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**ARBITRATION IN THE MATTER**

**Between**

**County of Sumpter**

**and**

**The Employees Association**

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**Grievant: John Huffer**

**Issues: 30-day Suspension  
Discharge**

**Judy A. Gust, Arbitrator**

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**PRELIMINARY STATEMENT**

The hearing in this matter was held on May 17 and 18, 2000, at the County of Sumpter, Room 150, 302 Government Plaza, Sumpter, California. During the course of the hearing the parties presented evidence through exhibits and the testimony of witnesses who were subject to cross-examination. The record of this case was closed July 19, 2000 following receipt by the arbitrator of the parties post-hearing briefs.

**APPEARANCES & WITNESSES**

**For the Association**

Dean L. Dennis. . . . . Spokesperson and Counsel, The Employees Association  
Cindy Flinch . . . . . Chief Steward, Employees Association  
John Huffer. . . . . Grievant

**For the County**

Katy Dunes. . . . . Spokesperson and Deputy County Counsel  
Mary Yount . . . . . Personnel Analyst, Sheriff's Department  
Seth Carlson . . . . . Deputy Manager, County of Sumpter  
Les Hampf . . . . . Chief of Technical Services  
Vince Fix . . . . . Supervising Communication Technician  
Ricky Marly. . . . . Supervising Communication Technician  
Jean Tracker. . . . . Sheriff's Deputy, Internal Affairs/Investigations  
Ken Williamson . . . . . Telecommunications Engineer III  
Mark Striker . . . . . Senior Communications Technician

**BACKGROUND AND FACTS**

John Huffer was employed by the County as a Communications Technician II ("Tech II") in October 1987 under the General Services Administration. He continued his employment with

the County as a Tech II when the reporting relationship for the Communications function was changed to the Sheriff's Department in October 1996. From his employment in 1987 until April of 1994 Mr. Huffer received six standard performance evaluations, one below standard performance evaluation and one interim evaluation (4/89 – 6/89) noting deficiencies. From 1995 through 1998 Mr. Huffer received one marginally standard evaluation, four unsatisfactory evaluations, and one interim unsatisfactory evaluation. He received a final written warning for his substandard performance on December 10, 1998 and four biweekly progress evaluations until his Notice of Pending Discharge was issued to him on February 25, 1999.

Mr. Huffer's past disciplinary record shows that he was suspended for one day (nine hours) on March 16, 1995 for an incident with a coworker. He was suspended again for two days (18 hours) on October 6 and 7, 1997 for substandard performance, failure to follow supervisory direction, substandard relationships with coworkers and supervisor, and untruthfulness. A third suspension, which is one of the issues of this arbitration, was imposed for 30 days (October – November 1998) for violating departmental rules and regulations relating to Standards of Conduct, Cooperation, Obedience to Laws and Regulations, Conduct Toward Superior and Subordinate Officers and Associates, Use of Offensive Language and Offensive Conduct.

Mr. Huffer was subsequently discharged on March 26, 1999, for continued substandard performance

The parties, having proceeded through the negotiated grievance procedure without resolution, agreed that the matter was properly before the arbitrator for a final and binding decision.

### **ISSUE**

The following issues were presented for determination:

1. Was John Huffer suspended on September 14, 1998 (240 hours served October – November 1998) for reasonable cause? If not, to what remedy is he entitled? and
2. Was John Huffer's discharge, effective on March 26, 1999, for reasonable cause? If not, to what remedy is he entitled?

### **RELEVANT CONTRACT PROVISIONS**

#### *“Article VIII, Section 4. Suspension*

- A. *No regular, limited-term or probationary employee shall be suspended except for reasonable cause.*

#### *Article VIII, Section 5. Discharge and Right of Appeal*

- A. *No regular or limited-term regular employee shall be discharged except for reasonable cause. No proposed discharge shall be effected unless approved by the Personnel Director except for discharges imposed by the Chief Executive Officer.*

## **POSITION OF THE COUNTY**

The County's position is that there was reasonable cause for both Huffer's 30-day suspension in October 1998 and his discharge from employment in March 1999.

In regard to the suspension, the County argues that the Grievant made offensive, demeaning, intimidating and threatening statements to his supervisor, Ricky Marly, on three separate occasions. This behavior was directed only at the supervisor and followed Marly's presentation of unfavorable performance evaluations. The Grievant's statement to Supervisor Marly to the effect that children suffer for the misdeeds of their parents could itself have been sufficient grounds for discharge. Manager Robin had personally met with the grievant after the first two statements were made in February 1997, approximately five months prior to the third offensive statement that was made in July, 1997. Robin told Huffer that similar statements predicting that evil would visit Marly's person had to stop; that no direct or indirect threats or other such statements would be tolerated. Grievant did not stop but "upped the ante" in stating to his supervisor that his (the supervisor's) children would suffer harm (Co. Br. pp. 29, 31).

The County also discounts Huffer's testimony that he is a kind, religious gentleman as attempts to deny, distort, misrepresent and minimize the type of comments that Huffer made to his supervisor. It argues that Huffer was not simply instructing on religious principles or otherwise enriching Marly's Biblical knowledge. He was, according to the County, engaging in threatening conduct by separating himself from God and observing that God would even the score. The fact that Huffer did not physically harm or intend to physically harm Marly is beside the point. Such conduct has no place in the workplace and is contrary to the Department's Rules and Procedures (Co. Br. pp. 29).

In the instant case, a total of three distinct statements were made to the same supervisor, all in the workplace. Each comment was made in the context of discussing the Huffer's "horrendous" work record. It is the County's position that the Grievant targeted Supervisor Marly for verbal abuse which, in fact, caused worry to Marly, continues to worry him, and about which he has counseled his family to take heed. The County asks that the suspension be considered in light of the Grievant's history of such statements and the warning that such behavior had to stop. Further, the County asks that the suspension not be reversed. (Co. Br. pp. 31-32).

To support its position that there was reasonable cause to discharge Huffer, it relies on Huffer's history of poor performance. Huffer did not accept suggestions and directives for improvement and act upon them which ultimately led the department to have two staff people witness contacts with him. Grievant was not only a poor performer, but he had an attitude that did not facilitate improvement. He engaged in insolent and intimidating speech and denied any poor performance on his part by suggesting that everyone was wrong but him. The Department saw no change in his substandard performance and at the time of discharge could not have reasonably expected any improvement in the future. Although the Grievant was taking a community college course in the final days of his employment, it was "too little too late". There was no significant improvement in his performance in his last weeks but simply more of the same – the same substandard performance, the same excessive need for supervision, the same

assertion that he did not need to take an electronics course, the same conviction that he did not need a personal notebook, the same failure rate at fixing radios (Co. Br. pp. 27). The Grievant engaged in negligence that is serious, continuing, and productive of substantial waste. Further, he has a record of offensive statements to his supervisor after a specific personal admonition of the Department Manager to cease such statements. It is the County's belief that this constitutes reasonable cause for the discharge of the Grievant (Co. Br. pp. 28).

The Sumpter County Sheriff's Department submits that there was reasonable cause for Grievant's dismissal and suspension and requests that the grievances be denied (Co. Br. pp. 35).

### **POSITION OF THE ASSOCIATION**

The Association argues that the Grievant, Mr. Huffer, was a competent and hard-working radio and sound technician for some thirteen years servicing a wide range of communications equipment. It points out Huffer's numerous certificates earned over the years geared towards repairing and maintaining the County's aging communications backbone. It characterizes Huffer as a steady and competent performer who adapted to changing expectations whenever management provided him with appropriate direction, adequately conveyed to him its expectations, and gave him the opportunity and means to achieve those expectations. The Association disputes that there was reasonable cause for either the 30-day suspension or for Huffer's discharge (Assoc. Br. pp. 2).

As to the suspension, the Association challenges the reasons given for the suspension. It cites as insufficient only one brief paragraph related to performance that is conclusory and provides no specifics regarding his alleged substandard performance that would justify any disciplinary action, let alone a lengthy suspension. The other reason is challenged due to the allegation that Huffer threatened Ricky Marly and Les Hampf although neither the notice or hearing testimony offered information as to any threats directed at Mr. Hampf. Lacking such nexus with Hampf, the Association argues that the Department was mistaken as to that basis for Huffer's suspension (Assoc. Br. pp. 3-4).

In further support of its position, the Association argues that Huffer's testimony at the hearing provided an explanation of the intent behind the statements that would not allow an interpretation that would provide a basis for discipline. As Mr. Huffer stated, he is a deeply religious man and, in his culture, it is quite common to refer to Biblical passages and paraphrases as a way of expressing emotions. In each of the two instances Huffer was upset because of what he perceived to be unfair and inaccurate performance evaluations. In response, he directed a few rather archaic Biblically-inspired comments to Marly not as threats, but as metaphors for his frustration and disappointment. Further, Marly's own inaction betrays his contention that he viewed the comments made on February 25, 1997, as threats. Marly did not even bring up the February "threats" until months later, when he once again became irritated with Huffer. Accordingly, Marly's characterization of Huffer's comments as threats is simply not credible (Assoc. Br. pp. 4-5). The Association asks that Mr. Huffer's suspension be overturned and that he be compensated for all lost time and benefits (Assoc. Br. pp. 5).

The discharge is also unwarranted according to the Association. Mr. Huffer received standard or better evaluations through much of his career with the County and only occasionally received evaluations rating him unsatisfactory in one or more areas. The Association takes issue with the fact that Huffer's 1998 suspension was also based upon substandard performance because the suspension notice was brief and unspecific with regard to the substandard performance charge (Assoc. Br. pp. 5). Although Huffer was given a final warning on December 10, 1998, providing expectations to be achieved within 90 days, the Association argues that Huffer met the only two "specific" job expectations provided and that the other expectations were unspecific and too general (Assoc. Br. pp. 6).

The Association asks that the criteria for finding reasonable cause for discipline, as set forth in Remedies in Arbitration, Hill and Sinicropi (BNA, 1981), be reviewed in this case. Normally, a negative response to even one of the above inquiries indicates that sufficient cause does not exist as generally it,

*“. . . means that the employer's disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable or discriminatory action to such an extent that said decision constituted an abuse of discretion warranting the arbitrator to substitute his judgment for that of the employer.”*

To establish that the County lacked reasonable cause to discharge Huffer, the Association looks to inquiries relative to fairness, objectivity and forewarning (Assoc. Br. pp. 7).

The Association's position is that the County used a "backward-focused approach" to management that did not provide Huffer with the specifics of any perceived performance deficiencies or offer the support or resources necessary to comply with whatever expectations his supervisor may have had for him. Huffer never had the opportunity to really address any possible performance deficiencies because no clear, specific expectations were ever disclosed and no opportunity for success was ever afforded. The "Final Warning" was representative of the communication level at which his Department and supervisor dealt with him. It failed to provide Huffer with specific direction and resources as to how to cure those deficiencies. Rather, it set forth the following expectations:

- Pay attention to detail
- Complete all repairs
- Ask questions
- Follow instructions fully and completely
- Work more efficiently
- Repair any equipment given to you
- Complete all required paperwork
- Take a formal course in electronic equipment repair
- Adhere to your work schedule.

The Association argues that the two specific expectations, to take a course in electronic equipment repair and adhere to his schedule were met. The other expectations were unreasonable, unfair and nothing more than a vague and general "wish list" of hoped-for outcomes. The Association points to the opinion of the Administrative Law Judge for the Unemployment Insurance Appeals Board that stated: "His standards were never made clear by the employer nor were the specific deficiencies pointed out with clarity." Further, the

Department failed to provide Huffer with anything other than minimal on the job training opportunities and left to him the responsibility of identifying the type and quantity of training that might fulfill the Department's expectations (Assoc. Br. pp. 9-10).

The final point is that the Department failed to give Mr. Huffer the length of time to meet expectations that it had promised him. Rather than the promised ninety days, the Department took action after less than sixty days with much of that period occurring during the Christmas and New Year holidays. The Association alleges that the content of the final warning and the Department's subsequent conduct evidence the Department's intention to discharge Huffer before it ever gave him his warning (Assoc. Br. pp. 11).

The Association asks that the grievances be sustained, that Huffer's 30-day suspension be overturned receiving full back pay and benefits and that he be restored to his position as a Communications Technician II with full back pay and benefits.

## **DISCUSSION**

The burden in this case rests with the County to prove that it had reasonable cause for both the Grievant's 30-day suspension of October 1998 and his discharge from employment in March 1999.

Regarding the 30-day suspension, the County's position is that Huffer's conduct towards his supervisor, Ricky Marly, that occurred in front of Division Chief Hampf on July 8, 1997, was sufficient cause for the suspension. Hampf and Marly<sup>1</sup> had called Huffer in to present Huffer's annual performance evaluation. That performance evaluation, covering the period 4/13/96 to 4/10/97, was unsatisfactory and noted several specific expectations that Huffer was to meet (Co. Ex. pp. 045-047). Hampf and Marly both testified that Huffer made comments in that meeting to the effect that "your children will be sorry for what you are doing". At Hampf's suggestion, Marly documented the incident the next day in a memo to the Department's Human Resources Manager (Co. Ex. pp. 225). An internal investigation was then undertaken based upon Marly's memo and included investigation of two other comments that were made by Huffer in February 1997, again during an unsatisfactory performance review. The February comments were along the lines of "You will be sorry for the day you were born for doing this to me" and a comment made later that day within Marly's range of hearing to the effect that "anybody who makes life miserable will become miserable himself". Internal Affairs conducted and taped interviews with Marly, Hampf and the Grievant in July 1997 (Co. Ex. Interview Audiotapes). Huffer acknowledged in the interview as well as at the arbitration hearing that he did make such statements. He went on to explain that the comments were not threats and that the second one in February was not made to Marly but merely a statement repeated from a radio talk show that he was listening to and the comment was not directed to anyone in particular. The July comment, according to Huffer, was just a harmless reference from the Bible. Huffer testified that he did not even know if Marly had children and, as a deeply religious man, it was his habit and culture to quote scripture frequently.

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<sup>1</sup> Marly began having a witness to all contacts with Huffer following Huffer's allegedly veiled threats in February 1997 and Huffer's pattern of denying that some discussions occurred.

During the hearing, Huffer testified that Manager Robin had spoken with him about the February comments to Marly. Huffer again denied that his comments were meant as threats and, as to Robin's warning, acknowledged only that Robin told him not to repeat statements heard on the radio. However, Robin's memo to file notes that Huffer was told that he (Huffer) was responsible to ensure that such comments were not made and that formal disciplinary action would result if threats or insinuation of threats occurred again. (Co. Ex. pp. 251).

The Association argues that Huffer's comments were not threats but metaphors for his frustration and disappointment over what he perceived to be unfair and inaccurate performance evaluations. Further, it points out that Marly's inaction over the February comments prove that he did not consider those as threats and that the July comment by Huffer was not directed at Hampf and, thus, cannot form the basis for the suspension.

It is a well-known principle in the labor relations environment that the method for redressing wrongs or perceived wrongs is through the grievance procedure. To excuse Huffer's comments to his supervisor as mere emotional expressions of frustration and disappointment would be to condone intimidating, at best, and abusive or worse behavior by an employee. Such behavior seriously undermines management's ability to maintain good discipline and order in the workplace. To ignore this type of behavior would leave the County open to extensive liability should any threats actually become reality. Hudson's argument that this was his usual custom and culture to quote from the Bible also stretches the imagination beyond reason. There was no evidence, except Huffer's own testimony, that he frequently or periodically quoted scripture to others in the workplace. Given Huffer's vested interest in this matter, his testimony in this regard is highly suspect. Had Huffer not been specifically counseled by Robin about the inappropriateness of his February comments to his supervisor and warned of his responsibility and the consequence of formal disciplinary action, one might be more inclined to accept Huffer's explanation and to mitigate the consequence. However, it is found that Huffer did have clear and specific direction about inappropriate comments and the consequences for repeating such behavior (Co. Ex. pp. 251). Huffer's conduct in the July 1997 meeting was in direct violation of Robin's February 1997 management directive.

The next question is whether the July comments constituted a threat. The Association is correct that there is no evidence that Huffer's July comments were directed at Hampf. Accordingly, the charge that Huffer threatened Hampf cannot be sustained to find cause for the suspension. However, Huffer's comment was directed at Marly in front of Hampf. This July incident followed Huffer's warning from Robin just a few months earlier to cease any type of intimidating or threatening statements or behavior to anyone. Huffer's apparent disregard for Robin's counseling cannot be dismissed lightly. The record reflects a long history of Huffer's rebuttals disputing and/or denying management's assessment of his performance (Co. Ex. pp. 26,-31, 142-143, 145, 172-173, 181-182, 205-208, 229, 241). In light of those rebuttals and in consideration of Huffer's explanation -- that he just "happened to pick that quote out of the Bible" -- a reasonable person must conclude that Huffer's statement was, indeed, intended to intimidate and threaten his supervisor to withdraw criticism of Huffer's performance (Huffer Interview Tape). The Biblical quote is out of context. Huffer could offer no plausible explanation for why that particular quote was chosen if not to raise some concern on Marly's part about his children. The Association's argument that Marly's inaction betrayed his contention

that the February comments were threats is unsupported by the facts. Marly did take issue with the February comments and wrote a memo to Division Manager Joseph Robin on the recommendation of Mary Yount in Human Resources. The subject line of that February 25, 1997 memo noted: "Threat made by employee" (Co. Ex. pp. 249). Thus it is clear that Marly did consider the February comments to be threats and did take action to notify his superior of the two comments in February. Robin also made a Memo for File outlining the February counseling session he had with Huffer as a result (Co. Ex. pp. 251). As noted above, Huffer acknowledged that Robin spoke with him about the February comments although denied that Robin warned him against threatening comments. The record is convincing that Huffer was apprised before the third threat of the impropriety of such comments and his responsibility to assure such statements were not made again. Huffer was warned by Robin in February that formal disciplinary action would result if such comments were made again.

The one other argument advanced by the Association is that there was little specificity or support for the County's charge in the suspension action that Huffer's performance continued to be substandard. The reason for the July 8<sup>th</sup> meeting that ultimately led to the suspension was to discuss and present Huffer's annual performance evaluation. That evaluation noted performance deficiencies, several of which had been addressed in prior evaluations. There is little doubt that at the time of Huffer's suspension that there were continuing performance deficiencies. If ongoing substandard performance was the only charge made to support the 30-day suspension, then the information provided in the Notice of Pending Suspension likely would be insufficient to sustain a suspension of this length. However, the reason relied upon by this arbitrator to uphold the suspension is Huffer's inappropriate comment made to his supervisor after having been counseled to refrain from further threats or any insinuation of a threat. It is found that the County had reasonable and sufficient cause for its decision to suspend Mr. Huffer. As to the length of the suspension, there was no evidence that the decision was arbitrary, capricious or discriminatory. Thus, the level of discipline will not be disturbed.

The next issue to address is whether there was reasonable cause for Mr. Huffer's discharge. The County relies on a lengthy history of unsatisfactory performance reviews, its prior attempts to help Huffer succeed, and its conclusion that Huffer's attitude precluded any hope for improvement to support its position that reasonable cause existed and necessitated Huffer's discharge.

In reviewing Huffer's record, it is important to note that no less than four different supervisors prepared unsatisfactory written evaluations for Huffer<sup>2</sup>. There were common themes running through many of the evaluations. Although the Association argues that Huffer's final letter of warning was not sufficiently specific as to the County's expectations of Huffer's performance, these many evaluations well describe Huffer's performance deficiencies and suggest ways to correct those deficiencies. The Association also argues that the County used a "backward focused" approach and failed to provide appropriate training. Unfortunately, the deficiencies noted did have an historical perspective because they had not been corrected and kept recurring. Repeated suggestions for Huffer to read manuals and take classes both in electronics (1995 and 1998 evaluations) and computer courses, develop a troubleshooting desk

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<sup>2</sup> Ray Fransen, Ricky Marly, Kn Williamson, and Vince Fix.

manual for himself, and check out each piece of equipment that he worked on to assure working order, went unheeded. In fact, the evidence showed that Huffer rebuked these suggestions.

The expectation for computer proficiency and the need to upgrade his skills in that area was noted in several performance evaluations beginning in 1990. . Huffer testified that he did not need to take computer courses because he had an Associate's degree from Kingston Technical High School in Jamaica from 1960. Relying on a 1960 understanding of computers (that at that time took entire rooms if not buildings to house) to become proficient with desktop microcomputers in the 1990s is unrealistic.

While assigned to the Sound Section, Huffer was sent to specific training and failed to gain the necessary proficiency (Co. Ex. pp. 68). Les Hampf testified that Programmable Logic Controls (PLC) are used in the jails to control the doors and lights. Huffer was sent to a PLC course in May 1997. However, he was unable to pass a proficiency test at the end of the course and testified that he had difficulty focusing and concentrating. Huffer also excused his PLC deficiencies by stating that he was not able to attend the last afternoon of the class. However, Marly testified that he checked with the instructor and the one and one-half hours missed by Huffer was review only. With regard to the recommendations that Huffer enroll in an electronics course, again Huffer denied his need for such training by referencing his Motorola training that was completed in 1987 (Co. Ex. pp. 30, 71). It is widely recognized in the lay world that the computer and technological industry and its attendant applications have expanded exponentially since 1960. Similarly, the use of computer components in radio and sound equipment has also expanded. To rely on 10-30 year old education and training as sufficient to keep up in a technology driven business is irrational if not foolhardy.

Although Huffer takes exception with management's suggestion that he get further training in computers and electronics, he then complains that he was not given adequate training. Hampf testified that the Communications Technician II position is a journey level position where incumbents are expected to work on all types of electronic equipment and demonstrate a thorough knowledge of electronic equipment and troubleshooting. Upon his hire in 1987, the Grievant was assigned to the Radio unit and was having trouble with both the quality and quantity of his work there while supervised by Ray Fransen (Co. Ex. pp. 279-293). The performance reviews from 1987 – 1995 marked Huffer, with one exception, as meeting standard overall. However, performance deficiencies were noted such as interpersonal relationships, failure to seek assistance, failure to troubleshoot and complete a thorough check of all functions of the equipment he repairs, working too slowly and the need to upgrade computer knowledge.

Hampf testified that due to Huffer's performance difficulties in radio, he was reassigned in 1995 to the Sound/Video unit. Marly corroborated Hampf's version by testifying that he was asked to take Huffer in the Sound section because of Huffer's difficulties in the Radio section. Huffer testified that he just wanted a change and so requested a transfer to the Sound/Video unit. When taking the whole record into consideration, Hampf's testimony is credited as the more likely reason for Huffer's transfer to the Sound section. While in the Sound section, many of Huffer's performance deficiencies continued and subsequently Huffer requested a transfer back to the Radio section. Huffer's return to Radio was effected November 3, 1997.

While in the Sound/Video section from approximately October 1995 to November 1997, Ricky Marly became Huffer's supervisor. Marly testified that Huffer was given the first few months to become familiar with the type of equipment in their section and worked on older equipment. Although at first Huffer appeared to be getting the work done, equipment fixed by Huffer started coming back for repair. Huffer was counseled about using inappropriate supplies (toothpicks rather than metal pins, VCR head cleaning), not appropriately troubleshooting or assessing the cost of a repair that resulted in Huffer charging more labor hours for a repair than the cost of replacing the equipment with newly purchased equipment (Co. ex. pp. 125-135). Huffer also failed to take the appropriate tools out to work sites despite management directives to do so. Huffer testified that when he was sent to assist another technician, the other ("primary") technician had the tools (Co. Ex. pp. 049, 052) implying that he had no responsibility to make sure he had the appropriate tools. Huffer also testified that it was not practical to take all tools and one had to inspect the job to find out what tool was needed. Interpersonal issues with coworkers also continued to be problematic and Huffer's computer skills were not advancing (Co. Ex. pp. 043-048). Marly testified that finally he restricted Huffer's work to that which was less critical and urgent due to the poor quality and quantity of work performed by Huffer (Co. Ex. pp. 226-227, 262). One of the less complex and critical of Huffer's assignments was to assemble 12-13 speakers. Huffer took 1 - 1.5 hours to assemble each speaker. Believing this to be excessive, Marly asked another technician to assemble a speaker and videotaped his work. The other technician completed the speaker assembly in approximately 5 minutes. Marly then showed Huffer the tape and asked Huffer to assemble the speaker as demonstrated in the videotape. Huffer's performance was videotaped as well. From a review of that videotape, it is clear that Huffer did not follow the steps demonstrated and, even though aware that he was being videotaped, wasted much time talking, arguing, and shuffling around (Co. Ex. G).

During the last few weeks before Huffer transferred back to the Radio section, he was given some radios to work on to refresh his skills. Upon his transfer, Ken Williamson became Huffer's supervisor. Williamson testified that as a Communications Technician II, the journey level, one is expected to possess experience and knowledge of electronics fundamentals. Attending trade shows and reading industry manuals/magazines is what should be done to keep up and gain new skills. Because Huffer had been away from the Radio section for almost two years, Williamson designed a work sheet form for review of Huffer's work and to identify any needed remedial training. He also assigned Senior Technician, Vince Fix, to check on and advise Huffer on his work. Williamson testified that Fix spent 4-6 hours a day working with Huffer. Still, Huffer failed to repair equipment completely and required extensive supervision. Williamson also testified that Huffer wouldn't accept remedial training even though his work products were being returned as incomplete or having faulty repairs.

Vince Fix supervised Huffer for about 9 months before Huffer's discharge. He testified, as did Huffer, that he and Huffer had no personal animosity between them and got along well. Despite the amiable relationship, Huffer continued to perform poorly evidencing some of the same problems that were noted in several prior performance evaluations – failure to check out all systems and repair only what the customer reported, reluctant to ask for help, failing to keep a reference notebook of common problems, working only on less complex radios, and taking excessive time to complete his work.

Although the Association argues that Huffer was not given appropriate direction, clear expectations and the support or resources necessary to meet those expectations, the record reveals a lengthy history and many, varied attempts by the County to help Huffer to succeed. The Association also points to Huffer's unemployment insurance decision to prove that the County's final warning was non-specific as to expectations for Huffer. However, other administrative rulings are not controlling in arbitration as the standards for determining cause, misconduct and other claims differ between various adjudicative forums. Further, it is doubtful that the unemployment insurance hearing officer had the complete record of evidence that is before this arbitrator. Consequently, the unemployment ruling cannot be given any weight in this determination.

The County's conclusion that Huffer's attitude interfered with their attempts to train and counsel him is a sound one. Even at the hearing, Huffer manifested an attitude that he knew better than most, if not all, of the County's witnesses about radios and tried to support his attitude with his aging formal education and 1987 technical certification. Numerous rebuttals and denials by Huffer throughout the record evidence his unwillingness to take any responsibility for deficiencies. Such an attitude precluded correcting or improving performance as Huffer did not believe that any improvement was needed. What is surprising is that the County continued to work with Huffer for as long as it did. Although evidence was introduced that Huffer did enroll in an electronics course after receiving his final warning, it was, as the County argues, "too little too late". Many of the performance deficiencies noted did not stem from a lack of knowledge or training; rather, they stemmed from willful actions by Huffer to continue his pattern of behavior without modification. For example, Huffer's "expert" attitude apparently kept him from asking questions that would have avoided mistakes or incomplete repairs. Huffer was told repeatedly, from his first evaluation onward, to check out all functionality on a piece of equipment. However, Huffer testified that he continued to rely only on the complaint of the customer, implying that that was all he was responsible for. When Huffer was given clear directions, he often became argumentative as demonstrated in the speaker assembly videotape.

The Association points to the tests of reasonable cause and argues that fairness, objectivity and forewarning should be considered. The many supervisors who have concluded that Huffer's performance was well below standard for a journey level technician and the efforts demonstrated to show Huffer how his performance fell short are more than convincing that the County's decision was fair, based on multiple objective measures and comparisons with other Technician IIs as to quantity and quality, and that Huffer was or should have been well aware of that which he needed to do to become proficient within his classification. It is unlikely that any further efforts on the part of the County would have changed either Mr. Huffer's performance outcomes or his attitude.

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**AWARD**

For all of the reasons set forth above, both grievances are denied.

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Judy A. Gust, Arbitrator  
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August 27, 2000