

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA COUNTY

and

**KENOSHA COUNTY SOCIAL WORK PROFESSIONAL EMPLOYEES
EMPLOYED IN BROOKSIDE, AGING AND SOCIAL SERVICES
DEPARTMENTS, LOCAL 990, AFSCME, AFL-CIO**

Case 262

No. 67231

MA-13806

(Micklas Discipline Grievance)

Appearances:

Lorrette Pionke, Assistant Corporation Counsel, Kenosha County, County Courthouse, 912 56th Street, Kenosha, Wisconsin 53140-3747, appeared on behalf of the County.

Nicholas E. Kasmer, Staff Representative, AFSCME Council 40 Southeastern District, 8450 82nd Street, #308, Pleasant Prairie, Wisconsin 53158, appeared on behalf of Marc Micklas and Local 990, AFSCME, AFL-CIO.

ARBITRATION AWARD

Kenosha County and Kenosha County Social Work Professional Employees Employed in Brookside, Aging and Social Services Departments, Local 990, AFSCME, AFL-CIO, are parties to a collective bargaining agreement which provides for the final and binding arbitration of certain disputes. The Union filed a request to initiate grievance arbitration with the Wisconsin Employment Relations Commission for arbitration of a grievance filed by Local 990 on behalf of a member, Marc Micklas, herein Micklas or Grievant, concerning two disciplinary matters. The Commission designated Paul Gordon, Commissioner, as arbitrator. Hearing was held in the matter on October 10th 2007 in Kenosha County, which was not transcribed. A briefing schedule was set, extended by the parties, and the record was closed on December 10, 2007.

ISSUES

The parties did not stipulate to a statement of the issues. The County states the issues as:

Did the County have just cause to suspend Marc Micklas on August 29, 2006 for one day and subsequently suspend him again on October 2, 2006 for three days and what is the remedy?

The Union states the issues as:

Did Kenosha County violate the Collective Bargaining Agreement when Marc Micklas was suspended for one day in August of 2006 and/or three days in October of 2006? If so, what is the appropriate remedy?

The parties' statements of the issues are essentially the same. The collective bargaining agreement contains a just cause provision. The Union's statement is selected as being broad enough to cover the issues presented in the record.

RELEVANT CONTRACT PROVISIONS

ARTICLE I – RECOGNITION

. . .

Section 1.2 Management Rights. 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 for proper cause; the right to decide the work to be done and location of work; to contract for work services or materials; to schedule overtime work; to establish or abolish a job classification; to establish qualifications for the various job classifications; however, whenever a new position is created or an existing position changed, the County shall establish the job duties and wage level for such new or revised position in a fair and equitable manner subject to the grievance and arbitration procedure of this agreement. The County shall have the right to adopt reasonable rules and regulations. Such authority will not be applied in a discriminatory manner. The County will not contract out for work or services where such contracting out will result in the layoff of employees or the reduction of regular hours worked by bargaining unit employees.

. . .

ARTICLE III – GRIEVANCE PROCEDURE

. . .

Section 3.5 Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for a violation thereof under the terms of this Agreement, but only for just cause and in a fair and impartial manner. When an employee is being disciplined or discharged, there shall be a Union representative present and a copy of the reprimand sent to the Union. All "I'm disappointed" letters, corrective actions, and written verbal warnings will remain in the employee's personnel file for six months and after that would be closed within the employee's file. After six months, these actions will not be considered in future disciplines.

Written reprimands will remain in an employee's departmental personnel file for one (1) year from date of issue. After one (1) year, such reprimands will be removed to a closed file in the Personnel Department; and shall not be used in case of discipline.

The foregoing procedure shall govern any claim by an employee that he has been disciplined or discharged without just cause. Should any action on the part of the County become the subject of arbitration, such described action may be affirmed, revoked, modified in any manner not inconsistent with the terms of this agreement.

. . .

BACKGROUND AND FACTS

Kenosha County has adopted a number of work rules, policies and procedures as part of its functions and as recognized in the collective bargaining agreement. Among those is Uniform Work Rule, Work Rule, #3, which states:

Employees shall not demonstrate incompetence or inefficiency in the performance of job duties.

The County has Uniform Work Rule, Work Rule #20, which states:

Employees must comply with all federal or state codes and regulations that govern their respective departments.

The County also has Report #139, which states in pertinent part:

1. Policy

The art of discipline is intended to be positive in nature and attempts to correct unacceptable employee actions. This attempt includes counseling sessions, suggested referrals to outside agencies, and other help with the purpose of improving the behavior of an employee that may be detrimental and disruptive to the effective operations of a department and/or work program.

In the process of trying to assist the employee resolve problems and improve his/her behavior, corrective action may be necessary. This corrective action may include discipline.

Progressive discipline is basically a series of disciplinary actions, corrective in nature, starting with a verbal or written reprimand. Each time the same or similar infractions occur, more stringent disciplinary action takes place. It is important in invoking progressive discipline, up to and including dismissal, that each time disciplinary action is contemplated, it must be definitely established that an infraction did occur which is organizationally inappropriate. To definitely establish that an infraction did occur means that a supervisor must be able to sufficiently substantiate the occurrence of any infraction.

After the infraction has been established, then an assessment of the type of corrective action required is made, taking into account the previous disciplinary actions that have been taken. It does not necessarily mean that an employee is required to violate the same rule or have the same incident occur in order to draw upon previous corrective disciplinary actions. However, totally unrelated previous disciplinary actions should not be considered in progressing the severity of discipline.

When there is a series of minor infractions and where there have been several verbal reprimands, written reprimands or suspensions occurring over a period of time, and the employee's general behavior pattern is such that the previous disciplinary actions can be included, they may be used in determining the next level of progressive discipline, if any, in determining the proper action to be taken. If past behavior relates to the present problem, past action should be taken into consideration. If the relationship is unclear, consult with the Director of Personnel.

Upon taking any of these actions, the employee must be notified at that time that any continued involvement in that particular negative behavior will result in progressive disciplinary action up to and including dismissal.

The various levels of discipline are: verbal reprimand, written reprimand, suspensions, demotion, and dismissal.

2. Levels of Disciplinary Action:

a. Verbal Reprimand:

A verbal reprimand defines an inappropriate action or omission which includes a warning that the incident is not to be repeated. A verbal reprimand, when required, shall be given orally by the employee's immediate supervisor. The reprimand should be given in a private meeting. Verbal reprimands must be documented for the personnel file in order to substantiate the start of progressive discipline. The documentation should be recorded on the disciplinary action form. The employee must be told clearly, as is required at other disciplinary levels, what the infraction is, how to correct the problem and explicitly inform the employee what further disciplinary action may result for failure to comply with recommended corrective action.

All disciplinary actions of verbal reprimands must be sent to the Department of Personnel for approval – and after all signatures for recording and retention, and a copy given to the union representative who may be present at the employee's request. The Department of Personnel will keep logs of all disciplinary actions taken and the infraction that caused the discipline. These logs then form the basis of the uniform application of discipline in the future. Verbal reprimands will remain valid for one year.

b. Written Reprimand:

A written reprimand may follow one or more verbal reprimands issued to an employee for a repeated offense. A verbal reprimand need not precede a written reprimand. A written reprimand should be used for

repetition of an offense that originally caused a verbal reprimand. Infractions of a more serious nature may be disciplined initially by a written reprimand. The written reprimand shall be issued to the employee by the immediate supervisor in a private meeting. The immediate supervisor shall inform the employee of any past verbal reprimands issued to the employee for similar infractions. The supervisor shall explain the reasons for the issuance of the written reprimand; again, suggestions for correcting the behavior are issued together with a warning of what discipline, up to and including dismissal, may be taken in the future if behavior does not improve. The department will make an offer to the employee to have a union representative present.

Written reprimands must be sent to the Department of Personnel for approval prior to being issued with a copy to the union, if applicable.

c. Suspension

A suspension is a temporary removal of the employee from the payroll. A suspension may be recommended when the lesser forms of disciplinary action have not corrected the employee's behavior. Suspension may also be recommended for first offenses of a more serious nature.

Suspensions may be imposed on an employee for repeated offenses when verbal reprimands and written reprimands have not brought about corrected behavior, or for first offenses of a more serious nature. Examples of some of the more serious infractions (but not limited to those listed) are:

- major deviation from the work rules, including a violation of safety rules
- being under the influence of alcohol
- falsification or misuse of time sheets or records
- fighting
- theft of another employee's property
- disobedience of an order

The number of days recommended for suspension will depend on the severity of the act. Commission of the above offenses may also result in a recommendation for dismissal.

e. Discharge:

Discharge may be recommended for an employee when other disciplinary steps have failed to correct improper action by an employee, or for first offenses of a serious nature. Examples of some of the more serious infractions (but not limited to those listed):

- being under the influence of alcohol or drugs on the job
- possession of an unauthorized weapon on the premises
- willful destruction of County property
- insubordination
- fighting on the job
- theft of County property or funds
- abandonment of position

Grievant has a Masters Degree in Social Work and has been employed by the County as a Social Worker IV, Court Services Unit, since March 2002 and is in the Union bargaining unit. At times relevant to this arbitration he had a caseload of difficult cases that included juvenile sexual offenders and others. These are cases that are involved in juvenile court proceedings. As part of his duties Grievant provides information, plans and reports to his Department and the courts concerning the juveniles, attends staffing of cases, arranges for court hearings as needed, assists in planning services appropriate to the juvenile and family problems, arranges for placement of juveniles who are not in their family homes, arranges for treatment programs and other services for the juveniles, maintains files and records and enters certain required information into the County and State computerized record keeping system (SACWIS), and takes actions in compliance with state and federal law, among other things. His case load varies between 30 to 50 cases, sometimes in the mid 50's, which is similar to others in his department if slightly higher than most. There are approximately nine social workers in Grievant's Department in addition to their supervisor and other Department administrators. Some services for juvenile cases are contracted out by the County, and reports and case notes from those contractors sometimes are not automatically forwarded to the social worker responsible for the case from 10 to 15 percent of the time.

In the Fall of 2005 Grievant's supervisor, Nancy Ramsey, expressed in an "I'm disappointed" writing to him of November 22, 2005 her concerns over his job performance in several areas over the previous several months. Stated concerns were: poor work completion, lack of timeliness and appropriate follow-through. Reference was made to several specific placements and permanency plans as well as Grievant having been taken out of rotation for over two weeks and having help available to organize existing files and closing old files when he had expressed feeling overwhelmed. Reference was also made to an overdue home study needed under the Federal Interstate Compact Agreement, and having over 40 expired cases overdue for closure. Files being disorganized and lacking case notes were mentioned, along with Ramsey's previous requests to attend to the above items. She directed him to take 4 specific actions addressing the above circumstances, with due dates for each. Previous to this, one of the Juvenile Court Judges had sent at least two emails to the Department with questions and concerns over Grievant's preparedness for certain court actions and related items.

On December 19, 2005 Grievant was issued disciplinary action consisting of a written reprimand. It alleged violations of work rule #3 - Employee shall not demonstrate incompetence or inefficiency in the performance of job duties, and work rule #19 - Employees shall comply with all federal or state codes and regulations that govern their respective departments. The discipline form informed him that further discipline may result in suspension, and contained a work improvement plan to correct the problem. The discipline form narrative contained a description of infraction citing 5 different matters. One concerned failure to notice the Juvenile Court upon the return of a juvenile from foster placement in violation of Chapter 938 of the Wisconsin statutes and the Court's lapse of jurisdiction in the case noticed in a December 2, 2005 hearing. One concerned failure to provide the Court with ordered bi-monthly progress reports regarding the same juvenile which had been ordered six

months earlier. One concerned failure to comply with the Court's request to review the case of a juvenile prior to release from placement in Corrections, which request had been made in mid-October. One concerned appearing at a hearing on November 29, 2005 unprepared for two juvenile cases and without one of the juvenile's file for reference. The final one concerned the Federal Interstate Compact report referenced in the letter of November 22nd. The discipline narrative went on to review the discussions the Department had had with Grievant about these types of issues and attempt to improve his performance, as well as noting other performance deficiencies, the Juvenile Court communications, and the November 22nd letter. The discipline noted the impact of work violations, listing several ramifications caused by his actions or inactions. The discipline had attached to it an 11 point work improvement plan which stated:

Marc Micklas is hereby directed to do the following:

1. Beginning immediately, all paperwork being submitted to the Court will be reviewed by your Supervisor, Ron Rogers or John Jansen before filing. This included request for Change of Placement, Sanctions motions, memos to the Court and any documentation being filed with Court that includes a narrative.
2. You will follow all statutory mandates without exception and within accepted timelines.
3. You will record all placements in SACWIS within 5 working days and submit them to the Supervisor for approval.
4. You will maintain a case-note system on all open cases.
5. You will submit case closure forms two weeks prior to expiration of the Court file.
6. You will submit all expired cases for closure by the end of January 31, 2006.
7. All supervisory Reviews and Interstate Compact studies will be done within the designated timeframes. Supervisor will indicate the due dates on the documents.
8. Case files will be organized sufficiently for coverage by the Worker of the Day or other co-workers as may prove necessary. The file organization will be coordinated and approved by your Supervisor.
9. Improvement will be monitored through a weekly meeting with his supervisor or Lead Supervisor to discuss progress in the aforementioned areas. This will commence the week of January 3rd, 2006.
10. The Work Improvement Plan will be reviewed every 60 days with a Union representative present.
11. The Work Improvement Plan will continue until June 30, 2006. It may be terminated earlier with the agreement of all parties.

. . .

This written reprimand was reduced, on December 21, 2005, to a verbal reprimand. The work improvement plan remained in effect. No grievance was filed by the Grievant or Union as to the December discipline.

The reviews each 60 days referenced in item 10 of the work improvement plan did not occur, and the weekly meetings referenced in item 9 of the work improvement plan did not occur regularly, although Grievant and his supervisor meet almost daily on specific cases on ongoing work.

When his performance was reviewed in June, 2006 the result was a disciplinary action of a written reprimand, dated June 16, 2006. The description of infractions was for work rule #3 and work rule #19, as in the previous discipline. It warned that further discipline may result in suspension and/or termination, and to correct the problem required immediate compliance with expectations in work performance and continued the work improvement plan, which was updated for the current time frame. Because the meetings in the original plan had not occurred regularly, the work improvement plan was continued to September 27, 2006, with meetings with the Union to review the plan to be held every 30 days. The attached description of infraction stated:

1. Marc has failed to comply with the federal and state requirements for preparation and review of Permanency Planning for hour in out-of-home care. Specifically for example: JQ placed in care on 3/9/03. Should have been reviewed in 9/03 and Court reviewed in March 04. The case should have been reviewed every 6 months until his return home on 6/9/06. Also CG placed in care on 9/7/04. He should have been reviewed in 3/05 and Court reviewed in 9/05 and again in 3/06. And MO who was placed in 11/05 and should have been reviewed in 5/06. PJ who was placed in care 1/10/04 and has not had a review in over a year

Marc was specifically instructed to take certain cases back to Court to have them reviewed and to get the case back in compliance with state and federal requirements. He has admitted he has not done so.

2. Marc again failed to comply with Court orders. He was ordered to place JE in the 30 day SPRITE program in May 06. JE was to stay in secure custody pending placement. When the program was cancelled for May, Marc failed to notify the Court of the status of the placement or return to Court for a new placement order. As a result, in violation of the Courts order, JE remained in secure detention for 2 months which was beyond the amount of time he would have be in secure and in the SPRITE program had it not been cancelled. The Court was extremely upset by this failure of responsibility by Mr. Micklas.

3. Marc continues to be ill prepared for Court according the Juvenile Court Judge. He is frequently unable to answer fundamental questions about his cases when in front of the Court.

4. Marc Micklas has not adequately complied with the conditions of the Work Improvement Plan agreed upon in December 2005, beginning 1/3/06. The following improvements have not occurred:

- 1) Record all placements in SACWIS within 5 working days and submit them to Supervisor for approval.-Marc continues to be late with SACWIS work, often needing email prompting by Prisilla Risenhauer to get work done.
- 2) Submit case closure forms 2 weeks prior to case closure. -He has had at least 10 files that have closed since 1.1.06 and has submitted only 1 case closure form for 2006.
- 3) Case files will be organized sufficient for case coverage by the Worker of the Day or other co-workers as may prove necessary. -Marc's files continue to be chaotic and disorganized. After a number of instructions by his Supervisor to prepare out-of-home cases for transfer to the Out-Of Home case-manager, he has not transferred one case. He was repeatedly not prepared to transfer the cases because they were not compliant with case-work completion expected for transfer.

In summary, Marc Micklas continues to struggle with the basic job responsibilities. The court has continued to voice concerns over his representation of his cases in Juvenile Court to Division of Children and Family Services management. In spite of a verbal warning on 12/20/06 and a Corrective Action Plan that began on 01/03/06, he has still not improved his work performance to an acceptable point. Failure to immediately comply will result in suspension and/or termination.

This written reprimand was modified to a verbal reprimand on June 28, 2006. On that same date a 12th part was added to the work improvement plan after another court incident occurred concerning Grievant's ability to answer the court's questions and questions at an internal staffing, which addition stated:

12. That Marc is adequately prepared for all Court hearings and internal staffings.

No grievance was filed by Grievant or the Union as to this discipline.

The Union, Grievant and the County met in July to go over the work improvement plan pursuant to point 10 of the plan. At that meeting the County indicated that Grievant was improving in his work, and another meeting was scheduled for late August. A somewhat complicated series of events then followed. They consist generally of events leading up to and including an August 11, 2006 Juvenile Court hearing, events concerning an August 24, 2006 Juvenile Court hearing, an August 29, 2006 disciplinary action against Grievant concerning the August 11th related events, events surrounding a September 5, 2006 Juvenile Court hearing, and an October 16, 2006 disciplinary action against Grievant concerning the

August 24th and September 5th events. The work improvement plan meeting that had been scheduled for late August was replaced with the disciplinary action of August 29th. The disciplinary actions of August 29th and October 16th were grieved by Grievant and the Union, and are the subjects of this arbitration.

The events leading up to and including August 11th are summarized, accurately,¹ in the disciplinary action of August 29th. That discipline alleged violations of Work Rules #3 and #20, and violations of elements 2, 3, and 12 of the work improvement plan of June 28, 2006. The action taken was a one day suspension without pay. Further discipline that may result was multiple day suspension and/or termination. How to correct the problem was immediate compliance with expectations in work performance as described in the work improvement plan established on 6/28/06. The allegations of work rule violations contained an attached description which stated:

Type of Action: One Day Suspension Without Pay

Marc Micklas has been demonstrating poor work performance leading to violations of the Kenosha County Uniform Work Rules. A Work Improvement plan was implemented on 6/28/06 based on Work Rule violations under "Work Habits" of the Kenosha County Uniform Work Rules. Marc has continued to violate elements of the Work Improvement Plan entered into on 6/28/06. Specifically, #2, #3, and #12. Marc Micklas has also continued to violate Work Rule #3 "Employees shall not demonstrate incompetency or inefficiency in the performance of job duties." And Work Rule #20 "Employees must comply with all federal or state codes and regulations that govern their respective departments." under Work Habits of the Kenosha County Uniform Work Rules.

Description of Infractions:

Marc received a 30 day notice of pending discharge of a client in care in a residential facility in Green Bay. He was expected to find an alternative placement, in this case, treatment foster care, for the client. On August 1st, 2006 the case was staffed with Steve Julius, Ron Rogers, Nancy Ramsey and Marc Micklas with the institution in Green Bay on a conference call. It was made clear at that staffing that the client would not be able to remain in the institution past the 30 day mark, August 11th.

Marc called Laurie Bellanger, the Juvenile Court Clerk and verbally requested a Change of Placement hearing date that she scheduled for August 11th. From August 1st to August 11th Marc continued attempts to locate a foster placement without success.

As the date for the discharge and the hearing approached, Marc was contacted by Rachel Rush from Intensive Aftercare several times with regard to the status

¹ Some additions follow the information contained in the disciplinary action.

of the search for a new placement. Marc did not return the calls to Ms. Rush to keep her up to date with regard to placement. Nor did Marc communicate to the residential facility his difficulty finding an alternative placement.

By the day before the scheduled Change of Placement hearing Marc had not found a placement for his client, however, he had also not communicated that to the residential facility or Ms. Rush. That afternoon, Marc did call the residential facility and leave a voice mail message that they should not transport the client from Green Bay for the hearing because the hearing had been cancelled. He had no confirmation that anyone had received the message before the end of that day. He had also called the Clerk's office and asked the hearing be taken off the calendar for the next morning. The Clerk told him it would be removed. On Friday morning, Marc was at the Courthouse for another hearing and was called into the courtroom because the residential facility had transported his client from Green Bay early that morning to appear for Court. They told the court that Marc's client was being discharged that day and they were appearing for his Change of Placement hearing as scheduled. They had not received the message Marc left asking them not to bring the client to Kenosha.

The Court had not received reports related to Change of Placement nor had the necessary paperwork been filed requesting the Change of Placement. Consequently, the service providers and parents were not present, the client was not represented and there was no legal motion in front of the Court. Essentially, no one knew why they were there. Because no one had received proper notice as dictated under 938, which should have been filed a minimum of 3 days prior to the hearing, the Court could not proceed with the hearing. In addition, there was no placement available for the client and the residential facility would not take the client back because they had already filled his bed at the facility that day based on their belief that the client was being discharged at the Change of Placement hearing in Kenosha.

The Judge called the Department and spoke by conference call with Nancy Ramsey and Leon Potter. The Court was very upset at the lack of proper procedure being followed and the lack of responsible handling of the case. Marc was ordered to take the client with him and immediately find a place for the client to stay.

As a result of Marc's failure to communicate adequately with Intensive Aftercare, who might have supplied some assistance, and the residential facility, had they been given sufficient notice might have been able to hold off the new intake a few days, Marc's client was left sitting in the common area of DHS while Marc sought a resource to take him for about 5 days. Perhaps with a less difficult client that would not have been the troubling issue it became. The client understood the fact that there was no place for him to go as he sat in the common area with Marc checking in on him from time to time.

Moreover, Marc's credibility and the credibility of the Department was seriously eroded by his failure to perform basic statutory work and to simply communicate his intentions and placement issues with the residential facility and Intensive Aftercare resulting in the client being driven 3 hours to Kenosha for a hearing that could not take place. Had Marc simply followed accepted protocol and good case-management practice, much of the chaos that occurred could have been avoided and the issues been handled in a more well planned, pro-active and cooperative manner.

In Summary, Marc violated Work Rule #3 and Work Rule #20 of "Work Habits" under the Kenosha County Uniform Work Rules by the following acts or failure to act:

1. He requested a hearing with Juvenile court and failed to file proper paperwork by August 8th and supply notice to all interested parties.
2. Marc should have contacted the facility and Aftercare and other service providers by August 9th to inform them the hearing would not proceed.
3. Marc repeatedly failed to communicate with the facility and service providers on the status of the case when it was clear that finding alternative care was not going well. Failure to communicate with all parties violates basic, fundamental casework practice.
4. The result of Marc's poor management of this case and violation of Chapter 983 caused a 12 year old child client to be removed from placement without any place for the child to go. The child understood the gravity of the situation and remarked that he was now "homeless". Marc's client went from the structured, predictable setting of a residential facility to a completely unpredictable and unstructured, chaotic situation.
5. Marc's gross incompetence has not only damaged his credibility and professional status with the Court, but has negatively impacted the reputation and credibility of his co-workers as well.

In addition to the Work Rule failures under "Work Habits" of the Kenosha County Uniform Work Rules, Marc has also continued to violate the Work Improvement Plan entered into on June 28, 2006 in the following manner:

1. He failed to follow statutory requirements in Chapter 938, described in #2 of the Work Improvement Plan by failing to file the proper paperwork required under 938.357(1)(a)(am) and 938.357(1)(a)(am)3(2) in the case of L.L.
2. He has not completed the case transfers to Julie King, instructed in #3 of the Work Improvement Plan. To date, Marc has only transferred two cases to Julie King. On August 21, 2006, during Supervisory staffing with Marc, he was instructed to transfer the

cases of C.G., L.D., P.J. and R.R. by the end of the week. He was also instructed to request a Court Perm Plan review of C.P. by the end of the week. That has not been completed.

3. Marc was not adequately prepared for the Juvenile court hearing involving his client, L.L. as required in #12 of the Work Improvement Plan.

As indicated in footnote 1, the juvenile was a hard to place juvenile based upon his background and after August 1st Grievant had tried a number of potential resources, more than 12 or 13 agencies used by the Department, in attempting to find placement for him before the hearing. He got his last rejection on August 10th. The juvenile was 11 or 12 years old at the time. Prior to August 1st Grievant had not made much effort to find a placement for the juvenile. He had intended to use a Notice of change to a lesser restrictive setting as the procedural mechanism to transfer placement, but was instructed by his superiors on August 1st to use a Notice of hearing and petition and to schedule a hearing before the court as the procedure to transfer placement. Through a liaison on or near August 1st he had notified the Green Bay facility that a hearing was scheduled for August 11th. Grievant had made some status reports to the supervisor and lead supervisor of this situation, but had not notified everyone involved within 72 hours of the August 11th hearing that the hearing was scheduled, or that it was later taken off the court schedule on August 10th. He spoke with Lead supervisor Rogers, who told Grievant to contact the Green Bay facility to not bring the juvenile to Kenosha. Grievant called the Green Bay facility around 3:30 the afternoon of August 10th and left a phone recorded message. He did not speak with a person. He had received phone calls from the intensive aftercare personnel for the County as to the status of the case, but he did not return those phone calls. On August 11th it took Grievant about 8 hours to finally locate a temporary facility for the youth, pending a further court hearing in the matter. He had not filed any paperwork with the Court prior to August 11th because he had not at that point found a placement, finding out only later that he could have put on a petition a placement to be determined.

Prior to Grievant receiving the one day suspension were the Court hearing events of August 24, 2006. These events are summarized below. However, when grievant received the August 29th discipline, the events of August 24th were not mentioned by the County and they were not part of the discipline of August 29th. On September 5th Grievant was at another Court hearing. The events of that hearing along with the events at the August 24th Court hearing, both of which concerned the same case as the August 11th events, became the subject of an October, 2006 disciplinary action against Grievant. Grievant and his Union representative had a meeting with the Department on September 7, 2006 concerning the discipline issued for August 11th. The August 24th and September 5th events were not discussed at that time. Grievant served the one day suspension on September 8, 2006.

Thereafter, Grievant received a Notice of Pre-Disciplinary Meeting from Ramsey dated October 2, 2006 advising Grievant that there would be a pre-disciplinary meeting on October 16, 2006 to discuss charges of violation Work Habits Work Rule #3, advised of his

right to have a Union or other representative of his choice resent, included a summary of the facts surrounding the events of August 24th and September 5th, and recommended a 3 day unpaid suspension. The Notice contained the following narrative which accurately² summarized the events of August 24th and September 5th:

The facts supporting the violations of the Kenosha County Uniform Work Rules follow.

On August 24, 2006, you were at a scheduled hearing for L.E. At that hearing the Court requested the telephone number for the placement provider, Family Services of Northeast Wisconsin, where the youth had been placed until August 11, 2006. You informed the Court that you did not have the number because you did not have the case file with you. You were unable to provide basic information to the Court, therefore, the Court had to use telephone number information to query the number, then get transferred to several other numbers before speaking with anyone who could be helpful with regard to the case.

The same case was before the Court again on Sept 5th, 2006. You were unable to adequately respond to questions and concerns the Court raised regarding information in the progress reports from Family Services on Northeast Wisconsin in Green Bay. You were the case-manager for L.E. during the 6 months he was in placement at Family Services of Northeast Wisconsin and you could not give the Court information because you did not have the reports or other records to reference because, again, you did not have his case file with you. As a result, you were unable to adequately address the issues the Court raised with regard to the institutions progress reports.

As the Case-Manager of record you were not prepared to respond to inquiry by the Court and/or submit any supporting documents. This failure to provide basic information on this case and others has resulted in the Courts opinion that you are not doing your job, you do not know your cases and, by extension, are not providing adequate supervision of your cases.

The Work Improvement Plan from 6/28/06 specifically states that you are to be “adequately prepared for all Court hearings and internal staffings”. These recent hearings demonstrate your failure to realize the importance of your responsibility to be a principal information resource for the Court and reputable representative of the Division of Children and Family Services.

You have previously been placed on Work Improvement Plans on 1/06/06 and 6/28/06 with verbal warnings and you were placed on a one day suspension without pay on 9/08/06. These disciplinary actions were taken with the expectation that you would renew a commitment to improve the standard of your work in Court Services. However, failures continued to occur in the areas addressed in the Work Improvement Plans.

² Some additions follow the information contained in the disciplinary action.

As a result of the above infractions of the Kenosha County Uniform Work Rules, I am recommending the following disciplinary action:

1. A 3 day unpaid suspension from your current duties as a case worker in the Juvenile Court Services Unit.

. . .

As referenced in footnote 2, at the September 5th hearing when Grievant was asked by the Judge for reports from the Green Bay facility, Grievant had the information attached to the court motion but could not find them when asked by the Judge at the hearing. Also, not all social workers bring their entire files with them to all court hearings, and had at times been unable to provide information and phone numbers to the court at those immediate times. Social Workers do, however, typically bring their entire files to court. Other social workers have had delays in making case closures and data entries for shorter periods of time than many of Grievant's cases, and were not disciplined for failure to do so because they were asked to complete the case closures and did so. Supervisor Ramsey was present at both hearings to observe and monitor Grievant during those hearings.

On October 16, 2006 the pre-disciplinary meeting referred to above was held with Grievant, his Union representative, and several other members of the bargaining unit appearing on his behalf. The disposition of that meeting, which referenced, among other things, that in November 2005 the County began the formal disciplinary steps, resulted in the County finding him in violation of Work Rule #3 and warranted the 3 day suspension without pay. The attachments to the written report of the meeting included, among other things, the December 19, 2005 disciplinary action form with the accompanying narrative and work improvement plan.

Other bargaining unit members have been disciplined and suspended for violation of the County Work Rules, including those relating to job performance.

The Union filed a grievance, later amended, to contest the disciplines of August 29th and the October 2nd notice of pre-disciplinary meeting. The grievance was denied by the County as to both disciplines throughout the grievance process, leading to this arbitration. Grievant served the three day suspension in November, 2006.

Further facts appear as are in the discussion.

POSITIONS OF THE PARTIES

The County

In summary, the County argues that it had just cause to suspend Grievant on August 29, 2006 for one day and subsequently suspend him again on October 16, 2006 for three days for his violation of the Kenosha County Uniform Work Rules. Grievant consistently failed to perform according to the standards set forth in the job description. In August he failed to properly notice a case and inform a residential facility of an inability to

arrange placement, failed to return phone calls or follow up with placement, resulting in the juvenile waiting all day at the office to get placed after appearing in court without counsel or placement. Grievant knew the work rules. Work Habits #3 require he perform his job competently. For this he received a one day suspension. The same case was in court in September and Grievant appeared without the case file or enough information to answer simple questions of the court or provide documentation despite being case manager for over six months. He was again unprepared and received a three day suspension. This discipline was after corrective action failed to improve his job performance.

The County argues that it's progressive discipline policy has guidelines for employees who consistently violate minor work rules. In 2005 there were problems with Grievant's performance and he got an "I'm disappointed" letter. The letter listed numerous documented, clear problems and recurring problems, directed Grievant to take certain steps by specific dates, and was the first of a series of County steps to improve his performance. Despite the letter, there were additional incidents that lead to the December 19, 2005 written reprimand. Grievant fell short of job performance expectations. The form listed suspension as a further discipline that may result. On January 3, 2006 he was placed on a work improvement plan for six months and directed to follow nine attached guidelines to improve his work. He was on notice of serious repercussions if job performance did not improve. On June 16, 2006 he was disciplined for inability to perform basic job duties. He continued to fall short of expectations. He has not completed the work improvement plan. He failed to comply with court orders and review cases. He was ill prepared and unable to answer simple court questions. A 12th requirement was added to the work improvement plan to be adequately prepared for all court hearings and internal staffings. The plan was continued to September 27, 2006 and stated further action may result in multiple day suspension and/or termination. He was on notice that his work performance was still under scrutiny and he was required to take certain listed steps to improve job performance. The Union claims he should have been insulated by the plan and at the Union request it was been extended 90 days, claiming the monthly meetings had not occurred. However, Ramsey met with Grievant daily to go over his work. Without the monthly meetings the Union somehow shifts the burden to the County for Grievant's lack of progress, then claim the County was unfair and harassing Grievant. A July meeting noted some improvement. However, in August Grievant failed to send proper notice and do follow up leading to his August 29th suspension. He failed to complete certain basic tasks and follow directives and put the County in an unacceptable position with the juvenile court and providers. He had specifically been told to call the facility and to find a placement, and he failed to follow directives. He had been warned of further discipline. He had notice his performance had been unacceptable. The applicable work rules had been cited. On September 29, 2006 he was notified he was suspended for one day for violation of the work rules in respect to competence. Clearly, the County must move to the next disciplinary step to gain compliance with directives and bring his performance to acceptable levels. The Union acclaims this issue should have been addressed in the corrective action plan. The plan does not preclude further discipline, and Grievant's performance was getting worse, not better. He was on notice he could have been suspended or even terminated.

The County argues that the collective bargaining agreement allows discipline or discharge for just cause under Section 1.2 as a Management right. The agreement also makes reference to discipline under 3.5 and refers to an "I'm disappointed letter" and that discipline is to be administered in a fair and impartial manner. The agreement gives the County the right to discipline for just cause and directs it to do so in a fair and impartial manner. The County had just cause to discipline Grievant. He admitted that he was noncompliant with the work improvement plan, that Ramsey has met with him daily to go over his work, and that he had dropped the ball. On October 2, 2006 he was served with a Notice of a Pre-Disciplinary Meeting when the same case that he'd been suspended for came up in September and he could not answer simple questions and did not have his file with him. He appeared before the court unprepared. After continued efforts by the department to improve his efforts this was unacceptable. The Union claims that the suspension action commenced against Grievant was harassment. However, this discipline was administered fairly and impartially in accordance with the progressive discipline policy.

The County further argues that despite its efforts to reform Grievant's job performance, he continued to show incompetence and unpreparedness. There was Union testimony that some files were too big to carry to court and that Grievant's cases were difficult. He stated this area was his specialty and that if you did not have the answer to a questioning court, you made a point of having the answer the next time you were in court. Grievant had the opportunity to reappear again in court and redeem himself, but he was unprepared again. Although his transgressions when isolated appear minimal, taken in light of the entire record of events and attempts to work with Grievant to improve his performance and be prepared for court, this was egregious. It is in these types of cases that progressive discipline is appropriate.

The County also argues that progressive discipline is appropriate in cases where otherwise minor transgressions such as tardiness, or in this case, attention to deadlines and other statutory requirements do not constitute discharge, but call for corrective action on the part of the employer to improve the employee's performance. The County labored for months at a work improvement plan listing acceptable performance standards. Prepared for court was added. Not having a file in court was not something that someone would be suspended for, but given continued warnings that Grievant be prepared, it had compounded beyond the acceptable level. Added to the incidents of the LE case, the need to take disciplinary action to correct the problem was clear. A one day suspension was issued. Grievant admitted he was non-compliant. The County met with the Union. Then Grievant dropped the ball. At this point the County decided to increase the level of discipline. Progressive discipline is appropriate for such an instance. Despite the suspension, Grievant did it again, appearing in court unprepared on the case that got him into trouble the first time. The County had no other recourse than to follow through with appropriate discipline and sent a Notice of Pre-disciplinary Hearing.

The County argues it had just cause to discipline Grievant. Clearly he was on notice that he was subject to disciplinary action. He'd been subject to a work improvement plan preceded by a reprimand in each instance that set for the action that would be taken for further

violations of work rules. He continued to fall short of expectations. In August he was incompetent leaving a juvenile without placement, angering the court and the facility that transported the juvenile to a hearing which was not on the calendar or properly noticed. This left the juvenile homeless sitting all day at the office waiting for placement. It is important that the social worker keep accurate and up to date records and follow up on placements and planning services. His incompetence impacted office operations. Case closures in some cases were over a year past due. His SACWIS entries were months behind, not a few days late. He didn't have records or answers for the court. He failed to give requisite notice under the law, failed to place LE and notify the facility there was a problem. He didn't return calls. By not having paperwork caught up it caused delays in payments and payments that should have been discontinued. Grievant's supervisor investigated the occurrences, with recurrent input from the court regarding Grievant's progress or lack thereof. Ramsey met with Grievant on the status of his files. She checked his case list for closures. The County verified what occurred with the LE case and attended hearings to confirm and address problems. Jansen compiled a report with substantial evidence at the pre-disciplinary hearing. The County applied the rules evenhandedly. It disciplined other employees under the same policy. Similar levels of discipline have been imposed. Grievant was disciplined under the progressive discipline with substantial reason to do so. Pursuant to County policy the disciplines began with a verbal reprimand, then written reprimand, then one-day suspension, then three day suspension. The transgression may appear small but compounded over time and pointed out for corrective action and reserved for further disciplinary measures, the level of discipline was appropriate.

The Union

In summary, the Union argues that the County did not have just cause to issue the one-day suspension in August and/or the three-day suspension in October for the following reasons: 1) the plan was never fully implemented and allowed to be completed; 2) Grievant's actions involving and surrounding the August 11th hearing were reasonable, even admirable, given the circumstances; 3) Grievant was unjustly disciplined for his actions surrounding the three-day discipline and the County failed to timely discipline him regarding said events; and 4) the County failed to follow its own discipline policy when disciplining Grievant for said events. The burden of proof is on the employer to show by a preponderance of the evidence any wrong doing and that the penalty imposed was warranted. The Union argues for the application of the seven Daugherty requirements of just cause to support contested discipline, citing arbitral authorities.

The Union argues that the County failed to fully implement the plan and failed to give it the proper time to correct any perceived issues. The plan put forth in December 2005 was only given a month to demonstrate improvement. No meetings were scheduled to discuss areas where Grievant was progressing or allegedly below standards. No meetings were scheduled when performance issues came up. No meetings were scheduled with the Union for each 60 day period. Progress was occasionally discussed between Grievant and Ramsey.

There should have been meetings scheduled to discuss Grievant's progress or performance issues, including the Union. The plan served only as notice of deficiencies in certain areas, and should not be used in this manner. It should be used as a tool to improve the employee's work. The plan was fully implemented in June 2006 when the other discipline was reduced based on failure to fully implement the plan. In the July meeting with the Union the Supervisors had only praise for Grievant's progress and did not indicate there were areas of work to improve on. The August meeting was cancelled and later that day a one-day suspension was issued. The two suspensions were all work related. They were ideal subjects to be brought up at the plan meetings. The County instead punished Grievant without any discussion. The Union is not in anyway insinuating that the County does not have the ability to discipline employees on work improvement plans. Major violations can be disciplined. The Union does contend an employee should not be disciplined when a work issue arises during the course of said plans. These issues should be discussed as a learning tool. Grievant's work issues did not involve major rule infractions and should have been dealt with without discipline.

The Union argues that the County improperly disciplined Grievant for the situations surrounding the August 11th hearing for the juvenile. When first informed of the release August 1st, Grievant immediately scheduled a hearing for August 11th. He exhausted all resources, kept the Supervisor updated on the situation, and properly notified the court of the cancellation of the hearing. Grievant was disciplined for failure to file paperwork, failure to contact the family and Green Bay facility, not having a placement, damaging department credibility, and being unprepared for the August 11th hearing. The County can only justify discipline on negligence and not on incompetence, gross negligence or recklessness, citing arbitral authority. Grievant's actions were not flagrant or reckless and he's shown the ability to meet minimum levels of satisfactory work. The Supervisors admitted the case was difficult and Grievant has some of the more difficult cases. It would be illogical to staff difficult cases with an incompetent employee. The real issue is whether Grievant was negligent. Grievant was in a no win situation on August 1st, being told at essentially the last minute of the discharge and need for placement. He was given a short amount of time to find placement or convince Green Bay to hold the juvenile longer, which it had no intention to do. Grievant attempted to the last minute to find a placement. Similar to other arbitral decisions, he did the best he could given the difficult hand he was dealt. The only relevant inquiry is whether he acted prudently given the circumstances thrust upon him. He didn't file paperwork because there was none to be filed. On August 9th he didn't have a placement and was unsure the hearing would take place. It would be foolish to file paperwork for a hearing that was not going to occur. If he'd have filed paperwork without a placement in hand it is highly likely the Judge would have contacted the supervisor and Grievant would have been disciplined for those actions. He was unprepared for the hearing on August 11th because he had cancelled it. It goes against reason to discipline for being unprepared for a hearing that was cancelled. Hurting the credibility of the department in the eyes of the court is present throughout the disciplines, and is not a sufficient basis for discipline. Grievant did inform the Green Bay facility of the cancellation of the hearing on August 10th albeit via voicemail. He placed the juvenile in the future weeks and spent the rest on his time on August 11th finding him a place to stay. Grievant acted prudently and even admirably. Because of his actions and the lack of proper justification for the one-day suspension, just cause did not exist for said discipline.

The Union further argues that the County improperly disciplined Grievant for his actions surrounding the three-day suspension and said discipline was untimely. There was no just cause for the discipline and it was untimely as it was known about prior to the issuance of the one-day suspension and both incidents occurred prior to Grievant serving the three-day suspension. On August 24th he had the paperwork but not the phone number for the Green Bay facility. On September 5th he had the requested reports attached to the motion but could not find them when before the judge. The County failed to properly enforce the alleged case file rule, citing arbitral authority. Grievant was suspended for allegedly being unprepared for court, but actually disciplined for failing to bring the entire case file to court. He had his paperwork and motions so he was not unprepared. It is not uncommon for employees to attend court without the entire file, even phone numbers. However, Grievant is the only employee to be disciplined for this offense. The supervisor failed to universally enforce any rule related to bringing an entire file to court. The existence of the plan cannot justify enforcing a rule against only one employee. This type of issuance can only be done on a unit wide basis and not on an employee basis. The purpose of the plan is to help in alleged deficiencies and not to put him on notice that future occurrences would result in discipline. The three-day suspension was untimely. Citing arbitral authority, the three-day suspension was issued almost a full month after the alleged occurrences and the hearing occurred prior to serving the one-day suspension and the later hearing occurred before imposing the initial suspension. Grievant was prejudiced because the August 24th occurrence should have been dealt with in the initial suspension and the September 5th may have been avoided. The supervisor was present and knew what occurred August 24th, and no mention was made about this in the initial suspension. Discipline occurred over a month later. The Supervisor was present at the September 5th hearing. Had Grievant been disciplined for the August 24th hearing with the initial suspension then the events of September 5th may never have occurred. As to need to investigate, the supervisor was present at both hearings and observed all the facts. The County has no basis for delaying the discipline regarding both hearings, or at a minimum the first, except to bolster a case for a second discipline. The County lacked just cause because it failed to include the first hearing in the initial suspension, did not discipline him regarding the first hearing in the six business days before the next hearing, and failed to discipline him regarding both hearings for almost a month despite knowing the facts on each day.

The Union also argues that the County failed to properly follow its own discipline policy and progressive discipline standards when it disciplined Grievant for the events in question. The collective bargaining agreement gives the arbitrator the ability to modify the disciplines, citing Section 3.5. Rule 139 provides the progressive steps for discipline, and states that discipline should be corrective in nature. And suspensions may be imposed where verbal reprimands and written reprimands have not brought about changes, or for first offenses of a more serious nature. Arbitral authorities set out factors to consider. Grievant did not have a written reprimand because they had been reduced to verbal reprimands. The next step in the County's progressive discipline would be a written reprimand, and an employee should receive multiple verbal and written reprimands prior to a suspension. There is no serious infraction here to disregard progressive discipline. Removal of the juvenile to

Kenosha without a placement is serious, but looking at the result does not give the proper perspective of what occurred prior to the day and following that morning. Grievant had worked diligently to find a placement. His actions were admirable given the constraints he had to work under and at minimum should mitigate any discipline he should receive. The one-day suspension blames him solely while others were partially culpable. The Green Bay facility failed to notify him prior to August 1st of the discharge and the County did not inform him of the August 11th date until August 1st, ordering him to schedule a hearing for the 11th. Grievant had only one prior discipline that could be considered. Neither the letter of disappointment nor the first verbal warning can be considered because under the collective bargaining agreement after 6 months they cannot be considered in further discipline. Both occurred more than 6 months prior. And mitigating factors also exist. The maximum penalty under Rule 139 for events surrounding August 11th is a written reprimand because of the totality of the circumstances, the other party's culpability, and there was no written reprimand in his file prior to the first suspension. The three-day suspension was also unjust and given for events occurring throughout the unit. Grievant was the only one disciplined for failure to bring his entire file to court. The facts do not support a three-day suspension. Regarding August 24th, he was disciplined for a question most social workers would not have anticipated. Regarding September 5th, he simply forgot he had attached the reports to the motion. The circumstances support a minor rule violation at best. The maximum penalty under Rule 139 would be a written reprimand because any rule violation that occurred was minor, Grievant was the only employee disciplined and whom the rule was applied to, the County's lack of timeliness, and the actual circumstances involved. Even if just cause did exist, the maximum disciplines under Rule 139 would have been written reprimands.

DISCUSSION

The case involves two instances of discipline which have been grieved and are the subjects of this arbitration. The first is the one day suspension without pay issued on August 29, 2006. The other is the three day suspension without pay issued by Notice of October 2, 2006 and formalized on October 16, 2006. The collective bargaining agreement contains a just cause provision for disciplinary matters as set out in Article III, Section 3.5, which states:

Section 3.5 Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for a violation thereof under the terms of this Agreement, but only for just cause and in a fair and impartial manner. When an employee is being disciplined or discharged, there shall be a Union representative present and a copy of the reprimand sent to the Union. All "I'm disappointed" letters, corrective actions, and written verbal warnings will remain in the employee's personnel file for six months and after that would be closed within the employee's file. After six months, these actions will not be considered in future disciplines.

Written reprimands will remain in an employee's departmental personnel file for one (1) year from date of issue. After one (1) year, such reprimands will be removed to a closed file in the Personnel Department; and shall not be used in case of discipline.

The foregoing procedure shall govern any claim by an employee that he has been disciplined or discharged without just cause. Should any action on the part of the County become the subject of arbitration, such described action may be affirmed, revoked, modified in any manner not inconsistent with the terms of this agreement.

Other than being implemented in a fair and impartial manner, the agreement does not further define just cause, and the parties have not agreed to any particular definition of just cause. The County's progressive discipline policy in Rule 139, which is not contractual, does recognize certain benchmarks usually associated with a just cause determination. These include the definitive establishment that an infraction did occur which is organizationally inappropriate, a corrective and progressive series of steps, recognition of any past disciplinary actions, the severity or multiplicity of infractions, and notice of potential progressive discipline for continued involvement in particular negative behavior. The Union argues that the just cause issues should be assessed using what are commonly called the seven Daugherty just cause requirements as set out in ENTERPRISE WIRE CO., 46 LA 359, 362-364 (Daugherty, 1966). Those seven requirements run roughly parallel to most if not all of the benchmarks in the County Policy, and are: 1) the employee must be forewarned of the consequences of his/her actions; 2) the employer's rules must be reasonably related to the orderly, efficient and safe operation of the employer's business and the performance the employer might expect from the employee; 3) the employer must make an effort to discover whether the employee did in fact violate or disobey a rule of order before administering discipline to the employee; 4) the employer's investigation must be conducted fairly and objectively; 5) at the investigation stage, there must be substantial evidence of proof that supports the charge against the employee; 6) the rules must be applied fairly and without discrimination; and 7) the degree of discipline must be reasonably related to the nature of the offense and the employee's past record. Generally, just cause involves proof of wrongdoing and, assuming guilt of wrongdoing is established and that the arbitrator is empowered to modify penalties, whether the punishment assessed by management should be upheld or modified. See, How Arbitration Works, *Elkouri & Elkouri* 6th Ed., p. 948. A common definition of just cause, which the undersigned and other arbitrators have employed in the absence of a contractual definition, is in essence, that two elements define just cause. The first is that the employer must establish conduct by the Grievant in which it had a disciplinary interest. The second is that the employer must establish that the discipline imposed reasonably reflects its disciplinary interest. Implicit in just cause are matters of fair notice and procedural fairness.³ PORTAGE COUNTY, MA-135, (Gordon, December, 2007). This is the standard of just cause that will be applied here along with the parties' contractual requirement that employees may only be disciplined for just cause and in a fair and impartial manner.

³ How Arbitration Works, *Elkouri & Elkouri* (6th Ed.) pp. 967 - 969.

As noted, there are two separate disciplinary actions. They will each be considered sequentially.

The one day suspension

The one day suspension issued on August 29th concerned the events leading up to and including the August 11th court hearing. A just cause determination requires examining whether the County had a disciplinary interest in the conduct of Grievant surrounding those events. Court hearings and the placement of juveniles are large and important responsibilities of the County, the Department of Children and Family Services, and its employees. Some of these responsibilities are imposed and required by state statute, such as Chapter 938, Wis. Stats., which is the juvenile justice code. The County also has work rules to ensure that these and other responsibilities are properly and efficiently carried out by its employees. The collective bargaining agreement recognizes the County's right to establish reasonable work rules. The County has done that in Work Rule #3 and Work Rule # 20. They state:

Work Rule, #3

Employees shall not demonstrate incompetence or inefficiency in the performance of job duties.

Work Rule #20

Employees must comply with all federal or state codes and regulations that govern their respective departments.

The County's progressive discipline policy also recognizes the policy to attempt to correct unacceptable employee actions which include counseling sessions and other help to improve behavior that may be detrimental and disruptive to effective department operations. This is part of a process that may include discipline, if necessary. Implicit in that is the use of a work improvement plan which, in this case, contains specific tasks and work directives. Among the elements of Grievant's work improvement plan in effect at the time were specific provisions to be prepared for court hearings and follow all statutory requirements of Chapter 938 and Chapter 48, Wis. Stats., within accepted timelines. The events leading up to and including August 11, 2006 involved the transfer of placement of an 11 or 12 year old juvenile, who could no longer be placed in the Green Bay facility, for which Grievant was directed by his supervisors to schedule a juvenile court hearing and arrange for other placement. Grievant and the Department understood that the Green Bay facility did not intend to provide placement after August 11th. That this new placement and hearing be accomplished efficiently and in compliance with state statute is something that the County certainly has an interest in, and which is fairly supported by its work rules. Similarly, and in the very same context, the County has an interest in having work improvement plans followed, both by the employee and by the County itself in a fair and impartial manner. As to a just cause determination, the County had a disciplinary interest in how well Grievant performed the work duties he was directed to perform in arranging for new placement and the related juvenile court hearing that he needed to arrange by August 11th.

As alleged in the disciplinary action form, the County has established on the record that Greivant's conduct did not competently or efficiently meet his job duties by failing to timely notify the Green Bay facility and County aftercare personnel that there would not be a hearing on August 11th so that the juvenile would not be brought to court in Kenosha, and by not contacting the Green Bay facility and County service providers as to difficulties in finding placement before the juvenile was brought to court so that a new placement could be found first. And, he did not comply with state law concerning notice and court filings for juvenile court hearings to transfer placement. There were also case transfer and permanency plan review deficiencies. These deficiencies are violations of Work Rules #3 and #20. They also do not comply with the directives in the work improvement plan. This is best seen in the context of setting and noticing the hearing that Grievant had been originally directed to arrange.

On August 1st it became clear to the Department, including Grievant, that the Green Bay facility did not intend to hold the juvenile past August 11th. Accordingly, Grievant was directed by his supervisors to schedule a court hearing and arrange a new placement for the juvenile. The procedures and requirements for such a juvenile court hearing are set out in Section 938.357(1), Wis. Stats. This requires a written notice of hearing and a written request for change of placement, along with other particulars, be filed with the court and a copy of the notice and request provided to the juvenile, the parents, guardian, legal custodian of the juvenile, and all parties bound by the dispositional order. Under the statute this notice must be provided not less than 3 days prior to the hearing. On or about August 1st Grievant called the juvenile court scheduling clerk and did schedule a hearing for August 11th. Grievant did not, however, prepare a written request for change of placement and did not prepare a notice of the scheduled hearing. Obviously, neither document was filed with the court. Nor were the required documents served on the necessary parties at any time, let alone at least 3 days prior to the scheduled hearing. With a hearing scheduled for August 11th, the notice and request would need to be provided by August 8th. Even though Grievant was attempting through the usual service providers to arrange for a new placement for this difficult to place juvenile, he admits, now, that such placement need not have been determined by the time of filing the necessary paperwork and holding the hearing. Had such notice and request been filed by August 8th, Grievant could continue to seek a placement with the hearing on August 11th expected to go forward. Because the necessary notice and request was not filed, after August 8th the proposed hearing could not go forward without the necessary notice and complications associated with that. Grievant continued to seek a new placement, but did not notify the Green Bay facility, the County Aftercare provider, or other necessary parties as to the status of the case until the afternoon of August 10th when he told lead supervisor Rogers. By this time, after August 8th, Grievant had failed to file the proper paperwork and supply notice to all interested parties as required by state law and as part of his duties as a Department Social Worker. Grievant was procedurally unprepared for the August 11th court hearing – so much so that the hearing could not even be held as originally directed. As discussed below, he was also, eventually, substantively unprepared for it when the juvenile was transported to court with no placement or hearing arranged. The County was well founded in its determination that these are violations of Work Rule #3 and Work Rule #20. It is also a failure to comply with the work improvement plan wherein he was directed to follow all requirements of Chapter 938 and to be prepared for court hearings. These violations were part of the County's basis for the August 29th discipline.

On August 10th Grievant was directed to call the Green Bay facility and tell them or request that the juvenile not be transported to Kenosha on August 11th because a placement had not been arranged and a hearing would not be held. Between 3:00 and 3:30 p.m. Grievant called and left a recorded phone message. He did not talk to a person in Green Bay. He did not follow up with another call after leaving the voice message to confirm that anyone at the Green Bay facility actually got the message, and that the juvenile would not be brought to Kenosha. This is despite Grievant knowing that the Green Bay facility had no intention of keeping the juvenile past August 11th. This was an unsettled state of affairs that concerned the placement of an 11 or 12 year old juvenile who was admittedly difficult to place. It is Grievant's responsibility as a Department Social Worker to plan for and provide appropriate client services. Grievant failed to provide for the appropriate service of a new placement when he did not assure himself, or the Department, that the Green Bay facility was not going to transport the juvenile. Grievant had waited until practically the last few hours to attempt to notify the Green Bay facility.⁴ As a result, the juvenile was brought to Kenosha for a hearing that was no longer scheduled, no interested parties had been made aware of the circumstances, and there was no placement for the juvenile. Even more uncertainty and urgency followed over the next 7 or 8 hours as Grievant attempted to and eventually did arrange for temporary placement. The Department had a sound basis for determining that the failure to provide this service and allow these circumstances to develop is not effective, competent or efficient performance of Grievant's job duties and constitutes a violation of Work Rule #3. This was also a basis for the County's August 29th discipline.

From August 1st through at least August 8th and beyond, it was becoming increasingly clear that Grievant was not able to arrange for a new placement and that the proposed hearing date was approaching. During this time the Aftercare services for the County had tried to contact Grievant as to the status of the case, and he did not return the calls or attempt to inform Aftercare of the difficulty he was having. As alluded to above, he also did not keep the Green Bay facility aware of the difficulty he was having. Grievant was overlooking or failing to use these two resources which are designed to and might have provided help or guidance. He did not do everything that he could have to try to avoid the situation. Even though there is nothing in the record to guarantee what either resource may have been able to provide, the Department expects social workers to communicate with and use the resources available to them, and this is to be implied in sound case management. It is part of his job to work with provider agencies. The Department had a sound basis for concluding this was not competent or efficient job performance, and Grievant's conduct violated Work Rule #3. This, too, was a basis for the County's August 29th discipline.

The Union has argued that Grievant did everything he could and that his conduct on August 11th was admirable, given the circumstances thrust upon him. The Union misses an essential point. This was not someone else's fault. It was Grievant's failure to follow statutory procedures, maintain contact with service providers, and assure the Green Bay

⁴ Because the hearing notice and placement change request had not been provided by August 8th, Grievant could have notified his supervisors earlier, at least by August 8th or 9th and, as a practical matter given himself more time to notify and confirm with the Green Bay facility that there would be no hearing.

facility had received his message, which is what caused the circumstances of August 11th in the first place. These are circumstances of Grievant's own doing. It is a bit more telling that on August 11th he was able to arrange a placement in about 8 hours when he had not been able to make an arrangement from August 1st through August 8th, and even thereafter.

The August 29th discipline also referenced Grievant's failure to complete case transfers and to complete certain permanency plan review activities as set out in parts of the work improvement plan. Grievant does not contest the factual accuracy of those allegations, although he does dispute the seriousness of them. Given that he was directed to do them and he has not, to some extent the record thus demonstrates that he has failed to comport with Work Rule #3.

The County having established conduct in which it has a disciplinary interest, it is next necessary to consider whether the discipline imposed reasonably reflects that interest. This includes the work record, progressive discipline concepts, and applicable provisions of the collective bargaining agreement.

The County has adopted Rule 139 as a progressive discipline policy. Contained within the policy are provisions for suspensions. The Union argues that under the policy there should have been at most a written reprimand because the previous discipline within 6 months, June 16, 2006, had been reduced to a verbal reprimand, and the next step would be the written reprimand under the policy. However, the policy itself provides that suspensions may be imposed for repeated offenses when verbal reprimands or written reprimands have not brought about corrected behavior, or for first offenses of a more serious nature. Under some circumstances there need not be a verbal or even a written reprimand before a suspension would be called for. The policy then sets out several examples of serious infractions, which are not limited by the listed examples. Those include: major deviation from the work rules, including a violation of a safety rule; being under the influence of alcohol; falsification or misuse of time sheets or record; fighting; theft of another employee's property, and; disobedience of an order. Here, Grievant had on record at the time a written reprimand of June 16th. Under Section 3.5 of the collective bargaining agreement, 6 months is the furthest back a verbal reprimand or "I'm disappointed" letter may be considered in other discipline. Although there was a work improvement plan considered by the County that had been in effect from a discipline previous to that, December, 2005, the December 2005 verbal warning itself and the "I'm disappointed" letter were not considered in the August 29th discipline form. He also had in effect a work improvement plan which had been updated on June 28th. The work improvement plan included, among other things, a directive to follow state statutes and be prepared for court hearings. On August 1st Grievant was given a directive to schedule a change of placement hearing. On August 10th he was told to call the Green Bay facility and inform them not to bring the juvenile. The directives carry with them the clear implication that they be done thoroughly, completely and competently. Failure to completely meet the court hearing scheduling directive and the directive to effectively call the Green Bay facility is commensurate with disobedience of an order. In the verbal warning of June 2006 he had been

informed that further discipline could include a suspension. When Grievant violated the work rules in the four separate ways as set out above, and as alleged in the discipline form, the result was having an 11 or 12 year old obviously troubled and difficult to place youth left without a placement for the better part of a day. This is a circumstance flowing from several infractions and is of a more serious nature as contemplated by the policy for suspension. The failure to make the case transfers and permanency plan actions as also contained in the suspension action adds further weight to the disciplinary interests addressed. A suspension here is consistent with the County policy. Apart from the County policy, a one day suspension here is reasonably related to the disciplinary interest involved. Grievant had worked for the County since 2004. The physical care for shelter, food, stability, rehabilitation, and other concerns are all involved in the care of the juvenile. The juvenile was transported without knowing where he was going to be placed and then spent a day in uncertain circumstances. Grievant spent a day reacting to the immediate circumstances. He had received a prior verbal reprimand in June for matters concerning certain paperwork aspects of his job and the actual placement and care of other juveniles in his charge. The concept of progressivity in the discipline is implicated. Other social workers for the County have been suspended for work rule violations. Despite the Union's arguments, there is nothing in the record to establish that Grievant was being discriminated against, harassed, or treated any differently than anyone else for this type of conduct and work history. A one day suspension is not unreasonably related to the disciplinary interests in the facts of this case.

The Union argues that Grievant should not be disciplined while he was on a work improvement plan. Nothing in the collective bargaining agreement provides such an exemption, nor is it in Rule 139 or the plan itself. The development of the plan serves to point out to Grievant that the Department viewed certain aspects of his job performance needed to be improved. The Union contends the alleged infractions would be good learning experiences for Grievant to be considered within the work improvement plan rather than a basis for discipline. That might be a suggestion for the Union to make, but it is the County's role to design a work improvement plan and administer discipline within the confines of just cause and in compliance with the collective bargaining agreement. It need not take the Union's suggestion. And, such plans are not insulation from being disciplined and do not excuse employees from continued violations of work rules. Grievant was not suspended for any action or non action which had originally resulted in the directives of the work improvement plan. He was disciplined for actions and inactions which occurred well after the work improvement plan was implemented. Similarly, the fact that the plan had been extended because weekly and monthly plan meetings did not occur does not relieve Grievant from doing his job as he is supposed to. And the fact that the meetings had not occurred as originally planned in January of 2006 does not mean that anyone other than Grievant is responsible for the predicament he put himself in from August 1st to August 11th. A one day suspension without pay is a matter for Grievant to reflect upon the seriousness of his conduct, its ramifications, and what is expected of him to efficiently and competently perform his job. On the contrary, the work improvement plan clearly gives notice to Grievant that he must be prepared for court along with the other specified directives including meeting statutory requirements and completing case transfers.

The record does not reflect any partiality or unfair treatment of Grievant in the consideration and application of the one day suspension. The County has met its burden to establish just cause for the one day suspension.

The three day suspension

The three day suspension was recommended in the notice to Grievant on October 2, 2006 and actually determined after the meeting of October 16th. The County discipline policy requires a notice of proposed discipline if it is more than a one day suspension, with the opportunity for a meeting before such discipline is actually imposed. The basis for the County's discipline was the events occurring at the August 24th court hearing and the September 5th court hearing.

There is no serious factual dispute as to what happened at each hearing, both of which involved the same case and juvenile as the August 11th incident. These were placement hearings concerning the juvenile. On August 24th the juvenile court wanted the telephone number of the service provider from the Green Bay facility where the juvenile had formerly been placed. Grievant did not have that number available with him in court, and the court then went through several telephone calls or messages before being able to connect to and speak with the service provider. On September 5th the juvenile court wanted to reference or look at some service provider reports from the Green Bay facility. Grievant was not able to locate the reports, although they were actually attached to his court motion. Grievant had not expected to be asked about those reports because the matter before the court was for transfer of the juvenile to a new placement. For both hearings Grievant had brought some information with him, but not the entire file, which was voluminous. Social workers for the County do not always bring their entire files to hearings if they are large, but do bring working files that contain pertinent information. Sometimes the Court asks questions that the social workers do not have a ready answer for, and they supply the information at later hearings. During the August 24th and September 5th hearings Grievant's supervisor, Ramsey, was present to observe him and the proceedings.

As noted in the earlier discussion, the County does have an interest in having social workers prepared for court hearings and in actively working with service providers. This reasonably implies and includes having basic information available at court hearings, such as contact information and service provider reports. The same County work rules applying to the August 11th events also apply to the events of August 24th and September 5th. The County does have a disciplinary interest in how social workers provide this information to the court.

Before determining whether Grievant's actions or inability to provide requested information at the hearings constitutes work rule or other violations supporting a just cause determination, it is first necessary to consider the points raised by the Union that the August 24th hearing occurred before the August 29th imposition of discipline, and the discipline associated with August 24th was not timely. Ramsey had observed the court proceedings on August 24th. On August 29th Grievant and the Union had expected to meet with Ramsey to

discuss the work improvement plan as required in the plan. That meeting was cancelled by the Department and later that day Grievant was given the disciplinary action form. When Grievant received the one day suspension of August 29th, the incident of August 24th was not mentioned or discussed by his supervisor or anyone else. There is no reference to the August 24th events in the August 29th disciplinary action form. The parties met again on September 7th as to the August 29th discipline and, again, there was no mention of the August 24th incident, or the September 5th court hearing for that matter. The Department reviewed Grievant's work history and prepared the Notice of Pre-Disciplinary Meeting, which was provided to Grievant on October 2, 2006. This was the first time of record that Grievant was made aware that the County intended to discipline him for the events of August 24th and September 5th.

Just cause determinations have due process considerations. And the collective bargaining agreement between the parties states in Section 3.5 that employees may be disciplined, "but only for just cause and in a fair and impartial manner." Among the administrative due process concerns considered by arbitrators is that the imposition of discipline must be prompt, and in some cases delay in imposing discipline is seen as undercutting the employer's argument that the misconduct was extremely serious. LABOR AND EMPLOYMENT ARBITRATION, (2ND ED.), *Bornstein, Goslin, Greenbaum*, § 14.03[2][a], 14-10. The concept as a component of due process is also recognized in COMMON LAW OF THE WORKPLACE, (2ND ED.), *St. Antoine*, p. 210:

§ 6.15 Timeliness

Most arbitrators agree that an employer's action in disciplining or discharging an employee must be timely-taken without undue delay after the incident or incidents relied on by the employer in justifying its action.

Similarly, employers must impose discipline within a reasonable amount of time after learning of misconduct. DISCIPLINE AND DISCHARGE IN ARBITRATION, *BRAND*, p. 37. This permits employees to respond to the discipline at a time when memories are fresh. See, DISCIPLINE AND DISCHARGE IN ARBITRATION, 2001 Supplement, *Draznin*, p. 5. This principle is invoked in cases involving delays of a year or longer. It is sometimes determinative in delays of a much shorter time, given other factors that may be involved. Depending upon the particular circumstances and contract language involved, timeliness considerations sometimes require the reduction or modification of discipline. See, e.g. MILWAUKEE COUNTY, MA-1223 (McGilligan, February, 2004) (Seven week delay between incident and interview of Grievant); LAFAYETTE COUNTY, MA-9864 (McGilligan, April, 1999) (Three months between incident and imposition of discipline); MARRIOT SERVS. CORP., 109 LA 689 (Kaufman, 1997) (Three week delay in notifying employee of infraction where contract required notice "as soon as possible"); CITY OF BERKLEY, 106 LA 364 (Pool, 1996) (Delay of two to three days before asking grievant about alleged incident).

The arbitrator is persuaded that in this case the delay between the August 24th event and the October 2nd Notice, with the August 29th discipline occurring without mentioning it and another discipline related meeting occurring for the same juvenile's case in between without mention of the event, renders the August 24th event untimely as one of the reasons for the three day suspension. The County was aware of the incidents because Supervisor Ramsey was in Court on August 24th specifically to assure that the matter proceeded without further issues. Had it been mentioned on August 29th, just a few days after the incident, Grievant might have been able to approach the September 5th hearing differently, perhaps by bringing his entire file with him to court despite it's large size. Beyond the potential disadvantages to Grievant attendant with the delay, it does indeed undercut the County's position that the cumulative nature of Grievant's shortcomings in providing information in court eventually add up to a situation serious enough to justify a three day suspension. The County, in its brief, acknowledges that the transgressions, when isolated, appear minimal. The County does consider the incident as just one in a series of events and attempts to work with Grievant. But the County is correct in that this August 24th incident was minimal. Whether it would have been considered by the County as a reason to impose discipline had the September 5th matter not happened has to be questioned. To bring it up for discipline over five weeks later, after two disciplinary meetings in between, seems more punitive than fair. The due process and fairness considerations inherent in just cause and contained in the parties agreement does not allow the August 24th failure to have the phone number available for the court to be used as a basis to impose discipline.

The September 5th court incident is different. The delay between the event and the Notice is not as long, it occurred after the August 29th discipline, and there was one, but not two disciplinary meetings between the event and the notice. The event itself is more serious. Access to service provider reports is not as readily available as a telephone number. Even though the reports happened to have been included with the court filings, when asked for no one, including Grievant, and apparently the Court, realized that. To be under the impression that such reports, in this particularly troubled case, were not in court or available can indeed give rise to a level of serious consternation - by the Court and the Department. The shorter length of time involved here does not as seriously erode the County's greater disciplinary interest, or undermine a sense of due process and fairness, so as to render the September 5th matter untimely as a basis for discipline.

There is another procedural issue raised by the Union concerning the County's use of prior disciplines more than 6 months old when it imposed the three day suspension. That is the consideration and use by the County of the verbal warning administered more than six months prior to the three day suspension and the incident(s) precipitating it.

The written reprimands of December 19, 2005 and June 16, 2006 were both reduced to verbal reprimands shortly after their issuance. Grievant was given notice of the three day suspension October 2, 2006, the events that form the basis for that having occurred on September 5th. As discussed above, the August 24th events are not being considered as a basis

that the County can use to impose discipline. The collective bargaining agreement in Article III states in pertinent part:

Section 3.5 Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for a violation thereof under the terms of this Agreement, but only for just cause and in a fair and impartial manner. When an employee is being disciplined or discharged, there shall be a Union representative present and a copy of the reprimand sent to the Union. All “I’m disappointed” letters, corrective actions, and written verbal warnings will remain in the employee’s personnel file for six months and after that would be closed within the employee’s file. After six months, these actions will not be considered in future disciplines.

Written reprimands will remain in an employee’s departmental personnel file for one (1) year from date of issue. After one (1) year, such reprimands will be removed to a closed file in the Personnel Department; and shall not be used in case of discipline.

In the October 2nd Notice the County set out the prior disciplinary history it was relying on:

You have previously been placed on Work Improvement Plans on 1/06/06 and 6/28/06 with verbal warnings and you were placed on a one day suspension without pay on 9/08/06. These disciplinary actions were taken with the expectation that you would renew a commitment to improve the standard of your work in Court Services. However, failures continued to occur in the areas addressed in the Work Improvement Plans.

The use by the County of the plural reference to “warnings”, and in the context of the reference to the 1/06/06 work improvement plan are clearly references to the verbal warning of December 19, 2005 wherein the 1/06/06 work improvement plan was first directed. The verbal warning of December 19, 2005 cannot be considered for disciplinary reasons after six months, according to the agreement. The September 5, 2006 events occurred more than six months after the December 19, 2005 verbal warning.

This leaves the allowable basis for the three day suspension as the September 5th events and the prior discipline as the verbal warning of June 16, 2006 and the one day suspension of August 29, 2006. It is also appropriate to consider the County allegations in the October 2nd notice that Grievant did not comply with the work improvement plan on 6/28/06 which required him to be “adequately prepared for all Court hearings and internal staffings”. Just cause requires that the discipline imposed must reasonably reflect the employer’s disciplinary interest. Here, one of the alleged infractions and one of the prior disciplines are not available to support the three day suspension and that absence erodes the reasonableness of a three day

suspension, given what the County itself would otherwise view as a minimal transgression. But, as noted in the discipline form of October 2nd, this does raise a serious concern as to whether Grievant is providing adequate supervision of his cases. This is a serious enough transgression in view of progressive discipline policies and considerations. This was the same juvenile who had been involved in the August 11th incident. September 5th and August 11th were both court hearing related matters. The work improvement plan specifically included being prepared for court hearings. Grievant's actions on September 5th did not demonstrate competence or efficiency. He should be able to anticipate and quickly access important information and not need to rely on later court hearings to supply that information. The undersigned is persuaded that Grievant's conduct violates Work Rule 3. A progressive discipline approach had been undertaken by first resorting to the June 19th verbal warning with a work improvement plan and then a one day suspension. Even though the September 5th event may not be as serious as the August 11th event, considering the recent, allowable prior disciplines, another suspension would not be unreasonable. The undersigned is persuaded that a one day suspension for the events of September 5th is reasonable in view of the allowable disciplinary interests that can be considered.

The Union has argued that Grievant has been harassed by the County through its discipline, and that is a reason why the disciplines cannot stand. However, there is nothing in the record to show that the County has any reason to harass or single out Grievant for any treatment different than others. The County has had legitimate concerns about Grievant's job performance. The County has established several violations of work rules by Grievant. And, although not well developed, the record does show that other social workers have been suspended for violation of work rules. The Union's contentions have not established a reason why the above disciplines should not be imposed.

The Union argues that the real reason Grievant was disciplined was because he did not have his file in court and others don't always bringing their entire files. But this is not why Grievant was disciplined. He was discipline for the fiasco surrounding August 11th that was well beyond simply not having a file in court. And the September 5th incident was specific in its reference to the service provider reports. Certainly if Grievant had brought his entire file to court the reports would have been in the file, but the record reflects they were in court already as attachments to the motion papers. Although the discipline form does mention that Grievant did not have his entire file with him, it was the inability to locate the reports and to have necessary information readily available, as opposed to bringing the entire file, which was the reason the County had for discipline. Grievant has not been treated any differently here than anyone else because here he was not disciplined for not bringing his entire file. Similarly, the Union argument that other social workers have not had some information in response to court questions and were allowed to supply it later without discipline is of no help to Grievant. The argument has no logical relationship to the August 11th failed court hearing. The August 24th court hearing has now been eliminated from consideration for other reasons stated above. And to have relatively recent service provider reports for a recent placement for this difficult to place juvenile readily available to Grievant at a hearing specifically held to consider new placement is not the type of information that can reasonably be expected to be

supplied at some later, unspecified time. Those reports related directly to the juvenile's current situation and the lack of access to it by Grievant does support a conclusion that he did not know his cases well, and as a result perhaps the County was not provided the services needed. There is nothing in the record to suggest that any information other social workers were allowed to supply later was of similar import so as to conclude Grievant was being treated differently than others.

The County did have just cause to impose a suspension for the events of September 5th.

Accordingly, based upon the evidence and arguments in this case, I issue the following

AWARD

The grievance is denied in part and sustained in part.

1. The grievance over the August 29th one day suspension is denied and dismissed. There was just cause for the one day suspension in August of 2006. The County did not violate the collective bargaining agreement when Grievant was suspended for one day in August of 2006.
2. The grievance over the October 2nd Notice and three day suspension is denied in part and sustained in part. There was just cause for a one day suspension of Grievant in October of 2006. The County violated the collective bargaining agreement when Grievant was suspended for three days in October of 2006.
3. As a REMEDY for the October violation, the County will make Grievant whole for two days, amend his discipline record to reflect a one day suspension as opposed to a three day suspension and eliminate the August 24th incident as a basis for the one day suspension.

Dated at Madison, Wisconsin, this 19th day of June, 2008.

Paul Gordon /s/

Paul Gordon, Arbitrator