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In Re the Arbitration between:

**BMS File # 05-PA-1221**

Winona County,

Employer,

and

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

AFSCME Council 65,

Union.

Grievance of Kristi Petersen

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Pursuant to **Article XXI** of the collective bargaining agreement effective January 1, 2003 through December 31, 2005, the parties have brought the above captioned matter to arbitration.

James A. Lundberg was selected as the neutral arbitrator from a Minnesota Bureau of Mediation Services list of Arbitrators.

The parties stipulated that all steps of the grievance procedure were properly complied with and the grievance is properly before the Arbitrator for a final and binding determination.

The grievance was filed April 11, 2005.

A hearing was conducted on October 3, 2005.

Briefs were filed on November 3, 2005.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE:**

*Whether the Employer had just cause to suspend grievant, Kristi Petersen, for four weeks without pay? If not what is the proper remedy?*

**FACTUAL BACKGROUND:**

The grievant, Kristi Petersen, has been employed by the Winona County Department of Social Services as a Child Protection Worker for three and one half years. Ms. Petersen has a BA degree and is working on a MA in social work. She is divorced and has two children from her prior marriage. Grievant was disciplined as a result of a complaint made by her former husband and his current wife to Winona County Social Services. The complaint against the grievant was related to written comments she made on the intake form of a possible maltreatment complaint involving her former husband that was received by Winona County Social Services.

The grievant's former husband shall herein be identified as A. Petersen.

A. Peterson's current wife shall herein be identified as S. Petersen.

On November 1, 2004 the former husband of S. Petersen contacted Winona County Department of Social Services with a complaint about the treatment of his children while they were with S. Petersen and A. Petersen. The grievant was not the County intake person.

On November 2, 2004 one of the grievant's co-workers, Ms. Laisy, told the grievant that a report had been made by the ex-husband of S. Petersen.

The grievant accessed the SSIS (Social Service Information Service) and added about two and one half pages of information about A. Petersen and his relationship with

grievant's children on the intake form. Her narrative begins "KP noted this intake when reviewing the intake log for screening and has additional information on the family. The information I have is somewhat historical and has not been enough to make a CP report on, but will perhaps add depth and/or weight to the information from..." Nothing in the narrative prepared by the grievant was specifically related to the conduct that gave rise to the complaint submitted by the former husband of S. Petersen. The narrative included information about the mental and emotional health of A. Petersen. Grievant was motivated to add her remarks to the SSIS intake form by the fact that her children periodically reside with A. Petersen.

The SSIS form indicates that a screening team reviewed the report on November 11, 2004 and referred the matter to Fillmore County due to a conflict of interest. The screening team noted that the two younger children reside in Fillmore County and their mother is a Child Protection Worker in Winona County. However, the screening team made no comment regarding the information added to the report by the grievant. There is no evidence that the screening team evaluated the commentary or took any action with regard to the grievant's commentary on the intake document.

On December 10, 2004, the grievant requested specific information from Fillmore County regarding the status of the investigation. The grievant made the request out of concern that her children might also be the victims of maltreatment. According to the grievant's supervisor, the Fillmore County Investigator felt she was being pressured by the grievant to provide her with case notes, which Fillmore County does not provide. The grievant allegedly told the Fillmore County Investigator that Winona County does disclose case notes.

Grievant also contacted the Guardian ad Litem of the children of S. Petersen in Wisconsin. A letter from the Guardian ad Litem submitted into evidence indicates that the contact was made in 2003. The Employer alleged that grievant acted inappropriately by contacting the Guardian ad Litem and identifying herself as a Winona County Child Protection Worker.

By letters dated February 15, 2005 S. Peterson and A. Peterson complained to the Winona County Department of Human Services that the grievant improperly and unethically used her position as a Child Protection Worker. The complaints involved a number of issues including the grievant's intervention into the November 1, 2004 case involving a child of S. Peterson and a claim that grievant previously made an improper contact with the Guardian ad Litem for S. Peterson's children.

The Employer investigated the complaints. As part of the investigation the Fillmore County investigator was contacted and the grievant was interviewed. As a result of the investigation the grievant was given a reprimand and a 4 week suspension without pay. The suspension letter gave the following explanation for the disciplinary action:

Specifically you entered personal information into the Social Services Information System on the A. Petersen and S. Petersen alleged maltreatment report initiated by another person with no county or individual requesting or seeking that information. Additionally, you attempted to gain access to copies of the case notes from the investigative case being conducted by Fillmore County Department of Human Services by using your employment with Winona County as a mechanism to receive that information. As a trained Child Protection Investigator and Social Worker, ethical boundaries of access to information and

ability to add information were violated. Another person outside of the Department of Human Services would not have either the access or knowledge of the report nor ability to change or add information to the existing report.

The contact made with the Guardian ad Litem of S. Petersen's children was not given as a basis for the discipline in the disciplinary letter to grievant, but was incorporated into the argument in support of the discipline. Based upon a letter dated April 7, 2005 from the Guardian ad Litem addressed to Winona County, the Arbitrator finds that grievant's contact with the Guardian ad Litem was not improper.

The grievant's contact with the Fillmore County Investigator was generally within appropriate boundaries. The Employer determined that grievant improperly requested case notes from the Fillmore County Investigator. The grievant testified that she requested notes relating to her children. Whether the grievant requested notes and/or written reports specifically about her children or requested notes and/or written reports from the file in general is of little significance in this case because the Fillmore County Investigator did not turn over any notes to the grievant. The Fillmore County Investigator may have felt that she was being pressured by the grievant to provide more information than the grievant was entitled to receive but the grievant did not receive any improper information from Fillmore County.

The two and one half pages of additional comments made on the intake form by the grievant are clearly not related to the maltreatment complaint. The grievant should not have made the additions to the intake form, grievant should not have had access to the file, grievant's co-worker should not have discussed the file with the grievant and the screening team let the file go to Fillmore County with the information added by the

grievant. There is no evidence that the screening team took any steps to prevent inappropriate information from being passed on to Fillmore County.

The Union grieved the suspension on April 11, 2005.

**SUMMARY OF EMPLOYER'S POSITION:**

The grievant violated the Minnesota Government Data Practices Act by publishing private data about her former husband in the SSIS without an appropriate reason. The information she placed on the intake form may be accessed by thousands of people who work in the area of child protection throughout the State of Minnesota. The grievant did not have a legitimate reason for reviewing the SSIS form and her disclosure of private information, including information about her former husband's mental health, violated the purpose of the Data Practices Act, which is to protect private data from disclosure to anyone except a party authorized to receive it.

The grievant can not claim that she included the information about her former husband because she is a mandatory reporter. The maltreatment complaint that was submitted to Winona County Social Services was not related to any information she provided in her narrative. The grievant provided a narrative of historical events that had no bearing on the situation that was reported and all of the events had been addressed in other settings, including Family Court proceedings. If the grievant believed that the information she provided needed to be submitted for investigation, she should have submitted an independent report. She also could have discussed her desire to add information to the SSIS with her supervisor before she added her narrative to the report.

The grievant also violated the Winona County Data Practices policy. The policy defines non-public data and private data. It restricts access to non-public and private data

to those employees who need the data to do their jobs. The grievant did not need to access her former husband's file to do her job. Not only did she not need access to the file to do her job, but the information she provided was not needed by any Child Protection Worker to investigate and evaluate the complaint involving S. Petersen's child.

The grievant also violated the Winona County policy regarding conflicts of interest. Grievant intervened in the lives of A. Petersen and S. Petersen at a time when she had existing child custody matters pending with A. Petersen. Her job did not include adding non relevant information to the SSIS report. The narrative was submitted because of her personal relationship with A. Petersen. Her job did not include contacting an out of State Guardian ad Litem, while holding herself out as a Child Protection Worker in Winona County. Instead, grievant had a personal agenda. Grievant's job did not involve attempting to obtain information from Fillmore County beyond the scope of what would otherwise be available to her. Grievant wanted the information for personal reasons. Using her position as a Child Protection Worker to further personal goals is unequivocally a conflict of interest. The conflict of interest caused the grievant to violate ethical boundaries.

The Employer also argues that the grievant was not truthful during the investigation. Grievant said she was directed by a co-worker to add information to the SSIS but the co-worker testified that she never told grievant to add information to the SSIS. The grievant also asked the Fillmore County Social Worker to provide her with case notes and when the Social Worker said she would not provide notes, the grievant said "that's what Winona County does." Winona County does not provide case notes.

The discipline imposed on the grievant was appropriate. She violated policies and practices that are central to the operation of Child Protection Services. The confidential data that is used by Child Protection Services is not to be accessed by anyone who does not require the data in order to do his or her job and may not be disclosed for any purpose other than to accomplish the employee's job.

The grievant argued that she was acting as a mother, not as a County employee. However, the problem she failed to acknowledge is that her role as a County employee is not the same as her role as a mother and the two roles in this situation constitute a conflict of interest. Her failure to acknowledge and accept the boundaries between the two roles exacerbated the problem.

The Employer believes that the discipline is consistent with the serious nature of the misconduct and should be upheld.

**SUMMARY OF UNION'S POSITION:**

The information that Grievant added to the SSIS involving A. Petersen did not result in a negative reaction from any of her co-workers. The document, which included the grievant's narrative, was reviewed by a screening team of her peers. After the document was screened, it was delivered to Fillmore County for investigation. The screening team made no additions or subtractions to the SSIS. The screening team did not contact a supervisor with a request for further review nor did the screening team talk to the grievant about the propriety of the information that was included in the report. The Arbitrator should conclude that grievant's conduct was consistent with the practices of the department.

Ms. Laisy testified that “It would be common for us to add additional information if we have additional information.” Both the initial intake person and the screening team considered grievant’s additions to be normal. Grievant did not improperly add information to the SSIS.

The Employer failed to prove that grievant’s conduct violated the Minnesota Government Data Practices Act. At no time has the Employer identified a specific section of the Data Practice Act that was violated by grievant’s conduct.

Grievant did not violate the Data Practices Act when she requested information about her children at the conclusion of the investigation. The letters between the grievant and Fillmore County regarding the investigation relate only to information that the grievant was entitled to obtain under the Data Practices Act. The grievant had a right to obtain information that related to her children.

It was not improper for the grievant to inform those involved in an investigation that she was both a parent and a Child Protection Worker. By informing an investigator that she was a Child Protection Worker, the grievant believed she was relieving the investigator of the burden of explaining to her the investigative process.

The Winona County Conflicts of Interest and Data Practices Policies are too vague to place County employees on notice of what would be a violation. The policies do not specifically delineate the differences between private and public data nor do they specifically address the handling of data in Child Protection cases. The only reference in the Data Practices Policy relating to child abuse investigations says that the identity of the reporter is confidential. The conflict of interest policy says “When an employee believes a potential for a conflict of interest exists involving personal gain, it is the employees

duty to avoid any situation which he/she believes has the potential for a conflict of interest.” The policy is aimed at preventing financial gain. The grievant could not violate a policy that does not exist.

The grievant did not knowingly violate any policy of the Employer. However, if the Arbitrator finds a violation of some policy, the grievant’s precarious position as both mother and Child Protection Worker and the grievant’s otherwise excellent employment record should be considered in evaluating the level of discipline imposed. The grievant had legitimate concerns for the welfare of her children, while they were part of a household where potential maltreatment had been reported. The grievant has been a reliable employee with no prior disciplinary problems. The imposition of a four week suspension upon an employee with no significant disciplinary history, who was acting to protect the welfare of her children, is simply too harsh.

The Union asks that the grievance be sustained and the discipline revoked or in the alternative, that the discipline be reduced.

**OPINION:**

While the Data Practices Act is a statute that must be followed scrupulously by the County, the review and analysis of the grievant’s conduct can be made under the just cause standard without determining whether the statute was violated. The Union accurately notes that the County failed to cite a specific section of the Act that was violated. However, the license taken by grievant in accessing an SSIS form that she was not assigned to process, and adding information about A. Petersen to the SSIS form that was not assigned to her is inconsistent with the purpose of the Minnesota Government Data Practices Act.

There is insufficient evidence to determine whether the grievant improperly attempted to obtain confidential information from a Fillmore County Investigator. The grievant's recollection of what was said is different than the information reported to grievant's supervisor. Both descriptions of what took place between the grievant and the Fillmore County Inspector are consistent with the letters written between the grievant and the Fillmore County Inspector.

The grievant was acting in the capacity of a Child Protection Worker for Winona County at the time she wrote a narrative describing what happened between her, her children and A. Petersen during the course of her marriage and enlightening an unknown audience with regard to the mental condition of her former husband. **Joint Exhibit #2** entitled "Responsibilities of Employees, Contractors, Volunteers, and Interns who have access to not public data at Winona County" clearly states that with regard to private data and non public data "Access within the county is restricted to those employees who need the data to do their jobs." The grievant's job did not require her to access the complaint relating to her former husband. It was not a requirement of grievant's job that she make additions to the SSIS form. The substance of the grievant's comments had nothing to do with the grievant's job. Grievant's comments had nothing to do with the substance of the report that had been made to Winona County. Grievant's statement informed an unknown audience of private information about A. Petersen and did nothing to assist in the investigation of the specific maltreatment complaint.

Grievant may have felt conflicted at the time she learned that a complaint had been made about A. Petersen, but she was not in a position where her role as mother was in any way in conflict with her role as Winona County Employee. She was at work and

engaged in work other than the processing of the SSIS form relating to A. Petersen. She was forbidden by County policy from accessing private or non public data unless she needed access to do her job. At the time grievant learned about the complaint against A. Petersen, arrangements were already being made to have a different County process the file because of possible conflicts of interest. Grievant was neither the intake person nor a member of the screening team nor was she assigned responsibility for referring the file to a different County. Grievant did not need access to the file to do her job.

The grievant clearly violated the Employer's policy with regard to access to non public and private data. In addition, the information that was placed on the SSIS form was not relevant to the specific complaint that was made. The Employer had just cause to discipline the grievant for violation of Winona County policy regarding access to private and public data.

The County took into consideration the magnitude of the grievant's misconduct together with the personal issues that motivated her conduct and her employment history. While the discipline imposed upon grievant was harsh, the magnitude of grievant's misconduct was substantial. The policy of the County regarding access to private and non public data was clear and was known by the grievant. Substantial harm could have resulted from grievant's conduct either to A. Petersen or to the Employer as a consequence of grievant's misconduct. There is no evidence that the Employer failed to consider any mitigating factors. In fact, it appears that discharge was considered but the grievant's positive work record and difficult person circumstances were a part of the decision not to discharge grievant. Hence, the level of discipline should not be disturbed.

**AWARD:**

*The grievance is hereby denied and the four (4) week suspension of grievant is upheld.*

**Dated: December 19, 2005**

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**James A. Lundberg, Arbitrator**