

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

RHINELANDER EDUCATION ASSOCIATION, Complainant,

vs.

SCHOOL DISTRICT OF RHINELANDER, Respondent.

Case 39
No. 55412
MP-3324

Decision No. 29288-A

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, P.O. Box 1400, Rhinelander, Wisconsin 54501, appearing on behalf of Rhinelander Education Association.

Attorney John H. Priebe, P.O. Box 1399, Rhinelander, Wisconsin 54501-1399, appearing on behalf of the School District of Rhinelander.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On July 30, 1997, the Rhinelander Education Association filed a complaint with the Wisconsin Employment Relations Commission alleging that the School District of Rhinelander had committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats., by disciplining a teacher without just cause.

Pursuant to Secs. 111.07(5) and 111.70(4)(a), Stats., the Commission appointed Debra Wojtowski to conduct hearing and issue Findings of Fact, Conclusions of Law and Order in the matter. Hearing was conducted in Rhinelander, Wisconsin on January 28, 1998 by Examiner Wojtowski and the parties filed post-hearing briefs, the last of which was received on or about March 31, 1998.

No. 29288-A

By letter dated October 13, 1998, the Commission advised the parties that it would be assuming jurisdiction over the matter pursuant to Secs. 111.07 (4) and (6) and 111.70(4)(a), Stats. The parties provided the Commission with the record on October 21 and 26, 1998.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Rhinelander Education Association, hereinafter referred to as Association, is a labor organization which has its principal offices at 1901 West River Street, Rhinelander, Wisconsin 54501.

2. School District of Rhinelander, hereinafter referred to as the District, is a municipal employer which has its principal offices at 315 South Oneida Avenue, Rhinelander, Wisconsin 54501.

3. At all times material hereto, the Association has been the exclusive bargaining representative of “. . . all non-supervisory certified teaching personnel” of the District including Nancy Cohen.

4. At all times material hereto, Cohen was the high school debate team coach.

5. On January 5, 1997, Cohen spoke with two senior members of the District’s high school debate team and requested that they provide her with the article entitled “Kansas City Gun Plan” which they were going to use to support their debate argument.

6. On January 6, 1997, Cohen was provided with the article and noticed the addition of the word “juvenile” which caused her to decide that this article could not be used without violating debate rules and to further decide that the two students who were using the article should not go with the debate team to the meet in Eau Claire, Wisconsin, because she believed the students might be cheating.

7. At 12:20 a.m. on January 7, 1997, Cohen called District activities director Tom Shafranski and informed him of her problem with the two students and the “Kansas City Gun Plan” article. She advised him that if the students were allowed to compete, she would not accompany the team to the competition.

8. Shafranski met with Cohen and the two students on January 7, 1997 at 7:30 a.m. before the bus was to depart for the meet in Eau Claire and determined that the students could not use the article but could attend the meet. Cohen voiced her objection to the two students attending the debate meet and stated that she could not attend under the circumstances. Several times during the course of their discussion on January 7, 1997, Shafranski requested that Cohen board the bus and accompany the team to the meet. Shafranski also advised Cohen that her refusal to accompany the debate team was considered by him to be insubordination. Cohen did not board the bus and did not attend the debate meet. At the end of the discussion, Cohen informed Shafranski that she was sick and subsequently went home.

9. Cohen's refusal to attend the debate meet occurred before she told Shafranski that she was sick. Cohen made no claim to Shafranski on January 7, 1997 that sickness prevented her from accompanying the debate team to the meet in Eau Claire, Wisconsin.

10. On January 9, 1997, Shafranski issued a written reprimand to Cohen for her refusal to accompany the debate team to the January 7, 1997 meet.

11. After receiving notice of reprimand on January 9, 1997, Cohen filed a grievance with the Association alleging that Shafranski had violated her rights under Article XII, paragraph A of the collective bargaining agreement.

12. The collective bargaining agreement between the Association and the District provides for sick leave for employees in Article VI and Cohen made a claim for and received a paid day of sick leave from the District on January 7, 1997.

13. At all times material hereto, the Association and the District had in effect a collective bargaining agreement providing in Article XII a just cause standard for discipline.

14. The collective bargaining agreement between the Association and the District provides a grievance procedure in Article III but does not provide for binding arbitration of grievances.

Based on the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. Cohen's refusal to accompany the debate team was insubordination.
2. The District had just cause under the collective bargaining agreement between the Association and the District to discipline Cohen with a letter of reprimand for her insubordinate refusal to accompany the debate team on January 7, 1997.
3. The District has not violated the collective bargaining agreement between the Association and the District and therefore has not violated Secs. 111.70(3)(a)4 and 5, Stats.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

The complaint is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 24th of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

I dissent

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Rhineland School District

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

The Pleadings

In its complaint, the Rhineland Education Association asserts that the Rhineland School District committed prohibited practices within the meaning of Secs. 111.70(3)(a)4 and 5, Stats., by issuing a written reprimand to teacher Cohen. The Association asks that the District be ordered to: cease and desist from such conduct; remove the letter of reprimand and all grievance materials from Cohen's personnel file; send an apology to Cohen; and take whatever other action the Commission deems appropriate.

In its answer, the District denies that it committed any prohibited practices and asks that the complaint be dismissed.

POST HEARING POSITIONS OF THE PARTIES

The Association

The Association contends that the District lacked just cause to discipline Cohen and therefore violated the parties' collective bargaining agreement.

It argues that Cohen was sickened by the District's decision to allow unethical debate students to compete over her objection and thus was physically and emotionally incapable of accompanying the students to the debate competition. Under such circumstances, the Association asserts Cohen did not behave in an insubordinate manner. The Association notes that the District allowed Cohen to use sick leave for the day in question and alleges that the District thereby conceded that Cohen was ill and could not perform her debate coach duties.

Given all of the foregoing, the Association asks that the District be found to have violated the parties' contract and that Cohen receive the relief requested in the complaint.

The District

The District argues that it had just cause to reprimand Cohen for insubordination and thus did not violate the collective bargaining agreement.

It asserts that despite its repeated requests and ultimate warning that refusal would constitute insubordination, Cohen chose not to accompany the debate team to the competition. The District alleges that under these circumstances, Cohen's decision not to accompany the team was insubordinate and that it had just cause to issue the reprimand.

The District contends that it acted responsibly when investigating Cohen's concerns about unethical conduct by debate team members and by granting Cohen's request for sick leave following her refusal to accompany the team. Contrary to the Association, the District argues that its decision to grant Cohen's sick leave request was not inconsistent with its decision that Cohen had been insubordinate.

Given the foregoing, the District asks that the complaint be dismissed.

DISCUSSION

We have carefully reviewed the record and conclude that the District had just cause to reprimand Cohen. Thus, the District's conduct did not violate the parties' collective bargaining agreement and we have dismissed the complaint.

The essential facts are not in dispute. Cohen is a person of high moral character who concluded that two students on the debate team had engaged in unethical behavior and should not be allowed to compete. She brought her concerns to the District. The District conducted an investigation and concluded that the students should be allowed to compete. Cohen advised the District both before and after the investigation that if the students were allowed to participate in the competition, she would not be willing to coach them. Cohen did not accompany the team even after being warned that her refusal would be considered insubordination.

While Cohen's ethical standards are commendable, it ultimately remained the District's decision as to whether the students should be disqualified from competition and, if not, whether Cohen was obligated to accompany the students to the competition. In her capacity as an employe of the District, Cohen was obligated to honor the decisions her employer made. Her failure to do so constituted insubordination and gave the District just cause for the written reprimand.

Cohen's insubordination occurred before the commencement of her regular work day. Her subsequent illness (and the District's willingness to allow her to use sick leave) does not excuse her conduct.

Given the foregoing, we have dismissed the complaint allegations that the District violated Secs. 111.70(3)(a)4 and 5, Stats., by violating the collective bargaining agreement. 1/

1/ Even if we concluded that the contract had been violated, dismissal of the Sec. 111.70(3)(a) 4, Stats., allegation would have been appropriate because violation of a collective bargaining agreement (Sec. 111.70(3)(a)5) does not also violate the duty to bargain (Sec. 111.70(3)(a)4).

Dated at Madison, Wisconsin this 24th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Rhineland School District

DISSENTING OPINION OF COMMISSIONER A. HENRY HEMPE

This case is not about whether two members of the Rhineland high school debate team should or should not have been permitted to participate in a regional competition. Neither is it about whether the grievant's ethical standards are exemplary or excessive.

In my view, the Association accurately states the gist of this case:

If the district accepts that the grievant was ill on the date of January 7, 1997, then it is ludicrous to expect that she can be insubordinate for not performing her duties on said date. (Brief of Association at p. 3)

The School District has not challenged the grievant's claim of sick leave. The School District has not contended that the grievant was guilty of any sick leave abuse. The School District has not demanded any medical verification of grievant's claim. On the contrary, the School District granted the grievant's claim for sick leave pay without objection.

That being the case, it seems to me that the School District has placed itself in a poor position to prove the grievant guilty of insubordination.

This is not to say that under different circumstances there may not have been just cause to find the grievant insubordinate. If, for instance, the grievant had refused to board the debate team bus bound for Eau Claire, *but* remained on the school premises, proceeded to her classroom, and engaged in her primary responsibility of teaching English, a *prima facie* case of insubordination could be readily made.

For that matter, had this case arisen in the context of District resistance to the grievant's claim for sick leave, a much closer question could be presented.

But neither of these alternate scenarios occurred. The record indicates that the grievant became stunned and confused when she learned that the two students she had accused of cheating would be allowed, nonetheless, to participate in the regional competition. The grievant, still upset with that decision, retrieved her personal belongings from the bus that was to transport the debate team to Eau Claire, but refused to accede to the Activities Director's request that she resign as debate coach. Instead, she announced her intent to take sick leave and proceeded to her home and her bed.

The grievant denies telling the District's Activities Director that she would not go to Eau Claire if the two students she believed had cheated were permitted to participate. The grievant claims that although she was extremely tired, she became emotionally and physically ill only after learning that the two debaters whom she had accused of cheating would be allowed to participate in the regional competition. Her testimony in this regard appears almost impossible to disprove directly. Of considerable significance to me, however, is the fact that her claim of illness stands uncontested by the District.

Actually, based on the evidence adduced a hearing, the grievant's contention of illness seems plausible enough. Given the grievant's high, apparently inflexible ethical code and what the majority acknowledges as her "high moral character," it seems quite unlikely that she would be untruthful about feeling ill or when she became ill. Apparently the District also thought so when it granted her sick leave.

To argue, as does the majority, that the grievant was insubordinate before she became sick is an exercise in sophistry. What the majority attempts to distinguish as two separate incidents are of one piece and form one continuous sequence. No one – the majority included – except for the grievant can say with any assurance at what point the grievant became ill.

The grievant says she became ill when she learned the two subject students were to be allowed to participate in the regional debate competition. That happened prior to the grievant's retrieving her personal belongings from the bus. To find otherwise necessarily discredits the grievant's testimony in this respect – which, in turn, seems inconsistent with the majority's earlier dictum lauding the grievant's high moral character.

Thus, the School District accepts the grievant's claim of sick leave for January 7, 1997, then disciplines her for insubordination. But its rationale in support of these divergent conclusions is circular and unpersuasive. In effect, the District argues that even though it does not dispute that the grievant's emotional and physical illness rendered her unfit to perform her coaching (and teaching) responsibilities that day, her failure to perform them constitutes insubordination.

But this sort of reasoning smacks of the novel *Catch 22*. Under this circumstance a suspicion begins to ripen that the grievant was disciplined due to School District supervisory frustration or irritation that she became ill.

Perhaps the School District hierarchy believes the grievant should have been made of "sterner stuff" than to become ill when she learned that her views as to the outcome of a policy dispute would not prevail. Perhaps it believes that her succumbing to illness under those circumstances was "unprofessional" (as her reprimand from the Activities Director arguably reflects). But even if those views can be supported, becoming ill does not constitute just cause for discipline.

For the purposes of this record, the grievant *was* indisputably ill. Given that, her decision to take sick leave was not insubordinate, but justified under the sick leave provision of the parties' labor agreement.

Dated at Madison, Wisconsin this 24th day of November, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner