

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**McINTOSH MEMORIAL LIBRARY**

and

**LOCAL 1527A, AFSCME, AFL-CIO**

Case 3

No. 68925

MA-14405

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**Appearances:**

**Mr. Laurence S. Rodenstein**, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appeared on behalf of the Union.

**Mr. Charles W. Pautsch**, and **Ms. Lisa A. Baiocchi**, Constangy, Brooks & Smith, Attorneys at Law, 330 East Kilbourn Avenue, Suite 827, Milwaukee, Wisconsin 53202, appeared on behalf of the Library.

**ARBITRATION AWARD**

On May 26, 2009 AFSCME Local 1527A and the McIntosh Memorial Library filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a dispute pending between the parties. A hearing was conducted on September 2 and November 17, 2009 in Viroqua, Wisconsin. No formal record was taken. Post-hearing briefs were filed and exchanged by January 20, 2010.

The Award addresses the termination of employee P.O.

**BACKGROUND AND FACTS**

P.O., the grievant, was employed by the McIntosh Library as a Library Aide for just under 16 years as of the date of her discharge. During her tenure with the Library, Ms. O. worked under a number of Library Directors. The record in this proceeding is largely silent as to the grievant's work performance prior to 2008. The record also indicates that prior to 2008 there was little or no supervision of employees. A number of witnesses testified that the then-Library Director spent little or no time or attention on the management of the facility. It was

the testimony of Christina Dunn, a co-worker of the grievant, that she brought issues involving the grievant to the then Director and was told that the Director didn't have time for such matters. At some point in January, 2008, the Director was replaced.

At that time, Shirley Creager, the Library's Director of Youth Services, was appointed interim Director. Ms. Creager had been on staff since October 2001, and had 20 years of experience as a teacher. Creager had not worked with the grievant prior to her appointment to the interim position. She had been aware of staff concerns related to the grievant, including a concern that the grievant could not get her work accomplished, that the grievant had periodic confrontations with co-workers, and that certain staff were unhappy with the grievant.

Upon her assuming the Director position, staff members came to Creager upset with the grievant. Among the concerns raised was the contention that the grievant was not working, and spent too much time chatting. In response to the concerns raised, and the grievant's view that she needed time away from the front desk/counter in order to focus on her work, a schedule was created and a desk was located downstairs, away from the front desk. The grievant was provided time to get away from the bustle of the front desk to do her assigned work. It was Creager's testimony that the schedule didn't work. She testified that the grievant didn't like the schedule and that confrontations continued to occur. She testified that the grievant was frequently confused. Specifically, she testified that the grievant screamed at her "Who gave you the right to tell me what to do?" Creager indicated that she replied "The Library Board, now go do it!"

Creager testified that she asked the grievant to weed audio books from the Library collection, and the grievant failed to do so. Creager testified that the Library is a part of the Winding River Library System, which is a 30 Library group. An advantage of membership is that books are loaned through the system. It is a rule of the System that if a book is requested and not picked up, the book is to be returned to the originating Library. It was Creager's testimony that P.O. would leave the book on hold and when told she had to return the book, would become angry. She indicated that people needed time.

Ms. Creager was in regular and ongoing communication with Bill Brooke, who was President of the Library Board. On April 24, 2008 Creager sent Brooke an e-mail which outlined a number of concerns she had with P.O., including the fact she was argumentative, rigid, disruptive, and that she had used a permanent marker on magazine bar codes, causing the bar code reader to not be able to read the codes. It was Brooke's testimony that he had had a number of conversations with the grievant about her performance and behavior in the past. Another such meeting was conducted on April 28, 2008 involving the grievant, Brooke and another member of the Library Board, Gary Krause. It was Brooke's testimony that he scripted the content of the meeting, and that the following constitutes a script of his remarks at the meeting:

As I said when we fired L. in January, this library would be going in a new direction. I understand L. did a poor job of meeting the employees needs,

evaluating employees and solving problems & conflicts (she wasn't around enough upstairs to oversee employees, their work ethic & attitudes).

So I want to take some time here to give you some directions.

...

I've taken some time to review some of your past evaluations and its clear to me that past Directors M. and L. saw your friendly personality as a plus toward working with staff & patrons.

I'm also aware that you have been a good Library Clerk for several years now.

What I'm going to go over with you now is some direction to hopefully help you to continue to develop as a good team Library employee and "team player".

#### The Director

Shirlee is the interim director. In Shirlee's absence Lucille is the asst. director. We expect respectful, professional and cooperative attitude & work behavior toward the director & all staff. (see me if you need to talk more about this).

#### Teach Card Catalogue Use

We want you to teach patrons how to use the card catalogues, we don't want you to do all the looking for them. Try to show how to use the catalogues. We certainly expect you to be helpful to patron's needs, however, most patrons will understand how to search the catalogues if you teach them (we don't want you to tell patrons you can't help them find what they need, in some cases you will have to look up materials for a patron.)

#### Personal Phone Calls

Personal phone calls are not encouraged during work hours. Emergencies are the exception. Limit personal emergency phone call time to less than 2 or 3 minutes.

#### Treat all co-workers w/respect, compassion & in a positive manner

If you have a problem with your job duties or if you don't like your job, speak to the director. If you're not satisfied with her answer make an appointment with me and we can discuss it. Do not tell other employees about what their job

description is or is not. If you have a question/issue go to the director. If there is something that you need to talk with me about, such as Lisa Ann, please do so.

#### Professional Behavior and Duties

Treat co-workers with respect & kindness. Be professional. If you have questions about your duties go to Shirlee, if Shirlee is gone for the day check with Lucille.

#### Memory

Take notes, write down new duties or new directions to help remember what you are asked to do.

#### Complaining to Others

If you have questions about your job duties speak to Shirlee. Complaining to or accusing co-workers is harmful to the work environment. Please go to the director with concerns.

#### Excessive Visiting w/Patrons

Shorten your visits with library patrons. Talking at length with library users is not part of your job duties. It is appreciated that different employees say hello and have brief conversations (30 seconds – 2 minutes) with library users. This is positive for the library environment. This is not a social club, this is a place you come to work. We want you to enjoy your work. We want the work environment to be productive/efficient & stress free. We appreciate Hellos to . . .

Suggestions are welcome at our library. We are interested in your ideas and suggestions, but make no library policies or changes without the directors approval.

It was his testimony that the grievant wouldn't accept responsibility for her "poor work habits, her failure to complete job duties, her continued harassment of Lisa Ann and others." Brooke testified that he gave the grievant this script, and that she signed it. He indicated he believed this to be appropriate because the grievant's memory was so bad.

During her tenure as interim Director, Creager did not issue a written warning or other formal discipline to the grievant.

On, or about July 7, 2008 Trina Erickson was hired as the Director of the Library. Ms. Erickson had no working background with the grievant. However, she was briefed by both Creager and Brooke as to the grievant's performance issues.

By July 14, Ms. Erickson was recording her observations and the feedback she received from staff as to the grievant's shortcomings. From July 14, 2008 to March 16, 2009, a period of approximately 8 months, she recorded approximately 40 incidents she deemed noteworthy. Approximately 23 of those observations occurred between July 14 and November 19, 2008. A sample of the recorded notes included;

- According to our staff schedule P. is scheduled to work at the upstairs check out desk from 9:00 – 2:30 on Monday's. When Christina returned from lunch at 12:30 P. told her she was going to go downstairs to the bathroom and run an errand. P. told Shirley she needed to spend her petty cash money and therefore was going to go to the Post Office to buy stamps and to Viroqua Computers to purchase typewriter supplies for the typewriter Lilas uses. Shirley questioned why she needed to go and buy something for the typewriter when Lilas is gone and P. said for the past 15 years she has been doing this so Shirley backed off. Christina said P. left the desk at 12:30 and never returned until 2:30. Christina was so swamped upstairs she had to send patrons back to Lucille's office for assistance. When Lisa asked P. where she had been for 2 hours Lisa said P. got very defensive and in her face. So the question still remains, why would it take P. 2 hours to go to the bathroom, the Post Office, and Viroqua Computers. Where was she?
- July 14 Lisa advised Erickson that the grievant was having a hard time completing basic computer tasks
- July 15 Erickson recorded her observation that the grievant didn't like the new phone procedures
- July 17, Erickson recorded that Shirley informed her that Lisa "confessed" to her that Lucille and Lisa had been doing the grievant's work for months. She indicated that the two would go back and re-do the grievant's mistakes
- July 15, Erickson recorded that the grievant was unable to understand how to handle magazine subscription invoices, though she has been trained in the area in the past. The work was reassigned.
- July 28, Erickson noted that she and Brooke had met with the City Attorney relative to the behavior of the grievant. She indicated that staff have all noticed a decline in the grievant's work ethic and ability to

complete simple tasks. She notes that the most noticeable difference is the grievant's inability to fill out a simple time card, a process that has always been used.

- On August 19 Erickson noted that a number of concerns relative to the grievant were raised in the staff meeting, including not putting materials away and storing patrons' library cards in the library.
- On October 7 there are two entries each of which involve the grievant questioning Erickson's authority.
- On November 11 Erickson wrote that three of the grievant's co-workers came forward with complaints, which included
  1. If there are 4 patrons in line at the Check out desk P. will sometimes ignore some of the patrons so she can wait on her friend who may be last in line.
  2. P. has been very confrontational with Lisa about the number of hours she spends doing certain aspects of her job.
  3. P. was very rude to Christina when she had the book cart behind the checkout desk to put Holds on the shelf. P. was giving Christina a hard time for having the cart behind the shelf.
  4. While P. was on desk duty she actually told a patron to ring the bell so a different staff person would come up to the checkout desk and assist them. There were no other patrons in line.

Erickson recorded the results of a November 11 meeting requested by the grievant where the grievant advised, among other things, that she was very resistant to change and that her co-workers were watching her and reporting her every wrong move.

On November 19, 2008 the grievant was given the following document;

The Library Board of Directors along with the Library Director are requesting immediate attention be given to the following concerns which have been addressed with you before. Failure to comply will result in your position being eliminated.

1. You need to be able to complete all tasks outlined in your job description.

2. You need to be non argumentative and/or confrontational with co-workers, volunteers, or patrons.
3. You must exhibit flexibility in your work schedule. Your daily schedule is merely a guideline and can be altered when warranted.
4. Any questions, concerns or problems you have with another staff person should be brought to the Director's attention. It is not your job to question the job duties or actions of other staff.
5. Working with patrons:
  - a. You are not allowed to show favoritism to patrons. All patrons should be treated equally and fairly based on the library policies.

This agreement is accepted by:

P.O. /s/ 11/19/08

Trina Erickson /s/ 11/19/08  
Trina Erickson, Library Director

Gary J. Krause /s/ 11/19/08  
Gary Krause, Library Board Vice-President

The document was signed by the three noted signatories.

Erickson continued to monitor the grievant, and recorded a number of notes following the November 19 document of concerns.

- On November 21, Erickson noted that Lisa had reported that the grievant had used a permanent marker to write I.D. numbers on DVD's which resulted in permanent damage. The note indicates that when Lisa confronted the grievant she acknowledged she knew she couldn't do that and didn't know why she did.
- The November 21 entry went on to note that P. told Lisa Ann that the Board feels every decision she makes is wrong and will now ask Lisa before doing anything so she doesn't get in trouble. Lisa said this has

become very disruptive as P. will interrupt Lisa when she is working with a patron just to ask her how to complete routine tasks.

- On November 21 Erickson noted that the grievant uses her own library card for patrons who have fines they cannot pay
- There are a number of entries that indicate the grievant cannot fill out a timecard
- There is an entry for the week of February 16<sup>th</sup>, 2009:

The staff have started coming to me again with concerns they have about P. There really haven't been any major concerns voiced since mid November. Now the staff are bringing up problems we have addressed with her already including:

1. Having a negative attitude.
  2. Unable to prioritize what is the most important task to complete.
  3. Abandoning Christina at the checkout desk when they are both assigned to desk duty.
  4. Stockpiling work at her desk so she always has a reason to leave the upstairs area for 90 minutes per day.
  5. Not doing work she has been trained to do. She tells myself and the staff "she doesn't remember", "it's easier if you just do it", "I can't find my notes on how to do that task, etc." Most of these problems have to do with our computer timing software, and Horizon computer system.
- Erickson noted that during the week of February 23, the grievant, after asking what materials to take to a High School event and being told, indicated she had no idea what she should take.
  - There is a February 23 entry which confirms the substance of a meeting between the grievant and Erickson involving the grievant spending too much time with friends, initiating calls to people when she finds books or materials she thinks would be of interest to them, and allowing her friends to skip ahead in line.
  - There is a March 2 note reporting that three staff members have come forward to complain that the grievant was using disrespectful language



with other staff, was creating a disturbance, was refusing to help a patron and became upset when asked to help at the desk.

- There is a March 5 memo recording a conversation between the grievant and Erickson, which involved the grievant complaining about the work of a co-worker in a loud voice in front of the public.
- There is a note, dated March 5 which records that that the grievant called Lisa a “slave driver”, and “teacher” in a derogatory or mocking tone, in front of patrons.
- There is a note indicating that the grievant was given refresher training in how to catalog magazines during the week of March 9, that she took notes and successfully cataloged 3 magazines, but that one week later she was unable to catalog magazines and had lost her notes.

Erickson testified to the events underlying the notes. She further testified that she met with the grievant, one-on-one, on 18 occasions to address performance concerns. Erickson determined to terminate the grievant. She drew up a list of reasons supporting the termination and presented it to the Library Board. On March 20, 2009 the grievant was terminated by the following letter:

P.

This is to inform you that your employment with the McIntosh Memorial Library has been terminated effective March 20<sup>th</sup>, 2009. This decision was reached by the Board of Directors and Library Director after nearly one year of meetings with you, which have not resulted in a change in your work ethic.

Your employment is being terminated with us as a result of:

- Repeated professional development meetings with you that haven't produced a change in your work ethic.
- Not completing duties outlined in your job description in a satisfactory manner to the Board and Management.
- Being uncooperative and argumentative in regards to policies and changes implemented by the Library Board and Management.

Sincerely,

Trina Erickson 3/20/09 /s/  
Trina Erickson, Director  
McIntosh Memorial Library

Bill Brooke 3/20/09 /s/  
Bill Brooke, Board President  
McIntosh Memorial Library

Lisa Widner, the Union Steward, testified on behalf of the employer. She indicated that when the Library joined the Winding River Library System, in about 2004, the workplace became a lot busier. The introduction of technology, coupled with the busier pace caused the grievant to fall behind. She further testified that the grievant had trouble remembering how to use the computer. She described the grievant as stressed and angry. Much of Widner's testimony corroborated that of Erickson.

Widner also indicated that she frequently gave the grievant instructions over and over. It was her testimony that the grievant would initially follow the instructions and then forget. She testified that the grievant would become upset if she (Widner) worked in the back office, expressed the view that it was "mean" to send people with overdue fines to collections, and that the grievant regularly abandoned Christina at the front desk. She further recounted a story about the grievant refusing to help a patron with hygiene issues set up an e-mail account, though she had helped numerous others do the same thing. It was her testimony that the grievant threw her hands up in the air and left. Widner testified that she was alone at the desk with the phone ringing at the time. She testified that she said to the grievant; "if you cannot help the man could you staff the desk?". She testified that the grievant replied; "No, this is my away from the desk time."

Christina Dunn, a co-worker of the grievant also testified on behalf of the employer. It was her testimony that she had issues with the grievant that pre-dated 2008. It was her testimony that the grievant refused to take her lunch when scheduled. This was disruptive to Dunn, who was attempting to nurse her baby over her own lunch hour. She testified that the grievant was disruptive to others. She indicated that when Creager was interim director, the grievant announced, "I'm going to do what I want to do-I'm not going to listen to Shirlee, I have been here longer." Dunn testified that the grievant never weeded the books on tape. It was her testimony that the grievant left stacks of books around the Library, argued with co-workers, rebuffed efforts of help, was always on the phone with family members, and made a lot of personal calls. Additionally Dunn testified as to numerous areas in which the grievant was unable to perform her job.

The Union called no witnesses. The grievant did not testify.

**ISSUE**

The parties stipulated the following issue:

Did the Employer violate the collective bargaining agreement when it terminated the grievant, P.O.?

If so, what is the appropriate remedy?

**RELEVANT PROVISIONS OF THE  
COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE II – MANAGEMENT RIGHTS**

• • •

2.01 The Board shall retain the absolute rights, responsibilities and functions of management as well as those granted by applicable law to operate the Library and services to the citizenry otherwise provided in this Agreement, this includes but is not limited to provide the rights to:

• • •

I. Suspend, demote, discharge and take other disciplinary actions in the work force, for just cause;

**POSITIONS OF THE PARTIES**

It is the position of the employer that the grievant experienced performance issues for years. Those issues were not addressed by management for years. When an ineffective Director was removed, the grievant's job related performance issues came to the front. Creager and Erickson confronted the issues. The employer contends that Erickson met with the grievant on 18 separate occasions to help her. The employer argues that the Library administered progressive discipline, making O. aware of the issues, giving her time to correct the issues and informing her of the consequence of not addressing such issues.

The employer details many of the incidents set forth above, and concludes that they constitute cause for termination.

It is the view of the Union that the record establishes that the Library never gave the grievant any written confirmation of the concerns it had over her performance. Ms. Erickson kept a log of the grievant's behavior, but never shared the contents of that log with the grievant. It is the view of the Union that Erickson began employment predisposed to the view that the grievant was a poor employee. It is the view of the Union that her immediate documentation of the grievant supports that conclusion.

It is the view of the Union that the application of just cause includes both procedural and substantive due process considerations. The Union argues that just cause requires the application of greater levels of disciplinary sanctions with the goal of creating an opportunity for the affected employee to fix unacceptable performance. The Union asserts that the very idea of progressive discipline incorporates the notion that a series of increasingly more severe disciplinary penalties is necessary to provide the offending employee several opportunities at work performance correction prior to administering the ultimate sanction.

It is the Union's view that the Library failed, in three important ways, to properly discipline the grievant. It is the view of the Union that the Library failed to provide the grievant with procedural due process by not disciplining her in sequentially greater and greater levels of penalties imposed. The second alleged shortcoming is that the Library failed to identify the consequences of specific work rule violations which gave rise to the objectionable behavior. Finally, the Union contends that the Library failed to address the grievant's deficiencies in an honest attempt, aimed at providing a remedial path for her to improve her inadequate work performance.

As to its first claim, the Union regards the failure to impose increasingly severe discipline as a glaring error. The Union asserts that the only written document provided the grievant was the November 19, 2008 letter, which the Union contends is defective because it fails to identify clearly the disciplinary consequences of failure to address the performance concerns cited, and is not addressed specifically to the grievant. The Union also contends that the November 19 meeting was flawed, in that the record indicates that the grievant was not offered union representation at the meeting. It is the view of the Union that the reference to position elimination is ambiguous, and more a reference to lay-off, which is of little significance to the senior grievant.

It is the view of the Union that the Library offered, at best, a half-hearted attempt to address the performance issues displayed by the grievant. The Union believes that Erickson misrepresented her perspective relative to the grievant, and thus her testimony relating to the grievant's performance and the remedial efforts of the Library should be discounted.

It is the view of the Union that the Library was a hostile workplace for the grievant. It points to testimony that there occurred 16 staff meetings in the year preceding the termination. At many of these the grievant's performance was discussed. Sometimes the grievant was present, sometimes she was not.

The Union contends that the November memo and the March termination letters are filled with vague generalities, that are so unfocused no employee could act to correct the generic behaviors noted. The Union poses the question; "what does it mean to be non-argumentative when all of the other staff is criticizing your performance regularly before your supervisor?"

The Union suggests that the employer may have been motivated more by the grievant's age or the fact she was earning more than her younger peers as motives for the employers actions in this matter.

### DISCUSSION

I believe the record establishes that the grievant has performance issues. Those include her difficulty performing certain tasks associated with her job, certain workplace flareups that occurred because the grievant had a perspective of the job that was different from that of the people she worked for and with, and the attitude she brought to the job.

I believe that there are certain aspects of the job that the grievant either cannot or will not perform. She has trouble handling the checkout desk work. She appears to have a great deal of trouble with any task that is computer related. She had difficulty filling out a time sheet. The time sheet task would appear to be a recurring assignment, and one which she would be motivated to complete. There are numerous incidents where she did not re-shelve books and other materials. There are numerous incidents referred to where she did not process new books or materials into the Library. These are substantial shortcomings in a Library. The record is filled with examples of the grievant demonstrating a lack of comprehension as to what is to be done. There are numerous references to a loss of memory related to work tasks.

The grievant has a view of how this small town Library should be run. Her view is not meaningfully shared by those around her. She chats with patrons. Her good relationship with patrons is noted in a number of the documents, but is frowned on to the extent it conflicts with her ability to get her job done. Her use of her personal library card to allow patrons to avoid the consequences of fines is contrary to the operating protocol of the Library. She appears to resent having her friends sent to collections. She is willing to hold books longer than the system will allow, in order to accommodate the needs of patrons. She appears to be comfortable allowing her friends to skip past others in line. At least one aspect of her reluctance to do some of the weeding is that she appears to want to have more magazines available. None of this is really malicious. It is regarded as unworkable in a library that is increasingly busy and must sustain its operation.

The grievant displayed an attitude at work. The employer describes it as belligerent and difficult to work with. The record supports a finding that the grievant was difficult to work with. An incident is reported where the grievant took two hours away from work. She reacted negatively when called on it. There was testimony that the grievant spent a lot of time on personal phone calls. This is a part of the attitude that work was an extension of the grievant's personal life. There are recurring references to the grievant being angry, particularly if called to perform a task she did not want to do. There are a number of incidents reported where the grievant initiated or pursued conversations that were critical of co-workers in front of patrons. She appears to have lacked a sense of workplace decorum.

It appears that the Library has changed in a way that took the grievant out of her comfort zone. It may be that her attitude was a product of too many changes, too little capacity to make those changes, and many people around her pointing critical fingers in her direction. It further appears that avoidance was a primary coping mechanism. She avoided the desk, when possible. She asked others to do certain tasks, as just being easier. She avoided computer tasks and lost her notes on how to operate the computer. She simply walked away from the man with hygiene issues.

It appears that there was no effective management of personnel prior to January, 2008. Whatever the grievant's shortcomings they were at least tolerated for over 14 years. Upon her appointment as interim Director, Shirley Creager addressed the perceived concerns with the grievant. Creager was a veteran of the Library. It was her testimony that co-workers came forward with issues regarding the grievant. As interim Director, it was Creager's task to maintain the status quo in anticipation of a permanent Director, and she did so. The Union is right when it points out that Creager issued no formal discipline nor did she give the grievant written feedback relating to performance deficiencies.

However, Creager did talk with the grievant about workplace issues, and she did cause the work to be rearranged, in part to accommodate the grievant. During this same time frame, Library Board members were more active in the operation of the Library. Board members Brooke and Krause met with the grievant on April 28, 2008. The "script" of the discussion was handed to the grievant and she signed it. That document raised concerns about maintaining a respectful attitude and work behavior, teaching patrons to do for themselves, personal phone calls, respect toward co-workers, the grievant's memory, complaining/accusatory behavior and excessive visiting. These are all themes that persisted through the point of termination.

When Erickson assumed her position, she had been thoroughly briefed about concerns related to the grievant. Ms. Erickson's background is in communications, not Library Science. It was her testimony that she attempted to meet with the grievant to work with her. Erickson did provide assistance in certain areas. In other areas of the operation co-workers were the ones who endeavored to assist the grievant.

The Union complains that Ms. Erickson made secret book on the grievant and kept her notes private. I believe that to be the case. It is also the case that the employer did not subject the grievant to a traditional sequence of progressive discipline. However, the testimony and exhibits show that most of the notes were references to meetings, incidents and events in which the grievant was an active participant. It also appears that complaints and concerns relating to the grievant were raised at a number of staff meetings at which she was present.

The grievant was given a written notice of expectations and areas of concern on November 19, 2008. This followed seven months after the April meeting. The format of the November document is as a written "Agreement", which the grievant signed. This strikes me as an extraordinary event. At a minimum, it served to put a reasonable person on notice that

there were serious concerns about her workplace conduct. In fact, two days later she was reported telling Lisa that the Board feels that every decision she makes is wrong. I believe the grievant understood that there were concerns.

The conduct and performance issues continued following the November 19 meeting. The Union is right when it argues that the grievant was not confronted with much of this. The Union is also right when it asserts that Erickson did not advise the grievant that her job was in jeopardy or specifically indicate that discipline would be forthcoming if certain specified conduct continued. That said, there were reportedly 16 staff meetings, many of which produced criticism of the grievant. Erickson testified that she had 18 one on one meetings with the grievant to address performance matters. Other witnesses testified that they rendered assistance or attempted to do so over this period of time. I agree that the formal process is left wanting. However, I do not believe this period represents a feedback vacuum.

Three of the grievant's co-workers testified on behalf of the employer. Each of them indicated that they made efforts to train, accommodate and work with the grievant. Each of them also testified that their efforts were rebuffed. Each of the co-workers testified that the grievant either could not or would not grasp and perform various elements of her job. Each of the co-workers indicated that the grievant was abusive toward them.

The Union finds fault with the lack of progressive discipline. Indeed, there was no progression from a written warning to a one day suspension to a three day suspension preceding the discharge. Some of the conduct leading to the termination was willful. The grievant's avoidance of the front desk, her failure to file, and her open and public criticism of those around her could have been addressed by a series of progressively more severe sanctions. Some of the behaviors exhibited are not obviously willful. It is not clear to me that the grievant's inability to use the computer, her memory/comprehension shortcomings, her feeling overwhelmed by the volume of work are matters entirely within her control. It is possible that with some disciplinary time off the clock, she would have been motivated to develop strategies to address these matters. However, nothing in this record supports such a conclusion.

The Union argues that the November 19 memo was deficient, in that it was not addressed to the grievant, it was ambiguous, and the grievant was not afforded Union representation. The document was not formally addressed. However, it made specific reference to "concerns which have been addressed with you before" and threatened "your position being eliminated". Each of the 5 paragraphs are directed at "you". The grievant signed the "agreement". I believe the grievant knew to whom the document was directed. Similarly, I did not find the document to be ambiguous. It does talk about the grievant's position being "eliminated". The Union notes that in labor parlance there is a considerable difference between the elimination of a position and the discharge of an individual. The use of "elimination" was imprecise in a labor relations sense. In the context of this meeting and this "agreement", I believe the grievant knew what the employer was threatening. In context, it is hard to construe this document as a threat to lay off someone else if the grievant doesn't shape up.

The Union says the November 19 document is defective in that there was no union representation made available to the grievant. However, the record is silent as to whether or not Union representation was requested. [see NLRB v. J WEINGARTEN, INC. 95 S.Ct. 959, 88 LRRM 2689 (1975)]

It is the view of the Union that there was no bona fide effort to work with the grievant to address her performance deficiencies. There is considerable evidence in the record to the effect that there were numerous meetings held to assist the grievant. There is also considerable testimony in the record that such efforts were rejected or ignored. As a practical matter both management and co-workers testified that they tried and failed to help the grievant.

The Union contends that there are procedural deficiencies in this proceeding such that the grievant should be reinstated. It is unclear what constructive purpose reinstatement would accomplish. There exist significant workplace deficiencies, many of which have survived repeated efforts at remediation. There appears to be no one in the library who has experienced success in coming to the aid of the grievant. Reinstatement would place the grievant back into an environment which the Union has described as hostile towards her. The record offers no suggestion as to how remediation might occur.

The grievant attended the first day of this hearing. She did not attend the second day, leaving the Union to advance her case without benefit of her assistance. On its face this is characteristic of the avoidance behavior demonstrated on the job. It is not a basis for successful rehabilitation back into the workplace.

### AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 2nd day of March, 2010.

William C. Houlihan /s/

William C. Houlihan, Arbitrator