

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**EAU CLAIRE COUNTY**

and

**AFSCME, LOCAL 2223**

Case 237  
No. 69418  
MA-14598

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**Appearances:**

**Mark DeLorme**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 421A North 5th Street, Upper, Manitowoc, Wisconsin 54220, appeared on behalf of the Union.

**Sharon McIlquham**, Assistant Corporation Counsel, Eau Claire County, 721 Oxford Avenue, Room 2570, Eau Claire, Wisconsin 54703, appeared on behalf of the County.

**ARBITRATION AWARD**

On December 21, 2009, AFSCME Local 2223 and Eau Claire County 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 grievance pending between the parties. Following appointment, a hearing was conducted on May 13, 2010, in Eau Claire, Wisconsin. A transcript of the proceedings was taken and distributed by June 4, 2010. Post-hearing briefs were filed and received by July 16, 2010. Reply briefs were waived on July 19, 2010.

This Award addresses the termination of employee T.P.

**BACKGROUND AND FACTS**

T.P., the grievant, has been employed by the County, as a custodian, since April, 2007. The grievant was discharged on July 29, 2009 for disclosing the location of the West Central Drug Task Force (WCDTF), which was deemed confidential by the County.

The West Central Drug Task Force is a federally funded multijurisdictional task force that was created in 1988 by the federal government to engage in narcotics investigation. It consists of approximately 14 law enforcement agencies. The location of the unit is confidential. The task force has taken measures to maintain the confidentiality of the location. Employees of the task force do their own custodial work. When it is necessary to have maintenance work done, the agency uses specified contractors, who are not permitted into the facility unaccompanied. The location of the WCDTF is not published. When the agency relocated to a County owned facility, County Board members were not informed as to the location.

The reason for the concern over the location of the WCDTF was explained by a member of the task force:

Obviously, there are multiple reasons. You know, the undercover identity of the investigators working in an undercover capacity... We don't want to disclose our vehicle to anybody who is involved in criminal activity. Records, if anybody were to break in, they would find out who we're working on, what we're working on, and ...and what we're doing. There's always a significant amount of money that's kept at the West Central Drug Task Force. Just an ongoing array of reasons I could tell you. You know, since I've been employed at the West Central Drug Task Force, through the investigators that I have worked with, their...their homes have been targeted, and their families have been hurt. You know, in one case, that was solved: in the other case where a gentleman's house... was shot, that case has never been solved. I wouldn't want anything to ever happen based on information that was leaked through a... a source that we could have somehow taken care of by not disclosing where we live, where we work, what we drive...

The members of the Drug Task Force do not meet informants in the office. Employees of the County building in which the task force is housed do not have keys to the facility.

The WCDTF was previously housed in a private facility. At some point in time the WCDTF determined to move. That move was prompted, at least in part, because the Agency believed the former location had been photographed, and security was an issue. The task force moved to a county owned facility in June, 2008.

When the WCDTF relocated, its offices were re-keyed. Most of the building employees were not told who was moving into the space. Some employees, including the grievant, were told that they would no longer be required to clean that portion of the building. The then supervisor of the grievant was advised by task force members of the identity of the WCDTF, and was further advised that the location of the task force offices was confidential. It was the grievant's testimony that the supervisor, who is no longer living, advised him that the WCDTF was moving into the building, and that he (the grievant) would no longer be required to clean that space. The grievant further testified that he was not told that the location of the WCDTF offices was a confidential matter. A co worker testified that employees were not told that the

identity of the new occupant was a secret. Over time, the employees of the building all came to realize who the new tenant was.

In the time period following its move, WCDTF had an undercover investigation in progress. The grievant was among those who fell within the sweep of the investigation. As a part of the investigation, the drug task force maintained an informant. At some point, during the pendency of the investigation, the informant advised the task force that the grievant had disclosed the location of the task force office to individuals who were suspects or targets of the investigation. It appears that information was provided sometime in the spring or early summer of 2009. It further appears the task force was concerned that the grievant, who had been admitted into the task force offices on two occasions, had divulged information observed while in the offices.

The conversation which the informant overheard occurred during the Christmas period, 2007. The grievant was talking with his former roommate. He summarized the conversation that occurred for the County, as follows:

“A friend asked me how my job was going and I said it was good but they changed my hours at the \_\_\_\_\_ because the ... had to be there when we were and that we had to stay out of a certain area downstairs because the task force was moving in there. His roommate evidently overheard that. And he got mad at me and the former roommate because we wouldn't lie to the police for him. So he told the police I was telling people where the task force was located. I was never told that the location of their office was confidential until about 4 months later after they moved in there by other employees who worked in that building.

The grievant's description of the conversation is the only account of what was said.

The grievant indicated that the informant wanted him to lie for him about being ripped off by another person. When the grievant refused to do so, the informant sent him a text message to the effect; “I hope you value your job”. It appears the informant informed the task force of the fact that the grievant had divulged the location of the task force offices.

The conversation between the grievant and his roommate occurred around December, 2007. The task force moved into its new offices in the spring of 2008. When the task force became aware that the grievant had divulged the location of its new offices, it contacted Eau Claire County Human Resources with that fact. Because the criminal investigation was still underway, the Law Enforcement agency asked Human Resources not to intervene until the criminal matter was concluded. It is unclear when the task force contacted Human Resources. However, it was the recollection of a Human Resource witness that Human Resources waited about 1-2 months before conducting its own investigation to permit the criminal investigation to conclude. The criminal investigation did conclude. The grievant was not charged criminally. There is no indication in the record that anyone to whom the grievant spoke was charged criminally.

The Human Resource investigation commenced thereafter. On July 24, 2009 the grievant was interviewed by law enforcement personnel. On August 6 the grievant was interviewed by Human Resources. As a result of those interviews, and the balance of the investigation, the county concluded that the grievant had communicated the location of the WCDTF headquarters to individuals believed by law enforcement to be involved in narcotics trafficking. When interviewed, the grievant admitted he had disclosed the location of the task force. He denied having communicated any information he might have observed while in the offices of the task force.

It appears that most, if not all of the county employees assigned to the building knew that the WCDTF was about to, or had moved in. The grievant testified that he understood the work of the task force to be confidential, but did not understand the work site to be so. He testified that he was later told by co-workers that the location was itself confidential.

The grievant was terminated by letter, dated 8/6/09, which contained the following:

#### **Type of Offense**

**Violation of policy or work rule:** Resident rights; inmate rights; HIPAA; confidentiality issues; County Code Chapter 3.70, etc.

#### **Details**

**Briefly summarize the essential facts upon which this discipline is based. Identify the specific work rules, performance or conduct standards violated.**

Mr. P. disclosed the confidential information of the West Central Drug Task Force (WCDTF) to persons who were not Eau Claire County employees and who were likely drug offenders. Mr. P. signed a confidentiality policy stating that keeping protected information confidential is the responsibility of all current and former Eau Claire County employees. It also states that any person violating the confidentiality policy may be disciplined up to and including termination of employment, depending on how serious the breach is. Legal action or other sanctions could also occur.

Mr. P. was also trained on the importance of confidentiality on June 6, 2007. During this training, employees were told that they are to treat all records as confidential outside the workplace and if they are unsure of the status of any record, assume the record is confidential. Employees were trained to avoid even the appearance of impropriety.

Mr. P. signed a document stating that he received the Personnel Manual. This receipt also states that Title 3 "Personnel" in the Eau Claire County Code of General Ordinances contains standards for the administration of daily personnel

transactions. By disclosing the location of the WCDTF, Mr. P. violated Section 3.50.010.C which states: Disclosure of confidential information. No public official or employee shall, without proper authorization, disclose confidential information.

**Briefly describe the impact of the employee's performance/conduct on departmental operations.**

The location of the WCDTF is confidential in order to assist in ensuring the safety of the deputies who work in that division. These deputies are working with known criminals, many of which have the potential for violence. Disclosing this information puts these individuals at risk, and potentially their families lives at risk.

Also, given the shared location of the WCDTF, it is critical for the location to remain confidential to ensure the safety of others organizations housed in that location. Those who work their (sic) need to feel safe, secure, and free of retaliation by the criminals targeted by the WCDTF. The location is now known in the drug community due to the disclosure made by Mr. P. placing an unnecessary risk on these individuals.

**If applicable, summarize the previous discipline record of this employee. If the previous discipline is relevant to the "theme" of the current discipline or relevant to note.**

N/A

**If applicable, explain any mitigating circumstances that may increase or reduce the disciplinary level.**

This breach is considered a very serious breach in confidentiality. The individuals who received this information were criminals who would benefit from knowing the location of the WCDTF. The employees working for the WCDTF have an increased risk and the individuals working at the location also have a potential increased risk.

...

The termination letter makes reference to a number of confidentiality related rules of the County. The rules cited by the County, and relied upon in this matter include the following:

Chapter 3.50

CONFLICT OF INTEREST

3.50.001 Purpose. The proper operation of a democratic and representative government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for improper personal gain; and that conflicts between private interests and public responsibilities be avoided. In recognition of these goals, there is established a code of ethics to establish guidelines for ethical standards of conduct for such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the county and by directing disclosure by such officials and employees of private interests in matters affecting the county. The provisions and purpose of this code and such rules and regulations as may be established are declared to be in the best interests of the county. (Ord. 147-54, 2003; Ord. 136-11, Sec. 1, 1992; Ord. 81-82/132, Sec. 1 (part), 1981).

...

3.50.005 Definitions.

...

D. "Privileged information" means any written or oral material related to county government which has not become part of the body of public information and which is designated by statute, court decision, lawful order, ordinance, resolution or custom as privileged.

...

3.50.010 Specific conflicts enumerated. The following conflicts of interest shall be expressly prohibited:

...

C. Disclosure of confidential information. No public official or employee shall, without proper authorization, disclose confidential information, nor use such information to advance the actual or anticipated financial or personal interests of him or herself or others.

...

3.50.050 Sanction for violations. Any person violating this chapter may be subject to a forfeiture of not less than \$100 nor more than \$1,000 for each offense, subject to 3.50.060. . . .

3.050.060 Forfeiture schedule. The following specified violations of this chapter shall be subject to the accompanying forfeiture schedule:

. . .

C. 3.50.010C., Disclosure of confidential information. \$100 to \$1,000;

. . .

### **EAU CLAIRE COUNTY CONFIDENTIALITY POLICY**

Keeping protected information confidential is the responsibility of all current and former Eau Claire County employees. Employees must comply with County, State, Federal and HIPAA policies for confidentiality. Discussions and information shared with other staff members are to be limited to the minimum necessary to carry out job functions. Non-County employees working at Eau Claire County and Contractors and Vendors providing or having access to confidential information, must also maintain confidentiality. Non-employees, working with Eau Claire County must be informed that they comply with Eau Claire County confidentiality policies and must agree to fitting penalties if they fail to follow the Eau Claire County Confidentiality Policy. Contracts, when appropriate, must refer to the policy and penalties.

Documents agreeing not to disclose confidential information and ‘business associate agreements’ should be used to make sure there is compliance with Eau Claire County policy and compliance with the HIPAA law requirements.

### **WHAT IS THE PROCEDURE IF THERE IS A BREACH?**

Complaints, concerns or reports of a breach of confidentiality of protected Personal Health Information must be reported to the Privacy Officer. Personal Health Information means any “individually identifiable health information” kept or transmitted by electronic or other means. If the Privacy Officer is not available, the Department Head should be notified.

### **MUST I REPORT A BREACH?**

Yes. Employees who truly believe that a breach of confidentiality has occurred but do not report it are subject to disciplinary action.

**WHAT WILL BE DONE AFTER I REPORT A BREACH?**

An investigation will be conducted by the Privacy Officer. All information gathered will be reviewed to determine what, if any, corrective action is to be taken. Discipline of the person who caused a breach may be recommended. That person may be disciplined up to and including termination of employment, depending on how serious the breach is. Legal action or other legal sanctions could also occur.

**CAN I BE RETALIATED AGAINST IF I REPORT A BREACH?**

NO. Under no circumstances will the County allow retaliation or intimidation of a person who reports a breach. If there is retaliation by someone, that person may be further disciplined up to and including termination.

For more information regarding specific confidentiality requirements, please contact the Privacy Officer.

As noted in the termination letter, the grievant participated in a training program which addressed confidentiality. The relevant slides include the following:

**Conflict of Interest/Ethics,  
Confidentiality, and  
Scope of Employment**

...

**Ethics Code Prohibits an  
Employee from**

- Accepting “anything of value”
- Which means: any money or property, favor, service, payment, advance forbearance, loan or promise of future employment
- Namely anything which is likely to influence the judgment of individuals

**Specific Conflicts Prohibited**

...

- Disclosure of confidential information

...

### **Penalties**

- Don't risk your reputation or a forfeiture of \$100 to \$1000

...

### **Confidentiality**

#### **What is Confidential?**

- The Wisconsin public records law presumes records are open; however, there are specific exceptions in many statutes which make records confidential.
- If you are unsure of the status of any record, assume the record is confidential prior to releasing or discussing it. Direct questions to your supervisor or department head.

#### **To Avoid Liability**

- Treat all records as confidential outside the workplace
- Avoid discussing cases or documents involving named individuals in public areas of the courthouse, including waiting rooms and restrooms
- Avoid discussing in public (e.g. restaurants, churches, theaters, businesses, etc.)
- Avoid discussing with family members or friends

## **Personnel Records**

- No blanket exemption from public inspection except for home address, home email address, home telephone number and social security number
- Balancing test applied and employees have right to notice and opportunity to file action to prevent disclosure
- Medical records are retained separately and are confidential

### **ISSUE**

The parties stipulated to the following issue:

Did the County have just cause to terminate the grievant?

### **RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT**

#### **ARTICLE I RECOGNITION AND MANAGEMENT RIGHTS**

...

1.06 The Employer shall have the right to:

- C. Suspend, discharge or take other appropriate disciplinary action against employees for just cause; to layoff employees in the event of lack of work or funds, or under conditions where continuation of such work would be inefficient and non-productive.

### **POSITIONS OF THE PARTIES**

It is the view of the County that the location of the WCDF is confidential. The County points out that the grievant was given copies of the County Conflict of Interest policy, along with the Confidentiality policy. Additionally, the grievant was given training relative to the need for confidentiality. It is the view of the County that the grievant then disclosed the confidential information to individuals involved in the use and sale of illegal drugs.

It is the view of the County that its determination should be upheld unless it can be demonstrated that it acted in an arbitrary or capricious manner.

It is the view of the County that if either a two part just cause standard or the 7 standards set forth by Arbitrator Daugherty are applied, it has satisfied the just cause standard. It is the view of the County that the grievant breached the confidentiality of the location of the WCDTF and that the conduct is so severe, and job related, as to warrant discharge.

The County includes the following in the conclusion of its post hearing brief:

It is a matter of common sense as well as widespread knowledge throughout the country and the Maintenance Department that the location of the WCDTF was to be kept confidential. Training was provided to P. If a matter is to be kept confidential, it matters not to whom the grievant revealed the information, or whether the person obtained the confidential information from an intermediary by chance or directly by design from the grievant. The County should be able to reasonably expect the grievant to know that any information regarding WCDTF should be kept confidential, regardless of its failure to specifically inform the grievant the location of WCDTF was confidential and should not be disclosed. Some requirements are so obvious by their nature that no such training should be specifically required before compliance can be expected. The County's failure to inform the grievant specifically that the location of WCDTF is confidential should not be regarded as grounds for concern over an injustice in this matter.

Testimony, taken as a whole, leads to a conclusion that the grievant was on notice of the fact the location of WCDTF was a confidential location. Training provided outlined the procedures that if there was a question as to whether or not information was confidential, the employee should inquire with any questions and presume all information was confidential. Even after the breach occurred, Mr. P. became aware of the fact the information was to be kept confidential and at that point, did not disclose the breach as required by the confidentiality policy.

The grievant committed a serious and substantial breach of confidentiality which puts officer's lives at risk and compromises ongoing drug investigations. Progressive discipline was not in order or appropriate in this instance.

It is the view of the Union that the County has the burden to establish the existence of conduct by the grievant in which it has a disciplinary interest and to further establish that the discipline imposed reasonably reflects that interest. It is the view of the Union that the County had a duty to notify the grievant that the location of the task force is confidential, and didn't do so. County confidentiality policies do not address the drug unit.

It is the view of the Union that the County's expectation that employees should know the location is confidential is not reasonable. The discharge letter does not assert that the

grievant should have known, it asserts that County confidentiality policies were violated. The Union argues that all building employees knew the task force had moved in. The County told vendors the location was confidential. It did not tell its own employees.

It is the view of the Union that it is normal for people to talk about their jobs. If the County objects to the grievant's conversation it should use progressive discipline. The Union contends that the information involved, the location of the drug task force, does not belong to the County. The task force is not a County agency.

It is the view of the Union that it is not obvious that the location of the task force is a secret location.

### DISCUSSION

I believe the County has a legitimate interest in keeping the location of the drug task force confidential. The County is a participant in the operation. The task force mission is a service to the citizens of Eau Claire County. The County is host to the operation. For all of the reasons outlined in the testimony there are operational and safety reasons to keep hidden the location of the unit.

The County went to certain lengths to protect the work site. County Board members, who had to authorize the lease, were not told of the site. The public was not informed. The address was not publicized. The day to day cleaning was handled in house, in order to avoid bringing in outsiders. When an outside vendor was needed, only screened vendors were used, and were accompanied by task force personnel. Visitors had to be escorted in.

However, the unit was sited in a public building, with other County employees. The locks were re-keyed. The cleaning staff was rescheduled and advised that they were no longer required to clean the area. I think it is reasonably predictable that the building employees would figure out who was in the building. The record establishes that employees knew the drug unit was moving into the building, even before they arrived. The grievant was told by his supervisor.

I believe the task force faced a dilemma as it moved to the public building. It could either identify itself to the employees within the building, and advise them that location was itself a confidential matter, or it could proceed on a need to know basis, and advise only those with whom it had to do business of its identity. Identifying itself to a number of people was no doubt regarded as counterintuitive to the desire to maintain the confidentiality of the location. Limiting the disclosure of the task force site to those who had to know left the rest of the workforce to operate in an information vacuum. Under the approach taken, the opportunity to urge building employees to keep the location to themselves was lost.

I do not believe the County put the grievant on notice that the location was deemed confidential. No one told him. His supervisor told him the task force was moving in. The

supervisor had to explain the change in work assignment and evidently identified the new tenant as the reason for the changes. The record indicates the supervisor had been advised that the site was confidential.

I do not believe the ethics or conflict of interest policies go to the confidentiality of the task force location. Chapter 3.50, Conflict of Interest, defines “Privileged Information” as “...written or oral material related to County government...”. On its face this does not address the confidential nature of an office or operation. The Conflict of Interest policy goes on to enumerate the conflicts that are prohibited. It prohibits the “Disclosure of confidential information.” There is no explanation as to whether or not privileged is the same as confidential. Confidential is not otherwise defined. The Code goes on to set forth sanctions for violations of the chapter. Those sanctions consist of forfeitures ranging from \$100-\$1,000. There is no reference to loss of employment as a consequence.

The County has a confidentiality policy. The two introductory paragraphs make two references to HIPAA. The first underlined paragraph also makes reference to health information. Aside from these references to health protected information, the confidentiality policy does not specifically identify what other information is deemed confidential. There are references to County, State, Federal policies, but the subject matter of those policies is nowhere defined. The first underlined paragraph addresses a “...breach of confidentiality of protected Personal Health Information...”. It is that “breach” that is addressed in the Reporting paragraph. Employees who fail to report a breach, as set forth in the preceding paragraph, are subject to disciplinary action. I do not think this policy addresses the facts underlying this dispute.

The grievant was trained relative to confidentiality. The outline of the training indicates that employees were advised that they were not to disclose “confidential information”. The outline contains no definition of what that would be. The outline makes reference to records, cases, documents, and personnel records. These references all point to the more routine functions handled by county employees. They do not really address the status of the work site occupied by the drug task force.

The County argues that the grievant should have known. It is the view of the County that it is self evident that the location of the drug task force is confidential. The County makes this argument in the context of the employees of the building being generally aware of the fact that the drug task force was housed in the building. The County’s concern in this proceeding is less over the fact that employees told one another that the drug task force was located in the building than it is over who the grievant told.

Who the grievant is, and who the grievant told goes to the heart of this dispute. I think the County’s concerns are well articulated by the following testimony, provided by a member of the task force:

Q: Given what you just said regarding the confidential nature of the drug task force, how would you expect a custodian or maintenance worker to know the work that the drug task force does?

A: How do we expect 'em to know what the drug task force does?

Q: Well, for example, you said there's a difference between what happens with the evidence room and the security measures that the drug task force takes, how is a --- a maintenance person, for example, supposed to know the difference in the way security works?

A: I guess I'm really not getting your question.

Q: Well, you said it was ---

A: If T. is involved in criminal activity, in hanging out with people who are targets of the West Central Drug Task Force, I can tell you that people who are involved with criminal activity are concerned about being arrested and want to know who and what the West Central Drug Task Force knows about them.

Q: And how would a -- a custodian or maintenance --- maintenance employee know that?

A: If he's involved in criminal activity.

Q: He would know that just because he's involved in criminal activity?

A: Well, if T. weren't involved in criminal activity and didn't know the confidential informant who was, you know, a person who was involved in criminal activity and other people, then I guess telling the West Central Drug Task force location would be immaterial because he would not be involved in criminal activity and hang around people who are involved in criminal activity, but it becomes a little bit bigger of a significant problem when he's involved, or at least we're led to believe he's involved with these people, and the reason he's involved with these people is because of drug use, and now he's disclosing the location of the West Central Drug Task Force.

Q: Well, let me stop for a second and ask, regarding your investigation, were any charges filed against T.?

A: No.

The County is aware of the fact that employees knew the drug task force was in the building. Employees found out and talked with one another. The grievant found out when his supervisor told him. It is the fact that the grievant disclosed this information to the targets of the drug task force that has motivated the County to proceed. There is no indication that other employees have been disciplined for communicating the task force location to one another or to others.

I do believe there is a distinction between talking to your co-worker and talking to drug dealers where the topic is the location of the drug task force. The co-worker is likely a casually interested listener. The drug dealer is potentially a far more threatening individual.

The question in this proceeding is whether the grievant's disclosure was so egregious as to warrant his discharge.

The grievant is a relatively short term employee. He has no prior discipline. From the foregoing I do not believe anyone put him on actual notice that the WCDTF site was to be maintained as confidential. What underlies the County's determination to discharge the grievant is the fact that it views the grievant as someone who is "involved in criminal activity". That forms the basis for the county's conclusion that he should have known not to communicate the location and further to the county's view as to why this is such an egregious act. It is the status of the grievant and those he associated with as "involved in criminal activity", that distinguishes this case from the more routine situation where two employees talk or an employee tells his or her spouse who has moved in.

I appreciate the concerns that have led to the decision to terminate. I believe the security concerns that surround the facility are real and serious. However, notwithstanding the numerous references to the grievant as someone involved in criminal activity, he was not charged. There is no evidence in this record that the grievant has a criminal record. Similarly, there are a number of references in the record to a number of individuals who are also referred to as individuals involved in criminal activity. There is no indication in this record that any of those individuals were charged, much less convicted of criminal conduct.

This proceeding involves the termination of the grievant's employment. He was terminated for disclosing the location of the WCDTF. The confidentiality and ethics codes of the County do not really address this fact situation. He was not given specific direction relative to the confidentiality of the office. Other employees talked, at least among themselves, as to the location of the WCDTF. What has set the grievant apart is the view of the County that he is involved in criminal activity, and communicated sensitive information to others involved in the very activity that is the focus of the task force. There is no proof that he is, in fact, involved in such activity. There is the allegation that it is the case, and his denial. If the County is to rely upon the status of the grievant as one involved in criminal behavior, it must establish that by a greater preponderance of evidence than exists in this record. On its face, the comments of the grievant to his former roommate seem like a typical conversation one might have about work. There is no indication that they were more than that. Those conversations

only take on an insidious character in the context of their being communicated to individuals who would use the information to avoid criminal detection or who would do harm.

I believe the grievant's comments were an indiscretion. I do not believe they are sufficient to constitute cause for his discharge.

**AWARD**

The grievance is sustained.

**REMEDY**

The employer is directed to reinstate the grievant and to make him whole for lost wages and benefits. The employer is entitled to offset the backpay with Unemployment Compensation, and/or with interim earnings, if any.

Dated at Madison, Wisconsin, this 30th day of August, 2010.

William C. Houlihan /s/

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William C. Houlihan, Arbitrator

WCH/gjc

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