

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SKAALEN SUNSET HOME, INC.

and

SEIU DISTRICT 1199W/UNITED PROFESSIONALS FOR QUALITY HEATH CARE

(Leah Miller grievance)

Case 50

No. 66697

A-6275

Appearances:

Kathy Horton, Administrator, Skaalen Sunset Home, Inc., 400 North Morris Street, Stoughton, Wisconsin, 53589, appearing on behalf of Skaalen Sunset Home, Inc.

Nicholas E. Fairweather, Cullen Weston Pines & Bach LLP, 122 West Washington Avenue, Madison, Wisconsin, 53703, appearing on behalf of SEIU District 1199W/United Professionals for Quality Health Care.

ARBITRATION AWARD

Skaalen Sunset Home, Inc., hereinafter Skaalen or Employer, and SEIU District 1199W/United Professionals for Quality Health Care, hereinafter Union, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a WERC Commissioner or staff member to serve as the sole arbitrator of the instant dispute. Commissioner Susan J.M. Bauman was so appointed. A hearing was held on April 12, 2007 in Stoughton, Wisconsin. The hearing was not transcribed. The record was closed on April 27, 2007, upon receipt of all post-hearing written argument.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

The parties stipulated that the issue to be decided is:

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

BACKGROUND and FACTS

Grievant Leah Miller was employed by Skaalen Sunset Home as a Certified Nursing Assistant (CNA) from April 3, 2006 through July 31, 2006. On her first day of employment, Ms. Miller signed the Caregiver Pledge which reads, verbatim, as follows:

Caregiver Pledge

I pledge as a caregiver that I will never allow anyone to harm a resident. I will not allow anyone to talk disrespectfully or in a manner that would hurt the resident's feelings. I will protect the resident and his/her rights at all times. I will not allow anyone to abuse, neglect, mistreat, rough handle or take a resident's possessions.

If I see, hear or have knowledge of a resident being hurt, injured, observe a injury, being abuse, neglected, mistreated or see someone taking the resident's belongings, I will:

- ❖ Stop the person who is harming the resident.
- ❖ Stay with the resident and assure that they are safe and protected.
- ❖ Contact my supervisor immediately so that action can be taken.
- ❖ If I cannot report it to my supervisor, I know that I can contact the Administrator, Director of Nursing, other department head, unit manager, or social worker.

I also realize that by reporting a person who has caused harm, I have not caused trouble for them. They have broken the law and the bond of trust between the resident and the caregiver.

I understand what abuse, neglect, misappropriation and mistreatment are and will not allow that to occur to the individuals that reside here.

I am making this pledge because I believe that it is my responsibility to ensure that our residents always feel safe in their home and in my care.

On the same day, Ms. Miller acknowledged receipt of a copy of the Resident's Bill of Rights, and that the Employer had fully informed her of those rights. She agreed that she understood those rights and agreed to abide by them while employed at Skaalen Sunset Home. In pertinent part, the Bill of Rights states:

The resident has a right to a dignified existence, self-determination; and communication with and access to persons and services inside and outside the facility.

. . .

RESIDENT BEHAVIOR AND FACILITY PRACTICES

19. Abuse

The resident has the right to be free from verbal, sexual, physical, or mental abuse, corporal punishment, and involuntary seclusion.

QUALITY OF LIFE

20. Dignity

The facility must provide and care for residents in a manner and environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

. . .

Ms. Miller was terminated from her employment at Skaalen Sunset Home on July 31, 2006 by Administrator Kathy Horton due to alleged verbal abuse of a resident that occurred on July 27, 2006. The incident was reported to Ms. Horton by Laura Koenig, Rehabilitation Director, and Tara Tuinstra, Physical Therapist. Ms. Koenig testified about the incident based on a written summary she submitted to Ms. Horton on July 28, 2006 which reads as follows:

I was in the A wing hallway wheeling a resident toward the nurses station and was nearing the water fountain when I heard loud yelling from the end of the A wing hallway. I heard 2 voices exchanging loud and angry sounding verbalizations and headed to the area where it was coming from.

Upon entering the room accompanied by Tara Tuinstra, a fellow employee, I noted a CNA, Leah, standing next to Resident.¹ Leah was yelling at Resident who was seated at the edge of the bed whimpering. The roommate [sic] in 204A was also present in the room with her TV on loudly.

I told Leah that she could not yell at the resident and asked Resident what was wrong. Leah's response was "I wasn't yelling". I pointed out that I had heard her at the other end of the hallway. She went on to say Resident had been requesting to get out bed, but was not cooperative in safely doing so. Resident would apparently then request to lay back down from the edge of the bed and according to Leah this had been "going on for 2 hours." Leah was making wide gestures with her arms as she explained this and appeared frustrated as noted by her gestures and tone of voice.

¹ The resident in question will be referred to as Resident in order to protect her confidentiality.

Resident initially presented with her head hanging, and crying as Leah yelled at her and went on to say through her tears that she wanted to get up.

The CNA left the room, and Ms. Tuinstra and I proceeded to get the pt. out of bed. The resident expressed appreciation and seemed satisfied.

At hearing, Ms. Koenig acknowledged that she couldn't say if she heard one or two people yelling, nor what was being said. She did not review the Resident's care plan prior to entering the room, though she was familiar with the Resident and had no personal experience with Resident's being combative. She thought Ms. Miller's tone, volume of voice, and gestures were punitive, rude and insulting.

Physical Therapist Tara Tuinstra was with Ms. Koenig. She testified that she heard loudness, not words. At first she thought it was a family member and a resident, taking turns yelling. The sounds were escalating. Ms. Tuinstra and Ms. Koenig went to investigate. Resident was sitting at the edge of her bed and wanted to get out of bed. A Dr. Black (storm warning) was called. Ms. Tuinstra and Ms. Koenig assisted Resident into a wheelchair and out into the hall and the Grievant left the room. Ms. Tuinstra submitted a written statement pursuant to a request that was conveyed to her by Ms. Koenig.²

According to Barbara Kroda, the Director of Nursing, Skaalen Sunset Home has a zero tolerance for abuse policy. That is, the Employer terminates anybody found to be abusive, be it physical, verbal, or anything else, to a resident. The administration becomes aware of suspected abuse as a result of reports from family, staff, residents, etc. Upon receipt of a report of abuse, interviews are done and a determination is made. Ms. Kroda was not the investigator of the alleged abuse in this case. The investigation was done by the administrator, Kathy Horton.³ Ms. Kroda was present at the termination meeting. However, she does not recall what Ms. Miller said at the time.

The Grievant, Leah Miller, submitted a written statement on July 31, 2006, the day she was terminated, pursuant to a request from Ms. Horton. Her statement reads as follows:

The night shift told me Resident had not gone to sleep until about a quarter to 4 am. So I left her to sleep in only taking her to the bathroom once. After about 12 pm Resident's alarm was going off and I would come in and she would be half way out of the bed and I would say "OK Mildred are you ready to get up and get dress." She would say "NO" and lay back down with her feet hanging out of the bed, so I would put her feet back on the bed and the covers back over

² Ms. Tuinstra's written statement was not offered as an Exhibit at hearing.

³ Ms. Horton did not testify regarding the nature or extent of the investigation she undertook in this matter.

her. She did this three times. The last time it was a Dr. Black and I heard her alarm going off, so I hurried in and she was almost standing up. (She was my resident, so when people heard her alarm they would come tell me she was trying to get up.) I took my gait belt off but she would not let me put it on her, she started swinging and I was trying to tell her “please Mildred do not stand up” because I know she would have fell. Resident was telling me to get out, (and I would have if she was still laying down) but she wasn’t. Resident was swinging at me pretty hard and it look like she was going to fall out the bed. There was know way that I was leaving. I put her light on and I even yelled for some to come please help me. Finally occupation walked by and then they came in. They were asking Mildred what’s wrong and I started telling them what was going on. If you call talking loud so that they can hear me “yelling” then I am guilty of that. I would never yell at a resident like I was there mother or something. I don’t do it to my mother and I won’t Do it to some one else’s. You can ask any of my residents. “They might say I talk to much, but I don’t do wrong to others, especially those in need.

Thank you.

