

IN THE MATTER OF ARBITRATION
BETWEEN

Human Development Center)	
)	BMS Case No. 08 – RA – 0745
“Employer”)	Issue: Discharge
)	
and)	Hearing Site: Duluth, MN
)	
American Federation of State, County)	Hearing Date: 06-03-08
and Municipal Employees, AFL-CIO,)	
Minnesota Council No. 5, Local No.)	Award Date: 07-07-08
3558)	
)	Arbitrator: Mario F. Bognanno
“AFSCME or Union”)	
)	

JURISDICTION

The Employer, the Human Development Center (HDC), is a Minnesota non-profit corporation and community mental health center that provides integrated services to the residents of Carlton, Cook, Lake, and southern St. Louis counties in Minnesota and Douglas County, Wisconsin. AFSCME, Local No 3558, the Union in this case, represents HDC employees, including professional employees, at the Employer’s geographically dispersed facilities.

The parties are signatories to a January 1, 2007 – December 31, 2009 Collective Bargaining Agreement (CBA), which is their second negotiated agreement. (Joint Exhibit 1) Pursuant to the relevant provisions in the CBA the instant matter was heard on June 3, 2008 in Duluth, Minnesota. The parties stipulated that the matter was properly before the Arbitrator for a final and binding decision. Each party was afforded a full and fair opportunity to present its case;

witness testimony was taken under oath and cross-examined; and exhibits were introduced into the hearing record. At the close of the evidentiary part of the hearing, the parties, through their designated representatives, presented closing arguments. Thereafter, the undersigned took this matter under advisement.

APPEARANCES

For the Employer:

Joseph J. Roby, Jr., Esquire

James Gruba, HDC Executive Director

Pam Hinnenkamp, HDC Office Manager

Merle A. Peterson, HDC Human Resources Director

Didi Jezierski, HDC Human Resources Administrative Assistant

Karen Rantala, HDC Assistant Program Director

Julie Wilson, Coordinator, Adult Rehabilitation Mental Health Services (ARMHS)

Kari Davey, Support Staff, ARMHS (appearing by order of subpoena)

Rochelle Singleton, Support Staff, ARMHS (appearing by order of subpoena)

For the Union:

Bob Buckingham, Business Representative

Grievant/CSP (Community Support Program) Support Staff

Lucia Marshall, HDC Case Manager and Shop Steward

Leslie Thomas¹, HDC Support Staff

Lori Venne, HDC Support Staff

John Hiner, Crisis Response Team (Sr. Social Worker, State of Minnesota)

¹ Formerly, Ms. Thomas was a HDC staff member.

I. ISSUE

The parties stipulated to the following statement of the issue:

Whether the Grievant was discharged for just cause? If not, what is an appropriate remedy?

II. FACTS AND BACKGROUND

The Grievant was hired on March 24, 2003 as a CSP Support Staff person. (Joint Exhibit 8) In that position, she fulfilled receptionist, secretarial and clerical responsibilities. (Joint Exhibit 3) Moreover, she was a Union activist who, by the end of her employment, was serving as an AFSCME, Local No. 3558 Vice President.

On February 1, 2008, approximately five (5) years after having been hired, the Grievant was discharged for “[I]nsubordination, being rude to her supervisor.” Stated more expansively, the Grievant was discharged because she “... continues to overstep her boundaries with her supervisor. She continues to be disrespectful, rude and not professional while in the workplace.” (Joint Exhibits 14 and 15)

The Grievant’s discharge arose out of the following scenario. According to her supervisor, Pam Hinnenkamp, HDC Office Manager, on January 31, 2008, a very upset Outreach worker called her at approximately 2:05 p.m., indicating that the Grievant had left her a phone message, which stated that if the Outreach worker and her client failed to arrive at the facility within five (5) minutes, then their appointment with Eric, a HDC Therapist, would have to be rescheduled. Further, the Outreach worker said that the appointment was scheduled for 2:30 p.m. and that she was not at all late. Ms. Hinnenkamp told the Outreach worker

to make her appointment as scheduled, and then she proceeded to seek out the Grievant to ask her what had happened, after first confirming the appointment's date and time. Ms. Hinnenkamp documented that the Grievant "rudely" replied to her question, stating: "I'm taking care of it Pam, don't worry about it. Eric just made a mistake on his schedule."² Kari Davey, Support Staff, ARMHS, and another unit employee overheard the Grievant's comments and Ms. Hinnenkamp documented that Ms. Davey remarked, "That was very defensive and rude", referring to the Grievant's reply. (Employer Exhibit 35) Ms. Davey's testimony at the hearing essentially corroborated Ms. Hinnenkamp's documentation of these events. While not disputing the content of Employer Exhibit 35, the Grievant testified that she placed the call to the Outreach worker because she was asked to do so by a Therapist, namely, Eric.

Ms. Hinnenkamp hand-delivered discharge correspondence to the Grievant at the February 1, 2008 meeting that she had called and that also included other Union- and Employee-side participants. (Joint Exhibits 14 and 15) At this meeting, Ms. Hinnenkamp explained why the Grievant was being discharged, recounting the events of the previous day, observing that it was not the scheduling mix-up *per se* that triggered the disciplinary action but, rather, the fact that she had been so rude and disrespectful in the presence of others. In response, Ms. Hinnenkamp's documentation of the meeting indicates that the Grievant was defiant. (Employer Exhibit 36) The Grievant's testimony did not contest this account of the events of January 31 or February 1, 2008. The Union grieved the Employer's discharge action on February 1, 2008. (Joint Exhibit 16)

² Apparently Eric mistakenly believed that the appointment in question was set for 2:00 p.m.

Before her discharge, the Grievant had been disciplined on four (4) prior occasions. What follows is a synopsis of the events germane to each of these prior occasions. The synoptic information was taken mainly from witness testimony and documents in evidence that were contemporaneously prepared by the Grievant's supervisor, Pam Hinnenkamp, HDC Office Manager, given her personnel management responsibilities. In the main, the facts of this case are not in dispute but the way the parties interpret said facts differ in certain respects.

1. June 5, 2007 – Verbal Warning: On May 1, 2007, as Lisa Clark, ARMHS team leader, was talking to her team, the Grievant, who was attending the meeting, was observed “shaking her head no vigorously” in disagreement with a point Ms. Clark was making. Subsequently, Ms. Hinnenkamp advised the Grievant that such conduct was disrespectful toward supervisor Clark. (Employer Exhibit 10) On June 5, 2007, Ms. Hinnenkamp issued a verbal warning to the Grievant because she was (1) falling behind in her paper work, filing and billing responsibilities; (2) overstepping her boundaries by questioning Ms. Hinnenkamp's work with co-workers and by attempting to resolve issues raised by other employees rather than informing their supervisors of same; and (3) contributing to a hostile workplace with her eye-roll mannerism, disrespect and talking about co-workers. The Grievant denied the hostile workplace charge. (Employer Exhibit 11)

2. August 16, 2007 – First Written Warning: On June 20, 2007, an investigation found that the Grievant had interrupted a private session between a case manager, his client and his client's girlfriend and that she approached the

girlfriend in a confrontational manner. Ms. Hinnenkamp concluded that this conduct was a violation of patient privacy and created a possibly explosive situation. (Employer Exhibit 12) The next day, on June 21, 2007, Ms. Hinnenkamp met with the Grievant, maintained that she got her side of the story and then proceeded to explain that such uninvited intrusions were inappropriate and raised role/boundary issues. (Employer Exhibit 13) The Grievant testified that this event was not investigated. On August 6, 2007, the Grievant communicated with Ms. Hinnenkamp, using a disrespectful tone and shaking her head at Ms. Hinnenkamp disapprovingly. (Employer Exhibit 14) On August 13, 2007, the Grievant, according to Ms. Hinnenkamp, "rudely" accused her of "... jumping all over ... " the Grievant. (Employer Exhibit 14) Also, on that same date, Ms. Hinnenkamp reminded the Grievant not to turn down her office thermostat to which the Grievant, according to Ms. Hinnenkamp, responded "rudely", "I'm the only one in the office Pam, what difference does it make!" The Grievant then "slammed" her office door shut, Ms. Hinnenkamp documented. (Employer Exhibit 14) At the arbitration hearing, the Grievant testified that after Ms. Hinnenkamp left her office, "I closed my door". On August 16, 2007, Ms. Hinnenkamp issued a First Written Warning, commenting:

I have observed on several occasions Ginger being disrespectful and disruptive while in the workplace, contributing to a hostile work environment.

She also recorded the Grievant's reaction as follows:

Ginger says she doesn't agree with half of this. She feels that I snap at her and that's why she snaps back.

(Joint Exhibit 5)

3. October 15, 2007 – Final (Second) Written Warning: At an October 15, 2007 meeting with Lucie Marshall, HDC Case Manager and Union Steward, and the Grievant, Ms. Hinnenkamp recounted that previously she had advised the Grievant that her request for a transfer had been denied. In response, Ms. Hinnenkamp documented that the Grievant became “belligerent and demanding,” and she noted the following exchange,

Grievant: “This is a mental health facility; do they even care about my mental health? I want a yes or no answer, Pam!”

