

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 1730, AFSCME, AFL-CIO**

and

**BAYFIELD COUNTY**

Case 87

No. 69897

MA-14791

(Bailey Grievance)

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**Appearances:**

**Mr. James Mattson**, Staff Representative, 8480 East Bayfield Road, Poplar, Wisconsin, appearing on behalf of Local 1730, AFSCME, AFL-CIO.

**Ms. Mindy Dale**, Attorney, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of Bayfield County.

**ARBITRATION AWARD**

Local 1730, AFSCME, AFL-CIO hereinafter "Union" and Bayfield County, hereinafter "County," mutually requested that the Wisconsin Employment Relations Commission assign Lauri A. Millot 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 29, 2010 in Washburn, Wisconsin. The hearing was not transcribed. The parties submitted briefs and reply briefs, the last of which was received by December 7, 2010, whereupon 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, but were unable to agree as to the substantive issues.

The Union framed the substantive issues as:

Did the Employer have just cause to give the Grievant a written warning? And, if not, the appropriate remedy is for the County to rescind this written reprimand and to remove it from any and all records and files.

The County framed the substantive issues as:

Did the Employer have just cause to give the Grievant a written warning? If not, what is the appropriate remedy?

I accept the County's framing of the issues.

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 3**

##### **Discipline, Dismissal, Suspension**

- A. The parties recognize the authority of the Employer to discipline, discharge or take other appropriate disciplinary action against employees for just cause.
- B. The following shall be the sequence of disciplinary action:
  - 1. Oral Reprimands;
  - 2. Written Reprimands;
  - 3. Suspension;
  - 4. Discharge.

The above sequence of disciplinary action need not apply in cases where the infraction is considered just cause for immediate suspension or discharge.

- A. If any disciplinary action is taken against an employee, both the employee and the Union Steward will receive copies of this disciplinary action.
- B. Should the Union present a grievance in connection with the dismissal or suspension of an employee within ten (10) working days of such dismissal or suspension to the Personnel Committee, the dismissal or suspension shall be reviewed under the terms of the grievance procedure as specified in Article 4. This provision does not apply to probationary employees.

#### **ARTICLE 4**

##### **Grievance Procedure**

Crucial to the cooperative spirit with which this Agreement is made and in the sense of fairness and justice, this grievance article is made part of the Agreement to provide a procedure for the employees to adjudicate any grievance he/she may have as to those grievance issues as set forth in this Agreement.

Should an employee feel that his/her rights and privileges under this Agreement have been violated, he/she shall consult with a steward.

A. A grievance is defined to be controversy between an employee and the Employer as to:

1. A matter involving the interpretation of this Agreement;
2. Any matter involving an alleged violation of this Agreement in which the employee or the Union maintains that any of their rights or privileges have been impaired in violation of this Agreement; or
3. Any matter involving wages, hours, or conditions of employment.

B. The following procedure shall apply when employees wish to present a grievance:

**STEP 1** – The Union Steward shall personally file the written grievance with the employee’s Department Head, or designee, within fifteen (15) working days following the day when the employee knew or should have known of the event giving rise to the grievance. The written grievance shall be signed by the Union Steward and shall set forth the facts giving rise to the grievance, the specific provision(s) of the contract alleged to have been violated, and the relief sought. Upon receipt of the written grievance, the Department Head or designee shall initial the written grievance indicating the date and time of receipt of the written grievance. In the event neither the Department Head or designee are available, the grievance shall be submitted to the County Administrator or designee who shall route the grievance to the Department Head or designee. The Department Head, or designee, will meet with the grievant and Union Steward within ten (10) working days and shall give the grievant and Union Steward a written answer within ten (10) working days after such meeting.

**STEP 2** – If the answer given by the Department Head or designee in Step 1 does not resolve the matter, the Union Steward may appeal the grievance to the Personnel Committee within five (5) working days of receipt of the answer at Step 1. The Personnel Committee shall meet within thirty (30) working days to hear the grievance and shall respond to the grievance in writing within ten (10) working days of the hearing.

**STEP 3** - If the grievance remains unresolved after Step 2, the Union Steward may, within fifteen (15) working days following receipt of the Step 2 answer, notify the Employer of his/her intention to arbitrate the dispute. The parties shall confer and attempt to agree on an arbitrator to hear the dispute. Should the parties fail to agree on an arbitrator, they may jointly or individually petition the Wisconsin Employment Relations Commission (WERC) to appoint an impartial arbitrator from its staff to hear the grievance and render a decision in the matter.

**A. Decision of the Arbitrator:**

1. The decision of the arbitrator shall be in writing and set forth his/her opinions and conclusions on the issues submitted to him/her, in writing, and/or at the hearing.
2. The decision of the arbitrator shall be binding for both parties, shall be final, and is limited to the terms and conditions set forth in this Agreement.

**BACKGROUND AND FACTS**

The Grievant, Denise Bailey, is a ten year social worker with the County assigned to the Family Service Unit in the Department of Human Services. At all times relevant herein, the Grievant's supervisor was Anita Haukaas, Family Services Manager, and Elizabeth Skulan was the Director of the County Department of Human Services..

The Grievant's work record was discipline free until December of 2008 when she was issued a written reprimand with two days of suspension. The discipline was grieved. The parties ultimately entered into a letter of agreement which dismissed the grievance and reimbursed the Grievant for 19 hours pay, although the documentation remained in the Grievant's file.

During the fall of 2009, the County was addressing federal law non-compliance issues as they related to face to face contact for out-of-home placements. Haukaas distributed, via e-mail, multiple policy updates addressing caseworker contact benchmarks and how to properly document in the online file system. One of the e-mails distributed was the Caseworker Contact Requirement for Children and Juveniles in Out-of-Home Care memorandum dated July 15, 2008 which provides in the Ongoing Services Provision Documentation Requirements that:

1. The Ongoing Services worker must document both completed and attempted face-to-face contacts with children and families in the family's case record. The worker must include:

- the date, type, and duration of contact,
  - who was involved,
  - where the contact occurred,
  - the purpose of the contact, and
  - a summary of the meeting.
2. If the Ongoing Services worker is unable to meet requirements of this policy due to client unavailability or lack of cooperation, the circumstances must be documented in the family's case record.
  3. Any exceptions to the requirements of this policy must be approved by a supervisor and documented in the family's case record.

If the ongoing Services worker is unable to meet requirements of this policy due to client unavailability or lack of cooperation, the circumstances must be documented in the family's case record. P. 14 2

Attached to the July 15, 2008 memorandum was a document entitled, "eWiSACWIS Quick Reference Guide [to] Documenting Monthly Caseworker Contacts" which read in pertinent part as follows:

Introduction:

This is a guide on how to enter a case note to meet the Federal mandate on monthly case worker contacts with children and juveniles in out of home care. The following five data criteria must be met in order for a case note documenting a face-to-face contact to be included in the count of those submitted for federal reporting purposes:

1. To count as a successful case worker contact for a particular month, the Date on the case note must be during that calendar month.

...

Sometime between October 15 and October 19, the Grievant was assigned a kinship case from Chippewa County. This particular case required that the Grievant have a face to face contact with the Chippewa County child (hereinafter, "XX"). The Grievant met the child and conducted the face to face contact on November 3, 2009. Following her visit, she sent an e-mail to Andrea Bowe, the Chippewa County social worker also assigned to the case. The e-mail was sent at 9:21 a.m. and read:

Hi Andrea,

I just wanted to let you know that I saw XX and XXX on Tuesday, Nov 3<sup>rd</sup>. What a nice little boy and XXX seems very nice as well. We had a nice visit and I enjoyed talking with both of them. Before I enter the case note I just wanted to let you know that I tried to schedule something with XX for the last week of October so there would be a face to face for that month. XX schedule was such that we could not meet until this week which was then November. How would you like me to document this? Would you like me to back date the contact for October and then see them again towards the end of November for a November contact? Let me know ASAP so I can do a case note in eWisacwis.

Thanks

Denise

After reading the e-mail from the Grievant, Bowe sent an e-mail to the Grievant's supervisor, Anita Haukaas, informing her that the Grievant had offered to back date the face to face contact. Bowe addressed Haukaas by her first name "Anita" and indicated that she had a "concern" in that the Grievant "asked about backdating her casenote." Bowe also responded to the Grievant's e-mail and told the Grievant that she should document the face to face visit on the date it occurred. Haukaas responded to Bowe's e-mail stating that "this is totally inappropriate to document false dates" and that she would be discussing the situation with the Department Director.

Haukaas met with the Grievant on November 17, 2009. On that same date, Haukaas directed the following e-mail to Skulan:

RE: Face to face discussion

On 11/19/09 Denise Bailey and I reviewed her cases and discussed the recent e-mail I received from Andrea Bowe in Chippewa County. In the e-mail Adreas (sic), reported that Denise had asked Andrea if she wanted the documentation for a face to face visit to a child placed in Bayfield County to be back dated.

Denise had stated that her intention was not to falsify documentation as "this would be unethical". We discussed her intentions. From my understanding, Denise said that she believed that if she documented this visit for October, then she would go back earlier in November for a visit so that the timing of the visits were within a 30 day period of time. We discussed the documentation and requirement for face to face visits, which that (sic) state requires each calendar month (October, November, etc...) and not every 30 days. This is not a new requirement and one I would expect a seasoned social worker to be familiar with.

Denise was asked to review the documentation in eWisacwis. Her e-mail to Andrea Bowe was cut and pasted to the database and is now a permanent document in the electronic Wisconsin State Automated Child Welfare system. I stated I must respond to Andrea and that I would tell her that falsifying information is not encouraged, accepted, or tolerated in Bayfield County and that I would discuss the issue with Denise.

Denise was then asked if she had altered any dates in the documentation of her own face to face visits in order to meet compliance standards. Denise stated she had not.

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The Grievant was issued a letter of reprimand on December 10, 2009 citing two performance concerns. Relevant to this proceeding was a charge of offering to back date legal records. The Union grieved the discipline alleging Article 3 (A) of the labor agreement was violated. The Union described the basis for the grievance as:

Denise Bailey, Social Worker II of Family Services, in the Department of Human Services was given a written reprimand and a corrective action plan. Administration and Management based their decision on two concerns: (1) they are assuming Ms. Bailey would likely backdate; and (2) they are accusing her of discussing confidential issues. The Union feels these disciplinary actions were given in an arbitrary and capricious manner.

The grievance was processed through all steps of the grievance procedure placing it properly before the Arbitrator.

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

### DISCUSSION

The sole issue in this case is whether the Grievant offered to back date a eWiSACWIS entry. The County maintains that she did while the Union asserts she did not explaining that the e-mail was poorly written resulting in a misunderstanding.

The relevant portion of the e-mail that the Grievant sent to Bowe reads:

...

I just wanted to let you know that I saw XX and XXX on Tuesday, Nov 3<sup>rd</sup>. What a nice little boy and XXX seems very nice as well. We had a nice visit and I enjoyed talking with both of them. Before I enter the case note I just wanted to let you know that I tried to schedule something with XX for the last

week of October so there would be a face to face for that month. XX schedule was such that we could not meet until this week which was then November. How would you like me to document this? Would you like me to back date the contact for October and then see them again towards the end of November for a November contact? Let me know ASAP so I can do a case note in eWisacwis.

. . .

This e-mail is clear, concise, coherent and organized. It does not contain misspellings, extra wording or missing words. It informs the reader of what the Grievant did, when she did it and then she asks the question, "would you like me to back date the contact?" This was not a poorly drafted e-mail nor is it susceptible to misunderstanding.

The evidence establishes that Grievant was obligated to initiate face to face contact with the child on a monthly basis. This e-mail references this monthly obligation. The Grievant informed Bowe that she had intended to make the face to face contact and was unsuccessful and therefore, she offered a methodology for compliance with the obligation, albeit deceitfully. Lacking this deceit, the Grievant was tardy with the face to face contact and therefore would have been subject to consequences for performance deficiencies.

When confronted by the County, the Grievant explained that she asked Bowe if she should back date the face to face contact and further, that if Bowe took her up on her offer, she would have refused to make the entry. This is illogical. The Grievant offered to back date. I suppose its possible to conclude that the email was poorly written if the Grievant's intent was to inform Bowe of when the contact occurred and then inform Bowe that if Bowe wanted to back date the entry, she could certainly do that, but such a reading of the email requires conjecture, lacks evidentiary support and condones inaccurate untruthful entries. It is more reasonable to conclude that the Grievant was agreeable to back dating at the time she sent the e-mail. While it is possible that she could have changed her mind if Bowe had accepted her offer, we will never know this because Bowe did not accept the offer.

The Grievant acknowledged that she knew that face to face contacts were required every month and that staff were expected to accurately document those contacts. She further acknowledged that it is inappropriate to document a face to face visit on a date different than the date upon which it actually occurred. The evidence establishes that the Grievant drafted an e-mail which offered to backdate the eWiSACWIS case record.

The Union argues that even if the Grievant considered back dating the case record, she did not do so and therefore, the discipline was not warranted. The Grievant was not disciplined for back dating, she was disciplined for offering to back date. That offer to back date was extended to a Chippewa County social worker which harmed the reputation and integrity of both the Grievant and the County.



The Union contests the quality of the investigation by pointing out that Haukaas lacked any recollection of the content of her conversation(s) with Bowe. While this certainly challenges Haukaas' credibility, it is immaterial to whether the Grievant offered to backdate a legal document.

The Union also concludes that the investigation into the backdating was sub-standard since the investigation into the confidentiality charge was overturned because Haukaas failed to properly investigate. The flaw with this argument is that the County identified two separate and distinct offenses in the December 10 document. The fact that one of the offenses has been removed due to an inadequate investigation does not automatically negate the legitimacy of the second offense.

The extent of the involvement of Bowe in this matter is disconcerting. Bowe forwarded the Grievant's e-mail to Haakaas before she even asked the Grievant for clarification. Bowe addressed Haakaas, a supervisor in another county, by her first name indicating they (Haukaas and Bowe) had a prior relationship. After Bowe was informed by Haukaas and the Grievant that there was no intent to back date, Bowe chose to cut and paste the Grievant's e-mail into the eWiSACWIS system when there was no reason to do so and the only logical result would be harm to the reputation of the Grievant and the County. At every turn, Bowe selected a course of action that directly injured the Grievant. That, coupled with Haakaas' willingness to disclose to Bowe some of the facts and circumstances of the Grievant's on-going disciplinary investigation and Haakaas' inability to recall or produce notes from her alleged conversations with Bowe which could have provided exculpatory evidence, seriously call into question Bowe's credibility and motives. Yet, even when I discount any evidence that could have been tainted by Bowe, the content of the November 3 e-mail remains unchanged.

Moving to the level of discipline imposed, the Union concludes that the first offense relating to confidentiality, was the more serious offense and that with its removal, the sanction for the lesser offense is too severe.<sup>1</sup> There is no dispute that the confidentiality offense has been removed from the disciplinary action, but there is insufficient evidence in this record to conclude that the confidentiality portion of the disciplinary sanction was the more serious charge. The disciplinary offense which is the subject of this grievance meets the just cause standard and it is not excessive to impose a written warning for offering to falsify legal records.

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<sup>1</sup> The second performance concern related to an alleged violation of confidentiality. After being accused, the Grievant informed Haukaas that the Court had authorized the Grievant's communication and she directed Haukaas to speak with Judge Anderson. Haukaas did not follow up or speak to Judge Anderson. After the discipline was issued, the Grievant approached Judge Anderson and he intervened resulting in the County deciding to remove the confidentiality issue from the written warning and it issued her a formal letter of apology.

**AWARD**

Yes, the Employer had just cause to issue the Grievant a written warning. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 31st day of March, 2011.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator