

IN THE MATTER OF ARBITRATION BETWEEN]	DECISION AND AWARD
]	
HENNEPIN COUNTY MEDICAL CENTER]	OF
]	
(“THE EMPLOYER”)]	ARBITRATOR
]	
and]	
]	BMS CASE: 11-PA-0614
AMERICAN FEDERATION OF STATE, COUNTY]	
]	
AND MUNICIPAL EMPLOYEES, COUNCIL 5,]	
]	
LOCAL 977]	
]	
(“THE UNION”)]	

ARBITRATOR: Eugene C. Jensen

DATE AND LOCATIONS OF HEARINGS: March 31, 2011, Hennepin County Medical Center
May 10, 2011, Hennepin County Medical Center

DATE OF FINAL SUBMISSIONS: May 20, 2011, Post-Hearing Briefs

DATE OF AWARD: June 30, 2011

ADVOCATES: For the Employer

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For the Union

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GRIEVANT: Joyce McMullen

ISSUE

Did the Employer have “just cause” to terminate the Grievant effective October 27, 2010?

JURISDICTION

Pursuant to the rules of the Minnesota Bureau of Mediation Services and the Labor Agreement between the parties, this matter is properly before the Arbitrator.

BACKGROUND

The Employer is the Hennepin County Medical Center, a large metropolitan hospital. The Employer provides interpretive services for its non-English speaking patients. The Grievant worked as an Office Service Specialist III (OSS III) in the Interpretive Services Department. When she began her employment, she was assigned duties related to a billing backlog. The Employer acknowledges that the Grievant did a good when she was assigned those duties.

Later, the Grievant's job duties were superseded by another source of information, and the Employer assigned her scheduling duties. The Schedulers in the department are also OSS III's. Schedulers are responsible for scheduling both HCMC interpreters and Agency interpreters (contract employees). Fully trained Schedulers are expected to perform three major functions: 1) futures scheduling; 2) same day scheduling; and 3) writing schedules for the interpreters. The last two are considered to be the more complex parts of the job. In addition, to accomplish the above successfully, Schedulers must answer phones on an almost continuous basis.

It is the performance of the Grievant in her capacity as a Scheduler that is at issue in this arbitration. The Employer alleges that the Grievant was unable to perform the functions of the position and that she displayed poor interpersonal skills which threatened the overall reputation of the department.

PERTINENT LANGUAGE FROM THE PARTIES' COLLECTIVE BARGAINING AGREEMENT

ARTICLE 7 – GRIEVANCE PROCEDURE

Section 1. A grievance shall be defined as a dispute or disagreement raised by an employee against the Employer involving the interpretation or application of the specific provisions of this AGREEMENT.

Section 4. ARBITRATION. If the grievance is not settled in accordance with the foregoing procedure, the UNION may refer the grievance to arbitration within fourteen (14) calendar days after the employee and UNION's receipt of the EMPLOYER's written answer in Step 2.

ARTICLE 33 – DISCIPLINE

Section 1. The EMPLOYER will discipline employees in the classified service only for just cause.

Section 2. Discipline, when administered, will be in one or more of the following forms and normally in the following order:

- A. Oral Reprimand
- B. Written Reprimand
- C. Suspension
- D. Discharge or disciplinary demotion

Section 4. Written reprimands, disciplinary suspensions, disciplinary demotions or discharge of permanent employees are appealable up to and through the arbitration step of the grievance procedure contained in this AGREEMENT.

Section 5. The EMPLOYER and UNION shall make available to each other all information and evidence that will be used to support a suspension or discharge or defense against such action no later than the Step 2 meeting of the grievance procedure.

JOINT EXHIBITS

1. January 1, 2010 – December 31, 2011, Labor Agreement Between Hennepin County Medical Center and the American Federation of State, County and Municipal Employees, Council 5, Local 977, Clerical Unit.
2. October 20, 2010, Letter to the Grievant from the Employer. Notice of Intention to Dismiss.
3. October 27, 2010, Dismissal Letter.
4. AFSCME Council 5 Official Grievance Form, Step 2. The Grievance alleges that the Employer “did not do their best to help her excel in this new job.” And, the

Grievance further states that the “Employee would like another position within HCMC [Hennepin County Medical Center].

5. December 7, 2010, letter to the Grievant from the Employer upholding the dismissal following Step 2 of the Grievance Procedure.
6. December 7, 2010, memo from Chris Cowen [AFSCME Business Agent], to Elizabeth M. Bonin [Senior Human Resources Consultant]. The memo notifies the Employer that the Union “would like to refer the Joyce McMullen grievance to arbitration.

EMPLOYER’S EXHIBITS

1. Annie Listiak’s sixty page supervisory file relating to the Grievant.
2. Hennepin County Medical Center’s 3/2/2009, Policy #: 002067. The policy is entitled: “Interpersonal Conduct.”
3. An April of 2009, “Code of Conduct” booklet.
4. Two emails:
 - I. August 26, 2010, email from Annie Listiak, to MS.ISD, in which she warns employees to “[r]efrain from sending” . . . “email forwards with jokes, prayers, etc. as part of mass distribution.”
 - II. August 27, 2010, email from Roxana Macias, to Annie Listiak and MS.ISD. The email states: “SORRY, FRIENDS.”
5. July 27, 2009, MEMO from Annie Oettinger [A.K.A. Annie Listiak], to [another Scheduler]. This memo summarizes a verbal reprimand for excessive tardiness and absenteeism.

UNION'S EXHIBITS

1. This document is entitled "Daily Duties," and two different witnesses claimed authorship: Amanda Grant and the Grievant.
2. September 1, 2010, "Thanks" memo from the Grievant, to Annie Listiak.
3. This exhibit contains several separate documents:
 - May 2008, "Speaking Together" certificate awarded to the Grievant.
 - May 12, 2010, memo from Kathy Wilde, Chief Nursing Officer, to the Grievant, congratulating her for five years of service to HCMC.
 - Nine "Agency interpreters check in and out desk" forms dated between August 9, 2011, and September 16, 2011.
 - July 6, 2009, "Thank You" memo from Mary Koepke, EHR Revenue Director, to the Grievant.
 - June 30, 2009, "thank you" memo from Mary Koepke to the Grievant.
4. "Hennepin County Medical Center Education Transcripts" for the Grievant and five of her co-workers as of 3/22/2011.
5. Two performance reviews for the Grievant: the first one for a one year period ending 11/2009, and the other for a one year period ending 12/2008.
6. March 18, 2010, memo from Annie Listiak, to MS.ISD, in which she congratulates her staff for their outstanding work.
7. A listing of email topics for Roxana Macias, dated from 5/3/2010, through 8/27/2010.
 - 7.a. An addendum to Union Exhibit 7 above. It identifies specific times for emails received between 5/3/2010 and 8/27/2010.

8. May 6, 2011, memo from John Volpe, Patient Services Coordinator, to Carmenlita Brown, AFSCME Chief Steward, regarding his experiences with the Grievant.
9. May 6, 2011, email from Patricia Moline, Accounts Payable, to Carmenlita Brown, regarding her experiences with the Grievant. And, an email from Ms. Brown to Ms. Moline requesting that she offer her services as a “character witness.”
10. May 9, 2011, email from Barbara Turino, Accounts Payable, to Carmenlita Brown, regarding her experiences with the Grievant. And, an email from Ms. Brown to Ms. Turino requesting input, as per exhibit 9 Above.
11. Several emails and forms relating to the Grievant’s assignments, schedules, training and work forms. One document’s date is 12/23/2008; the others have dates between 1/14/2010 and 7/13/2010.
12. February 19, 2008, document prepared by the Grievant at the request of her director, Pam Clifford. These were the Grievant’s recommendations to improve the department’s performance.
13. Undated document that the Grievant prepared, at the request of the director, to memorialize the “INVOICE PROCEDURE.”

EMPLOYER’S WITNESSES

- I. Annie Listiak, Manager of the Interpretive Services Department. Ms. Listiak testified to the following:
 - Manager since October of 2008.
 - The Grievant performed well in her previous position.

- The Grievant's previous work output was no longer needed.
- She got along well with the Grievant.
- The Grievant lacked some skills necessary in her new assignment as a scheduler.
- A scheduler hired after the Grievant was able to catch on to the duties rapidly.
- A scheduler hired to replace the Grievant caught on with minimal training.
- HCMC has scheduling classes available, but the information is much broader than necessary for her Schedulers. Her Schedulers do not schedule patients; they only schedule interpreters.
- Their phone system is basic and does not require extensive training.
- "Futures" scheduling represents about 20% of the job.
- Training did not go well, and the Grievant could not take calls on her own.
- The Grievant did not become competent in "futures" scheduling.
- The 12 hours of training mentioned in the verbal reprimand is more than the other schedulers received.
- Same day scheduling and writing schedules are the two more complex aspects of the job.
- There was no training at the Training Center to help the Grievant succeed.
- Introduced Employer Exhibit 1, a supervisor's file, kept by Ms. Listiak for the Grievant.

- i. Page 18 of the Supervisor's file is the verbal reprimand (6/24/2010) that she gave the Grievant.
- ii. Page 7 is a competency checklist that was created by her and some other schedulers to show the requirements of the Grievant's position.
- iii. Memo from Listiak to a scheduler (co-worker "A"), asking her to create a basic phone key guide for the Grievant. And a response memo from co-worker "A", to Listiak: "Attached is what I have and I gave to Joyce [Grievant]. This could also be added to the scheduler training book."
- iv. Pages 10 – 13 were created to be helpful "tips" for the Grievant in doing her job.
- v. Page 14 is a list of the Grievant's duties.
- vi. Page 16 is a June 1, 2010, email from an employee of HCMC, in which she complains about the Grievant's inefficiencies.
- vii. Page 17 is a June 9, 2010, email from co-worker "A", in which she states that two HCMC employees from a specific clinic were frustrated when working with the Grievant. They told her that the Grievant was argumentative and lacked customer service skills.
- viii. Page 19 is a note to her file listing the dates she had met with the Grievant about her changing role, expectations, and training.
- ix. Page 20 is an email from her to the Grievant, in which she clarifies her co-workers' schedules.

- x. Pages 21 – 23 represent a performance improvement plan for the Grievant, dated 6/29/2010.
- xi. Page 24 is an August 10, 2010, email from co-worker “A”, complaining about the Grievant’s work schedule, argumentative nature, not transferring calls properly, lunch breaks, and how she reflects poorly on the scheduling team.
- xii. Page 25 is an August 25, 2010, email from an HCMC employee who has interacted with the Grievant in the course of his work assignments. He finds the Grievant to be inefficient and rude.
- xiii. Pages 26 and 27 are Listiak’s notes to her supervisor’s file regarding the Grievant. Many negative comments are in the document: doesn’t ask for help, complaints from employees of HCMC (co-workers and others), phone usage problems, and yelling at interpreters.
- xiv. Page 28 is an August 25, 2010, written reprimand given the Grievant for job performance and customer service problems.
- xv. Pages 29 and 30 represent an updated performance improvement plan (8/30/2010).
- xvi. Page 31 is a September 3, 2010, note to the file summarizing a complaint from an agency interpreter about the Grievant. She said she had to wait while the Grievant was on a personal call.
- xvii. Page 32 is a September 9, 2010, email from a co-worker (co-worker “C”) complaining about the Grievant not answering the “futures” phone line.

- xviii. Page 33 is a September 14, 2010, email from a co-worker "A", complaining about the Grievant being rude to a blind interpreter.
- xix. Page 34 is a September 15, 2010, email from a co-worker "B" complaining about the Grievant not answering the phone.
- xx. Page 35 is a note to file about the Grievant hanging up on a staff interpreter (September 24, 2010).
- xxi. Pages 37 – 39 relate to co-worker "C" helping the Grievant improve her skills in several areas (September 27, 2010).
- xxii. Page 40 adds a follow-up meeting with co-worker "C" regarding the training she gave to the Grievant (October 19, 2010).
- xxiii. Page 41 is a September 28, 2010, complaint from a HCMC employee in the medicine clinic about the Grievant: rude, curt, refuses to overbook. This employee avoids using the Grievant whenever possible.
- xxiv. Page 43 is a September 28, 2010, complaint from co-worker "A". She wrote that the Grievant hung up on someone during a telephone transfer. She also indicated that the Grievant allowed a phone call to remain on hold while chatting with an interpreter.
- xxv. Pages 46 and 47 are two complaints from co-worker "A" regarding inappropriate phone transfers by the Grievant on September 30, 2010.
- xxvi. Pages 48 and 49 are the two pages of a one day suspension given to the Grievant on September 30,

2010. Several shortcomings are addressed. Including:

1. Complaints from co-workers and “customers.”
2. Not performing the “basic functions” of her job.
3. Inappropriate use of work time while calls pile up.
4. Rudeness.

xxvii. Page 50 is an October 5, 2010, note from co-worker “A” regarding errors in scheduling by the Grievant.

xxviii. Page 51 is an October 13, 2010, email from co-worker “B” about the Grievant’s inability to schedule “future Other Language appointments.”

xxix. Pages 54 and 55 are two pages of an October 20, 2010, “Notice of Intention to Dismiss” letter from Listiak, to the Grievant.

xxx. Page 56 is an October 27, 2010, letter from Laura Kieger, Senior Human Resources Consultant, to the Grievant, in which Ms. Kieger affirms the Grievant’s discharge following an administrative hearing on October 25, 2010.

xxxi. Page 58 and 59 are notes (November 24, 2010) that Ms. Listiak put together following a second step grievance meeting, regarding training for the Grievant.

xxxii. Page 60 is a December 7, 2010, second step grievance response from Mary Peterson, Patient Care Director, to the Grievant. The grievance was denied.

II. Co-worker "C", Interpreter.

- Has worked in interpretive services for almost fifteen years. She is classified as an interpreter, however, she has also done scheduling duties.
- She got along well with the Grievant prior to the Grievant's job change.
- She received no special training as a scheduler; she learned on the job.
- She wrote the email mentioned above in xvi (page 32).
- She had to raise her voice to get any help from the Grievant.
- The Grievant would stand up and say, 'I'm at lunch' and leave, without coordinating with the other staff.
- The Grievant would say she was logged in when she wasn't.
- She helped train the Grievant, but found it frustrating. She would get it right a couple of times and then go back to the wrong way. She reported back to Ms. Listiak that the Grievant had difficulty in retaining the training she provided: "it was hard to train her, her ways were set."
- She didn't try to teach her how to write schedules or same day scheduling. Future scheduling is the easiest, and the Grievant was having trouble with that. She did not feel that more training would help.

III. Co-worker "A", Scheduler/Office Specialist III.

- She was comfortable with futures scheduling after the first day on the job
- She stated that an employee who was hired after the Grievant was discharged required only two days of training to learn the futures scheduling.
- Over a two week period, she provided forty hours of training to the Grievant. The training did not go very well. She explained the same thing over and over again and it just didn't click one hundred percent.
- Regarding page 7 of the supervisor's notes (Future Scheduler Competency Checklist), she said that she gave Ms. Listiak the words and she created the document.
- She created the "cheat-sheets" contained on pages 12 through 14 of the supervisor's notes. The replacement employee has not needed to use them.
- She liked the Grievant and described her as a "very nice person."
- She wrote several of the notes sent to Ms. Listiak complaining about the Grievant's poor performance and customer service problems.

IV. Co-worker "B", Scheduler/Office Specialist III.

- She has worked for HCMC since 1979, and worked for Interpretive Services from 2001 to 2008, and from 2009 to the present.
- Her duties include phone answering, futures schedules, same day requests and creating schedules for the interpreters.
- She received a minimal amount of training

- She was scheduled to assist in training the Grievant, but it did not occur.
- She wrote the email contained on page 34 of the supervisor's file: "It is becoming impossible, unfair to work with her [the Grievant] and I see how my co-workers suffer. She has gotten to the point where she is so defensive that there are arguments going on in front of everyone."
- She also wrote the email contained on page 51 of the supervisor's file: "For damage control, could we have Joyce [the Grievant] not schedule any future Other Language appointments? Even though she seems like she's getting it, she is not. I am willing to take all the calls that she has and would be willing to sit with her to train. She is clearly not getting the unavailable thing. . . .[Languages] are being double booked."

UNION'S WITNESSES

1. Office Specialist III, Respiratory Care Department.

- An employee of HCMC since 1999.
- From 2001 through 2008 she was a scheduler in the Interpretive Care Department.
- She left the unit because she was burned out, couldn't sleep, and found it to be a stressful work environment.
- She also suffered from carpal tunnel syndrome, due to writing schedules.
- She believed that there was very little time to train and that management wasn't supportive enough.

2. AFSCME Chief Steward and Patient Service Coordinator for HCMC.

- Patient Service Coordinators make less money than OSS III's.
- She received adequate training for her job: phone usage, working as a team, EPIC System, courtesy and customer service for the health care worker, and more.
- As chief steward, she handled a complaint regarding another scheduler in the Grievant's unit.
- She requested and received complimentary emails regarding the Grievant from other patient schedulers.
- She was also aware of complaints about the Grievant.
- In her role as chief steward, she had employees from Interpretive Services approach her about the "cliquish atmosphere" in the department. She stated that they were too afraid to come forward and confront the problem.
- She testified about Employer Exhibit 5 (Verbal reprimand of another Interpretive Services employee for tardiness and absenteeism). She stated that the employee missed work due to the stressful nature of the worksite.
- She felt that the Employer had solicited complaints regarding the Grievant.

3. Joyce McMullen, Grievant.

- Began working for HCMC in 2005.
- Born in Pakistan; moved to the USA in 2001, following religious persecution.

- Her educational background included a Master's degree in English.
- She taught in Pakistan at both the high school and college level.
- She volunteered at HCMC for the first six months (not allowed to work).
- She worked for Interpretive Services in a different capacity when she began with them: her work related to billing and she kept track of interpreters' schedules, did photo-copying, faxed and printed medical bills and maintained a data base for the department.
- Union Exhibit 1, Daily Duties, was created by the Grievant, not Amanda Grant. Ms. Listiak asked her to bring a list of her duties to a meeting with her.
- It was her job to see twenty to twenty-five interpreters per day and make sure they were dressed appropriately.
- Future calls were sent to her, and the phone was ringing constantly.
- Introduced Union Exhibit 2: a memo from the Grievant, to Ms. Listiak regarding sitting down with her to observe her scheduling routine.
- Meetings with Ms. Listiak about her performance concerns lasted no longer than five minutes.
- She would have benefitted from more training.
- Nobody told her about the "make busy button" on the phones.
- Although Amanda Grant claimed that she had trained her for forty hours, she said that the actual training lasted for about forty minutes.

- She commented on Union Exhibit 11:
 - I. Page 1 (2/19/2010 memo from Ms. Listiak to the Grievant) added duties to her job.
 - II. Page 2 (1/14/2010 memo from Ms. Listiak to her staff) added additional duties to the Grievant's job.
 - III. Page 4 (3/3/2010 memo to Joyce, from Ms. Listiak, with CC's to Amanda Grant and Paula Jeffrey) and Page 9 (3/17/10 memo from Ms. Listiak). The training mentioned in these two documents did not occur as planned. What was supposed to be forty hours, turned out to be 40 minutes.
 - IV. Page 13 (4/9/2010 memo from Ms. Listiak, to the Grievant and Jill Vollmar). These two days of two hours each of training did occur.
 - V. Page 14 (7/13/2010 memo from Ms. Listiak to her staff). This document prompted the Grievant to produce Union Exhibit 1, not Amanda Grant.
- Union Exhibit 12 is a long list (3 pages) of recommendations to improve the department that the Grievant produced in response to a request from Pam Clifford.
- Union Exhibit 13 is a two page list of procedures regarding invoices. This, again, was requested by Pam Clifford.
- In response to Employer Exhibit # 1, she testified to the following:
 - I. Page 7 (HCMC Interpreter Services Department Future Scheduler Competency Checklist). She never saw this document before the arbitration hearing.

- II. Page 9 (“Cheat Sheet” for phones). Amanda never gave her this document.
- III. Page 8 (5/4/2010 memo from Amanda Grant, to Ms. Listiak). This memo references a “scheduler training book.” The Grievant was told there was no training book.
- IV. Pages 10 through 14 (what appears to be scheduling procedures). The Grievant never saw these prior to the grievance.
- V. Page 15 (Interpreter Services Department Future Scheduler Competency Checklist, dated 5/5/2010). Never saw this prior to the grievance.
- VI. Page 16 (6/1/2010 complaint about the Grievant). Listiak would only say that she had a complaint. She would never give her the details, even when she requested them.
- VII. Page 21 – 22 (Performance Expectations and methods to improve). She never received any training from Ms. Moroney.
- VIII. Page 24 (8/10/2010 memo from Amanda Grant to Listiak). Listiak knew that she was leaving at 1:00 PM that day. She allowed it.
- IX. Page 25 (8/25/2010 memo from Lucas Dahlseng to Listiak). This was a complaint about the Grievant. She testified that Mr. Dahlseng is a friend of Amanda Grant.
- X. Page 26 (notes to Listiak’s file regarding the Grievant). She never knew about the “make busy” button.

- The total amount of training she received was four hours and forty minutes.
- The blind man referenced in one complaint did not file a complaint; Amanda Grant filed the complaint.
- Testified that there is a clique within the scheduling group. She was not a member of the clique.
- Her husband works for HCMC.

4. Patient Services Clerk, Orthopedics.

- Testified that she has worked in orthopedics since 2002, and she is a Patient Services Clerk.
- In the course of her work duties, she arranges for interpreters.
- Her experiences with the Grievant have been positive: “it went like it’s supposed to go.”
- Interpretive Services rarely answer their phones right away, however, the Grievant helped right away.
- Not active in the union, and does not know the Grievant outside of work.

EMPLOYER’S ARGUMENTS

The Employer’s argument is three-fold: 1) they offered the Grievant every opportunity to succeed, 2) despite their efforts to insure the Grievant’s success, she was unable to perform even the most basic functions of the job, and 3) the Grievant’s lack of interpersonal skills threatened the reputation of the Interpretive Services Department.

HCMC hired Ms. McMullen in May 2005 to deal with a backlog of interpreter bills that were not reaching insurance providers in a timely fashion. Ms. McMullen did a good job on this largely data entry position. . . .

Within a few months of starting as ISD Manager, Ms. Listiak began discussing with her boss, Director Pam Clifford, whether Ms. McMullen's role should be shifted to that of a scheduler because that function really needed another employee. . . . The most basic function of this job is "future scheduling" of interpreters for appointments, and this task is the building block for the more complex activities of "same day scheduling" and writing the interpreter schedule for the next day.

The training methods used by the Employer in the Grievant's case had worked in the past with other schedulers. These training methods included "on-the-job training." The Employer provided four hours of direct training in September of 2009, ". . . but the training did not go well."

The Employer believes that it provided the Grievant more training and training aids than is normally necessary to assist an employee in becoming a fully qualified Scheduler. The Employer also alleges that the Grievant's position in this matter requires one to believe that an improbable conspiracy existed.

ISD also provided Ms. McMullen a variety of study aids to assist her. . . . Both Ms. Listiak and [coworker "A"] testified that these were created specifically for, and given to, Ms. McMullen. The telephone cheat sheet specifically explains the "Make Busy" button on the telephone, and [co-worker "A" and co-worker "B"] both testified how the telephone log-out issue was repeatedly explained to Ms. McMullen. In order to accept Ms. McMullen's testimony that she never saw the telephone cheat sheet, or any of these learning aid documents, one would have to conclude that Ms. Listiak blatantly testified dishonestly about going over the

Future Scheduler Competency Checklist with Ms. McMullen on April 28 and May 5, 2010, that Ms. Listiak completed this form as part of the ruse, ER Ex. 1, at [page] 15, and that the April 9, 2010 e-mail attaching a blank checklist form addressed to Ms. McMullen and others is somehow “lying” as well.

The Employer points out that the Grievant received significant feedback regarding her inadequate job performance from Listiak, including a verbal reprimand, a written reprimand, a one day suspension, and one-on-one meetings. And, despite three levels of discipline prior to her discharge, the Grievant did not grieve their issuance.

Another area of the Grievant’s work behavior was singled out by the Employer in its brief: “. . . her repeated failure to coordinate her lunch breaks with the other schedulers.” And, although the Grievant described this issue as a “one time occurrence which never happened again,” Listiak, [and co-workers “A and “C”] all testified, this was a recurring problem . . .”

Complaints from co-workers, agency interpreters, and other HCMC employees who had interactions with her were numerous, and many of the complaints focused on the Grievant’s rudeness. Listiak testified that she did not receive complaints regarding the other employees she supervised.

Finally, the Employer, anticipating the Union’s counter arguments, attempts to refute them:

The Clique Conspiracy All of HCMC’s witnesses stated that they wanted Ms. McMullen to succeed in her new role as scheduler. Not only was their testimony credible, it was logical, too. The schedulers’ work volume was heavy, and they

thought and hoped that another scheduler was being added to the lineup. Having Ms. McMullen work out as a scheduler was in their own self interest. . . .

Adequacy of Training For Ms. McMullen, ISD went further and provided written materials in addition to significantly more hours of training. . . . [A]ll of the other schedulers, who were accomplished at more than just future scheduling, did not go to any classes on telephone usage or the electronic health record EPIC. . . . [T]hese other schedulers were simply mentored by an experienced scheduler.

UNION'S ARGUMENTS

The Union argues that the Grievant "should not be terminated for three main reasons:"

- 1) Despite management's concerns about her job performance, the work Joyce did on future scheduling actually helped the department attain its goal of using fewer agency interpreters.
- 2) The evidence and testimony presented by management about Joyce's training and performance was, in several instances, contradictory or vague; and
- 3) Lack of proper supervision and training in the department in general.

The Union goes on to state that the Grievant was employed by HCMC for nearly six years and "her performance was deemed to be 'highly commendable'." It was only when the Grievant became a scheduler, that she was "exposed to the prerogatives of a clique of coworkers; coworkers who are a very close knit group."

In regards to the training that the Grievant received, the Union asserts that she received less than what her supervisor wanted her to have: "[Listiak's] vision for training and what happened

were two different things.” The Union suggests that the Grievant did not receive much of the training that she was scheduled to receive from her co-workers, and that Listiak should have made HCMC training at the education center available to the Grievant.

Co-worker “A” testified that she provided forty hours of training to the Grievant, and yet the Grievant testified that she received only forty minutes of training from her. In fact, the Union argues that the Grievant received a mere four hours and forty minutes total of training, and very little of it from her supervisor.

Annie Listiak’s direct monitoring of Joyce’s training was next to nothing. In fact when asked how much training Annie provided Joyce, Annie said “None.” When asked how many times Annie spent watching her work, Joyce McMullen said “once.”

In addition, the Union argues that although there was progressive discipline, it occurred over a short period of time and many of the Employer’s cited reasons were merely repeats of the same events.

The Union feels the Employer moved much too fast thru the progressive discipline process to allow meaningful time to improve deficiencies. Documents and testimony show how quickly Joyce went from alleged training on September 27 & 28 to a one day suspension on October 1, 2010, to an investigative meeting & termination both on October 20, 2010.

And finally, the Union asks that the Grievant should be brought back to work:

[W]e ask that the Employer bring Joyce back to work. Joyce deserves another chance to succeed in a proper work environment where she, like any employee, should expect to be able to work where there is a standard of accountability for all employees; including management.

DISCUSSION

This matter's outcome relies on "just cause." Did the Employer have just cause to terminate the Grievant's employment? Was the Grievant afforded "due process" during the disciplinary steps, up to and including her discharge? In essence, did the Employer afford the Grievant the opportunity to succeed in her work?

The Employer argues that it provided the Grievant many opportunities to succeed, and that despite those efforts, she was unable to master the position's most basic task: futures scheduling. The Union argues that the Employer did not provide the Grievant adequate training for her to be successful, and that the culture of the worksite was exclusionary to the Grievant and other so-called "outsiders."

The Arbitrator believes that the Union made some points in challenging the Grievant's termination. It was able to introduce evidence that the Employer did not provide as much training to the Grievant as they claimed. However, the Employer, despite these exaggerated claims, did provide more training to the Grievant than it normally offered to new employees. Other employees were able to pick up on the futures scheduling within a day or two of on-the-job-training, and then move on to learn the more complex aspects of the job. The Arbitrator, recognizing that the Grievant did a very good job in her previous position, believes that the duties of a Scheduler were simply a bad fit for the Grievant. Despite many efforts to correct her performance, she continued to make errors that negatively affected the overall performance of the department.

A more significant issue in this case, however, is the Grievant's problems with interpersonal communications within the department, between departments, and with outside contractors. The Employer offered volumes of emails and other communications regarding the Grievant's contentious behaviors while on the job. These included:

- Refusing to coordinate lunch breaks with her co-workers.
- Ignoring people waiting at her desk.
- Arguing with agency Schedulers and others.
- Discourteous manner: yelling, rudeness, curtness, etc.

Medicine is a competitive service industry. HCMC is a large service provider, and within this structure resides the Interpretive Services Department. Its services are essential not only to the hospital, but most of all to those patients it serves. As such, the Grievant's negative behaviors are totally in opposition to the department's service goals. Interpreters, HCMC departmental schedulers, and others deserve and should receive a positive and friendly experience when they interact with the Interpretive Services Department's Schedulers. The Department's good reputation is essential to its existence. And, although it is clear that the Grievant struggled with the duties of her position, the Arbitrator finds the Grievant's problems with interpersonal communications to be the primary reason for his decision to affirm the Employer's action to terminate the Grievant.

AWARD

After carefully reviewing all of the testimony and the documents entered into evidence, and for the reasons cited above, the Arbitrator denies the Union's grievance. The Employer did have just cause to terminate the Grievant.

Respectfully submitted this 30th day of June, 2011

Eugene C. Jensen, Neutral Arbitrator