

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
VILLAGE OF SLINGER EMPLOYEES UNION
LOCAL 1061, AFSCME, AFL-CIO, WISCONSIN COUNCIL 40

and

THE VILLAGE OF SLINGER

Case #6
No. 67031
MA-13717

(Michael F***** Termination Grievance)

Appearances:

Lee Gierke, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 727, Thiensville, Wisconsin 53092, appearing on behalf of Local 1061.

Nancy Pirkey, Attorney at Law, Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of the Village of Slinger.

ARBITRATION AWARD

Pursuant to the terms of their collective bargaining agreement, the Village of Slinger (hereinafter referred to as either the Village or the Employer) and AFSCME Local 1061 (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen, a member of its staff, to serve as the arbitrator of a dispute concerning the Village's termination of Michael F*****. The undersigned was so designated. A hearing was held on July 19, 2007 at the Village's offices, at which time the parties submitted such exhibits, testimony and other evidence as was relevant to the dispute. A stenographic record was made, and a transcript was received on July 30. The parties submitted briefs and reply briefs, the last of which were received by the undersigned on October 2, 2007, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language, and the record as a whole, the Arbitrator makes the following Arbitration Award.

ISSUES

The parties agreed that the central question was whether there was just cause to terminate the Grievant, but could not agree on a precise wording of the issue, and left it to arbitrator to frame the issue in his Award. The issue may be fairly stated as follows:

Did the Village have just cause to terminate the Grievant, Mike F*****? If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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Article III-Management Rights

The Village of Slinger possesses the sole right to operate the Village of Slinger and all management rights repose in it. These rights include, but are not limited to the following....

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

...

Article XXVII-Discipline

Section 27.01. Upon request an employee will be provided with Union representation in the event of an investigation or interview concerning disciplinary action of which could reasonably result in disciplinary action.

RELEVANT VILLAGE POLICIES

20. WORKPLACE VIOLENCE

It is the Village's intent to prevent violence in the workplace through every means possible, and, should such violence occur, to minimize its impact on employees, customers, vendors and bystanders. The Village has a "zero" tolerance for violence in the workplace.

20.1 Definitions

In the context of this policy, violence is defined as any act of physical, verbal, or psychological threat or abuse, intimidation, assault, or trauma on an individual. Further, threat is defined as any words or actions involving an intent to harm an individual or property.

Employees who engage in conduct or behavior that is verbally, physically, or psychologically threatening or intimidating, or who carry or use any weapons in the workplace may be subject to termination for the first offense.

20.2 Prevention

As in any situation, sound management techniques and practices significantly contribute to the prevention and limitation of potential problems.

Department Heads need to pay attention to sudden changes in employee behavior, and especially pay attention to threats made in the workplace. Never believe that workplace violence is someone else's problem or fail to take any threat seriously.

20.3 Warning Signs

While it is not the intent of this policy, nor is it possible, to identify all potential signs of workplace violence, all employees should be alert for signs of workplace violence and should report concerns to their immediate supervisor or the Village Administrator immediately. Some examples of behavior which may precede violent behavior include:

- a) Individual drops menacing hints about his/her knowledge of firearms;
- b) Individual may make intimidating statements such as "You haven't heard the last from me," "I'll get even," etc;
- c) Individual may possess, and leave in plain view, reading materials with themes of violence, revenge and harassment;
- d) Individual may demonstrate inordinate interest in law enforcement equipment and activities.

All employees should be aware that, to the extent that these or similar behaviors occur, the potential for workplace violence exists and should be reported to your Supervisor or Department Head at once.

20.4 Threat Response

All Village employees should adhere to the following guidelines in the event of any threat of violence in the workplace, regardless of the source:

- a) Treat all threats seriously.
- b) Immediately involve key resources at the work site, i.e., Village Administrator, Department Head, Police Chief, or contact 911.
- c) Do not overreact or attempt to resolve the situation yourself, i.e., engage in physical contact with, challenge, criticize, or use communication styles which might generate hostility.

20.5 Weapons

The Village prohibits all persons (employees, contract/ temporary employees, vendors, visitors, customers and any other persons) who enter Village property from carrying a handgun, firearm, or other dangerous weapons of any kind onto the property, or in the scope of performing their job, regardless of whether the person is licensed to carry the weapon or not. The only exception to this policy are law enforcement officers.

The Village reserves the right to search any person, vehicle, or object on its property, or authorize searches by law enforcement agencies with or without the employee being present. Searches may only be conducted with the approval of the Village Administrator and/or Police Chief. Searches may be conducted by management or local authorities as necessary. Refusal to cooperate with a search may result in disciplinary action up to and including termination.

The Village will not tolerate any retaliation against any employee for making a good faith report under this policy. Any retaliatory action may be grounds for disciplinary action up to and including termination.

20.6 Management's Responsibility

Department Heads are to take all threats seriously. If an employee reports a threat or suspicion to a Department Head, or an individual exhibits violent or threatening behavior, makes threatening comments or writes threatening notes, Department Heads should immediately contact the Village Administrator and/or the Police Chief; or, if appropriate due to an immediate threat, call 911.

BACKGROUND

The Village provides general municipal services to the people of Slinger, Wisconsin, including the operation of a Utility Department covering, inter alia, water and wastewater services. The Union is the exclusive bargaining representative for the Village's non-exempt employees. At the times relevant to this case, Maureen Murphy was the Village Administrator and James Haggerty was the Village Engineer and Director of the Department of Public Works. The Grievant, Mike F*****, was an Operator in the Utility Department for nine years, until his discharge in May of 2007 on charges of having violated the workplace violence policy.

Prior to 2007, the Grievant was the lead worker in the water side of the utility, and was basically in charge of that side of utility operations, largely working alone. Greg Moser was the lead operator on the wastewater side of the operation, working with another operator. Although they shared the same job title and classification, the water and wastewater operators were not cross-trained and there was no interchange of personnel between the two different aspects of the utility.

At the beginning of April, 2007, Haggerty promoted Moser to Superintendent, and he and Murphy ordered Moser to cross-train the operators to work in both sides of a merged utility operation. The Grievant was directed to report for work in the mornings at the wastewater plant, so all of the operators could share a morning briefing, and was relieved of his responsibility for managing the water operations. The changes did not sit well with the Grievant, who had resisted earlier attempts at cross-training of operators, and who resented his loss of autonomy and authority. While he obeyed Moser's orders, he became uncommunicative, and passively resisted learning the wastewater side of the operations, questioning everything he was told and expressing the view that the merger of operations and cross-training was a waste of time and money. He did little to help train Moser or Matt Tonn, an operator who had been hired in February, in any of the water side operations, limiting himself to answering specific questions he was asked, but not volunteering any information.

On April 16, 2007, a gunman opened fire in a classroom building at Virginia Tech, killing and wounding scores of students and faculty. After lunch that day, the Grievant and Matt Tonn were assigned to perform field work together. As they traveled to a job site, Tonn asked the Grievant whether he had heard about what happened. The Grievant replied either "Yes. That might happen here soon. There's some people in the office that need to get it." or "Yes. I'm surprised that hasn't happened here yet. There's some people in the office that need to get it." Although the two men made some small talk in the course of the afternoon's work, the Grievant did not say anything further on the subject, and Tonn did not ask anything further.

After they returned to the utility office, Tonn told Moser what the Grievant had said. About twenty minutes later, as the three operators were filling out their time sheets for the day, Moser noticed that the Grievant's hands were shaking uncontrollably, to the point that he could not write. This was something that Moser had seen before when the Grievant was under stress, though it had never been pronounced until 2007. Moser told him to just complete the paperwork in the morning when he was feeling better. The Grievant replied "It's this place. I'm just stressed out. I'll be fine. When I get home the shaking will stop and I'll be able to put a pattern of rounds into the size of a dime." Moser asked what kind of gun he was shooting with, and he said it was a pellet gun.

In the course of that evening and the next morning, Moser thought about the Grievant's comments. He had been a supervisor for only two weeks, and was not sure exactly how to handle the situation, so early in the afternoon of April 17th he drove to the Village offices and spoke with Maureen Murphy and Jim Haggerty. He told them in general terms that Tonn had reported some threatening remarks, and about the Grievant's comment about going home and shooting target practice.

After Moser made his report, Haggerty decided to go to the utility offices and speak with Tonn. Tonn told Haggerty that the Grievant had told him he was surprised there had not been something like Virginia Tech here yet and that "there's some people in the front office that need to get it." Haggerty asked Tonn if thought the Grievant had been joking, and Tonn said that he seemed serious. Tonn also repeated a comment the Grievant had made sometime in February in connection with the utility, about feeling that there had been someone who was out to get him for the past three or four years. That period roughly coincided with Haggerty's employment with the Village. Haggerty went back and reported to Murphy that the situation was more serious than Moser had reported. He related the comments Tonn had repeated to him, and told her that Tonn seemed concerned. Murphy decided that she would place the Grievant on an administrative leave and conduct an internal investigation. Murphy phoned the Police Chief, who was out of town at a conference, and described the problem to him, explaining that she wanted an internal investigation, not a criminal investigation. The Chief said he would assign Lieutenant Joel Schodron to conduct an inquiry.

On the morning of April 18th, the Grievant reported for work at the water treatment plant, and Lieutenant Schodron was waiting for him there. Schodron asked if he could speak with him about some statements he had made, and the Grievant agreed. Schodron started by expressing concern about the stress the Grievant seemed to be feeling over his job. The Grievant confirmed that he found the changes at work very stressful, that he felt they had taken everything away from him, even though there had never been a problem with his work. He told Schodron he had been looking forward to retiring in seven years, and that he might have to look for another job because he didn't think he could take the stress that long.

Schodron cautioned the Grievant that stress could be bad for his health, and the Grievant told him he had a doctor's appointment for the following day because of his blood pressure and his concern that he might be developing ulcers. Schodron asked what he did to relieve stress, and the Grievant told him he shot at targets with his pellet gun, and also did some bow shooting and gardening. Schodron asked if he was a hunter, and he said he had given up hunting several years earlier because he was no longer comfortable with killing animals.

Schodron mentioned that people had noticed that the Grievant's hands had been shaking two days earlier when he tried to do his paperwork, and the Grievant told him that it was due to the intense stress of the job changes. He repeated his wish that they had just left him alone for another seven years, and expressed confusion at why the changes had been made, when there had been no problems or complaints about the job he was doing with the Water utility.

Schodron told him he was aware of the comments about the Virginia Tech shooting, that there were some people in the front office "who need to get it" and that something like that might happen in the Village. The Grievant replied that "that was not supposed to go farther than it did." Schodron said they had to take such comments seriously in light of incidents such as Columbine High School and Virginia Tech, and so needed to follow up and find out if he was serious. The Grievant told him that he had simply made the comment due to stress and that it would never happen. He followed that by again expressing the wish that people would have just left him alone until he could retire. He then laughed and commented that he had once made a bomb with lights and a ticking noise when he worked at a car dealership, and that after he did that, people stopped bothering him.

Before Schodron could pursue the Grievant's comment about once having built a bomb, his cell phone rang and Maureen Murphy asked if he was speaking with the Grievant and whether she could come down to the plant. Schodron said he was nearly finished and that Murphy could come down. The Grievant told Schodron he'd overheard the call, and Schodron replied that Murphy was going to talk to him when they were done. Schodron again told the Grievant that everyone was concerned about his health and the stress he was displaying, and that it wasn't good for anyone. Schodron asked again if he intended to do harm to anyone, and the Grievant repeated that that would never happen and that his comment had been due to being stressed out by the job changes.

Murphy arrived at the plant, and Schodron noticed an immediate change in the Grievant's affect, with his eyes becoming glassy and his hands beginning to shake. Schodron stepped out of the room to speak with Murphy, and he told her that the Grievant had admitted the statements but had also stated that he did not mean them seriously. Murphy then entered the room with the Grievant and told him he was being placed on administrative leave with pay for two weeks or so while an internal investigation was completed. She told him he could not come on Village property or speak with any Village employees during that time, and asked if

he understood. The Grievant said he understood, but asked why he was being placed on leave. Murphy said it was because of his statement, and he asked “what statement?” She said the threats to the Village staff, and he denied having made any threats. She repeated that it was the threat he made towards the staff and he said he didn’t remember making any threats to anyone. Schodron then intervened, telling the Grievant that it was the statement that they had just discussed, the one that he had said would never happen. The Grievant then commented that “This is probably a good thing. I need some time away” and left the premises.¹

After completing the initial interview with the Grievant, Schodron spoke with Tonn and Moser, and secured written statements from them. In his interview, Moser mentioned an incident from several years earlier, during a time when the Grievant’s house was at risk of being demolished to make room for a State highway project. The Grievant had commented that if they wanted to take his house, he’d go up on the roof with a rifle and take out as many of them as he could. When Moser expressed skepticism and noted that the Grievant had many friends among the county deputies, he replied that they were the ones who should know better than to take his house. Ultimately, the Grievant’s house was demolished for the project, and he did not take any improper action to prevent it from happening.

When he was finished with Moser, Schodron checked the Grievant’s work van. On the center console, he found an unspent 12 gauge shotgun round. He took the round and locked it up at the police department. Schodron completed his interviews for that day by speaking with a DPW employee, Terry Mergener. Mergener said he had observed that the Grievant was very shaky and nervous since the changes at the utility, and expressed the opinion that he was not himself and was suffering from depression of some type. Mergener said he had not heard the Grievant make any threatening comments.

The following morning, Schodron returned to the water utility office and confirmed that the Grievant had a complete set of the personnel policies, including the Workplace Violence policy. While he was there, he took photographs of the office and its contents, including an audio book from the West Bend public library. The audio book was titled “Die in Plain Sight.” Schodron photographed it and included it in his report because he had been trained to include anything that seemed unusual.²

As a follow-up to the Grievant’s claim of having made a bomb while working at an auto dealership, Schodron checked with the Hartford Police Department to see if they had any reports involving the Grievant. They indicated that they had no record of any contact with the Grievant. A check of the County’s database likewise showed no contact with the Grievant by other departments. On the 21st, Schodron went to the Grievant’s home for a second interview.

¹ The text of Lieutenant Schodron’s investigative report is appended hereto as Appendix “A”.

² The book “Die in Plain Sight” is a popular mystery novel. Schodron made a separate mention of it in his report, but the description of the book in the report was somewhat misleading due to a typographical error: “Also included in these photographs is a photograph of a cassette book called "Die" in plain sight, which was located on top of the black filing cabinet by the south wall. It appears to have been taken out from WEST BEND LIBRARY with tape 3 being observed in the radio on top of the filing cabinet.”

He observed that the Grievant seemed much more at ease than he had three days earlier. He asked the Grievant about the shotgun shell he'd found on the van console. The Grievant explained that he'd found it quite some time ago, while he was working. It was on the pavement, and he didn't want to leave it lying around where kids might find it, so he tossed it in his van. Schodron followed up on the mention of a bomb, and the Grievant explained that while working at a car dealership in Hartford, he had tinkered with some old junk, adding wires and lights to a box, and another employee told him it looked like a bomb. The Grievant commented that "I should never have mentioned that." Schodron then got a detailed employment history from the Grievant, and concluded the interview.

Additional interviews were conducted Police Chief Schmidt, who confirmed with Moser that the Grievant had had a very hard time adjusting to the changes made in his work routine, and had characterized the changes as "stupid" and "a waste of money." Moser told the Chief that the Grievant appeared to be having difficulty in making calculations and performing his normal duties. Matthew Tonn told the Chief that the Grievant was very vocal in his disapproval of the changes, calling them "bullshit" and "a fucking waste of money." Tonn told the Chief that the Grievant had told him in February that someone had been out to get him for the past three or four years, and that he was looking for another job. Tonn said that he had been very nervous since the Grievant made his comments, and that he believed no one should have to be afraid or feel threatened when they go to work. Schmidt also made a statement for the report, relating a conversation he had with the Grievant on April 3, when the Grievant said he didn't know how much longer he could take it, and might have to look for another job.

Murphy reviewed the investigative report, and the Grievant's personnel file. There was no record of discipline in his file, but there was a record of a meeting in 2005 with the then-Village Administrator and Utility personnel about difficulties in an effort at cross-training sewer and water employees. Murphy was also aware of an undocumented verbal warning in February of 2007, related to the Grievant's reluctance to assist in training Tonn on water operations. Murphy reviewed the Village's Personnel Policies, which included a "zero tolerance" policy on work place violence. The policy defined violence as "any act of physical, verbal, or psychological threat or abuse, intimidation, assault, or trauma on an individual. Further, threat is defined as any words or actions involving an intent to harm an individual or property." Murphy conferred with counsel, and met with the Village Board on the evening of May 8. She recommended to the Board that the Grievant be fired, and the Board approved the recommendation.

On May 10th, Murphy and the Village's labor counsel met with the Grievant and his Union Representative. The Village's attorney did most of the talking, and presented the Grievant and the Union with a draft of a termination letter, with the option of either resigning or being discharged. The Grievant declined to resign, and on May 15th the Village sent him a formal discharge notice:

. . .

Dear Mr. F*****:

The Village has completed its internal investigation into your actions on April 16, 2007 and we are now prepared to present the results of that investigation and the level of disciplinary action which will be imposed.

Summary of Investigation

The internal investigation was conducted by Lieutenant Schodron at my request. The basis for this investigation was a report I received in which you made a threatening statement to a Village employee.

On April 16, 2007, a Village employee asked if you had heard about the shootings at Virginia Tech. You responded "This might happen here soon. There are some people in the office who need to get it." During an interview with Lieutenant Schodron, you admitted making this statement to a Village employee, but indicated that the statement "was not supposed to get farther than it did." You also told Lieutenant Schodron that you made this comment due to stress at work and that you would never act on this threat. At the end of the work day, your supervisor noted that you were extremely shaky in filling out your time card. When your supervisor asked if you were okay, you indicated that it was "this place" and that you would be fine after you went home and were able to "place a pattern of shots within the size of a dime." In response to a question from your supervisor, you stated that you use a pellet gun for shooting, with sharp pointed pellets. Your comment about shooting a gun was overheard by the same employee who you made the comment to about "people in the office need to get it."

The internal investigation also revealed that you feel you are under extreme stress at work and that you are unhappy with cross-training and learning other aspects of your job. You made the statement that "they took everything away from you" when the Village began assigning you to work at both the water and sewer utilities. You indicated that the Village should just have left you alone for seven more years until your retirement.

The investigation determined that your threat has made several employees feel intimidated and unsafe at work. These employees do not believe that your comments were a joke or an off-hand comment; instead, some employees believe that you made a direct threat and these employees have taken additional precautions to protect themselves in the event you act upon your threat of violence.

Findings of Investigation

After discussing this issue with the employees involved and reviewing the report of the internal investigation, I find that I have a fiduciary responsibility to take steps to protect the safety of all employees and to enforce the policies adopted by the Village Board. After much thought and consideration, I have outlined my findings of this investigation.

- You did make a statement to a fellow employee in which you threatened several Village employees with physical harm. While you claim that you may not have intended to act upon that threat, you have created an unsafe work environment and created an atmosphere of fear, intimidation, hesitation, and disrespect in the workplace.
- The Village has a “zero” tolerance policy regarding workplace violence. The policy states that “employees who engage in conduct or behavior that is verbally, physically or psychologically threatening or intimidating or who carry or use any weapons in the workplace may be subject to termination for the first offense.” You were given a copy of this policy and should be familiar with its requirements.
- You made threats in front of the staff that you must work with each and every day. As a result, Village employees do not feel safe in their work environment and do not believe that they work in a mutually respectful workplace.
- The Village may have employee retention issues if you are permitted to return to work.
- It is clear that your threats bring into question your judgment and reliability. Your job requires good, solid judgment and the utmost reliability as you have daily access to the Village’s water supply.
- You have expressed neither remorse nor acceptance of responsibility for your words or actions.
- The Village may have liability issues if you are retained at work and become involved in any disagreement with a member of the staff or the public.

Disciplinary Action Imposed

As stated in the policy, the Village has “zero” tolerance for workplace violence and a first offense can be grounds for termination. I find that your actions have created an atmosphere of fear, intimidation, distrust, and disrespect among employees in the Utilities/Public Works and also throughout the Village. I find it is in the best interests of the Village and its employees that you be disciplined for your conduct here. I find that just cause exists to terminate your employment effective immediately.

/s/ Maureen Murphy, Village Administrator

. . .

The instant grievance was thereafter filed, contending that the Village lacked just cause to terminate the Grievant. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration. At the hearing, in addition to the facts recited above, the following testimony was taken:

Matt Tonn testified that he had been hired in early February as an Operator at the Utility. He was assigned to the wastewater plant, and saw the Grievant only intermittently. Tonn did not feel the Grievant had any problems with him personally or with Moser, but the Grievant did make comments that were critical of Jim Haggerty and Maureen Murphy. Once, in the course of small talk near the end of February, the Grievant commented to him that he was uncomfortable with management, and thought someone had been out to get him for three or four years, but he wasn’t sure who. This comment was made around the time of a DNR inspection, and the Grievant was under a great deal of stress.

At the beginning of April, Moser implemented the cross-training plan and ordered the Grievant to report each morning to the wastewater plant. Tonn said the Grievant was obviously very unhappy about this, and was more nervous than usual. On April 16th, the Grievant picked him up after lunch and they drove to the work site. On the way, Tonn asked if he’d heard about Virginia Tech, and the Grievant replied “Yes. That might happen here soon. There are some people in the office that need to get it.” The Grievant was neither particularly upset, nor joking around. He simply made the statement in a matter of fact sort of way, and then the conversation shifted to other things. While Tonn did not feel personally threatened, he did take it seriously and felt concern for the people in the office. That is why he reported it to Greg Moser later that afternoon.

At the end of the day on the 16th, the Grievant’s hands were shaking so badly that he could not complete his time sheet. When Moser told him to do it in the morning, the Grievant said he would go home and relieve his stress by shooting, and could place a pattern of shots in the size of a dime. Tonn was comfortable around guns, and this remark did not particularly

alarm him. According to Tonn, he never felt threatened by the Grievant or afraid of him, until after he was walked out of the plant and placed on leave on the 18th. After that, Tonn felt nervous about going on calls at night. He had been provided with a description and plate number for the Grievant's vehicle, but he never did see either the vehicle or the Grievant after he was placed on leave.

Greg Moser testified that he took over as Superintendent on April 2nd, with orders from Maureen Murphy to merge operations and cross train the operators. Earlier efforts to do this had foundered on the Grievant's lack of cooperation, to the point in 2005 that the then-Village Administrator had a heated exchange with the Grievant about it, in the course of which he had cursed out the Grievant. The Grievant was no more receptive to the idea in 2007, and had queried Moser about why his responsibilities were being taken away, who was behind it, and whether there was some bigger agenda. While the Grievant obeyed Moser's orders to report to the wastewater plant, he was distant to the other operators and provided the minimum amount of cooperation possible. He made comments that the changes were "a fucking waste of time" and "a fucking waste of money."

At about 3 p.m. on April 16th, Tonn came to him and said the Grievant had made a disturbing comment. He related that the Grievant had said something like Virginia Tech might happen here. Tonn seemed upset about it, and Moser took it seriously. A short time later, he noticed the Grievant's hands were shaking so hard that he couldn't finish his time sheet. When he told him to finish it in the morning, the Grievant said it was "this place" and that he'd be fine once he got home. He said he shot his gun to relieve stress and could put a pattern of rounds into the size of a dime. Moser asked what he was shooting, and he said it was a pellet gun.

Moser was uneasy about the Grievant's comments and thought about what he should do. Early the next afternoon, he reported the comment to Haggerty and Murphy. He did not feel personally threatened at first, but became increasingly nervous after the Grievant was placed on leave, the locks were all changed, and the police provided him with a description of the Grievant's vehicle and plate number. Moser was also aware of comments the Grievant had made years earlier about shooting anyone who tried to take his house away from him, and even though nothing like that had actually come about, it bothered him.

James Haggerty testified that Moser's initial report was somewhat vague, and he felt that Moser was trying to handle the situation on his own. He decided to check with Tonn to see how serious the situation was, and after speaking with Tonn concluded it was more serious than Moser had described. He told Murphy of his concerns, including the Grievant's uncontrollable shaking, and his comments about shooting to relieve stress, and she decided to conduct an internal investigation. Haggerty expressed concern for his own safety, since the Grievant's statement that someone had been out to get him for three or four years coincided with his tenure as Village Engineer, and he was one of the "people in the office."

Maureen Murphy testified that she ordered an internal investigation on the advice of counsel, immediately after receiving Moser's initial report. Her concerns were heightened later in the day when Moser came back from speaking with Tonn and told her that after getting more details, the hair was standing up on the back of his neck and that the Grievant had referred to Virginia Tech. On April 18th, when she went to place the Grievant on administrative leave, Schodron had already told her twice, once on the phone and once in the hallway, that he admitted making the statements, so she was surprised when he feigned ignorance of the reason for his suspension. During their brief meeting, the Grievant was clearly very nervous. His hands were shaking and he did not want to talk to her. After the Grievant left, Lt. Schodron informed her of his comment about having made a bomb, and this heightened her sense of concern.

When she received Lt. Schodron's report, she reviewed it, the collective bargaining agreement and the Village's zero tolerance policy on Workplace Violence. She concluded that he should be terminated, because he was fully aware of the policy and the policy, by its terms, allowed for termination on a first offense. Since he had plainly violated the policy, and had made a threat against a specific group – the people in the office – and because a return to work would place him back in the same stressful conditions he had not been able to handle before, with the same people who had turned him in, she concluded that termination was the appropriate penalty. In reaching her decision, she also considered that he was in charge of the public water supply, and that the Village might have liability problems should anything go amiss.

Murphy stated that she felt personally threatened by the Grievant's comments because she is "the office" and because he had such a strong reaction to her presence.

On cross-examination, Murphy said she did not reach a final decision to terminate the Grievant until the Village Board met on May 7th. She agreed that she had not interviewed the Grievant, nor spoken directly with Tonn or Moser, and had not provided any information to the Union prior to the termination meeting on May 10. She also agreed that she had not sought any medical evaluation of the Grievant prior to terminating him.

Dean Otte testified that he is the Village Administrator of the Village of Deerfield, and was the Clerk Treasurer of the Village of Slinger for 27 years. He testified that he was well acquainted with the Grievant, and had been reasonably good friends with him for 20 years. Otte said he was stunned by the Grievant's termination, and that he had always known him as a non-violent and caring person. On cross-examination, Otte agreed that his knowledge of this incident was entirely second hand, and that as a Village Administrator, he would take any threat of violence very seriously.

John Haug testified that he was the Chief of Police of Slinger for 13 years until his retirement in 1996, and that he and the Grievant had become good friends during his time with the Village. Haug said the two of them used to go hunting and fishing at a cabin he owned, and that in his experience the Grievant was a completely non-violent person. Haug expressed the opinion that the Grievant would not have threatened anyone.

Terry Mergener testified that he works for the Slinger DPW and is a good friend of the Grievant's. When he first heard that the Grievant was on administrative leave for making a threat, he laughed because he could not believe what he was being told. He expressed the opinion that the Grievant was not a violent person, and said he would have no hesitation in working with him. On cross-examination, Mergener stated that the Grievant had seemed unhappy with events at work, and had said he did not like the direction things were headed with the water utility. He agreed that the reference to Virginia Tech would have to be taken seriously, but noted that people often say things they don't mean and later regret. Mergener recalled one prior case of workplace violence at the Village, with an apprentice lineman who would spit in people's faces, throw equipment, and the like. He said she was given many opportunities to correct her behavior, but was ultimately fired.

Shirley Wolf testified that she had worked for the Village for 22 years, and had known the Grievant since he attended high school with her son. She had always known him as a quiet, big hearted person, and never even heard him raise his voice.³

Michael F***** testified that he had worked for the Village of Slinger for nine years prior to his termination. In the spring of 2007, his job was changed radically. He was moved out of his office, and his responsibilities at the water utility were taken away. He could not understand the reason for this, since he thought he was doing a great job at the water utility. He was proud of the job he had done, and there were no problems, so the changes were very unsettling. He became very nervous and fearful of losing his job, although he followed the orders he was given.

The Grievant recalled that, on April 16th, when Tonn asked him if he had heard about Virginia Tech, he said he was surprised something like that had not happened here yet, because everyone was under such pressure. When Lt. Schodron asked him about the comment several days later, he could not really recall his exact words. While it had been a stupid thing to say, he didn't mean anything by it, and he could not understand why Schodron was asking him about it. He said he understood by the time of the arbitration hearing how someone could view it as a threatening comment, but that it was never intended that way.

The Grievant testified that his hands shook as the result of stress, and that he would relieve the stress by gardening, splitting wood, and shooting his pellet gun. When he made his comment on April 16th about putting pellets in a pattern the size of a dime, it was a way of describing how relaxed he would become and how steady his hands would be once he left work.

³ The parties stipulated that each of the remaining members of the bargaining unit – other than Matt Tonn – would testify in the same vein as Mergener and Wolf on behalf of the Grievant.

When Lt. Schodron stopped by his office on April 18th, he did not tell the Grievant that there was any problem or that he was in any type of trouble, and it never occurred to him that he was. In the course of discussing how he wished they would just leave him alone at work, he made a passing reference to a gadget he had constructed as a joke at another job, which everyone told him looked like a bomb, and he said everyone left him alone after that. He said he mentioned it just as an example of the kind of stupid stuff that is said at work. When Murphy came in during their conversation and told him he was being placed on administrative leave for making threatening statements, he was confused as to what she was talking about, and asked her several times "What statements?" This was the first point at which he realized that he was in some sort of trouble.

The Grievant said that he had a pre-arranged doctor's appointment the day after he was placed on administrative leave, and when he described his problems with shaking and stress, the doctor prescribed a medication which had helped him tremendously.

The Grievant stated that he very much regretted the comment he had made, and that he never intended to threaten anyone. He said he had never been in any type of trouble before for any reason, much less making threats. Had he been given any opportunity, he would gladly have apologized and expressed remorse, but the only person who ever discussed the matter with him was Lt. Schodron, and after that interview he was ordered not to come on Village property and not to have any contact with any Village employee.

On cross-examination the Grievant said he had not expressed remorse during the May 10 meeting, but observed that the purpose of that meeting was to announce his termination. He said his nervousness about his job began in 2005 when he had a run-in with the then-Village Administrator about cross-training, and that was when he began to be concerned that someone might be out to get him.

The Grievant said his comment that "There's people in the office who need to get it" was a reference to Maureen Murphy and James Haggerty, and that he meant by that that they should be fired. He conceded that Maureen Murphy made him very nervous, though he was not sure why, and he admitted that he did not like her, and did not agree with her views.

In the interview with Schodron, he said his comment to Tonn was not supposed to go farther than it did because he viewed it as simply an offhand comment, that he didn't think would be repeated. His remark about the bomb was an attempt to compare dumb stuff that gets said at work, but by the time of his second interview with Schodron, he understood that he never should have said anything about it, because referring to a "bomb" under the circumstances was just digging a hole for himself.

Additional facts, as necessary, will be set forth below.

ARGUMENTS OF THE PARTIES

The Position of the Village

The Village takes the position that the Grievant was terminated for just cause, and that the grievance must be denied. The Grievant's discharge resulted from his violation of the Workplace Violence policy. By the clear terms of that policy, the Village announces that it will have zero tolerance for workplace violence and that an employee may be terminated for a first offense. The Grievant received this policy, and was well aware of its terms. The policy is, on its face, reasonable. As this same arbitrator has noted in the past, an employer not only has a right to insure workplace safety, it has a duty to do so, and this policy is part and parcel of that duty. The Village is obligated to take threats of violence seriously, and it is not obligated to wait for them to escalate into actual violence before reacting.

The Village argues that it conducted a fair and thorough investigation into this matter, using a disinterested, professional investigator, Lt. Schodron. Lt. Schodron's investigation uncovered substantial evidence that the Grievant did in fact make a threat of violence, directed at a specific target group – the people in the office. The almost inevitable result of this was to create an atmosphere of fear and anxiety for Tonn, Moser and others in the work force. The investigation showed that their fears were well grounded, as the Grievant's other statements and actions reinforced the Village's reasonable concerns that he posed a danger to other workers. He made pointed references to his marksmanship shortly after he uttered the Virginia Tech threat. He engaged in heated and profane criticism of the changes Moser had implemented at the Utility. He expressed the feeling that someone was out to get him. He told Schodron that he had intimidated co-workers at a prior job with a fake bomb. He once told Moser he would take out anyone who tried to take his house for a construction project. All of this coming from a man who was so unnaturally disturbed by unwelcome changes at work that he would shake uncontrollably. Any reasonable person would have concluded from this that the Grievant was serious in making his threat against the people in the office. Having reached that conclusion, the Village could hardly be expected to continue to employ the Grievant, particularly not as the principal guardian of the public water supply.

The arbitrator should reject the Grievant's efforts to recast his comments as some sort of joke, or an innocent expression of his desire to see the upper management fired. No one would use these words to express that thought. He was clearly stating that the people in the office should be physically harmed. The Grievant's explanation lacks credibility, both because it is implausible, and because he himself lacks credibility. The Village reminds the arbitrator that the Grievant denied making any threats when he spoke with Murphy, only moments after admitting them to Lt. Schodron.

The arbitrator should likewise reject as irrelevant the opinion testimony offered by various co-workers and former co-workers, to the effect that the Grievant was not a violent person. The testimony seeks to have the arbitrator conclude that their perception of his character makes it likely that he acted in conformance with his perceived character. That is

not a permissible inference, much less a reliable one. These persons may be sympathetic to the Grievant, but they are not competent witnesses, and their testimony can be given no weight.

In conclusion, the Village amassed substantial evidence of a serious threat of violence to its workers from a disgruntled colleague. The Grievant made a shocking comment expressing his belief that a shooting rampage was likely. A short time later, he made it a point to boast about his shooting prowess. This was a pattern of behavior that was clearly deliberate, and intended to intimidate his co-workers. It is classic verbal violence, and under the well known and reasonable zero tolerance policy, the choice of termination as a penalty was clearly within the sound discretion of the employer. The arbitrator must apply the policy as it is written, and should not substitute his judgment for that of the employer. Accordingly, the grievance should be denied.

The Position of the Union

The Union takes the position that the Village grossly overreacted to an admittedly inappropriate remark by the Grievant. This remark was spontaneous and general, made in response to a co-worker's question about the Virginia Tech shootings. It was made one time, in private, and was completely isolated from any further discussion. The two men carried on with small talk and discussions of work after the discussion, and the Grievant did nothing to follow up on the comment.

The Grievant's comment, while completely inappropriate, simply cannot be characterized as any kind of serious threat of violence. It was an outburst by a man who was deeply frustrated with changes in his work life, and having terrible trouble adjusting to those changes. However, the remark was unconnected to any acts or conduct that might indicate a serious intent. The first time anyone asked him about the remark, he twice said it would never happen. The fact that he did not mean it as a threat is shown by his confusion when Murphy said he was being placed on leave for making threatening statements. He had no idea what she was talking about, and asked several times "What statements?" He never viewed his remark to Tonn as a threat against anyone, and so did not realize that that was what Murphy was talking about.

The Union argues that the Village rushed to judgment on the basis of suppositions and misinformation. The entire decision making process was undertaken with the Virginia Tech tragedy unfolding in the background, and that helped fuel an overreaction. Prior to having any report from the investigation that was supposedly going to establish the facts, Murphy ordered all of the locks changed, distributed information about the Grievant's vehicle, and told people to be on the lookout for him. Every one of those steps creates the perception that the Grievant is a dangerous man, and sends the message to co-workers that they should fear him. All of this in response to an isolated comment by a long term employee with absolutely no history of violence.

The investigation conducted by the Village omitted the most basic due process rights for the Grievant. Never once was he directly asked about his comments or given some opportunity to explain himself. Lt. Schodron did not tell him precisely what he was investigating. Murphy, who decided to terminate the Grievant, never even spoke with him. Alone among the witnesses, the Grievant was not asked to provide any written statement. His only input came at the termination meeting, when he was presented with a letter discharging him and told he could opt to resign if he preferred.

Murphy's discharge decision was largely based on the contents of Lt. Schodron's report, but that report is replete with misleading, prejudicial and ultimately irrelevant information. The report repeatedly refers, in capital letters, to a "BOMB." This was, in fact, a joke device the Grievant cobbled together years earlier at a different workplace, which one of his co-workers said looked like a bomb. This is completely innocent, but the inflammatory word was included in the police report, and Murphy admitted being influenced by it. In this same vein, Lt. Schodron reported finding a shotgun shell in the Grievant's work van. When asked about it, the Grievant gave a perfectly reasonable explanation, but this detail was still included in the report, adding a reference to weapons and weaponry for no apparent purpose. The most egregious example is the audiotape found in his office, supposedly titled "Die". No explanation is given, other than it was in his office, and was in plain sight. This makes it sound quite sinister, until one realizes that the report is wrong, and that the title is actually "Die In Plain Sight", a popular murder mystery. Again, there is no reason for a police report to include the fact that a work of popular fiction was found in someone's office, but it adds another disturbing sounding element.

Another completely irrelevant point woven into this case is the Grievant's comment about relaxing by shooting his pellet gun. Hours after the initial comment, Moser noted the Grievant's hands shaking and told him he could finish his paperwork the following day if he was feeling better. The Grievant explained that the shaking was just due to work stress, and that within five minutes of getting home his hands would be steady enough that he could shoot a pattern the size of a dime. The Village distorts and twists this comment into some type of threat, when it was simply run of the mill office chatter. The Village relies on this comment, the audiotape, the shotgun shell and the "bomb", to paint the Grievant as some sort of depraved madman. Yet every employee of the Village who had known the Grievant for any length of time offered testimony to the effect that he is a non-violent person, with whom they would be comfortable working. This included the former Chief of Police, a trained law enforcement professional.

The Village has a reasonable policy, but it must be applied reasonably. Granting that the Grievant's comment about the Virginia Tech tragedy was wholly inappropriate, it was a comment and nothing more. If it called for discipline, it called for discipline in proportion to his actual conduct. A broad zero tolerance policy, such as the Village's, must be able to distinguish between an employees who shakes his fist during an argument, and one who punches someone with his fist. Likewise, it must be able to distinguish between a single isolated comment, unaccompanied by any threatening action or further comment, and a genuine threat of violence.

DISCUSSION

The Grievant was employed by the Village for nine years, and had a clean disciplinary record until he was terminated by the Village for violating the Workplace Violence policy. The policy defines “violence” as “any act of physical, verbal, or psychological threat or abuse, intimidation, assault, or trauma on an individual.” For verbal violence, the making of threats, the policy defines a “threat” as “any words or actions involving an intent to harm an individual or property.” The policy provides that any employees who “engage in conduct or behavior that is verbally, physically, or psychologically threatening or intimidating, or who carry or use any weapons in the workplace may be subject to termination for the first offense.”

The Grievant’s offense was the making of a comment to a co-worker, who asked if he had heard about that morning’s shootings at Virginia Tech. There is some variation in the recollections of his response, but in essence he replied “Yes. That might happen here soon. There’s some people in the office who need to get it.” That was the end of the discussion of Virginia Tech, and the two men moved on to other subjects.

The Village had members of the Police Department conduct an internal investigation, which established that the Grievant had made the comment. The Village Manager determined that the threat was serious, and in so deciding was influenced by the following additional information from the Police Report and witness statements:

- The Grievant’s job responsibilities were changing, and he was bitterly opposed to the changes.
- The Grievant was under a great deal of stress, which manifested itself in uncontrollable shaking of his hands.
- The Grievant made a comment later in the day about relaxing by shooting, and stated that he could shoot multiple rounds into a pattern the size of a dime.
- The Grievant had made a comment to the same co-worker a month earlier about feeling that someone had been out to get him for three or four years.
- The Grievant told Lt. Schodron during the investigation that he had once made a bomb at a previous place of employment, and that people then left him alone.
- The Grievant had a shotgun shell in his work van.
- The Grievant had an audiotape entitled “Die” in plain sight in his office.
- The Grievant never expressed any remorse nor made any apology.
- Some of the Grievant’s co-workers expressed anxiety about their safety after he was placed on administrative leave.

While these factors were highlighted in either the Police Report or the Village's argument, and can be made to look damning, many of them do not hold up under scrutiny.

The most prominently argued action in this case, other than the Virginia Tech comment itself, was the Grievant's later reference to being able to shoot a pattern of rounds the size of a dime. The Village policy includes in its list of warning signs of violence: "Individual drops menacing hints about his/her knowledge of firearms." However, the Grievant's comment was not menacing in context. His supervisor noticed his hands shaking, and told him he should finish his paperwork the following day if he was feeling better. The Grievant replied in effect that as soon as he was out of the workplace and got home, his hands would be steady enough to shoot a gun with precision. It was not he who initiated the exchange, and if he was seeking to menace either Moser or Tonn, he would hardly have told Moser that he was using a pellet gun for his target practice. This observation goes to the Grievant's intention in making the comment about taking target practice. It does not address the comment's effect on others, which is discussed below.

The Village also places great emphasis on the Grievant's reference to having made a bomb at a previous workplace, and having boasted of using it to intimidate his co-workers. The record is fairly clear that there never was any bomb, just a device that had no function, but contained lights and other effects. The reference to the bomb was, according to the police report, made following the Grievant having several times repeated that he wished he had been left alone, and then laughing and stating that he had built a bomb at a former workplace and then everyone had left him alone. As the Grievant belatedly realized, this was a very stupid joke to make to a policeman in the course of this kind of inquiry, but it takes a great deal of reinterpretation to turn it into the sinister and dangerous comment that the Village portrays in its argument. That is not to say that receiving a police report with the word "BOMB" in capital letters in several places would not heighten the concern of any reasonable person reading the report. It is to say, though, that the Grievant's comment, in context, is best understood as a poor joke, not a threat or a boast.

The Grievant's asserted lack of expressions of remorse or making of an apology is, as the Union points out, difficult to attach great weight to. As soon as the investigation started, the Grievant was ordered to stay away from Village property and not to have any contact with any Village employees, an order which he obeyed. The only contact he had thereafter with any Village employee, other than Lt. Schodron, was when Murphy called him in and fired him. Thus from the point at which he would have known anyone was upset with his comment, to the point at which he was terminated, he had no contact with anyone to whom he could express remorse or offer apologies. The order to keep off the premises and stay away from other employees was entirely understandable and justified, but as a practical matter it prevented the Grievant from expressing the remorse the Village says would have demonstrated his good faith.

Another point influencing the Village's termination decision was the fact that some co-workers had expressed concern about working with the Grievant if he returned to the job. I do not discount this, but it is difficult to assess the source of their concern. While a given person may not have any particular concern as a result of the initial comment, once the Grievant was placed on leave and knew his co-workers had reported him, there might be concern that he would be angry over being turned in. It is also hard to say how much their anxiety over the Grievant was influenced by the fact that the Village removed him from his job, distributed his vehicle information and told them to be on watch for it, promised increased police patrols around their houses and changed all of the locks on Village buildings. Each of those is a perfectly reasonable safety step, but each sends an unmistakable message that the Village considers the man to be dangerous. Without in any way criticizing the Village Administrator for taking these steps, it is nonetheless difficult to sort out after the fact how much of the fear is due to the Grievant's comment, and how much is due to the Village's reaction.

The Village does not argue over the importance of the shotgun shell found in the Grievant's work van, nor does it place any particular stress on the audiotape "Die" supposedly found in his office. Both are completely innocuous as it turns out, but both are separately mentioned in the police report, and add to the flavor of violent imagery that permeates the report. For all that the report is filled with alarming references to shooting and ammunition, bombs and sinister sounding audiotapes, the only thing of real substance in all of that is the original reference to Virginia Tech. This is not a criticism of Lt. Schodron's thoroughness in compiling his report, but it does highlight the danger of any conclusions based on simply reading the report.

Discounting the inflammatory but irrelevant factors, the Village was nonetheless faced with a serious question of the Grievant's intentions and what risk, if any, he posed to co-workers and others. He was plainly under a great deal of stress, and not dealing with it particularly well. He was plainly upset with the management of the Village over the changes in his work life. He made the Virginia Tech reference. Notwithstanding his testimony that the reference to "some people in the office who need to get it" meant that Haggerty and Murphy deserved to be discharged, I agree with the Village that it is more reasonable to interpret it as stating the opinion that they deserved to be harmed. The Village's policy defines a threat as "words or actions *involving an intent to harm* an individual or property." The first question, then, is whether the Grievant's statement should be understood as seriously intending to visit that harm upon them. The answer to that question depends upon whether one focuses on the Grievant's subjective intent in making the statement, or on how others understood and were affected by his statement.

Just Cause for Discipline

Having very carefully combed through the record, and having closely analyzed the Grievant's testimony, I cannot honestly conclude that he subjectively meant harm to Murphy, Haggerty or any other person. The Grievant's statement was an unpremeditated response to a question. He did not raise Virginia Tech - he was asked about Virginia Tech. There was nothing preceding the comment to suggest the possibility of violence. There was nothing following the comment to suggest the possibility of violence. There is nothing in the police report or in the history of his employment to suggest that he has been or is a violent person. While he later expressed familiarity and even expertise with weapons, expressing familiarity with rifles is not per se evidence of a predisposition to violence. It is, in fact, commonplace in workplaces in a state like Wisconsin, and his comment does not stand out as something other than the normal course of conversation. This statement was in a separate and unrelated conversation, initiated by Moser's comment about his shaking hands, and was reasonably responsive to that comment. When asked directly about his original statement, the Grievant readily admitted it, immediately attributed it to stress and stated that it would never happen. I am persuaded that what happened here is that the Grievant, out of stress and frustration, spontaneously blurted out a grossly inappropriate comment that he never had any intention of acting on. Focusing solely on the Grievant's state of mind, his statement does not meet the "intent to harm" element of the policy.

This policy, however, cannot be read as solely concerning itself with the Grievant's subjective state of mind. The policy punishes "Employees who engage in conduct or behavior that is verbally, physically, or psychologically threatening or intimidating..." By looking to "conduct or behavior" that is "threatening or intimidating" the policy responds to the objective acts of the employee, and by implication, to the reasonably foreseeable reactions of others to those acts. The Grievant was known to be intensely hostile to management's intention to merge the utilities. He was known to be under a great deal of stress. He was known to have a nervous and somewhat peculiar affect, and to shake uncontrollably when under particular stress. He knew this, as did all of the other workers and managers with whom he was involved on a daily basis. Thus when he said of the Virginia Tech massacre "That might happen here soon. There's some people in the office who need to get it." any reasonable person would have understood the remark to convey that a shooting spree might occur involving the managers who had been making his life miserable by changing his job. The reasonably foreseeable result of making this statement was to alarm others and, to varying degrees, the statement *did* alarm Tonn, Moser, Haggerty and Murphy. It made them feel less secure in their physical safety on the job. In short, his conduct in making that statement made them feel "threatened" and "intimidated." That is part of what the policy prohibits.

While the Grievant did not subjectively intend to do harm to any co-worker, the words he used created worry and a measure of fear among other Village employees. The Village's Workplace Violence policy, reasonably understood, prohibits the doing of harm, the intention of

doing harm, and creating the apprehension of harm. These are three different things, and creating the apprehension of harm is plainly a less serious offense than the other two. It is, nonetheless, an offense under the policy. Violation of a valid work rule is universally understood to provide just cause for discipline, and I therefore conclude that the Village had just cause to discipline the Grievant. The question then becomes whether the degree of discipline – discharge – was also consistent with a just cause standard.

Just Cause for Discharge

The Village's policy is styled as a zero tolerance arrangement. The Village asserts that there is no prior case under the policy and thus no proof that the Village is not committed to discharging any and all employees who violate the policy, to whatever degree. On the other hand, the policy is worded in such a way as to provide a range of disciplinary penalties for the Village's use, and there was unrefuted testimony that a lineman in the Electric Utility had engaged in threatening behavior and violent acts some three years before this incident, and had been given multiple opportunities to improve. It is not completely clear that that behavior took place under the current policy.

A zero tolerance policy on workplace violence is, in the context of the times and the evolving norms of society, reasonable and enforceable. It is not sufficient, though, to simply say that the employer has a zero tolerance for threatening or violent words and actions, without also saying what that means. Certainly it means discipline in every instance, no matter what the nature of the violation. As noted above, though, this policy prohibits conduct ranging from words with the unintended but predictable effect of worrying other workers, to actual acts of physical violence against others. Those are vastly different things, and would normally be expected to yield different disciplinary consequences. In order to reconcile a policy this broad with the mutually agreed just cause provisions of the contract, if the employer intends that the only penalty for all violations will be discharge, there must be clear notice to the employees, or other evidence showing that all employees understand it as such.⁴ / ⁵ There is no such evidence here.

⁴ In recent years, actual violence, except in rare circumstances involving substantial provocation and/or self-defense, has almost always been understood to expose an employee to discharge, no matter what the wording of the employer's policies.

⁵ The Village analogizes this case to my Award in Appleton Mills [A-57890 (Nielsen, 3/00)], where a threat of violence unaccompanied by any actual conduct led to a discharge, and the discharge was upheld. Appleton Mills does stand for the proposition that verbal threats may suffice to support a discharge, as they may under the Village's policy here. It is factually distinct from this case, but the distinctions are instructive. In Appleton Mills, the employee initiated an angry exchange with two co-workers, and escalated to include clear threats, including a reference to already having the materials for deadly violence – the trench coat and AR-15 – on hand. The employee aggressively raised the specter of the Columbine massacre, linking it to his own intentions. In this case, the Grievant responded to a question about the Virginia Tech shootings with a wholly

The Grievant blurted out a comment that would have caused any reasonable person to investigate further, in order to determine whether he was conveying a serious threat of harm. That investigation did not develop any information that should have led a reasonable person to conclude that the Grievant intended violence, or was a risk for violence. The fact that the Village Administrator did not arrive at that same conclusion may be in part due to her decision not to speak with the Grievant and give him some meaningful opportunity to present his side of the story before terminating him. That is not to say that the Village's overreaction was entirely its own doing. The Grievant is not an innocent victim here. Having made a comment that would reasonably be understood as a threat of violence, the Grievant himself set the stage for the later strong reactions to the police report of his comments about being able to shoot a pattern the size of a dime, and having once built a bomb, as well as his possession of otherwise innocuous items like a shotgun shell and a murder mystery. Each of these comments and items is capable of being innocently explained, and I believe that each has been innocently explained. The cumulative effect of all of this was, however, to present the situation as far more threatening and dangerous than it truly was.

I agree with the Union that the penalty of discharge is out of proportion to the Grievant's actual conduct and history, and that the policy as articulated to employees does not mandate termination as the penalty for every violation. At the same time, the underlying aims of the policy are important enough to the Village and employees alike that a significant suspension could be justified for even an unintended violation. In this specific case, given the Grievant's degree of fault in setting the stage for the Village's reaction, I conclude that a reinstatement with an offset for what would normally be considered a significant suspension would nonetheless constitute something of a windfall to him. Without in any way purporting to define a disciplinary standard for future cases, I conclude that the appropriate balance between the Village's violation of the just cause standard and the Grievant's egregious lack of common sense is to reinstate him to his former position, with half of the period between his termination and the date of this Award treated as an unpaid disciplinary suspension.

On the basis of the foregoing, and the record as a whole, I have made the following

inappropriate comment that could reasonably be viewed as a threat, although not a threat to the person he was speaking with. As previously noted, the Grievant's statement was completely isolated and offhand. It was not part of an argument, and it was not part of a tirade. In Appleton Mills, the employee had a history of discipline for initiating confrontations with co-workers. The Grievant here has no such history. Most significantly, the employee in Appleton Mills lied about his statements, evincing a guilty state of mind and eliminating any question about whether his intentions had been serious or not. Here, the Grievant admitted his comments immediately, and explained them, including twice stating that he was not serious and would never do any harm to anyone. I have concluded that these denials were sincere. It is impossible to generalize about threat cases, because they are fact specific. However, it is fair to say that this case and Appleton Mills are distinct from one another on virtually every determinative point.

AWARD

1. The Village had just cause to discipline the Grievant, Mike F*****.
2. The Village did not have just cause to terminate the Grievant, Mike F*****.
3. The appropriate remedy is to (a) immediately reinstate the Grievant to the payroll at the appropriate rate of pay for his former position, and reinstate him to his former position following a reasonable period of reorientation, if necessary; (b) convert the termination to an unpaid suspension for one half of the time between the date of the discharge and the date of reinstatement to the payroll; and (c) make him whole for the losses attributable to the period of the discharge, less the period of suspension.
4. The undersigned will retain jurisdiction over this matter for a period of sixty days following the date of this Award for the sole purpose of resolving disputes over the remedy.

Dated at Racine, Wisconsin, this 7th day of April, 2008.

Dan Nielsen /s/

Daniel Nielsen, Arbitrator

APPENDIX "A"

**INTERNAL INVESTIGATION FOR VILLAGE OF SLINGER
ON EMPLOYEE MIKE F*******

April 17, 2007 SLINGER POLICE DEPT Incident #2007-0609

Beginning of Incident #2007-0609, SLINGER POLICE DEPT LT SCHODRON/952 reporting. On April 17, 2007 at approximately 4:42 pm, I received a phone call from SPD CHIEF SCHMIDT/951 who indicated that he had spoken with MAUREEN MURPHY about a threat that was made by MIKE F***** from the VILLAGE OF SLINGER WATER UTILITY. SPD CHIEF SCHMIDT/951 informed me to contact GREG MOSER, MATTHEW TONN and MAUREEN MURPHY regarding this threat and to handle it accordingly.

Upon completing my conversation with SPD CHIEF SCHMIDT/951, I did make contact with GREG MOSER, the SUPERINTENDENT of PUBLIC WORKS. Upon speaking with GREG MOSER he indicated that MIKE F*****, on Monday's date, April 16, 2007, was extremely shaky when he came in at the end of his shift hours and was attempting to complete his time sheet. GREG MOSER described MIKE F***** as being unable to control his hands for he was shaking so severely he could hardly pick up a pen or figure the calculation for his time sheet. GREG MOSER stated during this time he asked MIKE F***** if he was okay and MIKE F***** responded stating, it was this place. MIKE F***** continued indicating that it will stop (5) five minutes after I get home and further that he would be able to shoot into a target in a pattern within the size of a dime. GREG MOSER did ask MIKE F***** what he used to shoot with, in which MIKE F***** stated he used a pellet gun. GREG MOSER said that later that same evening MATTHEW TONN informed him MIKE F***** also made a strange statement earlier in the day. MATTHEW asked MIKE F***** if he had heard about the VIRGINIA TECH shootings that had occurred on the same day and MIKE F***** in response to that question answered, "People in the front office were needing to `get' it." I informed GREG MOSER that I was going to be making contact with MATTHEW TONN in reference to obtaining further details on the earlier conversation. I further informed GREG MOSER I would be contacting MAUREEN MURPHY regarding this situation and would contact him back later this evening.

At approximately 5:16 pm, I made contact with MATTHEW TONN and asked him what he had observed Monday, April 16, 2007 with MIKE F***** MATTHEW stated that Monday while he was working with MIKE F*****, he

asked MIKE F***** if he had heard about the VIRGINA (sic) TECH shootings. MATTHEW TONN indicated that MIKE F***** responded with, "This might happen here soon. There are some people in the front office who need to `get' it." I asked MATTHEW TONN if MIKE F***** elaborated any further in regards to who he was referring to, in which MATTHEW indicated he did not. MATTHEW TONN indicated that at this time, they were in the WATER UTILITY van en route to do some lowering of, what he described as curb stop boxes. MATTHEW TONN stated he became concerned as he felt this was an improper response due to the seriousness of the activity that was occurring at VIRGINIA TECH. He was concerned that something may happen with MIKE F***** and MATTHEW TONN became extremely nervous about this statement. MATTHEW TONN also indicated that he was in the proximity of MIKE F***** and GREG MOSER, upon MIKE F***** entering the office to complete his time sheet, and also described MIKE F***** as being extremely shaky while attempting to complete his time cards. MATTHEW indicated that he heard GREG MOSER ask MIKE F***** if he was okay and GREG MOSER further noted to MIKE F***** that he could finish the time cards tomorrow if he was unable to finish them today. MATTHEW TONN also heard MIKE F***** make the comment about going home, shooting his gun and after he did that, he would feel okay. I informed MATTHEW TONN I would be making contact with him at a later time and noted that I would most likely be requesting to obtain a written statement regarding his observation.

I made phone contact with MAUREEN MURPHY, who advised that on today's date GREG MOSER approached her with the concerns that he had about MIKE F*****. MAUREEN MURPHY indicated she was concerned about the threats that were made by MIKE F***** and wished for the Police Dept to intervene in regards to this matter. I informed MAUREEN MURPHY I had already spoken with GREG MOSER and MATTHEW TONN in reference to the statements made. I also informed her I felt it would be in our best interest to meet with MIKE F***** on tomorrow's date when he came into work, in regards to his statements and at that point evaluate the nature of the statements. I further informed her that I would also conduct an investigation into obtaining any further comments made that may not have been reported up to this date. Shortly after this MAUREEN MURPHY indicated that at this point her intent would be to place MIKE F***** on paid administrative leave, pending an internal investigation conducted by our department (the SPD) regarding the threat. I informed MAUREEN MURPHY I would make contact with her after my interview with MIKE F***** and I would stay with MIKE F***** until she was able to join us at the WATER TREATMENT PLANT to conduct any personnel action she felt would be necessary regarding MIKE F*****'S employment. It should be noted that I did inform GREG MOSER of my intent of coming to the WATER TREATMENT PLANT to meet with MIKE F***** the next morning and I obtained MIKE F*****' S starting time at the TREATMENT PLANT.

On April 18, 2007 at approximately 7:00 am, I responded to the SEWER WATER TREATMENT PLANT to meet with MIKE F*****. Upon my arrival shortly before 7:00 am, MIKE F***** was not at the work place. GREG MOSER informed me that normally MIKE F***** would arrive just prior to 7:00 am and should be at the PLANT shortly. GREG MOSER further stated to me that there was some concern in his family with his wife and children in regards to what MIKE F***** may attempt to do. I informed him that we would be informing officers at the Police Dept to conduct extra patrol until we were able to complete further investigation into the statement that was made.

MIKE F***** arrived at the SEWER WATER TREATMENT PLANT. From my patrol vehicle I observed him walk into the TREATMENT PLANT. MIKE F***** waved towards my direction and he appeared to be calm at this point. I did not observe any unusual shaking or signs of nervousness. I made face to face contact with MIKE F***** inside the plant and asked if he would be willing to speak with me briefly. I informed him that I had some concerns, as well as others had concerns, about statements he made earlier and I was requested to come down and see how he was doing. MIKE F***** indicated he was willing to speak with me. I asked him if he would like to have a seat at the table located in the WATER TREATMENT PLANT office area.

I informed MIKE F***** that I was concerned about his health and further indicated I was concerned about his stress that had been observed by other people in the Village. MIKE F***** indicated that ever since the changes had been made, he felt extremely stressed out while at work. MIKE F***** stated he wished he would have been left alone doing his Water Utility job and that they took everything away from him. I asked MIKE F***** what he meant by "they had taken everything away from me", to which he responded with, "everything was taken away." "They had me working here with the Sewage and before I was just responsible for the clean water and doing the reports." MIKE F***** indicated he felt he never had any problems completing the reports and he did not know why they would have taken that responsibility away when he never felt there was a problem. He then continued, "I used to work with fresh water and (then pointing out towards the treatment tank) now I have to work with this crap." MIKE F***** then continued, "Why couldn't they have just left me alone for (7) seven more years." I asked MIKE F***** what was going to occur in (7) seven years, to which he indicated he was planning on retiring in approximately (7) seven years. MIKE F***** further stated he was unsure if he could make it that long, due to the stress he was feeling.

MIKE F***** indicated that he was looking around at other employment opportunities and believed he may just have to leave earlier due to the stress. He was considering moving to the Antigo area even if he had to take a couple of

years off of working. I informed MIKE F***** I could understand how being stressed out can cause health problems and informed him he needed to take care of finding a way to lower this stress prior to having other health problems. MIKE F***** then indicated that he had an appointment set with his Doctor for tomorrow, which would be Thursday, April 19, 2007, due to some concerns with his blood pressure and stated he felt he may be getting ulcers from the stress he was having. MIKE F***** stated he has felt an extreme amount of stress from the time that he starts his workday, which continues until he leaves. I asked MIKE F***** what he did to attempt to relieve his stress, to which MIKE F***** replied he shoots his gun and just started shooting his bow this year as well. MIKE F***** said he felt this was helping him to reduce his stress. MIKE F***** indicated that it was a good time of the year as he could start working on his garden, pulling weeds, and this would also help him reduce his stress. I asked MIKE F***** what kind of gun he usually used when he was shooting to reduce his stress. MIKE F***** told me he shoots a pellet gun and after a couple of minutes of being home and shooting his pellet gun, he felt a great amount of relief from that activity. I asked MIKE F***** if he was a hunter, to which he stated he no longer hunts, although he used to hunt and that he used to hunt for birds and did some deer hunting in the past. MIKE F***** stated he no longer likes to go hunting because he no longer feels comfortable with killing animals.

I asked MIKE F***** about some reports I received regarding his hands being extremely shaky on Monday while he was attempting to complete his paperwork. MIKE F***** stated that the stress has been horrible since the changes and again noted he felt they were taking away all of his responsibilities. MIKE F***** again said he wished they would have just left him alone for (7) seven more years. He did not understand why some of the changes were being made when he did nothing wrong and believed that there were not any complaints or problems with his work in the past.

I asked MIKE F***** about the statement made towards the front office after he was asked on Monday, whether or not he heard about the shootings that occurred at VIRGINIA TECH. I informed MIKE F***** I heard he made a comment that there were some people in the front office 'who need to get it' and that it may happen here soon. MIKE F***** stated, "That was not supposed to get farther then it did." While he shook his head back and forth. I informed MIKE F***** there were several people nervous about that comment. I told him with incidents like Virginia Tech, Columbine and other shootings that occurred, we have a duty to check into the threats that are made and attempt to identify the seriousness of the threat. MIKE F***** indicated he made the comment due to stress and that it would never happen. MIKE F***** continued

stating the stress was due to the changes that were made and felt it was unfair that his responsibilities were taken away. MIKE F***** then laughed and stated he made a BOMB once. MIKE F***** stated he had his BOMB all wrapped up, with lights that turned on and that it ticked. He did this while he was working at the dealership and that nobody bothered him after that.

At that point my cell phone rang and MAUREEN MURPHY called and asked if I was speaking with MIKE F***** to which I stated I was. MAUREEN MURPHY asked if she could head down to the Plant? At this point, I informed her she could start towards our direction and that I was starting to come towards completion. After hanging up the phone, MIKE F***** indicated he overheard the entire phone call from MAUREEN MURPHY. I instructed MIKE F***** that MAUREEN MURPHY would be coming to speak with him after I was done. I then instructed MIKE F***** again that we were extremely concerned about his health and the stress that he was exhibiting to other employees by his actions. I further informed him that this was not good for him or for anyone else.

I asked MIKE F***** if he had any intentions of harming anyone, in which he responded, "that would never happen." I asked MIKE F***** why he would make a statement like that, to which he replied he is just extremely stressed out and again pointed towards the SEWER WATER TREATMENT area, stating, "I have to work with this now."

At this point MAUREEN MURPHY arrived at the TREATMENT PLANT and I immediately observed MIKE F*****'S eyes become glassy and his hands shake. Upon MAUREEN MURPHY'S arrival, I spoke with her briefly outside the room where MIKE F***** was located. I informed MAUREEN MURPHY that MIKE F***** stated he did make the comment although stated he indicated, "that would never happen." MAUREEN MURPHY then made contact with MIKE F***** along with myself present in the room. MAUREEN MURPHY informed MIKE F***** he was being placed on paid Administrative Leave for up to possibly (2) two weeks or more until an internal investigation could be completed. MIKE F***** was instructed that until he was contacted by herself, he should not go to any of the VILLAGE work properties, including the VILLAGE HALL. MAUREEN MURPHY asked MIKE F***** if he understood this, to which MIKE F***** stated he understood. MIKE F***** asked MAUREEN MURPHY why he was being placed on leave. MAUREEN MURPHY advised MIKE F***** that it was because of the statements he made. MIKE F***** then indicated, "What statement?" Upon MAUREEN MURPHY informing him of the threats to the VILLAGE STAFF, he then denied making any statements and again asked what statements. MAUREEN MURPHY then

indicated to him that the threat made to the office and at this point MIKE F***** stated, "He did not remember making any threatening statements". I then informed MIKE F***** that MAUREEN MURPHY was talking about the statements we had just concluded talking about and I informed him that he had told me when I asked him if he was planning on conducting any of the actions regarding his statement that, "That would never happen".

MAUREEN MURPHY again informed MIKE F***** that he should not be on any Village property and not return to work until notified by herself. MAUREEN MURPHY then asked MIKE F***** if he needed anything prior to leaving. MIKE F***** then checked his pockets and indicated that he did not need anything. I walked MIKE F***** out to the area where his truck was parked and informed him that he needed to get his health in order and at this point MIKE F***** indicated to me, "This is probably a good thing, I need some time away." I informed him that he should go to his doctor as planned. I observed MIKE F***** leave the VILLAGE Property.

It should be noted during my entire conversation with MIKE F*****, he did not ask for any Union representation during any point of our discussion.

After MIKE F***** was released from the SEWER WATER TREATMENT PLANT I returned and spoke to GREG MOSER and MATTHEW TONN in reference to the threat that was made. Upon speaking with MATTHEW TONN, I asked if he was willing to give me a written statement in regards to what he recalled from MIKE F*****, on April 16, 2007. MATTHEW TONN provided a 2-page written statement and did again reiterate to me what was said between himself and MIKE F*****. MATTHEW TONN again told me his concerns as to the threat made and indicated he did not feel it was an appropriate comment in regards to the question that he asked him when asking about the VIRGINIA TECH incident.

I also spoke with GREGORY MOSER who completed a 2-page statement in reference to his observations and what MATTHEW TONN informed him of. During my continued discussion with GREG MOSER he also indicated that a couple of years prior to today's date, unknown exact date or time, that MIKE F***** had been dealing with a State Highway Project in the vicinity of his residence. GREG MOSER indicated that at that time the State of WI may wish to take his house for the highway work and that if this would occur that he would go on the rooftop and take out as many of them as he could. GREG MOSER indicated that he did ask MIKE F***** at that time why he would do something like that, and that he was aware that MIKE F***** had friends that were Washington County Deputies. MIKE F***** made a comment to him

after that that those are the ones that should know better to come and try to take my house. Statements by MATTHEW TONN and GREG MOSER are attached with this report.

I checked the interior of the work van used by MIKE F***** during the course of his employment. In the center console of the work van I found a red, 12-gauge AA Winchester shotgun round, unfired. This was taken into my possession at 8:30 am to be later secured at the SPD in locker #19 with my personal lock so I would maintain access to it if needed. No other items of interest were found in the work truck.

At approximately 12:30 pm on this same date, I spoke with TERRY MERGENER from the DPW at the DPW GARAGE. Upon speaking with TERRY MERGENER he indicated that he did observe MIKE F***** to be shaky and very nervous since the changes were made in his job. TERRY MERGENER indicated that he felt that MIKE F***** was suffering from some depression as of the last couple of weeks, although never made any type of comments or threats in his presence. TERRY MERGENER further described MIKE F***** as having uncontrollable shaking with his hands and that he was not acting his normal self. TERRY MERGENER did not provide any further information.

I was unsuccessful in making contact with any of the other employees on this date.

On April 19, 2007 at 10:30 am, I obtained the key for the office located at 741 Industrial, commonly referred to as WELL #5, where MIKE F***** worked out of for his water utility duties. While checking that office, I located the March 19th, 2001, 3rd version of the VILLAGE OF SLINGER PERSONNEL MANUAL in the right lower desk drawer. This manual was located underneath a few other miscellaneous articles of paper. I checked the policy for workplace violence in this manual and did observe, on page 37 and continuing through page 38 and page 39, the policy was in fact in place in the manual.

After further checking in the office I located the October 2002 manual in the black filing cabinet which was located on the south wall of the office. It should be noted the desk is on what I am considering the north wall of the office. In this black filing cabinet, in the 3rd drawer from the top underneath several miscellaneous files, I observed the VILLAGE OF SLINGER Personnel Manual and did observe in that manual under pages 26 through page 28 the section regarding 'Workplace Violence' was in fact inside that manual. Copies of the Workplace Violence Section of this manual are attached with this report.

I took several photographs of the room and the location of the manual for a total of 15 photos. Also included in these photographs is a photograph of a cassette book called "Die" in plain sight, which was located on top of the black filing cabinet by the south wall. It appears to have been taken out from WEST BEND LIBRARY with tape 3 being observed in the radio on top of the filing cabinet. These photographs will be attached with this report.

On April 19, 2007 at 3:50 pm, I was able to meet with RODNEY GANNS. RODNEY had informed me that TERRY MERGENER and himself were at MIKE F*****'S house the prior evening and stated they were consuming some beer. RODNEY GANNS indicated that MIKE F***** appeared to be more relaxed then when he was in the work environment. RODNEY GANNS indicated, "They should have just left him alone where he was at." I asked RODNEY GANNS what he meant by that, in which RODNEY GANNS stated that MIKE F***** became upset when the changes were made to his position, that MIKE F***** was fine before the changes were made. RODNEY GANNS indicated that MIKE F***** became stressed out after the changes and observed MIKE F*****'S work attitude to change. He also stated he did observe MIKE F***** was extremely shaky at the work environment in the last couple of weeks. RODNEY GANNS did not provide any observation of any unusual comments or other further details in regards to MIKE F*****.

On April 20, 2007 I checked to verify MIKE F*****'S hire date and located a date of hire of March 29, 1998. I requested to see his personnel file to inquire about prior previous employment and/or any articles to aide in my investigation. I was unsuccessful in locating any application or personal resume in his personnel file. I also observed the signed document indicating MIKE F***** had received and read the 2002 Personnel Manual.

Due to the comment that MIKE F***** made in regards to the potential BOMB while working at the dealership, I contacted the HARTFORD POLICE DEPT and asked if they had any history on file regarding a MICHAEL F*****. I was informed that they did not have any MICHAEL F***** in their current nor their old data base.

I spoke with GREG MOSER on this same date in regards to MIKE F*****'S changes in his duties. I was informed by GREG MOSER that instead of reporting to the WELL #5 OFFICE, MIKE F***** was to report to the SEWER WATER TREATMENT PLANT each morning at the start of his work shift. GREG MOSER was then able to make contact with him and provide any direction that may be needed. At the time he reports for work in

the morning, prior to the start of his work day, GREG MOSER also indicated that they were in the process of conducting some cross training along with the new hire MATTHEW TONN as they wanted more than one person familiar with the water portion of the Village Utilities. He did indicate that it appeared about the time that he received his promotion that the problems were noted with MIKE F*****, and it appeared that MIKE F***** was having a difficult time adjusting to the changes that were made in his daily work routine. GREG MOSER indicated that he believed that the cross training would have helped MIKE F***** in relieving him of some of his responsibility in case he wished to take time off. This way another person would be able to handle any emergencies as they came in and also weekends would be able to be freed up so the same person would not have to be on call every weekend.

On April 21, 2007 at 4:34 pm, I spoke with MIKE F***** at his residence at 4517 STH 144. Upon my initial contact with MIKE F***** I asked him how he was doing and MIKE F***** advised that as long as he was keeping busy that he felt pretty good. I did not observe any shakiness or similar appearance of stress that was observed on April 18, 2007 nor any similar stress that was described by any of the other workers in the VILLAGE while MIKE F***** was at his place of employment. I specifically asked MIKE F***** about the shotgun shell that was found in the work van. MIKE F***** indicated that he found it in what he thought was possibly the parking lot or on the street quite some time ago. MIKE F***** indicated that he was not sure exactly if it was on a street or parking lot due to the time frame. He stated he was concerned that some kid may pick it up and did not want the shotgun round to get in the wrong hands, resulting in someone possibly getting hurt. I asked him about the BOMB that he had told me about while we were at the SEWER WATER TREATMENT PLANT. At this point MIKE F***** indicated that it was just a box he had wired up with some old junk that he had located and taped the entire box up with lights and miscellaneous items. MIKE F***** indicated that one of the other employees indicated to him that it looked like a BOMB and that he had initially let that person believe that's what it in fact was. MIKE F***** indicated that he was just tinkering around with some old junk and he originally had no intentions of making anything that looked like a BOMB and again that some people just thought that was what it looked like. He then stated that, "I should have never even mentioned that."

I asked MIKE F***** about some of his previous employment in which he indicated that he had worked for JIM'S SLINGER SERVICE, which I am familiar that it used to be in the VILLAGE OF SLINGER on the corner of W

Washington St and Oak St. MIKE F***** also indicated that he had previously worked for 5 CORNERS, a dealership and further that he had worked for UPTOWN CHEVROLET prior to working for the VILLAGE OF SLINGER.

On April 24, 2007, SPD CHIEF SCHMIDT/951 returned to obtain a further detailed statement from GREG MOSER in reference to his observations of MIKE F*****. In this statement it does indicate that since the VILLAGE BOARD had approved the position of the DPW UTILITIES SUPERINTENDENT that MIKE F***** was having a difficult time dealing with the changes. In this statement GREG MOSER states that even the very small changes in MIKE F*****'S work had been enormously difficult for MIKE F***** to handle. MIKE F***** demonstrated this by not speaking with MATTHEW TONN or himself and further that MIKE F***** often questioned why they were making the changes, making further comments that the changes made were 'stupid', 'a big waste of money' and appeared to be having a difficult time making calculations and conducting his normal work routine.

On April 25, 2007 at approximately 8:55 am, SPD CHIEF SCHMIDT/951 obtained a more detailed statement from MATTHEW TONN in reference to MIKE F*****. MATTHEW TONN had been familiar with MIKE F*****'S demeanor towards these changes and did hear MIKE F***** indicate that the move was "bullshit" and that it was a "fucking waste of money". MATTHEW TONN observed MIKE F***** to refuse to do various jobs that were assigned to him, indicating that it was not his job and was disgruntled with the changes. MIKE F***** would also use the word 'Fuck' at the beginning of several of his comments and stated to MATTHEW TONN that he was looking for a new job. Also noted in MATTHEW TONN'S statement is that MIKE F***** made comments to him around the period when MATTHEW TONN started working for the VILLAGE OF SLINGER this past February, indicating he felt that someone in SLINGER has been out to get him for the last (3) three to (4) four years and he hadn't figured out who it was yet. MATTHEW TONN ended his statement indicating that since the comments were made by MIKE F***** in regards to the gun and what he has noted in his statement as "shooting the Village Hall" that it has made him very nervous, where he feels he has to be constantly watching over his shoulder as he fears for his safety and that believed that nobody should be scared or feel threatened when they go to work. I have no further information at this time.

JRSchodron/952

DASCHMIDT

On April 3rd 2007, while accepting a delivery of Emergency Warning Sirens at the DPW GARAGE, I was standing next to MIKE F*****. MIKE F***** commented to me that he didn't know how much longer he could take this. I asked MIKE F***** what was wrong and he said that he may need to look for a different job, and that they just needed to leave him alone for seven more years. I told MIKE F***** he should have a talk with GREG MOSER, that GREG MOSER is a good guy and maybe he could help him out. MIKE F***** gave me the impression he did not want to do that.

I did not observe MIKE F***** to be shaking, but he did seem upset by the changes taking place in the DPW.

DASchmidt/951