

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**PEPIN COUNTY**

and

**PEPIN COUNTY HUMAN SERVICES AND COURTHOUSE  
EMPLOYEES LOCAL 1946-A, AFSCME, AFL-CIO**

Case 52  
No. 67348  
MA-13843

(Laehn Discipline Grievance)

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**Appearances:**

**Tom Rusboldt**, Attorney at Law, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, Eau Claire, WI 54702-1030, on behalf of Pepin County.

**Steven Day**, Staff Representative, Wisconsin Council 40, AFL-CIO, 318 Hampton Court, Altoona, WI 54720, on behalf of Local 1946-A and Grievant Lois Laehn.

**ARBITRATION AWARD**

The County and the Union are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. The Union filed a request to initiate grievance arbitration with the Wisconsin Employment Relations Commission for arbitration of a grievance concerning the discipline of one of its members, Lois Laehn. The Commission designated Paul Gordon, Commissioner, to serve as arbitrator. Hearing was held on the matter on January 22, 2008 in Durand, Wisconsin. No transcript was prepared. At the close of the hearing both Parties agreed to waive the filing of written briefs or arguments, and requested the arbitrator to issue an expedited, abbreviated award. Accordingly, the record was closed on January 22, 2008.

**ISSUES**

The Parties stipulated to the following statement of the issues:

Did the employer have just cause to suspend the Grievant for five (5) days?

If not, what is the appropriate remedy?

## DISCUSSION

At the request of the Parties this award is in an abbreviated form. In early 2007 the Pepin County Commission on Aging, which oversees the County's Department of Aging and Senior Services, was looking into the activities of the Department and its employees to be familiar with the employees and to gain a better understanding of the Department's functions and how the Department was meeting its responsibilities. The Commission had a particular concern about the job functions of the Director, John Gast, and of the Program Assistant, Lois Laehn, Grievant herein. Of most concern was the management style or effectiveness of Gast. Grievant is also the secretary to the Commission (not a Commission member). By early February, 2007 the Commission did not feel it was getting the information and cooperation from the Director in getting requested input from the Department employees. There are four full-time employees, five or six part-time employees, and a number of volunteers working out of three sites in the County. The Commission set a meeting for February 13, 2007 and requested the attendance at that meeting of Department employees Connie Weber, Luanne Barber and Joan Lauer. The request for these employees to attend the meeting was communicated to them by Gast when he told them and wrote it on the Department calendar between a week and ten days before the meeting. Grievant worked during the week prior to the meeting, but only for a very short time on the Friday preceding the meeting. She was on vacation the week of February 12<sup>th</sup>. She was also aware of the upcoming meeting and the request that the other employees attend it. The employees did attend the closed meeting, appearing separately.

In summary, it is the County's allegation that prior to the February 13<sup>th</sup> meeting, the Grievant instructed the other employees not to communicate candidly with the Commission at the meeting. The County also alleges a second, similar violation occurred on February 20<sup>th</sup>. The Commission Chairperson, John Tappe, the County Personnel Supervisor, Darlene Brunner, and Attorney Tom Rusboldt were performing investigatory functions on February 20, 2007 as to the Department. Attorney Rusboldt had been hired by the County to participate in what was styled an investigation into the functioning of the Department. Their concerns were those identified by the Department above, and they were also aware of the matter of whether Grievant had told the employees not to communicate candidly with the Commission on February 13<sup>th</sup>. The three met with Grievant at the Department site in Durand on February 20, 2007 and discussed with her various things about the Department. Grievant was then instructed not to interfere with the investigation and not to take any steps to obstruct or impede staff cooperation with the investigation. She was also told that she was not to tell staff members not to talk to Attorney Rusboldt or to not talk to him candidly. It is the County's second allegation that immediately after that meeting, Grievant told Lauer and Weber not to discuss anything with the Board or to volunteer any information about what goes on at the Senior Services Center. Gast was on vacation that day and was not there.

Grievant denies that she ever told the employees any time before the February 13<sup>th</sup> meeting not to communicate candidly with the Commission, or anything of the sort. Grievant also denies that on February 20<sup>th</sup> she said anything to the employees about not talking to the Commission, or Board, or to anyone investigating for the County, or that she told them not to volunteer any information about the Department. Grievant contends that she did say, particularly to Weber several times, to “tell the truth or it will come back to bite you in the butt.” The Union further notes that the contract requires progressive discipline and requires the County to prove just cause – a burden the Union contends the County cannot meet in this case.

