BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PORTAGE COUNTY

and

PORTAGE COUNTY COURTHOUSE, HEALTH CARE CENTER, DEPARTMENT OF HEALTH AND HUMAN SERVICES, AND LIBRARY SYSTEM EMPLOYEES LOCAL 348, AFSCME, AFL-CIO

Case 192
No. 66497
MA-13545

(Mansavage Termination Grievance)

Appearances:

James R. Macy, Attorney, Davis & Kuelthau, S.C., 219 Washington Avenue, P.O. Box 1278, Oshkosh, Wisconsin 54944, on behalf of Portage County.

Houston Parrish, Staff Attorney, Wisconsin Council 40, AFSCME, AFL-CIO, 1457 Somerset Drive, Stevens Point, Wisconsin 54481, on behalf of Local 348 and Dorothy Mansavage.

ARBITRATION AWARD

The County and the Union are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union and the County selected Paul Gordon, Commissioner, from a Wisconsin Employment Relations Commission panel to serve as arbitrator to resolve a grievance filed by the Union on behalf of Dorothy Mansavage (herein the Grievant or Mansavage). Hearing was held on the matter in Stevens Point, Wisconsin on February 6, 2007 and February 16, 2007. A transcript was prepared and made available to the parties. The parties filed written briefs and reply briefs and the record was closed on May 4, 2007.

ISSUES

The parties did not stipulate to a statement of the issues. The Union stated the issues at the hearing as

> Was there just cause for termination? If there was not just cause then what is the remedy?

In its briefing the Union stated the issues as

> Has the employer met its burden to prove that it fairly notified Ms. Mansavage that her permanence(sic) was insufficient to the point of termination in the months leading up to August 2006 and did it meet its burden to show just cause to terminate? Did the employer fairly provide due process and the procedural elements of just cause to Ms. Mansavage by failing to provide her the opportunity to rebut the allegations against her? If not, what is the remedy?

The County states the issues as

> Did the County have just cause within the meaning of Article 3 of the Collective Bargaining Agreement to terminate the Grievant? If not, what is the appropriate remedy?

The County's statement of the issues is adopted as that which best reflects the record. A just cause standard carries with it elements of procedural fairness and due process so as to broadly cover the issues raised by the Union in this proceeding.

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 – PROBATIONARY PERIOD

A) New Employees: Upon becoming employed in a position within the bargaining unit, employees shall serve a six (6) month probationary period. . . .

. . .

B) Discharge: An employee on probation may be released without prior notice or recourse to the grievance procedure.

. . .

ARTICLE 3 – MANAGEMENT RIGHTS

A) The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this Agreement and applicable law. These rights include, but are not limited to the following:

1. To direct all operations of the workforce;
2. To establish reasonable work rules and schedules of work;
3. To hire, promote, transfer, schedule and assign employees;
4. To suspend, demote, discharge and take other disciplinary action against employees for just cause;
5. To lay off employees from their duties because of lack of work or any other legitimate reasons;
6. To maintain efficiency of County government operations;
7. To comply with state and federal law;

. . .

Any dispute with respect to the reasonableness of the application of said management rights with employees covered by the Agreement may be processed through the grievance and arbitration procedure contained herein, however, during the pendency of any grievance or arbitration proceeding, the County can continue to exercise these management rights.

ARTICLE 8 – GRIEVANCE ROCEDURE

. . .

H) Arbitration

. . .

4. Decision of the Arbitrator: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the contract. The arbitrator shall not modify, add to, or delete from the express terms of the Agreement.

. . .

BACKGROUND AND FACTS

Grievant has been an employee of Portage County from 1987 until her involuntary termination on August 3, 2006. She had initially worked in a clerical position in the County's Department of Health and Social Services. In 1992 she moved to a Child Support Specialist position where she remained, except for a few months in 2000 at the District Attorney's Office, until her termination. Her supervisor in Child Support has always been Linda Check, the Administrator of the Portage County Child Support Agency. Check had worked for 11 years in the Clerk of Court's office before becoming a receptionist/secretary in child support. She then became a Child Support Specialist and in 1991 was made the Administrator in that Agency. She has 21years experience in the Agency.

As more fully set forth below, the Notice of Termination of Employment, dated August 3, 2006, alleged continuous violations of four Personnel Policies and contained attachments summarizing prior disciplinary actions, a memorandum referencing not satisfying a mandatory EAP requirement, a profanity incident, and another attachment referencing 87 matters including, but not limited to, reviews and follow up of casework after the last of prior disciplines.

The Agency has one Administrator, one Lead Specialist, two Specialists, three Specialist Assistants, two Child Support Clerk IIs, an Administrative Secretary and a Typist. Each of the three Specialists (including the Lead Specialist) is responsible for approximately 800 cases or files. Cases are divided alphabetically. Among the various job duties and responsibilities in the Agency, Specialists follow federal and state statutes, regulations and guidelines along with Agency policies. Timelines for certain actions to be taken by Specialists are set by federal and state statutes, regulations and guidelines. There is extensive use of the

KIDS computer system by which detailed information is put into the system by the Specialists and their Assistants, and the system generates data, worklists, reminders, various measures and other information relating to and used by the Agency. The KIDS system is statewide and data is put into the system and used by various government offices to carry out their duties. The Specialists in the County Child Support Agency are trained in the regulatory provisions and in the use of the KIDS system, and have ongoing training and learning opportunities in all aspects of their work.

The County position description for the Child Support Specialist which Grievant received contains the following

> POSITION SUMMARY:
> Performs under general supervision of the Child Support Administrator, and otherwise acting independently, carries out duties of the position on a daily basis. This includes complying with federal regulations, state laws and administrative laws. Position has very technical and complex duties.

The position description also contains ESSENTIAL FUNCTIONS, which include, among several others, the following

- Provide direction and technical support to the assigned Specialist Assistant for preparation and processing of legal documents, including service of process, correspondence and other forms as necessary.
- Conduct interview with unwed mother in order to pursue establishment of paternity. Record required interview responses in order to prepare legal documents for paternity. Obtain information from the attending physician in order to determine the conceptive period when necessary.
- Conduct interview with parent/parents in order to establish child support and medical coverage for child/children either when married and parties separate or a Voluntary Paternity Acknowledgment had been filed. Establish child support, medical coverage and determine any costs to be ordered, including birth expenses when appropriate. Set monthly repay amount on all costs.
- Monitor and enforce collection of current child support, any overdue child support and birth expenses due State of Wisconsin and/or other party. Monitor purge orders in contempt action prior to expiration date. Request further court action when warranted. Pursue medical support when not included in current order. Utilize Administrative Enforcement tools available when deemed appropriate in IV-D case.
- Pursuant to 1988 Family Support Act, review all child support orders every thirty-three months to determine compliance of order based on Wisconsin standard guideline. Negotiate agreement with parties and pursue appropriate legal documents for approval and filing.

- Conduct pre-trial meeting in office in effort to attain settlement prior to court date. Arrange schedule with child support legal counsel at least one to two days in advance of upcoming court date for cases remaining on calendar. The court worksheets must be attached to physical file in reparation for court. Verify all necessary documentation for court is in physical IV-D file, including any account record needed. Be prepared to testify at court hearing when requested.
- Meet with custodial parent in order to prepare required interstate documents and signing of documents. Refer to Specialist Assistant for processing and mailing of paperwork. Negotiate settlement with other states recognizing other state laws while continuing to act in the best interest of the State of Wisconsin.
- Review Bulletin Board in KIDS daily/weekly to remain informed of changes in automated system and other work-related areas. Review Fact Sheet for instruction/information regarding specific topics as available.
- Respond to telephone calls, voice mail messages and incoming correspondence following agency policies.
- Document conversations/interview information and any other action taken that is not automatically recorded in KIDS system. Include clear description regarding action for future reference by workers.
- Work assigned KIDS Worklists daily/weekly. Refer appropriate worklist to designated staff. Prioritize INVR worklist and provide direction regarding National Medical Support Notice to Specialist Assistant and/or Financial Clerk when warranted.
- Meet all timelines with KIDS worklists and other reports in order to remain compliant with federal and state requirements.
- Dictate correspondence for assigned Specialist Assistant.

Since at least 1998 the County has had a manual of Personnel Policies which apply to its employees. Some of those are concerned with procedural human resource and employment relations matters, employee assistance program, and discipline and discharge. The policies state:

> . . . All other provisions in this manual not covered by labor agreements shall be in full force and effect.

The policies also state:

> . . . Each employee (except Elected Officials and LTE's) shall be evaluated at the following intervals. Timely completion of all performance evaluation shall be the responsibility of the hiring authority.
>
> B. Annual – Performance evaluations should be completed in March of each year for Department Heads and on or before the anniversary date for non-department heads.
>
> C. Special – A special performance evaluation may be completed whenever there is a significant change in the employee's performance.

The discipline and discharge portion of the policies contain Section 13.02 Grounds for Discipline, and states in part

> The following shall be grounds for discipline ranging from a verbal warning to immediate discharge depending upon circumstances and the seriousness of the offense in the judgment of management.
>
> . . .
>
> (2) Insubordination (refusal to obey reasonable orders, insolence, etc.);
>
> . . .
>
> (14) Failure to adequately perform assigned job duties:
>
> (15) Failure to follow duly established work rules, policies and procedures;
>
> (16) Professional unethical conduct or behavior
>
> Other circumstances may warrant disciplinary action and will be treated on a case-by-case basis.

The performance evaluations referenced above have not taken place in Portage County on a regular basis for at least eight years and the policy is not strictly enforced. Some departments do them regularly, annually, and other departments not at all. The County does try to annually review department heads and non-represented employees. There have not been annual performance reviews in the Child Support Agency since 2003.

Grievant did have approximately five written annual performance evaluations by Check from 1996 through 2003, and none since then.[1] Each of those had an overall evaluation of "satisfactory or above", and contained some very positive comments about portions of her work. Some factors were sometimes rated "Very Good". However, each also noted things such as where Grievant needed more focus and to take all steps in her cases, or a need to follow office work rules. Some evaluations noted things that "Needs Improvement", such as remaining on the job; observing work and safety rules; quality of work, accuracy, neatness, thoroughness, competence; dependability, the degree to which employees can be relied upon to get the job done; public contact; quantity of work, amount of acceptable work accomplished. There are several notations concerned with Grievant's time spent on personal telephone calls during work time. The evaluations indicate that at times Grievant performed very good work and improved her job performance in areas that needed improvement, and at times her job performance did not improve or reverted to again needing improvement.

[1] On April 11, 2005 Check had what she termed a "Performance Review" with Grievant in conjunction with following up from a previous discipline. Grievant was not told this was a performance evaluation and the use of a format of a written performance evaluation was not used or provided to Grievant.

Grievant believes, as she testified to at the hearing, that her work habits did not change from the time she was receiving good evaluations to the time of her termination.

Prior to her termination Grievant had received several disciplines while in the Child Support Agency. They are

July 3, 1997	Infraction of Rule: Verbal warning for tardiness
July 3, 1997	Infraction of Rule: Insubordination, professional unethical behavior in public office. Failure to follow work rules. Written "Verbal" Warning Corrective Action: Refrain from offensive and inappropriate language in public office during work hours. Treat others with respect at all times. Notify office personnel (assigned secretary) at all times when exiting the office where you will be and how long away. Concentrate on self control.
April 18, 2000	Infraction of Rule: Section 13.02(1) Dishonesty/ Falsification, Section 13.02(13) Unlawful conduct impairing efficiency of office, Section 13.02(15) Failure to follow established work rules. Written "Verbal" Warning Corrective Action: Work cases as assigned. Consult with Supervisor in regard to working outside of assigned alphabet when not pertaining to cases with identified exceptions. Provide fair and equal service to all customers, including the IV-A, IV-D Referred cases.
April 18, 2000	Infraction of Rule: Labor Agreement – Abuse of Sick leave. Policy Section 13.02(8) Abuse of sick leave, Section 13.02(1) Dishonesty/Falsification of record, Section 15.02(F) interference with county employment with secondary employment. Suspension (1day) Corrective Action: Work with secondary employer for reasonable starting time not ever interfering with primary county employment shift. Cease and desist from falsifying requested appointments for approval towards credit of sick time.

March 2, 2002	Infraction of Rule: 13.02(2) Insubordination – disruptive reaction, 13.02(16) Professional unethical conductor behavior in office 3/1/02 Written Warning Corrective Action: Seek EAP assistance. Learn controlled behavior. Do not place blame on others for problems unrelated to job. Learn to focus on job responsibilities during entire work day.
July 26, 2004	Infraction of Rule: 13.02(14) Failure to adequately perform assigned job duties. Written "Verbal" Warning Corrective Action: Further irresponsibility of job duties will result in further disciplinary action. Employee needs to be attentive to scheduling work and following through with her appointments.
July 26, 2004	Infraction of Rule: 13.02(4) Unauthorized use or abuse of County equipment or property, 13.02(13) Unlawful conduct defined as a violation of or refusal to comply with pertinent laws and regulations when such conduct impairs the efficiency of county Service. 13.02(14) failure to adequately perform assigned job duties. 13.02(15) failure to follow duly established work rules, policies and procedures. 13.02(16) Professional unethical conduct or behavior. 13.02(17) Violation of the confidentiality requirements of the department. Suspension (2 weeks) Corrective Action: When returned to work employee will report to Administrator to review work regulations, rules and policies. Report to Administrator anytime a doubt in procedure. Refrain from any use of county time for personal work. Any further security violation or unauthorized disclosure of child support information will result in further disciplinary action up to and including termination.

August 24, 2004	Infraction of Rule: 13.02(4) Unauthorized use or abuse of county equipment or property. 13.02(14) Failure to adequately perform assigned job duties. 13.02(15) Failure to follow duly established work rules, policies and procedures. Written Warning Corrective Action: Follow through with all work rules, policies and procedures. If in doubt, seek advice from Supervisor or Lead Specialist. Follow attached copy of written guidelines (Attachment A) to assist to improve meeting timelines in all establishment and enforcement of assigned caseload. Lead Specialist will provide further verbal explanation of guidelines to assure clarity and understanding. Recommend Employee Assistance Program to further assist with improvement of performance issues. (See Attachment B identifying specific areas for performance improvement)
February 9, 2005	Infraction of Rule: 13.02(2) Insubordination (refusal to obey reasonable orders, insolence, etc.). 13.02(14) Failure to adequately perform assigned job duties. 13.02(15) Failure to follow duly established work rules, policies and procedures. Suspension (3 days) Corrective Action: Mandatory Employee Assistance program referral – Must make contact with EAP office in order to schedule an appointment no later than end of day on February 11, 2005. Follow through with work on a daily basis using work rules, laws, regulations and procedures in order to remain in compliance. Communicate with Admin. whenever uncertain as to handling of a particular case and respond when requested as soon after as possible. Must commence recording and maintaining record of all phone calls and pertinent information requiring documentation in the KIDS system. This position requires being responsible with an ongoing follow through of work and contact with customer.

Most, if not all, of the above disciplines contained additional attachments as to the nature of the rule infractions. The disciplines for August 24, 2004 and for February 9, 2005 contained several attachments that covered various procedures and duties which are followed in the Agency for Grievant to use as part of the corrective actions.

All but the July 3, 1997 disciplines were on a preprinted written form which contained the typed statement

> Any further incidents of this nature may be grounds for further discipline up to and including discharge.

The discipline of February 9, 2005 contained the following statement at the bottom of the page that outlined the reasons for the mandatory referral to employee assistance program.

> Need to have employee focus on work at all times and not slack off and revert to not meeting the timelines. The completion of work by following through regularly is essential in this very important and responsible position in the agency. This is a very serious matter and any future non performance in this position will lead to further disciplinary action.

The Child Support Agency has four different performance measures whereby the Agency as a whole reports certain duties in terms of volume numbers and percentages to the federal and state government based on KIDS data. A percentage of 80 or 90, depending on the measure, is needed to maintain or obtain certain funding levels for the County. The data is reported in each measure for each specialist. Because of performance problems Grievant had been experiencing, Check had assigned the Lead Specialist to help Grievant with her cases, particularly on matters that were affected by the performance measures. For each of the performance measures for 2006 introduced at the hearing, Grievant's reported volumes and percentages were commensurate with the other two Specialists with the difference being that the Lead Specialist had helped Grievant obtain those numbers and percentages. No loss of funding was demonstrated by the County due to the performance of Grievant relating to the performance measures.

After the February 9, 2005 discipline Check reviewed Grievant's work regularly and closely, and had contact with Grievant's EAP counselor, particularly as to the availability of at least one more counseling session. Grievant had gone to all but the last available session. Check met with Grievant frequently to go over her casework and performance concerns. Some of these meetings concerned missed timelines and procedures and Check gave Grievant specific directions about what to do to follow through with needed work for the case, often putting the directions in writing. Grievant understood that these directives were matters that needed to be done or should have been done. As alluded to above, the Lead Specialist was also helping Grievant on her casework, including use of the KIDS system, telephone call routing and response times, for example. The Lead Specialist also helped out other Specialists as part of

her job, but spent more time and worked more with Grievant than with the other Specialist. Check noticed some improvements in Grievant's job performance, but also noticed continued missed timelines and lack of procedural follow through. While none of the Specialists always meet all of their performance measurement goals or all of the timelines, Grievanat's performance was consistently below that of the others. On or about June 28, 2006 Grievant used profanity in the office as to Agency forms and procedures which resulted in office staff reporting the matter to Check. Grievant used "the F word" and gestures such as the finger up to the time of her termination. She had been directed by Check not to use that type of language. Other workers in the office were concerned about that. Grievant was not the only person in the office who used profanity, and no one was fired or terminated for use of profanity up to that point.

In July of 2006 Check met with the County Personnel Department because she was still finding errors in Grievant's work. She then made the 87 item attachment referred to above. In conjunction with this she did a review of Grievant's files and made copies of portions of approximately 120 cases (County Exhibit 7-A, 2/16/07) for a time frame after Grievant's February 9, 2005 discipline. She felt that these represented instances of Grievant having again missed timelines, did not follow through with required actions and job duties, failed to comply with federal and state regulations, failed to enter activities and communications into the KIDS system, changed delinquency codes without having performed necessary collection actions or providing an explanation, and did not follow Agency procedures, work rules and specific directives. Twenty-one of these were further testified to at the hearing by Check (with additional cross reference to County Exhibit 20). Three[2] of these twenty-one, cases 8, 14 and 15, are clearly identifiable in the Termination Notice attachment. Of the 21 testified to by Check, number 17, the inquiry from a State Senator, was a mere inquiry and does not establish a violation of any policy, rule, regulation or directive. Number 21 reflects a mere question by Grievant of Check as to how to handle a particular matter and does not establish a violation of any policy, rule, regulation or directive. The remaining 19 cases, as testified credibly by Check, establish non-compliance with the federal code of regulations, state statutes, office policies and directives. Additionally, Grievant admitted, at the hearing, to missing timelines and failing to follow through on required duties in an additional eight cases: cases 13, 30, 34, 36, 46, 58, 69, 109.

