

BEFORE THE ARBITRATOR

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

and

GREEN COUNTY (PLEASANT VIEW HOME)

Case 164
No. 67388
MA-13860

(Teresa Rockey Grievance)

Appearances:

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

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

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, Green County Pleasant View Home Employees, Local 1162, WCCME, AFSCME, AFL-CIO (hereinafter Union) and Green County (hereinafter County or Employer) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute regarding the discharge of an employee. The undersigned was so assigned. A hearing was held on June 26, 2008, at the Pleasant View Nursing Complex, Monroe, Wisconsin, at which time the parties were afforded the full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. No transcript was taken. The parties submitted post-hearing briefs, and the record was closed on August 20, 2008.

Having considered the arguments of the parties and the record as a whole, the undersigned makes the following Award.

ISSUES

The parties agree that the issues before the Arbitrator are:

Did the County have just cause to discharge the Grievant?

If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

**ARTICLE 2
MANAGEMENT RIGHTS**

2.01 The Union recognizes the rights and responsibilities belonging solely to the County, prominent among, but by no means wholly inclusive are the right to hire, promote, as well as, for just cause, the right to demote, transfer, suspend, discharge or discipline. The right to decide the work to be done, and the location of the work consistent with the terms of the Agreement. The County has the right to plan, direct, and control the work force, to schedule and assign work to employees, to layoff employees for economic reasons, to determine the means, methods and schedules of operation for the continuance of its operations, to establish standards and to maintain the efficiency of its employees. The Union also recognizes that the County retains all rights, powers or authority that it had prior to this Agreement except as modified by this Agreement. The County has the right to establish reasonable work rules, and require employees to observe its rules and regulations. Reasonableness of management's decisions are subject to grievance procedure. However, the provisions of this Article are subject to the other express provisions of this entire Agreement and these rights shall not be used for the purpose of undermining the Union or discriminating against any of its members.

...

**ARTICLE 7
DISCHARGE AND SUSPENSION**

7.01 The Employer may discharge or discipline any employee for just cause. An employee charged with an offense justifying immediate discharge, will be informed of such offense in writing at the time of his/her discharge, and a copy thereof shall be sent to the Union. All discharges shall be made in the presence of employee's Stewards, if possible. The Employer shall give at least one (1) warning notice in writing of a complaint for other offenses (those not involving immediate discharge) against such employee to the employee and the Union.

Discharge without a warning notice is authorized in cases of:

1. Dishonesty
2. Working under the influence of liquor or drugs
3. Willful destruction of property
4. Physical or verbal abuse of residents
5. Theft from employer or other employees or residents
6. On the job criminal conduct
7. Failure of an employee to report to work on three (3) consecutive scheduled shifts without any notification to the Employer, unless due to circumstances beyond the control of the employee.

...

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

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

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

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

...

ARTICLE 26 ANTI-DISCRIMINATION

26.01 Neither the Employer nor the Union shall discriminate in any manner whatsoever against any employee because of race, creed, religion, color, national origin, or sex. The Employer and the Union agree to comply in all respects with the provisions of the Age Discrimination in Employment Act of 1967.

26.02 The Employer shall seek to provide a workplace which is free from harassment. The Employer will investigate all written complaints of alleged harassment based on gender, ethnic/racial, religion, disability or

sexual orientation. The Employer will discipline or take appropriate action against any employee who harasses or is violent.

BACKGROUND

The County provides general governmental services to the people of Green County, Wisconsin. Among these services is the operation of Pleasant View Home, a nursing facility for the elderly. The Union is the exclusive bargaining representative for the Home's non-professional staff, including food service employees.

By letter dated August 13, 2007, Pleasant View Administrator Don Stoor advised Teresa Rockey, hereafter Grievant, of the following:

...

RE: Employment Status at Pleasant View Nursing Home

Dear Teresa;

I am writing to you regarding your status as an employee in the Dietary Department at Pleasant View Nursing Home.

I was informed that this past week you again had problems in the kitchen with not being able to perform tasks you have been trained to perform and have performed numerous times in your work experience in the kitchen. In addition I was told of problems again with your behavior being disruptive to the operation of the kitchen. Enclosed with this letter is a detailed description of these problems involving your work. You have been reprimanded numerous times over the past fourteen months for these same problems. It was hoped that your performance would have improved since that time but the same mistakes continue to be made and the same problems with your behavior disrupting the kitchen operation continues to be a problem.

At this time I want to inform you that your employment at Pleasant View Nursing Home is being terminated effective today, August 13, 2007. If you should wish to meet with Becky Brown and myself, and a union representative, to discuss the termination of your employment a meeting can be arranged.

...

Enclosed with this letter were the following documents:

...

PLEASANT VIEW NURSING HOME

NOTICE TO EMPLOYEE OF DISCIPLINARY ACTION

WRITTEN WARNING _____

SUSPENSION _____

TERMINATION X 8-13-07

Employee Teresa Rockey Date 8-13-07

Employee Conduct Leading to Disciplinary Action

INCOMPETENT PERFORMANCE

and

DISRUPTIVE BEHAVIOR

See Attached

Recommendations: Termination

This notice reviewed with employee and original given to employee on:
Date: 8-13-07 By Called Teresa Rockey's home phone and left message on
answering machine @7:18 a.m. 8-13-07

Union Steward/Management present _____

Names

(This document was signed by Supervisor Rebecca L. Brown and Administrator
Dan Stoor)

...

INCOMPETENT and DISRUPTIVE BEHAVIOR leading to Termination

Teresa Rockey has shown persistent incompetence across the board of her
cook's Helper job and now Food Service Worker job over the past 14 months
since the first step in progressive discipline given on 6-27-06. See also the
progressive discipline from 9-1-06, 10-12-06, 1-15-07, 1-15-07, 2-9-07, 3-6-07,
8-2-07, and 8-2-07.

See Food Service Worker Job Description and Objectives of the Food Service Department. Pleasant View Nursing Home's first responsibility is to the Residents.

Incompetence in completion of routine trayline duties on 8-6-07, 8-7-07, 8-8-07 and 8-9-07 which are an essential part of the job, in preparing Pudding for Residents on 8-9-07, and in using the most basic of Food Service equipment the electric and manual can openers on 8-9-07.

