

**IN RE ARBITRATION BETWEEN:**

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**CENTERPOINT ENERGY AND MINNESOTA GAS COMPANY**

**and**

**GAS WORKERS UNION, LOCAL 340**

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**DECISION AND AWARD OF ARBITRATOR  
FMCS CASE # 060202-53349-7**

**JEFFREY W. JACOBS**

**ARBITRATOR**

**July 10, 2006**

**IN RE ARBITRATION BETWEEN:**

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CenterPoint Energy Company,

and

Gas Workers Union, Local #340

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DECISION AND AWARD OF ARBITRATOR  
FMCS Case # 060202-53349-7  
Paul Andrusko grievance matter

**APPEARANCES:**

**FOR THE UNION:**

Rockford Chrastil, Esq., atty. for the Union  
Paul Andrusko, grievant  
Mike Everetts, Union President  
Ian Brown, Union Steward  
Bruce Jenson, Mpls. Police Officer

**FOR THE EMPLOYER:**

Michael Fahey, Director, Employee Relations  
Jim Swanson, Manager, HSP  
Sue Spannaus, Supervisor, HSP  
Nicko Porter, Senior Supervisor, HSP

**PRELIMINARY STATEMENT**

The above matter came on for hearing on April 13, 2006 at 9:00 a.m. in the Center Point Energy offices at 800 LaSalle Ave. S., Minneapolis, Minnesota. The parties presented testimony and documentary evidence at that time. The parties submitted post-hearing Briefs dated June 28, 2006, which were received by the arbitrator June 29, 2006 at which time the record was considered closed.

**CONTRACTUAL JURISDICTION**

The parties are signatories to a collective bargaining agreement covering the period from May 1, 2002 through April 30, 2006. Article 5 provides for submission of disputes to binding arbitration. The arbitrator was selected from a list provided by the Federal Mediation and Conciliation Service. At the hearing the parties stipulated that there were no procedural arbitrability issues and that the matter was properly before the arbitrator. In addition, the parties negotiated an agreement dated January 4, 2005, which provides for certain limitations on the arbitrator's jurisdiction as set forth below.

**ISSUES PRESENTED**

Did the Employer have just cause under the terms of the last chance agreement dated January 4, 2005 to terminate the grievant? If not, what shall the remedy be?

## **PARTIES' POSITIONS**

### **EMPLOYER'S POSITION:**

The Employer argued there was just cause for the discharge since the grievant violated the terms of a last chance agreement he signed on at least 3 bases. In support of this position the Employer made the following contentions:

1. The Employer asserted that the grievant had been terminated but later reinstated pursuant to a last chance agreement dated 1-4-05. The Company's argued simply that he violated the terms of this agreement and that the arbitrator's jurisdiction is strictly limited to whether the grievant did in fact violate the terms of that agreement.

2. The last chance agreement provides in relevant part as follows:

b. You must perform your work in a satisfactory manner and you must meet standards (i.e. 3.0 or higher) on an overall basis each MONTH on the following Home Service Plus performance and productivity measures: (emphasis in original)

- Percent of Call Backs
- Percent of First Call Completions
- Performance ratio
- Total Jobs Per Hour
- Contract Options PM and Sales Leads

c. You must comply with all safety standards and regulations of the Company, including possessing and using personal protective equipment for emergency response and other work as required (e.g. safety eyeglasses), following safe practices at work and strict avoidance of any preventable collisions.

d. You must maintain a satisfactory record of attendance at work. This includes reporting to work, training, meeting and your jobs each day on a timely basis. Tardiness, absence without leave or absence from your work area without the permission of your supervisor will be considered unacceptable. In addition, if your rate of chargeable absence from work as determined by the Company exceeds 20 hours in any continuous six-month period, your attendance will be deemed unacceptable.

You and Local 340 agree that if you violate any of the conditions set forth in paragraphs 1 and 2 above, you will be subject to immediate termination at the discretion of the Company. If the Company takes termination action, the only issue that may be presented to and considered under the grievance procedure by the arbitrator is whether or not you in fact violated the condition as charged. The arbitrator will have no jurisdiction or authority to modify termination action if the facts presented by the Company establish that a violation of such condition occurred.

3. The Company argues that the grievant violated several of these conditions and must therefore be terminated. First, his performance and productivity numbers increased at first and were above the 3.0 mark from January through August. No one ever complained during those months that the measures were incorrect or inappropriate. In fact, everyone knew what those measures were and understood that these were the well-accepted measures by which all personnel are measured. The grievant was measured the same way everyone else was.

4. For September 2005 the grievant's measures fell below the 3.0 mark and were 2.75. The Company asserts that the clear language of the Last Chance Agreement (LCA) provides that if any of the grievant's overall measures fell below the 3.0 mark in any months (and "month" was amply emphasized in the language) he would be subject to termination.

5. Moreover, in contravention to the assertion by the Union and the grievant, he was never told that he would be given a pass essentially if his numbers fell below the 3.0 mark by a small amount, say 2.9 or so. Irrespective of that, his numbers were well below that and were at 2.75 for the month of September 2005.

6. Second, the grievant's attendance was well below that which was required by the terms of the LCA. He agreed that if his chargeable absences exceeded 20 hours in any continuous 6-month period he would be in violation of the LCA and subject to immediate termination. His chargeable absences were 41.60 hours in a 6-month period and there is no dispute about that.

7. The Company countered the Union's argument that this provision is now null and void by virtue of a separate arbitration and Court proceeding regarding sick time. It argued that the other arbitration in no way negates the clear provisions of the LCA that these parties agreed to nor did it extend to negate such a provision in separately negotiated agreements.

8. Finally, the Company argued that during the investigation of whether the grievant had violated the LCA it was discovered that he was driving Company vehicles with an expired driver's license. Company rules clearly require that the grievant have a valid driver's license and pointed to Article 29 of the labor agreement, which provides that "all employees must have a valid Minnesota drivers License, as required, for their respective job classifications." See also Company Driver Policy, Company Exhibit 11.

9. Here it is clear that the grievant was required to have a valid license since he drove Company vehicles every day and in fact had a take home vehicle so he could respond faster when called.

10. The Company countered the Unions argument that an expired license still enabled him to drive by noting that under Minnesota law driving under an expired license is a continuing criminal violation every time a person drives with an expired license. This is true even if the period of expiration is less than one year. An expired license is not "valid" and therefore driving with an expired license is a clear violation of Company policy.

11. The Company cited to several prior awards that uphold the validity of LCA 's between the Union and the Company as well as awards upholding terminations for failure to have a valid driver's license.

12. The essence of the Company's argument is that the arbitrator's jurisdiction is strictly limited by the terms of the LCA. The only matter to be decided is whether he violated any of the conditions set forth therein. Once that has been determined, the arbitrator has no jurisdiction to modify the degree of discipline. Here the grievant violated two of the clearly defined terms of the LCA and violated clear Company policy regarding his driver's license.

The Employer seeks an award denying the grievance and upholding the grievant's discharge.

## **UNION'S POSITION**

The Union's position is that there was not just cause for the discharge since the grievant did not violate the terms of the last chance agreement. In support of this position, the Union made the following contentions:

1. The Union argued that the grievant was certainly subject to the LCA but that he did not violate it. First, the Union argued that the use of sick leave has already been dealt with in a prior arbitration, later affirmed by the Federal District Court, which invalidated the Company policy against discipline of the legitimate use of sick leave by employees. This renders null and void that provision of the LCA regarding the 20 hours of chargeable absence.

2. The Union pointed to page 101-03 of the transcript and argued that the Company acknowledged that all of the time the grievant used was legitimate sick leave. According to the arbitration and subsequent Court proceeding, the Company is estopped from enforcing this provision insofar as it relates to legitimate use of sick time.

3. Further, the Union argued that the grievant did not violate the terms of the LCA by failing to have a valid driver's license. The LCA refers specifically to safety rules and regulations and speaks in terms of safety practices and equipment. It does not reference drivers licenses anywhere nor does it require the grievant to comply with all of the Company's policies as a condition of the LCA. The Union argued that adherence to the LCA must be limited to its terms and that the grievant is not subject to the harsh consequences for violation of the LCA unless there is a very specific clause that was violated. Here the Union argued that there was not. While the grievant may have violated a more general work rule by failing to have his license for a short time, that does not put into play the Draconian consequences called for in the LCA.

4. Moreover, the Union pointed out the under Minnesota Law the failure to have a license, while a violation of statute, does not result in the immediate loss of driving privileges. A person whose license is expired for less than one year, as was the grievant's here, has merely to go to the Department of Motor Vehicles and reinstates the license. This is accomplished by paying a fee and renewing the license. There are no further consequences under those circumstances. The grievant's action in simply allowing his license to expire, caused most likely because he had moved and the notice advising him to renew the license did not follow him, does not equate to a violation of the LCA.

5. The Union's third argument is that the Company's standards as applied to the grievant were manifestly unfair. The Union noted that for some 8 months, the grievant's numbers were well above the 3.0 required in the LCA. The Union argued that these numbers show that the grievant complied with the LCA.

6. Moreover, the Union argued that while everyone agreed that the standard as set forth in the LCA was 3.0, no one expected that the Company would lie in wait for the grievant. It was expected that his standards would be expected to stay above a certain level but that if on one month he fell very slightly below standards on one area he would not be summarily fired. The Union argued that the Company in fact told the grievant and the Union representatives that and that they entered into the LCA in good faith believing that the Company would not ambush them. The Union argued that lie in wait is precisely what the Company did and in fact did not terminate him for many weeks after the September 2005 numbers were in. In the interim, the grievant's numbers were again well above that which was required of him in the LCA.

7. The Union also argued that the grievant's supervisor told him that he would not be fired if he had one bad month. The Union alleged that if he was close to the 3.0 mark the Company would not, if his numbers were good over the course of time, hold him to some Draconian standard and fire him for one month in which one of the 5 listed items was not met. See Tr. at 280-283.

8. The Union also argued that the percentage of first call completions was affected by a lack of parts needed to make those completions. The Union asserted that the grievant told his supervisor about igniters not being available and that she acknowledged the problem. The Union argued that the drop in that one number was caused by the Company and was no fault of the grievant: he simply could not get the parts he needed to complete the jobs.

9. The Union pointed out that the grievant was allowed to work until mid-November even though the numbers the Company alleges he missed were from September. The Union argued most strenuously that the Company cannot now be allowed to invoke the terms of the LCA after that long a delay and when the grievant's performance met or even exceeded that which was required of him under the LCA.

10. Finally, the Union argued that the terms of the LCA do not reference the miscellaneous category and that the grievant was not under that agreement required to meet that standard. The specific terms of the LCA provides for 5 listed items and do not reference the Annual performance review, set forth as Company Exhibit 9. The Union asserted that the clause in the LCA referencing the minimum standards refers only to the listed 5 standards and not anything else. Accordingly, the fact that the grievant did not meet the miscellaneous standard does not invoke the provisions of the LCA.

11. The essence of the Union's argument is that the grievant did not violate the terms of the LCA in performance standards. Further, the part of the LCA less than 20 hours of chargeable absence time is no longer valid insofar as the legitimate use of sick time is concerned. Finally, the lack of a driver's license, while possibly a violation of general work rules, is not a violation of the LCA per se.

The Union seeks an award of the arbitrator sustaining the grievance in its entirety and reinstating the grievant with full back pay and other accrued contractual benefits.

## MEMORANDUM AND DISCUSSION

The grievant is a long time employee of the Company with a somewhat checkered work record. He has however been with the Company for approximately 27 years. No direct facts were introduced on this point but it was clear that based on a poor work and attendance record he was terminated in late 2004. During that process the parties signed the LCA signed on January 4, 2005 resulting in the grievant's reinstatement. As noted above, one of its main provisions is as follows:

You and Local 340 agree that if you violate any of the conditions set forth in paragraphs 1 and 2 above, you will be subject to immediate termination at the discretion of the Company. If the Company takes termination action, the only issue that may be presented to and considered under the grievance procedure by the arbitrator is whether or not you in fact violated the condition as charged. The arbitrator will have no jurisdiction or authority to modify termination action if the facts presented by the Company establish that a violation of such condition occurred.

The arbitrator's jurisdiction is limited by the terms of this agreement and if there was a violation of its terms the termination must be sustained. There is no power to fashion a remedy per the terms of the LCA. The Company pointed to 3 alleged violations of this agreement any one of which it asserted provide grounds to terminate the grievant. These will be dealt with separately.

**Attendance:** The Company alleges that the LCA required that the grievant not use any more than 20 hours of chargeable time in a continuous 6-month period. It further points out that the grievant used 41.60 hours of such time and that this alone constitutes a clear violation of the LCA justifying his termination. The evidence was clear that the grievant was absent for those hours but further showed that the reason he was absent was due to legitimate sick time. There was no allegation that he fraudulently used sick leave or that he was not legitimately sick on the days he was off.

The LCA provides in relevant part as follows:

You must maintain a satisfactory record of attendance at work. This includes reporting to work, training, meeting and your jobs each day on a timely basis. Tardiness, absence without leave or absence from your work area without the permission of your supervisor will be considered unacceptable. In addition, if your rate of chargeable absence from work as determined by the Company exceeds 20 hours in any continuous six-month period, your attendance will be deemed unacceptable.

The question is thus whether the grievant's actions in being absent for more than 20 hours in a continuous 6-month period was a violation of the LCA. Based on these facts and circumstances it is determined that it was not.

The Union pointed out that a prior arbitration negated the right of the Company to discipline its employees for the legitimate use of sick time. This was subsequently upheld by Judge David Doty of the U.S. Federal District Court and has general application to the relationship between these parties. It is also of some significance that the Court proceeding post-dated the LCA. The Court upheld the arbitrator's award in that matter.

It is clear that the provision in the LCA is negated by the prior award insofar as it relates to the legitimate use of sick time. Note that the provision may still be valid insofar as it relates to other use of leave or absences. The prior arbitration dealt only with the legitimate use of sick time and the facts here clearly show that the time this grievant used was due to legitimate illnesses justifying the use of sick time. See Tr. at 101-03.

Moreover, it was curious that the Company knew that the grievant was well over the 20 hours by mid-September of 2005 yet waited to take its action until some two months later. It was not clear why this delay occurred but the evidence as a whole showed that the Company was not going to terminate the grievant for this reason alone irrespective of the prior arbitration and subsequent District Court decision. Thus, these two factors weighed heavily against the Company's case in this matter.

Accordingly, it is determined that the grievant's absence for more than 20 hours under these facts did not constitute a violation of the LCA.

**Loss of driver's license:** The Company further argued that the grievant allowed his driver's license to expire and that he drove for many weeks without a driver's license using Company vehicles on Company time. This clear-cut violation of Minnesota Law, in the Company's view, justifies his immediate termination under the LCA.

The Union argued that the mere expiration of a driver's license does not make it impossible to drive and that if a person were to be stopped by law enforcement and they discovered the expiration of the license due to its being allowed to expire, the officer would ticket the person with such expired license and allow them to drive away. The Union also argued that the only reason the grievant allowed the license to expire was because he had moved and the DMV failed to send the notice of renewal to his new address. This is hardly the grievant's fault and he should not be subjected to the Draconian penalties for such a simple lapse. Moreover, when he received notice of the expiration, he immediately reinstated it. He was never ticketed for this either. This in the Union's view distinguishes this situation from one where the employees lost their licenses due to DUI offenses or other moving driving violations. The grievant was not guilty of any of that.

The Union argued that the mere expiration of a driver's license in Minnesota does not automatically result in the loss of driving privileges. Once the grievant was made aware of the expiration of his license he renewed it immediately. He did however drive for several weeks without a valid license. This argument by the Union was not persuasive and did not factor into the decision in this matter. Frankly, if the expiration of the driver's license were grounds for immediate termination under the terms of the LCA the matter would be over.

The obvious issue here is whether the expiration of the driver's license violates the terms of the LCA. It clearly did violate the terms of the general working conditions found in the labor agreement. That however is a different issue. It did not however violate the specific terms of the LCA itself.

It is axiomatic that for the terms of the LCA to apply, with its limitation on the determination of whether there exists just cause for discipline and the limitation on remedy, there must be a very clear violation of the agreement itself. LCA's typically are interpreted fairly strictly by arbitrators largely due to the limitations that are found within them. It is thus appropriate to examine the language of the LCA closely to determine whether the loss of the driver's license constitutes a violation of that, as opposed to a violation of a more general work rule.

First, the LCA does not require strict adherence to *all* Company work rules as a condition of the LCA, i.e. with its limitations as noted above. It requires as follows:

You must comply with all safety standards and regulations of the Company, including possessing and using personal protective equipment for emergency response and other work as required (e.g. safety eyeglasses), following safe practices at work and strict avoidance of any preventable collisions.

This language does not reference driver's licenses specifically nor does it require that the grievant comply with literally every work rule required of Company employee's. Rather it applies to safety standards and regulations. Moreover, the clause relied on by the Company in the contract is entitled "General Work Rules" and is not a safety regulation per se. While it is clear the grievant allowed his license to lapse, the simple answer is that this alone, while a violation of work rules, is not a violation of the LCA. Therefore, the limitations contained with it do not apply. As discussed below, the issue is whether there was just cause to discipline the grievant for this violation and what the remedy should be for that.

Accordingly, it is determined that the expiration of the driver's license is not a violation in and of itself of the LCA even though it certainly is a violation of the Company's more general work rules. Further, there was no allegation that the grievant violated any actual safety rules or regulations or that he operated his vehicle in an unsafe manner in any way. The sole allegation in this regard had to do with the driver's license issue.

**Failure to meet standards:** Here the question becomes more difficult. The LCA clearly provides that the grievant must meet certain performance standards and that if he does not on an overall basis each month that will constitute a violation of the LCA. The question is thus whether the grievant did in fact violate the terms of the LCA on this question.

The language of the LCA provides in relevant part as follows:

You must perform your work in a satisfactory manner and you must meet standards (i.e. 3.0 or higher) on an overall basis each MONTH on the following Home Service Plus performance and productivity measures: (emphasis in original)

- Percent of Call Backs

- Percent of First Call Completions
- Performance ratio
- Total Jobs Per Hour
- Contract Options PM and Sales Leads

Understandably, the Company points to the operative language of this clause. It says that the grievant must meet standards on an overall basis each month (emphasis in the original) on the 5 bulleted points. The evidence showed that these are the standards by which all similarly situated employees are measured and that neither the Union nor the grievant objected to these after the LCA was signed. The evidence also showed that the grievant in fact met these standards on an overall basis from January until September of 2005 and in fact met them even after September until his termination in November. Obviously the November time frame was cut short by the termination itself.

The evidence showed that on the performance measures set forth in the LCA, the grievant met those standards and performed at the required 3.0 level. The Company however argued that there is another measure that must be read into the LCA and is implicit there since it is one of the performance measures used to rate performance of the employees. This is the “miscellaneous” performance dimension set forth in the Performance Statistics Worksheet. This accounts for 30% of the employee’s overall rating and must be considered.

The Company argued that this is implicit in the LCA since the sentence is compound and required the grievant to both satisfactorily perform his work and meet standards on an overall basis on the Home Service Plus performance standards. The Company argued that since the miscellaneous standard is one of the Home Service Plus performance standards it must be there.

The problem for the Company is that the language in the LCA doesn’t say that. It says “[the grievant] must perform your work in a satisfactory manner and you must meet standards (i.e. 3.0 or higher) on an overall basis each MONTH on the **following** Home Service Plus performance and productivity measures.” (Emphasis added). The clear and plain meaning of this sentence is to limit the performance measures to those 5 items specifically listed in the language. It does not provide for anything more than that and simply cannot be reasonably read to include anything more than that.

It is axiomatic that the mention of one thing is the exclusion of others. Elkouri notes this basic principle as *expressio unius est exclusio alterius* (The expression of one thing in the exclusion of another.) “Thus, contracts that specify certain exceptions imply that there are no other exception, and those that expressly include some guarantees are thought to exclude other guarantees.” Elkouri and Elkouri, *How Arbitration Works*, 6<sup>th</sup> Ed. at page 467-68.

Here, of course, there is a very specific list of standards by which the grievant’s performance was to be measured under the LCA. To express these clearly implies that others are not part of the LCA. The LCA does not for example refer to the measures found on Company Exhibit 9, i.e. quality, productivity and organizational development. It refers to 5 very specific items, which are found within the list on Company Exhibit 9, but which are only a portion of the list found there. This is not to say that the grievant was not to be measured by these standards. He was. It is however that his performance *under the terms of the LCA* were to be measured by these and no others.

The Company is now attempting to read something into the LCA that is not there and certainly could have been placed there had that been the intent of the parties when they agreed to it. Again, LCA’s given their consequences are interpreted somewhat strictly. Here however, even a liberal reading of the provision clearly shows that it is limited to the “following” 5 measures. Note that this does not mean that the grievant can ignore the other measures or that he could not be disciplined for failing to meet them. What it means is that the strict terms of the LCA do not apply to that performance measure. Accordingly, the miscellaneous provision found in the Performance Statistics Standards is not part of the determination under the LCA of whether he violated its terms.

Now the question is whether the grievant fell below the 5 listed items. The evidence shows that he met those 5 items and that there was in fact no violation of the LCA on these facts. He met or in some cases exceeded the performance standards referenced in the LCA for September for the percent of callbacks, percent of first call completions, performance ratio and total jobs per hour.

The Company asserted that he fell below standards for contract options, PM and sales leads but the Union showed that he actually met or exceeded those standards. The evidence showed, contrary to the numbers listed on Company Exhibit 9, that he was required to make a certain number of contract options and sales leads and that this is calculated on an annual basis. The evidence showed that the measure used to determine contract options, PM and sales leads are determined on an annual basis and that the grievant more than met those standards here. Moreover, the LCA requires that the grievant meet the 5 listed items on an overall basis each month. The plain and unambiguous meaning of this is that the 5 items must be examined overall, i.e. together and not individually to see if the aggregate of the 5 listed items totals 3.0. The simple answer is that on these facts, the Company failed to show by a preponderance of the evidence that he fell below the required 3.0 threshold on an overall basis for the 5 listed items in the LCA.

The Union argued that the Company failed to adequately explain the numbers that were used to measure whether the grievant met the listed standards in the LCA and was not able to even explain the process they used. See Union brief at p. 13-17. There was some evidence to support that conclusion.

Two things became clear from the evidence. First, the Company did not show by a preponderance of the evidence that the grievant failed to meet the 5 listed performance standards listed in the LCA. Second, there was considerable evidence to show that the grievant met those standards even in September 2005 on an overall basis. Thus, the evidence showed that the grievant met those standards for September 2005 and that he did not violate the terms of the LCA.

The Union argued that the grievant did meet the 5 listed items on an overall basis for the month of September. See Union Brief at p. 19-21. The Union's point is well taken that the 5 performance measures are to be determined on an "overall basis" not on an individual basis. The evidence as a whole show that for the 5 listed items the grievant was actually well above the 3.0 mark required by the LCA. Accordingly, based on the evidence as a whole, it is determined that the grievant did not fail to meet the terms of the LCA insofar as the performance measures were concerned.

Having made the determination that the grievant did not violate the terms of the LCA the next question is whether he violated other more general work rules. It is clear that he did as set forth above. There is no question that he was driving Company vehicles with an expired license. It is also clear that he did not engage in any unsafe act during this time and that he immediately renewed his license once he found out about it.

However, the law is clear and the work rule is clear that a person must have a valid driver's license to operate a vehicle, much less a Company vehicle. As noted above, the Union's argument that the expiration of the license is essentially no big deal and that a person can still drive is unpersuasive. The Company's work rule requires that a Company employee driving Company vehicles must have a valid driver's license. While it is understandable how the grievant missed the renewal notice it is his responsibility to make sure his license is valid when driving Company vehicles. The issue is thus whether there was a violation of the work rule, not whether some state law was violated.

In addition, the grievant did fall below at least one of the performance measure, albeit, not one on the 5 listed measurement standards set forth in the LCA. Given the grievant's work history, it is imperative that he understand the need to meet all performance standards. Under these circumstances the more general rules with regard to establishment of just cause are in effect for those actions the grievant took which were violations of the general work rules but not of the LCA itself. Under that standard, it is clear that some discipline for the loss of the driver's license and the failure to meet other standards is appropriate.

The grievant's conduct was a serious violation of work rules but under the circumstances it was clear that his actions in allowing the driver's license to expire was not exclusively of his own doing. The grievant testified credibly that he did not get the notice and that once he was made aware of the problem with his license he took immediate steps to get it renewed.

Moreover, it was apparent that the matter that drove the miscellaneous standard, for which there is not a strict mathematical measurement, was in some substantial portion the driver's license problems. These therefore go hand in hand somewhat. Given the subjective nature of the standard and the evidence that the grievant's performance in the other standards has in fact improved, termination would be inappropriate when viewing the evidence as a whole.

Several different options were considered but the one that appeared most appropriate is reinstatement to his former position without back pay or accrued contractual benefits. It will be so awarded.

Finally, it should be noted so it is abundantly clear, the terms of the LCA are still in effect, except the sick leave provisions as set forth above. This decision is merely that he did not violate them now. The grievant must continue to meet the terms of the LCA in order to stay employed upon his reinstatement.

#### **AWARD**

The grievance is **SUSTAINED IN PART AND DENIED IN PART**. The grievant shall be immediately reinstated to his position, i.e. within 3 business days of this Award, but without any back or accrued contractual benefits.

Dated: July 10, 2006

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Jeffrey W. Jacobs, arbitrator