

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

BLUE CROSS & BLUE SHIELD UNITED  
OF WISCONSIN

and

OFFICE AND PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION LOCAL NO. 787,  
AFL-CIO-CLC

Grievances 93-52,  
93-54 and 94-11  
involving Louise Rosier

Case 2  
No. 51816  
A-5310

Appearances:

Mr. Lawrence T. Lynch, Foley & Lardner, 777 East Wisconsin Avenue, Milwaukee, WI 53202, and Mr. Robert I. Wertheimer, Company Attorney, 401 West Michigan Street, Milwaukee, WI 53203, appearing on behalf of the Company.

Mr. Vincent G. Cossens, Business Representative, 633 South Hawley Road, Milwaukee, WI 53214, with brief by Ms. Sandra K. Graf, Murphy, Gillick, Wicht & Prachthausen, 300 North Corporate Drive, Suite 260, Brookfield, WI 53045, appearing on behalf of the Union.

ARBITRATION AWARD

The parties jointly requested that the Wisconsin Employment Relations Commission designate the undersigned Marshall L. Gratz to serve as Chairman of an Arbitration Board also consisting of Company-appointee Kathryn Koenen Potos (the Company's Director of Human Resources) and Union-appointee Roger Bybee (Communications Director, Labor Strategies, Inc., Madison, WI) to hear and determine a dispute concerning the above-noted grievances under the grievance arbitration provisions of their June 1, 1989-May 31, 1993 Agreement (herein Agreement).

The parties presented their evidence and arguments to the full Arbitration Board at a hearing held at the Hilton Inn--Milwaukee River, in Glendale, Wisconsin, on January 17, 1995. After a transcript of the hearing was distributed, the parties submitted post-hearing briefs by March 11, 1995, marking the close of the record. The Arbitration Board met in executive session at the Madison office of the Wisconsin Employment Relations Commission on April 27, 1995. The Arbitration Board Chairman (herein Chairman) circulated a draft award to the other members of the Arbitration Board on July 31, 1995. After further deliberations, the following Award is hereby issued.

## ISSUES

At the hearing, the Company proposed that the issues be: "Was the Grievant disciplined and discharged for just cause? If not, what is the appropriate remedy?" The Union proposed and the Company agreed that Arbitration Board be authorized to fashion a statement of the issues after it has had an opportunity to receive the evidence and the parties' arguments. The Union proposed in its brief that the issues be: "Whether the discipline of the Grievant was proper, and whether her discharge was for just cause and, if not, what is the appropriate remedy?"

The Arbitration Board formulates the issues for determination as follows:

1. Did the Company violate the Agreement by its September 9, 1993 written warning to Grievant?
2. Did the Company violate the Agreement by its October 19, 1993 three-day suspension of the Grievant?
3. Did the Company violate the Agreement by its June 22, 1994 discharge of the Grievant?
4. If the answer to any of 1-3, above, is "yes," what is the appropriate remedy?

## PORTIONS OF THE AGREEMENT

### ARTICLE I Recognition

. . .

1.4 The Company agrees that it will not discriminate or coerce an employee because of his activity as a member of the Union.

. . .

### ARTICLE II Management

2.1 The Union recognizes that the management of the office and facilities and the direction of the working forces, including the right to direct, plan and control operations, and establish and change working

schedules and establish and enforce reasonable work rules, the right to hire, promote or transfer employees, or suspend or discharge employees for just cause or to lay off employees for lack of work or other legitimate reason, the right to introduce new or improved methods, materials, processes and equipment or facilities, and to manage the properties are vested exclusively in the Company. . . . The Company in the exercise of its rights hereunder shall not violate or fail to comply with the express purpose of a specific provision or provisions of this Agreement.

. . .

## ARTICLE V Grievance Procedure

5.1 A grievance is a claim based on an alleged violation of, failure to comply with, or a dispute involving the interpretation or application of, a specific provision or provisions of this Agreement.

5.2 A grievance must be presented to the Company within twelve (12) working days of the discovery of its occurrence or the same shall be deemed waived by the Union and the grievant.

5.3 In the event of such grievance, the steps hereinafter set forth shall be followed:

Step 1. The employee or the employee and his steward shall present the grievance orally to the immediate supervisor. The immediate supervisor will answer the grievance within two (2) working days. A steward will be given an opportunity to be present at the adjustment of any grievance in Step 1.

Step 2. If not settled in Step 1, to be considered further the grievance must be reduced to writing and dated and signed by the employee and his steward, and submitted to the department manager within three (3) working days after receiving the Step 1 answer from the immediate supervisor. The written grievance will describe the subject matter of the grievance and specify the contract provision or provisions at issue. Inadvertent errors in the description of the subject matter or specification of the contract provisions shall not render the grievance non-grievable. The department manager, an employee relations representative (and the supervisor at the option of the Company) shall

meet with the grieving employee, his steward and the Building Steward within three (3) working days after receipt of the grievance to discuss and attempt to resolve the same. The department manager shall give his answer in writing to the steward, with a copy thereof to Labor Relations, the Building Steward and the Chief Steward, within three (3) working days after such meeting, or the grievance shall automatically move to Step 3. Upon receipt of such answer, Labor Relations will assign a number to the grievance and inform the Chief Steward of such number. The Union will reply in writing to the department manager's second step answer within five (5) working days after receipt thereof by the steward, or the grievance will be considered dropped.

. . .

5.4 Any of the time limits referred to in this Article may be varied by mutual of agreement of the parties (Union and Company).

5.5 Grievances having general application (including job evaluation grievances), or grievances involving discharge, may be filed within the applicable time limit by the Union in writing as provided in Step 2 and may be taken directly to Step 2.

5.6 No employee having seniority will be disciplined or discharged without just cause. Before an employee having seniority is disciplined or discharged the Company will, if possible, advise the steward and allow the steward to be present when such disciplinary or discharge action is discussed with the employee, providing the employee and steward are available for such discussion. If no steward is available at the time disciplinary action is taken, the Company will notify the Union within one (1) working day of such action. Employee discipline and work rules are set forth in Appendix A attached hereto.

5.7 The above procedure may be utilized if an employee or the Union has a complaint or suggestion which is not a grievance, but in no event shall an unresolved complaint be arbitrable.

5.8 The Company will pay stewards and up to six (6) Bargaining Committee Members at their regular hourly rate for time lost during their regularly scheduled shift while they are participating at the appropriate step in grievance procedure discussions with management representatives. When the circumstances of a particular grievance so merit, and in exceptional cases, the grievant or steward will be allowed

to attend the third step grievance meeting upon request from the Union. Upon mutual agreement between the parties (Union and Company) such grievant may attend the fourth step grievance meeting. Such grievant will be paid at regular hourly rate for time lost during his regularly scheduled shift while participating in the third and fourth step discussion with management representatives.

5.9 Neither the Union nor employees shall engage in union activities in Company premises during working time except to the extent permitted by this Agreement. It is understood that the duties of a steward under this labor agreement are to represent bargaining unit employees in handling grievances or complaints as set forth in Article V above, and to confer with management representatives concerning administration of this labor agreement where appropriate.

## ARTICLE VI Arbitration

...

6.1 A grievance not resolved in the grievance procedure which claims that the Company has violated or failed to comply with the express purpose of a specific provision or provisions of this Agreement may be submitted to arbitration by the Union as hereinafter provided.

...

6.9 The function of the Arbitration Board shall be of judicial rather than a legislative nature. It shall not have the power to add to, to ignore, or to modify any of the terms and conditions of this Agreement. Its decision shall not go beyond the interpretation and application of this Agreement and shall be limited to the extent necessary to determine the issue submitted to the Arbitration Board by the parties. It shall be controlling that this Agreement sets out all restrictions, rights and obligations agreed to by the parties and that no assumed or implied restrictions, rights or obligations were intended. Practices under this Agreement may be considered in the interpretation and application thereof.

...

6.11 The foregoing procedure shall govern a claim by the Union

that an employee having seniority in the unit has been disciplined or discharged without just cause. In case it is determined by such procedure that the employee has been disciplined or discharged without just cause, he shall be reinstated with full seniority rights which may, but need not, include back pay.

. . .

#### APPENDIX A

The following illustrates the types of employee offenses which upon occurrence or discovery will lead to either: (a) disciplinary steps; (b) suspension; or (c) discharge; depending upon the severity of the offense.

1. Theft
  2. Dishonesty or immorality
  3. Unauthorized disclosure of confidential information
  4. Willful damage to property
  5. Falsification of records
  6. Fighting or intentionally threatening another employee with physical violence
  7. Possession or use of a firearm or other dangerous weapon on Company property
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8. Insubordination
  9. Punching another employe's time card
  10. Horseplay (particularly activities which may bring bodily harm to you and/or others)
  11. Being under the influence of intoxicants or illegal drugs/possession of intoxicants or illegal drugs on Company property
  12. Gambling or other illegal activities at work
  13. Willful disregard for safety or practices
  14. Inappropriate attire or appearance at work
  15. Unauthorized solicitations on company time
  16. Unwarranted and/or excessive absenteeism or tardiness
  17. Continued substandard job performance
  18. Careless damage to property
  19. Unauthorized absences from work station
  20. Excessive break times

Employee offenses identified as numbers 1 through 7 are generally considered more serious in nature. Therefore progressive discipline may not always apply. The severity of the more serious offenses may require immediate suspension or discharge.

The Company ordinarily will follow progressive discipline for offenses identified as numbers 8 through 20. Only in the more severe cases of offenses for numbers 8 through 20 will other than progressive disciplinary action apply. Guidelines for progressive discipline are as follows:

1. Oral Warnings  
The employee is to be given an oral warning by his immediate Manager/Supervisor.
2. Written Warning
  - a. If the employee should repeat the same offense for which he had previously received the oral warning, the immediate Manager/Supervisor should then provide the employee with a written warning.
  - b. This written warning should explicitly describe the nature of the offense, time, date and place, as appropriate to the situation.
  - c. A copy of the written warning should be forwarded to the Labor Relations Department.
3. Disciplinary Layoff
  - a. A third repetition of the same offense will usually result in a disciplinary layoff.
  - b. The period of layoff will be determined by the seriousness of the employee's actions.
4. Discharge
  - a. If the employee repeats the offense beyond the previous steps and following a disciplinary layoff, this will result in discharge.
  - b. Labor Relations and the Union must be notified before the employee is actually discharged.

The offenses noted above are by no means inclusive -- rather the most common. Other actions which are contrary to good conduct will be dealt with as they occur.

If an employee receives an oral warning for any given offense and there is no reoccurrence within six (6) months at work (excluding

periods of layoff and leave of absence) from the date of the initial offense, such oral warning will be considered dropped. If such employee has a second offense within such six (6) month period, progressive disciplinary action will apply. If no further offenses are committed within a twelve (12) month period at work (excluding periods of layoff and leave of absence) from the date of the most recent disciplinary action (i.e., written warning or disciplinary layoff), all record of such offense will be considered dropped.

## BACKGROUND

The Company underwrites and administers health and related insurance policies to groups and individuals. The Union has for many years represented a bargaining unit of the Company's Class I clerical and administrative personnel. The Company and Union have been parties to a series of collective bargaining agreements including the Agreement and a Supplemental Agreement covering the period June 1, 1989 through at least May 31, 1993. Bargaining about a successor to the Agreement began on an active basis in April of 1993. The bargaining and the parties' relationship during its course were variously described by Union witnesses as "bitter," "a difficult time" and "strained at best." As of October 21, 1993, Union NLRB charges against the Company were pending. (exh.27) The parties ultimately concluded a settlement on a successor to the Agreement in early May of 1994. (tr.252)

The Grievant, Louise Rosier, had been employed by the Company for 26 years prior to her discharge on June 22, 1994. At the time of her discharge, she was working as a Customer Service Representative II in the Company's Metropolitan Milwaukee Association of Commerce (MMAC) unit. Grievant was active in the Union since 1977, the Union president since well before June of 1992, and a Union steward beginning in about September of 1992. (tr.204) Grievant had a long-established reputation in the Company as a highly skilled and reliable Representative to whom supervisors often referred key employer representatives to assure that their questions and concerns were optimally handled.

The disciplinary actions in this case were all issued in connection with Grievant's work in the MMAC unit. That unit is dedicated to serve some 800 employers with some 6,000 employees and 15,000 members covered by insurance. It consists of approximately 16 employees including bargaining unit Customer Service Representatives (CS Representatives or Representatives) and at certain times a bargaining unit Senior Customer Representative. The MMAC unit supervisor at all material times was Natalie Radisich who reported to Colleen Singh (nee Krajacic), the manager of MMAC and an adjoining area dedicated to servicing federal employee insurance programs (FEP). When Grievant transferred to MMAC in June of 1992, she was one of four Customer Service Interviewers or Representatives along with Jan Gall, Sue Joy and Nadine Bonner. Bonner transferred out of MMAC temporarily in September of 1993 and permanently in October of 1993, and was replaced by Connie Huston. During one of the periods of time when Grievant was working in the MMAC unit, Singh's sister worked there as the Senior CS Representative. The work of the Customer Service Representatives consists of responding to inquiries and complaints about group and subscriber benefit coverage, enrollment, claim payments, billing and/or

membership status by direct telephone calls and written correspondence with members covered by the insurance, agents, groups, employers or MMAC representatives.

Each MMAC Customer Services Representative's phone has one "ACD" or "business" line and separate extension lines for each of the individual Customer Services Representatives assigned to the unit. Calls coming in on the business line are routed to the next available Representative by an Automatic Call Distribution (ACD) device. Representatives make themselves available or unavailable to receive ACD calls by activating an AUX in/out switch. When the business lines to all of the available Representatives are busy, callers receive a recorded message stating that their call will be directed to the next available Representative. The ACD device directs such calls to a "queue" where they wait for distribution, in the order the call was received, to the Representative whose business line next becomes available. The extension phone lines enable the Representatives to place and receive internal and external calls to facilitate their responses to customer needs, sometimes while the customer is on hold on the business line. Representatives can press an "inspect" button to determine how many calls are in the queue and how long they have been waiting, but only when they are on the ACD line, not when they are on their individual extension line. Representatives' phones ring twice when receiving external calls and once for internal calls and there are other means of determining whether a call is internal or external before answering it, as well. (tr.171, 230-31).

The unit supervisor and area manager are located nearby the CS Representatives such that Singh was able to overhear many of Grievant's phone conversations from her work location. (tr.106) The Representatives know that supervisors have equipment that permits them to monitor both sides of conversations on each Representative's phone without the Representative knowing that particular conversation is being monitored. Radisich testified that she monitored each of her CS Representatives on the same day between three and five times a week at varying times of day, depending on her schedule. (tr.29-30) She stated that "[t]he reason we generally do that is for quality-type purposes. We want to be sure that the service we are providing and the information we are conveying on the telephone is of top-notch quality." (tr.28) Singh said she would sometimes monitor calls when she overheard conversations in which the Representative was being rude, dealing with an irate subscriber, or on a personal call.

The Representatives' hours are somewhat flexible. Grievant worked 8:30 AM - 5:00 PM with a half-hour flex option whereby she could, in at least some situations, report to work up to a half hour later than 8:30 AM and make-up that time at the end of the day. Bonner worked a four day workweek, 8:00 AM - 6:00 PM, Monday-Thursday. The CS Representatives were entitled to take a 20-minute break in the morning, a 45-minute lunch around mid-day, and a 20-minute break in the afternoon. The Representatives and other employes have pay phones available to them to make outgoing phone calls during their lunch and breaks. Those employes, Grievant included, were encouraged by supervision to make personal calls on those phones at those times. (tr.86)

Radisich had supervised Grievant previous to her transfer to the MMAC unit when they were both in the Kimberly-Clark dedicated unit. Radisich testified that, from that experience, she knew

that Grievant was prone to spending too much of her work time on personal phone calls or away from her work area. When Grievant applied for an opening in the MMAC Unit, Radisich met with Grievant, discussed that concern with her, and made it clear that if she came into the MMAC unit she would have to limit the amount of non-Company business she conducted and that she needed to be available to take telephone calls from the MMAC subscribers. Grievant assured Radisich that she understood, and thereafter the transfer was effected.

Bonner testified that when she heard that Grievant had applied for the MMAC opening, she expressed the same concerns Radisich had about Grievant because of a prior experience Bonner had substituting for Grievant for a day in the Kimberly-Clark dedicated unit. Bonner testified that she spent the majority of the day answering personal calls for Grievant and that she told the Kimberly-Clark supervisor she would not return because she did not enjoy being someone else's personal secretary.

#### Informal Counseling

The series of Company actions regarding alleged misconduct on Grievant's part began with an Informal Counseling memo issued by Radisich to Grievant on August 27, 1992. As originally written, it identified Grievant's offense as "Substandard Work Performance," but at the request of Grievant and Union Steward Sandy Davis, that was changed to "Not Following/Adhering to Work Rules." The description of the offense/performance deficiency read as follows:

On 8/25/92 Louise placed a customer on hold to answer another incoming call. The sub placed on hold was Mr. K-. The 2nd call was personal & Louise said "the customer wants to talk to the President so I'll talk to you for awhile." Talked on personal call for 2 minutes before returning to our customer. Louise must understand that our customers always come 1st & that it is inappropriate to put callers on hold to conduct personal business or have personal conversations. Personal calls must be stopped (in and out) as discussed.

. . .

Comments: At 2:10 Louise was on a personal call & in AUX. Was told to get off pers. call & be available.

The Informal Counseling memo also included a typed attachment as follows:

Colleen and I have received several complaints regarding Louise Rosier from her co-workers. The incidents for the week of 8-24-92 are as follows:

Two co-workers complained that Louise was away from her work station and another CS Rep could not go on break.

A call came in, which was monitored, where a customer asked why a claim was not paid yet. Louise responded "we have to convince the computer to pay the claim". The customer did not understand this so they asked for a clarification. As a response Louise said "we have to convince the computer to pay the claim" again. Since the customer did not understand this response the first time the customer did not understand the response the second time. Louise must take the time to communicate effectively, and in non-insurance lingo.

Received a complaint from a co-worker that she could not work because Louise is spending the morning talking about personal subjects and is loud and disruptive. The subjects were about Bembenek and how beautiful her daughters were.

During monitoring, Louise placed a customer on hold to take an incoming call. The incoming call was personal. She told the personal caller "guy wants to talk to President, so I'll talk to you for awhile". Came back to the sub after two minutes.

Louise was on a personal call and her phone was in aux. Jan was the only one available. Louise was told to get off the call and be available.

At 4:30, Louise left after spilling popcorn on the floor. After spilling it she continued to run over the popcorn rather than pick it up. Louise indicated that the cleaning people would clean it up.

A call was in queue and I asked Louise to get off her personal call and take a business call. She put her finger up to indicate I should wait. I did. It took her 32 additional seconds to complete her personal call while our customer waited.

Louise has voiced her opinion that we should not lie to our groups that we don't have a backlog. After the tour of MMAC Louise asked a co-worker whether she had to bite her tongue while listening to what we said to the tour. As a customer service representative, you should have the skills needed to respond to a customer's questions without having to discuss backlogs. Our customers expect us to assist them in resolving problems with their insurance coverage and the question of workload should never enter into your discussion. Doing so is unethical.

Louise was the only one on the phones and was on a personal call. A customer call was in queue waiting to speak with a CS rep but couldn't get through because Louise was on her personal call. I asked Louise to take a call. She did.

These incidents were all reported by co-workers or were witnessed by management. They reflect poor work habits and work ethics. Louise is being warned that behavior such as those illustrated above will not be tolerated and will result in disciplinary action in the future. Although this is an informal warning, the next situation will result in progressive disciplinary action.

On December 3, 1992, Grievant's response to the Informal Correction was attached to it. It read as follows:

I am writing this in response to the accusations on my informal counseling that will stay in my records. I will address issues by number.

1. I left my work station to use the restroom telling my co-workers where I would be.

2. This subscriber that I was speaking to is a very unreasonable man. His services were for methadone treatment which Blue Cross had never been billed for before. His claims were taking a very long time to get processed because of diagnosis codes and procedure codes. This was not my case but the interviewer was not in this specific day and my training is to try and help not just take a message for call back. The interviewer and I worked together on this subject. I thought very hard on how to explain and used that terminology on purpose. He proceeded to ask to talk to the person who writes the checks. I explained a "person" does not write the checks. He then asked to speak to the supervisor, manager, director and president. Each time he asked for one of the above I put him on hold for a few minutes then went back on explaining they were not available. These people are way to busy to talk to a person that is being unreasonable. When he asked to talk to the president I put him on hold, my personal line rang I spoke for 2 minutes and returned to the subscriber stating the President was not available. I DID NOT put him on hold for the purpose of answering my personal line. This same case was not solved for sometime. This subscriber called in numerous times, I never dealt

with him after my warning. At one point my co-worker told him to stop harassing us. The end result of this case was weeks after my contact with him because he apparently called our switchboard and was transferred to the director Beth Lubotski. Our manager then promised a special check be issued by 3:00 pm that day and he would personally pick it up. After the check was issued it was not signed so it need to be returned to accounting to be signed. Our manager Colleen Krajacic then met him in lobby. When she returned a co-worker asked how it went. Colleen said he was so sleazy I didn't want to shake his extended hand. We still get calls from him regarding numerous things. Each one of the interviewers do not like to deal with him.

3. The issue of discussing personal subjects is confusing because though I was discussing the court case about Bembeneck I was not talking to myself. There were 3 to 4 people discussing it for less than 5 minutes.

4. I dropped approximately 5 kernels of popcorn on the floor.

5. Yes I did make a comment to my CO-WORKER. At no time did I make any such comment to a sup, subscriber or agent. NOR would I ever consider doing so. I am a very conscientious and experienced customer service representative. With an exceptional reputation of being able to handle all situations on the plans whether pleasant or not.

According to Radisich, in response to the informal counseling, "Louise did agree that she had been making a lot of personal phone calls or getting them, and she agreed that she probably was deserving, but of the incident she was kind of surprised about the ones that we indicated in the notes and was a little annoyed at a couple of them as well." (tr.27) According to Grievant, she and her steward orally grieved the offense designated and the matters referenced in Radisich's memorandum. In the end, it was Grievant's understanding that "everything would be eliminated out of my counseling except my personal phone calls. Because of everything else that was in there I accepted that and did not go further with the grievance." (tr.165)

In any event, no written grievance was filed concerning the informal counseling.

At the arbitration hearing, the Company presented several sets of notes, written primarily by Radisich and Singh and in some cases by Senior CS Representatives, regarding the substance of telephone conversations Grievant had on her phone in the MMAC unit. Grievant acknowledged that all of those notes accurately described conversations or portions of conversations that Grievant

was involved in on the dates noted.

Among those was a note by Radisich of a July 27, 1992 phone call monitored by Radisich and concerning Radisich's conversation with Grievant about it. That note read as follows:

Told Louise she was being monitored & we heard that she put a sub on hold to do Union work. I told Louise we needed to discuss this right up front & I let her know there was to be no Union work on Company time (Louise is not a Steward). She said OK. Regarding the sub she said she was working on this & put the sub on hold to do her on-line research. I said fine, I'm sure you know our subs always come 1st -- She agreed.

7/27 pm - told Louise this time this was "no big deal" (not an official warning).

Other supervisory notes relating to time period preceding the informal corrective action memo reflected Grievant telling a subscriber on November 19, 1992 she would call her back rather than putting her on hold, and then punching in and talking to a Union office person about Union business; and a five-minute call to her daughter on November 20, 1992 from 3:57-4:02 PM.

After the informal counseling, Radisich began systematically logging the results of her monitoring of the four CS Representatives' individual extensions. Radisich testified that she found that Grievant did not have as many personal telephone calls as before the informal counseling but that by mid-November, 1992 she was again receiving or making many personal calls on Company time.

On October 12, 1992, Radisich wrote Grievant a memo asking that she review an attached computer log of outgoing calls made from her extension during the "billing month" of September, 1992 (beginning in late August and ending in late September) because "Yours is 5 pgs long. Everyone else's is 2 pgs or less. Pls be sure you aren't making any more telephone calls that aren't business." Grievant responded that "the only ones I am sure aren't Blue Cross business" were calls to her home phone and to the Union office phone. The Company's computerized outgoing phone logs call particular attention to calls that exceed 6.0 minutes in length. There were 14 calls to the Union office that billing month, with a mean length of 4.6 minutes, the longest of which began at 4:58 PM and lasted 32.3 minutes, and two of those calls exceeded six minutes. There were 13 calls to Grievant's home during that billing month, with a mean length of 2.5 minutes, longest of which was 3.7 minutes.

Summaries of some of the more illustrative of the supervisory notes regarding calls the Company considered personal during the period between the informal counseling and the oral warning were the following:

10-22-92 -- co-worker complaints that Grievant was not making up time

and was turning down her phone volume since any call she would get while away from her desk would be personal anyway. Radisich left Grievant a note stating she may not turn her phone ringer volume down whether she is at or away from her desk, and that "it's a work rule."

11-11-92 -- talking with or about Ski's Union job for 2 minutes with an employer on hold.

11-24-92 -- on personal call 3 minutes while others were on ACD calls and call(s) in queue. Grievant finally cut off the call.

12-8-92 -- put subscriber on hold and engaged in personal call.

1-18-93 -- put customer on hold 5 minutes while she finished a personal call with Judy.

3-9-93 -- lengthy supervisory note reading as follows:

3/9 A sub called on my line who was referred by legal. I needed to transfer him to a CS Rep to respond to his question. All CS Reps were on ACD calls except Louise. She was on a

personal call. the call started at 9:59 & she hung up @ 10:23. Immediately after hanging up, she called another person (woman). This, too was personal. she asked woman if she could charge Casey's plane fare. ended @ 10:31. When Louise hung up at 10:23, 2 calls were waiting (in queue). One of the calls abandoned.

12:19 Louise was on a personal call (AUXOUT) --

Discussed this with Louise today. Louise said she rec'd the call from the male (9:59) right when it was her break time. Therefore, she felt it was an appropriate time to take the call since it was her break.

I told Louise that I (or anyone else) would have no way of knowing whether she was on break. but, Regardless, she should take her break, leave the floor & use the pay phone. I also told her that I didn't understand why this guy kept calling her at work if she told him she couldn't take calls.

Louise asked why I was scrutinizing her & her calls so much. I said that was purely coincidental. The other nite, I stood talking to her at her desk when her daughter called her -- personal call. Today these calls. I told Louise that I happened to glance at the AT&T screen & I saw 2 calls in queue. Everyone else was on an ACD call but her; she was in AUXOUT/IN - I punched in & heard it was a personal call. When she hung up & immediately made her 2nd call, a call abandoned. Louise said she didn't realize that. I told Louise the biggest problem with her abuse is the length of her calls. The reasons I kept catching her is because she is on the phone for long lengths of time. She said she would try to cut it down--I told Louise, no, eliminate it.

3:26 pm Louise called home & spoke with her Daughter. 3 min call.

5-5-93 -- Grievant was conversing with her daughter with a call waiting; Grievant Aux'd out to make an outgoing call.

The day after the last of those noted calls, Grievant was issued an oral warning.

#### Oral Warning

On May 6, 1993, Radisich issued Grievant an oral warning for Failure to Adhere to Work Rules, which was recorded in written form as follows:

Louise continues to make &/or receive personal calls during working hours. This has been discussed with Louise previously. In the most recent situations, customer calls were waiting in queue while Louise was on a personal call. In both recent situations there were no other interviewers available to take calls. Therefore, we ran the risk of losing/abandoning the customers call resulting in customer dissatisfaction.

Grievant waived the presence of a Union representative, and did not file a grievance or attach any response to the oral warning memorandum.

Grievant and Radisich were alone when the oral warning was issued. Radisich testified that Grievant told her at that time that "she felt she deserved this one. She told me she agreed she had been excessive and she deserved this oral warning." (tr.42) According to Grievant,

[i]t was just Natalie and myself in her office discussing my personal phone calls; and at that time I did admit to getting too many personal phone calls. I admitted that I was being abusive of the practice, that I would stop my abusiveness. However is there any way that I could get some personal phone calls, and Natalie's answer to me was, yes, as long as they are short. At that point I notified anybody who would call me on personal matters that they would have to be brief and short, quick and to the point. It couldn't be a lengthy discussion. (tr.165)

Summaries of some supervisory notes regarding calls the Company considered personal that bear on how sincere/effective Grievant was about limiting them during the period between the oral warning and the written warning were the following:

7-15-93 -- 6-minute call to get clown for Union Labor Day activities. Gave out work number for the person she called to call back because there was no one at the Union office for them to call. Meantime, the Company lost a call that had been in queue during that period.

7-21-93 -- 12-minute call with male

7-21-93 -- spoke to Vicky Botros regarding details of the Union office job Botros had accepted, with 2 calls in queue. Bonner complained to supervisor. Supervisor directed Nadine to punch in and take calls rather than continue working on a group surveys project.

7-22-93 -- call from male friend

7-28-93 -- 15 minutes chatting with a woman

8-6-93 -- At 11:48 AM Customer Service called Grievant to transfer a subscriber call to her. Grievant put the subscriber on hold and went back to a call she had placed to someone about a getting clown for Labor Day parade, commenting "sorry, in Customer Service we do get calls." Grievant finished the conversation about the clown and then started talking about Disneyworld, Universal, vacation, etc. Singh went to Grievant's desk at 11:53 and told her to take the subscriber's call.

9-3-93 -- Radisich overheard a call and confronted Grievant that the call involved was personal. Grievant replied that the call was Union-related. Radisich responded that it wasn't grievance-related. Grievant agreed. Radisich told Grievant to stop engaging in such calls. [This call is discussed in greater detail in the DISCUSSION.]

9-7-93 -- Bonner complained to a supervisor that Grievant was on a personal call. Singh monitored and heard Grievant on a call with a man talking about Maritime days. The call ended before Singh had a chance to tell Grievant to end it.

Two days after the last of the calls noted above, Grievant was issued a written warning.

#### Written Warning

On September 9, 1993, the Company issued a written warning to Grievant for Failure to Adhere to Work Rules, as follows:

Louise continues to make &/or receive personal calls during work hours. The most recent situation was on 9-8-93 where Louise was on the phone with a male friend and two calls were in queue. Louise was the only interviewer on-line, so the customers had to wait until Louise finished her personal call. This has been discussed with Louise in the past. In addition, Louise may not conduct non-grievance-related Union business during work hours.

At the time the written warning was issued, Union Steward Sandy Davis was present. In those discussions, according to both Radisich and Grievant, Grievant said she thought that she had improved and that she did not deserve the written warning. Davis testified that she asked what Radisich was saying about phone calls from Grievant's daughter because there are many single mothers in the bargaining unit and Davis was concerned that the Company was going to start a precedent where mothers could not get phone calls from their children. Davis recalled that Radisich responded "that she had no problem with phone calls from her daughter." (tr.219) According to Davis, the Union took issue at that time with Radisich's treatment of Grievant's non-grievance related Union business phone calls and told Radisich that it would follow through with the grievance procedure on that subject.

The written warning was grieved in grievance #93-52 on September 10, 1993. The grievance asserted that the Company violated Agreement Sec. 5.6 and all related articles as follows:

On 9-9-93 Louise was put on written corrective action for failure to adhere to work rules. The discipline is unwarranted & the union wants the action removed from Louise's file.

In processing the grievance, Davis requested documentation of the Company's monitoring of CS

Representatives. On October 6, 1993, Radisich replied as follows:

As requested, I reviewed the monitoring documentation for all of my Customer Service staff. My findings are as follows:

Sue Joy - Out of 87 occurrences of monitoring, since May 6, 1993, Sue was never on a personal call. Therefore, there is no documentation.

Nadine Bonner - Out of 56 occurrences of monitoring, since May 6, 1993, four were personal. None of the four calls were lengthy and none were during periods when calls were in queue. I don't consider this volume excessive and would have no reason to document further detail. My notes simply say "personal". Had Nadine's volume been excessive, she would have been warned, as was Louise, and if continued, she would have been placed on formal disciplinary steps. Had this happened, detail would have been accumulated on Nadine as well. Since this was not the case there is no additional detail.

Louise Rosier - Documentation began on May 6, 1993. Out of 67 occurrences of monitoring, 42 were for personal and non-grievance related calls.

Statistically, the percentages are as follows:

Sue - 0% personal  
Nadine - 7% personal  
Louise - 63% personal

If you have any questions regarding this, please let me know.

Summaries of some of the more illustrative of the supervisory notes regarding calls the Company considered personal during the period between the written warning and the suspension were the following:

9-10-93 -- a one-minute call on Union business not grievance- related during which Grievant said "she had to make it quick."

9-27-93 -- Grievant was on personal call with a male acquaintance for at least 15 minutes, though Grievant put the male caller on hold to take a business call.

9-29-93 -- made personal plans for the evening

10-6-93 -- 9-minute conversation around mid-day with a male union

president about meeting at Potowatomi Bingo.

10-18-93 -- Talked with a male caller from 1:06-1:12 PM; the caller said he called her twice the previous week but she was not at her desk and that he will call her tomorrow. Grievant told him she would not be at her desk before 10:30, so caller should call after 10:30. [This call is discussed in greater detail in the DISCUSSION.]

10-18-93 -- Grievant talked from 1:14-1:16 with a different male caller about her having been missed at a bar. Grievant asked the male why he is home. Male asked if someone could be listening and declined to answer Grievant's question when Grievant answered in the affirmative. The male said he would call her at home instead.

10-18-93 -- At 1:17, Grievant called another employe and asked to meet her in the restroom. Grievant then left her work station saying she was going to the restroom.

The day after the last of the calls noted above, Grievant was issued a suspension.

#### Suspension

On October 19, 1993, the Company issued Grievant a 3-day suspension for Failure to Adhere to Work Rules as follows:

Louise continues to make &/or receive personal, or non-grievance related telephone calls. This continues even after Louise has been counseled & warned on previous occasions. Louise has been told to let all callers know that she cannot receive personal calls as her job is in jeopardy. On 10-18-93 Louise was on a personal call with a male who said he'd call her tomorrow. Louise told him she would be away from her desk until 10:30 so he should call after 10:30. This shows a total disregard for the work rules discussed in each step of the disciplinary process. If this \* practice continues, Louise will be terminated. Louise is being given a 3 day lay-off w/out pay.

\* making &/or receiving calls (personal); not adhering to work rules.

At the time the suspension was issued to Grievant, in Davis' presence, according to Radisich, Grievant said she thought she had been making arrangements for people to call her at home and that she did not deserve the suspension. Grievant testified she tried to explain that there were good reasons why she told the male caller to call her back after 10:30, but to no avail. (Grievant's explanation is reviewed in detail in the DISCUSSION.)

The suspension was grieved in grievance #93-54 on October 20, 1993. The grievance asserted that the Company violated Agreement Appendix B (sic), Sec. 5.6, 1.4 and all related articles as follows:

On 10-19-93, Louise was put on a 3-day layoff for failure to adhere to work rules. The Union has previously grieved the written warning as not warranted. Louise has shown improvement on her personal calls & the union believes this corrective action to be a form of harassment. For all the reasons listed above the union wants the layoff removed from Louise's record & back pay for the lost wages.

The Union notified its members of Grievant's suspension in writing on October 20, 1993, as follows:

LOCAL 787 TO AMEND CHARGES WITH THE N.L.R.B.

LOCAL 787 PRESIDENT IS LAID OFF

EFFECTIVE TODAY, LOCAL 787'S PRESIDENT LOUISE ROSIER HAS BEEN GIVEN AN UNWARRANTED THREE DAY DISCIPLINARY SUSPENSION.

AGAIN, THE COMPANY IS ATTEMPTING TO PUT UNDUE PRESSURE ON YOUR OFFICERS, STEWARDS, TASK FORCE MEMBERS AND REPRESENTATIVES. THEIR GAME PLAN IS TO ACT LIKE BULLIES AND SCARE YOUR UNION REPRESENTATIVES. THEY HOPE THAT IT WILL DETRACT FROM THE MAIN ISSUE -- THE COMPANY IS TAKING AWAY 2.5 MILLION DOLLARS OF YOUR BENEFITS.

IT WON'T WORK

TODAY, THE UNION WILL AMEND ITS' NLRB CHARGES TO INCLUDE THE IRRESPONSIBLE AND ABSURD ATTEMPT TO GET US OFF TRACK AND NOT CONCENTRATE ON THE 2.5 MILLION DOLLARS OF LOST BENEFITS.

BACK TO THE TABLE

ALSO WE WILL CONTACT THE FEDERAL MEDIATION AND CONCILIATION SERVICES. WE WILL BE REQUESTING THE FEDERAL MEDIATOR TO GET THE COMPANY BACK TO THE TABLE. WE WANT TO LET THEM KNOW THAT YOU WON'T SETTLE FOR ANYTHING LESS THAN A FAIR AND EQUITABLE

CONTRACT.

Bonner returned a copy of that letter to then-Union Business Agent Vicky Botros bearing Bonner's handwritten comment as follows:

10/21/93

Vicki

How about telling the truth!

Personal phone calls are not allowed and Louise abused this to the max!  
HER LAYOFF HAS NOTHING TO DO WITH NEGOTIATIONS!  
THIS WAS NOT A SCARE TACTIC MANAGEMENT WAS JUST  
FOLLOWING RULES!

Nadine Bonner

cc to Mary Traver [Company General Counsel]  
Natalie Radisich

On December 3, 1993, Grievant was presented with her performance review signed by Radisich and Singh. The precise evaluation period involved is not apparent from the record evidence. That review rated Grievant highly overall. It included the following "performance summary and/or additional comments":

Louise is an excellent interviewer who is knowledgeable, confident and dependable. Any area would be happy to have Louise work for them as long as she continues to eliminate personal calls.

As one of three "Development Goals & Action Plans," the review included, "Continue to eliminate personal calls."

With regard to discussion had at the conference when the review was presented, Radisich testified that she thinks she told Grievant that "if she were to eliminate personal phone calls, she would be a perfect employee." (tr.57) As Grievant recalled it, Radisich told her "that I was now a perfect employee because I no longer received personal phone calls." (tr.210)

With regard to Grievant's telephone activity from October 29, 1993 to June 21, 1994, the Company presented evidence at the arbitration that its supervisors had monitored Grievant on 175 occasions of which the Company identified 62 (35%) as personal, non-grievance related calls.

Company computer records of outgoing calls from Grievant's extension to the Union office and to her home reveal the following numbers of calls with the Chairman's further analysis of the

mean length, maximum length and number of calls specially noted in the Company's records as exceeding 6.0 minutes in length:

billing month	Calls to Union office				
	# calls	mean	max	> 6 min	
September, 93	22	4.9	19.0	7	
October	1	0.9	0.9	0	
November	1	0.8	0.8	0	
December	1	10.0	19.9	1	
January, 94	0	0.0	0.0	0	
February	4	4.4	5.3	0	
March	5	3.7	8.3	1	
April	5	6.5	24.9	1	
May	6	3.6	16.2	1	
June	2	3.5	4.7	1	

billing month	Calls to Grievant's home				
	# calls	mean	max	> 6 min	
September, 93	11	0.8	2.1	0	
October	10	1.4	3.3	0	
November	4	0.4	0.7	0	
December	4	2.3	1.1	0	
January, 94	11	1.1	5.0	0	
February	8	1.9	4.7	0	
March	12	1.3	2.8	0	
April	12	1.3	4.9	0	
May	10	0.6	1.1	0	
June	12	1.6	9.6	1	

Summaries of some supervisory notes regarding calls the Company considered personal that bear on how sincere/effective Grievant was about limiting them during the period between the suspension and the discharge were the following:

12-14-93 -- conversation with a male for 24 minutes

"January, 1994" -- a 2-minute call on a Union matter in which Grievant told the other party that "we have to talk about this later."

2-4-94 -- Grievant had a phone call regarding the Company's

cancellation of a negotiation session allegedly because of media involvement. Grievant left the MMAC phones unattended in order to go to another location apparently about that situation.

3-21-94 -- Grievant talked to her landlord for 10 minutes; then she told him cannot have personal calls at work, so she would call him that night at home.

3-31-94 -- 2-minute call from daughter regarding need for Grievant to talk to the parent of a friend who intends to stay overnight that night. They talked about what time Grievant would be home and that they would discuss it then.

4-5-94 -- Grievant was upset with her daughter. Her daughter wanted to talk about it, but Grievant refused and hung up.

4-8-94 -- With a subscriber on hold, Grievant talked with a male about calling her at home later and getting together. The call ended when Grievant told the caller "she had to go."

4-15-94 -- Grievant was on a call with a daughter at 3:15 and chatted with a different female at 3:30.

4-21-94 -- Grievant called Ameritech regarding her phone bill. The call took from 9:01-9:14 AM. Ameritech verified Grievant's home and work numbers and asked if they could call her at work. Grievant said yes.

4-25-94 -- At 12:44 PM, while Grievant was on a call with a subscriber, her phone rang. It was a male friend whom she immediately put on hold. She then put the subscriber on hold and took the male friend's call. Grievant told him that "she couldn't talk long because her Supervisor was running around."

5-3-94 -- a 12-minute call about the upcoming vote on the Company's contract proposal during which she was asked if she had time to talk to someone else. Grievant answered "sure" and proceeded to try to answer a question about that person's eligibility to vote on the contract, calling the Union office in the process. Ultimately Grievant asked the Union Business agent to call the employe.

[On 5-9-94, the grievance meeting noted below was held.]

5-10-94 -- Grievant received a 2-minute call from her daughter while a different call with Grievant's landlord was on hold; Grievant talked 5

minutes to the landlord and agreed to call around to get certain estimates, but Grievant commented that her ability to do so was "limited because she can only make phone calls on her lunch hour."

5-16-94 -- two 2-minute calls. The first was to the Union office, asking to have Vicki call her back and leaving word that Grievant would call later to talk to Ski. The second call was to Sandy Davis about going to the Union office to sign checks.

5-18-94 -- several calls on the same day: a call to Sandy Davis about inability to find a parking space in the structure that day; a 21-minute call to Vicky about Union meetings and the importance of attending same; a 2-minute call from a daughter asking to use the car which Grievant ended by saying, "We'll talk about it when I get home."

5-19-94 -- a conversation on a variety of seemingly personal topics with a woman.

5-20-94 -- Grievant took a subscriber's call in between Union-business conversations with Vicky unrelated to a grievance.

5-25-94 -- a conversation about a girl's baby, Grievant's daughters' birth weights, etc.

6-1-94 -- a call to Vicky about several non-grievance-related topics, but winding up asking a contract interpretation question about holiday eligibility. Grievant put a subscriber on hold to finish that conversation with Vicky.

6-15-94 -- 12:33 PM at end of a call, Grievant told her daughter, "If you need a ride call me."

The Step 2 meeting with respect to the grievances regarding the written warning and the suspension was not convened until May 9, 1994, i.e., many months after the September 9 and October 20, 1993 grievances were filed in written form. During that meeting, Company representatives went over the fact that Grievant continued to make and receive personal phone calls in a manner the Company found unacceptable. The Company representatives told Grievant to eliminate all calls with her daughters except in cases of emergencies such as a broken arm or serious bleeding. According to Union witnesses, that was the first time the Company had told Grievant to limit calls from her daughters to emergencies. Grievant described the interaction as follows:

At that point they told me that I could no longer get any phone

calls at all. My daughters could not call me, nobody could call me. They made it perfectly clear that my daughters could not call me unless they had a broken leg, broken arm, or were bleeding to death.

I said my daughters have to get in touch with me for important things like picking them up from a girlfriend's house, or can I go over to girlfriend's house, or picking me up from school, or picking me up from work.

How are they not? I have to have some type of communication with them, but they didn't want to listen. They said you can receive no personal phone calls at all. (tr.170)

Following that meeting, on the same day, May 9, 1994, Singh issued the Company's Step 2 answer to the grievances as follows:

This response is for grievance 93-52 and 93-54.

The Company has formally counseled Louise in accordance with Appendix A of the collective Bargaining Agreement regarding adherence to work rules (excessive personal phone calls). Louise continued to make and receive personal calls, disregarding continual counseling.

Therefore the written and suspension will stand and the Company is not in violation of Article 5.6, 1.4 and all related Articles.

At a June 9, 1994, MMAC staff meeting, Radisich told the CS Representatives that they were never to turn their phone volume down. She testified that she did so because Grievant was turning her volume down in such a way that her supervisors and co-workers could not hear her extension ringing. (tr.63-64)

#### Discharge

On June 22, 1994, in the presence of Union Steward Beth Brockman, Radisich issued Grievant a notice of discharge which read as follows:

Louise continues to make &/or receive personal &/or non grievance related (classified as personal) calls despite repeated warnings. Since Louise's suspension, there were 69 additional "personal" calls. After the grievance meeting on 5-9-94 where Louise now clearly understood that

she couldn't receive any "personal" calls \*, she continued to make and/or receive a number of additional "personal" calls. None of the calls were emergencies (i.e., broken arm (daughter), etc). Therefore Louise is being terminated for her continual failure to adhere to work rules.

\*except emergency - clarified as "her daughter broke her arm & needs to got the hospital", etc.

According to Radisich, at the meeting at which the discharge was issued, Grievant stated that she understood what the Company's interpretation of an emergency was, but that she did not agree with it and felt that all of the calls from her daughter were important. Grievant testified that when she asked why she was being discharged she was told "it is your calls from your daughters" and that there was no other mention of any other phone calls. (tr.170)

On June 29, 1994, Grievant and Steward Beth Brockman filed grievance #94-11 asserting that the Company had violated Agreement "Sec. 5.6, Appendix & all related articles" as follows:

Louise Rosier was unjustly terminated on 6-22-94. The union demands immediate reinstatement & for the employee to be made whole. This form of harassment for her union activism needs to cease immediately!

Thank - You!

Singh answered that grievance on July 18, 1994, as follows:

The Company has reviewed all of the facts regarding Louise Rosier and has not violated Article 5.6. Louise was terminated with just cause. This grievance is denied.

On August 31, 1994, following a fourth step meeting, Company Director of Human Resources Kathryn Koenen Potos issued the Company's Step 4 answer to all three grievances, in pertinent part, as follows:

These grievances involve Louise Rosier's work rule violations and resultant termination and the Union's request that Ms. Rosier be reinstated and made whole.

After careful consideration of the information presented at the fourth step grievance meeting on this matter which was held on August 26, 1994, it remains the Company's position that Ms. Rosier's discipline and

termination will stand. Therefore the Union's request for Ms. Rosier's reinstatement will not be granted.

The three grievances were thereafter submitted to Arbitration as noted above.

At the arbitration hearing, the Company presented testimony by Radisich, Bonner and Singh. The Union presented testimony by then Union Chief-Steward Botros, Grievant and Davis. Pertinent aspects of the witnesses' testimony not referenced above are summarized below.

### Radisich's Testimony

Radisich testified that "personal phone calls really are not allowed, however, it is common knowledge that everybody gets them periodically, and as long as they are infrequent and they don't tie up the lines, there really hadn't been a problem with receiving a periodic phone call. . . . [W]henver the phone calls -- the personal phone calls would tend to get out of hand like with an individual, I would remind the unit as well like in section meetings." (tr.31) Radisich also testified that it was her understanding that grievance-related and potential grievance-related phone calls are permissible on Company time under the Agreement and that she told Grievant so and did not count such calls against Grievant. (tr.45) Radisich acknowledged that the supervisors were less concerned about noting the length of calls after the May 9 grievance meeting because, "[b]y this point Louise had been told that she couldn't make or receive any, so she -- because it continued, it didn't really matter whether it was a shorter call or longer call. . . ." (tr.78)

Radisich further described Grievant's offenses as follows:

Q [T]o what extent did the phone calls go beyond the necessary for a person to have a personal life?

A With Louise she was always excessive. I guess I have to compare what I see with Louise to what I see in other people, and I've had a lot of customer service type interviewers reporting to me in the past, and at that time as well, and Louise was always well beyond what everyone else did.

And there were a lot of single mothers that work at Blue Cross. Certainly a periodic phone call wouldn't have caused a problem here, but this was ongoing. The daughter is calling, the boyfriend is calling. It was like compilation of everything together caused that to be a problem.

Not just that her daughter called once during the week. It is an ongoing thing. Because the fact that it was ongoing, it was

frequent, and regardless of the different conversations that we've had where she couldn't take these calls, it just continued. It just -- the excessiveness was there.

She was always excessive, beyond what any other interviewer at Blue Cross that I've ever dealt with had as far as a practice for phone calls. (tr.80)

Radisich also testified that after the counseling sessions associated with the various steps in the instant discipline, Grievant would usually correct her behavior for a short period of time and then slip back into her old unacceptable habits. (tr.41) Radisich acknowledged that she believed that Grievant had tried to improve at those points but, as noted, always slipped back into her old habits. (tr.60) The exception was that Radisich perceived little change after the written warning and, in fact, observed from the contents of certain calls that Grievant was actually encouraging people to call her on Company time in "blatant disregard for what we've asked her to do." (tr.53)

#### Bonner's Testimony

Bonner testified pursuant to subpoena. She testified that she and the other MMAC CS Representatives were concerned at the prospect of Grievant's coming into the unit, based on personal knowledge and "common knowledge" in the entire department,

[B]ecause Louise was gone from the area a lot because of so-called union business and phone calls that we were aware of that she makes and coming in late and so on.

So we were concerned about that area being short a customer service person because we only had four people at the time, and if someone is gone on vacation or sick and she's gone, for whatever reason, it made it very difficult to handle the calls in the service area. (tr.92-93)

Once Grievant began working on MMAC calls, Bonner testified, her fears were realized:

Q What was it like working with her as far as phone coverage and that type of thing?

A It was quite difficult because there was a lot of times we were short. She was on phone calls or she was away from her desk or she came in late. There was a lot of times we were shorthanded. When you have a lot of calls coming in and your supervisor is

telling you you can't lose them, what will you do? So I had to go to my supervisor and manager several times and say she is not cooperating with us. She is on phone calls and we are losing calls. Do something. They said they would take care of it.

Q When you said she was on phone calls, you mean personal phone calls or union business kind of stuff?

A Both, right.

Q Meaning non-business calls?

A That's correct.

Q In general where were you located in relation to where Ms. Rosier was located?

A I was sitting right in front of her. So my back was to her, you know. Like if I'm sitting here, she would be right behind me this way. So her voice would go right to my back.

Q There is a partition dividing you, but you can see over the partition and voices could be heard?

A Right. Because we had the lower walls because it was a small unit, and we tried to work as a team. We had the lower walls.

Q Were you able to overhear the nature of her telephone calls?

A Oh, yes, all the time.

Q And was it common for her to get calls to you that seemed to be personal in nature and not business in nature?

A Yes.

Q Now, did you ever receive personal phone calls at work yourself?

A Occasionally. Everyone gets calls, but we try to keep it short and to the point because we are on a service line where we were getting calls. So we had to keep them down to a minimum and tried not just myself, but everybody else. (tr.94-96)

. . .

Q Can you give me any kind of estimation as to how often when you worked with her, how often you believe she was engaged in having personal phone calls during working time?

A There were several times a day. It was a routine where her kids would call her when they got home from school. They would call her about different things; what to cook for dinner, what laundry to do and so on.

Her friend Bob would usually call about quarter to five so they could make their plans for the evening or whatever they were going to do. Those were routine calls, plus the other calls that came in.

Another thing that would occur were that there were messages for her supposedly about union business as far as she got in the morning. She would return those calls instead of plugging in for customer service calls.

She could have waited for break time or lunch time.

### **Singh's Testimony**

Singh testified that she was often able to hear Grievant's telephone conversations because Grievant "didn't make an attempt to keep her voice low when she was on the phone, and I could clearly hear it." (tr.108) Singh agreed with the disciplines and discharge, "[b]ecause the excessive amount of phone calls prevented Louise from doing her job which could jeopardize the performance of our area, and it was extremely excessive. I had never seen anything like it in all my days at Blue Cross. . . . [W]e made it clear to her that whoever was calling her, whether they were friends or boyfriends or whatever, she needed to let them know that this was serious and her job was in jeopardy and have them stop calling her at work" but that to Singh's knowledge Grievant did not do that. (tr.110)

Singh testified that the Company gave the Metropolitan Milwaukee Association of Commerce performance guarantees which Grievant's time away from business on personal calls threatened to undercut. (tr.112) She acknowledged that "it is not in the guide book that no personal phone calls are allowed. An occasional personal phone call, an emergency or when it is absolutely necessary or when you ask permission is certainly acceptable, but getting phone calls from your daughter asking to pick up spray gel for their hair or asking if their boyfriends can stay over, or whatever,

those are not emergency calls, or things that are necessary to answer while you are supposed to be responding to customers. . . . Whether it was a short call or a long call, it was preventing her from doing the company's business." (tr.113-14) Singh noted that the rate of calls abandoned by callers who tired of waiting in queue was 5% compared with 0.2% in the adjoining FEP dedicated unit. She acknowledged, however, that she could not say whether Grievant was or was not responsible for the entire abandon rate difference. She also noted that the MMAC area was losing net business such that under existing staffing criteria its allocation of personnel was not proportionally lower than in other areas of the Company's business. (tr.117-119) The reduction from four to three CS Representatives was due to Compcare taking their telephone inquiry back into their business unit and away from MMAC.

### Botros' Testimony

Botros testified that, as Chief Steward, she was unaware of any bargaining unit-wide rule or standard regarding how many or what kind of personal phone calls employees can make during Company time. She said, "I would imagine that different departments have different rules, but none that I'm aware of." When asked on cross-examination whether employees can make and receive personal calls any time they want on Company time, she answered, "I would imagine that varies from department to department. . . . I know that a number of our employees received personal phone calls on an ongoing basis daily." (tr.129) Regarding the impact of Grievant's Union presidency on her rights to make phone calls on other than Company business during work time, Botros testified, "I don't believe that Louise had any additional rights because of her position as the union president. She did have some contractual rights because of her involvement as a union steward, but it did not give her special or extraordinary rights because of her being a union president." (tr.131) However, upon further questioning, she asserted that any rights Grievant had to engage in Union activity on Company time would be controlled by Agreement Art. 5 "and past practice" (tr.131) and "that the president did receive some union calls for local type business. . . . It didn't appear to be a problem until recent." (tr.154)

Botros stated that she believed Grievant had the right to be treated equally with her co-workers; that "because of the size of the [MMAC] department, there was much more monitoring being done in that area than in other like customer service departments" and that the Union had requested documentation of monitoring for customer services employees in other like jobs but had received only documentation regarding MMAC employees. Botros acknowledged that she had no firsthand knowledge of any FEP or MMAC employee who made or received personal phone calls at the frequency Grievant had. (tr.133) When asked if there was a Company policy to allow employees to engage in personal business on Company time, Botros replied, "I'm saying that there is a wide variety of administration of that throughout the entire corporation, and I think it depends on who you work for and [who] is monitoring you." Botros stated that she knew Grievant was being monitored much more aggressively and more often than the other customer service representatives working for the company outside of the MMAC unit. (tr.138) Botros asserted that the Company had singled Grievant out for such scrutiny because she was Union president, because she had a long history of Union activities and a high profile among the bargaining unit, and because the

Company and Union were having a very difficult time in contract bargaining. (tr.139) Botros stated that while the Company claims to have a policy that CS Representatives' calls are to be monitored, some supervisors do that and some do not. (tr.153)

Botros testified that Grievant told her and various others associated with the Union to limit their contacts to her during work time to grievance-related issues and that Grievant told her that she had told her daughters to call only when the issues were important. (tr.141) Botros stated that she always asked if Grievant was on a call so she could wait for her to finish the call she was on before talking with Botros. (tr.142) She testified that she had no knowledge of anyone else being terminated or suspended for excessive personal phone calls prior to Grievant's discharge in June of 1994.

Botros further testified that neither the disciplinary actions taken against Grievant nor the matter of work rules about personal calls on Company time were discussed between the parties in bargaining. She asserted that the issues regarding past practice and unequal treatment underlying the instant grievances were not promptly addressed in the grievance procedure either. "[O]nly after the union's insistence and request was there a second step meeting held. . . . [E]ven though the grievances had been filed some time ago and there is contract language on the timeliness of those meetings, it was only many months later that the actual grievance meeting took place." (tr 156)

#### Grievant's Testimony

The Grievant testified that no one ever approached her about Bonner having complained about receiving too many personal phone calls for Grievant when she substituted for her in the Kimberly-Clark group. She said that when Radisich interviewed her for the transfer to MMAC, "she said she was very pleased I was not a union steward at the time because [MMAC] did not need anyone being away from the phones on union business." (tr.164) When asked what steps she took after the oral warning to reduce her phone calls "like with your daughters and with your friends", Grievant responded, "[w]ell, at this time my daughters were not mentioned in my oral warning at all. It was just my friends, and I just told them that they could, you know, it just had to be quick, and in my own personal mind it could not be excessive. So I couldn't get like six or seven phone calls a day even if they were short." (tr.166)

Grievant further testified that the written warning came as a big surprise to her:

In May of '93 I received my oral warning. Between May of '93 and September of '93 I was not talked to about my personal phone calls, I was not given any type of indication that I was continuing to make poor [decisions?] on my personal phone calls. Therefore, I felt I had cleaned it up. I cleaned my act up, if you want to use familiar vocabulary.

Then in September of '93 I was called into the conference room with my steward and Natalie and I was just totally surprised. When I saw the written documentation of my personal phone calls, there showed up all my union phone calls.

Prior to this no one had ever mentioned to me that I could not conduct union business on company time. It had never been mentioned to me before, and I was just -- I was flabbergasted.

If you look at the documentation, there really is only a handful of true "personal phone calls," yard work, even my daughters are in there. There is only a few.

So at this point I had not told anybody they couldn't call me for union related, whether it was grievance or contract or whatever, or my daughters. I had no knowledge that they could not call at this point. And that was my written step.

Even at my written step it was agreed to that my daughters could contact me, but we go back to what was agreed to in my oral. They had to be short and to the point. So I never at this point told my daughters they couldn't call because I was never instructed that I couldn't get phone calls from my daughters.

My steward even agrees to that. She was there. We made the agreement that I could get phone calls from my daughters. So I notified all of my union affiliation, not the members themselves because there is no way I could contact 800 members, but all my union people. The stewards, the chief steward, the business rep that I no longer could get calls unless they are related to grievances.

Then I -- of course my friends still knew they could only contact me for just a few minutes. That was again in September of '93. Then in October of '93 when I got my suspension, it was -- Well, basically it was one day that four people called me within like a 15-minute period of time.

I kept saying I can only talk for a minute, and they kept saying I have to get in touch with you.

It was because I had made arrangements to have a day off on Wednesday and a friend of mine was going to fix my car, but if he couldn't fix my car, then I didn't need to have off Wednesday. He said, I've been trying to call you and you are never at your desk.

I said, okay, you can call me tomorrow. I will be at my desk except for a certain space of time. So that is what caused Colleen to be so upset with me, the fact that I'm scheduling my personal phone calls; but there was a reason behind scheduling.

It is because I was going to take Wednesday off or not. When I explained that in my disciplinary layoff, it didn't matter. And as was testified before, we had grieved the written, but before I could do anything with the grievance, I had gotten my disciplinary layoff.

All this I had tried so hard to change the things that the company did not like. Whether I agreed with them or not, I tried very hard to change them, but every time I turned around, the rules were changed and it was I couldn't win. (tr.166-169).

Grievant testified that when a call came in to her extension from the outside she had to answer it because it could have been business related. Indeed, Grievant noted that her supervisor gave her number to group representatives because the supervisor felt they would be best served if they talked to Grievant directly. (tr.172) Grievant testified that she turned her phone volume down after receiving the oral and written warnings because she was afraid to get personal phone calls and "there was no way I could contact every last soul that would ever call me" so until her supervisor gave her phone number out she felt she could not answer her extension altogether. (tr.173) Later she turned it down somewhat to enable a co-worker to know which of two lines was ringing. Grievant states that she was accused of doing that so "they wouldn't know if the phone calls were coming into my line. The only reason I can say that is because they wanted to know about every call that came in so they could listen, because if I was at my desk available for customer calls, there would be no reason for the whole department to know my phone was ringing." (tr.175)

Grievant testified that another MMAC, employe, Connie Huston, received personal calls on a daily basis and had told her son to call her daily when he got home from school and especially during the summer when he wanted to leave the house. Grievant claims that since her written warning, judging from the Company's 69 calls on the basis of which she was discharged, she been receiving only 2-3 personal calls on average per week and, as documented, the length of those calls was 2-3 minutes.

On cross-examination, Grievant asserted that while the informal counseling and oral warnings as regards personal phone calls were justified, the three subsequent disciplinary actions were not:

At my oral warning I was getting excessive personal phone calls and they were excessive in length, and I admit to that. And when I had my written warning, I had changed my practice. My friends no longer called me and we sat on the phone and chit chatted.

If they called at all, it was very short, very quick, you know. Are you going to be available this evening, are we going to have dinner, whatever. Very quick, short. A minute to two minutes.

But what I did not know between the oral and the written is that my union-related phone calls would be counted as personal phone calls. They have never been in the past in my 26 years working there. I have been associated with the union since 1977. 17 years they have never been counted as a personal phone call before. (tr.179)

Grievant testified that Radisich told her to take care of her personal business and phone calls during her breaks and lunch period and that Grievant attempted to do so. She acknowledged making outgoing calls home and to the Union office, asserting that the former tended to be short and toward the end of the day and that she could not say which of the latter, if any, were not grievance-related. She asserted, however, "I could not control the calls I received, but calls I made, yes, I made at the pay phone down on the second floor." Grievant states that she told her daughters not to call over frivolous matters and referred to Company-documented instances in which she cut them short and even hung up on them. With regard to the calls from the landlord, she explained that once it became clear that the calls were not going to be short, she took steps to end the conversations. (tr.182) Grievant acknowledges that Radisich made it clear before she came into MMAC that it was very important for Grievant to be available to take customer calls coming in, and that her failure to do so was why she was informally counseled and orally warned. Grievant admitted she could not say that the calls documented by the Company were the only personal calls she had received since her written warning, but she stated that she suspected and speculated that they monitored every call that she received because "that's how they were treating me at the end. Any time my phone would ring, they would listen." (tr.184)

Grievant acknowledged that Radisich had not told her that she could have as many calls with her daughters as she wanted. "I'm an adult. I have worked for the company for many years. I'm a respected employee as far as my work habits go. I know for a fact that having, you know, volumes of phone calls is not appropriate, but having a few every once in a while that are short and quick, I don't see any problem with that." Grievant acknowledged having personal telephone conversations while a customer was on hold. She asserted that while on a call with a customer she would only answer her extension if it would not interrupt the initial information gathering process with the customer and that she would only engage in a personal call while the customer was on hold at an appropriate break point in the conversation with the customer, such as to get information from the computer, so that she felt she did not interfere with the servicing of the

customer. Grievant recalled that a few times supervisors had told her that "you have customers waiting, can you get off your personal phone call?" (tr.190) Grievant reiterated that she told her daughters only to call when it was important, but said that she did not tell them only to call in an emergency or that they should not call because it could cause Grievant to lose her job.

Grievant testified that after the Company issued its statement about non-grievance related calls in the written warning, she and the Union resolved to fight that issue through the grievance procedure. In the meantime, "[i]f a phone call came in to me and it was from the union and non-grievance related and they said, do you have time right now, I would look at the situation and say yes or no." (tr.200)

### Davis' Testimony

Davis testified that she has been a Customer Service Representative, Union steward and Union officer and has received personal phone calls on work time on a daily basis "over numerous years" because of personal problems in her home life regarding husband, children and elderly parents. Those calls have never been a problem and she has never been counseled or reprimanded concerning them. (tr.215)

Davis also testified that she and Botros requested from the Company, but never received, information regarding monitoring in the FEP areas and other areas outside MMAC, and any feedback forms MMAC might have concerning the quality of the MMAC Representatives' business calls that were monitored for quality control purposes. Davis stated that she and Botros sent the Company a letter outlining discrepancies in the Company's documentation of Grievant's calls since the written reprimand but had received no response. Davis said that she was told by FEP supervisor Mary Lenz that in her area, even though it was under Singh's supervision, they "did not have any formal monitoring, that if they -- if she walked past a person and heard them on a phone call and it was personal in nature, she would document it at that time." (tr.218)

Davis stated that she knew of no uniform rule department to department regarding personal phone calls. In that regard, Davis described the following discussion with the manager in another unit employing CS Representatives:

. . . This summer I was recently involved with . . . with a grievance with one of the customer service managers, who was Diana Spitz at that time, and the supervisor was Joe Beckman, and this person had received a personal phone call.

And discussing it with Diana Spitz, she said she had no problems with people receiving personal phone calls as long as they were short, that there were no calls holding and that they weren't numerous in nature.

She couldn't give me a number, and we did discuss further, well, there is a hard time looking at the system because you cannot tell if a call is holding, and she said that she realized that and she hoped that the people would communicate with each other so that would not happen in the future. But that's the only time anything has been discussed, and that was a result of a grievance. (tr.220)

Davis further testified that Grievant asked her not to call Grievant unless it was grievance related and that Grievant "made every effort to comply with the wishes of the [company's] request, and I believe she did reduce her phone calls."

On cross-examination, Davis acknowledged that her letter identifying discrepancies asked only that the Company take that information into consideration, but did not request a specific response, and that she did not know whether the request for additional information about monitoring in MMAC or other units was ever reduced to writing.

Davis pointed out that calls within five minutes of Grievant's nominal 5:00 PM quitting time were within what has traditionally been recognized as a five-minute clean-up time during which CS Representatives can AUX out and clean up their work prior to quitting. Davis stated

that her understanding of Art. V was that a Union steward can, on Company time, receive complaints of employees. In that regard, she cited the second sentence of Sec. 5.9 plus past practice. Davis states that Union stewards have always been able to have conversations, including by phone, where a situation is brought to their attention so that a grievance could be filed, (tr.239) or where an interpretation of the Agreement is involved. (tr.243) In that regard she testified, "[U]ntil two weeks ago we were never told that we could not handle these things [on Company time]." (tr.242) "I was approached by my supervisor and told that I could no longer have employees come up to me on company time to discuss possible grievances. Interpretation of the contract that I had to do that on my lunch break or prior to or after work. The only thing I could do on company time was to discuss with management any grievances. . . . Whereas before we could do investigation if we needed to pull management records for that or talk to other employees in that department to see what the practice had been before. We were told we can no longer do that on company time, that if a person is having a problem they can only speak to us during their and our assigned lunch or before and after work." (tr.250-51) Davis stated that one or more grievances have been filed concerning those disputes, but in the meantime the activities are being performed on "Union time" such that the Union rather than the Company is paying the stewards during such activities while those disputes are pending. (tr.253)

According to Davis, who was a member of the Union's bargaining team in several but not the

most recent round of negotiations, "[t]he last few negotiations have been pretty bitter." She also notes that at times "the grievance process was so delayed with meetings and such" that the Union had been attempting to resolve matters prior to the need for invoking the formal grievance process. (tr.252)

Davis explained Union Exhibit 28 which she and Botros prepared in response to the Company's documentation concerning Grievant's phone calls from October 20, 1993 until her discharge on June 22, 1994. In that document the Union asserted that the Company's documentation lists 62 rather than the 69 calls referred to in the discharge notice and that, of those, the Union contests 38 on the grounds that they were one or more of the following: Union-related (which past practice had always permitted whether grievance-related or not), Company-business-related (such as where calls from or to subscribers involved chit chat to maintain goodwill but only the latter aspect of the conversation was monitored), to or from Grievant's daughters (which the Company permits other employees to enjoy and which Radisich said at the written warning were okay), calls that were either during Grievant's lunch or break period or were brief calls immediately before lunch or break times where Grievant arranged to meet people at break or lunch to do her business with them at that time as the Company had urged. Exhibit 28 also identified eleven dates on which personal calls were alleged by the Company but for which no monitoring activity was noted by on the log of allegedly-random monitoring. Finally, the Union identified the periods between December 15, 1993--January 27, 1994 and February 8-March 2, 1994 when no personal calls were noted.

#### POSITION OF THE COMPANY

Each of the disputed disciplinary actions was for just cause. Each was based on undisputed documentation that Grievant made and/or received an excessive number of personal calls while on Company time. While the Company acknowledges some such personal telephone calls are necessary for all employees, Grievant clearly and repeatedly abused the privilege. Grievant acknowledged that the Company had a right to be concerned and to take disciplinary action in response to her excessive personal telephone calls. By requesting that the oral warning be changed from Substandard Work Performance to Not Following/Adhering to Work Rules and not grieving the revised oral warning, the Union and Grievant recognized that there was an unwritten rule against making/receiving excessive personal telephone calls on Company time. The informal counseling noted that Grievant's behavior reflected not only poor work habits but also poor "work ethics." In that regard the Company's Employee Code of Ethical Conduct received by Grievant on July 20, 1992 included the following:

As an employee of our Company, I can help maintain the integrity of the Company and agree to promote an atmosphere conducive to successful business practice by agreeing:

. . .

- to put forth my finest efforts and pledge the highest levels of integrity and quality I am capable of achieving; making every sincere effort to be present for work and using my work time productively for company business.

. . .

-to properly use for business purposes all Company property for which I am authorized (including long distance telephone service, photocopiers, stationery, postage, automobiles and other equipment), never to abuse or take possession of such property, or the property of fellow employees, without expressed permission.

Grievant's "poor work ethics" were noted in the attachment to the Informal Counselling in addition to her poor work habits.

Grievant acknowledged that the Company was justified in giving her both the August 27, 1992 informal counseling and the May 6, 1993 oral warning. The disputed disciplinary actions were for the same offenses; the only difference is that they were grieved.

The Company followed the contractual progressive discipline procedure, opting to begin the process with informal counseling rather than an oral warning. Grievant's responses in each instance were to improve temporarily but then to fall back into her old unacceptable habits. Neither Grievant's Union offices nor her acknowledged expertise as a customer service representative are bases on which to deny the Company the right to discipline and ultimately discharge an employe who was unable or unwilling to conform her conduct to a the Company's legitimate, reasonable and repeatedly-explained standards of conduct.

The arguments advanced by the Union at the hearing should be rejected.

While there was no written rule specifically about employes receiving or making personal calls on Company time, all of the witnesses testified that the Company took a common sense approach to this matter. There was no blanket prohibition against personal calls on Company time as long as they were infrequent and did not become excessive. However, Grievant could not curtail the amount of personal business she conducted on Company time despite the Company giving her ample opportunity and progressive discipline to do so. As noted, the Grievant and the Union, by their responses to the informal counseling and oral warning effectively acknowledged the existence of an unwritten rule that employes were not to make and/or receive an excessive amount of personal calls on Company time. That unwritten rule serves the Company's legitimate business interests in responding to customer calls promptly rather than putting them on hold or in queue.

Notably, during the time Grievant worked in the MMAC unit, the abandon rate was 5% while the abandon rate for the neighboring FEP department was 0.2%. Where, as here, callers are in queue because a customer service representative is engaged in a personal telephone conversation, the Company is fully justified in taking corrective action against the employee. That is all that happened in this case.

The Company did not change the rules on the Grievant. Radisich initially gave Grievant permission to receive "some" personal calls if they were short. As noted, the Company acknowledges that some such personal calls are necessary for all employees. The informal counseling does not state that Grievant can have unlimited calls from her daughters or about non-grievance-related Union matters. The oral warning does not address the particular types of personal calls that Grievant continued to make and receive. Grievant should have known from the terms of the Agreement itself that Union-related calls were not permitted if they were not within the scope of Agreement Art. V, i.e., if they were not grievance-related. Radisich only reminded Grievant of that distinction so that she would fully understand what was and what was not expected of her. Similarly, Grievant should have known that calls to and from her daughters were personal calls. Only when she feigned ignorance as to whether a call with her daughters was personal did Radisich and Singh find it necessary to clarify that a call with one of her daughters was a personal call. They ultimately told Grievant that she was not to receive calls from her daughters unless they were of an emergency nature to get Grievant's attention to the need to control her personal calls and in response to Grievant's feigned ignorance as to what a personal telephone call was and in one more effort to define the obvious for her. In any event, misunderstandings about what was required of her cannot justify Grievant's misconduct since after receiving her supervisors' clarifications that they were considered personal calls, she continued to have numerous Union-related calls unrelated to any pending grievance and to have numerous calls with her daughters that could not remotely be considered of an emergency nature.

The Union has not shown that the Company had knowledge of any other employees who were receiving or making as many personal calls as Grievant. The Union's claim that Connie Huston received an excessive amount of personal telephone calls provides no support for a claim of disparate treatment for the written warning or suspension which were issued before Huston came to the MMAC department in or after October 1993. Thereafter, the monitoring logs of the three MMAC employees did not give the Company a reason to know that Huston was engaging in misconduct similar to Grievant's. The Company cannot discipline what it does not know about.

The Union's claim that Grievant was monitored more than other employees is untrue, as shown by the MMAC monitoring logs in evidence in this case.

The Union's claim that the Company records indicate that Grievant had weeks of improvement in which she did not engage in any personal calls assumes, contrary to common sense and the dates noted on the monitoring log, that the Company monitored all of Grievant's calls from the

beginning to the end of every shift she worked. Moreover, the telephone logs from Grievant's extensions show that from September 1993 through June 1994, Grievant habitually called the Union office and her home from her work extension during work hours. None of those obviously personal telephone calls correspond to any of the random monitoring that the Company did of Grievant.

For those reasons, the grievances should be denied in their entirety.

### POSITION OF THE UNION

The Grievant should not have been disciplined or discharged in this case for the following four reasons.

First, the standards the Company used in disciplining Grievant are a violation of past practice. For at least 17 years the Company consistently permitted employees to receive phone calls concerning Union matters that are not grievance-related. Grievant had, for many years, taken and received Union phone calls including non-grievance related calls without being warned or disciplined. If monitoring of customer service representatives is as commonplace as the Company claims, then the Company would have been aware that such calls by Grievant and others were being received, yet the Company never disciplined or discharged a Union employee on that basis before the Grievant. That practice was inherently reasonable because it is not possible to determine if a Union call is grievance-related or not without first taking the call. Union members may believe they have a grievance, but a grievance may not actually be filed. In this case, the Company counted all non-grievance related Union calls against Grievant, thereby improperly unilaterally changing and violating the existing past practice. Moreover, the Company did not inform Grievant of that change in practice until after she had received a written warning, half way through the discipline procedure.

Second, the standards used against the Grievant do not exist and are unreasonable. The Company admits that there is no written rule on phone calls and that everyone receives personal phone calls at work periodically, yet it disciplined and ultimately discharged a twenty-six year employee with an excellent employment record on that basis. The standard is unreasonable because it has changed over time: initially Grievant was told personal phone calls were permitted if they were not long in duration; later she was informed that Union calls unrelated to grievances were counted against her and that her daughters could call her so long as those calls were short; and on May 9, 1994 she was told she could not receive any personal calls at all except for family member emergencies such as broken limbs or severe bleeding. The Company standard is unreasonable because a Representative has no option but to answer calls and cannot know before doing so whether the call is business or personal or emergency in nature. The standard is impossible to apply because a supervisor who draws conclusion from only a portion of a conversation cannot reliably know whether grievance-related matters were earlier or eventually

discussed or whether small-talk is part of a Representative's business relationships with Company customers.

Third, the actions taken against Grievant constitute unequal and discriminatory treatment. The only person not allowed any personal phone calls was the Grievant; the alleged rules Grievant was accused of violating were not applied to anyone else. That the Company was trying to rid itself of a zealous unionist under the guise of a just cause discharge in violation of Agreement Sec. 1.4, is indicated by: the bitter active bargaining between the Union and the Company during most of discipline imposed in this case; the concern each of the Company's witnesses expressed about Grievant joining the MMAC unit even before she began working there; Radisich's telling Grievant during her interview that she was "glad she [Grievant] was not a union steward"; and the anti-union attitude evident from Nadine Bonner's testimony and conduct. That the personal calls standard was not consistently applied and enforced is shown by the Company's: breaking with past practice by counting Union-business calls against her; counting even one- and two-minute calls against her; monitoring Grievant because of what was overheard outside of routine and random monitoring; not always noting the length of the call monitored; not measuring how many calls Grievant took that were related to Company business; not always listening to the entirety of a call; monitoring Grievant more extensively than any other employe; and not disciplining any other employe for calls like some of Grievant's calls. In any event, the discipline imposed on Grievant is too harsh for the alleged infraction, and the penalty of discharge is too severe for a twenty-six year employe with an excellent performance record.

Fourth Grievant did not violate any Company rules because she made sincere efforts to meet the Company's demands. As required by the ethics code provision relied on by the Company, the Grievant made every "sincere effort to be present for work and use her work time productively for Company business." Radisich and Singh admitted that Grievant made efforts to comply with their demands. The performance review supports that Grievant was eliminating personal calls. Various Company exhibits reveal efforts by Grievant to curtail personal calls by telling the caller she could not speak or by hanging up. There is no evidence of harm to the Company since the calls relied on by the Company averaged only about two per week over an eight month period; Grievant testified that she would never put a customer on hold unless it was at an appropriate time; and there may have been other available representatives to service a customer during the two times a week Grievant has been shown to have made or received a personal call.

Therefore, each of the grievances should be granted. The Company should be found to have violated the Agreement by issuing each of the disputed disciplinary actions, and each should be removed from Grievant's record. In addition, the Grievant should be reinstated to employment and made whole for any losses she has suffered.

## DISCUSSION

The ISSUES have been framed to generally present the question of whether any or all of the

disputed disciplinary actions violated the Agreement. In light of the parties' arguments, each of the ISSUES 1-3 turns on whether the Company engaged in anti-union discrimination in violation of Agreement Sec. 1.4 and whether the Company complied with the just cause requirement in Agreement Sec. 5.6.

The Union bears the burden of persuasion regarding a violation of Sec. 1.4. The Company bears the burden of persuasion regarding just cause.

#### Claimed Anti-Union Discrimination

The Union has shown that, in the context of a bitter contract negotiation dispute with the Union, the Company wrote up, suspended and ultimately discharged the Union president, steward and long-time activist who had 26 years of Company service and who is highly regarded and positively evaluated for the quality of her work in most respects, for conduct including both Union business calls and calls unrelated to the Company and Union, as to which conduct the Company has never before suspended or discharged any other bargaining unit employe. Those and other circumstances cited by the Union in its brief have understandably lead the Union to conclude that each of the subject actions constituted anti-union discrimination violative of Agreement Sec. 1.4. The Union's contentions and the record evidence in that regard have therefore been reviewed with the close scrutiny they deserve, as regards both the nature of and the motivations for the disputed disciplinary actions.

Based on that careful review, the Chairman concludes that Grievant was not disciplined or discharged because of her Union activities or to influence or retaliate on account of activities of the Union. Rather, for the reasons outlined below, the Chairman concludes that Grievant and the MMAC unit were a particularly "bad fit" and that the Company actions at issue in this case stemmed from the Company's belief that Grievant was unwilling or unable to conform to standards of conduct which the MMAC supervisors imposed and sought to enforce in pursuit of the Company's rights under Agreement Art. V and the Company's legitimate business objectives. The validity of the standards imposed is, of course, disputed in other respects and analyzed in other sections of this DISCUSSION. The rationale for the conclusion that anti-Union discrimination has not been proven in this case is set forth immediately below.

The MMAC unit was small in size and dedicated in function, prompting close scrutiny, feedback and interdependence among its Customer Service Representatives and their supervisors. It appears to have been understaffed at various times -- down to two available CS Representatives for a significant period of time (e.g., exh.16, pp.4-5,7-8; tr.94) -- further emphasizing the interdependence of the CS Representatives working under those conditions. At some point in time when Grievant was working in the MMAC unit, it had a substantially higher abandon rate compared to the adjoining dedicated FEP unit, which could prompt MMAC supervisors to be particularly concerned about any conduct on the part of the CS Representatives in unit that might be preventing them from responding promptly to incoming business calls. The MMAC business

base was shrinking somewhat during the time Grievant was working in the MMAC unit, which might also have prompted supervisors to be particularly concerned about the quality of service their CS Representatives were providing.

In the context of the highly interdependent work relationships in this small unit, Grievant joined co-workers (especially Bonner) who were unsympathetic toward (and quite willing and prone to complain to supervision about) conduct on Grievant's part that caused them to carry a greater share of the incoming calls or to fail as a group to maintain high productivity standards. Also present in MMAC were a supervisor and manager who appear to have been highly-motivated about unit performance; by the time of the arbitration hearing, both had been promoted. Those supervisors were assisted with monitoring of CS Representatives from time to time by a Senior CS Representative. While that is a bargaining unit position, one of the Seniors who worked in MMAC during a part of the time Grievant was there was Singh's sister.

Grievant came to the MMAC in June of 1992. She is a single mother with two teenage daughters, a Union activist since 1977, sociable and loquacious (tr.192), Union president since before her transfer to MMAC, a Union steward since about September of 1992, and temporarily Union building steward for a later period of time, as well. Grievant apparently came to MMAC with the experience of having engaged both in a variety of Union activities on Company time and in substantial telephone activity unrelated to Company business on Company time without prior supervisory disciplinary intervention. For example, Bonner described the day when she had substituted for Grievant in the Kimberly-Clark unit as one in which she spent the majority of her time answering calls for Grievant that were not on Company business. While Bonner brought that to the attention of the Kimberly-Clark supervisor at that time, Grievant's un rebutted testimony was that she was never told about Bonner's complaint.

Grievant, for her part, does not appear to be either shy or compliant by nature. She appears to have taken pride both in her ability to provide quality service to Company customers, and in enjoying life and taking full advantage of the various opportunities and flexibilities that Company employment and policies provided. For example, there was no rebuttal to Bonner's testimony that Grievant had spoken proudly of taking full advantage of every late arrival permitted because of inclement weather. (tr.99) Grievant also appears to be deeply concerned about and committed to maintaining not only her daughters' well-being but also their freedom from guilt or concern about the impact their calling Grievant at work might have on Grievant's continued employment with the Company. In addition to all of that, Grievant had an active social life involving numerous friends and frequent activities.

In various ways, then, Grievant and the MMAC were a bad fit, portending difficulties of the sort that were experienced beginning not long after her transfer there.

Well in advance of the time when the latest round of bargaining became acrimonious, Radisich and Bonner had expressed their concerns about Grievant's apparently widely-known propensity to engage in activities that reduced her availability to receive Company business calls. Radisich

expressed those concerns to Grievant at the time of the pre-transfer interview. At that time she also emphasized to Grievant the importance of being available to take Company business calls in the small and dedicated unit that MMAC was. According to Grievant's testimony, Radisich told her that "she was very pleased I was not a union steward at the time because [MMAC] did not need anyone being away from the phones on union business." (tr.164) Thus, that ill-chosen remark was made in the context of a concern about unit productivity, rather than in the sense of hostility toward the Union or Union business per se.

Other rounds of bargaining had also been bitter, as well, though this one involved NLRB charges and the record does not indicate whether that was a feature of any previous round. Grievant was not a member of the Union bargaining team. Nor does she appear to have otherwise taken a highly visible role in relation to the contract negotiation process.

Most importantly, however, in the context of all of the foregoing, Grievant engaged in what she admitted was excessive personal phone call activity deserving of the informal counseling and oral warning issued to her for it.

The record satisfies the Chairman that the Company's disciplinary responses to that conduct, and to what the Company asserts was a continuation of that conduct in the months that followed, were an effort to maintain productivity and an equitable allocation of the work within the MMAC unit, rather than Agreement Sec. 1.4 anti-union discrimination.

#### Just Cause for Discipline and Discharge

The alleged offense for which each of the three disputed disciplines was imposed was improper personal phone call activity on Company time. In analyzing whether the Company has met the requirements of just cause as regards the three disputed disciplinary actions, the following sub-issues need to be addressed: the effect of past practices on the Company's right to discipline Grievant for Union business calls unrelated to matters subject to the grievance procedure; the reasonableness of the Company's unwritten rule regulating personal telephone calls; whether Grievant was given fair notice of the nature of the Company's unwritten standards; whether the Company was even-handed in its application of the unwritten standards; and, ultimately, whether the written warning, suspension and/or discharge met the requirements of just cause.

#### Effect of Past Practices on Discipline for Union Business Calls Unrelated to Matters Subject to the Grievance Procedure

The disciplinary actions in dispute in this case have included Company efforts, at times, to limit, and at other times to wholly forbid Grievant's Union business calls unrelated to matters subject to

processing as a complaint or grievance under the Agreement Art. V grievance procedure. The written warning flatly forbade Grievant from conducting any non-grievance-related Union business during working hours. In some of its other communications with Grievant on this subject, the Company told her it was treating non-grievance-related Union business calls as personal calls which it counted against Grievant in assessing whether her overall personal calling activity exceeded permissible levels.

The Union has asserted that all of those actions violated past practices whereby the Union president and stewards and perhaps other Union officials had previously been permitted to engage in Union business calls on Company time whether the calls were related to matters subject to processing under the grievance procedure or not. At the hearing, Grievant was asked whether anybody from the Company told her that it was okay to engage in calls unrelated to grievances and she replied that no one had except by permitting her to make such calls in the past. (tr.199)

The record provides little in the way of details concerning which Union officials have engaged in such phone calls, over what period of time, to what extent and in what circumstances, and with what degree of Company knowledge and approval or acquiescence. Nevertheless, the Union witnesses' general assertions regarding the existence of longstanding past practices in that regard stand uncontradicted in the record.

On the other hand, the language of the Agreement clearly and unambiguously prohibits the Union and employes from engaging in Union activities on Company time that are unrelated to matters that are subject to processing as complaints or grievances under the grievance procedure. Agreement Sec. 5.9 expressly prohibits the Union and employes from engaging in Union activities during working time except to the extent permitted by the Agreement. It identifies the duties of a steward as "to represent bargaining unit employes in handling grievances or complaints as set forth in Art. V above, and to confer with management representatives concerning administration of this agreement where appropriate." The Union has not pointed to and the Chairman has not found any provision in Art. V or the balance of the Agreement permitting Union officials to engage in Union activities that are not related to matters that are subject to processing in the Art. V procedure as complaints or grievances.

Under the Agreement, past practice, even if well proven, does not control as against clear and unequivocal contract language. Agreement Sec. 6.9 provides that "[p]ractices under this Agreement may be considered in the interpretation and application thereof." However, that section also provides that the Arbitration Board "shall not have the power to . . . ignore, or to modify any of the terms and conditions of this Agreement" and that in arbitrations, "[i]t shall be controlling that this Agreement sets out all restrictions, rights and obligations agreed to by the parties and that no assumed or implied restrictions, rights or obligations were intended." Accordingly, the past practices relied on by the Union do not control as against the clear and unequivocal language of Sec. 5.9.

Nevertheless, discipline cannot be imposed consistent with a just cause requirement where the

Company's enforcement of its rights under clear language has been lax over time, absent clear notice of the change in advance of the imposition of discipline. Grievant testified that the reference in the written warning to the effect that "Louise may not conduct non-grievance-related Union business during working hours" came as a surprise to her because she had not previously been told that any of her Union business calls were not okay such that they would be counted as personal. (tr.167) The documentary evidence persuasively indicates otherwise, however. Specifically, one of the notations regarding telephone calls in Exhibit 8 contains Radisich's rather detailed description of a conversation on that subject that she had with Grievant on July 27, 1992, as follows:

Told Louise she was being monitored & we heard that she put a sub on hold to do Union work. I told Louise we needed to discuss this right up front & I let her know there was to be no Union work on Company time (Louise is not a Steward). She said OK. Regarding the sub she said she was working on this & put the sub on hold to do her on-line research. I said fine, I'm sure you know our subs always come 1st -- She agreed.

7/27 pm - told Louise this time this was "no big deal" (not an official warning).

While there was no testimony elicited about that document, it was included in materials that Grievant and the Union had evidently seen not only at the arbitration hearing but also at a previous Unemployment Compensation proceeding. (tr.184-85) Grievant admitted that each of the many descriptions of Grievant's telephone activity set forth in the supervisory notations in various Company exhibits including Exhibit 8 was accurate in all respects. Hence, there is no reason to doubt the accuracy of Radisich's notes about her conversation with Grievant concerning the above-noted July 27, 1992 call. While the interaction was, by Radisich's own notation, "not an official warning," it was a nonetheless a clear statement and directive regarding Radisich's expectations about Grievant's conduct in the future. In the face of that clear statement in July of 1992, Grievant's contention that she had no reason to know until she received her written warning that Union business calls would be counted against her as personal calls is unpersuasive.

Of course, in her later-acquired status as a steward, Grievant was entitled to the rights to engage on Company time in Union activities related to complaints and grievances subject to processing under the Art. V procedure. Radisich indirectly acknowledged that Grievant had some such rights when she stated, "[i]f it wasn't potential grievance or grievance related, regardless if they were talking about a union-type issue, it was not a legal-type call and it was counted against her as a personal call." (tr.45) On September 3, 1993, the supervisor notes indicate that Radisich personally reminded Grievant that Union business calls were considered personal unless they were grievance-related. Six days later Radisich issued the written warning which reiterated that the Company drew a distinction between grievance-related and other Union business calls.

If Grievant believed Radisich's July 27, 1992 directive violated the Agreement properly interpreted in light of past practice, she could and should have filed a grievance to that effect at that time. Instead, she appears from the notes above to have accepted Radisich's directive when it was given and not to have grieved the matter until a reference to Union business calls was included as a part of an official warning in the September 9, 1993 written warning. Even after the written warning was issued, Grievant did not stop making Union business calls unrelated to contract administration. Nor does she appear to have routinely either asked Union callers at the outset of the call what their grievance-related business was or cut them off as soon as it appeared the call did not involve a contract administration matter. In any event, Grievant had been put on clear notice on July 27, 1992 that Radisich was not treating Union business calls by Grievant on Company time as okay.

In light of the language of the Agreement and the July 27, 1992 notification to Grievant noted above, the Company was not violating the Agreement by basing the subject disciplinary actions, in part, on Grievant's phone calls unrelated to matters subject to processing as a complaint or grievance under the Art. V procedure. (This award need not and does not address the additional grievance disputes, most or all of which appear to have arisen after the discharge, (tr.252-53) as regards Company efforts to limit stewards' Company time activities relating to matters subject to processing under the Art. V procedure.)

#### Reasonableness of Unwritten Rule Regulating Personal Telephone Calls

As noted, from the informal counseling through the discharge, the offense Grievant was charged with was improper personal phone call activity on Company time. Apart from the language of Art. V regarding Union business calls unrelated to matters subject to the grievance procedure, the Company admits there is no specific published rule on that subject. (tr.152) While the Company relies in part on portions of its ethics code, that code per se was not cited or apparently discussed in pre-arbitral processing of these grievances. Therefore, apart from the implications of Art. V for Union business calls on Company time discussed above, the Company's position in this case rests primarily on its assertion that there are well-understood though unwritten standards of conduct regarding personal calls on Company time by CS Representatives.

The Company's right to "establish and enforce reasonable work rules" in a manner that does not "violate or fail to comply with the express purpose of a specific provision or provisions of this Agreement" is expressly recognized in Agreement Sec. 2.1. The second last paragraph of Appendix A expressly recognizes that the offenses listed in that Appendix "are by no means inclusive" and that "[o]ther actions which are contrary to good conduct will be dealt with as they occur." Those provisions do not preclude the possibility that the Company may establish and enforce a standard of conduct regarding personal calls on Company time that is not addressed in a specific published rule.

It is only common sense that employees who are employed to do the Company's work are expected to limit the amount of time they spend on personal business during Company time. The Company also has more specific business reasons for placing reasonable limits on CS Representatives' personal call activity. The more often Company customers are forced to wait in queue or on hold for lengthy periods of time, the more likely they are to abandon the call or to be otherwise be dissatisfied with the Company's service. Promoting and maintaining customer satisfaction is obviously important to the Company's ability to retain and expand its business. Time spent by CS Representatives taking or making personal calls on their extensions prevents them from readily knowing when customers are waiting in queue and increases the likelihood of co-worker dissatisfaction about inequitable work sharing in the unit. Especially so when the CS Representative goes to Aux-out status to make or take the personal call. The potential for causing customer dissatisfaction is heightened where the personal call is made or taken while the customer has been put on hold or while one or more customers are waiting in queue.

The Union's contention that the Company has not shown itself to have been harmed by the personal call activities for which Grievant is being disciplined is unpersuasive. The abandon rate was significantly higher in MMAC than in FEP. While Singh acknowledged that she could not attribute all of the difference to the Grievant, there are examples in the supervisory notes where business callers abandoned while Grievant was engaged in personal call conversations. The evidence also makes it clear that Grievant's personal call activities created hard feelings among co-workers (especially Bonner) who wound up taking more Company business calls and experiencing more pressure to keep up with Company business calls because of Grievant's personal call activities. Bonner cited those frustrations as part of the reasons she transferred out of MMAC. The Union's contention that the Company has not been harmed by Grievant's alleged misconduct because the other MMAC CS Representatives could have answered any customer calls Grievant missed is unpersuasive both because there was not always another CS Representative available to promptly answer and because that approach merely substitutes one form of harm to the Company's legitimate interests for another.

The evidence suggests that it is generally understood among the bargaining unit that CS Representatives' personal call activity on Company time is not without limits. Grievant herself acknowledged that she understood that there were limits. She and Davis acknowledged such limits when they requested that the informal counseling be amended to identify the offense as "Failure to Adhere to Work Rules" and then accepted that amended memorandum and the subsequent oral warning specifying the same offense. Grievant also acknowledged such an understanding in her testimony, "I know for a fact that having, you know, volumes of phone calls is not appropriate, but having a few every once in a while that are short and quick, I don't see any problem with that." (tr.189)

In assessing the reasonableness of the Company's efforts to limit CS Representatives' personal calls on Company time, it can also be noted that the employees have pay phones and a total of 85 minutes of AM and PM breaks and mid-day lunch periods during which they are permitted and

encouraged to make personal calls as needed.

The Union is correct when it argues that CS Representatives cannot know who is calling on their extension and therefore cannot fail to answer what might be a call related to Company business. However, that does not make reasonable limitations on CS Representatives' incoming calls that take that reality into account per se unreasonable. The employees can take effective steps to prevent personal calls by telling most potential personal callers not to call them at work and by asking those that do to call only on important, time-critical matters. They can also take effective steps to terminate personal calls that they receive despite such requests by telling callers to call them at home or that they will call them back on their break, at lunch, etc.

Accordingly, the absence of a published rule, in and of itself, does not invalidate the Company's disciplinary actions in this case, and the concept of Company limitations on CS Representatives' personal calling activities on Company time is not per se unreasonable.

The standards that MMAC supervisors applied to Grievant prior to the May 9, 1994 grievance meeting are those indirectly described by Radisich in her October 6, 1993, response memo to Davis. Those standards take account of whether personal calls "were lengthy . . . [or] during periods when calls were in queue" and whether "the volume [was] excessive." Similarly, Radisich testified that, "[p]ersonal phone calls really are not allowed, however, it is common knowledge that everybody gets them periodically. And as long as they are infrequent and they don't tie up the lines, there really hadn't been a problem with receiving a periodic phone call." According to Bonner, everyone (except Grievant) attempted to adhere to such standards. (tr.95-96, 100-101). When asked whether she ever received personal phone calls at work, she replied, "[o]ccasionally. Everyone gets calls, but we try to keep it short and to the point because we are on a service line where we were getting calls. So we had to keep them down to a minimum and tried not just myself, but everybody else." (tr.95-96)

In light of the legitimate Company interests at stake in assuring that business calls are answered promptly and properly and in maintaining an equitable distribution of work within the MMAC unit, and in view of the availability of public phones and morning, mid-day and afternoon break periods during which employees can make personal calls, the above standards applied by the MMAC supervisors prior to May 9, 1994 were reasonable. (The standards applied on and after May 9, 1994 are discussed in some detail in a later section of this DISCUSSION.)

Nevertheless, in the absence of a specific published and written rule, just cause requires the Company to take particular care to assure that employees are informed of what is expected of them before it imposes discipline for a violation of an unwritten standard, and to assure that it applies the unwritten standard in an even-handed manner.

### Fair Notice of Nature of the Unwritten Standards

In this case, Radisich took special care during the pre-transfer interview to alert Grievant to the importance -- given the small size of the MMAC unit -- of being available to take Company business calls and of not spending time on personal calls and away from her desk as Radisich knew Grievant was prone to do based on her having previously supervised her in the Kimberly-Clark unit. Radisich took care "right up front" to inform Grievant about Union-business calls on July 27, 1992, as noted above. On numerous other occasions noted in the exhibits, Grievant was told to get off a personal call and be available to take Company business calls. She was also variously reminded that the Company had pay phones on its premises that were available for Grievant's use during her breaks and lunch period to make personal calls she needed to make during the work day, and that she needed to take steps to stop personal callers from calling her at work. She was specifically warned in the informal counseling, the oral warning and the written warning about being on a personal call with a customer or customers on hold or in queue. She was cautioned about both the length and the frequency of her personal calls on numerous occasions noted in the exhibits, as well, including the informal counseling and the suspension.

Grievant was fairly put on notice throughout the disciplinary process that she needed to keep the calls she made and received that did not involve Company business or grievance-related Union business (once she became a steward) to a minimum both in terms of length and frequency of calls and that she was to take special care to avoid taking or making such calls with customers on hold or in queue.

When Grievant was told earlier in the disciplinary process that she could make personal calls if they were short and that she could communicate with her daughters, she was not thereby given permission to have as many of those kinds of calls as she wanted or to have them extend as long as she pleased. Grievant's assertion that she had no indication of supervisory dissatisfaction about her personal telephone activity between her oral and written warnings (tr.166) is contradicted by the supervisors' notes regarding workplace interactions they had with Grievant on August 6 and September 3, 1993.

Even when the Company told Grievant at the May 9, 1994 grievance meeting that it expected her to avoid making or receiving calls from her daughters except for emergencies, the Company put Grievant on clear notice of what it expected of her in that regard. (The propriety of the Company imposing that emergencies-only standard is addressed separately, below, but the clarity of its notice to Grievant about that standard is well-established in the record evidence.)

In sum, the Union's contention that Grievant was not given fair notice of what the Company was asking of her throughout the course of the disciplinary process is not supported by the evidence.

### Even-handedness of Company's

### Application of Unwritten Standards

Just cause requires that an employer apply its rules in a manner that, within reasonable limits, treats like cases the same. The Union asserts that Grievant has been subjected to intensive monitoring and discipline for personal call conduct about which other CS Representatives in the bargaining unit have not been monitored as intensely or at all and have not been disciplined.

It appears that MMAC was monitored more intensively than other CS Representatives in similar units. Davis testified without rebuttal that monitoring CS Representatives for quality control is a Company policy that is more faithfully adhered to by some supervisors than it is by others, and that even in the adjoining FEP unit (also under Singh's general supervision) there was no formal monitoring program in effect. It is also clear from the record that the MMAC monitoring was not entirely random in nature. Singh admitted that she was sometimes prompted to monitor Grievant's phone activity when she overheard Grievant engaged in what sounded like a personal call. The record also indicates that Grievant was monitored when a co-worker complained that she was on a personal call. (exh.15, note re 9-7-93) The Union's analysis of monitoring dates confirms that the dates of several of the calls for which supervisors' notes were produced did not correlate with dates on which monitoring was systematically logged.

It appears, therefore, that the Company both intensified and systematized the logging of its monitoring at a point in time after Grievant's arrival in the unit.

The MMAC supervisors' close monitoring of its CS Representatives and particularly of Grievant for personal call activity were justified, however, as a response to Grievant's admittedly excessive personal call activities that led initially to the informal counseling and then to the oral warning. The just cause requirement of even-handed treatment does not prevent an employer from observing an employe more closely to determine whether a pattern of misconduct continues or abates in response to progressive discipline.

The Company's disparate monitoring activities therefore do not render any of the disputed disciplinary actions invalid.

However, the not-entirely-random nature of the MMAC monitoring reduces the weight that can be given to the Company's absolute and comparative percentages of monitored calls that the Company considered personal in nature. On the other hand, a comparison of the monitoring records with the computerized log of outgoing calls shows Grievant made several calls to her home that were not reflected on the supervisors' notes. It follows that the supervisors' notes, the accuracy of which is not disputed, did not by any means represent all of Grievant's personal calls during the periods during which they were recorded.

Given its hit-and-miss implementation of CS Representative monitoring, especially in other units, the Company cannot persuasively avoid claims that it is disciplining Grievant but not others for the same conduct merely by saying that it has no knowledge of the conduct of the others.

Nevertheless, Singh and Radisich testified that they had not seen abuse of personal calls such as Grievant's in all of their combined years in customer service units for the Company, and the Union has not persuasively identified any other CS Representative whose personal call activity on Company time compares with Grievant's. Grievant cited daily calls to Connie Huston from her son when he got home from school and, especially in the summer, when he wanted to leave the house, as constituting conduct of the sort for which Grievant alone was being disciplined. (tr.176)

Huston replaced Bonner, so she could not have begun work before September of 1993, and the monitoring records indicate that she was in training until late December of that year. (exh.16, pp.4-5). In any event, the calls Grievant attributes to Huston pale in comparison with Grievant's combination of non-contract-administration Union business calls plus daughter calls, friend calls, and other personal business calls as described by Bonner who had an opportunity to observe Grievant until her departure from MMAC in September of 1993. (tr.100-101). Davis' description of her own former situation as comparable to Grievant's at its worst overlooks the fact that Davis' calls related to serious family and personal problems which can justifiably be viewed differently than many of the personal calls Grievant was taking or making. Union witnesses referred generally to other employees who had personal calls on an on-going or daily basis, but the nature and extent of those employees' calls is not sufficiently revealed in the record to permit a meaningful comparison with Grievant's. Similarly, Bonner's description of Grievant's conduct in the Kimberly-Clark unit did not describe a pattern of conduct of sufficient length or detail to permit a valid comparison, either.

Davis also testified without rebuttal that the standards applied by supervisors to CS Representatives regarding personal calls on Company time vary from department to department. (tr.219-220) Also without rebuttal, Davis related what another customer service manager, Diana Spitz, told Davis were the standards Spitz applies, as follows: "she [Spitz] has no problems with people receiving personal phone calls as long as they were short, that there were no calls holding, and that they weren't numerous in nature." Those standards attributed to Spitz appear quite consistent with the standards the MMAC supervisors were applying to Grievant and her MMAC co-workers until the May 9, 1994 grievance meeting, and no other set of standards has been similarly attributed to any other member of Company management.

On that basis, the Chairman concludes that the standards applied to Grievant by the MMAC supervisors prior to May 9, 1994 have not been shown to be more onerous than those in effect for other CS Representatives in the MMAC unit or in any other unit.

However, at the May 9, 1994, meeting, supervision changed the rules on Grievant. At that meeting, for the first time, MMAC supervision told Grievant (as stated in the discharge notice) "that she couldn't receive any `personal' calls except emergency - clarified as `her daughter broke her arm & needs to go to the hospital', etc." (e.g., tr.130, 194 and 218) On this point, in cross-examination, Grievant testified as follows:

Q Was it your understanding that the company initially wasn't telling

you that you couldn't have any personal phone calls?

A Correct.

Q Telling you don't abuse it?

A Correct.

Q It got to the point where the company believed you were abusing it?

A Correct.

Q They told you finally no more personal phone calls unless it is of an emergency nature?

A Right.

Q That occurred at the grievance meeting in May of '94?

A Right. (tr.194)

Besides being a change from earlier less restrictive descriptions of MMAC management's expectations of the Grievant (as reflected, for example, in Radisich's October 6, 1993 memo to Davis), the "no personal calls except of an emergency nature" standard established for Grievant alone a standard of conduct that was more restrictive than that attributed to Spitz by Davis or than the Company claims or has shown to have established or applied as regards other bargaining unit employees.

The Company argues in its brief that it was merely restating the obvious to Grievant and trying to get her attention regarding what is and what is not a personal call, in response to Grievant's recurring and disingenuous claims of surprise about what the Company meant by personal calls. The testimony quoted above and the record as a whole indicate that it did more than that, however. The discharge notice clearly states that Grievant was discharged in part for failing to adhere to the more restrictive standard announced on May 9, 1994:

. . . After the grievance meeting on 5-9-94 where Louise now clearly understood that she couldn't receive any "personal" calls . . . , she continued to make and/or receive a number of additional "personal" calls. None of the calls were emergencies (i.e., broken arm (daughter), etc). . . .

To the same effect was the following testimony by Radisich concerning whether she made any kind of analysis of the duration of the additional personal calls referred to in the discharge notice:

Q Then did you do any kind of breakdown of the duration of these calls? I'm flipping through here. Like here is one 3:29 to 3:30, 3:35, 3:35, 2:30, 2:33. These were pretty brief 3:02, 3:06.

Did you do any kind of analysis of, you know, the duration of these calls?

A No, I didn't. By this point Louise had been told that she couldn't make or receive any, so she -- because it continued, it didn't really matter whether it was a shorter call or longer call, and there were some times when we did note it and there were other times when we really didn't note the length of the call. (tr.78) [emphasis added].

Thus, supervision found that when it accorded Grievant the same leeway it accorded everyone else, she abused and far exceeded that leeway. However, instead of proceeding with its theretofore justifiable and appropriate course of discipline of Grievant for far exceeding the same sorts of standards the Company (e.g., Spitz) expected of others, the Company responded at the May 9, 1994 grievance meeting by according Grievant less leeway than it accorded everyone else, and then it applied that more restrictive standard to her and ultimately discharged her when she failed to adhere it. By so doing the Company clearly violated the just cause requirement that work rules be administered in an even-handed manner.

#### Just Cause for the Written Warning

In light of the foregoing and the record as a whole, the Chairman is satisfied that the written warning was issued consistent with the requirements of just cause. During the period between the oral warning and the written warning, Grievant continued to engage in a variety of numerous and sometimes lengthy calls unrelated to Company business or to contract administration, and she continued to engage in personal call conversations while customers were on hold or in queue. On August 6, 1993, Singh told Grievant to return to a subscriber that she had put on hold in order to continue a Union business call concerning Labor Day parade arrangements. On September 3, 1993, Radisich told Grievant that her Union business call was personal because it was not grievance related and that Grievant was to stop engaging in such calls on Company time. For the reasons noted above, the Company was within its rights under Art. V both when it forbade Grievant from engaging in any Union-business calls on Company time unrelated to matters subject to the grievance procedure and when it chose to treat such calls as personal in assessing whether Grievant's personal call activity exceeded permissible limits.

#### Just Cause for the Suspension

The Chairman is also satisfied that the suspension was issued consistent with the requirements of just cause.

In the comparatively short period between the written warning and the suspension, Grievant continued to engage in sometimes lengthy personal calls, including four personal calls in succession that Grievant received during almost the entire period from 12:55-1:17 PM on October 18, 1993. Moreover, Grievant's response to the male friend who called and with whom she spoke for six minutes October 18, 1993 did reflect the "total disregard for the work rules discussed in each step of the disciplinary process" charged in the suspension notice.

During that conversation Grievant told her friend that she couldn't talk because her supervisor was in the area, suggesting that she would otherwise have been quite willing to have the conversation extend longer. Even more indicative of Grievant's continuing unwillingness to conform her personal call activities to the standards theretofore explained to her in connection with the prior disciplinary actions and at various other times, was Grievant's response to the male friend's indication that he would call her the next day. Grievant responded that she would not be at her desk before 10:30, so he should "call after 10:30." Despite having been previously told by supervision to alert people from whom she receives personal calls that her job was in jeopardy because of her personal call activity, Grievant unequivocally directed her male friend to call her at work. It was the caller himself, and not Grievant, who then suggested, "Maybe he'll call her at home before he leaves for work," instead.

Grievant's explanation that the caller "was a third shift worker so he couldn't call me at home" (tr.206) appears inconsistent with the caller's own suggestion as recorded in the supervisory notes. Grievant's additional explanation was also unpersuasive. She testified as follows:

. . . It was because I had made arrangements to have a day off on Wednesday and a friend of mine was going to fix my car, but if he couldn't fix my car, then I didn't need to have off Wednesday. He said, I've been trying to call you and you are never at your desk.

I said, okay, you can call me tomorrow. I will be at my desk except for a certain space of time. So that is what caused Colleen to be so upset with me, the fact that I'm scheduling my personal phone calls; but there was a reason behind scheduling.

It is because I was going to take Wednesday off or not. When I explained that in my disciplinary layoff, it didn't matter. And as was testified before, we had grieved the written, but before I could do anything with the grievance, I had gotten my disciplinary layoff. (tr.168-69)

The supervisory notes regarding that conversation include Grievant's comments to the caller that she would tell her supervisor "before she leaves today" (i.e., on October 18, 1993, which was a Monday) that Grievant needed to take a half-day off on Wednesday. Grievant could therefore

have determined before leaving work that Monday whether she had her supervisor's approval for the half-day off, making the caller's subsequent suggestion that maybe he would call her at home before he left for work a sensible alternative to Grievant's suggestion that he call her at her desk on Tuesday after 10:30.

Accordingly, the Chairman has concluded that the written warning was issued consistent with the requirements of just cause.

#### No Just Cause for the Discharge

As discussed in detail above, the discharge was based in part on Grievant's failure to conform to a standard of conduct that was different from and more restrictive than the Company has been shown to have established for its other bargaining unit CS Representatives. The language of the discharge notice and Radisich's testimony make it clear that the Company assessed Grievant's conduct on and after May 9, 1994 on the basis of that more restrictive standard and discharged her when she failed to conform to it. By doing so, the Company clearly violated the just cause requirement for even-handed administration of work rules and discipline.

On that basis, the Chairman concludes that the discharge violated the just cause requirement in Agreement Sec. 5.6.

#### Remedy

The Agreement in Sec. 6.11 specifically provides that "[i]n case it is determined [in the grievance and arbitration procedure] that the employee has been . . . discharged without just cause, he shall be reinstated with full seniority rights which may, but need not, include back pay."

Therefore, in addition to removal of the discharge from Grievant's record, reinstatement of the Grievant with full seniority has been ordered. The reinstatement has been ordered to a CS Representative II job equivalent to that from which Grievant was discharged, without specification that it necessarily be in the MMAC area. As noted, part of Grievant's difficulties appear to have arisen from the fact that she was working in a small unit in which the employees were highly interdependent. Allowing the Company a degree of flexibility in determining the unit into which to reinstate the Grievant will hopefully reduce the likelihood of a continuation of the conduct that led to the disciplinary actions in this case. It is suggested but not required that the Company confer with the Union regarding the position to which Grievant is offered reinstatement. Grievant will, of course, have whatever rights her seniority entitles her to under the Agreement as regards transferring to another CS Representative II position than the one to which she is reinstated should she find it desirable to do so.

The Company would no doubt contend that any reinstatement should be without back pay or without full back pay. The Chairman concludes, however, that neither the discharge penalty

imposed nor any lesser penalty could properly be predicated on the Grievant's failure to conform her conduct to the unreasonable standard identified in the discharge notice as having been established at the May 9 grievance meeting and applied to Grievant's conduct on and after that date.

A limitation on back pay is also unjustified in light of the length of time it took to schedule the Step 2 meeting(s) regarding grievances challenging the written warning and suspension. It is only after a Step 2 meeting that the Agreement requires the Company to respond in writing to the grievance within three working days or have the grievance automatically move to Step 3. Agreement Sec. 5.3 calls the Step 2 meeting to be held within three working days after the department manager's receipt of the written grievance, though Sec. 5.5 also permits the grievance procedure time limits to be varied by mutual agreement of the Union and Company. In this case, the written warning was grieved in writing on the same day it was issued, September 9, 1993. The suspension was grieved in writing on October 20, 1994, the day after the suspension was issued. The Step 2 meeting did not occur until May 9, 1994, with the Step 2 answer to both grievances also issued by Singh on that date. In that regard, Botros testified:

Unfortunately, there were not timely meetings being held on grievances that were filed, and only after the union's insistence and request was there a second step meeting held, and I don't believe that took place until May 9th of '94.

Louise was terminated I think on June 22nd of '94. So even though the grievances had been filed some time ago and there is contract language on the timeliness of those meetings, it was only many months later that the actual grievance meeting took place. So there was no clear resolution at that particular point in the grievance meeting.

As a matter of fact, the grievances went through the steps -- they progressed through the steps because there was no resolution to that.  
(tr.156)

According to Grievant, she was advised by the Union that it would fight the Union business calls issue "and we had hoped that it would get done quickly because we felt in the grievance procedure we would be successful." (tr.200) Elsewhere Grievant commented, "we had grieved the written, but before I could do anything with the grievance, I had gotten my disciplinary layoff." (tr.169) Davis' testimony suggests that delays in grievance processing may not have been unique to the instant grievances, however. She testified that, at least at some unspecified time in the past, the parties had tried to reduce the number of grievances and to "resolve them before going through the grievance process because the grievance process was delayed so much with meeting times and that." (tr.252)

It cannot be reliably determined from that evidence whether the Company or the Union or both caused the bulk of the lengthy delay in the processing of the grievances concerning the written warning and suspension in this case. It appears that the grievances got to a Step 2 meeting when they did only because of the insistence of the Union, but it is not clear when that Union insistence was initiated.

What is clear is that there is no suggestion in the record that Grievant was in any way responsible for the delays. She was, however, materially harmed by them. The delays deprived Grievant of an opportunity to be heard concerning her belief and the Union's that, based on past practice, the Company was violating the Agreement in various respects, including by prohibiting her from engaging in Union business unrelated to matters subject to processing as complaints or grievances under the Art. V procedure. The lengthy delays also prevented the parties from moving the dispute to a final and binding resolution settlement or arbitration award and prevented the parties from exploring the sorts of interim solutions that were apparently later worked out regarding other pending grievances whereby the disputed time was paid by the Union pending a resolution of the underlying dispute. (tr.252-53)

A variety of additional factors support an award of back pay in this case. Among them are the Grievant's length of service; the high quality of her work in most respects; the extent to which Grievant showed marked improvement in her personal call activities for a sustained period of time following the October 9, 1993 suspension and before again experiencing some disimprovement; and the express recognition of Grievant's progress regarding call activities in the performance review issued to Grievant on December 3, 1993.

Accordingly, the Chairman finds it appropriate to order the Company to make the Grievant whole for the losses she experienced on account of the not-for-just cause discharge.

Grievant ought not misread this Award as a confirmation that her conduct throughout the entire period after the suspension conformed in all respects to that to which the Company had a right to require of her. Grievant's calling conduct improved considerably in advance of her performance evaluation and was recognized as such in that review. The frequency of outgoing calls to Union office and home thereafter again disimproved somewhat. The notes concerning Grievant's personal calls after the suspension reflected some efforts on Grievant's part to cut personal callers short and to redirect their calling to Grievant's home. However, they also included several Union-business calls about matters not subject to the grievance procedure, a lengthy call regarding Grievant's phone bill, a statement during that call that it would be okay for the phone company to contact Grievant at work, and some instances in which Grievant continued conversations on personal calls with Company-business callers on hold.

As elsewhere noted in this Award, in the face of Art. V, past practice does not entitle Union officers or stewards to special privileges regarding Union business calls on Company time that are unrelated to matters subject to processing as complaints or grievances under the Art. V procedure.

More specifically, past practice does not prevent the Company, pursuant to Agreement Sec. 5.9, from forbidding all such calls and/or from choosing to treat such calls as personal in assessing whether an employe's overall personal call activity is excessive. In addition, the Company has the right to require Grievant and its other CS Representatives to keep personal calls (including but not limited to calls to and from close relatives), short, not numerous, and not initiated or continued when Company-business callers are on hold or in queue.

It should also be noted that, under the terms of the concluding paragraph of Appendix A, Grievant's written warning and suspension will remain on her record upon her reinstatement. The period of time between her discharge and her reinstatement does not count toward the 12 month period needed to remove it under that provision. For that reason, to protect herself from further jeopardy to her job (assuming she accepts the offer of reinstatement provided for in this Award), Grievant would be well advised: to purchase an answering machine for her home phone and to refer potential outside personal callers to it; to carefully limit the non-Company-business callers to whom she gives her work telephone number; to make it a habit to tell any non-Company-business callers who reach her at work to leave her a message on her home phone answering machine and that she will get back to them when she can after checking her messages at her breaks or lunch or after work.

Finally, the Chairman finds it appropriate to provide that the Arbitration Board retains jurisdiction to resolve disputes that may arise concerning the meaning and application of the remedy ordered in this case.

#### DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the ISSUES noted above that

1. The Company did not violate the Agreement by its September 9, 1993 written warning to Grievant. Accordingly, Grievance #93-52 is denied.
2. The Company did not violate the Agreement by its October 19, 1993 three-day suspension of the Grievant. Accordingly, Grievance #93-54 is denied.
3. The Company, by its June 22, 1994 discharge of the Grievant,
  - a. violated the just cause requirement in Agreement Sec. 5.6; but
  - b. did not violate the anti-Union discrimination

prohibition in Agreement Sec. 1.4.

4. The remedy for the violation noted in 3, above, shall be as follows. The Company, its officers and agents, shall immediately:

- a. remove the discharge from Grievant's record;
- b. offer to reinstate Grievant, with full seniority rights and all other rights and benefits restored, to a Customer Representative II position equivalent to the position Grievant held when she was discharged; the position to be so offered may be but need not be in the MMAC unit; and
- c. make Grievant whole, without interest, for the loss of pay and benefits that she experienced by reason of the discharge (with a set-off for interim earnings that Grievant would not have received had she not been discharged).

5. The Arbitration Board reserves jurisdiction for the sole purpose of resolving, at the request of the Union or the Company, any dispute(s) that may arise concerning the meaning and application of the remedy set forth in 4.a-c., above.

Dated at Shorewood, Wisconsin this 18th day of August, 1995

By Marshall L. Gratz /s/

Blue Cross-Blue Shield United of Wisconsin  
and  
Office and Professional Employees International  
Union Local No. 787, AFL-CIO-CLC

Grievances 93-52, 93-54 and 94-11 involving Louise Rosier  
WERC Case 2, No. 51816 A-5310

Dated: 8-8-95 I concur with the decision and award in Grievance  
attached Dissent.

Kathryn Koenen Potos /s/

## DISSENT

### A. Substance of Grievance No. 94-11

The basis for the Chairman's decision and award in Grievance No. 94-11 is his contention that "at the May 9, 1994, meeting, supervision changed the rules on Grievant." (Draft, p. 53) According to the Chairman, the Company "changed the rules" by prohibiting Grievant from receiving any personal telephone calls at work "and then it applied that more restrictive standard to her and ultimately discharged her when she failed to adhere [to] it." (Id., p. 55) In making this assumption, the Chairman ignores the following facts that he had found to be undisputed:

1. The Company had just cause to suspend Grievant on October 19, 1993, and the Chairman denied the grievance (No. 93-54) that the Union filed protesting that suspension.

2. The October 19, 1993 suspension specifically warns Grievant, in part, as follows:

Louise continues to make &/or receive personal, or non-grievance related telephone calls. This continues even after Louise has been counseled & warned on previous occasions. . . . This shows a total disregard for the work rules discussed in each step of the disciplinary process. If this \*practice continues, Louise will be terminated. Louise is being given a 3 day lay-off w/out pay.

\*making &/or receiving calls (personal); not adhering to work rules.  
(Emphasis added)

3. From October 19, 1993 to June 22, 1994, Grievant continued to make and/or receive an excessive amount of personal and non-grievance related telephone calls, for which the Chairman found the Company was previously justified in suspending her and warning her that "If this practice continues, Louise will be terminated."

4. Grievant did not dispute the accuracy of the Company's records regarding the substance of the telephone calls monitored between October 19, 1993 and June 22, 1994. These records establish that Grievant's telephone calls during this entire period were of the same nature as the calls that led to her previous disciplines.

5. The June 22, 1994 discharge notice to Grievant does not state that Grievant was being discharged for having made and/or received a single non-emergency personal telephone call since May 9, 1994, which according to the Chairman was the changed rule -- that she could

not receive any personal telephone calls at work. Rather, it states, in part, as follows:

Louise continues to make &/or receive personal &/or non-grievance related (classified as personal) calls despite repeated warnings. Since Louise's suspension, there were 69 additional "personal" calls. After the grievance meeting on 5-9-94 where Louise now clearly understood that she couldn't receive any "personal" calls,\* she continued to make and/or receive a number of additional "personal" calls. None of the calls were emergencies (i.e., broken arm (daughter), etc.). Therefore, Louise is being terminated for her continual failure to adhere to work rules.

\*except emergency - clarified as "her daughter broke her arm & need to get (sic the hospital)", etc.

If Grievant was discharged for violating the supposed "changed rules" after May 9, 1994, then she would have been discharged for her first non-emergency personal telephone call. She was not so discharged. The discharge notice clearly refers to the entire time period from Grievant's October 19, 1993 suspension and the "69 additional 'personal calls' Grievant had during that time period. In addition, the Company's telephone monitoring records establish that after the May 9, 1994 grievance meeting, Grievant was monitored on 24 separate occasions being on personal telephone calls! (See Company Exhibit 22). It is apparent that the Company did not discharge Grievant under any "changed rules" regarding the definition of a personal telephone call, but rather that Grievant was discharged for her complete failure to modify her behavior during the time period between her October 19, 1993 suspension and her June 22, 1994 discharge.

6. The May 9, 1994 grievance meeting related to the Union's grievances on Grievant's written warning and suspension, both of which disciplines the Chairman has upheld and with which I concur. The discussion about personal telephone calls at that grievance meeting was to (needlessly) clarify the obvious to Grievant. The Chairman has failed to recognize that the nature and type of the personal telephone calls Grievant received and made during the post-suspension period were of the exact same nature and type upon which the Company had justifiably based the informal and oral warnings (ungrieved and agreed to by Grievant) and the written warning and suspension (found justified by the Chairman). The Chairman has not explained how those post-suspension personal telephone calls were different.

7. The Chairman has failed to recognize that his theory that the Company "changed the rules" on May 9, 1994, does not correspond with the undisputed facts -- (a) that Grievant was discharged for her excessive personal telephone calls during the entire post-suspension period, not the post-May 9, 1994, period, and (b) that all the 24 monitored personal telephone calls after the May 9, 1994 grievance meeting were of the same nature and type for which the Company had been disciplining Grievant during her entire employment in the MMAC

unit. The Chairman obviously based his decision on the wording of the discharge notice and not the substance of Grievant's conduct that led to her discharge. That conduct remained unchanged and called for her discharge.

8. The attached Unemployment Compensation Decision, which coincidentally arrived the same day as the Chairman's proposed decision, found that the Grievant's conduct which resulted in her discharge constituted misconduct connected with her work.

B. Remedy

Even if the Chairman decides not to change his discharge decision, his rationale for not limiting Grievant's backpay award is faulty on two grounds. First, I have already addressed the lack of support in the record for the Chairman's holding that a lesser penalty is unjustified "on the Grievant's failure to conform her conduct to the unreasonable standard identified in the discharge notice as having been established at the May 9 grievance meeting and applied to Grievant's conduct on and after that date." (Draft, p. 58) It is undisputed that Grievant's conduct that led to her discharge was the same conduct that led to her previous disciplines. There was no new "unreasonable standard."

The Chairman then states "A limitation on back pay is also unjustified in light of the length of time it took to schedule the Step 2 meeting." (Id.) The Chairman incorrectly holds that the Step 2 grievance meeting on Grievant's discharge occurred on May 9, 1994. (Id.) Obviously, the May 9, 1994 Step 2 meeting did not and could not have related to Grievance No. 94-11, since Grievant was not discharged until June 22, 1994, and the Union did not file the grievance until June 29, 1994. The Chairman was understandably misled by the confusing testimony that Botros gave at hearing, which he cites on page 58. The grievance form in No. 94-11 (Jt. Ex. 4) indicates that Singh answered the grievance on July 18, 1994. Further, the Company's Step 4 answer to this grievance is contained in my August 31, 1994 letter to Mr. Cossens. (Jt. Ex. 5) This letter establishes that the Step 4 meeting had taken place on August 26, 1994. As the Chairman knows, he was contacted on November 2, 1994, by a joint letter from the parties informing him that he was selected as the independent Arbitrator in this matter. Thus, there was no delay in the processing of Grievance No. 94-11, although there was delay in processing Grievance Nos. 93-52 and 93-54, neither of which were sustained and are therefore irrelevant to the remedy issue.

Respectfully submitted,

Kathryn Koenen Potos /s/

Kathryn Koenen Potos  
Company Arbitrator

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Blue Cross-Blue Shield United of Wisconsin  
and  
Office and Professional Employees International  
Union Local No. 787, AFL-CIO-CLC

Grievances 93-52, 93-54 and 94-11 involving Louise Rosier  
WERC Case 2, No. 51816 A-5310

Dated: 8/8/95 I concur with the decision and award in Grievance No.s 93-52 and 93-54. I dissent from the decision and award in Grievance No. 94-11 for the reasons in the attached Dissent.

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Roger Bybee, Union-appointee