Also prior to Grievant's termination Check assembled a similar group of file entries documenting Grievant having changed delinquency codes from DLQ2 to DLQ0 without having taken required actions first (County Exhibit 8). There are ten such cases in the group but one was not identified until after August 3, 2006. Five of those were identified in the Termination Notice attachment for the dates of: 11-21-05, 11-30-05, 6-14-06, 6-20-06, 7-10-06. Both Grievant and the Lead Specialist testified at the hearing to the making of those entries. Grievant thought she was told by the Lead to make the changes the way she did. The Lead

[2] As discussed below, Case 14 is a duplicate of a case testified to by Check as part of her testimony on the Chart of 87 items. The case is considered as one matter for purposes of this Award.

Specialist testified, credibly, that she instructed Grievant how to address the situations in the DLQ2 files, and had instructed Grievant to first make documented collection efforts before changing the codes. Grievant improperly changed the codes without having taken documented collection actions.

Similarly, Check assembled file entries indicating Grievant failed to document information from call logs into the KIDS system in approximately 42 instances, from May 30, 2006 to August 3, 2006 (County Exhibit 9). One of these, 6-20-2006, is clearly identifiable in the Termination Notice attachment. Grievant admitted at the hearing that the phone calls from the last two weeks in July were not logged into the system. Out of the 42 instances, at least 19 occurred on and after July 14, 2006. The documentation and credible testimony of Check establish that all 42 instances occurred.

Check had also prepared another group of files (County Exhibit 10) which documented, in part, examples of Grievant's violation of personnel policies, regulations and timelines. The files in this group are from cases and circumstances referred to in the Termination Notice attachment. Check testified, credibly, that the case for 7/17/07 demonstrates a failure to follow timelines, procedures and follow through as to the establishment of an income withholding matter. Grievant admitted at the hearing to the validity of three of those cases: case 1, case 2 and case No ___997 of 4/12/2005.

Grievant knew that as part of her prior discipline she was required to continue to participate in a mandatory employee assistance program. She had attended seven of the eight sessions by January 23, 2006 and did not schedule the last session. She admitted at the hearing that she did not finish the last appointment.

As to the items in the Termination Notice attachment, Check testified, credibly, as to Grievant having failed to make timelines and guidelines in the case marked 7/13/2006, the five cases marked 9/1/2005, and the three cases marked 10/24/2005.

Sometime in July, 2006, Check met with the County Personnel Director, the assistant Corporation Counsel and the County Executive, to review Grievant's work performance in view of her prior disciplines. The Personnel Director had asked Check to summarize the various collections of documents (which have been identified above as exhibits) and that resulted in the 87 item attachment. They determined to interview Grievant and had Check give to her the attachment of 87 items the morning of August 3, 2006.

When the attachment was given to Grievant in the morning it was in a manila envelope and she was told to attend a meeting at 4:00 p.m. that day. She was told she could have a Union representative with her. Grievant kept working and did not open the envelope before going to the meeting. She realized at that time that she had been disciplined before, and did not want to be disciplined for not attending to her work then. She did not expect to be terminated. She met with a Union representative, who worked for Portage County Health and

Human Services Department, for a few minutes before the meeting. They did not open the envelope or review the enclosed chart of 87 items. They both went to the meeting. Check, the Personnel Director and County Executive were there. At the meeting Grievant was asked about her response to the allegations made against her. Grievant responded to the effect that she could not respond to the chart of 87 items without the cases because she did not know which cases the chart of violations was referring to. Grievant did not respond to the specific items. She did state that she felt she had done everything she could do, and that other people in the office make mistakes. There was some general discussion about her training and organization. At one point Grievant stated "I'm done with this", which concluded the meeting. Neither Grievant nor the Union representative requested more or additional time to review the chart. The Union representative thought it would be a waste of time to make such a request. Neither complained or suggested that they did not have sufficient time to review the items. Check, the Personnel Director and the County Executive then caucused in the hallway. They considered the prior efforts to improve Grievvant's work performance in view of her prior disciplines. It was at this point that they made the decision to terminate Grievant's employment. They had prepared several different letters ahead of time with different levels of discipline to use, depending on the results of the meeting, which might have resulted in no discipline or some other level of discipline. The County does that as a normal course of action. They then returned to the meeting room and gave Grievant the Notice of Termination of Employment letter dated August 3, 2006, which had attached to it the list of prior disciplines and some performance evaluation summaries, a memo dated 8/1/06 from Check regarding policy violations and factual allegations, and the 87 item attachment. Grievant was escorted from the building.

Grievant testified at the hearing that had she realized that she might be terminated for ongoing work performance concerns she would have posted out of the Child Support Agency if a position she was qualified for had been posted before her termination.

The Notice of Termination of Employment states in pertinent part

> This letter is to inform you that your employment with Portage County Child Support Agency as a Child Support Specialist is terminated effective immediately, Thursday August 3, 2006.
>
> This termination is based on continuous violations of Personnel Policy 13.02 as follows: 13.02 (2) Insubordination, 13.02 (14) Failure to adequately perform assigned job duties, 13.02 (15) Failure to follow duly established work rules, policies and procedures, and 13.02 (16) Professional unethical conduct or behavior.
>
> The attached documents summarize previous disciplines, issues raised in performance evaluations and notices since July 31, 1995, and violations since the last discipline of a 3 day suspension of February 9, 2005.

. . .

Attached to the Notice of Termination was a memorandum dated 8/1/06 from Linda Check, which stated in pertinent part

> 13.02 (2) Insubordination (refusal to obey reasonable orders, insolence, etc), 13.02(14) Failure to adequately perform assigned job duties; 13.02 (15) Failure to follow duly established work rules, policies and procedures.
>
> The attached listing provides information as to reviews and follow-up of casework after discipline and corrective action issued to Ms. Mansavage as of February 9, 2005.
>
> Ms. Mansavage has a mandatory requirement to report to EAP and continue attendance until advised otherwise. To date she has not completed the sessions, therefore not satisfying the mandatory requirement.
>
> On June 28, Ms. Mansavage had conversation with the Specialist and Lead Specialist in the office. Ms. Mansavage used profane language and was told by Ms. Berg to watch her language. I was informed of this happening in writing after I returned from vacation. I feel it is important to list this happening as it is totally unacceptable and she has been disciplined in the past for this very same thing.
>
> The position of Child Support Specialist is a high level position with very responsible duties. The position requires knowing as well as supporting and enforcing the rules, laws, regulations and office policies which govern the Child Support Program.
>
> Ms. Mansavage's coworkers have expressed their concerns to each other over the lack of caring for and taking responsibility for the duties they are all expected to perform. They have made statements as to why Ms. Mansavage can do some of things she gets away with and not suffer any consequences. The coworkers have had to answer to Ms. Mansavage's case customer when their phone call of letter has not been responded to even after several voice messages left or a promise of something being prepared and has not. This kind of occurrence affects the morale of the employees.
>
> Ms. Mansavage's performance continues to waiver from a higher level of performance to a much lower level of performance, but never meeting total required performance to get the job completed on a regular basis. I sincerely hoped Ms. Mansavage would have learned to recognize and focus on her work performance through working with EAP.

. . .

Also attached to the Notice was the list of prior disciplines and reviews. Besides the disciplines referenced above, it also contained the following

7/31/1005 Verbal warning	unauthorized union activity during work hours
7/29/1996 performance eval	stay focused with less distraction from outside, concentrate and verify all steps in process, more advance noticy(sic)y of time off
4/8/1998 performance eval	perf difficult to determine due to difficulty in personal life, suggest strive to stay focused.
1/12/2000 performance eval	2 areas of "Needs Improvement", remaining on the job and observing work rules, personal phone calls
2/25/2000 eval follow up and other concerns	8 concerns listed
8/4/2000 concerns re: DMs cases	accepted position w/DA, came back, when she was gone noticed errors in case files
3/5/2001 performance eval	Needs improvement in 3 areas: quality of work, dependability, public contact
2/27/2003 performance eval	Needs Improvement 4 areas: attendance, work habits, quality of work, and utilization of time – also addressed personal phone calls
7/10/2003 conflict resolution - agreement	communication problem w/co-worker

The Notice also had attached to it the above referenced 87 item attachment.

Concerning the 87 item attachment, the following 15 listed items have not been shown to have any independent implication in rule, directive, regulatory or personnel policy violations, although some do indicate some help and work directions were provided

1/23/2006	Phone message from EAP Counselor
10/31/2005	Dorothy on phone with customer
9/7/2005	Spoke to Dorothy
9/11/2005	Spoke to Dorothy
7/1/2005	Spoke to Dorothy
6/29/2005	Spoke to Dorothy
6/21/2005	Conversation with EAP Counselor
4/11/2005	Spoke to Dorothy
3/11/2005	Spoke to EAP Counselor
3/10/2005	Spoke to Dorothy
2/23/2005	Spoke to Dorothy
2/17/2005	Spoke to Dorothy
2/15/2005	Message at Mainline
2/15/2005	Phone call to Administrator
2/14/2005	Phone call to Laura Belanger

The Union filed a grievance on Grievant's behalf dated August 8, 2006, stating: Employee was dismissed without Just Cause. The grievance contented the article or section of contract which was violated was: Article #3, and all other relevant parts of the collective bargaining agreement. The grievance was denied by the County, which led to this arbitration.

Further facts appear as are in the discussion.

POSITIONS OF THE PARTIES

County

In summary, the County argues that it did not violate the terms of the labor agreement when it terminated the Grievant's employment. The Grievant's actions during all relevant times were wholly inconsistent with her job duties and responsibilities. Coupled with prior discipline, this conduct warranted discharge. The clear and unambiguous language of the labor agreement vests in the management the authority to discipline employees for just cause, and Grievant was fully aware of and completely understood her job duties and responsibilities. She knew through prior discipline that job performance inconsistent with those duties could result in discipline up to and including termination of employment.

The County argues that the Grievant received a number of disciplines for continued failure to follow required procedures, setting out ten such disciplines. Almost all involved a violation of Policy 13.02 regarding failure to follow work rules and procedures. Each put her on written notice of further discipline up to and including termination. The prior disciplines were significant progressive discipline geared toward following agency rules and procedures. Grievant admitted that she was on notice that any more disciplinary issues would result in her discharge.

The County contends Grievant's actions were inconsistent with her job duties and responsibilities. Noting her job duties from the position description, the County provided specific remedial training after the three-day suspension. And the Agency Director met periodically with Grievant to review her performance and encourage her, communicating with her approximately ninety times regarding procedural and performance errors. Grievant exhibited insubordination and failed to follow procedures and guidelines. She improperly or completely failed to input appropriate information into the KIDS computer system. Grievant was aware that proper performance was tied to federal funding for the agency and continued to fail in her duties.

The County argues it had just cause to discipline under Article 3 of the labor agreement. While the agreement does not define the term "just cause", a common arbitral definition is:

> The stock issues in a discipline case are: (1) is the employee guilty of the immediate misconduct alleged: and (2) if so, is the penalty imposed reasonable under all the relevant circumstances?

Grievant is clearly guilty of the misconduct alleged. Her prior discipline is significant and directly related to a continued failure to follow required work rules and procedures. She had warnings and discussions of performance issues to correct inappropriate and substandard performance. Since her last discipline her misconduct included failure to prepare proper court motions, failure to input proper procedural codes into the computer data base, failing to communicate with the custodial parent timely and effectively, failure to appropriately enforce child support obligations, failing to move for delinquency in time, total failure to follow through with paternity cases, failure to appropriately and timely respond to requests for information from her Specialist Assistant, failure to follow interstate timelines, and a general failure to follow through with procedures required by law, regulation and policy.

The County contends Grievant made work miserable for others to the point her own assistant sought other employment. Grievant was insubordinate rejecting remedial training offer to assist her, and refused to complete her required EAP counseling. She allowed others to do her work. She refused to schedule preparation meetings with the County Attorneys. None in the bargaining unit testified on her behalf regarding her continued failure to follow required rules and policy. Even the Union President admitted that no more time was necessary to review the many incidents and mistakes audited before termination.

The County further argues that Grievant's conduct warranted termination. The severity of her conduct was commensurate with the County's decision to terminate. After prior disciplines and additional training, EAP and follow up evaluation meetings, Grievant continued to violate procedures and policies. Her productivity was low. Other employees did some of her work so that the Agency as a whole could meet its goals and not lose funding. She was not following proper procedures and blamed others for timeline failures. In spite of additional remedial help, many times she continued to fail to properly input necessary data into the KIDS system, failed to meet timelines and failed to properly follow through on cases. Grievant had fair and reasonable notice of the performance issues and failed to improve. The County determined that further corrective action short of termination would not have solved the problems. The County had done all it could do to help her effectively perform her job short of termination and no further option was available.

The County also argues that after termination an audit of Grievant's pending cases demonstrated significant procedural violations in almost every file. The Agency was not able to meet state measures due to Grievant's failure to properly work cases, and lost funding for the 2006 fiscal year. Since her termination, the Agency is meeting or exceeding requirements for all measures.

The County contends the arbitrator should not substitute his judgment for the County's in deciding that termination was appropriate. It is the primary function of management to decide what disciplinary action will be taken. All an arbitrator should determine is whether or not the County acted in good faith, after a proper and fair investigation, and that the County did not act arbitrarily or capriciously or show hostile discrimination against the Grievant, citing arbitral authority. The arbitrator should not dispense his own brand of justice. The agreement does not give the arbitrator the authority to second-guess or otherwise modify a disciplinary decision made by management. The County had just cause for termination which was not an abuse of discretion. The arbitrator must uphold the County's decision.

In addition, the County argues the just cause standard was met, which, contrary to the Union's arguments in its brief, is a two part test. Also contrary to the Union's contention, the Grievant had adequate notice and was guilty of the misconduct alleged. Whether or not evaluations were provided is irrelevant and the Union never filed grievances challenging that. The Union ignored the many personal evaluation meetings held with Grievant. Contact and notice regarding poor job performance was ongoing. Grievant had discussions close to one hundred times since September 2005 regarding performance issues. Grievant's significant discipline history is relevant. Almost all involved Policy 13.02. In each Grievant was put on specific notice, in writing, that continued failure to follow rules and procedures would result in further discipline up to and including termination. The County provided significant progressive discipline geared toward following rules and procedures. Grievant cost the agency money because targets were not met. The labor agreement provision cited by the Union for Health Care Workers is a different department than where Grievant worked, and the one year limit does not apply here.

The County argues that contrary to the Union's contention, the Grievant had ample opportunity to respond to the reasons for termination. She never asked for more time or stated the time given was not adequate. She had ample time during the day to review the incidents, which matters had been discussed with her at some previous time. The Union did not raise this issue at earlier steps in the grievance process or at the hearing. It is not an issue. Grievant was given a chance to respond before the decision regarding her termination was made. Her discipline history provided her with notice of possible termination. She does not contest the accuracy of her prior disciplines. All of the incidents from February 5, 2005 are virtually uncontroverted as well. Grievant's defense to the numerous examples of rule violations was not based upon contradicting other witness testimony or the hundreds of documents at the hearing. She periodically admitted to various rule violations. She spent her time suggesting that she could not, on the face of the document, tell if she violated a rule. The County demonstrated overwhelmingly that cause existed to terminate the Grievant's employment.

Union

In summary, the Union argues that the County has failed to prove it met the notice requirement of just cause. Grievant was aware she had a right to expect annual evaluations based on the County personnel policies. She expected that if her performance was substandard an evaluation would be conducted to communicate to her that her performance was unacceptable, and Check told Grievant she was obligated to perform a performance evaluation on her each year. For each of her five evaluations through 2003 the County deemed her performance satisfactory, and never unsatisfactory in a single category. The County knew she could perform her job satisfactorily. Where evaluations were marked as needing improvement, subsequent evaluations showed improvement. Evaluations improved Grievant's performance previously. Check relied upon the personnel policies to fire Grievant, but Check did not adhere to the policies when she failed to give a performance evaluation after 2003. Grievant reasonably relied upon an entitlement to an annual performance evaluation to tell her how she was performing.

The Union argues that after the three-day suspension Grievant made every effort to abide by the employer's expectations and believed she improved her performance. Check did not indicate to her that she was performing poorly after February 2005. Had she known so she could have worked more closely with the lead worker or posted out of the Agency. The allegations in the termination were not even important enough to document at the time of their occurrence. The Chart of 87 was created after the fact in July. No such chart was compared to the other workers. Other workers were helped by the lead worker, who did not always meet deadlines. Grievant never caused the County to fail any government audit of the department. Grievant meticulously went through the documents offered to support its claims she was not doing her job to show what rubbish such claims were. Those very documents contained admissions by Check that Grievant's performance improved after February 2005, citing Check's notations from March 10, 2005, April 11, 2005, June 21, 2005, and January 17, 2006. Even if Grievant had been aware that the April 11th meeting was a performance review there is nothing in that review that indicates she was in danger of termination. The report and other memos indicate improvement. The documents, like prior formal evaluations, indicated her overall performance was satisfactory with room for additional improvement. Grievant would not reasonably conclude from her meetings with Check that she was anywhere close to being fired. None of Check's notes or memos suggests she informed Grievant that her performance was at a level to justify additional discipline, much less termination.

The Union contends that Grievant was to continue seeing the EAP counselor as long as they need to meet the performance required to do the job. Check testified that Grievant was not fired for missing any EAP appointments. The counselor communication notes indicate it would be left to Grievant's discretion to attend additional EAP sessions. Grievant was improving to the point her performance was satisfactory because Check had earlier declared that Grievant would attend EAP until her performance met job requirements.

The Union also contends that Check admitted it was her responsibility to inform an employee if the employee is on the verge of being fired due to performance. She wrote such information on the 14 day disciplinary suspension in 2004. That could be concluded as a grave matter because of the length of suspension and the extra typed warning. Check issued three disciplines for performance in July 2004, August 2004 and February 2005 as part of progressive discipline. But she did not provide any type of warning on any of those three disciplines that Grievant's performance was at a level that would lead to termination if it did not improve. The County offered no explanation as to why it would include the additional warning on the two week suspension but not on the February 9, 2005 suspension. There was 18 months without an intervening warning, discipline or review. A probationary employee can be evaluated within six months. Here the employer waited three times that long and never reassessed Grievant's performance to let her know she was in danger of losing her job. Grievant would have expected a written reprimand at most due to progressive discipline and that it had been so long since the last discipline.

The Union also argues that the collective bargaining agreement provided that for Health Care Workers a period of one year shall elapse from the issuance of the first disciplinary action until its removal from the employee's personnel file, and that contract provision bears consideration as to the parties' understanding on how long a particular discipline can be used for further progressive discipline. Here it was more than two years between the verbal warning and the termination.

The Union further argues that the employer failed to give Grievant a meaningful opportunity to defend herself against the allegations of poor performance. Grievant was completely surprised by her termination a year and a half after the last discipline. She was never given an opportunity to respond to the chart of 87 allegations handed to her on the day she was fired. At the meeting she was not asked to respond to the chart and was never told she could avoid termination by defending herself against the allegations in the chart. The discipline decision had not yet been made. The employer knowingly gave Grievant the impossible task of rebutting allegations that she had no time to even review, and did not tell her the importance of rebutting such allegations on the spot at the time of the termination meeting. Such grossly unfair treatment of a nineteen-year employee not only violated the just cause and due process requirements applicable to this termination, it is unconscionable.

Citing arbitral authority, the Union argues there are two questions involving just cause. The first is whether the employee is guilty of the actions complained of, and if so, whether the punishment is contractually appropriate given the offense. Procedural issues involving just cause may be addressed in answering the second question. The Union argues the County did not meet its burden to show performance warranted termination, and that Grievant was on notice that it believed that. The Union further argues the County did not meet the procedural elements of due process when it failed to give her notice and denied her any meaningful opportunity to respond to the allegations.

The Union contends that the County's recitation of the record is as unreliable as the proof it offered at the hearing. The County's reference to each of the 87 allegations having been previously discussed with Grievant, and close to one hundred separate discussions regarding performance issues are a gross distortion of critical testimony. Check's testimony shows Grievant did not have an opportunity to respond to them in any type of reasonable fashion prior to the termination, and that she was not presented with all the stacks of documents. The Union questions at what point does the County lose all credibility in this matter. If it cannot be trusted to accurately recite information it knows the arbitrator can verify then it cannot be trusted to accurately portray information that is not subject to verification.

The Union argues that the County may not circumvent the contractual just cause standard. The County incorrectly asserts that the County's choice of discipline should be upheld if it wasn't arbitrary or capricious. That claim is ludicrous. Just cause is a standard by which parties clearly contract out of other disciplinary standards, such as the arbitrary and

capricious standard. Just cause contemplates fair punishment. As a matter of course in just cause cases arbitrators determine whether the discipline was contractually appropriate, citing arbitral authority. Here termination was contractually inappropriate. Discipline after 18 months undermined the assertion the conduct was severe, and undermines the ability to rebut the allegations. Is fails due process. No reasonable person would ever believe Grievant could possibly defend herself by looking over the chart of 87 allegations over an 18 month period. The County's criticism of not asking for more time is specious. She had no reasonable opportunity to review the chart. And the employer's claim that it systematically kept Grievant informed that she was in danger of termination is incredible. Grievant was disciplined for wearing white canvas shoes, profanity was not unusual. If serious performance issues were ongoing such issues would have been brought to Grievant's attention in writing. They were not. And Check's notes indicate performance was improving. Grievant was not on notice that any further disciplinary issues would result in her discharge. The termination notices say termination 'may' result. She was told her performance had improved. Eighteen months had passed. Termination under such circumstances cannot be appropriate.

The Union argues the County failed to show by a clear and satisfactory preponderance of the evidence that Grievant's performance justified termination. The County introduced exhibits and documents with sweeping testimony claiming all the documents support its claim. Grievant discredited those documents at the hearing and the County largely did not even attempt to rehabilitate those documents. And it was the Lead Worker who instructed Grievant to change the DLQ codes, which the Lead Worker did not contest. The County declined to fully present the facts on any of the cases that Grievant worked on. The County relied on partial evidence to support its case. The most that can be said for the County exhibits is that Grievant was a bit behind in logging information into the KIDS system and she had no opportunity to input those calls into the system. Grievant so thoroughly undermined the County exhibits that the County came up with a new, improved chart it introduced on Day 2 of the hearing. It is unsubstantiated hearsay without the underlying cases having been offered. The chart was not a summary of documents contained in the record and thus may not be considered, citing Wisconsin statute Sec. 910.06. The County only offered snapshots of information, not a satisfactory number of entire cases. Grievant should not be penalized for that.

The Union also argues that the County cites dated, unrelated disciplines. Check issued three disciplines for performance, July 2004, August 2004 and February 2005 as progressive discipline. She had not disciplined grievant for performance issues previously. Grievant's performance evaluations were always satisfactory. Six of seven unrelated disciplines were before April 2002. Disciplines before July 2004 were not for performance issues. Unrelated, dated discipline is of minor relevance. The matter of scheduling with the County attorney was before Grievant was disciplined for performance. Grievant was never disciplined for failing to meet performance goals. Of all the disciplines there is absolutely no mention of performance measures, and they are not mentioned in the termination letter. It is inconceivable that the

department lost money for performance measures and has no documentary evidence of such a loss. The employer did not have just cause to discipline for performance measures. Due process requires notice and it is inappropriate to add charges after the employee was discharged.

DISCUSSION

This is a termination of employment case. Termination of employment, or discharge, is recognized to be the most extreme industrial penalty since the employee's job, seniority, and other contractual benefits, and reputation, are at stake.[3] The Parties' collective bargaining agreement requires that there be just cause for such action. The agreement does not define just cause. The Parties have not contracted, for example, a Daugherty Standard of just cause with its seven specific elements. The Parties suggest somewhat different versions of a just cause standard and how it is to be applied. As the County noted, the Union has expanded somewhat the scope of the issue it suggested at the hearing to be decided by enlarging in its briefing its view of just cause to include specific procedural elements. As the Union noted, the County would limit the arbitrator's ability to consider the penalty aspect of just cause, and suggests an arbitrary or capricious standard in that respect. The Parties do advocate some overlapping of terms. They both consider the concepts of whether the employee is guilty of alleged misconduct, and whether the penalty is reasonable or contractually appropriate under the circumstances.[4] A common definition of just cause, which the undersigned and other arbitrators have employed in the absence of a contractual definition,[5] is in essence, that two elements define just cause. The first is that the employer must establish conduct by the Grievant in which it had a disciplinary interest. The second is that the employer must establish that the discipline imposed reasonably reflects its disciplinary interest. Implicit in just cause are matters of fair notice and procedural fairness.[6] That is the standard that will be applied here, with considerations of the Parties' particular arguments discussed below. The standard is broad enough to cover the issues as determined to be fairly reflected by the record. This must be done in the context of whether the Grievant violated the four Personnel Policies as alleged in the Notice of Termination, and if termination of employment is reflective of the employer's interests in view of the surrounding circumstances, including Grievant's relevant work history, both favorable and unfavorable. The context also requires consideration of how the termination decision was made – the notice and procedural fairness matters.

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[3] Discipline and Discharge in Arbitration, Brand (4th Ed.) p. 67.

[4] County Brief p. 22. Union Reply Brief p.5.

[5] *See, e.g.,* AMERIGAS PROPANE, A-6129 (GORDON, APRIL, 2006); COLUMBIA COUNTY, MA-12398 (GORDON, JANUARY, 2005).

[6] How Arbitration Works, Elkouri & Elkouri (6th Ed.) pp. 967 – 969

The first element of just cause requires the employer to have a disciplinary interest in the conduct it alleges. Here, the labor agreement at Article 3 A) 1, 2, 6, and 7 reserves in the County the right to direct all operations of the workforce, to establish reasonable work rules, to maintain efficiency of County government operations, and to comply with state and federal law. This recognizes the County's right to make the Personnel Policies which it alleged Grievant violated. The substance of Grievant's work, as seen in the various duties listed in her job description, requires compliance with state and federal law as it relates to child support activities. Efficiency of County government operations reasonably includes seeing that job duties are performed. Direction of operations implies, among other things, directives to employees. These are all County operations in which the County has a disciplinary interest. They are reflected in the Personnel Policies in Section 13.02 Grounds for Discipline. Among those are the policies Grievant was alleged to have violated, and are:

> The following shall be grounds for discipline ranging from a verbal warning to immediate discharge depending upon circumstances and the seriousness of the offense in the judgment of management.
>
> . . .
>
> (2) Insubordination (refusal to obey reasonable orders, insolence, etc.);
>
> . . .
>
> (14) Failure to adequately perform assigned job duties:
>
> (15) Failure to follow duly established work rules, policies and procedures;
>
> (16) Professional unethical conduct or behavior
>
> Other circumstances may warrant disciplinary action and will be treated on a case-by-case basis.

Clearly the County has a disciplinary interest in the type of conduct it alleges Grievant has committed in violation of those Personnel Policies.

The Union argues, strenuously, that it is unfair to discipline Grievant for violation of the Personnel Policies when the Personnel Policies were not followed by the County to provide an annual performance review for Grievant under Section 10.02 A and B. This would have given her information as to the acceptability of her job performance, notice of any need to improve, notice and indications that termination or other discipline might follow if specific job duties did not improve, and an opportunity for Grievant to post out of the Child Support Agency if she felt her employment was in jeopardy. However, there is nothing in the labor agreement which requires there be annual performance evaluations. The policy manual is not a labor agreement. Even though the policy manual states at 1.04 that "[a]ll other provisions in

this manual not covered by labor agreements shall be in full force and effect", neither the policies nor the labor agreement provide for any penalty if the performance evaluations are not made annually. Moreover, the application of policies under Section 13.02 is not dependent or conditioned on the application of any other portions of the policies. Taken to its logical conclusion, the Union's argument here would mean that no discipline for a policy violation could be maintained by the County for any employee who has not had an annual performance review. That would be an unreasonable result and there is no evidence that that was in the contemplation of the parties in their labor agreement. It would also negate the County's right in the labor agreement to discipline and discharge for just cause.

The objections underlying the Union arguments as to the absence of annual performance reviews are addressed by the actual facts of the case. Grievant had notice of what was expected of her. The Union argues that she did not know her job performance was not adequate or that her employment might be terminated. However, the record clearly shows Grievant had reason to understand that she might be terminated for poor job performance. Grievant received at least nine written disciplines having to do with job performance or following policies and work rules. Each one contained the statement

> Any further incidents of this nature may be ground for further discipline up to and including discharge.

The Union argues that the use of the word "may" in the above statement is not notice to her that further disciplinary issues would result in her discharge. The argument is unpersuasive. Use of the word "may" allows for discharge, but does not mandate it.[7] Grievant's testimony admits this was notice to her. For example, it is worth setting out her testimony as to the discipline she received in July of 2004.

> Q. And as I look at this document as well, in about three quarters of the way down it says *Any further incidents of this nature may be grounds for discipline up to and including discharge?*
>
> A. Correct.
>
> Q. And at that time you were at least on notice in writing that performance was of such that you could be discharged, fair enough?
>
> A. For that specific action, fair enough.

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7 Additionally, in the February 2005 three day suspension discipline there was the statement in the attachment for mandatory referral to EAP which, in reference to meeting timelines and completing work, did state that future non performance in this position "will" lead to further disciplinary action. In progressive order, a verbal warning, written verbal warning, suspension, and suspension with mandatory corrective provisions very reasonably can lead one to understand that further discipline contemplates the remaining step of discharge.

Q. Well, is that what it says?

A. For - - yes, if I had violated the state regulation and printed out another - - oh, you're talking about this little thing here (indicating)? Oh. That's what it says on this document, yes. Does it say any further incidents; is that what we're looking at?

Q. Yes.

A. Yes, that's on the document.

Q. And you knew at the time that you were being disciplined for such things as failure to adequately perform your assigned duties, right?

A. Uh-huh, yes.

Q. And that was specifically noticed to you on the form?

A. Yes.

Q And you were also disciplined for failure to follow dually established work rules, policies, and procedures, right?

A. That's what the discipline says, yes.

Q. And you were disciplined for professional unethical conduct or behavior, right?

A. That's what the discipline says, yes.

(Tr. Vol. II pp. 106 – 108)

Following that discipline was the February 9, 2005 discipline that contained an additional, specific statement in the reasons for mandatory referral to the employee assistance program, stating

> Need to have employee focus on work at all times and not slack off and revert to not meeting the timelines. The completion of work by following through regularly is essential in this very important and responsible position in the agency. This is a very serious matter and any future non performance in this position will lead to further disciplinary action.

Grievant acknowledged that in this paragraph the County had put her on notice that there needed to be improvement or further discipline would follow, and that this was a very serious matter. Then, after the February 2005 disciplinary three day suspension, Check and Grievant talked a number of times about her cases and how she was doing, and Check did come to Grievant with concerns over different cases from time to time. In the context of some of those

Meetings Check expressed concerns for Grievant's performance. In those meetings there was discussion about Grievant having continued to improve, but also indicated other areas that needed to be improved. And in Grievant's item by item review of the entries in County Exhibit 7-A, Grievant admitted receiving or reviewing the numerous written notes from Check. Grievant characterizes these as merely directive and things needed to be done on cases. There are fifty-eight of these items. But the more complete circumstance, as explained by Check, is that these were things that should have been done and yet needed to be done because they were missed timelines and items not followed through pursuant to federal and state requirements. The point being, Grievant had both general and specific notice of job duties in specific cases that needed to be done and where performance needed to be improved. Grievant's position description contains these duties as well, including meeting all timelines with KIDS worklists and other reports in order to remain compliant with federal and state requirements, for example. The Union points to Check's testimony where she agreed it was her "job to tell the employee you're on the verge of being fired because of poor job performance". The labor agreement does not contain this level of specificity. Nowhere in the collective bargaining agreement is there a provision which requires the County to specifically notify Grievant that there would be the specific penalty of discharge or termination for continued poor job performance. The contrary is present in the personnel policies at 13.02, which notes grounds for discipline ranging from a verbal warning to immediate discharge depending upon circumstances and the seriousness of the offense. This is not a case of immediate discharge. It is a case of progressive discipline being applied over the course of several years with specific attention being drawn to substantially the same type of policy violations. The absence of annual performance reviews does not prevent the County from enforcing its other personnel policies under Section 13.02 and establishing violations of those policies as just cause to issue discipline or discharge. The absence of annual performance reviews does not negate the disciplinary interest of the County in the alleged conduct.

The disciplinary interest for just cause purposes is in the conduct it alleges. The conduct it alleged in the Notice of Termination is contained in that notice in the attached memorandum and the attached 87 item chart. Together they allege Grievant violated the personnel policies set out above, policies 13.02 (2), (14), (15) and (16). The County alleged Grievant failed to complete mandatory EAP sessions, failed to follow through with required child support collection actions within required timelines and Agency policy, changed delinquency codes without having taken required collection actions, failed to timely enter needed information and data into the KIDS system, and used profanity in the workplace.

The alleged failure to complete the mandatory EAP sessions is insubordination according to the County.[8] The March 2, 2002 and August 24, 2004 disciplines had recommended EAP. Mandatory EAP was part of the discipline Grievant received on February 9, 2005. There was a separate attachment to that discipline setting out the reasons

[8] Besides the EAP mater, the County also contends Grievant was insubordinate in failing to follow other directives, discussed below.

for making participation mandatory. Those reasons address efforts to improve job performance. They include, in summary: meeting several times in over three years regarding same concerns with performance and following the rules, laws, policies and regulations, employee can do the work but is not able to continue being focused, after discipline issued employee works well for a few months and then eventually reverts to not following through completing work; employee provided [with] written steps and reviewed with Lead Specialist, application of those steps has not been practiced in several cases, employee has been provided sufficient information to follow written instruction; employee states she does not trust her employer and that is why she fails to respond to questions asked of her in writing, employee feels she cannot come in and discus case concerns; requested employee to provide log of phone calls and notes made to enable her to remember to enter in KIDS, could not remember where they were, maybe thrown out, employee continues to fail to make notes regarding interviews held, conversations with parties that are pertinent to the case, Employee asked in the past to complete a daily log which would be retained, but does not; employee responds by wanting to blame others, need to remain focused; specialist teams are to discontinue other work and focus on Performance reports and on child support collection and arrears collection measures for three hours each Wednesday, Specialists are to provide work to their team assist, Assistant had not received any work on a Wednesday as well as several other days very little, this lack is a definite impact on others, agency's total performance measures must increase significantly this year and to date this employee's figures continue to remain same or even reduced at times. As noted above, a separate statement was included with these reasons

> Need to have employee focus on work at all times and not slack off and revert to not meeting the timelines. The completion of work by following through regularly is essential in this very important and responsible position in the agency. This is a very serious matter and any future non performance in this position will lead to further disciplinary action.

Both parties made reference at the hearing to hearsay statements of the EAP counselor, and both parties have made arguments as to how much, if any, weight should be put on such statements and how, if at all, they should be considered. The statements were admitted into evidence. Little weight will be put on them. There is little argument that the directive was for her to make contact with EAP for an appointment by February 11, 2005. The undersigned is persuaded from the record that she did not make contact with EAP to schedule an appointment by that time, but did so several days later. She had gone to seven of the eight sessions by January, 2006 and the EAP counselor had made this known to the County by March 11, 2006. Grievant did not schedule another session after that. Check did not discipline her at that time for not having scheduled or completed the remaining mandatory EAP session. The best and most reliable evidence on the matter of Grievant attending or completing the mandatory EAP is from the direct testimony of Grievant herself as to that part of the February 2005 Discipline.

> Q. And you received as part of that discipline a requirement to continue to participate in a mandatory employee assistance program, correct?
>
> A. Correct.

Q. And you didn't finish that, all of the counseling for that program, correct?

A. I did not finish the last appointment, correct.

Q. And you knew that participating in the employee assistance program was part of the required discipline - -

A. Yes.

(Tr. Vol. II p. 111)

This is an admission by Grievant that she did not follow the directive of her employer of mandatory EAP which was contained in the prior discipline. She did not complete the program and the program was mandatory. She offered no credible reason why she could not have completed it. It was insubordinate for her not to complete the program. This is a violation of policy 13.02 (2) insubordination.

The Notice of Termination alleges a violation of policy 13.02 (16) Professional unethical conduct or behavior, and the memorandum references the June 28th incident involving Grievant's use of profane language. This was an incident that concerned the use of forms required in the Agency. It was not the only use of profanity by Grievant. As the Union has pointed out, others in the office have used profanity and no one has been fired or terminated for that. However, Grievant had been disciplined for use of offensive and inappropriate language before. And whether others may have violated the policy does not justify continued violation of policy. This is a child support office and children are sometimes in the office. The County also has an interest in a professional work environment. Use of profanity directed towards work activities undermines that. While swearing or the use of profanity is not an uncommon occurrence in many work settings, in the face of directives and prior disciplines, even if others occasionally use profanity, that does not mean a violation of the policy did not occur here. Grievant's use of profanity in relation to the Agency forms after having been disciplined previously for that type of thing is unprofessional and unethical in violation of policy 13.02 (16).

The remainder of the factual allegations against Grievant for having violated the policies is contained in the chart of 87 items. In addition to the EAP and profanity matters discussed above, this is why Grievant's employment was terminated. These are the items the County took into account in making its termination decision. Matters not included as attachments to the Notice of Termination cannot be used to support the County's decision to terminate because they were not used in making the decision and were not provided to Grievant as reason to terminate. Evidence of the matters in the chart of 87 items such as the documents copied from the files and credible testimony that are linked to and relate to the items in the chart support the establishment of those items. But not all of the items in the chart

indicate any violation of policy. Those matters do not support or evidence a violation of policy. Some relate to mere questions by Grievant as to how to handle a particular matter. She had been encouraged by Check to come to her if she had questions. Some entries refer to communications between the EAP counselor and the County. Other than the overall failure to complete mandatory EAP, these items do not separately indicate additional violations. There are several items that merely indicate conversations between Check and Grievant with no policy implications at all apparent. In total there are fifteen of these types of items on the chart, detailed by date and subject matter above, which have no implication of any violations. These items do not support just cause for any discipline.

The remaining items in the chart do implicate policy violations, but only some of them were testified to at the hearing. Of the matters testified to at the hearing, only those which can be identified in the chart of 87 items can be considered to support just cause for the reasons just stated. Without explanatory testimony, the documents themselves are not particularly clear. Without some type of testimony to explain them, the County may have met a burden of production as to those matters, but not persuasion. Check did testify, with reference in many cases to copies from files in the record, to a number of alleged violations identified in the chart.[9] Those matters are sufficiently clear when considered in conjunction with the documentation.

The Notice of Termination included allegations of violations of policy 13.02 (14) Failure to adequately perform assigned job duties, and policy 13.02 (15) Failure to follow duly established work rules, policies and procedures. The policy against insubordination is also implicated because Grievant was directed to follow the rules and policies underlying the two noted policies. Several types of alleged performance deficiencies were attached to the Notice in the chart of 87 items for missed deadlines and not taking required collection activities, and for not entering information into the KIDS system. Check's testimony reviewed nine items directly from that chart. This established that Grievant failed to make timelines and guidelines in the cases marked 7/13/2006, the five cases marked 9/1/2005, and the three cases marked 10/24/2005. In the matter marked 10/24/2005 Grievant had a non-custodial parent's arrearage expunged without contacting the custodial parent first and without seeking to collect from the decedent's estate, in violation of office policy and procedures. In the matter marked 9/1/2005, these cases had not had timely collection and arrearage actions taken in order to be counted towards the performance measures, which require timely actions under federal and state standards. In the matter marked 7/13/2006, Grievant had been given instruction on contacting a parent for case closing and had not done so in time for the case to be closed timely. The failure to comply with these procedures and missing timelines are all violations of the personnel policies.

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[9] The Union strenuously objects to reliance on County Exhibit 20, which is a summary of the file documents in County Exhibits 7 and 7-A. The Union cites Sec. 910.06 Wis. Stats. That exhibit is only a chart or summary. It is admissible in that the Wisconsin Rules of Evidence are not strictly applied in grievance arbitration hearings. Any findings herein are not based upon the content of Exhibit 20. Those matters are the subject of testimony and documentation contained in other exhibits which contain entries from actual case files. But the exhibit does serve as a guide to what the County contends are facts that evidence violations of policies, rules and regulations referenced therein. After entry into evidence of the exhibits later summarized in County Exhibit 20, the Union did have a copy of the documents summarized in the later exhibit before it was testified to on the second day of hearing.

Check also testified about additional alleged violations and referred to file documents in County Exhibit 9, which were all from the cases identified in the chart of 87 items. Other than the log book copy which supported the allegation of failure to enter pertinent data into the KIDS system (discussed below) Check only testified in any detail as to one entry in the remainder of that exhibit. Check testified credibly to a matter dated 7/17/06. In that matter Grievant failed to obtain an income withholding order for over a year for an employed non-custodial parent who had an outstanding child support order. This was a failure of Grievant to perform her job duties. Grievant also testified as to the items in County Exhibit 10 and admitted that she did not perform her duties in the cases identified as case 1, case 2 and case No ___997 of 4/12/2005. The failure to perform job duties in these four cases are violations of the personnel policies.

As to the personnel policies noted immediately above, Check also testified in reference to certain case file copies as to an additional twenty-one cases identified in County Exhibit 20 – the summary of the file documents. However, only three of those can be identified as among the 87 items on the Notice chart. Only those three will be considered. They are cases 8, 14 and 15. In case 8 Grievant did not initiate a federally required 33 month review of that foster case as she had been instructed to do. Case 14 is the same case identified in the immediately above paragraph for 7/13/2006 and cannot be used twice by the County to establish additional violations of policy it has already established. In Case 15, a paternity case, Grievant failed to establish an order for support within the 90 day federal guideline.

The attached chart of 87 items sets out five identifiable allegations of Grievant having changed delinquency codes in the KIDS system from DLQ2 to DLQ0, without having first taken required collection efforts. The delinquency codes go into delinquent status automatically based on payment histories received in other parts of the KIDS system. Federal and state regulations, and thus work rule and policies, require the Specialist to take certain collection actions to attempt to effectuate collection before the Specialist is to change the delinquency code. The delinquency code acts as a reminder system among other things. After the February 2005 discipline the Lead Specialist specifically worked with Grievant to have her take the required collection steps before adjusting the codes back to 0. Grievant adjusted some of the delinquency codes back to DLQ0 without having taken required collection actions. Grievant testified that she changed the codes at the direction of the Lead Specialist. The undersigned is persuaded that the Lead Specialist testified more accurately, and more credibly, as to the directions she gave to Grievant on taking collection actions before changing the codes. In changing the codes without having taken the required collection activities Grievant was insubordinate, failed to adequately perform her job duties, and failed to follow established rules, policies and procedures in violation of the personnel policies.

Among the allegations in the 87 item chart is a failure to document telephone calls and enter other information into the KIDS system. Those are the items contained in County Exhibit 9. There are 42 such items. Agency policy, procedure and directive is to enter this information as soon as possible. Others working in the Agency use the information in the KIDS system to work on cases. Often other Specialists, the Specialist Assistants, and other

Agency personnel must enter the KIDS system to get information or take action on files being worked by a Specialist. If the required information, such as telephone contacts, is not entered into the system then the other person accessing the file is not aware of the actual status of a case. This can be problematic, confusing and inefficient. At the hearing Grievant admitted she was behind on the items from mid July, 2006 to the termination. There are 19 of those admitted items. The credible testimony of Check and the documentation established the 42 items of information and telephone calls, going back to May 30, 2006, were not entered into the KIDS system. Grievant did not perform her job duties and did not follow work rules, policies and procedures when she did not enter this information, all in violation of personnel policies 13.02 (2), (14) and (15).

A summary of the above review of the evidence shows that Grievant admitted to 30 allegations of failing to perform her job duties. The County's evidence established Grievant was insubordinate in not completing the mandatory EAP sessions, and engaged in unprofessional and unethical conduct in her use of profanity. The County also established an additional 42 incidents[10] of Grievant not performing her job duties or complying with Agency policy, work rule or regulations. This is a total of 74 instances of Grievant having violated the County's personnel policies. Only items that were contained in the Notice of Termination and its memorandum and chart of 87 items are included in the matters established by the County. The County offered evidence of several other matters it alleged as personnel policy violations, but which were not included in the memorandum or the chart or recognizable as such. Those matters are not considered to be proof of any violations alleged by the County in its Notice of Termination and they are not considered in determining the 74 violations set out above.

There are 74 instances of conduct in which the County has a disciplinary interest. The Union argues that Grievant did not have an opportunity to contest or explain the allegations on August 3, 2006 when she was terminated. The Union contends this is fundamentally unfair and a violation of due process within the requirements of just cause. Again, the facts undermine the Union's argument. Several points deserve attention.

The timing of the termination for job duty deficiencies occurring roughly over an 18 month period has been argued by the Union as unfair and violative of due process. However, Grievant's termination was based on an accumulation of violations and a failure to correct deficiencies in job performance over this length of time. She was not terminated for any single event. If she had been then the Union's argument would have more merit. Both before and after the February 2005 discipline the County made several attempts to help Grievant improve her job performance. After February 2005 she was required to go to the EAP sessions, was given help by the Lead Specialist, and was again given specific lists of directions and procedures as attachments to the February 2005 discipline, and given numerous directives in writing for case work needs, for example. The County gave her a chance, continued chances, to improve over time. And, there is nothing in the collective bargaining agreement which places time limits on this Agency within which to take action. Reference to repeated failures to adequately perform job duties and follow work rules, policies and procedures since the prior disciplines for similar conduct does not make the County's actions unfair.

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[10] It is a coincidence that the 42 items is of the same number as the 42 KIDS documentation incidents. The 42 numbers are arrived at separately and independently.

The record shows that the County conducted a fair investigation before making any decisions or taking action. Check met with other County officials to review what she was continuing to observe as inadequate job performance on Grievant's part. After those initial discussions Check then accumulated individual records from specific cases, the items contained in County Exhibits 7, 7-A, 8, 9, 10, and others. In at least one of these there are more than 100 separate matters. These were then reviewed and eventually summarized into the chart of 87 items, although not all the reviewed files were contained in that chart. Besides this investigation, the County did seek Grievant's input into its review of her job performance, as discussed next.