At hearing, Ms. Miller testified that Resident has two alarms, one under her and one clipped to her so that they go off if she moves off the bed. She also stated that Resident was combative when approached at the time of the July 27 incident, though Ms. Miller did not testify that such was the case during her encounters with Resident earlier in the day. Resident did not want to get up, didn’t want to get dressed, and started swinging at Ms. Miller. The Grievant put the call light on to get assistance with Resident. She heard the therapists coming up the hall. They came in and went straight to Resident, without saying anything to her. Ms. Miller felt that she was in a no win situation.

Resident’s care plan indicates that she is confused, has impaired hearing in the left ear, is at risk for falls, and is combative and resistive. The plan has a handwritten note indicating that “If becomes resistive/combative, stop. Have RN assess.” Ms. Miller testified that she couldn’t call the RN when Resident became combative towards the end of the interaction because she had to stay due to the risk of Resident falling. She spoke slowly and clearly to Resident three times, but was unable to get her to comply. Ms. Miller testified that she was aware that a different face would diffuse the situation, and that the appropriate strategy to utilize with a combative resident is to redirect the individual. Ms. Miller attempted to redirect, and would have left had the situation been safe for Resident.

Ms. Miller also acknowledged that she speaks loudly to residents at Skaalen. She estimated that 90% of her case load is hard of hearing. She does not dispute that she spoke loudly, but she denies that she waved her arms widely or was, in any way, rude or disrespectful to Resident.

Additional facts are included in the Discussion, below.

RELEVANT CONTRACT PROVISIONS

ARTICLE XIV – Discharge and Discipline

Section 1. Discipline for Just Cause. The Home may discharge, suspend or otherwise discipline for cause any employee who has satisfied his/her probationary period, subject to the grievance procedure. Normally such discipline shall include the sequence of verbal warning, written warning, suspension and termination. If the Home decides to suspend an employee, such suspension shall commence as soon as reasonably possible following the decision to suspend, and the term of the suspension shall, to the extent that scheduling will reasonably permit, be served as one continuous time period. The Home shall notify any bargaining unit member of their right to union representation at any disciplinary meeting, or any meeting that will result in discipline against that employee, and will arrange that representation with the Union if so requested.

Section 2. Notification of Discipline. The Home shall notify the Union, by mailing written notification thereto, and by delivery to one of the employees designated by the Union as a Union delegate, of any discharge or suspension of any employee, within 48 hours of such discharge or suspension.

Section 3. Notice to Contest. If the Union desires to contest the discharge or suspension, it shall mail or hand deliver written notice thereof to the Home within 7 days from the date of the receipt of the notice of discharge or suspension. In such event, the dispute shall be submitted and determined under the grievance and arbitration procedure hereinafter set forth; however, commencing at Step 3 of the grievance procedure.

ARTICLE XV – Adjustment of Grievances

. . .

STEP THREE. If the grievance is not resolved at Step Two, it may be appealed by the Union and/or the grievant to the Administrator and/or designee within five (5) days of the receipt of the written answer of the previous step. A meeting shall be arranged between the Union and the Administrator and/or designee to discuss the matter and its possible resolution within five (5) days of the request of the appeal. Within five (5) days of the meeting, the Administrator and/or designee shall give a written answer to the grievant and to the Union at

its office. If not resolved, either party may request one mediation session. The request shall be made within seven (7) days of the receipt of the Step Three answer by the Union at its office. The mediation request shall be made to the Wisconsin Employment Relations Commission.

STEP FOUR. If the grievance is not resolved at Step Three, the grievance may be referred to arbitration upon the written request of either the Home or the Union to the other, which request must be made within seven (7) days after the mediation meeting outlined in Step Three. In the event arbitration is requested the parties shall endeavor to select an arbitrator on the staff of the Wisconsin Employment Relations Commission by mutual agreement. If the parties are unable to agree upon an arbitrator within five (5) days, either party may request the Wisconsin Employment Relations Commission to name one from its staff within five (5) days. More than one (1) grievance at a time may be submitted to the arbitrator, if mutually agreed upon by the parties.

. . .

Section 4. Arbitrator's Jurisdiction. The parties agree that the arbitrator must interpret this Agreement and apply it to the particular case presented to him; but he shall, however, have no authority to add to, subtract from or in any way modify, the terms of this Agreement. The decision of the arbitrator shall be final and binding on the parties.

. . .

POSITIONS OF THE PARTIES

The Employer contends that Ms. Miller was terminated from her position for verbal abuse. Skaalen has a zero tolerance policy for any kind of resident abuse. Two therapists, Laura Koenig and Tara Tuinstra, overheard the Grievant yelling at a resident on July 27, 2006. They went to investigate and saw Ms. Miller making wide sweeping gestures with her arms while standing near the resident who was at the end of the bed, head down and weeping. The therapists told Miller that she could not yell at a resident and Ms. Miller denied that she was yelling, but stated the resident would not do what she wanted her to do. Ms. Miller appeared frustrated. Ms. Miller left the room and the therapists got the resident out of bed and out of her room.

The resident had been getting up to a sitting position several times that day. Each time, the alarms went off and Ms. Miller went to check on her, asking if she wanted to get out of bed. The resident indicated no, so Ms. Miller laid her back down. At no time did Ms. Miller go to the nurse on the unit to express her concern of the safety of the resident, even though the care plan states to have the RN assess if the resident is combative or restive.

The Employer points to conflict in testimony in that Tara Tuinstra's report indicates that Ms. Miller stated she was trying to get the resident back into bed, whereas Ms. Miller's testimony at hearing was that she was trying to get her out of bed due to a storm alert.⁴ Additionally, though Miller testified that she was yelling for help, the therapists both said they heard arguing, not calls for help.

An additional component to consider is the fact that the resident was weeping when the therapists entered the room. The Employer states that it is a concern when an interaction between a caregiver and resident results in the resident crying.

The final point made by the Employer is that the therapists have no reason to accuse someone of yelling at a resident unless they are convinced that it was being done. They reported the incident to Administration at the time it happened and wrote their accounts the same day, both giving virtually the same account of the event.

The Employer argues that the termination should stand. Skaalen reserves the right to have a zero tolerance policy with regard to resident care, one which is a higher standard of care than the State. The decision to terminate Ms. Miller was not based on State quality requirements and the fact that the State agency did not find abuse of the resident should have no bearing on the termination decision. The grievance should be denied.

The Union, on the other hand, argues that the grievance should be sustained inasmuch as the Employer did not have just cause to terminate Ms. Miller. The Union contends that regardless of which just cause test is used, the employer did not have just cause to terminate Ms. Miller. The Employer carries the burden of proving, by clear and convincing evidence, that the employee engaged in the wrongdoing alleged, and that it had just cause to discipline the employee.

The largely undisputed facts do not support a finding of just cause to terminate Ms. Miller. Ms. Tuinstra and Ms. Koenig testified that they heard yelling that sounded like family members arguing. In the resident's room there was additional commotion due to a storm warning drill and a television playing loudly.

There is no allegation that anything Ms. Miller said constitutes verbal abuse. The only claim is that Miller raised her voice and upset a resident. Such is not conduct that justifies any discipline. Miller was acting in the best interests of both Skaalen and the resident in trying to assist the Resident and prevent her from falling. She should not be punished for this.

⁴ There was conflict in the testimony as to when the Dr. Black alert was sounded. In the Employer's brief, there is information obtained from the Safety Director as to the actual time the alert was sounded. Inasmuch as this testimony was not offered at hearing, it will not be considered by the undersigned in determining whether there was just cause to terminate the grievant. While there was conflicting testimony on the timing of the Dr. Black, and the actual time it was issued could have provided support for the position of one side or another, the record was closed without the information being included in the record.

Even if it is determined that the Grievant's conduct justifies discipline, termination is disproportionate to the behavior. The Employer failed to utilize progressive discipline pursuant to Article XIV, Section 1 of the collective bargaining agreement. The actions of the Grievant were not abusive. If Skaalen believes that Ms. Miller acted inappropriately, it should have counseled her. There is nothing in the record to document Skaalen's communication to its employees regarding the use of loud voices when assisting residents.

In this vein, the Union argues that Skaalen failed to establish that Ms. Miller was on notice that raising her voice while assisting a combative resident is conduct that warrants discipline. While the Caregiver Pledge requires the reporting of instances when employees talk disrespectfully to residents, there is no evidence that anything Ms. Miller said was disrespectful. Miller yelled for help when the resident became combative. Miller was not on notice that this could subject her to discipline.

