

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**GREEN COUNTY PLEASANT VIEW HOME EMPLOYEES,  
LOCAL 1162, AFSCME COUNCIL 40, AFL-CIO**

and

**GREEN COUNTY (PLEASANT VIEW HOME)**

Case 162  
No. 66858  
MA-13663

(Theresa Rockey Grievances)

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**Appearances:**

**Thomas Larsen**, Staff Representative, AFSCME Council 40, appearing on behalf of the Union.

**William Morgan**, Corporation Counsel, Green County, appearing on behalf of the County.

**ARBITRATION AWARD**

The above-captioned parties, hereinafter the Union and County or Employer, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide several grievances involving discipline imposed on Theresa Rockey. The parties subsequently agreed that the hearing would address five separate matters: a verbal warning, two written warnings, a three-day suspension, a change in her work schedule and a seven-day suspension. A hearing, which was not transcribed, was held on July 24 and September 18, 2007 in Monroe, Wisconsin. The parties filed briefs on October 23, 2007. The Employer filed a reply brief on November 1, 2007. The record was closed on November 3, 2007 when the Union notified the undersigned that it would not be filing a reply brief. Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the undersigned issues the following Award.

**ISSUES**

The parties stipulated to the following issues:

- PS # 2: Was the Employer harassing the grievant by issuing her a verbal warning on September 1, 2006? If so, what is the appropriate remedy?
- PS # 3: Did the Employer have just cause to issue the grievant written warnings on January 15, 2007? If not, what is the appropriate remedy?
- PS # 4: Did the Employer have just cause to suspend the grievant for three days on February 9, 2007? If not, what is the appropriate remedy?
- PS # 5: Did the Employer violate the collective bargaining agreement on March 5, 2007 by unilaterally changing the grievant's work schedule resulting in loss of income? If so, what is the appropriate remedy?
- PS #6: Did the Employer have just cause to suspend the grievant for seven days on March 6, 2007? If not, what is the appropriate remedy?

### **PERTINENT CONTRACT PROVISIONS**

The parties' 2006-07 collective bargaining agreement contained the following pertinent provisions:

#### **ARTICLE 7 – DISCHARGE AND SUSPENSION**

7.01 The Employer may discharge or discipline any employee for just cause . . .

. . .

7.07 Levels of Discipline. Discipline shall be administered on the principle that the discipline is to be corrective in nature, not punitive. Normally, discipline shall be given in the following steps:

- |                      |   |
|----------------------|---|
| 1 <sup>st</sup> step | oral warning  |
| 2 <sup>nd</sup> step | written warning                                       |
| 3 <sup>rd</sup> step | a second written warning or suspension (up to 7 days) |
| 4 <sup>th</sup> step | additional suspension or discharge                    |

In exceptional cases, discipline may commence at the second or higher step depending on the severity of the offense committed.

A warning shall be considered null if the offense has not been repeated within twelve months. A suspension shall be considered null after twenty-four months if the offense complained of has not been repeated.

### **PERTINENT PERSONNEL POLICIES**

The Employer has adopted the following pertinent personnel policies:

#### **STANDARDS OF CONDUCT**

All members of the Pleasant View staff are expected to conduct themselves in a professional manner and to maintain particularly high standards of conduct. Both at work and off duty, the manner in which you conduct yourself reflects Pleasant View Nursing Home's reputation.

#### **NURSING HOME ETIQUETTE**

...

Each employee should always be pleasant, courteous, alert and helpful to everyone – residents, visitors and co-workers.

...

#### **BACKGROUND**

The Employer operates a nursing home in Monroe, Wisconsin which provides patient care and services to its residents. The Union is the exclusive collective bargaining representative for the Home's employees. Theresa Rockey was in the bargaining unit. This case involves discipline imposed on Rockey in late 2006 and early 2007. As noted in this decision's prefatory paragraph, it involves a verbal warning, two written warnings, a three-day suspension, a change in her work schedule and a seven-day suspension.

...

The three classifications in the kitchen are cook, cook's helper and food service worker. These kitchen workers serve three meals a day to the Home's 125 residents. When a meal is served, the tray line resembles an assembly line with everyone doing a specific job. Teamwork is critical to getting the meals out in a timely fashion.

...

Rockey worked in the Home's kitchen for 15 years. Initially, she was a cook. About ten years ago, she voluntarily downgraded from the position of cook to the position of cook's

helper so she could work the first shift. In addition to working Monday through Friday, Rockey also worked every third weekend. When she worked on the weekend, she was the cook and received cook's pay.

Rockey's supervisor for most of her employment was Becky Brown, the Home's kitchen supervisor and dietician. Rockey's working relationship with Brown was troubled. Insofar as the record shows, Brown treated Rockey civilly and with respect. The reverse was not true, meaning that Rockey did not treat Brown civilly, pleasantly or with respect. Rockey oftentimes demeaned, disparaged and discredited Brown to her (i.e. Rockey's) co-workers. Her disrespect and contempt for Brown was palpable. As an example, at meetings, Rockey was rude and condescending to Brown. Additionally, on the work floor, Rockey repeatedly yelled at Brown.

Rockey's working relationship with many of her co-workers was also problematic. They verbally complained to Brown that Rockey was uncooperative, rude and abusive to them, did not do her work, and disrupted the workplace.

Although she was a long-term employee with significant work experience, the record indicates that Rockey had various work performance problems. Over the years, Brown tried to get Rockey to improve/correct her various work performance problems via informal counseling sessions. As an example, in early 2006, Brown counseled Rockey on the proper procedure for the following topics: filling out payroll slips; taking breaks; and washing food carts. During that same time frame, Brown also instructed Rockey to follow the Employer's rules on the following matters: to not chew gum while working on the tray line; to follow the dress code; to wear a name tag; to make proper quantities of food items; and to take breaks and lunch on time. In each instance, Rockey knew what the rule was but simply did not comply with it.

On several occasions, Rockey talked to co-workers after she had just been counseled by Brown, and told them that she was not going to comply with the directive she had just been given because it had not been given to her in writing. The employees who heard Rockey say this understood that Rockey was playing games with Brown and a test of wills was ongoing between them. Brown heard of Rockey's statements to her co-workers from the employees themselves.

While Rockey felt that Brown singled her out for these counselings and corrections, the record indicates that Brown routinely counseled and corrected other employees too. Brown has also formally disciplined other employees too.

In June, 2006, Brown concluded that these informal counseling sessions and corrections had not changed Rockey's workplace behavior, so she decided to move from informally counseling Rockey to imposing formal discipline.

On June 27, 2006, Brown gave Rockey a verbal warning for serving moldy cookies. In that instance, Rockey knowingly served moldy cookies. After other employees discovered the cookies were moldy, they replaced the moldy cookies with fresh cookies.

On October 12, 2006, Brown gave Rockey a verbal warning for walking away from Brown when she (Brown) was giving her (Rockey) work instructions. In this warning, Brown admonished Rockey about this improper and disrespectful conduct, and counseled her to change her behavior or she would face further disciplinary action.

Neither of these verbal warnings were grieved.

### FACTS

The facts pertaining to the five separate disciplinary matters referenced in the prefatory paragraph are as follows.

#### The Verbal Warning

On September 1, 2006, head cook Alice Egli was temporarily away from the food line, so Rockey was the acting cook. A call came into the kitchen informing them that an early tray was needed for a resident. The phrase “early tray” refers to food that is prepared and served before the regularly-scheduled meal. Early trays are common and are necessitated by dietary requirements. In this particular instance, the early tray was for a single order of scrambled eggs. As the acting cook, it was Rockey’s job to prepare the single order of eggs. Rockey did not want to prepare the eggs though, so she directed food service worker Cindy Fahr to perform that task. Fahr was a new employee at the time. Egli overheard Rockey tell Fahr to prepare the eggs, and Egli injected that it was not Fahr’s job to prepare the eggs – it was Rockey’s job as acting cook. Egli was empowered to give Rockey work directives – including telling her in this instance to make the eggs – because Egli was the cook in charge. Rockey objected to Egli’s directive (that she make the eggs) and responded to Egli by “blowing up” at her. (Note: The record does not identify what Rockey said to Egli – just that she “blew up” and went on a tirade). Nancy Larson witnessed Rockey’s tirade and was so concerned for her own safety and well-being that she went into the cooler until Rockey had calmed down. Following the incident, Egli called Brown at home and complained about Rockey’s conduct toward her.

When Brown came into work that morning, she called a meeting with Egli, Rockey and Fahr to determine what had happened. During that meeting, Rockey stormed out of the room while Brown was still speaking to her about the incident.

Brown subsequently gave Rockey a verbal warning for the incident referenced above. In that verbal warning, Brown admonished Rockey to “use self control in words and tone of voice with co-workers”. When Brown gave Rockey the written copy of this verbal warning, Rockey refused to accept it and threw it on the floor.

### The Written Warnings

Overtime in the department is characterized as either planned or unplanned. Unplanned overtime occurs when employees have to stay past the end of their shift to finish a particular task. When that happens, and they work unplanned overtime, the procedure they are to follow is this: they are to obtain permission/authorization (for the overtime) from department supervisor Brown. In her absence, the head cook or the cook in charge can approve one hour of unplanned overtime. Advance approval of overtime is required so that the Employer can manage its budget and overtime cost.

The record indicates that Rockey has a history of working overtime that is not authorized (i.e. overtime that is not approved in advance). In these past instances, Rockey decided on her own volition to stay past the end of her shift and work overtime which had not been approved in advance. The record further indicates that Brown counseled Rockey on February 7, July 26 and August 31, 2006 about unauthorized overtime. In these counseling sessions, Brown told Rockey that unauthorized overtime was not permitted and she was to get approval in advance to work overtime.

It is in that context that on January 2 and January 8, 2007, Rockey worked unplanned overtime without advance approval from either the department supervisor, the head cook or the cook in charge. In other words, on those two dates, she did not request prior approval for overtime; she just worked it. On January 2, Rockey stayed past the end of her shift for about a half hour and worked on the milk order. On January 8, she did not take lunch. On one of these two days (the record does not indicate which one), Rockey told her co-workers that she was not going to complete the milk order during her regular shift, but was instead going to stay over and do it on overtime. Rockey subsequently requested overtime pay for those two dates. The Employer paid it (i.e. the requested overtime).

The record indicates that kitchen employees have some discretion about the order in which they do their job tasks. Brown felt that on these two days, Rockey intentionally delayed doing the milk order until the end of her shift so she could do the milk order on overtime.

On January 15, 2007, Brown gave Rockey a written warning for “unauthorized overtime” on January 2 and January 8, 2007. The warning provided in pertinent part:

...

On 1-2-07 and 1-8-07 Teresa Rockey placed a pink slip on my desk claiming overtime but did NOT ask permission for the overtime ahead of time from myself or the cook in charge. In doing assigned duty (milk order) Teresa did tasks of less importance earlier in her shift and did not communicate with cooks about when she could do the milk order. She did it at the end of her work day leading to overtime. In these 2 instances Teresa had enough time within her 8 hour day to complete tasks. Teresa must demonstrate good time management

and communication with cooks and co-workers. She must plan her work to complete her duties in assigned time frames for department functioning. She must verbally ask for overtime BEFORE taking it from the supervisor, the cook in charge on her shift, or the cook in charge on the PM shift (in that order). See Cook's Helper Job Description. See copies of slips requesting overtime. See Employee Assistance Sheet.

Improvement must be demonstrated in judgement and communication or further disciplinary action will be taken which may include suspension and or discharge.

...

That same day, Brown gave Rockey another written warning for "substandard performance of assigned routine tasks." Two tasks were referenced in that warning: the milk order and cutting cheese. Some background pertaining to these two tasks will be reviewed next.

In the summer of 2006, Rockey was assigned to do the weekly milk order. This job involves taking a physical inventory of the dairy products on hand and preparing an order which takes into account menus, resident populations and needs. This was a new task for Rockey, so she was trained how to perform it. Following that training, Rockey knew how to perform the task correctly. However, the record shows that Rockey had trouble performing this task correctly. The problem that Rockey had with this task stemmed from the fact that she did not always take a physical inventory of the dairy products on hand as she was supposed to do; instead, she relied on what she ordered the last time and simply ordered the same thing again. This approach caused problems with the milk order because it did not take into account changes in dietary needs of the residents, meal planning by the cooks, or the number of residents. Thus, there was often too much or too little milk/dairy products on hand after Rockey started doing the milk order.

The following background relates to the cheese cutting matter. The cook's helpers rotate certain routine tasks. One of the tasks included in that rotation is the preparation of cheese for the meals. The employee who does this task has to ensure that there is enough cheese sliced to make it through the entire week. Rockey was assigned to this particular task for a period of approximately six (6) weeks, commencing on December 17, 2006.

It is against that backdrop that there were problems with the milk order and the sliced cheese in the last week of December, 2006. Rockey was on vacation that week. While she was gone, the milk order needed to be changed several times by different people. Had Rockey done the milk order correctly before she went on vacation, this would not have been necessary. Additionally, before she went on vacation, Rockey did not slice enough cheese for the cooks to get through the week. As previously noted, it was her job to do that (i.e. to slice enough

cheese before she went on vacation for the cooks to get through the week). Since she did not finish that task, other employees had to cut cheese that week.

As noted above, Brown gave Rockey a written warning on January 15, 2007 for “substandard performance” related to ordering milk and cutting cheese. In the portion of the written warning dealing with the milk order, Brown identified the various problems which occurred with the milk order while Rockey was on vacation which had to be remedied by other employees. She then opined:

This is too much time and money spent to have 3 people do the milk order (Teresa to do it, the cook to fix it, and then the Supervisor to fix it) when it should have been done correctly in the first place. The milk order is about 5% of the total weekly order that the Cook is responsible for transmitting. The Milk Order Assignment can be done in 2-3 20 minute sessions or about 1 hour out of Teresa’s full time work week. Other staff have successfully completed this task in the allotted time frame.

In the portion of the written warning dealing with the cheese matter, Brown noted that Rockey was assigned to the cheese cutting task from December 17, 2006 to January 27, 2007; that part of that task “was to keep the cheese sliced up and ready ahead of time”; and that when Rockey went on vacation on December 25, she “did not leave enough cheese sliced to make it halfway through the week.” As a result, co-workers had to do it. Brown then opined that “This is an example of tasks left undone which irritate co-workers. While the task itself may seem like ‘no big deal’ it is a pattern of tasks left undone.” The warning ended as follows:

. . .Teresa is expected to perform Cook’s Helper duties. Teresa must correctly perform the Milk Ordering task weekly using good judgment, communication, correct timing, and within her 8 hour day. She must contribute to team work for the smooth operation of the food service. Failure to show competence in the routine duties will result in further disciplinary action which may include suspension and/or discharge.

At the hearing, Rockey testified that if the Employer had a problem with how she did the milk order, she should have been taken off that particular task rather than “rehashing” it. With regard to the cheese cutting matter, Rockey indicated that it was Egli’s responsibility, as cook, to ensure that the work was done; thus, the buck should stop with Egli.

