BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

FAMILY HERITAGE CARE CENTER/PARKSIDE RESIDENCE

and

FAMILY HERITAGE CARE CENTER/PARKSIDE RESIDENCE EMPLOYEES LOCAL 621, AFSCME, AFL-CIO

Case 2
No. 66819
A-6281

(Shawna Olson Grievance)

Appearances:

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, WI 54656-3755, appearing on behalf of Local 621, AFSCME, AFL-CIO.

Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of Family Heritage Care Center/Parkside Residence.

ARBITRATION AWARD

Family Heritage Care Center/Parkside Residence, hereinafter Employer, and Local 621, AFSCME, AFL-CIO, 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 County, requested the Wisconsin Employment Relations Commission to appoint a WERC Commissioner or staff member to serve as the sole arbitrator of the instant disputes. Commissioner Susan J.M. Bauman was so appointed. A hearing was scheduled for May 31, 2007, in Black River Falls, Wisconsin.

Prior to the scheduled hearing, the Employer moved to dismiss the grievances as being untimely. The parties developed a joint stipulation of facts that was filed on May 21, 2007. Each party had the opportunity to file written arguments on this procedural question, the last of which was received on May 22, 2007. In a decision on that date, the undersigned found that the grievances were arbitrable.

The hearing was subsequently held, as scheduled, on May 31, 2007, in Black River Falls, Wisconsin. The hearing was not transcribed. The parties filed written argument by July 9, 2007, and on July 16, 2007, advised that reply briefs would not be filed. The record was then closed.

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 were unable to stipulate to the issues to be decided, and agreed to allow the arbitrator to frame the issues based upon the parties' proposed issues and the evidence and arguments presented. The Union's suggested statement of the issues is:

> Did the Employer violate the collective bargaining agreement by 1) giving the grievant a written warning and/or 2) terminating the employment of the grievant? If so, what is the appropriate remedy?

The Employer frames the issue as:

> Did the Employer violate Article V (Discipline) of the collective bargaining agreement when it sent Written Warning #2 to Grievant on August 23, 2006, or when it discharged the Grievant on October 9, 2006? If so, what is the appropriate remedy?

The undersigned adopts the Union's statement of the issues.

BACKGROUND and FACTS

Grievant Shawna Olson was employed by Family Heritage Care Center/Parkside Residence, a facility owned and operated by the Heyde Companies, as a Resident Assistant from November 21, 2002 until her termination on October 9, 2006. Olson worked eight hour days, with her shift starting at 6:00 a.m. Although the record is silent with respect to Grievant's work history, including performance and attendance until March, 2006, during calendar year 2006 the Grievant's record of punctuality and attendance at work did not meet the Employer's expectations. On August 23, 2006, Yvette Murphy, the Grievant's supervisor, completed two "Heyde Companies Employee Disciplinary Record" forms, which were given to the Grievant on August 24.

The first, which was not contested, was a Written Warning and indicated the following:

Date(s) of Incident (Violation): 3/20/06, 4/4/06, 5/2/06, 6/8/06, 6/24/06, 6/30/06, 7/5/06, 8/8/06 Policy G-7 Absence/Tardiness
Employee was tardy on these dates and per our tardy policy 3 episodes results in verbal warning, 6 episodes results in a written warning, 8 episodes to result in 3 day suspension, 10 episodes results in termination.

Employee's Comments Re: Incident (Violation): [blank]

Corrective Action: Employee to arrive to work on time when scheduled

Future occurrences of this nature may result in: Future occurrences will follow as noted above.

The second Written Warning given to Ms. Olson on August 24, 2006 reads as follows:

Date(s) of Incident (Violation): 8/18/06 Policy G-7 Absence/Tardiness
Employee called 2 hours after scheduled shift started to inform of absence

Employee's Comments Re: Incident (Violation): [blank]

Corrective Action: Employee to call as soon as possible but at least 60 minutes prior to start of impending absence

Future occurrences of this nature may result in: Suspension and Termination to follow

The Union grieved this written warning on August 25 contending:

Employee was given written warning. Prior [sic] giving any notification of wrong doing (verbal warning).
Also employee was not given the chance to have Union representation.[1]

The Union contended this was a violation of Article V, Sec. 5.01 of the collective bargaining agreement and sought, as settlement or corrective action, "Employee given verbal warning and to void written warning."

