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In Re the Arbitration between:

BMS No. 07-PA-0894

State of Minnesota – Judicial Branch,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

AFSCME Minnesota Council 65, AFL-CIO,

Union.

Grievance of Lori Dunagan.

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Pursuant to **Article 18** of the Collective Bargaining Agreement effective July 1, 2005 through June 30, 2007, the parties have submitted the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral Arbitrator from a list of Arbitrators provided by the Minnesota Bureau of Mediation Services.

There are no procedural issues in dispute and the grievance is properly before the Arbitrator for a final and binding determination.

This Arbitration is over a written reprimand dated December 14, 2006.

The hearing was conducted on August 30, 2007.

Briefs were posted on October 5, 2007.

**APPEARANCES:**

**FOR THE EMPLOYER**

Walter Wojcik, Jr. and Lisa Schoeder  
Minnesota Judicial Branch  
25 Rev. Dr. Martin Luther King, Jr. Blvd.  
St. Paul, MN 55155

**FOR THE UNION**

Dean Tharp  
AFSCME Minnesota Council 65  
14089 Oakland Road  
Stillwater, Minnesota 55082

**ISSUE:**

*Did the Employer violate the collective bargaining agreement when the grievant, Lori Dunagan, was disciplined?*

*If so, what remedy shall apply?*

**FACTUAL BACKGROUND:**

The grievant, Lori Dunagan, is employed as a Senior Deputy Clerk and Court Assistant to a District Court Judge in Wabasha County, Minnesota. Her Employer is the State of Minnesota, Judicial Branch. Ms. Dunagan has worked for Court Administration in Wabasha County for approximately five years. Before she began working for Court Administration, Ms. Dunagan was employed by the Wabasha County Attorney's Office as a Legal Assistant/Paralegal for twelve years. Before coming to Wabasha County Ms. Dunagan worked for three years as a legal secretary in Rochester, Minnesota.

At the time that Courthouse employees were County employees, they were organized by AFSCME Minnesota Council 65. When Courthouse employees became employees of the State of Minnesota, Judicial Branch, AFSCME Minnesota, Council 65 continued to represent them.

On December 14, 2006 Ms. Dunagan was given a written reprimand by her Supervisor, Twila Holtan. The written reprimand alleges the following:

A customer<sup>1</sup> came to Court Administration on November 27, 2006, for a copy of her divorce decree<sup>2</sup>, which you provided to her. On November 28, while at the hair salon River City, you ran into this same customer and commented on her pending wedding, in

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<sup>1</sup> The customer's name at the time was Dawn Huth. She has since married and is known as Dawn Franke.

<sup>2</sup> The customer initiated the process on November 27, 2006. However, she obtained her divorce decree on November 28, 2006.

front of her young son,<sup>3</sup> who had not yet been informed that his mother was planning to get married. As a result, this customer filed a written complaint with me, explaining that your disclosure of this sensitive information, which you were only privy<sup>4</sup> to as a result of your being an employee of the court administrator's office, has caused tremendous emotional distress for her children, herself, and her new husband.

The above actions are in direct violation of the following policies and rules:

- Human Resources Policy 3.18, Article V (H), which states, "Employees shall avoid any activity that would reflect adversely on their position or court".
- Human Resources Rule 8.1 (b), which states that an employee may be disciplined for misconduct which includes "Action unbecoming an employee of the court which reflects on the court adversely".

Furthermore, such actions undermine the public's trust and confidence in the court system.

The factual basis for the discipline imposed upon Ms. Dunagan by her Employer is disputed. However, there is general agreement over the sequence of events and the relevant actors in this dispute. The customer and the grievant gave completely different accounts of who said what to whom, when the customer entered River City hair salon, with her soon to be step son.

On November 27, 2006 Dawn Huth, now Dawn Franke, met with Twila Holtan, the Wabasha County Court Administrator, who had agreed to perform a marriage

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<sup>3</sup> The 'young son' was actually the son of the customer's soon to be husband.

<sup>4</sup> The grievant collected the \$10.00 fee from the customer for a certified copy of the customer's divorce decree. Grievant was not the individual who certified the decree and grievant did not process a marriage license for the customer.

ceremony for Ms. Huth and Curt Franke. The Court Administrator reviewed the steps Ms. Huth needed to take to obtain a marriage license. Both Mr. Franke and Ms. Huth needed to obtain certified copies of their divorce decrees as part of the process. Ms. Huth's request for a certified copy of divorce decree was made following the meeting.

Late in the business day on November 28, 2006, Ms. Huth stopped at the Court Administration counter in the Wabasha County Courthouse to pick up and pay for a certified copy of her divorce decree. The grievant was working at the counter at that time. Grievant collected the \$10.00 fee for the certified copy and gave Ms. Huth the document, which had been certified by another court employee. Ms. Huth did not discuss why she was obtaining a certified copy of her divorce decree. There are many reasons why an individual might request a certified copy of a divorce decree.

After work the grievant went to *River City*, the hair salon. She was a little late because one of the family cars had been damaged in a collision with a deer. The grievant had been a customer of Julie Roemer-Fosmo, the owner of *River City*, for many years. The grievant obtained a hair cut and in the process the hair stylist and grievant had a wide ranging conversation. One of the topics of conversation between Ms. Roemer-Fosmo and the grievant was local couples who were getting married.

After leaving the courthouse, Ms. Huth made a couple of stops including one to pick up Dustin Franke, Curt Franke's son. Ms. Huth and Dustin went to the market to get shrimp for a special dinner<sup>5</sup> that night and arrived early at *River City* for Dustin's hair cut appointment.

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<sup>5</sup> Ms. Franke testified that she and Curt Franke intended to tell their children about the up coming wedding over a special dinner that night. Dustin had not been told that his father and Ms. Huth were planning to be married.

Ms. Franke testified that when she entered *River City* the grievant asked her whether she had set a date to be married. Ms. Franke's testimony was corroborated by the testimony of Dustin Franke. Both Ms. Franke and Dustin also testified that the conversation that ensued was upsetting to Dustin, because he had not been informed of the up coming wedding. Ms. Franke testified that she gave very short responses to the questions and did not encourage additional conversation.

Both the grievant and Julie Roemer-Fosmo testified that Julie Roemer-Fosmo initiated the conversation regarding whether and when Ms. Huth and Mr. Franke planned to be married. Julie Roemer-Fosmo testified that she learned the following from Ms. Huth:

- The wedding was planned for a date certain.
- The wedding was going to be rather informal.
- Ms. Huth probably would wear jeans to the wedding.
- Ms. Huth probably needed to get her eye brows waxed before the wedding.

A *Loudermill* hearing was conducted by the Court Administrator on December 12, 2006. At the *Loudermill* hearing the grievant denied that she initiated the conversation with Ms. Huth on November 28, 2006. The grievant also submitted a letter from Julie Roemer-Fosmo that corroborated grievant's claim that the conversation regarding an up coming wedding between Ms. Huth and Mr. Franke was initiated by the owner of *River City*. The Court Administrator determined that Ms. Huth's version of what happened to be an accurate account and imposed discipline on the grievant in the form of a written reprimand. The Court Administrator testified that the grievant had prior incidents of misconduct. However, the collective bargaining agreement only allows management or

the Arbitrator to consider prior discipline that has been imposed within two (2) years. There is no evidence that grievant was disciplined in the past two (2) years for any misconduct.

Both the Court Administrator and the grievant testified that they have a “strained” relationship.

The Union produced a number of photographs of the *River City* hair salon. The photographs and testimony regarding the photos establish that upon entering *River City* from the front door one can not see the customer receiving a hair cut or other hair treatment because of a partition wall that blocks the view from the street. Similarly, a customer receiving a hair cut can not see a person who has entered the salon because the partition wall blocks his/her view. Hence, the grievant could not see Ms. Huth when Ms. Huth entered the hair salon and the grievant could not be seen by Ms. Huth when Ms. Huth entered the hair salon. The stylist is able to see both the customer she is working on, in this case the grievant and anyone who enters the salon in this case Ms. Huth, as she positions herself at the edge of the partition wall, while cutting hair. Ms. Franke testified that the wall did not exist on November 28, 2006. The grievant testified that the wall has been there for many years. The Arbitrator finds that Ms. Franke’s testimony regarding the existence of the wall lacks credibility and the wall prevented the grievant and Ms. Huth from seeing each other, when Ms. Huth entered the hair salon.

**SUMMARY OF EMPLOYER’S POSITION:**

The grievant knew of the expectations of her Employer. She was a long term employee in the court system. It is well known among courthouse employees that one does not discuss the business of the courts away from work. The Court Administrator

explained that what happens at the courthouse stays at the courthouse. The grievant acknowledged that it is inappropriate to discuss what transpires at the courthouse away from work.

Not only did the grievant know what was expected of her but she knew she could be disciplined for violating the Court Employee Code of Ethics policy. Article V. Performance of Duties H. prohibits any “activity that would reflect adversely on the court employee’s position.” The rules and consequences are common knowledge in the courthouse. The grievant acknowledged receipt of the Minnesota Judicial Branch Policies & Procedures and was informed of the policies and procedures through staff meetings, coaching, and counseling sessions.

The fact that divorce decrees and marriage licenses are public documents does not relieve the grievant of responsibility for her actions. The grievant was disciplined for speculating and gossiping about Ms. Huth’s upcoming marriage, which she was only privy to because of her employment with the courts. Ms. Huth’s and Mr. Franke’s marriage plan was not public information at the time that the grievant discussed it with non-court employees. The Employer contends that grievant knew Ms. Huth was in the courthouse on November 28, 2006 to obtain a certified copy of her divorce decree and deduced that Ms. Huth needed the certified copy to obtain a marriage license. The grievant’s speculation was brought to *River City* in the form of gossip. A court employee engaging in gossip over the personal business of court customers is “action unbecoming an employee of the court which reflects on the court adversely.”

The grievant has a history of inappropriate behavior, which was noted in her January 2006 performance review. According to her supervisor, Ms. Holtan, “I have

some consistent feedback regarding conduct in the office and courtroom i.e talks loudly about things that should not be discussed; knows a lot of personal information about most people, and sometimes has an avid interest in proceedings. She makes comments that could be overheard and may be offensive to others”. The grievant did not respond to prior counseling and to information given her in the performance review. Hence, the corrective discipline was appropriate.

The Employer reasonably relied upon the information given by Ms. Huth regarding the grievant initiating conversation with her about her up coming wedding. Ms. Huth had absolutely no motivation to lie. Ms. Huth did not have a personal relationship with the grievant, either positive or negative and there is no evidence of bad blood between the husbands or family members of the two women.

The Employer rejected the information received from Julie Roemer-Fosmo because it lacked credibility. The grievant had been a long term, regular customer of Ms. Roemer-Fosmo. The economic relationship between the two women and the fact that grievant drafted the letter, which Ms. Roemer-Fosmo signed raises serious questions about the credibility of information provided by Ms. Roemer-Fosmo. Hence, the grievance should be denied.

**SUMMARY OF UNION’S POSITION:**

The Employer did not fully and fairly investigate the complaint made against the grievant. Despite receiving a letter from Ms. Roemer-Fosmo that contradicted the information in the complaint, the eyewitness was not interviewed before discipline was imposed. Additionally, the Court Administrator admitted that her relationship with the grievant was strained and she simply did not believe what grievant told her. The evidence

of bias in the investigation was corroborated by the fact that a positive letter of recommendation written about the grievant was not included in her personnel file by the Court Administrator, despite the Court Administrator's representation that it would be placed in grievant's personnel file.

The grievant did not violate a reasonable rule of the Employer. The rule that grievant may not disclose sensitive information does not exist in any written form nor was grievant ever told that discussing sensitive information was a rule violation. The information that grievant allegedly discussed in public was public information. In this instance, the Employer unreasonably attempts to require an employee to treat public information as if it was private information pursuant to an unwritten rule regarding sensitive information. The rule cited by the Employer is overbroad, vague and subject to so many interpretations that it is completely unenforceable.

The Employer failed to establish that grievant knew Ms. Huth had obtained a marriage license. Marriage licenses are issued in a different part of the courthouse than the area where the grievant works. Grievant provided Ms. Huth with a divorce decree that had been certified by a different employee. Certified divorce decrees are used in many different ways for a multitude of reasons other than obtaining a marriage license. There is no evidence that the grievant knew Ms. Huth was using the certified divorce decree to obtain a marriage license.

The Union argues that neither Ms. Franke nor her step son were credible witnesses. Ms. Franke could have cut off discussion about her up coming wedding, if she had chosen to do so. In fact, she did not have to inform anyone that she was going to be married, until after she and Mr. Franke told their children. In this situation, Ms. Franke

attempts to blame the grievant for her own indiscretion. Clearly, Ms. Franke was confronted with two upset children and an upset husband-to-be and needed a scapegoat. The grievant's presence at *River City* provided a convenient scapegoat.

The Union argues that Dustin Franke was a well prepared witness but not a credible one. In his testimony Dustin calls the grievant "Lori", as his step mother referred to her. One would expect that the young witness would refer to the grievant as Ms. Dunagan in deference to her being of an older generation. In this instance, the young man appears to have been coached and used the language that would have been used by a peer.

The grievance should be upheld. The Employer failed to fairly investigate the complaint against the grievant, the work rule grievant allegedly violated is non-existent and the balance of credible evidence adduced at hearing does not support the complaint.

**OPINION:**

The Employer has failed to establish by a preponderance of the credible evidence that the grievant engaged in the conduct for which she was disciplined. First, there is no evidence that at the time Ms. Huth entered *River City* the grievant knew Ms. Huth had obtained a certified divorce decree for the purpose of obtaining a marriage license. Second, the allegation that grievant initiated a conversation with Ms. Huth regarding her upcoming marriage to Mr. Franke is contradicted by the physical arrangement of the hair salon.

The only person who could see Ms. Huth, when she entered *River City* was Julie Roemer-Fosmo. The grievant was sitting on a chair behind a wall that prevented her from viewing the front door to the establishment. Similarly, Ms. Huth could not see through

the wall that obstructed her view of the grievant. The physical setting is given great weight in this situation. It is highly unlikely that the grievant would have initiated a conversation with someone who had just entered the premises without seeing and knowing who she was addressing. On the other hand Ms. Roemer-Fosmo had a clear view of the front door and one would expect her to strike up a conversation with a customer who was entering her business.

In this instance there is insufficient evidence to support the substance of the complaint made against the grievant and the grievance must be upheld. There are other important issues raised in this arbitration, including whether an enforceable rule exists that prevents a court employee from discussing public information obtainable at the courthouse away from work and whether the bias of grievant's supervisor towards grievant draws into question any investigation of grievant's conduct by her supervisor. The Arbitrator will not rule on those issues in this opinion but strongly suggests that the parties address the issues outside of this forum.

**AWARD:**

- 1. There is insufficient evidence to support the complaint made against the grievant dated December 12, 2006. Hence, the Employer did not have just cause to impose a written reprimand upon the grievant.*
- 2. The grievance is hereby upheld and the written reprimand is hereby revoked.*
- 3. The Employer is hereby ordered to remove the written reprimand from grievant's personnel file.*

**Dated: October 17, 2007**

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**James A. Lundberg, Arbitrator**