

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 269
No. 67695
MA-13994

(A.F. Three-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 three-day suspension of A.F. on August 28, 2007? 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.....

...

ARTICLE III - GRIEVANCE PROCEDURE

...

Section 3.5 Work Rules and Discipline. Employees shall comply with all provisions of this Agreement and all reasonable work rules. Employees may be disciplined for 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.

...

OTHER RELEVANT LANGUAGE

KENOSHA COUNTY UNIFORM WORK RULES

...

WORK HABITS

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

...

DEPARTMENT

Employees shall not engage in the following conduct:

...

8. Insubordination, including disrespectful treatment of their supervisors or management.

...

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 three-day unpaid suspension, issued on August 28, 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 the time of her suspension, her hourly wage was \$29.41.

At all times material to this proceeding, Nancy Ramsey was A.F.'s direct supervisor in the DCFS Juvenile 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 There are approximately 38 employees in the Division of Children and Family Services, with about nine under Ramsey's supervision. Robert Reidl and Diane Yule are 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 worker, 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.

In late July, 2007, Ramsey told A.F. that she would need to file a civil judgment on a case which involved a considerable amount of restitution required of a juvenile, B.M. Such a motion must be filed within one year after a case closes; as this case had only recently closed, there was no immediate deadline that the department needed to meet.

A.F. told Ramsey she had not previously filed such a judgment, and did not know how to proceed. Ramsey replied it was an easy process, and asked A.F. if she had the necessary electronic form. When A.F. said she did not, Ramsey said that she would have another worker, Joshua Vollendorf, email her the necessary form, which she did. Shortly thereafter, Ramsey checked with A.F. to see that she had received the electronic form, and to instruct her on how to enter the necessary data and submit it.

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.

Ramsey and A.F. were the only two witnesses to what happened next who testified. Their testimony corresponds in certain areas, and is in conflict on other material matters.

Ramsey testified that this encounter occurred on July 27, 2007, while A.F. was sitting in her cubicle and Ramsey was at the cubicle doorway, and that at one point A.F. arose, brushed past Ramsey, and, while walking away from her, said, "you're not going to get it anytime soon," or words to that effect. Ramsey further testified that A.F. continued down the short hallway, ignoring Ramsey's request for an explanation or clarification, and that after Ramsey asked two or three times why A.F. had said that, A.F. "walked into the conference room and slammed the door." Ramsey further testified that she then turned and saw another staff member standing there, and that the other employee exclaimed, "Oh, my God," or words to that effect.

A.F. testified that the incident actually began on July 25, when Ramsey gave her a note while she was on the phone in her cubicle, informing her she needed to file the judgment in the B.M. matter. A.F. further testified that she went to Ramsey's office on July 26th, informing her she had never filed such a document, and asking how to proceed, and that Ramsey replied she would have Vollendorf email her the necessary form, which she did.

A.F. further testified that, on the 27th, she had been dictating a court report in the conference room, where she customarily does her dictation, when she took a bathroom break. Exiting the bathroom, she encountered Ramsey near the copy machine, in an open area next to the several office cubicles. A.F. testified that while she was in the hallway, walking back to the conference room to resume dictation, Ramsey asked her if she had gotten the digital form from Vollendorf. A.F. testified she told Ramsey that she had not opened the email that Vollendorf has sent, and that she didn't know when she would fill out and submit the form. A.F. testified she then continued walking away from Ramsey, who stayed in the copy area, and that, when she heard Ramsey say, "what?," she repeated, over her shoulder, that she didn't know when she would get to the matter. A.F. testified she then entered the conference room, closed the door, and completed her dictation. A.F. further testified that she prepared the motion on August 1, and filed it the following day, and had so informed Ramsey.

On August 10, 2007, following consultation with Rogers and Yule, Ramsey issued a Notice of Pre-Disciplinary Meeting to A.F., as follows:

You are hereby advised that on Friday, August 24, 2007 at 9:00 a.m. in the Personnel Office there will be a pre-disciplinary meeting to discuss the charges of:

1. Violation of Kenosha County Uniform Work Rules, Work Habits #1, "Employees shall be courteous and polite at all times while on duty or while engaged in work-related situations."

2. Violation of Kenosha County Uniform Work Rules, Work Habits #8, "Employees shall not engage in the following conduct; Insubordination, including disrespectful treatment of their supervisor or management." ³

You may have present at this meeting a Union representative or any other representative of your choosing.

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

On Friday, July 27, 2007, at approximately 1:50 p.m., I gave you a list of case closures for July. I also asked you if you had read my note instructing you to file a request for a Civil Judgement (sic) on the B.M. case. You said you did not know how to do that and had never done one. I indicated that they were simple forms to fill out and file along with a request for a hearing. (All the time I was saying this you were walking away from me.) I went to a co-worker I knew had electronic copies of the forms and asked him to email them to you. I then went back to you and told you they were being emailed to you. You walked past me, out of your office and said, "Well, don't expect it anytime soon," over your shoulder. I told you it was your obligation to make sure restitution is paid by the youth. As you continued walking away you said, "Fine. Just don't expect it anytime soon," again, over your shoulder. I asked you, "Why?" just as you reached the door to the conference room (about 20 feet from your office) and you did not reply. I asked you again, "Why not?" and you continued to ignore my question and closed the conference room door. At no time did you turn to face me, make eye contact, answer my question or acknowledge my attempt to engage you.

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

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

You are hereby advised that you have the right to a pre-disciplinary meeting upon the charges in this notice. You may waive your right to the meeting and admit the charges are true. Your failure to show for this meeting will be construed as you are not contesting the charges. If you waive your right to the meeting, the 3-day unpaid suspension from your position as a social worker in the Juvenile Court Services Unit will be imposed.

³ At hearing, it was clarified that the violation alleged in charge (2) actually related to Department #8, not Work Habits #8.

In addition, any further violation of the Kenosha County Uniform Work Rules may result in further disciplinary action up to and including termination.

John Jansen, acting Director of the Department of Human Services at the time of hearing, was Director of the Division of Children and Family Services at the time of A.F.'s discipline. On August 28, he conducted a meeting, pursuant to 1982 Kenosha County Board Res. 139, on the 3-day disciplinary suspension Ramsey had recommended. Witnesses were not sworn, and no transcript was prepared. AFSCME staff representative Nick Kasmer spoke on behalf of A.F., who did not appear as a witness. Concluding that the union was not able to refute the contentions in Ramsey's memo of August 10, and that A.F. walked away from Ramsey, was discourteous and disrespectful, and close the conference room door in her face, Jansen on September 7, 2007 issued a written decision which incorporated Ramsey's narrative and imposed the three-day suspension as recommended.

The union filed a timely grievance, and the matter was subsequently advanced to arbitration.

POSITIONS OF THE PARTIES

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

Kenosha County Uniform Work Rules Work Habits #8 does not remotely apply to the description of the alleged misconduct the Grievant was accused of violating and therefore must be dismissed. A full six weeks of review of the alleged incident and management still did not get it right.

The infraction as stated by management included text that related to insubordination, which is addressed at Work Habits #4. Problem is that rule reads differently than specified by management, and relates to employees who refuse assigned work or to obey a legitimate order. The grievant did not refuse an assignment and in fact finished it well before management gave any indication it was concerned about her conduct. A charge of insubordination must be dismissed.

The prejudice to the union and grievant is one of confusion, compounded by the double charge for the same conduct. The grievant is accused of being both not "courteous and/or polite" and of being "disrespectful" of her supervisor. Could it be that management could not decide which rule was applicable and cited both? And if being disrespectful and not being courteous/polite are the same violation then one charge was sufficient and a second charge was redundant.

The only questions are whether the grievant violated rule 1, and, if so, was the 3-day suspension excessive.

Ramsey testified that there would not have been any discipline for the incident had other employee(s) not witnessed A.F.'s conduct. Since there was no credible evidence as to the identity or perceptions of this anonymous staff member, who was never called to testify, or even identified, the grievance must be sustained. Moreover, Ramsey embellished the record at hearing, describing A.F. as "slamming" the door, whereas in her own report of the incident she referred to A.F. as merely "closing" the door.

A.F.'s testimony was clear and detailed, and left unrebutted many critical points establishing that the employer failed in its burden of proof that A.F. was not courteous and/or polite. The record as a whole establishes that the employer did not have just cause to issue a three-day suspension to the grievant.

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

The heart of insubordination is a disrespect for authority and a refusal to do work. A.F.'s repeated statement, "don't expect it anytime soon," frustrated Ramsey. The incident ended with A.F. shutting the door in Ramsey's face, causing another employee to respond, "Oh, my God." A.F. didn't flatly refuse to do her task, but put it off indefinitely without responding to or communicating with her supervisor. This was a failure to follow a supervisor's directive.

Although A.F. did not expressly say "no," her statement "don't expect it anytime soon," indicated she would not attend to it, and constituted a refusal to follow an order or directive. This response was also disrespectful, and together with her actions constituted insubordination.

As the county's progressive discipline policy is corrective in nature, that the grievant had recently been suspended was a factor in the decision to suspend her for this incident. There is no doubt that the grievant's demeanor and refusal to discuss her response was a disrespectful and insubordinate act. While it did not warrant discharge, the incident warranted a three-day suspension as the appropriate next step.

A.F. violated the work rule requiring that she be courteous and polite at all times, and engaged in insubordination in her disrespectful response to Ramsey's directive to file a form with the court. A.F. was properly warned about the consequences of continuing to not follow supervisory directives. The grievance should be denied and the three-day suspension upheld.

DISCUSSION

The county contends that A.F. violated two provisions of its Uniform Work Rules by her interaction with Ramsey on July 27, and that, given her recent one-day suspension, there was proper cause for a three-day suspension.

The union highlights the fact that the August 27 notice cited Work Habits #8, which has a different text from that included in the notice. However, as the union should recall, this matter was clarified at hearing; as Ramsey testified, and as the documentary record validates, the text quoted was for Department #8, not Work Habits #8. Moreover, there was no testimony by the grievant or any union representative about any confusion at the pre-disciplinary hearing or thereafter as to what violations were alleged. Accordingly, I do not believe the ability of grievant or union to understand the charges and defend against them was adversely affected to a material level.

Insubordination has been defined as “the refusal by an employee to work or obey an order given by the employee’s supervisor.”⁴ This basic definition, however, is subject to the following qualifications: an employee’s refusal to work or obey must be knowing, willful and deliberate; the order must be both explicit and clearly given; the order must be reasonable and work-related; the order must be given by someone with appropriate authority; the employee must be aware of the consequences of failing to perform the work, and, if practical, the employee must be given time to correct the purportedly insubordinate behavior.⁵

The employer contends that A.F. was insubordinate in that she “refused to follow a directive. She refused to follow an order.”⁶

The record does not support this claim. In fact, A.F.’s un rebutted testimony was that she informed Ramsey she had completed the assignment more than a week before Ramsey issued the Notice of Pre-Disciplinary Meeting on August 10, 2007.⁷

The county is on firmer grounds when it characterizes A.F. as being discourteous and disrespectful. She was.

The extent of discourtesy and disrespect, however, is subject to interpretation. Ramsey certainly told the story in stark terms, seeming to elaborate on her earlier contemporaneous accounts. In particular, her August 10, 2007 memo states that A.F. “closed the conference room door,” whereas she testified at hearing that A.F. “slammed the door.”⁸ A.F. testified she closed the conference room door, which would be the normal action of someone needing a quiet place in which to do dictation.

⁴ *Discipline and Discharge in Arbitration*, Norman Brand, ed., BNA Books, Washington, D.C., 1998.

⁵ *Ibid.*

⁶ Brief, p. 6.

⁷ Tr., p. 69, at 17-20.

⁸ Tr., p. 23, at 10 and 15.

Two of the tenets of just cause are that the employer notify an employee what behavior is and isn't acceptable, and what the punishment for improper behavior would be. Yet Ramsey testified that A.F. had spoken to her in this manner in the past, without discipline. Ramsey testified that this incident was more serious because "this was the first time that she had done something that insubordinate publicly so that other members of the staff were also disturbed by her behavior." ⁹ However, although Ramsey explicitly testified that the suspension was based on the incident being observed by other unit employees, no such employee appeared at the disciplinary meeting before Jansen or at the arbitration hearing. The absence of such critical testimony significantly weakens the employer's case.

I am also troubled by Jansen's reversal of the burden of proof he incorporated at the disciplinary meeting. It is well-settled that the employer has the burden of proof in establishing just cause for discipline. Indeed, Kenosha County has explicitly incorporated this understanding in its disciplinary practices, by adopting Res. 139 and holding itself to this standard:

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

Yet Jansen testified at hearing that he followed Ramsey's statement of the facts and recommendation for a three-day suspension "based on the fact that the union wasn't able to refute it." ¹⁰ Such an inversion of the burden of proof further weakens the employer's case.

Jansen also testified that he reviewed A.F.'s file "which had memos throughout the years." ¹¹ However, as the collective bargaining agreement provides, and as I have so held in a companion case, prior written reprimands "shall not be used in case of discipline" after a year has passed since their issuances, 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. ¹² Jansen should not have taken into account any documents which violated these expiration dates,

For all these reasons, the three-day suspension cannot stand. But there is no question that A.F. was disrespectful and discourteous to Ramsey, even under A.F.'s narrative. It is simply rude to walk away from someone who is talking to you, respond dismissively over your shoulder to their legitimate inquiries and comments, and close a door in their face (even if they are down a short hallway). By her actions on July 27, 2007, A.F. violated Kenosha County

⁹ Tr., p. 14, at 12-25.

¹⁰ Tr., p. 56, at 23-24.

¹¹ Tr., p. 50, at 18-23.

¹² KENOSHA COUNTY, Dec. No. 7395 (2/5/09), in which I denied the union's grievance over A.F.'s one-day suspension. The written award incorrectly states the date of that one-day suspension as April 16, 2008.

Uniform Work Rules Work Habits #1 and Department #8. However, even in the context of A.F.'s other, contemporaneous discipline – namely, her one-day suspension on April 16, 2007 – a three-day suspension for these violations is excessive.

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 sustained in part and denied in part. The employer has just cause to discipline A.F., but not to impose a three-day suspension. The grievant shall be made whole for all wages and benefits she lost due to her three-day suspension. The employer may, at its discretion, issue a written reprimand for the events of July 27, 2007, in a manner consistent with the terms of this Award.

Dated at Madison, Wisconsin, this 12th day of February, 2009.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator