

IN THE MATTER OF ARBITRATION BETWEEN

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Minnesota State College Faculty  
(on behalf of Timothy B. Strand),  
Union,

and

State of Minnesota, Minnesota State Colleges and  
Universities, (on behalf of St. Paul College)  
Employer.

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OPINION AND AWARD

Timothy Strand Discipline Grievance

MSCF Case No. SP-14-01  
MnSCU Case No. GR-14-0045

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

May 12, 2015

HEARING SITES:

Minnesota BMS Offices  
St. Paul, Minnesota

HEARING DATES:

January 27-28, 2015

RECORD CLOSED/BRIEFS RECEIVED:

March 16, 2015

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## **INTRODUCTION AND JURISDICTION**

Grievant served as the instructor of the Carpentry program at Saint Paul College. He was discharged from this faculty position for diverting from his approved sabbatical leave plan and then failing to complete the plan as it was approved. It is undisputed that Grievant registered for different courses from his approved plan, two of which were taken at a different institution from his approved plan. The Employer's position is that this constituted a significant change in the substance of his plan without obtaining approval of the amended plan. In addition, Grievant failed to complete all of the course work as well as other required components of his approved plan. This constituted just cause for Grievant's discharge. The basic position of the Union and Grievant is that he substantially completed his approved plan and did not need to amend it. In addition, to the extent Grievant did not complete all aspects of his plan, it was because requirements placed on him by the Employer during his sabbatical leave excused him. During the relevant time frame, Grievant had no prior discipline on his record. In addition, no significant performance deficiencies were noted in a 2011 classroom observation worksheet.

The instant grievance challenges the Employer's action and alleges Grievant's dismissal was without just cause. For the remedy, the grievance asks that Grievant be made whole and the Employer be ordered to rescind the letter of dismissal, remove all materials related to the action from his Grievant's file, and return him to his full-time unlimited faculty position as instructor of the Carpentry program at Saint Paul College.

The hearing in this matter was held on January 27 and 28, 2015. The undersigned was selected to serve as arbitrator pursuant to the parties' collective bargaining agreement. The parties submitted the foregoing discipline issue to arbitration. No procedural issues were raised. Both parties were afforded a full and fair opportunity to present their evidence. Witnesses were sworn and their testimony was subject to cross-examination. The testimony was recorded and transcribed by a certified stenographic reporter. The parties submitted post-hearing briefs, duly received by email attachment on March 16, 2015, which closed the record, and the matter was taken under advisement.

The parties also reached a factual stipulation on seventeen evidentiary items. They further agreed on the statement of the issues to be submitted to arbitration. Finally, they agreed that the time limit for issuance of the undersigned's Award would be two months after receipt of the post-hearing briefs.

## **ISSUES**

1. Did the Employer have just cause when it terminated Mr. Tim Strand for not completing the work of his approved sabbatical plan and not submitting an amended plan?
2. If not, what is the appropriate remedy?

## **BACKGROUND SYNOPSIS**

The principal circumstances involved this matter took place over an approximately 18-month period of time ending with Grievant's discharge in April of 2014. Those circumstances involve a wide variety of activities as well as many contentions and counter-contentions. In addition, certain evidence did not surface until the arbitration hearing held more than 9 months after the effective date of Grievant's discharge. This section does not attempt to reference all of the many facets of the dispute. Instead, this section strives only to illustrate the nature of the dispute and the competing positions of the parties as well as the many evidentiary conflicts that exist in the record. As noted previously, the hearing was transcribed and both parties have complete copies of all of the exhibits as well as the post-hearing briefs. Accordingly, they know the full extent of the evidence and testimony and need not have it repeated in its entirety herein.

The Employer, Minnesota State Colleges and Universities (MnSCU), is an entity within the executive branch of the State of Minnesota. It consists of a system of community and technical colleges as well as state universities located throughout the state. Saint Paul College (SPC) is a two-year higher education institution within the MnSCU system. The Minnesota State College Faculty (MSCF) is the exclusive representative of the faculty members of the community and technical colleges. MnSCU and MSCF are parties to the 2013-2015 Master Agreement (Agreement), which applies to the instant grievance.

Grievant began working sporadically toward a bachelor's degree before becoming a carpenter. In 1979, another member of the MnSCU system, Inver Hills Community College (IHCC), accepted 10.67 credits Grievant accumulated at the University of Minnesota before then. He completed his first courses toward his degree at IHCC that same academic year. He completed more course work at IHCC in 1997 through the fall semester of 1999. His progress resumed in 2004 and

continued through spring of 2006.

In 1986, Grievant became a graduate of the Carpentry program at SPC. After working as a carpenter thereafter, he was hired as the instructor for that program on August 24, 2004. During the 2009 - 2012 time frame, the SPC Carpentry program that Grievant taught was favorably cited in relevant publications often quoting him. One publication contained the feature article entitled, “Shakespeare with Power Tools. How a humble trade school became the best community college in America.”

The Carpentry program at SPC is known as a “singleton” program because Grievant was the sole instructor. He was classified as an unlimited full-time faculty member which made him eligible to take sabbatical leaves pursuant to Article 17 of the Agreement. Eligibility accrues after serving six or more academic years.

Grievant was approved to take a sabbatical leave during the fall semester of 2012. He sought to complete course work at the University of Wisconsin - Stout (UWS) because it offered a Bachelor of Science degree program in Career and Technical Education Training. He declined to take the leave, however, when he found that several of the courses he planned to complete were not available to him because they were not being offered by UWS at the time.

Grievant developed another sabbatical plan for leave during the fall 2013 semester and used the MnSCU Sabbatical Leave Application Packet to write his plan in the customary format for submission. In addition to the plan application itself, the Packet contains guidelines in the form of Guide A and Guide B to assist faculty members in writing their plans.

According to the Employer’s testimony, the Packet has been in use for decades. Guide B includes the following information:

If my plan consists *entirely* of course work, I have included specific information regarding 8-12 semester credits to be completed per semester. Other planned activities may reduce the number of credits needed for approval. If credits are to be applied to a column change on the salary schedule, grades of pass or satisfactory may jeopardize the average grade of “B” required in the contract.

(Italics in original)

The reference to 8-12 semester credits refers to graduate level courses. When the Packet was

originally adopted, most faculty members already had bachelor degrees and used sabbatical leaves to make progress toward advanced degrees.

The Agreement describes the purpose of sabbatical leaves in Article 17 as follows:

**Section 4. Sabbatical Leave.** The purpose of sabbatical leaves is to give faculty members the opportunity to secure additional education, training, or experience which will make them better prepared for carrying out their college assignments, and will support the professional development of the faculty, the development needs of academic departments or areas, and the planned instructional priorities of the college/system mission.

This statement of purpose is also restated verbatim in italics on the first page of the application form that must be signed by the applicant.

Subdivision 2 of that same Agreement section contains the following mandatory requirement:

If a faculty member desires to change the substance of the plan that was previously approved by the college president or designee, the faculty member *shall* submit an amended plan to the college president. \* \* \*

(Italics supplied)

Grievant completed the application forms for his planned sabbatical leave and submitted it for approval in accordance with the Agreement procedure. Pertinent portions of his submitted plan read as follows:

**1. WHAT DO YOU PLAN TO ACCOMPLISH WITH YOUR SABBATICAL?**

I am planning to attend U.W.STOUT in Menominee, Wisconsin. I will be registering for 12 credits at the college. I plan to register for credits and classes as follows:

- CTE<sup>1</sup>-334 Performance Analysis.....3 credits
  - CTE-337 Competency-Based Education: Career and Technical.....2 credits
  - CTE-440 Instructional Evaluation in Career and Technical Education.....2 credits
  - INMGT-(Industrial Management)-400 Organizational Leadership.....3 credits
  - SCOUN (School Counseling)-301 Introduction to Guidance.....2 credits
- 12 credits total ..... Optional classes for fall 2013 @ UW STOUT; EDUC-336 Multiculturalism (2 credits) CTE-438 Course Construction (2credits)

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<sup>1</sup>CTE references a Career and Technical Education Department course.

**2. HOW DO YOU ANTICIPATE THAT YOUR SABBATICAL PLAN WILL MAKE YOU A BETTER EDUCATOR? HOW WILL YOUR SABBATICAL PLAN IMPROVE YOUR TEACHING AND STUDENT LEARNING?**

While attending UW STOUT, I will learn the latest and cutting edge technical and career education rubrics that will broaden My *{sic}* teaching abilities at ST. PAUL COLLEGE. I will use this information to define my program's core competencies and develop updated curriculum for the Carpentry program.

**3. WHAT ACTIVITIES WILL HELP YOU MEET THE ANTICIPATED ACCOMPLISHMENTS OF YOUR SABBATICAL PLAN?**

My sabbatical will consist of full-time attendance at UW STOUT @ Menominee, Wisconsin, as planned in answer number 2.

**4. WHAT IS YOUR ANTICIPATED TIMETABLE FOR ACCOMPLISHING THE ACTIVITIES OF YOUR PLAN?**

FALL SEMESTER: Attend full-time classes at UW STOUT from September 2013 through December 2013.

**5. WHAT DOCUMENTATION WILL YOU PROVIDE FOR YOUR ACTIVITIES AND THE COMPLETION OF YOUR SABBATICAL PLAN WHEN YOU WRITE YOUR SABBATICAL REPORT?**

I will provide my college transcript and completion grades from my activities at UW STOUT.

I will submit a sabbatical report upon return from sabbatical leave.

I will submit rewritten curriculum for my fall classes demonstrating the knowledge and techniques I have learned at UW STOUT.

Page 4 of 4 of the application contains spaces for the signatures of the applicant, the supervising administrator, and the college president. The following form language is printed just above the line for Grievant's signature:

This sabbatical plan, which I will complete, will be of mutual benefit to the college and me. I understand that this plan requires both the recommendation of my

supervising administrator and/or CAO<sup>2</sup>, and approval by the college president, and any significant change in this plan also requires approval of the college president or designee.

**I further understand that *upon return from the sabbatical leave, I will submit a report to the college president or designee upon my first day of my return*<sup>3</sup>, which will document how I have accomplished this plan.**

(Underscoring, italics, and boldface in original)

Grievant signed and submitted his plan on November 15, 2012. His supervising administrator, SS<sup>4</sup>, signed it the same day. The president signed his approval on November 26<sup>th</sup>.

The Agreement also provides that official notification of sabbatical plan approval will be made by the president on January 15<sup>th</sup> following submission of the application. The president did so by letter to Grievant dated January 15, 2013. This notice provided Grievant some seven months in which to prepare for his leave to be taken during the fall semester of 2013. The president's letter also included this paragraph:

Upon return from sabbatical, you are required to complete a written description of the plan activities undertaken while on sabbatical. Sabbatical leave reports are part of the sabbatical activity. Therefore, in accordance with Article 17, Section 4, Subd. 7 of the 2009-2011<sup>5</sup> MSCF contract, it is imperative that your sabbatical leave report be provided to [RS], Chief Human Resources Officer, before or on the first day of your return. Failure to do so may result in disciplinary action.

Grievant began his sabbatical leave in late August of 2013. His first day to return to the Carpentry program at SPC was the following January 9, 2014. During his sabbatical leave, Grievant

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<sup>2</sup> Chief Academic Officer

<sup>3</sup> The requirement to submit a report upon returning from a sabbatical leave is also expressed in the Agreement.

<sup>4</sup> SS was and is now again a member of the faculty at SPC as well as a member of the MSCF bargaining unit. She was serving temporarily as Interim Dean of Business and Career and Technical Education.

<sup>5</sup>The successor Agreement had not yet been finalized. The relevant Agreement language did not change.

received his full pay of approximately \$32,000 along with benefits valued at another \$11,000.

During Grievant's sabbatical leave, a new dean for the Business and Career and Technical Education department was hired to begin on October 1, 2013. SS returned to the bargaining unit and resumed her faculty position.

In early October, some of the students in the Carpentry program voiced concerns about the lack of field work for them. Four handwritten complaint forms are in evidence (Union Exhibit 9) and cover the period from September of 2013 through the following April. Among other things, the students had expectations that they would be performing some actual carpentry work at real job sites during the semester. To quell the discontent, the new dean, FB, requested that Grievant and the substitute instructor meet to discuss solutions. FB knew that Grievant was on his sabbatical leave so a voice mail was left for Grievant on the morning of October 11<sup>th</sup> that offered Grievant two windows of time for the meeting on the following Monday, one in the morning and one in the afternoon; Grievant was allowed to select the window that was most convenient for him.

The meeting was held on Monday morning, October 14<sup>th</sup>, and lasted less than two hours. Nine action items emerged from that meeting. Four of them involved Grievant to some degree. One of them asked Grievant to move up a roofing project he had slated for the following spring semester so it could be completed that fall semester. The remaining items were assumed to require no more than a conversation to handle. Grievant did not raise any concerns that he was having difficulty with his sabbatical or that completing the actions items would adversely impact his sabbatical. There were some 20-25 followup phone calls between FB and Grievant that lasted no more than several minutes.