Ms. Hinnenkamp: “Do not talk to me in that tone ever again.”

According to Ms. Hinnenkamp’s notes, she maintained that it was this exchange (i.e., the Grievant’s disrespectful behavior toward her) that triggered the October 15, 2007 final written warning. On the other hand, at this meeting, the Grievant maintained that the instant warning arose out of an earlier exchange, having to do with the Grievant’s refusal to attend an upcoming ARMHS meeting headed-up by Ms. Clark. (Employer Exhibit 18)

Further, at the arbitration hearing, the Grievant testified that while she was “pointing her finger”, she was not “pointing at Ms. Hinnenkamp” *per se*; she admitted to possibly having made the “yes – no” statement; and she acknowledged that she did say that she would not attend future ARMHS meetings. Later on October 15, 2007, Ms. Hinnenkamp e-mailed the Grievant, directing her to attend the referenced ARMHS meeting, which she did attend. (Employer Exhibit 19) The second written warning document sets forth Ms. Hinnenkamp’s stated reasons for the discipline:

After having been denied a relocation request, Ginger began contributing to a hostile and toxic work environment. Such behaviors include: a meeting with her supervisor where Ginger was demanding, in a raised voice while pointing her finger, that a question be answered; reports from several staff members that Ginger was “at it again”, “on a roll”, etc., meaning that Ginger was angry or upset about something and discussing the situation with numerous staff members. Statement of refusal to perform duties as assigned by supervisor (Ginger indicated that she would no longer attend the Tuesday ARMHS meeting that she has been instructed to attend).

Ms. Hinnenkemp also reports the Grievant’s reactions:

Ginger feels that this is the outcome of the 10/09/07 meeting with ARMHS Group. She feels that I am lying.

(Joint Exhibit 7)

The Grievant’s Annual Performance Evaluation took place on October 27, 2007. The following supervisory comments are documented therein:

Strengths and Accomplishments: I have only worked with the Ginger for the past 6 months. Given previous history I believe Gingers (sic) work performance, and attitude toward her job has made a wonderful turn around. One of Gingers (sic) greatest strengths is the insurance piece in her job. She can always be counted on to help out someone that may not be as familiar with process as she is. This is very much appreciated by her supervisor.

Improvement Needed: Ginger should continue to work on the “Count to 10” rule before speaking if it is something she doesn’t agree with. By knowing that suggestions or ideas given to her by her supervisor are only to help she should be able to receive constructive criticism easier and with a positive demeanor.

(Joint Exhibit 8)

On November 11, 2007, Ms. Hinnenkamp held a “coaching” meeting with the Grievant, at which time the two (2) discussed “expectations” regarding the Grievant’s on-the-job conduct. The Grievant apparently acknowledged that she had spoken with Rochelle Singleton, Support Staff – ARMHS, saying something

to the effect that Ms. Hinnenkamp was being non-communicative and giving her “the cold shoulder.” (Joint Exhibit 11) In a memorandum from Ms. Singleton to Ms. Hinnenkamp, dated November 29, 2007, Ms. Singleton, at Ms. Hinnenkamp’s request, documented work-based observations she had made with respect to the Grievant. Some of her observations are as follows:

- “... [the Grievant] does not understand healthy boundaries between herself and her supervisors.”
- “she undermines her supervisor.”
- “I believe her present situation has little if anything to do with Pam because she has run into trouble with every supervisor she has had at HDC.”
- “I also believe that because of her many years of being reprimanded by supervisors, she often speaks negatively about them to her coworkers.”

(Employer Exhibit 27) At the hearing, Ms. Singleton essentially confirmed what she had written in this memorandum and further stated that she has never observed Pam behaving negatively towards others. In a December 5, 2007 e-mail message to the Grievant, Ms. Hinnenkamp expressed detailed expectations bearing on the latter’s participation in “Tuesday” ARMHS meetings: Specifically she wrote:

You need to be sitting at the table taking accurate minutes of the meeting. Not in your office doorway. This is for the entire meeting. You should not be in your office doing other things. You should only be making copies when asked to by the supervisor of the meeting or myself. Your phones are forwarded to the main building so there is no need to go into your office and do other things while the meeting is going on. Getting up and walking around is disruptive and disrespectful. You are a part of a team and therefore you need to attend the meeting as such. If you have any questions please let me know. Thank you.

(Employer Exhibit 28)

4. January 15, 2008 – Unpaid Suspension: On January 11, 2008, Ms. Hinnenkamp counseled the Grievant in regard to the way she was managing her time at work. According to Ms. Hinnenkamp, the Grievant became defensive and got upset. Continuing, nevertheless, Ms. Hinnenkamp next commented to the Grievant about her tendency to eavesdrop and then to cut in on conversations that were taking place in Ms. Hinnenkamp's office, which was adjacent to the Grievant's office. At this point, the Grievant abruptly cut off the conversation and left Ms. Hinnenkamp's office to go home pointing out that it was 4:30 p.m.: the end of her scheduled workday. (Employer Exhibit 29) At the hearing, the Grievant agreed with the essence of Ms. Hinnenkamp's account of this exchange. On January 15, 2008, the Grievant was issued an unpaid five (5) hour suspension for being insubordinate and specifically for:

Standing up and walking out of my office while I was talking to her on January 11, 2008. Not sitting up to the table during Tuesday ARMHS meeting as told to do on December 5, 2007. Interrupting other peoples' conversations as talked to on January 11, 2008.

(Joint Exhibit 12) Ms. Hinnenkamp and the Grievant discussed the reasons for the suspension on that same day. (Employer Exhibit 30)

With respect to nearly each of the above-discussed disciplinary steps, the Union filed a corresponding grievance. The Union grieved the August 16, 2007 first written warning, even though a written grievance was not formally served on the Employer. Regarding this warning, on August 23, 2007, the parties held a 1st step grievance meeting. At this meeting, the Employer clarified that the June 5, 2007 interaction between Ms. Hinnenkamp and the Grievant was a "documented"

coaching session and, thus, it constituted a “verbal warning”. Further, the Union questioned whether the first written warning was a manifestation of anti-Union animus, as the Grievant was a Union Vice President. Ms. Hinnenkamp denied any such motivation, asserting that the Grievant simply must begin to act positively, respectfully and professionally. At this meeting, the Grievant blamed Ms. Hinnenkamp, claiming that she has been “rude”. (Employer Exhibit 16) Ms. Hinnenkamp refused to withdraw the first written warning.

On October 22, 2007, the Union grieved the October 1, 2007 second written warning. (Joint Exhibit 7) On October 24, 2007, the parties – the Grievant, Lucia Marshall and Ms. Hinnenkamp – held a 1st step grievance meeting in regard this warning. During their meeting, the Grievant got angry and allegedly said: “I will point my finger this time! This whole thing is about management being able to say and do whatever they want and not us!” Ms. Hinnenkamp refused to withdraw her second written warning. (Employer Exhibit 22) On November 6, 2007, the Union filed a 2nd step grievance regarding this matter. (Joint Exhibit 9)

On January 15, 2008, the Union filed a grievance, challenging the Grievant’s suspension of January 1, 2008. (Joint Exhibit 13) The parties’ 1st step grievance meeting pertaining to the suspension was held on January 29, 2008. This meeting included Lucia Marshall, the Grievant and Ms. Hinnenkamp. At the onset of the meeting, the Grievant hand-delivered the following statement to Ms. Hinnenkamp:

I feel it was unfair and not warranted.

First – I was off of work at 4:30PM on Friday January 11, 2008 and did not feel that Pam had the right to keep me in her office and put

me down both mentally and physically on my time. She called me in her office at 4:20PM and when it was the end of my day of work I told her I can not take anymore and I was leaving.

Second – I came into work late on Tuesday January 15, 2008 at 8:20AM as I was sick in the early am before I had come to work. When I got to work the meeting had already started and the table was FULL. Pam was sitting away from the table and so was Julie Wilson. If I had asked people to move to make room for me to sit I would had (sic) disturbed the meeting that would have gotten me in trouble also. Jim Gruba was there and he was talking. I pulled my chair from my office and put it in the walk way for the rest of the meeting.

Third – I did not interrupt a conversation! If Pam if (sic) talking about the conversation about keys including Lisa, Diann and Dani. Diann had turned away from Lisa and I was coming from the copy machine. I took out my key change (sic) and showed Diann which key was for the doors upstairs and which one was for the outside door AFTER Lisa told her to figure it out herself. Lisa made a statement about everyone doing her job that she does not have to be there. After a while I went into Lisa's office and told her I was sorry if she thought I was doing her job and that I WAS NOT trying to do her job but the help Diann understand the keys. Julie Wilson was in the office and heard me talk to Lisa.

What Pam is doing is unfair and I would like her to stop harassing me. I do my work and I do a good job. The workers do not have a problem with me, just Pam and Lisa.

(Employer Exhibit 32) After reading this statement and with respect to their January 15, 2007 meeting, Ms. Hinnenkamp advised the Grievant, among other things, that although her work-day had come to an end at 4:30 p.m., it was "... disrespectful to get up and walk out of the office when I was talking to her."

(Employer Exhibit 34)

Finally, as previously noted, the Union grieved the Grievant's discharge on February 1, 2008. The parties' were unable to resolve the above-referenced grievances. Accordingly, they combined the grievances (i.e., the first and second

written warnings, suspension and discharge grievances); jointly stipulated that all pre-arbitration steps of their contractual grievance procedure were waived; and advanced the combined set of disputes to arbitration for a final and binding determination.

III. RELEVANT CONTRACT AND HANDBOOK LANGUAGE

ARTICLE 47 – Discipline and Discharge – Misconduct. In cases of misconduct, the Employer shall not discipline or discharge an employee without just cause and without following these progressive discipline steps:

- (1) first written warning
- (2) second written warning
- (3) unpaid suspension
- (4) discharge

One or more progressive discipline steps may be skipped in cases of serious misconduct, including but not necessarily limited to, theft, violation of the illegal drugs and alcohol policy, assault, falsification of any Employer record, insubordination, willful breach of client confidentiality, willful violation of vulnerable adult or child protection laws, job abandonment, and willful destruction of property. Any first written warning more than one (1) year old shall not be cited for progressive discipline purposes, providing there have been no other subsequent warnings or suspensions. All discipline shall be in writing to the employee, with a copy to the Union.

(Joint Exhibit 1; emphasis added)

HUMAN DEVELOPMENT CENTER – UNION EMPLOYEE HANDBOOK

Employee Professionalism

Professional Conduct

As an employee of Human Development Center, your primary responsibility is to perform your job in an efficient and productive manner. You are expected to meet reasonable standards of work performance and personal conduct, including obeying company rules, adhering to safe working practices, cooperation with management and fellow employees.

The following list is not intended to be exhaustive. It merely is intended to provide you with examples of the types of conduct that will result in disciplinary actions.

- Gambling;
- The use, sale or possession of alcohol, drugs or weapons;
- Fighting, assaulting or attempting to assault or provoke another person to engage in an assault or fight;
- Profane or abusive language;
- Insubordination;
- Sabotage;
- Theft;
- Unauthorized use of company material, time, equipment or property;
- Excessive absenteeism or tardiness;
- Other unprofessional conduct during work hours or on company premises.

(Joint Exhibit 2; emphasis added)

IV. POSITION OF THE EMPLOYER

The Employer initially argues that the Grievant was disciplined and subsequently discharged for just cause; that each disciplinary step was reduced to writing, with a copy of same given to the Union; and that the Employer complied with each of the steps of progressive discipline, as specified in Article 47 of the CBA. Next, the Employer contends that the Grievant was on notice regarding its standards of conduct, code of ethics; compliance program; and conflict of interest policies; and the Employer's expectations regarding professional conduct, including the point that employee misconduct such as the use of abusive and insubordinate language would result in disciplinary action.

(Joint Exhibits 2, 4 and 10) In this regard, in April 2005 the Grievant received a copy of the Employer's "Expected Core Behaviors and Values" statement, which includes an admonition regarding the maintenance of "appropriate boundaries" and features the values of "cooperation" and interpersonal "rapport". (Joint Exhibit 3)

Further, the Employer contends that the Grievant knew that her workplace conduct, particularly as it related to her relationship with supervisors, was objectionable, as Ms. Hinnenkamp made clear during coaching sessions and during the progressively severe steps of the parties' negotiated disciplinary process. Nevertheless, the Employer argues, the notice it provided the Grievant did not deter her from continuing to be abusive, insubordinate and uncooperative toward supervisors, co-workers and clients; possibly because she refused to take responsibility for her own (mis)conduct, while at the same time, accusing others of being at fault.

Still further, the Employer points out, whereas the Grievant charges Ms. Hinnenkamp as being the cause of her problems, the hearing record proves that the opposite is true, namely: (1) that the Grievant has similar problems with her previous supervisor, Marge Martin; that as far back as March 28, 2005, Ms. Martin had put the Grievant on written notice for misconduct; and that on September 6, 2005 and February 3, 2006, Ms. Martin issued first and second written warnings to the Grievant, respectively, for inappropriate behavior particularly *vis a vis* supervisory management; (2) that upon her assumption of supervisory duties, Ms. Hinnenkamp, who was aware of the Grievant's disciplinary history, agreed to wipe clean the Grievant's personnel file of its two (2) warning letters as of November 1, 2006, provided that the Grievant experiences no further incidences of insubordination relative to the present date, June 26, 2006. Ms. Hinnenkamp testified that although some coaching occurred during the intervening months, the Grievant's disciplinary file was expunged as

scheduled; and (3) witnesses Julie Wilson, ARMHS Coordinator, testified to having observed the Grievant's disrespectful and argumentative attitude toward Ms. Hinnenkamp, without any provocation on Ms. Hinnenkamp's part; witness Karen Rantala, Assistant Program Director, corroborated Ms. Wilson's observation that she had never observed Ms. Hinnenkamp "raise her voice" or "lose her temper", and Ms Rantala referred to Ms. Hinnenkamp's supervisory management as being "exemplary"; and Ms. Davey and Ms. Singleton, both co-worker and members of the bargaining unit, testified to having observed the Grievant being "disrespectful", "loud" and "unprofessional" toward Ms. Hinnenkamp. (Employer Exhibits 4, 5, 6, 7 and 8)

