

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

VILAS COUNTY

and

WISCONSIN COUNCIL 40, LOCAL 474A, AFSCME, AFL-CIO

Case 84
No. 66243
MA-13465

Appearances:

Dennis O'Brien, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhinelander, Wisconsin 54501, appearing on behalf of Wisconsin Council 40, Local 474A, AFSCME, AFL-CIO.

John Prentice, Simandl & Murray, S.C., Attorneys at Law, 20975 Swenson Drive, Suite 250, Waukesha, Wisconsin 53186, appearing on behalf of Vilas County.

ARBITRATION AWARD

On August 21, 2006 Vilas County and Wisconsin Council 40, Local 474 A, AFSCME, AFL-CIO filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint William C. Houlihan, a member of the Commission's staff to hear and decide a grievance pending between the parties. Hearing on this matter was delayed, and ultimately conducted on September 11 and 12, and November 13, 2007, in Eagle River, Wisconsin. A transcript of the proceedings was taken and distributed by November 30, 2007. Post-hearing briefs and reply briefs were filed and exchanged by July 29, 2008.

This Award addresses the termination of employee C.B. for an inability to do the job.

BACKGROUND AND FACTS

C.B., the grievant, was employed by Vilas County as a Document Technician in the Registrar of Deeds office for just under two years, immediately prior to her discharge on May 11, 2006. Prior to her tenure in the Registrars office, the grievant worked in the Vilas County Child Support Agency from November 1998 until she transferred to the Registrar's office in May, 2004. The grievant was successful in the Child Support Agency, and was given positive feedback and compliments on her work.

Before going to work for Vilas County, the grievant was employed by a nature and wildlife publications company and before that by a major University. In both of those settings the grievant had been successful, and had strong references. Prior to the incidents giving rise to this proceeding, the grievant had never been disciplined.

Joan Hansen is the Vilas County Registrar of Deeds. The Registrar of Deeds is an elected position, whose mission is defined by Sec. 59.43 Wis. Stats. The essence of the job is to file and record various legal documents, including deeds, mortgages, plats, survey maps, marriage, birth, and death certificates. Sec. 59.43 sets forth detailed requirements as to which documents are to be recorded, how they are to be numbered, and requires documents to be maintained "legibly" and "clear". It has always been Ms. Hansen's view that documents scanned and filed with the Registrar's office must be of the highest quality possible. Imperfections, even those which do not compromise the readability of the document or which appear on the document as it comes into the office, are removed if possible. And so, creased corners, fold lines, or wrinkles are corrected.

One consequence of the foregoing is that the work of a Document Technician is tedious, very detail oriented, and subject to a rigorous standard. The work is repetitive but requires focus and attention.

The essential duties found on the Document Technician Job Description includes reviewing documents, recording, filing and indexing documents, proofing and preparation of documents, clean and maintain equipment, enter document data into computer and proof input/output, index and process vital statistic documents, review, scan, index and process UCC Real Estate Financing Statements, balance daily accounting reports, and a variety of other tasks and duties.

The grievant initially trained to do document imaging. The early training was done by a co worker, Kathy Clure. The grievant was not initially trained to do many of the other tasks found within the job. There are a variety of reasons to explain this, the most important of which is that Hansen did not have confidence in the grievant's ability to learn many of these tasks.

From the outset of her employment in the Registrar's office the grievant made mistakes and was slow to learn some of the detail of the job. She was not nearly as sensitive to minor document blemishes or imperfections as is Hansen. Over time Hansen and office co workers pointed out the errors made by the grievant and Hansen engaged in ongoing training. Errors persisted. Most of the errors were of a modest, non-substantial nature. However, some were not. Overall, the grievant's performance was not deemed to be up to the standard of the office by Hansen or by the other employees of the office.

In April, 2005 Hansen held a re-training session with the grievant to teach certain elements of the job. The three-hour session was conducted away from the work site and addressed the substance of the work. The grievant's job performance was discussed. By this

time co-workers were complaining about the grievant's work. Around this same time, the grievant allowed a member of the public to take a microfilm document to another room. This was considered a serious breach of office protocol. There was a review of office protocol prompted by the incident, and the grievant was counseled on the matter.

Hansen advised the grievant that she (Hansen) would be putting an error in proofing through the system as a sort of test to see if the grievant was proofing properly. On, or about May 10 the grievant discovered an error and believed that she had discovered the error that Hansen had planted. With that in mind she went to Rebecca McDowell, the Assistant Registrar, and indicated that she had found the error and did so in a light hearted manner. McDowell, whose mistake it was, evidently became angry with the grievant. The grievant, believing it was a test told McDowell to lighten up and further indicated it was only a little mistake. McDowell took the matter to Hansen.

Hansen was displeased with what she perceived to be the grievant's attitude. The mistake was not a part of a test. She sent the grievant the following memo:

MAY 10, 2005

TO: C.B.

FROM: JOAN HANSEN, REGISTER

SUBJECT: UNACCEPTABLE ISSUES

ISSUES:

I was not here this morning and Rebecca was not feeling well and was running late. Office practice is to have the office up and running by 8am. It is not just my responsibility or the deputy's. It is everyone's responsibility. Kathy Clure was rather upset because when she arrived you were here at the courthouse. The office was still locked and she had difficulties finding her keys to unlock the office. You came out of the bathroom, greeted her and told her you were going back out for a cigarette. You did not assist her to get in the office, nor did you help turn on all the equipment before the 8am start time.

THERE WAS A LITTLE HEATED DISCUSSION ABOUT A MISTAKE MADE ON THE DOCUMENTS BETWEEN REBECCA AND YOURSELF Yes, I had mentioned that we would be testing to see if the proofing was being done properly. The main reason for telling you that was so you would be more careful and thorough about proofing. If it were a test, we would only have tested by missing an "A-page ". The type of mistake Rebecca made is not an easy mistake to correct; therefore, it would never have been a test.

*It is imperative that all aspects of our work be done "ERROR FREE". It was inappropriate to have told Rebecca that she needs to "lighten up about mistakes". **ABSOLUTELY NOT!!!! WE DO NOT WANT ANYONE TO MAKE MISTAKES. WE ALL MUST STRIVE TO BE ERROR FREE.** Do not work with the assumption that an error can be corrected. It only takes one mistake in this department to cost the county millions of dollars in a lawsuit. In case you have not noticed, we **are devastated** when mistakes are made. Making light about this type of issue is **UNACCEPTABLE**. You need to acquire the work ethic which strives for "perfection".*

WRITTEN REMINDER ABOUT TALKING TO YOURSELF

*Several members of the general public (this includes title people, appraisers, etc.) have mentioned that it is **very distracting** to hear you talking to yourself constantly. They find it **very distracting** when you talk on the phone in a "very loud" voice. **You must remember that the public area is very similar to a library.** People talk in a library, but they do not talk out loud to themselves and when talking with others, they talk softly. Please use the library rule. If you are not aware that you are talking to yourself we can attempt to remind you at all times; but I feel you should work on this habit on your own. **Learn to talk in your mind, not out loud.***

This event sums up the office climate. Hansen was very concerned about the grievant's work. From her perspective, the grievant had been on the job for a year and was not performing. The grievant and McDowell had a strained and increasingly hostile relationship. Clure did not believe the grievant was doing her job. As a consequence the day ends with the grievant being written up for discovering a mistake made by McDowell. The memo makes reference to a number of matters. They go to her perceived attitude, skills, and personal habits, all of which would contribute to her termination. The grievant perceived herself to be isolated in the office. McDowell was contemptuous of the grievant. The grievant believed Hansen to be McDowell's protector.

One month later, June 17, 2005 a Title company employee came to the Registrar's office to indicate there was a page missing from a mortgage satisfaction. The error was identified and the Registrar's office was able to secure the original document and scan it in correctly. The error had been made in September, 2004. Hansen reviewed the error with the grievant the next day, and the grievant recognized and acknowledged the error. The grievant was advised that this was unacceptable and that care needed to be exercised so that it did not happen again. This was a serious error.

On July 12, the grievant was given a verbal notice that she should not have food and drink on her desk, in any proximity to documents. The no food rule is an office policy designed to protect the documents from damage. All employees have food and/or drinks around their work stations. Employees strive to keep the food and drink away from document areas. It was Hansen's observation that the grievant was keeping the food and drink too close

to the documents. On July 18, the grievant was given a written warning for having a cup of coffee too near documents. She responded by noting the space limitations around her work area. The food around documents concern persisted throughout the grievant's employment.

The food issue was one of a number of concerns noted during this time frame. The issues varied. Some were shared with the grievant. Some were not.

On, or about August 2 an employee from a Title company came to the office to advise the Registrar's office that a mortgage had not been returned. Hansen called companies who had documents processed by the Registrar, and as it turns out the mortgage had been included with a packet of documents that was sent to another company. This company did a search of documents returned to them, and discovered the missing mortgage, which was retrieved. This error was attributed to the grievant, and brought to her attention. Her response to the matter was to indicate that she would double check before mailing a group of documents to a single location. It was Hansen's testimony that this had never happened before. This had the potential to be a serious problem.

At this point in time the grievant was primarily scanning and proofing documents. Her training on other aspects of the job had been placed in abeyance, because Hansen lacked confidence in her ability to do the work accurately. It was at this approximate time that Hansen determined to monitor the grievant's work. The scanner is hooked up to the computer in Hansen's office. As documents are scanned, Hansen can see the same image presented to the person doing the scanning. She is able to watch in real time the document image as it is scanned. Her concern with the grievant's work was such that she actively monitored the grievant's work through this device. This had never been done before.

On August 18 another serious scanning problem occurred. A blank page was imaged. A Warranty Deed was not imaged and the Registrar had to go back to the Title Company, get the deed, and re-record the Deed. The grievant accepted responsibility for the error, and believed it occurred because she was interrupted in her work. This was a serious matter.

On August 22 Hansen met with the grievant to talk about the importance of the documents being handled, and why the office protocol is as it is. The conversation addressed handling food around the documents and how errors could have serious consequences for the customers. Later in the day, another mistake was made. It was a heavy document day, and the grievant had not completed the document scans by the end of the work day. She offered to stay and work overtime. Hansen said no, and directed her to go home. In light of the grievant's unwillingness to begin before 8:00 A.M. Hansen would not authorize overtime.

Hansen continue to monitor the grievant's work and found a minor error on August 23. On August 29 the grievant imaged a document incorrectly, by allowing an overlap of two pages. When the error was brought to her attention the grievant re-imaged the document and apologized. This error was regarded as serious by Hansen in that it compromised the document in question. It appears that the grievant failed to charge a credit account for documents copied

on August 30. During this period of time there were a number of notations relating to the grievant talking out loud to herself in a way co-workers found disruptive. The matter was periodically brought to her attention. By this point in time the grievant had little if any support in the office.

On, or about August 31, Hansen created a test to determine whether or not the grievant was proofing with accuracy. Given the number of people who handle documents in the normal course of work, everyone in the office but the grievant, was aware that a test was being administered. The grievant missed most of the planted errors. Hansen did not talk with the grievant about the test and errors. She determined instead that she would do re-training in the area of proofing.

The monitoring of work continued, and a number of mistakes were discovered. Creased corners, lines, and marks on documents were regularly found. Most were of a relatively minor nature. As she oversaw the grievant's work Hansen concluded that the grievant worked at a slow pace. She did not understand why there were lapses between documents or why it took so long for the grievant to process documents. At times she had co-workers re-do the grievant's work, where errors were discovered. At times she had co-workers do the work which would normally be the grievant's.

On October 4 a page was missing from scanned documents. McDowell evidently discovered it, and made an inappropriate remark to the grievant which touched off a shouting match between the two. Hansen came out and reprimanded the two co-workers. Hansen continued to monitor the grievant and noted a series of errors and/or what she regarded as sub-standard performance over the next few weeks. On October 27 a Title Company employee brought a document to Hansen which had chocolate on it. She wanted a clean copy for her client. The document was re scanned. The incident confirmed Hansen's very great concern over food around documents.

The monitoring continued. The grievant was very aware and uncomfortable with the constant surveillance. She found it threatening. On November 3 Hansen told the grievant to re-scan a number of documents. The grievant did not believe that all of the errors were of her making. The two had a blowup in Hansen's office. The grievant did not believe that most, if any, of the errors were of her making. She believed she was under employment threatening scrutiny and that this was an instance where she was being blamed for the errors of others. Hansen believed that one, or more of the errors was attributable to the grievant and regardless of whose error was in play, wanted the work re-done properly. This incident led to a verbal warning which was confirmed in writing;

November 3, 2005

TO: C.B.

FROM: Joan Hansen Joan Hansen /s/

SUBJECT: Verbal Warning

As you know, there are specific steps we follow to accomplish the work performed in this office. The work done in this office is governed by law and the law is specific. We have established certain rules/steps to follow for a purpose. First, to ensure we comply with the law; and second, to make our jobs more efficient and productive. Over the past several months, you have failed to follow and adhere to several of the established office practices/procedures.

I have constantly given you verbal and written reminders over the past 5 months. These were not official "in your personnel file" reprimands, but rather working tools/reminders to help you improve your job performance and understand the importance of the work we do here and our work ethic. Still, after all this time, too many mistakes are being made. Many of them are serious and unacceptable mistakes.

After more than 16 months of being with this office and being trained in the procedures, enough time has passed that your repeated substandard performance must be addressed more formally. This therefore constitutes a verbal warning. I do not want to assume that you are purposely doing things your own way or in a way that is more comfortable for you. Rather, I can only conclude that you still do not understand the importance in doing the specific steps necessary to perform your job properly and efficiently. We do not do things in ways that makes it easier on us. ***We must do the work (especially imaging) in a way that makes it error free (perfect).***

Given the above, it is necessary to again review all specific steps and procedures relating to your job and to this office. Attached is a list of your errors that have occurred with imaging over the last three months, many of which we have discussed as they occurred. If, after 30 days from this warning, you continue to have problems and unacceptable errors continue to occur, you will be subject to further disciplinary action. I will be available to you during that time period to answer any questions or provide any support that I can to help you address your job performance.

Another effort at re-training began on November 7. The grievant was limited in the work she was assigned to perform. Hansen created a step by step protocol for scanning and distributed it. The document had office wide application, but was created as a tool for the grievant. The ongoing monitoring revealed numerous errors and work imperfections. The monitoring stopped from November 17 through December 5. Hansen had done some retraining, and determined that there should be a learning period where mistakes would occur. She determined that the elimination of the monitoring would allow the grievant to be more comfortable in performing the work.

The monitoring began again on December 5. Mistakes were discovered. During this time two documents were imaged with notes attached. When the error was brought to the attention of the grievant, she could not see the problem. By mid-December, Hansen came to the conclusion that the grievant was unaware of what she was looking at or what she was reviewing. It was in this context and the performance history that Hansen concluded that she would never be able to trust the work of the grievant. Hansen was investing huge amounts of time and effort monitoring, reviewing and correcting the work of the grievant.

The monitoring continued. Errors were discovered. The 30 day period referenced in the warning came and went. The work was not to the standard set by Hansen. On February 2, 2006 a written warning was issued:

To: C.B.

From: Joan Hansen, Register of Deeds

Date: February 2, 2006

Re: Written Warning

For over a year, I have regularly had to address deficiencies in the performance of your job as document technician. On November 3, 2005, you received a "verbal warning" that more formally documented and detailed your errors. You were given 30 days to correct your ongoing errors and warned that you would be subject to further discipline if your performance continued to be unacceptable.

Since November 3, 2005, you have continued to make an inordinate amount of mistakes; attached a list of your errors. We have gone over your job description and performance issues at length. I have continuously expressed my dissatisfaction with your job performance and regularly discussed your recurring problems with you. (see attached) If your errors are not willful, they must reveal your inability to do your job or reflect careless indifference. As I have explained many times, the document technician position is a highly detail-oriented job. Tasks must be done correctly the first time. The errors that you continue to make are unacceptable and disruptive to the efficient and proper functioning of my statutory office.

Although you have had more than a year to show improvement, you have continued to perform poorly. The constant need for me and the other staff to manage your performance problems detracts from our work and the mission of our office. I cannot allow this to continue.

If within thirty (30) days you do not demonstrate significant improvement, I will recommend termination of your employment with Vilas County. I will be available to answer any questions or provide whatever support I can. I am also willing to discuss with you any accommodations that may assist you in the performance of your job. But you must be able to demonstrate substantial improvement.

If you have any further inquiries regarding these issues, please do not hesitate to contact me. Thank you for your anticipated cooperation.

The warning came with a list of errors and concerns. Some of the matters had been discussed with the grievant. Some had not. The period immediately following the warning did not see an improvement in the performance of the grievant. On February 15 the grievant took a leave of absence.

Hansen initiated a review of the grievant's prior work. She was concerned that there could be errors as yet undiscovered. A number of items were discovered after the grievant left on leave. One involved the wrong document being sent.

The grievant's circumstance was known throughout the Courthouse. On March 17, 2006 the Union held a meeting, called at the request of McDowell and Clure. During the course of that meeting, and in other conversations with Union Executive Board members, McDowell and Clure supported Hansen and were critical of the grievant. McDowell expressed the opinion that the grievant was stupid and untrainable. She believed the grievant had been disrespectful of Hansen and that Hansen had worked hard to help and train the grievant. McDowell believed that the grievant should be removed and that the Union should investigate thoroughly before undertaking to represent the grievant.