The Union also contends that the Employer failed to properly investigate the July 27, 2006 incident. Skaalen failed to produce any evidence of its investigation. Ms. Koenig, Ms. Tuinstra and Ms. Miller submitted written statements to Skaalen management. There is no evidence of an interview of the resident, the resident's roommate, or any of the other employees on staff during the shift. The failure of the Employer to complete these tasks comprises an inadequate investigation and evidence the absence of just cause to discipline Ms. Miller.

For all of the above reasons, the Union asks that the grievance be sustained, that Miller be reinstated and be made whole for any losses that she has incurred since her unjust termination.

DISCUSSION

The collective bargaining agreement provides that the Employer "may discharge, suspend or otherwise discipline for cause any employee who has satisfied his/her probationary period, subject to the grievance procedure." The agreement does not define the phrase "for cause" and does not distinguish this phrase from the general standard of "just cause" traditionally utilized to determine whether discharge or discipline is warranted. Absent an agreed-upon definition of "cause" or "just cause" and absent an agreement as to the legal standard to be utilized in this matter, the undersigned adopts a two prong analysis. This standard requires the Employer to establish the existence of conduct by the grievant in which it has a disciplinary interest, and it must then establish that the discipline imposed for the conduct reasonably reflects its disciplinary interest.

Skaalen Sunset Home terminated the Grievant, Leah Miller, for being verbally abusive to a resident. Skaalen has adopted a zero tolerance policy for abuse and contends that it terminates any and all employees who abuse residents, be it verbal or physical abuse. Skaalen

acknowledges that the standard of conduct it requires of its employees exceeds that which is required by the State of Wisconsin and, therefore, argues that the fact the State did nothing when Ms. Miller's alleged abuse was reported to it has no bearing on this case. Whatever standards the State might employ, the fact that Ms. Miller's CNA license has not been affected by her termination by Skaalen, as well as the fact that she was not denied unemployment compensation, have no bearing on the question before this arbitrator.

Accepting, for the purposes of this award, that Skaalen Home has adopted a zero tolerance for abuse policy, and that the policy has been uniformly applied to all employees,⁵ the question is whether Ms. Miller's actions constitute abuse of a resident. I conclude that Ms. Miller's behaviors, under the circumstances of this case, do not constitute verbal abuse of a resident.

The written report of Ms. Koenig, and the testimony of Ms. Koenig and Ms. Tuinstra, establishes without any doubt that loud voices were emanating from Resident's room in the early afternoon of July 27, 2006. It is also undisputed that around the time in question, a Dr. Black alert was issued. There was, however, conflicting testimony as to whether the Dr. Black alert was issued before, or after, the events giving rise to the disciplinary action at issue herein. Because the weather related situation makes no difference to the outcome, I decline to make any determination as to the sequence of events with respect to the Dr. Black alert.

The therapists heard loud voices and thought that there was a family squabble. They went to investigate and found the Grievant and Resident. Ms. Koenig contends that they heard two voices "exchanging loud and angry sounding verbalizations" when they were down the hall from Resident's room. When they entered her room, they report that Ms. Miller was yelling and Resident was whimpering. They also report that Resident's roommate was in the room, and that the roommate's television set was on very loud.

Ms. Miller acknowledged that she was yelling, yelling for help inasmuch as she could not safely move Resident either into, or out of, Resident's bed. Ms. Miller also testified that she had pushed the call button, seeking assistance in dealing with Resident. This was uncontested by any testimony offered by the Employer. The therapists further state that Ms. Miller was making wide gestures with her arms, a fact which is denied by Ms. Miller. There is no evidence that these gestures were directed, in any way, at Resident. The therapists report that Ms. Miller appeared frustrated, and that these gestures and her tone of voice evidenced the frustration.

There is no question that Ms. Miller was frustrated. She had, through the course of the morning, assisted Resident a number of times when Resident's alarm had gone off and it

⁵ Although Director of Nursing Kroda testified that Skaalen terminates anybody found to be abusive, neither party submitted any evidence of acts that Skaalen had determined to be abusive and for which it has terminated employees.

appeared that Resident wanted to get up. Each time, however, Resident indicated that she did not want to get up, and Ms. Miller assisted her back into bed. On the final occasion, Resident was getting out of bed and would not allow Ms. Miller to place her gait belt on her. Whether Resident wanted to get out of bed, or stay in bed, is not of consequence. The reality is that she was almost out of bed and was unstable without support which she was unwilling to accept. Ms. Miller was trying to deal with Resident in a safe manner, and she spoke loudly to Resident who was not cooperating. There is no evidence that anything Ms. Miller said to Resident was rude, disrespectful, or lessened Resident's dignity.

When the therapists entered the room, Resident was in a seated position. Her head was hanging, and she was crying or whimpering, depending on which of the therapists' words one adopts. It is clear from Resident's care plan that she tends to be combative and restive. The care report also specifies that one should "Speak slowly/clearly. Explain procedures. Reapproach if agitated. Offer diversion." Under the circumstances, with Resident unwilling to accept assistance, but also being in an unsafe situation (attempting to stand), Ms. Miller could not do a great deal other than seek other personnel to come to her assistance and, in fact, replace her in getting Resident up and into the hallway as required by the Dr. Black alert.

Yes, Ms. Miller spoke loudly, raised her voice. However, this does not mean that she was yelling at Resident or abusing Resident. Abuse implies maltreatment, something which has not been shown. The therapists testified that they heard two people yelling, yet there is no evidence that Resident was yelling, or capable of yelling. The roommate's television was on high volume. Was the argument that the therapists heard actually coming from the television set? Nobody testified to what was on the television, or even whether they considered that the "argument" may have emanated from the television. There was no evidence as to the content of the "argument". What words were being said? By whom?

Apparently, nobody spoke to the roommate to ascertain what, from her perspective had occurred. There does not appear to have been an attempt to ask Resident what had taken place between Ms. Miller and herself that day.⁶ There is no record evidence that any attempt was made to talk to any other persons, staff, residents, or guests, who may have been present or nearby to determine what they may have heard or seen.

All that has been established is that Ms. Miller spoke in a loud voice. There is no indication that Ms. Miller was ever put on notice that speaking in a loud voice to a Resident is considered to be verbal abuse by Skaalen Sunset Home. Although the Director of Nursing testified that Skaalen terminates any and all employees who engage in patient abuse, she did not provide any indication that any individual had previously been terminated for speaking loudly to a Resident under such circumstances where the patient's safety was in question. Accordingly, the Employer has failed to establish the first prong of the two-prong just cause

⁶ It may well be that neither Resident nor her roommate would have been able to accurately describe the events of the incident in question. If that was the case, the Employer has the burden of establishing that fact.

analysis. It has failed to establish the existence of conduct by the Grievant in which it has a disciplinary interest. Having failed to establish that the conduct engaged in by the Grievant is one in which it has a disciplinary interest, no just cause for the termination has been established and there is no need to discuss whether the level of discipline was appropriate.

In making this finding, the undersigned is well aware that, under some circumstances, speaking loudly to or yelling at a Resident may, indeed, be conduct in which the Employer has a disciplinary interest, may constitute verbal abuse of a resident, and may be appropriate grounds for discipline or termination. Here, the Employer has only established that voices were raised, but has not established whose voice, other than Ms. Miller's, was raised and engaged in argument. The therapists were very clear that there were two voices, and that they were arguing, although the therapists failed to mention any of the words that they "heard" being used. Thus, it is entirely credible that Ms. Miller's yells for help were not what the therapists heard but, rather, it was an argument on the television set that both therapists acknowledge was being played loudly.

In finding that the Employer did not have just cause to discharge Ms. Miller, I do not find that her behavior was, or was not, appropriate on the day in question. Certainly, the fact that Resident was weeping is cause for concern. However, I can only find that the evidence presented does not demonstrate that Ms. Miller verbally abused the Resident.

Accordingly, based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

The grievance is sustained. The Grievant shall be reinstated and be made whole for all wages and benefits lost as a result of her termination, less any interim earnings and benefits.

The undersigned will retain jurisdiction for a period of 30 days following issuance of this award for purposes of resolving issues of remedy.

Dated at Madison, Wisconsin, this 11th day of, May 2007.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator