

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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RHINELANDER EDUCATION ASSOCIATION,	:	
	:	
Complainant,	:	
	:	
vs.	:	Case 29
	:	No. 44742 MP-2404
SCHOOL DISTRICT OF RHINELANDER,	:	Decision No. 26694-A
	:	
Respondent.	:	
	:	

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Appearances:

Mr. Gene Degner, Executive Director, WEAC UniServ Council #18, 25 East Rives Street, Rhinelander, Wisconsin, appearing on behalf of the Complainant.

Ruder, Ware, & Michler, S.C., by Mr. Ronald J. Rutlin, P.O. Box 8050, Wausau, Wisconsin, appearing of behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

Rhineland Education Association, having on October 24, 1990, filed with the Wisconsin Employment Relations Commission a complaint alleging the Rhinelander School District had committed prohibited practices within the meaning of Sec. 111.70 (3) (a) 1 and 5 when it disciplined an employe without just cause. The Commission, on November 23, 1990, appointed Edmond J. Bielarczyk, Jr., a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order. A hearing on the matter was held on January 8, 1991, in Rhinelander, Wisconsin. A stenographic transcript of the proceedings was prepared and received by the Examiner on January 28, 1991. Post hearing written arguments were received by the Examiner by April 1, 1991. Having considered the evidence and being fully advised in the premises the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The Rhinelander Education Association, hereinafter referred to as the Respondent, is a labor organization maintaining its offices at 25 E. Rives Street, Rhinelander, Wisconsin.

2. The Rhinelander School District, hereinafter referred to as the Complainant, is a municipal employer maintaining its offices at 315 South Oneida Avenue, Rhinelander, Wisconsin.

No. 26694-A

3. At all material times herein the Complainant and the Respondent have been parties to a collective bargaining agreement, effective August 28, 1989, through August 25, 1991. The parties collective bargaining agreement does not provide for final and binding arbitration of grievances. The agreement does contain the following pertinent provision:

. . .

ITEM 12 - NONRENEWAL/DISCIPLINE

A. Standard for Discipline: No teacher shall be discharged, reprimanded, suspended, or disciplined except for just cause. Any such action shall be subject to the grievance procedure set forth herein.

. . .

4. At all material times herein the Respondent has employed James W. Strek as a Teacher of the Mentally Retarded. On May 8, 1990, Strek participated in two (2) Individual Education Program (IEP) / Multidisciplinary Team Report (M-Team) meetings concerning two special education students. Present at the meeting concerning student A were Strek, the Special Education Director for the Northern Pines and Three Lakes School Districts Sam Mule, the Respondent's Multicategorical Program Teacher Vickie Keszler, and A's parent. Present at the meeting concerning student J were Strek, Mule, Keszler, the Respondent's Speech and Language Pathologist Ellen Greenland, and J's parent. Mule was present for the meetings because both students were out-of-district students. The following morning Mule telephoned the Respondent's Assistant Superintendent - Pupil Services Paula Hansen to express his concern that Strek's and Keszler's behavior at the meetings was very unprofessional. Hansen made the following notes concerning her telephone conversation with Mule:

**Notes Regarding Telephone Conversation With Sam Mule**

on 5/9/90

IEP/M-Team meetings were conducted on Tuesday afternoon 5/8/90 for A-----, V---- and J----. Present at the A V meeting were Sam Mule, Jim Strek, Vickie Keszler, Ellen Greenland and the parent. Present at the J J meeting were Sam Mule, Jim Strek, Vickie Keszler and the parent.

I received a telephone call from Sam Mule on Wednesday morning 5/9/90 at approximately 8:40. The message indicated "important" and that I should call him back. I returned his call at approximately 8:50.

Sam indicated that Jim Strek and Vickie Keszler's behavior at the meetings for A and J was "very unprofessional". He said they were "so negative, I couldn't believe it." He stated that they were "negative about the special education program the Rhinelander School District had" and they "painted a bleak picture for parents." They were "cutting down the system". They did not appear to "want any out of district students in their program." The "public relations" they displayed for the school district was "bad".

"What did my parents walk out of that meeting with" was a concern expressed by Sam. According to Sam "the first mother got up and said she was confused and didn't know what was best for her child. Jim was continually saying this (his program) is a protected environment and I want to tear them out and put them into the junior high (where) they'll learn the bad behaviors from the junior high kids." According to Sam, where the benefits of both options have been discussed, Jim had absolutely no positive comments to make about placing either student in the age

appropriate setting. Sam felt there was "inappropriate laughter, facial expressions and body language by Jim when Sam asked questions. These behaviors insinuated "your asking a dumb question." Sam said, "if I read it, I am sure the parents read it." Sam feels that the negative comments about the program and the inconsiderate treatment of Sam, left the parents confused. "I felt that they (the parents) felt uncomfortable at the meeting."

According to Sam, rather than supporting a mainstreaming philosophy and discussing the possibility of placement of students in age appropriate settings, as the legislation requires district's to consider in each IEP, Jim responds to Sam's attempts for a discussion in this area were highly critical. His comments gave the impression that the district policy is to "just put them out anywhere (in the mainstream setting) whether it is good for them or not." "He didn't mention the LRE or that REI is for students with mild handicaps" but rather the school district is going to "take all of the kids out". "I did not hear him say one positive advantage for kids to be in an age appropriate setting."

Jim and Vickie complained about lack of funds for special education materials and lack of aide time. They indicated that the "district does not give any money to special education. Jim indicated that he had not received money for materials in the last two years.

Sam felt that Vickie and Jim exhibited behaviors which gave the impression that for them working with the students was an hourly job rather than a teaching profession. According to Sam, Jim kept looking at his watch. It was apparent that he wanted to leave the meeting. "When I asked him about a contract with Joel, I asked leading questions to get details." Jim gave a one sentence answer rather than giving a full explanation. Sam felt this was because Jim wanted to end the meeting. Jim informed the parent in a discussion that "at the end of the year he is unemployed". Vickie and Jim were complaining at the meeting about the fact that students and teachers are required to make up the snow day at the end of the year. Vickie said that she has plane reservation on that day and she will not be canceling it.

Sam wanted "no repeats" of Jim and Vickie's behavior of "cutting down the system."

5. On May 9, 1990, Hansen met with Strek and made the following notes concerning their meeting:

**Meeting with Jim Strek 5/9/90**

The meeting commenced at approximately 10:00. Jim was informed that this was not a disciplinary meeting but rather that the purpose was to obtain information about the A V and J J meetings yesterday afternoon. He was

advised that he could have a union representative present if it turned into a disciplinary meeting. He agreed that the meeting should proceed but it would be stopped if he felt the representative was necessary.

I told Jim that I received a telephone call from Sam Mule that morning regarding the A V and J J meetings. I told him that Sam had some major concerns about the behavior of the two teachers at the meetings. I indicated that the problem was not about professional disagreements on where a child should be placed, the amount of money teachers receive for supplies, or the fact that the DPI will not approve the aide for his program next year. The issue on which I needed information was the manner in which the special education program was presented to the parents and to Sam, and the professional behavior of the persons involved in the meeting.

QUESTION: "In your opinion, how did the meetings proceed yesterday?"

ANSWER: "It was very negative. I would talk about philosophy. Vickie would say I've been told this is the way I have to do it. That's the way it has to be."

"Edith has said if A goes to the junior high school that would be a giant step up."  
"She was misled by Sam."

QUESTION: "Were Sam's comments criticized in the meeting?"

ANSWER: "I don't think he was ever criticized. Some of it might of started by him not allowing others to say what they thought was best."

QUESTION: "Did you make comments critical of the Rhinelander special education program."

ANSWER: "I would say I was not critical. Small things were brought up about budget things and supplies. A would be with 8th graders funneled into eighth grade classes. Edith knew he couldn't do it. I was under the assumption that the students would remain here next year. It was a surprise to be called by Vickie saying that Sam was considering moving the students to the Junior High School. I had the IEP already written."

At that point Jim was reminded that the IEP is developed by the IEP committee and cannot be written ahead of time. Decisions are made by the committee. He responded with, "I've crossed things out and added to."

Jim then said "There was no psychological report in that file. There was nothing in Jane's file either. Sam said he would talk to you guys. . . Sam said he would go with all the old testing. . .The M-Team re-evaluation was last night".

QUESTION: "Sam indicated that your behavior showed you wanted to get out of the meeting. You kept looking at your watch and gave the parent brief responses when questioned on an issue that needed a detailed explanation."

ANSWER: "I'm not going to say one more word."

QUESTION: "Did you make a number of negative remarks about the special education program at the meeting?"

ANSWER: "I wasn't negative. Vickie was very negative. . .I couldn't state what I thought was the best placement. A is this short, big, round boy. I can't see the benefit of him being there (Junior High School). His scores reflect a TMR placement not EMR. I'm not so sure that Sam wasn't so negative also."

(Note: A's intelligence test scores fall within the -3 to -4 S.D. range (moderate MR). Children who score in this range can either be placed in a mild/moderate (previously referred to as EMR) program or a moderate/severe (previously referred to as TMR) program.

6. On May 9, 1990, Hansen met with Keszler and made the following notes concerning their meeting:

**Meeting with Vickie Keszler 5/9/90**

I met with Vickie Keszler on May 9 at 12:15. I said I received a telephone call from Sam Mule regarding the meetings yesterday for A and J. I described Sam's comments. Vickie stated that she was ten minutes late to the first meeting regarding A. She said they "had two different views about the student. Jim did not want Alan moving up because he was not ready for the junior high setting." A is "small in stature". Jim "had addressed the issue with the parents." They agreed to maintain A at Crescent School. It would be beneficial to the student. "Jim is dealing with instruction." "Sam is dealing with age." Vickie indicated that the parents should make the final decision. They have the option to have A in a "program where the instruction is targeted at the appropriate level or to forget about appropriate curriculum and base the decision on chronological age." A's mother was "confused because there definitely were two opposing views. I tried to stay out of it. When it comes down to it, the parents have to decide." Vickie said, "Jim was negative about sending kids up here (junior high school). Sam emphasized the age."

"By the end we had to say that we do not really know what is going to happen anyway. We could not come to any decision. Sam was going to write into the IEP that the student needs an age appropriate environment.

Vickie did not admit nor deny the statements that Sam made about her behavior. She did say that she felt that she did apologize to Sam and the parent at the end of the meeting for her behavior. I emphasized to Vickie that we did not want a repeat of that type of a meeting and asked her if she would be willing to meet with Jim, Sam and myself. She agreed.

(Note: I mentioned it to Sam in a subsequent telephone conversation, that Vickie stated that she apologized to the parent and him at the end of the meeting for her behavior. Sam said that he did not really hear any type of apology but if those were her sentiments and if would not happen again he would accept that.)

7. On May 9, 1990, Hansen contacted Greenland and made the following notes concerning their conversation:

**Discussion with Ellen Greenland 5/9/90**

I called Ellen Greenland after talking to Sam to obtain information from her on the meeting regarding A V. Ellen indicated that the meeting was definitely uncomfortable but she did not feel that she could say a lot about the meeting. She stated that during the meeting Vickie was "noticeably concerned about equipment and money. Jim wasn't sure that the Junior High School was the proper placement. Jim was concerned about the placement."

8. On May 9, 1990, Hansen was contacted by Lee Hamlin concerning

comments made by Streck in the Teacher's Lounge on the morning of May 9, 1990, and Hansen made the following notes concerning their conversation:

**Conversation with Lee Hamlin 5/9/90**

Lee Hamlin stopped by my office approximately 4:00 on May 9. She said that she was very disturbed by something that happened in the teacher's lounge that morning before school. She stated that Jim was talking about the meetings which took place on A and J the previous day and stated "Vickie Keszler and I really cut down the special education program." Lee indicated that this was an exact quote. Jim went on to say that he told the people at the meetings that "I haven't got any money from the special education director for the last two years." According to Lee, Jim said that he told Sam Mule and the parent that their school district is paying a large amount of money in tuition for these students and we don't get money for materials. There was then a statement while Jim was looking for a paper clip that there was not even enough money for paper clips. Lee stated that Linda Havel was also in the lounge at that time and heard Jim's comments.

(Note: Sam stated in a later conversation that Jim never made any comments during the meetings about the tuition paid by his district in relationship to the lack of funds for materials or in any other context. It should also be noted that according to the records at Crescent school, Jim received \$30 per student this year for supplies (\$210 total). This dollar amount per student is the same amount that all of the regular classroom teachers at Crescent receive.)

9. On May 9, 1990, Hansen contacted Linda Havel by telephone and made the following notes concerning their conversation:

I called Linda Havel at home and J J. Linda said she was. I asked her if she could describe what happened. She said he indicated that he "had a meeting with Sam Mule." "He mentioned Vickie Keszler, and said the meeting had to do with his program and others in that category." Jim said "someone is making a big error with A ", Jim said. "The plan was for him to go to the Junior High School." Linda said at one point Jim stated that when someone "asked for a paper clip, I told them I hadn't received any money for two years."

Linda confirmed that Jim said "Vickie Keszler and I really cut down the special education program." I asked her if there was anyone else in the lounge who heard the comments. She stated that Lee Hamlin was there and since the incident took place before school, that Joanne Farrell and Marsha Legrey were probably also in the lounge at that time.

10. On May 10, 1990, Hansen met with Streck, Respondent's Principal of Crescent Elementary School Jon Warmke, and the Executive Director of WEAC

UniServ Council #18, Gene Degner. Hansen made the following notes concerning this meeting:

**Meeting with Jim Strek 5/10/90**

I called Jim on the morning of May 10 and stated that we would need to meet at 10:00. I advised him that he may want to have a representative present.

The meeting was held in Jon Warmke's office at Crescent School. Present were Jon Warmke, Jim Strek, Gene Degner and myself.

QUESTION: "At the IEP meetings on Tuesday afternoon, were you making negative comments regarding the special education program."

ANSWER: "I don't think I made negative comments. I haven't gotten anything (for) supplies. Carl always gave a special amount to each special education teacher. Suddenly there wasn't any of that around. As far as integration or mainstreaming, I didn't refer to it as my boss telling me I had to do it. There is still some misunderstanding on how the children are to be integrated. From most of the people I talked to, teachers (don't seem to understand it). We need a real good inservice on how to do it."

QUESTION: "So you don't feel that you tore apart the special education program."

ANSWER: "No, certainly not meaningfully. I feel it was rotten I wouldn't have stayed (for the past ... years)."

QUESTION: "Did you tell teachers on Wednesday morning that "Vickie Keszler and I really cut down the special education program?"

ANSWER: "I'm not sure if I put it that way or not. I'm not sure if I put it that way or not. I'm not certain that I did not say "It sounds like Vickie and I really put down the special education program after I received the phone call about the meeting."



(Note: The incident in the lounge took place before school started, approximately 7:50. I called Jim to tell him I needed to discuss the meeting he had at approximately 9:00.)

QUESTION: "What if I told you that two staff members from Crescent said that you boastfully said, "Vickie Keszler and I really cut down the special education program." What would you say?"

ANSWER: "I'm not sure I said it that way."

I said, "there appears to be a problem with your "dishonesty in connection with the job and sabotage of the school district's goals and programs. We feel there is a need for a written reprimand at this time."

I then said that Jon and I were discussing the possibility of a one-day suspension just before Jim arrived for the meeting and did not finish our discussion. We will let Jim know of our decision on that later.

Gene Degner then said he felt we should "bring back Sam Mule and the teachers who said what his comments are. If you don't, we are going to grieve it anyway." Gene said, "My concern is whether the comments were dealing with a professional disagreement." He had a "concern about what was said and how it was said." Gene then said, "What I want to know is what is happening with Vickie?" I responded that since Vickie did not have any previous written reprimands on file regarding her professional behavior, I met with her yesterday to give her a verbal warning. Since Jim had two previous written reprimands in his file regarding professional behavior, he would receive a written reprimand and a possible suspension. Gene then indicated that if both were/are involved, whether as participants or accomplices to the fact, they should be treated the same. Gene said it would be very helpful to have a meeting with Sam. He said there was no need to have the parents present. Gene then wanted to know who the teachers were that described Jim's behavior on Wednesday morning. I responded that the teachers did not want to have their identities known. Gene then said that Jim has the right to face his accusers.

11. On May 11, 1990, Hansen contacted the parent of student J. Hansen made the following notes of their conversation:

**Telephone Conversation with Mrs. J 5/11/90**

On Friday, May 11, I had a telephone conversation with Mrs. J, one of the parents who participated in the M-Team/IEP meetings on May 8. I indicated that I had

recently received a complaint about comments Jim Strek made at J's IEP meeting and alleged comments he subsequently made about that meeting.

QUESTION: "Would you consider Jim's behavior at the IEP meeting for Joel negative?"

ANSWER: "I don't know if it was really negative. It was more like 'let's hurry up and get out of here. I've got something else to do. He didn't seem to understand why we were meeting."

QUESTION: "Did he appear to be cutting down the special education program?"

ANSWER: "I can't really say he was cutting down the program itself. I can't say that Mr. Strek acted any different than any other time I've met with him."

"No, I really don't feel he cut down the program. Mr. Mule did get a little upset. I have to be honest, Mr. Strek told Joel sometime ago that Joel wasn't going to be in the program anyway. I have to be honest, I feel my son went backwards when he went into the program. . .when he went into Mr. Strek's class. A lot of the worksheets he has been doing the last few months he's been doing since he was seven years old."

QUESTION: "Was he critical of the amount of money he received for supplies?"

ANSWER: "Yes."

QUESTION: "Was he critical of the amount of aide time?"

ANSWER: "Yes, in fact he said he was going to lose his aide next year?"

QUESTION: "Was he critical of Mr. Mule?"

ANSWER: "I picked up some ill feelings between Mr. Mule and Mr. Strek. The only think (sic) I got out of the discussion was that they were deciding whether to reorganize the program and Joel would be more

appropriate at the Junior High School should they reorganize."

QUESTION: "Was Mr. Mule acting negatively toward Jim?"

ANSWER: "Not directly toward him. No."

12. On May 16, 1990, the following letter of reprimand was sent to Strek:

#### Written Reprimand

**Employee:** Jim Strek  
**Position:** Mentally Retarded Program Teacher  
**Department:** Pupil Services Department  
**School:** Crescent Elementary School  
**Date:** May 16, 1990

On the afternoon of May 8, 1990, Mr. Strek participated in M-Team/IEP meetings which were conducted for two out of district students enrolled in the School District of Rhinelander special education program. Present at the meetings, in addition to Mr. Strek, were Vicki Keszler (Multicategorical Program Teacher at Rhinelander Junior High School) and Sam Mule (Special Education Director for the Northland Pines and Three Lakes School Districts). A parent for each student was in attendance at their child's respective meetings. In addition, Ellen Greenland, the speech and language pathologist, participated in one of the meetings.

Mr. Strek displayed unprofessional behavior at these M-Team/IEP meetings. Mr. Strek attempted to subvert the School District of Rhinelander Special Education Program by being critical of the program in the presence of the Special Education Director for the Northland Pines and Three Lakes School Districts and the parents. Although the School District of Rhinelander is complying with the state requirements for the allocation of aide time, Mr. Strek complained to the parent and special education director about losing his aide. Although Mr. Strek received the same dollar amount per child as the regular classroom teachers at Crescent School for classroom supplies this year, he complained that he had not received any funds.

Although Mr. Strek is legally required to consider and discuss a continuum of least restrictive environment placements during each IEP meeting, he eliminated the option of the age appropriate setting in advance, wrote an IEP prior to the meeting reflecting his point of view and did not openly discuss the option of an age appropriate setting. Individuals at the meeting stated that it was very apparent that Mr. Strek did not want to fully discuss issues with the parent since the behavior he showed indicated that he wanted the meeting to end quickly (constantly looking at his watch and giving the parent brief answers to questions which

required further explanation).

Mr. Strek attempted to undermine the special education program as evidenced by a.) reports from persons who attended the M-Team/IEP meetings indicating that he was critical of the special education program, and b.) Mr. Strek's own admission to fellow teachers the following morning ("Vickie Keszler and I really cut down the special education program").

Mr. Strek displayed dishonesty in connection with the job. Mr. Strek was asked the following questions at a meeting on May 9, 1990 with Jon Warmke, the Crescent School Principal and Paula Hansen, the Assistant Superintendent - Pupil Services:

QUESTION: "Did you make comments critical of the Rhinelander Special Education Program?"

ANSWER: "I would say I was not critical."

QUESTION: "Did you make a number of negative remarks about the special education program at the meeting?"

ANSWER: "I was not negative. Vickie was very negative."

Mr. Strek was asked the following questions at a meeting with Jon Warmke, Paula Hansen, and Gene Degner on May 10, 1990:

QUESTION: "At the M-Team/IEP meeting on Tuesday afternoon, were you making negative comments regarding the special education program?"

ANSWER: "I don't think I made negative comments."

QUESTION: "So you don't feel that you tore apart the special education program?"

ANSWER: "No, certainly not meaningfully."

QUESTION: "Did you tell teachers on Wednesday morning that "Vickie Keszler and I really cut down the special education program?"

ANSWER: "I'm not sure I put it that way or not. . .I'm not sure if I put it that way or not. . .I'm not certain that I did not say "It sounds like Vickie and I really put down the special education program after I received the phone

call about the meeting  
yesterday."

Teachers at Crescent School have verified that Mr. Strek did say those exact words. Also, Mr. Strek was describing how he "cut down the special education program" prior to the start of school at approximately 7:50 a.m. Mr. Strek did not receive the "phone call about the meeting" until approximately 9:00 a.m. Therefore, his comments could not have been a result of the telephone call.

Mr. Strek has two other written reprimands in his file regarding lack of professional behavior. One dealt with his absence from school without contacting school personnel and the second with his disregard of a direct order from his building principal. The consequences of Mr. Strek's continued unprofessional behavior as specifically stated above, is suspension from employment at Crescent School, without pay for one day on May 24, 1990. Incidents such as dishonesty in connection with his job, disregard of a direct order from the principal, absence from work without notifying the principal in advance and deliberate disregard of reasonable standards of behavior which an employer has the right to expect, are considered misconduct. This is grounds for discharge. However, in that Mr. Strek is a long standing employe of the School District of Rhinelander, he will be given another chance to stop this type of behavior. It should be clear that the next incident of this nature will result in severe discipline including possible discharge.

Paula Hansen /s/  
Paula Hansen 5/16/90  
Assistant Superintendent - Pupil Services Date

Jon M. Warmke /s/  
Jon Warmke 5-17-90  
Date

Principal, Crescent Elementary School

\* \* \*

I have read and received a copy of the above statement.  
I do do not wish to submit written comments of my own  
about this matter.

Jim Strek /s/  
Jim Strek 5/17/90  
Date

cc: Paula Hansen  
Jon Warmke  
Jim Strek  
Personnel File

13. On May 18, 1990, Strek filed a grievance alleging his discipline

violated Item 12 of the parties collective bargaining agreement. Thereafter the grievance was processed through the parties grievance procedure. On October 3, 1990, the Respondent's School Board denied the grievance. On October 24, 1990, the Complainant filed the instant complaint with the Wisconsin Employment Relations Commission alleging Respondent's actions in disciplining Strek violated Sec. 111.70 (3) (a) 1 and 5.

14. Prior to May 16, 1990, Strek had received two previous disciplinary actions. One on January 12, 1984, for failure to follow proper procedures and one on February 14, 1986, for failure to contact the Respondent concerning an absence.

15. Prior to May 9, 1990, Keszler had not received any disciplinary actions from the Respondent. Keszler apologized to Mule and a parent at the end of a meeting for her behavior. Keszler received an Oral Reprimand for her actions on May 9, 1990. There is no evidence that Keszler grieved her Oral Reprimand for her actions on May 9, 1990.

16. On May 13, 1990, the parent of J sent a letter to Hansen which states in pertinent part:

"Throughout his school years I have found most (not all) of his teachers to have the same attitude as his current teacher Mr. Strek. A few points are; There isn't enough money to do my job the way I want to, my classes are too big, I don't have enough aide time, J learned just about all he's going to and I have a very limited supply budget. To a point, I understand some of these concerns. However, I as a parent cannot change many of these concerns and don't feel that they need come up in my son's IEP, M-team and other meetings.

. . .

Yes, I do see some problems with my meeting last week re; educational plans. Yes, there were comments made that I feel should not have been made and yes, I did feel that there was some urgency on Mr. Strek's part. These are no different than I've heard in most meetings. This dept. has been reorganizing since J entered school nine years ago."

17. On January 4, 1991, the parent of A sent a letter to Hansen which states in pertinent part:

. . .

"I did not come away from that meeting being upset. I was concerned about my son. I didn't want him put in a position of being made fun of.

I thought Jim spoke in the interest of A. I was astounded when I heard he was reprimanded for what went on at that meeting. Nothing was said that I took offense too (sic). I do hope everything works out well for him."

. . .

18. The Complainant contends Strek, who has been a fourteen (14) year

employe of the Respondent and has participated in several IEP meetings, has never been apprised of management's expectations for M-team meetings. The Complainant also contends Strek has always prepared a working draft IEP prior to any IEP meeting, using the phrase "I have written an IEP." in a very general way with full knowledge and understanding the draft will be added to or subtracted from at the actual meeting. The Complainant contends Mule, a new Special Education Director, objected to this general statement taking it out of context and accused Strek of violating the rules of an IEP because Strek brought a rough draft to the May 8, 1990, meetings. The Complainant argues Mule had arrived at the meetings with the preconceived idea of where student A and student J should be placed, Mule had established the time frame (one-half hour) for each meeting and Mule was in charge of each meeting. Thus, there was frustration of the part of Strek and Keszler, the blame lies with Mule. The Complainant also contends the Respondent denied Strek his professional opinion and argues the letters from the parents of student A and student J demonstrate neither parent heard or saw anything out of the ordinary at the meetings on May 8, 1990. Further, that while all Strek was trying to do was to present his professional view concerning the placement of the students, only Strek received a one (1) day suspension. The Complainant argues that since Strek disagreed with Mule concerning the placement of the students his actions were deemed unprofessional by Mule. The Complainant also argues that nothing said by Strek at the May 8, 1990, meetings was an untruth. The Complainant also contends Hansen's investigation of Strek's activities was tainted from the start. Hansen informed Strek at their May 9, 1990, meeting that it was not disciplinary but informational, that she was seeking information on how the special education program was presented to the parents and Mule and the professional behavior of the persons involved in the meetings. The Complainant argues Strek was clearly disciplined for statements he made at the meetings. Hansen met with the other participants or contacted them without other witnesses being present, telephoned only one parent yet testified she did not contact the other parent because she did not want to involve the parents, had met with Mule and Keszler on May 7, 1990, to discuss moving students A and J to the Junior High School, the notes Hansen wrote concerning her conversations with the participants are her recollections and are self-serving and that it was not until June, 1990, that Strek learned who the teachers were that complained about his lounge conversation. In addition the Complainant argues Hamlin's testimony acknowledged she had a difference of opinion with Strek, was self-serving as Hamlin had a previous disciplinary action removed from Strek's and her's personnel files and gave no explanation of what coming down hard on Mule meant. The Complainant further contends the discipline was not uniformly administered as Keszler only apologized to the parents and there is no evidence to support this fact, the previous discipline of Strek is unrelated to the instant matter and the discipline levied in the instant matter was too harsh.

19. The Respondent acknowledges it has the burden of proof in this matter and contends the evidence unequivocally establishes the Respondent had "just cause" to discipline Strek for unprofessional conduct. The Respondent argues Mule's testimony at the hearing demonstrates Strek's unprofessional conduct, that Strek misrepresented "mainstreaming" depicting the Junior High as a dangerous place, that Strek used body language indicating "let's get this over with", that Strek had already told the parent the student would be in Strek's program next year, that Strek stated "I don't care about the student, once my contract ends I don't have to deal with this anymore.", and that statements Strek made were untrue and did not reflect well on the Respondent's provisions of programs for handicapped children. The Respondent also asserts that Hansen's investigation established that Strek had acted in an unprofessional manner. Further, Strek's comments in the Teachers' Lounge on May 9, 1990, demonstrate Strek purposefully attacked the special education program and he in effect bragged about it. The Respondent also argues that Strek's testimony at the hearing clearly supports the Respondent's position.

The Respondent also contends the Examiner should not substitute his discretion for the Respondent's in determining the proper penalty to impose on an employe for misconduct. The Respondent contends it conducted a full investigation and its actions in disciplining Strek was not unreasonable, arbitrary or capricious. The Respondent also contends there was a reasonable basis for differentiating in the degree of punishment imposed as Strek had two (2) prior written reprimands, Keszler had none, Keszler did not deny what occurred or attempt to place blame on another, and Keszler was truthful and remorseful claiming she had apologized for her actions.

20. Strek

and J. Strek did state at the meetings he was not assigned an Aide for the following year, that he had not received money for materials for the last two (2) years, that at the end of the school year he was unemployed, that the Junior High was not an appropriate setting because of the dangers to the students, and did state the following morning in the Teacher's Lounge that he and Keszler had cut down the Special Education Program in their meetings on May 8, 1990. Strek was not assigned a teacher aide for the following year because of a reduction in the number of special education students enrolled in his program. Strek received the same dollar amount per student (\$30.00) as other teachers employed by the Respondent. Strek testified he knows very little about Respondent's special education program at the Respondent's Junior High School. Strek had informed parent A that student A would be in Strek's program the following year prior to the IEP/M-team meeting on May 8, 1990. Strek had prepared an IEP prior to the May 8, 1990, meetings. Strek is aware the parents of students in Respondent's special education program are to make decisions concerning student placement after receiving information and discussing the matter at IEP/M-team meetings. Strek is aware the IEP for a student is to be done after a IEP/M-team meeting. Strek is aware the Respondent is legally required to raise the age appropriate setting issue with parents prior to developing a IEP.

21. Respondent's actions in disciplining Strek for unprofessional behavior at the May 8, 1990 meetings was for just cause. Respondent's actions did not violate the parties collective bargaining agreement.

Upon the basis of the above and foregoing Findings of Fact the Examiner makes and issues the following

CONCLUSIONS OF LAW

1. The collective bargaining agreement between the Complainant and the Respondent does not provide for final and binding arbitration of grievances.

2. The Respondent, when it disciplined James Strek for unprofessional behavior, had just cause and did not commit a prohibited practice within the meaning of Sec. 111.70 (3)(a) 1 or 5, Stats.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Examiner makes and renders the following

ORDER 1/

The instant complaint is hereby dismissed.

Dated at Madison, Wisconsin this 9th day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_



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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 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.

RHINELANDER PUBLIC SCHOOLS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The Complainant alleges the Respondent by its actions violated the collective bargaining agreement in effect between the parties. The complained of actions occurred when the Respondent disciplined James Strek for nonprofessional behavior at two (2) meetings held on May 8, 1990. Strek filed a grievance and it was processed through the parties' grievance procedure. The parties' grievance procedure does not conclude in final and binding arbitration. Where final and binding arbitration of grievances is not provided for in a collective bargaining agreement the Wisconsin Employment Relations Commission has exercised its jurisdiction under Sec. 111.70 (3)(a)5 Stats., and determined the grievance on its merits. 2/ The instant matter arose when Special Education Director for the Northland Pines and Three Lakes School Districts telephoned the Respondent's Assistant Superintendent - Pupil Services Paula Hansen to report that Strek's and Vicki Keszler's behavior during two (2) meetings held with parents of students enrolled in the Respondent's special education program was very unprofessional. Hansen then discussed the matter individually with Strek, Keszler, Ellen Greenland, Lee Hamlin, Linda Havel, and one of the parents involved. Thereafter Hansen met with Strek, Strek's Bargaining Representative and the Crescent School Principal.

On May 16, 1990, Strek received a written reprimand and a one (1) day suspension. Strek had previously received reprimands on January 12, 1984 and February 14, 1986. Keszler, who had not been previously disciplined and who had informed Hansen she had apologized to Mule and one of the parents for her actions on May 8, 1990, received an oral reprimand.

Complainant's Position

The Complainant

Complainant raises five (5) arguments in support of its position. First, that Strek had never been apprised of management's expectations for IEP/M-team meetings. The Complainant asserts that the rough IEP Strek had drafted was a practice he had developed, that Strek was well aware the IEP would be modified at the May 8, 1990, meetings, and that Mule overreacted to Strek's comments concerning the IEP. The Complainant also argues Mule came to the meetings with the preconceived idea of placing the students in the Junior High School. The Complainant also points out that Strek was excluded from the meeting held on May 7, 1990, between Mule, Keszler, and Hansen were movement of the students was discussed. Thus, the fact Strek was frustrated at the meeting because he believed there needed to be a more thorough discussion of the age appropriate issue was caused by Mule, who had his own agenda for these meetings. The Complainant also argues that if Mule wanted a more thorough discussion of the age appropriate issue Mule could of rescheduled a second meeting rather than blaming Strek for the frustrations which occurred at the meetings.

Second, the Complainant argues that the Respondent denied Strek his professional opinion. The Complainant points out only Strek was disciplined, yet although he was informed by Hansen he was not being disciplined for disagreements over placement, lack of money for supplies, of lack of an aide, he was the only person suspended for a day. The Complainant also points out both parents informed Hansen in writing that they heard nothing out of the ordinary at the May 8, 1990, meeting they attended. The Complainant contends

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2/ Turtle Lake School District, Dec. No. 24687-A (Bielarczyk, 12/87), Superior Board of Education, Dec. No. 11206-A (WERC, 10/72); Melrose-Mindoro Jt. School District No. 1, Dec. No. 11627 (WERC, 2/73).

that Strek is being disciplined because Strek disagreed with Mule on where the students should be placed and that nothing Strek said at the meetings was untruthful or critical of the Respondent's special education program.

Third, the Complainant argues that Hansen's investigation was tainted from the start. The Complainant argues Strek was informed at his May 9, 1990, meeting with Hansen that the issue wasn't professional disagreement but the manner in which the special education program was presented to the parents. However, the Respondent's letter of reprimand clearly identifies truthful statements made by Strek concerning the lack of an aide and money for supplies as well as Strek's draft IEP as unprofessional behavior. The Complainant also points out that Hansen met individually to interview all participants except for Strek, whereat the Elementary School principal was at. Hansen only telephoned one parent yet testified she did not want to involve the students' parents. The Complainant argues Hansen has dual standards, on the one hand meeting with Keszler and Mule to discuss the options of moving A and J to the Junior High School and on the other hand critical of Strek for bringing a draft IEP to the meetings. The Complainant also argues that Hamlin had self-serving reasons to discuss Strek's Teacher Lounge behavior with Hansen, the removal of a reprimand from her personnel file. The Complainant further argues that it was not until June, 1990, that Strek was informed of the teachers who complained of his lounge conversation. Here the Complainant questions whether Strek was disciplined for his behavior at the May 8, 1990 meetings or for his conversation in the Teacher Lounge. The Complainant argues the entire investigation is fraught with generalities and conclusions without evidence.

Fourth, the Complainant argues discipline was not uniformly administered. The Complainant asserts both Strek and Keszler engaged in the same behavior, yet Strek received a one (1) day suspension and Keszler only makes a tearful apology. The Complainant points out that evidence of an apology by Keszler is neither supported by Mule or the letters written by the parents. The Complainant also argues that Strek was disciplined for not advocating the Junior High School special education program while Keszler, the Special Education Teacher at the Junior High School, was not held accountable for its advocacy. The Complainant also argues there is no commonality between Strek's previous disciplinary matters and the instant matter. The Complainant does acknowledge that the only distinction between Strek and Keszler is the occurrence of the two (2) letters.

Lastly, the Complainant argues the discipline is too harsh. The Complainant points out Strek is a fourteen (14) year employe with only two (2) letters in his personnel file, the last of which was on February 14, 1986. The Complainant asserts it is inconceivable to interpret the three incidents as having a relationship to form progressive correction. At most, the Complainant asserts, there was a professional disagreement between Mule and Strek which neither parent, as evidenced by their letters, was upset about or felt that the employe acted any different than other employes in other meetings. The Complainant asserts Strek has not had any difficulty in following the instructions of his supervisors should they make the instructions known. The Complainant argues that if the Respondent had a concern about parent perceptions coming out of IEP meetings the Respondent had an obligation to bring that to the attention of the employes before serving Strek with a one (1) day suspension. The Complainant concludes by pointing to the letters of the parents and argues that these are hardly the letters of parents who thought Strek was cutting down the Respondent's special education program.

#### Respondent's Position

The Respondent contends the evidence demonstrates that it had "just cause"

to discipline Strek for unprofessional behavior. The Respondent acknowledges it has the burden of proof in a disciplinary matter and argues the applicable standard is a preponderance of the evidence. Such a standard, the Respondent contends, simply means an employer, acting in good faith, has a fair reason for disciplining an employe which reason is supported by the evidence. The Respondent asserts misconduct which is directly connected with an employe's work, represents a willful disregard of the employer's interest, and is inconsistent with an employe's obligations to the employer constitutes such "just cause". The Respondent argues all of the above elements are present in the instant matter.

The Respondent points to Mule's testimony to support its position that Strek engaged in unprofessional conduct at the May 8, 1990, meetings. Mule's testimony demonstrates that Strek depicted Respondent's Junior High as a dangerous place, that there is a sense of getting lost in the building, that Strek stated he did not believe in the Respondent's mainstreaming philosophy, that Strek used body language indicating let's get this over with, that Strek stated he had already told the parent the kid's going to be in the program next year, that Strek stated "I have already made this decision and told the parent.", that Strek stated I don't care about the student, once my contract ends I don't have to do anything with this anymore, I am unemployed, and that Strek stated there had not been any resources for the program for the last two (2) years. The Respondent argues that Hansen's investigation into Strek's conduct established that Strek was in fact unprofessional. The Respondent asserts Strek's comments in the Teacher's Lounge not only affirm Strek attacked the Respondent's special education program but also that he bragged about doing so. The Respondent also points to Strek's testimony at the hearing and argues his testimony demonstrates he acted in an unprofessional manner. 3/

The Respondent also asserts that Strek had participated in many IEP meetings in the past and knew what the nature and purpose of those meetings was for. The Respondent argues Strek purposely attacked the special education program to voice his complaints about the program in front of the parents defeating the purpose of the meeting.

The Respondent also argues the Examiner should defer to the Respondent's judgement as to the proper penalty to be imposed for Strek's misconduct. The Respondent points to several arbitral decisions to support this contention and argues there is no evidence that the Respondent acted in an unreasonable, arbitrary, or capricious manner in imposing a one (1) day suspension for Strek's misconduct. The Respondent asserts Hansen conducted a full investigation including meeting with Strek to allow him to respond to the allegations. After interviewing Mule, Keszler, Havel and Hamlin, Hansen again met with Strek and his bargaining representative to again permit Strek to respond to the matter. Hansen then contacted a parent who supplied a letter confirming Strek's conduct at the IEP meeting was unprofessional. The Respondent concludes the penalty imposed was appropriate in light of the nature of Strek's offense.

The Respondent further argues the contention that Strek received disparate treatment is totally without merit. The Respondent acknowledges that Keszler who also had acted in an unprofessional manner only received an oral reprimand. However, the Respondent asserts there was a reasonable basis for differentiating between Strek and Keszler in regard to the degree of discipline imposed. Strek had two (2) previous written reprimands in his personnel file pertaining to unprofessional behavior. Keszler, unlike Strek, did not deny what had occurred, attempt to place the blame on another, was truthful and

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3/ Transcript pp. 140-141, 144-145, 149-152, and 155-156.

remorseful. The Respondent concludes there was thus a reasonable basis for differentiating the degree of discipline imposed on Strek and Keszler.

#### Discussion

The Examiner notes at the onset of this discussion that at the hearing in the instant matter Strek did not dispute he made the statements for which, in most part, he had been disciplined for and which the Respondent has labelled to be unprofessional behavior. These statements include the following: that he had already informed the parent the student would be staying in his program, that he wasn't going to have an aide the next year, that he had not received any resources for supplies, that he stated he had a IEP written, that the Junior High School would not be an appropriate setting for the students because of dangers to them, that at the end of the year he was unemployed, and that he stated in the Teacher's Lounge Keszler and he had cut down the special education program. Strek also testified at the hearing that he knew very little about the special education program at the Respondent's Junior High School. 4/ Further, that he was aware of the age appropriate setting issue and that this issue would be raised at the IEP/M-team meetings. 5/

The Examiner finds the Complainant's argument that Strek always prepared only a draft IEP for the IEP meetings ignores the fact that Strek had already told at least one parent their child would be in Strek's program next year. The Examiner finds that Strek made this determination prior to informing the parent of the age appropriate issue. The Examiner also finds that it was reasonable for the Respondent to conclude this is unprofessional behavior also.

Strek presented the Respondent's Junior High School as a dangerous place for special education students while at the same time he knew very little about the special education program at the Junior High School. The Examiner finds it was reasonable for the Respondent to conclude this is unprofessional behavior.

While the Examiner would agree that Strek could professionally disagree with Mule concerning the placements of students A and J for the next school year the Examiner concludes that the record does not demonstrate such a disagreement occurred at the IEP/M-team meetings held on May 8, 1990. Contrary to the arguments raised by the Complainant, the Respondent had the right to expect Strek to act as a professional at these meetings.

The Examiner also finds that there is nothing in the record which would demonstrate that Strek was denied his professional opinion. While Strek did raise concerns that can be deemed professional, such as his belief that student A was not ready for the Junior High Setting, Strek also made statements which the Examiner has found reasonable for the Respondent to conclude were not professional. Strek's statements, such as he is unemployed at the end of the school year and that he had already informed the parent the student would be in his program next year, are not presentations of his professional view about his concern for the instruction of a special education student. The record herein, as argued by the Complainant, does demonstrate that it is not unusual for teachers to complain about the lack of a teacher aide or limited resources at IEP/M-team meetings. However, the Examiner finds it reasonable for the Respondent to conclude such complaints are unprofessional when, as in the instant matter, the loss of a teacher aide is due to a Wisconsin Department of Public Instruction (DPI) determination that the number of students in Strek's program is such that the assignment of a teacher aide is not warranted and the

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4/ Tr. p. 156.

5/ Tr. p. 143.

parents are unaware of this fact and when the complained of lack of funds fails to acknowledge to the parents that the teacher is receiving the same dollar amount per student as other teachers.

The Examiner finds there is nothing in the record which demonstrates that the investigation conducted by Hansen was tainted as argued by the Complainant.

Hansen interviewed Strek, Keszler, Mule, Hamlin and Havel. She then met with Strek and his bargaining representative to discuss the information she had gathered during the investigation. The Complainant has correctly pointed out that Strek was initially informed by Hansen that the issue was not professional disagreements, the amount of money for supplies or the lack of a teacher aide, but about professional behavior, yet, in Respondent's letter of reprimand Strek was disciplined for complaining about lack of money for supplies and lack of an aide. However, as noted above, Strek did not inform the parents it was a DPI determination that caused the loss of his teacher aide nor did he inform the parents he received the same dollar amount per student as other teachers. The Examiner finds it is reasonable for the Respondent to conclude that Strek's failure to inform the parents of these facts is unprofessional behavior. The Examiner notes here that Strek did not dispute he made the statements attributed to him by the individuals Hansen interviewed. There has been no showing of any animosity between Mule and Strek. While Strek had previously had differences of opinion with Hamlin, Strek did not dispute that he had stated in the Teacher's Lounge that he had really come down hard on the Respondent's special education program.

The record does demonstrate that Keszler received an oral reprimand and Strek received a written reprimand and one (1) day suspension. The complainant has argued the discipline was not uniformly administered and was not progressive. However, the record demonstrates Keszler had a clean work record, was remorseful concerning her conduct at the May 8, 1990, meetings, and informed Hansen she had apologized to Mule and a parent for her conduct. (Even though Mule could not recall whether Keszler made such an apology he did not assert such an apology never occurred.) Strek has received two (2) previous written reprimands. The most recent being on February 14, 1986, concerning a failure to report to work or to contact work concerning an absence. Strek did not show any remorse about his conduct at the meetings. Nor did Strek apologize for any of his actions. Further, in the Respondent's view, Strek bragged about his conduct at the meetings the next morning in the Teacher's Lounge. Given these distinctions in the conduct of the two teachers the Examiner concludes the Respondent's variations in the level of discipline levied on the employes involved herein is reasonable.

The Examiner notes here that the staleness of Strek's previous disciplinary actions does not preclude the Respondent from reviewing them in determining the appropriate discipline in the instant matter. In most instances an arbitrator would deem a work record clean of any infractions for four (4) or more years as an example of successful corrective discipline. However, the Examiner finds that distinctions between the degree of misconduct of Keszler as compared to Strek sufficient to warrant the variation in discipline levied by the Respondent. In particular the record demonstrates Strek did not dispute that he was aware that the Respondent had a legal obligation to discuss the age appropriate setting issue with parents prior to creating a IEP. However, the record demonstrates he not only developed IEP's for the students prior to the May 8, 1990, meetings which did not take this issue into consideration, he also informed one student's parent the student would be in his program the following year without informing the parent of the age issue. Even if the Examiner found merit in the Complainant's contention the IEP's Strek developed were only draft's to be used as working documents at the meetings, such a result ignores the fact that Strek told the parent their student would be in his program without providing the parent information which Strek knew the respondent was

legally required to give the parent prior to such a determination. The Examiner therefore concludes the variation and degree of discipline imposed by the Respondent in the instant matter was reasonable.

The Complainant has also argued the degree of discipline is too harsh, particularly where there is no infraction of any kind of work rule or standard, where at most we only have a professional disagreement and where neither parent was upset or thought Strek acted any differently than other employees in other meetings. However, as noted above, Strek was aware of the Respondent's legal obligations and ignored them. Strek made statements at the meetings which the Respondent concluded were unprofessional and the Examiner has found this conclusion to be reasonable. Further, the parent of A states in their letter... "I was concerned about my son. I didn't want him put in a position of being made fun of.". The parent of J states in their letter... "To a point I understand some of these concerns. However, I as a parent cannot change many of these concerns and don't feel they need come up in my son's IEP, M-team and other meetings.". The Examiner finds these statements lead to a conclusion that the parents left the meetings with concerns and that the Respondent can reasonably conclude these concerns were in part caused by the Strek's conduct at the meetings.

Based upon the above and foregoing the Examiner concludes the Respondent had just cause to discipline and levy a one (1) day suspension on Strek for unprofessional behavior at the May 8, 1990, IEP/M-team meetings. Having so found the Examiner finds Respondent has not violated the collective bargaining agreement between the parties. Accordingly, the Examiner concludes the Respondent's actions did not constitute a violation of Sec. 111.70 (3)(a)5, Stats., and has dismissed this portion of the complaint. The Examiner also concludes there is no evidence to support a conclusion Respondent's actions violated Sec. 111.70(3)(a)1, Stats., and has dismissed this portion of the complaint.

Dated at Madison, Wisconsin this 9th day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Edmond J. Bielarczyk, Jr. /s/  
Edmond J. Bielarczyk, Jr., Examiner