Following the meeting McDowell wrote the Corporation Counsel the following:

March 17, 2006

Martha Milanowski
Corporation Counsel
330 Court Street
Eagle River, WI 54521

Dear Ms. Milanowski:

Kathryn Clure and I requested a meeting with our local's executive board to tell our side of the story regarding C.B. They have most of the courthouse feeling

oh-so-sorry for her because she is losing her job. After an hour of sometimes-rancorous conversation, here is what we learned:

1. If a co-worker is doing only a small portion of her work, you must do the rest of it for her without complaint, while attempting to hide this fact from your supervisor.
2. If a co-worker is unable to learn a job after being re-trained, re-trained, re-trained ad-infinitum, it is not her fault - it is the fault of the people attempting to train her.
3. If a co-worker refuses to comply with the simplest and most basic office policies and procedures, well, that's ok—she doesn't have to.
4. Employees should strive to do just enough to get by.
5. The phrase “just cause” holds no meaning for a union worker.
6. Insubordination is acceptable if an employee is “having a bad day”.
7. A supervisor should never use the word “we”.
8. A department head and her employees are never a team—the relationship must be kept adversarial.
9. All the employees in an office must lower themselves to the level of the least competent one among them so as not to humiliate that person or make her feel excluded.
10. Never call a spade a spade.

They make it seem as if this is all Joan's fault (she's “intimidating”) - they actually asked us if Joan intimidated us! Even when we told them that we love our jobs, would never think of leaving and couldn't ask for a better supervisor than Joan, they still want us to suffer B.'s incompetence and insubordination. We informed them that Joan bent over backwards and tied herself in knots trying to train this woman, and has evidenced the patience of a saint in trying to deal with her. The county has come within a whisker of being sued (twice!) because of B. - which is why we had to start checking absolutely everything she did.

C.G. got all upset when I called B. stupid, so I will explain it like this:

When she posted into our office, she *chose* not to apply herself and completely learn the job.

She *chose* to do the small part of the job she did learn carelessly and as slowly as possible.

She *chose* to not comply with office policies and procedures.

She *chose to* be uncooperative.

She *chose* to be insubordinate.

Now, maybe those are smart choices in C.'s sad little world, but they certainly are not in mine.

What other choice does Joan have in this situation? Keep B. this office, gradually reducing her job responsibilities to near zero? How fair is that to Kathy and myself? We already have to do 75% of her work because she is either too incompetent or too untrustworthy to do it. Joan has to work incredibly long hours just to keep up on her administrative duties because she has had to spend so much of her time checking up on B. The Union wants us to keep covering up for her and protecting her incompetence - we realize that she will never find another job as good as a county job (due to her age, her poor health, and her limited skill set) but we have been waiting nearly **two years** for her to finally get it. No one can accuse Joan of acting precipitously in this situation.

I would be more than happy to speak personally with you, John Prentice and/or the personnel committee if you think it worthwhile.

Sincerely,

Rebecca McDowell /s/
Rebecca McDowell
Deputy Register & Deeds

The grievant has a number of medical conditions which impact her job performance. She suffers from Crohn's disease and arthritis. The stress of her work situation exacerbated her symptoms. Additionally her experience at work caused her to suffer Major Depression which included anxiety, sleep disturbance, decreased concentration, fatigue, and a sense of helplessness and hopelessness. Her work situation was diagnosed as taking a severe toll on her mental and physical health.

As previously noted, the grievant took an FMLA leave of absence effective February 15, 2006. She subsequently requested an extension of her leave. The County denied the request. The grievant then requested a return with accommodations. Simultaneously, the County sent the grievant the following letter of discharge:

May 11, 2006

-via Federal Express

C.B.

. . .

Re: Termination of Employment

Dear Ms. B.:

I have continuously expressed my dissatisfaction with your performance as Document Technician. I have explained many times that the Document Technician position is a highly detail-oriented job. Notwithstanding that we have gone over your job description and performance issues at length, you have continued to make an inordinate amount of mistakes and you are only performing a small portion of the responsibilities set forth in your job description.

On February 2, 2006, I met with you and your union representative to discipline you for your poor performance. At that time I gave you thirty (30) days to show improvement and demonstrate that you can do the job. In the days that followed prior to your medical leave, you continued making errors and performing poorly. And most recently, we discovered that an image you recorded was missing a page! Owing to your performance issues, we have to have someone review all the documents you imaged. Essentially, we have someone performing your work.

The constant need for me and the other staff to manage your performance problems detracts from our work and the mission of our office. I cannot allow this to continue. I did not want to take disciplinary action against you while you were out on leave, but if your errors are not willful or do not reflect careless indifference, they reveal your inability to do your job. Consequently, I am terminating your employment, effective immediately.

I hope you are able to find employment you desire and which suits your needs and skill.

Very truly yours,

Joan Hansen /s/
Joan Hansen
Register of Deeds

The Union grieved the termination, which grievance was denied, leading to this proceeding.

ISSUE

The parties stipulated the following as the issue to be decided;

Did Vilas County have just cause to terminate the employment of C.B.? If not, what is the appropriate remedy?

**RELEVANT PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT**

ARTICLE II - MANAGEMENT RIGHTS

The County possesses the sole right to operate County government and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to the following:

. . .

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

. . .

ARTICLE V - JOB POSTING

A. Notice: In the event a job vacancy or new position occurs in the Courthouse Employees Bargaining Unit, if the County decides to fill the position, a notice of said vacancy shall be posted in the Courthouse so that all interested employees may apply. . . .

B. Promotion Procedure and Trial Period: In making promotions, filling vacancies for new jobs, the policy of seniority shall prevail, provided the senior employee considered for the job is qualified to perform the essential

duties for the job. All employees in the bargaining unit will be considered first. The senior qualified employee shall be given a thirty (30) calendar day trial period during which time the employee may return to his/her former position. In the event the senior qualified employee returns to his/her former position, the next senior qualified employee will be given an opportunity, and this process shall prevail until the position is filled. The immediate supervisor shall be the judge of employee qualifications. . .

. . .

ARTICLE XXIII - LEAVES OF ABSENCES

A. Duration: Leaves of absence without pay may be allowed for personal reasons, not to exceed thirty (30) days duration. Requests for such leave must be taken up with the Personnel Committee. Any leave granted under this provision which would also qualify as Family and Medical Leave time shall run concurrent with time to which the employee may be entitled under the Federal and State Family and Medical Leave Acts.

. . .

D. Medical Leave: An employee may be granted an unpaid leave of absence for serious medical reasons for a period of up to twelve (12) months. Requests for such a leave of absence shall be made to the Personnel Committee and include a physician's certification of the health condition and a physician's written opinion that the employee should be able to return to work within twelve (12) months. Absent County approval of a medical leave of absence, such leaves of absences shall be pursuant to Federal and State Family and Medical Leave Acts.

POSITIONS OF THE PARTIES

It is the position of the Union that while the grievant did make errors the employer has exaggerated the seriousness of the problem. Most of the errors reported have little or no adverse impact on the operation of the department. It is the Union's view that errors made did not rise to the level of statutory violations. The Union notes that documents are handled by many employees. The Union contends that all errors have been attributed to the grievant. This is alleged to be so even when a mistake passed through the hands of multiple individuals.

It is the view of the Union that others made mistakes. Depending upon the status of the individual, mistakes were ignored or tolerated. In contrast, the grievant was placed under minute scrutiny and even the most minor matters were recorded and added to a discipline pile.

The Union points out that the grievant had a long and successful work history until she entered the hostile work environment that is the Registrar of Deeds office. The Union notes that the grievant has Crohn's disease. It is the view of the Union that the hostility of the department adversely impacted her health. The decline in her physical and mental health contributed to some of her performance deficiencies. The Union points to medical records in support of this claim.

The Union believes there exists procedural flaws. The grievant was told she had 30 days to improve following the verbal warning. When the 30 days passed without further discipline she reasonably believed that things were better. It was 90 days later that she was given a written warning. The grievant went on FMLA leave shortly after the written warning. There was little opportunity for her to demonstrate the improvement referenced in the written warning. Notwithstanding that, she was terminated the same day she asked for an accommodation.

The Union assails the role McDowell played in the termination. It is the view of the Union that McDowell regularly attacked the grievant, called her names, and contributed mightily in making the workplace an impossible place to work. The Union believes that McDowell was instrumental in the termination of the grievant.

It is the view of the County that the grievant either could not or would not do her job. The County brief recites a lengthy list of mistakes and errors made by the grievant. The County concludes that after nearly two years the grievant could not do the job, nor was she making improvement.

The County points out that the Document Technician position is a tedious position which requires near perfect accuracy. In the view of the County the grievant did not perform to office standards. By the time of her termination, the grievant was not performing half of the duties in the position description. The grievant was trained and re-trained in the work. The training was not effective. The grievant was given several verbal warnings and a written warning. She was aware that her performance deficiencies were serious. She asked for a Union representative before one of the training sessions.

DISCUSSION

The core fact driving this Award is that after nearly two years the grievant was unable to do the job. The record establishes that the grievant had a good work record prior to her time at the Registrar of Deeds office. However, the Document Technician job is different in kind from jobs previously held by the grievant. It demands a temperament and set of skills that proved to be too great a challenge. The grievant received her initial training from Clure. Nothing in the record suggests that Clure was at that time biased against the grievant or that the training was inadequate. There was repeated formal and informal training. Hansen's considerable efforts to point out mistakes and to re-train were described as fair and professional by the grievant. Nothing in this record suggests that more training would have been useful.

The grievant never reached the stage where she was asked to do the full job. The scope of expectations was accordingly narrowed. This was the case because Hansen lacked confidence in the grievant's ability to absorb more, as she struggled.

The grievant's performance shortcomings were manifested in a variety of ways. Many detail errors were made. When she did scanning a number of blemishes were overlooked. The grievant lacked Hansen's perspective on detail. The grievant made actual mistakes, i.e. missing a page. This reflected an inability to double check work. The need to constantly pay attention to detail and to review and check work requires a special temperament. In the area of proofing it appears that the grievant did not have the critical eye needed to review documents in the detail required for such work.

Hansen's December conclusion that the grievant didn't really understand what she was looking for is likely an accurate assessment. The grievant was repeatedly cited for eating or drinking around her desk. It suggests that she never really appreciated the nature of the documents she was working with. The grievant was periodically admonished for talking to herself. This would be regarded as a relatively harmless trait in many workplaces. It was an issue in the Registrar's office. It was likely an uncontrollable habit, but one which served further to ostracize the grievant.

The Union raises several objections to the discharge. The Union contends that the overwhelming number of errors were minor, and were corrected in the office. In the view of the Union such errors have no impact on the statutory sufficiency of the documents. The contention is true. However, there were a lot of errors. By all accounts, the number was disproportionately high. Some of the errors were serious, and had the potential to bring about very real harm to customers and to the credibility of the Registrar's office. Hansen did set a rigorous standard. However, the record suggests that no one, including the grievant, was held to an absolute standard. Mistakes were tolerated. This termination was not about a modest series of inconsequential errors.

The Union complains that many of the errors were never brought to the attention of the grievant. From the perspective of the Union this calls into question how serious these matters were and how the grievant could have meaningfully reacted to matters she was unaware of. The record is filled with hundreds of alleged errors. Some were not brought to the attention of the grievant. However, many more were. The bulk of errors were brought to the grievant. The serious errors were brought to her.

There were errors assigned to the grievant by default. At times assumptions were made that if there was an error it must have been made by the grievant. Such claims would not support a termination. Most of this record is not this type claim. The norm was that the grievant was confronted with a mistake that all parties acknowledge she made. From December on, Hansen monitored her work. She personally observed the work as it occurred. Some of the more serious complaints came from outside parties.

It is the view of the Union that the grievant entered the department with a chronic health ailment. Her health was severely impacted by the hostile work environment she experienced. Her health declined as a result of the treatment she received, which contributed to her performance deficiencies. I agree with the Union's contentions relative to the grievant's health and the influence of the workplace on her health. This claim is supported by the medical evidence placed in the record. The record further supports a conclusion the Ms. McDowell has been hard on a number of co-workers.

However, there is a certain chicken and egg phenomenon in operation. The grievant was not learning or performing her job. In a small office there are few performance secrets. The office bickering centered on performance related matters. Her co-workers were increasingly frustrated and hostile toward the grievant. At times she asserted certain rights that were contrary to the culture of the office. For example the other Departmental employees came in a few minutes early to open the office. The grievant, relying on the collective bargaining agreement did not. While it may have been her right to start work at the contractually identified hour of 8:00 A.M., it irritated her co-workers.

The record establishes that Hansen was both patient and professional in her demeanor toward the grievant. It was over a year before the monitoring began. The grievant's work performance created stress and anxiety among her co-workers.

The grievant's health issues are significant. The work is not appropriate to her skills or to her health. The office is stressful, particularly to someone who is not naturally inclined to its detail. The Union offered a series of medical records to demonstrate the effects of the workplace on the grievant. My reading of those records, which covered a period from February 2, 2006 through the balance of the year, indicate that her medical providers believed that the grievant needed a different job, and that her physical ailments got worse as a consequence of the increased stress brought about by work. One report indicated that the scrutiny she experienced on the job was causing stress. One report indicated that the grievant needed a respite from work. Once on leave, the reports indicated her health was improving, and that symptoms were clearing up.

These records are from a period which begins with the written warning. The grievant had been under job threatening scrutiny for several months at the time and had been warned that she would be terminated if her work did not improve. During this period her work performance was on the decline as was her health. It would not be a surprise that she suffered stress related health issues.

The Union points to testimony that the grievant made numerous mistakes from the beginning of her tenure with the Registrar's office. If that is the case the Union contends that it was the responsibility of the employer to have declared her unqualified and sent her back to her prior job within 30 days. There is no indication that Hansen believed the grievant to be incapable of learning the job so early on. The job requires training. Following the training, the grievant was assigned to work. She was not held to the level of scrutiny that was to come

later. Article V, B provides an employee with the opportunity to return to her former position if not qualified for a job she has posted into. This was a right available to the grievant. She did not avail herself of it, presumably because she did not feel professionally threatened at the time. I believe at that time everyone was engaged in a good faith effort to train the grievant and to facilitate her efforts to integrate successfully into the department.

It is the view of the Union that the County focused blame for errors on the grievant. Many documents went through several hands in the course of processing. The Union asks why it is that only the grievant was held culpable for errors. I think it is true that all employees made mistakes. It is also true that the grievant made a disproportionate number of mistakes. Some were identified internally. Others were brought to the attention of the department by the public. As more and more errors surfaced there was greater attention focused on the grievant. As Hansen became more and more concerned about the quality of the work she paid more and more attention to the grievant's work product.

The Union contends that no one has ever been placed under the scrutiny that the grievant experienced. While this is true, it is also true that no one else had ever struggled with the work in the same way. There was testimony from former employees that they had scanned documents with turned corners or minor blemishes and the work had not been criticized or re-done. I credit this testimony. However, it was the frequency of errors and seriousness of some that led to the increased scrutiny.

There was an office culture that was well established before the grievant ever arrived. C.B. was a newcomer to that office. She did not fit well with the culture. Others held her job before and testified that they felt mistreated, particularly by McDowell. This was a meaningful factor in the lack of success of the grievant. However, the record establishes that the performance of her predecessors was significantly higher. The most serious of the interpersonal clashes occurred well into the grievant's employment in the department.

The Union contends that the termination has procedural flaws. The verbal warning indicated that the grievant had 30 days to improve. After 90 days passed she felt that she had improved. The written warning advised the grievant that she had 30 days to improve her performance. However, she went on FMLA leave 10 days later. With respect to the verbal warning, the grievant was the recipient of follow up feedback on her performance for most of the period. With respect to the written warning the grievant was not at work much after that warning was issued. Given the level of scrutiny she was under, her performance, and health, was on the decline. There is no serious indication that more time on the job would have turned her performance around. She took a leave because she needed to get away from her job to preserve her health. The medical evidence supports that conclusion.

The parties did not pursue a grievance over the warning. Instead they attempted to find an alternative job for C.B. The attempt failed. No one was willing to trade jobs. Vacancies either did not materialize or were not appropriate fits for the grievant. The parties considered creating a new position, but the County rejected that idea. Such resolutions are beyond the scope of this proceeding.

The Union complains about the role McDowell played in this matter. It is the view of the Union that McDowell helped document the case against the grievant. The Union contends that McDowell was hostile and abusive toward the grievant. The Union contends that Hansen is protective of McDowell. I suspect this is all true. Hansen did invoke minor discipline against McDowell for some of her inappropriate remarks. The work environment was, at times unpleasant. At times the grievant played a role in that. None of this alters the ultimate decision.

In the end, the grievant could not do the job. The number of errors she committed were well above the accepted standard. Other employees made mistakes, but not the number nor of the significance committed by the grievant. While most of the errors were minor, several were very significant. All parties involved in this matter realized the grievant should be elsewhere, but that could not be accomplished. The grievant's medical providers have indicated that she cannot be in the Registrar's office.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 30th day of October, 2008.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

