

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**MONROE COUNTY HIGHWAY EMPLOYEES,
LOCAL 2470, AFSCME, AFL-CIO**

and

COUNTY OF MONROE

Case 201
No. 68272
MA-14176

Appearances:

Kristen M. Clark, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 4504 Markle Road, La Crosse Wisconsin 54601, appearing on behalf of Monroe County Highway Employees, Local 2470, AFSCME, AFL-CIO, referred to below as the Union.

Ken Kittleson, Monroe County Personnel Director, 14345 County Highway B, Room 3, Sparta, Wisconsin 54656, appearing on behalf of County of Monroe, referred to below as the County.

ARBITRATION AWARD

The Union and the County are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint Richard B. McLaughlin to resolve Grievance 2008-3, filed on behalf of Randy Kobel, who is referred to below as the Grievant. Hearing on the matter was held in Sparta, Wisconsin on December 10, 2008. The hearing was not transcribed. The parties filed briefs by January 12, 2009.

ISSUES

The parties stipulated the following issues for decision:

Was the written warning issued to the Grievant on May 20, 2008, a violation of the just cause standard, as stated in the collective bargaining agreement?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

Article 3 – MANAGEMENT RIGHTS

Section 1. The County possesses the sole right to operate county government and all management rights repose in it, subject only to the provisions of this Contract and applicable law. These rights include, but are not limited to the following:

. . .

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

. . .

The County’s exercise of the foregoing functions shall be limited only by the express provisions of this Contract. If the County exceeds this limitation, the matter shall be processed under the grievance procedure.

Article 20 – GENERAL PROVISIONS

. . .

Section 5. The County shall not discipline or discharge an employee except for just cause. . . .

BACKGROUND

The form for Grievance 2008-3 states the relevant circumstances thus:

Commissioner Dittmar filed an insubordination report against me for the Operator I position due to a lack of a Class A CDL. This report had been filed with the knowledge that the Highway Committee had previously voted to have me reinstated to the State Section 2 position for which a Class A CDL is not required.

The grievance seeks the removal of the report from the Grievant’s personnel file. The “Disciplinary Action Report” form is dated May 20, 2008 (references to dates are to 2008, unless otherwise noted); has an “X” notation by the “Insubordination” entry; was signed by Joe Pauley, the County’s Road Supervisor; and reads thus:

Since late 2002 (the Grievant) has been verbally directed to get a Class A CDL (which is a requirement of his position) numerous times. On 11/15/07 (the Grievant) received a memo to get his Class A CDL before the end of 2007. (The Grievant) received verbal permission to extend this deadline until the middle of January 2008 and at the end of January 2008 said he would get his Class A CDL. Since the end of January 2008, (the Grievant) has not attempted to obtain his Class A CDL or received approval to not obtain it.

The position description for Highway Equipment Operator I (EOI) states that an incumbent must show, "Possession of valid Wisconsin Commercial Driver's License Class A for air-brake equipment with a minimum of tanker (N) endorsement."

The Grievant started with the County in early May of 1999. Jack Dittmar, the County Highway Commissioner, hired the Grievant into an entry level position. Before the Grievant reported for work, a posting for a vacant EOI position went unsigned. Dittmar placed the Grievant in that position even though he lacked a Class A CDL or an N endorsement.

Dittmar issued the Grievant two memos dated November 15, 2007. One is headed, "Class A CDL Requirement" and states:

A Class A CDL has been a requirement for your position since you started on May 03, 1999. Since you were assigned into this position as a new hire, you were given time to get the required class of CDL. Supervisors and I have verbally talked with you at different times about getting a Class A CDL since at least 2002. Operation of a semi-tractor & trailer is the main reason a Class A CDL is required for Operator positions.

As we continue to lose employees through attrition it is more and more critical that the remaining employees are capable of a wider range of duties. Operation of a semi-tractor & trailer is one of these additional capabilities.

Please get a Class A CDL before the end of 2007. We can arrange for your use of a Department semi-tractor & trailer to take the road test outside of normal working hours. If you cannot accomplish this, please let me know why and when you will get the license. If I do not hear from you, I assume you will have it before 2008.

Thank you for your cooperation.

The other memo included another employee; is headed, "CDL 'N' (Tank Vehicles) Endorsement"; and states:

A CDL "N" (tank vehicle) endorsement was a requirement in the position description when you signed the posting for your current position. Operation of a salt brine pre-wet truck was the main reason to add the tank requirement to the Section Leader position description back in 2003 and it has always been a requirement for Operator positions. The hydroseeder is another vehicle which requires a tank endorsement.

As we continue to lose employees through attrition it is more and more critical that the remaining employees are capable of a wider range of duties. Operation of a tank vehicle is one of these additional capabilities.

Each of you have been in your current positions for over two years and to date do not have the required "N" endorsement. You are only required to pass a knowledge test (\$5 cost) to get one and it makes you a more valuable and versatile employee (here or for any other employer). Attached is some information from the WDOT website & CDL Handbook regarding the "N" endorsement.

Please get the "N" endorsement before the end of 2007. If you cannot accomplish this, please let me know why and when you will get the endorsement. If I do not hear from you, I assume you will have it before 2008.

Thank you for your cooperation.

Dittmar and the Grievant discussed these memos sometime after the Grievant received them. At the time of this discussion, the Grievant was suffering from a leg injury traceable to a fall while he was repairing his house. Dittmar indicated he would extend the timeline stated in the memos to permit the Grievant to heal prior to taking a driving test. Sometime late in January, the Grievant indicated to Dittmar that he would acquire a Class A CDL "in a week."

Sometime late in January, the Grievant signed a posting for the position of Highway Section Leader. The position description requires that an applicant have, "Possession of valid Wisconsin Commercial Driver's License Class A or B for air brake equipment with a minimum of tanker (N) endorsement." Dittmar awarded the Grievant the position, and the Grievant began work as a Section Leader on February 25. He worked only one-half of that day, however. Dittmar removed him from the position and awarded it to another employee because early in the morning of February 25 Dittmar received an abstract of the Grievant's driver's license records from the Wisconsin Department of Transportation. The abstract did not contain any entry for an N endorsement or for a Class A CDL.

On February 28, the Grievant filed Grievance 2008-1 regarding his loss of the Section Leader position. Dittmar denied the grievance in a memo dated March 14. The Union appealed the grievance to the Highway Committee, which met on May 8 regarding the grievance and issued a formal response dated May 19, which states,

The Highway Committee has reinstated you to the subject position per settlement of grievance 2008-1.

The effective date of this reinstatement will be Monday, May 26, 2008 which is the Memorial Day holiday. Tuesday when you report to the Tomah shop, Patrol Superintendent Gerald Kast will contact you (as he will each morning) with daily work assignments. . . .

As noted above, Pauley issued the insubordination report on May 20. Dittmar addressed the relationship of Grievance 2008-1 to 2008-3, in a memo denying Grievance 2008-3, which is dated June 19, and reads thus:

The quick answer to the nine years that Randy was in the Operator I position is that I was too nice to Randy and trusted Randy's word when he said he would get a Class A CDL. Randy was issued the verbal warning after the Highway Committee meeting because that is when some of Randy's statements made it clear that he had no intention of getting his Class A CDL as he was arguing that he didn't need it. It is not Randy's position to decide what qualifications are required for each position and Randy was insubordinate (and also lied to management) when he told me at the end of January 2008 that he would be taking the driving test to get his Class A CDL. Randy made no attempt to take a driving test between the end of January 2008 and the end of May 2008 even though the County had testing set up at the Tomah shop for other employees during this time and Randy was informed about the testing. Randy needs to learn that he needs to do what management instructs him to do (be subordinate and grieve afterwards if he doesn't agree with what he is instructed to do). The disciplinary action report issued to Randy is management's warning that his insubordination in deciding that he doesn't need to follow supervisors orders will not be tolerated anymore.

The background set forth to this point is undisputed and the balance is best set forth as an overview of witness testimony.

Jack Dittmar

Dittmar is a civil and an environmental engineer with a Masters' degree in Public Administration. He has served as Highway Commissioner for about ten years. The Grievant was one of his earliest hires. The Grievant and several other applicants were on an eligibility list when Dittmar came to the County. When an EOI posting went unsigned, Dittmar pulled the Grievant from the eligibility list to fill the position. Roughly two years later, Dittmar learned that he lacked a Class A CDL and an N endorsement. From 2002 on, Dittmar discussed with the Grievant the need for the certifications. He assumed the Grievant would take care of it.

He made the requirement formal with his two memos of November 15, 2007. Dittmar granted the Grievant an extension of the requirement through January 31, 2008. In a discussion on that date, the Grievant indicated to Dittmar that he would have the Class A CDL and N endorsement in a week.

The Grievant was the most senior employee to sign the posting for Section Leader. When Dittmar ran a check on DOT records he learned that the Grievant had no N endorsement and directed Pauley to remove him from the Section Leader position. Dittmar felt the Grievant had more than ample time to acquire the N endorsement. This action prompted the filing of Grievance No. 2008-1, which was the subject of a Highway Committee meeting on May 8. At that meeting, the Grievant argued that he did not need a Class A CDL to be a Section Leader. This shocked Dittmar, since he had “cut (the Grievant) a lot of slack” and felt that the Grievant was stalling to avoid complying with the requirement.

This prompted Dittmar to consider discipline, since it was evident the Grievant had no intention of complying with the requirement. His attempt to argue that he did not need the certification put the Grievant well out of the discretion appropriate to a non-managerial employee. Dittmar acknowledged the Class A CDL was not a requirement of the Section Leader position at the time the Grievant filled it. Dittmar had, as of the arbitration hearing, not received any notice that the Grievant had acquired a Class A CDL. He did not investigate the point, because he felt the discipline was necessary to sanction the Grievant’s ongoing inability to comply with the directive to get a Class A CDL. He was aware that one other Section Leader does not have an N endorsement. That employee only plows County roads and thus does not need the endorsement. A change in his duties would require it.

The Grievant

The Grievant worked as a Patrolman for the Township of Tomah before coming to the County on May 3, 1999. He did not have a Class A CDL or an N endorsement at the time of his hire. Dittmar told him early in his tenure as an EOI to get the air brake restriction removed from his license and he did so. On at least two occasions, Dittmar told the Grievant to “look into” acquiring a Class A CDL and an N endorsement, and may have indicated that the Grievant “probably should get it.” Dittmar did not issue any directive on the matter until November of 2007. At no point did Dittmar ever indicate that a failure to do so would result in disciplinary consequences.

Obtaining a Class A CDL required the Grievant to drive to La Crosse to take a driving test after work hours. It also required him to do a truck inspection and cost \$20.00. To obtain the Class N endorsement required successful completion of a written test and a \$5.00 filing fee. He acquired the N endorsement prior to becoming Section Leader. He did not pay the filing fee because an examiner told him that if he was going to get a Class A CDL, he could pay the filing fees then. The Grievant took and failed the Class A CDL test in late April. His failure to pay the \$5.00 filing fee when he acquired the N endorsement prompted the absence of an entry in DOT records that Dittmar discovered in late February. Sometime after late April, the Grievant retook the Class A CDL test and passed it. He had a temporary Class A CDL permit as of the date of the arbitration hearing.

After his initial placement in the Section Leader position, Dittmar informed him that he did not have a Class N endorsement. This shocked the Grievant, who offered to drive to La Crosse to confirm that he had one. Dittmar refused the request and pulled him from the position. Sometime after this, the County offered a number of employees the opportunity to take the driving test required for a Class A CDL on County equipment at County facilities. Pauley notified the Grievant of this opportunity, but the Grievant declined it, preferring to wait for the result of Grievance 2008-1. Between May 8 and May 20 no supervisory employee discussed the issue regarding a Class A CDL with the Grievant. The Grievant stated he “just did not get it” to explain why he failed to obtain a Class A CDL. He acknowledged he “probably should get it” and noted he never really understood the need for it, given that he never operated equipment that demanded it.

Further facts will be set forth in the DISCUSSION section below.

The County’s Position

The grievance has roots dating to the Grievant’s date of hire on May 3, 1999. He “was hired from the entry-level section helper eligibility list and moved immediately into an Equipment Operator I position.” This “unusual” move reflected that no one had signed the posting that generated the vacancy the Grievant filled. The EOI position required a Class A CDL with a tanker (N) endorsement. The Section Helper position required only a Class B CDL. The Grievant completed his one-year probationary period on May 2, 2000. Dittmar treated the Grievant more leniently than perhaps he should have, with the result that the Grievant worked nine years as an EOI without the necessary CDL endorsements.

The Grievant’s posting into a Section Leader position brought the situation to light. That position requires the N endorsement, which the Grievant had acquired, but which did not appear on his DOT records because he had yet to pay a filing fee. Because he convinced the Highway Committee that he would pay the fee and had passed the test, the Committee granted him the position effective May 26, 2008. Dittmar’s review of the matter, however, revealed the Grievant’s failure to obtain the Class A CDL which Dittmar had directed him to obtain in 2007. A review of the evidence establishes that the Grievant treated the direction casually, as if it had no bearing on him. More significantly, “Dittmar realized that (the Grievant) had no intention of getting his Class A CDL but had been stringing him along with false promises of getting the required license.”

This realization prompted the May 20 disciplinary notice for insubordination. “Insubordination’ is not a charge to be issued lightly”, but was warranted in this case under the “legal definition of insubordination” stated in Roberts’ Dictionary of Industrial Relations, (BNA, 1994) at 349. More specifically, Dittmar’s November 15, 2007 memo to the Grievant “serves as a direct order to get his Class A CDL.” The Grievant responded by stringing Dittmar along. His testimony confirms that he is “an individual who is willing to bend the truth to his advantage.”

Against this background, the written warning must be viewed as a very light penalty for a very serious offense. The grievance should, therefore, be denied.

The Union's Position

The evidence “does not support the Employer’s position that (the Grievant’s) action constituted ‘insubordination.’” “Insubordination” is a precise term in labor relations, and requires an employer to establish all of its elements. Those include, under KAY-BRUNNER STEEL PRODUCTS, 78 LA 363 (GENTILE, 1982) at least seven elements of proof. A review of the evidence establishes that the County failed to meet them.

More specifically, Dittmar never clearly ordered the Grievant to obtain a Class A CDL and never informed him of the consequences of failing to acquire one. Early in his tenure as an EOI, the Grievant informed Dittmar that he did not have a Class A CDL and Dittmar responded only that “he should probably get his air-brake and the other ones.” The Grievant got the air-brake endorsement a few weeks after he started. After that, Dittmar did nothing beyond casually inquiring whether the Grievant had obtained the Class A CDL.

In November of 2007, Dittmar issued a written notice to the Grievant directing him to obtain a Class A CDL. This came eight years after his hire date and, in any event, whatever deadline was set was extended when the Grievant hurt his leg in a roofing accident. At the same time, Dittmar directed the Grievant to obtain the N endorsement. The Grievant complied. Subsequently, the Grievant successfully bid to become a Section Leader. He started the job on February 25, 2008, and worked one-half a day. Dittmar directed him off of the position based on the mistaken belief that the Grievant lacked the N endorsement. No member of management ever told the Grievant that he faced discipline for failing to secure the Class A CDL prior to becoming a Section Leader. The Highway Committee granted his grievance to return to that position and the Grievant ultimately secured the Class A CDL in April of 2008.

Against this background, the “record shows that (the Grievant) was never given a direct order to get his Class A CDL.” Rather, the record shows inconsistency on Dittmar’s part. That inconsistency is highlighted by Dittmar’s learning in late February of 2008 that the Grievant lacked the Class A CDL, yet postponing any disciplinary action until late in May 2008, “one day after he notified (the Grievant) that he was being put back into a position that did not require a Class A CDL.”

No view of this evidence supports a conclusion that the County met its burden to prove just cause for the discipline. It follows that the grievance should be granted “and that the written reprimand (should) be removed from (the Grievant’s) record.”

DISCUSSION

The stipulated issue questions whether the May 20 written warning for insubordination meets the contractual just cause standard. In my view, unless the parties stipulate otherwise, two elements define just cause. The first is that the County must establish conduct by the Grievant in which it has a disciplinary interest. The second is that the County must establish that the discipline imposed reasonably reflects its disciplinary interest.

The County alleges that the Grievant's conduct to obtain a Class A CDL and an N endorsement was insubordinate. Although each party cites a different source to define "insubordination", the definitions are similar, since Roberts' definition cites the Gentile award. As the County points out, "insubordination" as commonly used can cover anything from a disrespectful look or attitude toward a supervisor to deliberate defiance of a simple request. The Roberts' definition is not precise on whether "insubordination" extends to a negligent failure to comply with a directive or is restricted to a deliberate refusal, but does cite the Gentile award to establish a seven element test which is restricted to a deliberate refusal. I have cited the Roberts' definition in past cases, but have followed the restriction of "insubordination" to a deliberate refusal. I put the point thus, in LAKE GENEVA, MA-10750, DEC. NO. 6043 (4/00) AT 21:

Arbitrators have stated the elements to proving insubordination in a variety of ways. In my opinion, to establish insubordination, the (Employer) must demonstrate that the Grievant understood and deliberately defied a clear, work-related order issued by a known supervisor. See, for example, *Roberts' Dictionary of Industrial Relations*, (BNA, 1986); and Bornstein, Gosline & Greenbaum at Section 16.04.

This underscores that insubordination is a serious offense, distinguishable from negligence. It can support sanctions outside of the progressive discipline used to modify negligent conduct. The basis for this is the presence of willful conduct undermining work place management.

There is no dispute that the Grievant, as of his receipt of the November, 2007 memos, understood that he was required to obtain a Class A CDL and an N endorsement. There is no dispute that he understood the requirement came from Dittmar whose authority is well known. His late January statement that he would have the CDL within a week underscores these points. The dispute turns on whether the Grievant understood he was under a work-related directive and whether he deliberately defied it.

The evidence will not support the County's view that the Grievant deliberately defied a clear directive. Dittmar's frustration with the Grievant is evident and understandable. This does not, however, establish a clear directive. The May 20 warning asserts the directive was clear and consistent over time. The evidence falls short of establishing this. The long gap between the Grievant's placement in the EOI position and the issuance of the November, 2007

memos fails to establish a directive. At best, the evidence indicates Dittmar indicated the Grievant ought to get the Class A CDL and the N endorsement. The Grievant took the discussions to mean that it would be a good idea to obtain them rather than that he had to do so or risk discipline. There is no persuasive evidence that the Grievant's interpretation of the discussions was unreasonable.

As the County points out, the November, 2007 memos put all this to rest, clarifying the need to act. Treating the memos as a directive does not, however, resolve the dispute. The Grievant was wearing a leg brace at the time he needed to comply with the directive, and there is no dispute that Dittmar gave him an extension regarding compliance. The evidence also shows that as of late January, the Grievant was aware of the need to comply, for he advised Dittmar he would have the certifications in a week.

The evidence regarding the clarity of the directive dissipates from this point on, complicated by the Grievant's signing a posting for a position that did not require a Class A CDL. More specifically, he obtained the N endorsement at some time in late January or early February and subsequently failed in an attempt to secure the Class A CDL. Dittmar was unaware of this, but believed that the Grievant had the required N endorsement at the time he awarded him the Section Leader position. Dittmar's removal of the Grievant from the Section Leader position prompted Grievance 2008-1, which prompted the Highway Committee action awarding the Grievant the Section Leader position. Dittmar took the Grievant's advocacy at the May 8 Highway Committee meeting to indicate he never intended to secure the Class A CDL. The discipline for insubordination followed.

The discipline cannot, however, substitute for the lack of a clear work directive. As noted above, whatever clarity the directive has is traceable to the November, 2007 memos. Those memos, however, address the EOI position, not the Section Leader position. The Class A CDL memo refers to "your position" and is addressed to "Randy Kobel, Equipment Operator I." The N endorsement memo is addressed to two employees, and notes the endorsement "was a requirement in the position description when you signed the posting for your current position." Neither clearly states that the Class A CDL was a directive independent of the position occupied by the employee. However viewed, the clarity of the November, 2007 memos suffered as time wore on. There is no directive, verbal or written, in the record that can update the directive concerning the CDL required by the EOI position to apply to the Section Leader position. That one other Section Leader lacks the N endorsement, which the position description requires, further undercuts the clarity of the directive that the County asserts.

Nor will the evidence support a conclusion that the Grievant willfully disregarded whatever directive Dittmar issued. The May 20 disciplinary report complicates the directive by overstating its clarity. The assertion that "since late 2002 (the Grievant) has been verbally directed to get a Class A CDL" is unproven. The memo concludes that "since the end of January 2008, (the Grievant) has not attempted to obtain a Class A CDL". This is unproven.

Rather, the evidence establishes that he tried at least once to obtain the license in that period of time. It appears he may have tried twice within that period, but the evidence is less than clear on the point. The evidence indicates he successfully obtained the Class A CDL at some point in time. The lack of clarity on this point undermines the assertion of willful conduct. Dittmar acted summarily following the Highway Committee's action granting Grievant 2008-1. He never investigated whether or not the Grievant acted to obtain the CDL. Whatever is said of this course of action, it affords no support for the allegation that the November memos state a clear work directive deliberately defied by the Grievant.

The disciplinary interest the evidence supports rests on the conduct underlying Dittmar's frustration with the Grievant's response to the November, 2007 memos. That frustration is well-placed. The Grievant's testimony falls well short of establishing initiative or diligence in responding to Dittmar. His statements that he "just did not get it" or that he took Dittmar's suggestions to mean that he "probably should get it" speak for themselves. That he declined to take the Class A CDL test offered at County facilities because a grievance was pending is inexplicable. Dittmar's June 19 response to Grievance 2008-3 establishes that he took the Grievant's presentation to the Highway Committee to mean that the Grievant never intended to comply with the November, 2007 memos. However understandable this perception is cannot obscure that the Grievant did act to comply, successfully with regard to the N endorsement and unsuccessfully regarding the Class A CDL, at least prior to being made Section Leader. In any event, whether or not his actions were less than successful or diligent cannot obscure that whatever disciplinary interest exists focuses on negligence and not on willful conduct.

This poses the second element, which is whether the discipline imposed reasonably reflects the proven disciplinary interest. As the County points out, the level of discipline imposed is a low level of discipline. This cannot obscure that the interest the County asserts is outside of progressive discipline. Dittmar did not act to verbally warn the Grievant but to document the personnel file with a serious charge that the Grievant willfully disregarded a work directive. That assertion is an all or nothing proposition. It is unproven and the record will not reasonably support the insertion of insubordination into the Grievant's personnel file.

Had Dittmar chosen to follow progressive discipline, a different result could be supported. The purpose of progressive discipline is to clearly identify appropriate behavior and to sanction inappropriate behavior. The proven disciplinary interest is the Grievant's lack of diligence in responding to the November, 2007 memos. The extent of this interest is narrow. He obtained the N endorsement as directed. Thus, there is no inappropriate behavior to sanction on that point. It is not clear when he failed the Class A CDL. That he may not have timely responded to the November, 2007 memos could be inappropriate conduct amenable to progressive discipline. The difficulty here is that Dittmar took no action to clarify when or how the Grievant acted to comply with the November, 2007 memos. That the Grievant successfully moved into a position not requiring a Class A CDL undercuts the clarity of the County's disciplinary interest in the Grievant's timely response to the November, 2007

memos. The assertion that the disciplinary interest is independent of the Section Leader position is contradicted by the fact that an incumbent Section Leader lacks an N endorsement. In any event, the lack of clarity on the point was more within Dittmar's control than the Grievant's. If Dittmar believed the Grievant was under a continuing obligation to comply with the November, 2007 memos, which on their face apply only to the EOI position, he had only to update the memo and clarify to the Grievant that a lack of timely compliance risked discipline. No such clarification occurred. At the time the insubordination warning was issued, the only clear signal being sent was that the Grievant had frustrated management and deserved punishment of some type. The attempt to label this "insubordination" cannot be modified in a fashion that sends a comprehensible signal to the Grievant on what behavior he is expected to modify. Thus, the Award entered below expunges the discipline from his personnel file.

This should not be read as a vindication of the Grievant's conduct. As noted above, there is an objective basis to the frustration Dittmar felt toward the Grievant. The clearing of his personnel file reflects that just cause imposes responsibility on the exercise of authority. This should not obscure that an employee's best defense against discipline is the quality of their work conduct. The quality of conduct posed here is debatable, and debatable conduct is a weak shield.

AWARD

The written warning issued to the Grievant on May 20, 2008, was a violation of the just cause standard, as stated in the collective bargaining agreement.

As the remedy appropriate to the County's violation of Article 3, Section 1D and Article 20, Section 5, the County shall remove any reference to the May 20, 2008 written warning from the Grievant's personnel file(s).

Dated at Madison, Wisconsin, this 16th day of March, 2009.

Richard B. McLaughlin /s/

Richard B. McLaughlin, Arbitrator

RBM/gjc

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