[1] The issue of Union representation was not developed at the hearing, nor argued in the parties' briefs. Accordingly, this objection to the discipline is considered waived.

During the period of time that the Union and the Employer were discussing the grievance, the Grievant failed to report to work on October 6, resulting in her termination. An Employee Disciplinary Record was drafted by Yvette Murphy and was dated October 6. It was given to the Grievant on October 9. The form reads as follows:

> **Date(s) of Incident (Violation):** Employee has 2 documented NO CALL NO SHOWS within a 12 month period 8/18/06 and 10/6/06
>
> **Employee's Comments Re: Incident (Violation)**: "I don't agree with this I believe a suspension would be a more appropriate course of action."

The Union grieved the termination by grievance dated October 10, 2006 in which the facts were described as:

> Employee had a no call, no show 10-6-06. Employee should have received written warning and/or 3 day suspension.

The Union again contended that Article V, Section 5.01 of the collective bargaining agreement had been violated:

> Employee received verbal and 1 written (pending) Employee should be receiving 2nd written warning.
> Just case [sic] & any other article that may applied. [sic]

To resolve the grievance, the Union sought that the Grievant be made whole, be reinstated in her job and have references to the termination removed from her personnel file.

At hearing, the Employer presented a copy of the Grievant's attendance record for calendar year 2006. This record indicates that, in addition to the tardiness for which the uncontested written warning was issued on August 24, there were three dates in early July on which the Grievant either left work early, was absent for no stated reason but had given more than 60 minutes notification, and called with appropriate notification and indicated that she was not feeling well. On July 28, the Grievant did not report to work and did not call in at all. In addition to the events of August 18 which gave rise to the August 24 warning, Grievant also called on August 19 to advise that she would not be at work on August 20 because she was "having too much fun". On September 19, the Grievant was called by another Resident Assistant when she did not arrive at work on time, resulting in Grievant's arrival at 8:55 a.m. instead of her scheduled 6:00 a.m. start time. She was also tardy on September 13, September 16 and September 17. After the no call/no show on October 6, Grievant was terminated.

According to the Employer's policies, an employee who is unable to come to work is to call and advise the supervisor or designee of this fact at least 60 minutes prior to the start of the shift. When an employee calls in and doesn't self replace, i.e. find another employee to cover the shift for him or her, the employee receives an "occurrence." The Heyde Company policies and procedures delineate the consequences of receiving occurrences.

The Grievant testified that she has no recollection of why she did not come to work on July 28, and that she had no excuse or reason for her failure to call in on October 6. With respect to August 18, a Friday, Grievant explained that she had been staying in Hixton, approximately seven (7) miles from her worksite. She was given a ride to work on a motorcycle which broke down somewhere close to work. Although she had her cell phone with her, it did not work. She started walking, approximately one-quarter mile to a nearby house. There, she used the phone to call for a ride from her boyfriend. He picked her up, took her and his Dad, the driver of the motorcycle, back to Hixton where they left the father. Then, she was given a ride to Merrillan. She called her employer at 8:00 a.m. from Hixton and talked to Sonia, another Resident Assistant. Olson explained the situation and offered to come to work. Sonia told her not to bother, that everything was taken care of.

The Grievant also testified that normally when she called in to work to advise that she was not going to be present, she would speak with Wally Apland, the Facility Administrator, or her supervisor, Yvette Murphy, the Resident Care Coordinator. If neither was there, she would leave the message with a co-worker. Olson does not know if Murphy was present on August 18.

Additional facts are included in the Discussion, below.

RELEVANT CONTRACT PROVISIONS

ARTICLE III – MANAGEMENT RIGHTS

Section 3.01 Except as expressly modified by other provisions of the Contract, the Employer possesses the full right to operate Family Heritage Care Center/Parkside Residence, and all management rights repose in it. These rights include, but are not limited to, the following:

A. To direct all operations of Family Heritage Center/Parkside Residence;

B. To establish reasonable rules and schedules of work;

. . .

E. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

F. To maintain efficiency of Family Heritage Care Center/Parkside Residence operations;

G. To take whatever action is necessary to comply with State or Federal laws;

. . .

ARTICLE V – DISCIPLINE

Section 5.01 In the event job performance or behavior causes problems, disciplinary action may be necessary provided that the discipline is imposed in a fashion consistent with just cause. The progression of disciplinary action normally is (1) verbal, (2) written, (3) suspension, and (4) discharge. However, this shall not be interpreted that the sequence is necessary to all cases as the type of discipline will depend on the severity of the offense.

. . .

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

When an employee has worked twelve (12) consecutive months from the last warning notice, all warning notices shall be null and void.

ARTICLE VI – SENIORITY

. . .

A. Section 6.03
Seniority shall terminate and with it the employment by the Employer upon the occurrence of any of the following:

. . .

B. If the employee is discharged for just cause.

. . .

D. If the employee is absent without notifying the facility or without a satisfactory excuse for two (2) working days in a twelve (12) month period, unless he/she has contacted the facility and is excused.

. . .

ARTICLE X –SICK LEAVE

. . .

Section 10.02 . . . Employees who are sick and unable to report to work shall notify or call the employee in charge, to be notified at least sixty (60) minutes before the regular shift assignment or earlier.

. . .

RELEVANT POLICY AND PROCEDURE PROVISIONS

Policy No.: G-4 – Disciplinary Action

In the event job performance or behavior causes problems which interfere with work and the management of Heyde Health System, disciplinary measures may be necessary. The degree of action is dependent upon the severity of the problem. All disciplinary actions should be recorded on the "Heyde Companies Employee Disciplinary Record" form.

. . .

UNEXCUSED ABSENCE: When an employee does not report to work when scheduled or does not have an acceptable reason, the absence is considered an unexcused absence. The first unexcused absence is documented as an unexcused absence on the "Heyde Companies Employee Disciplinary Record." Two unexcused absences result in termination.

Policy No.: G-7 – Absence – Tardiness

All employees must personally notify their Supervisor or his/her designee of an impending absence or tardiness. This notice must be done on a daily basis, as far in advance of the employee's starting time as is possible but at least 60 minutes prior to his/her shift.

Failure to report an absence may be considered grounds for immediate dismissal and failure to report absences for two consecutive days will normally be considered a voluntary termination without notice.

Excessive absence or tardiness will be considered grounds for suspension and/or termination.

Policy No.: G-35 – Code of Conduct

In any organization, it is necessary to have rules covering a number of subjects, including personal conduct. It would be impossible to write rules to cover every situation. However, good conduct is expected of all employees and violations such as the ones listed below, will result in disciplinary action. The degree of discipline, up to and including discharge, will vary depending on the severity of the infraction.

. . .

24. Repeated absenteeism or tardiness.

25. Failure to call in when absent.

. . .

This is not intended to be an all inclusive list of violations but a minimum. It is provided because Administration has an obligation to let employees know what is expected of them. Violations of the above may result in oral or written warnings, suspension or discharge.

Procedure No.: 14 – Absenteeism and Tardiness Control

Excessive and avoidable absenteeism creates a serious problem at Heyde Companies. It is important to the successful operation of our company and quality of care to our residents that employees be at work each scheduled work day.

In order to reduce and control absenteeism and assure consistent and equitable treatment of absenteeism, the following procedures will be followed:

ABSENTEEISM

1. For purposes of this procedure, absence will be defined as unscheduled time off from the job.

2. All employees are expected to report for work as scheduled and to work their scheduled hours. Employees will be charged with an "absence occurrence" when they fail to report for scheduled work hours.

3. A. Absences for which employees will be charged an occurrence include, but are not limited to, failure to report for such reasons as personal illness, personal accident, family illness, personal business, or similar non-work related absences.

Absences lasting several days will be treated as one occurrence. Heyde Companies has the right to require an employee to submit a doctor's slip or undergo a physical examination, at the employee's expense, to verify claim of illness or injury.

B. Absences that are NOT charged with an occurrence include, but not limited to, job related injury, jury duty, death in family as per Personnel Policy B-6, disciplinary time off, vacation or holiday and approved leaves of absence.

C. Employees who work the 12-hour weekend shift will be charged 1 ½ occurrences on the first day (or second) of the weekend, but if you miss the second day (or first) of the weekend, it is still only 1 ½ occurrences.

4. It is our goal to help each employee become a more dependable and positive influence within Heyde Companies. Throughout each step of the following disciplinary process, the supervisor and/or department head will provide counseling. The counseling will include a discussion of the absence and possible remedies/referrals. The disciplinary procedure treats unexcused absences separate from the regular absence occurrence procedure.

A. DISCIPLINARY "ABSENCE OCCURRENCE" PROCEDURE:

1. Absenteeism is documented on a continuous 12-month cycle.

FULL TIME EMPLOYEES:

6 occurrences in 12 month period – verbal warning
8 occurrences in 12 month period – written warning
9 occurrences in 12 month period – 3 day suspension without pay
10 occurrences in 12 month period – termination

PART TIME AND CASUAL EMPLOYEES

4 occurrences in 12 month period – verbal warning
6 occurrences in 12 month period – written warning
7 occurrences in 12 month period – 3 day suspension without pay
8 occurrences in 12 month period – termination

B. UNEXCUSED ABSENCE:

1ST occurrence – written warning
2nd occurrence – termination

SPECIAL CIRCUMSTANCES

A. Any absence occurrence over one half hour causing the employee to be away from work half of their scheduled day or less will be charged with "1/2 absence occurrence."

B. A full time employee who changes to a part time status will be placed on the same step of the program he/she was on under the full time schedule.

C. If you can't come to work on your scheduled day, you can avoid getting an absence occurrence by finding someone to work for you (self-replacement)

1. If you can't come to work on your scheduled day (for any reason), find someone to work for you. If you do, you won't be charged with an absence occurrence.

2. When finding someone to work for you, he/she must be qualified to do your job.

3. You must call your Supervisor/Charge Nurse to notify him/her that you won't be in and who will be filling in for you. The designee must then call the Supervisor/Charge Nurse to notify him/her that the designee will be working. It can't result in overtime.

4. If the designee does not call, the Supervisor/Charge Nurse will notify the employee that the designee did not call. If the employee fails to find someone and doesn't work, he/she will receive an occurrence.

If the designee doesn't show after making the call, he/she will receive the occurrence.

5. As per current policy, you must notify your supervisor a minimum of 90 minutes prior to the start of your shift.

Maintenance of attendance records is the responsibility of each department. Supervisors should maintain written record of employee's absences and tardiness that will include the reasons for missing work.

POSITIONS OF THE PARTIES

The Employer contends that the bargaining agreement and the Parkside Home policies and procedures clearly identify termination as the consequence of two unexcused absences. Because employee absences, especially no-call/no-show incidents adversely affect quality patient care and disrupt the lives of co-workers, the Employer is warranted in taking disciplinary action when the policies and procedures are not followed.

The Grievant was tardy ten times between March 20 and August 8, 2006. She failed to call in or report to work on July 28, 2006. On August 18, less than a month later, she failed to call in until three hours after she was required to report an absence. Two days later, she gave timely notice that she was not coming to work, because she "was having too much fun." The Employer, thereafter, issued two written warnings on August 23: the first for excessive tardiness; the second addressed the August 18 incident. Less than two months later, on October 6, the Grievant again failed to call in or report to work. The Employer terminated her.

The collective bargaining agreement at Section 10.01, requires that an employee give at least sixty (60) minutes notice if unable to report to work due to illness. Article III, Section B, of the Agreement allows the Employer to unilaterally establish reasonable work rules. In Policy G-7, the Employer reasonably expanded the sixty minute requirement to all absences. There is an operational basis for this as the Employer must replace absent or tardy employees in order to provide care for the residents. It takes time to find replacements who are willing and able to come to work.

Article III, Section E of the Agreement provides that the Employer may take disciplinary action for just cause. Section G of the same article establishes that management may take steps necessary to comply with Federal and State laws, including staffing mandates.

Section 6.03 (D) of the Agreement is explicit that an employee absent without notifying the facility or without a satisfactory excuse for two (2) working days in a twelve (12) month period will result in termination. Parkside Procedure 14 provides that the 2nd occurrence of an unexcused absence will result in termination. Policy G-4 also states that failure to report an absence may be considered grounds for immediate dismissal, and "failure to call in when absent" is listed in Policy G-35 as something that may result in oral or written warnings, suspension or discharge.

All employees are advised of the Employer's policies and procedures during employee orientation. The Grievant had ample notice of the consequences of her repeated failure to timely report for duty/call in.

The Employer contends that the Grievant's explanation for her failure to timely call in or report to work on August 18 is pure fiction. The reason for her absence on August 20, "having too much fun," is weak. The Grievant could have, and should have, been fired in August. Instead, she was given two written warnings. She was on notice that more severe discipline would be forthcoming if her attendance, tardiness and untimely reporting were not modified. The Employer also points out that the Grievant's attendance record was dismal, and that her tardiness continued after the August 23rd warning. She could have, and probably should have, been fired for excessive tardiness. The Grievant does not deserve another chance.

Finally, the Employer argues that the written warning on August 23 and the termination of October 6 are consistent with the just cause provision of the collective bargaining agreement. On August 23rd, the Grievant was given two written warnings: one for excessive tardiness/absenteeism and one for the no-call/no-show of August 18. The Union grieved the no-call/no-show warning because the Grievant had not received a verbal warning for this behavior. However, the contract gives the Employer flexibility in applying discipline and the Employer wanted to put the Grievant on notice that her employment was in jeopardy, especially given the disruptive nature of a no-call/no-show to the operations of the facility. Further, Article 6.03(D) makes it clear that unexcused absences are serious violations, with "two strikes and you're out" being the consequence.

Despite the August 23rd warning, the Grievant again failed to report to work or call in on October 6th. Section 6.03(D) explicitly provides for termination under the circumstances. Indeed, the October 6th incident was the Grievant's third such incident in a 10 week period, with no mitigating circumstances for either the July or October incident.

The Employer asks that the Arbitrator not substitute her judgment for that of the Employer and that the grievances be denied.

The Union's main arguments concern the apparent lack of progressive discipline and the ambiguity of the Employer's policies. The two instances of no call/no show for which the Grievant was terminated are very different. In one case, her means of transportation broke down and she called in two hours after the start of the shift and offered to come to work; in the other instance, she had no excuse. Both situations were treated the same.

Neither the policies nor the collective bargaining agreement define a no call/no show. In the case where the Grievant called in, albeit two hours after the start of the shift, the Union argues, it cannot be a "no-call." In addition, it became a "no-show" only because the employee on duty told the Grievant not to come to work.

The Union does not dispute that the Employer has the right to establish work rules, but they must be reasonable and must be consistently applied. The record herein contains three (3) policies that address absences from work, and they are all different. The written warning cites a violation of Policy G-7 which provides, in pertinent part, "Failure to report an absence may be considered grounds for immediate dismissal and failure to report absences for two **consecutive** days will **normally** be considered a voluntary termination without notice." However, Policy G-35 reads, in pertinent part, "The degree of discipline, up to and including discharge, will vary depending on the severity of the infraction." The policy lists, as infraction 13, "Absence from work without a physician's permit and/or authorization from Supervisor." Policy G-4 addresses progressive discipline as verbal warning, written warning, suspension and termination. Further, it states: "Unexcused Absence – when an employee does not report to work when scheduled **or does not have an acceptable reason**, the absence is considered an unexcused absence." The policy goes on to state that the first unexcused absence is documented as an unexcused absence on the Disciplinary Record and the second results in termination.

The Union asks, how is an employee to know which policy applies? The written warning cited a violation of Policy G-7. Did this put her on notice that two consecutive days of absence would result in termination, or does G-35 apply which allows the Employer to base the discipline on the severity of the infraction, or does G-4 apply which allows absences with acceptable reasons? Further, Policy G-4 indicates that termination will occur after two unexcused absences, but it fails to state a timeframe in which these occur.

Article V of the collective bargaining agreement addresses progressive discipline. It is the Union's position that the policies do not override the language of the collective bargaining agreement. Termination was too severe, especially inasmuch as no suspension was given prior to the termination.

The Union requests that the two (2) grievances be sustained, with Ms. Olson being returned to her prior position, references to the incidents being purged from the file, and Ms. Olson being made whole.

DISCUSSION

The Grievant contests two different disciplinary actions taken by the Employer that are attributable to her failure to report to work on a timely basis, or to timely notify the Employer that she would not be present. The first disciplinary action grieved is the written warning provided to the Grievant on August 24 and concerns the events of August 18. The Disciplinary record makes specific reference to Policy G-7, cited in full, above.

It is the Union's contention that the various policies and procedures adopted by the Employer are inconsistent, and that the progressive discipline provisions of Section 5.01 of the collective bargaining agreement require that a verbal warning, rather than a written warning, be the proper disciplinary action taken under the circumstances of the August 18 event.

Inasmuch as the contested disciplinary action cites only Policy G-7 and not the other policies and procedures (Policies G-4 and G-35, Procedure 14) that were introduced at the hearing, the undersigned will confine the discussion to Policy G-7 and, whether there was a violation of the collective bargaining agreement when the Employer issued a written warning for the Grievant's actions on August 18. Since the termination notice mentioned one policy, and not the others, due process considerations argue for consideration of only the stated policy. However, as a preliminary matter, it must be noted that the Grievant had received copies of all policies and procedures in question, and that she was, therefore, on notice, that the Employer considered unexcused absences from work, as well as tardiness from work, to be misconduct of a serious nature which could result in termination of employment. The policies are not inherently inconsistent with one another.

The collective bargaining agreement, at Section 3.01(B), permits the Employer to establish reasonable rules and schedules of work. In accordance with that provision, the Employer has adopted Policy G-7. In pertinent part, Policy G-7 expands the requirement that an employee provide notice to the Employer at least 60 minutes prior to his or her shift for any reason that might cause him or her not to report to work, not just for illness as required by Section 10.02 of the collective bargaining agreement. Such extension of the 60 minute requirement is reasonable. The policy also provides that failure to report an absence may be considered grounds for immediate dismissal, and failure to report absences for two consecutive days will normally be considered a voluntary termination without notice. This is consistent with Section 6.03(D) of the collective bargaining agreement that provides that an employee who is absent without notice or a satisfactory excuse for two (2) working days in a twelve (12) month period shall have his or her seniority and employment terminated. Again, this portion of Policy G-7 is reasonable, when read in context with the collective bargaining agreement.

The final provision of the policy provides that excessive absence or tardiness will be considered grounds for suspension and/or termination. This provision is consistent with the general expectation of any employer that employees will be present for work on a regular basis and is certainly reasonable.

The written warning of August 24 was accompanied by another, uncontested written warning, for excessive tardiness. In addition, the Grievant had been absent without notice on July 28, although she did not receive any discipline for this no-call/no-show occurrence. Against this background, the Employer made a determination that it wanted to put the Grievant on notice that her attendance and lack of punctuality was a concern for the Employer, and that her job might be in jeopardy. The collective bargaining agreement, at Section 5.01, is quite

clear that discipline is to be imposed in a "fashion consistent with just cause." The agreement provides for a progression of disciplinary action, but also provides that "this shall not be interpreted that the sequence is necessary to all cases as the type of discipline will depend on the severity of the offense."

On August 18 the Grievant was given a ride on a motorcycle by her boyfriend's father. They left Hixton with plenty of time for her to get to work on time. Unfortunately, the motorcycle broke down, and her cell phone did not work. She walked to a nearby house, about a quarter of a mile away, and called her boyfriend, but she failed to call her place of employment to advise that she would be delayed because of the breakdown. Instead, she waited until her boyfriend arrived from Hixton, rode back to Hixton with him and, apparently, went to Merrillan to pick up her car. She called work at 8:00 a.m. from Hixton to advise of the circumstances. The Grievant testified that it takes 10 to 12 minutes to get to work from Hixton, that she initially left Hixton around 5:45 a.m., and was close to work when the motorcycle broke down.

The Grievant could have called work from the house where she used the phone to call her boyfriend. This would have resulted in notification to the Employer that she would be late for work at very close to the time she was to start work, 6:00 a.m. When her boyfriend arrived to pick up his father and the Grievant, the Grievant could have asked for a ride to work. Based on her representations of time and distance, this would have resulted in her being at work by no later than 6:30 a.m., tardy, but at least there.

The Grievant chose not to do either of these. According to Mapquest, the distance between Hixton and Black River Falls is 11.66 miles,[2] and it takes 14 minutes to make the trip; from Hixton to Merrillan is 10.87 miles, requiring 17 minutes; and Merrillan to Black River Falls is 11.54 miles, taking 18 minutes. Even allowing for the time to be picked up quite close to Family Heritage, the Grievant could have been taken back to Hixton, picked up her car in Merrillan, and gotten to work by 7:15 a.m. She did not do this. Rather, she called work at 8:00 a.m. to advise that she had transportation problems. She did not speak to a supervisor, and doesn't know if one was available. She talked to a co-worker who, she says, told her not to bother coming in.

Based on the facts as the Grievant presented them, it is quite apparent that she was in no rush to get to work on August 18 and that even though she did have transportation problems, she could have gotten to work close to on time. Her disregard for her obligations to the residents of Parkside and to the imposition of extra duties placed on co-workers, makes a

[2] The Mapquest distances are from City center to City center. The Grievant testified that the distance was only about 7 miles from her boyfriend's house to her work place.

written warning appropriate.[3] Under these circumstances, the Employer was justified in issuing a written warning, rather than merely giving the Grievant a verbal warning. Although the Grievant attributes her absence that day to the fact that a co-worker told her not to come to work when she called in at 8:00 a.m., this was an unexcused absence. Clearly, a co-worker cannot excuse the Grievant from work. Further, the Grievant made no apparent attempt to speak with her supervisor or the facility administrator about the situation.

On October 6, 2006, the Grievant failed to report to work. She did not call, she did not come in. She testified that she had no excuse and no reason for not calling in on that day. On October 6, her supervisor, Yvette Murphy prepared an Employee Disciplinary Record by which she terminated the Grievant's employment. This was presented to the Grievant on October 9, at which time she refused to sign the document, but did write thereon that she didn't agree with the discipline and felt that a suspension would be a more appropriate cause of action.

The Employee Disciplinary Record does not cite any policies or procedures violated by the Grievant. It does, however, reference the fact that the Grievant had two documented NO CALL NO SHOWS within a 12 month period, August 18 and October 6, 2006. Policy G-4 does provide that two unexcused absences result in termination.

The Union contends that this policy is invalid as it is unclear as to the period of time in which the two unexcused absences must occur in order to result in termination. The notice of termination does not cite Policy G-4, but does cite two unexcused absences in a 12 month period. This is consistent with Section 6.03(D) of the collective bargaining agreement that provides for termination of seniority and employment in the event of two unexcused absences in a twelve (12) month period.

Here, the employee did not notify the facility of her absence on October 6. With respect to August 18, both the notification was too late to be effective, and the Employer found the reason given to be unsatisfactory. While, in general, the undersigned would find transportation problems to constitute a valid, satisfactory reason for failing to come to work on time, the facts of August 18, as delineated above, lead to the conclusion that the Grievant failed to act in a reasonable manner consistent with a desire to be at work on a timely basis. Hence, the August 18 absence did not have a satisfactory excuse and the discipline, termination, is appropriate subsequent to the second absence.[4]

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[3] I consider the written warning to be appropriate without consideration of the other tardinesses and absences, and regardless of the specifics of the policies and procedures calling for a written warning upon the occurrence of a no-call/no-show. The circumstances demonstrate a blatant disregard for the obligations of the position of Residential Assistant held by the Grievant.

[4] Although the Grievant was not disciplined for July 28, when she neither called the facility nor showed up to work, the Employer could count that date and determine that the Grievant was absent three (3) times in a 12 month period without proper notification or satisfactory excuse.

The Union contends that the concept of progressive discipline controls, and that a suspension would be the more appropriate discipline in this case. However, not only does the general language of Section 5.01 of the collective bargaining agreement provide that the normal sequence of discipline need not be followed in all cases but could vary depending on the offense, but the specific language of Section 6.03(D) provides for the termination of employment in the event of missing two (2) working days in a twelve (12) month period without being excused. That is the situation here.

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

AWARD

1. The Employer did not violate the collective bargaining agreement when it issued a written warning on August 24, 2006.

2. The Employer did not violate the collective bargaining agreement when it terminated the Grievant on October 9, 2006.

The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of July 2007.

Susan J.M. Bauman /s/
Susan J.M. Bauman, Arbitrator

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