

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**MENOMINEE COUNTY HUMAN SERVICES DEPARTMENT  
PROFESSIONAL EMPLOYEES, AFSCME, AFL-CIO**

and

**MENOMINEE COUNTY**

Case 72  
No. 69027  
MA-14446

(Kohus Grievance)

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**Appearances:**

**John Spiegelhoff**, Staff Representative, AFSCME Wisconsin Council 40, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-2900, on behalf of the Menominee County Human Services Department Professional Employees.

Centofanti Phillips, S.C., Attorneys at Law, by **Andrew T. Phillips**, 10140 North Port Washington Road, Mequon, Wisconsin 53092, on behalf of Menominee County.

**ARBITRATION AWARD**

The Menominee County Human Services Department Professional Employees, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and Menominee County, hereinafter the County, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The County subsequently concurred in the request and the undersigned was designated by the Commission to arbitrate the dispute. A hearing was held before the undersigned on October 22, 2009 in Keshena, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by November 13, 2009. At the hearing the parties stipulated to the issuance of an expedited, abbreviated award.

Now, having considered the record as a whole, the Arbitrator makes and issues the following award.

## **ISSUE**

The parties stipulated to the issue to be decided by the Arbitrator as follows:

Did the Employer have just cause to suspend Peggy Kohus? If not, what is the appropriate remedy?

## **RELEVANT CONTRACTUAL PROVISION**

### **ARTICLE XVII - MISCELLANEOUS PROVISIONS**

#### **Section 17.01 - Mileage and Meals**

All employees who use their personal cars in the performance of their duties shall receive the mileage rate authorized by the State of Wisconsin for its own personnel. Meals shall be reimbursed at the rate authorized by the State of Wisconsin for its own personnel or County Board Policy, whichever is greater. Documentation of mileage must be done on Department forms with requested information turned in monthly.

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## **BACKGROUND**

The Grievant, Peggy Kohus, was first employed by the County as a Case Manager and at all times material held that same position. As a Case Manager she was required to use per personal vehicle in the course of her duties which included the transport of clients from location to location. This was the case during the period in question, July, 2008 thru December, 2008.

In early 2009 the County issued the Grievant a "Disciplinary Action Report" setting forth essentially three allegations against her:

1. She failed to submit mileage submissions on a monthly basis but rather submitted six months of accumulated mileage submissions for the period July, 2008 thru December, 2008 in January, 2009.
2. The mileage submitted exceeded the actual mileage which should have been driven.
3. She claimed mileage for a day she did not work.

This "Disciplinary Action Report" is dated February 4, 2009; references the "Date of Incident" to be January 9, 2009; refers back to prior discipline taken in 2008 regarding late arrival to work; and provides for the "Action Taken" to be "3 Days of Leave Without Pay." Several of the other dates referenced in the "Disciplinary Action Report" are erroneous. The report was compiled by the Grievant's immediate supervisor, Sue Golding who also reviewed the Grievant's mileage submissions and found them to be erroneous. As a result, this action was taken and, subsequent to that, this grievance was filed.

### **DISCUSSION**

There is no question that the Grievant violated the parties' collective bargaining agreement when she submitted six months of mileage receipts/claims to the County in January, 2009. She admits it. There is also no question that this violation was a serious one, not only because it constitutes a blatant contract violation, but also in light of the fact that the County relies on the prior year's mileage records to budget properly for the following year. In this case it did not receive the Grievant's mileage records until sometime in 2009. As a consequence, the total mileage available for all County employees could result in a reduction of available mileage in the year 2009.

There is also no question in the mind of the Arbitrator that the Grievant did not intend to falsify her records in an illegal attempt to violate the law to "affect (sic) the County" as charged in the County's "Disciplinary Action Report." The County's Executive Director, Barbara Nelson, while stating that she believed the Grievant's action "boardered" on falsification of records, nonetheless removed the allegation of violation of law from the action. She harkened back to the 2008 discipline received by the Grievant for erroneous time records and, linking the two, observed that she had "concerns" about the Grievant's record keeping. Any further incidents, she said, will result in a major violation of falsification.

The Grievant's testimony was credible and the Arbitrator is persuaded that any discrepancies in her mileage submissions, including the submission for mileage on the day she did not work, were the result of sloppy record keeping combined with a general disregard for attention to detail, not an intention to falsify her records and harm the County.

If the issue of falsification of mileage records is removed from this equation, as I have done, and the Grievant admits the violation of the operative contractual provision, as she has done, we are left with the simple question of whether a three day suspension without pay is too harsh a punishment for the violation of the contractual requirement that mileage claims are to be submitted monthly. As mentioned above, there are significant budgetary considerations involved which, especially in today's economic environment, the Undersigned does not take lightly. The Undersigned also takes note of the heretofore cavalier attitude which seems to have been taken by the Grievant relative to the submission of the mileage reports required. For these reasons, and because this Arbitrator is reluctant to upset management's assessment of penalties for contractual and workplace infractions, so long as such penalties are reasonable and not arbitrary or capricious,

which I find is not the case in this instance, I have determined that the grievance is denied and the penalty of a three day suspension without pay is reasonable under the facts and circumstances presented by this record.

In light of the above, it is my

**AWARD**

The Employer had just cause to suspend Peggy Kohus.

The Grievance is dismissed in its entirety.

Dated at Wausau, Wisconsin, this 20th day of November, 2009.

Steve Morrison /s/

Steve Morrison, Arbitrator