

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VERNON COUNTY

and

**LOCAL 2918, AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES, AFL-CIO**

Case 147
No. 66710
MA-13606

and

Case 149
No. 67023
MA-13714

Appearances:

Ms. Dawn Marie Harris, O'Flaherty, Heim, Egan, Ltd., 201 Main St., P.O. Box 1147, La Crosse, Wisconsin 54602-1147 appeared on behalf of the County

Mr. Thomas Wishman, Staff Representative, Box 2236, Fond du Lac, Wisconsin 54936 appeared on behalf of the Union

ARBITRATION AWARD

On June 7, 2007, Vernon County and Local 2918, American Federation of State, County, and Municipal Employees, AFL-CIO filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance involving a written warning issued to B.S., a member of the bargaining unit. On February 12, 2007 the parties filed a second request with the Wisconsin Employment Relations Commission seeking to have the termination of employee B.S. included within the scope of the Arbitration proceedings. Hearing on these matters was indefinitely postponed at the request of the parties. A hearing was subsequently scheduled. Both matters were heard on October 17 and 18, 2007. The hearing was not transcribed.

Post-hearing briefs and reply briefs were filed and exchanged by December 12, 2007.

This Award addresses the written warning and termination of employee B.S.

BACKGROUND AND FACTS

B.S., the grievant was hired in December, 1991, by the Vernon County Human Services Department, as an Economic Support Specialist. A significant aspect of her job was to determine eligibility for various forms of public assistance. The client load is heavy. The job requires a good deal of attention to detail. ESS workers experience an ongoing daily stream of inquiries, applications, and status changes that require attention. Over the course of time, the nature of the work changed significantly. Rules and regulations have changed as have categories of assistance.

Throughout much of her career, the grievant experienced periods where her supervisors believed that she was not performing her job at an appropriate level. There was an ebb and flow between Ms. S. and her supervisors relative to these concerns. The concerns would be voiced, Ms. S. would respond, and supervision would be satisfied that her performance had come around. Time would pass, and the cycle would repeat.

In November, 1998 the grievant was given a memo by her supervisor, Nancy Thompson advising the grievant that she should not attend a training meeting, but rather spend her time cleaning out case status alerts that had gone unattended, transferring certain cases previously brought to her attention, attending to two specific cases that were not timely, and attending to over 600 cross matches that were pending in her caseload. It was Thompson's testimony that following the memo, the grievant's performance in the targeted areas improved.

On December 19, 2000 the grievant was placed on a Personal Improvement Plan by Thompson. The substance of the plan was to improve performance in the areas of timely case processing, responding to supervisory inquiries into case status, maintaining a log of calls to record contacts with clients. By February 22, 2001 the grievant was advised that she had met her plan, that she had displayed good follow-up, and was encouraged to keep up the good work.

By March 27, 2001 the grievant found herself on a second Performance Improvement Plan. This plan addressed a need for more timely action on case developments. The plan also addressed a need for better documentation and case comments. Case comments are notes taken in the file of cases that update and document the status of developments in a case. They serve to preserve memory of events, i.e. telephone conversations, and provide a record of the status of a case which permits a third party reader to know what is going on in a case. If a case handler is on vacation or otherwise absent, a co-worker can pick up the file and handle a development that occurs.

On September 19, 2001 a meeting was convened involving the grievant, her Union Steward, Nancy Thompson and Linda Nederlo, Human Services Director. The grievant was given a verbal warning relative to her work performance. The warning document begins;

“This is to inform you of the fact that missed deadlines will no longer be tolerated....”The memo chronicles a missed deadline and recites numerous requests and follow-ups that were either missed or ignored. The memo concludes that “...further disciplinary action will be taken should actions such as those listed continue.”

The warning was not grieved. On April 25, 2002 Thompson sent the grievant the following memo:

To: B. S.

CC: Linda Nederlo, Director and Personnel File

From: Nancy Thompson

Date: 04/25/02

Re: Follow-up to September 19, 2001 Meeting

I want to express what I believe has been happening with work deadline issues and follow-up issues since the meeting, which was held between you and me (with Union Representation and Linda also present) on September 19, 2001.

- ❖ Work deadline issues: To my knowledge there has been no significant/out of the ordinary problems with meeting work deadlines* There has been great improvement in this area!
- ❖ Follow-up issues: When you have been given a directive, i.e. “please take care of this alert”, etc. the follow up from you to me has been excellent!

You have been doing a great job with your caseload and continue to have a good rapport with the participants of the programs we administer. Keep up the good work!

*still need to get caught up on crossmatches

By October, 2002 Thompson was again dissatisfied with the grievant’s performance. That dissatisfaction led Thompson to send the grievant a memo titled “Inadequacies in Job Performance and Excessive Visiting”. The memo indicated that the grievant had been deleting alerts (prompts indicating that some action need be taken) without taking the directed action and further indicated that errors have resulted. The grievant was directed to respond in writing as to why she does so, and was further directed to cease the practice. The memo goes on to criticize the grievant for spending too much time visiting with other staff to the detriment of

her job duties. The memo asked if the grievant needed training or assistance with any aspects of her work.

The grievant replied with the following;

TO: Nancy
CC: Linda
From: B.
Date: October 12, 2002
RE: Alerts and Excessive Visiting

It has been my practice to copy all alerts and then I work from the copy of the alerts. I find it much easier to do it this way. I find it easier rather than going back to alerts each time I need to work on them. If I have not taken any appropriate action this is not intentional and rather oversight. I will correct any over payments or underpayment. On one of such of the handouts you had given me I had already completed a review before you gave them to me and had noted that I needed to do a supplement. If you would like to see the date of the review it is in the file.

If is your policy that alerts will not be deleted until worked on I will follow that policy.

The response goes on to address the criticism relating to visiting. The concerns relating to deleting the alerts is similar to the concerns expressed in 1998, in that both relate to the timeliness and accuracy of the grievant's approach to work. The response indicates that the grievant did not believe additional training was needed, but asked for information on handling overpayment. A sheet on overpayment was created and provided to the grievant in response to her request.

In February, 2003 Thompson recommended that the grievant not attend a training session because she had fallen behind in her work. The grievant was advised that there were concerns with her case handling.

The record is silent with respect to the grievant's performance between February, 2003 and February 2005. Her performance evaluation of February 11, 2005, while indicating a need to improve productivity and efficiency, and a lack of documentation, indicated that she was meeting Agency standards. A follow-up evaluation, done on May 31, 2005 shows all areas of concern improving. Good improvement is noted in a number of areas. Thompson, the evaluator notes that "...complaint phone calls from clients have been drastically reduced !..." The evaluation is encouraging. Witness testimony is that the grievant had buckled down and was doing her job.

On December 12, 2005 Thompson sent the grievant a memo indicating that a Medicaid eligibility case had not been done properly. The memo is critical of the grievant for mishandling the income verification in the matter, and also for the file entries. The memo refers to a second case and indicates the case was not handled timely. The grievant is directed to follow-up on the matter and get back to Thompson. On December 19 another memo was issued to the grievant indicating that a number of case reviews were overdue. One of the concerns referred back to a case noted on December 12, where the eligibility of a BadgerCare recipient was in question. Delay in reviewing the status of the recipient resulted in receipt of benefits to which the recipient may not have been entitled. It was Thompson's testimony that the grievant had been directed to get the matter done. There was no explanation as to why it was not.

On February 8, 2006 Thompson provided the grievant with her annual performance evaluation, which indicated that the grievant met standards. Comments were positive. There were no negative comments, and the grievant was given an "exceeds standards" rating on Customer Service.

On July 7, 2006 the grievant was given a verbal warning for failure to follow procedures, and for the quality of work produced. The warning was confirmed in writing and placed in her personnel file. Excerpts from the warning included the following;

Nancy has received numerous complaints from clients not being able to get a hold of B. She has documented 5 incidents since March, 2006. Clients report that when they leave a message for B. asking you to phone them, B. has not returned their phone calls. Per the clients' conversation with Nancy, the issues that clients needed to talk to B about involved reporting jobs, household composition, questions about MA coverage, questions about FoodShare and needing to schedule appointments. Client reporting is required for on-going assistance because changes in a client's status may impact the amount of assistance that person receives. Nancy has documented one face-to-face contact with a client regarding a client that reported that she left several phone messages for B. and never received a return call to discuss the MA program and her case closing. Nancy has documented a face-to-face contact with a client that lost her monetary benefit on July 1, 2006 as a result of not having a meeting with B. That client reports that she left messages for B. and did not receive a return call. There are no case comments on this case in the system regarding the situation dated June 29, 2006.

Untimely case comments on cases. On 12/02/2005 a meeting was held in the Director's office. We reviewed the requirements of documentation in CARES (CMCC). Pamela Eitland, Nancy Thompson, B., and Debra Moran (per B.'s request although they were advised by the Director that this was not a discipline meeting) were present in the meeting. Since then, Nancy has completed case monitoring as part of the requirement of the ESS Supervisor's job duties. A

pattern has been established of continued untimely entry of CMCC. The pattern includes, for example, case comments entered on 06-21-06 for a contact dated 06-16-06. Case comments entered on 05-11-06 for a contact on 04-05-06. Case comments entered on 05-11-06 for a contact on 04-17-06. Case comments entered on 05-02-06 for a contact on 04-21-06. There is a state requirement directing all workers to enter case comments within 24 hours of the contact. Case comments are essential for the monitoring of cases and to track notices given by recipients of economic assistance.

This manner of performance by a staff person questions the ability, capability, and reliability of the department to conduct business in a professional and competent manner for which the department receives funding to continue services. Incomplete work product impairs the positive public relations that the department is striving to obtain. B. involves other staff in disputes that ultimately cause disruption in the unit and agency as a whole.

. . .

Action to be taken:

x Verbal Warning Written Warning 3-day suspension
Termination Other:

2. The following corrective action must be taken by the employee:

- B. will have prompt follow-up to phone messages. If unable to reach client after three attempts (internal department policy) then document in CARES/CWW.
- B. will review the Case Comments training document and complete the learning activities at the end of the document and will review BWSP Operations MEMO 00-25 titled "Documenting Sensitive Information in CARES and access to CARES information". On July 24, 2006 B. will set up a time to meet with Nancy to review the learning activity answers and discuss any questions that might arise during the review of the documents. B. will complete this corrective action in full by July 28th, 2006.
- B. will ask for guidance from her supervisor when questions or concerns arise.
- B. will follow directives.

Consequences should incident occur again:

Further performance issues will include action up to and including termination.

It was the grievant's testimony that she did not see this coming. She indicated that she had not received feedback or an indication that there was a concern in this area. She indicated that she did not know that things were going wrong. She replied that she did not agree with the content of the warning, and further that she could not be responsible to return calls that she never received. No grievance was filed over this matter.

On October 6, 2006 the grievant was given a written warning over matters the employer regarded as relating back to the previous verbal warning. The written warning included the following;

Your behavior/actions have been found unsatisfactory for the following reasons:

Lateness	Insubordination	x Failure to follow procedure
Damaged equipment	Rudeness	Quantity of work produced
Refusal to work overtime	Fighting	X Quality of work produced
Absenteeism	Language	Policy Violation Other

Supervisors Complete Description of Violations:

Nancy continues to receive complaints from clients reporting that they cannot reach nor do they receive return phone calls from B. Complaints have been received from other agencies as well.

August 31, 2006 Personnel from BadgerCare Unit of Electronic Data Systems (EDS) [EDS serves as the fiscal agent for Wisconsin Medicaid], phoned on this date and stated that B. had not responded to their phone calls regarding questions on case number --- Personnel from EDS stated that they had phoned B. on August 25th and August 30th and had left voice mails for B. asking her to return their call. EDS personnel stated that she had also emailed B. in regard to another case and had also not gotten a response on that issue. When Nancy spoke with B. about this issue on August 31, 2006 B. stated that she did not recollect getting any phone calls from the personnel at EDS in regard to this matter.

September 21, 2006 Individual in case number 7 --- phoned and told Nancy that they had phoned B. numerous times and left messages “almost every day for two weeks and had not heard back” from B. They applied for FoodShare on August 21st, 2006 and, as far as they knew, had turned in all needed verification. When Nancy checked with B. it was discovered that the requested verification had been received in our agency by B. on August 23rd, 2006 and had not been acted on to date. B. also told Nancy that she did not know if she had gotten messages from the client or not. The proper procedure for FoodShare processing period is 30 days (September 20, 2006).

September 25, 2006 – Individual in case number 8 --- phoned and told Nancy that she had left phone messages for B. “numerous messages in the last week or two” – and had not heard back from B. She stated that her fiancé has also left messages for B. and not heard back from her. Nancy transferred this phone call directly to B. Client called back and left a voice mail for Nancy approximately 8 minutes later stating that “she had made a mistake, sorry, her fiancé did not call B. today”.

September 27, 2006 – Individual in the case number --- phoned and told Nancy that she “cannot get B. to return her phone calls.” She stated that she calls B. every week and leaves a voice mail asking B. to call her back. She had questions about medical coverage for certain members of her family. She stated that she has been phoning B. since August when her decision letter was received. She stated that the first time she phoned B. “three times in one week and B. finally called her back.” She went on to say that she had phoned B. “at least 3 weeks ago” to report changes on her case and asked in her message to B. “what do you need?” She stated that she had not received a call back from B. to date. She stated that the first week she phoned B., B. was on vacation all week and she left a message to have B. call her back. No call back from B. was received.

September 27, 2006 – Nancy received a call from a Supervisor at an Intermediate Care Facility (ICF) in regard to one of B.’s cases (Case number -) The Supervisor stated that her staff has tried to contact B. for the past several months and they have not heard back from B. She reported that staff had phoned and left messages for B. on the following dates: July 11, 2006, August 9, 2006 and September 13, 2006 and there had been no response from B. to any of these phone calls. She did state that on August 9th when the staff phoned for B. that B.’s voice mail message stated that she was on vacation all week and would be back in the agency on August 15th so the staff left a message asking B. to get back to her upon her return to work the next week. The Supervisor stated that they were concerned as to why the individual in this case did not have a “cost share/patient liability” calculated. If the calculation was completed, the amount of funds that the county was contributing toward this

person's care at the facility could be reduced. She went on to state that it appeared to the staff at the facility that this individual had been certified for the incorrect category of Medicaid and that's why they were trying to contact B. When Nancy checked further, it was discovered that a wage verification request was sent out on this case on August 21, 2006 and that the verification was due back to the agency on August 31, 2006. B. had an alert on this case on August 25, 2006 indicating that the verification due date (August 31, 2006) was approaching. Per a query of the alert history on this case, Nancy discovered that B. deleted this alert on August 30, 2006 without taking the appropriate action on the case.

Application processing problem – September 27, 2006 – In case number --- there was nothing pending on the case yet the case was not confirmed. The application filing date for the case was August 31, 2006 and the assigned worker is B. When Nancy addressed this case with her, B. stated that one category of assistance would not pend and B. was not sure why. B. stated that she would finish the case within the required 30 day processing period and that she needed to contact the client for follow-up. Nancy told B. that if she was unable to contact the client for follow-up, B. should send a manual verification checklist and extend the processing period for an extra ten days as of Friday (September 29, 2006) and to document all actions including attempts to contact the client. As of October 4, 2006 the case is still pending and is over the 30 day processing period. The case has not had the processing period/verification due date extended and there is no documentation in the CARES/CWW for this case.

The performance described above and as identified in the July 7, 2006 verbal warning, calls into question the ability of the staff person to perform required functions of the job. Professional courtesy, positive community relations and the ability of clients to express concerns without imposing guilt or fear of retaliation are basic expectations of staff in this agency.

Employee Response: agree x disagree

. . .

Action to be taken:

Verbal Warning x Written Warning 3-day suspension
Termination Other:

2. The following corrective action must be taken by the employee:

- B. will have prompt follow-up to phone messages. If unable to reach client after three attempts (internal ESS unit policy), B. will document attempts to contact clients in CARES/CWW.
- B. will ask for guidance from her supervisor when questions or concerns arise.
- B. will follow directives.
- B. will identify training needs that will assist in applying techniques to perform the tasks in her job and discuss training options with Nancy.
- B. will demonstrate immediate and sustained improvement in job performance and quality of work produced.

Consequences should incident occur again:

Further performance issues will include action up to and including termination.

Supervisor's Signature: Nancy J. Thompson /s/ Date: 10/6/06

Again, B.S. disagreed with the substance of the warning. She was advised that she had until noon to respond, and did so. Her response consisted of the following;

I disagree with the written warning due to the following:

August 31, 2006 I did not receive the phone calls from EDS. I did receive the E-mail and I responded to it.

September 21, 2006 Case was in the pending drawer waiting for the pregnancy verification. When I realized that I had not put the verification into the case for the foodshare I entered the verification and corrected the case.

September 25, 2006 I had received a call from the client that morning for the first time. I told her that I would check her case and return the call to her. I had other appointments and did not have the chance to return her call. She again called and made the statement that she had tried to call me several times to my supervisor. I contacted the client to tell her that I needed to have her come in for a review. I set the review up for that Friday so that her benefits would start the first of October. I told her at that time that I had not received any phone calls from her prior to that morning. I also said that I thought she should call my supervisor again and explain that I had not been ignoring her calls. I asked my supervisor if she had called and she said that she had left the message of her fiancé had not called that morning. When the client and the person that she lives with came in for both of their reviews on September 25, the person that she lives with asked if she had apologized for the misunderstanding.

September 27th, 2006 Case was discussed with long-term support worker in the past and thought it was taken care of. I am not trained in type of case and did not know that it was an institution case. I went to my supervisor when I realized that this was a type of case I should not have had. I explained the whole situation with her and understood when she gave the case to another worker that it was taken care of, not to be written up.

September 27th, 2006 I received this information and entered the information on and still could not get the case to open correctly. I have discovered the reason why and opened the case back to the effective date.

Ms. S. prepared a more detailed response to the discipline which was not intended to be shared with the County. It was submitted on, or about November 1, 2006. That response consists of the following;

August 31, 2006

I did not have record of receiving any phone call from Sandy at EDS. I had received an E-mail that I called her about. When I talked to Sandy I explained that I had not received her messages. At this time I gave her my direct line, she said that more and more agencies are doing this. We discussed the case and corrected what she wanted me to. I have since talked to her about two other cases and she is now using my direct line.

September 21, 2006

The case was in the pending drawer waiting for the pregnancy verification. When it was brought to my attention about the foodshare I removed the case from the drawer and realized that I had not put in the verification for the foodshare. I entered the information and the foodshare was issued. The benefits for September and August were issued correctly. I do not have record of her calling. I know that I called her at least once about needing the pregnancy verified and I explained to her that medical might not cover everything if she did not give it to me. To date I have not received the verification.

September 25, 2006

I received a call from the client that morning for the first time. I told her that I would check on her case and return her call when I had the chance as I had someone in my office and other appointments that morning. Before I had the chance to call her back she called my supervisor and told her that she had tried to call me several times, the supervisor gave me the call. When I was talking to

the client I asked her why she said that to my supervisor and she commented "I don't know". I set up the appointment for that Friday so her benefits would continue for October. I told her at that time that I had not received any phone calls before that morning. I did say that I thought that she should call my supervisor and explain that I had not been ignoring her calls. I asked my supervisor if she had called and she said that she had left a message of "her fiancé had not called that morning." When the client and the person that she lives with came in for their separate reviews on September 25th, the person that she lives with asked if she had apologized for the misunderstanding. I commented that when I was doing the review that the subject did not come up that the misunderstanding was taken care of with my supervisor. He commented that she should have apologized for what she did; I did pursue it any further.

September 27, 2006

The client applied for assistance on 07/28/06. When I came back from vacation there was a message from a person that I did not recognize as my client. When she applied for assistance she used her maiden name hyphenated with her married name. When she called she used her married name only. I could not locate her file or an intake sheet. I called the number and finally got a hold her 08/29/06 and at that time I realized where the mistake was. September 7, 2006 I received a call from her and I tried to return her call. September 19th I received a call and again tried to return it. September 27th I did talk to the client and received the needed information. I called her back and talked to her about the medical assistance.

September 27, 2006

September 13, 2006 I received a phone message from Jan at Central Wisconsin Center. I gave the message to a worker in Long Term Support. I thought that were it was to go since the message talked about Cost Share and Patient Liability. I had talked to that worker in the past about this case.

September 26, 2006 I am working on my employment alerts and again I found the alert on the employment for this client. I had copies of the alert in the previous month and I still needed to complete this employment verification.

September 27, 2006 I went to talk to this client's caseworker in Long Term Support. I talked to Crystal and Sharon about the employment. Crystal contacted Central Wisconsin Center to ask for the employment verification. I also asked Sharon about the Cost of Care and she stated that all the money goes to Central Wisconsin Center.

September 28, 2006 I resent the message to the worker in Long Term Support from September 13th. The worker returned my call and said that the Cost of Care/Patient Liability was I needed to do. It was an Economic Support function per Jean K. her supervisor. Sharon had given the message to her supervisor to listen to. I went to talk to Jean and she told me that Nancy (my supervisor) had talked to her about the case earlier in the week, and that there was a problem with it. I never heard anything from Nancy in regards to this case.

I went to my supervisor on this date and told her that there was a problem with this case. She again did not tell me about any call or that she realized there was a problem. When I went to talk to her about it she was not helpful, she told me to look it up in the manual. I talked to another worker earlier in the day and she said that she would help me with the case but she questioned whether I should have had this case.

September 28, 2006 Information on the employment was received – later to be found that the client was receiving an average of \$40.00 per month as wages. This type of wages would not affect the medical assistance case.

September 29, 2006 Supervisor came into my office and told me that the case will be given to another worker. I gave the case and the employment information to the other worker.

October 6, 2006 written reprimand for the case.

I discussed this case with a Long Term Support worker in the past and I thought it was taken care of. I feel that I was not trained in this case and that I should have never had the case. When I heard Cost Share and Patient Liability I thought of a waivers case. I went to my supervisor as soon as I knew there was a problem, I thought she would help me correct the case not write me up for a human error. I understood that when she gave the case to another worker that it was taken care of. The other worker corrected the Cost Share and corrected the case.

September 27, 2006 – On October 6, 2006 when I looked the case up I discovered why it was pending and opened the case back to the effective date. Past – Had to contact client about B. new rule for applying for FPW – She delayed bringing in BC until the end – Then I had problems with case trying to get it open -

The written warning was grieved. The grievance was denied.

The denial came from Linda Kica, Human Resources Director for the County. It was the grievant's testimony that she met with Ms. Kica during this time period, and indicated that

she believed there were personality issues at play, between herself and Nancy Thompson. She requested the intervention of a third party. It was the grievant's uncontradicted testimony that Kica was receptive to the suggestion, and indicated that she knew of someone who would be effective. The grievant testified that there was no follow-up.

The grievant was given her annual performance evaluation on February 13, 2007. It showed a dramatic decline as compared to the 2006 evaluation. Most categories, and accompanying remarks, reflected a "needs improvement" designation. It was Thompson's testimony that the grievant had fallen back into old habits. It was the grievant's testimony that she did not agree with the assessment contained in the evaluation.

On March 26, 2007 the grievant was given a three day suspension for her performance. The five page typed suspension document lists 17 incidents in detail, which form the basis for the discipline. The document was prepared in advance of the meeting, and handed to the grievant at the meeting. Its contents were explained, and the grievant was directed to go home, and return on April 2, 2007. She was further directed to take the discipline document home, and to respond upon her return on April 2. Excerpts from the discipline letter include the following;

Supervisor's Complete Description of Violations:

10-06-06 - 1:32 p.m. (during the time that the written warning was being issued) – Phone message from client stating that she had received a decision about a month ago stating that she might not be eligible and she spoke with B. about this. She has more questions and has called B. . . .This incident required management intervention because of not returning calls to clients.

. . .

10-23-06 3:09 p.m. Phone call from another client stating that she has a complaint about her worker B. She stated that she was having a lot of problems with B. and her childcare case because of B.'s failure to communicate. She had to repeatedly phone B. the last three months in order to have B. take care of her case. She said that she received a decision letter saying her case is closing due to the Six Month Report Form (SMRF) not being processed. She said that she had sent in her SMRF the last week in September 2006.

. . .

01-02-07 Issue with the FoodShare Employment and Training Program. The Employer Outreach Coordinator had notified B. via email on 12-20-06 that an individual in this case reported to her that she had gained employment. To date there was still no action taken by B. in regards to this reported change. . . Supervisor also notified B. that she was out of compliance because she had not

taken timely action on a reported change and that this will have an effect on the Department's W-2 performance standard of an entered employment in the year 2006. . . .Per CARES/CWW the AFEI (employment information) data entry was completed on the case 01-04-07 but only after management intervention.

January 2007 Director received a phone call from an individual requesting a different worker. . . . B. did not process the case correctly so the case closed automatically from the state on 12-31-06.

01-18-07 – Targeted Case Review. The review was completed on 01-18-07 and due back 01-18-07. Per B., the verification needed to complete the case was just requested from the client on 01-18-07. . . .which is not timely.

01-19-07 – Phone call from another client complaining about her worker, B. Client stated she dropped off information for B. 3 to 4 weeks ago. Stated that she had phoned B. twice and left messages both times. B. has not responded to her calls.

. . .

01-22-07 - Requested for the second time of B. to take care of overdue alerts . . . B. incorrectly case commented on this case in November that the absent parent was added to the case but the absent parent was not on the case. . . .The problem with this application was that there were no case comments in the case.

. . .

01-22-07 Email from the DWD Area Administrator regarding a W-2 case monitoring issue. Follow up was needed from our agency RE: "It does not appear the agency contacted participant prior to CMC ending to inquire about supportive or case management services. Looks like they just ended the CMC placement." She then referenced instructions in an operations memo and asked that we please review the matter to ensure appropriate agency practices are in place to ensure participants are being fully served. . . .I'm sure the reason this issue is being questioned by State staff is due to the fact that there is nothing about the conversation you state below in case comments, i.e. there is no record of the conversation which you are stating took place last May. In fact I do not see any case comments in regards to ending the W2 placement either. . . ." This violation of proper practice has been repeatedly addressed with B. to no avail.

01-22-07 Another ESS worker received a voice message from Gundersen Lutheran Hospital regarding the status of an MA application involving B. . . .The Liaison was calling regarding the status of an MA application (presumptive disability) that had been faxed to our agency on 12-28-06 and they had also

mailed the original forms to our agency on that date. She said that she had not heard a word back from the worker.

. . .

01-29-07 Supervisor delivered overdue alerts to B. that had already been requested two and three times. B.'s chronic inability to follow through is not productive.

02-07-07 Supervisor gave a copy of one alert to B. – it was an external QC request and assigned B. to have the case scanned into BCF due to it being a formal request from QC and to notify supervisor when the assignment was complete. . . . Supervisor inquired with the scanning staff who indicated that she had not been told that the case was time sensitive. B. does not follow through on her responsibilities to timely complete her duties.

02-12-07 W-2 Specialist emailed supervisor that there was a second reminder to B. for a sanction to be acted on. W-2 worker did not receive a response to her first email. W-2 worker stated that B. is the only worker in the unit that does not respond per procedure. Again, management had to deal with this work deficiency.

The week of March 5th – W-2 Specialist produced additional examples of emails she had sent to B. with no response to date from B. One was sent on February 26th and one was sent on March 5th. This non-responsive behavior by B. adversely affects dis-enrollments and entered employment for the purpose of completing required reports. . . .No other worker in this Unit requires such ongoing supervision.

02-13-07 – Client called supervisor regarding SSI FoodShare. B. previously allowed for FoodShare but has now unilaterally and without any reason decided not to allow it. When B. met with her supervisor on this date she provided no explanation to support this decision. This is incident is not good service.

03-07-07 – Supervisor sent an email to staff requesting that the cases selected for Targeted Case Review (TCR) should be scanned by 03-16-07 and to notify supervisor when complete. B. was given until 03-21-07 to complete due to her absence from the office. On 03-21-07, B. emailed stating “I have put the files in the scanning room to be scanned” but did not follow through on making sure this deadline was completed even after being granted an extension. B. is the only individual in this Unit that does not understand these definitive deadlines and this is not acceptable work performance.

03-19-07 Supervisor received a voicemail from an individual requesting a new worker because B. was not responding to phone calls/messages. . . .Supervisor transferred the call to B. and requested information as to why B. had not returned client's phone calls. B. indicated that she did not know. . . .There were no case comments noting any telephone contact attempts in violation of Department policy.

03-21-07 Supervisor was copied on an email sent to B. from personnel at the Vernon County Child Support Agency. Child Support staff indicated that B. had not responded to phone calls that affect benefits and case processing. . . .

The ongoing chronic pattern of lack of performance and poor work quality, in addition to poor public relations as described above and as identified in the July 7, 2006 verbal warning and the October 6, 2006 written warning, raises deep concerns about the ability of B. to perform this job. The necessity for constant reminders and guidance to do routinely assigned work that B. has done for many years at this department indicates the probability that she is not capable of performing at the level necessary to maintain employment in the agency. The amount of administrative time spent on monitoring this worker, responding to calls from clients that B. should be responding to, and the need to respond to poor service by B. in order to repair relations with both county and state departments is unacceptable. B.'s inability to conform to clearly established deadlines is unacceptable. The agency has provided supervision, clarification, training and re-direction for a lengthy period of time. Despite these efforts, which has taken a great amount of administrative time, B. is unable to show any sustained and acceptable improvement in work product and/or professional ability to perform this position. If this situation does not immediately improve after this unpaid suspension, then B. will be terminated. No other employee of this Department has ever consumed so much administrative time.

. . .

2. The following corrective action must be taken by the employee:

- B. will follow-up to phone messages on the day that they are received and will document attempts to contact clients. If unable to reach client after three attempts (internal ESS unit policy), B. will document attempts to contact clients in CARES/CWW.
- B. will demonstrate immediate and sustained improvement in job performance and quality of work produced.

- B. will ask for and accept guidance from her supervisor when questions or concerns arise.
- B. will follow directives.

...

The grievant served the three-day suspension. During the period of her suspension she prepared an answer to the various claims set forth above. Many of her responses explain her perspective on the cases cited. Some of her responses indicate that she is unable to formulate a response because the case or client was unidentified. The suspension was grieved, and the grievance denied. This matter was not appealed to Arbitration, and the validity of the suspension is not before me.

While the grievant was serving her suspension, four of her co-workers were assigned to handle the portion of her caseload that required attention. Those workers did not do a comprehensive review of B.S. caseload, but rather when a matter required attention, it was handled by one of the four. Each of the four came upon matters they believed were not handled appropriately. Each came forward with problems they discovered while handling the grievant's caseload.

It was the testimony of Rhonda E., one of four ESS workers assigned to B.S. caseload, that on one file the application, and supporting documentation was missing. A client lost a month's eligibility because the Department had to re-request information and re-verify information provided. On a second file, a check for a BadgerCare premium was missing. The check was not located, resulting in a client, with few resources, being obligated to pay two premiums. There were no case comments to guide the replacement worker. On a third matter, Ms. E. indicated that there were five monthly reports not filed. On a fourth matter there was an individual identified who had received Medicaid for three months for which he was not eligible. Finally, there was an application never acted upon, leading to a client not receiving benefits.

Jody S. testified that she received a call from a client whose file was closed. According to Ms. S. the client was eligible for benefits. The Child Support income was wrong, because B. had not checked the system. In a second incident, there was an overpayment of Food Share, due to an improper verification of income. On a third matter, a client wanted to drop off a BadgerCare premium, under circumstances where no premium was due. On a fourth matter, a client had income that was not counted. There was another circumstance where a client was receiving benefits to which he was not entitled, due to a failure to consider the provision of shelter. On a sixth matter, a request for Food Stamps had not been processed, because B. had not filled out the request.

Sarah L. testified that there was an incident where the data on a check stub did not match file entries. She had to check for overpayment. There was a similar concern on a

second file. Sources of income were in the file, but never recorded. As a result, Ms. L. believed that a client had received approximately \$2400 in benefits for which they were not eligible. Finally, there was a missing Disability application. Ms. L. had the client re-submit the application. There was no documentation in the file.

Vicky Z. testified that she discovered a delay in printing out two client budget requests. She discovered a client whose name was wrong. Ms. Z. discovered that B.S. had not entered a change in workplace information in the file, but that a second change canceled out the first.

Each of the ESS co-workers testified that what they observed was surprising. S. and L. indicated that they were alarmed and that they had never seen work of such poor quality. It is a fair summary of their collective testimony that they believed that what they encountered was not minimally acceptable or competent work. Each of the ESS workers were asked if they were directed to seek out problems, and each indicated that they were not. They discovered what they did in the course of handling B.S. caseload during her three day absence.

When Thompson and Eitland became aware of what had been unearthed they believed the performance problem to be far worse than previously understood. They interviewed the co-workers, and compiled their findings. When B.S. returned to work on April 2, 2007 she was terminated. The termination letter reflects the findings of her co-workers, which were attached. The documents were presented to the grievant at the April 2 termination meeting. The grievant was not forewarned that she would be facing termination upon her return. She did have Union representation. However, she was not provided an opportunity to review and respond to the allegations contained in the letter. Her response was to indicate that she would do better.

The termination letter and attachment read as follows:

April 2, 2007

Via Hand Delivery

Ms. B.

RE: Termination Notice

. . .

At this time, we must inform you that your employment with Vernon County is terminated effective today. While you were out on unpaid suspension (March 27, 28 and 30, 2007), your Supervisor and I have received complaints from your co-workers who have been covering your work during your disciplinary suspension. Your co-workers have needed to probe into your files to complete work on your cases. In doing so, they have identified numerous

errors, including but not limited to, repeated errors entered into state systems by you that has led to incorrect benefit distributions, which is a very serious violation on its own. Your co-workers have also had negative reaction to your chronic documented errors and poor performance. What has also been discovered and reported by your co-workers is that there are even more unresolved issues with cases in your assigned caseload than management has been aware of (management has already documented your prior gross performance deficiencies based upon known complaints from clients). You are fully aware that such errors can create liability for this Department. There are many, many more work quality problems that leave doubt that you are able to perform any of the essential functions of this job. The Administration and ESS/W-2 Unit have come to the conclusion that your work product is grossly deficient and that despite management attempts to work with you and remediate your performance problems, and despite your co-workers assistance, your inability to perform this position puts this Department and those we are here to serve at risk in an unprecedented manner.

This agency is in a clean-up situation that has disserved clients. Your poor work performance adversely affects the Department's overall performance evaluation results while we are working diligently to appropriately and professionally serve this county and our clients. The problems that have been created by your performance deficiency are so numerous at this time that I cannot trust that you have the ability to resolve these issues in the best interest of the Department and our clients. You do not appear to even recognize the errors. We cannot afford to have someone on staff that does not adhere to definitive deadlines, procedures and policies because the risks to our clients and this agency are too high. These performance problems, to an extent that is currently unknown, will result in agency outcome reports being negatively affected; there are potential sanctions against the Department for errors in your work; the governing state departments may impose increased oversight of case processing in this agency; clients will require reimbursement for underpayments due to your error and will be required to pay back benefits for which clients were overpaid due to your error. I will be made aware of additional consequences to this agency as we work to correct the situation that you leave us in.

Your inability to recognize the deficiency in your work performance has left the Administration no choice but to terminate your employment in order to reduce liability exposure for our clients and this Department. This low level of performance has not been tolerated from any other employee and we cannot accept such a low level of performance from anyone.

. . .

Sincerely,

Pamela J. Eitland, Director
Department of Human Services

. . .

Supervisor's Complete Description of Violations:

03-27-07 Supervisor received call from client. Another ESS worker completed an "intake" on 02-08-07. . . .The timeframe exceeded the 30 day processing period as of 03-10-07, so the state system automatically withdrew the client registration and no benefits were issued.

Week of 03-26-07 – missing BadgerCare check. . . .

Week of 03-26-07 – Pending, ongoing case. B. did not complete case comments on the case. B. did not enter changes in client employment information; but entered incorrect child support information. The case had not been updated since 2003.

03-27-07 Open case – Six Month Review Form was received in the agency on 02-23-07. . . .B. allowed the Veterans income to be verified using a savings deposit by the client. This is not proper verification. . . .the incorrect amount of income was in the state system. FoodShare benefits were incorrectly issued because of this error. . . .

03-27-06 Open case – Client contacted agency regarding a BadgerCare premium. ESS staff that were covering for B. discovered in one of the cases on her caseload, that income was being counted incorrectly from two sources and the client should never have had to pay a BadgerCare premium.

Week of 03-26-07 Two "request for potential subrogation information for recipient's file" documents were found in B.'s room. . . .B. had not taken the individual off Medicaid due to non-cooperation with TPL, per policy and procedure.

Week of 3-26-07 Check stub received in the agency on 01-29-07 found in B.'s office. Date on the check stub did not match state system entries made by B. This is a potential overpayment.

Week of 3-26-07 Copy of pension income check received in the agency on 03-07-07 found in B.'s office. Income had not been entered into the state system. .

. .

Week of 3-26-07 Request from Long Term Support staff asking for screen prints from the state system in regards to a waiver client – requested on 03-07-07. No response from B.

Week of 3-26-07 ESS worker discovered that client's name was entered incorrectly by B. into the system and that loss of income had not been entered. Client reported that she had sent in reports for January and possibly February 2007. Reports were not in the clients file.

Week of 3-26-07 Staff from a provider agency reported to an ESS worker that she had turned in a disability application on behalf of a client and was checking on the status. There was no file and no entry in case comments or the system indicating that any information had been submitted to Disability Determination Bureau yet.

Week of 3-26-07 Open case – Client phoned the agency with questions on their case. ESS staff responded by reviewing their information that B. had entered into the system. B. entered and verified incorrect income causing significant errors in the deductible and benefits. The client should not have received a benefit at all.

Week of 3-26-07 Incidents of client submitting medical bills paid and these bills needing to be posted on the Medicaid deductible tracking screen. B. did not complete the postings.

Week of 3-26-07 Ongoing case. B. had pended the income portion of the case on 03-02-07 and had not completed this portion of the case in a timely fashion.

As of 03-08-07 – 150 overdue cross matches.

The ongoing chronic lack of performance and poor work quality has risen to the level that management cannot trust B. to accurately perform the job functions. The significant amount of administrative time spent on correcting B.'s mistakes, responding to calls from clients that B. should be responding to, and the need to respond to poor service by B. in order to repair relations with both county and state departments cannot continue. B.'s inability to conform to clearly established deadlines per policies and procedures is unacceptable. The agency has provided supervision, clarification, training and re-direction for a lengthy period of time. In addition, her co-workers have assisted her on numerous occasions. We must immediately terminate B's employment in order to reduce liability exposure for our clients and the department.

The matter was grieved and ultimately appealed to Arbitration, along with the written warning grievance.

ISSUE

The parties stipulated the issues to be;

Did the employer have just cause to discipline the grievant by issuing her a written warning on October 6, 2006?

Did the employer have just cause to terminate the grievant's employment on April 2, 2007?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II ADMINISTRATION

2.01 Except as otherwise provided in this Agreement, the COUNTY retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to hire, promote, transfer, demote or suspend or otherwise discharge or discipline employees for just cause;. . .

. . .

ARTICLE V GRIEVANCE PROCEDURE AND ARBITRATION

5.06 The vote of a majority of this Board, or arbitrator, as the case may be, shall be final and binding upon the parties and they shall render a decision within twenty (20) calendar days from the date of the hearing, unless an extension is approved jointly by the COUNTY and UNION. Any time limits in this Article may be extended by agreement. ^[1]

POSITIONS OF THE PARTIES

The County lists the various discipline issued the grievant over her years with the County and concludes that cause exists for the termination. Remedial measures have been employed, and have failed. The performance does not measure up to what is minimally acceptable. It is the view of the County that it had to supervise the grievant in an unprecedented manner.

The County points to the testimony of the greivant's co-workers who discovered mistakes and clients not being served. The employer argues that "B.S. was told over and over

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^[1] Note: This provision was waived by the parties.

by management to maintain proper case notes, to act promptly on case alerts, to not delete case alerts until she acted on them, to promptly verify income information, to meet deadlines, etc.” It was these very matters that the co-workers witnessed.

It is the County’s view that at the April 2 meeting, it confronted the grievant with the matters addressed in the suspension document. “Management was really looking for a global response from B. as to the chronic errors, intentional failure to meet deadlines and failure to properly serve the clients...”. “Instead, B. came in with excuses and this incredible promise to try to do better.”

The County had tried to work with the grievant for years. Things improved for a while and then slid. Without some indication of a meaningful plan of improvement, including the grievant taking full responsibility for her actions, the County was left with termination

It is the view of the Union that the employer lacked just cause for either disciplinary measure. The Union argues that the February 2006 Performance Review violates the grievant’s due process rights for failing to provide a plan of corrective action. The union contends that prior to 2006, the employer had provided such a plan, and accompanying assistance, and the grievant had responded to the criticism. That changed in 2006, when the County’s approach to the grievant changed. Instead of being supportive, and counseling the grievant to better performance, the County began to build a discipline record.

It is the view of the Union that the discipline issued on October 6, 2006 violates the just cause standard. The Union believes that the employer failed to perform a full and fair investigation prior to issuing the discipline. The written warning had been prepared before the meeting, prior to questioning her about any of the alleged incidents. She was directed to respond to the allegations immediately. That, according to the Union evidences the desire of the employer to put the grievant on record as opposed to obtaining additional facts. There were mitigating facts presented by the grievant, which were not available to the employer at the time of discipline.

The Union contends that the discharge of the grievant on April 2, 2007 subjected the grievant to double jeopardy and further violated her due process rights. It is the view of the Union that the employer failed to conduct an appropriate investigation. The charges were drawn up when the employee arrived. The employee was terminated in the course of a pre-determined meeting. There was no effort to solicit any information from the employee or to obtain mitigating information. The allegations were similar to those contained in the suspension document.

The suspension document directed the grievant to correct her performance deficiencies. Before she could return to attempt to do so, she was terminated.

DISCUSSION

The grievant was subjected to three instances of discipline related to her performance, which are relevant to this proceeding. There exists a written warning, which is before me, a three day suspension, which is not, but forms a part of the disciplinary progression, and the termination. The first issue presented for decision is whether or not the written warning was for just cause. There is a recurring theme to the incidents that preceded and prompted the written warning. The warning contains reports of six articulated events or occurrences. Each complains that the grievant has not responded to calls or inquiries. The messages are purportedly from clients or other practitioners in the field. The complaints allege behavior similar to that which prompted the July 7, 2006 warning. The grievant answered that she either had no records of the alleged calls or that they did not occur.

The enumerated events were presented in a hearsay format; i.e. the Employer reported to the grievant what others had reported to the Employer. As a practical matter, it is hard to see how else the employer could communicate the various concerns it had received. Notwithstanding the hearsay character of the employer's evidence I think it likely the calls were placed and that the grievant's memory or record is lacking. There are many reported calls, noted by a number of people, from too many varied sources to be dismissed. In the context of the grievant's work history, notably the July 7 verbal warning, a further warning appears justified.

The warning was prepared before the meeting. The grievant was directed to respond that day. A response was forthcoming later that day, and more completely a month later. It is unclear what the purpose of the response was to be. Thompson testified on cross examination that the decision to discipline had been made before issuance of the document. A central purpose of confronting the employee is to explain the basis of the charges and allow the employee to tell her side of the story. For that to be purposeful the final decision to invoke discipline has to await the employee response so that the response can be considered. For example, the grievant denied receipt of the telephone calls relative to the August 31 matter. It is at least possible that the employer would have followed up with EDS personnel.

Every employer who initiates discipline proceeds on the belief that some basis in fact exists for that discipline. The due process aspect of the just cause standard requires that the employer consider what the employee has to say before proceeding. As a practical matter the significance of the written warning was made moot by the three day suspension. However, the written warning placed the grievant on notice of the concerns raised in the supporting document.

The grievant was subsequently given a three day suspension for a litany of incidents and/or concerns similar to those cited in the prior disciplines. The suspension was grieved. The grievance was denied. The matter was not appealed. Two consequences flow from the Union's decision not to appeal the suspension. The first is that the three day suspension stands, and is not subject to review in this proceeding. The second consequence is that the discipline threshold, against which to measure the discharge, is a three day suspension. The status of the

written warning, at least as a step in the progressive discipline procedure, has been rendered moot.

The grievant was terminated at a meeting convened on April 2, 2007. At the Arbitration hearing, six and one half months after the discharge, the grievant responded to the various claims made in the attachment to the termination letter. She testified that she didn't recognize some of the situations. On others, she testified that she did not receive the documents alleged to be in her possession. On yet others she testified that she had handled the matter in an appropriate way.

I believe the record establishes that the grievant had significant performance issues. Those issues had appeared and been remediated over the years. As the Union points out the County's approach to the grievant changed in 2006. I think the County was entitled to switch strategies. The County had repeatedly brought performance concerns to the attention of the grievant. She was offered direction and assistance. She was given improvement guidelines and direction. At times she responded, and relapsed. I believe the record demonstrates that at the point of this progression of discipline, the grievant was not performing her job. At some point, an employer is free to invoke the disciplinary process to address performance concerns. Prior remediation efforts had been successful. The grievant's performance had turned around. The grievant was able to adjust her performance in response to supervision or minor discipline. There is no explanation as to why the grievant could not sustain an acceptable level of performance. The fact that the employer assisted the employee for years, only to have the employee relapse repeatedly, should not result in the employer being estopped from invoking discipline.

The Union complains that the discipline lacks a plan of corrective action. I do not agree. The written warning has such a plan, which specifically addresses the need to promptly return phone calls and document the failure to reach callers. The grievant's failure to follow this directive formed a part of the basis for her subsequent discipline. The directive was repeated in the three day suspension and the failure to return calls and/or log case status is noted in the discharge.

I believe the record establishes that the grievant was not performing her job to a minimally acceptable level. Management held that view, and found itself continuously intervening to prod and correct the grievant's work. There are numerous complaints about the grievant's work. Many were from related service providers. This is not just a case of clients complaining about the person in charge of their benefits. The County contends that the kind and number of complaints is extraordinary. That contention was buttressed by the testimony of the grievant's co-workers. None of her co-workers were supportive. Each, to a greater or lesser extent, testified that the grievant did not do her job. There are an overwhelming number of errors, or failures to communicate, in the record.

The grievant's response does not begin to address the weight of the evidence. There were repeated offers of assistance and repeated responses that it was not needed. Under the totality of the record, I am left with the conclusion that the grievant was not doing her job.

I do not believe the discharge placed the grievant in double jeopardy. The incidents giving rise to the discharge were unknown to the employer at the time of the three day suspension. The incidents are different from those that formed the basis for the suspension. I am not willing to conclude that the employer should have been on notice of the discharge matters at the time of the three day suspension. The discharge events were unearthed by co-workers who were performing the grievant's day to day job, in her absence. It is not reasonable to hold supervision to this level of detail.

It is true that the suspension document directed the grievant to correct her performance. She was subsequently denied the opportunity to do so. However, the context giving rise to the suspension changed during the three days. The employer's discovery as to just how bad things were caused it to believe remediation was futile and that the Agency was exposed and potentially liable. The corrective plan was terminated along with the grievant's employment. The emergent factual record supported that decision. To find to the contrary would exalt form over substance.

However, there is a flaw in the discharge. The grievant was presented with a lengthy termination letter, and a two page attachment with 15 entries, each describing an event(s) in which the grievant is alleged to have not performed or performed improperly. She was not advised in advance of the nature of the meeting. She did not have an opportunity to review and respond to the charges. The decision to terminate had already been made, with no opportunity to respond to the employer's evidence or to tell her own story.

Under the terms of the collective bargaining agreement, the grievant's termination is measured against a standard of just cause. At a minimum this vests an employee with rights to a pre-termination hearing, giving the employee notice of the charges against the employee, an explanation of the employer's evidence, and an opportunity to tell her story. (See CLEVELAND BD. OF EDUCATION V. LOUDERMILL, 470 U.S. 532, 118 LRRM 3041, 1985).

Arbitration Awards analyze discharge cases using a number of tests or theories of just cause, the most popular of which is Arbitrator Carroll Daugherty's "7 Tests of Just Cause", outlined in his famous GRIEF BROS. COOPERAGE CORP. Award. (42 LA 555 (1964)) The third of Daugherty's tests is;

Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

Daugherty explained the rule in Note 1, which accompanied the original text;

Note 1: This is the employee's 'day in court' principle. An employee has the right to know with reasonable precision the offense with which he is being charged and to defend his behavior.

More recently, Abrams and Nolan articulated an alternative to Daugherty's "Seven Tests", in a work which purports to summarize "most arbitration awards". In "Toward A Theory Of 'Just Cause' In Employee Discipline Cases", (1985 *Duke Law Journal*, 594) the authors propound their "fundamental understanding" theory. In it, they identify the discipline interests of all parties. This theory includes the following;

. . .

C. The concept of just cause includes certain employee protections that reflect the union's interest in guaranteeing "fairness" in disciplinary situations.

1. The employee is entitled to *industrial due process*. This includes:

- a. actual or constructive notice of expected standards of conduct and penalties for wrongful conduct;
- b. a decision based on facts, determined after an investigation that provides the employee an opportunity to state his case, with union assistance if he desires it;
- c.

. . .

I believe the County has established that the grievant was not performing her job after months and years of assistance and remediation. Reinstatement appears futile. There is no reason to believe that more effort at remediation or discipline will bring about a lasting change in performance. However, the process violation is not a trivial matter. It is fundamental to the very concept of just cause that an employee is afforded the opportunity to hear and respond meaningfully to the charges that will form the basis for termination, before the termination decision is made.

AWARD

The grievance is sustained.

REMEDY

I am not directing reinstatement. Rather, I am directing the County to pay the grievant five day's pay. This represents a period in which the grievant could have reviewed the charges against her and prepared a response. I do not believe the response would have altered the outcome.

Dated at Madison, Wisconsin, this 5th of June, 2008.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

