



## **I. INTRODUCTION**

This matter came on for hearing pursuant to a collective bargaining agreement between the parties effective from July 1, 2003 through June 30, 2005. A hearing occurred on June 2, 2006 in a conference room at the Office of the General Counsel of the University of Minnesota, 200 Oak St. S.E., Minneapolis, Minnesota. Ms. Sandra J. Curtis, Business Representative, represented the Union, AFSCME Council No.5, AFL-CIO. Ms. Shelley Carthen Watson, Associate General Counsel, represented the Employer, University of Minnesota.

The hearing proceeded in an orderly manner. There was full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter had been properly submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved. The arbitrator officially closed the hearing upon the submission of post-hearing briefs on July 7, 2006.

## **II. STIPULATED ISSUE**

**DID THE EMPLOYER VIOLATE THE CONTRACT WHEN IT ISSUED A WRITTEN REPRIMAND TO MARY GALEN O'CONNOR?**

## **III. RELEVANT CONTRACT PROVISIONS**

### **Collective Bargaining Agreement –Article 22**

Section 1. Discipline For Just Cause. Disciplinary action shall be taken only for just cause, ...Disciplinary action, except discharge, shall have as its purpose the correction or elimination of incorrect work-related behavior by an employee...

### **Section 3. Investigatory Meeting**

Twenty four (24) hours notice of investigatory meetings shall be given to the employee whenever possible. Supervisors are encouraged to give such notice in writing. The employee is entitled to a Union representative at an investigatory meeting which may result in disciplinary

action against the employee. However, neither the refusal of the employee's Union Steward or Union representative to participate nor their unavailability shall abridge the Employer's right to conduct an investigation. The Employer shall provide a written summary of the investigation results to the employee and the Union if it is involved in representing the employee during the investigation within seven (7) calendar days of the conclusion of the investigation. Investigation results may include, but are not limited to, exoneration of the employee or the conclusion that disciplinary action is not to be taken at this time. Where a change in policy or procedure is made as a result of the investigation, the employer will provide written notification of the change to all affected employees.

#### Section 4. Disciplinary Meeting.

Supervisors shall give employees a forty-eight (48) hour notice, whenever possible, of planned disciplinary meetings. Supervisors are encouraged to give such notice in writing. If the Steward and the employee agree, the disciplinary meeting can be held less than forty-eight (48) hours after notification, but the Steward or employee cannot refuse to hold an immediate meeting if circumstances require. Supervisors shall give employees the opportunity to have a Union Steward present for an oral warning, a written warning, a notice of suspension, or a notice of discharge. Employees shall be given an opportunity to hear evidence and respond to the evidence supporting suspension or discharge while still in pay status....

#### Section 6. Corrective Disciplinary Procedure

The normal corrective disciplinary procedure shall consist of three (3) steps, except that initial minor work deficiencies shall be privately brought to the employee's attention through coaching. Both parties agree that the order of discipline below is the progressive order of discipline; however, a situation may arise where it will be appropriate to depart from this order.

- A. An oral warning...
- B. A written warning shall be given to the employee specifying the nature of any continuing incorrect work-related behavior and pointing out that non-correction will result in further disciplinary action.
- C. A notice of suspension...

Discipline shall be documented in writing to the employee. Discipline beyond oral warning will be copied to the employee's official personnel file. The employee shall sign the disciplinary letter to acknowledge discipline has occurred and shall receive a copy of the disciplinary letter. However, refusal of the employee to sign the letter will not invalidate the disciplinary action. Such letter shall include a statement of the rationale for the disciplinary action taken. A copy of the disciplinary letter will be provided to the Steward when written warning, suspension or discharge is involved.

#### **IV. STATEMENT OF THE FACTS**

Grievant, Galen O'Connor, has been an employee of the University of Minnesota, Minneapolis campus, for thirty-nine years. For the last fourteen years she has worked in the Disbursement Services department, and her tenure there has been troubled. Prior to 1998, Grievant had no disciplinary record, but since then her record is checkered with discipline and coaching. Although she entered Disbursement Services as a supervisor, in 1994, her supervisory duties were removed, and she was reclassified to a lower account specialist position which she still holds. In 1996, Disbursement Services, with input from the Union, developed and presented to all employees a list of expectations for workplace conduct.

Beginning in 1998, while she was still a Union steward, Grievant's behavior became increasingly more aggressive. Her supervisor coached her repeatedly about being too loud and too persistent in pursuing argumentation. On November 11, 1999, Grievant became loud and aggressive with her supervisor and manager over a trivial matter. Efforts to calm her were ignored. Grievant called the campus police because she felt she was the one being harassed and intimidated. Grievant was disciplined for her behavior with a five day suspension which was upheld in arbitration. Arbitrator Daniel Jacobowski found Grievant's behavior "inherently inappropriate and misconduct of a severe nature" and "disruptive to the entire workroom."

On March 29, 1999, when her supervisor gave Grievant a "letter of appropriate conduct expectations" Grievant became loud and aggressive again. She threw papers on the floor, marched into the manager's office and continued her verbally abusive conduct. She felt the University had not properly investigated anonymous, harassing phone calls Grievant had received in early January, 1999. Grievant's six day suspension for this inappropriate behavior incident was upheld by another arbitrator in January, 2001. Arbitrator Jeffrey Jacobs found

Grievant's reaction to receiving a letter of conduct expectations "highly inappropriate and intolerable in the modern workplace."

Before either of these arbitration cases could be decided, in November, 1999, the University attempted to terminate Grievant for alleged misconduct as a member of the Board of Directors of the University's Financial System User Network. The University alleged that Grievant's behavior at Board meetings was a "serious deviation from generally accepted standards for workplace behavior." It was alleged that Grievant continued her pattern of loud, aggressive, intimidating, and inappropriate behavior toward her fellow board members and invited speakers at meetings from 1998 through 1999. Arbitrator Charlotte Neigh upheld the grievance and found that Grievant's behavior at Board meetings did not constitute non-correction of previously cited inappropriate workplace conduct. Grievant was reinstated with back pay in Disbursement Services.

In this present grievance, Grievant alleges that the University did not have just cause to issue a letter of reprimand/warning to her for her behavior in the workplace on July 15, 2004. An investigation conducted by the Employer found that a co-worker delivering papers to Grievant's cubicle hit the back of her chair and startled her. Grievant then went to the co-worker's area and ordered him to sit down so she could hit the back of his chair in the same manner. When the co-worker refused to comply despite repeated orders to do so from Grievant, a loud, profane argument ensued. Only then did Grievant go to the department director's office to report the incident. Although the director was meeting with someone else Grievant was admitted, and started to demand action to redress the incident.

The co-worker who had hit Grievant's chair passed the office on his way home, saw Grievant in the office, and came in to explain his side of the dispute. A loud argument, with name calling, disturbed the entire office. When the co-worker started to leave, Grievant grabbed

his arm, and ordered him to stay. The department director intervened between the two and ordered the co-worker to go home. Grievant continued to demand that the director resolve the incident.

An investigation by Grievant's immediate supervisor was conducted over the next few weeks. Grievant admitted the behavior alleged but felt that what she did was appropriate. On July 29, 2004, the supervisor provided Grievant with a written notice of his findings that both employees violated the University Code of Conduct and the published list of workplace expectations for the Disbursement Services department. On the morning of August 2, 2004, an investigative meeting was held with Grievant alone because she requested the meeting be held immediately to discuss the findings of the investigation. In the afternoon of August 2, 2004, with the Union's agreement and presence, the supervisor conducted the disciplinary meeting and distributed the warning letter to Grievant.

The co-worker who initiated the July 15<sup>th</sup> incident also received a warning letter, but he did not file a grievance.

Ms. O'Connor did file a grievance which alleged that the University did not have just cause to discipline her. The matter proceeded up the grievance ladder, and at each stage the Employer's discipline was upheld.

## **V. POSITION OF THE PARTIES**

### **POSITION OF THE UNION**

The Union asserts that the Employer lacked just cause to impose discipline because Grievant was the victim, not the aggressor in this case. Nor, they assert, was the investigation comprehensive since key witnesses were not interviewed, and not all evidence gathered was included in the summary report, especially the contradictory information on whether the Grievant made physical contact with the co-worker with whom she was quarreling. Lastly, the

Union argued that the working environment was biased toward the Grievant's success since attempts by the Grievant to bring the Employer's attention to this situation were unheeded, and no assurances of her continued safety were provided.

#### EMPLOYER POSITION

It is the Employer's position that after the co-worker who began the incident that is the subject of this grievance retreated, Grievant initiated a new and more contentious conflict when she went to the co-worker's area and repeatedly insisted that he sit down and allow her to hit the back of his chair as he had hit hers. It is her self-help vigilante conduct that earned her disciplinary action. Grievant admitted that she did not seek management help before confronting the co-worker and escalating the hostility in the workplace, but sees no problem with her self-help conduct. Each disputant was separately disciplined for his/her individual actions of inappropriate workplace behavior after a fair and thorough investigation.

#### VI. ANALYSIS

There is a fundamental understanding between the parties in the employment relationship. A potential employer is willing to part with its money only in return for something it values more highly, the time and satisfactory work of the employee. The potential employee will part with his/her time and work only for something he/she values more, the money and fulfilling work offered by the employer. This fundamental understanding of the employment relationship can be easily summarized: both parties realize that the employer must pay the agreed wages and benefits and that the employee must do "satisfactory" work. "Satisfactory" work in this context has four elements: (1) regular attendance, (2) obedience to reasonable work rules, (3) a reasonable quantity and quality of work, and (4) avoidance of any conduct that would interfere with the employer's ability to operate the business successfully. The main addition to the fundamental understanding that Unions seek in collective agreements is job security. Most

frequently, the agreement protects job security by limiting the employer's power to discipline and discharge.

The fundamental understanding, as amended in the collective bargaining agreement, can be stated as follows: employees will provide "satisfactory" work in return for which the employer will pay the agreed wages and benefits, and will continue the employment relationship unless there is "just cause" to terminate it.

"Just cause" is obviously not a precise concept. It cannot be applied to a particular dispute by an employer or an arbitrator without analysis and exercise of judgment. There will never be a simple definition of "just cause," nor even a consensus on its application to specific cases, but this does not mean the phrase is devoid of meaning. On the contrary, it is possible to make sense of the term and give it substance. This can be done by viewing the just cause standard as an amended form of the fundamental understanding. Just cause, in other words, embodies the idea that the employee is entitled to continued employment provided the employee attends work regularly, obeys work rules, performs at some reasonable level of quality and quantity, and refrains from interfering with the employer's ability to efficiently conduct its business with activities on or off the job. An employee's failure to meet these obligations will justify discipline up to and including removal.

There are three inquiries to determine whether just cause exists. The first is whether the evidence establishes that the Grievant committed the offenses forming the basis of discipline. The second is whether the Grievant was afforded due process. The last inquiry is whether the penalty is appropriate, considering the nature and severity of the offenses and any mitigating factors.

**1. Does the Evidence In This Case Establish That the Grievant Violated the Disbursement Services Department Workplace Expectations and the University Code of Conduct?**

### **University Code of Conduct: Section III Rights and Responsibilities**

Subd. 1. Fairness. Members of the University community have the obligation to respect, and to be fair to other members....Members must not engage in, nor permit, harassment...

### **Disbursement Services Workplace Expectations**

1. The University's Code of Conduct should serve as the standard by which all employees of the Disbursement Services operate in their interaction throughout the University. In [the] majority of cases, employees are accountable to their direct manager if behavior falls outside these expectations/guidelines.
2. The only acceptable way to express disagreement in the workplace is in a conversational tone.
3. Outbursts of anger/rage, etc., have no place in the workplace.
4. Show respect for all co-workers regardless of position.
5. Take responsibility for your own behavior.
6. Strive to create and maintain a respectful workplace.
7. Observe personal boundaries of space, quiet and interruption.
8. ....

### **Compliance with the University Code of Conduct and the Disbursement Services**

Workplace Expectations would have required Grievant to go immediately to her supervisor, or manager, since the supervisor was not in the office that day and report her discomfort with the actions of the co-worker who had hit her chair. Instead, and completely contrary to expected standards, Grievant took vigilante action and went to the co-worker's area and demanded, repeatedly and unpleasantly, that he sit down in his chair so she could "give him a taste of his own medicine." No behavior could be farther from reasonable expectations than what Grievant did.

Her behavior in the co-worker's area was unprofessional, disrespectful harassment, and created an entirely new and more hostile workplace incident. She failed to show respect for a fellow employee, failed to maintain a respectful workplace, harassed another employee and

displayed anger and outrage. Her behavior interfered with the Employer's ability to conduct its own business and created a hostile work environment for all the other employees who witnessed this incident.

Grievant argues that the "Disbursements Services as a Professional Workplace" advises that if one has a problem with a co-worker one should attempt to resolve it directly with the co-worker before going to a supervisor. Grievant didn't do that. Nothing in rudely ordering a co-worker to sit down so he can be harassed points to resolution of a problem, on the contrary, it evinces Grievant's true intention in going to the co-worker with whom she was angry—revenge.

After attempting personal revenge in the co-worker's area, and being handed the same rough justice she sought to inflict, Grievant went to her department authority to report the problem. There, after both workers engaged in angry, rageful converse against each other, Grievant stepped over the threshold of reason and physically assaulted the co-worker. The evidence is overwhelming that Grievant violated the University Code of Conduct and the Disbursement Services Workplace Expectations. A "fair day's work for a fair day's pay" does not include turning the workplace into a maelstrom of chaos and hostility. The co-worker's behavior affected only Grievant. Grievant's retaliation toward the co-worker disrupted the entire department who witnessed and heard the stomach-churning conflict she created.

## **2. Was Grievant Afforded Due Process?**

The Grievant argues that she was not afforded due process because she did not have a Union representative with her during the investigatory meeting with the Employer on August 2, 2004. The CBA at Article 22, Section 3 provides that an employee is entitled to a Union representative, but that the unavailability of a Union representative shall not abridge the Employer's right to conduct an investigation. Here, the Grievant, a former, long-tenured Union

steward, was well aware of her right to have a Union representative present, but specifically requested that the investigatory meeting be held as soon as possible. Nor was the Grievant prejudiced in any way by the Employer's presentation of its evidence to her of the incidents giving rise to the investigation. Grievant's arguments that she was unaware that she was the target of the investigation are disingenuous given her history of previous disciplinary action.

The investigation was comprehensive and fairly conducted. All the process that was due was provided to Grievant.

**3. Whether A Reprimand/Warning Letter Was Appropriate Considering The Nature and Severity of Grievant's Offense and any Mitigating Factors.**

Given Grievant's history of aggressive misconduct on the workroom floor and her total lack of insight into her behavior, a warning letter was generous. Grievant became enraged at the hearing because the offending co-worker had not be called to testify. Her disruptive behavior at the hearing highlighted her inability to perceive reality, therefore there is little that the Employer can do to further assist her with coaching. On July 15, 2004, Grievant breached the fundamental understanding of the employment relationship. Grievant has failed to perform "satisfactory" work. Her behavior was again grossly inconsistent with established work expectations, and her contentious behavior disrupted the Employer's ability to conduct business by creating a hostile environment for other workers who are affected by her negative behavior. The Employer was well within its rights and did properly issue a reprimand/warning letter to Grievant. There are no mitigating factors that would lessen this consequence.

**VII. AWARD**

After study of the testimony, other evidence produced at the hearing, the arguments of the parties (in post hearing written briefs) on that evidence in support of their respective positions,

on the basis of the above discussion, summary of the testimony, analyses and conclusions, I make the following award:

1. The grievance is not sustained.
2. The collective bargaining contract was not violated when the Employer issued Grievant a warning letter for her behavior on July 15, 2004.

Respectfully,

Dated: (August 4, 2006)

/s/

Arbitrator

Hard copy by regular mail sent 080406