Personnel & Salary – County Clerk & Recorder Committee
Tentative Minutes
March 12, 2012

1. Call to Order: Chairman Boes called the meeting to order at 3:00pm. Present: Finfrock, Bauer, Bowers (left at 3:24pm), Heuer, Hopkins and Kenney. Others: Barnes, DeArvil, Baumgardner, Kilker, County Clerk/Recorder Becky Huntley, Health Dept. Administrator Doreen O'Brien, Solid Waste Director Steve Rypkema, Fred Cederholm, Chuck Cawley and Marty Typer.

2. Approval of Minutes: February 15, 2012: Motion by Finfrock to approve the minutes as presented, 2nd by Bowers. Motion carried.

3. Approval of Bills: Motion by Bauer to approve the bills in the amount of $15,305.71, 2nd by Bowers. Motion carried.

4. Public Comment: None

5. County Clerk & Recorder Report: County Clerk Huntley distributed her monthly Recorder report. She stated that everything is going smoothly with the election; 344 early/absentee voters at the Courthouse and 110 early/absentee voters at the Rochelle polling place. Huntley briefly discussed the letter that has been sent out to citizens from the Superpac and she has had several calls from upset citizens. She stated she has spoken with the State Board of Elections and she does have to process the absentee request from this mailing. She did put out a press release regarding her view of the material. Huntley also mentioned that other County Clerks were upset by it also and the Dixon news paper had a very good article regarding it.

   Barnes stated that his meeting with Chief Judge Gunderson regarding the holiday schedule did not go very well. Chief Judge Gunderson informed Barnes that the holiday schedule comes from the Illinois Supreme Court and he will not deviate from it. Huntley stated that this is the first year in her length in office that the November Presidential election was not a holiday.

6. New Business
   - Employee Evaluation Process (Appointed Officials): Boes distributed 2 hand-outs regarding the evaluation process. Kenney questioned who will do the evaluation without an Administrator; Boes felt that the respected Committee of the Dept. Head will do them. Bauer stated that once again we are dividing the County into 2 different groups; elected and appointed. Discussion continued regarding the participation and why it does not pertain to elected officials.

     Huntley questioned which holds precedent; union contract or elected official signature and who is responsible for verifying that the contract is upheld. Heuer stated that the contract should come first; however we do give an elected official a budget and how they spend it is up to them. Discussion continued.

     Boes stated his hand-outs are just examples and guidelines; he wants the Committee to discuss further next month. Huntley stated she felt that the monthly Committee meetings are the time for input and is a type of monthly evaluation.

   - Motor Vehicle Report Policy: Discussion was held regarding the policy; they will modify the current policy to meet the requirements from the insurance company.

7. Old Business
   - “EA” Communication: Boes stated he has been in contact with Kathleen Sidenberg and she is willing to meet to discuss the evaluation process. Boes would like Finfrock and Barnes to be present at the meeting.

     Heuer distributed a hand-out regarding social media that she received from the last UCCI seminar and it was suggested that the County review it.

     Kenney questioned the status of the labor attorney.

8. Chairman Comments: None

9. Adjournment: With no further business, Chairman Boes declared the meeting adjourned. Time: 4:02p.m.

Respectfully submitted,
Tiffany O’Brien

DISTRIBUTION TOTALS

REBECCA HUNTLEY

OGLE COUNTY CLERK/RECORDER

RECORDER'S OFFICE

YEAR (2012) FEBRUARY	RECORDING FEE	AUTOMATION FUND	G.I.S FUND	RECORDER'S G.I.S	COPIES	RHSPS STATE	RHSPS RECORDER	STATE REVENUE	COUNTY REVENUE	TOTAL
TOTALS	$10,618.00	$2,481.50	$9,758.00	$703.00	$1,822.15	$5,994.00	$333.00	$5,899.50	$2,949.75	$40,558.90
REVENUE STAMPS RECEIVED										
REVENUE STAMPS SOLD	$5,899.50									
STAMPS on HAND (2/29)	$34,054.50									
SIX MONTH TOTAL										
TOTAL for YEAR										
AVERAGE NUMBER RECORDED per DAY: AVERAGE NUMBER per DAY: SIX MONTH YEAR	2012/718(19)37.79 2011/671(17)39.47 2010/703(19)37		NUMBER G.I.S per MONTH (697)			NUMBER RHSPS per MONTH (666)				

Employee Name: _____

Performance Appraisal~ Management Employees

Employee Name	
Job Title	
Department	
Manager	
Period Covered	**(mm/yy) to (mm/yy)**

Objectives

1. The performance appraisal is designed to provide employees with feedback relating to their individual strengths and areas requiring growth during each twelve months of their employment.
2. The performance appraisal is designed to stimulate dialogue between the employee and the manager, and to encourage both parties to commit to goals to be accomplished during the next twelve months. It is intended to merely formalize a feedback process which is continually occurring between the employee and the supervisor. This process should be a comfortable experience for both parties.

Responsibilities

1. The appraisal process should be based on the organization's mission so clear goals can be set for the employee against which progress can be measured. The performance discussion form should be reviewed and updated, and goals can be adjusted based upon this discussion.
2. It is recommended that the performance discussion take place at least once a year. The original performance discussion form should be reviewed and updated at least annually.

Process

1. The performance appraisal document should be given to employee to acquaint them with the format and to provide them with the opportunity to consider their personal goals and objectives for the upcoming year.
2. Prior to meeting, the supervisor and the employee, independently, complete the document. It is not necessary that every bullet item be addressed, only those that are applicable. Bulleted items present concepts to think about and should be responded to in a more global sense on the right hand side of the page.
   Note: Only the manager's evaluation will be included in the personnel file.
3. The supervisor and the employee meet to discuss performance and to establish goals and objectives. The supervisor reviews general management expectations and personal effectiveness. The supervisor and employee sign the final document.

Employee Name: _____

Rating Scales

Unsatisfactory
Performance is inadequate (below minimum acceptable standards and expectations.) Performance is causing problems/inconveniences/hardships for the department and /or coworkers and is having a negative impact on departmental effectiveness and/or productivity. This level of performance cannot be condoned or allowed to continue. Employees with an overall rating of Unsatisfactory are not eligible for salary increases.

Provisional (New Employee)
New employees are not expected to perform at the Fully Competent level required of more experienced individuals. The new employee may need to be oriented to the job, complete required training, and/or need time to become proficient through practice and/or exposure to the new working environment. This level of performance applies to the new employee who is essentially satisfying the standards and expectations of a person learning or becoming oriented to the new position. New employees assigned an overall rating of Provisional may be eligible for salary increases.

Average
Performance only meets the minimum standards and expectations. Performance is generally "acceptable," but improvement is needed and expected. Performance at this level may cause the department and/or coworkers some problems or inconveniences- or tends to diminish the department's effectiveness and/or productivity. Performance at this level is characterized as "just getting by". Experienced employees assigned an overall rating of Provisional are not eligible for step/merit increases.

Fully Competent
Performance fully meets standards and expectations. The individual performing at this level is considered a stable and skilled performer by coworkers and immediate supervision. Performance, at times, may be higher or lower, but averages to the Fully Competent Level.

Commendable
Performance EXCEEDS standards and expectations. Performance at this level would generally be recognized by peers and immediate supervision. Performance is characterized by notable skill, initiative, and superior job knowledge. This individual's performance exceeds most other employees in the same position.

Outstanding
Performance SIGNIFICANTLY EXCEEDS standards and expectations. Performance at this level would generally be recognized by peers, immediate supervision, higher level management and others. This individual suggests and initiates improvements/changes and through own performance has materially enhanced effectiveness of the department or work area. Performance is generally not equaled by others (current and/or former employees in the same position.)

Employee Name: _____

Job Skills and Knowledge • Demonstrates knowledge & understanding of job duties, equipment, and appropriate work methods • Applies knowledge of skills to produce quality work • Completes assignments in a thorough and accurate manner • Able to perform wide variety of job related tasks	**Performance Discussion** **Rating: Competent**
Responsibility • Performs responsibilities as specified in the job description • Performs tasks thoroughly and on time; works within departmental guidelines • Produces work that is accurate and purposeful • Makes sound recommendations and decisions	**Performance Discussion** **Rating: Competent**
Customer Service • Maintains courtesy and diplomacy with internal customers and external contacts • Makes self available to respond to customer needs • Prevents unnecessary delays for customers • When necessary, communicates policies to the customer effectively and accurately • Listens effectively	**Performance Discussion** **Rating: Competent**
Problem Solving • Able to isolate and define problem areas • Participates constructively in group problem solving • Considers alternatives and consequences before making decision • Finds innovative and improved ways of doing things • Utilizes job knowledge and sound reasoning to analyze situations, resolve problems, and reach decisions	**Performance Discussion** **Rating: Competent**

Employee Name: _____

Organization • Adheres to priorities & deadlines • Follows through on assignments despite setbacks • Plans and schedules work for self and employees to meet City objectives and goals • Eliminates unnecessary duplication • Produces neat, accurate, thorough, and organized work • Demonstrates flexibility in responding to priorities and organizational change	**Performance Discussion** **Rating: Competent**
Leadership Qualities • Fosters and encourages support from department to accomplish objectives, follow procedures, and accept suggestions • Inspires confidence and respect in department personnel • Motivates employees to achieve departmental and business goals and objectives • Promotes respect, honesty, integrity, and fairness to all	**Performance Discussion** **Rating: Competent**
Initiative • Willing to assume new and challenging assignments • Expends the effort and time necessary to do the job well • Routinely shows an interest in improving knowledge and skill level • Is able to work independently or within a group • Offers suggestion to solve problems or improve operations	**Performance Discussion** **Rating: Competent**
Budgetary Controls • Controls operating costs by effectively utilizing staff, material, and equipment • Carefully monitors expenditures and works within budgetary constraints • Contributes to planning by providing comprehensive justification for budgetary requests • Controls capital costs by effectively utilizing staff, materials, and equipment	**Performance Discussion** **Rating: Competent**

