FEDERAL MEDIATION AND CONCILIATION SERVICE

ARBITRATION AWARD

IN THE MATTER OF ARBITRATION	)	
	)	
Between	)	
	)	**FMCS# 09-51203**
Xcel Energy	)	
	)	
And	)	
	)	**John Remington**
IBEW Local 1426	)	**Arbitrator**
	)	
	)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a grievance over the termination of Joanne Sauvageau, selected the undersigned Arbitrator John Remington, pursuant to the provisions of their collective bargaining agreement and under the rules and procedures of the Federal Mediation and Conciliation Service, to serve as a disinterested member of their contractual Arbitration Board and hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on April 22, 2009 in Fargo, North Dakota at which time the parties were represented and were fully heard. The parties waived the participation of their respective members of the Arbitration Board and requested the undersigned Arbitrator to decide the dispute alone. Oral testimony and documentary evidence were presented; a stenographic transcription of the

proceedings was taken; and the parties requested, and were granted the opportunity to file post hearing briefs which they did subsequently file on June 16, 2009.

The following appearances were entered:

For the Company:

Michael J. Moberg	Attorney at Law Minneapolis, MN

For the Union:

Seth Thompson	Business Manager Grand Forks, ND

THE ISSUE

DID THE COMPANY HAVE JUST CAUSE TO DISCHARGE GRIEVANT JOANNE SAVAGEAU AND, IF NOT, WHAT SHALL THE REMEDY BE?

PERTINENT CONTACT PROVISIONS AND POLICIES

ARTICLE 1- *METHOD OF NEGOTIATION*

Section 2. The right, in accordance with the provisions of this agreement, to employ, promote, discipline and discharge employees and the management of the property are reserved and vested in the Company. The company shall have the right to exercise discipline in the interest of good service and the proper conduct of its business.

Section 3. Employees who have attained seniority shall , through the representatives of the Local Union, have the right to a hearing on any differences of opinion as to their competency to fill a new position or vacancy, of promotion or demotion, of discipline administered, of layoffs, of discharge, or of discriminations.

Section 4. It is agreed that an employee who has attained seniority shall on request be presented with written notice

of discharge at the time of discharge and the Company shall then within fifty-six (56) hours furnish the Local Union with specific reasons for such discharge.

Section 5. In the matter of suspension, demotion, or discharge, if after hearing witnesses, the charges are not sustained, the employee shall have his/her record cleared of such charges and the arbitration board may rule that the employee shall or shall not receive full or partial wages from the Company. No discipline by suspension shall be administered to any member of the Local Union which shall impair his/her seniority rights.

ARTICLE III- *ARBITRATION*

Section 1. All differences that may arise which cannot be agreed upon by the representatives of the Company and the Local Union shall be submitted in the manner hereinbefore provided at the request of either party to an arbitration board as follows:

(a) The Arbitration Board shall consist of two (2) persons to be selected by the Company and two (2) persons to be selected by the Union (either party is privileged to select alternate members) and the four (4) so selected shall meet without delay and in no event later than five (5) days from the date of written notice of the request for arbitration for the purpose of selecting a disinterred person to act as the fifth member of the Arbitration Board.
(b) Either party shall request from the Federal Mediation and Conciliation Service (FMCS), a panel of five (5) Arbitrators.

XCEL ENERGY CODE OF CONDUCT (UNIFORM POLICY)

……
Dishonesty and Theft

Employees are responsible for safeguarding the company's assets. Employees will not engage in fraud, embezzlement affecting company property, funds, securities or other assets; willfully damage or destroy property or materials belonging to the company, its employees or customers; or engage in diverting electric energy, natural gas, propane or

any other product produced or distributed by the company or service provided by the company.
……

Consequences of Violating the Code

An employee or director who violates the law, the Xcel Energy Code of Conduct or Xcel Energy policies will be subject to the Positive Discipline Process and possible termination of employment or other penalty. Additional actions may include reassignment of work duties and limitation in future job opportunities. Violations of law may be referred to local law enforcement authorities for prosecution.

Discipline Guidelines/ Positive Discipline (Uniform Policy)

Summary

…… Positive Discipline is a means by which management may seek to correct problems and build commitment, not merely compliance, for all employees. Each type of discipline is a reminder of expected performance. Positive Discipline focuses on communication and individual responsibility, not punishment.

Applicability

This policy applies to all non-bargaining unit and bargaining employees of Xcel Energy Inc., its wholly owned subsidiaries and affiliates ("Xcel Energy")

……

Termination
Termination of employment is the permanent removal of an employee from service. When the disciplinary process has failed to bring about a positive change in the employee's behavior, termination is likely to occur. Termination may result from a failure to meet the expectations of a Decision Making Leave or a lesser type of discipline.

> Termination also may occur in those instances where a single offense is so severe or where performance shortcomings are of such a nature that the application of the Positive Discipline system is unwarranted or inappropriate in the judgment of management. The following examples (this list is not all inclusive) illustrate some examples of situations that may result in immediate termination of employment:
>
> ……
> • Violation of the Corporate Code of Conduct
> ……
> • False statements or responses on application, physical examination, medical claims, expense statements or any other company records, or given during company investigations.

BACKGROUND

Xcel Energy, hereinafter referred to as the "Company," provides utility service to a ten state region in the North Central United States. Eastern North Dakota including the cities of Fargo and Grand Forks are included in this region. Northern States Power Company is a subsidiary of Xcel Energy and is a party to a collective bargaining agreement with Local Union 1426 effective through December 31, 2009. Company classified employees are represented by the International Brotherhood of Electrical Workers and its Local Union 1426, hereinafter referred to as the "Union."

The facts are largely undisputed. Joanne Sauvageau, the Grievant in this matter, was employed as a meter reader in the Fargo, ND area by the Company, and its predecessor, for over thirty (30) years when her employment was terminated on September 16, 2008 for submitting inaccurate and/or falsified meter readings, an infraction commonly known as "curb stoning" or simply "curbing." The implication is that a meter reader, rather than actually going to the location where the meter is located

and recording the correct usage, makes up or estimates a reading based on past usage. It is undisputed that the Company has a specific and longstanding policy prohibiting this practice; that falsification of meter readings will result in termination for a first offense; and that other employees who have falsified meter readings in the past have been terminated.

The record reflects that on August 8, 2008, the Company was alerted by an unidentified meter reader, possibly one of Grievant's co-workers, that there had allegedly been sixty-one (61) falsified meter reads in Fargo. Field Operations Manager Brenda Peterson, who received this allegation, was unaware of any such falsifications. She then contacted Supervisor Susan Kern who was likewise unaware of this alleged falsification. She in turn contacted Linda Paulson, the senior meter reader at the Fargo Service Center. Kern subsequently ascertained that there were indeed sixty-one potentially false readings that Paulson had been asked to investigate by the Company billing office. All of these reads had been made by Grievant during the summer of 2008.

Kern then contacted Workforce Relations Consultant Nicole Elmasry. Together they reviewed the documentation and subsequently traveled to Fargo on August 14, 2008 to conduct an on-site audit. Kern and Elmasry randomly audited 11 of the 61 "bad" reads and found that 6 of these eleven reads by Grievant were bad in that the readings observed during the above field audit were actually lower than the readings reported by Grievant earlier in the summer. The Company concluded that this was evidence of falsification since meters do not run backward, an assertion undisputed by the Union. Further, Kern and Elmasry noted that Grievant had entered several of the readings into her handheld computer only a few seconds apart. This was suspicious because the Grievant was

required to walk from one meter to the next and physically stand in front of the meter while reading it. The customer meter locations that Grievant was required to walk between were typically several minutes apart.

On August 15, 2008 Kern and Elmasry interviewed Grievant. Grievant admitted that she had occasionally written the meter readings on a piece of paper and entered it into the handheld computer later. Grievant acknowledged that such a procedure was improper and in violation of Company policy. However, Grievant had no explanation for the bad reads and denied that she had falsified the readings. Grievant allegedly suggested that the billing department may have been responsible and that this department frequently changes the readings. In this connection the Company asserted that while the billing department may change customer bills, it never changes the meter readings. Elmasry testified that she subsequently confirmed that the billing department has neither the access nor the ability to alter any data already entered into the meter reading software reports. Meter reading data is generated when the meter reader downloads the data directly from a handheld computer after a route has been read.

Elmasry further testified that she and Kern then reviewed computer reports of all of Grievant's meter readings between June and August of 2008 and noted well over one hundred bad readings during that period. She further testified that they then looked for possible explanations for the bad readings but could only conclude that the bad readings were the result of falsification. Accordingly, they recommended that Grievant be terminated.

Brenda Peterson issued Grievant a termination letter on September 16, 2008 which states:

> Effective today, September 16, 2008, you are terminated from Xcel Energy for, but not limited to, violations of Company Policies and Procedures, which include but are not limited to the Code of Conduct and the Meter Reading policy regarding falsification of meter readings.

The Union responded on behalf of Grievant in a letter from IBEW Business Manager Seth Thompson to Elmasry dated September 22, 2008. This letter states, in relevant part:

> In accordance with Articles I & II of the Labor Agreement, Local 1426 hereby serves notice that we are grieving the termination of Joanne Sauvageau. As per Article I, Section 3 we request a meeting to rectify this matter as soon as possible.
>
> Given the circumstances we believe that the discharge was unwarranted and request that Ms. Sauvageau be returned to work immediately and made whole for her losses.
>
> In addition, Local 1426 requests all information Xcel Energy has in its possession substantiating the allegations against Ms. Sauvageau. Please consider this to be an ongoing request.
>
> ……

Elmasry responded to the grievance letter on December 16, 2008. This letter states, in relevant part:

> This letter is in response to Ms. Joanne Sauvageau and the grievance meeting that was conducted on October 23, 2008 and the follow-up meeting on December 9, 2008.
>
> During the October 23, 2008 grievance meeting, the Company and Union reviewed the information provided by the Company on September 30, 2008.[1] ……
>
> Per the Local Union's request, attached is a copy of the e-mail exchange between Ms. Peterson and Mr. Axness.
>
> The Local Union asked the Company to return Ms. Sauvageau to work immediately and made (sic) whole for

[1] This information included the MRAS Meter Reading History Screen and the ARCS (Automated Route Control System) data for Grievant..

> her losses, however, the fact remains that Ms. Sauvageau violated Company Policies and Procedures, which include but are not limited to the Code of Conduct and the Meter Reading policy regarding falsification of meter readings. The Company feels this level is warranted.
>
> Based on the foregoing, grievance #73147 is denied.

The Union subsequently initiated a request for arbitration. There being no contention that the grievance was improperly or untimely filed, the Arbitrator finds that this matter is properly before him for final and binding resolution.

CONTENTIONS OF THE PARTIES

The Company takes the position that the field audit conducted by Kern and Elmasry; the admitted procedural violation of writing readings on paper and subsequently entering them into the computer; and the review of Grievant's reported readings June through August of 2008; provided more than sufficient evidence of Grievant's falsification of meter readings. The Company therefore contends that its decision to discharge Grievant must be deemed for just cause. The Company argues that termination is appropriate despite Grievant's prior long and satisfactory work record due to the seriousness of the offense and the fact that Grievant offered no explanation or justification for her actions. The Company maintains that it followed its well established policies in terminating Grievant; that Grievant was aware of these policies and the penalty for curbing; and that it has consistently discharged employees guilty of curbing in the past. In this connection the Company maintains that the practice of curbing is generally recognized as a terminable offense in the utility industry.

The Union takes the position Grievant's long and discipline free work history strongly suggests that it is unlikely that she would engage in the practice of curbing and notes that the evidence against Grievant is circumstantial. The Union further takes the position that there are alternative possible explanations for the erroneous reads and that the Company failed to follow up on these possibilities. The Union therefore maintains that Grievant was not afforded due process because of the Company's failure to conduct a thorough and complete investigation. Specifically, the Union contends that the Company failed to verify the list of meters that had bad reads against the list of 5,000 meters that had recently been retrofitted with new modules; that the Company failed to verify the reads of other meter readers in the same time frame to determine if a problem was created by the use of new handheld computers that had recently been introduced in Fargo and Grand Forks; that the Company failed to verify Grievant's reads prior to June of 2008 to ensure that the bad reads weren't an isolated instance that could be explained by the above new meter modules or the new handheld computers; that the Company didn't physically read more meters to ensure that the reads were incorrect and not a product of erroneous reads in the system; and that the Company failed to thoroughly investigate the alleged role of Meter Reader David LaDouceur in attempting to undermine Grievant and another meter reader whose seniority prevented him from retaining a job in Fargo or Grand Forks.

DISCUSSION, OPINION AND AWARD

It is fundamental in labor arbitration that, in a disciplinary matter, the Company bears the burden of conducting a complete and unbiased investigation. The crux of the Union's argument in this regard is that Kern and Elmasry did not physically read enough

meters to ensure that the reads were incorrect and not a product of erroneous reads in the system. In this connection the Union offered documentation (Union Exhibit #3) dated July 30, 2008 to show that approximately 4400 gas meters in North Dakota had malfunctioned at some time during the winter of 2007-08; that these meters revealed very low or no gas consumption; and that the North Dakota Public Service Commission had requested the Company to suspend rebilling of customers with malfunctioning meters. The implication is that some of these malfunctioning meters may have been included in the meters for which Grievant had reported bad reads. However, this implication must be rejected since the above malfunction resulted in no or low readings, and the bad reads reported by Grievant were too high. Had Grievant read one of these malfunctioning meters, her reported reading should have been identical to, or very slightly above, the previous reading.

The Union also properly questioned the relatively small number of meters that Kern and Elmasry physically audited. Under cross examination Elmasry admitted that she and Kern had hoped to physically read more than eleven meters but were unable to do so because they got lost and were expecting bad weather. However, it cannot be denied that six of these eleven meters revealed that Grievant had reported bad reads. The Arbitrator is therefore compelled to find that the field audit conducted by Kern and Elmasry on August 14, 2008 revealed substantial evidence of falsification and that they were fully justified in moving on to the next stage of the investigation. Assuming for the sake of argument that Kern and Elmasry had returned the following day and physically read the remaining fifty meters and found no bad reads, the findings of August 14 would still have prevailed. The Union also asserts that the Company, in conducting a thorough

investigation, should have verified Grievant's reads prior to June of 2008. This claim is without merit. Even had the Company performed such verification and found no bad reads, this finding would not have diminished the evidence of Grievant's misconduct in June.

Notwithstanding the issues raised by the Union, the Arbitrator is satisfied that the investigation conducted by the Company with respect to the number of meters verified, the time frame selected, and the procedures employed was sufficient to satisfy the requirements of a fair and objective investigation. Further, he finds that the Company obtained sufficient evidence from this investigation to conclude that Grievant had falsified readings in violation of Company policies of which she was fully aware.

The Union contends that the Company should also have verified the reads of other meter readers taken during June of 2008. This contention is based on the Company's introduction of new handheld computer readers in Fargo and Grand Forks in May of 2008. It is apparent in the record that these new meters were similar but somewhat different than the hand held computer readers previously utilized; that meter readers had experienced some problems with them; and that the Company provided no meaningful training in the use of these new computers. Despite these problems, Grievant's testimony revealed that she generally understood the operation of the new handhelds and never complained to management that she had difficulty in using them. Indeed, she never indicated to either Brenda Peterson or Sue Kern that she didn't understand how to operate the new handheld. The Arbitrator must therefore reject the contention that the new handheld computers somehow contributed to the bad readings that were the sole cause of her discharge.

We are left, therefore, with the matter of David LaDouceur's supposed efforts to discredit Grievant and cause her termination. There can be little doubt from the record that LaDouceur had motive to see Grievant discharged. Indeed, he may well have been the employee that called the Company's attention to the sixty-one bad reads noted above. Further, there is no dispute that LaDouceur's prospects for continued employment with the Company in North Dakota would have improved with the departure of Grievant who held superior seniority rights. It is also troubling that LaDouceur's personal relationship with a Company supervisor may have given him access to information about Grievant's work. However, while LaDouceur had motive, there is no evidence that he had either the means or the opportunity to change Grievant's meter reads or somehow alter Company records to show that her reads were bad when they actually were correct. Grievant may have believed that, as she testified, LaDouceur was "out to get her" but she provided no evidence or testimony to show that he actually manipulated records or sabotaged her handheld computer.

Ultimately, it was Grievant's unwillingness or inability to offer any credible explanation for the substantial number of bad reads uncovered by the Company's investigation that lead the Company to the conclusion that she was guilty of falsification. While it may be true that her long and satisfactory performance, the fact that she had already successfully bid on a desirable position with the Company to replace her job as a meter reader that was scheduled for elimination, and the fact that she was nearing retirement eligibility suggest that she was unlikely to risk curbing, none of these factors provides an alternative explanation for the bad reads document by the Company. It is equally possible that her lengthy tenure with the Company may have provided her with a

false sense of security from discipline for curbing, or that the elimination of her meter reading position after thirty plus years made her resentful toward the Company or careless in her performance of meter reading duties. While Grievant consistently denied any wrongdoing, her credibility in this regard was diluted by her admission that she had engaged in "paper reading," that is, recording meter readings on paper and later entering them into the handheld computer. This clear violation of Company policy undercut her protestations of innocence concerning the charge of falsification and the Union's defense that it made no sense for her to have engaged in curbing.

The Arbitrator has made a detailed review and analysis of the entire record in this matter and has carefully read and considered the arguments advanced by the parties in their post hearing briefs. Further, he has determined that certain matters raised by the parties in these proceedings must be deemed irrelevant, immaterial, or side issues at the very most, and therefore have been afforded no significant treatment, if at all, for example: the fact that the new handheld computers failed to correctly read probe meters; whether or not Grievant was awarded her first job selection following the announced elimination of her meter reading position; whether or not the MRAS Meter Reading History and ARCs use a different time basis; whether or not employee ID's were posted on the Company bulletin board; Grievant's belated explanation that her diabetes compelled her to engage in paper reading; the awards of Arbitrators Griffin and Neigh; and so forth.

Having considered the above review and analysis together with the findings and observations hereinabove made, the Arbitrator has determined, and so he finds and concludes, that with the specific facts of the subject grievance and within the meaning of

the parties' collective bargaining agreement, the Company has established, by clear and convincing evidence, that Grievant falsified meter readings in June of 2008, providing the Company with just cause to terminate her employment. Accordingly, an award will issue, as follows:

AWARD

THE COMPANY HAD JUST CAUSE TO TERMINATE GRIEVANT JOANNE SAUVAGEAU. HER GRIEVANCE IS THEREFORE DENIED AND DISMISSED AS BEING WITHOUT SUBSTANCE OR MERIT.

_____

JOHN REMINGTON
ARBITRATOR

July 29, 2009

St. Paul, MN