Grievant was given the memorandum and chart of 87 items in the morning and she did not look at the contents of the envelope until the meeting at about 3:30 pm. The envelope was something given to her at work by her employer. Grievant surmised it was a disciplinary matter and that would be job performance related. She chose not to address or even consider that employment related matter and instead did her other work. She did not attempt to prepare for the meeting or seek to reschedule the meeting. She had a Union representative available for the meeting and neither looked at the contents of the envelope before the meeting. In the meeting when the memorandum and chart were brought up by the County, Grievant did not ask for more time to review the items. At that point there had been no decision made on what, if any, discipline or action was called for. The initial meeting was ended by Grievant. She did not attempt to explain any of the maters in the envelope. She did not ask to continue the meeting to take the time she may have felt she needed to review those matters with the County. There is nothing in the record to indicate that the County would not have honored any request of this type or that it would have been a waste of time. When she was then given the Notice of Termination letter the personnel policy violations were based on the items in the memorandum and the chart. In view of the collection of information by the County and the opportunity given to Grievant for comment, the County did make a fair investigation of Grievant's job performance.

The memorandum and chart of 87 items was a very specific statement of the charges or allegations the County was making. They are replete with not only dates, but also case file numbers, and the nature of what the County considered a failure of performance. The Notice of Termination provided her with the personnel policies alleged to be violated and the particulars of the infractions. As noted above, it is only those matters referred to in the two attachments to the Notice of Termination which are found to have occurred for just cause purposes. Incidents not contained in those attachments or discovered later have not been considered as establishing conduct in which the County had a disciplinary interest. The 74 instances were stated precisely enough in the Notice of Termination so that Grievant could respond to them, even if she needed to do so by reference to the case files. She could have begun that response at the August 3rd meeting. She certainly had the opportunity, and did respond, throughout the grievance and arbitration hearing process. She went through each of the 120 cases in County Exhibit 7, 7-A, for example.

The collective bargaining agreement here does not set out a specific manner in which a decision to impose discipline or discharge is to be made, only that there be just cause. The agreement does not require there even be a meeting or opportunity for Grievant to respond to the concerns or allegations of failed job performance before making a decision about what, if anything, the County might do. Arbitrators are divided on the need for such a meeting in consideration of due process for just cause purposes.[11] However, Grievant was afforded that opportunity with the assistance of a Union representative. She did not make much of it. Whether required or not, she was given the opportunity to explain her job performance conduct before the termination decision was made.

The due process and procedural fairness concerns inherent in just cause have been satisfied by the County.

The just cause analysis next turns to the question of whether the discipline imposed reasonably reflects the disciplinary interest. This is not strictly the same as what the County argues is the standard. It argues that unless the discipline is discriminatory, unfair or arbitrary and capricious, the arbitrator should not substitute his personal judgment. The County, noting that the agreement provides that the arbitrator shall not modify, add to, or delete from the express terms of the agreement, argues that the collective bargaining agreement does not give the arbitrator the authority to second guess or otherwise modify a disciplinary decision made by management. Yet, the County also argues that just cause has as its second test the question is the penalty imposed reasonable under all the relevant circumstances. Again, the agreement does not define just cause. It does not prescribe what an arbitrator can and cannot consider in making a just cause analysis. The County's later statement of this part of just cause is what is being considered here. The County's former argument would recognize that the discipline must not be, among other things, unfair. Whether it is unfair or fair is another way of saying it must be reasonable under the circumstances, and that is essentially the same thing as asking if it reasonably reflects the disciplinary interest.

The Union argues that Grievant's performance has been satisfactory and that her prior performance evaluations always gave her an overall evaluation of satisfactory. The Union argues her conduct does not merit termination. Yet again, the facts of ten prior disciplines, the progressively more serious penalties imposes with those disciplines, the addition of required written instructions and procedures to follow appended to the latter two of those disciplines, various notations of the performance evaluations of needing improvement, several informal meetings with Check since February 2005 noting a need to improve in some areas, recommended and then mandatory EAP participation, all erode the Union's argument. Seventy-four separate violations is not satisfactory job performance. Grievant was consistently not performing her job duties, was insubordinate and unprofessional. She had help, direction and additional training provided and available to her. An employee's performance, though satisfactory in the past, may later be judged unsatisfactory because the employee's performance had deteriorated.[12] The record of continued disciplines and violations demonstrates that to be

[11] Discipline and Discharge in Arbitration, Brand (4th Ed.) p. 46

[12] Ibid, p.138.

the case here. It is indeed as noted in some of the performance reviews and disciplines that Grievant has been capable of performing her job duties, does improve for a time after discipline, but then, consistently has gone to a lower level of performance. While all the prior disciplines were not solely for performance issues as the Union points out, they were still violations of personnel policies. Job performance issues had been the subject of some prior disciplines. There is no requirement that progressive discipline up to and including discharge must be for violations of the same or related policies. Carried to its logical conclusion, that argument would mean that an employee could violate any number of different policies with impunity and not be subject to discharge because of the differing nature of violations. In the absence of contractual language to the contrary, consideration of an employee's work and disciplinary history is helpful and meaningful in a just cause determination.[13]

While no single incident established here as a violation of personnel policy may be serious enough to warrant discharge or termination, this case is a culmination of a large number of violations occurring after several other progressive disciplines. The County considered this in making its decision. The Union contends that disciplines more than one year old should not be considered, arguing that the provision in the collective bargaining agreement which provides this for the Health Care Center employees bears consideration as to the Parties' understanding of how long a prior discipline can be used for further progressive discipline. However, this particular provision is limited in the agreement to the Health Care Center, and does not apply bargaining unit wide. Putting this specific provision into a limited part of the agreement demonstrates that the parties knew how to negotiate such a provision, and had they intended it to apply to the entire bargaining unit they would have specified that. They did not. This reflects an intention that the provision is not to apply to the entire bargaining unit to cover Grievant's position. The Union itself points to Grievant's 19 years of employment as a factor in her favor, thus extending well beyond the one year provision in which to view Grievant's employment. Here, not only were the prior disciplines included with the Notice of Termination, but other meetings and performance evaluations were considered and included in the Notice. These past efforts were all designed to improve Grievants's job performance and the County made the reasoned decision that there was no reasonable alternative to discharge. And as discussed above, Grievant had been disciplined for this type of policy violation before.

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[13] The point is stated in How Arbitration Works, Elkouri & Elkouri, (6th Ed.) pp. 983, 989

> Some consideration generally is given to the past record of any disciplined or discharged employee. An offense may be mitigated by a good past record and it may be aggravated by a poor one. Indeed, the employee's past record often is a major factor in the determination of the proper penalty for the offense. In many cases, arbitrators have reduced penalties in consideration of the employee's long, good past record. In turn, an arbitrator's refusal to interfere with a penalty may be based in part on the employee's poor past record. In one case, the arbitrator held that, although neither the incident at he time of discharge nor any other single incident cited by the employer was sufficient to warrant discharge, the general pattern of the employee's unsatisfactory conduct and performance, as established by a series of incidents over an extended period, was preponderant evidence justifying discharge. Other arbitrators have reached the same conclusion in similar "last –straw" situations. Additionally, in one case, an arbitrator reduced the penalty, but used the employee's disciplinary history to impose a "last-chance provision" on the employee's reinstatement.
> (citations omitted)

She was specifically informed each time that any further incidents of this nature may be ground for further discipline up to and including discharge. In failing to complete the mandatory EAP sessions, failing to timely enter all information into the KIDS system, and failure to follow through with work on a daily basis, Grievant did not comply with the corrective action of the previous discipline. Grievant's repeated policy violations after progressively severe discipline reasonably reflects and is supportive of the County's decision to terminate her employment.

The County's interests obviously concern the nature of Grievant's job. The termination of Grievant's employment is a very serious matter. Grievant's employment responsibilities are also a very serious matter. That is to establish child support orders and effectuate collection on those orders. That is important work for the County and the people who depend on receiving those payments. There are also the interests of the payer to consider, as well as employers who are impacted by income assignments and contacts with a Child Support Agency. The duties of a Child Support Specialist directly affect people's lives and well being, economic and otherwise. It is no stretch of imagination to see that failure to adequately perform job duties negatively impacts those lives. That is a very serious matter. The County has a very serious disciplinary interest in this conduct. It has taken serious progressive discipline to correct and improve Grievant's job performance and Grievant has continued to fail to perform her job. There are at least 74 instances of policy violations here, practically all of them evidencing a failure to perform job duties. Grievant's honesty in admitting to 30 of these is offset by her minimization of the directives given to her in writing by Check as to most of the other items, and the sheer number of violations. The County has an interest in having the job duties of a Child Support Specialist carried out and actually performed. That performance is expected to be in an efficient manner. Further attempts at improving job performance are not at all likely, having been tried with increasing intensity. These failures and violations of personnel policies are serious enough to warrant termination of employment. Termination of Grievant's employment reasonably reflects the County's disciplinary interests. Regardless of the level or quantum of proof needed to establish just cause, the County has demonstrated by at least clear and convincing evidence that it had just cause to terminate Grievant's employment.

The County did have just cause within the meaning of Article 3 of the collective bargaining agreement to terminate the Grievant. The County did not violate the agreement. Accordingly, based upon the evidence and arguments in this case I issue the following

AWARD

The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 4th day of December, 2007.

Paul Gordon /s/

Paul Gordon, Arbitrator

PG/rb
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