Employee Name: _____

Disciplinary Measures • Prompt in addressing disciplinary problems • Handles disciplinary measures appropriately and in a timely fashion • Reacts and applies disciplinary measures equitably to employees	**Performance Discussion** **Rating: Competent**
Attendance and Punctuality • Reports to work as scheduled • Follows call-in and approval procedures for time off • Requests and uses leave appropriately	**Performance Discussion** **Rating: Competent**
Interaction with Others • Expresses ideas and information accurately and understandably in both oral and written form • Interacts and cooperates with others to ensure the City's objectives and goals are met • Resolves conflict effectively • Shows interest in the job and the City • Shares information with other departments	**Performance Discussion** **Rating: Competent**
Organizational Development • Promotes teamwork/cooperation • Promotes and actively participates in organizational development processes • Solicits ideas form other departments when appropriate • Supports City's objectives and missions	**Performance Discussion** **Rating: Competent**
Safety and Health • Actively participates in and supports the safety and health program • Enforces all safety rules, regulations and procedures. Provides training if appropriate. • Makes certain that equipment, tools, and machinery are being used and maintained properly • Keeps abreast of accident/injury trends within department and takes proper action to reverse	**Performance Discussion** **Rating: Competent**

Employee Name: _____

Management Skills	**Performance Discussion** **Rating: Competent**
• Promotes teamwork/cooperation • Trains, coaches and develops employees • Delegates responsibility and authority • Establishes annual goals for the department • Focuses on achieving results in an effective and timely manner • Communicates and executes City policies • Clearly defines responsibilities and authority limits to employees • Recognizes individual capabilities and assigns work accordingly • Focuses on performance rather than personality in relating to others	

Overall Assessment: Competent

Areas that require improved performance:

Goals for the upcoming year:

My signature acknowledges that this performance appraisal has been discussed with me. It does not indicate agreement with the contents.

_____ _____

Employee Signature date Evaluator signature date

_____ _____

Department Head Signature date Human Resources Signature date

Employee Name: _____

Employee Comments:

Please respond to the following questions:

1) What do you like most about your job?

2) What do you like least about your job?

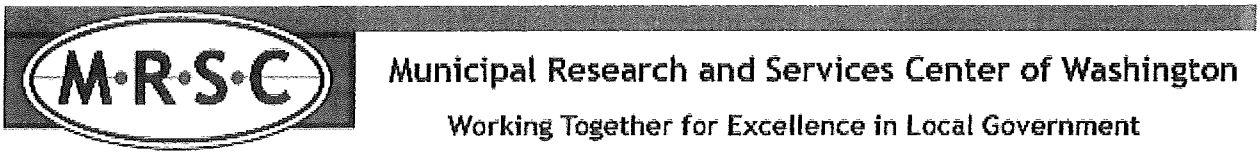
3) What would you like to see changed/improved?

4) What are your career objectives?

Rate the following:

	Excellent	Good	Fair	Poor	N/A
Your Salary					
Employee Benefits					
Supervision					
Administration					
Communications					
Your job duties					
Job Safety					
Employee Facilities					
Employment Security					
Recognition of Efforts					
Workload					
Working Conditions					
Fair Treatment					
Policies/Procedures (City-wide)					
Policies/Procedures (Department)					

Note: This data is for informational purposes only. Your feedback will help the City of Anacortes determine if changes need to be made within our system.



HR *Advisor*

MRSC has joined with Janice Corbin and Janet May, Partners, Sound Employment Solutions, Rhonda Hilyer, President, Agreement Dynamics,and Bruce Schroeder, Employment/Litigation Attorney, Summit Law Group, to bring you the "HR Advisor" article series on employment and labor law issues affecting Washington local governments. The "HR Advisor" will feature a new article each month with timely HR management information and advice you can use.*

Employee Performance Evaluations

January 2005

Janice Corbin and Janet May
Sound Employment Solutions, LLC

Recently, as cities and counties try to do more work with fewer resources, we have seen a resurgence in public entities wanting to focus on performance management, including a recommitment to the use of annual performance evaluations. Performance evaluations serve as a valuable tool for recognizing the performance of your top performers, for providing redirection to employees who may not be performing to your expectations in a particular area, and for taking the first step in dealing with the problematic performer. When you say the words "performance evaluation", however, many employees and supervisors immediately have a negative reaction. Because we strongly believe in the importance of performance management, including performance evaluations, we have spent a lot of time talking with supervisors about their concerns when it comes to performance evaluations. Several common issues of concern have surfaced, including, but not limited to, a lack of understanding as to why performance evaluations are necessary in the first place, a lack of training in how to give feedback to employees and/or how to prepare the evaluation, and a concern about how an employee will react to the feedback.

With these common concerns in mind, this article will focus two key performance evaluation issues. The first is the reasons for doing performance management and why it is critical to the workplace. Next, key issues to keep in mind when preparing the performance evaluation.

Reasons for Doing Effective Employee Performance Management

- Employees want to know from their supervisors where they stand. They value knowing what is expected of them, especially in today's ever-changing work environment. Honest and consistent feedback about individual job performance helps the employee know the performance that is being done well, what needs to be changed or corrected, and results or consequences of his/her performance.
- Employees who are self-motivated achievers and consistent performers will succumb to frustration and disillusionment if there is no distinction between their performance and the performance of the mediocre or poor performer.
- The performance evaluation meeting provides the employee and the supervisor with an opportunity to have a conversation about performance goals and objectives, and to explore objectives for the

next evaluation cycle.

- Honest and accurate performance feedback provides managers, supervisors and employees with an opportunity to set performance goals for individual employees and the team.
- Performance management in the form of a performance evaluation is an invaluable instrument that validates recruiting, hiring, and selection processes for hiring employees with specific job skills and qualifications.
- Performance evaluations are a critical tool in assessing the organization's training and staffing development needs.
- Doing performance evaluations is a required job duty of supervisors and managers in most public entities.
- Performance evaluations serve as the first step in addressing problematic performance.

Supervisor's Performance Evaluation Checklist

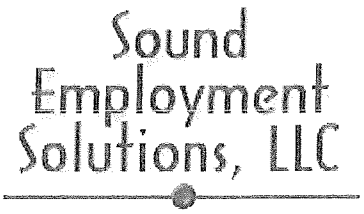
- Keep a file on all employees that work in your workgroup and include information about things that occurred throughout the evaluation cycle, such as work on a special project, citizen commendations, training, citizen complaints, performance discussions, etc.
- Provide feedback to your employees, throughout the evaluation cycle, not just at evaluation time. Timely and consistent performance feedback is essential in detecting and correcting poor performance early in the evaluation cycle. Early detection will help the employee redirect his/her performance to a more suitable level. When addressed early in a systematic way, the chance of the conversation becoming confrontational is lessened. The annual performance evaluation meeting should not be the first time the supervisor has discussed performance with the employee.
- Review the job description to see if there are any changes in the work being performed by the employee. All employees should have a job description that specifically details the essential functions of their position. In addition to providing the basis for analyzing potential disability accommodations, job descriptions play an important role in the performance evaluation process because they provide the basic understanding of what the employee's job duties are.
- Using the job description as a springboard, the supervisor should have a set of performance expectations or performance goals for employees. These expectations should include basic standards of performance related to job duties, but also should contain more subjective elements such as teamwork and communications.
- Consider what changes may have occurred in the organization and/or in the daily operations during the evaluation cycle. Organizational or operational changes may have directly impacted the employee's performance, i.e., introduction of new technology, new procedures, and staff shortages.
- By their very nature, performance evaluations contain your opinion of the employees. Make sure such opinions are based on objective facts or behaviors.
- Be authentic and sincere when giving an employee performance feedback. The supervisor's rating and remarks should reflect the actual performance, i.e., exceptional or exceeds standards, or below standard.
- Resist the temptation to let recent events dominate the evaluation. Doing so leads to frustration in the strong performer who wonders if you were paying attention the rest of the year, and gives the message to the problematic performer that he/she only has to perform right before evaluation time.
- Evaluate each performance element individually. Do not let the deficient or excellent performance in one element determine the tone of the entire evaluation.
- Do not mention that the employee filed a grievance or other complaints. Do not base negative ratings on a disciplinary action that has been overturned on appeal.
- Performance evaluations should never be influenced positively or negatively by a person's race, gender or other protected class status. With that said, do not let fears of discrimination cause you to rate all employees with the same rating.
- Remember that the discussion about the employee's performance does not always have to result in agreement between the supervisor and the employee, but it does mean there has to be an understanding. In other words, the employee may not like the standard or performance expectations, but when he/she leaves the performance evaluation meeting, the employee understands what is expected.

HR *Advisor*

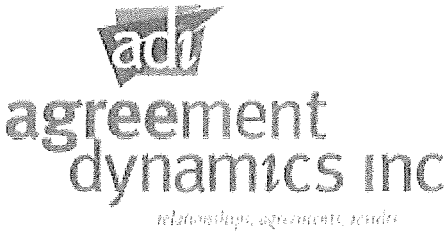
Bruce Schroeder is an employment / litigation attorney with Summit Law Group, Seattle. Bruce's practice is concentrated on representing management in the entire range of employment law matters. More.

Janice Corbin is a partner with Sound Employment Solutions, LLC, Seattle. Janice has over 15 years of human resources experience with the Seattle Police Department and the International Harvester Truck Company and has worked in the law enforcement field for over 22 years. More.

Janet May is a partner and attorney with Sound Employment Solutions, LLC, Seattle. Janet has over ten years of experience in the labor and employment law field, and has represented both management and labor. More.



Rhonda Hilyer, President and Founder of Agreement Dynamics, is an international consultant with a reputation for helping convert traditional, conflict-based environments into productive, collaborative ones. More.



*The Articles appearing in the "HR Advisor" column represent the opinions of the authors and do not necessarily reflect those of the Municipal Research & Services Center.

SOCIAL MEDIA

I. BEST PRACTICES FOR EMPLOYERS

A. Adopt written policies to address social networking as it pertains to your business activities and employees.

   1. Narrow your social media policy. The issues most commonly raised before the NLRB allege that an employer has overbroad policies that restrict employee use of social media.

   2. Publish policies and notify employees of the policies' existence. Have employees sign a written acknowledgement.

B. Consider prohibiting the use of company equipment and systems for personal purposes.

C. Employees should be prohibited from writing about, posting pictures of, or otherwise referring to any other employee without his or her permission.

D. Prohibit management from "friending" or connecting to employees on social media sites.

E. Employers should consider making sure that there is a legitimate business need before taking action that may be construed as an intrusion into employee privacy.

SOCIAL MEDIA

(Sample Policy)

I. USE OF SOCIAL MEDIA

The purpose of this policy is not to restrict the flow of useful and appropriate information but to minimize the risk to the company and its employees. The company recognizes the growing importance of online social media networks as a communication tool and respects the right of employees to use the mediums during their personal time. Use of these mediums during company time or on company equipment, however, is prohibited.

The company takes no position on its employees' decision to participate in the use of social media networks. However, employees who participate in social media are encouraged to include information about their work at the company as part of their personal profile as it would relate to a typical social conversation. This may include:

- Work information such as company name, job title, and job duties.
- Status updates regarding an employee's own job promotion.
- Personal participation in the company sponsored events, including volunteer activities.

A. In general, employees who participate in social media are free to publish their own personal information without censorship by the company. Employees must avoid, however, posting information that could place the Company at competitive or legal compliance risk.

1. All employees are responsible for maintaining the company's positive reputation and presenting the company in a manner that safeguards the positive reputation of themselves, as well as the company's employees, managers, and shareholders.

2. If an employee chooses to identify him or herself as a company employee on any social media network, he or she must state in clear terms that the views expressed are the employee's alone and that they do **not** reflect the view of the company. Employees are prohibited from acting as a spokesperson for the company or posting comments as a representative of the company.

There are some types of information employees are not permitted to discuss or display online, including:

- Information that is confidential or proprietary to the company or to a third party that has disclosed information to the company. For example:
    - Information about or identifying coworkers; the company's customers, partners, vendors, and suppliers; or
    - Information that may be valuable to a competitor including specific product information or pricing; embargoed the company's information such as launch dates, release dates, and pending reorganizations; and the company's intellectual property such as drawings and/or designs, software, ideas, and innovation.
- Statements disparaging the company's or our competitors' products or services, executive leadership, coworkers, strategy, and business prospects.
- The company's logo on any social media network without permission. Also, images of coworkers and the company's premises and property.
- Statements, comments, or images referencing illegal drugs or that include profanity or could be considered obscene.
- Statements, comments or images that disparage any race, religion, gender, sexual orientation, disability, or national origin. Also, any communication that engages in personal or sexual harassment, unfounded accusations, or remarks that would contribute to a hostile work environment (racial, sexual, religious, etc.). As well as, any behavior not in agreement with the company's Standards of Ethical Conduct Policy or general corporate policies.

- The company maintains a corporate presence on social media sites that are deemed appropriate for marketing the company to the public. These pages are maintained by the Marketing Department; however, employees are encouraged to participate on these pages while representing themselves personally, following the guidelines above.

II. NOTICE

Employees will be subject to discipline for any social media posting that the company determines is detrimental to the company's business. Note that employees will be held responsible for the disclosure, whether purposeful or inadvertent, of confidential or proprietary company information, information that violates the privacy rights or other rights of a third

party, or the content of anything posted on any social media. Further, employees may be liable for monetary damages for such disclosure.

III. VIOLATION OF POLICY

The nature of any social media posting and degree of harm to the company will be factors in determining whether discipline will be imposed and the severity of any such discipline, up to and including termination of employment.

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of Arbitration Between The Hope Institute for Children and Families and American Federation of State, County and Municipal Employees (AFSCME) Council 31, AFL-CIO on behalf of AFSCME Locals 2481 and Unit A	Discharge of [redacted]

Appearances: Brown, Hay & Stephens, LLP by Mr. Jeffery M. Wilday Attorney, for the Employer

Ms. Susan M. Osthus Legal Counsel, AFSCME Council 31, for the Union

The above-captioned parties were unable to resolve a dispute over the interpretation and application of their Agreement. They selected Edward B. Krinsky as arbitrator to make a final and binding determination of the dispute.

A hearing was held on June 17, 2009 at Springfield, Illinois. No transcript of the proceedings was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed on July 15, 2009 with the receipt by the arbitrator of the parties' closing arguments.

The parties stipulated to the following issue: Was the grievant discharged for just cause? If not, what is the remedy?

The following language of the is relevant to the dispute:

ARTICLE VII DISCIPLINE

Section 1. Definition

In order to protect the health, safety, and welfare of the persons we serve in order to provide the highest quality

> services possible, certain rules and regulations have been adopted for all employees. While specific violations may be considered severe enough to warrant immediate dismissal, the Employer agrees with the tenets of progressive and corrective discipline.
>
> . . .
>
> Disciplinary action may be imposed upon non-probationary employees only for just cause...

Facts:

The Employer is a private organization, serving the needs of developmentally disabled children who, according to the testimony of Chief Operating Officer Bukowski, have "significant cognitive and medical impairments." The children reside at the facility and the Employer provides services for them twenty-four hours a day, seven days a week. The Employer is funded by State of Illinois agencies, as well as grants and donations. Bukowski and Chief Executive Officer Nyre both testified that the Employer's reputation is central to its mission, as it affects decisions of parents to send their children to the Institute as well as the decisions of foundations, donors and the State to support it.

Employees receive an Employee Handbook which includes:

> **Productive Work Environment - No Harassment**
>
> The Hope Institute promotes a productive work environment and does not tolerate inappropriate verbal or physical conduct by an employee...which creates an intimidating, offensive, or hostile environment...
>
> Employees are expected to act in a positive manner and contribute to a productive work environment that is free from harassing or disruptive activity. Employees...are individually responsible for their conduct or activity in the workplace, especially when it is harassing or disruptive. Harassing or disruptive activity can include, but is not limited to, jokes, remarks, pictures, cartoons, slurs, insults, or other speech or conduct intended to cause, or which do cause, any person to be ridiculed, embarrassed, belittled, or held up to public ridicule, on account of his or her race, gender, religion, marital status, union status, age, physical appearance, handicap, ethnic origin, or any similar condition or status, especially including sexual harassment.
>
> No form of harassment will be tolerated, and any employee...who is found to have engaged in harassment of

another employee will be subject to appropriate disciplinary action, depending on the circumstances, up to and including termination.

. . .

On the Job

Professional Conduct

Every employee is expected to conduct his/herself in a manner that reflects the highest standards of professionalism, ethical practice, and customer service. Our philosophy is that we CARE (Consistently Appreciate and Respect Everyone) at all times...

...Extra care is expected to maintain good relationships with the members of the community we serve...

Personal Conduct

An employee holds a position of public trust and is expected to conduct himself/herself in a responsible, professional manner, refraining from conduct that adversely affects the confidence of the public. An employee who violates the public trust or fails to conduct herself/himself in a professional manner is subject to discipline up to and including dismissal from employment. The rules of personal conduct include, but are not limited to, the following:

1. An employee shall not participate in or condone...misrepresentation in the performance of duties;

. . .

4. An employee shall show respect for cultural styles and values of different groups and individuals within those groups;

. . .

7. An employee's conduct while off-duty may subject the employee to discipline up to and including dismissal. In order to invoke discipline or to discharge an employee, the conduct must raise reasonable doubt concerning the employee's suitability for continued employment...

. . .

9. An employee shall not demonstrate inappropriate behavior...

. . .

Expectations, Rules, and Responsibilities

The nature of our business at The Hope Institute requires that all employees...follow...guidelines for personal standards of conduct. If an employee violates..guideline, whether in the workplace or outside the workplace, they may be subject to disciplinary action up to and including discharge.

The following are a list of possible reasons for the immediate

> discharge of an employe.
>
> . . .
>
> 13. ...engaging in conduct that conflicts with the overall mission/philosophy of The Hope Institute outside of The Hope Institute.
>
> . . .

The grievant, signed a "receipt for the...handbook" on September 26, 2005. The receipt document includes the statement, "I ...understand that failure to comply with the policies contained it it may result in disciplinary action, up to and including discharge."

Nyre testified that approximately once a week he conducts a Google search for "The Hope Institute for Children and Families," and for the Institute's top executives by name, to see what appears there. Some time in late November or early December, 2007, on a week-end, he conducted such a search, and discovered the following entry:

> MySpace.com - "Pain is inevitable. Suffering is optional."- 26...
>
> Currently, I am a Residential Service Advisor Supervisor at **The Hope Institute for Children and Families.** I have been working with children with...

Nyre clicked on the link which accompanied this entry and looked at the first several pages of the grievant's MySpace page. He was sufficiently disturbed by what he saw that he called Bukowski immediately, told her what he had found, and asked her to investigate the matter.

Bukowski testified about the grievant's MySpace posting:

On the second page grievant identified himself as a Supervisor at the Institute. In fact, she testified, the grievant was not a supervisor, and had not been one. [The arbitrator notes, too, that under the "General" category is written "...Pimpin since been pimpin since been pimping,

On the third page there is a photo of the grievant. Bukowski testified that it is clear from the background of the photo that it was taken at the grievant's workplace in Grant Unit #2, where he works. The photo shows the grievant holding up both hands, each with the middle finger

extended. The caption under the photo says "Take this [redacted] to the boss bitches..." Bukowski testified that she is a boss, and she supervises another woman who in turn supervises the grievant.

On the fourth page, the grievant has indicated "Occupation: PIMP!" and "Income: $250,000 and Higher." [The arbitrator notes, too, that under the "Companies" category is listed "CMJ Pimp Service Inc. Yo Momma, Udahoe US Master Pimp Hoetollogy" Also repeated there, as in a prior page, is the statement "Pimpin since been pimpin..."]

On the fifth page there is a photo depicting the grievant and a female employee, with arms around one another, taken at the work place. [The arbitrator notes, too, that someone has posted a comment on the page, dated June 19, 2007, stating "I went to school with her. She cool as[redacted]]

The sixth page has several photos. One shows the grievant with a female former employee, and the caption underneath says "Jen and I[redacted] in the bathroom!!!" A second photo shows the grievant with another female former employee, and the caption underneath says "A good friend who loves to give[redacted]..." Bukowski testified that this picture was taken at the grievant's work place.

The seventh page has a photo taken at the work place. The grievant is depicted standing with his right hand behind his head, and with something bulging from his pants which, Bukowski testified, appears to be an erection. The caption says "Ima myspace freak, a myspace freak. Just being stupid at work!!!!" [The arbitrator notes, too, that on that page someone has posted a comment, dated March 22, 2007."]

The eighth page shows the grievant at his work place in a boxing pose, with both hands made into fists held in front of his face. The caption says "Keep your chin tucked [redacted] cause Im comin with the thunda!!!!"

The ninth page has a photo of the grievant taken at work and has a caption, "What the [redacted] That's all I can Say!"

The 10th page has a photo of the grievant at the work place, holding his hand over his mouth. The caption is, "Who DEY."

The 11th page has a photo of the grievant at the work place. He is wearing a tiara, and the caption is "LIL FAIRY! WHAT THE [redacted] LOL"

A 12th page shows the grievant at the workplace, and the caption is [redacted] you!!!"

A 13th page shows the grievant at the workplace, with his fisted hands in a boxing stance. The caption says, "YOU KNOW IM COMING FOR YA...ITS BEEN A LONG TIME WAITIN'..."

A 14th page has a photo of a female co-worker. It was taken at a playground. The female is sitting astride something, and the caption is "Come and Jump on It...My pony Baby Come and Jump on it!!!!! FREAK!!"

Bukowsi testified that she viewed the grievant's MySpace page as being "absolutely" in violation of the Employer's Personal Conduct policy. In her view, the MySpace entries call into question the grievant's respect for children and women and are inappropriate for someone whose position requires maintaining the trust of children and their parents. In her view, a parent would be "totally appalled" if they found this while doing a Google search, and they wouldn't want to enroll their children at the Institute.

On cross-examination Bukowski testified that she was "stunned and shocked" after seeing the grievant's MySpace entries. She consulted with Human Resources, and she had someone talk to the grievant telling him to take down the entries. She doesn't know when that was done.

Bukowski testified that since being hired, the grievant was promoted to his present position. She was not aware of whether he had had any other problems at work.

Bukowski testified that she recommended to Nyre that the grievant be terminated. In so doing she didn't consider his past record. She viewed his conduct as being so egregious and as having such potential negative impact on the Institute that she viewed immediate discharge as the only appropriate penalty

She testified also that no parent ever called her about the MySpace posting, and that there is no evidence that the grievant used language at work similar to what appeared in the captions. In her view these things did not make any difference in her recommendation of what should be done.

Nyre testified that he agreed with Bukowski's testimony and concurred in her recommendation that the grievant be discharged. He described himself as having "a severe reaction" to what he saw. He also shared her perception of the grievant having an erection in one photo, and he viewed the grievant's description of himself as a pimp as being exploitive of women and children, not in keeping with the Institute's mission of helping to make a better life for the children under its care, and as damaging to the Institute's reputation and its fund raising efforts.

The grievant was discharged on December 20, 2007. The discharge notice included:

> Harassment and inappropriate conduct in that you posted inappropriate and sexually explicit comments on a publicly accessible internet site where you identified yourself as a THICF employee and displayed Photographs of THICF co-workers taken at work without authorization, and which include inappropriate and sexually explicit comments about THICF employees and an inappropriate and Sexually explicit pose.
>
> . . .
>
> This conduct is in violation of THICF policies regarding personal conduct, including off-duty conduct, and sexual harassment...

The following day, the Union filed a grievance citing "unjust discharge violation of Article

seven and all other pertinent articles that apply," and requesting that the grievant be returned to work and made whole.

The grievant testified that he was hired in September or October, 2005. He began as a Habilitation Specialist and in mid-2006 was promoted to a Lead Worker position. The only previous discipline given to him was a verbal warning [for something completely unrelated to the matters which led to his discharge]. He is not aware of anything but positive comments from parents of the children under his care. He never received a bad evaluation, and he was never cautioned about his behavior in the workplace.

He testified with respect to the MySpace entries that they were meant entirely as "fun" for the entertainment of his friends. He described himself as "a jokester" and none of what appeared was meant to be taken seriously. He testified that the "pain is inevitable..." quote (which appears on every page of the posting), is the slogan of the mixed martial arts fight club which he belongs to at a local gym. He testified that the only fighting he did was at the gym, and he has never been arrested for any violent behavior. He testified that he is not a pimp, and never has been one, and that he does not make $ 250,000 and never has, and that he was not a supervisor. Asked on cross-examination why someone would think it funny that he identified himself as a supervisor, he testified that his friends would say "cool, you're a supervisor.".

The grievant testified that he did not have an erection in the photo. Rather, he was wearing baggy pants and had keys, wallet and a phone in his pocket , which gave the appearance of something it was not.

The grievant testified that when a supervisor approached him to let him know that management of the Institute knew about his web site, he took the captions and photos off the work site within an hour. He did not know that his postings would be viewed as a violation of the Employer's policies, and it didn't occur to him that they might be offensive to parents or donors. He testified also that all of the co-workers who appeared in the photos

were his friends, and none of them complained about them.

In April, 2008 the Employer issued to employees a policy entitled "personalized website postings." It is undisputed that prior to that date, the Employer did not have a policy in place which specifically addressed website postings.

Discussion

The grievant's actions in this case were offensive to the Employer representatives who viewed the MySpace page. They were also potentially very damaging to the Employer's interests, which depend on its good reputation for donations, foundation and government funding and on the willingness of parents to entrust their children to the Institute. The arbitrator has used the word "potentially" since there is no way to calculate whether there were actual damages incurred, or over what period of time. As noted above, "Comments" on some of the pages suggest that the posting may have been up for many months.

MySpace and Google are available to anyone with a computer and internet access. Before the grievant's posting was taken down, any such individual could have Googled the Employer's name and been shown the link to the grievant's MySpace page. Even after the posting was taken down, the posting would still exist on any computer on which it had been downloaded, and therefore could have had further distribution.

Giving the grievant the benefit of the doubt, he testified that the posting was all for the amusement of his friends. Again, giving him the benefit of the doubt, it did not occur to him that he was doing harm to his Employer. In point of fact, however, what he posted was not amusing to Employer representatives, and it was harmful to the Employer. The Union argues that there was "no evidence presented that any co-worker saw and was offended or intimidated [by the posting]." Neither party called other bargaining unit members as witnesses, and thus their reactions are unknown. Clearly Nyre and Bukowski, who are employees of the Institute whether or not the Union would view them as co-workers, were offended by what they saw.

Any number of things about the posting were offensive including: (a) the grievant's identification of himself as an employee of the Employer; (b) his misrepresenting his status as a supervisor, which made the situation worse if viewers thought that a person responsible for this posting could be a supervisor there; (c) his claiming to make a salary of a quarter of a million dollars, coupled with (d) his identification of himself as a pimp and multiple references to "pimpin". Imagine the viewer who would get the impression that an employee of an institution caring for developmentally disabled children would be a pimp!; (e) his posting photos taken at the workplace, with several pictures of himself making obscene, suggestive or aggressive gestures; (f) posting obscene and disgusting captions on several of the photos, some of which could be viewed as offensive to anyone, and particularly to women, African Americans, gays and lesbians as well anyone who is offended by crude sexual comments and/or gestures.

When the Employer became aware of the MySpace page it took immediate action to have the posting taken down, and to take disciplinary action. The Employer viewed the grievant's conduct as egregious and as providing just cause for his discharge. The arbitrator is in agreement with the Employer's assessment of the situation.

There are no mitigating factors. The grievant was a short-term employee. Although he was a good employee with a clean disciplinary record prior to the events in this case, those factors are outweighed by the outrageousness of his conduct. There is also no contention, or evidence, that the Employer singled the grievant out for especially harsh treatment. There is no evidence that conduct such as the grievant engaged in has been tolerated by the Employer in the past.

The Union notes that the Agreement contemplates the use of progressive discipline, and in its view the grievant's internet posting was not just cause for immediate discharge. The Union agrees with the appropriateness of the Employer's actions insofar as it directed him to remove the offensive content and remove any reference to the Hope Institute, which he did, and the Employer's subsequent creation and publication of a policy about its

expectations of use of personal web pages. In the Union's view, these actions coupled with an oral reprimand would have been sufficient discipline.

As quoted earlier, the language of the Agreement includes the statement: "While specific violations may be considered severe enough to warrant immediate dismissal, the Employer agrees with the tenets of progressive and corrective discipline." The arbitrator agrees with the Employer that the violations of its policies by the grievant were severe enough to warrant immediate dismissal.

The Union argues that the grievant's conduct in posting his MySpace pages did not violate specific rules. The fact that there was no rule prohibiting items (a)-(f) listed above by the arbitrator, does not mean that employees were free to engage in such conduct without the prospect of serious disciplinary action including discharge. Any employee reading the Employer's Handbook, which was given to each employee including the grievant, could not help but understand the importance to the Employer of avoiding misconduct both on and off the job, including conduct which would bring harm to the Institute.

At the hearing the Union asserted that an employee should not be subject to discipline for off-duty conduct which has no nexus to the employee's employment. While his MySpace posting was apparently meant for the amusement of his friends, and the posting may have been made on his own time while off duty, the grievant himself provided the nexus to the workplace. He identified himself, unnecessarily, as an employee of the Employer, misrepresented his employment status, posted inappropriate photos taken at the workplace and gave them inappropriate and offensive captions. These actions violated the Employer's policies and were potentially harmful to the Employer.

In its closing arguments the Union asserts that discharge of the grievant was inappropriate also because no other employees were disciplined for their actions. There was no testimony or evidence presented at the hearing about discipline of other employees, or the lack of it. There was also no evidence presented that any other employee shared

responsibility with the grievant for the posting or its contents.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The grievant, [redacted] was discharged for just cause. The grievance is denied.

Dated this 22nd day of July, 2009 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator