

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

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

and

KENOSHA COUNTY

Case 267
No. 67693
MA-13992

(A.F. One-Day Suspension)

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin 53717-1903, for the labor organization.

Ms. Lorette Pionke, Senior Assistant Corporation Counsel, Kenosha County, 912 - 56th Street, Kenosha, Wisconsin 53140, for the municipal employer.

ARBITRATION AWARD

Kenosha County Social Work Professional Employees Employed in Brookside, Aging and Social Services Departments, Local 990, AFSCME, AFL-CIO and Kenosha County are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The union made a request, in which the county concurred, for the Wisconsin Employment Relations Commission to provide a panel of seven commissioners and/or staff members from which it could select an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement relating to discipline. The panel so provided included staff member Sharon Gallagher, who announced her impending retirement while the parties were engaged in the selection process. The Commission offered to provide a new panel or a substitute panel member, which offer the parties waived. The parties selected Stuart D. Levitan, of the commission's staff, as the impartial arbitrator. Hearing in the matter was held on August 19, 2008, in Kenosha, Wisconsin, with a stenographic transcript being made available to the parties by September 12. The parties filed written arguments, the last of which was received on November 14, 2008, and waived their right to file replies.

ISSUE

Did the employer have just cause to issue a one-day suspension of A.F. on April 16, 2008? If not, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

ARTICLE I - RECOGNITION

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Section 1.2 Management Rights. Except as otherwise provided in this agreement, the county retains all the normal rights and functions of management and those that it has by law. Without limiting the generality of the foregoing, this includes the right to ... demote or suspend or otherwise discharge or discipline for proper cause; The County shall have the right to adopt reasonable rules and regulations.....

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ARTICLE III - GRIEVANCE PROCEDURE

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

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

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

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OTHER RELEVANT LANGUAGE

KENOSHA COUNTY UNIFORM WORK RULES

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WORK HABITS

1: Employees shall be courteous and polite at all times while on duty or while engaged in work-related situations.

...

4: Employees shall be considered insubordinate if they refuse assigned work or refuse to obey a legitimate order of supervision or management.

...

7: County telephones, electronic mail, and other types of communication devices are to be used in a professional manner and for the conduct of County business. Employees shall not use such equipment for personal business without supervisory permission.

...

18: Employees and union officers shall not conduct personal or union business or solicit funds during work hours without prior supervisory approval.

...

DEPARTMENT

Employees shall not engage in the following conduct:

1. Unauthorized absence, tardiness, or leaving early.
2. Discourteous or disrespectful treatment of others or the use of profanity or threatening language.

...

21. Acts of dishonesty including, but not limited to, knowingly making false statements that could cause harm to the County or to another County employee.

...

USE AND OPERATION OF KENOSHA COUNTY
INFORMATION SYSTEMS AND NETWORKS

...

- 8: The electronic communication systems are not to be used to create any offensive or disruptive messages or to access any information that is not required during the normal course of business. Among those electronic communications which are considered offensive are any messages that contain sexual implications, racial slurs, gender specific comments, or any other comment that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, disability, or the like.

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Kenosha County Board of Supervisors
Report #139
1982

1. Policy

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

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

Progressive discipline is basically a series of disciplinary actions, corrective in nature, starting with a verbal or written reprimand. Each time the same or similar infractions occur, more stringent disciplinary action takes place. It is important in invoking progressive discipline, up to and including dismissal, that each time disciplinary action is contemplated, it must be definitely

established that an infraction did occur which is organizationally inappropriate. To definitely establish that an infraction did occur means that a supervisor must be able to sufficiently substantiate the occurrence of any infraction.

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

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

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

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

2. Levels of Disciplinary Action:

a. Verbal Reprimand:

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

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

b. Written Reprimand:

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

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

c. Suspension

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

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

- major deviation from the work rules, including a violation of safety rules
- being under the influence of alcohol
- falsification or misuse of time sheets or records
- fighting

- theft of another employee's property
- disobedience of an order

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

e. Discharge:

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

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

3. Internal Review:

Before any of the following disciplinary actions may be taken, the system of internal administrative review described below will be followed to insure that the discipline system is utilized in a uniform and equitable manner.

For

- a) suspensions of two or more working days
- b) discharge

The following system shall be adhered to:

- a. Employee Infraction of Rules, including continued failure to meet performance standards:
 - Department Head or Supervisor investigate situation
 - Employee is provided with written notice of investigation and his/her rights

b. Due Cause Meeting:

Due cause meeting held with Director of Personnel.

Department Head and Supervisor to review results of investigation and recommended level of discipline. A maximum level of discipline will be set in the due cause meeting, based on equitable and uniform discipline county-wide.

c. Written Notice to Employee:

The employee is informed in writing of the charges brought, his/her rights, and the date, time and place of a pre-disciplinary meeting the discuss the charges.

d. Pre-Disciplinary Meeting

- Conducted by Department Head
- Supervisor involved attends
- Employee and representative of his/her choosing attends
- Witnesses may be called by the department or by the employee. Such witnesses will be provided the time off from work to appear at the pre-disciplinary meeting.
- Charges will be discussed, with ample time provided for a complete presentation of charges and for rebuttal and defense by the employee.

e. Results of Pre-Disciplinary Meeting:

As a result of the discussion and facts and material presented in the pre-disciplinary meeting, the Department Head may, except for discharge requests:

1. Take disciplinary action as determined in the due cause meeting;
2. Reduce the level of disciplinary action determined in the due cause meeting; or
3. Take the matter under advisement, for no longer than two (2) working days.

In no event shall the level of disciplinary action taken be greater than the maximum determined in the due cause meeting.

f. Written Notice to Employee:

Written notice of disciplinary action to be taken shall be given to the employee, stating effective date and time of action.

BACKGROUND

A.F., the grievant, is a clinical social worker employed by the Kenosha County Human Services Department, Division of Children and Family Services, Juvenile Court services. This grievance concerns her one-day unpaid suspension, issued on April 16, 2007.

A.F. began work for the county as a Limited Term Employee in its Child Protective Services union in October, 1997, and became a permanent Social Worker IV the following May. She transferred to the Court Services Unit in May, 2000, and was reclassified as a Social Worker V four years later.

At all times material to this proceeding, Nancy Ramsey was A.F.'s direct supervisor in the DCFS Court Services Unit. As a union steward for several years, A.F. in late 2006 filed at least one grievance alleging that Ramsey was mistreating employees in her unit.¹ Ron Rogers served as DCFS Lead Supervisor, and thus Ramsey's supervisor, from November 2000 until he was appointed acting director of DCFS on March 1, 2008.² Prior to Rogers' appointment as acting director, John Jansen was the Director of DCFS. There are approximately 38 employees in the Division of Children and Family Services. Robert Reidl and Diane Yule were the director and assistant director, respectively, of the county Division of Personnel Services.

Personnel in the DCFS Juvenile Court Services unit are agents of the court, providing supervision for juveniles adjudged delinquent, essentially as a probation service for the county's delinquent youth. Although A.F. is a licensed clinical social work, such degree is not necessary to perform her job duties, which consist of conducting the post-adjudication pre-sentence investigation and making recommendations to the court; appearing in court, and then ensuring that the court's orders are followed.

The procedures, regulations and deadlines for these activities are governed by the Juvenile Justice Code, chapter 938 of the Wisconsin Statutes. Pursuant to statute, it is the agency, not any individual employee, that is responsible for completing and providing the pre-dispositional and dispositional reports to the court. Accordingly, the DCFS has a rule that a supervisor is to review and approve all such reports and recommendations by social workers.

In order to maintain communication and familiarity with cases, Ramsey meets at a set time with staff each week ("the individual staffing" meeting), and also on an ad hoc basis throughout the workday. In addition to the individual staffing meeting, which Ramsey established in early 2006, there is a unit meeting at 8:30 each Monday morning.

In recognition that the unit work often involves meetings outside the normal workday, the unit has a policy of granting and utilizing flex time. To administer the policy, and also monitor the location of its employees, the office has a sign-out book, where all employees are

¹ Further details of this grievance, and its disposition, is not in the record.

² Rogers and A.F. were in their respective positions at the time Ramsey became a supervisor.

to track their movements and whereabouts. Entries in the sign-out book provide the basis for employees to accumulate flex-time, and note its use. Because unit employees may visit families after hours in dangerous neighborhoods, the unit also relies on the log-book to aid employee safety.

On March 7, 2007, Ramsey reviewed one of A.F.'s case files in order to respond to a request for information. She noted that a report was missing a required signature from a supervisor. Ramsey pulled some of A.F.'s other files, and noted that there were other reports which also did not have signatures. Ramsey then met with her supervisor, Rogers, and scheduled a meeting with A.F. to discuss what the supervisors considered to be the very serious matter of the reports not having their required signatures.

At that meeting, A.F. stated that supervisors were not always available when she was filing the reports, and that other DCFS employees had also filed reports without signatures. Rogers later had all of the DCFS units audit ten files from each case worker and no other reports were found to be without the required supervisory signatures.

On March 30, 2007, A.F. informed Ramsey that, over the past few months she had accrued 12 hours of flex, which she intended to use for a sick day. This came as a surprise to Ramsey, who was unaware that A.F. was stocking such flex time. A.F., a union steward, explained she had accumulated such flex time conducting union business or going to doctor's appointments during working hours. A.F. did not note any of these activities in the daily log, where they should have been recorded. A.F. maintained that Ramsey had given her a special exemption from the unit's policies on accumulation and reporting, which Ramsey did not believe to have been the case.

On April 3, 2007, two other employees of DCFS, Donna Dickenson, the Kinship worker, and Joshua Vollendorf, exchanged a series of emails concerning Ms. Dickenson getting some services (the so-called "Title 19 insurance") started for a minor under care, as follows:

At 10:41 AM, Vollendorf wrote to Dickenson as follows:

Donna,

Could you please authorize straight T-19 for (A.A.) He is currently on DT pending charges and is likely to go to corrections.

Thanks!

At 11:11 AM, Dickenson replied to Vollendorf as follows:

If he goes to corrections they will set it up. Does he need medical care while he is in DT? If not, lets jut wait and see what happens with his placement. Donna:

At 12:30, Vollendorf wrote Dickenson as follows:

He does, and Ron would like him signed up for Straight T-19.

At 1:32 PM, Dickenson replied to Vollendorf as follows:

Please forward DOB and SS# and placement date. thanks.

Vollendorf replied at 1:33PM as follows:

His DOB is (X-XX-XX), SS# is (XXX-XX-XXXX), and he was placed in detention on (X-XX-XX).

Dickenson replied at 1:34 PM as follows:

Thank you, Ron says I need the information to set up the MA.

Vollendorf replied:

not a problem ³

Dickenson apparently took umbrage at something or some attitude in Vollendorf's emails, and forwarded the email train to A.F.⁴ At 3:04 PM, A.F., intending to write to Dickenson, send the following email to Vollendorf:

WHAT AN ARROGANT ASSH*** !!!!!

At 3:09 PM, A.F. wrote Dickenson as follows:

Donna I called Josh an arrogant ass by mistake ...

When he got this email from A.F., Vollendorf went to Ramsey to inform her of the matter. Ramsey believed he looked stunned and upset. He showed the message to Ramsey on his computer, and then forwarded the email to Rogers. Vollendorf later that day initiated a further meeting with Ramsey, at which he conveyed that he was confused and upset by A.F.'s email. Vollendorf also told Ramsey he was concerned there could be repercussions against him for bringing the matter to her attention. Vollendorf initiated another meeting with Ramsey later that afternoon, at which he expressed his surprise and consternation over the incident. Ramsey also believed that the email disrupted the working relationships within the office she

³ The exhibit seems to indicate that Vollendorf sent this email at 12:34 PM. However, it appears on the page immediately after Dickenson's email of 1:34PM, and seems to be in response to that email. The parties did not address this matter at hearing or in their briefs.

⁴ Rogers testified Dickenson used the word "uppity" to describe Vollendorf's tone. Dickenson was present for the hearing but did not testify.

supervised, especially since there were two other staff members in her office when Vollendorf came in to report the email, both of whom Ramsey believed became upset over the situation. Other employees, some from outside Ramsey's unit, also came to talk to Ramsey about the email. Because of a previously scheduled short vacation, Ramsey did not participate in the investigation of the email incident, which was conducted by Rogers. Ramsey never discussed the email with A.F. Other than in this email, Ramsey had never heard A.F. use inappropriate language to address co-workers.

As part of his investigation into the email incident, Rogers spoke with A.F., Vollendorf, the union president and one or more union stewards, and Dickenson. Rogers and Ramsey also discussed the email situation with assistant personnel director Yule, as they had discussed with Yule A.F.'s failure to obtain proper signatures and her accrual and use of flex time.

For improper use of the email system (sending the emails to A.F., who had no professional involvement in the matter), Dickenson was issued a one-day suspension, reduced during the grievance procedure to a written reprimand.

In order to facilitate consideration of A.F.'s disciplinary record, Ramsey prepared a document summarizing that record, as follows:

- 3/7/07 Meeting with Lead Supervisor, Supervisor, employee and Union Representatives to discuss violation of work policy relating to court documents and Supervisor's signature;
- 12/19/06 Meeting with Supervisor regarding flex time policy and employee's lack of following procedure;
- 11/29/06 Memo relating to her failure to comply with paperwork filing process;
- 2/28/05 I am disappointed letter from Supervisor for failure to attend mandatory training and being rude and discourteous to a service provider;
- 10/04/04 email from Director relating to Ms. F. being rude and demeaning to a LTE;
- 4/8/04 Memo from Supervisor regarding disappointment with employee's work performance;
- 12-18-03 Memo from Supervisor relating to inappropriate use of e-mail;

- 12-16-03 e-mail from Director to all staff relating to proper use of e-mail correspondence;
- 11/10/03 Memo from Supervisor relating to Ms. F.'s use of e-mail as being tactless, disrespectful and unprofessional;
- 1/3/03 Memo from Lead Supervisor regarding employee's deficiencies in attendance and work performance;
- 11/19/02 Kenosha County Disciplinary Action Form relating to excessive absences and lack of documentation of case work;
- 9/14/01 Correction Action Plan relating to Work Rule violations. Ms. F. refused to sign;
- 8/29/01 Meeting with Director, Lead Supervisor, Supervisor, Ms. F., and Union Representation regarding her refusal to do assigned work;
- 8/28/01 Meeting with Lead Supervisor, Supervisor, Ms. F., and Union Representation regarding her refusal to complete assigned work;

After consultation between Ramsey, Rogers and Yule, the County on April 16, 2007, issued the following Disciplinary Action Form to A.F.:

A.F. has violated the following Kenosha County Uniform Work Rules:

1. Work Habits #1: Employees shall be courteous and polite at all times while on duty or while engaged in work-related situations.
2. Work Habits #4: Employees shall be considered insubordinate if they refuse assigned work or refuse to obey a legitimate order of supervision or management.
3. Work Habits #7: County telephones, electronic mail, and other types of communication devices are to be used in a professional manner and for the conduct of County business. Employees shall not use such equipment for personal business without supervisory permission.
4. Work Habits #18: Employees and union officers shall not conduct personal or union business or solicit funds during work hours without prior supervisory approval.

5. Department: Employees shall not engage in the following conduct: #1: Unauthorized absence, tardiness, or leaving early.
6. Department: Employees shall not engage in the following conduct: #2: Discourteous or disrespectful treatment of others or the use of profanity or threatening language.
7. Department: Employees shall not engage in the following conduct: #21: Acts of dishonesty including, but not limited to, knowingly making false statements that could cause harm to the County or to another County employee.
8. Use and Operation of Kenosha County Information Systems and Networks #8: The electronic communication systems are not to be used to create any offensive or disruptive messages or to access any information that is not required during the normal course of business. Among those electronic communications which are considered offensive are any messages that contain sexual implications, racial slurs, gender specific comments, or any other comment that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, disability, or the like.

The facts supporting the violations of the Kenosha County Uniform Work Rules follow. (Please see attached).

HOW TO CORRECT PROBLEM:

1. Ms. F. will immediately comply with the Kenosha County Uniform Work Rules.
2. Ms. F. will not conduct Union business or personal business during work hours, without prior approval from her supervisor.
3. Ms. F. will not accrue or use flex time without first receiving approval from her supervisor.
4. Ms. F. will follow supervisory directives.

DISCIPLINARY ACTION TAKEN:

One Day Suspension Without Pay

WHAT FURTHER DISCIPLINE MAY RESULT:

Multiple Day Suspension and/or Termination

Ms. F. violated the aforementioned Kenosha County Uniform Work Rules in the following manner:

Description of Infraction:

A.F. violated Work Habits #4, Work Habits #18, and Department Rule #1:

On 12/19/06, Nancy Ramsey met with A.F. to discuss her having acquired and used flextime without informing her supervisor of either the need to accrue flex time or to make use of acquired flex time. At that time Ms. Ramsey informed Ms. F. that she was not to accrue or use flex time without informing Ms. Ramsey in advance, per the standard policy in the Kenosha County Division of Children and Family Services.

On 03/07/07 Lead Supervisor Ron Rogers and Nancy Ramsey met with A.F., Tracey Wheeler and Lynn Costello to discuss Ms. F.'s failure to obtain the required supervisory approval on several court documents. During the meeting, Ms. F. excused her behavior by stating that other Division of Children and Family Services social workers were also filing reports without a supervisor's signature. In response to Ms. F.'s statements, a review was conducted of the last 10 court documents that each Division of Children and Family Services social worker had filed with the court. The review found that all of the other Division of Children and Family Services social workers were obtaining supervisory approval and signatures prior to filing court documents. Ms. F.'s statements were found to be untrue.

During the 03/07/07 meeting, Ms. Ramsey discussed Ms. F.'s failure to adequately communicate with her supervisor and follow supervisory directives. At that time, Ms. F. indicated she would comply with her responsibility to communicate with her supervisor and follow directives as required under her duties as an employee of the Division of Children and Family Services.

However, on 03/30/07 Ms. F. disclosed in an email that she had been attending doctor appointments and physical therapy appointments during work hours. She further disclosed that she conducted Union business during work hours and indicated she accrued flex time for the appointments and Union business. Ms. F. restated this information in a meeting with Ms. Ramsey on 04/03/07. She claimed that "a lot" of Union (990 Pro) business occurred over the past couple of months requiring her attendance.

Ms. F. failed to inform her supervisor with regard to the weekly physical therapy appointments during County work hours. (Ms. F. had only made her supervisor aware of two scheduled doctor appointments.) She also failed to inform her supervisor when conducting Union business during County work hours.

Ms. F. did not follow Ms. Ramsey's directive on 12/19/06 to keep Ms. Ramsey informed if she was going to accrue flex time. She also failed in her agreement from the meeting on 03/07/07 to comply with the expectation that she communicate thoroughly with her supervisor and comply with supervisory directions. In addition, Ms. F. states she has attended numerous Union business meetings during work hours and has attended many physical therapy appointments during work hours, all without notifying her supervisor, Nancy Ramsey. Ms. F. clearly has refused to follow Ms. Ramsey's directive of 12/19/06 and is in violation of the Kenosha County Uniform Work Rules, Work Habits #4, Work Habits #18, and Department Rule #1.

A.F. violated Work Habits #1, Work Habits #7, Department #2, Department #21, and Use and Operation of Kenosha County Information Systems and Networks #8.

On 04/03/07 Ms. F. was sent email from Donna Dickerson that was an email conversation between Donna Dickerson and Joshua Vollendorf. (See attached). Ms.F. then forwarded this email to Joshua Vollendorf after adding her own email correspondence to Mr. Vollendorf in which Ms. F. wrote to Mr. Vollendorf, "WHAT AN ARROGANT ASSH***!!!!!!!"

On 04/05/07 Lead Supervisor Ron Rogers met with Ms. F., Tracey Wheeler and Sue Fanning to ask Ms. F. a series of questions regarding her email to Mr. Vollendorf. During the meeting Ms. F. admitted to sending the email to Mr. Vollendorf. She stated that she was referring to Donna Dickerson as the "ARROGANT ASSH***." Ms. F. stated that she sent the email to Mr. Vollendorf in order to stick up for Mr. Vollendorf. She shared that earlier that day, while at lunch, she and Ms. Dickenson had discussed Mr. Vollendorf and that Ms. Dickenson had stated that she felt Mr. Vollendorf acted "uppity" with her. Ms. F. stated she thought Ms. Dickenson sent the email to her in order to prove Ms. Dickenson's point that Mr. Vollendorf acted "uppity." Ms. F. stated that she did not request the email from Ms. Dickenson, but when she received it and read it, she sent the, "WHAT AN ARROGANT ASSH***!!!!!!!" to Mr. Vollendorf in order to show Mr. Vollendorf she supported him. Mr. Rogers asked Ms. F. if she had actually intended to send the email to Ms. Dickenson and asked if she were actually agreeing with Ms. Dickenson and if she intended to call Mr. Vollendorf an "ARROGANT ASSH***." Ms. F. stated to Mr. Rogers that she was referring to Donna Dickenson as the "ARROGANT ASSH***" and that she intended the email to go to Mr. Vollendorf.

A check of the Kenosha County email records found an email Ms. F. sent to Ms. Dickenson in which she wrote, "Donna I called Josh an arrogant ass by mistake."

Ms. F.'s use of the term, "ARROGANT ASSH***" in email at work is clearly not courteous and not polite. Sending email with that language is not professional and it was not sent to conduct county business, but rather sent for personal reasons. Describing any co-worker as an 'ARROGANT ASSH*** !!!!!' is a clear example of discourteous and disrespectful treatment of others. When given an opportunity to discuss the email with Lead Supervisor Ron Rogers on 04/05/07 she chose to give dishonest answers. Ms.F.'s email to Ms. Dickenson in which she wrote, "Donna I called Josh an arrogant ass by mistake," confirms that she was calling Mr. Vollendorf an "ARROGANT ASSH*** !!!!!" in her email. This incident and her false statement made to the Lead Supervisor clearly demonstrate that Ms. F. has violated the Kenosha County Uniform Work Rules Work Habits #1, Work Habits #7, Department #2, Department #21 and Use and Operation of Kenosha County Information Systems and Networks #8.

IMPACT OF KENOSHA COUNTY UNIFORM WORK RULES VIOLATIONS:

Kenosha County DHS strives to create an inclusive, welcoming, work environment for all of its' employees. The impact of workplace hostility and abusive behavior extends well beyond the immediate act of hostility. Ms. F.'s offensive, careless email caused considerable disruption of the workplace. Not only was Ms. (sic) Vollendorf completely shocked, embarrassed and confused by the email, he was also concerned that disclosure of the email would result in retaliation by A.F. Ms. F. is aware that use of the County email system to convey inappropriate email is prohibited. The risk that the email may be misinterpreted, viewed or received by an unintended individual is a persuasive argument against such improper use of the public email system. Co-workers that became aware of the email were also unnerved and likewise concerned that Mr. Vollendorf would experience repercussions by Ms. F. This damage to the working environment and the employee's perception of their work climate is very concerning to management. Ms. F. cannot continue to disrupt the workplace with unprofessional, offensive emails.

Ms. F. compounded the problem when she attempted to diminish responsibility for her behavior by making false statements with regard to the intention and target of the hostile email. The Division of Children and Family Services relies on its' case managers, who conduct a great deal of their work responsibilities independently, to be honest and of good character. Making false statements in this instance and her false statements made during the 03/07/07 meeting clearly

calls into question Ms. F.'s credibility with regard to other areas of her case management duties. In order to restore her credibility with her supervisor, Ms. F. must initiate and maintain open and honest communication with her supervisor.

Ms. F. deliberately did not follow a directive of management with regard to accrual and use of flex hours. She also did not comply with County expectations that she make her Supervisor aware of conducting personal or Union business during scheduled work hours. All County employees are required to abide by the Kenosha County Uniform Work Rules as well as accepted Division policies with regard to work performance and responsibility. It is essential for the smooth and efficient operation of the Court Services Unit that Ms. F. convey her whereabouts to her Supervisor and obtain Supervisory approval for scheduled absences and accrual of flex time.

Ms.F. must comply immediately with the basic work expectations found in the Kenosha County Uniform Work Rules. If she does not comply, she faces further disciplinary action up to and including termination.

There is no record of other unit or department employees being disciplined for violating the provisions for accumulating, tracking and using flex time. At least two county employees have been discharged for improper use of the email system.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the union asserts and avers as follows:

The grievant's infamous email was intended only for Dickenson, regarded by the county itself as "private." The affront to Vollendorf was an unintentional mistake which was not made in Vollendorf's presence.

Ramsey's description of the "extraordinary" nature of the event and the purported ripple effect it had within the bargaining unit was grossly exaggerated. Ramsey is not believable, and the employer's case is long on hearsay. Without Vollendorf and other employees testifying as to their reaction to the unfortunate disclosure of the email the county clearly failed to make its case.

Ramsey did not discover she had a half-hour meeting with Vollendorf the afternoon of the emails until she was being cross-examined. Perhaps Vollendorf's tormented colloquy of that afternoon was forgotten and cross-examination stirred her memory of that poignant moment. Or, Ramsey just laid it on, made it up.

Ramsey's handling of the whole episode is suspect. The email was inappropriate but it was not sensational, especially to professional social workers who are used to dealing with deviant behavior. Ramsey could have taken control of the situation by taking Vollendorf aside.

Ramsey was not present when the grievant allegedly made false statements to Rogers, and Rogers never testified to any such false statements.

The employer improperly considered past incidents which were outside the time limits set by the collective bargaining agreement and thus not a fair part of its deliberations leading to a suspension.

Even if the employer had a free hand to consider any meeting the grievant had with Ramsey, the email bears no relationship to the county's claim that the grievant had a problem with authority, in that it is unrelated to that premise and its statement that the grievant had to be suspended rather than receive a "I am disappointed" letter as Dickenson did.

The employer's prejudice toward A.F. is broadcast by the fact that Dickenson's offense of forwarding client information inappropriately was more egregious than A.F.'s, yet management showed a total lack of concern over that.

The record supports a finding that incidents of alleged misconduct regarding signatures on court documents and flex-time were "piled on" after the email incident to justify a suspension as opposed to an "I'm disappointed" letter. The arbitrator should find the county did not have just cause to suspend the grievant for one day and grant all appropriate remedy.

In support of its contention that the grievance should be denied, the employer asserts and avers as follows:

The county had just cause to discipline A.F. because she violated office policy by not obtaining the requisite signatures for court documents, by not communicating and documenting her use of flex time, and by sending an email to a coworker calling him an "ARROGANT ASSH***." A.F. clearly understood the rules.

A.F.'s statement that other employees hadn't obtained the necessary signatures was unfounded, and here excuse that no one was available was not acceptable, either. A.F. further violated office policy when she failed to communicate with her office regarding flex time, and document her use of it. By making it difficult for her supervisor to hold her accountable for the hours she worked and what hours she was unavailable, A.F. was not accountable for the hours she would claim to work.

A.F. also sent an email that was insulting and degrading to a coworker, then acted as though she had not done so before later admitting she had in fact sent the email. This incident created drama and hostility in the workplace.

A.F. clearly does not want to be accountable for her actions; even though not specifically related to her job performance, this behavior makes her difficult to manage. The continued violations of the work rules caused her discipline under the county's rule on progressive discipline. Lesser discipline had been ineffective in correcting her behavior, and she repeated a violation (using flex time without approval) that she had been warned about.

The one-day suspension was appropriate considering the number of violations A.F. had accumulated, was meant to be corrective, and should stand.

DISCUSSION

The county alleges that A.F. committed eight separate violations of the Kenosha County Uniform Work Rules, including violating the standards of four "Work Habits," three "Department" requirements and a provision regulating the Use and Operation of its Information Systems and Networks. The accumulated misconduct, the county contends, gave it proper cause to impose a one-day suspension. The union counters that the county overreacted, showed bias against the grievant, and may have suborned perjury in its presentation.

The county contends the grievant violated several provisions of the Uniform Work Rules when she sent the "ARROGANT ASSH***!!!!!" email, and then lied to Rogers about it. In particular, the county claims this conduct constituted violations of Work Habits 1 and 7, Department standards 2 and 21, and improper use of the computer network.

Those rules provide as follows:

WORK HABITS

1: Employees shall be courteous and polite at all times while on duty or while engaged in work-related situations.

...

7: County telephones, electronic mail, and other types of communication devices are to be used in a professional manner and for the conduct of County business. Employees shall not use such equipment for personal business without supervisory permission.

...

DEPARTMENT

Employees shall not engage in the following conduct:

2. Discourteous or disrespectful treatment of others or the use of profanity or threatening language.

...

21. Acts of dishonesty including, but not limited to, knowingly making false statements that could cause harm to the County or to another County employee.

...

USE AND OPERATION OF KENOSHA COUNTY INFORMATION SYSTEMS AND NETWORKS

...

- 8: The electronic communication systems are not to be used to create any offensive or disruptive messages or to access any information that is not required during the normal course of business. Among those electronic communications which are considered offensive are any messages that contain sexual implications, racial slurs, gender specific comments, or any other comment that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, disability, or the like.

The union seeks to minimize its import, contending "the affront to Vollendorf was unintentional," and that the email, while "inappropriate," was not sensational, especially "to a group of professional social workers who deal with deviant behavior every day in their work life." The union also suggests that Ramsey lied when she described the impact of the email on Vollendorf, stating that she "made it up."

I agree with the union that the county's decision not to call Vollendorf as a witness means it cannot rest its case on the emotional impact he suffered, if any, from this incident. However, the county can rely on the testimony of Ramsey and Rogers recounting what they witnessed the impact of A.F.'s email to be, both on Vollendorf and other unit employees.

The fact that A.F., Dickenson, Vollendorf and the other members of the unit "deal with deviant behavior" on a daily basis is probably true. But that does not excuse one

employee from referring to another in an official email, subject to disclosure under the Public Records Act, as an “ARROGANT ASSH***!!!!!!” Contrary to the mandates of the rules cited above, A.F.’s email was *not* courteous and polite; it was *not* a professional use of the email system; it *was* discourteous, disrespectful and profane, and it *was* offensive and disruptive. Moreover, A.F.’s attempt to mislead Rogers as to the nature and purpose of the email constituted an act of intentional dishonesty.

Further, the union errs when it claims that “management showed a total lack of concern” over Dickenson’s inappropriate use of the email system (forwarding the email chain to A.F. in the first place), which it describes “more egregious” than A.F.’s. As the union well knows, the county also issued Dickenson a one-day suspension, reduced during the grievance process to a written reprimand.⁵

I agree that A.F. violated the provisions cited when she sent the “ARROGANT ASSH***!!!!!!” email and then sought to mislead Rogers about its meaning. It is hard to see how such an email, and an attempt to cover it up, would not violate these rules. I conclude that A.F. did violate the cited Uniform Work Rules, as the county has alleged, by the entirety of the email incident.

The county next alleges that A.F. violated several work rules by not obtaining the required signature from a supervisor on various court documents, and by failing to communicate with the office regarding her accumulation and use of flex time. In particular, the county asserts A.F.’s conduct violated the following provisions:

WORK HABITS

#4: Employees shall be considered insubordinate if they refuse assigned work or refuse to obey a legitimate order of supervision or management.

#18: Employees and union officers shall not conduct personal or union business or solicit funds during work hours without prior supervisory approval.

DEPARTMENT

Employees shall not engage in the following conduct:

1. Unauthorized absence, tardiness, or leaving early.

On December 19, 2006, Ramsey discussed with A.F. her concerns that A.F. had accrued and used flex time without giving Ramsey proper notice, and reminded her of the

⁵ The record is silent on whether, during consideration of the Dickenson grievance, the union shared with the county its belief that Dickenson’s misconduct was “more egregious” than A. F.’s.

policy that employees not do so. On March 7, 2007, Ramsey reminded A.F. that she was expected to communicate openly and honestly with her supervisor.

Yet on March 30, 2007, A.F. informed Ramsey via email that she had been accruing flex time by attending medical appointments and conducting unspecified union business, all during the workday and all without timely notice to Ramsey.

Also at the meeting of March 7, 2007, Ramsey reminded A.F. of the requirement that certain court records and reports be signed by a supervisor. A.F. contended that other workers also filed reports without signatures, a claim not supported by Rogers' subsequent audit of case files.

The union does not address these two issues in its argument, other than to make the conclusory statement that the allegations regarding signatures on court documents and the improper accrual and use of flex time "were 'piled on' after the e-mail incident to justify a suspension as opposed to 'I'm disappointed' letter."

By accruing and using flex time without advance notice to Ramsey, A.F. refused to obey a legitimate supervisory directive, conducted personal and/or union business without prior supervisory approval, and was absent without authorization. Accordingly, by this conduct A.F. violated Work Habit rules 4 and 18 and Department rule 1. Further, by failing to obtain the required supervisory signatures on reports to the court, A.F. refused to obey a legitimate order from her supervisor.

As noted above, the county has adopted a policy for progressive discipline, under which a suspension "may be imposed for repeated offenses when verbal reprimands and written reprimands have not brought about corrected behavior, or for first offenses of a more serious nature," including, but not limited to, "falsification or misuse of time sheets or records," and "disobedience of an order."

The county had not previously issued a verbal or written reprimand to A.F. for failure to obtain a supervisor's signature on reports to the court. Moreover, the county did not discipline A.F. for her failure in this regard until the email incident arose. Accordingly, while A.F. did thus violate Work Habit #4, and give her supervisors an incorrect statement regarding how prevalent this practice was, this matter did not rise to the level of insubordination which gives just cause for a one-day suspension.

Nor had the county previously issued a reprimand to A.F. for failing to notify Ramsey about her accrual and use of flex time. The county *had* counseled A.F. on this matter on December 19, 2006 and March 7, 2007, only to learn on March 30, 2007, that A.F. was continuing to violate the clear and reasonable policy. In so doing, A.F. disobeyed an order and misused her time sheets. However, I do not believe that this conduct, by itself, would justify a disciplinary suspension either.

Without endorsing the union characterization of the county as malevolently dredging up old incidents in order to increase A.F.'s discipline, I do agree with the union that the county cannot rely on any item in A.F.'s disciplinary record prior to the entry of November 29, 2006. Section 3.5 of the collective bargaining agreement clearly provides that written reprimands "shall not be used in case of discipline" after a year has passed since their issuance, and that all other letters, corrective actions and written verbal warnings "will not be considered in future disciplines" after six months has passed since their issuance. Accordingly, the entries from August 28, 2001 to February 28, 2005 cannot factor in the discipline of A.F. ⁶

Although the issues of flex time and proper signatures were considerations, the county acknowledged that the email was its motivating factor in suspending A.F. for one day. It is on that conduct that the discipline rests.

An employee who calls another an "ARROGANT ASSH***!!!!!!," at work, poisons the work environment. Doing so in an office email that is subject to public disclosure further subjects the second employee to great embarrassment, and subjects the employer and the other workers to ridicule and loss of necessary public support. Doing so and then lying to a supervisor about it irrevocably damages the level of trust necessary for the proper operation of a workplace such as the Kenosha County Division of Children and Family Services. A Social Worker V in that workplace should know it is wrong to describe a colleague as an "ARROGANT ASSH***!!!!!!" in an office email, and wrong to lie to a supervisor when asked about it.

I believe that sending an official email describing a colleague as an "ARROGANT ASSH***!!!!!!," and lying to a supervisor about its nature and meaning, is an offense of a sufficiently serious nature as to justify a one-day suspension. Accordingly, on the basis of the collective bargaining agreement, the record evidence, and the arguments of the parties, it is my

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin, this 5th day of February, 2009.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

⁶ Because the question was not argued, I decline to opine on the year's validity which Report # 139 accords verbal reprimands.