BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 487, AFL-CIO

and

CITY OF EAU CLAIRE

Case 302
No.71324
MA-15120

(Henke Termination Matter)

Appearances:

Attorney John B. Kiel, Law Office of John B. Kiel, LLC, P.O. Box 147, 3300-252nd Avenue, Salem, WI 53168-0147, appearing on behalf of IAF Local 487, AFL-CIO.

Attorney Anna M. Pepelnjak, Weiss, Berzowski Brady LLP, 700 North Water Street, Suite 1400, Milwaukee, WI 53202 appearing on behalf of the City Of Eau Claire.

ARBITRATION AWARD

The Eau Claire Firefighters Local 487, hereinafter referred to as the Union, and the City of Eau Claire (City), are parties to a Collective Bargaining Agreement (Agreement) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. On December 23, 2011 the IAF Local 487 filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to provide a panel of arbitrators from which the parties would select one to hear and resolve the Local's grievance regarding the allegation that the City violated the Agreement when it terminated the employment of Christina Henke (Grievant). The City subsequently joined in that request and the Parties selected the undersigned as the arbitrator. Hearing was held on April 3, 2013 in Eau Claire.

ISSUES

The Parties were able to stipulate to the issue to be decided by the Arbitrator as follows:

Did the City violate the collective bargaining agreement when it terminated Christina Henke on January 7, 2009?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE III – UNION RECOGNITION AND ACTIVITIES

. . .

Section 5. Neither the City nor the Union, in carrying out their obligations under this Agreement, shall discriminate against any employee because of sex, race, color, creed, age, handicap, political or religious affiliation, or nationality. Nor shall the City discriminate in hiring on any of the foregoing grounds.

. . .

ARTICLE IV – MANAGEMENT RIGHTS

Section 1. It shall be the right of the City to operate and manage its affairs in all respects in accordance with its responsibility, and the powers or authority which the City has not specifically abridged, delegated, or modified by other provisions of this Agreement are retained by the City. Such powers and authority, in general, include, but are not limited to, the following:

A. To determine the mission of the agency, set standards of service to be offered to the public, exercise control and discretion over its organization and operations, and to utilize personnel in the most appropriate and efficient manner possible.

B. To take disciplinary action, relieve its employees from duty because of lack of work or for other legitimate reasons.

. . .

J. To determine status, tenure, and seniority of employees, certify payrolls, and review appointments and promotions.

K. To hire, schedule, promote, transfer, assign, train, or retrain employees in positions within the Fire Department.

. . .

ARTICLE XIV – PROMOTIONS, REEMPLOYMENT, PROBATION, SUSPENSIONS, DISMISSALS, LAYOFF

Section 1. All promotions, reemployment, suspensions, and dismissal of any member of the Fire Department subject to this Agreement will be in accordance with Section 62.13 of the Wisconsin Statutes, and past practices of the department as of the effective date of this Agreement.

Section 2. All newly hired permanent employees shall be considered probationary for a period of eighteen (18) months from the date of employment with the Eau Claire Fire Department. Probationary employees may be discharged at the discretion of the Fire Chief without any recourse to appeal.

Section 3. Employees who have completed the probationary period satisfactorily and are continued in employment thereafter shall have a permanent status and shall be entitled to all rights, protection, and benefits that are granted by this Agreement retroactive to the original date of hire, which is followed by continuous employment. A notice of an employee's appointment to permanent status shall be submitted to the Union Treasurer within five (5) days of the appointment.

. . .

BACKGROUND

The City of Eau Claire maintains a fire department, the members of which are represented by Local 487 of the AFL-CIO. The parties hereto are bound by a labor agreement which requires an 18 month probationary period prior to becoming a full-fledged firefighter. During this 18 month probationary period the candidate is required to complete a number of tasks. Failure to complete the tasks in a timely manner results in the candidate failing the probation, and the resultant failure of the candidate to achieve the status of firefighter. Under certain circumstances the probationary period may be extended by 6 months, however the Grievant's probation was not extended in this case.

Grievant applied for employment as a Firefighter on February 9, 2007. On June 26, 2007 she was offered the job by (then) Deputy Chief of Operations Lyle Koerner. Her employment was conditioned upon passing a medical/physical evaluation and a background check which she did. She was one of three new Firefighters hired at the same time. The other two were Brian Mero and Ben Gruber. Because all three were hired on the same day the Department had them draw playing cards in order to determine their respective seniority. The drawing occurred on Monday, July 9, 2007 and was witnessed by Deputy Chief Koerner and Captain Bryon Benson. Based on that draw Mero was determined to be the most senior, Grievant placed second and Gruber third. All three new employees signed a document dated July 9, 2007 attesting to the results of the draw and acknowledging their respective seniority positions. All accompanying employment forms were signed by the three new employees on the same day as the draw and each was provided with various handbooks. Grievant's first pay-period ended on July 22, 2007. She worked a 40 hour work week and was paid for 80 hours. Hence, she was paid for two weeks work which is consistent with her start date of July 9, 2007. She signed her "City of Eau Claire – Biweekly Time Sheet" dated July 22, 2007 confirming the pay period began on July 9, 2007.

The Department uses a calendar month system to determine the ending date of probationary periods. For instance, if a probationary period begins on the first of the month in January, it ends on the first of the month in July of the following year, presuming an 18 month period, as is the case here. Grievant's probation would have been completed on January 9, 2009. The Grievant was terminated on January 7, 2009. This grievance followed.

POSITIONS OF THE PARTIES

The Union

The Union states that the City "builds its case around rules" when it argues that the Grievant failed to complete the requirements of her probation and "did not show enough commitment to the City of Eau Claire Fire Department and should be fired even though she received favorable performance evaluations and completed a task entitled "Employee is actively studying streets and IFSTA manual." (IFSTA stands for the *International Fire Service Training Association.* This body publishes many manuals covering such topics as "Essentials of Firefighting", "Fire and Emergency Services Instructor", "Fire Department Company Officer" and the like.)

The street exam was to have been taken at about 6 months into the probationary period of 18 months. This rule was not strictly enforced and several probationary employees failed to comply with the rule without being fired. One firefighter waited for over a year to pass this test and was not fired even though the requirement of the rule said it "shall be completed"

within the first six months. There were other instances of this exam not being completed and the other firefighters were not fired. The City bent this rule for the Grievant, too. She took and passed the street test on 12/15/2008, well beyond the six-month requirement.

The *Probationary Requirements for Newly Hired Employees* states that

> Should the probationary employee fail to complete their probationary requirements within the 18-month probationary period, the employees' probationary period shall automatically be extended for 6 months and/or terminated. (Eau Claire Fire Department Administrative Guideline dated May 17, 1985, Revised June 1, 2004)

If the 18-month rule was hard and fast why didn't the City simply "pull the plug" on her when she failed to complete the IFSTA exam? The answer: Because she was on track to have her probationary period automatically extended and had never been given notice that failure to complete the examinations before January 9, 2013 would result in her termination. Continuation of her probation was "the universal expectation." But on January 4, 2009 she sent an e-mail to Chief Koerner wherein she "put the issue on the table" by stating:

. . .

> Dear Chief Kassing and Chief Koerner:
>
> I am writing to you both after learning that I did not pass the 2nd test in the series of three required for completing the probationary period. I know how disappointed you both must be that I did not allow myself enough time to retake the test prior to my scheduled probationary end date. I can assure you no one is more disappointed than I am in myself. I have made poor time management decisions and I am desperately working on that quality I did not realize I possessed.
>
> I started with Eau Claire Fire Department eager and excited to work for you both and many other mentors I have grown to know over the years. I came on the department very unknowing that my extroverted personality would not be well received by all. I have allowed a few vocalized opinions and actions within the department members to affect my ability to fully focus and complete my tasks toward probationary completion. I regret that I have allowed these things to affect me so poorly; however I am a determined individual. If given the

> opportunity, I can prove my worth to the department by retaking the exam with a passing score. I understand this could mean probationary extension.
>
> In the last month I have been told by many fellow co-workers that I am one of the best paramedics that Eau Claire Fire Department has. I have been told that my bedside manner, ability to calm a chaotic scene, and knowledge of the job is a great attribute for any crew. I take pride in my work, take direction well, and I work hard everyday (sic) to improve my skills. It is evident to me and moreover to you that the learning process is continual in becoming a skilled firefighter/paramedic. An area I strive to improve is the motor pump operations procedures. After taking the exam, I realize this was an area of weakness. I would appreciate the opportunity to attend that class to become more proficient.
>
> I do not want my career with ECFD to end. If so granted an extension, I want to prove that I can be one of the best employees that you have ever hired. I am willing to do whatever requirements you set forth to maintain my position with the department. I am a good person and I have so much more to offer the citizens of our city and members of our department. I humbly ask you to please consider all of these things when making your decision about my future with the department.
>
> Respectfully,
>
> Christina Henke

This e-mail became her death knell. Once read by the Chiefs who received it they were "quick to conclude that the Department might get away with denying Ms. Henke the benefit of an extension." Koerner testified that firing a female firefighter is a "very delicate, very unique" matter and he was worried about "the discrimination thing." Her e-mail suggested to him that "she might view the world otherwise." The City's motive for firing the Grievant was not her failure to complete the probationary tests within 18 months but rather because of her personality. Chief Koerner did not like her personality or her level of comfort with other members of the department. He "expected Ms. Henke to be a wallflower" and to "stay out of the limelight and kinda (sic), for lack of a better term, hide from – from us. . ." He took the opportunity to recommend her termination because she was more "open" than other probationary employees.

The Grievant's personality does not provide just cause for her termination. The City concedes that it does not terminate probationary employees for any reason or no reason at all. Nor does her personality provide legitimate reason to relieve employees, as is required by the

labor agreement in Article IV, B. Regardless of her probationary status she should not be denied the core concepts of due process and fair dealing. The burden should fall on the City to prove justification for its actions by a preponderance of the evidence and the City has failed to do so. Hence, the City should be ordered to rescind the Grievant's termination, return her to her position in a non-probationary status and make her whole.

The City

The Grievant had not completed her probationary period satisfactorily at the time of her termination on January 7, 2009, as required under Article XIV, Section 3 of the labor agreement. The calculation used by the City to determine her probation period begins with the first day the probationer is on the job in pay status and ends with that day of the month 18 months later. This is a long standing method used by the City. Although Grievant's counsel referred to a telephone call the Grievant allegedly received "sometime in June" from Koerner during which he "offered" her the job and which she "immediately accepted", no such facts are in evidence. In fact, the Grievant herself failed to testify at the hearing. Statements of counsel are not evidence. Koerner's letter dated June 26, 2007, by its terms, is conditional and does not constitute a contract. Koerner testified that if these conditions (medical/physical exam and background check) had not been met the offer would have been withdrawn. Also, the dates of the medical/physical exam and the background check are not in evidence and so without any specificity as to these dates the Union is precluded from arguing that her first date of employment, and thus the beginning date of her probation, began on the unknown date (or dates) upon which the two contingencies were satisfied.

Grievant's first day on the job was the day she signed the documents traditionally signed by new hires. This was the day she identified her first day in pay status and the first day she was paid. It is also her first day in Union seniority and to use any other day as the beginning of her probation period ignores undisputed facts in the record and is patently illogical.

Grievant's probation ended on January 9, 2009. The labor agreement does not use the terms "uninterrupted" or "period of time" or "year and a half" as argued by Grievnt's counsel during his opening statement. It refers to a period of 18 months from the date of their employment making no distinction based on the number of days in any particular month or in a particular year and covers all probationers regardless of the particular day, month or year in which they were hired.

Grievant's assertion that she passed her probation when she "passed her 18-month performance evaluation" lacks merit. The evaluation is dated 12/21/08 and the signatures on the evaluation show that Lt. Deziel reviewed the document with Grievant on January 4, 2009.

The effective date is uncertain and can easily be eliminated because it is too early. Also, nothing in the labor agreement or the operational guidelines of the department identifies the performance appraisal as the instrument signifying the end of the probationary period. In addition, Lt. Deziel did not have the authority to move Grievant off of probation. According to the ECFD Organizational Chart only Chief Kassing had the power to extend or terminate a probationary employee. Chief Koerner explained how the probationary period is determined as follows:

> I can just tell you what I normally look at, regardless if it's a leap year or a non-leap year. I look at every month is a month and if you started on whatever date of whatever month that was, 18 months later, that date is the end of the date.

A consistent past practiced involving a major condition of employment becomes an implied term of the contract especially when the term is not repudiated by negotiators over several contract terms.

Grievant was not entitled to an extension of her probation. This is a management decision and nothing in the labor agreement limits or restricts management's right to extend probation or to terminate a new hire. Also, the guidelines of the department relating to the extension of probation were explained at hearing without contradiction:

> Should the probationary employee fail to complete their probationary requirements within the 18-month period, the employee's probationary period shall automatically be extended for 6 months and/or terminated.

Koerner explained that the term "automatically" refers to the length of the extension not to the entitlement to it. Lastly, Grievant was not a good candidate for an extension due to her procrastination and absence of diligence. Chief Koerner observed her conduct first hand and concluded that she would not succeed as a firefighter because she lacked the requisite commitment and an extension of her probation would be an exercise in futility. At hearing, the Union elicited evidence that she may have failed the IFSTA test because she had not taken the course relating to Motor Pump Operation (MPO) and suggested that had she been given more time to take the course she might have passed the IFSTA test. Nothing in the record suggests that Grievant was prevented from taking the course, while the other two probationers had found time to take it, nor does the record reflect that taking the course would allow her to pass the IFSTA test. (Others had passed that test without taking the course.) Also, only 24% of the IFSTA test related to MPO so she could have failed the entirety of these questions and still passed IFSTA.

The Union failed to offer proof that Grievant's termination was motivated by gender-based discrimination. Not only were these assertions unsupported by the record they fail to constitute sex discrimination under any interpretation of the law. "It is not adequate for the complainant to present evidence which simply raises the suggestion or the possibility that a prohibited motivation was at work." (Citing Conner v. Heckel's Inc., ERD Case No. 199600406 (LIRC, 09/27/99). At all times, the complainant bears the burden of demonstrating by a preponderance of the evidence that the employer's actions were based on prohibited factors. Id.

The general release dated October 13, 2011 in the ERD complaint filed by the Grievant extinguished Grievant's right to make a claim against and/or recover anything of value from the City. The release was signed by the Grievant, the City and counsel for both parties.

This grievance should be denied.

Union's Reply

While Article XIV provides for an 18 month probationary period and that a probationary employee may be discharged at the discretion of the Fire Chief without recourse to appeal, this language is not available to the City to challenge the decision via the grievance procedure. Since the grievance alleges sex discrimination in violation of Article III, Section 5 and the labor agreement provides, in Article II, that a grievance includes all claimed violations applicable to the employees, it follows that Grievant has the right to grieve this alleged violation. Article III, Section 5 sets forth very specific rights that protect any employee from discrimination and is the type of provision intended by the parties to be enforceable by all employees, including probationary employees. Denying probationary employees the right to proceed to arbitration under Article III, Section 5 would lead to an absurd result – the denial of sex discrimination protection to all employees except to those on probation.

Regarding arbitrability, the undersigned should not overlook the facts in this case and should view them in the light most favorable to the Grievant. She had successfully completed her 18 month review and had been recommended for a wage increase and this must mean something. "It is reasonable to infer that these signify that at the time of signing the City intended to afford Ms. Henke more time to complete her probationary requirements – as contemplated by its rules. . ." and to extend her probationary period by 6 months.

So what changed? The answer is simple – Grievant offered Koerner a second look with her January 4, 2009 e-mail. The City should be required to justify its refusal to offer her the benefit of its own rule – the rule which affords probationary employees more time to complete their probationary requirements.

Assuming *arguendo* that the Grievant was within her probationary period, the "just cause" standard should never the less apply ". . .because the Union has alleged that Ms. Henke was terminated in violation of provisions that specifically applies (sic) here, namely Article III, Section 5 and Article IV, Management Rights, Section I, paragraph B. . . (A)nd. . . because Chief Koerner himself acknowledges the applicability of this standard to probationary employees:" In his letter to Chief Kassing on page 3 of City Exhibit 37, dated January 5, 2009:

. . .

> In this particular situation, we have actually proven that there is "Just Cause" for this dismissal recommendation.

. . .

Having relied on the just cause standard the City should not now be allowed to escape its constraints on arbitral review. It comes down to this: "Did the City violate the collective bargaining agreement when it terminated Christina Henke on January 7, 2009?" If so there is no just cause for discharge, the contract has been violated and Ms. Henke is entitled to relief. The question should be answered in the affirmative for two reasons: First, Grievant was subject to unequal treatment when compared to other male employees and second, the collective bargaining agreement allows the City to relieve employees from duty for legitimate reasons. No legitimate reason exists here and the City's application of its management right is unreasonable.

The City supports its claim by arguing that Mero and Gruber both completed their exams within 18 months. It does not take into account that Grievant was assigned to light duty for two months and was assigned to review paramedic protocols. She was placed on a different work schedule than her counterparts Mero and Gruber and given different responsibilities. This interfered with her ability to study for, schedule and take the three probationary exams. She lost two months which would have otherwise been available for her to study. The City also "hangs its hat" on hearsay claims of Scott Walby who claims he heard Grievant "talk loosely and openly" about her sexual relations in the workplace. Chief Koerner failed to investigate fairly before relying on Walby's statements. Had he done so he would have discovered that Walby's allegations were not credible.

The great weight of circumstantial evidence supports the conclusion that the City treated Grievant differently than similarly situated males. The City simply dismisses this body of compelling circumstantial evidence to baldly deny that she was treated differently when it terminated her rather than offer her the additional time she requested.

City's Reply

Having failed to develop certain arguments in briefing, the Union has abandoned them and is precluded from addressing them in response. Specifically they are:

1. Grievant achieved permanent employment status (and eligibility for "just cause" termination) based on the Union's computation of the probationary period.

2. Grievant's Article XIV, Section 2 "date of employment" is July 7, 2007.

3. Article III, Section 5 of the collective bargaining agreement takes precedent over Article XIV, Section 2 for terminating probationary employees.
4. The General Release does not extinguish Grievant's right to make a claim and/or recover from the City of Eau Claire.

Because the Union failed to raise, develop or substantiate these arguments in its initial brief, they are deemed waived.

The arguments set forth in the Union's initial brief fail to support the grievance. The Union makes three arguments as follows:

First, it says that the ECFD's implementation in the jointly written 2004 SOG, Employee's Appraisal Program does not invalidate Grievant's discharge.

> The portion relating to the completion of the Streets test within the first six months has been modified and now employees are not allowed to take that test until after the first six months has passed due to the amount of work required of the employees during that time. Grievant was accorded the same rule exemption as were other probationary employees.

Second, the Union argues that Grievant was not entitled to an "automatic" extension of probation under the SOG.

> The Union ignores Chief Koerner's uncontradicted testimony which states that the Department construes the word "automatic" to refer to the length of the extension (6 months) and not to the

guarantee of it. ". . .the automatic six months still means six month period, not that they automatically get it." It also argues, without evidentiary support, that Grievant had never been given notice that her failure to complete the examination by January 9, 2009 would result in termination.

Third, Chief Koerner did not wrongfully recommend termination.

The Union takes the position that Koerner maliciously decided to recommend termination after he received Grievant's January 4, 2009 memo. This record is void of any evidence even remotely suggesting that Koerner's actions were motivated by dislike of the Grievant or her personality. On the contrary, this was a difficult decision for the Chief. He repeatedly testified that discharging Grievant was a difficult decision for all involved, himself included. Also, the argument ignores the fact that Chief Kassing was the ultimate decision maker, regardless of Koerner's recommendation.

The Union's final paragraphs suggest, without elaboration, that Grievant's termination violated the standards of "just cause" (while ignoring the fact that she was not entitled to just cause); the Management Rights Clause (ignoring the fact that Grievant's failure to complete her probationary requirements constitute a "legitimate reason" for termination); and the "core concepts" of due process and fair dealing (ignoring the fact that the case cited involved a just cause termination in which the employee had no notice that her job was in jeopardy until it was too late to improve her performance).

This grievance should be denied.

DISCUSSION

This matter hinges largely on the answer to the following question: Was the Grievant within her probationary period when her employment was terminated on January 7, 2009? The Union argues the Grievant's start date was July 7, 2007. It holds this view because of an entry on the original stipulation of the parties (during their pre-hearing attempts to resolve this matter) which identifies Grievant's first day of work as July 7, 2007. Ms. Pepelnjak, the City's attorney, drafted that document and had, according to her, used that date by mistake. The significance of this alleged mistake was that if July 7, 2007 was her start date then she would have completed her 18 month probationary period on January 7, 2009 and her termination on that same date (January 7, 2009) would arguably have been at issue. Subsequent to the

Grievant's attorney signing off on the stipulation Ms. Pepelnjak determined that she had made the error and advised the undersigned and Mr. Kiel of her mistake and sought to change the stipulation to reflect the proper date of July 9, 2007. Mr. Kiel objected to the change. Following some protracted discussions among those involved, including the undersigned, it was determined that Mr. Kiel and Ms. Pepelnjak could not agree to the Grievant's actual start date and the undersigned scheduled a hearing.

The difficulty with Grievant's position that her start date was July 7, 2007 is that this record does not contain one shard of evidence which could lead any reasonable person to conclude that this is the case. The evidence overwhelmingly favors July 9, 2007 as being the actual start date, and I so conclude and reject the Grievant's argument that her date of employment was July 7, 2007. Having determined that July 9, 2007 was her first day on the job, and hence the first day of her probationary period, I am convinced that she was a probationary employee on the date of her termination, January 7, 2009. I am convinced of this because I find the City's method of calculating the time period to be both reasonable and a long standing practice not otherwise challenged by the Union. Having thus determined that the City's method of calculating the probationary period is valid, the undersigned rejects the Union's argument that she was entitled to "just cause" eligibility based on the collective bargaining agreement. I find this to be the case since Article XIV, Section 2 gives the Fire Chief absolute authority to terminate a probationary employee "without any recourse to appeal."

I reject the Union's argument that the "General Release" does not extinguish Grievant's right to bring this claim since it was first argued on behalf of the Grievant in her reply brief. The same is true with regard to her argument that Article III, Section 5 "takes precedence over" Article XIV, Section 2 and is, therefore, rejected. Issues not raised in the main brief are considered abandoned. (See A.O. Smith Corp. v. Allstate Ins. Companies, 222 Wis.2d 475, 493, 588 N.W. 2d 285 (Ct. App., 1998); Matter of Bilsie's Estate, 100 Wis.2d 342, 346, fn. 2, 302 N.W.2d 508 (Ct. App., 1981); City of Milwaukee v. Christopher, 45 Wis.2d 188, 190, 172 N.W. 2d 695, 696 (1969); and Harper v. Vigilant Ins. Co., *433 F.3d 521, 528 (7th Cir., 2005).*

I also reject the Union's argument that, because the Employee Appraisal Program requires probationary employees to complete the Streets test within the first 6 months and, since the rule was not strictly enforced (several candidates, including Grievant, failed to complete this test within the first 6 months of probation) then the City cannot rely on other rules to terminate the Grievant. I embrace the City's argument that the reason probationers are prevented from taking the Streets test within the first 6 months of training is because the newly hired employee has a lot to learn and it would not be fair to have them start taking exams without having ample time to study. Also, the evidence demonstrates that historically

probationers took the test after the initial 6 months of training. Perhaps the most compelling reason to reject this argument is that it is irrelevant to the issue of why Grievant was terminated.

The Union argues, not persuasively, that the Grievant was "entitled" to an "automatic" extension of her probationary period by 6 months because of language found in the Department's SOG which states in pertinent part:

> Should the probationary employee fail to complete their probationary requirements within the 18-month period, the employees' probationary period shall automatically be extended for 6 months and/or terminated.

I reject this argument and adopt that of the City. Chief Koerner explained:

> ". . .it means that if we were to extend one's probationary period automatically, if that was the case, it would be for six months, if that was an option. If we chose not to extend probation, we have the right to terminate that individual from employment." and ". . .the automatic six months still means six-month period, not that they automatically get it."

As the City argues, and the undersigned agrees with this logic, "After all, what purpose does a specific probation period serve. . .if neglectful employees inevitably get more time? Should a probationer who dawdles for a full 18 months be assured of another (six months) to fulfill the requirements? The Union's interpretation leads to an absurd result and, on that basis, should be rejected." Citing Brown County (Sheriff's Department), MA-14680 (Neumann, 1/27/2011) ("Absurd results. . .are to be avoided").

The undersigned also rejects the notion that Grievant was never given notice that her failure to complete the requirements of her probation by January 9, 2009 would result in termination. Koerner testified, without contradiction, that he and other management representatives had reminded Grievant that she must be diligent about her test-taking, notwithstanding the fact that the evidence amply demonstrates that she was fully aware of her obligations.

I also reject the Union's argument that Koerner wrongfully recommended termination because he disliked her personality. The Chief repeatedly testified that it was a hard decision to make because of her long prior acquaintance. He testified, again without any semblance of contradiction, that "Again, the Chief and I were very close with - - with the Kruckmans and Henkes (Grievant's family) and it hurt. It - - was a very difficult decision that the three Chief Officers of the organization made and we didn't find any pleasure in it."

The undersigned finds no evidence to conclude that Grievant was not given due process nor was she treated unfairly by the City in any respect and she was in no way discriminated against on the basis of her sex.

Based on the above and the record as a whole, the undersigned issues the following

AWARD

The City **did not** violate the collective bargaining agreement when it terminated Christina Henke on January 7, 2009.

The grievance is denied in its entirety.

Dated at Wausau, Wisconsin, this 26th day of June, 2013.

Steve Morrison /s/
Steve Morrison, Arbitrator

SM/gjc
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