Finally, the Employer observes that the Union has been involved with the Grievant's disciplinary matters from A through Z and that the record facts support its conclusion that it had just cause to discharge the Grievant.

V. POSITION OF THE UNION

The Union initially requests that each of the grievances in this case be separately considered and ruled on; arguing that doing so will uncover unacceptable "due process" blunders on the part of the Employer. Specifically, the Union argues, the Employer assumed that certain critical facts of the case were true without the benefit of having first conducted a full investigation to validate same. In particular, the Union identifies three (3) such situations. First, with respect to the first written warning on August 13, 2007, Ms. Hinnenkamp did not ask the Grievant whether she had turned down her office thermostat, rather she assumed that she had.

Second, with respect to the second written warning on October 15, 2007, Ms. Hinnenkamp had referenced “reports from several staff members that Ginger was “at it again”, “on a roll”, etc., meaning that Ginger was angry or upset about something and discussing the situation with numerous staff members.” At their first step grievance meeting, Ms. Lucia Marshall asked Ms. Hinnenkamp if she actually had spoken to the referenced “several staff members”, to which Ms. Hinnenkamp responded “No”. Moreover, Ms. Hinnenkamp referenced the Grievant’s refusal to attend future ARMHS meetings as a reason for being disciplined; yet, the Union argues, this cannot be a basis for insubordination (and in fact, the Grievant did attend the subsequent ARMHS meeting).

Finally, with respect to the Grievant’s suspension on January 15, 2008, Ms. Hinnenkamp had referenced, as a causal factor that the Grievant walked out of her office in the middle of a conversation with Ms. Hinnenkamp. This fact in and of itself, the Union urges, does not add up to insubordination since the Grievant left at 4:30 p.m., at the end of her shift, and Ms. Hinnenkamp did not otherwise “order” her to stay. Further, the Union contends that Ms. Hinnenkamp admits that she did not investigate why the Grievant did not sit at the table during the ARMHS meeting of January 11, 2008. Still further, the Union contends that on January 11, 2008, the Grievant was being coached with respect to “interrupting” Ms. Hinnenkamp’s phone conversations and, as such, she should not be disciplined for the same event.

In summation, for the above-enumerated reasons, the Union pleads that the Grievant was discharged without just cause and, therefore, she should be reinstated with full back pay and benefits.

VI. DISCUSSION AND OPINION

The Grievant in this case was a relatively short-term employee who was discharged on February 1, 2008, for being insubordinate and disrespectful of her supervisor, Ms. Hinnenkamp, *inter alia*. The Employer convincingly maintained that before reaching the decision to discharge the Grievant, it had put her on notice that her workplace misconduct would not be tolerated. The Grievant was given a copy of relevant Employer policies governing workplace conduct and she received coaching sessions. In addition, the Employer proved that the Grievant's discharge was preceded by a verbal warning, first written warning, second written warning and suspension and that at each step in this progression, the Grievant was advised in specific terms as to the objectionable nature of her conduct. Having received the Employer's governing policies and coaching, and having systematically moved from disciplinary step to disciplinary step is sufficient "notice", satisfying this tenet of just cause.

The record evidence exhibits a repeating pattern of kindred misconduct. Note the following:

- Verbal Warning – Was issued to the Grievant for being disrespectful of supervisors Clark and Hinnenkamp, among other reasons;
- First Written Warning – Was issued to the Grievant for her failure to recognize the professional boundary that separated her from a case

manager and his client and his client's girlfriend; for communicating with Ms. Hinnenkamp in a disrespectful way; and for being rude when Ms. Hinnenkamp asked the Grievant not to turn down the thermostat in her office. The Grievant accused Ms. Hinnenkamp as being a rude provocateur.

- Final (Second) Written Warning – Was issued to the Grievant for being “belligerent and demanding” toward Ms. Hinnenkamp; for contributing to a hostile work environment; for threatening not to attend future ARMHS meetings. The Grievant questioned Ms. Hinnenkamp’s veracity.
- Unpaid Suspension – Was issued to the Grievant for abruptly and disrespectfully walking out of a counseling meeting she was having with Ms. Hinnenkamp, albeit at the end of the Grievant’s workday; for disregarding Ms. Hinnenkamp’s December 5, 2007 order that the Grievant “sit at the table” during ARMHS meetings; and for crossing boundaries by interrupting Ms. Hinnenkamp’s telephone conversation on January 11, 2008.
- Discharge – Was issued to the Grievant for her rude reply to Ms. Hinnenkamp’s inquiry regarding a business-related transaction: an offensive reply that was overheard by two (2) bargaining unit employees. The Grievant’s response was that of defiance wherein she accused Ms. Hinnenkamp of “snapping” at her. (Employer Exhibit 36)

Based on this record of evidence, the Arbitrator is persuaded that the Grievant is guilty of insubordinate and defiant behavior toward supervisory

managers and, specifically, toward Ms. Hinnenkamp, as charged by the Employer. Indeed, this conclusion is corroborated by the following uncontested utterance by the Grievant during the second written warning's 1st step grievance meeting between the parties:

I will point my finger this time! This whole thing is about management being able to say and do whatever they want and not us!

In relevant part, *The Random House Dictionary of the English Language: The Unabridged Edition* (1981) defines the term “defiance” as: “1. a daring or bold resistance to authority or to any opposing force. 2. open disregard; contempt ... 3. a challenge to meet in combat or in a contest ... “ The above-quoted remark by the Grievant fits this definition of the word, defiance. Her remark manifests a “resistance to authority”, “disregard” and “contempt”. Further, it may suggest that the Grievant does not understand that it is management’s right and prerogative to direct the workforce and to issue discipline for just cause and that it is the Union’s right, by contract, to object to management’s actions *via* the grievance procedure. In this case, it seems that the Grievant wrongly objected to the fact that when Ms. Hinnenkamp counseled and/or questioned her about one thing or another, she was merely doing her job. Still further, the above-quote may suggest that the Grievant wrongly thinks that she enjoys a special right to be defiant and disrespectful to supervisors who otherwise have not been shown to be hot tempered, loud or provocative. Indeed, the record evidence suggests just the opposite with respect to Ms. Hinnenkamp’s supervisory style. Finally, the

Union did not introduce material evidence that supports the insinuation that Ms. Hinnenkamp harbors either an anti-Union animus or an anti-Grievant animus.

In a similar vein, the Arbitrator is unimpressed by the content of the Grievant's written remarks of January 29, 2008. (Employer Exhibit 32) He questions: "How could the Grievant possibly believe that she was suspended in part for having broken off her conversation with Ms. Hinnenkamp at 4:30 p.m. on January 11, 2008, at the end of her workday and without having been directly ordered to stay?" The fact that the Grievant left work at 4:30 p.m. was not the issue in this incident. Rather, the issue was the way she exited from this conversation, namely, abruptly and rudely, with past admonishments against being disrespectful toward her supervisor notwithstanding. At the workplace, nobody, including supervisors, ought to be treated in this manner. Conduct of this sort is at odds with the "professional conduct" directive discussed in the HDC – Union Employee Handbook. (Joint Exhibit 2)

In addition, Employer Exhibit 32 also manifestly supports the Employer's claim that the Grievant refused to accept accountability for her conduct, pointing the finger of blame at others: the cause of the Grievant's problems is Ms. Hinnenkamp, she claims. This affirmative defense invites into the analysis the fact that Ms. Martin, the Grievant's previous supervisor, found the Grievant to be equally difficult to supervise for reasons of disrespect and insubordination, Ms. Martin also saw fit to write-up the Grievant on two (2) occasions. It appears that the Grievant's problem with "supervisory" management has haunted her employment with the HDC since at least 2005: a material finding based on the

undersigned's decision to give probative weight to Employer Exhibits 4, 5, 6, 7 and 8, the Union objection to the contrary notwithstanding.

The Union, however, argues that the Employer failed to meet its just cause burden by disciplining the Grievant before establishing the truth of certain alleged facts. That is, the Union points out, the Employer's failure to investigate these allegations violates the "due process" tenet of just cause. The undersigned now turns to an analysis of this charge. First, the Union argues that Ms. Hinnenkamp did not ask the Grievant whether she had turned down the thermostat in her office before disciplining her for doing so, after she had been asked not to do so. For not ascertaining whether the Grievant did or did not turn down the thermostat in question, the Union contends that the August 13, 2007, first written warning ought to be expunged from the Grievant's personnel file, as grieved. The problem the undersigned has with the Union's construction of this argument is that, while it is true that Ms. Hinnenkamp did not ask the Grievant whether she turned down the thermostat in her office, the Grievant's response to Ms. Hinnenkamp's implied accusation was: "I'm the only one in the office Pam, what difference does it make?", suggesting that in fact she was the responsible party. In addition, at the time, the Grievant did not deny that she had turned down the thermostat and, for that matter, she did not deny having turned down the thermostat at the arbitration hearing. Nevertheless, the real issue here is the way the Grievant responded to her supervisor's inquiry: her words were argumentative and by slamming shut her office door, she was being defiant and

disrespectful. Based on this analysis, the undersigned sustains the Employer's first written warning.

