

Grissom #3

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYER

AND

UNION

GR: Employee 1

Five (5) Day Suspension

ARBITRATION OPINION AND AWARD

David W. Grissom

Arbitrator

ARBITRATION

This Arbitration took place on the dates of February 4, March 22 and April 9, 1999 at the Union Headquarters on Avenue A in Grand Rapids, Michigan. The Hearing was concluded on the above noted date. Pursuant to the receipt of Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

This grievance arises from a five (5) day disciplinary suspension issued to Employee 1 effective April 6, 1998 for the purported violation of Section 2 of Employer Rules and

Regulations, Rule Nos. 19, 8 and 13 in that order (Joint Exhibit #4). These Rules are set forth below.

EMPLOYER

Employer Rules and Regulations

The purpose of these Rules and Regulations is not to restrict the rights of anyone, but to define them and to protect the rights of all and to insure cooperation.

**ALL EMPLOYEES SHALL ABIDE BY THE FOLLOWING REQUIREMENTS.
FAILURE TO DO SO SHALL RESULT IN DISCIPLINARY ACTION.**

Committing any of the following violations will be sufficient grounds for disciplinary action, up to and including discharge, depending upon the seriousness of the offense in the judgment of Management.

19. Disregarding or refusing to obey an order, either written or verbal, from a foreman, supervisor, or other appropriately identified Management personnel.
8. Using abusive language, threatening, intimidating, coercing and/or fighting with employees, Management
13. Horseplay, creating a distraction, interfering with an employee or causing unsafe or unsanitary working conditions.

Ms. Employee 1, hired on May 11, 1989, is an Office Assistant II in the Housing Inspection Division of the Neighborhood Improvement Department.

The five (5) day suspension under review was predicated upon the following Employer allegations: (1) That on Wednesday, March 11, 1998, Employee 1 demonstrated hostile, defiant and challenging behavior towards her Supervisor, Supervisor 1 surrounding legitimate questions put to her regarding a telephone conversation that morning (2) that on Thursday, March 19, 1998 during an investigative interview into the above described occurrence, Employee 1 was further uncooperative and defiant to Labor Relations Specialist Person 1, (3) that in 1993, Employee 1 was warned and counseled that "shouting matches" with fellow employees constituted

inappropriate conduct in the workplace and in 1997 was again admonished that hostile behavior toward Management representatives would not be tolerated; that correspondingly, during her 1997 Performance Evaluation, Employee 1 was advised that she was expected to treat all staff members and the public in a courteous and professional manner (4) that notwithstanding the above cited counselings and directives in these areas, Employee 1 continued to disregard such responsibilities in her capacity of an Office Assistant II as evidenced by the incidents on March 11 and 19, 1998. In pertinent part, the Disciplinary Notice issued by Employer Manager, Manager 1 on March 31, 1998, states as follows (Joint Exhibit #3):

Person 2 finds that you have disregarded previous directives in violation of Employer Rules and Regulations, Section 2, Rule 19. You also have engaged in intimidating behavior toward your supervisor while creating a distraction and interfering with fellow employees in violation of Employer Rules and Regulations, Section 2, Rules 8 and 13.

Based upon the above, I concur with Mr. Person 2's recommendation. You are hereby officially notified that you are to serve the disciplinary suspension effective on the date and time referenced above. Following the suspension you are directed to report for work at the start of your next regularly scheduled work shift on Monday, April 13, 1998, at 8:00 AM.

I cannot stress to you enough that your challenge of management's normal functions will be dealt with severely. The Employer will not tolerate this type of behavior in the work place. The level of this disciplinary action is meant to send a clear and unequivocal message to you that any future behavior of this nature by yourself toward your supervisors, fellow employees, or members of the general public will result in a recommendation for your discharge from employment with the Employer. Your employment is dearly in jeopardy if you again fail to conduct yourself in a professional manner or engage in defiant outbursts when approached or questioned by management about your job performance or potential rules violations.

Sincerely,

/s/

Manager 1

Employer Manager

The Employer's position that the five (5) day suspension issued to Employee 1 was for

just cause was advanced via the testimony of Employer witnesses as follows: Housing Inspection Administrator, Administrator 1 testified that Employee 1, as an Office Assistant II in the Housing Inspection Division, maintained the responsibility to carry forward clerical support duties along with about six (6) other employees who worked in similar capacities. Administrator 1 further advised that Housing Inspection Supervisor, Supervisor 1, Employee 1's immediate Supervisor, reported directly to her and that in the clerical section of the office, Employee 1's desk was situated just inside the door.

Administrator 1 testified further as follows: On September 14, 1993, she was compelled to issue a Letter of Instruction to Employee 1 for her involvement in a "shouting match" with employee, Employee 2 over a misunderstanding about the purchase of two (2) computer glare guards. In this, Administrator 1 counseled Employee 1 to correct her behavior and to insure that there was no such re-occurrence. This Letter of Instruction is set forth below (Employer Exhibit #7).

Date: September 14, 1993
To: Employee 1
Office Assistant II
From: Administrator 1 (initialed)
Housing Inspection Supervisor
Subject: LETTER OF INSTRUCTION

I am writing this to reiterate what was discussed on 9/1/93 after your heated exchange with Employee 2. This exchange was precipitated by a misunderstanding about the purchase of 2 computer glare guards. Two different glare guards were purchased to ascertain which would work better in this environment. While Suzanne was gone on break one was removed from her desk and placed on your computer terminal. An argument ensued between you and Suzanne. Suzanne stated she accidentally bumped into you. Your response was to assume the shove was intentional and shove back.

You are expected to work cooperatively with all employees regardless of any personality conflicts that may arise. I expect your conduct in this office to be maintained at a professional level at all times.

It is inappropriate to engage in a shouting match with any employee. It was inappropriate for you to shove Suzanne back. At that point you should have walked away and reported the incident to me. This incident deteriorated when you removed the glare guard from Suzanne's desk without discussing it with her. In that respect you are responsible for precipitating the ensuing events.

I was very pleased that our counseling session concluded with an exchange of apologies that I believe were sincere. I trust there will be no further similar incidents in the future.

Housing Inspection Administrator, Administrator 1 went on to testify that on June 30, 1997, Employee 1 was given an annual Performance Evaluation (May 1996 to June 1997). In the "Attitude" category, she was rated as follows: "Partially Meets Requirements" (2). In conjunction with this assessment, a meeting was convened with Employee 1 whereupon she was issued a memo directing her to improve her conduct in a number of specific areas, to wit (Employer Exhibit #6):

Date: June 30, 1997

To : Employee 1

OA II

From: Administrator 1 (initialed)

Housing Inspection Supervisor

SUBJECT: 6/30/97 EVALUATION

I expect the following behaviors to be consistently followed to improve your rating(s):

1. Remain at your work station with your phone logged on unless you are waiting on a customer, doing filing, picking up or delivering work to another employee, on break or at lunch.
2. Compliance with all instructions in writing issued to the clerical support staff or to you personally by Administrator 1, Person 3 or Person 4. Of particular importance are written instructions with respect to eating at your work station, taking breaks and meal periods at assigned times and leaving on breaks with other employees who are not on a scheduled break.
3. Keep personal phone calls to a minimum number and duration.
4. Treat all members of the staff and the public in a courteous and professional manner. This includes (sic) a respectful tone of voice and respectful words and conduct.

5. Keep your radio or other electronic equipment at a volume that is not audible to other employees.
6. Limit your conversations with other employees to appropriate subject matter. It is not appropriate for you to discuss another employee's work performance with that employee. It is appropriate for you to report another employee's work performance to a management employee.

Administrator 1 testified that at the June 30, 1997 meeting, Employee 1 in protesting the "Attitude" rating, refused to sign the Evaluation and left her copy in the Office; that thereafter a grievance was filed on the matter demanding that the memo be removed from Employee 1's personnel file. According to Administrator 1, Management agreed but only if she signed a statement denoting that she had received the memo. Administrator 1 advised that Employee 1 refused to do so and that therefore the memo remained in her file. Administrator 1 testified that the six (6) points in the cited memorandum stemmed from a number of complaints from other employees plus her own observations that Employee 1 was frequently away from her work station and sometimes did not log her phone calls. Administrator 1 also stated that Employee 1 was known to be discourteous and unprofessional and maintained a habit of leaving meetings before the conclusion of same.

Administrator 1 also referred to another Letter of Instruction issued to Employee 1 on September 1, 1997. This written admonition arose from a July 31, 1997 meeting at the behest of herself and Labor Relations Specialist Person 1, which was generated by certain complaints that later proved to be unsubstantiated. Administrator 1 testified that during the meeting, Employee 1 became agitated and hostile and that in a demonstration of considerable anger, approached Person 1 to stand directly over him as he sat at the table. This Letter of Instruction is set out below in its entirety (Employer Exhibit #5).

DATE: September 1, 1997
TO: Employee 1
Office Assistant II
FROM: George Person 1 (initialed)
Labor Relations Specialist
SUBJECT: Hostile Behavior During Investigation

THIS IS A LETTER OF INSTRUCTION

On July 31, 1997, you were interviewed by Administrator 1 and myself regarding complaints which were later determined to be either unproven or unsubstantiated. During a meeting to discuss the outcome of the investigation held on August 29, 1997, I advised you of that outcome and additionally counseled you. The counseling addressed your behavior during that previous interview. I am now following up our discussions in writing.

Hostile and defiant behavior toward management representatives when they are exercising fundamental authority to either investigate complaints or address job performance issues is unacceptable and will not be tolerated by the Employer. As explained, it is understandable that you may not be happy about being asked questions or spoken to under such circumstances, but it is imperative in the future that you refrain from verbal and physical aggressive behavior that challenges that fundamental authority.

As far as Labor Relations function in investigations, be advised that upon request of department supervisors it is the function of staff from our office to assist and even carry out investigations when deemed necessary. In your case it was deemed necessary for a number of reasons. That is a management prerogative and your challenge of that decision is as well unacceptable behavior.

Based upon our discussions and this written follow-up, it is my understanding that you are aware your behavior was unacceptable and that in the future such hostile challenge of management authority will not take place. If you have any questions about what has been explained either in our face-to-face discussions or via this memorandum, please contact me at 456-3113 to discuss this matter further.

A grievance contesting the above cited Letter of Instruction was thereafter filed requesting that it be removed from Employee 1's personnel file (Union Exhibit #8). In response, the Employer Answered that it was Employee 1's responsibility to provide information to questions in a professional manner. Then, pursuant to a review of the matter by Labor Relations Director, Director1, the Employer agreed to resolve the grievance by removing the Letter from

Employee 1's personnel file but stating in the Answer that the Labor Relations Department and the Department Head ". . . may still maintain a copy of the Letter of Instruction in their respective files."

Regarding the March 11, 1998 incident, Administrator 1 testified as follows: That morning Housing Inspection Supervisor, Supervisor 1 called her to advise that Employee 1 had been on the phone for a long time and asked what to do about it. She (Administrator 1) told Supervisor 1 to proceed to check up on this. Then, within a few minutes, she (Administrator 1) went downstairs to the clerical area where she heard Employee 1's "loud and angry" voice from around the corner. At this point, Office Assistant I Employee 3 grabbed her arm and stated that she needed to talk to her. They proceeded into the conference room where Employee 3 told her that she was concerned that Supervisor 1 had "confronted" Employee 1 in the office as opposed to initiating a private discussion. During her testimony, Administrator 1 did not address the details of the untoward transactions between Supervisor 1 and Employee 1 but advised that when the encounter was over, she instructed Supervisor 1 to report the matter to the Labor Relations Office and that ultimately when the five (5) day suspension was issued, she concurred. Administrator 1 considered this disciplinary action to be appropriately corrective in nature.

On cross-examination, Housing Inspection Administrator, Administrator 1 agreed that although Letters of Instruction do not constitute discipline, the Letters did formulate a partial basis for the five (5) day suspension. She further answered that in reference to the June 30, 1997 cover memo to the Performance Evaluation (Employer Exhibit #6), it was understood that Employee 1 would be re-evaluated within three (3) months but since she would not sign off that she had received the memo as agreed, the Letter of Instruction remained in her personnel file and no re-evaluation took place. With respect to the Letter of Instruction dated September 1, 1997

(Employer Exhibit #5), Administrator 1 testified that the complaints against Employee 1 had to do with alleged phone abuse and long lunch periods but that these assertions proved to be without foundation. Yes, Employee 1 became upset on the grounds that she was being falsely accused. Administrator 1 also advised on cross-examination that on March 11, 1998, Supervisor 1 told her that she suspected that Employee 1 was conducting a long personal telephone call and that therefore, she instructed her to ask her what the call was about.

Labor Relations Specialist Person 1, testified as follows: In July 1997, he was requested by the Neighborhood Improvement Department to assist in investigating a complaint that Employee 1 had taken a three (3) hour lunch break and made a forty-five (45) minute personal call. As such, he went to the State Street Office to conduct an interview with Employee 1 in the presence of her Union Steward. The allegations proved to be false but during the meeting, Employee 1 was hostile and defiant towards him. Therefore, the September 1, 1997 Letter of Instruction was issued regarding her conduct at that July 31, 1997 meeting (Employer Exhibit #5). The delay was not explained. Person 1 pointed out that in accordance with the resolution stated in the subsequently filed grievance, the Labor Relations Department and the Department Head kept a copy of the Letter of Instruction in their files even though it was removed from Employee 1's personnel file (Union Exhibit #8).

In addressing the March 11, 1998 incident, Person 1 testified as follows: He was asked to investigate the incident by Supervisor 1 and therefore scheduled an interview for the same afternoon. However, Employee 1 was unavailable — out on illness leave for eight (8) days after the March 11 encounter. Upon her return to work on March 19, 1998, the meeting was convened to inquire into matters relating to Employee 1's billing responsibilities, her phone calls; the March 11, 1998 call specifically and the verbal exchange with Supervisor 1 which purportedly

involved yelling and other defiant behavior. The meeting was set for 3:00 P.M. At that time she however, the Union Steward came into the room and offered to provide a letter from Employee 1 in lieu of an interview. Person 1 rejected such a proposition and thereafter Employee 1 did not appear for forty (40) minutes. When she finally arrived in the conference room, she responded in the following manner: According to the testimony of Person 1, she stated that handling billings was not a priority and that she was "in charge" of her desk. (The billing question is not at issue in this case.) Regarding the phone conversation on March 11, 1998, Employee 1 is alleged to have told Person 1 that "It's up to you to find out if it was a personal call." This response was interpreted by Person 1 as a refusal to answer his question and he so stated. Person 1 testified further that momentarily, he ordered Employee 1 to answer his query as to the nature of the phone call under penalty of discharge and in doing so, advised her that she was again being defiant. Thereupon, Employee 1 stated that the phone discussion had involved business — a call from former employee, Employee 4 who was requesting information about a posting for the position of Housing Rehabilitation Specialist.

Person 1 testified further as follows: He asked Employee 1 if she had yelled at her Supervisor, Supervisor 1. Employee 1 replied that she had raised her voice after Supervisor 1 had approached her while she was on the phone. In this, Employee 1 is alleged to have told Person 1 that during the encounter with Supervisor 1, she ignored her while on the phone but that when she had to leave the phone to obtain a copy of the posting, Supervisor 1 followed her and it was he who first became loud. Person 1 testified that shortly, Employee 1 walked out of the conference room and that within earshot, he ordered her to come back. Ultimately she did but only upon her statement that Person 1 testified that Supervisor 1 had advised him that billing work was a priority.

Further, Labor Relations Specialist Person 1 testified that with respect to the March 11, 1998 incident, he interviewed seven (7) other employees: Employee 5, Employee 6, Employee 7, Employee 8, Employee 9, Administrator 1 and Employee 3 — plus Supervisor 1 and Employee 1. Thereafter, he met with Department Director James A. Person 2 and Supervisor 1 pursuant to which it was collectively concluded that Employee 1 by her actions, had violated Section 2 of the Employer's Rules, Rule Nos. 19, 8 and 13. As such, the five (5) day suspension was issued on March 31, 1998 to become effective April 6, 1998 (Joint Exhibit #3).

On cross-examination, Ms. Person 1 answered that indeed the phone conversation at issue involved business and had lasted for fourteen (14) minutes and fifty- seven (57) seconds. Yes — according to Person 1, apparently Lead Worker Employee 5 had told Supervisor 1 that the call had been twenty (20) minutes or more in length.

Office Assistant I Employee 10, who witnessed the subject transactions, testified that both Employee 1 and Supervisor 1 had raised their voices and that while Supervisor 1 was trying to get Employee 1's attention, she had slammed the phone down with this exclamation: "If you're going to talk to me about phone calls, you're going to talk to everybody else" at which point Office Assistant I Employee 3 got between them. Supervisor 1 is alleged to have then left the area. Employee 10 acknowledged that on or about July (Union Exhibit #9).

Office Assistant HI (Lead Worker) Employee 5 testified as follows: On the morning of March 11, 1998, Ms. Supervisor 1 told her that Ms. Employee 1 had been on the phone for over twenty (20) minutes. According to Employee 5, her phone bar (display) showed twenty-two (22) plus minutes. Employee 5 further testified that while Employee 1 was on the phone, Supervisor 1 approached her and said that she had been talking for a long time and that Employee 1 had ignored her. Not having recalled Employee 1 leaving the area to secure a copy of the job posting,

Employee 5 advised that she observed her slam down the phone and walk away as Supervisor 1 attempted to talk to her.

Then, as Employee 5 saw and heard it, Employee 1 shouted this: "You'll have to prove its a personal call. Why are you doing this to me?" To this, Supervisor 1 is alleged to have responded: "There's no sense in getting everybody upset about this. We'll talk about it later." On cross-examination, Employee 5 acknowledged that Supervisor 1 had interrupted Employee 1 while she was on the phone.

Housing Inspection Supervisor 1 testified as follows: Her desk was about fifty (50) feet from that of Employee 1. At about 8:30 A.M. on the morning of March 11, 1998, there was a need to discuss Employee 1's handling of Nuisance Billings which were not being taken care of expeditiously although they were a priority assignment. At 8:45 A.M., she went over to Ms. Employee 1 to address the matter but she was on the phone. As such, she stood in front of her desk assuming that she would curtail her phone conversation. A few minutes later at about 8:50 A.M. when Employee 1 put the phone down, she told her that they needed to talk. According to Supervisor 1, Employee 1 ignored her and left the area. Then, upon her return, she (Supervisor 1) attempted to speak to her again. Once more she was ignored. At this point, Employee 1 picked up the phone and began to read a Job Description and she (Supervisor 1) returned to her desk. Supervisor 1 testified that when she shortly came back to the area, she noticed that Employee 1's phone display was blank (off) and at the same time, observed and heard an "animated" conversation on the part of Employee 1. She again stood by her desk. Still no reaction from Employee 1.

Supervisor 1 testified further as follows: She then called Administrator 1 from Employee 10's desk. Administrator 1 told her to pursue the matter. Momentarily, Employee 1

slammed the phone down at which time she asked her why her phone display was off. Walking away, Employee 1 is alleged to have yelled, "Before you ask me about my personal phone calls, you need to ask everyone else. You don't know that this was a personal call. Prove it." Then, Employee 3 stood up and got between them with words to the affect: "I can't take this" to which Employee 1 purportedly retorted, "You don't have to take it. Just stay out of it." Supervisor 1 went on to testify that at this juncture, she left the room and had no further contact with Employee 1 that day.

On cross-examination, the following elements were confirmed. The call involved legitimate business and was approximately fifteen (15) minutes long and that for upwards of a total of five (5) minutes, Supervisor 1 stood in front of Employee 1's desk while she was on the phone. Supervisor 1 testified that she did not tell Employee 1, "I need to talk to you" until she was temporarily off the phone getting the Job Description (Employee 5 testified to the contrary). Also, on cross-examination, Supervisor 1 acknowledged that she had advised Administrator 1 on the phone that she thought the call was personal and that she never saw twenty (20) minutes on the display although she believed the call had lasted at least that long.

The Employer concluded its presentation with Neighborhood Improvement Department Director Person 2's testimony during which he advised that he concurred with the five (5) day disciplinary suspension.

For the Union, Office Assistant I Employee 3 testified as follows: Supervisor 1 walked over to Employee 1's desk while she was on the phone and asked her if the call was personal. After Employee 1 had hung up the phone, both principals began yelling at each other and shortly she (Ms. Employee 3) intervened to end the transactions.

Union Steward, Steward 1 testified that he processed the grievance contesting the 1997

Performance Evaluation and memo and that the matter was resolved with the understanding that Employee 1 would be re-evaluated in three (3) months and that the memo would be removed from her personnel file (Employer Exhibit #6). On cross-examination however, it was established that a primary aspect of the agreement required Employee 1 to acknowledge that she had received the Evaluation and memo with her signature to that affect but that she never did so. Therefore, the memo remained in her personnel file.

What was Employee 1's testimony in the matter of the five (5) day disciplinary suspension issued effective April 6, 1998? She testified that she had not grieved the 1993 Letter of Instruction (Employer Exhibit #7) and with respect to the June 30, 1997 Evaluation memo (Employer Exhibit #6), she never did sign off on it or on the Evaluation itself. With respect to the July 31, 1997 meeting with Person 1 which resulted in the September 1, 1997 Letter of Instruction (Employer Exhibit #5), Employee 1 stated that she was upset because she was being falsely accused and in this, Person 1 had "badgered" her. Regarding the March 11, 1998 incident, Employee 1 presented testimony as described below.

During her telephone conversation that morning, Supervisor 1 stood in front of her desk and asked if the call was personal. She did not respond. Then, Ms. Supervisor 1 went to Employee 5's desk and asked her if she had been on the phone for twenty-five (25) minutes. Employee 5 nodded — yes. According to Employee 1, Supervisor 1 came back to her desk and inquired again if the call was personal. Employee 1 has advised that she kept talking on the phone. She further testified that shortly, Supervisor 1 called Administrator 1 and stated that "Employee 1's been on the phone for twenty-five (25) minutes. What shall I do?" When she put the phone on hold to retrieve the Job Description from the file cabinet, Supervisor 1 is alleged to have approached her and said, "Didn't you hear me when I was talking to you?" Employee 1 and

Employee 3 stood up and said she didn't want to hear it and Employee 11 nudged her. She started yelling at me and I said, "You didn't know if it was a personal call or not" (Supervisor 1) away.

Employee 1 testified further as follows: Yes — she did raise her voice. Regarding the call, she explained that it constituted business involving her discussion of the aforementioned job posting. She denied that she had slammed the phone down and went on to state that at 1:00 P.M. she went home and did not return to work until March 19, 1998 due to illness (stress); that she had properly called in sick and that is not in dispute. With respect to the meeting with Person 1 on March 19, 1998, Employee 1 admitted that she had walked out of the room in the midst of the interview but emphasized that she did return. Ultimately, Employee 1 testified that on March 11, 1998, she felt that she had been provoked and embarrassed by Supervisor 1.

The Union wound up its presentation with the brief testimony of former Union Vice President who confirmed that Letters of Instruction are not discipline and that he believed that the Evaluation memo and September 1, 1997 Letter of Instruction should have been removed from Employee 1's personnel file (Employer Exhibits #6 and 5).

This grievance was filed on April 6, 1998 alleging that the five (5) day suspension was not for "proper cause" (just cause). The Union also claimed that the Letters of Instruction and any counselings given to Employee 1 were inappropriately considered as a partial basis for the discipline and that the Performance Evaluation and accompanying memo should have been removed from her personnel file. The Union requests that the disciplinary action be rescinded and that Grievant Stevenson be made whole (Joint Exhibit #2).

Having been denied up through the Grievance Procedure, this dispute was brought on for Arbitration on February 4, 1999.

PERTINENT CONTRACT LANGUAGE

ARTICLE IV. MANAGEMENT RIGHTS

... the Employer ... (maintains the right) ... to discipline and discharge for proper cause. ...

ISSUE

Was the five (5) day suspension for just cause?

DISCUSSION

The evidence in this dispute has been treated in considerable detail in the Facts portion of this Award. Therefore, each and every element need not be reiterated here.

The salient aspects of this controversy however, do require re-emphasis. Grievant Employee 1 was issued a five (5) day disciplinary suspension upon the Employer's charge that by her actions on March 11 and 19, 1998, she usurped Section 2 of the Employer's Rules and Regulations, Rules Nos. 19, 8 and 13 in that specified order. These Rules call for disciplinary action up to and including discharge for disregarding or refusing to obey a supervisory order; the use of abusive, threatening or intimidating language in the workplace and actions that encompass creating a distraction or interfering with other employees respectively. The question is this: Did Grievant Employee 1's conduct on March 11, and/or March 19, 1998 on the evidence, reasonably comprehend behavior that violated some or all of the cited Rules?

In terms of prior related developments, it has been established that on September 14, 1993, Grievant Employee 1 was issued a Letter of Instruction and was commensurately counseled for her involvement in an office "shouting match" with another employee (Employer

Exhibit #7). Subsequently on June 30, 1997, she was given a less than satisfactory rating in "Attitude" in her Performance Evaluation covering the period between May 1996 and June 1997 (Employer Exhibit #6). An accompanying memo from then Housing Inspection Supervisor Administrator 1 was correspondingly issued which listed six (6) areas that required improvement and attention. These specifications directed Grievant Employee 1 to remain at her work station, comply with all supervisory instructions with emphasis on not eating at her desk and properly adhering to break and lunch period time lines. In addition: keeping personal calls to a minimum, treating all staff and the public in a courteous and professional manner, keeping her radio volume down and limiting her conversations with other employees to appropriate subject areas while in the office. In this connection, it has been established that at the post-Evaluation meeting when Administrator 1 attempted to discuss these items, Grievant Employee 1 refused to sign the Evaluation document and left it and the cover memo in the office when she departed. On this score, an early ruling is in order. In resolution of the grievance subsequently filed protesting of the Evaluation and memo, the Employer agreed to remove same from her personnel file and to re-evaluate her in three (3) months — but only if she signed a statement acknowledging receiving the documents. This she never did and therefore the material properly remained in her personnel file to be appropriately considered as part of the current disciplinary action.

The record evidence further establishes that on September 1, 1997, Grievant Employee 1 was issued another Letter of Instruction by Labor Relations Specialist Person 1, for "defiant and hostile behavior towards Management" in connection with an interview conducted on July 31, 1997 surrounding allegations that she took an extended lunch period and had abused reasonable phone time. These accusations from another employee proved to be without foundation but notwithstanding, Grievant Employee 1's behavior at the meeting was unacceptable in terms of

her defiant attitude, refusal to answer questions and particularly her demonstration of extreme anger in leaving her seat to stand over Person 1. In this, the undersigned Arbitrator shall extend a degree of dispensation to Grievant Employee 1 since it is understandable that she might become upset in a situation that revealed that the assertions were in fact without foundation. Still, the manner in which she handled herself at that interview was unprofessional and unacceptable. In this regard, the referenced Letter of Instruction was not improperly utilized as a backdrop to the five (5) day suspension because in the grievance that followed, the Employer denoted that although the document would be removed from her personnel file, it would remain in the file of the Department and the Labor Relations Office (Union Exhibit #8).

The point here is that pursuant to these prior written admonitions and counselings, Grievant Employee 1 was on notice that her negative attitude, lack of professionalism and courtesy and related conduct, would not be tolerated. It is recognized that Letters of Instruction and counselings do not constitute discipline. However, these prior warnings do demonstrate that the Employer had previously experienced considerable difficulty with Grievant Employee 1 as an employee and that she knew that similar behavior in the future could mean disciplinary action. There is no Contract bar to the consideration of the Letters of Instruction and prior counselings in the assessment of subsequent discipline — particularly relative to the established pattern of conduct that resurfaced on March 11 and 19, 1998. It must be concluded that the Letters and counselings did constitute a record of legitimate work history and therefore were appropriately weighed with respect to the five (5) day penalty issued to Grievant Employee 1 effective April 6, 1998 (Joint Exhibit #3).

Now, to the March 11, 1998 incident. The evidence finds that although Grievant Employee 1's verbal responses and demeanor were improper, there is reason for mitigation in her

favor to the extent that a degree of provocation existed. The evidence finds that on the morning of March 11, 1998, Supervisor 1 approached her desk and stood there for upwards of a total of five (5) minutes while Grievant Employee 1 was on the phone. According to the testimony of Administrator 1, Employee 5, Employee 3 and the Grievant herself, Supervisor 1 interrupted her phone conversation to ask her at least twice whether the call was personal. This frankly was a professionally inconsiderate way to handle what Supervisor 1 perceived (incorrectly) as a problem in the office and certainly could have subjected Grievant Employee 1 to embarrassment in the presence of office staff. The action that Supervisor 1 should have taken of course was to wait until Grievant Employee 1 had finished her phone conversation and then discuss the matter in private.

In actuality, the call involved legitimate business (job posting) and was just less than fifteen (15) minutes long. In this, there is abundant evidence that Supervisor 1 believed at the time that Grievant Employee 1 had been on the phone for more than twenty (20) minutes on a personal call. During her testimony, Supervisor 1 provided the impression that she really approached Grievant Employee 1 at her desk to discuss Nuisance Billings but the evidence showed that her concerns related principally to the nature and length of the phone conversation and on this count, she followed Grievant Employee 1 to the file cabinets where she went to obtain a copy of the job posting. For Supervisor 1's part, a mitigation of the penalty is in order. But this does not totally absolve Grievant Employee 1 from culpability in the violation of Rule Nos. 8 and 13 for the reasons explained below.

Instead of simply responding to her supervisor after she completed the phone conversation that this was a business call and briefly stating the wheretofors, Grievant Employee 1 instead became extremely defiant and hostile. She shouted: "If you're going to talk to me about

phone calls, then you need to talk to everyone." Then words to the affect: "You'll have to prove it's a personal call" — all in loud and angry tones. This escalated the situation into a mutual exchange of yelling by both Grievant Employee 1 and Supervisor 1. Ergo, although Supervisor 1 should have manifested her concern in a post-call discussion away from staff and not stood at the helm questioning Grievant Employee 1 while she was on the phone, Grievant Employee 1 exhibited inappropriate conduct by virtue of her loud and defiant statements to her Supervisor. It has further been established on the evidence that on March 19, 1998, Grievant Employee 1 showed her defiance by not showing up for her 3:00 P.M. interview until some forty (40) minutes thereafter although she was apparently in the area. She was additionally quite uncooperative and discourteous to Labor Relations Specialist Person 1 in stating that "It's up to you to find out if it was a personal call." Thereupon she had to be ordered to answer the questions put to her in Person 1's efforts to get to the bottom of the matter. She then left the room before the interview was over, an exhibition that can only be considered as a personal insult to Person 1, a Management representative — conduct absolutely not to be tolerated. Only when she was ordered back into the room, did she reappear upon the proposition that she was there again solely because her Union Steward had told her to come back. In a word, this behavior was totally unacceptable and was in full disregard of Management's previous warnings and admonitions regarding her attitude and unprofessional conduct. Certainly, Grievant Employee 1's words and actions in this regard, violated Rule Nos. 8 and 13.

Whether Grievant Employee 1 precisely refused to follow a supervisory order in the matter of the March 11 and 19, 1998 incidents, is a close question. The evidence finds that she pushed the edge of the envelope on this score but there is no substantive indication that she in fact went over the line. Therefore, it is determined that the Charge under Rule No. 19 is set aside.

In the aggregate, the evidence establishes that Grievant Employee 1 by her behavior on March 11 and 19, 1998, did violate Section 2 of Employer Rule Nos. 8 and 13. As already denoted, mitigating circumstances attach to the March 11, 1998 "phone" incident. As such, the five (5) day suspension shall be reduced to a three (3) day suspension and Grievant Employee 1 shall be made whole for the two (2) day difference.

There was just cause for discipline less than a five (5) day suspension. That penalty is reduced to a three (3) day suspension. The grievance is sustained in part and denied in part.

AWARD

There was just cause for discipline less than a five (5) day suspension. That penalty is reduced to a three (3) day suspension. The Grievant is to be made whole for the difference in time lost. The grievance is sustained in part and denied in part.

David W. Grissom

Arbitrator