### **The Three-Day Suspension**

As was noted in the **BACKGROUND** section, Rockey’s working relationship with many of her co-workers was problematic. Specifically, she clashed with numerous co-workers over a variety of things. Following these clashes, some employees verbally complained to Brown about Rockey’s conduct toward them. Their complaints were that Rockey was volatile, uncooperative, rude and abusive, did not do her work, and disrupted the workplace.



In January, 2007, the verbal complaints about Rockey's conduct increased, and Brown told those employees who complained to her about Rockey to put their complaints in writing. Some of them did. In late January and early February, 2007, about half of Rockey's first shift co-workers submitted written complaints to Brown about Rockey. Their complaints were as follows. Cindy Fahr's written complaint alleged that on January 29, Rockey did other tasks than what she was supposed to be doing on the tray line; and was deliberately slow while working on the tray line which caused the entire line to get backed up. Debra Anderson's written complaint alleged that Rockey played games with her co-workers by intentionally slowing down the tray line. Penny Baker's written complaint alleged that Rockey did not do the tasks she was supposed to be doing on the tray line; had other employees do her work; and deliberately held up the tray line. Sharon Stietz's written complaints (she filed two) alleged that Rockey did not do her assigned tasks, so other people had to do them; yelled at her and other employees; and intimidated and manipulated co-workers.

When these written complaints were filed with Brown, Rockey somehow learned of their existence – probably via the workplace grapevine. Knowing that these written complaints could adversely affect her employment status, Rockey lobbied her co-workers to sign a statement that said something to the effect of “Theresa has been kind to me.” Rockey also called her co-workers at their homes and urged them to sign the note just referenced. Rockey's phone calls upset and intimidated some of those called. Additionally, it increased the tension in the workplace between those involved.

After Brown received the written complaints just noted, she suspended Rockey for three days for “disruptive behavior in the workplace”. The suspension notice, which was dated February 9, 2007, provided in pertinent part:

...

Teresa is still having disruptive behavior in the workplace. I have had 5 formal complaints of harassment by Teresa directed towards co-workers. The details are available for the Administration. The complaints are from the workdays of 1-29-07, 1-30-07, 1-31-07, 2-1-07 and 2-2-07. She has been asking co-workers to sign a statement along the lines of “Teresa has been kind to me” during work hours in the kitchen with repeated phone calls to co-workers homes, and in the community. One employee felt emotionally pressured to write, sign and date the note for Teresa. The co-worker said she did not have the emotional strength at that moment to refuse. Details are available for the Administration. Teresa's request for written notes is linked with the things Teresa does to make their work day more difficult.

Teresa is using work slow downs and disorganization at her work station to slow the others down as a way to put pressure on or intimidate co-workers. The Residents have meals delayed with these slowdowns. She has been unpredictable and causing tension when at work. Co-workers have witnessed

her out of control behavior with co-workers and had it directed towards them. They feel pressure of not knowing what might “set Teresa off”. This behavior shows a pattern of manipulation and erratic behavior. One co-worker says she is afraid to work with Teresa on days without the Supervisor. Co-workers report Teresa tries to make them look bad or stupid.

No form of emotional manipulation is allowed at work. This is harassment and will not be tolerated.

Teresa is being suspended for 3 days 2-11-07, 2-12-07, and 2-13-07. If not corrected progressive disciplinary action will be taken which may include a seven day suspension or termination. Recommendation: Demonstrate self control. Demonstrate consistently good team work with co-workers. The nature of the kitchen work requires a high degree of teamwork and cooperation. Employee assistance offered.

...

All the employees who filed written complaints against Rockey testified at the hearing. Their testimony essentially mirrored what they said in their written complaints.

### **The Change in Work Schedule**

Grievances were filed over the disciplinary actions noted above and discussed by the County Personnel and Labor Relations Committee in early March, 2007. During their discussion, the Personnel and Labor Relations Committee decided that Rockey’s work performance problems and difficulties with her co-workers were more pronounced when Brown was not present, and this could be helped with more supervision. The Committee knew that Rockey worked every third weekend. They also knew that when she worked weekends as the cook (overseeing the cook’s helpers and the food service workers), she had no supervision herself because Brown did not work weekends. The Committee decided to temporarily change that situation via the following action: they changed Rockey’s work schedule so that for 90 days, she worked just Monday through Friday and did not work every third weekend. On March 5, 2007, Home Administrator Don Stoor, County Corporation Counsel Bill Morgan and Brown met with Rockey and her union representative and informed her (Rockey) that for 90 days, she would not be working any weekend hours – just Monday through Friday. The next day (March 6), Morgan confirmed this action in a letter which provided in pertinent part:

This is to confirm our conversation of yesterday’s date. As you know, the Green County Personnel and Labor Relations Committee met last week and felt that, given the continued tensions and problems in the kitchen, for the time being, it was best if your schedule be changed to be Monday through Friday. Many of the concerns and issues that have come up have occurred when Ms. Brown is not present. I base this comment on both your statements, as well

as those of your fellow union members. While Ms. Brown cannot be present at all times during your shifts, she is not able to be present at all on the weekends. Therefore, for the next ninety (90) days, you should plan on having your shift be simply Monday through Friday.

As I stated in our meeting yesterday, you will continue to be scheduled as Cook's Helper, Cook, and Food Service as appropriate, and will continue to receive pay at those levels as appropriate. It is hoped that at the end of this 90-day period, when we reassess the situation, you will be able to move back to a standard work schedule. However, in order for that to happen, our expectation is that your conduct and work performance will improve.

As a result of this action, Rockey did not receive the pay she would have gotten had she worked every third weekend during the 90 day period following March 5, 2007.

### **The Seven Day Suspension**

Following her three-day suspension in mid-February, 2007, Rockey was on medical leave for about two and half weeks. As a result, she was away from the kitchen for about three weeks total. She returned to work on March 5, 2007. That morning she was told that her work schedule had been changed and for 90 days she would no longer work every third weekend – just Monday through Friday (i.e. the matter referenced above).

Prior to learning that her schedule had been changed, Rockey turned in a leave slip which included some weekend days off. Upon reviewing that leave slip, Brown saw that it included some weekend dates that Rockey was no longer scheduled to work, so Brown asked Rockey to resubmit another leave slip without the weekend dates because, as noted above, her new schedule did not include any weekends. The reason Brown asked Rockey to re-do the paperwork, rather than simply change the leave form herself, is because it is department policy that vacation submissions be in the employee's own hand; supervisors are not permitted to modify or change submissions themselves. This is done to avoid conflicts or questions regarding the accuracy of vacation requests.

Rockey responded to Brown's request for a new leave slip as follows: she literally got in Brown's face and demanded that her schedule not be changed. When she did this, Rockey did not scream or yell, but instead was at pains to keep her voice low. Brown described the result as a "whispered shout". Rockey then slammed her hand on the table several times and belligerently told Brown that she would not accept the schedule change because it had not been mutually agreed to. At that point, Brown felt that Rockey was out of control and was intimidated by her, so Brown walked away from Rockey without saying anything in response. Rockey then followed Brown out the office door and into the kitchen. While it was obvious that Brown did not want to argue about the matter because she had not said anything and had walked away, it is apparent from Rockey's subsequent actions that she (Rockey) did want to argue about the matter. Rockey then made numerous statements which were intended to

provoke a response from Brown. Some of Rockey's statements were the following: "I'm calling my lawyer"; "I'm going downtown"; "I'm taking you to arbitration"; "I've got Bill Morgan running scared"; "I'm going to win at all costs"; and "I'm gonna get you!" Brown declined to take the bait, so to speak, and did not respond to any of the statements, whereupon Rockey finally walked away.

After walking away from Brown, Rockey went up to a co-worker and said sweetly: "Will you help me with the milk order?"

The next day, March 6, 2007, Brown suspended Rockey for seven days for her "disruptive behavior" the previous day. The suspension notice provided in pertinent part:

**DISRUPTIVE BEHAVIOR THAT IS UNACCEPTABLE AND ESCALATING  
IN THE WORKPLACE**

Teresa Rockey returned to work on 3-5-07 following a 3 day Suspension and a Medical Leave of Absence. She was called to a meeting at 10:30 am with myself, Don Stoor, Administrator, and Bill Morgan, Corporation Counsel. Teresa brought Peggy Siegenthaler from the Union. Bill talked with her about her return to work and said she will have a schedule of Monday through Friday for ninety days. She was given an opportunity to talk about this. She wanted to know if she still had to do her Cook's Helper assignments. I said she still had to do her Cook's Helper assignments as she is a Cook's Helper and is at that pay schedule. Other than that comment she did not talk but smiled and looked away.

Upon her return to the kitchen she requested a weeks vacation and did not include a day that would have changed with the Monday through Friday schedule before the lunch tray line. I asked her after the tray line to come to the office. At that point she changed her request to include the weekend days. I told her she could have the week off but needed to change her request slip to the new schedule. She got belligerent and demanding and said "When was that decided? My schedule is the same because it was not mutually agreed to. Who says I have a new schedule? You won't get away with this. I'm taking this to arbitration. You have to mark it right now about my vacation" and pushed the vacation slip towards me. I told her I would get back to her tomorrow. This is an example of her desire to fight and "bait" others to engage in fights and arguments.

After the vacation issue I go out into the kitchen and she started talking to me with threatening speech. She was talking in a normal volume but a rapid fire voice. "There is no schedule change. I'm taking this to arbitration. Bill Morgan's running scared of me. This won't solve anything. I'm taking this to arbitration and you're in trouble for having others do all your work. Why are

you scheduling me? Why are you scheduling everyone now? Why did you start scheduling PMs? I'm going to win. I'm going to arbitration to 'get you'. I have ways of getting you. This is no solution. This should have been solved six months ago." She jumps from topic to topic and does not allow any interruption or redirection. This is an escalation because she used to threaten me with "going to personnel" and now she is threatening me with Arbitration. Also escalating in that she drags co-workers names into her threatening speech. She is obsessing with ways to bring her co-workers down.

I was finally able to say "can you find something else to do for the last 10 minutes of your shift?" as an attempt to defuse her behavior. So she went to Pat and was sweetly asking for help on the milk order. This was the second time in the shift of going from belligerent to sweet in a rapidly changing mood. Then she said she was going to look at the log book.

In the 15 minutes she could/should have been making jello on her assignment list she spent 5 minutes with her rapid fire speech towards me, 2 minutes asking Pat for help, and then looking at the log book. Another worker had to make jello.

If these were isolated incidents it would be concerning. She has had progressive discipline for this over the past year. This is repeated and unacceptable behavior: disrespect, pressured speech, jumping from topic to topic, labile mood, rapidly changing facial expressions, obsessing about co-workers, obsessing about past events, planning ways to "get you", threatening about the future, with lack of self control. In my supervisory judgment she is unstable at a level that is dangerous to her coworkers and inconsistent in ability to perform her job. I am taking this action in the best interest of the operation of the Food Service and the safety of coworkers and Residents.

Teresa is being suspended for 7 days: 3-8-07, 3-9-07, 3-12-07, 3-13-07, 3-14-07, 3-15-07 and 3-16-07. If unable to work with acceptable behavior upon return to work she will be terminated.

...

At the hearing, Rockey did not challenge or dispute Brown's account of the March 5 incident as referenced in both her (Brown's) testimony and the suspension letter. Instead, she simply averred that other employees have engaged in disruptive behavior in the workplace too. Specifically, she averred that Alice Egli and Julie Berndt have had outbursts as well. Rockey did not provide any details or dates regarding those outbursts.

...

All the matters referenced above were grieved and were subsequently appealed to arbitration.

## POSITIONS OF THE PARTIES

### Union

The Union's position is that just cause does not exist for any of the disciplinary action imposed herein. It makes the following arguments to support that contention.

With regard to the verbal warning, the Union alleges that under the circumstances, a verbal warning was an "inappropriate response to the grievant's exercise of her discretion" to assign work to Fahr. According to the Union, "the request for an early tray needed to be met promptly", and Egli's position "that the grievant should have taken the time to prepare a large batch eggs just to fulfill the need for a single serving would have resulted in a delay in getting the tray to the resident and having the remainder of the large batch of eggs sitting around for an excessive amount of time." Aside from that, the Union avers that later in the day when Brown met with Rockey, Egli and Fahr, Brown "berated the grievant in front of co-workers." The Union maintains this rebuke was unnecessary and, as a result, constituted harassment.

Next, the Union alleges that neither of the written warnings was justified. Here's why.

With regard to the overtime warning, the Union avers that Brown "allowed the grievant to work the overtime" in question. As the Union sees it, the Employer used this instance to heap additional charges of misconduct on the grievant (i.e. essentially to pile on additional charges). According to the Union, this warning should not pass muster for that reason alone.

With regard to the milk matter, the Union avers that the fact that the milk inventory "got out of whack" in the last week of December was due, in part, to the grievant's inexperience in ordering milk for the holidays. It notes in this regard that this was the first time Rockey had ordered milk over the Christmas holiday period. The Union contends that rather than blaming Rockey for the milk problem, someone else with more familiarity with the milk order should have done the milk order during that time period. The Union also calls attention to the fact that Egli's yogurt order resulted in an oversupply of that product, but Egli was not disciplined for that whereas Rockey was.

With regard to the cheese matter, the Union notes that Rockey was faulted for not having enough cheese sliced to cover the week she was on vacation. The Union begins its argument on this matter by noting that a vacation is supposed to be a time for an employee to "relax and decompress from work." Elaborating further on that point, the Union opines that employees should not be disciplined for what happens at work while they are on vacation. Applying that principle here, the Union submits that "it seems inappropriate to say that an employee is responsible to perform duties such as slicing additional amounts of cheese to cover their vacation period." The Union avers that other employees who worked the week that

Rockey was on vacation could have covered her duties (and specifically cut cheese). Aside from that, the Union suggests that it was the Employer's fault that not enough cheese was cut because "the Employer did not authorize the grievant extra overtime in order to pre-slice sufficient amounts of cheese to cover her vacation period." Thus, the Union puts the blame on the Employer for the fact that not enough cheese was cut when Rockey went on vacation. Putting the foregoing together, it's the Union's position that this written warning was not justified either.

With regard to the three-day suspension, the Union notes that the suspension was for "several non-specific incidents of disruptive behavior." According to the Union, "no compelling evidence has been brought forth to prove these allegations." The Union also contends that no actual investigation took place; rather the employees' complaints were accepted at face value with no confirming testimony. Finally, the union maintains that the grievant was not given an opportunity to rebut the charges at the time the discipline was administered.

With regard to the schedule change, the Union notes at the outset that the schedule change caused Rockey to lose the money she would have received for being the acting cook and also the weekend premium pay. As the Union sees it, there was no valid basis for unilaterally and involuntarily changing her schedule. Here's why. First, it notes that the supposed reason for the schedule change was "tensions and problems" in the workplace. According to the Union though, there was no showing that the "tensions and problems" at the workplace were manifested more frequently on the weekends than any other days of the week. Building on that premise, it's the Union's view that there was no basis to modify the grievant's schedule. Second, the Union calls attention to the fact that Section 21.04 of the collective bargaining agreement specifies the schedule of hours for the Dietary Department and provides that employees cannot have their shifts changed without their consent. The Union avers that in this instance, there was no mutual agreement to change Rockey's work schedule.

With regard to the seven day suspension, the Union argues that the record evidence is insufficient to support the allegations of inappropriate behavior. The Union contends that Rockey made no real threats against Brown. While Rockey did state it was her intention to pursue her grievance to the arbitration step, the Union notes that is where grievances proceed after the Personnel and Labor Relations Committee step. Aside from that, the Union maintains that Rockey's conduct did not constitute an "immediate threat" to Brown or Rockey's co-workers. To support that premise, it notes that Brown let Rockey finish her shift on March 5 and had her work the full shift the next day (March 6) before suspending her at the end of her shift. According to the Union, that establishes that there was no real concern by Brown about Rockey's conduct.

In sum, it's the Union's position that the Employer did not have just cause to impose any of the disciplinary action involved herein. It therefore asks that the discipline be overturned or reduced, and that Rockey be made whole for all lost wages and benefits.

## County

The County's position is that it had just cause for all the disciplinary action imposed herein. According to the County, Rockey committed misconduct by her actions and that misconduct warranted discipline. It believes that all the discipline imposed should pass muster under a just cause standard. It elaborates on these contentions as follows.

The County begins its argument with the following preliminary comments. It avers that Rockey has long caused "substantial and pervasive problems in the kitchen." According to the County, it made "significant efforts to correct the[se] problems and to redirect the grievant in a positive fashion" via counselings and corrections. However, these counselings and corrections did not change Rockey's inappropriate behavior, so it decided to impose formal progressive discipline. In its view, the record facts and underlying circumstances establish that the discipline imposed was appropriate.

With regard to the verbal warning, the County contends that the Union mischaracterizes the nature of the discipline itself. The County submits that Rockey was not disciplined for what she told Fahr. Instead, Rockey was disciplined for her conduct toward Egli and Brown – namely, her outburst to Egli after Egli disagreed with what she told Fahr and storming out of a meeting with Brown while Brown was still trying to talk to her about the incident. The County emphasizes that Rockey did not deny or dispute those basic facts. According to the Employer, there was no reason for Rockey to be that discourteous to Egli and disrespectful to Brown. With regard to the Union's assertion that the reason Rockey stormed out of the meeting was because Brown "berated" her at the meeting, the County avers that the facts do not support that assertion. It cites Egli's and Fahr's testimony to support that premise. Next, the County points out that its personnel policies provide that employees are expected to conduct themselves in a professional manner and be courteous and respectful of co-workers and supervisors. The County avers that Rockey's actions toward Egli and Brown on the day in question were rude, inappropriate and unprofessional. Building on that premise, the Employer believes discipline was warranted for this misconduct and that a verbal warning was not excessive.

With regard to the written warning involving unauthorized overtime, the Employer notes that Rockey had been counseled in the past about unauthorized use of overtime. Specifically, Rockey had worked overtime on her own volition without permission; she had been counseled not to do that. Thus, Rockey had been put on notice that she was to get permission in advance to work overtime. On January 2 and 8, 2007, though, that did not happen, and Rockey worked overtime without getting it approved in advance by anyone. The County emphasizes that on those days, Rockey did not request to work overtime; instead, she simply worked overtime without approval. According to the Employer, that was a clear violation of department policies and rules regarding overtime. Building on that premise, the Employer believes discipline was warranted for that misconduct and that a written warning – given the grievant's prior progressive discipline – was not excessive.



With regard to the second written warning, the Employer first addresses the cheese slicing component. It notes that the cutting of cheese for meals is an assigned task. When an employee has this job, they are to ensure that there is enough cheese sliced to make it through the entire week. Rockey was on the cheese rotation in the last week of December, 2006. When she went on vacation that week though, she did not leave enough sliced cheese behind. As the Employer sees it, Rockey failed to complete this basic, routine task that she was supposed to complete before she went on vacation. Since she did not, other employees had to do that task (i.e. cut cheese) while she was gone. According to the Employer, this was yet another instance of the grievant's unwillingness to perform her assigned tasks. As for the Union's contention that it was the Employer's fault that not enough cheese was cut in advance because the Employer did not authorize overtime for Rockey, the Employer characterizes that contention as "beyond the pale". It notes in this regard that no such request was made, much less denied. Finally, the Employer notes that Rockey had been counseled in the past about completing her assigned tasks, but in this instance, she once again failed to do so. As a result, the Employer believes this was a disciplinable act.

Next, the Employer addresses the milk order component. It notes that Rockey had been assigned the task of ordering milk and been trained how to perform it. However, she had trouble performing the task correctly because she did not always take an inventory as she was supposed to do; instead, she just ordered the same amount as last time. This way of doing the job had caused problems before. There were problems with the milk order in the week that Rockey was gone in December, 2006. What happened was that Rockey had ordered an incorrect amount of milk and other employees had to change the order. The Employer emphasizes that Rockey has been counseled in the past about the proper way to order milk, but in this instance, she once again failed to do so correctly and took a short cut (namely, not doing an inventory before ordering the milk). According to the Employer, that action constituted misconduct on her part. Aside from that, the Employer submits that the grievant's response to this incident at the hearing was "particularly telling". It notes that she suggested that if having her do the milk order was a problem for the Employer, then the Employer should simply have taken her off that particular task rather than "rehashing it". As the Employer sees it, this statement indicates "the grievant's failure to perform a relatively simple task is not due to her inability, but rather a calculated effort to get herself reassigned from a task which she apparently believes is beneath her." The Employer therefore maintains that discipline was warranted for these two matters and that a written warning was not excessive given the grievant's record and prior progressive discipline.

With regard to the three-day suspension, the Employer begins by noting, for background purposes, that Rockey's co-workers had long verbally complained to Brown that Rockey intentionally did not do her work and disrupted the flow of work on the tray line. In late January and early February, 2007, some of Rockey's co-workers put their complaints in writing. The Employer further notes that after Rockey learned that these written complaints had been filed, she called her co-workers at home and tried to bully them into being on her side. According to the Employer, this action constituted harassment and increased the tension level in the workplace between those involved. The Employer asserts that after the written

complaints were filed with Brown, she investigated the allegations relating to Rockey's work behavior and concluded that the allegations had merit. Specifically, she found that in late January and early February, 2007, Rockey did not perform her routine tasks and that this disrupted/held up the flow of work on the tray line. The Employer emphasizes that at the hearing, Rockey "chose not to address any of these issues", so it avers that the charges against Rockey were un rebutted. The Employer also calls attention to the fact that Rockey has been counseled in the past about completing her routine tasks, yet on the dates just referenced, she once again failed to do so. As the Employer sees it, that action constituted misconduct. What was particularly troubling to the Employer about Rockey's conduct was that it occurred on days when Brown was not working. It appeared to the Employer that Rockey was taking advantage of Brown's absence and intentionally not performing her assigned work. The Employer maintains that discipline was warranted for this misconduct and that a three-day suspension was not excessive given the grievant's record and prior progressive discipline.

With regard to the change in Rockey's work schedule, the Employer avers that its action was an effort to address the "tensions and problems" in the workplace that seemed to occur primarily when Brown was not present. The Employer argues that its decision to change Rockey's work schedule was within its management rights to modify the grievant's work schedule in an attempt to address the problems it was having. Building on that premise, it's the Employer's position that this action is not subject to review under the just cause standard because it was not punitive in nature. Instead, it's the Employer's view that its action in changing Rockey's work schedule is subject to review under a reasonableness standard. It contends that it acted in a reasonable fashion when it took this action because it believed Rockey's problems "were more significant when Ms. Brown was not present." According to the Employer, this change in Rockey's work schedule was "an attempt to salvage the situation and address the concerns expressed by both sides." The County hoped that by this action, Rockey's work performance would improve. The County acknowledges that the grievant suffered a loss in Sunday pay as a result of its action, but it believes that does not make its action per se unreasonable. It therefore asks that its action in changing Rockey's work schedule be found reasonable and upheld.

With regard to the seven-day suspension, the County begins its argument by noting that on the day in question, Rockey was told that her work schedule was being changed. Although Rockey did not challenge the Employer's authority/right to make that change during the morning meeting, she later did so when she was meeting one-on-one with Brown. The Employer acknowledges that Rockey had the right to challenge that decision via a grievance. However, when she met one-on-one with Brown, Rockey did much more than simply challenge the Employer's decision to change her schedule. What she did was to "blow up" at Brown and threaten her (namely, threaten to "get her"). While the Union asserts in their brief that Rockey's only threat that day was the threat to take the schedule change to arbitration, the Employer avers that Rockey said much more than that. However, even if that was all she said, the Employer submits that an employee "is not free to say whatever she wants in whatever manner she wants." The Employer maintains that "the tenor, tone and place of this discussion are all relevant factors in determining whether the speech was appropriate and protected."

Building on that premise, it's the Employer's view that Rockey's outburst and threatening behavior toward Brown was not protected workplace speech. Consequently, the Employer believes Rockey can be held accountable for what she said and did. The Employer also notes that at the hearing, Rockey did not challenge or dispute Brown's account of the March 5, 2007 incident as referenced in both her (Brown's) testimony and the suspension letter. As a result, the Employer asserts that the charges against Rockey were unrebutted at the hearing. According to the Employer, Rockey's uncontrolled outburst toward Brown in the workplace was inappropriate and does not have to be tolerated by the Employer. The Employer also emphasizes that Brown did not provoke the incident or yell at Rockey. Instead, Brown did not say anything and essentially tried to defuse the tense situation. Given all the foregoing, it's the Employer's view that Rockey's disruptive behavior on March 5, 2007 constituted misconduct and that this misconduct warranted discipline. The Employer maintains that a seven-day suspension was not excessive given the grievant's record and prior progressive discipline.

In sum, it's the Employer's position that it had just cause to impose all the disciplinary action involved herein, and that the change in Rockey's schedule did not violate the collective bargaining agreement. It therefore asks that all the grievances be denied and dismissed.

### **DISCUSSION**

At issue herein is whether the Employer had just cause for the discipline which is being reviewed here.

The threshold question is what standard or criteria is going to be used to determine just cause. The phrase "just cause" is not defined in the collective bargaining agreement, nor is there contract language therein which identifies what the Employer must show to justify the discipline imposed. Given that contractual silence, those decisions have been left to the arbitrator. Arbitrators differ on their manner of analyzing just cause. While there are many formulations of "just cause", one commonly accepted approach consists of addressing these two elements: first, did the employer prove the employee's misconduct, and second, assuming the showing of wrongdoing is made, did the employer establish that the discipline which it imposed was commensurate with the offense given all the circumstances. That's the approach I'm going to apply here.

As just noted, the first part of the just cause analysis being used here requires a determination of whether the employer proved the employee's misconduct. In making that call, I will address two separate components: did the employee do that which was alleged, and if so, was that misconduct? These two components will be addressed in the discussion which follows.

#### **The Verbal Warning**

It is noted at the outset that contrary to the Union's contention, Rockey was not given a verbal warning for telling Fahr to make the eggs. Rockey could apparently tell Fahr to do

that, just as Egli could – and did – tell Rockey to do that work herself. Also, contrary to the Union’s assertion, Egli did not tell Rockey to prepare a large batch of eggs – it was just a single order. Thus, Rockey was not disciplined for what she told Fahr. Instead, Rockey was disciplined for her conduct toward Egli and Brown – namely, her outburst to Egli after Egli disagreed with what she told Fahr and storming out of a meeting with Brown while Brown was still trying to talk to her about the incident. At the hearing, Rockey did not deny or dispute those basic facts. Being discourteous to co-workers and disrespectful to supervisors is not appropriate workplace behavior. It is inappropriate workplace behavior and employees who engage in such behavior do so at their own peril. The Employer’s work rules/policies provide that employees are expected to conduct themselves in a professional manner and be courteous and respectful of co-workers and supervisors. There is nothing in this record to indicate that the Employer has been lax in enforcing this rule or not applied it uniformly. With regard to the Union’s assertion that the reason Rockey stormed out of the meeting was because Brown “berated” her at the meeting, the record facts do not support the assertion that Brown “berated” Rockey. Another reason which Rockey proffered at the hearing to justify her storming out of the room while Brown was still talking was because Brown “counseled” her in front of Egli and Fahr and Rockey thought any “counseling” should have occurred in private. The problem with this contention is that employees do not get to decide if they are “counseled” by supervisors in private or in public. Brown decided in this instance to “counsel” Rockey in public (meaning in front of Egli and Fahr). She could do that. Thus, the fact that Brown “counseled” Rockey in public was not a sufficient reason for Rockey to storm out of the room while Brown was still talking to her. I therefore find that on the day in question, Rockey committed misconduct by blowing up at Egli and storming out of a meeting with Brown. That was misconduct which warranted discipline. I find that the discipline which the Employer imposed (i.e. a verbal warning) was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to the proven misconduct. The County therefore had just cause to impose a verbal warning on Rockey for her conduct on September 1, 2006 involving Egli and Brown.

### **The Written Warnings**

I’m first going to address the written warning for unauthorized overtime. For background purposes, it’s important to note that Rockey had been repeatedly counseled about unauthorized use of overtime. The reason she was counseled about it was because she had done it before (i.e. work overtime on her own volition without permission). In these counseling sessions, Brown specifically told Rockey to not work unauthorized overtime. As a result of these counselings, Rockey knew she was to get permission before she worked overtime. It’s in that context that on January 2 and 8, 2007, Rockey worked overtime on her own volition without getting it approved in advance by anyone empowered to do so. In other words, on those days, Rockey did not get approval before she worked overtime; instead, she simply worked overtime without approval or authorization to do so. That conduct clearly violated the directive she had been given by Brown concerning overtime usage. This was problematic because employers have a legitimate and justifiable interest in ensuring that employees obey work orders and directives issued by supervisors. When employees fail to

obey them, it undercuts the authority of supervisors. That, in turn, is detrimental to the working environment. At the hearing, Rockey did not offer any reason or excuse for her non-compliance with Brown's directive. That being so, the logical inference is that Rockey intentionally disregarded Brown's directive to get approval before working overtime. By disregarding that directive, Rockey committed misconduct which warranted discipline. I find that the discipline which the Employer imposed (i.e. a written warning) was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to Rockey's proven misconduct. The County therefore had just cause to impose a written warning on Rockey for unauthorized overtime on January 2 and 8, 2007.

The focus now turns to the written warning for substandard performance of assigned routine tasks. That warning had two different components to it: the cheese slicing matter and the milk order. These components will be addressed in the order just listed.

For background purposes, it's important to note that Rockey had been counseled repeatedly about completing her assigned tasks. The reason she was counseled about it was because she did not always complete/perform her work. In these counseling sessions, Brown specifically told Rockey to complete her assigned tasks so that other employees did not have to do her work. It's also noted for background purposes that all the cook's helpers perform certain routine tasks on a rotating basis. One job in that rotation is the cutting of cheese for meals. When an employee has this job in the rotation, they have to ensure that there is enough cheese sliced to make it through the entire week. Rockey was on the cheese rotation in the last week of December, 2006. It's in that context that when Rockey went on vacation that week, she did not leave enough sliced cheese behind. Thus, before she went on vacation, Rockey failed to complete this basic, routine task that she was supposed to complete before she went on vacation. As a result, other employees had to do that task (i.e. cut cheese) while she was gone. I find that Rockey's conduct violated the directive she had been given by Brown to complete her tasks. While employees are not normally responsible for things that go amiss at work while they are on vacation, this situation with the cheese slicing was an exception to that general rule. The reason it's an exception is this: as noted above, a cook's helper who is in the cheese slicing rotation is responsible for cutting a week's worth of cheese before they go on vacation. Rockey failed to do that. At the hearing, Rockey did not offer any reason or excuse for failing to cut enough cheese before she left on vacation. As for the Union's contention that it was the Employer's fault that not enough cheese was cut in advance because the Employer did not authorize extra overtime for that to happen, that contention misses the mark because there is no evidence in the record that such an overtime request was made, much less denied. In this instance then, Rockey once again failed to complete/finish an assigned work task. In the circumstances of this case where Rockey had been repeatedly warned to complete/finish her work, her failure to slice enough cheese before she went on vacation constituted misconduct which warranted discipline. I find that the discipline which the Employer imposed (i.e. a written warning) was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to Rockey's proven misconduct. The County therefore had just cause to impose a written warning on Rockey for not cutting enough cheese before she went on vacation in December, 2006.

The focus now turns to the milk order. For background purposes, it's important to note that in the summer of 2006, Rockey was assigned the task of ordering milk. This was a new task for her so she was trained how to perform it. While she learned how to perform it correctly, she admitted at the hearing that she had trouble performing it correctly. The reason she had trouble was this: she did not always take a physical inventory of the dairy products on hand as she was supposed to do; instead, she simply ordered the same amount as last time. This short cut had caused problems before. When these problems arose with the milk order, Rockey was counseled again about the proper way to order milk. It is against this backdrop that there were problems with the milk order in the week that Rockey was gone on vacation in December, 2006. What happened was that Rockey had ordered an incorrect amount of milk, so the milk order had to be changed. In that instance, just like previous instances, the problem was attributable to the fact that Rockey had not done an inventory before ordering the milk. When the problem with the milk order arose in the last week of December, 2006, Rockey was gone on vacation, so obviously she was not around to fix the problem which she caused. Other employees had to fix it. Thus, Rockey once again failed to do a basic routine task correctly, and since she was not around to fix it, other employees ended up doing Rockey's work for her. While employees are not normally responsible for things that go amiss in the workplace while they are gone, the milk order – like the cheese slicing matter – was an exception to the general rule. The reason it's an exception is because Rockey was supposed to order the correct amount of milk before she went on vacation. Rockey failed to do that. As a result, fault for that problem can fairly be attributed to Rockey. At the hearing, Rockey did not admit to making a mistake or accept responsibility for the incorrect milk order. Instead, she suggested that if having her do the milk order was a problem for the Employer, then the Employer should have taken her off that task rather than "rehashing it". The problem with this contention is that employees do not get to pick and choose which job tasks they perform. The Employer gets to make that call and in this instance, they decided that Rockey was to do the milk order. They could do that. Employees are supposed to complete their assigned job tasks correctly. Failure to do so can result in discipline. That's the situation here. As noted above, Rockey had been repeatedly counseled how to perform the milk order correctly. Her failure to perform it correctly before she went on vacation in the last week of December, 2006 constituted misconduct which warranted discipline. I find that the discipline which the Employer imposed (i.e. a written warning) was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to Rockey's proven misconduct. The County therefore had just cause to impose a written warning on Rockey for not performing the milk order correctly before she went on vacation in December, 2006.

### **The Three-Day Suspension**

The record indicates that Rockey's co-workers had long verbally complained to Brown that Rockey was uncooperative, rude and abusive, did not do her work and disrupted the workplace. In late January and early February, 2007, some of Rockey's co-workers put their complaints in writing. A review of those written complaints confirms that they essentially mirror the verbal complaints made to Brown. After Brown received the written complaints, she suspended Rockey for three days for "disruptive behavior in the workplace". The

“disruptive behavior” which was identified in that letter was that Rockey: 1) harassed co-workers by calling them at their homes to get them to sign a statement backing her; 2) created additional tension in the work place via the phone calls just referenced; and 3) engaged in work slow downs at her work station which disrupted the entire tray line. The first question to be answered is whether the Employer proved these allegations. Based on the following rationale, I find that it did. As was noted above, this discipline stemmed from the written complaints filed by Rockey’s co-workers. These written complaints provided the basis for the three charges contained in the suspension letter. All the employees who filed the written complaints testified at the hearing. Their testimony essentially mirrored (i.e. confirmed) what they said in their written complaints. Following the testimony of those witnesses at the hearing, Rockey chose not to address or respond to any of the charges referenced above. Specifically, she did not address or respond to the charges that she: 1) harassed co-workers by calling them at their homes to get them to sign a statement backing her; 2) created additional tension in the workplace via the phone calls just referenced; or 3) engaged in work slow downs at her work station which disrupted the entire tray line. Since Rockey made no attempts to rebut those allegations, the arbitrator credits the un rebutted collective testimony of the employees who filed the written complaints against Rockey and testified regarding same. Their un rebutted testimony is sufficient to prove that Rockey did indeed do what she was alleged to have done in the suspension letter. Rockey had been previously warned to not harass co-workers and not disrupt work, so she committed misconduct when she once again engaged in that conduct in late January and early February, 2007. That misconduct warranted discipline. I find that under the circumstances present here, where the grievant had previously received several verbal and written warnings, a three-day suspension was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to Rockey’s proven misconduct. The County therefore had just cause to suspend Rockey for three days for the misconduct referenced in the suspension letter.

### The Change in Work Schedule

My discussion on this matter begins with a review of what happened. Grievances were filed over all the disciplinary actions noted above and were discussed by the County Personnel and Labor Relations Committee in early March, 2007. The Committee decided that Rockey’s work performance problems and difficulties with her co-workers were more pronounced when Brown was not present, and this could be helped with more supervision. (Note: When Rockey worked weekends as the cook, she had no supervision because Brown did not work weekends). The Committee decided to temporarily change Rockey’s work schedule and take her off weekends for 90 days. Their rationale for doing so was that a work schedule of just Monday through Friday would overlap more with Brown’s schedule and Rockey would, at least theoretically, be subject to more direct supervision by Brown (than would have been the case if she had continued to work every third weekend without supervision).

At issue is whether the Employer could take that action. Based on the following rationale, I find that it could. While there are no doubt situations where an employer changes an employee’s work schedule for a non-disciplinary reason, I see the schedule change involved

herein as disciplinary in nature. As a result, I'm going to analyze it as discipline subject to the just cause standard. When an employer deals with disciplinary situations, there are numerous options available for them to use to "discipline" the employee. While warnings, suspensions and discharge are certainly the most commonly used options, other options are also available. In this case, I need not identify what those other options are except to say that one of them is what the Employer did here (namely, temporarily change the grievant's work schedule). That schedule change did not occur in a vacuum. It was linked, of course, to everything else that was occurring at the time. The Employer concluded that the workplace problems associated with Rockey seemed to occur primarily when Rockey did not have supervision (meaning when Brown was not present). One of the times that occurred was on weekends. That being so, the record evidence supports the Employer's contention that the reason it took this particular disciplinary action (i.e. changing Rockey's work schedule) was to address that particular problem and modify Rockey's behavior. It could do that. I therefore find that under the circumstances present here, where if Rockey continued to work weekends she would have done so without supervision, a temporary change in her schedule so that she did not work weekends was not excessive, disproportionate to what preceded it, or an abuse of management discretion. The County therefore had just cause to temporarily change Rockey's work schedule.

### **The Seven-Day Suspension**

Several hours after being told that her work schedule was temporarily being changed, Rockey was involved in an incident with Brown. That incident resulted in the discipline which is being reviewed here. At the hearing, Rockey did not challenge or dispute Brown's account of the incident as described in both Brown's testimony and the suspension letter. Thus, the factual allegations made by the Employer concerning the incident were un rebutted.

Before I review what happened though, I've decided to make the following initial comments about Rockey's right to challenge the schedule change referenced above. First, Rockey certainly had the right to discuss the schedule change with management representatives. She chose to not discuss it when she was told of it; instead, she opted to talk to Brown about it one-on-one later in the day. She could do that. Second, Rockey had the right, under the contractual grievance procedure, to grieve the matter. Third, the Union has the right, under the contractual grievance procedure, to arbitrate unresolved grievances.

When an employee exercises his/her right to discuss a workplace problem or a grievance with the employer, they are not – as the Employer put it in their brief – “free to say whatever she wants in whatever manner she wants.” In other words, they are subject, of course, to the normal rules of conduct, behavior and decorum in the workplace. As some examples, an employee can't blow up, or go on a tirade, or let loose with a string of obscenities, and expect immunity from their bad conduct just because they were “discussing” a workplace problem or a grievance with the employer. It just doesn't work that way. If an employee engages in the type of bad conduct just noted while “discussing” a workplace problem or a grievance with the employer, their conduct is not protected and there can still be adverse employment consequences to the employee.



The reason this basic principle of the workplace was noted was because Rockey failed to comply with it when she “discussed” the schedule change with Brown. Here’s what happened. Rockey literally got in Brown’s face and demanded that her schedule not be changed. Rockey then slammed her hand on the table several times and belligerently told Brown that she would not accept the schedule change. Brown did not say or do anything in response; instead, she simply walked away. Rockey wouldn’t let the matter end, though, and followed Brown out of the room. While doing so, she peppered Brown with a series of statements. Most of the statements were not threatening in nature and thus are not listed here. However one was threatening. It was this: “I’m gonna get you!” Brown did not respond to this or any of the other statements, whereupon Rockey finally walked away.

Rockey’s words and conduct crossed the proverbial line. At a minimum, she was disrespectful and intemperate to her supervisor in this incident. Employers have a legitimate and justifiable interest in maintaining order in the workplace and preventing employees from being disrespectful and intemperate towards supervisors. Such conduct is obviously detrimental to the working environment since it undercuts the authority of supervisors. No employer can be expected to tolerate it. The grievant’s tirade that day was not the minor incident that the Union tries to make it out to be. It was serious. As was already noted, the most troubling of the statements Rockey made was her threat that she was going to “get” Brown. Not surprisingly, Brown felt threatened by Rockey’s outburst and behavior. It would be one thing if the record evidence showed that on that day Brown said or did something that intentionally provoked Rockey. If the evidence showed that, then some blame for the incident could be placed at Brown’s feet. However, there is no evidence that anything like that occurred. Even when this incident is considered together with the other events of the day – including Brown’s telling Rockey to complete another leave slip – there is nothing about Brown’s conduct that indicates that she somehow provoked Rockey’s tirade. That being so, Brown does not bear any responsibility for Rockey’s tirade. Instead, it is Rockey who bears responsibility for her conduct and she alone. Her disruptive behavior that day constituted workplace misconduct.

The Union offered several defenses for Rockey’s misconduct that day which, in its view, should excuse or justify her actions. Those defenses are addressed next.

First, the Union avers that Rockey made no real threats against Brown. That assertion is belied by the facts. While some of Rockey’s statements were innocuous and non-threatening, such as Rockey’s statement that she was going to appeal her schedule change to arbitration, one was different from the others because it was more ominous. It was the statement, “I’m gonna get you!” When Rockey said it, she did not elaborate on what she meant by it, so Brown was left to decipher its meaning herself. Brown was intimidated by it and considered it a real threat. Given its context and usage, the arbitrator is hard pressed to disagree.

Second, the Union notes that Brown let Rockey finish work the day of the incident and work the next full day before suspending her. According to the Union, this establishes that

there was no “real concern” by Brown about Rockey’s conduct. I disagree. In my view, all it shows is that Brown waited one day before responding to Rockey’s misconduct and imposing discipline. She could do that. If the Union is arguing that Brown’s discipline was imposed in an untimely fashion, that argument misses the mark because this labor agreement does not contain a timeline for the imposition of discipline.

Having addressed the Union’s defenses for Rockey’s misconduct and found them unpersuasive, the next question is whether that misconduct warranted discipline. I find that it did. As previously noted, the Employer has a legitimate and justifiable interest in ensuring that employees don’t blow up in the workplace and threaten supervisors. However, on March 5, 2007, that’s exactly what Rockey did. That misconduct warranted discipline.

The final question is whether the penalty which the Employer imposed for this misconduct (i.e. a seven-day suspension) was appropriate under the circumstances. I find that it was. Here’s why. As was noted earlier in this decision, Rockey had previously received several verbal warnings, several written warnings, a three-day suspension and a changed work schedule. She had therefore been progressively disciplined. The Employer decided to impose a seven-day suspension for this misconduct. What is noteworthy about that length is that Sec. 7.07 of the collective bargaining agreement specifically references suspensions “up to seven days”. This means, of course, that a seven-day suspension is expressly authorized by the collective bargaining agreement. I find that a seven-day suspension under the circumstances present here was not excessive, disproportionate to the offense, or an abuse of management discretion, but rather was reasonably related to Rockey’s proven misconduct. In so finding, I conclude that the grievant was not subjected to disparate treatment in terms of the punishment imposed. Insofar as the record shows, no similar situation has occurred where an employee threatened a supervisor during a tirade. While it was alleged that other employees had had outbursts in the workplace, that allegation, standing alone, is insufficient to prove disparate treatment. In order to prove disparate treatment, it is necessary to show that other similar factual situations occurred where the Employer imposed either lesser or no punishment. That was not shown here because no specifics were provided about the other instances. Additionally, it was not shown that the other employees had disciplinary histories which were identical to Rockey’s. As a result, it was not shown that Rockey was subjected to disparate treatment in terms of the punishment imposed. Given the foregoing, it is held that the County had just cause to suspend Rockey for seven days for the misconduct referenced in the suspension letter.

In light of the above, it is my

### AWARD

PS # 2: That the Employer had just cause to issue the grievant a verbal warning on September 1, 2006;

- PS # 3: That the Employer had just cause to issue the grievant two written warnings on January 15, 2007;
- PS # 4: That the Employer had just cause to suspend the grievant for three days on February 9, 2007;
- PS # 5: That the Employer did not violate the collective bargaining agreement on March 5, 2007 by unilaterally changing the grievant's work schedule; and
- PS # 6: That the Employer had just cause to suspend the grievant for seven days on March 6, 2007.

All the grievances are therefore denied.

Dated at Madison, Wisconsin this 17th day of March, 2008.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator

