

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**DOOR COUNTY COURTHOUSE EMPLOYEES,  
AFSCME, AFL-CIO Local 1658**

and

**DOOR COUNTY**

Case 172  
No. 68938  
MA-14414

Case 173  
No. 68939  
MA-14415

Case 174  
No. 68048  
MA-14456

(Benzow Grievances)

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**Appearances:**

**Mr. Joseph M. Guzynski**, Staff Representative, 8033 Excelsior Drive, Suite B, Madison, Wisconsin appearing on behalf of Door County Courthouse Employees, AFSCME, AFL-CIO, Local 1658.

**Mr. Grant P. Thomas**, Corporation Counsel, 421 Nebraska Street, Sturgeon Bay, Wisconsin, appearing on behalf of Door County.

**ARBITRATION AWARD**

Door County Courthouse Employees, AFSCME, AFL-CIO, Local 1658, hereinafter "Union" and Door County, hereinafter "County," requested that the Wisconsin Employment Relations Commission assign Lauri A. Millot, staff arbitrator, to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The hearing was held before the undersigned on September 30, 2009, October 1, 2009, and January 6, 2010 in Sturgeon Bay, Wisconsin. The hearing was transcribed. The parties submitted post-hearing briefs, the last of which was received by June 25, 2010 at which time the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

### ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Whether the Employer violated the just cause standard of the collective bargaining agreement when it suspended the Grievant for 10 days? If so, what is the appropriate remedy?

Whether the Employer violated the just cause standard of the collective bargaining agreement when it suspended the Grievant for 30 days? If so, what is the appropriate remedy?

Whether the Employer violated the just cause standard of the collective bargaining agreement when it terminated the Grievant? If so, what is the appropriate remedy?

### RELEVANT CONTRACT LANGUAGE

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### ARTICLE 4 - GRIEVANCE PROCEDURE

Step 3: The parties agree to the following panel of five (5) WERC arbitrators:

John Emery  
William Houlihan  
Richard McLaughlin  
Lauri Millot  
Dan Nielsen

The parties shall alternately strike from this panel until one remains who shall serve as the arbitrator. This panel of five (5) arbitrators shall remain in place until November 15, 2010. Within 45 calendar days after this date, at the request of either party, the parties shall choose a new panel of five (5) arbitrators from the panel of WERC arbitrators by alternating strikes until five (5) names remain. Should any of the panel of five (5) arbitrators leave the employ of the WERC, the parties shall choose from the panel of WERC arbitrators by alternating strikes until the appropriate number of replacement panel members exists to replace the departing arbitrator(s).

The grievance shall be submitted to arbitration by giving notice in writing to the Employer within thirty (30) days after the written reply of the Administrative Committee. Within five (5) days of such notice, the parties shall choose an arbitrator by alternating strikes of the panel of five (5) until one (1) remains. The union shall immediately transmit the identity of the chosen arbitrator to the WERC. Each party shall pay their own cost of the proceedings and will share equally the costs of the arbitrator.

C. Arbitration Hearing The Arbitrator shall meet with the parties at a mutually agreeable date to review the evidence and hear testimony from both parties. Each party shall pay their own cost of the proceedings and will share equally the costs of the Arbitrator.

D. Arbitration Award The power of the Arbitrator is limited as follows. The Arbitrator's function is limited to interpreting and applying provisions of this Agreement and shall have no power to add to, subtract from, or modify any of the terms of this Agreement. The decision shall be rendered in writing promptly following the hearings and shall be final and binding on the parties.

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#### ARTICLE 9 – SICK LEAVE

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S. Family and Medical Leave Act Each party hereto recognizes, and acknowledges its obligation to comply with any mandates set forth in, both the Federal and Wisconsin Family and Medical Leave Act(s).

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#### ARTICLE 21 – DISCIPLINARY PROCEDURE

The following disciplinary procedure is intended as a legitimate management device to inform employees of work habits, etc., which are not consistent with the aims of the Employer's public function, and thereby to correct those deficiencies.

Any employee may be disciplined, demoted, suspended, or discharged for just cause. It is understood that just cause for immediate discharge includes, but is not limited to, being under the influence of intoxicants or controlled substance

on duty and dishonesty. This expression of specific reasons for discharge shall not preclude discharge for other reasons normally considered just cause.

The normal sequence of disciplinary action for minor offenses shall be oral reprimands, written reprimands, suspension, demotion, or discharge. A written reprimand sustained in the grievance procedure or not contested shall be considered valid warning. A valid warning shall be considered effective for not longer than a nine (9) month period.

The Employer shall provide written notice of the reason(s) for any disciplinary action (other than oral reprimand wherein such statement will be issued upon request of the employee).

Any discharged or suspended employee may appeal such action through the grievance procedure and shall initiate grievance action by immediate recourse to Step 2, within ten (10) days of notice of discharge or suspension.

Suspensions shall not be for less than two (2) days, but for serious offense or repeated violation, suspension may be more severe. No suspension shall exceed thirty (30) calendar days. Notice of discharge or suspension shall be in writing and a copy shall be provided the employee and the Union.

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#### ARTICLE 27 - MANAGEMENT RIGHTS

Lawful Authority: Nothing in this agreement shall be construed as divesting the Employer of any of its vested management rights or as delegating to others, the authority conferred by law on the Employer, or in any way abridging or reducing such authority.

This agreement shall be construed as requiring the employees to follow the provisions in the exercise of the authority confirmed upon the employer by law.

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#### BACKGROUND AND FACTS

The Grievant, Jane Benzow, was hired by the County in May 1997 to the full time position of Receptionist/Secretary in the County Department of Community Programs. The Grievant's regular work hours were from 8:00 a.m. to 4:30 p.m. on Monday, Tuesday,

Wednesday and Friday, and from 11:30 a.m. to 8:00 p.m. on Thursdays. The Grievant continuously held this position until her termination from the County on June 5, 2009.

At all times relevant herein, the Grievant's supervisor was Joseph Krebsbach. Krebsbach became the Director of the Door County Department of Community Programs in May of 2008. Prior to accepting the Director position, Krebsbach supervised the Community Support unit in the Department. Krebsbach has been employed by the County since 1996.

The Grievant's job description read in relevant part:

### **General Summary**

Performs duties under direct supervision of Community Programs Director. Performs secretarial and clerical duties. Acts as Department receptionist and effectively maintains client schedules.

### **Duties and Responsibilities**

#### ***Essential Job Function***

1. Greets clients gathering information needed to assists (sic) them with appointments.
2. Answers telephone and directs clients to appropriate staff members. Answers questions regarding agency services.
3. Maintains client appointment schedules for all staff professionals and contracted professionals.
4. Make reminder phone calls, check insurance status and prepare all invoices prior to each psychiatric appointment.
5. Collects monies from clients (on account) and maintains receipt/records of same.
6. Records, prepares and submits minutes of monthly Board of Directors meetings.
7. Generates typed documents (e.g. minutes, memo's, letters) via computer, as needed by the agency.

8. Routes incoming and outgoing agency mail.

***General Job Functions***

1. Responsible for the security, operation and maintenance of the office equipment.

**Reporting Relationship**

Reports to the Community Programs Director

**REQUIREMENTS**

***Training and Experience***

1. High school diploma or GED; supplemented by one (1) year of responsible work experience; or an equivalent combination of training and experience. Technical college degree in office procedures or related area preferred.
2. Ability to type accurately at 50 wpm and accurately and efficiently file documents and materials.

***Knowledge, Skills, and Abilities Required***

1. Knowledge of general office procedures and the operation of normal office equipment.
2. Ability to maintain highest levels of confidentiality required.
3. Computer literacy and more than basic knowledge with Microsoft Office Suite of software and data base programs required.
4. Highly developed interpersonal skills required in dealing with public, agency clients and agency staff.
5. Experience in human service environments preferred.
6. Capable of working with limited supervision and able to make decisions regarding routine matters.
7. Strong organizational skills and maturity are required.

### **Physical and Working Conditions**

1. Normal office working environment with little or no discomfort from temperature, noise, dust, wetness or the like.
2. Agency operates a busy outpatient clinic providing an array of services to a wide variety of persons experiencing difficulties in the areas of mental health, developmental disabilities, or alcohol or other drug abuse.

In an effort to provide for continuity of County government and to cope with the problems of the emergency, you may be required to work during a proclaimed state of emergency, consistent with Sec. 166.03(4) (a)-(d) Wis. Stats. and County emergency management plans and programs.

The above is intended to describe the general content of the requirements for the performance of this job. It is not to be construed as an exhaustive statement of duties, responsibilities or requirements. They may be subject to change at any time due to reasonable accommodation or other reasons.

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The Grievant was diagnosed with fibromyalgia in November of 2001. The symptoms associated with fibromyalgia include severe muscle and joint pain, swelling in hands and legs, migraines, and nausea. The Grievant experienced flare ups and intermittent episodes which lasted three to four days and incapacitated her to the point where she could only rest. The Grievant was approved for and took intermittent Family and Medical Leave due to the fibromyalgia in 2004, 2008, and 2009.

The Grievant had a disciplinary history. She was issued a written reprimand that was reduced to a verbal warning on April 2, 2008 and a one day suspension that was reduced to a written on May 1, 2008. Both sanctions were imposed for performance deficiencies. Subsequent to these disciplinary actions, the County continued to monitor the Grievant's job performance.

In early November of 2008, Krebsbach received complaints regarding the Grievant's performance. The complaints related to the Grievant's failure to take her lunch at the designated time and failure to properly enter clients in the County TCM system, a computerized version of client records. As a result of the complaints, Krebsbach met with the

Grievant on November 10 to discuss a list of issues. Krebsbach addressed the complaints and concerns regarding other aspects of her performance including failure to pay attention to details. Krebsbach directed the Grievant to start to maintain a task log which he viewed as an important tool that would allow the Grievant to keep abreast of her work tasks.<sup>1</sup> He also directed her to draft a memorandum to him addressing how she would respond the concerns he had raised during their conversation. The Grievant provided Krebsbach the memorandum later that same day.<sup>2</sup> The memorandum was titled, “[p]lan of correction regarding my performance” and read as follows:

- 1.) I will use a logbook daily to record what I am working (sic) and what jobs people are giving me to complete. I began using this system today – should I want to stop this for any reason I will talk to my supervisor first.
- 2.) If I am not feeling well because of my Fibromyalgia and its affects on my job performance I will go home or stay home that day.
- 3.) Entering the OWI paperwork in TCM: I will ask my co-worker Kathy to do when I cannot get them entered because my workload is too heavy that day and thus ensure they are entered daily. The OWI paperwork will be entered on a daily basis.
- 4.) I will be here by 8:00 A.M. so the front desk is covered and ready for business. Should something happen that I cannot be her by 8:00 I will contact Mr. Krebsbach and inform of why I maybe late.
- 5.) Sometimes it is very busy at the desk when I complete a receipt. I will double check everything to make sure it is correct before I tear it out. I will make sure the receipts are written out my using my special pen on days my hands are swollen and hurt.

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<sup>1</sup> When the PIP started, the Grievant was expected to document everything that occurred throughout her day. That expectation was modified to her just documenting the tasks that she either regularly performed or was asked to do. The Grievant and Krebsbach eventually created a task log form for the Grievant that documented what date she was assigned the task, who assigned her the task, when it needed to be completed, and then the completion date. The Grievant found the final form of the task log to be a helpful tool.

<sup>2</sup> The Grievant submitted the memorandum to Krebsbach on November 10, 2008. Later that day, she requested that he return of the memorandum to her because she was concerned it would be viewed as an admission for purposes of future disciplinary action. The Grievant re-submitted the memorandum to Krebsbach on November 11, 2008.



I have started this today 11/11/08.

Any comments or suggestions would be greatly appreciated. <sup>3</sup>

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Subsequent to receiving the Grievant's memorandum, Krebsbach met with Kelly Hendee, County Human Resources Director. Krebsbach was concerned and frustrated and sought guidance as to how to assist the Grievant in fulfilling the essential functions of her job. With guidance from Hendee, Krebsbach prepared a Performance Improvement Plan (hereinafter, "PIP") which he presented to the Grievant on November 18, 2008. The purpose of the PIP was to improve the Grievant's performance. The Grievant was required to sign the PIP. The PIP read as follows:

This Performance Improvement Plan is to identify and correct deficiencies and inadequacies in your job performance. The objective is to establish clear performance goals, as well as corrections that are needed to achievement (sic) these goals. You will be provided regular feedback on your achievement of the established goals. The expectation is that you will fully cooperate with this plan and meet these goals.

There are two primary areas of concern; one is related to punctuality and the second is related to your failure to correctly and timely perform job duties. Both are critical aspects of your job.

It seems to be a lack of organization that affects your ability to attend to the detail of your tasks. This is seen through your not completing daily tasks like getting mail out on time, or getting clients entered into TCM by the end of the day they request services. Other examples include committing to projects you don't have time to complete, then becoming flustered by the tasks and making simple errors in scheduling and receipts. You are to follow the expectation and goals listed below:

Hours of work and meal breaks:

- \* You must report to work and be at your station, logged into your computer and fully prepared to perform your work duties by the open of business at 8:00 a.m.

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<sup>3</sup> The Arbitrator recognizes then spelling and phrasing errors which appear in the original. The Grievant's memorandum to Krebsbach has been replicated in its actual form.

- \* You are expected to take your lunch break from 12:30 p.m. until 1:00 p.m. If you are in the middle of dealing with a client, you are to leave as soon as you are able, but you will take no more than 30 minutes.

Attendance:

- \* You are not to report to work, or are to go home, if you are unable to perform essential job functions.
- \* You must provide the required prior notice, of your being absent from work or leaving work early, to me or a coordinator in my absence, as well as another support staff member who can cover your station.

Performance:

You are to analyze, prioritize and consistently and correctly complete duties and assignments in a timely manner. This includes:

- \* You will answer phone calls and greet clients at the window in a timely manner. This will likely require you to shorten some of the call (sic) you are taking by transferring them quicker.
- \* You will make reminder phone calls to all Dr. Miller's patients.
- \* You will schedule all professional staff and contractors as necessary.
- \* You will pick up mail before 11:30 a.m. and bring outgoing mail to the mail room by 3:15 p.m. each day.
- \* You will collect monies from clients and write receipt paying attention to detail. You will then follow outlined procedures with the money.
- \* When you are given a task you will clarify when that task is due. If you are unable to complete, you will let the staff member asking know this. If you accept a task, you will have it completed by the time you agree to.

- \* You will post Board agendas and take board minutes each month. You will have Board minutes to the Director by the Monday morning following the meeting date.
- \* You are to maintain a written time log of your work from the next four week period. Following that four week period, you will continue to keep written a written log of the tasks you are asked to complete.
- \* You will also follow through with the material you presented to me on 11-10-08

Assistance:

- \* You will need to identify and specify any support and/or resources you may need to assist in meeting these expectations and goals.
- \* We will meet each Monday at 11:00 a.m. to evaluate your performance. If I am out of the office for meetings, we will meet later in the week when we are both available. I commit to monitor and evaluate your performance at the level I expect you to perform.

Failure to demonstrate improvement in your performance, or failure to cooperate with this plan as outlined above, will lead to further disciplinary action, up to and including termination of the employment relationship.

By your signature below you acknowledge having read, reviewed with me, understand and received a copy of this Performance Improvement Plan. This Performance Improvement Plan will be in effect until February 28<sup>th</sup> unless extended by employer.

/s/ \_\_\_\_\_ 1/19/08  
Jane Benzow

/s/ \_\_\_\_\_ 1/19/08  
Joseph A. Krebsbach

The Grievant did not work on either Monday, November 24 or Tuesday, November 25 due to her fibromyalgia. On Wednesday, November 26, 2008, the Grievant worked beyond her ending time - until approximately 9 p.m. - without approval. Instead of recording her ending time as 9 p.m. on her time card, she wrote 4:30 p.m.

Consistent with the terms of the PIP, the Grievant and Krebsbach met on December 1, 2008, to discuss the Grievant's performance. Krebsbach questioned the Grievant regarding when she left work on November 26, although he did not indicate the purpose of the meeting was to investigate conduct or performance violations. Krebsbach documented the conversation in an e-mail to the Grievant reminding her to "log each task...write down each task ... develop a system to stay organized ... end your work day at 4:30 or as close to this as possible..." During the meeting, Krebsbach also addressed the Grievant's work log and the Grievant's need to organize her work so that it was timely completed.

Subsequent to the December 1<sup>st</sup> meeting, Krebsbach sent an e-mail to the management team informing them that the Grievant had been directed to document the tasks she was assigned by management staff. This documentation was to include not only the work that she was asked to perform, but also who asked that it be done, the date requested and the due date. Krebsbach asked the management staff to inform him as to whether the Grievant timely completed the tasks.

The Grievant and Krebsbach met again on January 5, 2009. Krebsbach reviewed the Grievant's work log, addressed two specific issues that had arisen since their last meeting, and informed the Grievant that she needed to limit the length of time she spent talking to clients who either called in or walked in. The Grievant also explained the circumstances of her absence on January 2 reporting that she did not know if Krebsbach was scheduled to work and she did not have his telephone number and therefore she called her co-worker, Deborah Karas, to report her intended absence.

Krebsbach and the Grievant met on January 13, 2009. Following that meeting, Krebsbach completed a PIP review which read as follows:

I would like to begin by acknowledging what appears to be an increase in effort on the part of Jane Benzow at her job. You have worked very hard at specific tasks and you have been very through (sic). However, the issues that needed to be addressed related to this PIP continue to be a problem. This is primarily related to correctly and timely performance of your job duties. This comes despite ongoing efforts to help support you and review with you your tasks. It does lead me to (sic) concern about your ability to attend to the needs of this job. I will express the concerns as related to the PIP below.

Hours of work and meal breaks:

- \* On 11/26/08 while this writer was on vacation, you worked until 9:00 P.M. without prior approval. As concerning, was the fact that you were evasive about the time you left. You then directly lied about the time you left only telling the truth after being confronted with the times on e-mails that you sent out that night.
- \* On 12/3/08 I observed you at your work station reading a jewelry catalog at 11:45 am. You put it aside as I walked through. Although I am unsure of the total time you spent in this non work related activity, Mr. Hirn observed you doing this from 11:52-12:20. I also observed you again at 3:19 looking at the catalog and writing out an order.
- \* On 12/26/08 again while this writer was on vacation, you were at work at 5:00 when Allen Lukach went home. You were told specifically following the 11/26 incident that you were to go home at 4:30 unless dealing with a client. I am unsure when you left that evening.
- \* You often do not leave for lunch at or near 12:30 which makes it more difficult to track if you are taking the 30 minute break specified. On 1-12-09 I observed you leaving near 1:00 I have had four or five times when individuals have indicated concerned about you taking longer than 30 minutes. (sic)

Attendance

- \* 1-2-09 you did not come to work and did not follow policy or the directive in the PIP, regarding notice of absence. You did not call me or any of the coordinators to report your not coming in.

Performance

You continue to have difficulty with the performance of your duties as spelled out in the PIP. This includes prioritizing work completing it on time and paying attention to details.

- \* You have not consistently picked up the mail or brought the mail down at the time specified. See attached.
  
- \* You have kept a poor log of tasks that have been asked of you by other staff members. The following are examples:
  1. On 12/1/08 in our review of your task list you indicated that no one had asked her (sic) to do any additional tasks since the 19th of November. I was made aware by Mr. Hirn on 12/3/08, that he asked you to update his calendar on 11/24/08. This was not documented in your log and was not completed when he returned from vacation on 12/1.
  2. On 12/17/08 you had not documented the task of making ROSI surveys for Sheryl Flores.
  3. On 1/6/09 you had not documented the 12 referrals that you received from David Hirn to enter into TCM.

The reason for the log is to help you be able to perform tasks in a timely manor and to help you be able to prioritize what you are doing each day. These there (sic) are examples of times were it was clear that you did not write the task down to help you remember them.

- \* The November DCP Board Minutes were to be done on the morning of 24<sup>th</sup> and you were absent from work on Monday and Tuesday. I sent you an e-mail asking you to (sic) the minutes with Sheryl Flores in my absence on the morning of the 26<sup>th</sup>. As of 2:30 in the afternoon you had not yet done this.
  
- \* There was a task requested by Kris Wagner-Maclean with a due date of 12-15-09 (sic). Although you indicated that it was done, you did not give that to her. You were then out of work on the 15<sup>th</sup> and 16<sup>th</sup>. You offered on your return to do some additional work on the chart review. At that time you still had not presented the material initially requested. Although I do not have the date that this was completed Kris found a fundamental error in the original request she had asked you to review. She then needed to check over the entire task.

- \* On December 26<sup>th</sup> Allen Lukach, AODA coordinator, expressed concern about you not following a directive to continue working down the waiting list in order to get appointments for our contracted counselor.
- \* On 12-17-08, I received a e-mail from Sheryl Flores expressing concern about you not being at your work station and the need of Paul Klapatch to answer the phone call that came in. She observed you in the hallway talking with another staff member.
- \* On 1-9-09, following your finding errors and missing documentation related to the AODA waiting list, you acknowledged that you had not entered three phone calls you made. I also found a client who was referred by you two days in a row to the same program.
- \* On 1-9-09 you did not have a task completed that was give to you on the 5<sup>th</sup> by Cindy Zellner-Ehlers. This was to go out in the mail on that date and did not.

The final concern that I have is related to your difficulty setting appropriate boundaries with clients. This is seen when you have extended conversations with clients at the window even after we have had numerous discussions about this. On 12/19/08 you took an unstable female client shopping with you following her appointment. When I expressed my concern you continued to give rationalizations and excuses for this behavior throughout our conversation. Again today 1/13/09 I observed you talking at the front window with one of Dr. Miller's patients. When I went back to the mail box over ten minutes later you were still talking with the same client. This prevents you from doing the other work listed above.

In conclusion, I am continuing to see the same concerns that were listed in your PIP happen in an all too regular pattern. I have concerns about what step to take next as I am concerned that a suspension will cause you to fall further behind in your work and make it that much more difficult to perform the task required of the job.

Krebsbach informed the Grievant during the January 13 meeting that he remained concerned with her performance and that he would be consulting with Hendee on January 15, 2009, to discuss the Grievant's performance and conduct deficiencies.

The Grievant was scheduled for an investigatory interview to occur on January 16 with a follow-up interview on January 22, 2009. The Grievant brought Union representation to both investigatory sessions. Following the investigatory interviews, the County imposed a ten (10) work day suspension. The disciplinary letter read as follows:

RE: Disciplinary Suspension (ten (10) work days)

Dear Ms. Benzow:

The County's investigation is complete. It has been determined that you, on several occasions failed to meet performance expectations specifically laid out in the Performance Improvement Plan, which you signed on November 19, 2008. Your failure to perform the duties of Receptionist/Secretary are not acceptable and will not be further tolerated.

Just cause exists for disciplinary action. You are being placed on disciplinary suspension without pay for ten (10) work days. The disciplinary suspension will commence Monday, January 26, 2009.

Further deficiencies or problems will lead to additional disciplinary action up to and including discharge.

The purpose of this disciplinary action is three fold. First, it serves the interests of fairness by alerting you to the performance issues discussed on Thursday, January 22, 2009 and offering you an opportunity to improve your performance. Second, it should impress upon you that the deficiencies are not acceptable. Finally, it provides you notice of the consequences of continued unsatisfactory performance.

A copy of this letter has been furnished to Joe Guzynski, Staff Representative, AFSCME. This letter will be placed in your personnel file.



Please contact me if you have any questions or comments.

Sincerely,

/s/

Joseph A. Krebsbach  
Community Programs Director

Included with the letter was a Disciplinary Report and an Attachment. The Disciplinary Report identified the dates of violations as 11/26/08 and 12/26/08 - False Time Card; 12/1/09 - Insubordination; 1/2/09 - Attendance; 12/1/08, 12/17/08, 1/6/09 - Failure to log tasks; 12/3/08 - Non-productive work time; and 1/9/09 - Failure to complete assigned task. The offenses were described as:

False time card – Expected Behavior: Jane will check with her supervisor or a program manager and all overtime will be approved ahead of time. She will also not falsify time card but record the approved hours.

Insubordination – Expected Behavior: Jane will answer questions directly and honestly when asked.

Attendance – Expected Behavior: Jane will call supervisor as required in contract and PIP.

Failure to log task – Expected Behavior Jane will keep an ongoing list of requests made of her in order to make sure she remembers to complete the task.

Non-productive work time – Expected behavior Jane will not do personal business while on work time at her work station.

Failure to complete assigned work – Expected behavior Jane will complete tasks by the time that she has agreed to do so or has been designated to complete by management.

The Attachment to the Disciplinary Report read as follows:

- \* *False Time Cards* On 11-26-08 Jane worked until 9:00 without prior approval. She did not document this on her time card. After being told not to do this again she worked on 12-26-08 until 5:30. Again not

documenting on her time card. As a union employee she is not able to “donate” her time. The impact of this behavior is that Jane will cause the Door County Department of Community Programs budget to be over for personnel as there is no overtime built in. It also makes her supervisor concerned about her ability to complete her job within a (sic) 8 hr. work day.

- \* *Insubordination* On 12-1-09 (sic) when questioned about working past 4:30, Jane was evasive and then lied about this. It was not until she was confronted with a (sic) e-mail she sent with a time stamped on it that she admitted when she was here. The impact of this is on the trust in the supervisory relationship.
- \* *Attendance* Jane did not follow the union contract or the PIP to report (sic) her sick leave on 1-2-09.
- \* *Failure to log tasks* This was a requirement of the PIP. This happened on three occasions that I am aware of 12-1-08, 12-17-08, 1-6-09. These are spelled out in the PIP review also. The impact of this is that then Jane does not complete assignments. The purpose of the log is to help Jane stay organized. The overall impact is that staff members are unwilling to bring support staff appropriate tasks to Jane out of fear that they will not get completed.
- \* *Non productive work time* On 12-3-09 (sic) at 11:45 Jane was observed by this writer reading a jewelry catalog. David Hirn then observed the same ongoing behavior between the times of 11:52 and 12:20. I then observed this again at 3:19. The impact of this is that Jane is not completing her work. It also it sets a poor image for the department when consumers and community members see an employee who has time to read catalogs at work. It also creates resentment among other employees.
- \* *Failure to complete assigned tasks* The mail has not been picked up or delivered as specified in the PIP. This was originally set due to mail not going out at all on two occasions in the month prior to the PIP. It was reported to me that the mail did not go out at the regular time from the mail room and had that not been the case, our mail would not have gone out again. The impact of this is that we often have time sensitive

material in out mail and it not going out is not acceptable. On 1-9-09 the task assigned by Cindy Zellner-Ehlers was not completed on time. The impact was first on Mrs. Zellner-Ehlers was (sic) it appeared that she was not competent to run the meeting that she leads involving other agencies. It also reflects poorly on the department. Finally and most significant, as stated above, these types of incidents lead others to not use Jane in the role that a secretary if (sic) for. This leaves her at times without work while. (sic) It also leaves the other two support staff feel (sic) overwhelmed with work and resentful of Jane.

The Grievant indicated her disagreement with the disciplinary suspension, writing in the Employee Comment section:

I didn't think that I was making a false time card. I was trying to be a good employee and finish up some projects on my own time. I was not insubordinate on 12/1/08 when Joe asked me. I did not know the exact time and in a kidding manner I guessed a couple of times but I was not lying until he told me what time I left. The failure to log tasks the I did not know that it meant jobs that are small and ... (underline in original and remainder of statement not in record.)

The Union timely grieved the suspension on February 2, 2009 asserting that the County had violated Article 21 and all other articles of the labor agreement that may apply.

### 30 Day Suspension

The Grievant returned from her 10 day suspension on February 9, 2009. On that date, Krebsbach met with her and discussed the County's performance expectations. Krebsbach affirmed the expectations contained in the PIP and the Grievant's need to pay attention to detail.

The following day, Krebsbach offered the Grievant an extension of the PIP in a letter that read:

Dear Jane,

I would like to offer you the opportunity to have an extension in your Performance Improvement Plan. The PIP was set to end on February 28<sup>th</sup>. My suggestion would be that we extend the PIP until March 13<sup>th</sup>. The reason for this suggestion is that due to your recent suspension, you have lost some of the time originally set to help you work through your performance issues.

I continue to see the PIP as a time for the two of us to try and invest some extra time and energy to work through those issues that you have been having trouble with. I intend to continue to meet with you at least one time week to review the tasks that you are being asked to do, and your performance on these.

As indicated in the PIP, failure to improve performance will lead to further disciplinary action which at this time will be termination.

Please let me know your performance by checking the appropriate line, signing and returning.

...

The Grievant declined to extend the PIP. Krebsbach and the Grievant completed their weekly meetings as prescribed by the PIP. Upon the PIP expiration, they continued to meet to discuss the Grievant's performance, but on a less frequent basis.

The Grievant experienced a flare up of her fibromyalgia on Monday, March 16 and Tuesday, March 17. The Grievant stayed home on both of those dates until she felt better and arrived at work late. This was consistent with the instructions she had received from the County to stay home when she was not physically capable of performing her job.

On Wednesday, March 18, 2009, the Grievant awoke with pain due to her fibromyalgia. The Grievant decided she would go to work since she had missed the prior two days and she believed her symptoms would subside when she arrived at work. At 8:03 a.m., the Grievant called in and reported that she would be late because she could not find her glasses.

The Grievant arrived at her work station between 8:10 a.m. and 8:15 a.m. The Grievant immediately experienced discomfort due to the lighting in her work area even though the County had already installed a dimmer light consistent with the accommodations she requested per her FMLA paperwork. The Grievant also suffered from a headache and became nauseous. The Grievant attempted to log onto her computer, but was unsuccessful. The Grievant was trying to schedule a client with an appointment, but due to her inability to log into her computer, was traveling between Kathy Zak's office and the front desk where she was communicating with the client. The Grievant traveled back and forth between the front desk area and Zak's office approximately three times because she could not remember the date and time of the appointment.

Sometime near 9:20 a.m. the Grievant was approached by Sheryl Flores. Flores observed the Grievant with her headset on and a woman standing in front of the Grievant behind the glass window that separated the Grievant's desk from the waiting room area.

Flores moved toward the Grievant and noticed that the Grievant's eyes were closed. Flores then put her hand on the Grievant's back and said, "Jane," which startled the Grievant.

Flores, who was concerned about the Grievant and her ability to perform her responsibilities, first assisted the woman at the window and then sought out Krebsbach. Flores located Krebsbach in the hallway and reported her concerns. Krebsbach went to the front desk area to speak with the Grievant. Krebsbach indicated to the Grievant that "you don't look so good" following which the Grievant left her workstation and went home. Tr. Vol. II, p. 134.

The Grievant was called to an investigatory meeting on March 19, 2009 to address "allegations of poor work performance and following supervisor's directives." The Grievant brought Union representation during the investigatory session.

The County completed a Disciplinary Report Form on March 19 which suspended the Grievant for violation of "[u]nsatisfactory performance and failure to follow directive." The offense was described as:

Not answering phone calls and messages in a timely manor (sic), coming to work late, inability to perform essential job duties while at work Expected behavior is to answer phone calls in a timely manor (sic) and check any messages within 15 minutes. Arrive at work and be at work station prepared to perform job at scheduled work time. Jane will call in sick or go home when unable to perform essential job duties...

3-13-09 Jane did not follow through with checking her voice mail for over one hour.

3-18-09 Jane arrived for work fifteen minutes late for work. She only called after her shift was to begin. She was unable to perform her job duties when she was here. She was unable to check computer data to schedule an appointment and she was unable to serve the customer at the window.

These are both issues that we have discussed at length in the past.

The Grievant responded on the report writing:

On 3/18/09 I did call in per my phone at home 7:50 AM to report I would be late. I did not feel well but thought it would go away as it did earlier in the

week. I had stayed home on Mon and Tue and then felt better and went in. I thought if I went in I may feel better. I was stressed as Joe was standing behind me and a customer was up front and I wasn't feeling well but this scrutiny made everything worse. I was not able to concentrate having him (illegible).

The Grievant was issued a 30-day suspension on March 19, 2009, in a letter which read:

Dear Ms. Benzow:

The County's investigation is complete. It has been determined that you, failed to meet performance standards specifically laid out in your job description, and discussed on numerous occasions. Your failure to perform the duties of Receptionist/Secretary are not acceptable and will not be tolerated.

Just cause exists for disciplinary action. You are being placed on disciplinary suspension without pay for thirty (30) work days. The disciplinary suspension will commence effective immediately (Thursday, March 19, 2009.)

Further deficiencies or problems will lead to additional disciplinary action up to and including discharge.

The purpose of this disciplinary action is three fold. First, it serves the interests of fairness by alerting you to the performance issues and failure to follow directives discussed on Thursday, March 19, 2009 and offering you an opportunity to improve your performance. Second, it should impress upon you that the deficiencies are not acceptable. Finally, it provides you notice of the consequences of continued unsatisfactory performance and failure to follow directives.

A copy of this letter has been furnished to Joe Guzynski, Staff Representative, AFSCME. This letter will be placed in your personnel file.

Please contact me if you have any questions or comments.

Sincerely,

/s/  
Joe Krebsbach  
Community Programs Director

The Union grieved the discipline on March 27, 2009, asserting that the County had violated Article 21 and all other articles of the labor agreement that applied.

### Termination

The Grievant returned to work on April 20, 2009. Krebsbach met with the Grievant on that day and discussed her return to work and the County's expectations. The Grievant expressed to Krebsbach that she felt under pressure at work and further, that she felt "everything she does is being watched."

Between April 20 and May 19, Krebsbach received e-mails from staff members identifying what they viewed as the Grievant's performance deficiencies. Staff further articulated frustration with the Grievant's inability to completed tasks that she was asked to complete.

On May 21, 2009 Krebsbach sent an e-mail to all staff which directed them to submit work requests to the Grievant in writing rather than verbally. Krebsbach's e-mail to staff was the result of an accommodation request from the Grievant's physician.

The Grievant was directed to attend an investigatory meeting on May 21 to address allegations of, "[y]our poor performance. Specifically, failure to perform your duties as prescribed by your superior." Discipline did not immediately result from this investigatory session, but Krebsbach continued to received reports from staff identifying performance concerns including:

- \* On May 22, 2009, contract employee Perry Ackeret who performed OWI assessments for the County in April, May and June of 2009 directed a letter to Krebsbach. The letter reviewed an incident with the Grievant which occurred the prior day and also described his observation that the Grievant "seemed to have a difficulty time understanding questions and overall difficulty communicating" and "that overall J. seemed confused at times, very distant and overall a lot of difficulty in communicating..." Cty. Ex. 18.
- \* On June 2 Krebsbach received a note from Cindy Zellner-Ehlers, Developmental Disabilities Coordinator, which described the Grievant's behavior at an impromptu team meeting. Zellner-Ehlers reported that the Grievant had not completed the audit of timesheets and that when she was asked questions about the timesheet audit, "she appeared unable to track questions posed, unable to hear the responses provided given her lack of processing information, and misguided at times on a (sic)

expectations of what she was to do vs what she interpreted her charge to be which was above and beyond the scope of the assignment.” Zellner-Ehlers concluded the note indicating that she was “concerned about Jane’s performance and capacity to do the tasks assigned.” Cty. Ex. 15.

- \* On June 2 Krebsbach received a two page letter from registered nurse Margaret Rock. Rock reviewed her observations of the Grievant’s behavior the prior day. Rock expressed her concern with the Grievant’s performance and listed the negative affects she believed the Grievant’s performance had on the agency.

On June 2, 2009 the Grievant was required to attend a second disciplinary meeting to address allegations of “poor work performance and following supervisor’s and Human Resources directives.” Present at the meeting were the Grievant, Krebsbach, Hendee, and Union representatives, Brian Seigworth and Linda Viste.

The County informed the Grievant in a letter that it “deemed just and sufficient cause for discharge” existed and that she was being terminated effective June 6, 2009. The County listed the reasons for her termination as, “[f]ailure to perform your job duties...[a] sustained pattern of poor performance of your job duties...[n]eglect to follow work rules and procedures.” In addition to the letter, the Grievant was provided a Disciplinary Report with an Attachment. The County Disciplinary Report form read in relevant part:

**Violation:** Unsatisfactory Work Performance

**Type of offense and Expected Behavior:**

Poor client care, failure to follow directives, substandard work, not answering the phone

The form referenced an Attachment which described the incidents as follows:

Documentation for Disciplinary action on 6-5-09

- 5-20-09 Did not send letter to clients on waiting list as directed by Tina Baeten AODA Coordinator
- 5-21-09 Did not send correct mailing to families for Jean Severson
- 5-22-09 Left client sitting in waiting room for 30 minutes despite clinician asking if client was here.



- 6-1-09 Did not answer phone. Did not check messages or forward six different messages that were left between 10:30 and 12:30. (Similar incident 3-13-09)
- 6-1-09 Unable to put mail in correct mail boxes.
- 6-1-09 Did not inform Margie of client's arrival to see her.
- 6-1-09 Not returning a call to client Patrick P. to reschedule appointment with Dr. Miller
- 6-1/6-3 Incorrect dates on Clients invoice for rescheduling.
- 6-2-09 Unprofessional mailing to 22 clients sent out with several errors. (Name written incorrect, not legible, whited out and ripped and taped shut.)
- 6-3-09 Connected one patient to another patient when trying to transfer.
- Ongoing - Intermittent calling of clients to remind them of scheduled appointments.
- Not consistently informing case managers of patients scheduled appointments, which the case manager is required to attend.
- Approved minutes for April were not posted on Q drive as required following our May 20<sup>th</sup> board meeting.

The County followed this Disciplinary Report with a letter dated June 5, 2009, directed to the Grievant's attention which read as follows:

Dear Ms. Benzow:

The County's investigation is complete. It has been determined that you, failed to meet performance standards specifically laid out in your job description, and discussed on numerous occasions. A determination has been made to terminate your employment with Door County effective June 5, 2009. The bases (sic) for this determination include:

- A. Failure to perform your job duties
- B. A sustained patter of poor performance of your job duties.
- C. Neglect to follow work rules and procedures.

Such is deemed just and sufficient cause for discharge.

You must immediately, return all items of Door County property to the Human Resources Department.

You may appeal this action as set forth in the collective bargaining agreement or as otherwise provided by law.

A copy of this letter will be furnished to Joe Guzyinski (sic), Staff Representative, AFSCME. This letter will also be placed in your personnel file.

Please contact Kelly Hendee if you have any questions or comments.

Sincerely,

\\s\  
Joe Krebsbach  
Community Programs Director

The Union timely filed a grievance dated June 11, 2008 challenging the termination on the basis that it violated Article 21 of the parties' collective bargaining agreement. The parties agreed to expedite the processing of this grievance and consolidate it with the afore-referenced grievances.

Additional facts, as relevant, are contained in the DISCUSSION section below.

### ARGUMENTS OF THE PARTIES

#### County Initial Brief

The County maintains that there was just cause to discipline the Grievant. The County recognizes and accepts its burden to show that it had just cause to suspend and discipline the Grievant. The evidence supports the County's actions and therefore, the grievances must be denied.

Relevant to all three cases is the manner in which just cause is analyzed. The County advocates the use of the majority view which contains two elements. Those include:

1. Did the employer prove that the employee engaged in the conduct for which she was disciplined?

2. Did the employer establish that the discipline imposed was appropriate in light of all relevant facts and circumstances?

The County reminds the arbitrator that when an employee has engaged in conduct meriting discipline, the arbitrator should not second-guess the employer unless the employer has violated some specific provision of the labor agreement or the employer has abused its discretion.

Moving to the evidence, the County offered contemporaneous written notes and reports to support its case. Use of such notes is common in arbitration hearings. The admissibility of these notes and reports has considerable support and therefore the Union's evidentiary concerns are usurped by the substantial trustworthiness and reliability of the notes and reports.

#### 10 Day Suspension

The Grievant had a disciplinary history prior to the January 23, 2009 suspension. The County had identified conduct and performance concerns and engaged in various methodologies to address those concerns. Ultimately, the Grievant failed to heed the County's warnings and directives.

The County placed the Grievant on a Performance Improvement Plan (PIP) on November 19, 2008. The PIP identified clear, precise and straightforward expectations for the Grievant. The Grievant knew what was expected of her. The PIP put her on notice that if she failed to improve her performance and conduct, she would be disciplined. Krebsbach met with the Grievant on a weekly basis and sometimes more often to discuss conduct and performance issues. He identified his expectations and they discussed ways for her to meet the expectations. Krebsbach also indicated to the Grievant that consequences would result if improvement did not occur. The Grievant was allowed sufficient time to demonstrate acceptable conduct and performance, but she was either unable or unwilling to improve.

The Grievant was issued a disciplinary letter and the County completed a disciplinary report. The letter and report are complementary, not contradictory. The discipline was supported by facts and circumstances and in light of the prior disciplinary sanctions, a 10 work day suspension was appropriate.

#### 30 Day Suspension

The Grievant was disciplined for failing to retrieve voice mail messages, arriving late for work and for her inability to perform the essential functions of her position. The County provided the Grievant a thorough and complete documentation of the facts and circumstances giving rise to the discipline.

Focusing on the Grievant's work performance on March 18, 2009, it is clear that the Grievant exhibited either poor judgment and insight, or completely disregarded a County directive when she reported for work. The Grievant knew she was not to report to work or was to go home if she was unable to perform the essential functions of her position. When she reported for work, she was in a lethargic state and was unproductive. Her presence interfered with the performance of her co-workers, adversely affected the provision of services to clients, and potentially harmed the credibility and reputation of the agency.

The 30 calendar day suspension was not excessive, disproportionate to the offense, or an abuse of management discretion.

### Termination

The Grievant was terminated effective June 5, 2009, for just cause. The County had given her a reasonable opportunity to meet performance and conduct standards and she failed to do so. This is a case of an employee who could not handle the essential functions of her position.

The County was engaged in a sequence of progressive discipline with the Grievant. In each instance, she failed to make any real progress in correcting her performance or conduct. The severity of the discipline imposed – discharge – was neither disproportionate nor an abuse of management discretion. Rather it was reasonably related to the seriousness of the Grievant's proven unsatisfactory job performance and poor conduct in view of all previous discipline.

The County had just cause to suspend the Grievant on January 23, 2009; to suspend the Grievant on March 19, 2009; and to discharge the Grievant on June 5, 2009. The three grievances should be denied.

### Union Initial Brief

The County violated the just cause standard of the collective bargaining agreement when it issued the Grievant a 10 day suspension, a thirty calendar day suspension and a termination notice.

### 10 Day Suspension

The County's decision to issue the Grievant a 10 day suspension is not supported by the facts, does not comport with procedural due process and constituted double jeopardy. Additionally, the penalty imposed was inordinately harsh and severe.

The Grievant was placed on a mandatory Performance Improvement Plan (PIP) and was told she would be disciplined if she failed to cooperate with the PIP. The PIP mandated that she attend regular meetings with Krebsbach. The Grievant was never informed that the meetings could serve an investigatory purpose culminating in discipline. Rather, she was led to believe that the meetings were designed to help her improve her performance. The PIP meetings channeled the discussion away from her performance to issues in which she was entitled to the protections afforded to employees facing the prospects of discipline. Krebsbach deceptively did not announce or otherwise inform the Grievant that he intended to use the information gained during those meetings as the basis for future discipline. Had the Grievant known Krebsbach the PIP meetings were investigatory, she would have exercised her right to Union representation. The County violated the Grievant's WEINGARTEN rights.

The County knew that the Grievant had stayed late at work on November 26, 2008, and did not record the hours beyond 4:30 p.m. on her time card. Her time card was not falsified nor did she attempt to deceive Krebsbach. Rather, the Grievant intended to donate the time to the County and was never told that she could not do so. She only intended to get her work done. Krebsbach did not communicate to the Grievant that he had a serious or genuine concern over the accuracy of her time card. The County waited until January 23, 2009, to discipline the Grievant. This delay was unreasonable, without justification and therefore punitive. The Grievant was further prejudiced by the unreasonable delay in that she reoffended on December 26, 2008.

The County tacked on an insubordination charge to the November 26 time card issue. When the County asked the Grievant on December 1 if she worked past 4:30 p.m., she responded inaccurately, but there was no intent to deceive Krebsbach or the County. The Grievant was disciplined because she lied to the County. The County already knew she has stayed later as evidenced by e-mails she sent to Krebsbach after 8 p.m., therefore it had no legitimate reason to ask the Grievant whether she stayed past her quitting time.

The County subjected the Grievant to double jeopardy when it disciplined her twice for staying after her ending time on November 26. When the Grievant met with Krebsbach on December 1, he documented that he informally counseled her not to stay late unless she was responding to a telephone call or assisting a client at the window. That informal discipline was elevated to a suspension on January 23. The County did not seek new information between December 1 and January 23.

The Grievant stayed past 4:30 p.m. on December 26 to respond to incoming calls concerns prescriptions requests for Dr. Miller. The Grievant had been given permission earlier by Krebsbach to stay if she was assisting a client. The Grievant did not document the actual ending time on her time card because she did not know the County expected her to document actual time worked even if she was not expecting compensation for such time.

The Grievant was ill on January 2, 2009. The labor agreement requires employees to notify the Department Head or their immediate supervisor of their intent to use sick leave at least one-half hour prior to their normal starting time. The County expected the Grievant to not only notify her supervisor, but also make contact with a coworker. The Grievant followed the protocol and made the most important telephone call – she telephoned coworker Karas - and told her that she was not feeling well and would not be at work. The County unreasonably placed an additional burden on the Grievant to make two calls. Krebsbach's notes establish that Karas informed him of the Grievant's illness and therefore, the County's interests were satisfied.

It is unreasonable to discipline the Grievant for not maintaining a task log. Not only was the Grievant the only employee expected to complete a log, but neither Krebsbach nor the PIP provided specific instructions or expectations as to the structure of the log. Instead, it was a tool that was continuously being revised and discussed. On December 1 during a PIP meeting, the Grievant was counseled to keep the log, yet she was disciplined on January 23 for the same infraction. She was further prejudiced by the delay because she also received discipline for failure to log tasks on December 17 and January 6. The County stacked these infractions in order to impose a more severe penalty on January 23.

The County observed the Grievant looking at a jewelry catalog during work time on December 3. The magazine was given to her by another employee whose daughter was selling the items in the catalog. No one approached her and advised her to cease looking at the catalog. Instead, the County waited until January 23 to confront the Grievant. The delay was unreasonable and unjustified.

The Grievant was disciplined for failing to complete tasks including picking up, distributing and taking out the mail and. She was also disciplined for not preparing and distributing a mailing for Cindy Zellner-Ehlers on January 9, 2009. The evidence does not support either assertion. The County could not specify a time or date in which the mail was not properly distributed. As for the Zellner-Ehlers mailing, there was a complete lack of communication and the County unreasonably blamed the Grievant for the miscommunication. Lacking evidence of wrongdoing, just cause does not exist for these infractions.

The County's decision to imposed a 10 day suspension violated the just cause standard. The Union asks that the grievance be upheld in whole or in part and the Grievant made whole.

### 30 Day Suspension

The County's decision to issue the Grievant a 30 calendar day suspension is not supported by the facts. Lacking evidentiary support, the County cannot meet the just cause standard.

The County concluded the Grievant had not checked her voice-mail for over one hour on March 13. The Grievant was not confronted with the accusation of not checking the voice-mail messages immediately thereafter or even during the disciplinary process. Instead, the County waited a week and addressed the messages in an investigatory meeting on March 13. If checking voice mail is a serious infraction, it is unreasonable to wait a week. Moreover, the County did not allow the Grievant or the Union the opportunity to hear the voice mail messages.

The Grievant arrived 15 minutes tardy for work on March 18. She had no prior infractions for tardiness and the County discipline policy identifies a verbal reprimand as the appropriate level of progressive discipline for a first offense.

The County cannot meet its burden in establishing just cause when it disciplined the Grievant for being unable to perform her work duties due to illness. The Grievant became ill after she arrived at work on December 18. She was unable to focus and wanted to go home, but was unable to leave until she obtained Krebsbach's permission. Once Krebsbach arrived, he immediately noticed that there was something seriously and medically wrong with the Grievant, yet he reacted irresponsibly and insensitively. The County had little concern for the Grievant or her well-being and failed to recognize the Grievant's attempts to perform her job duties despite her physical distress.

The County imposed a very severe 30 calendar day suspension. This was punitive, not corrective, and therefore violated the County's Progressive Discipline Policy. The discipline lacked just cause, should be removed from her file, and she should be made whole.

### Termination

The termination lacked just cause.

Tina Baeten, AODA Coordinator, asked the Grievant to prepare and distribute a mailing on May 20. The Grievant prepared the requested letters and mailed them out, but did not enter the fact that they had been mailed out in the client records computer software system. Baeten did not believe the mailing had been sent out since it had not been documented as complete. There is no evidence that the mailing was not sent.

The Grievant was asked by Jean Severson, Case Manager, to send out a mailing. Severson expected a letter, the form and a self addressed envelope to be sent to a listing of clients, but Severson did not provide the Grievant with the form. Had the Grievant been given the form, she would have included it in the envelope. It was not the Grievant's responsibility to catch Severson's error.

The Grievant did not leave a client sitting in the waiting room for 30 minutes on May 21. Rather, Clinician Perry Ackeret left the client sitting in the waiting room for 30 minutes. Karas was working at the Grievant's work station from 4 p.m. to 4:10 p.m. and she attempted to reach Ackeret and he was not in his office. Both the Grievant and Karas were unsuccessful in reaching Ackeret. Ackeret gave differing accounts as to what happened that day; first, he said he came to the desk at 4:15 to ask about his client and then later, he said he called the desk to ask about his client. The County's charge, that the Grievant left the client for 30 minutes, is not supported by the evidence.

The Grievant was disciplined for not answering the telephone and failing to notice voice mail messages for a two hour period on June 1. It was insufficient for the County to believe they could just claim that there were voice mails that the Grievant left unanswered, but never allow her to hear the messages. There is no proof that voice mail messages even existed.

As to the claim that Grievant put mail in the wrong mailboxes or that she failed to inform Registered Nurse Marjorie Rock that her client had arrived or that she did not return a call to an unknown Patrick P. or that she does not make reminder calls or inform case managers of client appointments, the County hasn't a shred of proof to support these claims. The County did not have any specific dates, pieces of mail, or specific mailboxes in which there was "incorrect" mail. The County did not indicate the client or clients that the Grievant greeted and did not direct to Rock. The County does not know when Patrick P. called or who it was that he spoke to about his appointment and does not have a listing of calls the Grievant allegedly failed to make. There is no evidence to support the County's claims that the Grievant engaged in wrongdoing.

The Grievant admitted that she made errors on a couple of client invoices. Just as Krebsbach incorrectly identified the date on the June 5, 2009 disciplinary report, the Grievant is human and susceptible to making errors. This is not a terminable offense.

The evidence does not establish that the County has met the just cause standard when it terminated the Grievant. The termination should be overturned and/or reduced and the Grievant made whole.

### **County in Reply**

The Grievant's version of the facts leading up to the three disciplinary sanctions is vastly different than the recollections of Krebsbach, the other witnesses, and the documentation. When evaluating credibility, the witness's interest in the outcome and her perceptions must be taken into consideration. Further, there were numerous witnesses that testified and corroborated the sequence of events as the County set forth. The Grievant's testimony was a compilation of denial, shifting responsibility, and offering up excuses to mitigate her conduct, poor performance and non-performance.



The County has offered facts and circumstances that, when pieced together, paint a picture of the Grievant's poor performance and conduct. The County has met its obligation of providing a preponderance of evidence which supports each of the three disciplinary actions.

#### 10 Day Suspension

The Union's claim that the Grievant's WEINGARTEN rights were violated is misplaced. Counseling sessions about performance deficiencies do not trigger WEINGARTEN. At no time did the Grievant request union representation and therefore she waived any rights which she otherwise would have had. Moreover, the Grievant was on notice that should her performance deficiencies continue, she was subject to disciplinary sanctions. Finally, when the Grievant was subjected to a investigatory meeting, specifically on January 16, 2009 and January 22, 2009, she asked for and was represented by a Union official.

As to the Union's double jeopardy argument, the Grievant's counseling sessions including those which occurred due to the PIP, were not disciplinary in nature and therefore she was not subject to discipline for the same offense. The delay in imposing discipline was of the Grievant's making. The County offered the Grievant time, during the PIP, to improve her performance. When the PIP was complete and her performance had not improved, the County proceeded to disciplinary action.

The Grievant should have been fully aware of the County's expectations. The Grievant had held her position as Receptionist/Secretary since May of 1997. The job did not change in any meaningful way during those 12 years. The Grievant should not have had any difficulty understanding the basic duties and responsibilities of her position and if she had questions, it was incumbent upon her to ask.

#### 30 Day Suspension

The Grievant's condition of fibromyalgia is irrelevant and peripheral to the disciplinary issues. Any claims related to her alleged disability are more properly raised in alternate forums.

The County was unable to provide the Grievant and/or the Union the original voice mail messages. This was because another bargaining unit member reasonably retrieved, transferred, and deleted the messages. The County did not intentionally destroy or deny the Union the messages, they just were not retained.

The Grievant arrived late for work on March 18. The Grievant's testimony as to her condition and ability to perform her work are directly contradicted by Krebsbach, Flores and the documented evidence. The Grievant knew she was not to report to work if she was unable to perform her job, but did so anyway.

### Termination

The Union's contention that the County was obligated to contact each client to ascertain whether or not they received the Baeten letter is absurd. The Grievant knew the County procedure was to enter activities related to a client into TCM. The Grievant was assigned a routine and unsophisticated task and she failed to complete it. She did not enter the letters as being sent and therefore it was reasonable to conclude they were not sent.

The evidence presented and all reasonable inferences that may permissibly be drawn support the conclusion that the County had just cause to impose three disciplinary actions on the Grievant. The grievances should be dismissed.

### Union in Reply

The Union disagrees with the County's analysis, arguments and conclusions and addresses each disciplinary sanction individually.

### 10 Day Suspension

The County enumerated twelve separation violations in its January 23, 2009, letter of discipline. The County is limited to those identified complaints and is forbidden from adding new charges to buttress its case. REXAM GRAPHICS, 111 LA 1176, (Gangle, 1998). New allegations were present by the County at hearing. The Union was never informed of the allegations much less given the opportunity to investigate them. The County's case must stand or fall on the reasons cited at the time of termination and therefore the additional allegations must be ignored.

The County failed to follow the progressive discipline guidelines as contained in Article 21 of the labor agreement when it imposed a 10 day suspension. Article 21 states, "[s]uspensions shall not be for less than two (2) days, but for serious offense or repeated violation, suspension may be more severe." The parties intended to separate minor misconduct offenses which warrant a minimum two day suspension from those major offenses that are serious or severe. The misconduct alleged by the County is not serious. Had it been serious, the County would not have waited two months after the infractions to discipline the Grievant. The County was contractually obligated to continue progressive discipline with a two day suspension and only after that was imposed could the County proceed to a more lengthy suspension.

The ten day suspension imposed was unduly harsh and did not serve a legitimate County interest. The County wanted the Grievant to change her behavior. Something less than two weeks without compensation would have communicated to the Grievant that she needed to modify her behavior. The lengthy suspension was unreasonable, punitive and violated the just cause standard.

As to the County's assertion that the Grievant was conniving and planned the days she stayed late to coincide with Krebsbach's absence, that is incorrect. The County is just attempting to stretch the facts in an attempt to paint the Grievant in a bad light.

### 30 Day Suspension

The County based the suspension on its belief that the Grievant was sleeping at her desk on March 18, 2009. The Grievant was not sleeping – she felt ill and tilted her head downward with her eyes closed. Her behavior was typical to someone who suffers from severe headaches.

The Grievant did not know that she would become ill at work. Had she known, she would not have reported for work. The County maintained that the Grievant's absence from work had a detrimental effect on her co-workers, yet it similarly argued that the Grievant should have either stayed home or left work as soon as she became aware she was ill which also would have negatively impacted the County. The Grievant stayed at work in order to obtain Krebsbach's permission to go home. It was unreasonable for the County to discipline the Grievant for her attempt to work.

### Termination

The County argued in its initial brief seven "post-disciplinary" performance inadequacies which were not a part of the termination. As more fully explained in the section addressing her ten day suspension, the County cannot supplement its termination with additional reasons.

For all of the above reasons, the Union respectfully requests the Arbitrator affirm the grievances, reinstate the Grievant and make her whole for all lost wages and benefits.

## DISCUSSION

The Union challenges the County's decisions to discipline the Grievant on the basis that just cause was lacking. The Union further posits that the discipline should be overturned as a result of due process violations including failing to allow the Grievant a Union representative and double jeopardy.

The County disciplined and ultimately terminated the Grievant for her inability to perform the essential functions of her Receptionist/Secretary position. Incompetence, lacking misconduct, is the inability of the employee to perform at a minimum level of acceptability after having tried to do so. “A charge of incompetence reflects an assessment by a qualified observer that the employee is incapable of improving.” Brand, *Discipline and Discharge in Arbitration*, (1998) p. 135. While this would generally be characterized as a straightforward incompetence case, the County has asserted the Grievant’s incompetence in the form of various mistakes, deficiencies, and misjudgments. Given this, analysis will follow the normal requirements of just cause.

The Union relies on Arbitrator Richard McLaughlin’s examination of just cause as articulated in BROWN COUNTY, Case 655, No. 60134, MA-11535 (2002) wherein he stated that, “...first the Employer must establish conduct by the Grievant in which it has a disciplinary interest. Second, the Employer must establish that the discipline imposed reasonably reflects the interest.” The County similarly advances this methodology of just cause. The County has an interest in the Grievant satisfactorily performing the essential functions of her position; therefore I will focus on whether there is sufficient evidence to establish that the Grievant is guilty of the alleged conduct and whether the penalties imposed were reasonable.

The County meted out three disciplinary sanctions to the Grievant: a 10 day suspension; a 30 calendar day suspension; and finally, termination. These cases were consolidated and the parties agreed and understood that the undersigned was expected to address each sanction individually and ultimately in concert with one another. Thus, if one disciplinary action is found to be lacking just cause or the sanction imposed too severe, then there will be a direct impact on the subsequent disciplinary actions. I will therefore start with the 10 day suspension, proceed to the 30 calendar day suspension, and finally, address the termination.

### **10 Day Suspension**

The Grievant was disciplined for her “failure to perform the duties of Receptionist/Secretary.” The County attached a document which further identified the deficiencies and enumerated six different infractions that occurred between November 26, 2008, and January 9, 2009. Each infraction will be addressed separately.

False Time Card

The Grievant was disciplined for not recording her correct ending times on November 26 and December 26. On both dates, Krebsbach was away from the office. The Grievant admitted that she stayed and worked beyond her ending times on the two days and further, that she did not correctly record her work time on her time cards.

The Union argues that the Grievant believed she could “donate” her time to the County. The County did not specifically inform the Grievant in her PIP that she was not allowed to stay beyond her ending time, but Krebsbach testified that the Grievant was informed that she was expected to obtain “express approval” if she desired to work beyond her regular working hours. Tr. Vol. I, p. 80. The Grievant had previously been compensated overtime for work performed outside of her normal work hours and there is no evidence in this record to suggest that it was reasonable for the Grievant to believe that the County allowed employees to “donate” time. Moreover, the Grievant is a twelve year employee who knew or should have known that she was expected to truthfully record her work hours.

Even if I were to accept that the Grievant did not know, definitively, on November 26 that she could not “donate time,” she again stayed late on December 26, another day that Krebsbach was out of the office. The Grievant testified that she stayed until 5:30 p.m. and that she “had gotten some – like two or three phone calls for Dr. Miller from pharmacies and I think a patient, and I had to – I wrote out the messages for her and put them in her mailbox and then there was some other paperwork ...” Tr. Vol. II, p. 21. The Grievant only had permission to stay beyond the end of her work day to provide direct service – either in person or by telephone – to a client. The Grievant knew that she was expected to leave at the end of her work day and she did not do so. The Grievant’s testimony that she again believed that she could “donate” her time is incredible, given Krebsbach’s clear directive on December 1 that “donating” her time was not allowed and that she was expected to accurately record her time.

Insubordination

The County charged the Grievant with insubordination for her responses during her December 1 PIP meeting when she was asked what time she left work on November 26. As previously addressed, the meeting on December 1 was a PIP performance review and not an investigatory session. The Grievant responded to this charge on January 23 on the Disciplinary Report Form indicating that she was not insubordinate and that “when Joe asked me I did not know the exact time and in a kidding manner I guessed a couple of time but I was not lying...” Ex. L. The evidence supports the Grievant’s characterization of her response – that she was kidding and not untruthful. While I accept that the Grievant was hard to pin down and less than candid in responding to Krebsbach, at no time did she knowingly, willfully and with deliberation, refuse to cooperate with Krebsbach which is required in order to deem her to

having been insubordinate. Brand, *Discipline and Discharge in Arbitration*, (1998) p. 177-186.<sup>4</sup>

### Attendance

The Grievant testified that on the evening of January 1, 2009, she had just had a tooth pulled and was taking pain medication. The Grievant determined that she would be unable to report for work the following day, January 2, and called a co-worker Karas. Karas confirmed that she received a telephone call from the Grievant informing her (Karas) that the Grievant would not be reporting to work the following morning. The Grievant admitted that she knew she was expected to contact Krebsbach if she was unable to report for work, but testified that she “thought Joe was on vacation.” Tr. Vol. II, p. 25.

The Grievant’s PIP specifically stated that she was expected to contact Krebsbach “or a coordinator in my absence...” if she was unable to report to work. The Grievant testified that she knew this expectation just like she knew that the PIP directed her to secure a co-worker to cover for her absence. The Grievant did not call Krebsbach or another coordinator before her absence on January 2 which was inconsistent with the PIP directive.

### Failure to Log Tasks

The Grievant had a history of not knowing what work she was asked to do, what the work she was asked to do entailed and when she was expected to have the work completed. As a result, Krebsbach discussed and ultimately directed the Grievant to maintain a work task log. Krebsbach’s directive followed the Grievant’s voluntarily agreement to maintain the task log, but it is fair to say that the Grievant’s decision to voluntarily comply was due, in part, to Krebsbach’s insistence.

The record establishes and the Grievant admits that she did not regularly maintain the log. Interestingly, the Grievant acknowledged that the log was a useful tool for her to complete her work duties. Had the Grievant maintained the log, it is more likely than not that she would have known when tasks were due and her ability to complete those tasks would have been enhanced.

The Union argues that the County’s decision, to require the Grievant to maintain a log when no other employee had a similar expectation, was unreasonable. Further, that maintaining the log was overly time consuming and inhibited her ability to perform her duties. I disagree. There are many employees that complete time or task logs as part of their daily

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<sup>4</sup> The Union argued that the Grievant’s WEINGARTEN rights were violated when she was questioned without Union representation being present. Since I have concluded that the insubordination charge lacked merit, I decline to address the due process argument..

work. These time and task logs are completed for numerous reasons – billing, patient records, etc. – and while there may be an initial time investment, it also provides structure to a disorganized employee. I do not find merit to the Union’s argument.

*Non-Productive Work Time*

The County disciplined the Grievant for viewing a jewelry magazine during work time. The Grievant testified that she was given a jewelry magazine by Jean Stevenson during the morning of December 3. The Grievant does not deny that she looked at the magazine “periodically” throughout the day. Tr. Vol. II, p. 20. Later in the day, Severson brought the Grievant an order form which the Grievant completed during working hours at her workstation.

The evidence establishes that the Grievant engaged in personal business – looking at the magazine – during the work day. The Grievant admitted that she knew she was subject to increased scrutiny due to her work performance and further, that she knew she should not have been viewing the magazine during work time. The Grievant was guilty of this charge.<sup>5</sup>

*Failure to Complete Assigned Tasks*

The County identified two tasks in support of its assertion that the Grievant failed to complete assigned tasks. Those included her failure to timely pickup and deliver mail and her failure to complete a task on January 9, 2009, for Cindy Zellner-Ehlers.

The Grievant was expected to pick up the mail before 11:30 a.m. and take the out going mail to the mailroom by 3:15 p.m. daily. The County did not identify any dates in the January 23 disciplinary documents nor at hearing as to exactly what dates the Grievant did not pick up and/or take out the mail as directed. There is insufficient evidence to conclude that the Grievant did not complete this task.

The record establishes that during the week of January 5, 2009, Zellner-Ehlers asked the Grievant to make five copies of a packet of documents, prepare a matrix and memorandum, and mail the documents to four area special education educators by Friday, January 10, 2009. The Grievant did not timely complete the mailing.

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<sup>5</sup> The record fails to address whether the County addressed Severson’s non-productive work time on December 3, 2008. Given that the Union has not asserted that the Grievant was selectively disciplined for this behavior, I conclude that the totality of the Grievant’s performance and conduct prompted this portion of the disciplinary sanction.

The Grievant first testified that she did not know that Zellner-Ehlers expected the documents to be mailed by that Friday and although she had timely completed the task, she was unable to locate Zellner-Ehlers in order for Zellner-Ehlers to approve the work. Later during cross-examination she stated that she knew that Zellner-Ehlers wanted the project typed by Friday, but that she did not know that it was supposed to be mailed out by Friday. Tr. Vol. II, p. 48. Further, she testified that she “looked for Cindy,” that she had “gone down there a couple times,” and that she called Zellner-Ehlers on the telephone a couple of times, but did not leave a voice mail message. Tr. Vol. II. p. 31, Tr. Vol. II., p. 55. The Grievant’s testimony is contradictory, self-serving, and incredible. The Grievant knew that something – either a mailing or the typing – was expected to be completed by Friday and she did not fulfill the expectation.

Zellner-Ehlers did not approach the Grievant to inquire as to the status of the project. Had she done so, she may have been surprised if indeed the Grievant had completed the task as she (the Grievant) testified. If the task was incomplete, Zellner-Ehlers would have, at a minimum, known its status. It is curious that if this was such an important mailing that would harm the reputation of the agency if it was not timely sent out, why it was that Zellner-Ehlers did not followed up on its status. This failure to work with the Grievant to complete the task is revealing in that it not only diminishes the importance of the mailing, but it also provides insight into the isolation which the Grievant was experiencing.

*Was the Grievant subjected to double jeopardy?*

The Union argues that the Grievant was subjected to double jeopardy when the County counseled her for performance deficiencies during PIP meetings and then later disciplined her for the very same infractions.

Industrial due process protects an employee from double jeopardy. INTERNATIONAL HARVESTER CO., 16 LA 616 (McCoy, 1951). The principle of double jeopardy bars an employer from increasing a penalty after a final decision on the merits has been made for the impropriety.

There is no question that when the Grievant walked away from the December 1, 2008 PIP meeting she had every reason to believe that the concerns raised by Krebsbach regarding November 26 would never be discussed again. Krebsbach knew that the Grievant had worked beyond her work hours before the meeting, yet at no time during the December 1 conversation was discipline discussed. Instead, the Grievant was informed she was not allowed to “donate” her time to the County and that in the future, she was expected to correctly record the hours she worked on her time card. The County therefore counseled her on this date and its decision to impose a suspension for the same charge violates due process.



### Conclusion

The County disciplined the Grievant for failing to perform the functions of her position. The County cited multiple performance deficiencies and one misconduct violation. The misconduct violation, insubordination, is the most serious of the charged offenses and was not supported by this record. The record also disallows the charge of failing to complete the task of mail collection and distribution. The evidence further establishes that the County violated the Grievant's due process rights when it disciplined her a second time for a time card violation.

The County followed a progressive discipline in that it transitioned from lesser sanctions, oral warning and written warning, to the more serious sanction, suspension. While I do not fault the process that the County followed, the County's decision to start with a 10 day suspension was excessive. I fully recognize and adhere to the philosophy that an arbitrator should not substitute her opinion for that of management when determining a proper penalty, but in this situation, the length of the suspension is so severe and unreasonable that it must be modified. I look to the decision of Arbitrator Daniel F. Jennings who stated:

In disciplinary matters, a penalty that is markedly too harsh for the offense is unreasonable and an abuse of managerial discretion. A penalty that flows from an incomplete analysis of both the misconduct and the individual employee is arbitrary.

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The 10 days suspension is reduced to two days.

### **30 Day Suspension**

The Grievant was suspended for thirty calendar days on March 19, 2009 for failure "to meet performance standards specifically laid out in your job description and discussed numerous occasions." The disciplinary documentation further described specific incidents including:

3-13-09           Jane did not follow through with checking her voice mail for over one hour.

3-18-09 Jane arrived for work fifteen minutes late for work. She only called after shift was to begin. She was unable to perform her job duties when she was here. She was unable to check computer data to schedule an appointment and she was unable to serve the customer at the window.

These are both issues that we have discussed at length in the past.

Incident on March 18, 2009

While the County included two infractions in the disciplinary action, it was the incident which occurred on March 18, 2009 that prompted the County to initiate disciplinary action. As a result, that infraction will be addressed first.

On March 18, 2009, the Grievant called in and informed the County that she would be late because she could not find her glasses. The Grievant arrived at work by 8:15 a.m.

Sometime between her arrival and 9 a.m., a client approached the front desk area window and communicated to the Grievant that she wanted to complete the operating while intoxicated assessment paperwork. The assessment paperwork requires that the client complete a form, schedule an appointment with the AODA counselor, and pay a fee. In attempting to schedule the client's appointment, the Grievant was unable to log into her computer. As a result, the Grievant went to co-worker Kathy Zak's office, to obtain an appointment. Zak logged into her computer and verbally provided the Grievant with an available appointment. The Grievant returned to the front desk, but needed to call Zak to confirm the appointment time because she had forgotten. The Grievant also had difficulty collecting the money and was not responsive to the client's needs.

Sheryl Flores, County Community Support Program Director, was scheduled to sit in on a meeting with a client that morning. At 8:30 a.m., she spoke by telephone with the Grievant and asked the Grievant to telephone her (Flores) when the client arrived. At 9 a.m., Flores went to the front desk to see if her client was in the waiting room. When Flores arrived at the front desk, she saw a woman standing at the window and the Grievant was in her chair with her headset on. Flores testified that the Grievant's eyes were closed. Flores put her hand on the Grievant's back and said her name. Flores testified that she startled the Grievant. Flores described the Grievant's physical condition when she addressed her as "sleeping or had dozed off at the window" and she "appeared overly sedated." Tr. Vol. II, p. 119. Flores

further indicated that the Grievant's speech was slow and a little slurred and that the Grievant appeared "very, very sleepy, maybe sedated." Id. Flores recalled that the Grievant told her she was unable to "get into her computer." Id. Flores documented her observations of that morning as follows:

9:10 Jane eyes closed, client at window. Sheryl tap on the back and asked if John was in with M.D. + pointed to client at window - unable to get into her computer. Appears overly sedate.

/s/

Sheryl Flores, LCS

As a result of her observations, Flores sought out Krebsbach and reported her concerns.

Krebsbach testified that he became aware of an incident at the front desk area from Flores who approached him in the hallway at 9:20 a.m. Krebsbach went to the front desk and observed the Grievant. Krebsbach's notes from March 18 describe the situation as follows:

...I went to check on the situation and Jane was very slow and lethargic to answer. She was trying to complete a receipt and was having difficulty with this task. She was scribbling on the receipt after the carbon section was given to the client. I asked Jane what she was working on and after a long pause, she stated, "things." I assisted her in getting the client a receipt as it appeared that she had forgotten the client was at the window. Jane had yet to log into the computer. She stated she was having problems with the computer. When I told her that she did not look well, she stated, "I though (sic) I was good enough to come in." Jane had a "thick speech", was having difficulty tracking and was disoriented. I then informed her that she needed to go home immediately to which she responded, "I thought I could do it". I again informed her that she needed to go home. She then offered to come in and do the minutes for this evenings (sic) board mtg. I assured her we would get those taken care of.

The Grievant testified that she was experiencing a flare up of her fibromyalgia during the week March 16, 2009. The Grievant had stayed home from work in the mornings on Monday and Tuesday, but felt better on Wednesday and decided to go to work at her starting time, partly due to the scheduled Board meeting that evening and her responsibility to take minutes at it. When the Grievant arrived at work, she immediately was impacted by the bright lights in the office resulting in a headache and feelings of nausea. The Grievant testified that she started to ache, feel stiff and was unable to focus. As a result, she concluded she needed to go home and at 9:30 a.m. started to look for Krebsbach at which time he approached her

and inquired as to how she was feeling. The Grievant testified that after Kresbach approached her, she immediately told him that she needed to go home.

The Grievant admitted that when Flores approached her, she (the Grievant) had her elbows on her desk, with her head resting her hands and further, that she was startled when Flores touched her back. The Grievant acknowledged that she was unable to perform her work duties that morning and that she knew that she was not to report to work if she was feeling unwell. Regardless of whether the Grievant was actually sleeping or not, it was reasonable for Flores to conclude she was sleeping.

The testimony conflicts as to who decided the Grievant would leave the workplace that morning and go home. The Grievant believes that she decided she needed to go home and that when Krebsbach approached her that morning, she informed him that she needed to go home. In contrast, Krebsbach recalls that he directed the Grievant to go home. Since there is no dispute as to the reason the Grievant went home – she was unable to perform the essential function of her position – the only value to ascertaining who decided that the Grievant would depart the workplace relates to the severity of the discipline. If indeed the Grievant decided that she needed to leave the workplace, that could be a mitigating circumstance.

The Union argued that the Grievant should not be disciplined for becoming ill at work. This argument presumes that the Grievant was healthy when she arrived at work and she was not. The evidence establishes that this was the third day in a row that the Grievant was ill in the morning. On the two prior days, she stayed home until she was well enough to perform her job responsibilities and then reported for work. The Grievant had been directed by the County to stay home when she was unable to work and that the Grievant knew of this expectation. When the Grievant made the decision on March 18 to report for work, it was a risky and ultimately a faulty one. The Grievant hoped that her symptoms would subside. That did not occur and the Grievant was unable to perform the essential functions of her position and her inability to function was a disruption situation to the workplace.

This is not a situation where an employee reported for work feeling a little under the weather. Rather, the Grievant had a diagnosed condition that had recurring episodes. When those episodes presented themselves, she was unable to safely and competently fulfill her essential job duties. The County was aware of this and as a result, had specifically ordered her to not report for work on days in which she was ill. The Grievant's decision to report to work on March 18 was not only poor judgment, but also in direct conflict with a County directive.

Incident on March 13, 2009

The County identified two performance deficiencies in the disciplinary documentation. The incident of March 18 was clearly the more serious event and it is highly unlikely that discipline would have been meted out had it not occurred. But, since both events are included in the sanctioning document, it is necessary to review the March 13 charge.

The evidence establishes that on March 13, 2009, the Grievant took the out going correspondence to be mailed and Kathy Zak, who provides back up support for the receptionist position, worked at the front desk. When Zak arrived at the front desk, she noticed that the light was lit on the telephone which indicated that there were voice mail messages saved in the telephone. Zak retrieved two voice mail messages, one from a client who called in at approximately 2:45 p.m. and the second was from Krebsbach, who was out of town. Krebsbach's message requested that the Grievant call him back. Zak returned the call to Krebsbach and was told by Krebsbach that he had called in and left the message an hour prior. Krebsbach then asked Zak if the Grievant had been at the front desk that afternoon and Zak replied in the affirmative. Krebsbach directed Zak to document what had occurred with the voice mail messages. Zak prepared the following e-mail message which she sent to Krebsbach at 4:05 p.m. that same day:

At 3:55 p.m. I took the voice mail messages off the machine. Jane had taken mail down. One message was from Joe K. (I called back who instructed me to type this note). The other message was from Dr. Miller's 3:00 p.m. appointment stating he was going to be late.

When confronted, the Grievant denied there having been any unanswered voice mail messages on the answering machine and explained that they may have been messages that she had listened to and directed to the appropriate staff member, but failed to erase. I do not find the Grievant's explanation credible. Zak specifically identified the two messages, including one from Krebsbach. It was unlucky for the Grievant that Krebsbach called in on that day and asked for an immediate return call since he therefore knew when he called, knew he did not receive a call back, and then knew that it was Zak, not the Grievant, who telephoned him back.

The Union argues that the Grievant was entitled to hear the messages. There is sufficient reliable evidence to verify the existence of the messages. For me to find that the messages did not exist would require that I find that Krebsbach and Zak conspired to create unanswered telephone messages which would justify disciplinary sanctions. How likely is it that they would have done this for a relatively insignificant offense? I am not condoning a receptionist not listening to telephone messages, but when it is recognized that this charge relates to two telephone calls that were not responded to within a 90 minute time period

resulting in no actual harm (other than a delayed return call), I cannot conclude that either Zak, Krebsbach, or the County conspired to manufacture the voice-mail messages.

I recognize that the testimony establishes that the staff were frustrated with the Grievant's performance deficiencies and further, that it was impacting morale amongst the clerical group. Even accepting this as factual, I cannot conclude that Zak would have lied about the existence of the voice mail messages. Zak credibly testified about her interactions with the Grievant and Krebsbach. Whatever allegiance she may have had, I found her to be forthright and believable.

### Conclusion

The evidence establishes that the Grievant failed to check the front desk voice mail messages for a one hour time period on March 13 and that she was unable to perform her job duties when she reported to work on March 18. While the March 13 event was relatively insignificant, the March 18 situation was serious. The Grievant not only harmed the reputation of the County in the eyes of at least two clients, but she reported to work when she was unable to perform her duties after being directed by Krebsbach .

The Grievant had been disciplined just two months prior for failing to fulfill the responsibilities of the Secretary/Receptionist position. The 30 day suspension was for the very same offense. Given the severity of the March 18 incident, the continuing violation of the acceptable work performance standards, and the prior suspension, the evidence supports the imposition of a suspension, but on its face, 30 calendar days is excessive. As discussed above, compliance with progressive discipline is separate and distinct from selecting a disciplinary sanction that is proportionate to the offense. Moreover there no proof in this record that sets forth the level of punishment imposed by the County to employees who engaged in similar or identical conduct or even other employees who received a 30 calendar day suspension.

In determining the level of suspension to be imposed, the question is what is fair, proper, and appropriate under the circumstances. This is not a situation where the County chose between minor gradations of discipline. Instead, it went to a very severe 30 calendar day suspension which prompts the questions, what can an employee do for a 30 calendar day suspension that wouldn't support termination? The County's decision to impose a 30 calendar day suspension is, on its face, disproportionate and arbitrary. The suspension is reduced to 10 working days.

### Termination

The Grievant was terminated on June 6, 2009, for failing to perform her job duties, for a pattern of poor performance and for failing to follow work rules and procedures. The County provided a list of 10 specific infractions and one labeled "ongoing" that it relied on in

support of the termination. The Union maintains that the Grievant was not guilty of all of the infractions cited in the disciplinary documentation and therefore the County did not meet the just cause requirement for termination. I will address each of the infractions.

5-20-10 Did not send letter to clients on waiting list as directed by Tina Baeten AODA Coordinator

The County concluded the Grievant did not send out a letter as directed by Tina Baeten, County AODA Coordinator. The Union maintains that the Grievant sent out the letters, but failed to document the mailing in TCM, the computerized client records system.

Baeten sent the Grievant an e-mail on Wednesday, May 20 and asked her to send a letter (which was attached) to four clients. The letter informed the clients, who had been on a waiting list, that their position on the list had changed and that they were now eligible for services. Baeten further asked the Grievant to “let me [Baeten] know when you have sent these.” Ex. Cty 9. The Grievant did not notify Baeten that the letters had been sent nor did she enter the letters as having been sent in TCM.

On or about June 2, 2009, Baeten asked the Grievant whether the letters had been sent. The Grievant testified that she told Baeten that she sent the letters out on May 20, but that she did not enter the letters into TCM, although she intended to do so. The Grievant maintained that she was never informed by the County that she was expected to immediately make TCM entries after completing a task for a client.

Baeten’s version is much more lengthy:

Q: Did Jane in fact timely complete the task that you assigned to her?

A: I had asked several times as follow-up to find out if it had been done. I had heard no word about it as of the 2<sup>nd</sup> of June. So I had asked if it had been done. Jane, at which time, had told me that she had done it on Monday. I had asked what Monday it had been done because the days seemed off. I think I asked her to do it on a Tuesday. So I didn’t know what Monday. She said that she hadn’t put them into TCM at that point in time. So I asked what Monday and she paused for about a minute. I remember looking at the calendar and she seemed to be confused and then said, No, I did it on Friday. She said, “I did it right away when you asked me.” So I still wasn’t clear when it was done. So I did not – I wasn’t aware of the follow-through at that point in time. I had checked TCM to see if the letters were in there. I asked her to give me a copy of the letters just so I knew that even if they weren’t put into TCM that I

could put them in TCM so that could cover my end of things. I believe it was the next day that – and I don't know if it was actually the next day, which isn't in this document, that Jane said that she had not done them and asked for me to give her more information to do them again. I don't really recall the details.

The testimony is contradictory as to if, and when, the Grievant sent out the letters. Even if I accept the Grievant's version, by her own admission, she failed to fulfill Baeten's expectations. Baeten asked the Grievant to let her know when the letters were sent. The Grievant never did. It would have been in the Grievant's best interest to have made this contact with Baeten. It would have provided the Grievant the opportunity to let Baeten know that the task was complete and that while the Grievant had not yet input the letters in TCM, she still intended to do so. The Grievant's failure to notify Baeten supports the County's position that the Grievant did not send the letters.

The Union argued that the County should have contacted the recipients of the letters to determine when and if they received the initial letter. It is true that the County could have contacted the recipients to determine if the letter had been sent, but doing so could have harmed the reputation of the agency. Moreover, given the Grievant's admission to Baeten that she had not sent the letters, it would have been pointless to contact clients since the County already understood that the letters were not sent.

The County utilizes TCM to record client events. Had the County not utilized a computerized client records system, a copy of the letter would have been placed in each of the client's file. The Grievant did not enter the letters into TCM and it is reasonable to conclude that her failure to do so was because the letters were never sent. The fact is more than two weeks elapsed between when the Grievant believed she sent the letters and the date in which Baeten questioned her. The Grievant's expired PIP included an expectation that she organize her day such that TCM entries were made on the day that she performed the function to be documented. The Grievant was fully aware of this expectation and her failure to document the letters in the system supports the conclusion that the letters were never sent.

5-21-10      *Did not send correct mailing to families for Jean Severson*

The County charged the Grievant with failing to correctly send a Severson mailing to clients. The Union blames the County for not clearly and completely providing the Grievant directions as to the mailing and further, that the deficiency charged is beyond the scope of the Grievant's job description.



On or about May 20, 2009, Jean Severson, County Community Programs Case Manager, asked the Grievant to send the descriptive letter and the form to a list of families. The mailing included a descriptive letter that referenced a Parent Declaration form which required a parental signature. The Grievant sent the mailing, but failed to include the Declaration form.

Severson testified that she gave the Grievant the letter, a list of names, and self-addressed return envelopes. Severson was not certain that she had provided the Grievant the Parent Declaration form, but was certain that she provided the Grievant with detailed instructions that made reference to the Declaration form.

The Grievant testified that she sent out everything that Severson gave her and identified the items she was given as a return envelope, a letter, labels, and another piece of paper. On cross examination she further explained:

Q: And again, it goes back to my original question referring to the first mailing. Why would you send out a letter and a return envelope without the documents that the recipient is to complete, sign, and return?

. . .

A: There was another piece of paper in that paperwork. I believe, like I said, it was the Patient Rights, which do not have to be signed, and I assumed that's what I was sending out to be returned. There was no other paperwork in what she gave me to be sent out. And she did not mention to me about a contract.

Tr. Vol. III, p. 20

The Grievant was the only individual who made reference to a second document – the Patient Rights form – as part of the mailing. But, there wasn't a Patient Rights form in the mailing. The Grievant acknowledged that she was provided the self addressed return envelopes and that she knew that the Patient Rights form did not require the clients' signature. Tr. Vol. III, p. 204. If I accept the Grievant's testimony as credible, then she knowingly was sending out a form which she knew did not require a parent signature along with a return envelope, which just doesn't make any sense. It is more likely that the Grievant incorrectly identified the second document as Patient Rights form, rather than the Parent Declaration form, and further, that she failed to include it in the mailing.

The Union argues that it was not the Grievant's responsibility to review Severson's letter and make sure that the correct enclosure was included. The Union concludes that reviewing Severson's work is beyond the scope of the Grievant's job duties. I disagree. If

there was a Patient Rights form included and it did not require a signature as the Grievant testified, that prompts the question, why is the self-addressed envelope necessary? And, if a contract or form was not included, then a similar question arises, why is there a self-addressed envelope included? Both of these questions presume that the Grievant did not read or review the letter being sent to the clients which would have answered the question. It is reasonable to expect a clerical employee who is asked to distribute a multi-document mailing to review the documents and ensure that all components of the mailing are included.

The County also finds fault with the Grievant's second mailing of the letter. The Grievant hand wrote the addresses on envelopes in the second mailing and the handwriting was illegible. The Grievant also mailed an envelope addressed to one client with another client's name on the inside letter. This error breached the named client's confidentiality since it informed one client that another individual was also a client of the County. The County had reason to fault the Grievant for the manner in which the second mailing was sent.

The evidence establishes that the Grievant was guilty of the performance deficiencies as charged.

5-21-09        *Left client sitting in waiting room for 30 minutes despite clinician asking if client was here.*

The County charged the Grievant with failing to assist a client that arrived for an appointment on May 21, 2009. The Union maintains that the evidence does not support the charge.

On May 21, 2009, Deb Karas was working at the front desk while the Grievant was in a meeting with Krebsbach. An Operating While Intoxicated (OWI) client timely arrived for an appointment with OWI Assessor, Perry Ackeret. Karas testified that she buzzed Ackeret via telephone to inform him that the client had arrived, but Ackeret did not answer. Karas looked for Ackeret at his office and in empty offices across the hall. Karas was unable to locate Ackeret.

When Krebsbach arrived at work on May 22, he was approached by Ackeret. Ackeret recited to Krebsbach an incident that occurred the prior day. Krebsbach documented Ackeret's recitation:

Upon my arrival this morning our OWI assessor, Perry Ackeret, indicated frustration with desk staff yesterday. At approximately 4:10 he called the front desk to see if his 4:00 appointment was here. Jane answered the phone and when he asked she indicated that there was someone in the lobby but it wasn't someone for him. Perry stated that he waited another five minutes and then did the paperwork indicating that the client was a no show for his appointment.

Fifteen minutes later at 4:30 he received a call from Jane asking him if he was in with a client. When he indicated no that his last client was a no show she asked the name of that individual. She then stated that that person was, in fact in the waiting room and had been there since 4:00 waiting to see Perry. Perry's frustration was that: a) he needed to follow up on what he felt was the support staffs responsibility (notifying him his client was here) and then not getting correct information when he asked as well as, b) then having to deal with a customer who was very angry about having to wait for thirty minutes.

Ackeret also documented the incident in a letter dated May 22 that he gave to Krebsbach that same day:

...

On May 21, 2009 at approximately 4:00 p.m. there was a client that came in on time and I was not notified by Jane (secretary) that he had arrived. At approximately 4:15 p.m. I came out and asked her if my client had shown up and she indicated he had not. I went back to my office and at about 4:30 p.m. after I had put all the paperwork away and closed him out as a "no show" she called me and asked if I had a client in my office. I stated "no." She says that she thinks that the client may be in the waiting room. I heard her call through the window to the client and he said he had been waiting for about ½ hour. I came out and got the client and he was upset for having to wait for almost ½ an hour before being brought in.

That was not the only incident throughout these two days. On at least three occasions clients came in and when I came out after about 5 or 10 minutes after the hour and asked Jane whether the client had shown up she indicated that yes the person had been therefore sometimes 5 or 10 minutes. It is the policy that they would contact me in my office to let me know that the client has arrived. Throughout those two days Jane seemed detached and rather out of it. She seemed to have a difficult time understanding questions and overall difficulty, at least with me, and I also overheard other staff. This seems to be an ongoing pattern I've noticed with that type of affect for at least the past 3 or 4 months that I have come up to do OWI Assessments.

...

The Grievant testified that she was away from the front desk when the client in question arrived and checked in. The Grievant understood that Karas had not only telephoned Ackeret to inform him that the client was in the waiting room, but had also attempted to locate Ackeret by going to his office to find him and tell him that his client had arrived. The Grievant

testified she also telephoned Ackeret, asked another staff member to go to his office, and then telephoned him again to inform him that his client was waiting. At no time was the Grievant able to communicate with Ackeret. The Grievant testified that during the time she was working to locate Ackeret, she continuously informed the client of her efforts and that the client was not upset or angry.<sup>6</sup> The Grievant recalled that Ackeret arrived at the front desk at 4:30 p.m. at which time she informed him that he had a client waiting.

There are variances between Ackeret's verbal and written accounts. This could be attributed to Krebsbach not correctly documenting what Ackeret told him or Ackeret bolstering his innocence in a situation where a client was dissatisfied. Regardless, the discrepancies are relevant to finding the Grievant guilty or innocent of the offense charged.

The most significant discrepancy relates to Ackeret's belief that he communicated with the Grievant between 4:10 p.m. and 4:25 p.m. on May 21, 2009. Ackeret told Krebsbach that he called the front desk at 4:10 p.m. to inquire if his client had arrived. His letter indicates that he went to the front desk at 4:15 p.m. and spoke to the Grievant. The Grievant testified Ackeret did not come to the front desk at that time. Ackeret prepared his statement within less than 24 hours of when the incident occurred. He should have known whether he telephoned or appeared at the front desk to inquire as to whether the client had arrived. Ackeret's inability to provide a consistent recollection diminishes his credibility. Moreover, had Ackeret appeared at the front desk, it is likely that he would have looked into the reception area in search of his client since he was already concerned with the Grievant's ability to notify him when his clients arrived. I therefore conclude that Ackeret did not appear and ask the Grievant if his client was present.

Additional deviations in Ackeret's versions, while not significant for purposes of establishing what occurred, further question the reliability of his narrative. Ackeret's versions to Krebsbach indicated that he spoke to the Grievant at 4:10 p.m. by telephone or in person at 4:15 p.m., but the Grievant had no recollection of speaking with him. The timing of when Ackeret closed the client's file are also different in that his letter indicated it was at 4:15 p.m. just after his trip to the front desk while his verbal recitation to Krebsbach had him closing the file just before 4:30 p.m. Less than 24 hours after the May 21 situation with the client, Ackeret was unable to provide a consistent account of events which challenges his credibility.

The County concluded that the Grievant left the Grievant unattended for 30 minutes. The evidence does not support this. First, the Grievant was not assisting the client at 4 p.m. Rather it was Karas at the front desk and she indicated that she received the client and attempted to locate Ackeret. Ackeret was unavailable by telephone and in person to receive

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<sup>6</sup> The record is contradictory as to whether the client was angry. The Grievant testified the client was not angry when she was unable to locate Ackeret. Ackeret's letter of May 22 reports that the client was angry. This is relevant in that if the client was angry with Ackeret and not the Grievant, Ackeret's credibility is dubious.

clients. I cannot determine from this record when exactly the Grievant arrived at the front desk and Karas returned to her work station, but by 4:10 p.m. or 4:15 p.m. it is likely that the Grievant was at her desk.

The Grievant testified that she continuously spoke to the client while the client was waiting for Ackeret to be located. The Grievant did not view the client as being upset or angry, although both of Ackeret's versions indicate that the client was upset. The client may have been upset, but his dissatisfaction very well could have been with Ackeret and not the Grievant. I cannot find on this record that the client was upset.

The County did not speak to the Grievant about this incident until the June 4 investigatory session. Although Krebsbach testified that he spoke to the Grievant the following day and that she "admitted that she had in fact let Perry know about it afterwards, but she didn't recall the details of - or I don't recall her giving me specifics about her trying to contact Perry," his notes do not indicate that he spoke to the Grievant. Tr. Vol. III, p. 212. Krebsbach's notes should have included the conversation with the Grievant if it occurred, but it is notably absent. Cty Ex. 33, 34.

This record neither supports a finding that the Grievant left a client in the waiting room for 30 minutes nor that the contract clinician asked her between 4 p.m. and 4:29 p.m. if the client had arrived. This charge is not supported by the evidence.

*6-1-09 Did not answer phone. Did not check messages or forward six different messages that were left between 10:30 and 12:30. (Similar incident 3-13-09)*

The Grievant was disciplined for not responding to six voice mail messages on June 1, 2009. The Union challenges the charge on the basis that there was no tangible evidence to support it.

Zak sent Krebsbach an e-mail on June 1, 2009 at 1:19 p.m. which read as follows:

At approximately 12:40 Jane came into my office and asked me where Deb was. I told her she went to lunch and should be back soon because she was in my office with someone at 12:00. Jane then asked if I went to lunch and I stated yes. She stood for a few minutes in my office and I told her it was already 12:40 or 20 to 1:00. She then stated (sic) "Oh I suppose I should go to lunch and get the mail." She did leave for lunch at 12:41 p.m.

When I was up in front to cover the front desk I noticed the light lit for voice-mails. I then proceeded to access the system and this was on the voice-mail: 10:15 call for Kris; 10:41 call for LuAnn; 10:42 call for LuAnn; 10:44 call for

Kathy; 10:46 call for Tracy; 11:23 call for Tina; 11:33 call for Dr. Miller/Deb; and 11:38 not sure (lots of heavy breathing). I did take all the messages off and forwarded them to the correct person.

I also made copies of the receipts as Chris stated they were awful.

She did come back from lunch at 1:05 p.m. with mail in hand.

The County relied on Zak's e-mail when it disciplined the Grievant. The Grievant explained during the investigatory session that she "may not have looked over to the red light" (indicating a voice mail message). At hearing the Grievant testified that it was her practice to periodically look over at the telephone to see if the red light was on, but that on that Monday, she was working on a project. It is understandably difficult to focus on the incoming telephone calls while completing a project, but that was the Grievant's job which she performed to acceptable standards for at least twelve years.

The Union essentially argues that since neither the Grievant nor the Union heard the voice mail messages, they cannot be relied upon to support discipline. The Union is challenging the credibility of Zak. There is no question that there was discord among the clerical staff because of staff concerns with the Grievant's performance and Zak could have been frustrated. But again, that dissatisfaction is a far cry from drafting an e-mail that manufactured six voice mail messages. Even if I find that Zak's motivation was inconsistent with the Grievant's continued employment, her actions were true.

*6-1-09 Unable to put mail in correct mail boxes.*

The County charged the Grievant with incorrectly distributing the mail.

The record establishes that while there is an allegation that mail was placed in the incorrect mailboxes, the particular pieces of mail, the time in which the mail was incorrectly placed, and the specific mailboxes involved are not identified. Moreover, there is absolutely no evidence from which to conclude that the Grievant was the individual guilty of putting the alleged mail pieces in the incorrect mailboxes since every employee has access to the mail area.

The record does not support this charge.

*6-1-09 Did not inform Margie of client's arrival to see her.*

On June 2, 2009, Margaret Rock, County Registered Nurse, drafted a letter to Krebsbach wherein she reported that on June 1<sup>st</sup> the Grievant failed to inform her that two of her clients were in the reception area. Rock's letter reviewed seven items which she observed

and found unacceptable over the course of the entire day of June 1. In some cases, Rock documented the amount of time that a client waited to be served by the Grievant. There were no witnesses or corroboration to Rock's claims and the clients were never identified.

The Grievant testified that she did not leave clients unattended in the reception area. She further testified that since Rock was in the reception area, she believed Rock observed her clients and therefore, there was no reason to inform Rock of the client's arrival.

The Grievant's rationale is reasonable. If Rock was standing in the reception area timing certain events, she would certainly be able to observe her client's arrival and there would be no reason for the Grievant to tell Rock that the client had arrived. Moreover, while Rock's enthusiasm and dedication to investigating the reception area are commendable, it calls into question her motives.

*6-1-09 Not returning a call to client Patrick P. to reschedule appointment with Dr. Miller*

The County concluded that the Grievant failed to return client Patrick P.'s telephone call. The Union maintains there is insufficient evidence to blame the Grievant.

The record fails to identify when Patrick P. telephoned the agency and who answered the telephone. While the County presumed the Grievant received the call, there is no evidence to support this conclusion. The record does not support this charge.

*6-1/6-3 Incorrect dates on Clients invoice for rescheduling.*

The County concluded the Grievant erroneously completed client invoices. The Union maintains that not only were the errors inconsequential, but others make similar errors and are not disciplined.

The Grievant admitted to the errors to which the County charged. While it is true that the disciplinary documentation prepared by Krebsbach contained errors, that does not negate the Grievant's performance deficiencies, especially in light of the fact that the Grievant was on notice that she needed to pay greater attention to detail. This charge is supported by the evidence.

*6-2-09 Unprofessional mailing to 22 clients sent out with several errors. (Name written incorrect, not legible, whited out and ripped and taped shut.)*

The next identified infraction occurred on June 2 and alleged that the Grievant distributed to 22 clients a mailing which the County characterized as "unprofessional" in that

they contained errors including “[n]ame written incorrect, not legible, whited out and ripped and taped shut.” Tr. Vol. III, p. 196. The Grievant admitted that she hand wrote the envelopes and further, that she was in a hurry and felt under pressure to get them out. The record includes a photocopy of the one of the envelopes which confirms that the envelopes were indeed illegible, ripped and taped. The Grievant is guilty of this infraction.

*6-3-09 Connected one patient to another patient when trying to transfer.*

The County accused the Grievant of connecting one patient to another patient on the telephone concluding it was a disciplinary offense because it violated client confidentiality. The Union maintains it is not a disciplinable offense because the Grievant informed the County of this telephone system deviation in the past and the County failed to correct the problem.

Krebsbach testified that the Grievant never informed him that it was possible to connect two incoming outside lines. Krebsbach became the Director of the Community Support in May of 2008. The Grievant testified that she had informed every Community Support Director that preceded Krebsbach and the IS department of the problem, but that no one had either explained to her how it occurred so that she could avoid doing so in the future. Nothing in this record invalidates the Grievant’s testimony in this regard and therefore just cause has not been met on this infraction.

*Ongoing*

The County identified “Ongoing” concerns in the disciplinary documentation including, “[i]ntermittent calling of clients to remind them of scheduled appointments, “[n]ot consistently informing case managers of patients scheduled appointments, which the case manager is required to attend,” and “[a]pproved minutes for April were not posted on Q drive as required following our May 20<sup>th</sup> board meeting.” The County offered memorandums and e-mails to support each of these charges.

The Grievant was responsible for making reminder calls to clients scheduled for appointments. She was also expected to e-mail case managers and inform them of the client’s appointment time so that the case manager could attend the appointment. The Grievant performed these tasks as directed on some occasions and not on others. The Grievant explained that she would sometimes encounter a “busy” telephone number when making calls, but that she would circle that client’s name so as to indicate which clients needed another call. The evidence establishes that the Grievant did not consistently telephone clients and remind them of their appointments nor did she consistently inform case managers of client appointments.

As to the “Q drive” issue, the Grievant admitted she did not timely post the minutes.



Conclusion

The County identified performance concerns with the Grievant starting in 2008. The County followed a progressive discipline model moving from less serious sanctions, to more serious sanctions. The Grievant was issued an oral warning on April 2, 2008 a written warning on May 1, 2008, a 10 day suspension on January 23, 2009, and a 30 day suspension on March 19, 2009, all the while the County invested numerous hours attempting to mend the Grievant's performance. The Grievant conscientiously attempted to complete the tasks she was expected to perform and conform to the County's expectations, but she was unable.

The County terminated the Grievant for failing to perform her job duties, for a pattern of poor performance and for failing to follow work rules and procedures. The County set forth 10 separate infractions and three which it labeled as "ongoing" in support of the termination. A detailed review of the infractions establishes that six are supported by the evidence and four are not. Of those identified as "ongoing," two are very generalized commentaries that could establish that the Grievant was not thorough in completing the tasks to which she was responsible and the Grievant admitted to the third. The 10 specified and three general infractions which the County included as an attachment to the termination letter paint a portrait of the Grievant's performance and behavior during a 15 day window. That portrait establishes that the Grievant was incapable of performing the essential functions of her position and that the County's termination rationale was supported by the record. The County terminated the Grievant for poor performance, not following work rules and procedures and for failing to perform her job duties. The validated infractions, when viewed in concert with the Grievant's disciplinary history, establish that the Grievant was unable to fulfill the responsibilities of her position of Receptionist/Secretary and the termination was justified.

**AWARD**

1. The County violated the just cause standard of the collective bargaining agreement when it suspended the Grievant for 10 days on January 23, 2009. The 10 work day suspension is reduced to two work days. The County shall make the Grievant whole for lost wages and benefits.

2. The County violated the just cause standard of the collective bargaining agreement when it suspended the Grievant for 30 calendar days on March 19, 2009. The 30 calendar day suspension is reduced to 10 work days. The County shall make the Grievant whole for lost wages and benefits.

3. The County did NOT violate the just cause standard of the collective bargaining agreement when it terminated the Grievant on June 5, 2009.

Dated at Rhinelander, Wisconsin, this 9th day of February, 2011.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator

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