

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**GREEN LAKE COUNTY COURTHOUSE EMPLOYEES UNION,
LOCAL 514-C, AFSCME, AFL-CIO**

and

GREEN LAKE COUNTY

Case 84
No. 64793
MA-13017

(Laurie Radke Grievance)

Appearances:

Thomas Wishman, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Local 514-C, AFSCME, AFL-CIO.

Lindner & Marsack, S.C., Attorneys at Law, by **James R. Scott**, on behalf of Green Lake County.

ARBITRATION AWARD

Green Lake County Courthouse Employees Union, Local 514-C, AFSCME, AFL-CIO, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Green Lake County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on August 25, 2005, in Green Lake, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by November 25, 2005. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to stipulate to a statement of the issue, but agreed the Arbitrator will frame the issues to be decided.

The County would state the issues as follows:

Was there just cause for the discipline and discharge of the Grievant? If not, what is the appropriate remedy?

The Union offers the following statement of the issues:

Did the Employer have sufficient cause, separately and individually, to discipline the Grievant on February 10, 2004, July 1, 2004 and July 8, 2004? If so, what was the appropriate level of discipline that should have been imposed in each case?

The Arbitrator adopts the County's statement of the issues.

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited, in relevant part:

ARTICLE 2 - RECOGNITION

...

B. 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;

...

C. The Employees, Management and the Elected Officials shall show respect to each other, fellow employees and the general public.

...

BACKGROUND

Fox River Industries (FRI) is an agency of the Green Lake County Department of Health and Human Services, and is a sheltered workshop for developmentally disabled adults,

who are referred to as “consumers” or “clients”. There are approximately 50-55 consumers who are divided into groups by their ability to do work. There is a Production Aide or Program Aide in charge of each group. There is a workshop area where consumers work and there is a room with an offset press for doing printing jobs. FRI provides transportation for most of the consumers to get to and from work. There is a full-size bus that carries 28 passengers and has two wheelchair lifts that is referred to as “28/2”. There is a smaller bus and four vans. The large bus and the 15 passenger van are most used, the former has a specific route referred to as the “short route”, and the latter has a specific route referred to as the “long route”. FRI employs part-time Bus Drivers who generally work 3-4 hours per day in that capacity.

The Grievant was employed as a Bus Driver and a substitute Production Aide with FRI from September, 2001 until her termination on July 8, 2004. She began as a driver of the 15 passenger van, driving both a morning and an afternoon route. Subsequently, she also made deliveries of the printing jobs done on the offset press at FRI.

Ed Schuh was the Production Supervisor at FRI from late 2001 until February of 2004, when he replaced Anthony Jaworski as the Unit Manager there, responsible for FRI’s overall operation. As Production Supervisor, Schuh did not supervise the Grievant, except when she substituted as a Production Aide in the workshop and with regard to making printing deliveries. As Unit Manager, Jaworski, and as of February, 2004, Schuh, was the immediate supervisor of the Bus Drivers, including the Grievant.

Beginning in March of 2003, while Schuh was the Production Supervisor and Jaworski was the Unit Manager, an issue arose between Schuh and the Grievant regarding her coming to work early and talking to employees in the workshop area on their worktime. Schuh believed that she was usually visiting with these individuals, while the Grievant maintains she was helping them finish their work or talking about work-related matters. On March 25, 2003, the Grievant was given a verbal warning from Schuh for not following his directive that she not be in the workshop area when she is not assigned to be working there.

The Grievant’s December 16, 2002, evaluation noted as a positive under “Initiative, Creativity and Accountability” that, “She often arrives early for work assignments and helps out in production when needed.” This was noted again in the area of “Cooperation and Teamwork”. However, the evaluation also noted a number of problem areas: Adherence to work rules and supervisor’s directions (needed to improve on working relationship with lead bus driver); Communication skills (not communicating information regarding consumers to the Service Coordinator); Customer service (complaints from consumers about her kidding and her smoking – asked to confine her smoking to before and after her workshift); Safety (two reported accidents (with the big bus) and several complaints from parents about her driving habits – too fast in an apartment complex and moving the bus before consumers settled in their seats – noted some improvement in this area).

In mid-April of 2003, the Grievant was given a “Goals and Accomplishments Review”, which indicated “needs improvement” in the areas of: Judgement (Exchange of information,

dealing with crisis, confidentiality of consumer information); Communication (“Needs to communicate first with Service Coordinator and Production Supervisor on consumer information”); Cooperation (“Works well with co-workers but not with supervisory personnel”). An “unsatisfactory” was noted regarding meeting with the Service Coordinator on consumer goals and updating the manager monthly. Improvement was noted regarding not having any vehicle-related accidents or complaints on driving habits.

In June of 2003, issues again arose between Schuh and the Grievant regarding her being in the workshop area when she was not assigned to work there. On June 23, 2003, Schuh issued the Grievant a memo warning her that if she was again in the workshop without seeing him first, she would be given a written reprimand or suspension. There was also a meeting on that date between Schuh and Jaworski, the Grievant, and her Union Steward, Jeanne Theune, to discuss this area of concern. The Grievant indicated at the meeting that she came in early to prompt certain consumers to get ready for the bus ride home, as she felt production staff were not getting them ready.

In February of 2004, Schuh replaced Jaworski as the Unit Manager at FRI. On February 10, 2004, Schuh issued the Grievant a written reprimand for not following instructions in toileting consumer M.S. and not responding to the consumer’s calls for help. The reprimand was grieved.

The Grievant testified that Schuh had only given her brief verbal instructions regarding toileting M.S. and that she had followed them that morning. When M.S. started calling for Schuh, the Grievant asked if she could help, but he kept calling for Schuh. She went to Schuh’s office, but he was not there so she did not know what to do and did not know if she should enter the bathroom. A Program Aide at FRI at the time, Jeanne Theune, testified she was in the front lobby at the time and saw the Grievant standing outside the bathroom and heard her call out for Schuh for help, but did not hear Mark S. or see the Grievant go in Schuh’s office.

Schuh testified that he had not only given her verbal instructions, but demonstrated physically how to position M.S. He also stated that the Service Coordinator, Dawn Forbush, called him in his office to tell him M.S. was yelling for help and he found the Grievant standing by the bathroom doing nothing. Forbush’s memorandum regarding the matter stated she could hear M.S. calling for help and could see the Grievant trying to talk to him through the door instead of going in to help him, and that she called Schuh to let him know about it.

In late March of 2004, the Grievant was assigned to drive the large bus on the short route. On April 7, 2004, Schuh rode along with the Grievant to monitor her driving habits and consumer behavior on the bus and to determine the need for the changes to the route the Grievant had proposed. According to Schuh, he noted that the Grievant, as well as one of the consumers, did not have their seatbelts buckled (as was also the case with Schuh until a consumer reminded him) and that the Grievant did not have a clear idea where each consumer sat. As a result, Schuh issued the Grievant a memorandum on April 14, 2004 which stated, in relevant part:

After riding along and observing your morning bus route on Wednesday 4/7/04, I am directing that you to make the following changes immediately:

- 1 – After picking up the out of town consumers in the AM, ask them at least once if they are comfortable with the temperature in the bus. In the PM, ask them as soon as the bus engine is warmed up.
- 2 – Be sure *all* passengers and *yourself* are buckled up at all times during transit.
- 3 – Follow the seating chart you are being issued today 100%. The bus does not move until all consumers are seated and buckled in their assigned locations.

The Grievant did not drive the p.m. route on April 14th. The Grievant drove the a.m. route on April 15th, but did not implement the seating chart. According to Forbush the Grievant informed her on April 15th that she had not implemented the seating chart on that morning's a.m. route, and questioned whether it was needed, but also indicated she planned to implement it on a p.m. route. The Grievant testified that she felt it would be easier to implement the seating chart on the p.m. route, as she could explain it just once when everyone was on the bus, rather than explaining it separately to each consumer as they got on the bus on the a.m. route. The Grievant asserted the chart was implemented on the p.m. route on April 15th, however, according to Forbush's e-mail of April 19, 2004 to Schuh, she was asked to assist with a problem with a consumer on the Grievant's bus the evening of April 15th, and in doing so, noted that a number of the consumers were not seated according to the chart. Schuh issued the Grievant a written reprimand for not following his instructions to implement the seating chart immediately. The reprimand was grieved. At the grievance meeting with Schuh and the Deputy Director, LeRoy Dissing, the Grievant's behavior toward Schuh was so rude that Dissing threatened to give her a reprimand. The grievance was subsequently withdrawn.

On April 21, 2004, Schuh issued the Grievant a written warning for not filing an incident report regarding a consumer's having tripped and fallen, and injured herself, upon exiting the Grievant's bus on April 19, 2004. The Grievant had filed a report regarding a different incident involving that same consumer on that date, and testified that while she saw that consumer stumble while getting off the bus, she did not see her fall, and no one informed her the consumer was injured. She asserted she could not report what she was not aware had occurred. At Schuh's direction, the Grievant completed a report. A grievance was filed regarding the matter, but was withdrawn based upon the County's having indicated it considered the warning to be non-disciplinary in nature.

In May of 2004, a citizen reported to the Green Lake County Sheriff's Department that she had followed the FRI bus for two and a half miles the morning of May 25th and that the bus was two feet over the centerline much of the time. The Sheriff's Department relayed the complaint to FRI, and Schuh had them fax the report to him with the complainant's telephone number. Schuh called the individual and asked her to put in writing what she had observed. The individual asked to remain anonymous, but sent Schuh a letter, which stated, in relevant part:

As you requested, I am writing to summarize what I observed of your bus driver on May 25.

As I was driving to work in the morning (between 7:10 and 7:25 am, approximately), I was directly behind a large blue bus, heading east on County E (east of Neshkoro). I followed the bus to a point where it turned south on South Road.

During the approximately 2.5 miles I followed the bus, it was over the center line by 2 or more feet the majority of the time, (except when there was oncoming traffic), including when it was traveling around curves and up hills. At times, the bus was almost half in the westbound lane and half in the eastbound lane. The driver maintained a speed of between 45 and 50 mph. Because it was over the center line, I was unable to pass the vehicle. It appeared the driver was unaware I was behind it.

While the driving was not erratic, it appeared the driver was uncomfortable with staying in the eastbound lane, or perhaps being that close to the shoulder of the road.

Perhaps this is an "experience" issue, or a training issue. In any case, I felt it was necessary to call and mention it to the authorities, as the bus passengers may not be in a position to speak on their own behalf.

The identity of the individual was not shared with the Union.

The Grievant was the driver of the bus the morning in question and Schuh met with her and her Union representative on June 2, 2004 to discuss the matter. At that meeting, the Grievant stated she was taught in her CDL training that it was alright to be over the centerline as long as she could see oncoming traffic. Both Schuh and the Union's representative disagreed that it was alright to drive over the centerline. Schuh issued the Grievant a memorandum memorializing their meeting, which stated, in relevant part:

The purpose of this memo is to impress upon you the importance of practicing safe-driving procedures at all times. Be sure to follow all traffic laws, including driving in your lane, at all times. The safety of FRI consumers is our number one priority, and safety violations that compromise their safety will not be tolerated. If further substantiated reports of unsafe driving come to my attention, you are hereby warned that it will lead to progressive disciplinary action up to and including termination.

During the course of the meeting on June 2nd, the Grievant mentioned that one of the care-takers (Mr. Weckworth) for two of the consumers (J and J, 45 year old and 70 year old females) had told her he no longer wanted her to pull into their driveway and that she was concerned that she would need to pull to the side of the road to drop off the consumers. Schuh indicated he would call the Weckworths to find out what the issues were, but that she should continue to pull into their driveway until he had a chance to discuss it with them. Schuh spoke with Mr. Weckworth on June 3, 2004 and was told that the Grievant was not pulling into the driveway; rather, she was pulling to the side of the road in front of their driveway, and in doing so, was going back and forth so many times to get over far enough that he was

concerned the bus would be hit and she was digging up his ditch. Schuh asked Mr. Weckworth if he had a problem with the Grievant pulling the bus into their driveway to drop off J and J, and was told that he had no problem with that, but that the Grievant had difficulty doing that. He told Schuh that the first time the Grievant drove the bus out there she pulled in and sideswiped the rail of their fence. Asked if the previous driver had problems pulling into the drive, Mr. Weckworth indicated he had done it all the time without incident. He also indicated he had widened their drive since the Grievant took over to help with pulling the bus in and out. Mr. Weckworth opined that the Grievant did not know how to handle the bus and that when she backs out, she takes so long to position the bus on the road he is concerned the bus will be hit. He also informed Schuh that on one occasion the Grievant had such difficulty positioning the bus in the drive that he offered to do it for her and she allowed him to do it. Schuh asked the Weckworths to put their concerns in writing and, in response, they sent the following letter of June 3, 2004:

Dear Ed,

Writing to you in regards to your phone call today. As to your question that we told Laurie she could not come in the driveway we did not say she couldn't come in the driveway we just said to her if she did not feel comfortable coming in to go down the road, turn around and then pick up (J) and (J). Because when she first started driving and the first few times she came in the driveway she hit the fence or bend (sic) over posts when trying to turn around. Even when she has (sic) the small bus she would turn into the driveway just enough to be off the road and when she would back out she would not turn out instead back across the road and into the ditch on the other side of the road, backing out blindly.

Rich has told her not to drive on the shoulder of the road length wise along the ditch because the bus is so heavy it is rutted (sic) the end of our driveway up. Sometimes she approaches so fast and when she stops the wheels skid when it is wet. Another time she over shot our driveway and then had to back up quite a distance going backward then forward then backward having a hard time backing up straight and with the traffic we have on our road we feel it is dangerous.

Ed with the conversation on the phone today that she was suppose to drive in, she did not, instead she went down the road and turned again. She stopped short of the driveway down on the

shoulder of the ditch and (J) had to walk on the woods side of the fence which is very on even (sic) and hard for (J) because of her balance problem. (J) and (J) told us at supper that Laurie stated she was not going to use the driveway. We never had any problems with Leroy when he drove and turned around in our driveway. Rich is able to turn around in our driveway with the pontoon boat and the truck which is longer than the bus so we feel there should be no problem.

Sincerely,
Rich and Sue Weckworth

Schuh met with the Grievant on June 14, 2004 to discuss the problem at the Weckworths at which time the Grievant stated she did not know she had hit the fence rail the first time she was there, and denied telling J and J that she would not pull into the driveway. Schuh then called Mr. Weckworth, who told him that the Grievant knew she hit the fence rail because the bus got stuck on it and he had to direct her which way to turn the wheel to get off of it. Mr. Weckworth also told Schuh that J had not only stated at supper time that the Grievant had said she would not pull into their driveway, but had said it again right after supper. Mr. Weckworth also stated that on one occasion when he directed the Grievant not to park in his ditch, she said, "I can't park in the goddamn road, it's against the law." He also indicated that he had told the Grievant to go down the road and turn around and come back and pull off on the side of the road because he was convinced she could not pull into the driveway and turn around to exit front first.

On June 15, 2004, Schuh went out to the Weckworth's place to view the area and took photographs of their driveway area. On June 16, 2004, Schuh issued the Grievant a two-day unpaid suspension which stated, in relevant part:

Following up on our meeting (6/14/04), I am issuing you a two day unpaid suspension for the following failure to follow protocol in reporting accidents and for being dishonest/discourteous as set forth below:

- 1) In speaking again with Mr. Rich Weckworth, it became apparent that you knew you hit his fence with the bus in March of this year. He claims you were actually "hung up" on the fence and that he had to direct you in order to get the bus off of it. You failed to file an incident report with your supervisor. You had been warned (on April 21, 2004) to file incident reports and this continues to be an issue. You must file an incident report with your supervisor as soon as possible no matter how slight the incident.

- 2) Furthermore, Mr. Weckworth claims that J and J both told him that you are not going to use the driveway even though you deny this statement. I believe the Adult Family Home provider (Mr. Weckworth) in this instance. Therefore, you are not being honest with your supervisor in stating what you told these consumers. The fact is that you did not start pulling into the driveway to pick them up until after our meeting on June 2, 2004, which again adds credibility, to what you deny saying to J and J.
- 3) Mr. Weckworth claims that when he tried to direct you not to park in his ditch, you yelled, "I can't park on the god damn road. It is against the law." This statement is clearly inappropriate and even more so if consumers heard it. You are to reframe from using vulgar and/or obscene language at all times while on work time.

. . .

The suspension letter went on to state that the suspension was considered progressive discipline in light of the February 10, 2004 reprimand regarding the toileting of consumer M.S., the April 16, 2004 reprimand for not immediately implementing the seating chart, the April 21, 2004 warning for not filing an incident regarding a consumer tripping and falling getting out of the bus and injuring herself, and the June 2, 2004 memorandum regarding the citizen's complaint about her driving over the centerline of the road.

The Grievant testified that she did not know she had hung up on the fence rail and that Mr. Weckworth had not said anything about it that night, which was the first time she had driven to their place. She also denied telling J and J that she would not use the driveway and denied using profane language with Mr. Weckworth, stating that he sometimes yelled or raised his voice with her. She also testified that she did not think that J's memory abilities were such that she would be capable of repeating something the Grievant had said. Mr. Weckworth testified he could not recall the Grievant swearing at him.

The Grievant served her suspension and returned to work on Monday, June 21, 2004. Schuh was on vacation that week. The Grievant reported to Production Supervisor Becky Volgner on Tuesday, June 22nd, after returning from her morning route, that the night before Mr. Weckworth had yelled at her, upsetting a consumer, and had told her to pull into their driveway when dropping off J and J, back up, and pull out forward, rather than back out. She did so that morning, but the Weckworths had put up posts and string to block off the areas they did not want her driving on, and she thought she might have hit one. She reported that she did not feel there was room to back up the bus and that one cannot see the posts when backing up because of their close proximity to one another. The Grievant was concerned this was going to create trouble for her again and asked that the Weckworths provide written documentation as to the pick-up and drop-off procedure to be followed in order to eliminate communication errors. After discussing the situation with Dissing, Volgner told the Grievant to ask Mr. Weckworth to put his request in writing. The Grievant did not want to have to speak to Mr. Weckworth, but agreed to ask him if he came out to the bus again. On June 24th, the

Grievant informed Volgner that she had hit one of the posts at the Weckworths' the evening before and that it was making her very nervous because she did not feel there was enough room to maneuver the bus, and that LeRoy Pettit (the Lead Bus Driver) agreed with her. The Grievant asked to have someone ride along with her to see what she was describing. According to Volgner's notes, Volgner told the Grievant it would be best if Schuh rode along with her, but that since he was gone, she should pull alongside the drive to avoid any more chance of damage to the Weckworths' property.

The Grievant had a Production Aide ride along with her during that week to witness what was occurring. The Grievant testified that Aides have rode along in the past, without management objecting, when there are issues, although she conceded that the Drivers Handbook only mentions having Aides ride along when there is inclement weather or client-related problems. She testified that she told Volgner she was going to have someone ride along with her and that Volgner did not say she should not, and later testified that Volgner said she should do that, but conceded there was nothing in writing.

On June 26, 2004, the Weckworths sent Schuh a letter which read, in relevant part:

Dear Ed,

This is to inform you of an update of the bus driver, Laurie, for (J) and (J). Laurie tried numerours times to turn around in the driveway digging holes in the gravel by turning the wheels without moving the bus. Also knocking over posts, when Rich tried to help her Laurie got real upset and backed out across the road into the ditch, blindly, and had to go up the road and turn around any way. This was Monday. Tuesday (J) came home real upset stated that she wanted to stay here to live and not have to ride a different bus. All we could understand that Laurie told her something but do not know exactly what it was. When Rich tried to help Laurie she yelled "I can't do it."

Since Wednesday, Laurie has been going by and going down the road to turn around instead of coming in our driveway. She will tear up the bottom of the driveway again the way she did the first time, this is why we had to spend \$450 to correct the problem. We have given her a couple of weeks to learn how to turn around and there is no way after observing her she will never get it right because she does it different every time she did come in the driveway.

We are tired of having to rake the holes out after each time she does drive in and setting the posts back up. So we ask that you replace the driver or we will give notice that we will no longer do the Adult family Home and shut down entirely. We feel we have been fair and patient but we should not have to put up with her attitude.

Please let us know as soon as possible by giving us a phone call or coming out to our house to show you what we are telling you. Also to let you know even with the small bus or the van she has to go back and forth and back and forth before she gets turned around. Our phone number is . . . Also we do not want to be responsible for the safety of (J) and (J) because it is just a matter of time before something could happen.

The afternoon of Monday, June 28, 2004, Schuh rode along with the Grievant to the Weckworths on the p.m. route to see the driveway and what the problems were with turning the bus around there. The Grievant testified that the posts the Weckworths had along the borders of their drive were moved further back on June 28th from where they had been, giving her enough room to turn the bus around easily and that she told Schuh this and that she did not need any help. Schuh testified that on the way he noticed that consumer J did not have her seatbelt buckled and he had her buckle up. He testified that at the Weckworths, the Grievant acted angry and did not want to talk to him, and that when he got behind the wheel to demonstrate how to turn the bus around, the Grievant turned to face away from the bus and smoked a cigarette. The Grievant testified that she was upset and that Schuh and the Weckworths were yelling and taking pictures and she felt she was being attacked and wanted them to stop. She conceded she was smoking, but stated she was away from the bus and outside at the time. She also stated that she did not think Schuh was qualified to teach her how to turn the bus around, since he did not have a CDL.

On July 1, 2004, Schuh issued the Grievant a suspension letter that read, in relevant part, as follows:

RE: Discipline/Suspension Letter

After receiving a complaint on June 27th and investigating the allegations of unsafe driving by you and also your inappropriate attitude, I have determined the following:

1. You have engaged in unsafe driving placing yourself and passengers at risk by backing out of a caretaker's driveway across the road into a ditch blindly;

2. You have caused sufficient property damage to a caretaker's driveway by not turning the bus around appropriately. You have knocked over posts with the bus and dug up holes in the gravel by turning the wheels without moving the bus. The caretaker spent \$450 in new gravel for his driveway to correct the problem.
3. You have displayed a poor attitude toward the caretaker by yelling at him: "I can't do it!" Furthermore, your attitude toward me when I tried to demonstrate how to turn the bus around was that "I don't have time for this." You were sarcastic in your tone of voice and in your demeanor.
4. You lit a cigarette at the caretaker's home on June 28th while I was trying to show you how to turn the bus around. This is in violation of FRI policy.
5. I further observed that you did not have all passengers buckled up in their seatbelts that you were transporting on June 28th. This is in violation of FRI policy and is a safety/liability issue.
6. Having unauthorized personnel ride on your bus.

For the above reasons, you are being suspended without pay for three days. You will serve your suspension on the following days: July 2, July 6 and July 7. You should report back to work Thursday, July 8th for your morning route.

During the time of your suspension you shall not be allowed at Fox River Industries or have contact with any staff there during working hours except the Unit Manager (Ed Schuh).

Upon return to work, you are to:

1. Comply with the duties of your job description, work rules and policy/procedures.
2. Additionally, you are to follow consumer programming and scheduling as it relates to consumer care and safety. These conditions will be reiterated to you upon your return and you will be responsible to ensure that you follow them.
3. Perform your duties without sarcasm or inappropriate comments to consumers, staff and caretakers.

4. Not have any additional complaints (this includes damage to property) regarding your job performance or attitude.
5. No one shall ride the bus without express permission of management.

Failure to follow the above corrective action will lead to immediate discharge from employment with Green Lake County. This letter is intended to impress upon you the seriousness of with which management takes the concerns outlined within. This letter is intended to be your final notice that unless your job performance/attitude improves, you will be terminated from employment.

...

Also on July 1, 2004, Schuh received an e-mail from the Green Lake County Sheriff's Department regarding a complaint they had received from a George Henke regarding a lady driver of a FRI bus driving over the centerline of the road on June 30, 2004. Schuh called Mr. Henke on July 2, 2004 regarding his complaint. Mr. Henke told Schuh that on June 30th, he and his wife were on their way into Berlin eastbound on the county road when they encountered a big blue bus coming at them a foot over the centerline where the road goes over a culvert on a curve. While neither of them saw the driver that time, on the way home they saw the same bus again and saw the driver, describing the Grievant. Mr. Henke also stated that he had encountered the bus with the same driver previously with the front wheels of the bus two feet over the centerline of the road. Having seen this occur twice with that driver, he felt this was an unsafe practice that needed to be corrected, so he called the Sheriff's Department. Mr. Henke reiterated his statement at hearing, and further testified that he barely avoided being sideswiped by the bus the second time. The schedule shows that the Grievant was driving the large bus on June 30, 2004.

Schuh discussed the Grievant's performance with the Director and Deputy Director of the County's Department of Health and Human Services and recommended that her employment with FRI be terminated, considering Mr. Henke's complaint to be the "last straw". On July 8, 2004, Director Linda Van Ness issued the Grievant a termination letter which stated, in relevant part:

RE: Termination of Employment

Dear Ms. Radke:

This letter is to confirm that Green Lake County has decided to terminate your employment with the Green Lake County Department of Health & Human Services effective July 8, 2004. 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 engaged in unsafe and unlawful driving. A concerned citizen called the Green Lake Sheriff's Department to report that: On Wednesday afternoon, 6/30/04, this concerned citizen and his wife were eastbound on a trip to the Berlin Lumber store when they encountered the big blue bus coming at them over a culvert on a curve with its front wheels about one foot over the centerline. This concerned citizen stated that he had no reason to believe that a different driver would be operating the bus on the return trip; he assumed it was the same driver. He also stated that on a previous day (he does not know the exact date but stated that it was some time ago) he encountered this same dark haired driver on the same blue bus with her front wheels about 2 feet over the center line (on this occasion this concerned citizen was traveling west and Ms. Radke was going east). This concerned citizen felt at that time that maybe it was just a one-time incident, but after witnessing the same unsafe driving practice for the second time on Wednesday, he felt it was time to call it in.

2. 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:

- On February 10, 2004 you were issued a reprimand for not responding to a consumer who you were toileting (This is currently being grieved).
- On April 16, 2004, you were reprimanded for not immediately implementing a seating chart given to you by your supervisor (This is currently being grieved).
- On April 21, 2004, you were given a written warning for not turning in an incident report regarding a consumer who tripped off the bus ramp when exiting and injured herself.
- On June 2, 2004, you were issued a memo in regards to a complaint filed with the Green Lake County Sheriff's Department in which a citizen observed you traveling over the centerline for 2.5 miles and around curves. This was considered unsafe driving and you were directed to stay on your side of the road.
- On June 21, 2004, you were issued a two day unpaid suspension for not reporting an accident with the bus you were driving, not being honest with your supervisor and for using inappropriate language with an adult family home provider.
- On July 1, 2004, you were issued a three day unpaid suspension for the following:

1. You have engaged in unsafe driving placing yourself and passengers at risk by backing out of a caretaker's driveway across the road into a ditch blindly;

2. You have caused sufficient property damage to a caretaker's driveway by not turning the bus around appropriately. You have knocked over posts with the bus and dug up holes in the gravel by turning the wheels without moving the bus. The caretaker spent \$450 in new gravel for his driveway to correct the problem.
3. You have displayed a poor attitude toward the caretaker by yelling at him: "I can't do it!" Furthermore, your attitude toward me when I tried to demonstrate how to turn the bus around was that "I don't have time for this." You were sarcastic in your tone of voice and in your demeanor.
4. You lit a cigarette at the caretaker's home on June 28th while I was trying to show you how to turn the bus around. This is in violation of FRI policy.
5. I further observed that you did not have all passengers buckled up in their seatbelts that you were transporting on June 28th. This is in violation of FRI policy and is a safety/liability issue.
6. You unilaterally engaged in inappropriate conduct by allowing unauthorized staff to accompany you on your bus while transporting consumers the week of June 21 to June 25, 2004. It is simply not appropriate to allow anyone to ride on your bus without management approval, a matter well understood by staff and as a matter of common sense.

For the reasons noted herein, you have seriously jeopardized consumer safety and 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.

Sincerely,

Linda Van Ness /s/
Linda Van Ness, Director
Green Lake County Department of Health & Human Services

Ms. Radke grieved the discipline and her termination and being unable to resolve their dispute, the parties proceeded to arbitration before the undersigned.

POSITIONS OF THE PARTIES

County

The County asserts that it had just cause to impose the discipline it did on the Grievant, including her termination. The evidence shows that the Grievant was an employee with a poor attitude who was unwilling to conform her behavior to the employer's standards and that she acted with callous disregard for the most obvious safety standards.

According to the County, the Grievant had developed a pattern of coming into the workshop area in the afternoons well before her own start time of 3 p.m. While she had been spoken to about this, management had not enforced its prior directive. On March 19, 2003, a controversy developed between the Grievant, her mother and a consumer. The Grievant was formally alerted by her supervisor that she should not be in the production area unless assigned or to meet with Schuh. Schuh reinforced this directive the next day. Notwithstanding that clear directive, the Grievant was again in the workshop at 2:45 p.m. talking to a co-worker who was on the job. When confronted, the Grievant advised Schuh that there "was no way he could keep them from talking." Though Schuh reaffirmed that she should not be in the area before 2:55 p.m., the Grievant was still in the production area at 3:10 p.m., talking with her mother. In response to Schuh's directive to "move on" she accused him of harassment. On March 25, the Grievant received a formal verbal warning and was specifically instructed not to be in the production area either before or after the start of her shift. A specific criticism was also placed in her April, 2003 evaluation. Despite this, the problem continued. An incident occurred on June 20th in the workshop which culminated in a meeting with the Grievant and her Union representative and another disciplinary memo was issued indicating she had been given one more warning. Days later, the Grievant was back in the workshop shooting the breeze before her starting time.

The Grievant's response to this three-month effort to get her to comply with a simple directive was that management gave her inconsistent directions, and according to the Grievant, she was discussing work-related matters and it was appropriate for her to be in the workshop. The Grievant also believed that her presence in the shop only became an issue after Schuh was promoted to Unit Manager in February of 2004. However, on cross-examination, she admitted that the warnings were issued long before Schuh became her supervisor. The issue of the Grievant's being in the shop is not the most critical of her misdeeds, but is illustrative of her view of the workplace; rather than simply accepting a clear directive, she chose to initially disregard it, then challenged it and finally, grudgingly accepted it with disdain for the manager.

Next is the incident with consumer Mark S. Schuh, who had been toileting the consumer prior to his promotion, provided the Grievant with specific directions as to how to

put the consumer in a proper position to use the toilet facilities. Mark S. became easily disoriented as he was blind, deaf and developmentally disabled. Schuh's instructions were to back the individual into the stall so his legs touched the toilet, then put one hand on the toilet paper roll and instructing him to call out when finished. The Grievant was to wait outside the men's bathroom. On the day in question, the Grievant walked Mark S. into the bathroom and went outside. Thereafter, Mark S. began to yell for help. Eventually Schuh was notified and observed the Grievant simply standing outside the bathroom doing nothing, while Mark S. was halfway in the stall, completely disoriented, and crying out for help. The Grievant's version is that she only received minimal instruction from Schuh. When Mark S. became disoriented and started yelling, the Grievant allegedly asked him through the door if he needed help, and when he did not respond, she did nothing because she was "unsure whether to enter the bathroom." Unexplained is why she would ask someone who is virtually deaf if he needed help. Schuh's version of what occurred is corroborated by the contemporaneous business record prepared by Dawn Forbush, which indicated that apart from attempting to talk to Mark S., the Grievant did nothing. The Grievant's version is incredible. She claims she was not properly instructed, yet states that she performed precisely as Schuh testified he instructed her. As a caregiver responsible for this severely handicapped individual in obvious distress, one does not fail to react because they are unsure of whether or not to enter a bathroom that they had been in merely minutes before. Hence, a reprimand was warranted.

Regarding the seating chart written reprimand, the Grievant once again refused a direct written order from her supervisor. Following a supervisory ride-along, Schuh directed that that same day a seating chart be implemented immediately. The following day the Services Coordinator reported that the seating chart had not been implemented. The Grievant was given a written warning and at a grievance meeting her behavior was so unruly that the Deputy Director felt it necessary to inform the Union representative of that fact. The grievance was withdrawn. The Grievant's explanation was that Schuh's direction to immediately implement the seating chart was not absolutely clear, and that she thought she was free to exercise some judgment. However, she subsequently acknowledged there was nothing unclear about the practice.

On April 21, 2004, the Grievant was issued another written warning following an apparent injury to a consumer while exiting the bus. However, the warning was subsequently modified to "non-disciplinary".

The first complaint that the Grievant was driving the bus over the centerline came from an anonymous witness who felt that her driving was dangerous enough to file a report with the Sheriff's Department. The letter received by FRI as a follow-up to Schuh's investigation indicated that the Grievant was consistently operating her bus two or more feet over the centerline. At the follow-up meeting, the Grievant asserted that she had been taught that it was "okay to drive over the centerline as long as you can see what's ahead." Even her Union representative indicated he disagreed.

Regarding the suspensions, the Grievant was issued a two-day disciplinary suspension on June 16, 2004, for failure to report an accident involving the striking of a fence in the Weckworth's yard, for stating that she did not intend to follow instructions to turn around in the driveway, and for yelling at Mr. Weckworth. The Grievant denied that the latter two incidents occurred and asserted that regarding the first, she thought she was "hung up" on a snow bank, rather than on the rail fence. The "snow" explanation is simply false. The County asks the Arbitrator to take official notice of the U.S. Official Climatological Data for March 28, 2004 on the cited website. That data reveals that Wisconsin was free of all snowcover by that date. It would take a large pile of snow to "hang up" a large school bus. Hence, the Grievant is clearly not being truthful about that incident.

The Grievant served her two-day suspension on June 17th and 18th, and returned to work on June 21st while Schuh was on vacation. Upon his return, he received another letter from the Weckworths complaining about the Grievant's driving, and the fact that she damaged their driveway. In response, Schuh accompanied the Grievant to the Weckworth residence with the intention of showing her how to turn the bus around in the driveway. In a sarcastic tone of voice, the Grievant told Schuh that she "didn't have time for this" and stood to the side smoking a cigarette. She told Schuh to stop taking pictures and demanded Union representation.

When confronted with the photographic evidence that turning the bus around in the Weckworth's driveway was not all that difficult, the Grievant claims that the Weckworth's, acting in concert with Schuh, moved the posts further away, so it was easier. This implausible explanation is contradicted by Employer Exhibits 14A through 14F taken on June 15th and Employer Exhibits 10A through 10H taken on June 28th.

The Grievant does not dispute taking unauthorized personnel on the bus during the week Schuh was on vacation. She initially claimed that another supervisor tacitly authorized the ride-along, however, when confronted with the supervisor's notes, the Grievant backed off her claim that a supervisor approved of the witness passengers. She also acknowledged that the ride-along witnesses were not authorized under driver work rules. Her fall back explanation was that the supervisor had orally authorized the unpaid witnesses, even though her memo indicates to the contrary.

The Grievant also admitted that she engaged in the extremely dangerous practice of backing a school bus out of the driveway onto a roadway, and she admitted her comments to Schuh on the June 28th visit to the Weckworths. Essentially all of the conduct leading to the three-day suspension is admitted and while she disputes some of the conduct leading to the two-day suspension, she basically admitted the unreported accident as well.

The final straw was on July 1st, when Schuh received an e-mail from the Green Lake County Sheriff's Department indicating that George Henke had witnessed the Grievant again operating the bus over the centerline on the highway. Schuh investigated and spoke with Henke who did not know the Grievant by name. While carrying passengers, the Grievant was

operating the bus over the centerline and almost ran Henke and his wife off the road. Henke had also observed the bus being operated over the centerline several weeks before the incident. The Grievant did not deny or dispute any of the allegations made by Henke and common sense tells us that ordinary citizens do not report unsafe driving to law enforcement representatives, except in the most egregious cases. Yet the Grievant was subject to two separate complaints within a matter of weeks for the very same behavior. The Grievant did not claim that she was inadequately trained or in need of additional training, and she never asked Schuh for additional training.

Schuh recommended that the Grievant be discharged based upon her overall record and she was terminated. In addition to displaying a consistently poor attitude toward her employer, the Grievant engaged in unsafe practices that could potentially have injured a number of people. An employer does not have to wait for an actual injury before taking action. The County concludes that it has established just cause for the discipline and the termination.

Union

The Union asserts that an examination of the facts leads to the conclusion that the County did not have just cause to issue the discipline on the dates indicated or to terminate the Grievant's employment. While it would be disingenuous to assert there were no issues with the Grievant's employment, it is clear from the record that there is substantial doubt as to the adequacy and fairness of the employer's investigation and disposition of those issues. In some cases, it is not clear at the time the discipline was issued that the County had proof that the alleged incidents had occurred, but rather relied on information provided by outside individuals, which the Grievant disputed at the time. At hearing, the Grievant disputed many of the facts asserted by the County, and many of the incidents alleged as the basis for discipline are contradicted by the testimony of other witnesses as well. Looking at the appropriateness of the discipline, it would seem that the Grievant's supervisor was more interested in imposing discipline as a punitive measure, following a strictly progressive path, without regard to the facts and circumstances in each individual incident. There was little or no effort to afford the Grievant fair and reasonable considerations in her efforts to comply with the County's wishes and directives.

The Union asserts that the discipline issued on February 10, 2004 for the alleged failure to properly toilet consumer Mark S. does not meet the just cause standard and should not have been issued. The Grievant testified that she received no formal training regarding how to perform this duty other than verbal instructions from Schuh. On the morning in question, the Grievant had assisted the consumer into the toilet, closed the door and waited outside as she had been told to do. Shortly thereafter, the consumer began calling out for Mr. Schuh. The Grievant then went to Schuh's office to seek his assistance, but not finding him there, she asked the consumer through the door if she could assist him, but he kept calling out for Schuh. The Grievant testified that she did not know at that point if it would be proper for her to enter the bathroom. When Schuh became aware of the situation, he went into the bathroom and asked the Grievant to enter as well where he demonstrated for her first-hand how to handle the

situation. In most employment situations, this entire incident would have been treated as further training and as a clarification opportunity for the employee in the best case, and in the worst case, a small problem not worthy of discipline. This was the very first time that the Grievant attempted to perform the task and it was the first time that the consumer, a male, had been toileted by a female. There is no evidence to support the contention that the Grievant did not do as she was instructed, and the testimony of both the Grievant and her co-worker, Theune, was that as soon as she encountered a problem, she attempted to secure assistance. The discipline therefore not only fails the test of the employee having adequate notice of what was expected and the possible consequences of her failure to do what was expected, but also fails any reasonable analysis of appropriateness under the circumstances. Again, the discipline has more to do with punishment than an honest attempt to address a perceived performance problem.

The written reprimand issued by the County on April 16, 2004 for failure to implement a seating chart also does not meet the test of just cause. On April 14, 2004, the County issued a memo to the Grievant directing her to implement a new seating chart for passengers on her bus route, however, the first time the Grievant drove the route after the memo was issued was the next morning, April 15th. The Grievant readily admits she did not implement the seating chart for the morning route, but testified that she intended to implement it on the route that afternoon, as she believed it would be easier to implement the chart when she could get all of the passengers in the correct seat as they were leaving FRI, rather than to do it one at a time during the morning route. The Grievant admits that in discussing the seating chart with another member of management, Forbush, after she completed her morning route, she expressed reservations about it, however, there is no evidence to suggest that at any point in the conversation she indicated she would not implement the chart. She in fact did so that very afternoon without any further instruction or direction from management. The Grievant followed the directions she was given, but exercised reasonable judgment in how to go about it. To punish an employee for exercising sound judgment in carrying out a directive does not pass the “reasonable” test of just cause.

The County also did not have just cause to issue the written warning of April 21, 2004 for failing to complete a consumer report. The warning was issued because the Grievant allegedly failed to complete a report detailing an incident in which a consumer was injured during a stumble or fall, however, the Grievant testified that she was unaware that the consumer had suffered any injury as a result of the stumble. While the County asserts the Grievant knew of the injury to the consumer, it is unable to offer any evidence to support its contention. Thus, the County did not have sufficient evidence to prove the Grievant had knowledge the consumer was injured as a result of the stumble. Upon being directed to complete an incident report, the Grievant did so, where she again indicated she had no first-hand knowledge that the consumer had been injured. To issue a warning in this instance was not warranted by the evidence available to the County at the time.

The two-day suspension issued on June 16, 2004, likewise does not meet the requirements of just cause and should not have been issued. The suspension was based on

three separate determinations, none of which are supported by the evidence. The first item noted is that the Grievant failed to file an accident report for allegedly “hanging up” the bus on a fence post in attempting to turn around in the Weckworth’s driveway. While the Grievant does not deny that the bus may have been hung up on the fence in question, she indicated she was not aware of it at the time. It is not unreasonable to assume that was the case, as it was clear from her testimony that she got hung up on the post when she was backing up the bus. It is not unreasonable to assume that there are blind spots directly in back of a large bus of this type, and it is not always possible for the driver to observe through the rear-view mirrors. The testimony of Weckworth and the Grievant indicate that the former was present during the incident and was giving hand signals and directions to the Grievant, but there is no evidence to suggest she was aware she was hung up on the fence post, or that Weckworth informed her that she was. Given these circumstances, the County did not have sufficient evidence to prove that the Grievant was aware that she had backed into the post and it was therefore inappropriate to expect her to fill out an accident report on the incident. The second item noted is that the Grievant was untruthful regarding statements she had made to two of the consumers about whether or not she would pull into the Weckworth’s driveway to turn around the bus. The Grievant testified she did not make such a statement, and there is no evidence that the County made any attempt to directly interview the consumers in question in this regard. Schuh chose to rely on hearsay evidence provided by the caregivers, i.e., Mr. and Mrs. Weckworth. The County cannot meet the burden of proof required to demonstrate dishonesty on the part of the Grievant and the assertion should not serve as the basis for any discipline. Last, Schuh asserts that during a verbal exchange with Mr. Weckworth regarding where the Grievant should park the bus, she was alleged to have said, “I can’t park on the goddamn road. It is against the law.” While Weckworth and the Grievant both testified that they had verbal interactions regarding the situation of turning the bus around in the driveway, the Grievant testified she never used profanity and Weckworth, when asked directly, indicated he could not recall of an instance where the Grievant swore at him. As with the first two items, the County lacks sufficient proof of wrongdoing on the Grievant’s part to justify the imposition of any formal discipline, let alone a two-day suspension.

Regarding the three-day suspension issued on July 1, 2004, although some discipline may have been warranted, the level of discipline imposed was inappropriate with regard to the infractions alleged and the prior discipline that should have been in the Grievant’s personnel file at that time. While the Grievant admits to many of the items alleged, in order to determine the appropriateness of any discipline regarding those incidents, it is necessary to look at the context in which they took place. The Grievant had been driving the large bus since approximately March of 2004 when she was assigned to it by her supervisor, Schuh, without explanation. Most of the incidents described in the July 1, 2004 suspension occurred during the last week of June and had to do with the same old issue of turning the bus around in the Weckworth’s driveway. For nearly four months, the Grievant had been making a determined effort to comply with the wishes of Schuh to turn the bus around in the Weckworth’s driveway and with the wishes of the Weckworths that she not hit the fence, create ruts, or otherwise operate the bus in a manner they did not like. Although at least one other bus driver, Theune, testified that she had been allowed to drive the bus down the road to turn around in another

driveway, rather than use the Weckworths', the Grievant had not been allowed to do so. She was chastised for making ruts in the Weckworths' driveway when it was springtime, the ground was soft due to an abnormal amount of rain and ruts were created because of her efforts to turn the bus around in a manner so as not to hit the fence post and other obstructions. The Grievant's actions in backing the bus out of the driveway and across the road was another attempt to turn the bus around without causing further damage to the driveway. It is clear from everyone's testimony that by this time tensions were running high and that the Grievant was under increasing pressure to comply with everyone's requests and desires. The Grievant testified that on the day in question, when Schuh accompanied her to the Weckworth residence, she was upset and felt she was being attacked. Being a smoker, it was not unreasonable to assume that the Grievant might feel the need to smoke a cigarette to calm her nerves. It was also the testimony of the Grievant and Theune that it was their opinion that Schuh treated the Grievant differently than other employees. Theune testified that Schuh was "demeaning" in his attitude toward the Grievant, was short with her and talked to her like she was stupid. There is no reason to believe that on the day in question Schuh did not exhibit a similar attitude toward the Grievant. It can be argued that some, if not a substantial portion of the behavior exhibited by the Grievant which led to the July 1st discipline, was induced by the actions of Schuh and the Weckworths. This should have been taken into account in determining whether or not discipline was warranted as well as determining the level of discipline that should have been imposed.

Last, the Union asserts that the County did not have just cause to terminate the Grievant's employment for the alleged incident on June 30, 2004. It is alleged that on that date the Grievant engaged in unsafe driving based on a report that she had been observed driving over the centerline on her bus route. Although the County asserts that it had received a complaint from another source earlier in the year about a similar problem, that source wished to remain anonymous and it cannot be asserted with certainty that when Henke observed the bus being driven over the centerline in June of 2004, that the Grievant was engaging in a repeat of earlier behavior. Further, Henke indicated that he himself had sometimes driven over the centerline when driving a large vehicle. It is also noteworthy that despite the fact that Henke reported his observations to the Sheriff's Department, that department chose not to take any action regarding the matter. Even if one could deem this instance of driving over the centerline a legitimate cause for discipline, it should have been treated as a first offense of this type and it certainly did not rise to the level of warranting termination. Clearly, there was a rush to judgment, as the Grievant had not yet returned from a recently-imposed three day suspension, and the County was more interested in terminating her employment before she returned than in determining if the suspension had the desired effect on the Grievant's behavior and performance.

The Union concludes that the County did not have sufficient cause to discipline the Grievant on the dates in question or to terminate her employment. It asks as a remedy that the Grievant be reinstated to her former position with full pay and benefits retroactive to the date of her termination and that the February 10, July 1 and July 8, 2004 disciplinary actions be removed from her personnel file.

County Reply

The County asserts that the Grievant admits much of the wrongdoing with only a minor effort made to justify the conduct. The County believes that the record demonstrates together with her demeanor, that the Grievant was an employee who simply was unwilling to take directions. The County finds no merit to the Union's criticism that it relied on information from individuals "outside the organization" and followed a "strictly progressive path" with regard to discipline. Witnesses outside the organization have no "axe to grind" and would normally be accorded greater weight than those within; criticism for following progressive discipline is unusual and requires no comment.

The Grievant attempts to turn the two evaluations into positives by pointing out that in some areas she was rated as "meeting standards". However, the evaluations were offered to demonstrate that the Grievant's deficiencies predated Schuh's becoming her direct supervisor. The evaluation prepared by Jaworski notes that the Grievant had been the subject of complaints from parents on at least three occasions with regard to her driving habits. She was involved in two accidents and criticized for driving "too hasty" and starting before passengers were seated. The evaluation also includes criticism about her communication with supervisors. The next evaluation prepared by Jaworski reflects a deteriorating performance, with three "needs improvement" and one "unsatisfactory". The criticism directly comments on her unwillingness to cooperate and communicate with supervisory personnel.

The Grievant offered no argument on the issue of reporting early and her testimony and arguments regarding the Mark S. incident are implausible. She acknowledged that "toileting" was part of her job as a Bus Driver, and admitted that she stood outside the bathroom while Mark S. "screamed" for help. Her justification for not entering the bathroom was that she was unsure; however, given that only moments before she had taken Mark S. into the bathroom and was obviously aware no one else was there, her "hesitancy" is contrived. As to the seating chart discipline, like the directions not to come to work early and to properly toilet Mark S., the Grievant viewed the directive as "optional". It was simply one more step in her effort to test the will of her supervisor. Her explanation that it would be easier to implement the chart in the afternoon rather than the morning, is equally implausible. It would seemingly be easier to seat people as they are picked up one at a time, rather than to have 20 developmentally disabled adults milling around at once.

As to the first reported centerline incident, the Grievant offers nothing in response.

Regarding the suspensions, on the whole the Grievant acknowledges the wrongdoing, but argues that she had only been assigned to the large bus since March of 2004, and that her supervisor did not explain why he did it. However, it is clear that the Grievant had driven the large bus prior to March of 2004. Her December of 2002 evaluation reflects this in noting that the accidents had happened on the 28/2 bus, i.e., the large bus, in February and August of 2002. It is also apparent that the Grievant was involved in incidents where she struck objects in the Weckworth's yard and had not filed the required reports. It is irrelevant whether it was

a fence or a post or whether the Grievant could not see properly. The point is that she failed to file a report and that apparently she struck more posts in the yard during the week she had friends ride along, and again no accident report was filed, although she was not disciplined for that oversight. Further, the damage to the Weckworth's driveway was not exclusively attributable to wet spring weather. The June 26th letter from the Weckworths described their frustration with the Grievant's driving. Their threat to stop serving as an adult family home obviously triggered Schuh's decision to ride with the Grievant. Most telling, is the letter's reference to the Grievant's "attitude".

Finally, the County asserts that the Grievant attempts to reduce the Henke incident to a simple act of crossing over the centerline. However, Henke testified that the Grievant came very close to running he and his wife off the road, and that this was the second time he had observed the Grievant well over the centerline with the bus. Further, the initial complaint in this regard on May 26th, although anonymous, was not disputed by the Grievant. That complaining party witnessed the Grievant over the line by two or more feet for the majority of time she was driving the two and a half miles that the writer followed her. Schuh's write-up of the incident indicated that the Grievant had taken the position that she could be over the centerline on curves as long as she could see oncoming vehicles, however even her Union representative stated that was not the case. All of this evidence is unrebutted. Again, the Grievant simply did not want to follow directions or be told what to do. The County concludes that there is ample evidence to sustain the discharge.

Union Reply

Regarding the Mark S. incident, the County confirms in its brief that the Grievant followed the limited instructions she had been given by Schuh. The problem arose when something unanticipated, i.e., the consumer calling out for help, occurred. No evidence was provided that any instruction was given to the Grievant on how to handle such a situation. Therefore, she was left to decide on her own how best to proceed. Forbush confirms that the Grievant was attempting to talk to Mark S. through the door, and that she was able to eventually secure Schuh's assistance. At issue here is whether or not this series of events represents such a serious infraction of protocol as to warrant discipline. As this was the first time the Grievant had been directed to toilet the individual, and no specific instructions had been given her on how to handle the circumstances that arose, any reasonable analysis of the situation by the County would have led to additional direction being given to the employee on how to handle the situation and leaving it at that.

Regarding the suspensions, the Union strenuously objects to the County's reference to the U.S. Climatological Data of March 28, 2004. The evidence was not introduced at hearing, and there has been no foundation provided for it. Further, the assertion that this data is in some way determinative of whether or not there was an unmelted pile of snow in the Weckworth yard strains credibility. Anyone living in the upper Midwest can attest that piles of snow that have been removed from driveways can remain long after the actual snow cover has melted. Regardless, the two-day suspension was issued for failing to report an accident

involving striking the fence in the Weckworths' yard, stating that she did not intend to follow instructions to turn around in the driveway and for yelling at the Weckworths. The County has not provided any credible evidence to contradict to the Grievant's testimony that she did not know she had hit the fence, hence the reason for not reporting it. Simply saying that she should have known is not sufficient and suggesting that she would not have reported it had she known is mere speculation. Likewise, there is nothing in the testimony from Weckworth to support the contention that the Grievant yelled at him or his wife, or that she ever used profanity towards them.

Regarding the issue of allowing observers to ride along on the bus, the Grievant testified that she informed a member of management that she was doing so, and that she interpreted the section of the Bus Driver Handbook to allow an aide from FRI to accompany her. No testimony was offered by the County to suggest that the supervisor had told her that she could not have someone ride along; rather, she had said that "it would be best" if Schuh could ride along the following week. It is also ironic that her memo regarding this incident noted that she had told the Grievant that she "felt it would be best for her to pull alongside the driveway", the very thing that Schuh had instructed the Grievant not to do.

Regarding Mr. Henke's complaint, the Grievant being unable to offer any evidence to contradict Mr. Henke's testimony, his recollection must be relied on in his evaluation of what he observed and recalled, which may not be the same as another observer's. It is known that the Sheriff's Department did not consider the matter to be of sufficient concern to follow up on it. Further, no attempt was made by the County at this point, or since the first alleged incident of crossing the centerline, to observe the Grievant's driving on curves, and there was no attempt to fully investigate the circumstances surrounding the alleged incidents or to analyze what had happened. There certainly was no attempt to take corrective action; rather, there was a decision to terminate the Grievant's employment before she could return from her suspension. This decision was hasty and ill-conceived and a perfect example of how not to manage the employer-employee relationship.

The Union again concludes that by any reasonable standard the County did not have sufficient cause to discipline the employee on the dates in question or to terminate her employment and asks for the relief requested.

DISCUSSION

The parties' Agreement provides that the County may discipline or discharge an employee for "cause". The "cause" or "just cause" standard involves two questions that must be answered in the affirmative in order that the standard be met: (1) Did the employee engage in the misconduct alleged (i.e., conduct in which the employer has a disciplinary interest); and (2) if so, was the discipline imposed reasonable under the circumstances.

This case involves a series of disciplines spanning a period beginning with a written reprimand in February of 2004 and culminating with the Grievant's termination on July 8, 2004.¹

While the Union submitted evidence and argument regarding the April 16, 2004 written reprimand for not immediately implementing the seating chart and the April 21, 2004 written warning for not filing an incident report regarding a consumer who had stumbled and fell getting off the bus, the record indicates the grievance regarding the former was withdrawn by letter of June 2, 2004, and the grievance regarding the latter was withdrawn by letter also of June 2, 2004 with the understanding that the County considered the warning to be non-disciplinary in nature. Therefore, the written reprimand for not immediately implementing the seating chart cannot now be challenged and the "written warning" regarding failure to file an incident report is considered only to the extent it placed the Grievant on notice of the need to file such reports, and not as a step in progressive discipline.

February 10, 2004 Reprimand

The gist of this discipline is that the Grievant did not properly position the consumer in front of the commode in the bathroom and especially that she did not go to the consumer's assistance when he was calling for help after becoming disoriented in the stall. The record indicates the consumer is blind and hearing impaired, but not totally deaf. This was the first time the Grievant assisted this individual in this regard and she asserts she did exactly as Schuh instructed her in positioning the consumer in the stall, but did not know whether she should go back in the bathroom when the consumer started calling for help and tried unsuccessfully to find Schuh to assist in the situation. Schuh asserts he was in his office all this time until Dawn Forbush, the Service Coordinator, called him and said the consumer needed help. Forbush's memorandum states she called Schuh to apprise him of the situation and so he could witness the manner in which the Grievant was handling it.

It is apparent from the Grievant's evaluations that she did not work well with management, and Schuh in particular, and Schuh was already frustrated with her by the time he became the Unit Manager at FRI around this same time. This could have affected how he viewed the situation. However, it is apparent from Forbush's memorandum that she also did not think the Grievant handled the situation appropriately, in that she did not go to the consumer's assistance when he called for help, and instead stayed outside the bathroom and tried to talk to him. Even though the testimony indicates the consumer was not totally deaf, it is clear that he was seriously hearing impaired and that the Grievant was aware of this.

While the matter could have been handled as a non-disciplinary training matter, as the Union asserts it should have been, a reprimand for not going to the consumer's assistance was not so uncalled for under the circumstances as to make it unreasonable. Hence, there was "cause" for the reprimand.

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¹ The evidence regarding the issue of the Grievant's coming in early and being in the workshop when she was not assigned to be there in 2003 is only considered as background regarding her relationship with Schuh and is not cited in any of the subsequent discipline that is in issue.

Two Day Suspension

The Grievant was given a two-day suspension in mid-June, 2004 for not filing an incident report when she hit the Weckworths' fence in late March, telling the consumers J and J, for whom the Weckworths were caretakers, that she would not use the driveway anymore, and for using profane language with Mr. Weckworth when he tried to direct her not to park in the ditch. The Grievant did not deny hitting the fence, but asserts she was not aware of it until Mr. Weckworth told her about it a month later, and denies the latter two allegations. Schuh called Mr. Weckworth on June 14, 2004 to discuss the issues in the letter and sent Dissing an e-mail on that date summarizing their conversation.

Contrary to the Union's claim that the Grievant hit the fence while she was backing up the bus, consistent with what he told Schuh on June 14th, Mr. Weckworth testified that the Grievant hit the fence and hung up on it when she turned into their driveway. The Grievant testified this was the case as well. While it was dark at that time of day in March and the Grievant claims she thought she was hung up on a snowbank, she would have seen the tracks of the bus intersecting the fence when she exited the driveway.² Further, even crediting the Grievant's testimony that she found out she hit the fence when Mr. Weckworth told her a month later, she did not file an incident report even then, until ordered to do so by Schuh.

The other allegations are more problematic in that there is no direct evidence to support them. Regarding the Grievant having said she would not use the driveway anymore, Schuh relied on what Mr. Weckworth told him the consumers J and J had told Weckworth the Grievant had said to conclude the Grievant lied to him. While there is no basis in the record upon which to discredit Weckworth's testimony that J and J had made the statement, that is still hearsay evidence as far as whether the Grievant actually made the statement attributed to her. Schuh also states in the suspension letter that he relies on the fact that the Grievant stopped pulling into the driveway as indicative that she would make a statement like that. The Weckworths' letter of June 3rd states that Mr. Weckworth had told the Grievant that if she did not feel comfortable coming in the driveway, she could go down the road and turn around and then come back and pick up J and J. This may make it plausible that the Grievant would make such a statement, but it is not sufficient to establish that she in fact did and then lied about it.

As to the Grievant using profanity, there is Schuh's contemporaneous summary of his June 3rd conversation with Mr. Weckworth to support the allegation, but Mr. Weckworth testified he could not recall the Grievant swearing at him. Given the latter, there is again not sufficient evidence to prove this allegation.

As only the allegation that the Grievant failed to file an incident report regarding hitting the Weckworth's rail fence has been proved, and considering that of the prior disciplines cited

² The Arbitrator did not take notice of the weather data cited by the County, and would find it dubious at any rate with regard to determining whether there was a pile of snow in the Weckworths' yard on March 28, 2004.

in the suspension letter, only the February 10 and April 16, 2004 reprimands were actually disciplines. Under those circumstances there was not a sufficient basis to justify a two-day suspension without pay, and therefore, there was not “cause” for this discipline.

Three Day Suspension

On July 1, 2004, Schuh issued the Grievant a three day unpaid suspension for the following reasons: (1) blindly backing the bus out of the Weckworth’s driveway across the road; (2) damaging fence posts and the gravel driveway at the Weckworths’ by not properly operating the bus; (3) displaying a poor attitude toward the Weckworths by yelling “I can’t do it” at Mr. Weckworth when he tried to direct her, and by her attitude toward Schuh when he tried to show her how to turn the bus around; (4) by smoking a cigarette at the Weckworths’ when Schuh was demonstrating how to turn the bus around; (5) by not having all of the passengers on the bus buckled into their seat belts; and (6) by having unauthorized personnel ride on the bus.

The Grievant asserts she only backed the bus blindly out of the driveway once, that the Weckworths’ driveway was too narrow to turn around without hitting the posts (and that the posts were moved further back on June 28th so the drive was wider when Schuh came out there with the Grievant), that she felt Schuh and the Weckworths were ganging up on her on June 28th, that her smoking a cigarette at the Weckworths’ was not a problem since she was outside, and that the Production Supervisor had verbally approved her having the Aides on the bus during the week Schuh was on vacation.

These series of events, more so than the previous incidents, highlight two significant problems. First, and foremost, is the Grievant’s lack of skill in operating the large bus. The second is the Grievant’s attitude towards supervision or anyone who tried to tell her what to do or how to do it, such as Schuh or Mr. Weckworth.

Based upon the complaint received from the anonymous citizen in May of 2004, which the Grievant did not deny, and Mr. Weckworth’s observations of the Grievant’s ability to turn the bus around in their driveway or even pull up to the end of the driveway without having to go back and forth to position the bus properly, it is evident that the Grievant just could not handle the large bus and operate it in a safe manner. The Grievant’s accusations that the Weckworths were lying, or at least not telling the whole story, and were conspiring with Schuh by moving the fence posts on the edge of the drive to make her look bad, do not add up. There was no basis offered for why the Weckworths would make things up to get the Grievant in trouble, nor was one apparent from the record. To a great extent, the Grievant did not deny the problems she had turning the bus around at the Weckworths or pulling up to the end of the drive; rather, she offered excuses as to why it was not her fault. As to her claim that the Weckworths had moved the posts on June 28th to make her look bad to Schuh, a comparison of the photographs taken on June 15th with those taken on June 28th show the placement of the posts to be essentially unchanged.

As to the Grievant's attitude toward taking direction from a supervisor, her problems in this regard were noted in her earlier evaluations and also involved other supervisors than Schuh, as well. While there was obviously a personality clash between the Grievant and Schuh, which the latter's somewhat officious and impatient attitude³ toward her exacerbated, there were legitimate concerns with the Grievant's performance that justified Schuh's intervention. Upon receiving the June 26, 2004 letter from the Weckworths threatening to quit the adult family home program unless the Grievant was replaced as the bus driver, Schuh did not immediately terminate the Grievant or replace her, but rode out to the Weckworths with her to attempt to correct the problem by demonstrating how to turn the bus around in the driveway without hitting the posts or rutting the driveway. The Grievant, however, was not interested in being shown how to do anything by Schuh and openly demonstrated her contempt for his attempt to instruct her by turning her back to him and the bus while he demonstrated how to turn the bus around. The best the Grievant could come up with to excuse her attitude was that she felt she was being attacked by Schuh and the Weckworths and wanted them to stop. While the incident was no doubt stressful to the Grievant, that does not excuse her response to Schuh's attempt to address significant concerns with her performance.

The Grievant's smoking a cigarette at the Weckworths was clearly in violation of the directive she had received from Schuh in late 2003 and the directive from Jaworski in her 2002 evaluation. Her only excuse was that she was stressed and since she was outside, it was not a problem.

As to unauthorized personnel on the bus, the Grievant first claimed that she told the Production Supervisor she wanted a witness to ride on the bus with her to see what was occurring at the Weckworths and that the supervisor did not tell her not to do it, and then claimed that the supervisor affirmatively told her to have witnesses ride along. The Grievant having admitted she had an Aide ride along for reasons other than those stated in the Bus Drivers' Handbook, the burden was on her to establish she had management's approval. In this regard, the supervisor's notes mention only that she thought it best that Schuh ride along and that since he was not available, the Grievant should pull alongside the driveway, rather than pulling in, to avoid further damage to the Weckworths' property. There is no mention of approving the Grievant's having someone other than Schuh ride along.

Based upon the foregoing, the previous discipline, and especially the earlier citizen's complaint about the Grievant's driving, there was "cause" for the three-day unpaid suspension.

Termination

On July 1, 2004, the Green Lake County Sheriff's Department received a second citizen's complaint about the Grievant driving the bus over the centerline on the highway, this time in the face of oncoming traffic. Again, the Grievant did not deny it occurred, she just could not recall it. Like Mr. Weckworth, this citizen, Mr. Henke, testified at hearing as to

³ See Theune's testimony.

what he saw. Mr. Weckworth similarly testified that he had observed the Grievant driving the bus over the centerline.

The Grievant's position with FRI was as a Bus Driver; however, she continued to demonstrate her inability to drive the bus in a safe manner. The claim that the Grievant did not receive adequate training or that there was no attempt to correct the problem is not supported by the record. The Grievant conceded that she received training in driving the large bus when she first started and testified that she had no trouble with the road test on the bus with Jaworski. Schuh's attempt to demonstrate how to turn the bus around in the Weckworth's driveway on June 28th was met with contempt by the Grievant and her assertion that he was not qualified to teach her, since he did not have a CDL.

It was not unreasonable for management to assign the Grievant, a Bus Driver, to drive the large bus. Her demonstrated continued inability to operate the bus in a safe and competent manner, along with her attitude towards Schuh's attempts to correct the problems, constituted "cause", or "just cause", for the termination of the Grievant's employment on July 8, 2004.

Based upon the above and foregoing, the evidence, and the arguments of the parties, the undersigned makes and issues the following

AWARD

The County had just cause to impose the February 10, 2004 reprimand, and the July 1, 2004 three-day suspension without pay, and to terminate the Grievant's employment with the County on July 8, 2004.

The County did not have just cause to impose the two-day suspension without pay in June of 2004, and therefore, is directed to immediately make the Grievant whole for the pay she lost for those two days.

Dated at Madison, Wisconsin, this 5th day of July, 2006.

David E. Shaw /s/

David E. Shaw, Arbitrator

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7003

