

IN THE MATTER OF ARBITRATION BETWEEN

AFSCME Council 962, Local Union No. 6506
and
City of Muncie, Indiana

AAA Case No. 01-16-0001-6188
November 17, 2016
Issue: Gretchen Cheesman

APPEARANCES

For the City of Muncie

David J. Carr, Attorney
Paul C. Sweeney, Attorney
Megan Quirk, Attorney
Sarah Beach, Personnel Director
Dennis Tyler, Mayor
Terry Whitt Bailey, Director of Community Development

For AFSCME Council 962

William R. Groth, Attorney
Gretchen Cheesman, Grievant

JURISDICTION

A hearing on the above captioned matter was held at the Courtyard by Marriott Hotel in the Horizon Convention Center in Muncie, Indiana on November 17, 2016. At the hearing both parties were afforded a full and fair opportunity to present all evidence relevant to this case. A transcription of the entire case was taken by Debbi A. Austin, RMR, CRR. The record of this hearing contains 37 City of Muncie Exhibits and two (2) Union Exhibits as listed on pages 4-6 of the Transcript of Proceedings.

At the conclusion of the hearing the parties agreed to submit post-hearing briefs directly to the American Arbitration Association. Both briefs were properly received by the AAA and were then transmitted to the Arbitrator. The hearing was declared closed as of January 23, 2017 and this Arbitrator has until February 22, 2017 to render a final and binding award. The issue as denoted below is now properly before me for a final and binding ruling on its merits.

ISSUE

Was Gretchen Cheesman discharged for just cause? If not, what is an appropriate remedy?

RELEVANT CONTRACT LANGUAGE

(City Exhibit #1)

ARTICLE FOUR

Section 4.01 **General**

Except as expressly modified by a specific provision of this Agreement, all of the authority, rights and powers which the City had prior to the signing of this Agreement and prior to the inception of any relationship, legal or other, between the City and Union and the City and its employees are retained by the City and shall not be subject to the parties grievance and arbitration procedure.

Section 4.02 **Specific Rights**

Examples of the authority, rights and powers which are hereby vested in the City, with only such modifications (that) be expressly stated in a specific provision of this Agreement, include, but are not limited to the following: the right to schedule, adjust and assign work...to employees; to direct and control the workforce; ...; to discipline or discharge employees for just cause; to determine the work to be done by the City's employees; ...; to determine the creation, continuance, termination, change or consolidation of jobs or departments or of partial or total operations.

ARTICLE THIRTY-TWO – DISCIPLINE & DISCHARGE

Section 32.01 **General**

The City shall have the right to maintain discipline and efficiency of operations. The City shall have the right to discipline or discharge non-probationary full-time employees for just cause. ...

Section 32.02 **Progressive Discipline**

Except in the case of summary discharge (i.e., not the result of a third written reprimand), the City...

Section 32.03 **Just Cause for Discipline or Discharge**

It is agreed that just cause for issuance of a written reprimand shall include, (but) not limited to the following: ...

- (i) Unintentional unsatisfactory work;
- (j) Poor work effort or attitude; ...
- (s) Failure to follow written or verbal directions of management; ...

This list is not, nor is it intended to be, all inclusive. There are other types of unacceptable conduct, and the foregoing list shall not in any way be considered as limiting the City's right to issue a written reprimand to an employee for conduct which is not listed.

Section 32.04 – Just Cause for Summary Discharge

The City reserves the right to immediately discharge an employee without prior written reprimand whenever it believes the circumstances warrant discharge.

Examples of the types of offenses which may result in immediate discharge include, but are not limited to: ...

- (p) *Insubordination, including refusing to follow a supervisor('s or Department Head('s orders; ...*

The preceding list is not, nor is it intended to be, all inclusive. There are other types of unacceptable conduct which may result in immediate discharge and the following list shall not in any way be considered as limiting the City's right to summarily discharge a full-time employee for just cause which are not listed.

ARTICLE THIRTY-FOUR - ARBITRATION

Section 34.02 Power of the Arbitrator

- a) *The arbitrator's power is limited to deciding whether the City has violated a specific promise in this Agreement. There shall be no right to obtain and no arbitrator shall have any power to award or determine any change in, modification or addition to, or subtract from any of the terms of this Agreement. The arbitrator shall have no authority to substitute his discretion for that of the City in any matter in which the City has not expressly contracted away its right to exercise such discretion. (This sentence shall not be interpreted or construed, however, as restricting the power of the arbitrator to fashion the remedy if the City is held to have violated this Agreement).*
- (c) *In the event the arbitrator awards back pay (full or partial), such back pay shall be calculated on the basis of the amount of straight-time wages (including shift premium and longevity premium, if applicable) the employee would have earned with the City less any interim earnings, including unemployment compensation and any other governmental payments that the employee received from any source (other than a previously held "second job") during the period of time in which back pay is computed.*
- (d) *The arbitrator shall use reasonable efforts to make a written decision and award within thirty (30) calendar days following the close of the hearing in accordance with the evidence and the provisions of this Agreement. Such a written decision shall be final and binding on the City, the Union, and the aggrieved employee.*

Section 34.03 Expenses of the Arbitration

The expenses for the fee and expenses of the arbitrator and the cost of the hearing room shall be borne equally by the Union and the City.

ARTICLE FORTY-ONE – EVALUATION OF PERFORMANCE

Section 41.01 *An evaluation is a systematic review of an individual employee’s performance on his or her job to evaluate the effectiveness or adequacy of his or her work. ...*

Each employee’s performance will be evaluated in writing at least once per year by the employee’s immediate supervisor. The supervisor shall inform the employee in writing of any changes needed in job performance.

BACKGROUND AND FACTS

The Employer in this case is the City of Muncie, Indiana. The Union in this case is AFSCME Council 962, Local Union No. 6506. The parties to this case are joint signatories to a Collective Bargaining Agreement which is in the record of this case as City Exhibit #1. The Grievant in this case is Gretchen Cheesman, who had been a City employee for some nineteen (19) years prior to her discharge (Tr. 92) for insubordination. Her position with the City was as a Planner I in the Community Development Department (See City Exhibit #2, Tr. 93). In this role, her direct supervisors at the time of her discharge were Dr. Terry Whitt Bailey, the Director of Community Development and Kelly Harless, who was the Assistant Director of Community Development for the City of Muncie (Tr. 93).

One of the Grievant’s duties involved running the daily operation of the Unsafe Building Hearing Authority. In the City of Muncie, when the City becomes aware of a blighted building, a building inspector will be sent out to perform an examination of the site. If the inspector deems the building to be unsafe, a **yellow tag** will be placed on the building (See City Exhibit #20) which states, “Notice, Do Not Enter, Unsafe to Occupy.” The exact date the inspector places such a tag on the blighted piece of property is referred to as the **“tag date.”** The inspector also fills out a form (Tr. 165, City Exhibit #33)

which is called **Unsafe Building Inspection Findings**. The above referenced tag date is written on this form in a box in the lower right hand corner (City Exhibit #32).

After said form is turned in to the Building Commissioner, Ms. Cheesman's job was to set a hearing date, notify the property owners of this hearing date before the Unsafe Building Hearing Authority (Tr. 160, City Exhibit #33), and to **twice** publish notice of this hearing date in the newspaper. Union Exhibit #2 is an example of such a newspaper notice. The second time said notice is published in the newspaper is referred to as the **second publication date**.

Thus, a key concept in this case is this distinction between the so-called **tag date** and the **second publication date**. The reason this distinction is so important is because this date is critical as it starts the two-year window pursuant to the Indiana Unsafe Building Law during which time action on an unsafe building may be taken. Sometimes this action date is referred to as the **target date**.

Ms. Cheesman testified that she had used the second publication date as the date of notice that the order was given ever since the year 2007 when she became the Administrator for the Unsafe Building Hearing Authority (Tr. 169). Ms. Cheesman had utilized this procedure under two previous Muncie Mayors, Sharon McShurley and Dan Canan from 2007-2013. When Mayor Dennis Tyler was elected in 2012, he hired an attorney by the name of Megan Quirk to provide the City with legal services (Tr. 23). One of the areas in which Ms. Quirk provided legal services was in the Office of the Building Commissioner. Dr. Bailey advised her staff to follow directives from the City Attorney, Megan Quirk (Tr. 21, Bailey). The Grievant was aware that she was to follow instructions given to her by Megan Quirk (Tr. 198).

The Grievant had been disciplined by the City twice before her termination on February 12, 2016. She was first disciplined on May 5, 2014, for her failure to follow written or verbal directions of management (Tr. 41-42; City Exhibit #11). She received a second discipline in the form of a Final Warning on February 5, 2016. This Final Warning was again issued to the Grievant for her failure to follow written and verbal directives of City management (Tr. 43, 101-103; City Exhibit #13).

The Grievant's termination occurred shortly thereafter, on February 12, 2016. Her termination was for continuing to utilize the second publication date instead of the tag date for the calculation of the UBHA expiration date. Ms. Cheesman had used the second publication date for several years and under two previous Mayors. However, Mayor Tyler wanted the two-year time limit for UBHA orders to run from the tag date, as he testified to at the hearing (Tr. 30).

Basically, the City's position on this matter is that both Ms. Quirk and Dr. Bailey specifically instructed Ms. Cheesman to calculate the two (2) year expiration date from the tag date. Ms. Cheesman continued to use the second publication date, and thus was fired for insubordination. The Union's position is that Ms. Cheesman was never given any clear instructions in writing or verbally as to the required use of the tag date versus the second publication date.

It was on December 20, 2015, that Mayor Tyler received a letter (Tr. 43, 140-141; City Exhibit #12) from a concerned Muncie resident about a notification received from Ms. Cheesman about required repairs to his property. This property had been tagged by the UBHA in 2012 and the citizen wanted to know from the Mayor why he was being asked to make repairs outside of the two (2) year limit. It was this concerned citizen letter that ultimately led Megan Quirk to conclude that the Grievant had been intentionally defying her directive about calculating the expiration of UBHA orders using the tag date (Tr.

46-48; City Exhibit #17). It was on February 8, 2016 that the City learned that Ms. Cheesman had been using the second publication date for almost three (3) years (Bailey Tr. 40-41; City Exhibit #18).

Based on what had been discovered, Personnel Director Sarah Beach set up a meeting with the Grievant at 10:00 a.m. on February 12, 2016, to discuss the situation. At this meeting were the Grievant, Union Representative Nate Burgess and Personnel Director Sarah Beach. The result of this meeting was the termination of the Grievant for her alleged nearly three (3) years of insubordination for refusing to use the tag date for the calculation of the two (2) year period for the expiration of UBHA orders.

To protest her discharge, two grievances were filed against the City of Muncie, one on February 12, 2016 (City Exhibit #19) and the second on February 22, 2016 (City Exhibit #20). The first grievance challenged the city's issuance of a Final Written Warning to the Grievant on February 5, 2016, while the second grievance challenges the termination of the Grievant's employment on February 12, 2016. Given that the parties agreed at the hearing to the statement of the issue presented above, I will concentrate my analysis and award on the second grievance filed. This matter has been properly processed through the various steps of the contractual grievance procedure without resolution. The parties have agreed that there are no procedural or substantive arbitrability issues, and that this matter is properly before the arbitrator for a final and binding resolution upon its merits.

CONTENTIONS OF THE PARTIES

BY THE CITY OF MUNCIE

The City has argued that Ms. Cheesman was discharged for just cause for her insubordination. It is argued that Mr. Cheesman knowingly, willfully and deliberately defied the directions she was given by Ms. Quirk. The Grievant's repeated failure to utilize the tag date after receiving multiple directives

demonstrates that her failure to do so was purposeful. In addition, both Dr. Bailey and Ms. Quirk clearly expressed to the Grievant that she was supposed to use the tag date instead of the second publication date. The order to use the tag date is argued to be very reasonable as it is work related. It is also reasonable in that it assists the City in being in compliance with Indiana Law.

It is further maintained that both Dr. Bailey and Ms. Quirk had the appropriate authority to issue said order to the Grievant, and that the Grievant realized the potential consequences of not obeying the order – disciplinary action up to and including discharge. Finally, the City maintains that Ms. Cheesman was given adequate time to correct her behavior. In this case the Grievant had over two (2) years in which to correct her behavior, but elected not to do so.

Based on all of the above reasons and arguments, the City contends that it had just cause for the termination of the Grievant for insubordination. The City asks this Arbitrator to deny this grievance in its entirety.

BY THE UNION

The Union argues that the City of Muncie bears the burden of proving that there was just cause for the termination of Gretchen Cheesman. It is argued that the City has not been able to meet this burden for several reasons. First, it is argued that the City violated the Grievant's due process rights. It is argued that the City did not notify the Grievant of the charges against her and allow her the opportunity to respond prior to making the discharge decision.

The Union also argues that the Grievant did not violate Rule 32.04 (p) by refusing to follow a supervisor's or Department Head's order. Basically it is argued that the Grievant was **never** given an

unambiguous, explicit order from either Dr. Bailey or Ms. Quirk to use the tag date instead of the second publication date in her work. There is no place in the May 2013 email chain between the Grievant and Ms. Quirk where the Grievant is explicitly told to use the tag date as the anchor date. There is nothing else in writing where anyone from the City instructed Ms. Cheesman to utilize the tag date. The Union asks that if this matter had been so clearly communicated to Ms. Cheesman in May of 2013, why didn't anyone from the City check her work in over two years to make sure that she was using the tag date?

Finally, the Union has argued that even if the record was found to support the fact that Ms. Cheesman was given an unequivocal direction to use the tag date, the City has applied the wrong rule. The Union argues that even if Ms. Cheesman had been clearly told to use the tag date, her failure to do so was a **failure**, not a refusal. There was no element of outright defiance in Ms. Cheesman's failure to use the tag date. Rather, it is argued that she was confused as to what she was supposed to do as she was never given clear and explicit orders. The City's discharge paperwork refers to Ms. Cheesman's insubordination by using the term that she **failed to follow direction**. Ms. Cheesman had been engaged in work-related failures, not an outright refusal to follow orders given to her.

For all of the above reasons, the Union feels that the City has violated the Collective Bargaining Agreement by discharging the Grievant without just cause. The Union requests that this Arbitrator sustain the grievance and order that the Grievant be reinstated and made whole. If the Arbitrator should find that the Grievant was in violation of Rule 32.03(s), the Union argues that the appropriate remedy would be reinstatement with up to a fifteen (15) day suspension as provided for in the Collective Bargaining Agreement.

DISCUSSION

This is a discharge case where the burden of proving that there was just cause for the termination of the Grievant lies with the City of Muncie. The record in this case contains my handwritten notes, the various Exhibits accepted during the hearing, the Transcript of the Proceedings taken on November 17, 2016, and the Deposition of Terry Whitt Bailey taken on November 10, 2016, and the post-hearing briefs submitted by the parties. After a very thorough review of all of the evidence contained in the record of this case, I have arrived at the following conclusions:

1. The Grievant's immediate supervisor was Dr. Terry Whitt Bailey, the Director of Community Development for the City of Muncie. While Dr. Bailey did not appear as a witness at the arbitration hearing because she was out of the country, she did testify via deposition on November 10, 2016. Her deposition is part of the record in this case. At her deposition, Dr. Bailey was asked on direct examination about directives her employees received from City Attorney Megan Quirk:

Q: And if an employee in your department took issue with the director for the city attorney, Miss Quirk, would you expect the employee to disregard that directive or to follow the directive?

A: I would expect them to follow it. (Bailey Tr. 15)

Later, on redirect examination she was asked some questions central to this case:

Q: Just a couple of questions on redirect, Dr. Bailey. We've been talking a lot about tag dates and that Miss Cheesman was terminated for failing to use the tag date. Did you ever tell her to use the tag date in making these calculations?

A: Yes

Q: More than once?

A: More than once. (Bailey Tr. 50)

On Recross-Examination Dr. Bailey was asked:

Q: Just a quick follow up then. Were any of those conversations documented?

A: I didn't have to document them because I told her verbally. (Bailey Tr. 50-51)

The bottom line here is that Dr. Bailey testified that she verbally instructed the Grievant to use the tag date on more than one occasion. However, no written documentation from Dr. Bailey exists with regard to these instructions on the use of the tag date.

2. Ms. Cheesman was a rather long tenure City of Muncie employee, having worked for the City over two time periods. The first time Ms. Cheesman worked for the City was in either December of 1984 or January of 1985. She worked for a few years, took nine years off, and then returned to work at the City of Muncie in September of 2000. At the time of her termination, Ms. Cheesman had worked almost nineteen (19) years at the City (Tr. 148-149). She had worked under three different administrations, both Republican and Democratic. As a long tenured employee, Ms. Cheesman was very familiar with how to perform her job. She also knew that she was supposed to follow directives from her direct supervisor, Dr. Bailey, and from City Attorney Megan Quirk.

3. What this case boils down to after reading through the entire record is whether Ms. Cheesman received clear communication from Dr. Bailey and Ms. Quirk that she was to use the tag date instead of the second publication date as the date the clock started ticking for demolition purposes on condemned properties. The testimony in the record is directly at odds here. Both Dr. Bailey and Ms. Quirk have testified that Ms. Cheesman was told to utilize the tag date in her work. Ms. Cheesman testified that she was never given clear communication to this effect. Who is this Arbitrator to believe? Was Ms. Cheesman insubordinate and thus, discharged for just cause? A closer look at the evidence in the record of this case helps to answer this key question.

4. Article Thirty-Two in City Exhibit #1 has extensive language on the topic of just cause. Section 32.03 lists various reasons for just cause for discipline or discharge, such as “(s) failure to follow written or verbal directions of management.” Section 32.04 has another list containing offenses which provide management with just cause for summary discharge of an employee. One example from this list is “(p) Insubordination, including refusing to follow a supervisor’s or Department Heads orders;”

At worst, the Union contends that Ms. Cheesman is guilty of a violation of Section 32.03 (s) for her failure to follow written or verbal directions of management. The City sees things quite differently, arguing that Ms. Cheesman was properly discharged for refusing to follow a supervisor’s or Department Head’s orders.

5. My power as an Arbitrator is specifically limited in City Exhibit #1, Section 34.02, to deciding whether the City has violated a specific provision of the Collective Bargaining Agreement. I have no power to change, modify, add to, or subtract from the terms the two parties have agreed to in City Exhibit #1. Finally, I am not permitted to substitute my discretion for that of the City in any matter where the City has not expressly contracted away its right to exercise such discretion.
6. Ms. Cheesman and other employees were notified via email on March 2, 2012 (City Exhibit #3) that Megan Quirk was going to be the **appointed attorney** for the Community Development Office. It was clearly communicated to Ms. Cheesman and others that questions and requests should be sent to Ms. Quirk at her email address, meganquirk@hotmail.com. Dr. Bailey also

asked her employees to copy her or inform her of any requests made to Ms. Quirk. I find that Ms. Cheesman was aware as early as March 2, 2012, that should she have any questions regarding her work, she was supposed to contact Megan Quirk and inform Dr. Bailey of her question/request as well. In the instant case, Ms. Cheesman did not follow this procedure.

7. Dr. Bailey sent a similar email to all of her employees on March 22, 2012 (City Exhibit #4), asking them to copy her on all emails sent to City Attorney Megan Quirk.

8. As early as October 17, 2012, Ms. Cheesman had been warned about not acting within the scope of her authority (See City Exhibit #5). I will not go into detail over this matter, but suffice it to say that Ms. Quirk wrote in City Exhibit #5 in all capital letters:

“THIS IS NOT YOU NOR IS ANY OF THIS ACTION WITHIN THE SCOPE OF YOUR RESPONSIBILITY.”

In the same email to Ms. Cheesman, Megan Quirk wrote:

“Please understand I am continuing to find and made aware of situations where your unauthorized decisions, actions, and comments have placed the City of Muncie in positions of legal liability. Please cease and desist any actions or movement in this area. ...”

I find that Ms. Cheesman had definitely been put on notice about her unauthorized decisions, actions and comments. She was **clearly** told to **cease** and **desist** from such activities. With this kind of stern warning in her file, Ms. Cheesman should have been especially careful going forward. Unfortunately, such was not the case.

9. The record also clearly shows that Ms. Cheesman has been disciplined in the past for insubordination and exceeding her authority to act as an employee of the City. City Exhibit #11

is a Disciplinary Action Form dated May 2, 2014 which was a 1st Written Warning to the Grievant for insubordination, refusal to follow orders, and exceeding her authority to act as a City employee.

10. The single incident precipitating the ultimate discharge of Ms. Cheesman was a letter to Mayor Tyler from Muncie residents David and Brenda Foreman (City Exhibit #12), dated December 30, 2015. The Foreman's had a trailer at 1504 W. 15th Street in Muncie which was tagged in 2012, but the letter received from the City informed them they needed to attend a hearing at City Hall about this situation on January 14, 2016. Needless to say, Mayor Tyler was concerned about this letter and asked for this situation to be investigated.

11. Ms. Cheesman received another 1st Written Warning on February 5, 2016. The details of this incident are found in City Exhibit #13. Suffice it to say that the Grievant was once again disciplined for *"Employee acting outside scope and authority of position, failure to follow supervisor direction, and insubordination."*

12. It was on February 12, 2016 (City Exhibit #18) that Ms. Cheesman was notified of her termination in a letter signed by both Dr. Bailey and Personnel Director Sarah Beach. Quoting directly from pertinent sections of this letter, Ms. Cheesman was informed:

"We regret to inform you that your employment as Planner in the Community Development Office is Terminated on this date, February 12, 2016, for the following reason:

Insubordination, failure to follow directions of supervisor and/or Department Head, and acting outside the scope and authority of your position.

You were informed in May of 2013 by the City of Muncie attorney that the noticing period begins when houses are tagged under the Unsafe Building Housing Authority. You have continued for almost 3 years to begin the noticing period under "2nd publication" date per an email that you sent to the Building Commission on February 8, 2016. Your failure to follow directives have now

placed the City of Muncie at potential risk of being liable for action on properties that may have fallen outside the 2 year period allowed.”

In the February 8, 2016 email referred to above, Ms. Cheesman wrote to Craig Nichols: (See City Exhibit #18)

“If we are now counting the expiration of the order from the tag date instead of the 2nd publication date the following addresses will need to be retagged. ...”

Note that City Attorney Megan Quirk was not copied on the above email. Further, a couple of years earlier on September 3, 2014, Ms. Cheesman had sent an email (City Exhibit #37) to Bill Morgan, Zoning/Structural Inspector, in which she stated:

“Tagging date doesn’t matter, notification of hearing date does. The order is good for 2 years from the second publication date of the hearing. It can sit in my drawer for 3 years and still be good until notice is given.”

13. Clearly, Ms. Cheesman continued to use the second publication date and even told others that was the date that matters. But was she specifically told to use the tag date instead of the second publication date? I have already gone over the deposition testimony of Dr. Bailey who clearly expressed that she did verbally tell the Grievant to use the tag date. While Dr. Bailey was not present at the hearing to testify, I both watched and read her testimony. I find her to be a very credible and believable witness.

14. Fortunately, both Megan Quirk and Ms. Cheesman were present and testified at the arbitration hearing on this very point. Let me briefly summarize their testimony on the tag date issue. When she was recalled on rebuttal by the City of Muncie, Megan Quirk was asked on direct examination:

Q: *And in fact, was your testimony truthful today when you said that you told her about the ...using the tag date in 2013 and then repeatedly afterwards, up to 2016?*

A: Yes.

Q: *And you're sure about that? Under the penalties for perjury and with your law license at risk if you're testifying falsely, is that your testimony?*

A: *Absolutely. (Tr. 226)*

On cross-examination Ms. Quirk was asked the following questions, among others:

Q: *But you can't tell us when these conversations occurred, and you didn't put any of them in writing, did you?*

A: *I didn't have to put them in writing.*

Q: *And why was it necessary to repeat them so often if you thought Ms. Cheesman was following your directions?*

A: *Because I was making sure that we were doing what we needed to do, and we had problem properties, and I wanted to make sure, legally, we were taking authority and that we had the legal authority to take action on them.*

Q: *But if it was so important, why didn't you put it in writing? If this was a new policy that the City had adopted, why didn't you put it in writing?*

A: *I didn't have to, and it was something that I discussed with Gretchen as well as with Dr. Bailey, and this was the policy. (Tr. 227)*

This Arbitrator also finds Ms. Quirk to be a very believable and credible witness. One could argue that it may have been better to put such a policy in writing, but I can find nothing in the record that requires such an action to be taken.

15. Turning now to the testimony of Gretchen Cheesman, she was asked on direct-examination about the issue of conversations with Dr. Bailey and Ms. Quirk, as follows:

Q: *You heard Ms. Bailey testify – Dr. Bailey testify both in person and today, that she had, I think she said, numerous conversations with you from that date in 2013 up until the date of your discharge as to what you – what date you were to use as the trigger date for the two year period. Did you have such – did she have such conversations with you?*

A: *Never*

Q: *Did she ever discuss this issue with you?*

A: *Never. (Tr. 171) ...*

Q: Can you think of any conversation or communication you had with Megan that informed you that in her view you were taking an incorrect position with regard to the two-year period?

A: *No, I can't. And I guess I'd like to say that, had I clearly understood that I was to change the date I would have changed it. I don't have any reason to not change it if it was clearly communicated ...*

Q: *Did you at any time deliberately defy or disobey any directive or command that you received from a superior?*

A: *No. ...*

Q: *And you never had any communication with your direct supervisor, Dr. Bailey, about this issue that got you terminated; is that your testimony?*

A: *That's my testimony. (Tr. 172-174)*

This Arbitrator has several questions about the above summarized testimony of Dr. Bailey, Ms.

Quirk and Ms. Cheesman. First, why would both Dr. Bailey and Ms. Quirk not tell the truth about the tag date issue? I found their explanations to be both compelling and truthful.

Second, who has the most incentive not to be truthful? It is most certainly Ms. Cheesman as she has lost her job, one that she had held for a long time. Was there the possibility of some misunderstanding or failure to communicate clearly over the tag date issue? As I noted earlier, it may have been a good idea to put this policy in writing, but this was not required. Further, the record indicates that Ms. Cheesman had a history of wanting to do things her own way and perhaps using more authority than actually resided in her Job Description (See City Exhibit #2).

It is possible that in the mind of Ms. Cheesman, because she had been using the second publication date for so long and because she never received anything in writing to tell her to use the tag date, that she felt she had never received clear communication. But the evidence in the record overwhelmingly demonstrates that such communication was given to her. If she would have simply complied with the verbal directive of Dr. Bailey and Ms. Quirk this entire matter would have never occurred.

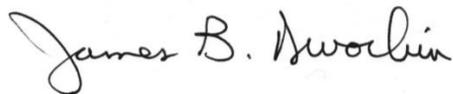
In summary, I find that the City of Muncie has satisfied the burden of proving that it had just cause to terminate the Grievant. I also find that the grievant was given a chance to explain her side of the situation but chose not to do so at the February 12th meeting. I do not find any violation of the Grievant's due process rights. Ms. Cheesman was clearly told verbally by Dr. Bailey and Ms. Quirk to use the tag date. She failed to do so and this is insubordinate behavior.

AWARD

I find that the City of Muncie did have just cause to terminate Gretchen Cheesman for insubordination.

This grievance is hereby denied in its entirety.

This award is issued and ordered on this 20th day of February, 2017, in Chesterton, Indiana.

A handwritten signature in cursive script that reads "James B. Dworkin".

James B. Dworkin
Arbitrator