forms. Queues tasks or jobs for efficient operations and according to deadlines.

Performs system, software and file backups. Performs data recovery procedures as needed.

Sets up new user accounts. Develops data security procedures.

Implement program changes including loading software.

Maintain data tape library.

Provides assistance to personal computer users regarding hardware and software questions. Consults with vendors regarding software program requirements and changes. Diagnoses problems on both the mainframe and PC platforms including terminal configuration, monitor and keyboard malfunctions. Provides instruction to users.

Maintains supply of computer related items as well as consumables for all County offices for printers, copiers, and fax machines. Orders supplies.

Inputs time cards into Data Processing database.

Creates and maintains procedures for documentation for the mainframe, PC and Data Processing office.

Prepares machine use and performance reports. Maintains data processing activity logs.

Prepares billing statements for Data Processing Center use and submits to Departments. Prepares and assigns account codes to data processing voucher for remittance.

Updates and maintains the County Web Page.

Assists Information Systems Director with special projects.

Assumes Information Systems Director responsibilities in his/her absence.

Cleans and performs preventative maintenance tasks.

Performs other related duties as assigned or directed.

. . .

During December 2004, the certified public accounting firm of Tracey & Thole, S.C., conducted an audit for the County. As part of the audit, the auditor verify that there is documentation in employee personnel files which authorizes the employee's claimed exemptions. In reviewing the Grievant's payroll data, the auditor noted that there were inconsistencies and informed the Payroll Clerk who informed the Finance Director. As a result, the County generated a report entitled, Payroll Change Audit. The Change Audit report indicated that changes had been made to the Grievant's payroll profile. The Grievant admitted to having changed her exemptions and address in the computer payroll profile. The Grievant did not make changes to any other employee payroll profiles.

On January 4, 2005, the County met with the Union and the Grievant. At the conclusion of the meeting, the County informed the Grievant that she would be placed on a paid suspension pending investigation of her work conduct and performance. At Anderson's direction, Neil Gulbranson, Chief Deputy for the County Sheriff's Department, escorted the Grievant to her office, allowed her to collect her purse and coat and then escorted her from her office to the courthouse side door. County employees and members of the public viewed the Grievant being escorted through the courthouse to the exit door.

On January 14, 2005, Ron Anderson, County Acting Administrative Coordinator, issued the following disciplinary letter to the Grievant:

. . .

On Friday January 7, 2004 (sic) as Acting Administrative Coordinator, I advised you that pursuant to an investigation, it is my position that you violated the Pierce County Policy on Computer Use and Information Systems, and acted outside the boundaries and scope of your job duties (see attached Addendum). I further indicated that I believe there is just cause for termination, but that I was willing to offer you the following in lieu of dismissal:

1. You may return to work for Pierce County on Monday January 10 2005 (sic) at 8:30 a.m. subject to the following requirements;
2. You will be transferred from the job of Data Processing/Software Support Specialist to Public Health Secretary, for which the rate of pay is \$15.46 per hour;
3. The County will waive the requirement that you must be in the new position for a period of one year in order to post for a different position;
4. You will not be eligible for any future employment within the Pierce County Data Processing Department.

For further details, see the attached copy of my letter to you dated January 7, 2005.

Pursuant to your request, it was confirmed that the proposed transfer to Public Health Secretary would be at 40 hours per week. You verbally indicated on January 7, 2005 that you would accept the offer set forth above.

Additionally, it was requested on your behalf by your union representative that the County not place the letter of January 7, 2005 in your Personnel File. After considering the matter, the request is denied, as it has been Pierce County's practice to place into employees' personnel files records of discipline, in order to accurately document an employee's work record, to document the manner in which personnel problems are being handled in the workplace, and to monitor compliance.

I understand that you may not agree with my position, however, you have the right to file a grievance pursuant to your collective bargaining agreement should you desire to do so.

At this time, I am requesting that you and your representative acknowledge, by signing below, that you understand and have accepted

the offer, as set forth in the 4 enumerated points set forth above (including that the position would be 40 hours per week).

Sincerely,

/s/

Ronald O. Anderson  
Acting Administrative Coordinator

. . .

#### ADDENDUM

To Anderson letter to Holtz of 1-14-05

	Date	Change Made to Employee master Data File
1.	8-20-03	Change made to employee's address
2.	8-20-03	Number of Withholding Allowances
3.	8-20-03	Change made to employee's marital status
4.	9-2-03	Change made to employee's marital status
5.	5-10-04	Number of Withholding Allowances
6.	5-11-04	Number of Withholding Allowances
7.	5-21-04	Number of Withholding Allowances
8.	10-6-04	Number of Withholding Allowances
9.	12-14-04	Number of Withholding Allowances
10.	12-21-04	Number of Withholding Allowances

Employee's position with Pierce County at all times in question was Data Processing/Software Support Specialist. The job duties for that position do not include data entry as it relates to payroll processing, and all data entry of payroll information, including the above described 10 incidents, is the responsibility of the Payroll Clerk. Employee acted outside the boundaries and scope of her job duties by making data entry changes to her employee master data payroll records, and employee did not obtain required authorization to access or alter the above described data. In accessing and making such data entry changes, the employee violated the Pierce County Policy on Computer Use and Information Systems, and particularly the following provisions:

1. "It is against Pierce County policy for an employee to purposefully delete or modify the work product of another employee without the consent of the employee that created the work product, or that employee's supervisor." 4(B).
2. Pierce County employees are prohibited from "Accessing resources or altering data without explicit management authorization." 4(D).



3. Pierce County employees are prohibited from "Obtaining unauthorized access to any computer system." 4(D)

The Union filed a grievance on January 27, 2005 alleging that:

1. Janet was escorted from the courthouse on January 3, 2005. This action violated Article 8, Section 1, Paragraph 3 of the union contract.
2. Janet received two disciplinary letters dated 01/07/05 and 01/14/05 respectively stating imminent dismissal. These letter are in violation of Article 8, Section 2 of the union contract.
3. Any additional provisions that apply.

The County denied the grievance at all steps placing it properly before the arbitrator.

Additional facts, as relevant, are contained in the DISCUSSION section below.

## ARGUMENTS OF THE PARTIES

### The Union

The County lacked just cause when it terminated the Grievant. The County has violated the simplest and most basic rule for disciplining an employee. The Grievant did not know that making changes to her payroll profile would subject her to disciplinary sanctions and therefore her discipline cannot be upheld.

The Grievant is an eight year employee of the County with no disciplinary record. She admitted she made seven changes to her deductions, changing her address two times and changing her marital status when that changed. The Grievant did not realize that the changes she made to her payroll records represented any violation of the County policy or presented a disciplinary concern to the County.

The Grievant has not violated County Rule 4(B) or 4(D) because she had permission to change her own payroll profile. The Grievant was told by her supervisor, Huppert, when she was hired to make changes to her record profile to familiarize herself with the computer system. No changes were made to any other employees' records.

A year prior to the Grievant's termination, she again altered her deductions. After Julie Brickner, County's Finance Director, and Bev Bierbrauer, Payroll Clerk,

learned of the changes, they approached her and told her that she needed to complete a W-4 form so that there would be paperwork documenting the change. At no time was she told to refrain from making changes or told that she was violating a County policy which would subject her to discipline.

In addition, the Grievant's predecessor, Ruth Weinberg, testified that she changed her deductions about 10 times over a two year time period and that changes were made to personal payroll profiles since 1988 with the knowledge of supervisory and management authorities of the County. Weinberg was similarly granted permission by her supervisor to make the changes.

As to the third rule the Grievant is alleged to have violated, "[obtaining] unauthorized access to any computer," the Union is unsure of what it is that the Grievant did to have violated this rule since she is authorized to work on the payroll portion of the computer system.

As to the assertion that the Grievant's conduct created a liability to the County, there is no evidence in the record to establish what that liability may have been. The only evidence offered regarding any liability was the testimony of Tom Wishman who concluded that there was no liability to the County.

### **The County**

The County maintains that it had just cause to transfer and/or terminate the Grievant for her willful violation of and reckless disregard for the County's Computer Use and Information Systems Policy.

With regard to the procedural challenge to paragraph one of the grievance, the Union failed to comply with the timing requirements of Article 9, Section 2 and therefore that allegation in the grievance should be dismissed. The Grievant was escorted from the Courthouse on January 3, 2005. The grievance was filed on January 27, 2005 which was in excess of the 15 workday filing requirement and therefore it should be dismissed.

Assuming arguendo that paragraph one is found timely, the County escorted the Grievant out of the courthouse to protect her and the County. County Administrator Anderson perceived there to be a threat to the County computer data and responded conservatively. The County took reasonable precautions to ensure that the escort was not embarrassing. Chief Deputy Gulbranson is regularly in the courthouse, was not wearing a uniform and the entire process took less than five minutes. The Grievant was not embarrassed nor harassed and the Union has not offered any credible evidence to support such a claim.

As to the merits, the Grievant violated the County's trust when she modified and manipulated her payroll records. It is essential that the County trust its employees, especially those with highest level of security access to the computer system. The Grievant's manipulation of her payroll data went well beyond the bounds of her duties and responsibilities as Data Processing/Software Support Specialist. Nowhere in her job description does it authorize the Grievant to perform data entry of payroll information. Although the Grievant believes she is allowed to make these changes, three County co-worker employees testified that the Grievant was not authorized to do both data entry and the processing of payroll records.

Administrative Coordinator Ron Anderson performed a complete and thorough investigation. He spoke to the Grievant, co-workers, her supervisor and obtained advice from Attorney Stephen Weld of Weld, Riley, Prenn & Ricci, S.C., and from Jeff Olson who chairs the County Information Services Committee and is Vice President of Technology for a local business. Both Weld and Olson believed the Grievant's conduct was in violation of County policy and recommended that discipline be administered. Anderson concluded that he had only two options; termination or transfer the Grievant to another department. Anderson chose the less intrusive option and transferred the Grievant.

The Grievant violated three provisions of the County's Policy on Computer Use. The policy was known to the Grievant, especially since she had the duty to develop data security procedures. The policy was reviewed with the Grievant on September 2, 2003. The Grievant disregarded the County Computer Use Policy and in doing so, jeopardized the security of the county computer data and payroll system.

The Grievant exposed the County to civil and criminal liability. The County's independent auditor confirmed that the Grievant's conduct "compromises internal controls over the payroll processing and possibly other financial records of the County". County Br. p. 8. Corporation Counsel identified the Grievant's behavior as a violation of criminal law, specifically Section 943.70(2) Wis. Stats which penalizes offenses against computer data and programs and the County considered reporting the Grievant's behavior to the District Attorney for prosecution. Given the opinions of both the County's auditor and its attorney, the County had a disciplinary interest in the Grievant's conduct.

The testimony of Ruth Weinberg and Tom Wishman must be discounted. Weinberg's situation is not similar in that no computer use policy was in existence at the time she made changes to her payroll records. As to Wishman, he is not an expert on the extent to the County's liability nor does he have the requisite credentials to provide an opinion regarding tax liability. Additionally, due to Wishman's AFSCME affiliation, he is biased.

### **The Union in Reply**

The Union takes issue with the County's assertion that the Union's witness, Tom Wishman, was biased. The County did not demonstrate that the content of Wishman's testimony was erroneous and did not sufficiently challenge it during cross examination. In fact, Wishman agreed with the County's witness who indicated that it was a bad process for payroll personnel to change their own payroll profiles. The Union requests that the Arbitrator focus on the testimony offered and not who offered it.

The Union maintains that the grievance is timely with respect to the escorting component and that the County's timeliness challenge should fail. The County's behavior was intended to humiliate the Grievant. The Grievant had already left the courthouse when she was brought back so that the Deputy could march her out of the building.

The County should have reported its belief that the Grievant had committed a criminal act to the District Attorney. A simple recitation of the statute does not provide a basis for the Arbitrator to find a violation. In addition, Article 8 does not allow the Arbitrator to find a violation.

Finally, there is no evidence to find that the Grievant was willful or reckless. She was honest and believed at all times based on the County's history of allowing her to make changes to her payroll profile that she had permission to make such changes and that when she did so, she was not subjecting herself to discipline.

The grievance should be upheld and the Grievant should be returned to her rightful position and made whole for her losses.

### **The County in Reply**

The Grievant violated County policy and acted outside the scope of her position. Her violations were serious, placed the County at substantial risk and satisfy the just cause standard to impose discipline and removal from the payroll position was warranted.

The Grievant cannot claim ignorance of County policy. When the Grievant was hired to the Software Support Specialist position, she read, acknowledged and signed her job description which did not include any data entry. On September 2, 2003, the Grievant was present at a meeting where Huppert reviewed, line-by-line, the County's Policy on Computer Use with employees. Finally, the Grievant admitted during cross examination that in November 2004 she was aware of the County's Policy on Computer

Use. The Grievant was aware of the County's policies and regardless of whether she understood the gravity of her actions, the discipline was justified.

The County did not acquiesce to the Grievant changing her payroll profile. Huppert testified she never authorized the Grievant to modify payroll data or perform data entry. Both Brickner and Bierbrauer testified that they first became aware that the Grievant was changing her profile after the auditor's findings were released in December 2004. The fatal flaw in the Union's argument is that while the Grievant may have had the ability to make changes to her payroll records, she did not have the authority to make changes.

Weinberg was not the Grievant's predecessor. Rather, Weinberg held a payroll position in the late 1980's and had the authority to make payroll modifications. The Grievant did not hold a payroll position and was not authorized to make payroll changes. As to the content of Weinberg's testimony, it was factually inaccurate and should be disregarded as too remote in time and irrelevant because it was well before the County Policy on Computer Use was enacted.

The Union's attempt to minimize the effect of the Grievant's conduct ignores the risk to the County. Modifications to payroll deductions are serious. The County's potential liability is not limited to tax liability; but also flows from the risk that the Grievant will make other changes to the payroll system including creating dummy accounts and paying herself. All the evidence obtained by Anderson pointed to the creation of significant risks and liabilities. Even the Union's witness, Wishman, testified that the Grievant's actions were an unacceptable practice.

The level of discipline imposed was appropriate. The Grievant breached the trusting relationship she previously held with the County. Immediate removal from that position was necessary in that the integrity and security of the entire payroll system was at stake.

The Grievant's complete failure to recognize the seriousness of her actions and her lack of remorse shows that there is no guarantee that she will stop making changes to payroll records and will stop creating risks for the County. The Grievant believed she had "God Rights" to make changes. The County is concerned that she will perform other unauthorized functions if she is returned to her position in the Information Services Department.

The grievance should be dismissed.

## DISCUSSION

The underlying issue in this case is whether the County had just cause to discipline the Grievant, but it is first necessary to address two preliminary matters.

The first is the County's procedural challenge to the portion of the grievance alleging a violation of Article 8, Section 1, paragraph 3 based on timeliness. The Grievant was escorted out of the courthouse on January 3, 2005 following a meeting with the County when she was placed on paid administrative leave pending a disciplinary investigation. The grievance was filed on January 27, 2005 and the labor agreement requires that grievances must be filed with 15 workdays of when the employee knew or should have known of the cause of action. There is no question that greater than 15 workdays had expired between the date of her escort and the date of the grievance. Thus, on its face, it would appear that this portion of the grievance is untimely.

The problem with this conclusion is that when the Grievant was escorted out of the building on January 3, she did not know that she would be disciplined for making changes to her payroll records. The language of Article 9 requires that a grievance be filed within 15 workdays of when she knew or should have known that the County's action caused her embarrassment. I suspect that if the Grievant had not been disciplined, no grievance would have been filed for the escorting incident. What prompted the grievance was the disciplinary letter issued to the Grievant on January 7. As a result, January 7 is the first date that the Grievant knew or should have know that she was being reprimanded and therefore that is the date from which the 15 workday filing limitation is calculated. The first assertion in the grievance was timely filed.

The second preliminary matter to address is whether the employment action taken by the County was a termination or transfer. The County frames the disciplinary action a transfer, while the Union characterizes it as a termination.<sup>1</sup> The Grievant was offered the transfer to Public Health after she was informed that she would be terminated. Had she chosen to not accept the Public Health position, she would no longer have been employed by the County. Given this, I conclude that the County terminated the Grievant from the Data Processing position.

Moving to whether the County had just cause to terminate the Grievant, I accept the County's methodology although I prefer to rely on Arbitrator Richard McLaughlin's written enunciation of just cause in BROWN COUNTY, CASE 655, NO. 60134, MA-11535 (MCLAUGHLIN, 3/02). Arbitrator McLaughlin stated in BROWN COUNTY

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<sup>1</sup> The Union in its brief explains to the Arbitrator that during the imposition of discipline in this matter, the County and the Union met and discussed how to proceed. It appears that the County concluded that it would transfer the Grievant and the Union challenged the transfer to the extent that the Public Health position was vacant and the unilateral assignment of the grievant to the position violated the posting process.

that “first the employer must establish conduct by the Grievant in which it has a disciplinary interest. Second, the employer must establish that the discipline imposed reasonably reflects its interest. This does not state a definitive analysis to be imposed on contracting parties. It does state a skeletal outline of the elements to be addressed, relying on the parties’ arguments to flesh out that outline.” ID.

The County argues that the Grievant violated the trusting relationship that is essential between an employer and an employee. Additionally, the County maintains it has an interest in operating its business in adherence with Internal Revenue Service rules and state criminal laws. I concur that these are enforceable interests and therefore, the County had a legitimate disciplinary interest in the Grievant’s conduct.

Turning to whether the Grievant engaged in the conduct for which she was disciplined, the County stated in the addendum to her involuntary transfer in lieu of termination that the basis for the discipline was:

... the employee violated the Pierce County Policy on Computer Use and Information Systems, and particularly the following provisions:

4. “It is against Pierce County policy for an employee to purposefully delete or modify the work product of another employee without the consent of the employee that created the work product, or that employee’s supervisor.” 4(B).
5. Pierce County employees are prohibited from “Accessing resources or altering data without explicit management authorization.” 4(D).
6. Pierce County employees are prohibited from “Obtaining unauthorized access to any computer system.” 4(D)

The Grievant was disciplined for making changes to her payroll profile in the computer system. The Grievant admitted to making the changes. Thus, the question is not whether she made changes in the computer system, but rather whether making changes to her personal payroll profile violated the stated provisions of the County’s Computer Use Policy. The Grievant does not dispute the existence of the County Computer Use and Information Systems Policy, but denies that her actions violated any provisions of the Policy.

The first basis for discipline, a 4(B) violation, is grounded in the County’s conclusion that the Grievant modified the work product of the Payroll Clerk, Beverly

Bierbrauer, when she changed her exemptions and address on her payroll profile. There are two components that must be satisfied to constitute a violation of this provision. First, the modification of the work product of another and second, that the modifications were made without consent of the other employee. Bierbrauer has direct responsibility for payroll which included monitoring W4 deductions for all County employees, making changes consistent with submitted documentation, and ultimately inputting timecards so that employees are paid. There is no question that Bierbrauer had input the Grievant's deduction and address prior to the Grievant making the changes to that portion of her profile, thus the Grievant modified Bierbrauer's work product and the first component of 4(B) has been satisfied.

Moving to the second component, Bierbrauer testified that she had never given the Grievant permission to make changes to her payroll profile. The Grievant does not challenge whether she was given explicit permission by Bierbrauer to change her personal payroll information, but argues that she was given implied consent a year earlier when Bierbrauer and Julie Brickner, County Finance Director, noticed that the Grievant had made changes to her payroll profile and asked her to document the changes with paper authorization. The Grievant testified that she was not admonished for making the changes in the computer system nor was she informed that another instance would result in discipline. Although both Bierbrauer and Brickner testified at hearing, neither was asked about this incident.<sup>2</sup> I am therefore limited by the record in this regard. As to the Grievant's veracity on this issue, her testimony is self-serving, but nevertheless it is not disputed.

The Union argues that the Grievant's job description provides her the "consent" to make changes to Bierbrauer's work product and furthermore, that the Grievant regularly made changes to Bierbrauer's work. The County maintains that although the Grievant's security clearance provided her the ability to make changes to any part of the computer system, it did not provide her the authority to make the changes. The County's point is well-taken. Employees are regularly provided the ability, through circumstances or otherwise, to take actions, but those actions may not be sanctified by the employer.

The Grievant was responsible for the on-going operation of the computer mainframe and for the processing of payroll. Inclusive to those duties, there were occasions in which she made changes to the payroll data which was Bierbrauer's work. Interestingly, when the Grievant's supervisor was asked whether the Grievant ever altered data sets, she responded affirmatively and then explained that she did not think that the Grievant should have been altering this data. Thus, this is not the first time or instance in which the Grievant acted in excess of the County's perception of her

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<sup>2</sup> Both Bierbrauer and Brickner testified that they immediately became concerned that they would be held responsible for the Grievant's computer system changes and communicated these concerns. Both responded defensively and were assured that so long as they did not know and/or give the Grievant permission, then they were not guilty of any wrongdoing.



authority. The difference is that in this instance she was disciplined, while she was not in the past.

The Union maintains that no violation occurred because the Grievant had her supervisor's consent when she made the changes. It is undisputed that the Grievant was directed by her supervisor when she was hired to practice working with the payroll system by making changes to her own payroll profile. I find this compelling evidence for two reasons. First, this is direct evidence that the Grievant was given permission by her supervisor to make changes to her own payroll profile. And second, the fact that the Grievant was to practice working with the payroll system and specifically her payroll profile directly contradicts the County's assertion that the changes that the Grievant made were beyond the scope of her job duties. If indeed modifying payroll profiles was beyond the scope of the Grievant job description, then there would have been no need for the Grievant to familiarize herself with the system.

Moving to the next basis for discipline, the County disciplined the Grievant for "[a]ccessing resources or altering data without explicit management authorization" which is a Rule 4(D) violation. This rule is stricter than the last. There is no question that the Grievant was given explicit direction from her supervisor when she was hired to make changes to her payroll profile. Having said that, the Grievant knew at the time that those directions were given that her supervisor's purpose when giving that directive was to provide the Grievant with an opportunity to learn and familiarize herself with the County's payroll system.

The County argues that the Grievant was "not authorized to modify or change any payroll records." This conclusion is not supported by the record. While it may be that Huppert and Brickner testified that the Grievant did not have authorization to make changes to the computer system, they both also indicated that there are circumstances in which the Grievant has made changes in the course of fulfilling her job duties. Brickner testified that she calls the Grievant when she needs help and that the Grievant has the authority to access the payroll records to resolve Brickner's problems. Huppert testified that although she did not find it appropriate, the Grievant had changed data sets. I am not persuaded that the Grievant did not have the authority to make changes to the payroll portion of the computer system.

As to the final basis for discipline, "[o]btaining unauthorized access to any computer system," I find the County had cause to discipline the Grievant for this rule violation. All of the circumstances that have been discussed above relate to the modifications that the Grievant made to the data in the computer system. There is a significant difference between having access to the system and using that access for your own personal gain. The Union argues that the Grievant did not benefit from the changes that she made. I disagree. The Grievant had a personal interest and must have benefited from making the withholding changes otherwise she would not have continued to make

changes. The Grievant is an experienced computer professional and understands the risks associated with unauthorized individuals tampering with data and the computer system as a whole. I credit the Grievant's supervisor, Huppert's, testimony as it relates to the severity of the Grievant's offense. Huppert testified that the Grievant's actions created, "strictly an auditing issue, strictly a security issue". I concur. I therefore find that the Grievant violated this provision of the Policy.

As to the Union's argument that the Grievant was unaware of the Computer Use Policy, I do not find the Grievant's testimony credible. The Grievant knew of the Policy, but did not know every minute component to the Policy. I am unwilling to accept the Union's argument that the Grievant's lack of knowledge of the Policy requires that I find that the County has not met the just cause standard. In this instance, regardless of whether the Grievant was fully informed on the content of the Computer Use Policy, she knew that making changes to her own personal payroll profile was inconsistent with the concept of separating financial responsibilities so as to create a secure check and balance system for the distribution of County funds. Moreover, she also is fully aware that access to the computer system, especially complete access, is limited to specific individuals for the sole purpose of maintaining the security and integrity of the data and the system. I therefore find that the Grievant's failure to respect the norms of computer system security constituted unauthorized access.

Having found that the County did not have just cause on two of the three basis for discipline, I find that termination is excessive. The County's arguments relating to the seriousness of the Grievant's actions would be valid if they were accurate. It is legitimate for the County to be concerned that the Grievant, or anyone else with similar access to the computer system, was entering data and the like so as to embezzle monies from the County. The Grievant did not do this. It is improper to discipline the Grievant for what she could have done rather than what she has done, and therefore I am reducing the termination to a written warning.

As to the County's reliance on the Grievant's behavior and its apparent and/or possible violation of Sec. 943.70(2), Wis. Stats., as a basis for the termination, it is conjecture. It may be that the Acting County Administrator, after consultation with the County Corporation Counsel, concluded that the Grievant may have violated a state statute, but of the fact of the matter is the Grievant was not charged nor was she found guilty of any criminal behavior. The County had insufficient evidence to base the Grievant's discipline on the presumption of two individuals that a state criminal law was violated and as such, the County did not have just cause to discipline the Grievant for possibly violating state law.

Given my finding as it relates to the Grievant's termination, it is unnecessary to respond to the first assertion in the grievance since there is no remedy that will rectify the allegations. Having said this, I find the fact that the County chose to subject the

Grievant to the humiliation of being escorted out of the building before discipline was administered to be unwarranted and unjust. Moreover, the County's proffered reason for the escort – to protect the employee and the County – is nonsense. At the time of the escort, the Grievant was being investigated. She had not been disciplined and certainly hoped she would not be and therefore it is absurd to believe she would harm the computer system given the nature of the allegations against her. Moreover, there was absolutely no evidence to indicate that the Grievant was in harm's way. As such, it was premature and excessive for the County to escort her out of the building

### **AWARD**

1. The Union's Article 8, Section 1, paragraph 3 grievance is arbitrable.
2. The County did not have just cause to terminate the Grievant.
3. The County had just cause to issue the Grievant a written reprimand for "[o]btaining unauthorized access to any computer system."
4. The appropriate remedy is to return the Grievant to the Data Processing/Position effective immediately and make the Grievant whole for all lost wages and benefits.

Dated at Rhinelander, Wisconsin this 12<sup>th</sup> day of January, 2006.

Lauri A. Millot

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Lauri A. Millot, Arbitrator