Second, the Union argues that Ms. Hinnenkamp refers to having received reports by "several staff members" that were critical of the Grievant and, yet, she failed to investigate the validity of said reports before issuing the October 15, 2007 second written warning. The Union contends that, therefore, its grievance regarding this matter should be sustained. (Joint Exhibit 6) It is true that Ms. Hinnenkamp did not interview the "several staff members" before disciplining the Grievant. However, it is also true that the Grievant did shout at Ms. Hinnenkamp, "I want a yes or no answer Pam", which can reasonably be interpreted as being insubordinate conduct; and that at the parties' October 15, 2007 meeting, the Grievant also threatened to no longer attend the Tuesday ARMHS meetings: an act of defiance. Indeed, this threat was credible enough to cause Ms. Hinnenkamp to send the Grievant an e-mail later that morning, advising her to attend the ARMHS meeting because it was a part of her job duties. The insubordinate, disrespectful and defiant behavior exhibited by the Grievant in regard to the "yes – no" remarks and the "ARMHS threat", both of which were directed at her supervisor, weigh more heavily against the Grievant than the "due process" blunder weighs in her favor. All three (3) of these events were components of the second written warning and, therefore, it is concluded that the discipline that was issued for just cause.

Third, with respect to the Grievant's January 11, 2008 suspension, the Union argument that the Grievant was within her rights to walk out of the meeting

she was having with Ms. Hinnenkamp because it was 4:30 p.m. – the end of her workday – and Ms. Hinnenkamp had not ordered her to stay. That is, the Union argues that the Grievant was not guilty of wrongdoing in this instance. This argument is not persuasive. The Grievant was disciplined for being insubordinate and disrespectful toward her supervisor for abruptly walking out on her in the midst of a counseling session. The Grievant's exit was neither apologetic nor considerate: rather, she commented, "Whatever, I just want to go home and not think about any of this", and she walked out of Ms. Hinnenkamp's office. (Employer Exhibit 29)

Lastly, the Union charges that Ms. Hinnenkamp did not investigate the fact that the Grievant did not "sit at the table" during the January 15, 2008, ARMHS meeting, contending this fact is a legitimate basis for setting aside her suspension. Again, the Union's contention lacks merit. Ms. Hinnenkamp was in the room at the time; she saw the Grievant come in; and she also could see whether there were vacant seats "at the table". The Grievant maintained that the "table was full", as she had arrived at the meeting late. She further maintained that "If I had asked people to move to make room for me to sit, I would had (sic) disturbed the meeting and that would have gotten me in trouble also." The Grievant chose to "pull my chair from my office" and to "put it in the walkway for the rest of the meeting." (Employer Exhibit 32) These choices, in the opinion of the undersigned, could not be further off the mark, given that on December 5, 2007, Ms. Hinnenkamp expressly told the Grievant to "... be sitting at the table taking accurate minutes of the meeting" and "Not in your office doorway". Ms.

Hinnenkamp interpreted the Grievant's conduct at the "ARMHS meeting" as being another exhibition of the Grievant's insubordination and disregard for supervisory authority. The Arbitrator concludes that Ms. Hinnenkamp's interpretation is reasonable and that she is the more credible witness. For these reasons, the Grievant's five (5) day suspension must stand.

Ultimately, the undersigned concludes that the Grievant is guilty of insubordinate and disrespectful conduct, as the Employer charges, and that her conduct disrupts the workplace: misconduct that she knew or should have known that could and would result in discipline up to and including discharge. Moreover, it is concluded that the Employer's "due process" slips were *de minimus* in nature and immaterial to the just cause standing of each level of discipline that the Employer meted out and, for these reasons, none of the Union's pre-discharge grievances is sustained. Finally, the way the Grievant responded to her supervisor's inquiry into the January 31, 2008 "Outreach worker" matter was both rude and uncalled for, as supported by record testimony. This act of disrespect rightly proved to be the "straw that broke the camel's back".

VII. AWARD

For the reasons discussed above, each level of discipline meted out in this case, including the Grievant's discharge, was for just cause.

Issued and Ordered on this 7th
day in July 2008 from Tucson,
AZ.

Mario F. Bognanno, Arbitrator