Because he had not arranged for his substitute to have signature authority for equipment purchases or rentals or material ordering, Grievant did the ordering of scaffolding for the roofing job. The property owner paid for the materials. FB asked Grievant to make sure everything was present for the start of the job. FB did not direct him to be at the job site thereafter. Nonetheless, Grievant did show up at the job site on multiple times even though the substitute instructor was up on the roof supervising the students.

Grievant was also invited to attend a meeting of the Carpentry Advisory Committee on Wednesday, October 30<sup>th</sup>. The meeting began at 8:00 a.m. and lasted approximately 1½ hours. The

minutes of the meeting do not reflect there were any action items assigned to Grievant.

SPC held an open house in mid-November. The Carpentry program was not assigned to staff any of the information tables. Although the substitute instructor was present to represent the Carpentry program, Grievant also chose to attend.

According to Dean FB's testimony, he saw Grievant at the campus a "handful of times" during the semester but "... not very often." Never on any of these occasions did Grievant indicate in any way that he was having difficulty completing his sabbatical requirements. In addition, no such concerns were raised by Grievant during email exchanges, phone calls, or by other means. Moreover, Grievant never indicated he had modified his sabbatical plan; nor did Grievant ever submit an amended plan to him.

As previously noted, the due date for Grievant's sabbatical report was January 9, 2014. Dean FB saw Grievant at an in-service meeting that day and asked about the report. Grievant replied that he would get the report together. He needed to get his transcripts from the college to complete the report. On January 17<sup>th</sup>, they met again at a departmental meeting. Again, Grievant said he needed to get his transcripts and would submit the report. On January 28<sup>th</sup>, FB sent an email to Grievant reminding him that the report had been due on January 9<sup>th</sup>. FB did not recall receiving any response from Grievant. On February 3, 2014, FB met in person with Grievant and informed him to immediately report to KM, the Vice President of Academic Affairs and Chief Academic Officer for SPC.

Grievant met with KM on February 4<sup>th</sup>. KM did not have Grievant's approved plan in front of her so they initially engaged in small talk about the experience. Grievant then provided her a draft of what she took to be a summary of his report. As she paged through the draft, one of the things that "... jumped out ..." was that there were some grades of Incomplete shown for the course work. Grievant went on to describe, for the first time to any administrator, some difficulties he had completing his plan. The courses he took at UWS were all online courses that did not require him to attend any sessions in person. However, his 13-year old computer did not support D2L<sup>6</sup>, which

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<sup>6</sup> Desire to Learn

is the software platform for delivery of online course work. He had to purchase a new computer for this purpose. He may have mentioned an obligation to participate in jury duty while on leave. He did describe the amount of time he spent on campus supporting his substitute, who was new to teaching and who did not have supplies and projects for the students. Grievant ultimately asked if he was in trouble.

After KM later did a side-by-side comparison of Grievant's draft document with his actual approved sabbatical plan, a formal investigation was launched. Grievant was interviewed with his Union representative on March 3, 2014. At his interview, Grievant provided the investigator with a two-page document entitled, "*Reality; What happened to screw up my best laid plans.*" The *Reality* document listed the following eleven bullet-points:

- My computer (14 year old Gateway) would not support D2L inputs or documentation for online classes ..... August 2013.
- Purchased a new HP Pavilion through Teacher Direct (teacher source through Education of Minnesota).
- Inver Hills would not recognize my sign on as student (star ID) IT department decides I am a teacher at Inver Hills Comm. College.  
Still a problem, today.
- Books for Inver Hills went totally online with ordering and all books were delayed two weeks on the average.
- Substitute instructor begins calling first day of fall semester and every night does not know what to do with the class or how to manage classes!
- I receive a registered letter and Summons from the Dakota County Court Administration to serve as a juror for two weeks starting on 09/03/2013. Laptops, computers, and phones are removed from person while waiting in the sequester room for jury duty.
- I am still required to order all materials, safety gear, first aid, scaffolds, building materials and attend my Advisory board meetings, shared governance meetings and MSCF<sup>7</sup> meetings at SPC.
- Early October or late September Carpentry students file Grievances to Administration stating that they are not getting the training or their money's worth in the classroom or shop because of substitute instructor.

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<sup>7</sup> Grievant served as treasurer for the local faculty association at SPC.

- I am asked informally to return to SPC and generate outside projects and suppress the situation, which I accomplish for the safety and security of the Carpentry program and My job!
- I am now attending to the wants and desires of both the students and the new instructor on a part time/full time basis and quickly losing my edge on my online classes that I had developed.
- I eventually file for an incomplete on one of my UW Stout classes and will complete the requirements of both classes in spring 2014 or fall 2014.

The Investigative Report was submitted to KM on or about March 28, 2014. Discussions in-house and with MnSCU administration concluded Grievant had not completed any of the five commitments of his sabbatical plan and his failure to do so was not mitigated by the interference of circumstances beyond his control. By letter dated April 9, 2014, Grievant was notified of the Employer's intent to discharge him for failure to complete his sabbatical plan as approved. Grievant's discharge was confirmed by the President of SPC by letter dated April 18, 2014.

The instant grievance was filed on April 30, 2014 to challenge the discharge.

The draft document Grievant provided to KM on February 4, 2014 revealed that Grievant had taken two general education courses through IHCC instead of UWS. In addition, it showed that the courses he did register for at UWS did not match the listing in his approved plan. He registered for only one of the five primary courses listed in his plan. Another was one of the optional courses shown in his plan. The third UWS course was nowhere listed in his plan. These deviations from his approved plan did not surface until KM's review and the Employer's investigation was conducted.

What follows in this synopsis section emerged via the Employer's investigation and/or evidence and testimony elicited at arbitration.

According to Grievant's arbitration testimony, he did not obtain information about then current course offerings and/or degree program requirements from UWS to develop his sabbatical plan. Instead, he used older materials he still retained to craft his plan. Nor did he meet with a UWS advisor to obtain help to write his plan before he submitted it for approval.

Grievant first met with his UWS advisor on the last day of July 2013, approximately one

month before classes were to begin. He did not share the actual contents of his plan with the advisor. Instead, they discussed the UWS degree program and what Grievant needed to do to complete it. Grievant followed the recommendations of the advisor, which included registering for the two general education courses through IHCC.

Most of the foregoing facets of the evidentiary record were largely free of dispute. That said, however, the testimony at arbitration included significantly diverging accounts about several of the events and circumstances associated with Grievant's activities in preparation for and during his sabbatical leave. Chronologically, these testimonial skirmishes began with the need to find a substitute to teach the Carpentry program while Grievant was to be on his sabbatical leave. The president's approval of Grievant's plan included a certification that a substitute could be found. Ordinarily, this responsibility falls to the Employer. In this dispute, however, it must be remembered that the Carpentry program was a "singleton" program where the key need was for skills and experience in that trade and not academic knowledge or previous teaching experience. There was no one already within the MnSCU system that could be assigned. The Employer's official who shouldered the responsibility was SS, who, as previously noted, was temporarily serving as Interim Dean for the program.

According to Grievant's testimony, he assisted SS in the search for a substitute by contacting the carpenters' apprenticeship school to see if they had anyone. He also contacted the union hall looking for retired carpenters. He said he relayed the information to SS about the many retired carpenters. He did not know whether SS contacted them. The Employer ended up with PF.

SS related a different account. She testified on rebuttal as follows:

So I signed [Grievant's] sabbatical in November of '13 and from that time - sorry, '12. At that time, I told him about being very concerned about not being able to find anyone to replace him. He said, Don't worry about it, we'll find someone. So then the next month, [Grievant], do we have anyone? [Grievant], do we have anyone? So this went over a period of seven months.

In between that time I said to [Grievant], If you're unable to find someone, I will find someone for you. I will run an ad in the paper or I'll ask other people and see if we can find a replacement. [Grievant] was adamant about him finding someone, and I understood that, because he wanted to find someone that he felt comfortable with for his program.

So in July he came to me and said, I have [PF], I think he is an excellent person, can I bring him in? I said, Absolutely. So then we had a conversation and he brought PF in, but PF was [Grievant's] top choice. I was not aware of any pool of people that were available because, if I had been, I certainly would have contacted them.

SS also took a sabbatical from her own singleton program in 2001 and had many conversations with Grievant about adequately preparing PF to substitute for him. She described her conversations thusly:

So as a singleton program, you're the advisor, you're the instructor, you're the placement person. You do everything. You create the curriculum, you do the curriculum and you have no one to really bounce anything off of because you are the person who does it all.

So when I took a sabbatical, I was very scared about what would happen to my program because I had worked so hard to build it up and I was afraid a sub would come in and just wipe out my numbers and I would come back from sabbatical and have no program. I had explained that to [Grievant] many times because I was afraid that [Grievant] would come back and, not knowing PF and PF not having any kind of teaching background, I was concerned that we might lose some students out of the carpentry program.

PF described himself as having been a carpenter for 40 years who ran his own business as a general contractor in Minnesota. He said he had known Grievant for a while and was contacted by Grievant about the middle of July 2013 to ask if he would be interested in substituting for him.

The following colloquy is a representative excerpt of Grievant's testimony about how he prepared PF to fulfill the role of substitute:

Q Did you assist PF in preparation for the classes in the fall of 2013?

A Yes, I did.

Q When did you help and how did you help?

A I'm not sure of the exact dates, but I would say we started July/August of that summer and I showed him the files. We have files for fall, spring, summer. It's all in the files, classes, projects, tests. It's all on file there. I developed - I made copies and showed him what the syllabuses are.

Q When you were showing him things, where were you showing him those

things?

A Down in the office and out in the shop. I showed him the shop. We do what's called mock houses, about three-quarter size houses, one side is residential, one side is commercial, so one side is wood and one side is steel studs. We build these every year. The beginning classes, they have to tear down the mock houses. In fall they start new mock houses or, if we do it every other year, the framework is there and in the fall they finish the mock houses to a finish grade, finish homes to a finish grade.

Q Did you provide lesson plans to [PF]?

A Yes.

Q Did you provide your syllabus to [PF]?

A Yes, I did.

Q Did he have access to those files –

A Yes, he did.

Q – in your office?

A Yes, he did.

Q Did your office become his office while you were on sabbatical?

A In that room, there are four offices and he got his own desk and his own computer and all the files became his files.

On rebuttal, PF provided this account of the assistance Grievant provided him for taking over the substitute's role:

Q Did the grievant show you any of his materials prior to the start of the semester?

A Yes, he did.

Q And can you describe to us how he did that and how that went?

A He took me into his office and he had four filing cabinets, four-drawer filing cabinets. He told me one of the filing cabinets contained the material I would need for the fall semester.

Q And what did you find in that filing cabinet?

A There were numerous projects, shop projects, lab projects that I could use. There were numerous quizzes, different worksheets that would actually go with the book I would be using.

Q And what was the state of the filing cabinet, the materials in there?

A The material was quite haphazardly placed. I had to organize the filing cabinets and go through them individually to find a rhyme and reason to what was listed.

- Q And how much time did that take you?
- A I spent approximately 12, 13 days going through that, organizing files and trying to find all of the entire course material.
- Q Did the grievant go through the file cabinets with you in any great detail?
- A He showed up on some days, some days I was there by myself. As I was going through it, I would ask him questions and he spent some time helping me go through it.
- Q Before the course started, before the fall started, how did you spend your time preparing for the three courses?
- A The vast majority of my time was spent trying to organize the files and the system because I was having a hard time finding what I needed throughout there because everything was intermixed so poorly. I struggled to find what I needed.
- Q How would you describe the amount of materials in that cube or office?
- A The amount of materials? We're talking four filing cabinets that were full, but we had papers piled on top. Some of it was in other cubicles. So I did organize the office somewhat so I could find what I was looking for.
- Q Did the grievant supply you with just the materials that you would need for the course or did you have to sift through and sort out what you would need?
- A I spent quite a bit of time sorting myself to find it. It was during – there's a break between the summer classes, and he wasn't there every day, so I had to actually take time. I even had my wife, who is a professional organizer, come in to help me try to sort through.

The evidence surrounding Grievant's actual registration for courses is undisputed. The person who was to become Grievant's advisor at UWS was formerly the Associate Dean of Academic Affairs at IHCC. They had met originally some years before at SPC while attending some kind of a technical skills assessment meeting. In preparation for registering for classes at UWS, Grievant met with him for the first time on July 31, 2013. This was some 8½ months after Grievant submitted his sabbatical plan for approval and less than month before classes began.

Although the advisor was aware that Grievant would be on a sabbatical leave, Grievant did not share the contents of his sabbatical plan with MS. According to the testimony of the advisor, MS, the purpose of the meeting was to determine what Grievant needed to complete the UWS Bachelor of Science degree program in career and technical education and training. This included reviewing and updating Grievant's prior course work from 2006. Three courses were recommended.

Of the three, only one was among the five primary courses listed on his approved sabbatical plan: CTE-334 Performance Analysis. Another one of the three courses was one of the optional courses listed on his approved plan: EDUC-336 Multiculturalism. The third course was not listed anywhere on his approved sabbatical plan.

In addition to the three courses to be taken at UWS, the advisor informed Grievant that he would need some general education credits to complete the UWS program. The advisor recommended Grievant take a Humanities course and a Sociology course at IHCC. Because IHCC was part of the MnSCU system, the advisor believed the two courses there would be more convenient and Grievant, being a faculty member within MnSCU, would be able to save tuition money.

Before registering in accordance with the advisor's recommendations, Grievant did not seek to amend his approved sabbatical plan nor did he inform any Employer official that his new plan differed from his approved plan.

To facilitate the understanding of the remaining portion of this Background Synopsis, two terminology definitions might be helpful. During its opening statement at arbitration, the Union recognized that Grievant did fail to comply with the terms of his agreed sabbatical plan. It contended, however, that any shortcomings were a result of Grievant being overwhelmed with non-sabbatical duties to assist the Carpentry program at SPC while he should have been able to devote his time and attention to his sabbatical plan activities. It was further contended that Grievant's failure was not negligent or intentional and certainly did not constitute just cause for his discharge. It is undisputed that Grievant was asked by his supervisor to attend some meetings at SPC and to see to it that other activities were accomplished to support the Carpentry program while he was in the midst of his sabbatical leave. Whether and to what extent outside circumstances and competing work requirements actually interfered with completing his sabbatical plan were sharply contested matters and became the focus of the bulk of the testimony during arbitration. Accordingly, when this synopsis refers to activities Grievant did to fulfill his sabbatical requirements, the term "Sabbatical Work" may often be used. When he was engaged in work supporting the Carpentry program, the term "Engagement Work" may be used.

To begin the discussion of the claimed interference with his sabbatical plan, this section will

use the order of bullet-points listed in Grievant's *Reality* document. The first four bullet-points dealt with computer issues and other difficulties with the courses at IHCC. They were both "blended" courses, which meant they had in-person classroom attendance requirements as well as online participation requirements. According to the evidence, Grievant did replace his older computer so he could access the D2L software platform and order books online. He was able to do this early in the semester. In addition, when asked during his investigation interview why he had not asked for a modification of his plan, his reply was that everything was going well for the first 5 to 6 weeks into classes. He achieved a grade of A in both courses.

Grievant's *Reality* document did not claim to have had any computer issues with his courses at UWS. All of the those courses were fully online and also used the D2L platform to deliver content. Grievant could fulfill the course requirements whenever it was convenient for him to do so. In addition, according to the testimony of the advisor, each of the courses could be entirely downloaded onto a thumb drive to avoid any access problems.

The fifth bullet-point as well as Grievant's arbitration testimony claimed that the substitute, PF, began calling him the first night of the semester and every night thereafter because he did not know what to do or how to manage the classes. Grievant also claimed he had to go to SPC to pull class lessons for PF to provide things for the students to do. Grievant said he did this because, "I love my program and I didn't want to see it fall apart. I needed that job after sabbatical." On cross-examination of Grievant, the following discussion took place:

Q Earlier you testified [PF] called you every night. How long were these phone calls?

A They were various lengths.

Q Can you give us a range?

A Anywhere between 10 to 15 minutes up to probably 45 minutes.

Q And was that from the very first night until the very last night of the semester?

A No. Most of them were the first – beginning of the semester.

Q And then when did that end?

A I don't recall the exact date when they ended. I don't think they ever really ended, but they dropped off in the volume.

Q Okay. When you say you called him every night –

A No, he called me.

- Q I'm sorry, when you say he called you every night, can you be more specific as to how long that took place?
- A I would say the first two weeks.
- Q The first two weeks he called you every night, so not the entire semester.
- A Not the entire semester.

According to PF's testimony about the calls, he did not call Grievant on the first night of the semester and every night in the first two weeks. Instead, it was Grievant who called him that first night to ask how things went that first day. Thereafter, PF only called Grievant maybe every six or seven days. Most of the calls dealt with his difficulty finding information he needed from the files. The calls were fifteen to twenty minutes at most. Grievant never said he was on sabbatical and too busy to talk. Grievant never asked PF to stop calling him. In addition, Grievant only stopped in to the classroom seven or eight times during the semester. PF never asked Grievant to join him in the classroom. PF also saw Grievant working on the computer in his office. During his testimony, Grievant acknowledged that some of his visits to the campus were to use his office computer for Sabbatical Work.

The sixth bullet-point dealt with Grievant's jury duty. His *Reality* document referenced two weeks of duty starting September 3, 2013. On cross-examination, Grievant acknowledged he was required to serve only two days out of the two week period. Those days were Tuesday and Wednesday, September 10<sup>th</sup> and 11<sup>th</sup>. According to the Juror Activity History document in the record, Grievant actually reported for service at 1:09 p.m. on the 10<sup>th</sup> and 8:35 a.m. on the 11<sup>th</sup>. The morning service on Wednesday the 11<sup>th</sup> would have conflicted with the in-person session of his Sociology class at IHCC.

The seventh bullet-point claimed Grievant was still required to order all materials and other equipment as well as attend meetings at SPC, including meetings of the local faculty association. According to the evidence, Grievant kept purchasing authority to himself while he was on sabbatical and did not transfer that authority to the substitute instructor, PF. As noted previously, Grievant did attend the Carpentry Advisory Board meeting on October 30, 2013. This was a Wednesday morning meeting that would also have conflicted with the in-person session of his Sociology class at IHCC. The Open House in mid-November was an evening engagement. By then, Grievant had completed

his Humanities class that required an in-person session on Wednesday evenings. That class was finished on October 16, 2013. After that date, Grievant only had four classes to complete. Despite the wording of this bullet-point in the *Reality* document, Grievant did not claim that his participation in MSCF faculty association meetings was a requirement of his dean or the SPC administration.

The eighth and ninth bullet-points deal with the student grievances filed in late September or early October. According to the *Reality* document, the grievances contended the students were not getting the training or their money's worth because of the substitute instructor. According to the record, the substitute was actually following Grievant's planned activities. Moreover, to the extent they refer to the substitute, the comments in the complaint forms are favorable toward PF. The complaints were directed at Grievant. As noted previously, Grievant was asked to attend a meeting on Monday, October 14<sup>th</sup> to deal with the student complaints. Although Grievant was offered the choice between a morning or afternoon meeting, the meeting was held in the morning which would, again, have conflicted with one of the in-person sessions of his Sociology class at IHCC. According to the testimony of Dean FB, Grievant was asked to move up the roofing project into the fall semester. Because Grievant had retained acquisition authority for himself, this required Grievant to acquire the scaffolding and ensure that everything was present on the first day of the project. Neither the dean nor the substitute asked Grievant to be present at the job site after the first day.

The tenth bullet-point is a broad contention that various kinds of Engagement Work caused Grievant to lose the edge he had developed on his online classes. In this regard, Grievant's arbitration testimony pointed out how he spent time on several activities. Among them, he said he assisted in the roofing project, an Adirondak chair project as well as the mock wall project and a Homeward Bound kitchen remodeling. He also claimed that he assisted students in finding jobs.

Grievant estimated the time he spent on the roofing project was three to four days per week and two to four hours per day. On cross-examination, the following exchange occurred:

- Q And how long each day were you there?  
A Now, that would vary between two and four hours a day.  
Q Two to four hours per day. Who asked you to be there?  
A My dean, FB, said, Make this happen.  
Q Did he ask you to be there three to four days a week?  
A He didn't. He said, Get it done.  
Q Is that a direct quote or –

A He said – – he told me, Make this happen, get this project done.

Q Did he ever ask you specifically to be there three to four days a week, two to four hours a day?

A I don't recall

According to the dean's testimony, he only asked Grievant to make sure everything was present on the first day of the job. According to PF's testimony, Grievant was only present about 45 minutes on the times he was at the job site. PF did not ask him to be there and nor did he need Grievant to assist. Grievant remained on the ground while PF was up on the roof supervising the students.

Grievant estimated that his visits to the campus for the other activities were in the range of an hour.

Grievant was asked about assisting students finding jobs on cross-examination thusly:

Q So did you or didn't you assist students in finding jobs?

A I don't recall how many I did.

Q So you can't say for sure that you spent any time assisting students in finding jobs that fall?

A No, I can't say.

Finally, the eleventh bullet-point claims he eventually filed for an Incomplete for one of his UWS classes and that he would complete the requirements of both classes in 2014. According to his advisor, Grievant did not file for an Incomplete for CTE-334 Performance Analysis although the advisor provided him with the instructions for doing so. Grievant admitted during his testimony that he knew how grades of Incomplete worked as a result of his own teaching experience. Nonetheless, as an exhibit obtained by the advisor during arbitration revealed, Grievant allowed the Incomplete grade to become a grade of F for the course. The evidentiary record does not provide any explanation for why Grievant did not act to prevent this.

The evidence at arbitration also revealed that the reason Grievant did not provide SPC administration with transcripts from UWS was because he failed to pay his tuition. As a result, a hold was placed on his records. The evidentiary record does not provide any explanation for why Grievant did not pay his tuition at UWS.

At the time of the arbitration hearing, Grievant still owed money to UWS and had not provided the Employer with any official transcript of his course work there. A recess was taken to permit the advisor to use his access capability to view Grievant’s UWS record. A printout of the applicable web page for the courses Grievant had for fall 2013 included this information:

CTE-334 Performance Analysis .....	F	[3 credits]
CTE-405 Methods of Tchng Career/Tec Ed .....	C –	[2 credits]
EDUC-336 Multiculturalism: IssuesPerso .....	C	[2 credits]

The Employer’s evidence also included examples of past discipline assessed for failing to complete sabbatical plans. In addition, the Employer’s post-hearing brief attached a prior arbitration award where the failure to complete a re-training plan by a faculty member while on layoff receiving pay and benefits was found to constitute just cause for discharge.

## **OPINION AND FINDINGS**

As noted previously, the Synopsis section of this Award did not attempt to reference every facet of the overall dispute. That said, however, the transcript volumes and post-hearing briefs of the parties have been thoroughly read and all contentions raised have been considered. The factual findings made herein and the conclusions flowing therefrom are based on the entire record of evidence. All of the contentions that are inconsistent with the following findings and conclusions have been rejected after due consideration and will not be further addressed herein.

Two observations about the dispute are warranted at the outset of this section. First, as written, the negotiated language of the Agreement makes it unmistakably clear that the primary purpose of a sabbatical leave is to benefit the institution. The program is unambiguously directed toward better preparing people for carrying out their college assignments and supporting the priorities of the college mission. This observation about the purpose of a sabbatical leave is confirmed by the wording of Question No. 2 of Sabbatical Application Form 2 as well as the return requirements found in Article 17, Section 4, Subd. 7 of the Agreement. While purely personal benefits may also be realized from sabbatical leave activities, such as making progress toward a

degree or advanced degree, those benefits are secondary to the primary purpose of the leave.

The second observation applies to the extent that a person seeks to have a failure to complete a sabbatical leave plan excused. An excuse is, in reality, an affirmative defense. It is well settled, indeed axiomatic, that the burden of proof to establish an affirmative defense rests solely upon the party advancing it. Not only must a factual foundation be offered for the defense but the foundation must be credible, persuasive, and represent the weight of the evidence on the issue.

Because of the purpose underlying sabbatical leaves, the Employer views an approved sabbatical plan, including all of its constituent parts, as a binding contract between the Employer and the faculty member. The Employer believes that the contract must be fulfilled as written and approved unless circumstances beyond the control of the faculty member intervene to prevent such completion.

It is undisputed that Grievant diverted from his approved sabbatical plan. In addition to other commitments, his approved plan listed no less than five courses at UWS. The five courses were heavily weighted toward Career and Technical Education within the UWS degree program. Grievant actually registered for only one of the five primary courses and one of the two optional courses listed on his approved plan. He also registered for a third UWS course that was not listed anywhere on his approved plan. Grievant also registered for two general education courses, Sociology and Humanities, to be taken through IHCC. The evidence does not establish that either of the IHCC courses provided Grievant with actual CTE knowledge of the kind listed in his approved plan. Given that Grievant registered for only two out of five courses listed on his approved plan, this was a significant change of his plan. Because of the significant reduction in CTE course work, the diversion also constituted a significant change of the substance of his plan. As a result, the Agreement required him to submit an amended plan and obtain approval of it before acting upon it. He failed to do so and this constituted a direct violation of the amendment requirement of the Agreement.

The evidence does not provide Grievant with a viable excuse for the deviations from his approved plan. He had previously declined a sabbatical leave one year earlier when he found certain courses were not available to him. The record does not establish why he could not have done so

again. But two other aspects of this dispute are more troubling and cry out for a logical explanation that the record does not provide. First, in developing his plan, why would Grievant not obtain the latest information from UWS about its course offerings for the fall semester of 2013? Second, why did he wait until just before his sabbatical was to begin before he met with a UWS advisor and then not share the actual contents of his approved plan with the advisor?

But even if Grievant's failure to seek approval for his changed plan is entirely overlooked, the remaining obligations of his plan, even as changed, must be addressed. According to the Employer, Grievant failed to complete a single component of his approved plan as follows:

1. Grievant received a failing grade in the one UWS course that remained from the core five courses he identified in his plan.
2. Grievant failed to define his program's core competencies.
3. Grievant failed to develop updated curriculum for the Carpentry program.
4. Grievant failed to provide a UWS transcript.
5. Grievant failed to submit his required sabbatical report upon his return.

Items 2 and 3 above are based on Grievant's responses to Questions 2 and 5 of his approved plan. He committed to use the knowledge he gained from his courses at UWS to define the core competencies and to make the curriculum updates.

The Union and Grievant identified several adverse forces like computer problems with D2L, jury duty, and various forms of Engagement Work for SPC during the fall semester of 2013 that prevented him from fulfilling his plan commitments and effectively excused him or at least mitigated the severity of any shortcomings. Before discussing these contentions, however, it must be noted that the fall semester at both IHCC and UWS ended in mid-December of 2013. Grievant's first day of return in 2014 was January 9<sup>th</sup>. This would have provided him with a semester break of approximately three weeks when there apparently would not have been any Engagement Work that would have interfered with completing these other plan commitments. Presumably that semester break period is when other sabbatical leave takers would be finishing up their sabbatical reports. The record in this matter does not address, in any manner whatsoever, Grievant's use of this break time to fulfill his plan commitments.

As previously noted, the components of the claimed Engagement Work and other circumstances that occurred during the fall semester of 2013 were the subject of conflicting evidence. Such conflicts inevitably require that overall credibility be assessed. In addition to those already referenced, the record contains several more matters that bear on credibility. They are here discussed in no particular order.

Self-interest is a traditional factor taken into account when assessing credibility. Grievant has a strong interest in the outcome of this matter and that can create an incentive to color testimony in the light most favorable to himself. Witnesses like RS and SS have no comparable interest and, as a result, have no incentive to distort their testimony.

During his testimony, Grievant emphatically claimed that carpentry is a “muscle-memory” set of skills that can only be learned through repetition of the “hands-on” physical tasks associated with use of tools in the fabrication of structures. In his view, the requisite knowledge and skills cannot be obtained through purely on-line work. After confirming his strong belief about this view on cross-examination, he conceded that he directed his substitute, PF, to issue grades of A to a student who never physically attended any carpentry classes but only did online work.

Grievant claimed he was impeded by computer problems associated with inability to access online courses with the D2L platform. However, it is clear from the record that this problem was resolved shortly after the semester began. Apparently it was not really a problem because Grievant admitted during his investigation interview that everything went well for him for the first 5 to 6 weeks of the semester. This would have included the time frame when the D2L problem was fixed. Moreover, Grievant received grades of A for both of his IHCC courses that required the use of the D2L platform. It is unlikely he could have received those grades if the claimed computer problem was really a significant obstacle as he claimed. And if the weight of the evidence shows that the use of a computer was not really a problem for his IHCC courses, the same would be true of his UWS courses that also used the same D2L platform.

The day and one-half of jury duty that Grievant claims adversely impacted his class work occurred on September 10 and 11, 2013. He claimed he had to miss class. The missed class is likely true, but it must be remembered that this also occurred during the first 5 to 6 weeks of the semester when he said, in his investigative interview, that things were going well for him. Once again, he

received a grade of A in the only class that would have been impacted by the jury duty. This makes it unlikely that his jury service really posed the problem for him that he claimed.

If so-called Engagement Work was truly interfering with completing his Sabbatical Work, one would have expected him to say something to somebody to that effect. It is undisputed that Grievant never made such comments to his dean or to his substitute during any of their communications.

Grievant claims he felt he had to be present on campus or at the roofing job site three to four days per week at 2 to 4 hours per day on the roofing project and an hour on campus. According to his dean's testimony, he did not need to be present at the roofing job beyond the first day. And while his dean did ask Grievant to attend two meetings and handle some other tasks, the dean's testimony does not provide corroboration for any need to be present three to four days per week. Similarly, the substitute instructor does not provide any justification for why Grievant would have been at the roofing job site beyond the first day. Moreover, the substitute put the duration of Grievant's visits at an average of 45 minutes.

It is undisputed that Grievant's courses at UWS were entirely online. Therefore, he could have satisfied his course requirements at any time of day or night or on weekends at his convenience. Even if he was involved in Engagement Work three to four days per week for 1 to 4 hours per day, it must be remembered that the visits included an unknown amount of time when he would be using the computer on campus for Sabbatical Work. Even if his Sabbatical Work on campus is overlooked, one would expect he would be left with sufficient time in the day and weekends to tend to his course work. His grades of A for the IHCC courses stand for the proposition that Engagement Work did not unduly interfere with his Sabbatical Work.

Although Grievant claimed his substitute took up much of his time with nightly phone calls, the testimony of the substitute disputed this. This conflict is among those on which the Union and Grievant have the burden of proof to establish the credibility of their evidence. No telephone billing records were introduced to show, one way or the other, how often they spoke or the duration of the calls. Once again, Grievant admitted he never asked the substitute to refrain from calling him.

Three other matters stand out as significant anomalies in Grievant's behavior during his sabbatical. First, it is undisputed that Grievant received a grade of F for the only UWS course that was listed as one of the five primary courses on his approved sabbatical plan. According to the

testimony of Grievant's UWS advisor, the advisor gave Grievant instructions how to avoid having the course grade become an F. Yet Grievant did not take any action to prevent this. No matter how much time he was spending on Engagement Work, one would have expected Grievant to find the time necessary to avoid the F. The record provides no explanation for this development.

Second, Grievant failed to provide proof of his UWS course work by means of an official transcript. This was because he failed to pay for his tuition and the debt remained unpaid at the time of arbitration. Grievant received his normal salary and benefits during his sabbatical leave. The record provides no explanation whatsoever for why Grievant did not pay his tuition at UWS.

Finally, there is no persuasive explanation for why Grievant was able to achieve grades of A for both of his IHCC courses while performing so relatively poorly on his UWS courses.

After due consideration of the many facets of this matter that bear on credibility, the finding is that the weight of the evidence supports the credibility of the Employer's evidence and undercuts the credibility of the evidence advanced by the Union and Grievant. The affirmative defense advanced by the Union and Grievant was, too often, based on relatively broad claims of interference by a variety of adverse forces that, on cross-examination, were often shrunk to only *de minimis* or non-existent magnitude. Accordingly, this section now turns to the analysis of the Employer's charge that Grievant failed to complete any of the five components of his sabbatical plan.

#### Grievant's failure to complete his course work

It is undisputed that Grievant did not actually register for the courses at UWS listed in his approved plan. Without more, this fact proves the Employer's contention. But there is more. Even if Grievant's diversion from his approved plan is overlooked, he still failed to complete the courses for which he did register. He received a grade of F for CTE-334 Performance Analysis at UWS. The course cannot, therefore, be considered to have been completed. This was the only course listed among the five primary courses on his approved plan that remained after his diversion.

Although not directly on point in this matter, Grievant's overall performance is deficient in another respect. Grievant was registered for five courses. The resultant Grade Point Average for the five courses shows his performance would not fulfill the average grade of "B" requirement for credit towards advancement on the salary schedule pursuant to Article 13, Section 2 of the Agreement.

#### Grievant's failure to define his program's core competencies

According to his approved plan, Grievant was to use the information he would learn at UWS to fulfill this commitment. On cross-examination, Grievant admitted that he had not done so.

#### Grievant's failure to develop updated curriculum for the Carpentry program

Once again, Grievant committed to use the information he would learn at UWS to update the curriculum for the program. He admitted on cross-examination that he had not done so "... at that time." From the context, it appears he meant he had not done so by the due date of January 9th. Although he did provide some Curriculum Review Forms to his dean via email on March 12, 2014, it is clear that the proposed changes were not based on information learned during his sabbatical. Instead, they were driven by factors that pre-existed his sabbatical leave and should have already been incorporated into the Carpentry program. For example, OSHA 10 comprised regulations that had been in existence well before Grievant's sabbatical leave.

#### Grievant's failure to provide a UWS transcript

It is undisputed that Grievant failed to provide a UWS transcript at any time prior to his discharge.

#### Grievant failed to submit his required sabbatical report upon his return

That Grievant failed to fulfill this requirement is also undisputed. Although Grievant submitted some documentation after the January 9<sup>th</sup> due date, none of it satisfied the sabbatical report requirement.

Given the foregoing credibility discussion, the following findings are warranted: First, Grievant failed to complete his approved sabbatical plan and also failed to submit an amended plan as he was required to do. Second, the Union and Grievant have not demonstrated any proper basis for being excused from these failures. The evidence advanced by them has not credibly established any circumstances beyond Grievant's control that mitigate the seriousness of the failures. Indeed, his failure to obtain approval of his amended plan was no fault of anyone but himself. Similarly, to

the extent that Grievant contended his substitute was unsuited to the task, it must be remembered that the substitute was Grievant's first choice, was prepared by Grievant, and Grievant did not take the steps necessary to authorize the substitute to obtain tools, equipment, and materials.

The foregoing findings now require consideration of the appropriateness of the discharge penalty. According to the Union's evidence, a person on sabbatical leave cannot be required to perform any type of Engagement Work while on a sabbatical leave. However, no provision of the Agreement has been cited to create such an outright prohibition. Moreover, such a contention ignores the undisputed realities of "singleton" programs described by SS during her testimony. Nonetheless, the Employer concurred that it tries to leave persons on sabbatical leave alone to fulfill their Sabbatical Work unless circumstances require otherwise; even then, the Employer tries to minimize any intrusions.

For its part, the Employer maintains that an unmitigated failure to complete a sabbatical plan while receiving full pay and benefits is an offense warranting discharge as well as an offense to which the doctrine of progressive discipline should not apply. In this regard, the Employer contends that it has no effective means to monitor a person who is on sabbatical leave to provide periodic corrective guidance if suitable progress is not being achieved. It also notes that the six-year service requirement that separates sabbatical leave eligibility renders the doctrine essentially ineffective.

In support of its contentions, the Employer introduced an exhibit showing seven examples of discipline imposed since April of 2006 within the MnSCU system involving failures to complete sabbatical plans as approved. Of the seven, all except two were initially assessed the penalty of discharge. The other two were initially assessed 15-day suspensions, which is the maximum permitted length of any disciplinary suspension, with or without pay, per Article 25 of the Agreement.

Another example shown on the Employer's exhibit involved a faculty member on layoff who was discharged for failing to complete an agreed-upon re-training plan in exchange for full pay and benefits. This discharge went to arbitration. The Award<sup>8</sup> in that case made this determination:

The Grievant accepted in excess of \$40,000 for services that he did not perform.

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<sup>8</sup>*North Hennepin Community College and Minnesota Community College Faculty Assn., Grievance of [GJ],(November 9, 1994, Cooper, Arb.)*

Such misconduct constitutes “just cause” for dismissal. The grievance challenging the dismissal is denied.

On cross-examination by the Union, the Union clarified the Employer’s discipline exhibit. The Union showed it was able to negotiate modifications of the initial discipline either before a grievance was filed or during the grievance process in all of the other disciplinary examples. The two 15-day suspensions were reduced to 5 and zero days respectively. One occurred in 2006 and the other in 2007. All of the discharges were converted to resignations. Similar to the instant matter, the two other most recent resignations involved initial discharges in early 2014.

Although the Union was able to negotiate resignations to replace initial discharges in the employee records, a permanent severance of an employment relationship by any other name is still a permanent severance of an employment relationship. Moreover, the maximum 15-day suspension permitted by the Agreement poses its own problem of needing to find a substitute instructor for the duration of the suspension. This would be especially troublesome where, as here, a “singleton” program is involved. On balance, the Agreement really does not provide a suitable disciplinary alternative to discharge that is commensurate with the magnitude of an unmitigated failure to amend a sabbatical plan coupled with an unmitigated failure to complete all components of the approved plan.

Given all of the circumstances of this record, the Employer’s decision to discharge Grievant was not unreasonable. Accordingly, the overall finding is that Grievant’s discharge was for just cause.

#### **AWARD**

The Employer did have just cause when it terminated Grievant for not completing the work of his approved sabbatical plan and not submitting an amended plan. The grievance, therefore, is denied.



Gerald E. Wallin, Esq., Arbitrator  
May 12, 2015