As part of the overall investigation into the Department a report was prepared which referenced the above two allegations of the County against Grievant. On July 11, 2007 the County issued a disciplinary letter and attachment to Grievant which stated in pertinent part:

I have been directed by the Pepin County Commission on Aging to suspend you without pay from your present position with Pepin County Senior Services for five (5) working days commencing on August 1, 2007. This discipline is per Article XVII of the labor agreement Local 1946A AFSCME, AFL-CIO is for actions by you as stated in the attached sheet.

The attachment stated:

**Attachment Page 22 of the report of Investigation and Evaluation.**  
**Pepin County Department of Aging done by Attorney Tom Rusboldt, dated June 17, 2007.**

In February, 2007, the Commission met with three Department employees. Two of them stated that they had been instructed by Laehn not to communicate candidly with the Commission. One of those told me that Laehn instructed her to watch what she said to the Commission because “They’re unforgiving.” Since the Commission itself participated in this discussion, the Commission members have a better idea of what the employees stated.

On February 20, 2007, I had my initial meeting with the Commission. Following that meeting, Commission Chair Tappe, Ms. Brunner, and I went to the Agency and met with Laehn. Gast was on vacation. Laehn was advised of the ensuing investigation and instructed that she was not to interfere with the investigation and that she was not to take any steps to obstruct or impede staff cooperation with my investigation. Laehn was specifically told that she was not to tell staff members not to talk to me or to not talk to me candidly. According

to Lauer and Weber, as soon as we left the Agency, Laehn called them into the office and said they were “not to discuss anything with the Board or to volunteer any information about what goes on at the Senior Services Center.” Both Lauer and Weber understood this to mean that they were not to speak with me. The employees reported the same conversation independently of each other and attributed the statement to Laehn. They reported feeling threatened by Laehn and one of them felt her job was in jeopardy.

Grievant had not had any prior disciplines in her lengthy employment with the County. The Commission ordered the five (5) day suspension because of both incidents which demonstrated a repeated behavior that was necessary to stop. And, because there were two incidents the Commission did not order an oral or written reprimand, but instead imposed the suspension.

The Union filed a grievance for Laehn over the suspension, which was denied by the County. This arbitration followed.

The collective bargaining agreement between the parties provides in Article XVII that “Pepin County will discipline employees for just cause only.” It also provides generally for progressive discipline

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Section 2. Discipline, when administered, will be in one or more of the following forms and normally in the following order:

- A) Oral Reprimand;
- B) Written Reprimand;
- C) Suspension;
- D) Discharge.

The number of written warnings and length of suspensions shall be determined by the County in accordance with the gravity of the violations, misconduct, or dereliction involved, taking into consideration that such steps are intended as corrective measures.

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These provisions are consistent with the generalized definition of just cause used by many arbitrators in the absence of a contractual definition. Just cause itself is generally considered to consist of two elements. 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. It is this second

element which is involved in the provisions of Section 2 of Article XVII. That element is considered only if the first element is established. In this case there are factual issues as to both County allegations concerning the February 13<sup>th</sup> Commission meeting and the February 20<sup>th</sup> meeting. Both factual disputes are over what Grievant said to the other Department employees as to providing information to the Commission and to those investigating for the Commission.

Grievant and the Department employees are the only persons who testified at the arbitration hearing who would have been involved in the actual conversations<sup>1</sup> containing the alleged statements at issue. It is first noted that the County does have an interest in getting full, complete and accurate information from its employees at all times as to County operations and employee work activities, and in being assured that such information flow is not interrupted or impeded in any way, aside from matters such as WEINGARTEN<sup>2</sup> rights and other matters not relevant here. The question remains as to whether the Grievant said or did what the County alleged.

As to events leading up to the February 13<sup>th</sup> Commission meeting, Barber, Weber and Lauer knew they were to appear at the Commission meeting between a week and ten days before the meeting. Grievant became aware of this within the same time frame. These employees did not know many details as to why they were being asked to attend the meeting. They had some concerns about going, especially Weber, who is by both her admission and the accounts of others who know and observe her, a nervous or shy person. Her demeanor at the hearing was consistent with that. There is no question that they did have some discussions with Grievant, sometime before Grievant left for vacation, about going to the Commission meeting. At least one Commission member, if not the entire Commission, thought that Barber and Weber told them at the meeting that Grievant's statements to them were made on February 13<sup>th</sup> immediately before they went to the Commission meeting. Any such understanding that the Grievant's statements were made on February 13<sup>th</sup> is not accurate.

Barber, Weber and Lauer and Grievant all testified at the arbitration hearing as to the conversations between them concerning the upcoming February 13<sup>th</sup> Commission meeting and the February 20<sup>th</sup> meeting. The testimony of each is summarized below.

Barber is a part-time bus/van driver for the Department who delivers meals and transports elderly persons for meals and other needs. She testified that she and Grievant discussed, about one week before the February 13<sup>th</sup> meeting, how to approach the meeting. Barber asked Grievant why she (Barber) was going up to the meeting and wasn't sure what the

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<sup>1</sup> As opposed to restating such conversations before the Commission on Aging on February 13<sup>th</sup>, to the three investigators, or to the Personnel Commission in the grievance process.

<sup>2</sup> NLRB v. WEINGARTEN, 420 U.S. 251, 88 LRRM 2689 (1975).

meeting was about. Grievant said to Barber “not to say too much”, “We don’t want the information to get out”, or “We don’t want too much information getting out of the office”, “We want to keep our information down here”, “Don’t offer information”, and, “Watch what you say”. Barber took these statements to mean just say as little as possible. Grievant may have said other things, but Barber does not have any specific recollection. Grievant did not use the word “Commission” in her statements concerning the scheduled meeting with the Commission, but it was in that context. Weber may have been in the same office room when this was said. When meeting with the Commission, Barber didn’t feel so much threatened by anything, but to just watch what she said. She didn’t really know what was going on.

Connie Weber is a part-time information and assistance specialist in the Agency. She testified that when she learned from Gast that she was to meet with the Commission she told him she did not want to, but Gast told her she would be going. She then said she would call in sick that day. She does not like talking a lot in front of other people. Sometime in the week before the meeting Weber did talk with Grievant about how to act or what to say at the meeting. She asked Grievant if she knew what it was about and what they had to go up there for. Grievant said she did not know. Weber asked Grievant “what do we do?” Grievant told Weber “you go up and you talk to them.” “You be very, very careful because they have no mercy for us down here.” Grievant did not describe to Weber what she meant by being very, very careful, or they have no mercy for us down here. Weber was worried about if she said something and got something started, but has no idea what she could have gotten started. Weber did not feel threatened by Grievant but, because they work closely together, that she might get talked to by her about why did you do this, or tell them that. Weber may have told the Commission she felt threatened, which would have been from worrying about a possible reprimand from a combination of Gast and Grievant. Grievant did not tell Webber not to talk to the Commission. Grievant did not use the phrase “They’re unforgiving”.

Weber also testified that on February 20<sup>th</sup>, Grievant had she and Lauer go into Gast’s office after Tappe, Brunner and Rusboldt had just talked to them. This was to keep the conversation from being heard by a volunteer who was then in the other office. Grievant told them “not to talk to anyone”, “This is not something you want getting out”, “it needed to be kept quiet”, and, “Oh God, I have to get a hold of Luanne because she’ll be the worst one.” Webber does not know if Grievant meant not to talk to Rusboldt, but that she meant not to talk about it to anyone because this was not something you want getting out. Weber did not take the statement to mean not to talk to those doing the investigation or to the Commission, but not to talk to their husbands and others because of not wanting it getting out. Weber further testified that she did not hear Grievant make the statement that she should always tell the truth or it will come back and bite you in the butt. Weber did not say later that they were “not to discuss anything with the Board or to volunteer any information about what goes on at the Senior Services Center”. Weber did not feel threatened by Grievant, but wondered if her (Weber’s) job was in jeopardy, but not from Grievant. Weber denies that she was ever told by Grievant to “tell the truth or it will come back to bite you in the butt.”

Joan Lauer was the kitchen manager for the Department at the Durand site. She testified that on February 20<sup>th</sup> she was in a “state of shock” when she was told by the three investigators that Gast and Grievant were being investigated. After the investigators left she spoke with Grievant, who asked her and Weber to come into Gast’s office. Grievant told Lauer and Weber “not to say anything to anyone about what’s going on.” Lauer understood this to mean she did not want it to go out beyond the office. Grievant did not mention anything about speaking to the investigators or the Commission. She did not feel threatened by Grievant. She does not recall Grievant saying anything like “bite you in the butt”.

Grievant testified that she cooperated fully with the investigation and provided all documents requested of her. She testified that she had been asked by Weber several times before February 13<sup>th</sup> what she should say, and Grievant told her several times to “tell the truth or it will come back to bite you in the butt”. She did not use the word “unforgiving”, and denies saying “be very, very careful because they have no mercy on us”. Grievant talked very little to Barber about this. She denied telling Barber “don’t say too much”, “we don’t want information getting out of the office”, “say as little as possible”. She denies having any such conversation with Barber at all and denies there was a conversation like that. On February 20<sup>th</sup> she was told by the investigators about an investigation about her and Gast. She was instructed not to obstruct or impede staff cooperation with the investigation. She was told by the investigators that she was not to tell staff members not to talk to Rusboldt or to not talk to him candidly. She was told that this wasn’t something that needed to be discussed with other County Departments, that it was best to keep it within the Aging Department. She was not told not to speak with other County employees. After the investigators spoke with Weber and Lauer, they came into the shared office and asked Grievant what this was about. Grievant characterized them as horror stricken. Grievant said “let’s go into John’s office”, because there was a volunteer person there who Grievant felt did not need to hear all of this. When the three were in Gast’s office, Grievant did not say any such things as “not to discuss anything with the Board or to volunteer and information about what goes on at the Senior Services Center”. She denies she told them that they were not to talk to anyone and to keep the whole thing quiet. She did say “tell the truth or it will come back to bite you in the butt”, “When they ask you a question, answer it”, and, “Tell the truth.”

The County allegations surrounding the February 13<sup>th</sup> meeting will be analyzed in light of the above testimony. There is a factual dispute as to the number and nature of statements made by Grievant to Barber and Weber. It is the undersigned’s conclusion that Grievant did have several conversations with Barber and Weber during the week before the Commission meeting wherein Grievant stated more than to tell the truth or it will come back and bite you in the butt. It is extremely unlikely that this would be the only statement that Grievant would make, especially given Weber asking several times about the upcoming meeting and her nervousness. Weber may not remember Grievant’s particular statement, which would not be unusual in the context of Grievant saying several different things. Weber has no reason to make up or imagine the other statements that she attributes to Grievant. Her nervousness, well

founded or not, explains why she may not have an exact recollection of all that Grievant may have said. Similarly, Barber's testimony about having talked to Grievant about the upcoming Commission meeting is credited. It is reasonable for her to have asked Grievant about the nature of the meeting. And Grievant's testimony on the point is ambiguous. Grievant phrased her answers in terms of not having a conversation with Barber "like that", or any "such" conversation. This is different than not having any conversation at all with Barber about the Commission meeting. Barber has no reason to make up or imagine the other statements attributable by her to Grievant. Barber was not present at the February 20<sup>th</sup> meeting, so that could not be the source of her hearing the statements from Grievant. She also testified that Grievant may have made other statements, but could not remember. Two separate people recollect Grievant making the additional statements. Although a simple numerical superiority is not alone dispositive, it does weigh in favor of the additional statements having been made. Although the exact quotes, words and phrases heard by Weber and Barber may not have been exactly as they testified to at the hearing, the undersigned is convinced that Grievant did make the statements, or very near the statements, as testified to by Weber and Barber, in addition to her other statement about the truth coming back to bite you in the butt.

Yet, the issue is not whether Grievant made that particular statement. The issue is whether she said or did anything to get the employees not to communicate candidly, openly or honestly with the Commission at the February 13<sup>th</sup> meeting. The undersigned is not convinced that she did, and is convinced that she did not. According to the testimony of Barber and Weber, Grievant did not tell them not to talk to the Commission. There is no evidence or testimony that Grievant told them not to communicate candidly to the Commission or say anything that was not true. The statements about being careful what you say, and not wanting the information to get out or go beyond the Department must be viewed in the context of these employees being asked to meet with the Commission and to answer accurately, and to keep the matter contained to the Commission as opposed to other County personnel, Departments or the public at large. The Commission is a part of the Department as its governing body. It is in the larger arena, not before the Commission, that Grievant's cautions are attributed. There is no evidence at all as to what, if anything, the employees would be expected to be careful about or what information they were not to volunteer. There is no evidence of anything they had to or were expected by Grievant to hide from the Commission. Weber did not know what the something was that she might start up. Neither Barber nor Weber felt threatened by Grievant, although Weber did have a bit of personal concern for their working relationship. The only testimony of Department employees is that Grievant did not use the phrase "They're unforgiving", as alleged in the disciplinary document. The evidence is insufficient to conclude that Grievant either did or attempted to instruct the employees not to communicate candidly with the Commission or to otherwise obstruct, impede or impair the Commission in its communications with the employees for the February 13<sup>th</sup> Commission meeting.

There is also a factual dispute as to the nature of Grievant's statements to Weber and Lauer on February 20<sup>th</sup>. For much the same reasons as the February 13<sup>th</sup> matter, it is the undersigned's conclusion that Grievant did make the statements, or statements very close to those, as testified to by Weber and Lauer in addition to the single, repeated statement Grievant says she said. It is much more likely that Grievant would have made more than the single statement under the immediate circumstances. She described Weber and Lauer as being horror stricken. Lauer describes herself as being in shock. Weber had been nervous even before February 13<sup>th</sup>. While these characterizations may be somewhat overstated, they do reflect an understandable level of anxiousness and concern that Weber and Lauer would have after being questioned by those doing the investigation. It is reasonable and understandable for Grievant to have asked them to go into Gast's more private office to discuss the matter so that others, such as the volunteer who was in the larger office, did not hear the conversations. The three investigators had held their discussions in the same place. Once there, as mentioned, it is most believable that there would have been some conversation about the circumstance of the investigation beyond a mere question of the employees of what is going on, and Grievant's mere response to tell the true or it will come back to bite you in the butt. The undersigned credits Weber and Lauer's testimony that Grievant did make the additional comments or very similar statements. Grievant may also have made her oft repeated comment in addition. Lauer testified she thought that she would remember something like that if it were said, but she ultimately did not remember hearing it. She was, to some degree, shocked, and there was more than one statement made by Grievant. And, whether Weber heard or remembered that particular statement is not the issue. Grievant maintains she was telling them to tell the truth. This goes to accuracy and credibility, which, on the point of making the other statements, the conclusion is drawn that those other statements were made. And again, two separate people testified to Grievant having made more than the single comment.

However, again, the issue is whether Grievant said or did anything to obstruct or impede staff cooperation with the investigation, or to not talk to or talk candidly to the Commission or those doing the investigation. The undersigned is not convinced, even by a preponderance of the evidence, that she did. It is first noted that the specific quote in paragraph two of the attachment to the letter of discipline which was attributable to Grievant was not said by Grievant. Grievant denied making it. Weber denied that she (Weber) had said it, and did not testify that Grievant had said it. Lauer did not testify to it. Weber did not take what Grievant said to mean she was not to talk to the Commission or those doing the investigation. That is the crux of the matter. Weber did take the statements to mean not to discuss the matter outside the Agency, such as to a spouse. According to Lauer, Grievant didn't say anything about speaking to the Commission or investigators. This certainly is not an instruction by Grievant that they not speak to the Commission or investigators. She understood Grievant's statements to mean the subject was not to go beyond the office. Grievant has just had a conversation with the three investigators about whether the matter of the investigation could, or should, be talked about with other County members of other Departments. It is reasonable and likely that a similar point would be mentioned between

Grievant, Weber and Lauer. This is a different thing than not speaking to the investigators or Commission. And, neither Weber nor Lauer felt threatened by Grievant. Grievant's statements and actions on February 20<sup>th</sup> were not attempts to and did not interfere with the investigation, obstruct or impede staff cooperation with the Commission, its investigators, or to not talk to them candidly. She did not make the quoted statement in the second paragraph of the discipline attachment which is attributed to her. Neither Weber nor Lauer understood from any of Grievant's statements that they were not to talk to the investigators.

The undersigned does not feel any witness knowingly testified to anything they did not believe is the truth. These four Aging Department personnel were all nervous, anxious and concerned about the events as they were unfolding, which is understandable. It is understandable that they may have heard and remembered different things which occurred about eleven months ago. The factual disputes require that all the evidence and circumstances be considered to determine which is the most credible version in the sense of accuracy, and not to impugn anyone's honesty.

Given the findings above, the County has not established conduct on the part of Grievant in which it had a disciplinary interest. It follows that the County did not establish just cause to impose discipline.

Accordingly, based upon the evidence presented I issue the following

**AWARD**

The grievance is sustained. As a remedy the County will remove and rescind the discipline from Grievant's record, and make her whole for wages and benefits.

Dated at Madison, Wisconsin, this 30<sup>th</sup> day of January, 2008.

Paul Gordon /s/

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Paul Gordon, Arbitrator