

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 24663-A

5. Immediately after the conference ended, Poupart reported Sobotta's remark to District Administrator Bauman and principal Eckert. Eckert consulted with Sobotta and varified that he indeed did make the remark attributed to him. Per Bauman's directive, Eckert then supended Sobotta with pay for four days pending a Board hearing on the matter.

6. The Petersons also complained to Bauman about Sobotta's language about a week or so after the incident. T.S.G.'s parents, on the other hand, never complained to the District regarding Sobotta's December 12, 1986 characterization of their daughter.

7. The District's Board on December 15, 1986 conducted a hearing on this incident. After hearing the facts and giving Sobotta a chance to present his side of the story, the Board suspended Sobotta for four days without pay. Sobotta on January 7, 1987 filed a grievance over his suspension which was denied by the Board.

8. Earlier, on April 3, 1986, Sobotta referred to the students in his class, which was made up of approximately 85 percent Native Americans, as a bunch of "dumb Indians" because some of them were unprepared and had come to class late. On the next day, about 13-14 parents came to school to protest Sobotta's remark. By letter dated April 8, 1986, Bauman warned Sobotta:

This letter is a follow up to an incident that occurred in your class on 4/3/86 in which you used an unfortunate ethnic statement. Statements of this nature are not accepted by the Lac du Flambeau Public School or the community of Lac du Flambeau. Parents should have the right to be concerned.

In the future, remarks of this type shall not be used by anyone at our school.

Sobotta apologized to his class and the entire school over his remark and he did not grieve the warning notice.

9. Teachers in the past have occasionally used foul language in school and have never been disciplined over it, with one teacher once telling a student that he would knock "his fucking head off if he didn't shape up and settle down." In addition, Principle Eckert told one of the Board members at the December 15, 1986 Board meeting when discussing another matter "you didn't have any damn right to be talking about these things downtown or in a tavern or wherever . . ." and administrators over the years have occasionally told students to "Get the hell out of here" and have used such terms as "Hell" and "Damn."

10. The District had just cause to suspend Sobotta over the December 12, 1986 remark.

On the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

Since the District had just cause to suspend Sobotta, it did not violate the contract and it similarly did not violate Section 111.70(3)(a)(5), or (1) Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

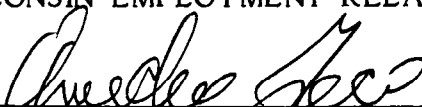
ORDER 1/

IT IS ORDERED that the complaint be, and the same hereby is, dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner

-
- 1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

SCHOOL DISTRICT NO. 1, TOWN OF LAC DU FLAMBEAU

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND ORDER

The Association alleges that the District lacked just cause to suspend Sobotta for four (4) days, arguing that the complaint against him was not fairly investigated; that he did not violate any formal rules relating to foul language and that the District has no uniform policy regarding such language; that he never received any prior warning or progressive discipline before his suspension; and that the punishment is too harsh. The District, in turn, maintains that Sobotta's suspension was proper because this marked the second time he has made intemperate remarks and that, "if he is to remain a teacher in the District that he understand that he has to act as a professional and control himself from utilizing the sort of comments which have placed both himself and the District in a difficult situation," adding: "(A)s a teacher and as a professional he has absolutely no right to utilize such language in the presence of parents and/or students."

The District is correct since Sobotta's reference to one of his students as a "son-of-a-bitch" on December 12, 1986 was wholly uncalled for, demeaning as it did one of his students who did not even have a chance to defend herself against his attack. The fact that neither the student nor her parents even complained to the District about it is hardly dispositive of this matter since the District itself has a justifiable interest of its own in seeing to it that none of its students are subject to such verbal abuse by any of its teachers. In addition, others have a justifiable complaint when teachers use such language in their presence, as shown by the fact that the Petersons complained to the District about Sobotta's language.

Also without the Association's assertion that the District's administration did not fully investigate this incident since it is undisputed that Eckert spoke to Sobotta about the matter before his suspension, during which time he, Sobotta, admitted making the statement attributed to him. That being so, there was nothing else to investigate irrespective of whether Sobotta's remark referred to T.S.G. personally or to her behavior as the Association alleges since his language in either case was wholly inappropriate.

Similarly without merit is the Association's claim that no rule was violated because, in its words, "the employer has presented no evidence to indicate that there was ever a rule or a Board policy indicating the type of language that was acceptable or unacceptable for teachers to use." That is true. But it is also true that the Board has never promulgated a rule prohibiting teachers from referring to their students as a "bunch of dumb Indians" since it can reasonably be assumed that teachers, as professionals, will not refer to their students in such derogatory terms.

Using the phrase "son-of-a-bitch" falls within the same general rubric since it, too, demeaned one of his students, particularly where, as here, Sobotta had already been warned in April 1986 that any name-calling constituted inappropriate behavior. Having been once formally warned in that fashion, Sobotta received the kind of progressive discipline embodied in a contractual just cause requirement. His four day suspension for the second incident of name calling therefore was fully warranted.

This is so even though other teachers and administrators occasionally have

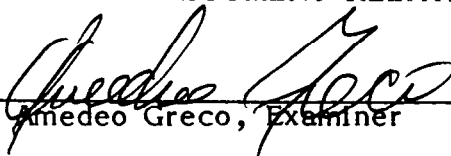
Indians." Accordingly, and because this one isolated instance did not rise to the level of a past practice justifying the use of epithets against students, it is not controlling.

In light of the foregoing, I therefore find that the District had just cause to discipline Sobotta; hence, the complaint is dismissed in its entirety.

Dated at Madison, Wisconsin this 30th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Amedeo Greco, Examiner