Routine trayline duties: Teresa was not able to listen to verbal instructions on the menu items from the cooks and retain them for the duration of the trayline (about 80 minutes). She was argumentative with the Cook in Charge on which menu items to serve. This is an example of her provoking behavior. These instructions are given verbally because the menu changes daily. Teresa was not putting the menu items on the trays as instructed resulting in extra trips to the Resident for items missed and the prepared items being short because she put them on the wrong trays.

Incompetence in routine Midmeal Preparation: Teresa was assigned to prepare the Midmeals. She made 3 mistakes in items labeled. She prepared pudding and labeled it properly but it had a big lump of undissolved pudding powder in the middle of it. I had to have her remake the pudding . Pleasant View had to pay her to make it once and then pay her to make it again. Teresa displayed anger at me that a co-worker had brought this pudding to my attention before it was served to the Residents.

Using the manual and electric can opener: Teresa has had a pattern of manipulation of co-workers in getting them to do her assigned work (while they interrupt their own assigned work to help her). Teresa asked one co-worker to open 2 of her 3 cans and the co-worker said no and pointed out the can openers to her. Then Teresa went to another co-worker to get her to open her cans. This co-worker did open the cans. The co-workers brought it to my attention and I had Teresa have a retraining session on using the manual and electric can openers. Teresa was incompetent in the operation of this most basic of food service equipment.

I have had numerous formal complaints of disruptive behavior of Teresa Rockey in the time frame of 6-5-07 through 8-9-07. The co-workers report to me that Teresa is manipulative, intimidating, and provoking towards them during their assigned shifts in the kitchen. All of these formal complaints have been given to Administration. Teresa has had progressive discipline specifically about disruptive behavior; verbal warnings on 9-1-06, 10-12-06, written warning on 1-15-07, and two suspensions for this on 2-9-07 and 3-6-07.

This level of incompetence and disruptive behavior will not be tolerated so Teresa Rockey is being terminated on 8-13-07

...

On or about August 16, 2007, the Union filed a grievance alleging that the County had violated Sec. 2.01 and 7.01 of the parties' collective bargaining agreement in discharging the Grievant without just cause. The grievance requests that the Grievant be reinstated to her current position in food service; that the Grievant be made whole for all lost wages and benefits; and that the discipline be removed from the Grievant's personnel file.

In a letter dated August 25, 2007, Administrator Stoor responded to this grievance as follows:

This letter is in response to the Union's grievance #8PS filed in response to the termination of Teresa Rockey on August 13, 2007.

As you know Teresa's termination was our last recourse in dealing with her continued inability to perform her job duties correctly and the problems with her disruptive behavior while at work in the kitchen. In compliance with the language found in Article 7.07 "Levels of Discipline" of the labor agreement, she has had numerous verbal and written warnings and several suspensions dating back to September 2006. In each case these reprimands were intended to be corrective in that the problems with her work and behavior were identified and she was counseled as to how to correct these problems.

It is apparent from the continued need to reprimand Teresa regarding her work and behavior that she was not able to correct those problems identified. As such our last recourse was to terminate her employment at Pleasant View Nursing Home.

In this case, the intent of the labor agreement was followed very closely and the decision to terminate was made in accordance with the specific language of the labor agreement. Therefore, I believe there has been no violation of the labor contract and as such the grievance is denied. In closing, if you should have any questions or need additional information or clarification regarding this matter please contact me anytime.

Thereafter, the grievance was submitted to arbitration.

Prior to her discharge from employment the Grievant had been employed by the Pleasant View Home for more than fifteen years. In GREEN COUNTY, Case 162, No. 66858 MA-13663 (3/17/08), involving the Grievant, Arbitrator Jones states as follows:

- PS # 2: That the Employer had just cause to issue the grievant a verbal warning on September 1, 2006;
- PS # 3: That the Employer had just cause to issue the grievant two written warnings on January 15, 2007;
- PS # 4: That the Employer had just cause to suspend the grievant for three days on February 9, 2007;
- PS # 5: That the Employer did not violate the collective bargaining agreement on March 5, 2007 by unilaterally changing the grievant's work schedule; and
- PS # 6: That the Employer had just cause to suspend the grievant for seven days on March 6, 2007.

All the grievances are therefore denied.

...

On August 2, 2007, the Grievant received two written warnings and a disciplinary demotion from Cooks Helper to Food Service Worker. The demotion was for "persistent incompetence across the board of her Cook's Helper Job over the past 14 months." The document setting forth the basis for the demotion also states that the Grievant "continues to have difficulty in both performance and behavior."

The document setting forth the basis for one of the written warnings of August 2, 2007 includes:

FOOD SAFETY INFRACTION

Teresa has passed two food service safety classes that Pleasant View Nursing Home has paid for: ServSafe and the Certified Dietary Manager class. She has attended in service education and department meetings stressing food safety. She has receive job counseling for food safety infractions of putting raw bacon on cooked pancakes - counseling date of 6-26-06 and serving undercooked eggs - counseling date of 9-18-06. She also receive a Verbal Warning on 6-27-06 for serving moldy cookies.

She also received other progressive disciplinary action in the past year.

Teresa was assigned to be Cook in Charge on the weekend 7-7-07 and 7-8-07 as per the Usual rotation. On Friday 7-6-07 she was assigned to do weekend prep work. She got out frozen cookie dough and placed it in the Walk-In Cooler with

her other food items for the weekend. On Sunday 7- 8-07 she put the thawed raw cookie dough out at room temperature in the morning. When the Dinner Trayline began Connie Thompson questioned Teresa if she was to serve these cookies as they looked “raw”. Teresa looked at the item in question and saw that they were not baked. She asked Cindy Fahr to go to the Freezer and get some baked diet cookies to serve. The non baked cookies were left out at room temperature for the duration of the trayline. These were Best Maid double chocolate diet cookies. The box they come in has SAFE HANDLING INSTRUCTIONS. After the trayline Teresa placed the non baked cookies back in the Freezer. This is a MAJOR food safety infraction. See Best Maid cookie Instructions. All the frozen diet cookies have been Best Maid Brand for over a year and a box with instructions was on the shelf even though these cookies may have been in a plastic bag labeled properly by Alice Egli because she had baked part of a box.

Another cook got these out a few days later and baked them not knowing they had been held refrigerated for about 44 hours and then at room temperature for about 2 hours. When Teresa was questioned by me Monday 7-9-07 about her Weekend she said everything went “fine.”

...

Pleasant View Nursing Home’s PRIMARY responsibility is to serve the Residents safe and nourishing food. As many of our Residents are elderly, debilitated, and immune compromised we have to make extra sure that the cooks follow all food safety procedures. The Best Maid Company prints the instructions on every box sold because it is essential that their products are handled correctly.

Food Safety is so important that any further food safety infractions will result in termination for Teresa Rockey.

The document setting forth the basis for the second written warning of August 2, 2007 states:

INCOMPETENCE IN PERFORMING ASSIGNED TASKS

Teresa has passed the Certified Dietary Manager course that Pleasant View Nursing Home paid for.

She was assigned to do the Milk ordering on 7-26-06. She was given training for several weeks at that time. The milk order could be learned in about 1-6 weeks. On 10-12-06 she received a Verbal Warning about her conduct in regards to retraining on the Milk Order procedure. She did not accept correction on how to perform tasks - specifically the milk order tasks. She has had a

pattern of resisting instruction on routine tasks. This is on a variety of routine duties including but not limited to the milk order.

On 1-11-07 Teresa received a Written Warning on substandard performance of assigned routine tasks specifically regarding the milk order task. She has been given continued training on this task 4-23-07, 5-3-07, 6-15-07, 6-21-07, and 7-16-07. She has been at regular cook and cook's helper meetings. About every week or two she does not do the task as she was instructed - doing different parts of it wrong. On 7-25-07 she did the milk order and communicated as needed. When the milk order was reviewed by myself on 7-26-07 I saw that she was still not doing it right and this is after a whole year of training and retraining. This is basic incompetence in performing her Cook's Helper Job.

See the Cooks Helper job Description. Teresa is not able to perform the Essential Job Functions listed on page 2 Language Ability and Interpersonal Communication, Mathematical Ability, and Judgment and Situational Reasoning Ability.

The cost of Teresa's incompetence is too high to continue. The other cooks and cook's helpers are able to perform competently with the same on the job training.

Pleasant View Nursing Home cannot continue to spend time and money retraining Teresa in the basic competencies of the Cooks Helper job. Teresa has had other progressive discipline in the past 14 months. Further evidence of incompetence will result in termination.

POSITIONS OF THE PARTIES

County

The Grievant's termination followed a period of progressive discipline that began in June 2006. This progressive discipline involved ten disciplines, including verbal warnings, written warnings, suspension and a demotion. The prior disciplines were grieved and denied in Arbitration.

In making the just cause determination, it is appropriate to consider an employee's work and disciplinary history. The Grievant consistently has not performed her job duties and has been insubordinate and unprofessional. The County has provided significant job counseling and training, as well as modified the Grievant's work schedule, in an attempt to improve her job performance and relationship with co-workers. A brief period of improvement was followed by a quick deterioration in overall conduct and performance; to the point that the Grievant had to be demoted.

The Grievant's work schedule was modified for a ninety day period so that her work schedule would have more overlap with that of her supervisor. The County considered this modification of work schedule to be corrective, rather than punitive. The arbitrator disagreed, but concluded that the work schedule modification was reasonable and may modify the Grievant's behavior; which it apparently did for a period of time.

In July 2007, the Grievant's work performance began to deteriorate as evidenced by the unbaked cookie dough incident and her milk ordering problems. The combination of these two incidents, in conjunction with the persistent incompetence over the past 14 months, resulted in her demotion to Food Service Worker. Inasmuch as these incidents were not grieved, they may properly be considered by the Arbitrator as evidence of prior and progressive discipline.

Effective August 13, 2007, the Grievant was terminated for exhibiting continued substandard performance, as set forth in the termination letter of August 13, 2007. The County does not argue that any single incident of misconduct would support discharge, but rather, asserts that, taken as whole and with the prior 14-month pattern of similar substandard performance and workplace problems, the County has just cause to discharge the Grievant.

The Grievant's version of the can opener incident is contravened by the credible testimony of Ms. Erickson and Ms. Fahr. This incident is remarkably similar to those incidents that were the subject of the earlier Arbitration, *i.e.*, the Grievant is assigned a task which she should be able to, but does not, perform to standards. Given the other employees' testimony that all employees received training on the manual and electric can openers and regularly used each type of can opener, there is no possible way that the Grievant could have worked in the kitchen and not used the manual can opener on a regular basis. There is no significant disagreement among witnesses regarding the tray line incident.

The Grievant's failure to recall does not serve to rebut the other witness testimony. The Grievant's selective memory is consistent with her testimony in the prior arbitration proceeding and should be similarly discounted.

The Grievant's failure to perform tasks to standard, such as filling juice glasses on individual trays, rather than having a tray of filled juice glasses ready to be placed on individual trays, negatively impacts upon the ability of other employees to perform their tasks in a timely manner; causing unnecessary tray line delay and overtime costs. Ms. Brown testified, on cross examination, that she was present in the kitchen and observed the tray line shortages.

Failure to mix pudding correctly not only makes the end product unpalatable, but also, creates consistency issues that present significant health hazards to residents who have swallowing difficulties. Presumably, the Grievant's failure to mix the pudding properly was a desire to avoid cleaning the stand mixer.

The Grievant may deny that she mixed this pudding, but she cannot deny it was her job and task. Rather than rewhipping the pudding, as requested by her supervisor, she reacted in anger and wanted to know who had complained to supervision.

The inconsistency in her ability to perform, and then to not perform, her assigned tasks suggests that the Grievant “likes to play dumb.” Her response to being retrained on the can opener, *i.e.*, “Now I am doing your work,” conveyed sarcasm and contempt; missing the point of the retraining.

The Grievant likes to get other employees to perform her work. As recognized by the prior Arbitrator, the Grievant also likes to blame others.

The Grievant’s continued substandard work performance, coupled with the obvious contemptuous attitude displayed by the Grievant, provides the County with little choice but to sever the employment relationship. The Grievant has bragged that no one’s ever been fired.

The County provides meals for 130 guests and residents each day. These meals must be prepared three times a day; consistent with State and Federal regulations. The Home’s residents often have compromised immune systems and significant health issues.

In order to provide meals in a safe and efficient manner, the twenty food service employees, on both shifts, must work in unison as a team. To have an individual consistently and persistently create a disruption has a substantial negative impact upon the County’s food service operation.

The Grievant had been a Cook, until at her request; she became a Cook’s Helper. The record demonstrates that the Grievant has either an extreme level of incompetence or a complete disregard for the County’s interests.

The collective bargaining agreement does not require a specific method of termination, other than indicating that a discharge is to be made in the presence of union stewards, if possible. Presumably the Grievant would have been told, in the presence of the steward, of her discharge had the Grievant not called in sick. Under the circumstances, the County’s notification of discharge was appropriate.

In each and every instance, the Grievant was given due notice and an opportunity to respond. There has been no failure of due process.

The discharge of an employee is a serious matter. The County, however, has a significant interest in ensuring that the job at hand is done.

The Grievant’s failure to perform her job duties, whether intentional or not, impacts negatively upon her co-workers and the County. The County has just cause to discharge the Grievant and this grievance should be denied.

Union

The County alleges a series of incidents involving the Grievant while working on the tray line during the week of August 6-9, 2007. None of the incidents were significant.

There seems to be an attempt to attribute any issues arising during this period to the Grievant. Supervisor Brown was not present and relied upon accounts provided by others; which accounts did not hold-up at hearing. The County failed to establish that the Grievant prepared the lumpy pudding.

The Grievant has been opening cans for fifteen years; yet there was never previously any issue raised by the County regarding her competency in completing this task. On the day in question, other employees had difficulty using the manual can opener due to its condition. The "training session" was an effort by the Supervisor to embarrass the Grievant in front of her co-workers.

Supervisor Brown states that she made the decision to terminate the Grievant on August 10; that the Grievant was off work the weekend of August 11-12 and called in sick on her next scheduled work day, August 13, 2006. Supervisor Brown called the Grievant's home on August 13, 2006 and left a message on the answering phone; notifying the Grievant that her employment had been terminated.

The County's method of termination raises a number of concerns. First, Supervisor Brown made the allegations and decided to discharge. The Grievant was not given notice and an opportunity to respond to the charges prior to the discharge. Not only was the answering machine notice of discharge impersonal, but also, the County had no way of knowing who in the Grievant's family would have received this message.

The County denied the Grievant due process by summarily discharging the Grievant, rather than providing the Grievant with notice and an opportunity to refute allegations against her. The County does not have just cause based upon the hearing record.

The grievance should be sustained. The Grievant should be reinstated and made whole for all lost wages and benefits. The Arbitrator should retain jurisdiction for sixty days to resolve any disputes regarding the implementation of the award.

DISCUSSION

Union's Concerns Regarding the County's Method of Discharge

In the discharge letter of August 13, 2007, the Grievant was provided with an opportunity to meet with Union and management representatives to discuss her discharge. The Union is concerned that this opportunity was not provided prior to the discharge decision.

The parties' collective bargaining agreement includes the following language:

...

7.01 The Employer may discharge or discipline any employee for just cause. An employee charged with an offense justifying immediate discharge, will be informed of such offense in writing at the time of his/her discharge, and a copy thereof shall be sent to the Union. All discharges shall be made in the presence of employee's Stewards, if possible. The Employer shall give at least one (1) warning notice in writing of a complaint for other offenses (those not involving immediate discharge) against such employee to the employee and the Union.

...

If an employer meets with the union and the employee prior to the discharge, the union and the employee may be able to respond to the employer's allegations of misconduct by providing the employer with information previously unknown to the employer which could have a bearing on the employer's decision. If the union and the employee are not provided with such an opportunity, the employer runs the risk of having made its disciplinary decision based upon incomplete or inaccurate information. In the present case, however, the parties' contract language does not require the County to meet with the Union and the Grievant prior to the County's decision to discharge.

The Union is concerned that the supervisor making the allegations against the Grievant is also the supervisor who made the decision to discharge the Grievant. It is for the County, and not this Arbitrator, to decide which management functions are assigned to management employees. The reasonableness of the supervisor's decision-making is a matter to be considered when determining whether the County has just cause for discharge.

Supervisor Brown states that she notified the Grievant of her discharge by leaving a message on the Grievant's answering machine. The undersigned shares the Union's view that this method of notifying the Grievant raises privacy concerns. Additionally, contrary to the argument of the County, the fact that the Grievant was not available to meet on August 13 because she was absent from work did not make it impossible for the County to discharge the Grievant in the presence of a Steward. The County could have discharged the Grievant in the presence of the Steward when the Grievant returned to work.

In summary, the record does not establish that it was not possible to discharge the Grievant in the presence of the Steward. The collective bargaining agreement, however, does not state that a failure to discharge the Grievant in the presence of the Steward nullifies the discharge. The County's method of discharging the Grievant is not so flawed as to warrant the conclusion that the County has violated the just cause standard agreed upon by the parties.

August 13, 2007 Discharge

As the parties stipulated at hearing, the issue to be decided is whether the County had just cause to discharge the Grievant. As Arbitrator Jones stated in the prior Award involving these parties and the Grievant:

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

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

Agreeing with Arbitrator Jones’ analysis of the just cause standard, the undersigned turns to the issue of whether or not the County has proven that the Grievant has engaged in misconduct as alleged by the County.

The Administrator’s letter of August 13, 2007 states, as a basis for discharge, that, during the past week, the Grievant again had problems with not being able to perform tasks that the Grievant has been trained to perform and that the Grievant engaged in behavior that was disruptive to the operation of the kitchen. These problems may be summarized as follows:

1. Incompetence in routine tray line duties related to an inability to listen to and retain verbal instructions on the tray line; with the effect that the Grievant did not put menu items on the trays as instructed resulting in extra trips to the Resident for missed items and a shortage of items due to placing the items on the wrong tray.
2. Argued with the cook in charge regarding which menu items to serve.
3. Incompetence in Midmeal preparations involving three mistakes in items labeled and preparing lumpy pudding
4. Displayed anger at supervisor and co-worker who brought pudding error to supervisor’s attention
5. Manipulated co-workers to do her assigned work of opening cans

Supervisor Brown states that, during the relevant week of August 6 through August 10, 2007, the Grievant had continued problems in performing her daily work assignments. Supervisor Brown further states that the Grievant had been trained to perform each of her daily work assignments and had been given no new daily work assignments during the relevant week.

Incompetence in Routine Tray Line Duties

Supervisor Brown states that there is a ticket placed on each tray which would tell the Grievant what needs to be placed on the tray. Supervisor Brown also states that employees on the tray line receive verbal instructions as to substitutions required by special dietary needs. With respect to the week in question, Supervisor Brown states that the Grievant incompetently performed her daily work assignments as follows:

- she gave apple sauce to the wrong residents; with the effect that the tray line ran out;
- the Grievant failed to place salad dressing on a tray.

Apple Sauce

Supervisor Brown states that she personally observed that there was a shortage of apple sauce; but that she did not observe the verbal instructions regarding the use of the apple sauce. According to Supervisor Brown, the Grievant was responsible for serving the apple sauce that day. The Grievant states that she does not recall being short on apple sauce.

Cooks Helper Cindy Fahr states that there are incidents of running short on the tray line; that these incident occur at times when the Grievant is not working, as well as when the Grievant is working; she does not recall any incident specifically involving the Grievant; that, if the kitchen runs short, it can hold up the tray line; and that holding up the tray line causes problems for other departments because they plan their activities based on the meal schedule.

Conclusion

Supervisor Brown's statements are sufficient to establish that, during the week in question, the Grievant was responsible for serving apple sauce and that there was a shortage of apple sauce. However, neither Supervisor Brown's testimony, nor any other record evidence, is sufficient to establish that the shortage of apple sauce was due to the fact that the Grievant had failed to follow verbal instructions or otherwise incompetently performed her work assignment.

Salad Dressing

Supervisor Brown states that the Grievant failed to put salad dressing on a tray. Supervisor Brown does not state that she has observed the salad dressing incident.

Cook Egli recalls that, during the week in question, a Chef Salad was not made; the Cooks Helper should have gone over the list and caught this; the tray was put on the cart with the knowledge that it did not have the Chef Salad; the cart waited for the Chef Salad; she made the Chef Salad and put it on the cart; and that she was half way down the hall with the cart before she checked and saw that the dressing was not on the tray. Cook Egli states that the failure to put the salad dressing on a tray caused unnecessary delay in delivering the food cart and extra work for Cook Egli.

According to Cook Egli, the dressing had been made, but had not been put on the tray by the “dessert” person and that the “dessert” person should have known that the tray required salad dressing. Cook Egli initially stated that the Grievant was on the dessert cart; but then stated that she thought, but did not know for certain, if the Grievant was on the dessert cart that day. The Grievant states that, on the day of the salad dressing incident, she was at the top of the line and, thus, did not have responsibility to put the salad dressing on the tray.

Cook Egli states that Food Service Workers are not responsible for salads. The Grievant states that, during the week in question, she was a Food Service Worker and, thus, not responsible for cooking or preparing items.

Cook Egli recalls an incident when the Grievant did not pour enough juice and then filled the juice one at a time; which slowed down the tray line. Cook Egli is unsure of when the juice incident occurred. The Grievant states that, during the week in question, she had no responsibility for juice.

Conclusion

Cook Egli’s testimony is sufficient to establish that, during the relevant week, salad dressing was not placed on a resident’s tray. Neither the testimony of Cook Egli, nor any other record evidence, is sufficient to establish that the failure to place salad dressing on a resident’s tray was due to the fact that the Grievant had failed to follow verbal instructions or otherwise incompetently performed her work assignment.

Supervisor Brown does not claim to have considered the juice incident when deciding to terminate the Grievant. Neither Cook Egli’s testimony, nor any other record evidence, is sufficient to establish that the juice incident occurred during the week in question.

Argued with Cook in Charge

Supervisor Brown alleges that the Grievant was given instruction to use fruit yogurt as salad and to use melon for chopped/fine and then argued with the Cook/Cooks Helper about the appropriateness of this usage.

Fruit Yogurt and Melon

Supervisor Brown states that, as a Food Service Worker, the Grievant is not in a position to question the appropriateness of menu items. Supervisor Brown states that, when the Cooks Helper appropriately used fruit yogurt as salad, the Grievant argued that it was protein. According to Supervisor Brown, employees may question the use of an item in furtherance of patient safety; but then need to accept the answer provided by the Cook or Cooks Helper.

Supervisor Brown states that it was Cook Egli and Cooks Helper Fahr's decision to use the melon for chopped/fine and that the Grievant argued with them about this decision. Supervisor Brown does not state that she observed the Grievant arguing with either the Cook or Cooks Helper.

Supervisor Brown states that it was Cooks Helper Fahr's decision to use the fruit yogurt as salad and that the Grievant argued with her about this decision. Supervisor Brown does not state that she observed the Grievant arguing with the Cooks Helper.

The Grievant recalls that she asked Cooks Helper Fahr if the yogurt was the salad. According to the Grievant, she was not questioning the use of yogurt as salad, but rather, was verifying that this was the item to be used as the salad.

Cooks Helper Fahr did not testify regarding fruit yogurt. Cooks Helper Fahr recalled that, during the week in question, the Grievant questioned Cooks Helper Fahr as to why cottage cheese was being used for salad when it is a protein. According to Cooks Helper Fahr, cottage cheese is a protein, but can also be used as a salad. Cooks Helper Fahr states that the Grievant questioned Cooks Helper Fahr, but it was not really an argument.

Supervisor Brown further states that the Cooks/Cooks Helper exercise their judgment as to whether melon is sufficiently soft to use for chopped/fine diets. Supervisor Brown states that, after Cooks/Cooks Helper Egli and Fahr exercised this judgment and determined that the melon was sufficiently soft, the Grievant then argued about the use of this melon.

Cooks Helper Fahr and Cook Egli both testified at hearing. Cooks Helper Fahr stated that, during the August week in question, there were issues with melons, but does not identify the issue, nor does she state that the Grievant is responsible for these issues. At hearing, Cook Egli did not reference melons.

Conclusion

Supervisor Brown's statements are sufficient to establish that it is inappropriate behavior for the Grievant, as a Food Service Worker, to argue with the Cook or the Cooks Helper with respect to their choice of menu items. However, neither Supervisor Brown's testimony, nor any other record evidence, is sufficient to establish that, during the week in

question, the Grievant argued with the Cook or the Cooks Helper regarding the use of melon for chopped/fine, fruit yogurt as a salad, or any other choice of menu items.

Incompetence in Midmeal Preparations and Preparing Pudding

Supervisor Brown states that, on August 9, 2007, the Grievant had the assignment to prepare pudding and ensure that pudding was available. Supervisor Brown states that, on that day, the pudding was lumpy and that lumpy pudding presents a safety hazard to residents who have difficulty swallowing.

According to Supervisor Brown, when questioned by Supervisor Brown, the Grievant claimed to not have prepared the lumpy pudding and Supervisor Brown accepted the Grievant's denial. The Grievant states that, on the day of the lumpy pudding, she was responsible for having pudding available; but that she did not make the lumpy pudding.

Conclusion

The attachment to the discharge letter alleges that the Grievant "made 3 mistakes in items labeled." Neither Supervisor Brown's testimony, nor any other record evidence, provides sufficient information for the undersigned to identify the referenced "3 mistakes." Given Supervisor Brown's testimony that she accepted the Grievant's denial that she had not made the lumpy pudding, it would not be reasonable to conclude that the Grievant had prepared the lumpy pudding.

Displayed anger at supervisor and co-worker who brought pudding error to supervisor's attention

Supervisor Brown states that, after she accepted the Grievant's denial that she had made the lumpy pudding, she directed the Grievant to blend the pudding. Supervisor Brown recalls that the Grievant did blend the pudding; but first spouted off.

Supervisor Brown recalls that, when she discussed the pudding problem with the Grievant, the Grievant was angry that another co-worker had brought the pudding problem to Supervisor Brown's attention. According to Supervisor Brown, the Grievant stated that the other employees should go to the Grievant with their concerns. When asked how this anger was displayed, Supervisor Brown replied that the Grievant did not shout; but that her speech was intense; and that she looked around to see who to blame.

The Grievant states that she blended the pudding when requested to do so by Supervisor Brown. The Grievant does not deny that she was angry that another co-worker had brought the pudding problem to Supervisor Brown's attention or that she told Supervisor Brown that the other employees should come to the Grievant with their concerns.

Conclusion

Supervisor Brown's statements are sufficient to establish that, during the week in question, there was lumpy pudding and that lumpy pudding presents a safety hazard to residents of the Home. Supervisor Brown and the Grievant agree that the Grievant had the responsibility to have pudding available on that date

The record is sufficient to establish that, when questioned about the pudding by Supervisor Brown, the Grievant displayed anger that another co-worker had brought the pudding problems to Supervisor Brown's attention and told Supervisor Brown that the other employees should come to the Grievant with their concerns. For safety reasons, as well as for food quality reasons, it was appropriate for a fellow employee to be concerned about the lumpy pudding and to report this concern to Supervisor Brown. Inasmuch as the Grievant was the employee responsible for making pudding available, it was appropriate for Supervisor Brown to question the Grievant regarding the lumpy pudding. In displaying anger because an employee brought the pudding concern to Supervisor Brown, rather than to the Grievant, and by telling Supervisor Brown that the employee should have come to the Grievant, rather than to Supervisor Brown, the Grievant exhibited a lack of respect for Supervisor Brown's authority to supervise the food service operation and its employees, including the Grievant.

Manipulated co-workers to do her assigned work of opening cans

Supervisor Brown recalls that, on August 9, 2007, Cook Marcia Erickson reported that the Grievant had asked Cook Erickson to open cans and that Cook Erickson replied "No;" and that the Grievant then asked Cooks Helper Fahr. Supervisor Brown further states that the Grievant told her that she had asked Cooks Helper Fahr to open the cans because she was having trouble opening cans and that Supervisor Brown responded that the Grievant would have a retraining session on opening cans. According to Supervisor Brown, the purpose of the training was to assure herself that the Grievant could perform her assigned work of opening cans.

Supervisor Brown states that all employees have been trained on the use of both types of can openers and that she had previously observed the Grievant opening cans with the manual can opener. Supervisor Brown further states that the Grievant should have been able to open her own cans without interrupting the work of other employees.

According to Supervisor Brown, at the retraining session, the Grievant initially did not open the can correctly and then did. Supervisor Brown recalls the Grievant stating, in an angry and sarcastic tone, "Marcia I am doing your work for you."

The Grievant states that Cook Erickson was in front of her using the electric can opener and that Cooks Helper Fahr offered to open the cans for the Grievant using the manual can opener. The Grievant further states that she uses the electric can opener; does not use the manual can opener and has not been trained on the manual can opener.

The Grievant recalls that Supervisor Brown asked if she had trouble opening cans and the Grievant responded “No”, that Cooks Helper Fahr had offered to open the cans. According to the Grievant, she was not having trouble opening cans because she had not yet started to open the cans.

The Grievant further recalls that Supervisor Brown told the Grievant that, after the Grievant returned from break, Supervisor Brown would train the Grievant; that when the Grievant returned from break, there were cans on the cart and Supervisor Brown was with another employee, grinning and laughing; the Grievant stated “How Embarrassing;” and then Cook Ferguson demonstrated how to use the manual can opener. The Grievant states that, during the training, she had trouble with the first can because she had never been trained on the manual can opener and had not used it. The Grievant states that she used the electric can opener and did not have problems with the electric can opener.

According to Cook Erickson, the Grievant asked Cook Erickson to open cans; that Cook Erickson tried to show her how to open the cans, but would not open them for her; that the Grievant then went to Cooks Helper Fahr; and Cooks Helper Fahr opened the cans for the Grievant. According to Cook Erickson, she reported the incident to Supervisor Brown because the Grievant wanted Cook Erickson to open the cans and the Grievant should have known how to use the manual can opener. Cook Erickson states that it is not unusual to ask for help, but that it is unusual to do the work of others.

Cooks Helper Fahr recalls that the Grievant came to her for help in opening cans. Cooks Helper Fahr further recalls that, at this time, she was scrubbing pans by the sink. Cooks Helper Fahr states that she believed that the Grievant had tried to open the cans. Cooks Helper Fahr does not state why she had this belief.

Cooks Helper Fahr further states that she opened four cans manually without any difficulty; she did not know why the Grievant could not open the cans because the manual can opener was working properly; can openers are used a lot and everyone is expected to use them; she thought it was unusual that the Grievant did not know how to use the manual can opener; and that employees normally perform their own work, but that employees will help others too.

Cook Ferguson recalls that, in response to the direction of Supervisor Brown, she demonstrated how to operate the manual can opener. Cook Ferguson does not recall seeing the Grievant opening cans previously; states that the can openers are used all of the time; and she thinks that all employees are expected to use the can openers.

Cook Erickson recalls that, in the ensuing training session, the Grievant was able to open the can; that the Grievant stated “I’m doing your work Marsha;” and that the Grievant seemed “to have an attitude.” Cook Erickson further recalls that, during the training session, the Grievant opened cans that Cook Erickson would have opened that day.

Cook Erickson states that she thought it was stupid to do the training; she did not understand how the Grievant could not have known how to use the can opener; and that everyone opens cans everyday. Cooks Helper Fahr states that she watched the Grievant's training, but did not understand why she had to be there.

The Grievant states that, when she was demoted on August 2, 2007, Supervisor Brown stated that she would be watching the Grievant. According to the Grievant, the can opener incident was a set up and that a lot of the girls were on the set up.

Conclusion

The Grievant's testimony that Cooks Helper Fahr offered to open the Grievant's cans is inconsistent with the testimony of Cook Erickson and Cooks Helper Fahr. The Grievant's testimony that she liked to use the electric can opener and that someone else was using the electric can opener provides a motive for the Grievant to have asked another employee to open the Grievant's cans using the manual can opener. The Grievant's claim that the Grievant did not ask Cooks Helper Fahr to open her cans, but rather Cooks Helper Fahr offered to open the Grievant's cans, is not credible.

Had the Grievant made an attempt to open the cans and then had a problem with the manual can opener, it would have been reasonable for the Grievant to request assistance from another employee. The Grievant states, however, that she was not having trouble opening her cans because she had not yet started to open the cans. The Union's claim that employees were having difficulty using the manual can opener is rebutted by Cooks Helper Fahr's testimony that the manual can opener was working properly at the time that she opened the Grievant's cans.

Supervisor Brown testified that all the food service employees open cans with the electric and manual can openers. This testimony is consistent with the testimony of Cook Ferguson; Cooks Helper Fahr and Cook Erickson.

The Grievant states that she had not been trained in the manual can opener and had not used it. This testimony is consistent with the evidence that, during the retraining, the Grievant initially had difficulty operating the manual can opener.

Supervisor Brown, however, credibly testified that previously she had observed the Grievant use the manual can opener. Given this testimony, as well as the improbability of an employee with more than fifteen years of experience in the Home's food service department not knowing how to use the manual can opener, the undersigned rejects the Grievant's claim that she did not know how to operate the manual can opener.

The record is sufficient to establish that, during the week in question, the Grievant's work assignment was to open several cans; that the Grievant had the ability to open these cans with the manual can opener; that the Grievant chose to not open the cans with the manual can

opener; and that the Grievant asked other employees to open the cans for the Grievant. In asking other employees to open the cans, the Grievant was not seeking reasonable assistance with a job task, but rather, was avoiding work. In avoiding this work, the Grievant failed to perform her assigned duties and interrupted other employees while they were performing their assigned work for no good reason.

Cook Erickson thought the training was stupid and Cooks Helper Fahr did not know the reason for her attendance at the training session. Neither employee, however, stated that they shared the Union's view that Supervisor Brown scheduled the training session for the purpose of embarrassing the Grievant in front of her co-workers. The most reasonable conclusion to be drawn from the record evidence is that the training session was scheduled because the Grievant told Supervisor Brown that she had difficulty using the manual can opener and Supervisor Brown wanted to ensure that the Grievant was able to perform this work.

The record provides a reasonable basis to conclude that Supervisor Brown and other co-workers had a legitimate basis to be unhappy about the Grievant's prior job performance. Given the Grievant's prior disciplinary history, it was reasonable for Supervisor Brown to closely monitor the Grievant's work. It was also reasonable for co-workers to bring complaints of Grievant misconduct to Supervisor Brown. It is not evident that Supervisor Brown, or any co-worker, was "out to get" the Grievant, except in the sense that they would not accept what they viewed to be Grievant misconduct.

Summary

As discussed above, the initial question to be decided is whether or not the Grievant engaged in misconduct alleged by the County. For the reasons discussed above, the record is insufficient to establish that, during the week in question, the Grievant engaged in the following conduct:

1. Incompetence in routine tray line duties related to an inability to listen to and retain verbal instructions on the tray line; with the effect that the Grievant did not put menu items on the trays as instructed resulting in extra trips to the Resident for missed items and a shortage of items due to placing the items on the wrong tray.
2. Argued with the cook in charge regarding which menu items to serve.
3. Incompetence in Midmeal preparations involving three mistakes in items labeled and preparing lumpy pudding

For the reasons discussed above, the undersigned is persuaded that the record is sufficient to establish that the Grievant engaged in the following conduct:

1. Displayed anger at supervisor and co-worker who brought pudding error to supervisor's attention
2. Manipulated co-workers to do her assigned work of opening cans

During the pudding error and can opener incidents, the Grievant exhibited a lack of respect for supervisory authority; an unwillingness to perform assigned work and a willingness to interrupt the work of other employees for no good reason. The County has a disciplinary interest in ensuring that its employees respect supervisory authority; perform assigned work and do not interrupt the work of other employees for no good reason.

The Grievant has engaged in misconduct for which the County has just cause to discipline. Having concluded that the Grievant has engaged in misconduct for which the County has just cause to discipline, the issue to be decided is whether discharge is the appropriate level of discipline.

Appropriate Level of Discipline

Article 7 of the parties' collective bargaining agreement sets forth seven types of misconduct for which the County may discharge an employee. The Grievant has not committed any of these seven types of misconduct. It follows, therefore, that, under Article 7, the Grievant's misconduct is of the type that requires "at least one (1) warning notice in writing of a complaint for other offenses. . ."

The Grievant received a verbal warning on September 1, 2006. As set forth in the Award sustaining this grievance, this verbal warning was in response to an incident in which the Grievant sought to avoid work by asking another employee to perform her work and, when told by the cook in charge, that the Grievant, and not the other employee, should perform the work, the Grievant "blew up" and directed a tirade against the cook in charge; which tirade caused an employee witness to seek shelter in a cooler. When called into a meeting with Supervisor Brown to discuss this incident, the Grievant stormed out of the room while Supervisor Brown was talking to the Grievant. When Supervisor Brown subsequently gave the Grievant her verbal warning, the Grievant refused to accept this verbal warning and threw it on the floor.

The written record of the verbal warning confirms that the Grievant was warned about her disrespectful behavior towards co-workers, including supervisors. In sustaining the verbal warning, Arbitrator Jones noted that, under the County's work rules/policies, employees are expected to be courteous and respectful toward co-workers and supervisors.

The written record of the verbal warning of October 12, 2006, identifies an incident in which Supervisor Brown attempted to instruct the Grievant on how to perform milk ordering; the Grievant responded by not listening to the instruction, blaming a co-worker, and walking away while the supervisor was speaking; and when called back by the supervisor, the Grievant

walked away a second time, stating “talk to co-worker and me.” At the time of the verbal warning, the Grievant was told to show respect to her supervisor and co-workers and to listen to and accept work instruction or be subject to further disciplinary action. As noted in the Award of Arbitrator Jones, this verbal warning was not grieved.

The Grievant received a written warning on January 15, 2007 for “unauthorized overtime” as well as a written warning for “substandard performance of assigned routine tasks,” *i.e.*, failing to prepare sufficient sliced cheese prior to leaving on vacation and ordering an incorrect quantity of milk. In the latter written warning, the Grievant was advised that the County expected the Grievant to perform her duties; that the Grievant had a pattern of leaving work undone; and that failure to show competence in performing routine duties would result in further discipline, including suspension and/or discharge. Arbitrator Jones sustained both written warnings.

The Grievant received a three day suspension on February 9, 2007 for “Disruptive Behavior in the Workplace” based upon the County’s conclusion that the Grievant pressured co-workers to sign a statement in support of the Grievant; engaged in work slow downs to slow the work of others as a way of pressuring or intimidating the co-workers; and engaged in out of control behavior toward co-workers in an effort to manipulate co-workers. The written suspension notice states that the Grievant should “Demonstrate self control. Demonstrate consistently good team work with co-workers. The nature of the kitchen work requires a high degree of teamwork and cooperation.” The Grievant was further advised that, if the Grievant’s behavior were not corrected, the Grievant would be subject to further discipline, including suspension or termination. This three day suspension was sustained by Arbitrator Jones.

The Grievant received a seven day suspension on March 6, 2007 for “Disruptive Behavior That Is Unacceptable and Escalating in the Workplace.” This suspension was in response to a Grievant confrontation with Supervisor Brown involving a change in the Grievant’s work schedule. Arbitrator Jones found that the Grievant “got in” her supervisor’s face; demanded that her schedule not be changed; slammed her hand on the table several times; belligerently told her supervisor that she was not accepting the schedule change; and, when her supervisor walked away, the Grievant followed her supervisor, making numerous statement intended to provoke a response from Supervisor Brown, including “I’m gonna get you.” This suspension letter specifically warned the Grievant against disrespect and inconsistent ability to perform job, among other behaviors, and stated “If unable to work with acceptable behavior upon return to work she will be terminated.” This seven day suspension was sustained by Arbitrator Jones.

On August 2, 2007, the Grievant received a written warning for incompetence in performing the assigned task of milk ordering on July 26, 2007 and a second written warning for food safety infractions regarding her handling of cookie dough, as well as disciplinary demotion for persistent incompetence in performing her Cooks Helpers job. The written warning for incompetence in performing the assigned task of milk ordering includes the

following statement: “Teresa has had other progressive discipline in the past 14 months. Further evidence of incompetence will result in termination.” It is not evident that the two warnings and the demotion were grieved.

Prior to her discharge, the Grievant was disciplined, on a number of occasions, for misconduct involving disrespect towards co-workers and supervision; as well as for misconduct involving failures to perform assigned work. The Grievant’s failure to perform assigned work has included at least one prior incident of avoiding work by asking another employee to perform the Grievant’s work.

Consistent with Article 7 of the parties’ collective bargaining agreement, prior to her discharge the Grievant received at least one (1) written warning notice of a complaint involving disrespect for supervisory authority and failure to perform assigned work. Contrary to the argument of the Union, the Grievant has not been summarily discharged. Rather, the Grievant has been provided with notice of the County’s expectations regarding her work place conduct consistent with the requirements of the parties’ collective bargaining agreement.

Article 7 of the parties’ collective bargaining agreement provides that, normally, discharge is to be preceded by oral warning, written warning, and a second written warning or suspension (up to 7 days). As reflected above, the County has followed this normal progressive discipline procedure.

Article 7 of the parties’ collective bargaining agreement recognizes that discipline is to be corrective, rather than punitive in nature. As stated by Administrator Stoor in his response to the grievance, the County has imposed numerous disciplines, from verbal warnings to multi-day suspensions, in an attempt to correct the Grievant’s behavior, but the Grievant continues to engage in behaviors that have been previously identified by the County as unacceptable.

All of the warnings and suspensions discussed above were issued within twelve months and twenty four months, respectively, of the misconduct that lead to the Grievant’s discharge. Under the terms of the parties’ collective bargaining agreement, these disciplines remain in effect.

Conclusion

In determining the level of discipline, it is appropriate to consider the Grievant’s length of service and work history. In the present case, the Grievant has been employed for more than fifteen years. The last year of her employment have been marked by numerous incidents of misconduct for which the Grievant has received discipline.

The Union argues that none of the incidents that gave rise to the discharge are significant. The undersigned agrees that any one incident of misconduct, standing alone, is not of sufficient magnitude to warrant discharge. The Grievant’s incidents of misconduct, however, do not stand alone.

Prior to engaging in misconduct for which she was discharged, the Grievant received the progressive discipline identified in the collective bargaining agreement, ranging from oral warning to a seven days suspension. This prior progressive discipline has not been sufficient to correct the Grievant's behavior. The record provides no reasonable basis to conclude that any discipline short of discharge will correct the Grievant's behavior.

Given all the circumstances, the discipline imposed by the County is commensurate with the established Grievant misconduct. The County has just cause to discharge the Grievant.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The County has just cause to discharge the Grievant.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 2nd day of December, 2008.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator

