`IN THE MATTER OF THE ARBITRATION	)	ARBITRATOR'S
	)	
BETWEEN	)	OPINION
	)	
KING COUNTY	)	AND
	)	
"THE EMPLOYER" OR "THE COUNTY"	)	AWARD
	)	
AND	)	
	)	
TEAMSTERS LOCAL UNION 174	)	
	)	THOMAS STEPHENSON
"THE UNION"	)	DISCHARGE GRIEVANCE

HEARING: May 17, 2006
Tukwila, Washington

BRIEFS: Union's received: June 30, 2006
Employer's received: June 30, 2006

HEARING CLOSED: June 30, 2006

ARBITRATOR: Timothy D.W. Williams
2700 Fourth Avenue, Suite 305
Seattle, Washington 98121

REPRESENTING THE UNION:
David Ballew, Attorney
Tom Stephenson, Grievant

REPRESENTING THE EMPLOYER:
Trish Murphy, Labor Negotiator
Thea Severn, Solid Waste Division
Operations Manager

APPEARING AS WITNESSES FOR THE UNION:
Tom Stephenson, Grievant

APPEARING AS WITNESSES FOR THE EMPLOYER:
Matthew Ludwig, Tukwila Police Department
Rudy Landon, County Employee
John West, County Employee
James Bennet, County Employee
Terri Hanson, County Employee
Allan Duncan, Supervisor
Thea Severn, Operations Manager

EXHIBITS

Joint

1. Collective Bargaining Agreement, 1/1/03 – 12/31/05
2. Termination Letter, 10/11/05

Union

1. Letter of Reprimand to Rudy Landon, 10/24/05
2. Harris Investigation, 5/1/03
3. Maxon Investigation, 5/1/03

Employer

3. Tukwila Police Report, 9/26/05
4. City of Tukwila v. Thomas Stephenson Court Records (Cause No. CR46120)
5. Bow Lake Transfer Station Floor Plan
6. Photo of Bow Lake Transfer Station Lunchroom (aka "Crew Shack"), Facing East
7. Photo of Bow Lake Transfer Station Lunchroom (aka "Crew Shack"), Facing West
8. Photo of Bow Lake Transfer Station Lunchroom (aka "Crew Shack"), Time Clock Area
9. Fire Department Incident Report Form, 9/26/05
10. Highline Community Hospital Emergency Department Discharge Instructions for Rudy Landon, 9/26/05
11. Accident Report and King County Safety & &Claims Documents for Rudy Landon
12. Medical/Physical Therapy Records for Injury Sustained by Rudy Landon on 9/26/05

13. King County Executive Order PER 18-7 (AEO), Titled "Workplace Violence Prevention"
14. King County Executive Policy PER 18-8 (AEP), Titled "Workplace Violence Prevention"
15. Collective Bargaining Agreement, 1/1/98 – 12/31/00
16. Solid Waste Division Workplace Expectations
17. Solid Waste Division Memos to Operations Employees Regarding Appropriate Conduct
18. Solid Waste Division Discipline Log for Use of Force, Fighting, or Striking, with Termination Letters Attached
19. Transcribed Voice Mail Message from Rudy Landon to Alan Duncan, 9/26/05
20. Alan Duncan's Investigation Notes for 9/26/05
21. Payroll Records for Rudy Landon, 9/26/05 – 10/30/05
22. Solid Waste Division's Notice of Proposed Termination Letter to Tom Stephenson, 9/27/05

BACKGROUND

King County (hereafter "the Employer or "the County") and Teamsters Local Union 174 (hereafter "the Union") agreed to submit a dispute to arbitration. A hearing was held before Arbitrator Timothy D.W. Williams in Tukwila, Washington on May 17, 2006.

At the hearing, the parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. An official transcript of the hearing was taken by Northwest Court Reporters.

At the close of the hearing, the parties were offered an opportunity to file post-hearing briefs. Both parties accepted and the briefs were timely received by the Arbitrator. Thus the award, in this case, is based on the evidence and argument

presented during the hearing and on the arguments found in the briefs.

SUMMARY OF FACTS

King County and Teamsters Local Union 174 were bound by a Collective Bargaining Agreement (CBA) for the term of January 1, 2003 to December 31, 2005. The instant grievance is subject to the Parties' 03-05 CBA.

The Grievant in this matter was employed by the Employer's Solid Waste Division as a transfer station operator and had been partnered with Mr. Rudy Landon for nearly eight years. The morning of September 26, 2005, before their 6:00 a.m. shift began, the two were embroiled in a situation that ended with Mr. Landon landing on the ground, sliding into a wall and receiving an injured. 911 was dialed, and the police and fire department arrived on the scene. Mr. Landon was treated at the scene by the medics and a police officer took his statement. Supervisor Alan Duncan was also called by Mr. Landon and made aware of the situation. Following this, Mr. Landon was taken to Highline Community Hospital where he was treated for back pain.

The Grievant was cited for Assault in the Fourth Degree (Employer Exhibit # 3). The Grievant testified that these charges were later dismissed (Transcript, page 120) but court documents indicate that the matter was later settled for 40 hours

of community service and mandatory anger-management training (Employer Exhibit # 4).

An investigation was conducted the same day as the incident, in which Mr. Duncan interviewed each employee on site at the time of the altercation, in the present of Union Shop Steward Eddie Baker. Following the investigation, Mr. Duncan concluded that the impetus for Mr. Landon's fall and subsequent injury was a shove from the Grievant. In accordance with section 12.4.6 of the CBA which explicitly prohibits violence in the workplace, Mr. Duncan decided to seek the Grievant's discharge.

Following a Loudermill hearing with Union representation present and subsequent interviews, the Grievant was presented on October 11, 2005 with written notification of his termination

On behalf of the Grievant, the Union filed a grievance protesting the termination and asking that 1) he be reinstated, 2) that the discipline against him be reduced to the same level as given Mr. Landon (a written warning) and 3) that he be made whole in every way. This was not acceptable to the Employer and thus the grievance was moved forward and ultimately was submitted to arbitration.

STATEMENT OF THE ISSUE

The parties agreed upon an issue statement at hearing, consisting of the following:

1. Did King County have just cause to terminate Thomas Stephenson's employment?

2. If not, what is the appropriate remedy?

APPLICABLE CONTRACT LANGUAGE

ARTICLE 12: DISCIPLINE AND DISCHARGE

12.1 No regular employee shall be disciplined except for just cause.

12.2 As a condition precedent to any suspension or discharge, the County must have given the employee a written reprimand wherein facts forming the grounds of the County's dissatisfaction are clearly set forth. Written reprimand, suspensions or discharges must be given by registered, certified mail or personally with a written acknowledgment of receipt. Copies of all written reprimands, suspensions or discharges shall concurrently be forwarded to the Union.

12.3 Letters of reprimand shall be expunged from an employee's personal history file after a period of twelve (12) months.

12.4 Written reprimands are not necessary if the grounds are:

* * * * *

6. Use of force, fighting or striking another person.
…

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ARTICLE 13: SETTLEMENT OF DISPUTES

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13.10 Arbitration

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D. The arbitrator shall be asked to render a decision promptly and the decision of the arbitrator shall be final and binding on both parties. The arbitrator shall retain jurisdiction until the final decision is made, unless otherwise agreed to by the parties. The written decision shall be dated and shall include orderly and concise findings of fact. Copies of the final decision shall be furnished to the Union and County.

E. The parties shall require the arbitrator to agree that, by accepting the position of arbitrator, she/he shall abide and be bound by the provisions of this Article. The arbitrator shall have no power to add or subtract from or to disregard, modify or otherwise alter any term of this Agreement or any other agreement(s) between the Union and the County or to negotiate new agreements. The arbitrator's powers are limited to interpretations or a decision concerning appropriate application of the terms of this Agreement or other existing pertinent agreement(s), if any, with respect to the issue being arbitrated.

F. Failure to abide by the final decision of the Arbitrator shall be a violation of this Agreement. The Union or the County may, if deemed expedient, seek court enforcement of any final decision of the Arbitrator.

G. Fees for the arbitrator shall be paid equally by the Union and the County. If the Union and County agree that shorthand, stenotype or other reporter should record the proceedings, the cost incidental thereto shall be shared equally and each shall have access to the record. If the Union or the County provide their own separate means for recording the proceedings, such shall not, as a matter or right, be available to the other. In the event of death or disqualification or unavailability of the arbitrator, a replacement may be made consistent with initial arbitrator appointment provisions and, in such event, no fee shall be due the displaced arbitrator.

POSITION OF THE EMPLOYER

The Employer, in beginning its case for demonstrating that it had just cause in terminating the Grievant's employment notes that the Grievant was fully aware that violence in the workplace was an offense meriting discharge. Established policy and posted expectations explicitly point this out, and training received by the Grievant reinforced this. Leaving aside these facts, common sense dictates that this behavior is unacceptable. Moreover arbitral authority recognizes that it is unnecessary for there to be a specific rule against it.

The Employer continues by emphasizing that fighting and the use of force is incontrovertibly seen by reasonable individuals as a most serious misconduct. The Employer cites a body of prior arbitral authority in displaying that termination for the reason of fighting or use of force, even if it is a first offense, is fully valid.

Turning to the specifics of this case, the Employer's most important argument is that it met its burden of proof in providing that it had just cause in terminating the Grievant. At issue is credibility, both the credibility of all the evidence against the Grievant, and the lack thereof in the Grievant's denial of the charges. Mr. Landon's account is bolstered by his demonstrated emotion at the time, by the corroborating testimony of other employees on site that day and by its own consistency

over time. The evidence supports his claim of injury from both the medical and insurance communities, not to mention the Tukwila Police force through Officer Ludwig.

On the other hand, the Grievant's account has shifted with time, adding new details and forgetting others as the investigation and grievance progressed. He was curt, uncooperative and vague when initially interviewed, and this behavior continued through his pre-dismissal hearing. Oddly enough, the Grievant even tried to introduce corroborating testimony from two unknown persons ("Brian Baum" and "Richard Davis") who did not appear at hearing. They had allegedly visited the station and, in spite of having no knowledge of the Grievant, managed to seek him out on the internet and provide him with exculpatory evidence. In short, the Grievant has done nothing which would lend his story any sort of believability, and in fact has only made his position seem even more outlandish than it was before.

In the face of this overwhelming amount of credible evidence and the Grievant's own damage to his credibility, the Employer had no choice but to weigh Mr. Landon's account as the most believable.

Having determined that the Grievant was the instigator in the altercation, the Employer was left with the question of discipline. Article 12.4 is explicit in stating that progressive discipline is not required when the violation includes, among

other things, "use of force, fighting or striking another person." Even leaving this language aside, arbitral authority has held that in cases of extreme violation of workplace protocol, including violence, progressive discipline need not apply.

Jumping directly to the ultimate form of discipline, termination, is both consistent with established past practice and appropriate to the situation at hand. Many violators of the violence ban have been terminated by the Employer, including those with previously spotless disciplinary records, as evidenced by Employer Exhibit #18, a collection of cases in which discharge was handed down on the basis of violent behavior in the workplace. The conduct in question merited the same treatment, both to discipline the violator and to signal the Employer's complete and utter intolerance for this behavior.

For the reasons above, the Employer asks that the grievance be denied, along with any claims of recompense that the Grievant or the Union may make.

POSITION OF THE UNION

In beginning their argument, the Union notes that the heart of the grievance is the two differing accounts of the incident which lead to the instant grievance, offered by the only two eye witnesses: the Grievant and Mr. Landon. The Grievant's account of the scuffle avers that Mr. Landon initiated the altercation by

pushing a chair into the Grievant's bad ankle, prompting the Grievant to lunge at him (without making physical contact) at which point Mr. Landon fell backward of his own accord. Mr. Landon's account, painting the Grievant as having thrown him five feet with a shove, is obviously at odds with this.

The burden of proof, weighing on the Employer as it does in all cases involving discipline and discharge, is argued to be clear and convincing evidence. The very fact that the allegation levied against the Grievant bears legal and criminal consequences raises this burden above what might be sufficient to show just cause in other discharge cases that did not involve a criminal charge. No corroborating first-hand testimony exists aside from the wildly different accounts of the two players in the incident; as such, the evidence this case is based upon is entirely circumstantial and therefore not sufficient to meet the stated burden of proof.

Moreover, claims the Union, the Employer's reasoning for preferring Mr. Landon's account over the Grievant's is fundamentally flawed. The three main factors used by the Employer in reaching their conclusion, the testimony of John West, the filing of a Labor and Industry claim, and the recorded phone message of Rudy Landon made the day of the incident, are argued to each be invalid.

First, the statements made by Mr. West, a co-worker of the two men, are as damaging to the account of Mr. Landon as to the

Grievant's. Mr. West testified to contact that Mr. Landon did not remember, consistently so over the course of the events and the subsequent investigation. Such contradictory statements cannot be reasonably seen as any grounds for determining what actually happened that day. Nor is this the only point in which Mr. Landon's account differs from evidence entered into the record. The Union lists several points of difference, including discrepancies and unreported information in Mr. Landon's account, which leave the Grievant's version of events as, if not more believable than Mr. Landon's. The conflicting and imprecise statements offered as evidence are insufficient to provide any grounds for an affirmative conclusion, much less the clear and convincing burden necessary to uphold the Grievant's discharge.

The second factor in the Employer's determination of the veracity of Mr. Landon's account is the filing and subsequent acceptance of a compensation claim based on injuries incurred by Mr. Landon. It is incontrovertible that Mr. Landon landed on the ground with enough force to cause injury. The contention arises from the question of whether Mr. Landon was propelled five feet with a shove or he fell of his own accord. The assertion of the five-foot shove was later amended to a more plausible idea that Mr. Landon slid after landing. The fact that the Grievant did not introduce his explanation for Mr. Landon's fall (an abortive lunge, without contact) until later in the investigation is not as telling as the Employer would like to argue, as the Grievant

was intimidated and afraid following the aftermath of the incident, unsure of how much he should say in such a tenuous position. He had found himself suddenly under suspicion, facing termination and a criminal citation. It is not difficult to conjecture that he may not have been in the clearest mental state at the time. His angry demeanor was more than likely a result of this state; there is no way to prove that his anger was a sign of recalcitrance or leftover rage from the incident.

The final element of the Employer's case for crediting Mr. Landon's version over the Grievant's, the recorded message left on the phone of Alan Duncan, is argued to be a testament to the veracity of Mr. Landon's story. Mr. Landon is extremely emotional during this recording as he recounts the alleged details of the incident on his supervisor's voice mail, but the Union notes that he showed a propensity for convenient and rapid shifts in emotional state at hearing. All other things being equal, should a man's career rest on the dubious sentiment of one man?

For the reasons listed above, the Union asks that the grievance be upheld, that the discipline against the Grievant be reduced to that leveled against Mr. Landon, a written warning, and that the Grievant be reinstated and made whole in every way.

ANALYSIS

The Arbitrator's authority to resolve a grievance is derived from the parties' collective bargaining agreement (CBA) and the issue that is presented to him. The pertinent language of the CBA is found in Article 12, Section 1 and it reads:

> **12.1** No regular employee shall be disciplined except for just cause.

The issue before the Arbitrator has been stipulated by the parties and reads, "Did King County have just cause to terminate Thomas Stephenson's employment?" The Arbitrator notes that in a grievance arbitration proceeding, the employer is generally assigned the burden of proof in any matter involving the discipline or discharge of an employee. In all other matters the Union is assigned the burden of proof. The instant grievance involves a dispute over the question of the discipline of the Grievant. Thus, the Employer carries the burden on this matter.

Also, this Arbitrator has regularly determined in prior decisions that where discharge relates to questionable circumstances that might make it difficult for the employee to find new employment (drug abuse, sexual harassment, theft, etc.), to sustain the discharge, the employer must establish by clear and convincing evidence that it had just cause to terminate employment. The matter in the instant case involves physically assaulting a fellow employee which generally does fall into the category which requires the higher standard of proof. Therefore, the standard used, in this case, is clear and convincing. In

other words, to sustain the discharge, the Employer must show, by clear and convincing evidence that it had just cause to terminate the Grievant's employment.

Arbitrators have traditionally evaluated the just cause standard using a number of different criteria. In this case, the Parties' arguments focus on two of these criteria: 1) proof of the charges against the Grievant and 2) whether termination was the appropriate response to the seriousness of the proven charges. The analysis continues by looking at each of these separately.

Proof of Charges

The Employer notified the Grievant by letter dated October 11, 2005 that his employment was terminated. In that letter the Employer stated the charges against the Grievant as:

> On September 26, 2005, following a verbal altercation with coworker Rudy Landon over whether the overhead lights should be turned on, you shoved Mr. Landon using both your hands on his chest. The force you used propelled Mr. Landon back approximately 4 feet, where he fell backwards to the floor, hitting his tailbone and back. This incident occurred at approximately 5:40 a.m. in the transfer station operator trailer at the Bow Lake Transfer Station.
>
> (Joint exhibit # 2)

There is no question that the incident that led to the discharge of the Grievant occurred in the transfer station operator office on the morning of September 26. There is also no dispute over the fact that only Mr. Landon and the Grievant were present at the time of the incident. However, Mr. Landon and the Grievant tell substantially different stories about how the

incident unfolded. Mr. Landon's version of the incident is believed by the Employer and forms the basis of the above charge.

The Grievant's version of the story includes the fact that there was a dispute over whether the overhead light should be turned on, that Mr. Landon pushed a rolling chair into his sore ankle causing him pain, that he made a lunging motion at the Grievant in response to the chair shoving action, that he never touched the Grievant and that the Grievant fell against the wall when he jumped backwards in response to the grievants lunge.

The Union takes the position that the Grievant's version is believable and that the Employer has failed to provide clear and convincing evidence that Mr. Landon's version is accurate. The Employer contends that the sum total of the evidence is more than sufficient to meet the clear and convincing standard and that the evidence establishes that the Grievant did make physical contact with Mr. Landon and that this physical contact resulted in Mr. Landon's fall and injury.

Having carefully reviewed the transcript, the documentary evidence and the Parties' arguments the Arbitrator concludes that the Employer's case has met the clear and convincing standard. The evidence, although somewhat circumstantial, is sufficient to prove that the Grievant did push Mr. Landon; the Grievant did made physical contact. While the Arbitrator will not respond to every point raised by the Parties in their arguments, the Arbitrator's primary reasoning in support of this conclusion is

provided in the following analysis along with his assurance that all the points raised by the Parties were given careful consideration.

First, this case relies heavily on believing the testimony of Mr. Landon and disbelieving the testimony of the Grievant. Reconciling the differences in testimony is always a challenging job for the Arbitrator. In this Arbitrator's experience, two individuals witnessing or experiencing the same event and then testifying about it almost a year afterwards will almost always have significant differences in their recall. The question then becomes which of the details are accurately remembered, what can be attributed to faulty memory and what is fabricated? In the instant case, the Arbitrator is relying heavily on circumstantial evidence and a common sense analysis to arrive at the conclusion that Mr. Landon's testimony on the critical fact is correct and that at least some of the Grievant's testimony is fabricated.

The Grievant testified that he lunged at Mr. Landon but did not touch him (Transcript, pages 104 & 105). Mr. Landon testified the Grievant pushed him in the chest with two hands sufficiently hard that he was propelled backwards such that he landed on the floor and up against the corner of a wall, striking the wall with sufficient force to injure his back (Transcript, page 26).

So, did the Grievant lunge but never touch or did the Grievant push with two hands on the upper part of the chest?

Ultimately Only the Grievant and Mr. Landon know the answer to this question. The Arbitrator finds, however, that Mr. Landon's testimony is more credible with regard to this critical fact and that the circumstantial evidence additionally points to the truthfulness of his account.

Right from the outset, Mr. Landon's accusation was that he had been pushed by the Grievant on the upper chest sufficiently hard that he fell to the ground and slid into the wall. In reviewing the testimony of Mr. Landon and those witnesses who had immediate interaction with him following the incident, the Arbitrator notes that the accusation against the Grievant was either that Mr. Landon had been pushed or assaulted.

In its brief, the Union agues against finding Mr. Landon creditable by pointing to certain inconsistencies between Mr. Landon's testimony at the hearing and the statements of other witnesses. Primarily the discrepancy lies in the fact that the other witnesses recall Mr. Landon, following the incident, swearing at the Grievant, stating that he was going to sue him, and threatening to have his brothers get after him. Mr. Landon testified that he did not do those things.

The Arbitrator agrees with the Union that Mr. Landon's testimony is not credible on this point. But, this discrepancy has nothing to do with the critical point: was he pushed or just lunged at. Moreover the evidence is very clear that Mr. Landon was in a highly emotional state which could account for his

failure to remember all of the things he did at that time. Additionally, the Arbitrator is convinced that Mr. Landon's emotional state is much more reflective you of a situation where one has been pushed by someone much bigger not just lunged at. The Arbitrator is convinced that falling to the floor as a result of flinching from a lunge has a significantly different psychological/emotional impact than being pushed to the floor by someone much bigger.

Turning to the Grievant's testimony, there are two factors that lead the Arbitrator to conclude that his denial related to pushing Mr. Landon are not credible. The first is the evidence the clearly establishes that new details were added to his statement at the arbitration hearing; statements that he had not previously provided the Employer even though he had ample opportunity to provide this information. These additions cast the Grievant's behavior in a much more favorable light and it is reasonable for the Arbitrator to believe that had they been true they would have come out in earlier proceedings. Yet the testimony of Alan Duncan, who had interviewed the Grievant after the incident, was that he first heard about the lunge and the painful ankle at the Arbitrator hearing (Transcript, pages 125 & 126).

Similarly, the testimony of Thea Severn, who conducted the Laudermill hearing, was that she did not hear the claim about the chair shoved into the painful ankle and the lunge that allegedly

caused Mr. Landon to fall until the arbitration hearing (Transcript, page 128). Ms. Severance testimony is actually more damaging to the Grievant because she goes on to state that she specifically asked the Grievant to demonstrate what he was accusing Mr. Landon of doing with the chair. Yet the Grievant made no mention during his demonstration that the chair had hit his injured ankle and caused pain.

The second reason the Arbitrator has difficulty believing the testimony of the Grievant relates to his conduct immediately after the incident that brought about his discharge. The evidence is clear that Mr. Landon was extremely emotional and specifically accused the Grievant of assaulting him in that he had been physically pushed to the ground. This action resulted in a call to the police and a call to the fire department both of whom made an appearance at the scene. The evidence indicates that the Grievant had an opportunity to make a statement to the police officer and a statement to his supervisor. The Arbitrator finds no evidence, even though it is clear that the Grievant was aware of the accusations made against him by Mr. Landon, that the Grievant ever specifically stated that he had never touched Mr. Landon. But this is the statement that he precisely made at the arbitration hearing.

The Arbitrator's common sense reflection on the situation leads him to conclude that if someone is making false statements by which a person is now in trouble with the police and with ones

Employer, the person would be angry at the accusations would be emphatic with denials. From all accounts, the Grievant was neither. The Union's arguments at pages 8 & 9 of its brief in which in which it claims that the Grievant was intimidated by the situation and therefore short in his responses is not persuasive to the Arbitrator. His behavior as described by Employer witnesses appears much more like that which would occur when you know you've gotten yourself in trouble because of your actions.

In summary, the Arbitrator finds the testimony from Mr. Landon with regard to the push credible while he finds the testimony of the Grievant regarding a lunge that induced Mr. Landon to fall as not credible.

Second, the Arbitrator finds that a review of the circumstantial evidence all point in the same direction: the Grievant did in fact push Mr. Landon. For example, the testimony of John West, who had interacted with the Grievant shortly after the incident, indicates that the Grievant specifically stated "I shoved Rudy" or "I pushed Rudy." The Union attempts to explain this testimony away by noting that it was very loud where this conversation occurred and that what the Grievant had actually said was "Rudy says that I pushed him." The problem with this explanation is that Mr. West has had several opportunities to correct his testimony, assuming that his testimony needed correcting, and each time he has emphatically indicated that his memory is clear.

The Union also indicates that Mr. West testimony should not be given much weight because he cannot remember whether the word used was pushed or shoved. The Arbitrator is unpersuaded and instead notes that this was an opportunity where the Grievant could have given an emphatic denial about touching Mr. Landon. Obviously he is aware that Mr. Landon is accusing him of pushing or shoving him which would have involved physical contact. As noted above, the absence of any denial raises questions about the Grievant's current story.

Also, there is the matter of the criminal proceedings against the Grievant. Charges were filed against the Grievant and there is a court record related to the disposition of the charges that is in front of the Arbitrator as Employer exhibit number 4. During the hearing the Grievant was asked on direct examination, "and did that case go to trial?" the answer the Grievant provided was, "it was dismissed" (Transcript, page 120). The Arbitrator's review of the file indicates that the matter was not dismissed. Rather that in lieu of going to trial the Grievant had agreed to take anger management training and to do community service. What the Grievant might have meant when he said the matter was dismissed was that there was no trial. The bottom line to the Arbitrator is that the court proceedings and the disposition of the case provide additional circumstantial evidence that Mr. Landon was correct when he testified that there was physical contact.

Ultimately, for all of the reasons cited above, the Arbitrator concludes that the evidence strongly indicates that Mr. Landon was pushed by the Grievant; the Grievant did make physical contact.

Seriousness of the Infraction

The logical place to begin the analysis of whether discharge was the appropriate response to the proven charges is to simply note that the Union does not contest the fact that the Grievant was on clear notice of the consequences for a physical altercation. Moreover testimonial evidence indicates that the Grievant receive specific training both in the year 2000 and the year 2002 with regard to workplace violence and the prohibitions against it (Transcript page 129).

Moreover, this Arbitrator when dealing with an issue of a physical altercation in the workplace believes that it is important to establish whether or not there was specific provocation for the action. While, in general, provocation does not excuse a physical response, it can help determine the appropriate disciplinary response. In the instant case, the confrontation began when Mr. Landon turned on the overhead lights in what was either a darkened room or a dark room depending on whose version of the lighting one believes. The Grievant refused to allow Mr. Landon to turn on the light and an argument ensued which ultimately led to the push and Mr. Landon's injury. The Arbitrator's very careful review of the record uncovered no

explanation whatsoever as to why the Grievant believed he could refuse Mr. Landon the right to turn on the overhead lights. Clearly, Mr. Landon had the right to fill out his timecard in a lighted room. Thus the Arbitrator designates the Grievant as the provocateur.

Next, the County has convinced the Arbitrator that its practice is to discharge on a first offense with regard to a physical altercation. Arbitral support for this practice has been provided to this Arbitrator in prior County decisions by two distinguished arbitrators, Carlton Snow and Janet Gaunt. The fact that the Union was able to establish that there was one prior case where employees were terminated and then at the second step of the grievance procedure brought back to work, does not dissuade the Arbitrator from arriving at the conclusion that in determining to discharge the Grievant the County acted consistent with its prior practice and consistent with arbitral authority.

CONCLUSION

For the reasons cited in the analysis portion of this decision, the Arbitrator has concluded that the critical fact is whether the Grievant made physical contact with Mr. Landon. On this point, the Arbitrator found Mr. Landon's testimony credible while that of the Grievant not credible. Additionally the Arbitrator found that the circumstantial evidence all supported the conclusion that the Grievant did make physical contact with Mr. Landon. The Arbitrator further found that the Employer's

decision to terminate the Grievant's employment was reasonable in light of the fact that he was the provocateur for the incident that occurred on the morning of September 26 and that he had been given extensive notice as to the prohibitions against a physical confrontation along with the potential penalty if he engaged in such action. An award will be entered consistent with these findings and the conclusion.

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TEAMSTERS LOCAL UNION 174	)	
	)	THOMAS STEPHENSON
"THE UNION"	)	DISCHARGE GRIEVANCE

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. King County had just cause to terminate Thomas Stephenson's employment.

2. The grievance is denied.

3. Per the requirements of Article 13, Section 10, Subsection G of the CBA, the Arbitrator assigns his fees 50% to the Union and 50% to the Employer.

Respectfully submitted on this the 4th day of August, 2006, by,

Timothy D.W. Williams
Arbitrator