

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

**GEORGE MUDROVICH**, Complainant,

vs.

**D.C. EVEREST AREA SCHOOL DISTRICT**, Respondent.

Case 53  
No. 57582  
MP-3522

**Decision No. 29946-L**

---

Appearances:

**Mr. George A. Mudrovich**, 826½ Steuben Street, Wausau, Wisconsin, 54403, appearing *pro se*.

Ruder Ware & Michler, LLSC., by **Attorney Ronald J. Rutlin**, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the Respondent D.C. Everest Area School District.

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

On May 26, 1999, Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that the D.C. Everest Area School District had committed prohibited practices in violation of Section 111.70(3)(a)1 and 3, Stats., when the administration recommended Complainant's layoff and the School Board members approved the same and rejected his application for full-time employment. On August 14, 2000, Respondent filed an answer denying that it had committed the alleged prohibited practices. On August 1, 2000, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as Examiner to conduct the hearing on the complaint and to make and issue Findings of Fact, Conclusions of Law and Order in the matter as provided in Sections 111.70(4)(a) and 111.07, Stats. Hearing in the matter was conducted on October 17, 18, 19, 23, and 24; November 30; and December 1, 6, 7, and 8, 2000; January 10, 11, and 12, 2001; and April 3

Dec. No. 29946-L

and 5, 2001. A stenographic transcript was made of the hearing and the parties submitted their post-hearing briefs by April 9, 2002. Based upon consideration of the evidence and the arguments of the parties, the Examiner makes and issues the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. George Mudrovich, hereafter Complainant, was employed by the D.C. Everest Area School District as a part-time French teacher in the Junior High from the 1995-96 school until his layoff on June 23, 1998. At all times material hereto, Complainant was a resident of Wausau, Wisconsin.

2. D.C. Everest Area School District, hereafter District, is a municipal employer with a principal address at 6300 Alderson, Schofield, Wisconsin, 54476. At all times material hereto, Roger Dodd, Robert Knaack, and Michael Sheehan have been employed by the District and have acted on behalf of the District in their capacity as District Administrator, Junior High School Principal, and Junior High School Vice-Principal, respectively.

3. While employed as a teacher with the District, Complainant was a member of the collective bargaining unit represented by the D.C. Everest Teacher's Association, hereafter DCETA or Association, and was subject to a collective bargaining agreement that was negotiated between the Association and the District. This agreement contains a procedure for filing and processing grievances, which procedure culminates in final and binding arbitration. This agreement defines a grievance as "a dispute concerning the interpretation or application of this contract" and a grievant as "a teacher, the Association or a group of teachers with a grievance on an identical issue." Article 10(F) of this agreement states as follows:

Standard for Discipline: No teacher shall be discharged, non-renewed, suspended, reduced in rank or compensation or deprived of any professional advantage except for just cause. Notwithstanding the foregoing, teachers may be otherwise disciplined or reprimanded for reasons that are not arbitrary or capricious. Any such action, including adverse evaluation of teacher performance asserted by the Board or representatives thereof shall be subject to the grievance procedure set forth herein.

At times, UniServ Director Tom Coffey represented the DCETA. On January 18, 2000, Arbitrator Raymond E. McAlpin issued an Award that stated the following: "Grievance denied." The issue presented to Arbitrator McAlpin, by stipulation of the parties, is "Did the District violate Articles 10, 32(B)(5), 32(E), and/or 32(I) when it laid off the grievant from his 80% position, and failed to appoint him to 100% position for the '98-99 school year? If so, what is the remedy?"

4. When Complainant commenced his employment with the District he was a 50% FTE teacher and taught three periods of French. Dodd was not involved in hiring Complainant. Knaack, a District Principal for over thirty years, was on the interview team that selected Complainant for his 50% position and was aware of the size of the applicant pool for this part-time position. Complainant was one of two individuals interviewed for this position. District records establish the number of individuals interviewed for a position. The District does not maintain records that establish the number of individuals that apply for a position. Dodd commenced employment with the District in 1980. During his employment with the District, Dodd has been an Assistant Principal and Principal. Dodd became the District Administrator in July of 1995. In March of 1996, Complainant received a 65% teaching contract for the 1996-97 school year, which increased his teaching load from three to four periods of French. In March of 1997, Complainant received an 80% teaching contract for the 1997-98 school year. Prior to receiving the additional 15%, Knaack asked Complainant if he would be interested in the additional work and Complainant responded in the affirmative. Complainant received the additional 15% without having to post, or submit a written request, for the additional FTE. Under this contract, Complainant was assigned four periods of French and two supervisions. Complainant was assigned additional supervision because movement to the house concept resulted in existing full-time staff having less time available for supervision duties. Complainant has a BA in French and is certified to teach Secondary Education. From the commencement of his employment with the District, Complainant had the impression that Ann Berns, the other French language teacher, thought she was his supervisor; attempted to tell him what to do; and had no interest in hearing his opinion, including his opinion on things that he knew better, such as the correct pronunciation of French words. Berns, who has a Master's Degree in French Literature, was hired in January of 1994 and taught full-time, primarily at the Senior High. When, in Complainant's view, Berns tried to tell him what to do, he would tell Berns that she was not his supervisor. Berns' view of the situation is that Complainant would not cooperate with her attempts to coordinate their teaching timelines and develop appropriate curriculum for the French program. When Berns met with Complainant in an attempt to coordinate curriculum, she concluded that he was never receptive to her suggestions; was uncompromising; and would always do things his way. On one occasion, Complainant told Berns that she was mispronouncing the nasal sound. Berns took offense and responded that she had been told that she had perfect pronunciation. Thereafter, Complainant photocopied the phonetic pronunciation of the vowel sound that he believed that Berns had mispronounced and left it on her desk. One of Complainant's motives in correcting Berns was to put her in her place because, in his view, she had always acted like she was the expert in French. After Complainant's first year of teaching, Berns wished that Complainant would leave the District and anonymously placed announcements of vacancies at other districts in Complainant's mailbox. When confronted by Complainant, Berns acknowledged that she had placed these notices in Complainant's mailbox. Berns complained to Knaack that Complainant had told

Berns that she had mispronounced a French word. Berns wrote notes to Knaack requesting that Complainant not interrupt her when she was in the classroom and that Complainant not be in her classroom while she was teaching. Initially, Knaack responded by telling Complainant to not be in Berns' classroom while Berns was teaching. When Knaack received the second note, he provided Complainant with a desk in another classroom so that Complainant would not be in the vicinity when Berns was teaching her French class. During the first and second year of Complainant's employment with the District, Berns voiced her concerns about Complainant's lack of cooperation and/or failure to follow curriculum timelines to his mentor teacher, Jean Haverly; to Corinne Solsrud, the Curriculum Coordinator for Language Arts and Foreign Language from August of 1995 until February of 2000; and to Knaack. During Complainant's first year of employment, Berns told Knaack and Solsrud that she and Complainant did not get along. During Complainant's second year of employment, Berns met with Sheehan and Solsrud to discuss her opinion that she and Complainant did not get along. Although Berns continued to have the same concerns about Complainant, she did not express her concerns about Complainant to administrators during the third year of Complainant's employment because, in her view, her previous discussions with the administrators had not produced any change in the *status quo*. On several occasions, Complainant complained about Berns to Solsrud and asked Solsrud to mediate between Berns and Complainant. Solsrud considered the relationship between Berns and Complainant to be contentious and responded to the complaints of the two teachers by meeting with the two teachers individually and/or telling the two that they needed to get along. Solsrud also discussed Complainant's relationship with Berns with Knaack. Knaack and Solsrud sent a memo to Berns and Complainant outlining what was expected of each. Knaack considers Berns to be easy to get along with. Knaack concluded that Complainant was responsible for any problems in the relationship between Berns and Complainant. Solsrud concluded that Complainant was more responsible than Berns for their contentious relationship. Solsrud has not heard that Berns had conflicts with any other teacher.

5. In various meetings during his first and second years at the District, Complainant requested his colleagues in the Foreign Language Department to consider the creation of a French classroom. Complainant did not receive any response to this request at these Department meetings. At the end of the 1995-96 school year, the teachers in the Foreign Language Department lobbied Knaack to keep their assigned rooms, arguing that they did not want to travel from room to room to accommodate the houses and that there should be little pieces of the country, *i.e.*, a classroom dedicated to the language and the culture of the country that produced that language. Complainant did not have an assigned room, but supported the position that a foreign language classroom should be "little pieces of the country." Certain foreign language teachers continued to have assigned rooms for the 1996-97 school year. In October of 1996, Complainant raised the issue of a dedicated French room with Sheehan, who listened to Complainant's concerns and suggested that Complainant raise his concerns in a memo. Complainant did so in a memo to Solsrud dated October 18, 1996:

I'd like to put forth my case for having a single room devoted to French for the 1997-1998 school year.

In the past, members of the Foreign Language Dept. have consistently pressed administration with their arguments that it is very important to have a given classroom devoted to their languages, in order to have "a little piece of \_\_\_\_\_" in the school.

I agree 100%. And what is true for Spanish and German must therefore be true for French.

The only counter to this line of reasoning would seem to be that given individual teacher's deserve their "own" room by virtue of seniority at D.C. Everest. All things being equal, I also agree with that line of reasoning 100%.

But all things aren't equal. We must all realize that it's the education of the students that is the primary concern. When French students see that there are several rooms devoted to Spanish and one to German, they will naturally start to feel that French somehow doesn't rate as highly as Spanish & German. Do we want to leave French students with this viewpoint? I don't think so.

I would like all members of the Dept. to consider this, so that we can discuss it at our next Dept. meeting.

. . .

cc: All members of FL Dept  
and Mike Sheehan

Solsrud, who thought that it would be appropriate to wait to act upon this request until the following Spring, when the District would have a better understanding of program and staffing needs for the 1997-98 school year, sent a copy of this memo to Knaack, with the note "Any reactions?" and "Please place in per. file." Complainant became irritated when he did not receive an immediate response to this memo. Solsrud did not address this memo, or Complainant's concerns regarding a dedicated French room, at the next two meetings of the Foreign Language Department. As a result, Complainant went to Sheehan and asked Sheehan to assign a classroom to French for the 1997-98 school year. Sheehan indicated that Sheehan was not going to let the Spanish teachers, who comprised the majority of the Foreign Language

Department, make the argument that they needed a “little piece of Spain” if they were not prepared to apply this argument to French. From this, Complainant concluded that Sheehan would treat French fairly when it came to room assignments, i.e., assign a dedicated French room. When the student registration numbers for the 1997-98 school year became available, Complainant met with Sheehan and reminded Sheehan of their previous conversation. Several times after this, Complainant asked Sheehan if he had made any decisions on the classroom assignments. From these discussions, Complainant concluded that Sheehan had not made a decision and would advise Complainant when he had. On or about May 20, 1997, Complainant saw the schedule for the 1997-98 school year and noticed that there were six sections of French scheduled in five different rooms and that no two consecutive sections of French were scheduled in the same room. Complainant was scheduled to teach four sections in three different rooms and Berns was assigned to teach two sections in two different rooms. The Spanish teachers, i.e., Haverly, Soto, Martin, Brye and Dudley, were each scheduled to teach all of their sections in a single classroom. German teacher Jones was scheduled to teach five sections in three classrooms and German teacher Ackerman was scheduled to teach two sections in a single classroom. Complainant went to Sheehan and said that the French room assignments were worse than last year and Sheehan responded that he would look into the matter. Complainant considered this to be an odd response because he understood that Sheehan was responsible for room assignments. Subsequently, Shar Soto, a Spanish teacher, told Complainant that Solsrud had scheduled a Foreign Language Department meeting for May 28, 1997. Solsrud scheduled this meeting, in part, because Sheehan had expressed sympathy with Complainant’s argument that French should be treated like Spanish and Sheehan told Solsrud that he wanted this issue resolved at the lowest level possible. Sheehan, and not Solsrud, was responsible for making classroom assignments. At the beginning of the meeting, Solsrud indicated that they had to discuss room assignments and that someone was going to end up being shafted. Solsrud’s statements and demeanor lead Complainant to conclude that the room assignment issue had been resolved and that the Department meeting was being called for the purpose of ratifying this resolution. At this meeting, Complainant made the argument that, in the past, the Foreign Language teachers had argued that they needed a little piece of their country to create the proper environment to foster the learning of their language and that he would like them to apply this argument to French. The ensuing discussion primarily involved Complainant, Soto and Holly Martin, another Spanish teacher. At this time, there were four Spanish rooms that were decorated with a “little bit of” Spain or Mexico. Soto made a proposal that would not provide a dedicated French room, but would provide that six sections of French be taught in two consecutive periods in each of three rooms. Complainant responded that such a proposal would be more convenient to Complainant, but that his convenience was not the issue. Rather, there needed to be one room assigned to French and Soto’s proposal would have him teaching in Spanish rooms. Inasmuch as there were not enough rooms assigned to the Foreign Language Department to give every teacher his/her own room, to grant Complainant’s request for a dedicated French room would be to displace more

senior Foreign Language teachers from what these teachers and administrators perceived to be the teacher's classroom. Arguments were made that Spanish teachers were entitled to keep their rooms because they were the more senior teachers. Complainant did not accept this argument. Arguments were made that it would be unfair to displace Spanish students from a Spanish classroom and Complainant responded that three Spanish classrooms should ensure that virtually all Spanish students would be taught in a Spanish classroom. The issue of moving from room to room was discussed. The discussion became loud and contentious, with assertions from each side that the other side was being hypocritical and uncompromising. At one point, Martin said "We never wanted French here in the first place." Solsrud did not consider this to be an appropriate remark. At the conclusion of the meeting, there had not been any change in the room assignments. Berns, the other French teacher, did not support Complainant's request for a dedicated French room and had never sought a dedicated French room. Although Solsrud indicated that she wanted the staff to work out a solution that was agreeable to everyone, Complainant concluded that Solsrud was going to let the Spanish teachers have their way because they were the majority. Complainant considered such an outcome to be unfair because, in his view, his argument that the Foreign Language Department needed to take one room from the Spanish teachers to create a French room could not be refuted. When Complainant left the meeting, he believed that Soto and Martin were angry with him. Solsrud's view of the meeting was that Soto and Martin began by politely arguing their case; then Complainant became loud and argumentative; and that, although both sides made inappropriate personal attacks, Complainant was the most belligerent and aggressive. At the time of this meeting, staff of other Departments had been able to agree upon how rooms were to be assigned within the Department. At the end of the workday on May 29, 1997, Complainant placed the following memo in the mailboxes of Solsrud and the other Foreign Language Department members:

Dear colleagues:

This is what I consider to be a just arrangement, one that is best for the students:

**Rooms 8, 9 and 10 are either exclusively or predominantly Spanish**, and these rooms adjoin each other for ease of movement for the Spanish teachers. Additionally, the extra desk in Room 10 plus one of the desks in the FL office could be used by Spanish.

***20 of 22 Spanish classes would be taught in these rooms, 1 class in Room 11 (across the hall)***, and only one outside the Dept. Additionally, one German class would be taught in Room 10.

**Room 11 is predominantly German.**

*5 of 7 German classes would be taught in this room, 1 class in Room 10 (across the hall),* and only one outside the Dept. Additionally, one Spanish class would be taught in here.

**Room 7 is predominantly French.** Both Berns' and Mudrovich's desks could both be in there.

*6 of 6 French classes would be taught in this room.* Additionally, two Spanish classes would be taught in here.

Haverly has 4 of her classes in Room 9, and one class in Room 11.

Brye has 4 classes in Room 8, and one class outside the Dept.

Soto has 2 classes in a row in Room 10, then 3 in a row in Room 8.

Martin has 2 classes in a row in Room 9, then 3 in a row in Room 10.

Dudley has two classes in a row in Room 7.

Jones has 1 class in Room 10, then 4 in a row in Room 11.

Ackermann has 1 class in Room 11, and one outside the Dept.

**No teacher has to work in more than 2 classrooms, and movement of teachers is kept to a minimum.** Please consider this.

Attached to this memo, was a proposed room assignment schedule. Under Complainant's proposal, Complainant, Berns and Dudley were the only Foreign Language teachers to teach all of their classes in a single classroom; more teachers traveled from room to room; and more senior teachers were deprived of his/her own classroom. Complainant believed that the proposed schedule would work because it permitted each Spanish teacher to teach in a Spanish room. On May 30, 1997, Soto and Martin met with Knaack to complain about a note that Complainant had sent to teacher aide Carol Maki. At the time of this discussion, Knaack had not seen the note. When Complainant arrived at school on May 30, 1997, he received a note from Knaack requesting Complainant to see Knaack regarding Complainant's treatment of Maki. When Complainant met with Knaack, Knaack told Complainant that teachers had complained to Knaack about Complainant's treatment of Maki. Complainant understood that Knaack was referring to a note that Complainant had written to Maki on May 19, 1997. This note stated something like "Oh, cram it" and was written in response to Maki's request that Complainant send a "study buddy" when sending students to her study hall. By making this



request, Maki was asking that Complainant follow school policy. When Complainant wrote this note, he considered it to be a joke and thought that Maki would view his note as a joke. Complainant told Knaack that he was joking when he wrote the note. Knaack told Complainant that Knaack had discussed the note with Maki and that Maki did not wish to make a complaint against Complainant. Knaack did not reprimand, or otherwise discipline, Complainant for sending this note to Maki. When Knaack would not tell Complainant who had complained about the note, Complainant indicated that Complainant believed that Spanish teachers had brought the complaint because there was a dispute over room assignments. Knaack told Complainant that he did not see any connection between the two issues, but that he did know that Soto and Martin had talked to Sheehan about room assignments and suggested that Complainant talk to Sheehan. At this time, Knaack was under the mistaken impression that Complainant had just written the note to Maki. Subsequently, Complainant told Maki that he had met with Knaack; that Knaack had told Complainant that the note had offended Maki; and that Complainant had not intended to offend Maki. In Complainant's opinion, Maki was a friend, but in this instance, Maki acted cold towards him. Shortly after this conversation with Maki, Complainant had a conversation with Soto and Martin that lead Complainant to conclude that both had complained to Knaack about the Maki note. During this conversation, Complainant understood Soto and Martin to have denied that their complaint was related to the classroom assignment issue and to have asserted that they made the complaint because of concern for Maki. Complainant responded that, if they were so concerned, then why had they not brought the matter up two weeks earlier. Subsequently, Complainant asked Knaack to arrange a meeting with Complainant and Soto and Martin. Knaack told Complainant that he had not been harmed by Soto and Martin's complaint and reiterated his view that there was no connection between the room assignment issue and the complaint on the Maki note. Complainant responded that the timing of the complaint indicated that there was a connection. Knaack responded that Complainant was not harmed because there was nothing in his file. Complainant responded that, unless the matter was resolved, Soto and Martin's perception of the matter would spread. Knaack agreed to give further consideration to Complainant's request for the meeting. On the following Monday, Knaack confirmed to Complainant that Knaack was not going to arrange such a meeting. Knaack declined to arrange such a meeting because he understood that the resolution being sought by Complainant was to have Soto and Martin apologize to Complainant. Subsequently, Complainant discussed the Maki note with an Association Representative; asked if the Association could mediate between members; and was advised that the Association wanted Complainant to drop the matter. Complainant then decided to consult his attorney, Ryan Lister. Thereafter, Lister sent a letter to Soto and Martin seeking a retraction and apology. On August 5, 1997, Complainant commenced a civil lawsuit against Soto and Martin alleging, *inter alia*, injury to reputation and profession and defamation for making statements that Complainant had verbally abused Carol Maki. Dodd and Knaack learned of this lawsuit prior to, or at the beginning of, the 1997-98 school year. Knaack first became aware of this suit when Soto and Martin telephoned Knaack to advise him that they were being taken to court. At that time, Knaack concluded that this suit would affect the

atmosphere in the Junior High. Dodd concluded that, by filing this lawsuit, Complainant had not responded to Soto and Martin's complaint in a reasonable manner. Three or four days after her August 6, 1997 service of the summons on the lawsuit, Soto telephoned Dodd to ask if the District would represent Soto and Martin in the lawsuit that had been filed by Complainant. Dodd expressed his opinion that the District was not obligated to provide such representation. Subsequently, Dodd received a telephone call from a representative of Soto's insurance carrier and concluded from this telephone conversation that this insurance carrier believed that the District had a statutory obligation to represent Soto. Thereafter, Dodd asked the District's Supervisor of Personnel, Jim Jaworski, to review the issue. By letter dated October 9, 1997, URC Risk Managers, Inc. (URCRM), the claims administrator for one of the District's insurers, confirmed that the District had previously tendered the Soto and Martin lawsuit to its insurer and advised Jaworski that, based upon the facts known at that point in time, the District's insurer could not commit to cover the representation of Soto and Martin in the suit filed by Complainant; that, the matter had been referred for additional investigation with respect to coverage; that the claim was reported to URCRM on September 29, 1997; and that Jaworski was requested to forward the information in the letter to Soto and Martin because URC did not have contact information for them. By letter dated October 30, 1997, Attorney James A. Higgins of Byrne, Goyke & Tillisch, S.C., notified the District that it had been retained by Soto to represent her in the suit filed by Complainant. In this letter, Higgins indicated that the conduct which was the subject of the suit, if it had occurred, would have been committed by his client while carrying out duties within the scope of her employment and also stated as follows:

I was recently retained, but understand that this matter was turned over to the school district's insurance carrier. The carrier denied coverage. Despite the insurance carriers position on coverage, we take the position that the school district is obligated to defend and indemnify Sharlene Soto pursuant to Wis. Stat. Sec. 895.46. She now faced both defense costs and potential judgment exposure because of actions by her or allegedly committed by her, which were clearly within the scope of her employment. We therefore take the position that the school district is obligated to defend and indemnify her. I would appreciate being contacted concerning the foregoing at your earliest convenience.

This letter indicates that MSI Insurance, the District's insurance carrier, was copied on this letter. After receiving this letter, Dodd contacted the District's attorney to have the attorney review the issue of whether or not the District had an obligation to defend Soto and Martin. By letter dated November 18, 1997, URCRM advised Jaworski that it did not consider the District's insurance policy to provide coverage in defense of Soto and Martin and that, therefore, it was denying the District's tender of that claim. On or about November 18, 1997, the District's attorney advised the District's School Board, hereafter School Board, that the

statutes required the District to provide representation. On November 25, 1997, the School Board authorized the law firm of Ruder & Ware to defend Soto and Martin in the lawsuit that had been filed by Complainant. On March 5, 1999, Attorney Cari L. Westerhof of the law firm of Ruder & Ware signed a sworn affidavit that she was an attorney for Defendants Shar Soto and Holly Martin and that the disbursements mentioned within have been or will be necessarily made and the copies charged for in the within bill of costs were necessarily obtained for use in the action of "George A. Mudrovich, Plaintiff vs. Shar Soto and Holly Martin" and these disbursements included the following:

10/29/97 RJR Telephone conference with R. Dodd re issues related to pending lawsuits against teachers in district and discussion of issues related to possible discipline of teacher.

The above referenced RJR is District attorney Ronald J. Rutlin. In statements before the Court, Westerhof said that "When the billing statement says that conferences about pending issues involving teacher, that is specifically Mr. Mudrovich." After filing his suit against Soto and Martin, Complainant observed that employees of the District who had previously been friendly did not want to associate with Complainant and had the attitude that Complainant was wrong because he had filed the suit against Soto and Martin.

6. On May 30, 1997, Complainant gave Sheehan a copy of his May 29, 1997 proposal and Sheehan acknowledged that he had discussed the room assignment issue with Soto and Martin. In a subsequent conversation, Complainant asked Sheehan if a decision had been made on the room assignments and Sheehan indicated that the room assignments were unchanged because Complainant thought that the Spanish teachers were throwing him a bone. Complainant indicated that he thought this decision was unfair and asked if he could discuss this matter further at a later time. When Complainant returned to discuss the room assignment issue, he told Sheehan that Soto and Martin's conduct in complaining about the Maki note foreclosed any possibility of the Foreign Language Department teachers resolving the issue and that Sheehan should make a decision that was fair. Complainant also indicated that if the classroom assignments remained as they were, then Sheehan was rewarding Soto and Martin. Sheehan responded that each teacher had a lot of seniority; the final decision would not be made for a few weeks; and Complainant should return in early June. At or near the end of the 1996-97 school year, Complainant told Solsrud that it would be unfair to not give him a dedicated French room because it would reward teachers who had done something nasty. Solsrud indicated that she was tired of being in the middle of this issue and would not assure Complainant that she would discuss this matter with Sheehan. At some point, Solsrud discussed the meeting of May 28, 1997 and Complainant's proposal of May 29, 1997 with Knaack. Solsrud told Knaack that Complainant had become very argumentative. During this meeting, Knaack responded that she should work with Sheehan on the class assignment issue. During this discussion, she told Knaack that she was upset about the personal attacks that had

occurred at the meeting; that it had become very personal between Complainant and the Spanish teachers; that the Spanish teachers were trying to guard what they had; and that Complainant was the most belligerent and aggressive. Solsrud was off-contract during the summer of 1997. On or about June 6, 1997, Complainant prepared and provided Solsrud with a letter that includes:

Dear Corinne:

I want to make my position quite clear about this whole room assignment matter.

If you will recall, twice during the 1996-97 school year, I brought up the issue of having a room devoted primarily to French, as there are currently *four* rooms devoted primarily or exclusively to Spanish, and one for German. In both instances, nobody else wanted to pursue the matter. I had also brought up this issue twice during the 1995-96 school year, before you were here, with the same negative results.

At the end of the 1995-96 school year, Mike Sheehan came down to talk with the department in Room 8. Department members were concerned that with the new teaming situation, Foreign Language classes might be left without their own classrooms. Several of the Spanish teachers – and me – stressed to Mike that it was important to have rooms that were devoted to the culture being studied so that, in Shar's words, there (sic) be "a little piece of Spain" for the students to experience.

When all of my attempts within the department to apply that same philosophy to *French* culture were rebuffed, I went to Mike during the winter to remind him of those arguments about "a little piece of Spain" that the Spanish teachers had put forth. He was sympathetic, and implied that he would try to assign French its own room.

When the room assignments were posted, it was obvious that Mike had forgotten this conversation, so I went to see him again. That would have been the day before you announced our May 28<sup>th</sup> department meeting.

If you will recall, during that meeting I reminded the Spanish teachers of their earlier arguments concerning "a little piece of Spain", and pressed them to explain why that should not apply to French. As you well recall, the discussion got rather heated. But my question about having "a little piece of France", when there are currently four "little pieces of Spain", was never answered.

Rather, the Spanish teachers pointed out that I was a new teacher, French is a new program, the school never even wanted French in the first place, and so on and so on. I was told that I should respect the seniority system. What wasn't brought up was that in the Science Department, *nobody* had their own rooms this year – including people like Tom Jacob, who has been here 30 years. However, Tom Grossklaus, a Civics teacher who has been here only 3 or 4 years, *did* have his own room. And Dave Cotrone, who has been here much longer than Tom Grossklaus, teaches out of *three* different rooms. All of these so-called anomalies to the seniority system exist because that's the way things were worked out *within* those three departments.

What all this boiled down to is that the Spanish teachers just wanted to protect turf, and that the logic that I had presented to them – the *very* logic that they had presented to Mike Sheehan a year earlier – had no effect on their desire to protect turf. They accused me of not wanting to compromise; wanting it to be all or nothing. After my repeated earlier attempts to address this issue in department meeting, only to be ignored, one should ask oneself just who was unwilling to compromise.

And here is their idea of a just solution: that their (sic) continue to be *four* rooms devoted primarily or exclusively to Spanish (so that the four full-time Spanish teachers can each keep their own room), and that the two sections of French 1a be taught in Room X, that the two sections of French 1b be taught in Room Y, and that the two sections of French II be taught in Room Z. This would indeed be more convenient to me than the current arrangement, but the convenience for me was *never* the issue! This so-called compromise completely ignores *the issue of having a room devoted primarily to French*.

Since we couldn't seem to agree during that May 28<sup>th</sup> meeting, you instructed us to try to work it out among ourselves and get back to you. I proceeded to do exactly that. The following day I looked at all the room assignments and created what I thought was a very fair setup. I put a copy in everybody's mailbox, *excluding* Mike Sheehan and Bob Knaack. The final comment on this sheet was, "Please consider this." It was not presented as a line in the sand that I wouldn't back away from.

The following morning, I was called into Bob Knaack's office, where I was informed that "several teachers" had complained to him that I had been abusive to Carol Maki. The impression was left with Bob that this alleged abuse had occurred the day before. Bob didn't tell me who had complained of this "abuse". He did tell me that Carol herself didn't want to make a complaint

against me. [I will restate what I told Bob, which is that I was joking with Carol, and that we *both* laughed about it the next day in the Lounge.] I asked Bob if the complainers might possibly be Spanish teachers. He said no (wishing to protect Shar's and Holly's identities), but asked me why I would assume that. I then told him about all the resent (sic) strife we've had. He suggested that I give my room-utilization proposal to Mike, since he knew that Shar and Holly had already done so. *That* is when I gave a copy to Mike.

Now, you have said that "everyone went against your instructions to work this out among ourselves" right after the May 28<sup>th</sup> meeting. In my book, this is equivalent to saying about 1930's Europe that, "There was a lot of conflict, then everyone went to war." We all know that the war started because Hitler unilaterally attacked many countries. This was clearly a black-and-white matter of unprovoked attack.

This issue is analogous. *I* was perfectly willing to sit down with my colleagues; I believe that the wording of my proposal made that clear. But then *Shar and Holly*, nobody else (that I know of), in the *nastiest* thing that I have ever had done to me, precluded *any possibility* of a professional conference to work things out. They literally stabbed me in the back by trying to convince Bob that I had been abusive to Carol Maki. Both of them (sic) were perfectly aware that this malicious accusation was false. And the timing of it tells the whole story. My alleged abuse of Carol had taken place two weeks earlier; no one complained then. But then two days after the May 28<sup>th</sup> meeting – the morning after they got my proposal – Shar and Holly tried to settle our departmental matter by branding me as a woman abuser.

And now it seems that there is a strong possibility that this incredibly malicious and underhanded action will not only be *tolerated*, but will actually be *rewarded* by the Administration, by giving Shar and Holly precisely what they wanted! The pretext would supposedly be that "we couldn't all work this out among ourselves."

Now Corinne, I believe you well know that it was Shar and Holly, *not me*, who had scurried behind your back and undermined your authority as the Curriculum Coordinator for the Foreign Language Department. What kind of message will you be sending all the people in our department if you don't come down on the two people who are *known by everybody* to have been the ones who disobeyed you?

But the issue of your authority as the Curriculum Coordinator is really a separate one. The main issue here is simply what is right and what is wrong. Here are the two parts of that: 1) It is only just that there be a French room if there are several Spanish rooms and a German room. 2) Shar and Holly resorted to the most mean-spirited malicious and dishonest means possible to resolve a departmental dispute. Should this be rewarded? No. Should this be tolerated? No. Should this be punished? Unquestionably.

. . .

P.S. I will not show this memo to, or discuss it with *anybody* other than you. And I will not present any memos to Bob, Mike or anyone else.

On June 18, 1997, Complainant asked Sheehan about room assignments and Sheehan told Complainant that the room assignments would remain unchanged. Complainant responded that he would go over Sheehan's head and Sheehan responded that Complainant could do whatever he wanted, but that it would not change the room assignments. Complainant then went to Knaack and asked Knaack to overturn Sheehan's decision. Knaack indicated that he would not do so because he normally left such decisions to Sheehan. Complainant responded that he would go over Knaack's head and Knaack responded that Complainant was free to do whatever he wanted, but that it would not change the room assignments. Complainant then made an appointment to discuss the issue with Dodd. Shortly after Complainant arrived at this meeting, Dodd invited Dan Hazaert, the District's Assistant Superintendent for Instruction of Pupil Services, to sit in on the meeting. During this meeting, Complainant was polite and respectful and, in Dodd's opinion, presented reasonable arguments as to why the French program was not being treated in the same way as Spanish or German. At the conclusion of the meeting, Complainant understood that the matter would be discussed with Knaack. During this meeting, Hazaert assured Complainant that Knaack was not allowed to discriminate against the French program with respect to access to facilities. Dodd told Hazaert to tell Knaack to give Complainant a French room and Hazaert responded that he would review Complainant's rationale with Knaack and work towards a solution. Subsequently, Hazaert discussed the classroom assignment issue with Knaack and told Knaack to reexamine the issue. On July 17, 1997, Knaack met with Complainant to discuss the issue. At this meeting, Knaack initially resisted the creation of a dedicated French room and argued that the Spanish teachers were more senior; that the success of the French program was more likely to be affected by the quality of the French teacher than the nature of the classroom; that Complainant should compromise by teaching two consecutive sections in each of three classrooms; that classroom assignment matters are normally decided at the Department level; and that he would work with Complainant to get a dedicated French room for the following year. Complainant responded that the compromise would not give Complainant a dedicated French room and that Complainant had tried for years to get a dedicated French room and that it was not fair to wait

any longer. Eventually, Knaack agreed to give Complainant a dedicated French room and offered Room 11, the smallest of the Foreign Language classrooms. Complainant indicated that he had one class of 32 students; Room 11 would be too cramped; if Complainant had the larger classes, then he should be given the largest classroom; and asked the size of the classes of the other teachers. Knaack indicated that he did not have that information available and, when Complainant reminded Knaack that Sheehan had a copy of the master schedule, Knaack retrieved the master schedule. Complainant reviewed the master schedule; concluded that one or two Spanish teachers had maximums of 25 or 26 students; suggested that they be given Room 11 and that he be given Room 7; and stated that Room 7 would be big enough to hold a desk for Berns, as well as Complainant. Knaack told Complainant that he would not give Complainant Room 7 because it would not be fair to Spanish to give Complainant the biggest room and that he would not take Room 7 away from Haverly, the teacher who was currently assigned to that room. Complainant responded that he was not aware that rooms belonged to any one teacher. At this point in time, Knaack raised his voice and emphatically stated that he was not going "to stick" it to Haverly. Knaack eventually offered Complainant Room 10. Complainant resisted this idea because he was resentful of the way he had been treated by the Foreign Language teachers and administrators and continued to ask for Room 7 on the basis that it was the largest room and he had the largest class. When Knaack indicated that the two rooms were the same size, Complainant stated that he wanted to measure the two rooms. At this point, Knaack threw up his hands and said "Oh, for Pete's sake." Knaack accompanied Complainant to the two classrooms and Complainant paced off the dimensions. Concluding that there was not a significant difference between Room 7 and Room 10, Complainant indicated that Room 10 was acceptable. During the walk to and from these classrooms, each individual continued with their arguments. At one point, Knaack responded that he could solve the large classroom problem by calling parents and telling them that their children could not be in French. Complainant responded that, if Knaack did that, then he was going to take Knaack to court. Knaack reiterated that he did not understand why the Department had not been able to work out the classroom assignments and Complainant responded that he had been stabbed in the back and he was not going to take the short end of the stick after being stabbed in the back. When Knaack again stated that he did not understand why the Department had not been able to work out the classroom assignments, Complainant raised his voice and emphatically stated that he was sick and tired of hearing Knaack say that, as if it were Complainant's fault; that it was not Complainant's fault that the Department had not been able to work it out; and that he did not want to hear that anymore. Knaack responded that they did not need to go to war over the matter. Knaack developed a schedule and Complainant told Knaack that the schedule did not make sense in that it put a Social Studies teacher in a Foreign Language Department room at a time that it could be used by a Foreign Language teacher. Knaack responded that he did this because it would cause Complainant to move once, which Knaack considered to be fair to the Spanish teachers who had to move. The meeting concluded with Knaack replacing the French section in the French classroom and indicating that, if he could work out the study halls, that this schedule should work. Complainant, who believed that he had yelled at Knaack,



apologized to Knaack for yelling. Complainant, who believed that Knaack had also yelled at him, was surprised that Knaack did not apologize for yelling. Under the schedule developed by Knaack, Haverly, Brye and Soto would teach in more than one room. On July 25, 1997, Knaack telephoned Complainant. During this telephone conversation, Knaack told Complainant that he had changed his mind and that the French room would be moved to Room 11; Complainant reiterated his concern that the room was too small for his largest class; and Knaack responded that the other Spanish teachers were upset about the room assignment that had previously been agreed upon and that Knaack's decision was final. Complainant initially agreed to the change, but then subsequently told Knaack that Room 11 was not acceptable; that the schedule worked out with Knaack had been fair; and that he did not like the fact that Knaack had made the change without first discussing it with Complainant. At this time, Knaack had the opinion that Complainant had been unreasonable and uncompromising in his efforts to obtain a dedicated French room. Knaack, who did not attend the Foreign Language Department meetings, based this opinion upon his discussions with Sheehan and Complainant, as well as upon Complainant's May 29, 1997 proposal. Subsequently, Complainant delivered two letters to Dodd's office, one of which was dated July 17, 1997 and the second of which was dated July 25, 1997. The July 17, 1997 letter began by advising Dodd that he and Knaack had reached an agreement to have Room 10 assigned as a French room and then stated:

However, I am very disturbed over the fact that in our meeting, Bob continued to demonstrate antipathy, even outright hostility to either me personally, or the French program, I can't tell which. Now, if I had successfully resolved a conflict with a colleague who was my equal, I would just put any harsh words behind me and forget about it. Unfortunately, this is not the case here. Bob Knaack is not my equal – he's my boss. As such, he could potentially do things that would have an adverse effect on my career. Based on the way things went this morning, I believe that Bob, given the opportunity, will do just that.

Complainant went on to summarize what he recalled of his meeting with Knaack. This summary indicates, *inter alia*, the following: Complainant initiated the conversation by asking what was going to happen with the French room assignments; Knaack responded that he did not understand why the Foreign Language Department could not work out the room assignments because with other Departments he is able to give them a list of available rooms and they work it out among themselves; Complainant responded that he tried to handle the issue in a professional manner but that two colleagues had stabbed him in the back with their allegation that he had abused Maki and that ended any possibility of working this out among themselves; Knaack indicated that he did not connect the two issues and the problem with Complainant's request was that there were not enough rooms; Complainant stated that he did not see the justice in having one German room and four Spanish rooms, but no French room; Knaack responded that having a French room is not what determines the success of a program

and that the success of a program was determined by the teacher; that if the students like the program, then they will tell their friends about it and Complainant would get more students; Complainant responded that students are more likely to have a positive experience if they are in a room that is devoted to the culture of the language that they are studying; Knaack responded that seniority was a factor in room assignments and that Complainant was least senior among the foreign language teachers; Complainant responded that seniority does not make a difference here and that the foreign language teachers were in competition for students and he did not see why the other foreign language teachers should have all the marbles; Knaack disagreed with this statement and Complainant explained why he believed they were in competition; Knaack reiterated his view that the Department should have worked it out and Complainant indicated that he was tired of repeating that he tried to handle the matter professionally; Complainant reiterated that he had tried to bring the issue up in Department meetings, but no one wanted to discuss it and that Soto and Martin ended all possibility of working it out when they chose to stab him in the back; Complainant stated that he did not want to discuss it anymore because he was not the one who made it impossible to work it out; Knaack stated that Complainant should compromise and that Knaack could schedule two of Complainant's classes back to back in one room and the remaining two back to back in a second room; Complainant responded that he wanted a single room devoted to French culture; Knaack reiterated that Complainant should compromise and that the two of them could work toward having a French room next year; Complainant indicated that French had been the poor cousin for four years, he saw no reason to wait, that he had provided a schedule that would work, and why would they not do something like that; Knaack responded that everybody else thought Complainant's schedule was unfair because everyone but Complainant would move between rooms; Complainant responded that this was a result of the way the classes were scheduled; Knaack then stated that he would try to accommodate Complainant by scheduling most of the French classes in Room 11; Complainant noted that this was the smallest room downstairs and that his largest class, 7<sup>th</sup> period, would not fit comfortably in that room; the two then discussed why this class was so large; Knaack indicated that they could put Complainant in another room for the 7<sup>th</sup> period; Complainant responded by asking why the French room could not be in a room that was large enough to handle his largest class; Knaack responded that he did not want to make the Spanish teachers mad; when Complainant asked if any of the Spanish teachers had as large a class as he, Knaack responded that he did not know; Knaack suggested that the two try to work out a schedule; Complainant wanted to use the schedule that he has prepared as a basis for the discussion, but Knaack told Complainant that he had lost it; Complainant then went home to retrieve his schedule because he could not make sense of the schedule that Knaack wanted to use; when Complainant returned, he believed that he saw the schedule that he had prepared on Knaack's desk; Complainant concluded that Knaack knew that he had not lost the schedule and that Knaack did not want to produce Complainant's schedule because Knaack wanted to start from scratch and produce a schedule that was more favorable to the Spanish teachers; Knaack began the conversation by indicating that he had looked at the numbers in Complainant's other classes and that they were tiny, 17 or

18 students; when Complainant asked if Knaack had looked at the Spanish class numbers, Knaack responded that he had not and that it would make no difference because he had placed Complainant in Room 10; acknowledging that Room 10 was better than Room 11, Complainant said that if he had the biggest class, then he should be in the biggest room, Room 7; Knaack then threw up his hands and yelled that Complainant was not getting Room 7 because it belonged to Jean Haverly; when Complainant responded that he was not aware that rooms belonged to anyone, Knaack yelled what was the matter with Complainant, that Knaack had just given Complainant the best room downstairs and Complainant was still not happy; Complainant responded by saying that he would like to see the Spanish teacher numbers; Knaack said something to the effect of “for crying out loud” and then went to get the numbers; Complainant observed that Haverly’s largest two classes were 24 and 25 students; when Complainant observed that there was a big difference between 25 students and the 31 students in Complainant’s largest class, Knaack yelled that Complainant was not getting Room 7 and that Knaack was not going to “stick it to” Jean; Complainant responded that he would like to pace off the two rooms; Knaack responded that it did not make any difference because Complainant was not getting Room 7; as Knaack and Complainant left Knaack’s office, Knaack was “huffing” about Complainant’s insisting upon pacing off the rooms and was visibly irritated and hostile; Complainant, being equally hostile at this point, told Knaack that Hazaert told Complainant that Knaack could not discriminate against French in access to facilities and did Knaack want Complainant to see Hazaert again; Knaack responded by indicating that he could fix Complainant’s problem with having too many students in a room by calling parents and telling them to take their children out of French; Complainant said go ahead and I will take you to court; Knaack asked why Complainant always wanted to sue people and Complainant responded that he was not going to stand for being screwed with; when Complainant and Knaack walked into Room 7, Knaack told Complainant that he did not know what was the matter with Complainant, that Knaack had given Complainant one of the best rooms and Complainant was still complaining; Complainant paced off the rooms as Knaack continued to complain about Complainant’s ingratitude; Complainant indicated that there was only about three feet difference in the rooms so Room 10 would be fine; Knaack responded that was what he had been telling Complainant; as the two walked back to Knaack’s office, Knaack reiterated that the Department should have been able to work it out and Complainant yelled that he did not want to hear that anymore, that Soto and Martin had stabbed him in the back and that it was not his fault that the Department could not work it out; Knaack responded that everything has to be your way, it is George’s way or no way; Complainant yelled that Knaack should not talk to him about cooperation, that Complainant had tried to work it out through the proper channels and the only way that he got anything done was to see Dodd; Knaack then said there is no need to go to war over this; Complainant responded that you keep talking about it like it is my fault and that he was sick of it; Knaack repeated that there was no need to go to war over it; when they returned to Knaack’s office, Knaack showed Complainant a schedule that had been prepared by Knaack which placed Complainant in Room 10 for all the French classes except for 7<sup>th</sup> period, where Complainant would be in Room 120; Complainant

responded that it did not make sense to move him out of Room 10 for 7<sup>th</sup> period because Brye could be moved into Room 120 instead of Room 10 for 7<sup>th</sup> period; Knaack responded by saying that it only seemed fair to have Complainant move once if everybody else had to move once; Complainant responded that if the French room was available for 7<sup>th</sup> period, then it made sense to use it for 7<sup>th</sup> period; Knaack agreed that he could do this; and that, after finalizing the agreed upon schedule, Complainant apologized for losing his temper, but did not receive an apology from Knaack for losing his temper. Near the end of his letter, Complainant wrote the following:

Even though the atmosphere in his office was now calm, I was very uncomfortable. I had just had a very hostile meeting with my boss, and I was feeling as if I had crossed the Rubicon with Bob. My apology was sincere [I don't think it's right to lose one's temper in a professional meeting, regardless of what Bob had done], but I also tried to patch up our working relationship by apologizing.

After several minutes more of watching Bob work, I asked him if I could let him finish up on his own. He said OK. I offered him my hand, and he shook it. I told him that I hoped we could put all this behind us. He seconded that notion.

But on the way home after the meeting I was still uncomfortable. This had been a very uncomfortable meeting, and I started to brood about the whole matter. I thought about it all afternoon. The fear kept on growing that Bob would try to get back at me eventually. After all, he couldn't be too pleased with the idea that I had gone over his head to you, Dr. Dodd, even though I told him on June 18<sup>th</sup> [the day I met with Mike Sheehan, when Mike told me rather cheerfully that he was going to keep the original schedule: 4 dedicated Spanish rooms and 5 different rooms for French. I told Mike that I'd talk to Bob about it if that was his final decision. He told me I could do whatever I want, but that it wouldn't change anything] that if he wouldn't consider reversing Mike's decision that I would come to see you.

This fear in me just continued to grow. So I sat down this evening to record everything I remembered about our conversation [i.e. Bob's and my conversations]. I would like a permanent record of this letter to you to be kept on file at the District office. I just can't get over the fear that Bob is going to want to get back at me. His hostility today has convinced me that he will eventually do so if he feels that he can get away with it.

That's why I want this letter to be a permanent part of the record. In fact, I would also like the witnesses I mentioned earlier to go on record as to what they heard and what they perceived as they watched Bob and me argue in an openly hostile manner.

I'd also like a copy to be given to Bob so that he can formally respond to my account of today's events. He may wish to dispute some of the things I've put down in this letter, so I'd like him to do this as soon as possible, while events are still clear in my memory, as well as in those of any witnesses.

Finally, I'd like to request that neither Bob Knaack nor Mike Sheehan be my direct supervisor this coming year, or in any future years. They have both treated me most unfairly, and I doubt that either of them will ever really get over the fact that I went over their heads to get that unfairness reversed.

One additional comment: Bob told me at one point today that he and Mike did go on record originally as being opposed to instituting a French program at the Junior High, but that that opposition was all in the past; he's all for the French program now, he says. But based on all the turmoil I had to go through with Bob and Mike to get a French room during the French program's fifth year, I doubt that he's really sincere about that support.

Attached to this letter were various classroom assignment schedules that Complainant considered to be relevant to his concerns, including his May 29, 1997 proposal. Dodd considers it likely that Knaack had thrown his hands in the air and raised his voice to Complainant, but considers such conduct to be evidence that Knaack was exasperated and frustrated with Complainant, rather than angry with Complainant. Dodd considers it likely that Knaack had resisted the idea of having a French room, but considers this resistance reasonable in view of the fact that Knaack had offered a compromise of having two French classes taught consecutively in a row. The letter of July 25, 1997, states as follows:

Please read this long letter that I've given you a copy of.

Then I'd like you to know that Bob Knaack is still messing with me. He called me this morning to inform me that he's changing the room assignment that we had agreed on (Room 10) to Room 11, because "all the Spanish teachers were upset." Please note that the two largest classes (31-me, 30-Dudley) are now in the smallest room. The biggest room by far (room 7) is scheduled to have a maximum of 26 students. Rooms 10 + 9 have maximums of 26 x 25 respectively (over)

It is clear to me that Bob is still trying to discriminate against me or the French program.

Attached to this letter was a schedule that had been developed by Knaack on July 17, 1997 and agreed upon by Complainant; a schematic with the dimensions of Rooms 7, 8, 9, and 10, identified in "paces;" and the room dimensions of these same rooms, marked in "feet." Under this schedule, Complainant and Berns taught all of their classes in Room 10. This schedule indicates that Complainant's 7<sup>th</sup> period class has 31 students; that Complainant's three other classes had 17, 18, and 19 students; and that the vast majority of the classes of the non-French teachers were over 23 students, generally ranging between 23 to 26 students. After receiving Complainant's letters, Dodd discussed the matter with Knaack. Knaack responded that Complainant was expressing Complainant's opinion; that Complainant had received his French room and that there was no further conflict. Knaack was not bothered by the fact that Complainant had gone over his head on the French room issue. Dodd concluded that Knaack was not hostile toward Complainant and Dodd did not see the need to intercede between Knaack and Complainant at that time. At the time that Dodd made this decision, he had not formed any opinion as to whether or not Complainant was the individual that had prevented the classroom assignment issue from being resolved at the Departmental level, but Complainant's proposed schedule lead Dodd to conclude that Complainant was unreasonable because Complainant had proposed that he remain in one classroom and that the more senior teachers move from room to room. Dodd considered Knaack's proposed compromise, *i.e.*, that Complainant teach two consecutive sections in a single classroom, to be reasonable. Complainant expected Dodd to contact him about the two letters because, in Complainant's view, he had made clear that there was a serious problem between Knaack and Complainant. When Dodd did not contact Complainant, Complainant telephoned Dodd on July 29, 1997. Dodd was not sympathetic to Complainant's complaints and told Complainant that Dodd supported Knaack's decision to assign Room 11 to Complainant. During this conversation, Dodd told Complainant that Complainant had alienated his colleagues in the Foreign Language Department and Complainant responded that they had alienated him. When Complainant brought up Soto and Martin, Dodd told Complainant that Dodd knew that Complainant also had problems with Berns. Within a few hours of this telephone conversation, Complainant made notes of this telephone conversation. These notes indicate, *inter alia*, that Complainant told Dodd that rooms should be assigned on the basis of need and not to soothe teacher egos; that Complainant's 7<sup>th</sup> hour class was by the far the largest Foreign language class and that it would not fit comfortably into Room 11; that Dodd suggested that Complainant find a larger room for his 7<sup>th</sup> hour class, indicated that one of the perks of seniority was that teacher's get the room of their choice and Knaack was trying to preserve some semblance of this tradition; that after Dodd had reiterated his position, Dodd told Complainant that he did not want to discuss the matter any further; that Dodd stated that French was receiving the same consideration as Spanish; that Dodd told Complainant that one of the reasons that Complainant

was not given Room 10 was that Berns did not want Complainant doing his preps at the desk in the adjoining small office while she taught her classes; that Dodd told Complainant that Berns had complained to Knaack that Complainant acted as if he were her supervisor and that Complainant needed to understand that he was not her supervisor; that Complainant knew that he had not discussed Berns with Dodd and assumed that Knaack had discussed Berns with Dodd; that Complainant resented the fact that Complainant had not been provided with an opportunity to respond to complaints made by Berns; that when Complainant attempted to explain his side of the issue with Berns, Dodd cut him off by saying that it was not important who was right or wrong; that Dodd said the point was that Complainant had alienated many of his foreign language colleagues; that Complainant became a little huffy and responded that Dodd should stop right there and that Complainant had been stabbed in the back by two of the Spanish teachers; that they alienated him, he did not alienate them; that Dodd responded that Complainant had alienated himself; that Complainant became huffier; stated that the two Spanish teachers had attacked him in the nastiest way possible and that the fact that they were not getting along was their doing; that Dodd acknowledged that he may have misspoke; that when Complainant indicated that everyone would like him fine if he was not assertive in his quest for a French room, Dodd responded that Complainant now had his own room and he advised Complainant to find another room for Complainant's 7<sup>th</sup> hour French class; that Dodd stated Complainant was being treated more than fairly; that Complainant asked Dodd if Complainant should expect to have to fight tooth and nail to be shown the same consideration as Spanish; that Dodd reiterated that Complainant was being treated very fairly; Complainant indicated that he disagreed; Dodd told Complainant that there was nothing further to discuss; and each said "good-bye." Dodd viewed Complainant's alienation of his colleagues to be a negative. In an addendum to these notes, Complainant indicated, *inter alia*, that he had asked for a meeting with Dodd, Knaack and Complainant to discuss room assignments and Knaack's behavior and continued attempts to not give him a French room; that Dodd said he did not see any point in that because Complainant had received his French room; that when Complainant asked Dodd if Complainant was being treated fairly when Knaack yelled at Complainant, Dodd responded that he had been in situations like that, when you are frustrated and can't get your point across, that the only way to get your point across is to raise your voice; that Complainant stated that Knaack did not raise his voice, but rather, yelled, and asked if Dodd thought that was proper; that Dodd responded that those things happen; that there was a discussion about the reliability of the student numbers for the 7<sup>th</sup> period class; and that there was a discussion about Complainant's request to not have Sheehan or Knaack supervise Complainant in which Dodd indicated that he could not promise anything. At the time of this July 29, 1997 conversation, Dodd had formed the opinion that Complainant's charges against Knaack were not very serious; that the matter had been resolved when Complainant received his French room; that the only reason that Complainant wanted to meet with Dodd was to have Dodd overrule Knaack's decision on the French room, which Dodd had no intention of doing; and that Dodd did not consider Complainant's complaints against Soto and Martin to raise an issue that needed to be resolved by Dodd. As a result of this telephone conversation, Complainant

concluded that Dodd had given a stamp of approval to the conduct of Knaack that Complainant viewed to be hostile and that such approval was not appropriate for a public school system. As a result of these conclusions, Complainant on July 29, 1997, telephoned School Board Vice-President Susan Leonard, an individual with whom he believed he had a friendly relationship. Leonard listened to Complainant's concerns and agreed to discuss the matter with Dodd. Following this conversation, Complainant drafted notes of the conversation. As these notes indicate, Complainant told Leonard, *inter alia*, that the French program had been treated unfairly; that he had discussed the need for a dedicated French room several times in Department meetings, but had gotten nowhere; that when he went to Sheehan, Sheehan had seemed sympathetic, but that, when room assignments were made, there was no dedicated French room; that when he went to Sheehan to discuss the matter, Sheehan referred the matter to Solsrud; that Solsrud had called the May 28<sup>th</sup> meeting, which became heated; that two days later Soto and Martin maligned him; that Knaack had yelled at Complainant on July 17<sup>th</sup>; that it was unfair that French, with the largest section, had been placed in the smallest classroom; that he had to fight to receive the consideration that French should have received without a fight; that he had sacrificed any chance of having a decent rapport with Knaack and Sheehan in order to assert the rights that the program deserved; that he did not believe that the School Board would have approved of what had transpired; and that he felt that his career at the District was in jeopardy since he had irritated both Knaack and Sheehan, and Dodd thought he was a difficult person who alienated everyone. As Complainant's notes also indicate, Leonard was quite sympathetic; agreed that matters could have been handled better; volunteered to call Dodd to discuss this issue; indicated that room assignments should be worked out at lower levels if possible, but if that was not possible, then someone needed to exert leadership and resolve the matter fairly. After this telephone conversation, Leonard met with Dodd and discussed the French room assignment issue, but Leonard was not critical of the decisions that had been made by administration.

7. On August 6, 1997, Complainant had a telephone conversation with Leonard. Shortly after this conversation, Complainant made notes of this conversation. As these notes indicate, Leonard stated that she and her husband had met with Dodd on August 4<sup>th</sup> to discuss their concerns; that Dodd had indicated that he would meet with Knaack to discuss what the Leonards had discussed with Dodd; that Dodd had indicated that he would make no commitment; that Leonard had read certain materials that she had received from Complainant, including his July 17<sup>th</sup> and 25<sup>th</sup> letters to Dodd and his July 29 notes of his conversations with Dodd and Leonard; and that Leonard told Complainant that she hoped things would work out "ok." While not reflected in these notes, Leonard told Complainant that she was not concerned about the room assignment change and did not want to discuss this change. From this telephone conversation, Complainant understood that Dodd would be talking to Knaack. Complainant expected Dodd to contact Complainant to put Complainant's mind at ease. When Dodd did not do so, Complainant on August 7, 1997, telephoned Dodd and Dodd confirmed that the room assignment remained unchanged. Shortly after this telephone conversation,



Complainant made notes of this conversation. As these notes indicate, Dodd confirmed that he met with Knaack to discuss the room assignment process; that Dodd had advised Knaack that there was a perception, shared by Dodd, that Knaack “had it in” for foreign languages; that Dodd cited, as an example, Knaack’s attempt to reduce another foreign language teacher from 100% to 80% FTE, which attempt was not allowed by Dodd; that Dodd advised Knaack that he had to correct this perception; that Dodd indicated that Knaack should have told Solsrud to provide a French room and then let the teachers work out the specifics; that Complainant indicated that his greater concern was the hostility that had been shown to him; that Dodd advised Complainant that he would keep the July 17<sup>th</sup> letter on file; and that, if Complainant experienced any further problems, then Complainant could come to Dodd, but that Dodd could not guarantee that Complainant would have a 100% position, have the room of his choice, or would not be assigned more than 30 students, but that Complainant would be treated fairly. Complainant was not disciplined for his lawsuit against Soto and Martin, or for his attempts to obtain a dedicated French room. On Friday, August 8, 1997, Complainant went to the Junior High Office and encountered Sheehan. Shortly after this encounter, Complainant made notes of this encounter. As these notes establish, Complainant requested and Sheehan agreed to provide Complainant with a copy of the original room assignments for the 1997-98 school year; Complainant requested and Sheehan agreed to meet with Complainant at that time; Sheehan sat down and Complainant remained standing; Complainant told Sheehan that Complainant was going to ask the School Board to invoke a disciplinary hearing against Sheehan and Knaack because the both of them had been very unfair in the way that they handled the room assignment issue; Sheehan responded “Oh;” Complainant told Sheehan that he was going to tell Knaack this, but that he understood that Knaack had taken vacation, and asked Sheehan if he would tell Knaack; Sheehan said “Ok”; and Complainant left the office. In a letter dated August 26, 1997 and addressed to Knaack, Complainant stated the following:

I found out from Connie Solsrud today that Mike Sheehan would be my direct supervisor this year. This afternoon, I went to Mike and asked him if he would arrange to have someone else (i.e. Kris Gilmore or Connie Solsrud) be my direct supervisor this year. He asked me why. I responded that because of all the turmoil I had to go through in the process of getting a room dedicated to French, turmoil that he had a part in, I didn’t feel comfortable having him as my direct supervisor. Mike replied that he would not arrange to make such a change. I asked him then to write out a memo (and sign it) to the effect that I had requested such a change, and that he had turned it down. Mike replied that he may write such a memo, but then again, he may not.

Since you are Mike’s superior, I am now making the request of you that you arrange to have either Kris Gilmore (my first choice) or Connie Solsrud be my direct supervisor this year. Thank you.

By letter dated August 27, 1997, Knaack advised Complainant of the following:

I am in receipt of your letter of August 26, 1997 asking for a change in primary supervisors. As I am sure you are aware, the primary supervisor works directly with you for improvement of instruction. I see no relationship between the supervision process and, as you stated in your letter, the turmoil that occurred over a French room.

Please be cognizant of the fact that although Mr. Sheehan is your primary supervisor, that Mrs. Solsrud, Mrs. Gilmore, or myself may also on occasion observe you in your teaching environment.

Hope you have a successful 1997-98 school year.

Kristine Gilmore began working for the District in the 1997-98 school year and had contact with Complainant in his capacity as a scorer and timer at various athletic events, as well as in the normal day-to-day interactions that she has with teachers. In Knaack's opinion, to grant Complainant's request regarding the assignment of supervision would have harmed the District by setting a precedent that a teacher selects his or her own supervisors. In Complainant's opinion, Knaack's statement indicating that other supervisors may, on occasion, observe Complainant was a subtle message that Knaack was going to harass Complainant. By letter dated August 27, 1997, Sheehan advised Complainant of the following:

Yesterday you requested that I not be the administrator that works with you in the supervision process. Upon receiving a copy of the memo that you sent to Mr. Knaack, I discussed the situation with him.

Mr. Knaack and I are in agreement that a change will not be necessary. I am afraid that you may be missing the point of the supervision process here at D.C. Everest Junior High School.

Our view always has been, and certainly will remain, that the best source of staff development is the supervision process. The goal of the supervision process is to work with you and all other teachers to help you grow into the most effective teacher you can be. I hope that you can understand this.

At this time there is no relationship between this opportunity for professional growth and ". . .the turmoil I had to go through in the process of getting a room dedicated to French. . ." It is my hope that you are able to see the purpose for which our supervision process operates and are able to enter into the process with a positive spirit. It may be necessary for you to look past any

perceived problems of the past summer in order for you to take advantage of this opportunity for professional growth.

In the days ahead all of the teachers that I will be working with will be sent a communication regarding goal setting. I might suggest that you begin to focus on those goals for professional development at this time.

In a letter dated August 28, 1997, Complainant appealed to Dodd to change his primary supervisor. This letter includes the following:

On Tuesday, August 26, 1997, I was informed that Mike Sheehan would be my primary supervisor during the 1997-98 school year. I went to his office that afternoon and very politely asked him to arrange to have either Kris Gilmore or Corinne Solsrud be my primary supervisor instead of him. He declined my request, so that same afternoon I wrote a memo to Bob Knaack about the matter. A copy of said memo is attached hereto as Exhibit #1 and incorporated herein by reference. Yesterday, I received Bob's memo of reply. A copy of said memo is attached hereto as Exhibit #2 and incorporated herein by reference. Mike also wrote a memo of reply. A copy of said memo is attached hereto as Exhibit #3 and incorporated herein by reference.

I wish to make it perfectly clear that I strongly object to this refusal to accommodate a very reasonable request on my part. Given the turmoil that I was subjected to this spring and summer by both Mike Sheehan and Bob Knaack, this insistence on having Mike be my primary supervisor is a clear form of harassment. Serious issues are raised as to Mike's objectivity and impartiality.

Both Bob and Mike maintained in their replies to my request that there is no connection between the supervision process and the hostility to me that they have recently demonstrated. Such a connection is extremely disingenuous. Everyone is perfectly aware that the supervision process can be very uncomfortable if the supervisor is not impartial or even appears to have other motives.

Their contention that Mike is better suited to helping me grow professionally than are Kris Gilmore or Corinne Solsrud – both of whom are primary supervisors to a number of other teachers, including members of the Foreign Languages Department – doesn't hold water. If the goal is truly "to help [me] grow into the most effective teacher [I] can be", that goal would be much more

likely to be achieved if I were to work with a primary supervisor whose objectivity is not in doubt. This does not include Bob Knaack or Mike Sheehan.

Please consider this. Thank you.

Dodd responded in a letter dated September 2, 1997, which includes the following:

**ASSIGNMENT OF GEORGE MUDROVICH IN THE SUPERVISION PROCESS**

I am in receipt of your letter dated August 28, 1997, in which you request that Mr. Sheehan, Assistant Principal, not be your primary supervisor during the 1997-98 school year. The assignment of teachers to supervisors has always been delegated to the principal of each building. In the past, principals have used very good judgment in the assignment of teachers to the people available for supervision in the building. I find your assignment to Mr. Sheehan is not contrary to that long-understood and well-developed process. To allow teachers to request a particular supervisor would undermine the process, particularly, since inequities would arise. Not all principals have the opportunity to assign staff to different supervisors. Teachers who did not want the principal in the building to supervise them would not have the same advantage as teachers in a building where there is more than one person to supervise instruction.

Philosophically, of course, the supervision process has nothing to do with the managerial process of assigning rooms, duties, and other contractual matters. Supervision as viewed in the D.C. Everest School District is an opportunity to talk professionally about the teaching act and how students can learn better through enhancing the teaching act. Mr. Sheehan is an expert at the supervision process and will be able to afford you the very best in consultation relative to teaching and learning. You are, indeed, fortunate to have Mr. Sheehan as your classroom instructional supervisor.

I have all the confidence in the world that you will have a productive experience as a classroom teacher during the 1997-98 school year. If you should have any further questions, please feel free to contact Mr. Hazaert or me in our offices.

Prior to sending this letter, Dodd asked Knaack why Knaack had assigned Sheehan to supervise Complainant. In responding to Complainant's request to not have Sheehan supervise Complainant, Dodd gave consideration to the fact that Principals normally have discretion to determine who supervises teachers on their staff; that Solsrud and Gilmore were relatively new to their jobs and that it would be beneficial to assign Complainant to a more experienced

supervisor; that Solsrud had supervised Complainant during the previous year; and that, if Sheehan were to supervise Complainant, it would provide both with the opportunity to engage in collegial activity and provide Sheehan with an opportunity to build some bridges with Complainant. Dodd did not give consideration to Complainant's personal preferences and did not consider it appropriate to do so. In Complainant's opinion, Dodd gave no credence to his expressed concerns about Sheehan's impartiality and Dodd was condescending when he told Complainant that Complainant was lucky to have Sheehan as his supervisor. In Complainant's opinion, it would not have cost the District anything to grant his supervision request; the administration's response indicated that the administration were not willing to accommodate his fears and concerns in a way that sensitive management should treat professional employees; that administration intended to show Complainant who was boss; and that, if Complainant did not like that, he could leave the District. Neither Sheehan, nor Knaack, ever expressed to Dodd that they had hard feelings about the fact that Complainant went over their heads on the French room issue. Dodd did not learn of any further dispute between Complainant and Sheehan until the end of the 1997-98 school year.

8. Complainant sent a letter dated September 9, 1997, to Susan Leonard, Vice President, D.C. Everest Area School District Board of Education, which included the following:

The three D.C. Everest School District administrators who caused me so much turmoil this past spring and summer – D.C. Everest Junior High School Asst. Principal Mike Sheehan, D.C. Everest Junior High School Principal Bob Knaack, and D.C. Everest School District Superintendent Dr. Roger Dodd – are continuing to treat me unfairly. Recent actions on their part have made it clear that they plan to harass me. I have been advised that the appropriate step for me to take at this point is to appeal directly to the D.C. Everest School District Board of Education.

Since you were very helpful to me this past summer, and are familiar with the turmoil I was subjected to by these three D.C. Everest School District employees, I am hereby formally requesting through you that the Board of Education invoke a disciplinary hearing against the three of them.

The recent actions I referred to above revolve around Bob Knaack's decision to assign Mike Sheehan as my primary supervisor during the 1997/98 school year. I have enclosed relevant Exhibits #1 - #5 for your perusal.

Please let me elaborate on the problems relating to this assignment of Mike Sheehan as my primary supervisor:

1) I did not relate this to Dr. Dodd in my August 28<sup>th</sup> memo to him (Exhibit #4), but in early August, I told Mike Sheehan face-to-face that I was going to request of the Board of Education that they invoke a disciplinary hearing against both him and Bob Knaack for the extremely unfair way that they had handled the whole matter of the assignment of a French room. Mike said very little in response to that statement of mine, but he could not have been pleased by it. [I did not make that request right away at that time because the attorney who is handling my case against Shar Soto and Holly Martin advised me to wait a while. Recent events have led him to conclude that it would not be advisable to wait any longer.]

2) All three of the above-named have maintained in their memos of reply to me that there is no connection between the supervision process and the turmoil I was subjected to this past spring and summer. Every teacher knows full well that in the real world, administrators can use the supervision process as a means to harass a given teacher. Bob Knaack made a veiled threat to do just that in the second paragraph of his August 27<sup>th</sup> memo to me (Exhibit #2). I would like to have the opportunity to question Bob on just how many times during the last few years either he or Mike Sheehan carried out an observation of a teacher to whom they were not assigned as primary supervisor (or who hadn't invited them to observe, or who were not assigned to work with them in a course such as the Effective Teacher program). I suspect that such observations are rare in the extreme at D.C. Everest Junior High School, and that when they have been carried out, it was with the intention of harassing the teacher in question.

Most teachers would also confirm that in their experience, some administrators consciously try to make teachers that they don't like feel uncomfortable during both the observation and the post-observation conference. I would like to have the opportunity to question both Bob and Mike in front of the Board as to whether either of them has ever behaved in such a manner.

3) Mike Sheehan's memo of reply (Exhibit #3) reads like a letter from a member of the Inquisition to a citizen that said citizen should "enter into the process with a positive spirit" and should feel fortunate that they can "take advantage of this opportunity for. . .growth."

This matter of my objection to the assignment of Mike Sheehan as my primary supervisor is, however, only a small part of the reason I am requesting the disciplinary hearing against Dr. Dodd, Bob Knaack, and Mike Sheehan. The source of my concern and distress is that the three of them, either together or separately, have engaged in actions in the time period since the French program

was instituted at D.C. Everest School District that have caused severe damage to my career as a teacher.

Now, Bob Knaack himself admitted (see page 23 of my July 17<sup>th</sup> letter to Dr. Dodd) that both he and Mike went on record at the time as being opposed to the introduction of a French program at D.C. Everest Junior High School. My understanding is that Dr. Dodd, then principal at D.C. Everest Senior High School, had also gone on record as being opposed to the introduction of a French program at D.C. Everest Senior High School.

Let me cite examples that would indicate to any unbiased observer that the three of them, subsequent to the institution of the French program at D.C. Everest Junior High School and D. C. Everest Senior High School, engaged in actions designed to hobble said French program:

1) It has been related to me that during the first year of the French program, the D.C. Everest Junior High School administrators chose to place a large number of students who were totally inappropriate into the first French class. Many of these students were known to be trouble makers, and their academic records made it obvious that they had no business taking any foreign language courses. The teacher, Mrs. Noble, repeatedly asked for assistance in disciplining these students, but was denied such assistance. In frustration, she left the employment of D.C. Everest School District after only one semester.

2) During the 1995/96 school year, there was a French I course at D.C. Everest Senior High School. For the 1996/97 school year, D.C. Everest School District refused to offer a French 2 course at D.C. Everest Senior High School, apparently because there were only 12 students signed up for it. Now, the overwhelming number of students beginning a course in foreign language study at any high school are college-bound students who are trying to satisfy either entrance requirements or eventual graduation requirements at the college of their choice. In fact, it is well known that UW Madison uses foreign language course experience as a de facto screening tool for admission of Freshmen. Now, when a student begins a course of study of a given foreign language at the high school level, there is an implicit "contract" between himself and said high school that he will be allowed to proceed to the next level of study of said foreign language in each subsequent year. To abrogate such an implicit contract in one of the initial years of the French program sends a clear signal to all students and guidance counselors that embarking on a course of study in French is a risky proposition. And, indeed, that message was received by students at D.C. Everest Senior High School, since during the current school year, the only way

Teacher Anne Berns could get a French I class at D.C. Everest Senior High School was to agree to teach a combined French 1/French 2 class – a clearly difficult proposition.

It is interesting to note that D.C. Everest Junior High School allowed a *beginning* German (if there is ever a time to appropriately tell students that they need to choose a different language, it is before they have even begun the course of study) section of only 13 students to go ahead for the 1997/98 school year.

3) During the 1996/97 school year, Teacher Anne Berns was assigned six sections of French (2 at D.C. Everest Junior High School, 4 at D.C. Everest Senior High School), ostensibly to save money by keeping me at 50% FTE, since that would mean that I would have only 3 sections instead of 4. This assignment of six sections was in addition to the condition that she travel between the two schools. Has D.C. Everest School District ever before imposed such a load on a teacher traveling between the Senior and Junior High Schools?

During the same 1996/97 school year, the administrators of D.C. Everest School District assigned the four full-time teachers of Spanish at the Junior High School (none of whom travel between the Senior and Junior High Schools) to teach only *five* sections each. And an *additional* Spanish teacher was employed to teach only two sections at the Junior High School. Now, if D.C. Everest School District was truly interested in saving money in an equitable way, why didn't they simply eliminate that part-time Spanish position at D.C. Everest Junior High School and assign six sections to two of the four full-time Spanish teachers, instead of assigning six sections to a traveling French teacher?

4) The adamant refusal to assign a room to the French program this year is the final example I wish to cite at this time. I wish to make it clear that this was not a problem that just made itself known at the end of the 1996/97 school year. I went to see Mike Sheehan about said matter in October of 1996. I put forth the same argument to him about a French room that the Spanish teachers had been so insistent about a year before: namely, that there should be a room that provided a "little piece of France" in the school during the 1997/98 school year, since there were *four* "little pieces of Spain" during the 1996/97 school year. Mike replied that he would certainly not allow the Spanish teachers to make that argument about their rooms if they weren't prepared to have the same argument apply to a French room. At his suggestion, I wrote a memo (see Exhibit #6) on October 18, 1996 to all my Foreign Language colleagues. When I received no response to this memo, I went to Mike in order to ask him to *impose* such a



decision on the Foreign Language Department. Mike told me he would consider this. On several occasions during the 1996/97 school year, I went to his office to ask him if he had made a decision on room assignments for the following 1997/98 school year. At each instance, he told me that he had not finalized the room assignments, but that he would let me know when he had. I took Mike at his word. I only found out about the official room assignments after someone pointed out to me in May 1997 that the room assignments were part of the master list that showed section assignments. I then went to see Mike on or about May 20<sup>th</sup> to ask him why he had not done what he had agreed to do. Apparently, Mike then passed the buck down to Corinne Solsrud (the Foreign Language Curriculum Coordinator), because I was informed that same day that Corinne had called a May 28<sup>th</sup> meeting for the Foreign Language Dept. It was obvious that a meeting so late in the school year must be to discuss the room assignment matter that I had complained about.

My initial thought about this meeting was that Mike would surely have instructed Corrine to make sure that there would be a French room for the 1997/98 school year, but that Mike didn't want to be perceived as the "bad guy" – that he wanted to push that off onto either Corinne or me. I figured I could live with that.

When Bob and Mike later learned the consequences of pushing the "bad guy" status off onto me – that Shar Soto and Holly Martin decided to try to resolve our departmental dispute by falsely accusing me of being verbally abusive to a female subordinate – they did nothing to set the matter straight, even though I specifically pointed out to both Bob and Mike that these false allegations were obviously connected to Shar and Holly's anger over my insistence on having a French room if there were four Spanish rooms. They even ended up by rewarding Shar and Holly for this malicious attack by giving them exactly what they had wanted!

After I found out that Shar and Holly were indeed two of the four teachers who had made this false accusation of abuse on May 30<sup>th</sup>, I asked Bob Knaack to convoke a meeting with me, him, Shar and Holly, Carol Maki (the aide I had allegedly abused), and Bob Coleman. Bob told me that he would think about it, but he later told me that there was no way that he would call such a meeting. Several weeks later, Bob told my attorney that he refused to call such a meeting because the other teachers involved had objected. This is a perfect example of the antipathy that both Bob Knaack and Mike Sheehan have demonstrated to me – they had no problem with Shar and Holly making such a malicious false accusation against me, but Bob wouldn't even call a meeting to discuss the matter, because, according to Bob, Shar and Holly objected to it.

This clear pattern of antipathy to the French program vis-à-vis the Spanish program placed me in a no-win situation. In order to have any hope of a future as a full-time French teacher at D.C. Everest School District, I was forced by Mike Sheehan, Bob Knaack, and Dr. Roger Dodd into the unenviable position of having to make a stand against their unfair actions. But by making this stand, I unavoidably incurred their antipathy. It is very obvious that this antipathy has not gone away, and that it never will.

When I accepted employment at D.C. Everest School District, it was with the understanding that I would be treated like any other teacher employed by D.C. Everest School District. I naturally believed that I would have the same opportunities to advance and prosper in my career at D.C. Everest School District that all other teachers employed by D.C. Everest School District have. But my future at D.C. Everest School District is in the hands of these three men who have treated me so unfairly. This naturally causes me much distress.

I trust that the information included in this letter will lead you to believe that it would be in the best interests of D.C. Everest School District to take an active part in resolving this matter.

At the time that Complainant wrote this letter, he had the opinion that the School Board would be a fair forum to arrive at a fair decision between two elements under their control, i.e., teachers and administration. When Leonard showed this letter to Dodd, he told Leonard that the School Board should hear Complainant's complaints and discipline Dodd if he needed discipline. In Dodd's opinion, Leonard did not take Complainant's complaints seriously. Dodd never criticized Knaack regarding any allegation contained in Complainant's letter of September 9, 1997. Leonard did not contact Complainant to discuss this letter. When Complainant happened to see Leonard while she was at his school, she indicated that she had received the letter and that Complainant would be given a response. In Complainant's opinion, Leonard was cold toward him and more or less turned her back on him, which Complainant did not view as a good omen. The School Board, in a September 23, 1997 executive session, reviewed the letter of September 9, 1997. Dodd reported to the School Board that the District's attorney had advised that there was a contractual grievance procedure to handle such complaints. The School Board members read parts of this letter; engaged in very little discussion of this letter; and directed Dodd to advise Complainant that there was a grievance procedure in place to address such issues. No School Board member expressed criticism of Dodd's conduct toward Complainant at this School Board meeting. Nor did any School Board member thereafter indicate to Dodd that he/she felt that Dodd had not properly handled matters involving Complainant. By letter dated September 25, 1997, Dodd advised Complainant of the following:

On September 23, 1997, in executive session of the D.C. Everest School Board the board members reviewed the letter you sent to Mrs. Leonard asking for a hearing to discipline Dr. Dodd, Mr. Knaack and Mr. Sheehan. At the conclusion of their review, they asked that I inform you that there is a grievance process in place that can be used to address such issues.

Dodd did not recommend that Complainant's letter to Leonard be addressed informally because he believed that Complainant took it past informality when Complainant requested that Principals be disciplined. Complainant considered this letter to a bad omen because it indicated that the School Board would not discuss the letter with him and had permitted the people that he had complained about to rule on their own behavior. In Complainant's opinion, this was a fishy way to resolve his complaints. Complainant's attempts to obtain a dedicated French room; Complainant's May, 1997 note to Maki; Complainant's complaints to District administration regarding Soto and Martin's conduct in complaining about Complainant's treatment of Maki; Complainant's lawsuit against Soto and Martin; Complainant's attempts to have someone other than Knaack and Sheehan supervise complainant; and Complainant's September 9, 1997 letter to Leonard were not for the purpose of collective bargaining or other mutual aid or protection, but rather, were for the purpose of furthering purely individual concerns.

9. After receiving Dodd's letter of September 25, 1997, Complainant met with Gerry LaBarge to discuss filing a grievance. LaBarge, who has been employed as a District teacher since 1983, was the DCETA Grievance Chairperson. LaBarge and UniServ Director Coffey assisted with the preparation of this grievance based upon notes of Complainant. Complainant, however, drafted the remedy portion of the grievance. Complainant signed this grievance, but the optional space for the signature of "Employee Representative's Signature" was blank. Although LaBarge considered this grievance to be valid, the Association did not sign this grievance, in part, because the Association was concerned about the personal nature of the grievance and the corrective action being sought in the grievance. LaBarge doubted that the remedies requested by Complainant were available under the contract and advised Complainant accordingly. Coffey, but not LaBarge, considered it possible that the grievance would benefit someone other than Complainant. This grievance states that its subject matter is "Creation of a Hostile Work Environment" and indicates that it was distributed to the "Grievant, Principal, President of the D.C.E.T.A., P.R. & R. Chairperson and Supt. of Schools." Attached to this grievance were written statements that included the following:

...

During the 1996/1997 school year, Mr. George Mudrovich attempted to work with his department and building administrators in creating a supportive atmosphere for the students who take French at the Junior High.

Mr. Mudrovich tried to work with his department colleagues from the beginning of the year to get a classroom dedicated to the teaching of French, as there were at that time four classrooms dedicated to Spanish and one to German. When Mr. Mudrovich was unable to get the issue brought before his department, he tried to enlist the support of Mr. Mike Sheehan. On or about May 20<sup>th</sup>, 1997, Mr. Sheehan directed Mrs. Corinne Solsrud, Foreign Language Department Curriculum Coordinator, to call a department meeting and discuss the issue of a French room. The meeting, which took place on May 28<sup>th</sup>, did not result in a classroom dedicated to the teaching of French, and instead led to a hostile work environment, creating competition among the foreign language teachers for classrooms. When asked to intervene and treat the French program as fairly as the other foreign languages, Mr. Sheehan ruled on or about June 2<sup>nd</sup>, and again on June 18<sup>th</sup>, not to give the French program its own classroom.

On June 18<sup>th</sup>, Mr. Mudrovich asked Mr. Robert Knaack to reverse Mr. Sheehan's decision, and to assign the French program its own room. Mr. Knaack refused to do so. Mr. Mudrovich continued to lobby for fair treatment of the French program by appealing the matter to Dr. Roger Dodd and Mr. Dan Haezert. On July 17<sup>th</sup>, 1997, after Mr. Knaack and Mr. Haezert had had a conference to discuss this very matter, Mr. Knaack again denied Mr. Mudrovich's request in a meeting with him in his office. A second, acrimonious meeting on that same day did finally result in Mr. Knaack agreeing to assign Room #10 to the French program. Because of the larger class size of the French class in comparison with the Spanish class held in the larger Room #7 (31 students versus 26 students), Mr. Mudrovich lobbied for equal access to school facilities and asked for the larger room, but was denied such fair treatment in an angry, abusive, and aggressive manner by Mr. Knaack. Mr. Knaack even resorted to threatening Mr. Mudrovich's career by saying that he could call several parents to tell them that their children wouldn't be allowed to take French. Furthermore, on or about July 25, Mr. Knaack even reneged on the assignment to French of Room #10 when he informed Mr. Mudrovich by telephone that he had unilaterally changed the room assignment to the smallest classroom in the department, Room #11.

Mr. Mudrovich appealed to Dr. Dodd, in a memo dated July 17<sup>th</sup>, 1997 (which Dr. Dodd received on or about July 28<sup>th</sup>), that there be a meeting to include Dr. Dodd, Mr. Knaack and Mr. Mudrovich to discuss the unfair, hostile treatment of both the French program and of Mr. Mudrovich himself by Mr. Knaack. Dr. Dodd denied this request during a phone conversation Mr. Mudrovich had with him on July 29<sup>th</sup>, 1997.

Mr. Mudrovich has become aware that at some time between July 25<sup>th</sup> and July 29<sup>th</sup>, 1997, Mr. Knaack denied him due process by passing unsubstantiated criticisms of Mr. Mudrovich up the chain of command to Dr. Dodd, giving Dr. Dodd the clear impression that said unsubstantiated criticisms were the undisputed truth. This action prejudiced Dr. Dodd's opinion of Mr. Mudrovich. Proof of this assertion is that Dr. Dodd later told a third party that Mr. Mudrovich is "the type of person who tells other teachers to 'go shove it'." These actions have sabotaged any chance Mr. Mudrovich would have had to advance in his career at D.C. Everest School District.

Mr. Mudrovich has also become aware that the program he was helping to develop and support was undermined by the elimination of a French 2 class at the Senior High during the 1996/1997 school year, thus making it more difficult to build and develop the program. Students need to know that, once they have begun a sequence of courses in a given language, they will be able to continue their studies in said foreign language in order to satisfy eventual college entrance and/or graduation requirements. This further erosion of the program made it clear that the French program was being undermined and was not being treated the same as the other foreign languages in the District. The elimination of that French 2 class also reduced the total number of sections of French in the D.C. Everest School District from 10 to 9, which resulted in Mr. Mudrovich being employed at 65% FTE during the 1996/1997 school year, and at 80% FTE during the 1997/1998 school year, when he should have been employed at 100% FTE during both years.

As a result of the way this issue of providing equal opportunity for all foreign language students was handled by the D.C. Everest School District administration, there has been verbal abuse toward Mr. Mudrovich by Mr. Knaack, and a continuing hostile work environment within Mr. Mudrovich's department and also between Mr. Mudrovich and Dr. Dodd, Mr. Knaack and Mr. Sheehan.

At no time since May 20<sup>th</sup>, 1997 has any of the above-named D.C. Everest School District administrators made any apologies to Mr. Mudrovich for the treatment he has been subjected to by them. Indeed, it is clear to Mr. Mudrovich that the three above-named D.C. Everest School District administrators, by their insisting that Mr. Sheehan be Mr. Mudrovich's primary supervisor during the 1997/1998 school year, and by Mr. Knaack's threatening to subject Mr. Mudrovich to a barrage of classroom observations, have decided to harass Mr. Mudrovich in retribution for Mr. Mudrovich having asserted the rights that the French program should have been accorded on its own merits.

REQUEST FOR SETTLEMENT OR CORRECTIVE ACTION DESIRED:

Such corrective action shall include, but not be limited to, the following:

- A public apology shall be made by Mr. Sheehan, Mr. Knaack, and Dr. Dodd for their unfair treatment of Mr. Mudrovich and the French program.
- A sum of money, to be determined later, shall be paid to Mr. Mudrovich as compensation for the mental anguish caused by said unfair treatment and the hostile work environment that has been created by said actions.
- D.C. Everest School District shall assign someone other than Mr. Knaack or Mr. Sheehan as Mr. Mudrovich's primary supervisor during the 1997/1998 school year. Additionally, neither Mr. Knaack nor Mr. Sheehan shall ever be the primary supervisor of Mr. Mudrovich in future years, nor shall they enter a classroom where Mr. Mudrovich is teaching, except in the case of an emergency, or for some other such non-supervisory purposes.
- D.C. Everest School District shall guarantee Mr. Mudrovich a 100% contract as a French teacher for as long as he chooses to remain with the D.C. Everest School District.
- The D.C. Everest School District shall pay the difference between the 65% FTE pay and the 100% FTE pay for the 1996/97 school year, and should increase Mr. Mudrovich's current 80% FTE to 100% FTE.
- Beginning with the 2000/2001 school year, the District shall compensate Mr. Mudrovich by paying him at the same rate of pay as a Curriculum Coordinator, since the hostile work environment created by Mr. Sheehan, Mr. Knaack and Dr. Dodd will unquestionably prevent Mr. Mudrovich's promotion to that position. It is reasonable to assume that he would have had an excellent chance to be promoted to that position by that time.
- There shall be a formal hearing to determine whether the actions of Dr. Dodd and Mr. Knaack, during conversations between Dr. Dodd and Mr. Knaack concerning Mr. Mudrovich, were in violation of Wisconsin Statute 134.01.

In LaBarge's experience, disputes between DCETA teachers and administrators are generally resolved prior to filing a written grievance and this ability to resolve disputes has caused the District to work very well. Consistent with normal practices, Complainant and LaBarge met with Knaack to discuss the grievance prior to filing the grievance. On October 29, 1997, Complainant filed the written grievance alleging the "Creation of a Hostile Work Environment." Complainant did not consider the grievance procedure to be the appropriate place to address the issues presented in his letter of September 9, 1997, and resented having to use the grievance process to raise these issues with the School Board. Complainant did not file his grievance of October 29, 1997 and raise the concerns expressed therein for the purpose of collective bargaining or other mutual aid or protection, but rather, filed this grievance and raised the concerns expressed therein to further a purely individual concern. Knaack, who received the written grievance, was shocked by this grievance because he believed that Complainant wanted the administrators reprimanded for personal reasons. Knaack considered such a reprimand request to be unusual. After the grievance was filed, Knaack told Dodd that a grievance had been filed and explained that the grievance was alleging a hostile work environment. Prior to responding to the grievance, Knaack reviewed the contract language and concluded that there was no contractual violation. In a letter dated November 4, 1997, Knaack provided the following Step 1 grievance response:

I am in receipt of your grievance dated October 29, 1997. At that time, you informed us that you wish to grieve Article 2 – School Board Functions and Article 30 – Equal Employment Opportunity Policy. As I review these sections of the General Contract For And Between The D.C. Everest Area School District and The D.C. Everest Teacher's Association, I find no violation. Therefore, your grievance is denied.

. . .

cc: Dr. Dodd  
Shirley Kislow  
Gerry LaBarge

On November 18, 1997, Complainant, LaBarge, and Coffey met with Dodd, Hazaert, and Owens at Step 2 of the grievance procedure. Dodd did not resent the fact that Complainant had filed this grievance. Dodd asked Hazaert and Assistant Superintendent for Business and Personnel Tom Owens to take notes of this meeting, which notes were not verbatim. During the Step 2 meeting, Complainant requested copies of Owens and Hazaert's notes. When Dodd refused this request, Complainant became agitated and stated that the notes had to be kept for

Court. After hearing Complainant's statements and responses to Dodd's questions, Dodd decided that there was no merit to Complainant's allegations. During the meeting, Dodd became agitated when he discussed Complainant's allegation that conversations of the administrators may have violated Sec. 134.01, Stats. Dodd told Complainant that Complainant's allegations regarding Sec. 134.01 were off the wall and that it was highly irresponsible of Complainant to have made such allegations. Dodd was perturbed by the Sec. 134.01 allegation when he initially read the grievance and considered this allegation to be outlandish, unfounded and to threaten the administrators with legalities. Complainant's allegation that administrators may have violated Sec. 134.01, Stats., was based upon his opinion that it was unreasonable for Dodd to have accepted Knaack's criticisms of Complainant's relationship with Berns as the truth. At this meeting, Dodd concluded that the grievance would be settled only if Complainant were given everything that Complainant wanted. Dodd was not willing to allow Complainant to decide who would or would not be his supervisor because it would set a precedent that teachers, not Principals, have authority to assign supervisors. Additionally, Dodd was of the opinion that, if he usurped the authority of the Principals, it would adversely impact upon his ability to work with the Principals. Dodd considered it reasonable to overrule the Principal in the French room decision because there was merit to Complainant's French room claim. Dodd did not consider it reasonable to overrule the Principal in the supervision issue because there was no merit to Complainant's grievance and the supervisory assignment, unlike the French room assignment, was not a discrete event, but rather, would persist into the future. When Dodd prepared his Step 2 grievance response, he referred to Owens and Hazaert's notes of the grievance meeting and incorporated only those matters that he deemed to be relevant. Dodd's Step 2 grievance response, dated November 24, 1997, includes the following:

FACTS AND ISSUES INVOLVED:

A review of the record indicates the following facts and issues involved:

During the spring and summer of 1997, Mr. Mudrovich enlisted the support of the junior high administration to have the use of a classroom dedicated to French. The administration's first response to his request was to have the foreign language department resolve the issue within the foreign language department. This process was not successful. The teachers of French were still scheduled in various rooms throughout the building when school ended. During the summer months, Mr. Mudrovich appealed to Dr. Dodd, Superintendent, to obtain a dedicated French room. Dr. Dodd asked that Mr. Hazaert, Assistant Superintendent, Instruction/Pupil Services, meet with Mr. Knaack, Junior High School Principal, to resolve the situation. After some discussion with Mr. Knaack, a French room was designated. However, Mr. Mudrovich did not



like the French room assigned to him. He felt it was not large enough. In the discussions with Mr. Knaack, Mr. Mudrovich felt Mr. Knaack was angry, abusive and aggressive. Because of the persistence Mr. Mudrovich exhibited in trying to obtain the French room, he has shown apprehension about the way he will be treated and the status of his employment in the D.C. Everest School District. As early as August 7, 1997, Dr. Dodd received a phone call from Mr. Mudrovich expressing his opinion that Mr. Knaack and Mr. Sheehan might try to retaliate against him in the future. Also, because of this fear, Mr. Mudrovich in a letter to Mr. Knaack dated August 26, 1997, asked that Mr. Sheehan not be assigned to be his classroom supervisor for the 1997-98 school year. Mr. Knaack and Mr. Sheehan denied this request in letters to Mr. Mudrovich dated August 27, 1997. In a letter to Dr. Dodd dated August 28, 1997, Mr. Mudrovich asked that Dr. Dodd intervene and appoint someone else as his primary supervisor. In a letter addressed to Mr. Mudrovich dated September 2, 1997, Dr. Dodd denied that request.

Because the request to relieve Mr. Sheehan as the primary supervisor of Mr. Mudrovich during the 1997-98 school year was denied, Mr. Mudrovich wrote a letter dated September 9, 1997, to board member Susan Burden Leonard asking for a board hearing which purpose it would be to discipline Dr. Dodd, Mr. Knaack and Mr. Sheehan. He stated that reason for the hearing was because they "are continuing to treat me unfairly" and "recent actions on their parts have made it clear that they plan to harass me." In that letter, Mr. Mudrovich listed several other ways he felt the French program had been treated unfairly. All board members were given a copy of that letter. The board discussed it in executive session on September 23, 1997. Board President Fisher asked that Superintendent Dodd write Mr. Mudrovich a letter to inform him that there is a grievance process in place that can be used to address such issues. A letter informing Mr. Mudrovich of the grievance process was sent to him on September 25, 1997. On October 29, 1997, Mr. Mudrovich approached Mr. Knaack with a formal grievance. The grievance cited Article 2 and Article 30 of the general contract formed between the D.C. Everest School District and the D.C. Everest Teacher's Association as having been violated.

## **ARTICLE 2 – SCHOOL BOARD FUNCTIONS**

*The Board possesses the sole right to operate the school system and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights, include, but are not limited to, the following:*

A. *To direct all operations of the school system;*

- B. To establish and require observance of reasonable work rules and schedules of work;*
- C. To hire, promote, transfer, schedule and assign employees in positions with the school system;*
- D. To suspend, discharge and take other disciplinary action against employees;*
- E. To take whatever action is necessary to comply with State or Federal law and to comply with orders or settlements with State of (sic) Federal agencies;*
- F. To introduce new or improved methods or facilities;*
- G. To change existing methods or facilities;*
- H. To contract out for goods or services;*
- I. To determine the methods, means, and personnel by which school system operations are to be conducted;*
- J. To determine the educational policies of the school district;*
- K. To decide upon the means and methods of instruction, the selection of textbooks, and other teaching materials, and the use of teaching aids, class schedules, hours of instruction, length of school year and terms and conditions of employment.*

### **ARTICLE 30 – EQUAL EMPLOYMENT OPPORTUNITY POLICY**

*It is the policy of the Board to recognize competence and ability when hiring new teachers and to provide genuine opportunities for careers within the school system. All positions within the district shall be filled on the basis of skill and ability. Except as required by applicable state and federal law, no consideration shall be given to race, color, creed, age, sex, handicap or national origin when hiring new teachers. It is understood that this provision shall not be subject to the arbitration provisions of this Agreement.*

In the explanation of the violation, Mr. Mudrovich repeated what he had written to Mrs. Leonard on September 9, 1997. On November 4, 1997, Mr. Knaack denied Mr. Mudrovich's grievance on the basis that Article 2 and Article 30 of the general contract formed between the D.C. Everest School District and the D.C. Everest Teacher's Association had not been violated.

On November 5, 1997, Mr. Mudrovich brought the grievance to the Superintendent of Schools. The same allegations about hostile environment, continued harassment, retaliation, unfairness, and loss of equal opportunity for employment were stipulated.

On November 12, 1997, Dr. Dodd sent a letter to Mr. Mudrovich saying he would meet with him about his grievance on Monday, November 17, 1997, at 3:30 p.m. Mr. Mudrovich called Dr. Dodd and asked that the date and time for the conference be changed to November 18, 1997 at 3:45 p.m. On November 18, 1997, a meeting was held as per step 2 of the grievance process. Present at the meeting were George Mudrovich, teacher; Gerry LaBarge, DCETA representative; Tom Coffey, Uniserve Director; Superintendent Dodd; Assistant Superintendent, Instruction/Pupil Services Dan Hazaert; Assistant Superintendent, Business/Personnel Tom Owens.

#### ISSUES INVOLVED:

1. Has a hostile work environment been created for Mr. Mudrovich?
2. Has the D.C. Everest administration been unreasonable and unfair in the assignment of Mr. Sheehan to supervise Mr. Mudrovich?
3. Have Mr. Mudrovich's rights for equal opportunity for employment been violated?

#### REASONS FOR DECISION:

On the form filing this grievance, Mr. Mudrovich states Article 2 and Article 30 of the teacher contract have been violated. Mr. Mudrovich did not say how Article 2 has been violated. Mr. Coffey suggested that the district has exercised their managerial rights in an unreasonable way. Whether a person gets his or her own room is not a legitimate way to measure reasonableness. To assume that every teacher should have his or her own room is, in fact, unreasonable. It is very difficult to respond to this claim that the district violated Article 2 when the grievant does not specifically say how Article 2 has been violated. The

administration invoked their managerial rights according to long-standing past practice the way the contract says we should and in the way we do for every other teacher in the same circumstances.

Mr. Mudrovich claims relative to Article 30 that his career will be stymied in the future. He has no basis, in fact, for this claim. He has been given the same opportunity according to Article 30 that every other teacher has been given.

Mr. Mudrovich contends a hostile work environment was created because his request for a dedicated French room was not immediately granted and that the room eventually given was not large enough. A French room has been given to the French program. The room given was previously occupied by a Spanish teacher with numbers in classes similar to Mr. Mudrovich's 30, 18, 18, 21.

Mr. Mudrovich contends that a hostile work environment was created by abusive, angry, aggressive actions by Mr. Knaack, Dr. Dodd, and Mr. Sheehan. In the conference on November 18, 1997, Mr. Mudrovich was asked to give specific words, actions, dates and times when this behavior was exhibited. He stated he had not experienced this kind of behavior from Dr. Dodd and Mr. Sheehan, but he said on July 17, 1997, Mr. Knaack threw his arms in the air and in a raised voice said, "You aren't having that room. That is Jean Haverly's room." Mr. Mudrovich admitted he was also raising his voice during this conference.

Mr. Mudrovich contends that a hostile work environment has been created through harassment. Specifically, he cites that Mr. Knaack threatened a barrage of observations. When asked the date, time and manner in which Mr. Knaack did this, he cited Mr. Knaack's letter of August 27, 1997, in which Mr. Knaack denies the request to change Mr. Mudrovich's supervisor. Mr. Knaack states in the letter, "Please be cognizant of the fact that although Mr. Sheehan is your primary supervisor, that Mrs. Solsrud, Mrs. Gilmore or myself may also on occasion observe you in your teaching environment." Mr. Knaack included this statement not as a threat but as information about a long-standing district practice. It is quite common that more than one observer participate in the supervision process in a given year.

In the November 18 conference, Dr. Dodd asked Mr. Mudrovich if he had been asked to do anything that any other teacher had not been asked to do. Had he been belittled, sworn at, called names, or anything similar by colleagues or administration? Mr. Mudrovich answered in the negative on all counts.

When asked what the nature of the hostile environment was and how he had been harassed, Mr. Mudrovich said it was because he had not been given a room and he had been assigned Mr. Sheehan as his supervisor. He offered no other explanation. When asked if his perception of being harassed affected his ability to perform his job satisfactorily, he said yes. Mr. Mudrovich said he thinks about it all the time and even wakes up at night thinking about it. When asked if the learning of children was affected by his fears, Mr. Mudrovich said yes but added it would be hard to prove as almost all of them were getting an A or A -. Asked if he was getting professional help, he said "no."

Mr. Mudrovich asked that a formal hearing be convened to determine whether the administrators in questions were in violation of Wis. State Statute 134.01, *"Injury to business; restraint of will. Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his or her reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his or her will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500."* Mr. Mudrovich was asked how the administrators in question willfully and maliciously injured him. Mr. Mudrovich's response was, "I don't know if it is true."

Mr. Mudrovich contends that the assignment of Mr. Sheehan as his supervisor is harassment. In the November 18 conference, Mr. Mudrovich was asked if the observations and conferences conducted by Mr. Sheehan about the observations were professional, about learning, about teaching, and about the curriculum. To all of the questions, Mr. Mudrovich answered yes.

The administration assigned Mr. Sheehan to Mr. Mudrovich because Mr. Sheehan had been his primary supervisor during the previous year when Mr. Mudrovich was taking staff development related to the district's supervision and instruction model. Due to the coaching component of the effective instruction model, it has been the administrative practice that the same supervisor (coach) continue in the supervision process to ensure the application of the model in the classroom.

Mr. Mudrovich is claiming in his grievance that his rights for equal opportunity of employment have been violated. When asked if he had applied for any position other than the one he currently has, he said "no." When asked if he had been denied equal access to the selection process, he said, "No. Not yet, but I know I will be in the future." When asked if he knew the process the

district used to select new employees or to promote employees, he said, “No, not entirely.”

Mr. Mudrovich contends he has not been given a 100 percent contract because the French program has been treated unfairly. He cites the dropping of French II at the high school during the 1996-97 school year as evidence of this unfair treatment. It was pointed out to Mr. Mudrovich that when there is low enrollment in foreign language classes at the second level, the department has several choices depending upon various circumstances. A teacher can teach the class as a sixth class, students can go to the junior high to take the class, a teacher can teach French I and II as a combined class, or the class is dropped. It was also pointed out that during the same year Mr. Mudrovich contends French II was dropped to keep him at a less than 100 percent contract the following classes were also dropped: Sewing, Printing and Silk Screening, Auto Mechanics, and Principles of Technology. Classes combined included: Business Procedures and Information Processing III; Apprenticeship I, II, and Technology Internship; Architectural Design and Advanced Drafting. Mr. Mudrovich asked if this had ever happened to another foreign language class. It was pointed out that German students had traveled to the Junior High for German II and many times in the past Mr. Ackermann had taught six classes to keep a class. Additionally, since the grievance conference on November 18, Dr. Dodd has discovered that German II was dropped for the 1997-98 school year as none of the other options could be put into effect for that class. All classes with low enrollment are dropped in accordance with Board policy.

#### DECISION:

In summary, the grievance is denied because:

1. Testimony and evidence does not support the claim that a hostile work environment has been created for Mr. Mudrovich. In his own testimony:
  - Mr. Mudrovich cites one instance when Mr. Knaack raised his voice to him. He also cites that he, too, was raising his voice during the conference.
  - Mr. Mudrovich self reports that Mr. Sheehan has been very professional during the supervision process.
  - Mr. Mudrovich reports that Dr. Dodd and Mr. Sheehan have never been

abusive to him.

Page 47  
Dec. No. 29946-L

- Mr. Mudrovich said he does not know if administrators have been willfully or maliciously injurious to him.
- 2. Assignment of rooms and supervisors are a necessary part of management's rights as determined by contract and long-standing past practice.
- 3. Mr. Mudrovich has not been denied equal opportunity for employment.
  - The French program has not been treated differently from other foreign language programs or subject areas within the school system when it comes to class size, teacher assignment, dropping and combining classes, and the scheduling of students to classes.
  - Mr. Mudrovich was approved for the .50 FTE French teacher position for the 1995-96 school year at the regular board meeting on May 23, 1995. Mr. Mudrovich stated that he has not applied for any other position in the district and that he has not been denied access to the posting, application or selection process.
  - Mr. Mudrovich's time as a teacher was increased from 65 percent in 1996-97 to 80 percent during the current 1997-98 school year.
  - Mr. Mudrovich has not incurred a financial loss.
- 4. The grievance was not filed in a timely manner.

Dodd did not deem it relevant to note in his response that, during the Step 2 meeting, Complainant requested and was denied a copy of the notes taken by Hazaert and Owens. Complainant considered Dodd's response to contain distortions and inaccuracies. Prior to the Step 3 hearing, the Association asked the administration if they would agree to have an Association staff attorney mediate the grievance and the lawsuit against Soto and Martin. Dodd, who was present at the mediation that was scheduled in response to this request, concluded that Complainant, who was represented by his personal attorney, would not settle for less than the corrective action requested in the grievance, which corrective action Dodd considered to be outlandish. The mediation did not resolve the grievance and, on January 19, 1998, the School Board held a hearing on the grievance of October 29, 1997. Leonard was absent from this meeting. Complainant's attorney, Ryan Lister, addressed the School Board and various School Board members questioned Lister, Complainant and Dodd. LaBarge was also present at this meeting. When Complainant asked for five minutes to read a statement, his request was granted. After twelve minutes, School Board President Fisher informed Complainant that he had heard enough and Complainant was not permitted to finish reading his statement. Complainant was permitted to submit a copy of his written statement to the School

Board. This written statement includes the following:

Page 48  
Dec. No. 29946-L

I am grateful that I now have the opportunity to address the Board concerning the turmoil that I have been put through by the three D.C. Everest administrators named in my grievance. I want to let you know that as a teacher, the last thing I ever wanted, or ever expected to be forced into, was to have to file a personal grievance against three of my bosses. I want you to understand that it was their actions, not mine, that have brought us all to this point.

No doubt, a picture has been painted for you casting me in the role of a trouble-making teacher. If you will now listen to what I have to say about all this, relying solely on the *facts* of the whole matter, you will see that that is not at all the case. You will see that I have conducted myself in a thoroughly professional manner.

At the time I was hired, in May 1995, I was thrilled to get a job at D.C. Everest School District. Everyone I knew told me that I was going to work for a very good district. I was told by Larry Baker that the French program here was then just ending its second year, but that it had grown and was expected to continue to grow. I worked hard my first year, putting in many extra hours. All my observation reports that year were favorable, as was my year-end evaluation, written by Bob Knaack.

One thing that I did want to see changed, however, was that there was no classroom dedicated to the French program, despite the fact that there were at that time four dedicated Spanish rooms, and one for German.

Since at that time I got along very well with all the other Foreign Language teachers - except for my fellow French teacher Anne Berns, which I will address later - I thought I could discuss the matter with them and try to resolve it in a friendly manner. Twice during the 1995-96 school year I raised the issue of having a dedicated French room in Department meetings. Both times, this was ignored.

But the Spanish teachers were certainly trying to make sure that they didn't lose *their* dedicated rooms. Toward the end of the 95-96 school year, in fact, they requested that Mike Sheehan attend one of our Department meetings so that they could impress upon him how important it was to have "little pieces of the target cultures" there in the Junior High. The reason they felt it necessary to do this was that the Junior High room assignments were going to undergo wholesale changes during



the coming 1996-97 school year because of the introduction of 7th grade

Page 49

Dec. No. 29946-L

teaming and they didn't want the Foreign Language Department to be shortchanged. Mike obviously accepted their reasoning at that time, because the Foreign Language Department kept all 5 of its rooms for the 1996-97 year.

At the beginning of the 1996-97 school year, I tried to lay the groundwork for getting a French room during the 1997-98 school year. The Spanish teachers had made it clear during the previous school year that they weren't going to volunteer to give over one of quote "their rooms" unquote. So I first went to see Mike Sheehan on October 18th, 1996, and asked him if it was too early too (sic) discuss room assignments for the 1997-98 school year. He responded that it was never too early to consider such matters. He suggested that I write a memo to my Foreign Language Department colleagues, laying out my arguments, and asking them to discuss the matter at the next Department meeting. This I did. I sent a memo to Corinne Solsrud, The Curriculum Coordinator, and sent copies to all my colleagues and to Mike Sheehan. Not a single person responded to that memo, and it was not discussed at either of the next two Foreign Language Department meetings.

So in January of 1997, I went back to Mike Sheehan and told him that it was obvious that my colleagues did not want there to be a dedicated French room. I further told Mike that I found it highly hypocritical of the Spanish teachers to put forth impassioned arguments about the absolute necessity of having four "little pieces of Spain", but that they were not prepared to have that apply to a "little piece of France". Mike agreed with me and told me that he would not allow the Spanish teachers to make that argument about Spanish if they weren't prepared to have the same line of reasoning apply to French. He strongly hinted to me that there would be a French room for the 97-98 year, but he didn't actually commit to that. Two more times during the Winter and Spring of last year, I went back to Mike Sheehan to ask him if he had assigned rooms yet. Both times I reminded Mike of the arguments about "little pieces of Spain and France." Both times Mike told me that he would let me know as soon as he had made a decision. Finally, in May of 1997 I saw the assignments for the 1997-98 school year. French had now increased to *six* sections for the 97-98 year, but these sections were to be taught in five different classrooms, whereas Spanish still had their four classrooms, and German, with 7 sections - only 5 of which could be taught in one given room because of scheduling conflicts, had their dedicated room. So I then went to Mike and very politely asked him why

this was so.

Page 50  
Dec. No. 29946-L

Now, I don't know how I could *possibly* have handled this matter more professionally than I had done. And there is *no question* that having a French room was the correct thing to do. Even Dr. Dodd later told me that what Bob Knaack and Mike Sheehan should have done was to tell the Foreign Language Department, "There *will* be a French room. Now you try to work out the details among yourselves." One would think that at this point, Mike Sheehan would have assembled the Foreign Language Department and told them as much.

But Mike did not do that. Rather, he got in touch with Corinne Solsrud. The result was that Corinne called a May 28th Department meeting, which Mike did not attend. We were all told at that time by Corinne that we were to discuss the matter and arrive at a solution among ourselves.

Now this was a callous and highly cynical way that Mike Sheehan chose to quote "resolve" unquote this matter. Mike was completely shirking his responsibility to handle this departmental conflict in a fair and just manner. He just threw me to the wolves. He already *knew* that the five Spanish teachers would press their numerical superiority over the French program. With twenty-plus years of experience as an administrator, Mike also knew that his refusal to exercise leadership and do the right thing would necessarily lead to strife within the Foreign Language Department, as surely as crying out "fire" in a crowded theater would cause a panic. Yet that was how Mike chose to handle the matter. And needless to say, that May 28<sup>th</sup> Foreign Language Department meeting was characterized by harsh feelings on both sides of the table. Mike Sheehan is paid big bucks to sit in that chair and make fair decisions, even when those decisions might make some people unhappy, yet he chose to abuse me by throwing all that off onto my shoulders, which was very upsetting to me during that May 28<sup>th</sup> meeting. Now, if it was true that I was a trouble maker, I would have immediately filed a grievance or denounced Mike Sheehan to Bob Knaack or Dr. Dodd. But that's not what I did. I don't want to have strife with my colleagues and bosses anymore than anyone else does. What I did was to follow Corinne Solsrud's instructions to try to work this out among ourselves. I wrote up a room-assignment proposal and distributed it to all of my colleagues, specifically *excluding* Mike Sheehan and Bob Knaack, so that Corinne Solsrud would not think that I was disobeying her explicit instructions. It is absolutely clear that I was doing everything I could to remain as professional as possible, even though my Vice Principal was not.

Then things took a very malicious turn. Now, we are not here today to resolve a legal dispute between me and Shar Soto and Holly Martin, and I am not asking that you Board members make *any* kind of judgment about their actions. But there are some *undisputed facts* about what happened on May 30th, 1997 that do have a direct bearing on what we are doing here today, and I have every right to inform you Board members how Mike Sheehan and Bob Knaack handled this matter.

On May 30th, the morning after I distributed to my colleagues my May 29th proposal for room assignments, I received a summons to Bob Knaack's office. That note said that he wanted to talk to me about my treatment of Carol Maki. I went to Bob's office right away. Bob told me that four teachers had come to him that same morning to complain that I had been verbally abusive to Carol Maki. I was stunned. When Bob explained that this had to do with a note that I had jokingly written to Carol two weeks previously, I was flabbergasted. The note I had written to Carol was indeed somewhat crude, but it was written as a joke and received that way. Carol and I *both* laughed about it in the upstairs faculty lounge the next morning, as I explained to Bob.

As an aside I will just say that Carol and I had been friends since I started teaching at D.C. Everest. We had spent much time together, with a small circle of other teachers in the basement lounge. As any teacher who has spent any time at all with that group in the basement lounge will tell you, the language down there often gets rather salty, including interpersonal comments and conversations. If anybody wishes, I can refer to specific instances, but that would only embarrass Carol Maki and other teachers. As everyone knows, there are people and groups of people that you can talk with one way, whereas you would never dream of talking the same way in a group of people you don't know.

Yet somehow four teachers just *happened* to go to Bob Knaack during the same short time span in order to brand me as an abuser of a female subordinate. Yet Bob made it clear that Carol Maki herself did not want to make a complaint. And this was not a trivial matter. If I had indeed abused Carol, that would have been grounds for firing me, as those four teachers well knew. I explained to Bob Knaack that Carol and I were good friends, that my note to her was a joke, and that she had clearly taken it as such. After just about two minutes of this conversation with Bob, I asked him if any of these teachers would have been from the

and asked me why I would think that. Now, Bob knew *perfectly* well that we were having a dispute about room assignments, yet he acted as if this was all news to him. And he knew *perfectly* well that Shar Soto and Holly Martin were two of the four teachers who had come to him, yet he denied it to me, and refused to acknowledge a connection between the room assignment dispute and the verbal abuse allegations, a connection that he knew *perfectly* well existed.

The first thing I did after I left Bob Knaack's office was to go up to Carol Maki's room to discuss this with her. I told her that I was extremely sorry if I had offended her two weeks earlier, but that I was confused why she had laughed about it with me the following day. Carol wouldn't look me in the eye, and it was clear to me that she didn't want to talk about it, so I apologized again and left her room.

Just outside Carol Maki's room, at the top of the stairs, I ran into Shar Soto and Holly Martin. I asked them point blank, "Can I assume that one of you two went to see Bob to complain about me abusing Carol?" Shar immediately responded, in a very self-satisfied way, "You can assume we *both* went to see Bob."

I then went back to Bob Knaack's office and told him that I had found out from Shar and Holly themselves that they were two of the four teachers who had come to him. I also told Bob that I wanted him to call a meeting with him and me, Shar and Holly, Carol Maki, and Bob Coleman, so that we could get to the bottom of their making these allegations. I told Bob that this was the most malicious thing that had ever been done to me, and that I wanted the truth to come out. Bob told me that he would think about it. Monday, June 2nd, I went to see Bob to ask him what he had decided about the meeting. He told me, "There's no way I'm going to call such a meeting. There isn't a letter in anybody's file now, but if I have such a meeting, there will end up being a letter in someone's file, and I don't want that." I pointed out that Shar and Holly had clearly made these allegations in order to get back at me because of the room assignment dispute. Bob responded, "I don't connect the two things."

I pointed out that it should be obvious to anyone, by nothing other than the *timing*. This alleged abuse had occurred two weeks earlier, yet Carol Maki herself and these four teachers said nothing about it. But then, 36 hours after a heated meeting, all four of them, but not Carol Maki, come to him at the same time to brand me as an abuser! Bob just answered

again, "I don't connect the two."

Page 53  
Dec. No. 29946-L

Now, I would like you Board members to put yourselves in my shoes at that point. I had spent the last two years trying my best to be a good teacher, and indeed had had nothing but favorable observations, and two very favorable year-end evaluations. And I had tried to get the French program to be treated on the same level as the Spanish program. Then I see that Mike Sheehan refused to do so, and Bob Knaack wouldn't even call a meeting to discuss four teachers committing the vilest act that has ever been done to me, all the while knowing full well *why* they had committed that act.

What way is this to run a school? As educators, we wouldn't tolerate actions such as Shar and Holly committed by *seventh graders*, yet Bob and Mike not only tolerated it, they actually *rewarded* Shar and Holly by giving them *exactly* what they had wanted, to the clear detriment of the French program. When I asked Mike Sheehan, after it came out what Shar and Holly had done, what he was going to do about the room assignment matter, he responded very glibly that he would just leave room assignments the way he had originally done them, because in his words, "You felt that the Spanish teachers were just trying to throw you a bone [and by that he meant that they wanted French to be taught in 3 different rooms versus 5], so I'll just leave things the way they are." I ask you Board members, just why was Mike placing the Spanish teachers in a position where *they* would be 'throwing *me* a bone'? Is that how Mike views his role as an administrator?

Mike Sheehan later tried to deny that his actions were unfair. On October 29th, 1997, in the first grievance conference in Bob Knaack's office, Mike flatly denied that there is any competition between the three Foreign Language programs - Spanish, German, and French - and that quote "it is unfortunate that George perceives that there is competition between the three languages" unquote. That statement of Mike's is ridiculous. Before French was instituted at D.C. Everest, there were *three* full-time German teachers at the Junior High. Now there is *one*. That cannot be attributed to anything but competition for students, a competition that, unfortunately for *German teachers*, has hurt the German program. That's the real world, and Mike knows it full well.

Mike Sheehan and others have also put forth the argument that room assignment is primarily a function of seniority. If this is true, then why was Nancy Autermann, a very senior teacher, put in the smallest room in

her department during the 1997-98 school year? Nancy strongly

Page 54  
Dec. No. 29946-L

protested that room assignment, yet it was not changed. By the way, I want to make it perfectly clear that Nancy has never talked to me about that problem, and does not know that I am talking with you about it. I know of it simply because it's common knowledge at the Junior High.

One would think that if I was a trouble maker, I would have gone to denounce Bob Knaack and Mike Sheehan to Dr. Dodd in early June, or that I would have filed a formal grievance. Yet that is not what I did. I went to Bob Coleman to ask him if the Union would get involved in a dispute, not against the District, but between several members. Bob Coleman said he would check into it, and informed me on June 3rd that he really just wanted me to drop the whole matter. He did tell me, however, that he had gone and talked to Shar and Holly, and that they had told him that they "wish they hadn't done it."

At that point, the first week of June, 1997, I asked Mike Sheehan if his decision on room assignments was final. He told me that he might change his mind, and that I should check with him during the week of June 16th. I went to see him on June 18th, and in a short meeting, he told me that he would indeed leave the French program in five separate rooms while the Spanish teachers would continue with their four dedicated rooms. I told Mike that I thought that was highly unfair, and that I would appeal to Bob Knaack if that was his final word. Mike answered, "You can do whatever you want, but it won't change anything." I went right over to Bob's office and made my appeal. He also turned me down, using many of the arguments he used later, on July 17th, which I have documented in Exhibit #7, my July 17th letter to Dr. Dodd. I again asked him how he could reward Shar and Holly for their act of maligning me in order to resolve our room dispute, and Bob just repeated his earlier statement, saying, "I don't connect the two." I told Bob that I thought he was being unfair, and that I would appeal to Dr. Dodd if that was his final word. Bob told me that I was free to do whatever I wanted.

That's when I went to Dr. Dodd. We met in his office on Monday June 23rd, 1997. Dan Hazaert was also there as I related the problems I had had with both Mike Sheehan and Bob Knaack. Dan told me that administrators were not allowed to discriminate in access to facilities. Dan pointed out that he himself would not make a decision on room assignments, but that he would discuss the matter with Bob, and that Bob would later get back with me.

Bob and I did meet in his office on July 17th, 1997. But the night before, when we had a brief phone conversation in order to set up the meeting, Bob made it clear to me that he still didn't want to give the French program its own room. He asked me, "What's your alternative?" I simply answered, "Let's talk about it tomorrow."

The board should have access to a copy of my contemporaneous notes of that July 17th meeting, because I sent them in a letter to Dr. Dodd, and he assured me that he would keep that letter on file. I ask that you Board members read that letter at your convenience, because it provides a very clear picture of the hostility that Bob Knaack directed at me at that time. At this time I wish to bring your attention to just one small portion of that meeting, and that is the point where Bob Knaack and I were discussing exactly which room the French program would be assigned. I was making the very reasonable point that one of my sections had 31 kids in it, and that Room #11, the room he had originally proposed for French, would be a very tight fit for those 31 students. I told Bob that I wanted to see what kind of numbers the Spanish sections had. Bob responded that it didn't make any difference, because he had changed the French room to Room #10. I told Bob that I still wanted to see what kind of numbers were in the Spanish sections, because if French had such a big section, it ought to be in the biggest room. All of this was being discussed in a very even tone of voice. But Bob clearly did not want to show me those numbers, and I only found them out later. This is how he responded to me. He threw his arms in the air and *yelled* at me, "You're not getting Room 7! That belongs to Jean Haverly!"

Now, I have been in many meetings with bosses in my life. Some of these meetings involved disagreements. But I had *never* been *yelled* at by a boss before. That was one of the most unnerving things I have ever experienced. Dr. Dodd has tried to play this down as Bob simply raising his voice, but he didn't "raise his voice." He *yelled* at me. I can't believe that the D.C. Everest School Board considers this to be acceptable management practice.

This bothered me enough that I felt that it was absolutely necessary to appeal again to Dr. Dodd. Bob Knaack's hostility toward me was now manifest, and I was seeking some sort of protection from retribution. Let me make it clear that I specifically asked in that July 17th letter to Dr. Dodd that there be a meeting to discuss how Bob had treated me. I

told Dr. Dodd that I wanted Bob to respond, and witnesses to be

Page 56  
Dec. No. 29946-L

questioned as soon as possible. But Dr. Dodd specifically turned down this request in a phone conversation with me on July 29th.

Now, if I was a trouble maker, one would think that I would have then filed a formal grievance against Bob Knaack. But I *didn't*. I was *still* trying to handle my problems with Bob Knaack without having to resort to the serious step of a formal grievance. I asked of Dr. Dodd that he simply make the decision that neither Mike Sheehan nor Bob Knaack be my primary supervisor for the 97-98 school year, nor any future years. Considering the fact that in any year four different people could be assigned as a given teacher's primary supervisor at the Junior High, and that it was certainly reasonable to suspect that Mike and Bob might want to retaliate against me, this was a very reasonable request. If Dr. Dodd had had any concern for my situation, he would have granted this request. But he didn't.

In fact, Dr. Dodd added to my turmoil. He told me that the *reason* Bob Knaack later changed our agreed-upon assignment to the French program from Room #10 to Room #11, the smallest room in the Foreign Language Department, was not that the Spanish teachers had objected to this, as Bob Knaack had told me. Rather it was that my fellow French teacher, Anne Berns, had objected to it. Dr. Dodd then went on to (sic) tell me of some very specific complaints that Anne had made about me. It is completely obvious that Anne had made these complaints to Bob Knaack, and that Bob had then discussed them with Dr. Dodd as if Anne's version of our problem was the undisputed truth. The unconscionable thing is that Bob Knaack had never informed me of Anne's comments before he passed them up to Dr. Dodd. If Bob had done me the justice and the simple common courtesy of discussing them with me, he would have found that Anne was not giving him a fair view of the situation. I'll point out just one undisputed fact that Bob would have found out, about the way Anne Berns has treated me. During the winter of the 1996-97 school term, Anne, on *six* separate occasions, put notices in my mail box of vacancies at other schools. These notices were all unsigned. When I finally asked Anne if she was the one who had put these in my mail box, she admitted that she had. I told her that it would have been a courteous thing to simply sign her name to them, so that I would know who they were from. Her response was that she didn't have the time to write her name on them. Does this sound like the actions of a teacher who has any desire whatsoever to get along with a colleague? There are other examples.



Feel free to ask me about them later.

Page 57  
Dec. No. 29946-L

But the point I was making was that my superintendent, Dr. Dodd, told me in our July 29th phone conversation, when I was appealing to him for protection from the actions of Bob Knaack, that I had, in his words, and I quote, "alienated many of my Foreign Language colleagues." Where would Dr. Dodd have gotten this viewpoint from, if not from Bob Knaack? Perhaps Dr. Dodd was not aware that I had shared a classroom with three of my Foreign Language colleagues, Brent Brye and Holly Martin in their Spanish rooms, and Bob Jones in his German room, during the 1995-96 school year. None of these three ever talked with Bob or anyone else about problems with me, because there *were* none. I even repeatedly subbed for Shar Soto during the 1995-96 and 1996-97 school years *at her request*. Additionally, I subbed at least 80 times for other teachers during the 1995-96 school year, and at least 30 times during the 96-97 school year. And, I shared homeroom duty with Bev Preussing during the 95-96 year, I shared homeroom duty with Paul Zopel and Laurie Smith during the 96-97 school year, and shared classrooms with Bob Jones, Tom Gustafson, Christian Ammon, and Marla Day during the 1996-97 school year. If I was the type of teacher who "alienates" other teachers, wouldn't Bob Knaack had received at least *one* complaint about me during that time?

It was clear to me at this point that the hostility from Bob Knaack and Mike Sheehan was not going to disappear, and that Dr. Dodd's earlier assurances that he would protect me against future unfair actions by them meant nothing. On August 8th, 1997, at 11:40 AM, I went to the Junior High to inform Mike Sheehan, and ask Mike to inform Bob Knaack, that I was planning to ask the Board to invoke a disciplinary hearing against the two of them for the extremely unfair way that they had treated me in this whole affair. I can only assume that Mike did indeed inform Bob of that information. On August 26th, I was informed that Mike Sheehan had indeed been assigned by Bob Knaack as my primary supervisor. It was clear that their attitude to me was simply, "We'll show him." Nevertheless, I went to Mike and asked him to arrange to have someone else be my primary supervisor. His response was, "No, I'm not going to give you that gift."

Now, you Board members may well ask yourselves why I would be so worried about having Mike Sheehan as my primary supervisor. You probably are not aware of this, but on at least one occasion, a female teacher has left a post-observation conference with Mike in tears. If, as Mike, Bob Knaack, and

Dr. Dodd insist, the sole function of a primary supervisor is to help a given

Page 58

Dec. No. 29946-L

teacher "grow in their career", how to (sic) they explain a teacher crying in one of these sessions? I am just as worried about being subjected to that type of intimidation as any female teacher. When I read the patronizing memos from the three administrators against whom I have brought this grievance, in which they completely belittled my justifiable concerns and told me how *lucky* I was to have Mike as a primary supervisor, I saw that these three administrators had no regard for my feelings as a teacher, and my rights as an employee of D.C. Everest School District.

And that is when, after all the turmoil and sleepless nights I had been subjected to, that is when I filed this grievance. I hope you board members can put yourselves in my shoes. It is highly uncomfortable for me to come to work each morning knowing that my bosses are hostile to me, and that the reason they are hostile to me is simply that I stood my ground for what is right.

Finally, I would like you to think of my students. I trust that the Board is not in favor of students being taught by someone who has unjustly been put in fear of his job.

The "Minutes" of this School Board meeting indicate that School Board members were told by Dodd that a principal, assistant principal or curriculum coordinator serve as the primary supervisor for all teachers and by Knaack that no teacher at the Junior High selects his/her supervisor; and that Complainant acknowledged that he was not being treated unfairly by Knaack during the 1997-98 school year. These "Minutes" also contain the following:

Lister said at the level two response, Hazaert told Knaack could not discriminate in the assignment of classrooms. Lister said it was unfair for Knaack to yell at Mudrovich and it was unreasonable for Knaack to tell Mudrovich he would call parents and tell them their children could not take French. He said that this would have a direct impact on Mudrovich's income. He said it was hard to (sic) Mudrovich to file a grievance against his bosses and that it had a chilling affect on his career. Lister said all of this has created a hostile work environment.

Lister said Mudrovich's statements were distorted in the grievance answers. He said he had nine pages of omissions. He said this was a personal grievance and not a policy grievance. He questioned why the superintendent replied to the grievance when he was part of it. He said it was a personal grievance against Knaack, Sheehan and Dodd.

After Complainant and Lister indicated that they had nothing more to say, the School Board

went into closed session at approximately 8:49 p.m., voted to deny the grievance and, at

Page 59

Dec. No. 29946-L

8:55 p.m., adjourned the meeting. Although not reflected in the “Minutes,” Dodd told Complainant that the allegation that Dodd and Knaack may have violated Sec. 134.01, Stats., was a very serious allegation; stated that he was very unhappy about Complainant having raised such an allegation and appeared to be upset over this allegation. At times during the meeting, District representatives appeared to be impatient when they addressed Complainant and, in LaBarge’s opinion, some statements made to Complainant and Complainant’s attorney were a bit insulting. The demeanor of the School Board members, as well as their questions, left Complainant with the impression that the School Board members were not interested in the facts, but simply wanted to support their administrators. The School Board’s attorney, Ronald Rutlin, provided the School Board’s written response in a letter to Lister dated January 20, 1998, which letter includes the following:

. . . At the conclusion of the Step 3 grievance meeting on Monday, January 19, 1998, the Board voted unanimously to deny the grievance. The reasons for the Board’s denial of the grievance include the following:

1. Many of the issues presented are not grievances as defined by the collective bargaining agreement.
2. No evidence was presented that establishes a violation of Article 2, Article 30, or any other section of the collective bargaining agreement.
3. The grievance was not timely filed since it was not filed within ten (10) working days after the cause of the grievance was known or should have been known by Mr. Mudrovich

The DCETA files and processes grievances that may not be arbitrable in order to call the Board’s attention to an issue that the DCETA would like to have resolved. After the School Board denied the October 29, 1997 grievance, the DCETA’s representative assembly discussed the grievance and decided to not appeal the grievance to arbitration. In making the decision to not appeal the grievance to arbitration, the DCETA considered the following: that Complainant had not been injured in that he had received a French room, as he had requested; that there was an issue as to whether or not the grievance was timely; the remedy requested in the grievance was problematic; and it was unlikely that a grievance arbitrator would rule in favor of Complainant.

10. On January 20, 1998, Knaack assigned Complainant to be in the IMC study hall every day. Knaack made this assignment because Complainant had a small assignment and Shirley Bjorklund, the teacher assigned to this IMC study hall, was having difficulty with this study hall. On January 22, 1998, Knaack issued the following memo:

TO: IMC SUPERVISORS  
FROM: ROBERT C. KNAACK, PRINCIPAL  
SUBJECT: IMC SUPERVISION  
DATE: January 22, 1998

There appears to be some confusion regarding staying at your assigned IMC duty for the entire period. It is our intent that IMC Supervisors remain in the IMC throughout the entire period and not share this assignment. If you feel that two supervisors are not needed in the IMC, we could find a substitute duty for the IMC assignment.

Thanks for your efforts on behalf of kids.

Knaack issued the January 22, 1998 memo in response to Bjorklund's complaint that Complainant was not in the study hall at all times and to remind all IMC supervisors of what was expected of IMC study hall supervisors. Knaack also responded to Bjorklund's complaint by issuing a handwritten note to Knaack and Bjorklund reminding each that they must be in the study hall at all times. On one occasion, Complainant told Knaack that Complainant did not like being supervised by Bjorklund. Knaack did not agree with Complainant's assertion that Bjorklund was supervising him. In March of 1998, the District renewed Complainant's 80% teaching contract for the 1998-1999 school year. On or about March 10, 1998, Complainant returned his signed contract to the Junior High Office and asked the secretary to give him a receipt for this signed contract. In Complainant's opinion, the secretary appeared reluctant to do so. Knaack and Sheehan then asked Complainant to come into their office; asked what Complainant wanted; Knaack told Complainant that it was not the secretary's job to sign such a receipt; Knaack and Sheehan refused to sign such a receipt; and Knaack indicated that, if Complainant were concerned, then Complainant could take the contract to the central office himself. In Complainant's opinion, Knaack was angry and the only reason for this anger was that Complainant had filed a grievance against Knaack. In April 1998, Lister deposed Sheehan and Knaack in the lawsuit against Soto and Martin. In Complainant's opinion, neither was particularly happy about being deposed.

11. On or about May 14, 1998, a "Master Class List" for the 1998-99 school year was posted at the District's Junior High. Sheehan prepared this "Master Class List" with the assistance of his secretary, Vicki LaPorte. As a general rule, building administrators, rather than the District Administrator, schedule class assignments. Prior to the time that Sheehan printed this Master Class List, Sheehan and Knaack had discussed staffing, but had not decided to assign Complainant to teach an additional section of French. Under the normal practices of the District, the "Master Class List" that is prepared in the spring of the year is not a final schedule for the ensuing year, but rather is subject to change. Consistent with this normal

practice, the cover page of the posted 1998-99 "Master Class List" contained a note from

Page 61

Dec. No. 29946-L

Sheehan that states: "I'm sure there will be some changes before August, especially to class sizes, but for the most part here is next year's schedule. If you detect a problem where you're scheduled to be in two places at one time etc. please let me know about it ASAP." On or about May 15, 1998, Complainant reviewed this "Master Class List" and observed that he had been assigned five sections of French, rather than the four that were reflected in his 1998-99 contract. Complainant went to Sheehan and said "I see that I am scheduled for five sections of French" and Sheehan responded "That is correct." When Complainant stated that he appreciated the additional section, but that his contract was for 80%, Sheehan indicated that he did not know that and would look into the matter. Sheehan assigned the extra section of French to Complainant because Sheehan needed to assign someone to this section in order to run the computer program and not because he, or any other District administrator, had decided that Complainant would be teaching an extra section of French for the ensuing school year. Given the fact that the Junior High had the available FTE, Sheehan and Knaack had authority to assign the extra section of French to Complainant, subject to the School Board's authorization to increase Complainant's contract to 100% FTE. Complainant's conversation with Sheehan was on a Friday. The following Monday, May 18, 1998, Knaack asked Complainant if he would like to be a 100% FTE teacher and Complainant responded yes. Knaack then asked Complainant to put that in writing. Knaack asked if Complainant would be interested in becoming a 100% FTE teacher because, in his experience, not all part-time teachers wanted to be full-time teachers. Complainant followed-up this conversation with a written response on May 18, 1998, which includes the following:

Re: Moving up from an 80% position to a 100% position as French teacher

Dear Bob,

In response to your verbal inquiry today whether I'd be interested in a full-time (i.e. 100% FTE) position, the answer is definitely "yes".

At the time that Knaack received this response, Knaack was not willing to increase Complainant to 100% FTE because Knaack did not approve of Complainant's relationship with Berns; Knaack considered Complainant's lawsuit against Soto and Martin to have negatively affected the atmosphere in the Junior High School Building; and Knaack was uncertain as to whether or not Berns would be available to teach the extra section. Knaack's opinion regarding the atmosphere in the Junior High was not based on conversations with any teacher, but rather, was based upon his belief that teachers in the Junior High School Building were unnaturally quiet. In Knaack's opinion, the unnatural quiet was due to the fact that Complainant's colleagues were concerned that they would be sued if they said something inappropriate. In early to mid-May, 1998, Dodd, Knaack, and Sheehan met to discuss a

number of administrative and staffing issues. Complainant's grievance was not discussed at

Page 62

Dec. No. 29946-L

this meeting. D.C. Everest Senior High School Principal Tom Johansen may have been at this meeting. At the meeting, Dodd and Knaack discussed whether to make Complainant a 100% FTE teacher. Although Dodd previously gave consideration to the fact that increased enrollments would probably necessitate a 100% FTE French position, this was the first time that Dodd had addressed the possibility of making Complainant a 100% FTE teacher. Knaack indicated that he was thinking of making Complainant a 100% FTE teacher, but that he had some reservations based on Complainant's relationship with Berns and the lawsuit that he had filed against Soto and Martin. At this meeting, Dodd told Knaack that the decision to raise or to not raise Complainant to a 100% position was Knaack's decision to make, but that if Knaack did not raise Complainant to a 100% FTE teacher, then Complainant would probably file a prohibited practice suit, or take some type of legal action, because Complainant had previously claimed that the administrators were going to retaliate against him. Dodd's subsequent knowledge of the May 18, 1998 conversation between Knaack and Complainant lead Dodd to conclude that, on May 18, 1998, Knaack was willing to offer Complainant a 100% position despite having reservations about Complainant. On May 18, 1998, Dodd had reservations about Complainant because Complainant had demonstrated that he was obstinate; not a team player; and would do almost anything in his power to get his own way. Dodd's reservations were due to Complainant's note to Maki; Complainant's lawsuit against Soto and Martin and Complainant's attempts to obtain a dedicated French room. With respect to the latter conduct, Dodd was influenced by the fact that Complainant wanted his own room when more senior teachers had to share; that Complainant asked Dodd to intervene rather than working the issue out within his own Department; and that, when Dodd intervened and Knaack provided Complainant with a French room, Complainant was not satisfied with the room that had been provided to him. Complainant's suit against Soto and Martin, as well as Complainant's letters recounting Complainant's view of the Soto and Martin situation, lead Dodd to conclude that Complainant had not handled the situation reasonably. Dodd, who did not know whether or not Complainant and Maki were friends, did not consider the note to Maki to involve friendly banter. At the time of the staffing meeting, Dodd balanced these reservations regarding Complainant against his opinion that Complainant's classroom performance was acceptable and concluded that Complainant was entitled to the benefit of any doubt regarding increasing Complainant to a 100% position. At the staffing meeting, Knaack did not yet know whether or not Berns was available to teach the extra French section and did not tell Dodd that he would offer Complainant the 100% position. On or about May 22, 1998, Complainant asked Knaack about his 100% FTE contract and Knaack indicated that he was still looking into the matter.

12. On May 27, 1998, Complainant ran an errand when he was supposed to be supervising his IMC study hall. Sheehan, who happened upon Complainant in a hallway, told Complainant that he needed to be in his IMC study hall. Sheehan also told Complainant that there was a substitute in the study hall and that Sheehan did not like to have the substitute handle the study hall by herself. Complainant said "OK" and returned to his study hall.

Complainant understood that Sheehan was returning Complainant to his study hall because

Page 63

Dec. No. 29946-L

there was a substitute teacher in the study hall. At the beginning of the day on May 28, 1998, Complainant went to Knaack and asked about Complainant's teaching contract. Knaack told Complainant that he wanted to see Complainant. Complainant responded "What about now?" in a manner that Knaack considered to be very loud and very negative. Recalling that Sheehan had recently reminded Complainant of the need for Complainant to be in his study hall, Knaack responded that Complainant needed to be in his study hall. Knaack documented the "What about now?" statement because of the way that Complainant was reacting. Shortly after noon on May 28, 1998, Complainant was scheduled to be in the IMC study hall with Bjorklund. Instead, Complainant was at the counter in the main office of the Junior High depositing money for a French Club trip. Sheehan walked up to Complainant; confirmed that Complainant was supposed to be in the IMC; and told Complainant to return to the IMC. Complainant, believing that on May 27 Sheehan had indicated that Complainant should not leave the study hall when there was a substitute teacher, responded that Shirley Bjorklund was in there. Sheehan indicated that it was a two-person study hall and that Complainant and Shirley were both needed there. Complainant responded that he was just going to take a minute to deposit the money. In Complainant's opinion, Complainant was not refusing to return to the study hall, but rather, was agreeing to do it as soon as he finished depositing the money. At this point, Complainant concluded that Sheehan was acting in a rude and imperious manner, rather than in the collegial manner that Sheehan had exhibited on May 27. Complainant then told Sheehan that Complainant and Shirley occasionally leave for a couple minutes at a time. Sheehan then told Complainant "You need to go back to your study hall now, I don't have time to discuss this." Complainant, who considered Sheehan to have become cold and more military like, became angry. Complainant thought Sheehan was acting inappropriately by treating him like a 7<sup>th</sup> Grade Student in front of staff and students. Complainant asked if Sheehan enforced the rule so closely with all the other IMC supervisors because Knaack had issued a memo at the beginning of the semester that all IMC supervisors must be in the IMC at all times. Sheehan responded even more sternly "I'm not going to discuss this with you. Go back to the Study Hall now." When Complainant responded by inquiring if Sheehan was going to treat him differently from other teachers, Sheehan told Complainant to go to his study hall now. As Complainant left the office, he told Sheehan "I'll show you the memo." The referenced memo was the January 22, 1998 memo from Knaack to IMC supervisors. Complainant, who considered Sheehan's manner to be hostile and demeaning, returned to his study hall. Prior to this time, Complainant had made a number of trips to the office at times when he was supposed to be in the IMC study hall and had not been told to return to his study hall. Less than fifteen minutes after leaving the office, Complainant wrote a three-page account of his conversation with Sheehan. For approximately eight years prior to leaving her employment with the District in June of 1998, Vicki LaPorte worked as a secretary in the main office of the Junior High and was supervised by Sheehan. Sheehan, Gilmore, and Knaack have offices adjacent to the main office. As a normal part of her duties, LaPorte documented the behavior of students who lost control in the office in case she was

later asked for an account of the student's conduct. LaPorte, who observed the May 28, 1998

Page 64

Dec. No. 29946-L

exchange between Sheehan and Complainant, considered Sheehan to have acted respectful toward Complainant. LaPorte considered Complainant's interaction with Sheehan to be unusual because, in her experience, a teacher who received an instruction from Sheehan generally followed that instruction and, if the teacher disagreed with the instruction, the teacher would come back later to discuss it with Sheehan. LaPorte did not document this encounter between Sheehan and Complainant. Shortly after the encounter with Complainant, Sheehan wrote a note to Knaack, on a student referral form that stated, *inter alia*, that:

. . . As you overheard, I again (second time) told Mr. Mudrovich that he needed to be in his study hall. He insisted upon arguing that it was OK since Mrs. Bjorklund was there – I told him to return to study hall – he made a couple of comments about treating him differently . . .

At the end of the school day on May 28, 1998, Complainant went to Knaack's office to ask about the extra French section; Knaack responded that he did not think that Complainant was professional enough to deserve an increase in his contract; and indicated that he may have to post at 20% to see if the District could find somebody else. Complainant, who believed that such a posting would be contrary to past practice, considered Knaack to be threatening Complainant. Complainant told Knaack that, if Knaack did not give him the extra French section, then Knaack would be in trouble. Complainant did not intend to communicate that he would do something violent. Complainant then described his earlier encounter with Sheehan. During the ensuing conversation, Complainant told Knaack that Sheehan was treating Complainant unfairly, rudely and different from the way other IMC study hall teachers were being treated and that Knaack had previously told Complainant that Complainant could leave the IMC study hall for a minute or two. Knaack discussed that Complainant's IMC study hall was a particularly difficult study hall. Complainant stated that Complainant knew that teachers that had been assigned two to a study hall had been switching off every day and asked if Knaack knew this. Knaack responded no and asked, if Complainant knew this, why had Complainant not discussed this with Knaack. Complainant responded that it was not Complainant's job to police other teachers and enforce Knaack's memo. Complainant told Knaack that he wanted an apology from Sheehan and that if Sheehan did not apologize, then Complainant was going to file a grievance. Knaack considered Complainant's complaint against the study hall teachers to be similar to the complaint made by Soto and Martin, *i.e.*, that a teacher is not following appropriate educational expectations. Shortly after Complainant left Knaack's office, Complainant wrote an account of his meeting with Knaack, which states as follows:

Thurs. May 28 3:30 PM

I was just in the office to talk to Bob Knaack about 2 things.



#1) I enquired about whether there'd be an extra section for me to teach next year, as was indicated in the master course listing. He told me that he had to think about whether I was going to be professional enough to deserve that raise, and that he wasn't sure that I was. He thought he might just hire someone at 20% FTE to fill that slot, he said. I asked if there was indeed an extra slot opening, in other words, was Anne Berns scheduled to come down from the High School to teach one class or two. [If she teaches only 1 here next year, that means that, according to the master schedule, there'd be 5 sections to be taught by me (or someone else, according to Bob), which is 100% FTE. Bob replied that he didn't know how many classes Anne would teach. I told him that I'd appreciate it if he'd find out soon.

Then we moved to:

#2): I handed Bob my contemporaneous notes of an episode that took place earlier today. (My notes label it as: Thursday, May 28, 1998, 12:15 PM) Bob read through it. Then he told me that that memo had been sent to all IMC teachers. I told Bob that I was aware of that, but that as far as I could see, he wasn't enforcing that rule for all the other 2-person IMC supervision teams, and that every time I walked past 2<sup>nd</sup> period IMC this semester, I've seen either Rich Pietsch, or Kris Heller, but not both of them. Bob replied he wasn't going to go around to check on teachers to see if they were following his rule. I told him again that I know that Kris and Rich are splitting that IMC duty, and have done so all semester. He asked me why I didn't come and tell him that. I replied that it was not my job to enforce his rules. But I told him that if I had decided not to come to IMC every other day, he sure would have found out in a hurry. He agreed, saying that Shirley Bjorklund would have come and told him.

At one point in this conversation Bob raised his voice, jammed his index finger down onto the desk and told me that I was just being treated like anyone else. I replied that I wasn't, because Mike had talked to me in a rude and hostile manner, and that I didn't appreciate it, and that I doubted seriously if any of the other IMC supervisors had been talked to that way, or that they (Bob & Mike) even bothered to check up on whether these other IMC supervisors were indeed in the IMC at all times. [Incidentally, at the very beginning of the semester, Shirley Bjorklund got very huffy to me when I stepped up to the photocopy room for a few minutes to make some copies. She talked to me as if I was a 7<sup>th</sup>-grade student, harshly pointing both index fingers at the ground in the IMC, telling me (in front of the students) "No, this is where you need to stay." I told Shirley that she was not my supervisor, and that she ought not to

be talking to me as if she was. I went to Bob Knaack the next day, told him of

Page 66

Dec. No. 29946-L

Shirley's behavior, told Bob I didn't appreciate it, and asked that he have a meeting w/ himself, me, and Shirley. He said "Wait a day, and see if it improves." He then obviously did talk to Shirley about it, because she didn't repeat that behavior.] Bob said that he wasn't going to go around and check up on people. So I replied, "But you were darn sure going to check up on me."

We discussed this back & forth for a couple minutes, rather confrontationally, and I saw that he didn't believe that Mike's behavior toward me was improper. So I just said, "Look, I want an apology from Mike over the way he talked to me in such a hostile and demeaning manner, or I'm going to file a grievance on this."

Bob then got hostile himself some more. He said "When are you going to start behaving like a professional? You always take everything so personal, and you're losing the respect of your colleagues. All this stuff you keep going on about should have been forgotten a long time ago, and your keeping on about it isn't helping your respect w/ your colleagues, it's hurting it. You need to stop thinking that it's George here, and everyone against you over there."

Then I told Bob that that situation was the direct result of how he and Mike has managed their jobs. I said, "During the [April 18<sup>th</sup>] depositions [in the Mudrovich vs. Soto et al case] it became very clear to me how you ~~too~~ two were determined to treat French one way, vs. Spanish another way. I found out that Mike had talked to Shar & Holly all year long about room assignments, while he was telling me at the same time, "I'll make sure you're treated fairly." Mike tried to pretend as if he just found out at the end of the year that there was a problem about room assignments, but he knew about it all along. So what did he do? He just threw me to the wolves."

Bob then repeated that I made too big a deal about it, and that it should have been settled before it went too far. I replied, "I came to you right away to ask you to settle it right here in the school, but you refused." Bob replied, "I didn't have a meeting on it, because I felt that everyone ~~who~~ would just end up losing if I did."

I replied, "Sure, I'm sitting there as the only loser in the deal, and you weren't willing to set that right."

We exchanged some more confrontational words, then I told him, “I want you to understand that if there is an extra slot open for French next year and you don’t give it to me, you’re going to have some trouble on your hands.

Page 67

Dec. No. 29946-L

Bob replied, “I don’t have to give you an extra section.” Then I replied, “This is just like the other deal. You’re not treating me like other teachers. I don’t know of any teachers who have been at 60%, 70% or 80% who were told that they had to write a letter requesting a bump up to 100% if there were sections available, and that you asking me to do this shows that you aren’t treating me the same as other teachers.”

Bob asked me to name just one example of him not treating me fairly this school year. I told him that one example was when he switched me from an every-other-day duty first semester to this every day duty 2<sup>nd</sup> semester.

Bob replied that he needed an extra person in the 6<sup>th</sup> period IMC Study Hall because it was so rowdy first semester, and he needed it to be improved. I replied that I didn’t have a problem with that expect (sic) that he was singling me out as the only one to be switched to an every-day duty, and that he only issued his memo that all IMC supervisors had to be there all the time after I had complained to him that Shirley Bjorklund was acting as if she was my supervisor and that that (sic) made me look like the bad guy to all the other teachers who do IMC supervision [In fact, Rich Pietsch came up to me at the time to give me a hard time about that.] And I also said again that I didn’t appreciate being put under watch by Shirley Bjorklund, while Bob & Mike themselves didn’t even bother to check all semester long if the other IMC supervisors were following his new rule. I repeated again that every time I walked past 2<sup>nd</sup>-pd IMC, either Pietsch or Heller was there, but never together. Bob did tell me that he had had to have a talk with both of these two just a few days earlier, because they had both left early, and had left the supervision up to aide Jamie Brown (or perhaps Val Duerkop)

Then Bob started in on me that he didn’t think I was doing a good job, because I have been sending lots of kids up to the office and, in Bob’s words, “Once you send a kid to the office, they lose all respect for you, and you won’t be able to control them.” I replied, “If you want to get an opinion of whether that IMC study hall has improved since I got in there, just ask Donna Stieber [who has told me as much numerous times]. Bob just blew that off.

The meeting ended by me just saying, “OK, I’m just going to let you know again that if there’s a French slot that opens up & you don’t give it to me, you’re going to have trouble on your hands. And I want an apology from Mike

Sheehan about the way he dealt with me, or I'm going to file a grievance tomorrow."

Page 68  
Dec. No. 29946-L

Bob said, "I'd never tell Mike Sheehan that he has to apologize to anyone."

I said, "Fine, you'll have my grievance tomorrow." Then I left.

Addendum: Earlier Bob said that not all IMC supervision duties are done by 2-person teams. I asked him how many, other than 2<sup>nd</sup> period, were done by 2-person teams [I actually asked him this twice during the meeting today. Both times he replied that he didn't know.]

Knaack's notes of this encounter state as follows:

George Mudrovich came in at the end of the school day questioning the actions of Mr. Sheehan, who had directed him back to his study hall in the IMC as per a directive from Mr. Knaack earlier in the school year.

During that conversation, Mr. Mudrovich said that people in the second period study hall (Richard Pietsch and Chris Heller) don't stay in their duties all of the time. This is just an indication of the same type of thing that Mr. Mudrovich blamed two teachers previously for and brought a law-suite (sic) against them. (Telling principal about a concern) Therefore, this shows that in the teaching profession that there are occasions that teachers do bring it to the attention of the principal that other colleagues are not following what they consider being appropriate educational expectations.

In addition, Mr. Mudrovich said that if he does not get the full time job that I could expect a grievance.

As Mr. Mudrovich left, he also told me that if I didn't have Mr. Sheehan give him an apology by the beginning of the day on May 29, 1998, that he would be filing a grievance.

Since then, he asked Mrs. Boon for six grievance forms.

13. At approximately 9:00 a.m. on May 29, 1998, Complainant hit the office door with his hand loudly enough to catch the attention of LaPorte and entered the Junior High office. At the time, Sheehan was with a student and there were other students in the office area. Within five minutes of this encounter, LaPorte wrote a note that indicates that

Complainant aggressively entered the office; loudly asked Sheehan if he had gone to the IMC to check on Heller and Pietsch; when Sheehan responded “No,” Complainant demanded, quite loudly, “Why not;?” Sheehan responded that he had not had time; Complainant queried “Don’t

Page 69

Dec. No. 29946-L

you go in there every hour and check on the other supervisors? Or is it just me?;” and that when Sheehan walked away without responding that Complainant said “I see – it’s just me.” LaPorte had not previously documented the conduct of a teacher. LaPorte’s note was not solicited by anyone. At approximately 10:41 a.m. on May 29, 1998, Complainant wrote a two-page account of his conversation with Sheehan, which includes the following:

This morning during second period I saw Mike Sheehan slowly walking down the hall from his office toward the north doors, then he disappeared around the corner. This journey had brought him right past the IMC, whose doors were open.

At about 9:02, I entered the office. Mike was finishing up talking to Dan Conklin in his office. When he came out, while he was walking over to Vicki LaPorte, I asked him, “Did you check to see if both Heller and Pietsch are supervising in the IMC this morning?” Mike ignored me, and talked to Vicki for 5 or ten seconds. When he was done, I repeated the same question. Mike just answered, “Nah”. I said, “Why not? You went out of your way to enforce that rule with me yesterday? Why not with them?” Mike: “It wasn’t important to me.” Me: “You go out of your way to talk to me yesterday about it, and then the very next day you don’t see if other teachers are breaking your rule?” Mike: “I haven’t gotten around to it.” [Note: I had just seen him slowly walking past their open door. You can see from the hallway that just Kris Heller was there!]

Me: “So, you’re going to make sure you enforce your rules with me, but you don’t even care if the other teachers follow that same rule.”

Mike refused to reply. So I said one more time, “So that rule is to be enforced just for me, and you don’t care if the other teachers follow it. Nice rules.” Then I left.

Following the meeting of May 28, 1998 and his receipt of Complainant’s complaint that other IMC study hall supervisors were not in their assignments, Knaack talked to Pietsch, Heller, Baxter and one other teacher regarding Complainant’s complaint. All denied that they were out of their study halls as claimed by Complainant. Complainant, who was disturbed by the fact that Knaack had indicated that Complainant was not professional enough to deserve an increased contract, met with Union Representative Carol Gums Tuszka. In the afternoon of May 29, 1998, Complainant met with Knaack, Tuszka and Sheehan. During this meeting,

Complainant asked a series of prepared questions and made notes of these responses. These notes indicate that many of the questions and responses centered on supervision in the IMC study hall. These notes also indicate that, in response to questions from Complainant, Knaack

Page 70

Dec. No. 29946-L

confirmed: that, on May 28, he had told Complainant that there may be an extra section of French, but that Knaack did not know if that section would be open; that he had not made a determination to recommend Complainant for this French section; that the French section would be posted about June 2; that some of Complainant's actions are unprofessional; and that Knaack denied saying that he had not yet decided whether he would recommend Complainant for that slot for the reason that he thought Complainant was not being professional. Shortly after this meeting, Complainant made notes that indicate, *inter alia*, that, at about 2:50 p.m. on that day, Complainant asked Knaack if he and Tuszka could meet with Knaack; Knaack responded sure, if he could get someone else to sit in; subsequently, Knaack came into his office and stated that Sheehan would be joining them; after Sheehan had joined them, Complainant asked Knaack if Complainant could ask a few questions about the meeting that he and Knaack had after school on the previous day; Sheehan responded that they were not going to have a question and answer session; Complainant responded that he wanted to be clear about what Knaack had told him; Knaack told Sheehan to let Complainant ask his questions, but that he wanted a copy of what Complainant wrote down; Complainant asked five or six questions and, when Complainant began to ask another question, Sheehan indicated that two or three questions ago Complainant had said that he had only one more question and that Sheehan had things to do and could not stay there all day; Complainant responded that his questions would only take a few more minutes; Knaack indicated that Complainant could ask his questions; when Complainant was finished asking his questions, Knaack asked why Complainant asked his questions and Complainant responded "You'll find out next week." Knaack did not consider this meeting to be confrontational and Knaack interpreted the remark "You'll find out next week" to be a possible reference to a grievance.

14. On Monday, June 1, 1998, Complainant went into the office and had a conversation with Sheehan. On June 7, 1998, Complainant wrote a one-page document recounting his June 1st conversation with Sheehan. This document establishes that, during first period, Complainant went into the office; when Sheehan came into the office, Complainant asked if he had checked to see if Baxter and Nyenhuis were both in the IMC, as rules required; Sheehan said no; Complainant asked why not; Sheehan responded you know the answer to that; Complainant responded that once again, Sheehan was going to enforce rules against Complainant, but did not care if other teachers were following the same rules; and when Sheehan did not respond, Complainant left the office. On June 2, 1998, Complainant entered the Junior High office during the first hour. The purpose of this visit was to make the point, for the third time, that Complainant was being treated differently from other IMC supervisors. As established by LaPorte's contemporaneous notes, Complainant waited by Knaack's office; when Sheehan came into the main office, Complainant walked across the office, clapping his hands, and tauntingly questioned Sheehan as to whether Sheehan had been to the IMC to see if

Baxter and Nyenhuis were there; Sheehan responded “No”; Complainant became loud and demanded “Why not;? Sheehan, who was with a student, ignored Complainant; Complainant continued to question Sheehan in a loud and disrespectful manner;

Page 71  
Dec. No. 29946-L

and when Sheehan and the student went into Sheehan’s office, Complainant rudely said “So, you’re just not going to answer any of my questions.” On June 7, 1998, Complainant wrote an account of this conversation, which indicates that, when Complainant came into the office, neither Sheehan nor Knaack were present; that Complainant waited a few minutes; when Sheehan came in, Complainant approached Sheehan and asked if Sheehan had checked to see if Baxter and Nyenhuis were in the IMC, as the rules require; Sheehan responded no; Complainant asked why not; Sheehan said Complainant knew the answer to that; Complainant responded that once again Sheehan was going to go out of his way to enforce rules against Sheehan, but did not care if other teachers followed the same rules; Sheehan did not respond; and Complainant left. These notes indicate that Complainant did not consider himself or Sheehan to have raised their voice. Complainant’s notes do not indicate that Complainant was clapping his hands or that Sheehan was with a student. Complainant returned to the main office during the second hour of June 2, 1998 and observed Sheehan sitting at his desk and Knaack standing behind Sheehan. Both were reading a document that was on Sheehan’s desk. Complainant stood in the doorway to Sheehan’s office and loudly asked “Have either of you two been in the IMC to check to see if Pietsch and Heller are both in there?” Knaack told Complainant to come into the office and shut the office door. LaPorte then cleared the main office of students so that they would not have to witness what she viewed to be a loud discussion. As she was starting to clear the office, Gilmore came out of her office and asked LaPorte to clear the office. LaPorte considered Sheehan, Knaack and Complainant to be talking loudly. Gilmore considered Sheehan and Knaack to be talking loudly, but considered Complainant to be yelling. Gilmore’s contemporaneous notes report that Complainant was yelling. Comments made during the ensuing conversation included the following: Knaack told Complainant that Complainant had gotten the whole school in a turmoil and that it was going to stop and that Complainant was not going to order Sheehan to do anything any more; Complainant said he had not ordered Sheehan to do anything, but rather, had asked him to do various things; Knaack stated that Complainant walked around like he was king of the school and that Complainant had the whole school in an uproar; Complainant stated that, if there were any problems at the school, it was because Knaack and Sheehan had done their jobs poorly and that Knaack and Sheehan were being paid big bucks to make responsible decisions; Complainant referred to Soto and Martin and stated that Sheehan and Knaack were trying to put that on his shoulders, but it was not going to stay there because Sheehan and Knaack had mismanaged that; Complainant stated that Sheehan and Knaack had made their beds and would have to lie in them and “These things will come back to you in the course of time, just think about that;” Sheehan asked Complainant what he meant by this statement and Complainant told Sheehan that he was a big boy and could figure it out for himself; on several more occasions, Sheehan asked what Complainant meant by that statement; Complainant indicated that he was not going to be more specific, but that things were going to come back on Sheehan and not

Complainant. During this conversation, Complainant also stated that Sheehan and Knaack were treating him differently; they were not responding to his complaints by checking on the other study hall supervision; and now Sheehan and Knaack were posting the extra French

Page 72

Dec. No. 29946-L

section, rather than following the standard practice of giving it to the part-time teacher. Complainant ended the conversation by asking Knaack to step aside so that he could leave the office. In Complainant's opinion, this discussion was quite unfriendly; Knaack was angry and belligerent; and Knaack stood by the door, as if he were barring Complainant from leaving. In Knaack's opinion, Complainant had behaved inappropriately during the encounter in which Sheehan had repeatedly asked Complainant to return to the IMC and Complainant became "unglued" during the June 2, 1998 meeting with Sheehan and Knaack because Complainant's temper was uncontrolled; Complainant was talking very loudly; Complainant repeated things violently; and Complainant made threatening remarks to Sheehan and Knaack such as they had made their bed and now would have to lie in it and "These things will come back to you in the course of time, just think about that!" Knaack did not interpret either remark to mean that Complainant was going to file a grievance or a prohibited practice complaint. Knaack understood that Sheehan also felt threatened by these remarks of Complainant. During the June 2, 1998 meeting, Knaack was not concerned that Complainant would do something that was physically harmful.

15. On Monday, June 1, 2003, in response to a request from Knaack, Jaworski posted a 30% position that included one section of French and two supervisions. The posting was open until June 19, 1998. By letter dated June 1, 1998, Complainant applied for the 30% position by submitting a handwritten letter to Jaworski that includes the following:

Re: French Position at D.C. Everest Junior High for the 1998-99 School Year

Dear Jim:

Although I highly resent that I was not given this extra available section as a matter of course, and that this offer to me was not made because of my efforts to get Roger Dodd, Bob Knaack and Mike Sheehan disciplined for their hostile actions toward me personally, I hereby give notice that I am indeed interested in teaching that extra session, which would raise me from 80% FTE to 100% FTE.

The letter was cc'd to Dodd, Knaack and Sheehan. Inasmuch as Complainant was at 80% FTE he was not eligible for an additional 30% FTE position. When Complainant gave this letter to Jaworski, he had a discussion with Jaworski. On June 1, 1998, Complainant wrote an account of his conversation with Jaworski. This account indicates that, on June 1, 1998, Jaworski told Complainant it was not the standard practice of the District to offer extra sections to part-time



teachers as they become available; Complainant asked Jaworski to sign his notes of this conversation and Jaworski refused. In Complainant's opinion, Jaworski became rather upset when Complainant pressed Jaworski to sign a paper indicating that he had refused to sign

Page 73

Dec. No. 29946-L

Complainant's notes. On or about June 1, 1998, Knaack told Dodd that Knaack was posting the 30% position because he did not want Complainant to be a 100% FTE teacher; that he needed additional study hall help; and that the situation was to the point where Complainant always thought that Complainant was right. At this time, Dodd understood that Knaack added the supervision to this position to make it more attractive to applicants. At this time, Knaack advised Dodd that Complainant had altercations with Sheehan in front of staff and students; that Complainant wanted Sheehan to apologize for directing Complainant to return to his study hall; and that Knaack had received FYI's that indicated that staff members were concerned about Complainant's presence in the Junior High. This was the first time that Dodd knew that Knaack had decided to not offer Complainant a 100% position. Dodd approved of the 30% posting, but such approval was not needed for Knaack to post the 30% position because Knaack had the FTE available. Prior to this discussion, Dodd assumed that Complainant would be offered the 100% position. At the time of this conversation, Dodd considered the ideal situation to be to continue Complainant at 80% and to hire another individual to teach one French class and two supervisions. At this time, Dodd was aware of some of the FYI's that had been filed with concerns about Complainant.

16. Kathleen M. Heller has been employed as a District teacher for at least seventeen years. At the end of May in 1998, Heller was a member of the Association's Executive Committee. At that time, Heller stood outside the door of a room in which District faculty were celebrating the retirement of a colleague to see if Complainant intended to enter the room. As Heller was leaving the room and Gilmore was entering the room, Heller voiced her concern that Complainant was very angry and that something could happen in a situation where staff was together in the same room. Gilmore, who understood Heller to be voicing a concern that Complainant would do physical harm to someone, considered Heller's concern to be foolish, but advised Heller that, if Heller were really concerned, then she should report her concerns to Knaack. Heller told Knaack, who was at the retirement party, that she had stood outside the door. Heller was motivated by a fear that Complainant would do something physically violent. Heller's fear, which she now acknowledges was probably irrational, was based upon her view that Complainant had become irrational about "some things." Heller did not observe Complainant engage in any conduct that would cause her to conclude that he would "snap." Her conclusion regarding Complainant's irrationality was based upon what she had heard about the lawsuit against Soto and Martin; Complainant's note to Maki; and a recent argument in the Office involving Complainant. Heller concluded that there was unease at the Junior High School that was attributable to Complainant and, other than guarding the door at the retirement party, Heller tried to steer clear of Complainant. Heller considers Soto and Martin to be wonderful people; does not consider Complainant's suit against Soto and Martin to be right; and believes that teachers in the District were afraid that, if someone made

Complainant angry, then he would sue them. On June 2, 1998, Complainant had a conversation with Sally Holzem. Complainant considered Holzem to have been friendly in prior years, but now considered her to be cold. Complainant attributed this coldness to the fact

Page 74

Dec. No. 29946-L

that, in an April deposition, he had referenced a birthday card that Holzem had given Maki to support his assertion that Maki did not have a problem with “off-color stuff.” On June 2, 1998, Complainant wrote a note and put it in the mailboxes of people who were part of “his group,” which states as follows:

To whom it may concern,

Some of Sally Holzem’s friends are under the impression that Sally somehow “tattled” to me about an off-color birthday card that Carol Maki had given her last fall.

Sally didn’t do that, nor did she ever have to. Carol had left that card on the table (standing upright) in the basement lounge for all to see.

The only reason this was brought up in the deposition of Carol Maki is that Carol simply refused to admit that her conversations with colleagues are often of an off-color nature (which is true of many adults; Carol only refused to admit this because she wanted to brand me as a verbally abusive person).

It’s too bad that these things can end up getting innocent third parties involved, but it appears to me that all that should be laid at the doorstep of Shar Soto and Holly Martin, since they obviously instigated this whole affair in the nastiest, most dishonest way possible.

Surely they didn’t consider that their refusal to own up to those actions and apologize for them (said refusal coming a long time before this went to court) would pull some of their friends into the mess that they (Shar & Holly) created. But they should have.

Holzem gave Knaack a copy of this note. In late May and/or early June of 1998, Knaack received a FYI (For Your Information) letter from Junior High employees Carol Tuszka, Sue Leider, and Kathy Pietsch that stated “We feel threatened by the unstable environment George Mudrovich has created in this building.” On or about June 2, 1998, Knaack received a letter from Maki, dated June 2, 1998, that states “I am becoming very concerned about the escalating ‘feud’ between Mr. Mudrovich and several staff members and myself. His recent note and irrational words and actions make me very uncomfortable.” On or about June 4, 1998, Knaack received a FYI from employee Lois Klein, dated June 4, 1998, that states “As a side comment, I am concerned about the feelings/tension this building is suffering due to one

person's 'thinking errors' and irrational behavior. It is so unfortunate that our lives are manipulated by one person's misuse of laws designed to protect true victims. In this case I think we are the victims." Heller sent Knaack a FYI, which is dated May 27, 1998 and states,

Page 75

Dec. No. 29946-L

in relevant part, "It is my perception and the perception of many others that the situation with George has become really uncomfortable. He makes me and many others uneasy. I do feel somewhat fearful of him at the Jr. High." This FYI was not sent in Heller's capacity as an Association representative and, after she had submitted this FYI, another individual wrote on the form "Head of PR." The FYI's were unsolicited. Knaack reviewed the FYI letters. On or about June 9, 1998, Knaack informed Dodd of the content of all the FYI letters. Knaack viewed the FYI's as confirming his opinion that there was a negative atmosphere in the Junior High and that Complainant was responsible for this negative atmosphere. Knaack did not ask the teachers who submitted the FYI's to provide any other details regarding their statements. Knaack concluded that Complainant filing an inappropriate lawsuit against Soto and Martin caused the concerns expressed in the FYI's. Knaack, who considered Soto and Martin to be very good teachers, had been astonished that Complainant had filed a suit against Soto and Martin and considered the suit to be unjustified and a vindictive response to two teachers who had brought the Maki note to Knaack's attention.

17. On or about June 2, 1998, Complainant met with LaBarge to discuss filing a grievance on the 30% posting. On June 3, 1998, Sheehan prepared and Knaack issued the following letter:

Dear Mr. Mudrovich:

It has been brought to my attention that you have, on more than one occasion, called Mr. Sheehan's attention to the fact that your fellow teachers may or may not be carrying out their professional responsibilities. Furthermore, I have been told that you have done so in an unprofessional manner while in front of junior high students and office staff. Please be advised that we do not see this as appropriate behavior for a member of our teaching staff.

I tried to make this perfectly clear when you walked into Mr. Sheehan's office at approximately 8:45 a.m. on June 2, 1998. Quite frankly, however, we are concerned that you may have missed the message since you exhibited behavior that could be described as out-of-control. Yelling loud enough so people in outer offices could understand you and so that students had to be moved to the guidance office is, again, not appropriate behavior for a member of our teaching staff.

Mr. Sheehan and I are very concerned about one of your final statements. You threatened us that we "made our bed and now we'd have to lie in it." When you were asked by Mr. Sheehan for clarification on your intended meaning you

commented "These things will come back to you in the course of time, just think about that!" We find this statement that you made, more than once, to be a very threatening statement and remain concerned about your actual intent.

Page 76  
Dec. No. 29946-L

So there can be no misunderstanding, always be prompt to your teaching and supervising duties. Remain on duty for the entire time assigned.

Please be advised that any further actions of this nature may lead to further disciplinary actions including termination.

This letter was cc'd to Dodd. Knaack discussed this letter with Dodd prior to issuing the letter. At the time that Knaack issued this letter, he was considering laying off Complainant, but had not yet reached a final decision on this issue. Due to the fact that this letter was incorrectly addressed, Complainant did not receive this letter until June 5, 1998. On June 5, 1998, Complainant and LaBarge, acting as a Union Representative, met with Knaack regarding Knaack's decision to post the 30% position. LaBarge communicated the DCETA position that Knaack should give Complainant a 100% position and Knaack responded that would not happen. During this conversation, Complainant questioned Knaack as to whether there had been a posting when Complainant previously had been increased from 50 to 65% and from 65 to 80% and Knaack initially responded that he did not know. Knaack subsequently confirmed that Complainant had been bumped from 3 to 4 classes because it was convenient for the District to do so. When Complainant, who believed that Knaack had previously stated that he had to post the extra French section under District policy, asked why Knaack had not followed District policy when he had previously bumped Complainant, Knaack responded by asking Complainant if the District should not have done so and should the District now reduce Complainant's contract. During this conversation, Knaack explained that Complainant was assigned an extra French section on the "Master List" because a name was needed to generate the program; Complainant's name was selected because he taught French; and, therefore, Complainant should not be expecting, on the basis of the master schedule, to have a 100% position. At this June 5<sup>th</sup> meeting, LaBarge and Complainant filed a written grievance on the "Assignment of available French classes," which alleges that "Article 2-C applied in an arbitrary and capricious manner; Article 30." This written grievance also includes the following:

Mr. Mudrovich observed the master class list at the Jr. High on May 16, 1998. He observed that Ms. Berns was scheduled to teach 1 of the 6 sections of French and He was scheduled to teach 5 of the sections. Mr. Mudrovich checked with Mr. Sheehan on May 17, about the fact that the 5<sup>th</sup> class would be a 100% contract. For the 1997-98 (sic) he has been teaching an 80% Contract. On May 18, Mr. Knaack asked Mr. Mudrovich if he was willing to teach the 5<sup>th</sup> class at 100% contract. Mr. Mudrovich indicated that he would be willing.

Mr. Knaack asked for a letter indicating that willingness and Mr. Mudrovich complied. On May 27 in a question/answer session with Mr. Knaack, Mr. Mudrovich asked Mr. Knaack about teaching the extra French section, and

Page 77  
Dec. No. 29946-L

was told that Mr. Knaack had not decided if there was a section nor if he would recommend Mr. Mudrovich for the slot. June 1 there was an internal posting for a 30% French position which Mr. Mudrovich applied for.

The requested corrective action was "Increase 1998-99 contract of Mr. Mudrovich to 100% FTE to allow him to teach the extra section of French". Attached to this grievance was the following:

Mr. Mudrovich should have his contract for 1998-99 adjusted to 100% based on the following facts:

1. The master schedule for the 1998-99 school year at the Jr. High includes 6 sections of French.
2. Ms. Berns is scheduled to teach 4 sections of French at the Sr. High, and 1 section of French at the Jr. High, leaving 1 section open.
3. Mr. Mudrovich's contract for the 1998-99 school year is for 4 classes at 80%.
4. Mr. Knaack asked Mr. Mudrovich if he were willing to teach at 100%, thus indicating that solution to the open French class. Since Mr. Mudrovich's name was on the master list for 5 classes, and Mr. Knaack asked about his willingness to teach 5 classes, Mr. Mudrovich was led to believe that he would be teaching the 5<sup>th</sup> class in 1998-99.
5. There is a posting for a 30% French teacher at the Jr. High. This would not seem to be needed, as there is one French class open and increasing Mr. Mudrovich's present contract to 100% would solve the open class situation.
6. Twice in the past, when additional French classes were added to the master schedule, Mr. Mudrovich's contract was adjusted upward to accommodate the additional classes. It would be appropriate therefore, based on past practice, to adjust his contract to 100% and allow him to teach the 5<sup>th</sup> class.
7. Mr. Mudrovich's classroom observation reports and year end evaluation were very favorable, indicating that he has had a successful teaching year and is thus qualified to teach as a full time teacher in the district.

Article 2 of the Master Contract gives the school board the right to operate the school system, but neither the board nor its agents may apply that right in an arbitrary and capricious manner. Not assigning the one open French class to

Mr. Mudrovich, and then posting it as a 30% opening is an arbitrary and capricious application of management rights to the point of hiring an additional

Page 78  
Dec. No. 29946-L

person for more teaching time than is actually necessary. It would seem to be more reasonable and sensible to adjust the contract of an 80% teacher in the same building as the open section to accommodate for the needed 20% FTE.

This decision also limits Mr. Mudrovich's access to a career in the district under article 30, since it is limiting his contract to 80% rather than the 100% contract of a career teacher.

Shortly after Knaack received the written grievance, he discussed it with Dodd. When Knaack received the written grievance on the French posting, he reviewed the contract to determine if there was a section that could be legally grieved; concluded that there was not; and denied the grievance. On June 7, 1998, Complainant wrote a five page document, recounting his June 2, 1998 conversation with Knaack and Sheehan, which includes the following:

(These notes are my best memory of a conversation that took place between Bob Knaack, Mike Sheehan and me at approximately 8:45 AM on June 2 1998 in Mike Sheehan's office:)

I came into the main office, and saw that both Bob Knaack and Mike Sheehan were in Sheehan's office. I went to the doorway and saw that Sheehan was holding a letter (I believe that it was my June 1 letter to Jim Jaworski) while he was seated at his desk, and that Knaack was standing behind him. They were reading it.

I asked "Have either one of you checked this morning whether Baxter and Nyenhuis were both in the IMC during 1<sup>st</sup> period?" Knaack said, "Come in and close the door."

A lot of things were said, but I don't remember them all. Here are some that I do remember:

Knaack: "You have no right to talk to Mike Sheehan like you have a couple times in the last few days. You owe him an apology."

Me: "How about the way Mike talked to me? He came up to me in the middle of the main office and talked to me like I was one of his 7<sup>th</sup> grade students who had been sent to the office."

Sheehan: "I was just telling you that you needed to go back to the IMC study hall. That particular study hall is one we've had a lot of trouble with, and I wanted you to go back there."

Page 79  
Dec. No. 29946-L

Me: "You were very rude to me in front of the secretaries & students, and I don't appreciate it."

Knaack: "He's your superior here, and when he tells you to do something, you need to do it and not argue. I want you to apologize to Mike right now."

Me: "I asked you to have Mike apologize to me for the way Mike was rude to me and you said 'No way'."

Knaack: "I'm telling you to apologize to Mike now."

Me: "I'm not apologizing to Mike for anything. He was rude to me, which started this whole thing. He needs to apologize to me."

Knaack: "You can't apologize for anything, can you? You never apologize for anything. You act like your (sic) King of the school. And you've gotten this whole school in turmoil."

Me: "I'm not the one who has caused problems in this school. You two are. You have mismanaged this whole affair from the beginning. You think you can put all this on my shoulders, but that's not what's going to happen. You're going to see that people above you are going to find out how badly you two have done your jobs."

Knaack: "What do you mean?"

Me: "You two guys are paid big bucks to sit in your chairs and make proper decisions. But you've tried to sabotage the French program since the get-go. And in the course of time you're going to see that that's going to come back on you, not me."

Sheehan then asked me about 5 or 6 times exactly what I meant by that.

Each time I gave answers such as, "You don't need things explained to you, figure it out yourself." Or, "I'm just saying that in the course of time, your actions are going to come back on you."

I certainly did not shout during this meeting, although at times, I may have raised my voice, though certainly not to a higher level than Bob Knaack had.

Page 80  
Dec. No. 29946-L

I don't remember what was said just before the end of the meeting, but at the very end, Knaack was standing by the closed door, giving me the impression that he was trying to prevent me from leaving. So I said to him, "I'm going to open that door now and leave."

I did that, and that was the end of the meeting.

Addendum: When Mike Sheehan said he was only concerned that my study hall have 2 supervisors at all times because of problems there, I said "Have you checked with Donna Stieber how the study hall is since I came on board?"

Knaack: "Donna Stieber isn't your supervisor."

Me: "I know, but she'd tell you it's really turned around. She's told me that many times." Knaack didn't respond.

I had said at one point that the January memo applied to all 2-person teams. Knaack said, "I put in the memo that if people had any needs to leave, they could square that away with me."

Me: "The memo didn't say anything about that."

Knaack: "Yes, it did."

Me: "I'm sure it didn't say that. Show me the memo."

Knaack gave me a wicked smile: "You don't have the memo, do you?"

Knaack said that he hadn't checked whether Baxter and Nyenhuis were both at IMC that morning, because he had had Baxter in his (i.e. Knaack's) office to talk to him about it.

[Knaack obviously told Baxter that I had "turned him in", because when Baxter later saw me, he said (irritated) "You went to Knaack about me?"

18. Principals have authority to assign available authorized FTE's to current part-time teachers. The School Board must approve all adjustments to FTE allotments and individual teaching contract percentages. Dodd, but not the Principals, has authority to



recommend to the School Board that a part-time teacher be non-renewed or laid off. June 5, 1998, was the last day of the school year. Prior to June 10, 1998, Dodd asked Owens for his interpretation of Article 32(I), which states as follows:

Page 81  
Dec. No. 29946-L

I. Part-Time to Full-Time Assignment: In the event that a regular part-time position covered by this contract becomes a regular full-time position at any time during the year, it is understood that the employee occupying the regular part-time position may be laid off immediately and that he/she may apply for the regular full-time position and will be considered together with other applicants for the position. Full-time teachers reduced to regular part-time shall not be subject to this provision.

During the conversation regarding Article 32(I), Dodd told Owens that when Complainant was interviewed for his part-time position there were few candidates. On or about June 10, 1998, Knaack met with Dodd; advised Dodd that the District had not received any applications for the 30% position; and recommended that Complainant be laid off. Knaack told Dodd that he wanted to lay off Complainant because there had been altercations between Complainant and Sheehan in front of support staff and students and that Knaack had received FYI's that indicated that staff was upset and concerned about Complainant's presence at the Junior High. Dodd and Knaack discussed the fact that, if Complainant were to be given the 100% position, then the District would be deprived of the opportunity to improve upon the position. Knaack also gave Dodd a copy of the June 2, 1998 letter from Complainant regarding Maki's birthday card to Holzem. During this discussion, Dodd telephoned the District's attorney to confirm the attorney's interpretation of Article 32(I). At this time, Dodd decided to apply Article 32(I) and layoff Complainant. Dodd concluded that it was appropriate to apply Article 32(I) to Complainant because it would be in the best interests of the District to improve upon Complainant. Dodd thought that it was likely that the District could improve upon Complainant because Complainant had demonstrated that he was not a team player; Complainant had alienated colleagues; and Complainant was responsible for a negative climate in the Junior High. Dodd also gave consideration to the fact that Complainant had been hired from a small applicant pool. Dodd concluded that Complainant was not a team player because Complainant did not act reasonably when he had disputes with others; always had to have his own way; and would do anything to get his own way. In reaching these conclusions, Dodd gave consideration to Complainant's repeated questioning of Sheehan and Complainant's demand that Sheehan apologize. Dodd's conclusion that Complainant was responsible for a negative climate at the Junior High was based upon Complainant's questioning Sheehan's authority in front of staff and students; Complainant's creating a disturbance in the Junior High office on more than one occasion; the FYI's that were submitted by Junior High staff and Complainant's lawsuit against Soto and Martin. Dodd had the opinion that this lawsuit had caused colleagues to avoid Complainant because they were afraid of confrontation and of being sued by Complainant. In making his decision to layoff Complainant, Dodd read and gave consideration to Complainant's notes of the May 28, 1998 confrontation with Sheehan; the

June 2, 1998 letter that Complainant had written regarding Maki's birthday card; Gilmore's note and the FYI's. Dodd learned about most of the FYI's at this meeting with Knaack. Dodd also gave consideration to his discussions with Sheehan regarding the recent confrontations that

Page 82

Dec. No. 29946-L

had occurred in the Junior High office and statements of LaPorte. Dodd considered Complainant's written statement to contain admissions of inappropriate conduct, such as being out of his study hall without permission. Dodd was concerned about Complainant's conduct in repeatedly questioning Sheehan; in not returning to his study hall until after Sheehan had repeatedly directed Complainant to return to his study hall; in demanding that Sheehan apologize; and in causing students to be removed from the office. In Dodd's opinion, Complainant should have immediately complied with Sheehan's work directive and then returned at a later time to discuss any concerns. Dodd was particularly concerned about the fact that Complainant's inappropriate behavior towards Sheehan occurred in the presence of other staff and students. A significant factor in Dodd's decision to layoff Complainant was Dodd's conclusion that, if staff who were fearful of Complainant were willing to sign their names to documents saying that they were concerned about the climate at the Junior High, then Dodd was not acting in the best interest of the District by not taking advantage of the contract provision that allowed the District to lay off Complainant and post a 100% position to determine if a better candidate for the 100% French position were available. Dodd was of the opinion that his recommendation to layoff Complainant would likely result in large legal costs to the District, but was not of the opinion that it would jeopardize Dodd's employment with the District. Knaack and Dodd did not discuss Complainant's grievances when they discussed laying off Complainant. Dodd did not discuss Complainant's grievance of October 29, 1997, with Knaack between the time that the School Board issued its response to the grievance and the time that Dodd decided to recommend the lay off of Complainant. On June 9, 1998, Complainant made a public records request for information regarding the employment of part-time teachers. On June 10, 1998, as Complainant was using a computer in the IMC, Sheehan came in and told Complainant that Dodd was looking for him. Complainant said "OK" and continued working on the computer. Ten or twenty minutes later, Sheehan came in and said Dodd was in Knaack's office and wanted to meet with Complainant. Complainant said "OK" and went to Knaack's office. Dodd then told Complainant that Dodd had decided to recommend that Complainant be laid off to zero percent under Article 32(I). Dodd then gave Complainant a copy of this contract provision. Dodd told Complainant that after the School Board voted on the layoff recommendation, then Complainant would be allowed to apply for the 100% position that would be posted within a day or two and would be considered along with the other candidates. Dodd also told Complainant that Article 32(I) had been used in the high school earlier in the year. Dodd told Complainant to turn in his keys. Knaack did not make any statement during this meeting. Complainant returned to the IMC, gathered his belonging, and left the building. At that point, Knaack did not consider Complainant to be an employee of the District. When the District laid off part-time teacher Cindy Skadahl, Solsrud or Johansen informed her of this layoff. Dodd's statement that Article 32(I) had been used earlier in the year and Dodd's subsequent similar statement to the School Board at the

September, 1998 grievance hearing were not correct, but Dodd believed these statements to be correct at the time that he made these statements. Dodd's belief that teachers had been previously laid off under Article 32(I) was based on hearsay statements of other administrators

Page 83

Dec. No. 29946-L

and was not independently verified by Dodd. Administrators other than Dodd considered Article 32(I) to have been used in the past. On June 11, 1998, the District posted a vacancy for a 100% FTE French teacher. The certification requirement was "Certification by the Wisconsin Department of Public Instruction in French (#355)." The "Qualifications" were as follows:

- Successful teaching or practicum experience at secondary level.
- Ability to work as a member of a team in the House Concept
- Ability to establish and maintain effective professional and public relationships.
- Ability to relate to students

The posting also included the following: "Applications must be received in the Personnel Department by 4:00 p.m. on Thursday, July 2, 1998."

19. Complainant, who considered himself to have been fired at the June 10, 1998 meeting, subsequently met with LaBarge to discuss filing a grievance. LaBarge and Complainant reviewed part-time teacher records. Complainant did not find any documentation that a part-time teacher had been laid off under Article 32(I). On June 15, 1998, Complainant, Coffey, LaBarge, Dodd, Knaack and Owens met to discuss Complainant's pending layoff. Owens made notes of this meeting and these notes were used by the District to prepare a typewritten summary of this meeting. Neither Owens notes, nor the typewritten summary, is a verbatim account of the meeting, but the typewritten summary is substantially accurate with respect to the events recounted. At this meeting, Coffey was provided with an opportunity to state the Association's position. Coffey stated, *inter alia*, that the District was not following past practice or acting in good faith by failing to raise Complainant to 100% FTE; by laying off Complainant; and that layoff was for reductions in budget or enrollment. Dodd supported the District's decisions by stating, *inter alia*, that, when Complainant was hired, only two candidates applied for this position; that the wording of the contract allows the District to layoff Complainant in order to gather the best candidates from a large pool; that Complainant's layoff was neither a non-renewal nor a discharge, but rather, was a layoff under Article 32; that other part-time teachers had been laid off; that some, but not all, of the laid off part-time teachers applied for full-time teaching positions; that some, but not all, of those who applied were hired for full-time teaching positions; that the District has not consistently laid off part-time employees and then posted a 100% position, which is why the contract states that the part-time employee "may" be laid off; and that, in the process of scheduling courses for next year, there had been a discussion as to whether or not District administrators would need to do a layoff and post for a full-time position. Approximately twenty minutes into the meeting,

Complainant began addressing Dodd. Complainant told Dodd that he had received a legal opinion that Complainant had been fired when he was told to return his keys and stay off the premises on June 10, 1998. Dodd responded that Complainant had not been told to stay off the

Page 84

Dec. No. 29946-L

premises, but rather, that Complainant had been told that, if he wanted to use the facilities that he had to check in at the office and the office would decide. Complainant attempted to read parts of the contract and Dodd cut off Complainant by telling Complainant that he was not interested in having Complainant read from the contract. When Complainant continued in his attempts to read from the contract, he was met with the same response. Complainant and Dodd engaged in an exchange which included the following: "Dr. Dodd, if you expect to have your job in a week or two you had better listen;" Dodd responded "Are you threatening me?;" Complainant responded "You serve at the pleasure of the board and you better consider how they look at this contract;" Dodd responded "Are you threatening me? It sure sounds like it;" Complainant responded "All I'm saying is that if you, Mr. Knaack, and Mr. Sheehan expect to have your jobs in a week or two you had better think about how a jury views the contract as well;" and Dodd responded "Now you are threatening all of us." Complainant responded that he was not threatening Dodd, just saying what could happen. Complainant stated that he could not take Dodd's job away. Dodd responded that he knew that, so if Complainant could not take his job away, the only reason that Dodd would not be there would be if Complainant does physical harm to Dodd. Complainant denied that he was making a physical threat against Dodd. Complainant's voice rose during this exchange. Dodd stood up when he asked if he was being physically threatened and pointed his finger at Complainant. Complainant responded that he was not threatening Dodd, just saying what could happen. Dodd reiterated that Complainant was threatening him. At that point, Complainant decided that the meeting was not going to be productive; gave Dodd a prepared sheet that indicated what Complainant needed to settle the matter; and left the room. LaBarge and Coffey remained in the room. Complainant considered Dodd to be belligerent in his responses and not open to Coffey's arguments. During this meeting, Dodd and Complainant both raised their voices.

20. In response to a request from Dodd, Knaack provided the following letter, dated June 16, 1998, to Dodd:

Mr. George Mudrovich needs to be laid off from his 80% teaching contract to 0%. This action needs to be taken as we will be advertising for a full-time French teacher.

Dodd requested this letter in preparation for the School Board meeting of June 23, 1998 for the purpose of providing it in background materials and demonstrating that the Principal was in agreement with Dodd's recommendation to lay off Complainant. On June 18, 1998, Dodd prepared an agenda newsletter for the School Board meeting of June 23, 1998, which indicated that Dodd would be recommending numerous employment/resignations/contract adjustments, including that Complainant be decreased from an 80% contract to a 0% contract. Consistent

with normal practices, Dodd met with committees of the School Board prior to the June 23, 1998 School Board meeting; advised the attending members of these committees that he was recommending that Complainant be laid off under Article 32(I); and explained that this

Page 85

Dec. No. 29946-L

provision of the contract permitted the District to lay off the part-time employee when the District intended to make the part-time position a 100% position. Dodd did not offer an explanation as to why he was recommending that the School Board exercise its Article 32(I) rights, and no Committee member asked for such an explanation. Consistent with her normal practice, Leonard met with Dodd prior to the June 23, 1998 meeting to discuss matters that would be on the agenda. During this meeting, Dodd informed Leonard that there would be a number of contract adjustments, one of which was Complainant's, and explained that the administration was recommending the adjustment to Complainant's contract because there was a provision in the contract that permitted the District to eliminate a part-time position and post a full-time position. Dodd also stated that when Complainant's part-time position was originally posted, the applicant pool was not very large; and that inasmuch as full-time position is desirable, the administration was hopeful that the posting would attract a larger applicant pool. Dodd offered Leonard no other reason for the recommendation. At that time, Leonard believed that Article 32(I) had been invoked earlier in the year in laying off an English teacher. On June 19, 1998, Complainant went into the office of the Junior High and asked Sheehan if he could use the computer and copier in the IMC. Sheehan responded that he did not think that he could let Complainant do that. Following further discussion between Sheehan and Complainant, Complainant left the building. Shortly after this discussion, Complainant made notes of this discussion. These notes indicate, *inter alia*, that when Complainant asked why he could not use the facilities, Sheehan responded that he thought they were supposed to only let people who were on duty do that; Complainant indicated that he had previously come in on off hours and used the facilities; Sheehan responded that was before the layoff decision and all this stuff; Sheehan asked a secretary to make a mental note of Sheehan's refusal; when the secretary nervously agreed, Complainant suggested that she write down certain information; Sheehan called out that he did not think that was necessary; and that, as Complainant was leaving the office, Sheehan asked if Complainant could wait until Monday so that Sheehan could discuss the matter with Knaack. On June 23, 1998, the School Board held a regularly scheduled School Board meeting. At this meeting, Dodd recommended numerous personnel actions, including that Complainant be reduced from an 80% contract to a 0% contract, effective June 23, 1998. Complainant was present at this meeting and a number of citizens addressed the School Board in support of Complainant. No member of the public spoke in opposition to Complainant. Hazaert, Dodd and Owens, but not Knaack, attended this School Board meeting. At the June 23, 1998 meeting, the School Board, in open session and without discussion, voted to approve a number of personnel actions, including that Complainant be reduced from an 80% contract to a 0% contract, thereby effectuating Complainant's layoff. Leonard, who was present at the June 23, 1998 meeting, concluded that the support demonstrated by the public on behalf of Complainant did not provide a sufficient basis to further investigate administration's recommendation to layoff Complainant.

21. On June 30, 1998, Complainant submitted an application for the posted 100% French position. Subsequently, an unknown individual attached Complainant's June 1, 1998 application letter for the 30% French position to his June 30, 1998 application for the 100% position. Current employees of the District are not always required to provide new applications, or to be interviewed, for new positions, or increased contracts. Rather, the application process varies depending upon the nature of the position and the discretionary decisions that are made by the administrator involved in the process. Such a discretionary decision may be to review, or to not review, the District's observation reports of the teacher applicants. At the time that Complainant applied for and was interviewed for the 100% French position, his layoff had been effectuated and, thus, he was not a current employee of the District. Complainant is not the only individual that has been laid off by the District and subsequently required to submit a new application or to be re-interviewed when seeking another position with the District.

22. By letter dated July 9, 1998, Beth Bouffleur, who was not a District employee, confirmed her interest in the 100% French position. Bouffleur brought her completed District application when she arrived for her July 13, 1998 interview. An individual in the District, probably Dodd, permitted Bouffleur to apply for the position after the closing date on the posting. Dodd appointed Hazaert to head the interview team for the 100% French position. Normally, Knaack, as the building principal for the posted position, would have been a member of the interview team, but Dodd decided that Knaack and Sheehan would not be on the interview team and advised Hazaert accordingly. Dodd chose not to use Knaack or Sheehan on the interview team because they had had recent confrontations with Complainant and he wanted interview team members that were not a party to these confrontations. Knaack was disappointed that he was not a member of the interview team because he prefers to be involved in hiring Junior High staff. Knaack expressed this disappointment to Dodd. Dodd has not determined the composition of any other interview team during his tenure as Administrator. Dodd told Hazaert that Johansen and Solsrud would be on the interview team and Hazaert then told Johansen and Solsrud of their appointment to the interview team. When Dodd chose Hazaert to head the interview team, Dodd knew that Hazaert had some knowledge of Complainant's disputes with Knaack and Sheehan. Dodd chose Hazaert because of his authority within the District; his competence, including his competence in administering the Gallup Teacher Perceiver Interview, hereafter Perceiver; and the fact that Hazaert had not been immediately involved in disputes with Complainant. After instructing Hazaert on the composition of the interview team; advising Hazaert that Complainant would be interviewed for the 100% position; and confirming that Hazaert was to follow normal procedures, Dodd did not have further interaction with the interview team until he received their recommendation as to which candidate should be offered the 100% French position. Consistent with normal

procedures, the interview team members individually screened the applications on file and made recommendations as to who should be interviewed. Complainant's application and Bouffleur's application may not have been available for such screening. The interview team

Page 87

Dec. No. 29946-L

did not need to screen Complainant's application because Dodd had told Hazaert that Complainant would be interviewed. Hazaert had told the other interview team members that Complainant would be interviewed. Consistent with normal District interview procedures, the interview team interviewed the applicants that had been selected for interviews and, following the completion of the interviews, made a recommendation as to who should be offered the 100% French position. The same interview process was used for each applicant, i.e., introductions were made, the interview process was explained; the interview was conducted and, at the end of the interview process, each candidate was provided with an opportunity to ask questions about the District and the position. Each candidate was told that the successful candidate would receive a telephone call and all others would receive a letter. Portions of the interview were recorded and transcribed. The District has used the Perceiver for approximately twenty years. The Perceiver is designed to identify the strengths and weaknesses in the talents that are believed to predict a successful teacher. Solsrud and Johansen have been trained in administering and scoring the Perceiver. Hazaert administered and scored the Perceivers that were given to each of the candidates for the 100% French position. Complainant, as well as candidate's Bouffleur and Betty Delsarte, were predicts on the Perceiver. For each member of the interview team, responses to the Perceiver were a factor in determining their Number One and Two candidates, but neither the responses to individual questions, nor the total score, were determining factors. When the Gallup Organization scored Complainant's responses to the Perceiver, this score was lower than Hazaert's scoring, but the difference was not significant. At the time that the interview team selected the candidate for the 100% French position, the interview team had access to each of the candidate's applications and materials that were submitted by the candidates with their applications, such as portfolios and letters of reference. The interview team gave consideration to these materials when deciding who was the best candidate for the 100% French position. The District's application asks for a brief explanation of background knowledge on a variety of issues, including "Skills for Effective Instruction" and "Dimensions of Learning." Bouffleur's and Complainant's application contain a response to the request for this information. Complainant had referenced certain materials in his application, such as his observation reports or evaluations, but had not appended his observation reports or evaluations to his application. The interview team reviewed only those materials that had been submitted by the applicants and, thus, did not review or consider Complainant's evaluations or observation reports. At the interview, Complainant was asked the following: "Can you describe your relationships with colleagues in the department in which you last taught which would be Foreign Language?" Complainant responded with the following:

GM: Well, I suppose everybody is aware that this last year has not been a good year but in my first two years I've had extremely good

relationships with virtually everybody I worked with, with the exception of one person who is the other French teacher, Ann Berns. Ann and I have not gotten along real well from the beginning and in fact I talked to

Page 88

Dec. No. 29946-L

Corinne a few times about trying to get some kind of a mediation between the two of us because we seem to be at loggerheads on stuff. That hasn't been really pursued. At one point I have wanted to take it a little further and I know that a lot of people in the school have the opinion that Ann and I don't get along because of things of my doing and things that Bob Knaack had mentioned a couple of times, that I corrected her pronunciation when she was working on something in class and that's something that has been blown totally out of proportion because it was something that I talked to her about in private. It's something that she was doing wrong and she chose to go and tell all of her colleagues about it. I didn't make it a public proclamation but from the very first day that I was there Ann tried to act as if she was my boss and started to try to tell me how to do things this way and that way and I told her in the beginning that it wasn't her position to tell me to do this or that but she continued to do this. In fact I think you were present at one point when we were talking about portfolios either in the first year or the second year. She was telling me that I have to do this, I have to do that. I said, "Ann, now listen. You can ask me to do something but it's not your position to tell me to do something." Ann and I have not gotten along. In fact, not many people know this but either during, I think it was during my second year, about six or seven times she put notices in my mailbox of vacancies of teaching positions elsewhere. With no name on it, nothing. After about five or six of these I said, "Ann, have you been putting these in my mailbox?" And she said, "Yes, I have." And I said, "Well, I understand that you might be trying to do something for my benefit but it would have been nice to just let me know that you were doing this and just sign your name on it." She said she didn't have time to sign her name on them. It would take one second to write Ann on it. It was clear that she didn't want me around here anymore because she and I have not gotten along real well and as I mentioned I've talked to Corinne about it a couple of times. I talked to Bob about it one time, but I'm kind of a bit of a pariah at school right now and so a lot of people have the opinion that if there's a dispute between me and anybody else that it's my fault. I'm going to say that in my first two years I shared classrooms with colleagues. I substituted my first year about 80 different times. I substituted my second year about 30 or 40 different times, shared classrooms on a day-to-day basis with six or seven people and I've never had any problems with any of them. At the end of last year at



about this time a couple of my teachers poisoned the well between the two of us, between the three of us I should say, and that has caused some hard feelings that frankly were not handled by my supervisors in a very

Page 89

Dec. No. 29946-L

fair way at all. I'll elaborate on that for just one second to say that I was accused of being verbally abusive by a couple of teachers and the very first thing I did after finding out who did this is I went to Bob Knaack and said that I'd like to have a meeting about this and discuss this. If the teachers are that much at loggerheads when they're doing things that are that nasty to each other, there is something wrong. So I went to Bob and asked if we could have a conference about it and he refused to do it. So, things have not gone well this last year but I don't feel that that's something that can be laid at my doorstep. I want to continue teaching. My job is something that's valuable to me and I want to maintain my career here in the Wausau area because this is my home. I will continue to try to do my job as professionally as possible but I do regret that there have been things done by supervisors above me that have been contrary to teachers getting along well with each other and hopefully eventually that will pass.

At the interview, Beth Bouffleur was asked "Could you describe your relationship with colleagues in the foreign language department in which you last taught?" and responded:

Well, there was only one and that was my cooperating teacher. They do only offer French at DeSoto. I had a very good relationship with her. We had the same train of thought and sometimes it was really kind of scary because we would be thinking the same things, you know. I definitely think I'm the kind of person that can get along with lots of different people.

At the end of all the interviews, Hazaert asked each team member to tell him their first and second choices for the 100% French position. Each interview team member ranked Bouffleur and Delsarte as their top two candidates. Hazaert and Johansen ranked Bouffleur as their Number One candidate. The interview team interviewed five candidates. Once it became evident that there was agreement on the top two candidates, the discussion focused primarily upon the pros and cons of Bouffleur and Delsarte. There was, however, some discussion about the strengths and weaknesses of the other candidates as a check to determine whether or not the interview team members had heard and understood the same information.

23. At the time of the interview for the 100% French position, Hazaert knew that there had been a 30% posting; that Complainant had filed a suit against some Junior High teachers; that Complainant had been laid off under Article 32(I); and that Complainant had conflicts with several people, including Knaack. At that time, Hazaert understood that other

teachers had been laid off under Article 32(I). At the time of Complainant's layoff, Hazaert did not have the opinion that Knaack had hard feelings toward Complainant, or bore Complainant any ill will. Hazaert's understanding of the candidate's proficiency in French

Page 90

Dec. No. 29946-L

was a factor that was considered by Hazaert when evaluating the candidates for the 100% position and was primarily determined by the fact that each candidate had the appropriate certification to teach French. Hazaert understood that Delsarte was bi-lingual and that Complainant reported during the interview that his French language proficiency was high. Hazaert considers Perceiver scores to be indicators, but not absolute determinants, of an applicant's talents. Hazaert considers other interview responses to strengthen or weaken the Perceiver indicators. Hazaert concluded that Complainant was a marginal predict on the Perceiver because of inconsistencies with other responses made during the interview. Complainant's responses to Johansen's questioning of Complainant's relationships to others influenced Hazaert's conclusion that Complainant was a marginal predict on the Perceiver. Hazaert did not consider Complainant's oral interview responses to have demonstrated any significant use of instructional models used by the District, e.g., Effective Instruction and Dimensions of Learning. Discussions at the end of the interviews lead Hazaert to conclude that the other interview team members were not satisfied that Complainant had demonstrated that he used District instructional models to any significant degree. Hazaert considered Bouffleur's interview to have demonstrated that Bouffleur was eager, spontaneous, extremely positive and excited about the 100% French position. Hazaert considered the fact that Bouffleur had completed her Master's Degree to be an indication that she set high goals for herself and was committed to her career. Hazaert was impressed by the fact that Bouffleur had worked in a computer lab at the university; was familiar with a variety of software programs and had assisted other teachers in setting up computer programs. Hazaert considered Bouffleur to have demonstrated that she was familiar with different initiatives and to have given some examples of how she had used these initiatives. The primary reason that Hazaert chose Bouffleur was her positive attitude; her enthusiasm for the position; her high level of commitment to her career; her demonstration that those that had worked with her were very positive about her; her interest in co-curricular activities; and her demonstration that she had some background with and could use District initiatives in the classroom. The primary reason that Hazaert did not select Complainant was that Complainant's interview indicated that Complainant had difficulty getting along with other staff members, particularly the other District French teacher. Hazaert's "primary reasons" for selecting Bouffleur, rather than Complainant, are reasonably supported by Bouffleur's and Complainant's application materials and interview transcript. While recognizing that it is natural to have conflicts within an organization, statements made by Complainant lead Hazaert to conclude that Complainant did not accept responsibility for any of the conflicts, but rather blamed other staff members, and that Complainant wanted a third party, i.e. administrators, to resolve his conflicts with others. Complainant's statements regarding his conflict with other staff did not persuade Hazaert that Complainant could move beyond the conflicts that he had had with other staff members or work with these staff members in a collegial environment and, thus, could not be successful in

the 100% French position. Hazaert considered Complainant's responses to the Perceiver questions to indicate that Complainant is not receptive to new ideas from multiple sources; lacks objectivity and is not innovative. From this, Hazaert concluded that it was not likely

Page 91

Dec. No. 29946-L

that Complainant would be a strong candidate for future District initiatives. Hazaert did not consider Complainant's interview responses to clearly establish that Complainant had a commitment to teaching. Specifically, Hazaert was concerned that Complainant made a verbal response that indicated that he was interested in teaching at a young age, but that his career choices did not verify his stated interest, e.g., he worked in an oil field. Hazaert had a high degree of concern over the cover letter that was attached to Complainant's application, but the cover letter was not a factor in Hazaert's hiring decision. At the time that the interview team selected Bouffleur as the top candidate for the 100% French position, Hazaert did not know that Complainant had received his disciplinary letter of June 3, 1998. Prior to the interview, Hazaert was aware of the fact that Knaack had raised criticisms that Complainant was not organized; did not follow the effective instruction model; and had alienated teachers, but never inferred from these criticisms that Knaack did not want Complainant to be chosen as the candidate for the 100% French position. In ranking the top two applicants, Hazaert ranked Bouffleur as his Number One candidate and Delsarte as his Number Two candidate.

24. Solsrud was aware of the 30% French posting, but did not know who made the recommendation to post this position. Knaack and Sheehan did not discuss this posting with Solsrud prior to the time that it was posted. Solsrud considers the process for hiring the 100% French teacher to be the standard process employed by the District and consistent with her prior experiences with the District's hiring process. When Hazaert told Solsrud that Johansen would be on the interview team, he also stated that Johansen would be fair, do a good job, and that it would be a better interview team. Solsrud assumed that Johansen, rather than Knaack, was on the interview team because Knaack and Complainant had had conflict and that Johansen would be more impersonal or impartial. Solsrud does not recall Knaack consulting her about Complainant's layoff, but does recall that Knaack discussed this layoff with Solsrud; told Solsrud that he was following the contract clause that permitted the District to layoff a part-time teacher in order to hire a full-time teacher; and did not explain why the District was applying that clause to Complainant. Complainant's layoff made sense to Solsrud because it was consistent with her understanding of District practices and seemed to be similar to what had occurred with Skadahh earlier that year. Solsrud's knowledge of Complainant's layoff did not lead her to conclude that Complainant had been laid off because Knaack and/or Dodd did not want Complainant in the District. At the time of the interviews for the 100% French position, Solsrud either did not know of, or had forgotten about, Complainant's October 29, 1997 grievance. Solsrud went off-contract on, or about, June 12, 1998. In ranking the top two candidates for the 100% position, Solsrud gave consideration to the application materials, the interview and the portfolio that each candidate was requested to bring at the time of the interview. At some point in the interview process, Solsrud saw Complainant's application and was struck by the fact that Complainant had a handwritten application letter. In Solsrud's

judgment, Bouffleur and Delsarte stood out from all the other applicants and were her top two choices. Solsrud's final selection of Bouffleur as the top candidate was largely based upon her perception that Bouffleur had submitted a strong portfolio, had strong references, did well on

Page 92

Dec. No. 29946-L

the Perceiver and had a strong interview. Solsrud considered Bouffleur to have done a good job of explaining her teaching philosophy and how she taught. Solsrud, who considered Bouffleur to be a stellar candidate, was particularly impressed by the fact that Bouffleur had a Master's Degree in French and was active in pursuing opportunities to hear and speak French. Bouffleur's and Complainant's application materials and interview transcript reasonably support Solsrud's conclusions regarding Bouffleur's qualifications for the 100% French position. Solsrud had a good sense of how each candidate's Perceiver went by listening to the responses of the candidates. Prior to starting the interviews for the 100% French position, Solsrud had heard that there had been conflict between Complainant and Knaack. Solsrud believes that she learned about this conflict when a secretary had discussed it with her because there had been loud shouting. Solsrud was not influenced by her knowledge of this conflict when she made her selection for the 100% French position. Prior to June 1, 1998, Solsrud had not discussed Complainant being a 100% FTE French teacher with Dodd, Knaack or Sheehan and was not aware that Complainant had received the June 3, 1998 reprimand letter. At the time that the interview team selected Bouffleur, Solsrud did not have a belief that Knaack, Sheehan or any other administrator did not want Complainant to be a 100% FTE teacher. Solsrud's experience with Complainant persuaded her that he did not deal well with conflict and had poor problem resolution skills when dealing with other teachers. Complainant's interview statements regarding how he handled conflicts at the Junior High was not a factor in Solsrud's selection decision.

25. At the time of the interviews for the 100% French position, Johansen knew that Complainant had been laid off; that there had been a lawsuit; that Complainant had conflicts with teachers; and that Complainant had filed a grievance, but did not know the particulars of the grievance. Johansen's knowledge of this grievance did not lead him to conclude that any District administrator might not want Complainant to be chosen for the 100% French position. Dodd did not discuss with Johansen how Dodd wanted the interview and selection process for the 100% FTE French teacher to be handled. At the time of the selection of Bouffleur as the top candidate for the 100% French position, Johansen was not aware of any animosity between Complainant and Dodd and had not heard any allegation that, at a meeting during the summer of 1998, that Complainant had threatened Dodd. Johansen did not know whether Sheehan, Dodd, or Knaack wanted Complainant to be hired, or to not be hired, for the 100% French position. Johansen was surprised when Hazaert told Johansen that he had been selected to interview candidates for the 100% French position because normally the Junior High principal would do this. Hazaert told Johansen that the District wanted an unbiased interviewer, but Hazaert did not say that Knaack would be biased. Johansen neither inferred, nor believed, that Knaack would be biased because Complainant had had conflicts with Knaack. Johansen concluded that the District did not put Knaack on the interview team as a precaution, i.e., to

avoid any claim by others that Knaack was biased against Complainant. Johansen considered the direction to interview Complainant to be a reflection of the fact that Complainant was a District teacher. Johansen did not draw any negative conclusion from the fact that

Page 93

Dec. No. 29946-L

Complainant had been laid off and considered Complainant's situation to be similar to that of Skadahl, who he understood had been reduced; reapplied for a position and interviewed for a position. Johansen knew that Complainant would be interviewed prior to screening the other applications. Johansen did not read Complainant's application at the time that applications were initially screened, but read it at some point in the interview process and was surprised by the cover letter. Johansen reads what is in the application and would have read Complainant's observation reports if they had been included in Complainant's application materials. The fact that Johansen still recalls the cover letter as a negative persuades him that the cover letter may have been a factor in his decision to not rank Complainant in the top two. Johansen's belief that Bouffleur was an intern was a factor in Johansen's decision because it lead him to conclude that she had student taught for 18 weeks, rather than 9 weeks, which persuaded him to give more credence to the report from her cooperating teacher. Johansen was not aware that Complainant had been an intern. Johansen asked Hazaert what the scores were for each of the interview candidates. Johansen did not consider Hazaert to have made any errors in scoring the Perceiver. In determining his top two candidates, Johansen did not rely on the total score of the Perceiver, or whether or not an individual was a predict or nonpredict, but rather listened to the questions as they were being asked and used his training in administering the Perceiver to assess the candidates' strengths and weaknesses within the various categories of the Perceiver. Johansen used his personal interview questions to follow through on his assessment of candidate strengths. Prior to asking Hazaert for the Perceiver scores, Johansen had an impression with respect to Complainant's strength and weaknesses. Johansen's primary concern about Complainant was Complainant's failure to demonstrate to Johansen that Complainant was using the methodologies taught by the District in his classrooms and Johansen's conclusion that Complainant had interpersonal skill problems. Johansen had a specific concern that Complainant was weak in "Dimensions of Learning." Johansen considered Bouffleur to have demonstrated that she was of capable utilizing the training that she had received and applying this training in the classroom. Specifically, Johansen concluded that Bouffleur demonstrated her use of cooperative learning in the classroom, while Complainant demonstrated that he received training from the District and then ignored the training and went his own way. Complainant's interview caused Johansen to question whether or not Complainant developed and followed through on lesson plans. Johansen selected Bouffleur as his first choice and Delsarte as his second choice for the position. Johansen's conclusion that Complainant had interpersonal skill problems was based upon Complainant's recitation of the problems that he had had with administration and other teachers, including Berns. Johansen, who had been involved in a number of employment interviews, had never heard an applicant recite as many conflicts with his peers. Johansen was especially troubled by the fact that Complainant's conflicts were with other members of Complainant's department. In Johansen's view, Complainant's conflicts with other Foreign Language Department teachers

would negatively impact upon the Department's ability to move forward on curriculum and implement new programs. In Johansen's opinion, a successful teacher must be able to get along with colleagues and that this ability is especially necessary in the District's middle

Page 94

Dec. No. 29946-L

school, which utilized team teaching. Johansen has supervised Berns for a number of years and gets along quite well with Berns. Johansen selected his top two candidates based upon the knowledge that he gained in the interview process and was not influenced by the fact that Complainant had filed a grievance. Johansen chose Bouffleur as his top candidate because he thought that she would do the best job at the Junior High. Johansen considered Bouffleur's interview, unlike that of Complainant, to be a positive interview and she made him more comfortable. After the interviews were finished, the interview team selected Bouffleur as the best candidate for the 100% French position and Bouffleur was hired into the 100% French position. Bouffleur's and Complainant's application materials and interview transcript reasonably support Johansen's conclusions regarding Bouffleur's and Complainant's respective qualifications for the 100% French position.

26. By letter dated July 15, 1998, Jaworski provided notice to Complainant that Complainant had not received the 100% French position. After completion of the interview process and the interview team's selection of Bouffleur as the successful applicant, Hazaert discussed the interview process with Dodd. During this discussion, Hazaert advised Dodd that Hazaert considered Complainant's application cover letter to show a disregard for the District's hiring process; that Complainant was a marginal predict; and that Complainant had mentioned disputes with colleagues that were not yet settled. Hazaert also reviewed the interview team's rationale for selecting Delsarte and Bouffleur as their top two candidates.

27. On July 7, 1998, Complainant and LaBarge submitted a grievance alleging that the District violated the collective bargaining agreement by laying off Complainant. This grievance was subsequently amended to allege that the District had violated the collective bargaining agreement by failing to award Complainant a full-time French position for the 1998-99 school year. On September 9, 1998, the District Board of Education met in a closed session for the purpose of considering Complainant's amended grievance. In response to questioning from the Respondent's Attorney, UniServ Director Garnier indicated that the amended grievance encompassed the grievance filed on June 5, 1998 and Complainant's layoff. Garnier was provided with the opportunity to speak in support of the grievance; Complainant was provided with the opportunity to speak in support of the grievance; and Dodd was provided with the opportunity to explain the decision to lay off Complainant and to not hire Complainant for the 100% French position. Dodd's explanation included the assertion that, under Article 32(1), the District has the right to layoff part-time teachers; that Article 32(I) had been used in the past; that the contract language provides the District with the right to enlarge the pool of candidates and to improve staff; that Complainant was hired from a pool of two applicants; that Knaack had contacted Complainant on May 18, 1998 to see if he would be interested in a 100% French position, but after May 27, 1998, Knaack contacted Dodd and

said not to make Complainant 100% FTE, but rather, to post a 30% position; that no candidates were available for the 30% position; and that on June 10, 1998, a decision was made to lay off Complainant under Article 32(I). Dodd explained that the decision to lay off

Page 95

Dec. No. 29946-L

was influenced by Complainant's conduct in disputing the need to return to his study hall; not returning to the study hall until he was repeatedly told to return; subsequently demanding an apology from Knaack and Sheehan; conducting himself in such a loud and raucous manner that students had to be removed from the office; and that, throughout the years, there were instances which illustrated that Complainant was not a team player. Dodd also indicated that there was a concern that Complainant was not using communication with other teachers as a way of obtaining teaching ideas. Dodd explained that the interview team for the 100% position was told to complete the process as for every position and that, in selecting candidates for District positions, the District relied upon applications, recommendations, Perceiver and questions germane to the District. Dodd explained that the District did not rely upon year-end evaluations or observation reports because only Complainant would have those in his file and such reliance would skew the process. During the portion of the meeting in which Complainant was present, various School Board members, but not Leonard, asked questions. The District's attorney, Dodd and Garnier responded to these questions. Knaack was present at the hearing, but was not asked any questions and did not make any statements at the hearing. After hearing the positions of the Association, Complainant and the Administration, the School Board deliberated for forty-five minutes in closed session, outside the presence of the administrators, and decided to uphold the administration decision to provide notice to Complainant that he was laid off from his part-time position and to deny the two grievances, as amended. The minutes of this September 9, 1998 meeting, as with all minutes of School Board Meetings, are not verbatim. Dodd reviews the minutes of School Board meetings to ensure that they are accurate with respect to motions.

28. Between May 28, 1998 and June 1, 1998, Knaack made the decision to not offer Complainant a 100% position and to post a 30% French and supervision position. Knaack's rationale for posting a 30% position was that he needed more supervision for the 1998-99 school year and he believed that a 30% posting would be sufficient to attract a qualified applicant to teach the available French section. Knaack did not want to raise Complainant to a 100% position because he was dissatisfied with Complainant's relationship with his co-workers and considered Complainant to be responsible for a negative atmosphere in the Junior High Building. Knaack did not give any consideration to the fact that Complainant had filed a grievance when he decided to post the 30% position. Knaack's decision to not offer Complainant a 100% position and to post a 30% French and supervision position was not motivated, in any part, by hostility toward Complainant's grievance activity.

29. Between June 4, 1998 and June 10, 1998, Knaack decided to recommend to Dodd that Complainant be laid off. Knaack decided to recommend Complainant's layoff because he concluded that there may be someone available for the 100% position that was as

good, or better than Complainant. In reaching this conclusion, Knaack primarily gave consideration to his belief that there was a negative atmosphere in the Junior High school which had resulted from the Soto-Martin lawsuit; Complainant's less than exemplary

Page 96

Dec. No. 29946-L

relationship with Berns; Complainant's refusal to return to his study hall when repeatedly directed to do so by Sheehan; the FYI's; and Complainant's threats against Knaack and Sheehan on June 2, 1998. Knaack also thought that Complainant had a number of grievances that were being filed for different situations. Knaack's concern over the number of grievances that were being filed by Complainant was not a major factor in Knaack's decision to recommend that Complainant be laid off. By thinking about the number of grievances that were being filed for different situations when concluding that there may be someone available for the 100% position that was as good, or better than Complainant, Knaack exhibited hostility to protected, concerted activity. In June of 1998 and at hearing, Knaack feared that Complainant would do something irrational and that this irrational behavior possibly could be something violent. Knaack's decision to recommend Complainant's layoff to Dodd was motivated, in part, by Knaack's hostility to Complainant for filing a number of grievances, but Knaack's decision to recommend Complainant's layoff to Dodd was not triggered by Knaack's hostility to Complainant's grievance activity, but rather, was precipitated by a number of legitimate business concerns.

30. Knaack did not have authority to layoff Complainant or to recommend to the School Board that Complainant be laid off. Dodd did not have authority to layoff Complainant but did have authority to effectively recommend to the School Board that Complainant be laid off. Dodd did not defer to Knaack's judgment when deciding to layoff Complainant. Dodd's decision to recommend the layoff of Complainant was based upon Dodd's independent consideration of a number of legitimate business concerns. Dodd's decision to recommend the layoff of Complainant to the School Board was not tainted by the unlawful hostility of Knaack, or of any other individual. The School Board's decision to accept Dodd's recommendation to layoff Complainant was not tainted by the unlawful hostility of Knaack, or any other individual.

31. Hazaert, Solsrud, and Johansen's evaluation of the qualifications of the applicants for the 100% French position was based upon legitimate business considerations. These legitimate business considerations lead Hazaert, Solsrud, and Johansen to decide that Bouffleur and not Complainant was the best candidate for the 100% French position. Hazaert, Solsrud and Johansen's decision to select Bouffleur and not Complainant for the 100% French position was not tainted by the unlawful hostility of Knaack, or any other individual. Respondent's decision to hire Bouffleur into the 100% French position and to not hire Complainant into the 100% French position was not tainted by the unlawful hostility of Knaack, or any other individual.

32. Complainant's behavior during his encounters with Michael Sheehan on May 27, 28, and 29, 1998 and on June 1 and 2, 1998; during his encounter with Robert



Knaack on the morning of May 28, 1998; and during his encounter with Michael Sheehan and Robert Knaack on June 2, 1998, manifests and furthers a purely individual, rather than a collective concern.

Page 97  
Dec. No. 29946-L

33. Complainant's behavior prior to meeting with representatives of the D.C. Everest Teacher's Association to discuss and prepare the October 29, 1997 grievance manifests and furthers a purely individual, rather than a collective concern.

Based upon the above and foregoing Findings of Fact, the Examiner makes and issues the following:

### **CONCLUSIONS OF LAW**

1. Complainant George Mudrovich is a municipal employee within the meaning of Section 111.70(1)(i), Stats.

2. Respondent D. C. Everest Area School District is a municipal employer within the meaning of Section 111.70(1)(j), Stats., and at all times material hereto, Roger Dodd, Robert Knaack, Michael Sheehan, Daniel Hazaert, Thomas Johansen, and Corinne Solsrud have acted on behalf of the Respondent.

3. Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection when he used the contractual grievance procedure to file and process his grievance of October 29, 1997, and when Complainant sought the assistance of representatives of the D.C. Everest Teacher's Association to prepare, file and process this grievance through the contractual grievance procedure.

4. Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection when, on May 28, 1998, he first announced an intent to file grievances if Michael Sheehan did not apologize to Complainant and if the District denied Complainant a 100% French position if one should be available and when he subsequently announced an intent to file such grievances.

5. Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection when he filed and processed his grievance of June 5, 1998 through the contractual grievance procedure and when Complainant sought the assistance of representatives of the D.C. Everest Teacher's Association to prepare, file and process this grievance, as subsequently amended, through the contractual grievance procedure.

6. A clear and satisfactory preponderance of the evidence does not establish that, prior to meeting with the D.C. Everest Teacher's Association to discuss and prepare the

October 29, 1997 grievance, Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection.

Page 98  
Dec. No. 29946-L

7. A clear and satisfactory preponderance of the evidence does not establish that Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection during his encounters with Michael Sheehan on May 27, 28, and 29, 1998 and on June 1 and 2, 1998.

8. A clear and satisfactory preponderance of the evidence does not establish that Complainant was engaged in lawful, concerted activity for the purpose of collective bargaining or other mutual aid or protection during his encounter with Robert Knaack on the morning of May 28, 1998 or during his encounter with Michael Sheehan and Robert Knaack on June 2, 1998.

9. A clear and satisfactory preponderance of the evidence does not establish that Roger Dodd, Daniel Hazaert, Thomas Johansen, Corinne Solsrud, Michael Sheehan or any member of the School Board, is hostile to Complainant's exercise of lawful, concerted activity.

10. Robert Knaack's decision to recommend the layoff of Complainant to Roger Dodd was motivated, in part, by Knaack's hostility to Complainant's protected, concerted activity in filing a number of grievances for different situations and, thus, by this decision of its representative Robert Knaack, Respondent has violated Sec. 111.70(3)(a)3, Stats., and derivatively violated Sec. 111.70(3)(a)1, Stats.

11. A clear and satisfactory preponderance of the evidence does not establish that Roger Dodd's decision to recommend the layoff of Complainant to the School Board was motivated, in any part, by hostility to Complainant's protected, concerted activity.

12. A clear and satisfactory preponderance of the evidence does not establish that the School Board's decision to layoff Complainant was motivated, in any part, by hostility to Complainant's protected, concerted activity.

13. A clear and satisfactory preponderance of the evidence does not establish that the interview team's selection of Beth Bouffleur as the best candidate for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity.

14. A clear and satisfactory preponderance of the evidence does not establish that Respondent's decision to hire Beth Bouffleur, rather than Complainant, for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity.

15. A clear and satisfactory preponderance of the evidence does not establish that Respondent violated Sec. 111.70(3)(a)1 or (3), Stats., when it laid off Complainant and did not

hire Complainant into a 100% French position.

Page 99  
Dec. No. 29946-L

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following:

**ORDER**

1. Complainant's allegations that Respondent violated Sec. 111.70(3)(a)1 and 3, Stats., when it laid-off Complainant and did not hire Complainant into a 100% French position are hereby dismissed in their entirety.
2. To remedy the violations of Sec. 111.70(3)(a)3, and derivatively Sec. 111.70(3)(a) 1, Stats., committed by its representative Robert Knaack, **IT IS ORDERED THAT** the Respondent, its officers and agents shall immediately:
  - a. Cease and desist from considering the number of grievances filed by an employee when making a decision to recommend the lay off an employee.
  - b. Take the following affirmative action, which will effectuate the purposes and policies of the Municipal Employment Relations Act:
    - (1) Notify all teachers represented by the D.C. Everest Teacher's Association, by posting in conspicuous places in Respondent's offices and buildings where such teachers are employed, copies of the Notice attached hereto and marked "Appendix A." This notice shall be signed by an authorized representative of the Respondent and shall be posted immediately upon receipt of a copy of this Order and shall remain posted for a period of sixty days (60) thereafter. Reasonable steps shall be taken by the Respondent to insure that this Notice is not altered, defaced or covered by other material.

(2) Notify the Wisconsin Employment Relations Commission within twenty (20) days following the date of this Order of the steps taken to comply herewith.

Dated at Madison, Wisconsin, this 15<sup>th</sup> day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

---

Coleen A. Burns, Examiner

**APPENDIX "A"**

**NOTICE TO ALL TEACHERS REPRESENTED BY THE DCETA**

Pursuant to an order of the Wisconsin Employment Relations Commission, and in order to effectuate the purposes of the Municipal Employment Relations Act, we hereby notify our employees that:

Principals employed by the D. C. Everest School District will not consider the number of grievances filed by an employee when making a decision to recommend the lay off an employee.

D. C. Everest School District

---

**THIS NOTICE WILL BE POSTED IN THE LOCATIONS CUSTOMARILY USED FOR POSTING NOTICES TO TEACHERS REPRESENTED BY DCETA FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE HEREOF. THIS NOTICE IS NOT TO BE ALTERED, DEFACED, COVERED OR OBSCURED IN ANY WAY.**

**D.C. EVEREST SCHOOL DISTRICT**

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

On May 26, 1999, Complainant filed a complaint with the Wisconsin Employment Relations Commission alleging that the D.C. Everest Area School District had committed prohibited practices in violation of Section 111.70(3)(a)1 and 3, Stats., when the administration recommended Complainant's layoff and the District School Board members approved the same and rejected his application for full-time employment. On August 14, 2000, Respondent filed an answer denying that it had committed the alleged prohibited practices.

On August 24, 2000, the Examiner issued an Order Denying Motion To Adopt Arbitrator's Finding of Fact That Respondent Was Motivated In Part By Complainant's Protected Union Activity When Respondent Laid Complainant Off On June 23, 1998 (DEC. NO. 29946-A). On August 31, 2000, the Examiner issued an Order Denying Complainant's Motion to Disqualify Attorneys Ronald Rutlin, Cari Westerhof and Dean Dietrich To Act As Advocates For Respondent For The Instant Prohibitive (sic) Practice Case (DEC. NO. 29946-B). On September 13, 2000, the Examiner issued an Order Denying Motion To Permit Complainant To Conduct Depositions Prior To The Hearing (DEC. NO. 29946-C). On September 19, 2000, the Examiner issued an Order Denying Complainant's Motion To Compel Respondent To Declare, Prior To The Hearing, Exactly Which Teachers Respondent Claims To Have Laid Off Under The Provisions Of Article 32(I) (DEC. NO. 29946-D). On September 22, 2000, the Examiner issued an Order Denying Motion To Compel Respondent To Furnish Copies Of Various Documents To Complainant And/Or Make Them Available For Complainant's Inspection (DEC. NO. 29946-E). On October 11, 2000, the Examiner issued an Order Denying Complainant's Motion To Amend Complaint (DEC. NO. 29946-F). On March 29, 2001, the Examiner issued an Order Granting Respondent's Motion To Quash Subpoena Duces Tecum (DEC. NO. 29946-G). On April 2, 2001, the Examiner issued an Order Denying Complainant's Motion Requesting That The Examiner Conduct In-camera Inspections of the Personnel Files of D.C. Everest Teachers Who Had Originally Been Hired On A Part-time Basis, But Were Later Increased To Full-time Status, In Order To Ascertain The Size Of The Original Applicant Pools of Said Teachers (DEC. NO. 29946-H). On April 2, 2001, the Examiner issued an Order Denying Complainant's Motion To Enter Into Evidence Appendix "A" Which Was Attached To Complainant's March 5, 2001 Motion Which Requested An In-camera Inspection Of Certain Personnel Records (DEC. NO. 29946-I) and an Order Denying Complainant's Motion In Limine (DEC. NO. 29946-J). On June 18, 2001, the Examiner issued an Order Denying Complainant's Motion to Reopen Hearing (DEC. NO. 29946-K).

## **POSITIONS OF THE PARTIES**

### **Complainant**

In searching for the truth, the Examiner must not permit witnesses to cavalierly disregard their duty to provide truthful answers. The Examiner should not reward a witness who obstructs the truth, or testifies falsely.

In this hearing, the most flagrant disregard for the truth was demonstrated by Leonard. Although Leonard, as School Board President, was in the position to know all of the relevant facts, she purposefully gave false testimony and used convenient excuses that “she could not recall” for the sole purpose of preventing the Examiner from hearing the truth. Had she told the truth, all necessary elements of a prohibited practice would have been established. With respect to Leonard’s testimony, all inferences against Respondent’s interest must be made and judgment must be granted in favor of Complainant.

The false and misleading testimony of Dodd, Knaack and Hazaert further establishes that the District was guilty of intentionally misleading the Examiner. If such individuals had testified fully and truthfully, Complainant’s prohibited practices complaint would have been proved by the very individuals accused of wrongdoing.

Under MUSKEGO-NORWAY, Complainant must establish the following four elements:

- 1) Complainant was engaged in concerted union activities protected by MERA;  
and
- 2) The Employer had knowledge of those activities
- 3) The Employer was hostile toward those activities
- 4) The Employer’s action was based, at least in part, on hostility towards those activities

On October 29, 1997, and June 5, 1998, Complainant filed grievances with the assistance and support of DCETA President LaBarge and UniServ Director Coffey. This conduct of Complainant involved concerted union activities protected by MERA. District administrators, including Knaack and Dodd, knew that Complainant had filed these grievances.

Complainant also was engaged in concerted union activity during a continuum of events from May 28 through June 2, 1998. This concerted union activity involved Complainant’s asserting his contractual rights to be treated like any other similarly situated employee and Complainant’s announcement that Complainant intended to file grievances if Complainant were not given an available French class and if Sheehan did not apologize to Complainant. District administrators were aware of this concerted union activity.

The District's administrators demonstrated hostility to Complainant's concerted union activity by the manner in which they responded to Complainant at the time that he engaged in his concerted union activity, as well as by the manner in which they reacted to Complainant after he had engaged in this activity. These reactions include otherwise inexplicable hostility and disparate treatment.

In their testimony, the District administrators displayed evasiveness, inconsistency and selective memory regarding Complainant's grievances and the "legitimate" reasons for their conduct towards Complainant. Given this evasiveness, an inference of hostility to said grievances must be made. CITY OF RACINE, DEC. NO. 28673-A (HONEYMAN, 1/97).

On June 10, 1998, Respondent, by its agents Knaack and Dodd, decided to recommend the layoff of Complainant and, on June 23, 1998, Respondent, by its School Board, accepted this recommendation. The decision to recommend Complainant's layoff and the acceptance of this recommendation was motivated, in part, by hostility to Complainant's concerted union activity. Subsequently, Respondent hired a 100% FTE French teacher. Respondent's decision to not accept Complainant's application for this 100% French position was motivated, in part, by hostility to Complainant's concerted union activity. By this conduct, Respondent has violated MERA.

Knaack's testimony at the arbitration hearing and before the Examiner demonstrates that Knaack's decision to recommend the layoff of Complainant was motivated by hostility to Complainant's concerted union grievance activity. Dodd's acceptance of Knaack's tainted recommendation imputes illegal motivation to the School Board. Under Commission law, the evidence of Knaack's hostility is sufficient to establish that Dodd's recommendation of Complainant's layoff and the School Board's approval of the same was motivated, in part, by hostility toward Complainant's protected, concerted activity. See MILWAUKEE COUNTY, DEC. NO. 27279-A (GALLAGHER, 12/92)

Knaack's attempts to deny that Complainant's grievances were a factor in his recommendation are nonsensical. Additionally, his denials were provided after the District's attorney had an opportunity to instruct Knaack on the status of the law.

Knaack and/or Sheehan demonstrated their hostility to Complainant's MERA protected activity by assigning Complainant to a IMC study hall in January of 1998; issuing a memo to IMC supervisors; singling out Complainant for enforcement of the IMC memo; displaying hostility to Complainant when Complainant requested a receipt acknowledging that he had returned his teaching contract; and failing to automatically increase Complainant from an 80% to a 100% FTE when it became known that an additional French section was available.



Knaack and/or Sheehan displayed hostility to Complainant's MERA protected activity in their reactions to Complainant's assertion of a contractual right to be treated in the same manner as other similarly situated employees and to Complainant's announced intent to file grievances. These reactions include responding to Complainant's complaints of disparate treatment in an unreasonable manner; Knaack's comment "You coming in here yesterday like you did was unprofessional," which comment can only be construed to mean that Complainant was unprofessional by engaging in grievance activity; Knaack's decision to post a 30% French position on June 1, 1998; Sheehan and Knaack's conduct towards Complainant on June 2, 1998; the issuance of the June 3, 1998 letter of reprimand; and Knaack's decision to recommend the layoff of Complainant.

The testimony of Dodd, Knaack and Sheehan regarding the deliberations for the staffing decisions made in the spring of 1998 is not credible. It is more likely that the following sequence occurred: Sheehan automatically assigned Complainant to the additional French section, per District practices; no other administrator was aware of this assignment until Complainant pointed out to Sheehan the discrepancy between the assignment of the additional French section and Complainant's 80% contract; Knaack was surprised to learn from Sheehan that Complainant had been assigned the additional French section; Knaack and Dodd decided on May 18, 1998, that they would use this opportunity to show Complainant that they had the power to make things difficult for Complainant if he crossed them by filing grievances asking that they be disciplined; after mulling things over, Knaack and Dodd decided to prove to Complainant that they could make things difficult by posting a 30% French position; neither discussed using Article 32(I) because they did not know of its existence; Knaack and Dodd were disappointed that no one applied for the 30% posting; they then looked at the contract to find a way to get rid of Complainant; and, after checking with legal counsel on June 10, 1998, decided to short-cut the posting and apply the newly discovered Article 32(I).

Sheehan's explanation as to why he entered Complainant's name on the Master Schedule is not credible, on its face, and is inconsistent with Sheehan's subsequent conduct. This explanation was fabricated in order to be a "team player" with Dodd and Knaack.

Knaack's assertion that the Master Schedule is a rough draft is contradicted by other evidence, including the note that Sheehan placed on the Master Schedule, and the fact that the actual 1998-99 Master Schedule is virtually the same as the Master Schedule that was posted in May of 1998. Knaack's evasive and irrational responses as to why he did not raise Complainant to 100% FTE between May 18 and May 27, 1998 establish that his purported reasons are pretextual.

On May 28, 1998, Complainant met with Knaack and attempted to carry on a calm, reasonable conversation, but Knaack flew off the handle. Knaack acknowledges that, at that meeting, Complainant indicated that he would be filing grievances if Complainant did not get a full-time job and if Sheehan did not apologize to Complainant. Knaack's repeated negative inferences in C-31 to Complainant's communication to him that Complainant would file a grievance establish Knaack's hostility toward Complainant's concerted union activity. STATE OF WISCONSIN, DEC. NO. 27511-A (McLAUGHLIN, 4/93); RICHLAND COUNTY, DEC. NO. 26352-A (SCHIAVONI, 7/90)

Respondent implies that Complainant ignored Sheehan's instruction to return to the IMC. This is not the case. Consistent with established practice of interacting with an administrator, Complainant explained why he was in the office.

On June 1, 1998, Knaack posted a 30% French position, rather than offer the available French section to Complainant. This posting is inconsistent with the prior practices of the District and violated Article 12(D) of the collective bargaining agreement. There is no reasonable, good faith explanation for why Knaack did not discuss the 30% posting with Solsrud, the Chair of the Foreign Language Department. The needs of the French program could have been met with a 20% posting.

If Knaack were legitimately concerned about Complainant's conduct, then by the end of the June 1, 1998 encounter, Complainant would have been advised that he was not behaving appropriately. Respondent did not even attempt to articulate a valid business reason for adding two supervisions to the French posting. For example, Respondent did not offer any financial analysis of the difference in cost between hiring an aide to supervise versus paying a teacher. All of the alleged legitimate business reasons for the 30% posting are, in fact, after-the-fact pretexts to conceal illegal motives.

The decision to post a 30% French position on June 1, 1998, rather than to give the extra French section to Complainant, was an attempt by Knaack and Dodd to either constructively discharge Complainant, or to force Complainant to submit and not file a grievance. The only factor that could have motivated the decision to post the 30% posting and to not give Complainant the 100% French position was hostility toward Complainant's MERA protected activities.

Past instances of illegal conduct and a discriminatory motive can sometimes be relied upon to shed light on subsequent conduct. CITY OF RACINE, DEC. NO. 30060-A (GRECO, 2/01). Thus, the 30% posting provides support to Complainant's contention that when Knaack and Dodd decided to lay off Complainant, a pattern of illegal conduct was repeated.

Dodd and Knaack had previously misrepresented the reasons for the 30% posting. Dodd's inconsistent testimony on why the posting was at 30% indicates that Dodd gave false testimony regarding the decision to post the 30% position and conspired with Knaack to destroy Complainant's career at the District. If a stated motive is discredited, it may be inferred that the true motive is an unlawful motive that the respondent seeks to disguise. NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28954-B (NIELSEN, 8/98).

In the prior arbitration hearing, Knaack testified contrary to his testimony in this hearing and flatly denied that he had decided to post the 30% position so that Complainant could not be considered for the vacant position. As Arbitrator Greco stated in a prior Award involving the District, lying under oath at an arbitration hearing is a very serious offense that cannot be rewarded in any fashion.

During the June 2, 1998 meeting, Complainant was asserting his contractual right to be treated like any other similarly situated employee. This meeting was nothing more than an argument that had been initiated by Knaack to try to intimidate Complainant as Complainant was asserting his contractual rights. Knaack's conduct at this meeting was completely inappropriate.

Given Knaack's virtually nonexistent credibility as a witness, the letter of reprimand grossly misrepresents what occurred at the meeting of June 2, 1998. Given Gilmore's acknowledgement that she felt pressure to be a member of the administrative team; the possibility that someone asked her to document the event; the inconsistencies between Gilmore's deposition statements, her contemporaneous note, and her testimony concerning the June 2, 1998 event, her contemporaneous note must be discredited as unreliable and inaccurate. Sheehan's contemporaneous note does not reference that Complainant made a statement that Knaack and Sheehan had made their bed and would now have to lie in it. The credible evidence demonstrates that Complainant did not make such a statement.

Complainant told Knaack and Sheehan "These things will come back to you in the course of time." Complainant established that the meaning of this was Complainant was going to file a grievance if Knaack went through with his plans to treat Complainant disparately. Complainant's message that he was going to file a grievance constitutes protected union activity.

If, as Knaack testified, Knaack considered Complainant to have said things violently, to become unglued and that Complainant's temper was uncontrolled on June 2, 1998, it would follow that Knaack would have feared Complainant on June 2, 1998 and would have taken precautions based on this fear. Knaack, however, denies that he had fear on June 2, 1998 and claims that his fear of Complainant occurred after June 2, 1998.

On June 2, 1998, Knaack did not take any precautions, e.g., no Police Officer escorted Complainant from the premises and Complainant was permitted to continue his teaching duties. The fact that Knaack only issued Complainant a letter of reprimand establishes that the June 2, 1998 meeting was not the momentous event that Knaack now recalls.

At the time that Complainant was engaging in the alleged “inappropriate” behavior, neither Knaack, nor Sheehan, advised Complainant that the behavior was inappropriate. Knaack’s testimony that he did not consider suspending Complainant for his alleged misconduct, establishes that the encounters do not justify terminating Complainant’s employment.

Knaack’s testimony regarding the alleged threats and his reaction thereto is false and self-serving and cannot be credited. The events of June 2, 1998 do not warrant taking away Complainant’s livelihood, when, according to Knaack, they did not warrant a one-day suspension.

Neither Complainant’s relationship with Berns, nor his suit against Soto and Martin, justified Complainant’s nonrenewal. Thus, it must be concluded that Knaack had no problem with Complainant’s continued presence at the Junior High.

Knaack’s claimed “reservations” about Complainant are not logical and do not provide a legitimate basis for preventing Complainant from becoming a 100% FTE teacher. Moreover, the May meeting in which Dodd claims to have been told that Knaack had reservations about increasing Complainant to a 100% FTE never took place. This meeting was fabricated to conceal the fact that Dodd and Knaack had rescinded Sheehan’s decision to assign Complainant a fifth section of French.

Prior to Complainant’s lay off, Dodd and Knaack demonstrated a pattern of conduct of using pretext to hide their true motives for acting against Complainant. If a respondent’s stated motives for its conduct are discredited, it may be inferred that the true motive is an unlawful one. A finding of pretext may itself be proof of illegal motive. NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28954-B (NIELSEN, 8/98).

Given the language of Article 10(F) and Knaack’s pretext that he wanted additional supervision, the grievance filed on June 5, 1998, surely must have appeared to be a loser. The decision to lay off Complainant was an effort to dispose of the June 5, 1998 grievance. Indeed, at the School Board hearing, the District’s attorney attempted to persuade the UniServ Director that the June 5, 1998 grievance was moot. Although the UniServ Director did not find this argument to be persuasive, the effect of the stipulated issue that was presented to the Arbitrator had the effect of disposing of the June 5, 1998 grievance. The timing of the layoff decision, as well as the totality of the circumstances surrounding this decision, gives rise to the inference that the layoff decision was motivated, at least in part, by anti-union animus.

At hearing Dodd provided many reasons for recommending Complainant's layoff, including that Complainant was not a team player; Complainant alienated other staff; the climate at the Junior High was not what it should be because of Complainant's presence; Complainant had to have his way, and if Complainant did not have his way, then he would do everything in his power to have his way; Complainant's encounters with Knaack and Sheehan in late May and early June, 1998; FYI notes from faculty; and the Soto-Martin lawsuit. These reasons were not communicated to Leonard when she met with Dodd prior to June 23, 1998; or to Complainant, LaBarge or Coffey on June 15, 1998; or to the School Board.

Leonard, who was President of the District's School Board at all times relevant hereto, testified that she was provided with only one reason for the layoff, i.e., that Complainant had been initially hired from a small pool of applicants. If Dodd had good faith reasons to layoff Complainant, then there is no innocent explanation as to why he did not provide these reasons to the School Board.

Dodd's failure to provide these reasons at that time demonstrates that Dodd knew full well that the layoff was pretextual and that Dodd was seeking to conceal from the School Board the true nature of his actions. If Respondent's stated motives for discharge are discredited, one may infer that the true motive for discharge is unlawful. HEARTLAND FOOD WAREHOUSE, 256 NLRB 940, 107 LRRM 1321 (1981).

Respondent offered no evidence of a policy or practice defining "small pool." The administrators did not define what the District considered to be a small applicant pool. Nor did Respondent provide any documentation that small pools were of concern, such as a process of tracking small applicant pools or that the size of applicant pools had previously been investigated prior to making staffing decisions.

The record is devoid of evidence that, prior to Complainant's Article 32(I) lay off, any District administrator had been concerned about the fact that a teacher was hired from a small applicant pool. Presumably, if a small applicant pool were of such concern, the District would have taken advantage of its contractual authority to non-renew those teachers when teachers were hired from a small applicant pool. To claim an on-going concern about small applicant pools regarding part-time teachers, but to not claim the same concern for full-time teachers is arbitrary. The stated concern over the small applicant pool is pretextual.

Sheehan testified that he did not know the size of the applicant pool at the time that Complainant was hired and only learned of the size later on. Knaack, who was involved in hiring Complainant and, thus, would have knowledge of the size of the applicant pool, denied bringing up the size of the applicant pool. Dodd testified that he did not look at Complainant's personnel file or his original application. Thus, Dodd would not have known about the size of the applicant pool. It is likely, therefore, that Owens and Hazaert were in a meeting with

Knaack and Dodd and fabricated an innocent sounding basis for laying off Complainant, i.e., the small size of the applicant pool.

If Respondent were truly concerned about the small size of the applicant pool, then it would have moved to non-renew Complainant prior to June of 1998. Inasmuch as the size of the applicant pool could not have changed from the time of Complainant's hiring, this situation is analogous to GREEN LAKE COUNTY, DEC. NO. 28792-A (NIELSEN, 4/97).

Dodd was compelled to assert a concern about applicant pool size to provide a plausible explanation to the School Board or some other entity. In fact, his asserted concern was pretextual and intended to conceal his illegal act of retaliating against Complainant for filing the October 29, 1997 grievance.

Knaack offered, as a reason for the Article 32(I) layoff, that he was looking for more supervision, but then was forced to acknowledge that the 100% French position would not provide more supervision. The impossibility of his rationale demonstrates pretext. Knaack's various other rationales were fabricated to sound good, but were not truthful.

Dodd testified that, prior to May 28, 1998, he did not have knowledge of anything that Complainant had done that would prevent Complainant from becoming a 100% FTE teacher. Thus, Dodd's testimony that he had previously heard from Knaack that Knaack had the reservations alleged by Dodd is not credible.

Respondent's allegations that Complainant was responsible for a poor climate at the Junior High school and was not a team player are rendered irrelevant by the evidence that the administrators wanted Complainant to continue at the Junior High. Respondent's allegation that Complainant was responsible for a poor climate at the Junior High is contradicted by the evidence that Complainant would have accepted a public apology from Soto accompanied by an admission that the allegations against him were false in lieu of pursuing his legal rights through litigation. The District had knowledge of this, but did not recommend this resolution. Nor did it take any other steps to resolve the dispute between Soto and Martin.

No administrator provided Complainant with notice that his action of suing Soto and Martin was not justified. Dodd never explained why he considered it unreasonable for Complainant to sue Soto and Martin. Dodd's claim that it was unreasonable to sue Soto and Martin is a smokescreen to cover up Dodd's own abysmal failure to take any steps whatsoever to resolve what Dodd knew, prior to filing the lawsuit, was a serious situation.

Heller and Pietsch are the wives of Chris Heller and Rich Pietsch. Complainant had spoken with Sheehan about their husbands switching IMC study halls. Heller was a long-term personal friend of Soto and Martin. Heller surely felt indebted to Knaack since Knaack had

hired her husband to teach 15% FTE since it is never necessary to hire a teacher to teach one class.

The FYI notes do not confirm anything. They are merely the opinion of several teachers, some of whom had reason to resent Complainant for purely personal reasons and Knaack knew this.

Had the administrators investigated the FYI notes, they would have learned that Heller's teaching abilities had not been compromised in any way by concerns about Complainant and that none of her fellow teachers had indicated to her that their teaching has been compromised. Heller's testimony establishes that her concerns regarding Complainant are irrational.

Knaack and Dodd's claimed belief that teachers were concerned that Complainant would sue them is not credible. None of the FYI letters indicated a fear of being sued. When people legitimately fear that they may be sued, what they really fear is the financial harm that might come to them. The Junior High teachers knew full well that whatever might happen, the District would bear all the financial burdens on their behalf.

The administrator's failure to investigate either the FYI notes, or their perception of a bad atmosphere, indicates that they were totally unconcerned about these matters. Neither Dodd, nor Knaack, truly believed that the fears expressed in the FYI letters were justified since neither of them took any actions that would be consistent with such beliefs. The FYI notes are unsubstantiated hearsay and, as such, may not be relied upon to justify the layoff decision.

Dodd's responses to questions about the FYI notes were "cute." When witnesses give "cute" answers to questions, Examiners may use such behavior to discredit the testimony. CITY OF STEVENS POINT, DEC. NO. 28708-B (SHAW, 1/97).

Respondent's repeated assertion that the FYI's were an important consideration in Complainant's layoff is rebutted by the evidence that Knaack did not show Dodd these FYI's as they came in. Rather, as Dodd testified, he saw most of them at the June meeting in which he decided to layoff Complainant. There is no credible evidence that Dodd was aware of the encounters that Complainant had with Knaack and/or Sheehan until he was shown the reprimand letter of June 3, 1998.

Knaack's failure to discipline Complainant for the note establishes Knaack knew full well that Soto and Martin misrepresented the circumstances surrounding the note. Knaack's testimony as to why he failed to grant Complainant's request for a meeting with Maki, Soto and Martin establishes that he knew full well that they had something to apologize for and he

was protecting them from having to apologize. Knaack's repeated testimony that, in Knaack's mind, Complainant wanted Soto and Martin to apologize is an inadvertent concession by Knaack that Soto and Martin's actions were appropriate.

Knaack's refusal to investigate the Maki note; Knaack's clear belief that Soto and Martin had something to apologize for; Knaack's incredible testimony that Soto and Martin's complaint against Complainant was not motivated by the French room dispute; Knaack's knowledge that Maki did not want to complain about the note; and the fact that Respondent did not call Maki, Soto and Martin as witnesses, establishes that there was no justification at the time of the note to discipline Complainant. For Dodd to rely upon this note to layoff Complainant, overruling Knaack's contemporaneous decision that discipline was not appropriate, is absurd.

Respondent argues that Dodd ultimately believed that Complainant's pursuit of the dedicated French classroom demonstrates his stubborn and obstinate attitude. First, no administrator ever put a note in Complainant's file that he was stubborn and obstinate. Second, Dodd never objected to the manner in which the French room issue was resolved. Given that the existing classroom situation was patently unfair, Dodd's claim that Complainant's actions forced Dodd to intervene in the French room issue is completely self-serving and incredible.

Dodd states that Complainant's insistence on having his own French room when he had the least seniority in the Foreign Language Department is evidence that Complainant is not a team player. If seniority was a valid reason to maintain the *status quo*, why did Bouffleur, a rookie, teach all five classes in Room 11, while veteran teachers Haverly and Soto had to travel from room to room?

On July 17, 1997, Knaack made Room 10 the French room by moving German to Room 11 and Spanish to 7, 8, and 9. Thus, Spanish teachers had no business complaining about the fact that French would be in Room 10. Respondent's contention that Complainant was not a team player when he sought a dedicated French room is completely belied by the fact that Knaack continually pandered to the desires of the French teacher, while ignoring the needs of the French-teaching members.

Knaack and Dodd's claims that Complainant was laid off because of the FYI's; that Complainant was not a team player; that Complainant was responsible for an "atmosphere of concern;" and that Complainant's lawsuit created a negative impact are without sound basis in the record. Thus, these claims must be pretextual.



Many of the “concerns” relied upon the administrators to justify Complainant’s layoff were known May 18, 1998, when Dodd acknowledges that he did not see any significant negative consequences if Complainant had been offered a 100% position, and on June 1, 1998, when, by the administrators’ own testimony, the ideal situation would be for Complainant to remain at 80%. The lack of any significant change in these circumstances between May 18, 1998, and June 10, 1998, indicates that these reasons for the layoff are pretextual.

Inconsistencies in the testimony of Dodd and Knaack establish that filling the 100% position with the most qualified candidate possible was not their motivation in laying off Complainant. Having discredited their avowed motive, it may be inferred that their true motive was an unlawful one that Respondent seeks to disguise.

Under the 30% position, the applications were to be received by June 19, 1998. Barely half way into this posting period, the decision was made to lay off Complainant and to post a vacancy in a 100% French position. Jaworski’s testimony confirms that this conduct violates District policy.

Respondent asserts that, because there were no viable applications, Knaack decided to close the posting. Respondent attempts to gloss over a pivotal issue, i.e., that Knaack had no bona fide reason to close the position on June 10, 1998, when it was to remain open until June 19th. Knaack was unable to give a credible explanation for his sudden abandonment of the 30% posting because there is no credible explanation. The decision to close the posting early confirms that Dodd and Knaack were simply scurrying around and attempting to find any way to get rid of Complainant.

Respondent’s reliance upon Complainant’s allegedly inappropriate conduct to justify his layoff gives rise to the clear inference that Respondent wanted to prevent a repeat of this conduct. Thus, under arbitral precedent, the layoff could be construed to be discipline and, by taking this position, Respondent is improperly taking a position inconsistent to that taken in the prior arbitration.

There is no rational explanation for why Dodd would wait until June 10, 1998, to invoke Article 32(I) and layoff Complainant. Dodd’s own testimony demonstrates that, until shortly before June 10, 1998, he did not know what Article 32(I) meant and that he asked Owens and then the District’s attorney to interpret Article 32(I).

The administrators that claimed prior use of Article 32(I) are lying. Dodd never used the term “spirit of 32(I)” prior to the 1999 arbitration hearing, which establishes that this term was fabricated for the purpose of wriggling out of the many inconsistencies in his testimony regarding the use of Article 32(I). Dodd’s use of Article 32(I) to justify Complainant’s lay off is pretextual and was intended to disguise the fact that Dodd was disciplining Complainant for filing grievances.

It is a prohibited practice to consider protected union activity in making a layoff decision, even if the activity in question took place during events that contained activity that was not protected. As Examiner Shaw stated in GLENDALE-RIVER HILLS SCHOOL DISTRICT, DEC. NO. 26045-B (9/91), MERA is not intended to protect only reasonable, polite employees and it is often the more aggressive and abrasive employees that may be most in need of protection. Examiner Shaw also found that when an employer that takes action against offending conduct that includes both protected and non-protected activity and describes the conduct in broad terms, it cannot escape liability by arguing that its action was based only on the non-protected activity.

All of Dodd's knowledge of the factors Dodd allegedly considered when he made the layoff decision came through Knaack. Thus, Dodd's actions were tainted by Knaack's illegal motives. MILWAUKEE COUNTY MEDICAL COMPLEX, DEC. NO. 27279-A (GALLAGHER, 12/92). It must be concluded that the recommendation to the School Board was motivated, at least in part, by hostility toward Complainant's protected concerted activity.

NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28954-C (MEIER, 3/99) and GREEN LAKE COUNTY, DEC. NO. 28792-A (NIELSEN, 4/97) are particularly instructive. In each case, the employer was found culpable based upon the fact that it acted upon recommendations of its agents that were motivated, in part, by anti-union animus. Also highly relevant to this case is MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27484-A (BURNS, 7/93). In this latter case, the Examiner found the Principal to have committed a prohibited practice due to anti-union animus even though it was an administrator above the Principal that made the actual decision on the recommendation.

Respondent attempts to portray the recommendation to lay off Complainant as a decision that Dodd made on his own. At the arbitration hearing, Respondent argued that "School District officials" decided to lay off Complainant. This reference means that both Knaack and Dodd made this decision.

By arguing that only Dodd made the decision to recommend the layoff, Respondent is taking an inconsistent position to that taken in the Arbitration hearing. Such an inconsistent position is barred under the equitable doctrine of judicial estoppel. (cites omitted)

Dodd's hostility to Complainant's concerted union grievance activity is established by the fact that Dodd did not want the School Board to respond to Complainant's letter of September 9, 1997, because then the School Board would have heard from Complainant, without any filtering by Dodd; the fact that Dodd wanted Complainant to file a grievance so that Dodd, a defendant, would be judge and jury; the fact that, on the very day that Complainant filed his grievance, Dodd attempted to have Complainant disciplined for filing this grievance; Dodd's demeanor and conduct during the processing of this grievance,

including the anger that he displayed to Complainant, his refusal to provide Complainant with a copy of the minutes of the Step 2 grievance meeting, and his gross misrepresentation of this Step 2 grievance meeting; and the timing of Dodd's recommendation that the District provide representation to Soto and Martin. Dodd's repeated denials that the October 29, 1997 grievance was not resented by Dodd or did not upset Dodd are inconsistent, self-serving, and not credible.

In the School Board's denial of the October 29, 1997 grievance, the School Board's attorney gave, as his first point, that many of the issues presented are not grievances as defined by the collective bargaining agreement. To advise that issues be handled via the contractual grievance procedure and then to assert that those issues are not grievable under the contract is the height of hypocrisy and bad-faith dealing.

Dodd's claim that he and Knaack had not discussed the October 29, 1997 grievance from January of 1998 until they made the decision to lay off Complainant is rebutted by his other testimony regarding discussions that occurred in the May, 1998 staffing meeting. Since Dodd lied about his May, 1998 conversation regarding this grievance, the only inference to be drawn is that the grievance did play a part in his decision to lay off Complainant. TOWN OF MERCER, DEC. NO. 14783-A (GRECO, 3/77).

Dodd testified three times that, in his opinion, Complainant was willing to do anything in his power to get his way. Clearly, Dodd was hostile to Complainant's explicit message to Sheehan, Knaack and Dodd that he would file a grievance if they continued to treat him in a disparate manner. This is established by the fact that threatening to file a grievance, or filing a grievance, is the only power that Complainant had within the District.

By inserting the disciplinary letter in Complainant's personnel file, Dodd and Knaack were purposefully violating Complainant's Article 8(G) contractual rights. This purposeful violation establishes that Dodd's state of mind in early June was one of hostility toward Complainant's contractual rights.

Dodd was frustrated in early June because he was desperate to get rid of Complainant, but knew that he did not have just cause. By his own admission, Dodd was so determined to lay off Complainant that he was willing to put his own job in jeopardy. Common sense dictates that, if Dodd had acted in good faith, then he could not have put his own job in jeopardy.

State of mind is a circumstance that may be used by the trier of fact to prove hostile motive. TOWN OF MERCER, DEC. NO. 14783-A (GRECO, 3/77). It must be concluded that Dodd made the decision to lay off Complainant under Article 32(I) regardless of whether or not it might later be ruled to be an action taken in bad faith.

The fact that Dodd was willing to risk losing his job demonstrates that Dodd had a personal motivation to get rid of Complainant. The conclusion that Dodd was personally motivated to layoff Complainant is also established by the evidence that Dodd came to the Junior High to personally inform Complainant of the layoff; that, although he met with Complainant in Knaack's office, Knaack did not say anything; and that Dodd ended the meeting by telling Complainant to return his keys and stay off the premises.

It is not normal to have the District Administrator involved in such notification. For example, Solsrud informed Skadahl of the layoff. It is not evident that Skadahl was told to stay off the premises.

Dodd testified that one of the reasons for laying off Complainant was that Complainant demanded that Sheehan apologize. This testimony establishes that Dodd's decision to lay off Complainant was motivated, in part, by hostility toward Complainant's protected union activity.

Dodd's testimony that Knaack and Sheehan had advised Dodd that Complainant had threatened Knaack is cute and evasive. It is incredible that, upon hearing that administrators were threatened that Dodd would not, as claimed by Dodd, fail to inquire about the details of the threat. Complainant asserts that Knaack, and Dodd by proxy, felt threatened by the events of June 2, 1998, in two ways, i.e., that Complainant would file a grievance or prohibited practice claim, due to the illegal actions that Dodd and Knaack had previously taken in deciding to post a 30% position and that Complainant was somehow a challenge to their personal authority in that he was not going to submit to their illegal bullying.

Dodd and Knaack undoubtedly felt threatened by Attorney Lister having telephoned the District's attorney, Cari Westerhof, to state his intention of filing a grievance if Complainant was denied a 100% FTE contract for the ensuing year. As documented in the Bill of Costs, on May 29, 1998, Westerhof made a telephone attempt to Knaack regarding the same.

Dodd's testimony is characterized by mistruth overall and, thus, his testimony regarding lawful motivations must be discredited. Dodd's principal motivation to get rid of Complainant was that he filed a grievance against Dodd, Knaack, and Sheehan on October 29, 1997.

The School Board ignored the obvious interest of the 47 individuals that spoke on behalf of Complainant; voted midway through the meeting of June 23, 1998, to layoff Complainant without discussion; purposely concealed the step at which the layoff occurred when it never mentioned Complainant by name and used the term "contract adjustment," rather than layoff; and approved the Administration's recommendation without discussion. The conduct of the School Board at the June 23, 1998 meeting, establishes that it had an illegal motivation to layoff Complainant.

The School Board members had a duty and an obligation to inform themselves of the issues involved. The only conclusion to be drawn from the School Board's failure to discuss what was obviously a controversial recommendation is that the School Board had come to an agreement prior to the meeting of June 23, 1998, in violation of the open meeting laws, and that the School Board was seeking to conceal the true motivation for the layoff.

The minutes do not reflect statements made by Complainant's supporters; mischaracterize Complainant's supporters as students; and mischaracterizes Complainant's supporters as speaking on behalf of the French program. Complainant's supporters were not there to address the French program; they were there to tell the School Board that they did not want Complainant to be terminated. By approving these minutes, the School Board concealed the true nature of Complainant's support; attempted to conceal the School Board's deliberations from the public; and evidenced a knowledge that School Board members knew that they were acting illegally, but believed that they could act without detection.

The fact that Dodd felt compelled to notify the School Board members ahead of time and his testimony that he gives School Board members a "heads up" on controversial matters demonstrates that Complainant's layoff was not a routine business decision of the type rubber-stamped by the School Board. Leonard's deposition statements demonstrate that Complainant's layoff was the only employment action that she recalled Dodd specifically addressed.

In summary, Complainant has established that Complainant was engaged in concerted union activity protected by MERA; that Knaack and Dodd were hostile to this activity; and that the administrators' recommendation that Complainant be laid off and the School Board's acceptance of this recommendation was motivated, in part, by hostility to this protected activity. The District not only committed a prohibited practice when it laid off Complainant, but it also, committed a prohibited practice when it failed to give fair consideration when Complainant applied for the 100% position.

Dodd's testimony regarding the likelihood that Dodd would get the 100% position is a jumble of evasion, self-contradiction, prevarication and attempts to reconcile his own irreconcilable assertions. Dodd's testimony that "There was every possibility in the world that [Mr. Mudrovich] would get [the one hundred percent position]" is completely discredited.

Dodd exerted control on the selection process for a 100% FTE French teacher in order to skew it against Complainant, while trying to give that process the surface appearance of objectivity. The selection team was biased against Complainant. The whole selection process was tainted to the extent that it is illegal.

In violation of past practice, Dodd appointed the interview team and selected Hazaert, his right hand man, to lead the interview team. Dodd's testimony regarding his reasons for appointing Hazaert is evasive, self-serving, inconsistent and patently false. Hazaert was no more qualified to lead the interview team than the elementary principles, both of whom were removed from Complainant's situation.

Hazaert was present at various meetings involving Dodd and Complainant. As Dodd acknowledged, it was likely that Dodd had discussed the October 29, 1997 grievance with Hazaert. Hazaert knew that Dodd was hostile toward Complainant for having filed grievances because Dodd and Hazaert worked closely together; Hazaert had been present at the Step 2 grievance meeting of November 18, 1997; and Hazaert was likely present at other meetings in which Complainant's grievance and lay off was discussed. There is no way that Hazaert could not have known of Dodd's attitude toward Complainant or Knaack's ill will towards Complainant.

During the interview process, Hazaert took every occasion to exercise his discretion in a manner that was prejudicial to Complainant. The multiple instances of Hazaert's having misconstrued Complainant's statements during his July 8, 1998 interview remove any presumption of impartiality.

Dodd's demeanor at hearing and his testimony in general demonstrates that Dodd is the type of administrator who yells at his subordinates and chooses to personally dominate situations, as well as the people who work under him. Hazaert cannot be unaware of this and would know what Dodd expected of him.

Complainant's grievances did not cause Hazaert personal discomfort, but he knew that he would feel great personal discomfort if the selection team chose to select Complainant for the full-time French position. Hazaert was hostile by proxy.

Although there is no testimony concerning who had custody of Complainant's application prior to July 8, 1998, the only logical inference is that it was Hazaert. Thus, Hazaert gave disparate and discriminatory treatment to Complainant in that he prevented other team members from reviewing Complainant's application until the interview process. This concealment of Complainant's application skewed the interview process against Complainant.

Hazaert's testimony demonstrates that it is standard practice to add to an internal candidate's written application any information kept by the District in his/her personnel file. In his application, Complainant referenced his year-end evaluations and observation reports and, by such reference, had a legitimate expectation that these materials would be read and considered by the interview team. If Hazaert had given Johansen access to Complainant's evaluations and observation reports, then Johansen would have likely read those observation

reports in full because, as his testimony demonstrates, he believed them to be a valuable tool. Solsrud also testified that it is always best to know how a candidate performed in the past.

By failing to pull these evaluations and observation reports, Hazaert violated District practices and discriminated against Complainant. The only possible causative factor for said bias was Hazaert's clear knowledge that his boss did not want Complainant to have the 100% French position.

Hazaert intentionally attached Complainant's letter of June 1, 1998, to his application for the 100% French position, or acquiesced to this attachment. Given the content and the June 1, 1998 date, Hazaert could not reasonably have concluded that this letter was in support of Complainant's application for the 100% position. This attachment was not a trivial matter and was intended to be prejudicial towards Complainant.

Hazaert states that the June 1, 1998 letter was submitted as part of Complainant's application for the 100% position. Other testimony demonstrates that Hazaert clearly recalled that, before the decision was made, he was instructed that this letter was not to be considered to be part of the application materials. Hazaert intentionally lied about believing that Complainant had attached the letter, which establishes that Hazaert is an untruthful witness.

Dodd skewed the interview process by personally arranging that Bouffleur be interviewed even though she had not applied for the vacancy in a timely manner. These arrangements were made after Complainant had been interviewed. Such conduct is particularly dishonest given that, on September 9, 1998, Dodd told the School Board that the interview team was not allowed to look at Complainant's performance evaluation reports because it would have skewed the process. Arranging for Bouffleur to be interviewed is inconsistent with Dodd's testimony that he told the interview team to follow standard procedures and to be fair.

By Hazaert's definition, the screening process must have been completed on or before July 8, 1998, the day on which Complainant was interviewed. Thus, Bouffleur must have been added to the interview list after the screening process. Hazaert lied under oath when he testified that, after all the applications had been received, the team then chose four candidates to interview. Hazaert knowingly acquiesced in the District's breaking its own rules when it accepted Bouffleur's late application for the 100% French position.

Hazaert's justifications for selecting Bouffleur were based upon false information, which Hazaert ought to have known to be false. Hazaert's testimony concerning the rationale for selecting Bouffleur and for not selecting Complainant is evasive, inconsistent, includes bold faced lies and is contradicted by the testimony of Solsrud and Johansen.

Hazaert gave false testimony regarding his knowledge of Complainant's conflicts with Knaack in an attempt to convince the Examiner that he was not biased against Complainant by any prior knowledge of these disputes. Hazaert also gave false testimony regarding Knaack's criticisms of Complainant.

Hazaert's testimony cannot be relied upon as truthful. Hazaert's misrepresentation of the process by which Bouffleur was selected for the 100% position leads to the conclusion that Hazaert was biased against Complainant and skewed the process against Complainant.

Knaack testified that he believed that Hazaert, Solsrud and Johansen knew that Knaack had recommended that Complainant be laid off. Given their employment relationship, it is not credible to assume that they would ignore Knaack's wishes and arrive at a selection decision that was not tainted by that knowledge.

Johansen inferred from Hazaert's statements that Knaack would be biased. Solsrud assumed that Johansen had replaced Knaack because there had been conflict. Thus, Johansen and Solsrud knew that Knaack was opposed to selecting Complainant and, thus, the whole process of selecting a 100% FTE French teacher was tainted.

One of the themes in the Perceiver is "Focus." Hazaert's testimony demonstrates that, although Bouffleur was not a predict in "Focus," he repeatedly indicated that he was impressed by her "Focus." Hazaert attempted to explain the discrepancy. The record, however, demonstrates that Hazaert made up her perceived excellence on the Perceiver in the same manner that he made up Bouffleur's alleged familiarity with Dimensions in Learning and Effective Instruction. These claims were made up in an attempt to justify selecting Bouffleur per the instructions of Dodd. Hazaert's untruthfulness is also demonstrated by his evasiveness in responding to Complainant's questioning of whether or not Hazaert was normally involved in Foreign Language Department interviews.

At hearing, Hazaert recalled saying at the deposition that it was his recollection that a ballpark number of a half of dozen people were laid off under Article 32(I) and that he does not recall them to the same degree. In other testimony, Hazaert demonstrated that he was never able to point to any specific examples of the alleged Article 32(I) layoffs. Hazaert made up a recollection regarding the use of Article 32(I) in order to be a team player for Dodd.

Hazaert testified that he became aware of the October 29, 1997 grievance at the Step 2 grievance hearing and also testified that he first became aware of this grievance at a cabinet meeting. Hazaert's untruthfulness was an attempt to persuade the Examiner that he was not biased against Complainant because of the grievance because he was allegedly not involved in the grievance. Hazaert is Dodd's right hand man. Owens testified that often he, Dodd and Hazaert discussed things. It is likely, therefore, that Hazaert was more involved in discussions of the grievance than he led on.



Hazaert's testimony that Johansen and Solsrud selected their top two candidates without having been informed of the Perceiver score is absurd because it means that there is no reason to administer the Perceiver. More importantly, this testimony is contradicted by Johansen's testimony that he knew the scores prior to the time that he picked the two candidates. Hazaert gave false testimony to bolster his assertion that the Perceiver score was not what was important and to conceal the fact that he had done something untoward regarding his scoring of Complainant's Perceiver.

Hazaert testified that he sent Complainant's and Bouffleur's Perceiver interviews to be scored by Gallup, but that no letters were exchanged when the Perceivers were submitted by Hazaert or returned by Gallup. This testimony is incredible on its face in that neither party would conduct business in this manner. For no letters to be exchanged, Hazaert must have instructed Gallup to not include a cover letter with the grading. Hazaert was attempting to conceal something.

Respondent knew that Complainant was challenging Hazaert's grading of the Perceiver score. Had everything been on the up and up, Respondent would have volunteered Gallup's scoring because it scored Complainant two points higher. Hazaert's testimony regarding the Perceiver does not pass the smell test.

At hearing, Hazaert claimed that he did not recall offhand who Complainant was referring to when he stated that a couple of teachers had poisoned the well, but that he knew at the time of the interview. In other testimony, however, Hazaert recalled that, in Complainant's interview response, Complainant indicated that the problem was with Berns, Soto and other staff. This conflicting testimony, as well as Hazaert's prior deposition statements and arbitration testimony, demonstrates that, at hearing, Hazaert pretended to no longer recall the details of Complainant's disputes and lied in order to conceal what he knew from the Examiner.

In stating that he found Complainant to be a marginal predict on the Perceiver, Hazaert, unreasonably, was making a subjective judgment about a test that is designed to be an objective tool. Hazaert testified that a Perceiver score of 35 could be a marginal predict. Inasmuch as 35 would be a very high score, Hazaert's testimony that Complainant is a marginal predict is contradicted by Johansen's testimony that a marginal predict is right on the edge. Hazaert wrote marginal predict on Complainant's test to justify his bias against Complainant.

Hazaert's testimony establishes that he made a negative judgment regarding Complainant based on the fact that he had a conflict with Berns. Hazaert also stated that the mere fact that an individual had a conflict means nothing. This conflicting testimony establishes that Hazaert testified falsely and was biased against Complainant.

Dodd skewed the selection process by personally appointing Johansen. Although Complainant does not assert that Johansen is dishonest, Johansen's actual behavior during the interview process is not relevant to this argument. Of relevance is that Dodd assumed that Johansen had prior knowledge of Complainant's conflicts with Dodd and knew that it would be highly unlikely that Johansen would not be influenced by this knowledge.

Contrary to the assertions of Respondent, all interviewees were not asked the same questions and the structure was not the same. Bouffleur was not asked about her past use of Dimensions of Learning, despite Hazaert's claim that it was an important consideration in the interview process. Bouffleur was not asked because her application materials indicated that she had no real familiarity with Dimensions of Learning. The structure was not the same because Johansen and Solsrud were not allowed to see Complainant's application before his interview began.

Respondent's brief contains misstatements of fact and after the fact justifications for Complainant's layoff. Arguments based upon these misstatements include that Complainant was responsible for a bad relationship with Berns; that Complainant's "campaign" for a classroom dedicated to French was an on-going disruption for faculty members; that Sheehan rejected Complainant's room assignment proposal based on Complainant's statement that he was not willing to compromise; that Sheehan left the room assignments unchanged because Spanish teachers had more seniority; that Complainant asked Association Representative Coleman to mediate a dispute about room assignments; that Solsrud indicated that she could not resolve the issue; that Dodd asked Hazaert to discuss the issue with Knaack to see if a compromise could be reached; that Knaack could not make Room 7 the dedicated classroom because it belonged to Haverly; and that it was Knaack's idea to measure the rooms.

The District's attorney has intentionally misstated facts on key issues. By this conduct, the District's attorney had violated Wisconsin Supreme Court Rules of Professional Conduct, SCR 20:3.3(a)(1).

The record evidence does not support respondent's assertion that Maki had asked Complainant to follow school policy. Respondent introduced no testimony that Maki was upset about the note. By failing to reference crucial facts that occurred prior to the August 5, 1997 lawsuit, Respondent completely misrepresented Complainant's response to Soto and Martin.

Dodd knew full well that supervisors had authority to abuse their managerial discretion and make a teacher's life miserable via the observation and evaluation process. Sheehan recognized this fact when he responded to Complainant's request that someone else supervise Complainant by stating that he would not give Complainant "that gift." Dodd, in an extremely condescending manner, disregarded Complainant's legitimate concerns regarding the assignment of Sheehan as his primary supervisor.

LaPorte's testimony that, on June 2, 1998, Complainant was clapping his hands and taunting Sheehan is inaccurate and/or an exaggeration. Sheehan did not make any reference to any clapping of hands.

Sheehan had no need to retreat into his office in order to escape Complainant. As his supervisor, Sheehan could have disciplined Complainant on the spot. By retreating, Sheehan demonstrated that he knew full well that Complainant was making a valid point and that Sheehan had treated Complainant disparately.

As Respondent states, Complainant testified that he went to see Sheehan to drive his point home for a third time. Respondent has omitted the fact that this point was that Sheehan was treating him differently from the way other teachers were being treated. This point was omitted because Respondent knew that this testimony showed that Complainant was engaging in protected union activity, i.e., asserting his contractual right not to be treated disparately.

Respondent misstates the issue before the Examiner in CEDAR GROVE-BELGIUM AREA SCHOOL DISTRICT, DEC. NO. 25849-A (BURNS, 12/89). The instant case is distinguishable on the basis that there is a nexus between the unlawful conduct of the Principle and the decision of the Administrator; there is ample evidence that the Administrator harbors anti-union animus toward Complainant and the Administrator was a credible witness.

MILWAUKEE COUNTY, DEC. NO. 28951-B (NIELSEN, 7/98) is distinguishable on several bases, including that the employer had a valid business reason for its conduct; that to exempt the employee from weekend work would have caused unfair hardships to other employees; that the administrator was a credible witness; the employer did not summarily impose discipline; and that the employer acted in a manner that is consistent with past practice. BARRON COUNTY, DEC. NO. 26065-A (BURNS, 1/90) may be distinguished on the basis that the administrator was a credible witness; there was no evidence the administrator was hostile toward employee's union activity; and the employer acted in a manner that is consistent with past practice.

Dodd's testimony confirms that the District violated Wisconsin's Open Meeting Laws during the process of laying off Complainant. Such a violation is sufficient to establish Respondent's unlawful motivation.

Complainant's prohibited practice claims are established by the intentional refusal of District personnel to present truthful testimony, as well as by the other record evidence. The Examiner should find in favor of Complainant and grant all remedies provided by law.

## **Respondent**

Complainant alleges that the District violated Sections 111.70(3)(a)1 and 3, Stats., by laying him off in his part-time teaching position with the District and, subsequently, hiring another individual for a full-time teaching position for which he had applied and was interviewed. Complainant bears the burden of proving these allegations by a clear and satisfactory preponderance of the evidence.

Notwithstanding Complainant's assertions to the contrary, the District did not violate any provisions of the Municipal Employment Relations Act (MERA). The employment actions taken by the District were based on non-discriminatory, work-related reasons, and the record clearly reflects that fact.

The District's legitimate employment decisions did not constitute discrimination in violation of MERA, and did not interfere with Complainant's rights under Section 111.70(2), Stats. Accordingly, Complainant's complaint should be dismissed in its entirety.

Section 111.70(3)(a)3, Stats., makes it a prohibited practice for a municipal employer to "encourage or discourage a membership in any labor organization by discrimination in regard to . . . tenure or other terms or conditions of employment." To prove a violation of this section, Complainant must, by a clear and satisfactory preponderance of the evidence, establish that:

1. Complainant was engaged in protected activities; and
2. Respondents were aware of those activities; and
3. Respondents were hostile to those activities; and
4. Respondents' conduct was motivated, in whole or in part, by hostility toward the protected activities.

When determining whether or not there has been unlawful discrimination, the WERC considers the totality of the evidence. The existence of legitimate business reasons for Respondent's conduct may rebut an inference of pretext or animus and the mere coincidence of adverse employment decisions and protected activity is an insufficient basis for a finding of a violation of Sec. 111.70(3)(a)3, Stats.

The record is devoid of any credible evidence that Respondent was hostile toward Complainant's concerted activity protected by MERA. Nor is there any evidence that the District's decisions to lay off Complainant from his part-time teaching position in French and,

subsequently hire Ms. Bouffleur for a full-time position teaching French were motivated, in any part, by hostility toward Complainant's protected concerted activity, i.e., the October 29, 1997 and June 5, 1998 grievances.

Although Dodd and Knaack met on June 10, 1998, to discuss the possible layoff of Complainant, Complainant's protected activity was not discussed during this meeting. Knaack was not a decision-maker with respect to the layoff of Complainant and his feelings toward Complainant's protected activity are not material to the instant dispute.

Respondent's Board of Education made the decision to layoff Complainant based upon the recommendation of Superintendent Dodd. As Superintendent Dodd's testimony establishes, his recommendation was based solely upon non-discriminatory, work-related reasons. One of these reasons, i.e., Complainant's conduct during a number of confrontations with Knaack and Sheehan between May 28, 1998, and June 2, 1998, was, in Superintendent Dodd's own words "kind of the straw that broke the camel's back." Complainant's conduct during these confrontations was insubordinate and did not constitute concerted activity protected by MERA. Thus, the District's reliance upon such conduct is not evidence of hostility toward Complainant's protected concerted activity.

Respondent acknowledges "informing the municipal employer of one's intent to file a grievance" is also activity guaranteed under Sec. 111.70(2), Stats. RICHLAND COUNTY, SUPRA. However, merely referring to the grievance process does not transform otherwise unprotected activity into protected activity. Actions may be so opprobrious as to be unprotected (HOTEL ST. MORITZ, 105 LRRM 1116 (NLRB, 1980) and the fact that bothersome behavior is exhibited in the context of free speech does not clothe the behavior with the protection afforded free speech. UNION HIGH SCHOOL DISTRICT, DEC. NO. 17939-A (HOULIHAN, 4/82). If an employee's reference to the grievance process were sufficient to provide protection, employers would never be able to discipline or otherwise take appropriate employment action against insubordinate employees.

Although Complainant's conduct between May 28, 1998, and June 2, 1998, would be reason enough for Superintendent Dodd to recommend Complainant's layoff, Superintendent Dodd had additional non-discriminatory, work-related reasons for his recommendation, i.e., that Complainant's conduct was causing a poor working climate at the Junior High School; Complainant's conduct demonstrated that he was not a team player; and Dodd's desire to allow the District to fill the one hundred percent (100%) French position with the most qualified candidate available.

Contrary to the presumptions of Complainant, the District had the contractual right to invoke Article 32(I). This right is not, in any way, limited by the fact that the District may not have exercised this right in the past and the exercise of this right does not provide circumstantial evidence of hostility toward his protected concerted activity.

Section 895.46(1)(a), Stats., unquestionably required the District to defend Soto and Martin in the lawsuit filed by Complainant. The fact that the District provided such a defense is not proof that the District was hostile toward his protected activity. There is no merit to Complainant's claim that Dodd contacted Soto's attorney and asked the attorney to send a letter to the District indicating that the District had to provide legal counsel to defend against Complainant's lawsuit.

To argue that Dodd, or anyone on the School Board, was hostile toward Complainant for filing the October, 1997 grievance is totally inconsistent with the facts of this case. Significantly, it was Superintendent Dodd who recommended to the School Board on September 23, 1997, that it require Complainant to file a grievance to provide him with a procedure to have the allegations made by Complainant in his letter to Leonard addressed and resolved. Additionally, such an argument is inconsistent with the content of Complainant's year-end teacher evaluations for the 1997-98 school year and the fact that Complainant's contract was renewed in March of 1998.

Dodd acted professionally and appropriately throughout the grievance process to ensure that Complainant was provided with an opportunity to express his concerns. Moreover, Dodd credibly testified that he did not resent either the fact that Complainant filed the grievance, or the fact that, within the grievance, Complainant asked the School Board to consider the possibility of disciplining Dodd, Knaack, and Sheehan.

Given the absence of any credible evidence to support a finding that Dodd harbored any hostility toward Complainant's protected activity, Dodd's recommendation to layoff Complainant could not have been motivated by such hostility. Nor is there any credible evidence to support a finding that any School Board member harbored any hostility toward Complainant's protected activity, or that the School Board's decision to adopt Dodd's recommendation was motivated, in any part, by hostility toward the grievances filed by Complainant.

Subsequent to the School Board's decision to lay off Complainant, Dodd formed the interview committee for the one hundred percent French position. All three members of the interview committee identified the same two applicants as their top two candidates, neither of who was Complainant. There is no credible evidence in the record to support a finding that any member of the interview committee was hostile toward Complainant's protected activity or that Complainant's protected activity played any role in the decision of the interview committee that offered the position to Ms. Bouffleur. Rather, the simple fact is that Ms. Bouffleur was offered the position because she was the better candidate.

Complainant's argument that Ms. Bouffleur failed to submit her job application by the deadline is based upon a fact that is not in evidence, as are many of Complainant's arguments.

Accordingly, these arguments must be disregarded and may not be given any weight by the Examiner. See Sec. ERC 12.06(1) of the Wisconsin Administrative Code.

Given the length of this hearing, as well as the length of time from the date of the conduct giving rise to Complainant's allegations and the hearing, it is not unusual that there would be inconsistencies in testimony. Moreover, the alleged inconsistencies in Dodd's testimony are either related to issues of minor import or are irrelevant to the disposition of this dispute. With respect to the relevant issues, *i.e.*, whether Dodd was hostile toward Complainant's protected activity and whether his decision to recommend the layoff of Complainant was motivated, in any part, by hostility toward Complainant's protected activity, Dodd's testimony is consistent, credible and confirmed by other record evidence.

The inconsistencies in Leonard's testimony alleged by Complainant are not relevant to the resolution of the instant dispute. Moreover, it is not incredible that the specifics of School Board discussions occurring on August 20, 1998, were not memorable on December 8, 2000, when Leonard testified at hearing. This is especially true given the fact that Leonard's involvement in the layoff of Complainant was not significant.

The evidence does not support a finding that Leonard, or any other member of the School Board, was hostile toward Complainant's protected, concerted activity or that the School Board's decision to layoff Complainant was motivated, in any part, by such hostility. Nor is it evident that Leonard had any involvement in the hiring of Bouffleur.

Under Wisconsin Law, there is a presumption that District officials act in good faith and this presumption may only be rebutted by clear and convincing evidence. Notwithstanding Complainant's arguments to the contrary, neither the law nor the facts supports his claim that certain District witnesses are incredible or acted in bad faith.

Complainant's complaint of prohibited practices is without merit. Accordingly, it should be dismissed in its entirety. Assuming *arguendo*, that the District's complained of conduct was motivated, in part, by Complainant's protected activity, Complainant is not entitled to back pay or reinstatement because the District would have made the same employment decision absent the improper motive. DEPARTMENT OF EMPLOYMENT RELATIONS V. WISCONSIN EMPLOYMENT RELATIONS COMMISSION, 122 Wis.2d 132, 361 N.W.2d 660 (1985); TAYLOR COUNTY, DEC. NO. 29647-C (WERC, 6/00).

## DISCUSSION

### Alleged Statutory Violations

The complaint contains the allegations that the District violated Sec. 111.70(3)(a)1 and 3, Stats., when the District's administration recommended Complainant's layoff and the District's School Board approved this layoff and rejected Complainant's application for full-time employment, in part, due to Complainant's protected, concerted activity, i.e., filing a grievance on October 29, 1997, and filing a grievance on June 5, 1998. Section 111.70(3)(a)1, Stats., provides that it is a prohibited practice for a municipal employer individually or in concert with others:

1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

Section 111.70(2), Stats., referred to above, states:

Municipal employees shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, . . .

An independent violation of Sec. 111.70(3)(a)1, Stats., occurs when employer conduct has a reasonable tendency to interfere with, restrain or coerce employees in the exercise of their Sec. 111.70(2) rights. *WERC v. EVANSVILLE*, 69 WIS. 2D 140 (1975). Section 111.07(3), Stats., which is made applicable to this proceeding by Sec. 111.70(4)(a), Stats., provides that "the party on whom the burden of proof rests shall be required to sustain such burden by a clear and satisfactory preponderance of the evidence."

Concluding that it is impossible to define "concerted acts" in the abstract, the Commission stated that it is necessary to examine the facts of each case to determine whether the employee behavior should be afforded statutory protection and that, at root, this determination demanded an evaluation of whether the behavior manifests and furthers purely individual or collective concerns. *CITY OF LA CROSSE*, DEC. NO. 17084-D (WERC, 10/83).

If after evaluating the conduct in question under all the circumstances, it is concluded that the conduct has a reasonable tendency to interfere with the exercise of Sec. 111.70(2) rights, a violation will be found even if the employer did not intend to interfere and no employee felt coerced or was, in fact, deterred from exercising Sec. 111.70(2) rights. *BEAVER DAM UNIFIED*



SCHOOL DISTRICT, DEC. NO. 20283-B (WERC, 5/84); CITY OF BROOKFIELD, DEC. NO. 20691-A (WERC, 2/84); JUNEAU COUNTY, DEC. NO. 12593-B (WERC, 1/77). However, employer conduct which may well have a reasonable tendency to interfere with employees' exercise of

Sec. 111.70(2) rights will generally not violate Sec. 111.70(3)(a)1, Stats., if the employer had a valid business reason for its actions. BROWN COUNTY, DEC. NO. 28158-F (WERC, 12/96); CITY OF OCONTO, DEC. NO. 28650-A (CROWLEY, 10/96), AFF'D BY OPERATION OF LAW, DEC. NO. 28650-B (11/96); MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 27867-B (WERC, 5/95).

Section 111.70(3)(a)3, Stats., provides that it is a prohibited practice for a municipal employer:

3. To encourage or discourage a membership in any labor organization by discrimination in regard to hiring, tenure, or other terms or conditions of employment; but the prohibition shall not apply to a fair-share agreement.

A violation of Sec. 111.70(3)(a)3, Stats., results in a derivative violation of Sec. 111.70(3)(a)1, Stats.

To establish a violation of Sec. 111.70(3)(a)3, Stats., Complainant must establish, by a clear and satisfactory preponderance of the evidence: (1) that a municipal employee engaged in lawful concerted activity; (2) that the municipal employer, by its officers or agents, was aware of said activity and hostile thereto; and (3) that the municipal employer took action against the municipal employee based at least in part upon said hostility. GREEN BAY AREA PUBLIC SCHOOL DISTRICT, DEC. NO. 28871-B (WERC, 4/98); EMPLOYMENT RELATIONS DEPT. V. WERC, 122 WIS.2D 132 (1985); MUSKEGO-NORWAY C.S.J.S.D. NO. 9 V. WERB, 35 WIS. 2D 540 (1967).

In its Answer, Respondent raised the Affirmative Defense of Laches, but this Affirmative Defense was withdrawn at hearing. At the start of hearing, Respondent raised, as an Affirmative Defense, that Complainant has failed to mitigate any damages.

### **Merits**

The Examiner has jurisdiction over allegations that are within the subject matter jurisdiction of the Commission and that have been properly pled in the complaint. The complaint does not contain any allegation that Respondent violated MERA when it issued the letter of June 3, 1998 of reprimand. The Examiner has no jurisdiction to overturn, or modify in any way, the June 3, 1998 letter of reprimand.

Complainant has cited many Arbitration Awards issued by Commission staff members functioning as grievance arbitrators. Arbitration Awards that do not involve the parties to this proceeding do not establish any precedent that must be followed by this Examiner.

Complainant claims that, inasmuch as Arbitrator McAlpin did not decide Complainant's June 5, 1998 grievance, this Examiner has jurisdiction to determine the merits of this grievance. Complainant's June 5, 1998 grievance alleges that Respondent violated the DCETA collective bargaining agreement. Under Sec. 111.70(3)(a)5, Stats., the Commission has jurisdiction to determine whether or not a municipal employer has breached a collective bargaining agreement between a municipal employer and its municipal employees. The instant complaint, however, does not allege a violation of Sec. 111.70(3)(a)5, Stats., and does not properly plead any claim that provides the Examiner with jurisdiction to determine the merits of the June 5, 1998 grievance, or the merits of any of Complainant's other claims that the Respondent has violated, or failed to comply with, the DCETA labor contract.

Complainant was laid off under Article 32(I) of the DCETA labor contract and not hired into the 100% position that was posted in June of 1998. Arbitrator McAlpin decided Complainant's rights under the DCETA collective bargaining agreement regarding this layoff and Respondent's failure to hire Complainant into the 100% position.

Although the Commission does not have jurisdiction to vacate an arbitration award under Chapter 788, the Commission has jurisdiction to review arbitration awards in complaint cases seeking enforcement of arbitration awards. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 30201-A (BURNS, 9/01). The instant complaint does not seek enforcement of an arbitration award. Notwithstanding Complainant's arguments to the contrary, this Examiner does not have jurisdiction to overturn, or modify in any way, the Award of Arbitrator McAlpin.

Complainant argues that, in the arbitration proceeding before Arbitrator McAlpin, Respondent maintained the position that Complainant's layoff was not discipline. Notwithstanding Complainant's arguments to the contrary, this record provides no reasonable basis to conclude that Respondent is asserting a contrary position before this Examiner.

Complainant argues that his layoff was, in fact, discipline and, relying upon various grievance arbitration awards, argues that Respondent has failed to comply with recognized standards of progressive discipline, including just cause standards. Complainant's arguments, including his arguments that Respondent did not have just cause to discipline or terminate Complainant's employment; that Respondent failed to provide notice, or a warning, that Complainant had engaged in misconduct; and all of the other arguments regarding Respondent's lack of grounds for discipline, or failure to impose a particular type of discipline

upon Complainant, may have relevance before a grievance arbitrator, but they are immaterial to the determination of the Sec. 111.70(3)(a)1 and 3, Stats., claims that are before the Examiner.

Complainant claims that the District has violated the open meetings law and that Respondent's attorney has violated provisions of the Wisconsin Supreme Court Rules of Professional Conduct. The Examiner is without jurisdiction to hear and decide either type of claim.

Complainant cites the following Respondent argument: "The record clearly establishes that Dr. Dodd was the administrator who made the decision to recommend to the School Board that it layoff Mr. Mudrovich . . ." and then argues that Respondent is precluded from making this argument under the principles of judicial estoppel because this position is inconsistent with Respondent's position at the hearing before Arbitrator McAlpin. In *RICCITELLI V. BROEKHUIZEN*, 227 WIS.2D 100, 111-12 (1999) the Wisconsin Supreme Court stated:

The equitable doctrine of judicial estoppel precludes a party from asserting a position in a legal proceeding and then subsequently asserting an inconsistent position. *State v. Petty*, 201 Wis.2d 337, 347, 548 N.W.2d 817 (1996). The doctrine may be invoked if: (1) the later position is clearly inconsistent with the earlier position; (2) the facts at issue are the same in both cases; and (3) the party to be estopped convinced the first court to adopt its position. *Id.* At 348. Determining the elements and considerations involved before invoking the doctrine of judicial estoppel are questions of law which we decide independently of the circuit court or court of appeals. *Id.* At 347.

The record does not establish that Respondent persuaded Arbitrator McAlpin to adopt the inconsistent position argued by Complainant. Assuming *arguendo*, that the equitable doctrine of judicial estoppel is applicable, Complainant has not established the requisite elements. Complainant's argument that Respondent is judicially estopped from arguing that Dodd was the administrator who made the decision to recommend to the School Board that it layoff Complainant is without merit.

Complainant argues that Arbitrator McAlpin found union animus, discrimination, and/or illegal conduct on the part of Respondent and that the Examiner must either adopt these findings, or be persuaded by these findings. As Examiner Mawhinney states in *RACINE POLICE ASSOCIATION*, DEC. NO. 27020-A (7/92); *AFF'D BY OPERATION OF LAW*, DEC. NO. 27020-B (WERC, 8/92):

The Commission has held that it has the authority to make determinations and order relief in cases involving noncontractual unfair labor practices, even despite,

Page 132  
Dec. No. 29946-L

contrary to, or concurrently with the arbitration of the same matters, and the

possibility of full relief through arbitration does not preclude it from fully adjudicating alleged noncontractual violations of the statutes which it enforces. 12/ The Commission has concluded that an employee can pursue grievance arbitration alleging a contractual violation by the employer while contemporaneously citing the same employer action as a basis for filing an unfair labor practice before the Commission. 13/

---

*12/ MILWAUKEE ELKS, DEC. NO. 7753 (WERC, 10/66)*

*13/ UNIVERSAL FOODS CORP, DEC. NO. 26197-B (WERC, 8/90)*

---

The parties did not agree to have Arbitrator McAlpin hear and decide the violations of Sec. 111.70(3)(a)1 and 3, Stats., alleged in the complaint and Arbitrator McAlpin did not decide these statutory violations. Arbitrator McAlpin's opinions regarding union animus, discrimination, and/or illegal conduct on the part of Respondent are not binding upon the Examiner. Nor are they persuasive.

Complainant devotes much of his extensive brief to the argument that the majority of witnesses are not telling the truth. Notwithstanding Complainant's arguments to the contrary, the record does not provide a reasonable basis to conclude that any witness is not being truthful because the witness is seeking to curry favor with District officials; is repaying District officials for past favors; or is retaliating against Complainant out of spite, in response to Complainant's prior conduct toward the witness, the witness' friends, relatives or colleagues, or for any other reason.

As Respondent argues, this hearing occurred several years after the events that then School Board member Susan Leonard has been asked to recall. Although Complainant's Grievance of October 29, 1997, was significant to Complainant, the record provides no reasonable basis to conclude that the claims raised in this grievance were of any particular concern to Leonard. Indeed, Leonard was not present at the School Board meeting in which the School Board considered this grievance.

Complainant's layoff was but one of many personnel actions that had been recommended by District Administrator Dodd at the School Board meeting of June 23, 1998. It is not evident that Leonard's participation in Complainant's layoff involved more than receiving a "heads up" from Dodd that Complainant's layoff was pending and voting to approve the contract adjustment that effectuated Complainant's layoff. It is not evident that Leonard had any involvement with, or influence upon, the interview team's selection of Bouffleur as the most qualified applicant.

Notwithstanding Complainant's arguments to the contrary, the record does not establish that Leonard is a liar, or refused to respond truthfully to questions because of hostility to Complainant. Rather, the more reasonable construction of Leonard's inability to "recall" is that she does not recall and is not willing to speculate.

Although there are inconsistencies and contradictions in witness statements, the record does not provide a reasonable basis to conclude that any witness is a liar, or otherwise inherently incredible. Rather, the most reasonable construction of the record evidence is that inconsistencies are attributable to the normal factors that affect the reliability of witness testimony, e.g., confusing or ambiguous questions; the event which the witness is being asked to recall was not particularly significant to the witness and, thus, was not impressed upon the witness' memory; the event may have had significance at the time, but the passage of time and intervening events have diminished the ability of the witness to recall the event; there were so many discussions regarding a particular subject or event that a witness has difficulty in recalling what was said to whom and when it was said; and that the witness is a poor witness, e.g., is not articulate when called upon to recount events and/or has a poor memory.

Many of the "inconsistencies" or "contradictions" in testimony perceived by Complainant do not exist. Many others are immaterial. The Examiner need not, and has not, addressed all of the nonexistent and/or immaterial inconsistencies and contradictions that are argued by Complainant.

In TOWN OF MERCER, DEC. NO. 14783-A (GRECO, 3/77), the Examiner stated that:

. . . it is well established that the search for motive at times is very difficult, since oftentimes, direct evidence is not available. For, as noted in a leading case on this subject, SHATTUCK DENN MINING CORP. V. N.L.R.B. 362 F 2D. 466, 470 (9 CIR., 1966):

Actual motive, a state of mind being the question, it is seldom that direct evidence will be available that is not also self-serving. In such cases the self-serving declaration is not conclusive; the trier of fact may infer motive from the total circumstances proved. Otherwise, no person accused of unlawful motive who took the stand and testified to a lawful motive could be brought to book.

In applying the above, Examiner Nielsen, in NORTHEAST WISCONSIN TECHNICAL COLLEGE, DEC. NO. 28954-B (8/98), recognized that if there is to be a finding of hostility and improper motive, it must flow from reasonable inferences drawn from overall circumstances. As the Court recognized in EMPLOYMENT RELATIONS DEPARTMENT V. WERC, 122 Wis.2d 132 (1985), an employer need not demonstrate 'just cause' for its action. However, to the extent that an employer can establish reasons for its action that do not relate to hostility toward an

employee's protected concerted activity, it weakens the strength of the inferences which the employee asks the WERC to draw.

Examiner Nielsen recognized that timing alone does not generally prove pretext, but may be persuasive evidence when combined with other evidence. As the Commission recognized in *NORTHEAST WISCONSIN TECHNICAL COLLEGE*, DEC. NO. 28954-C; 28909-D (3/99), although bad business decisions or poorly monitored business decisions do not violate the law, business decisions which are not objectively supported by the record clearly create inferences that the Examiner must consider when assessing motivation. In this case, the Commission also recognized that events that follow a layoff are probative of motivation.

As Examiner Nielsen also recognized, if an explanation for an action is discredited, pretext may be inferred, but then one must ask and resolve the following question: A pretext for what? With these fundamental principles in mind, the Examiner turns to a review of Respondent and Complainant conduct.

On October 29, 1997, Complainant filed a grievance. This grievance is one of the two instances of protected, concerted activity that is alleged in the complaint. In responding to Complainant's arguments that Respondent has demonstrated hostility to Complainant's protected, concerted activity, it is necessary to consider conduct that occurred prior to and after his October 29, 1997, grievance was filed.

Complainant commenced employment with the District in the 1995-96 school year as a part-time French teacher in the Junior High. During the time that Complainant was employed by the District, the District also employed a full-time French teacher, Ann Berns. At various times during the first and second year of Complainant's employment, Complainant complained about Berns to administrators and Berns complained about Complainant to administrators.

Junior High Principal Robert Knaack and Corinne Solsrud, the Curriculum Coordinator for Language Arts and Foreign Language, each had knowledge of some of these complaints. Prior to the beginning of the 1997-98 school year, Knaack concluded that there was a poor relationship between Complainant and Berns and that Complainant was responsible for this poor relationship. Solsrud concluded that Complainant was more responsible for the poor relationship between Berns and Complainant than Berns.

Solsrud and Knaack's knowledge of the relationship between Complainant and Berns during the first two years of Complainant's employment with the District, including their knowledge of Complainant and Berns' complaints, provided each with a reasonable basis to reach their conclusions regarding Complainant's responsibility for the poor relationship between Complainant and Berns. The evidence that these administrators may not have advised Complainant that his conduct towards Berns was inappropriate, unreasonable or unjustified;

that Complainant was not nonrenewed or disciplined for his conduct toward Berns; that these administrators may not have given Complainant an opportunity to rebut Berns' complaints; that these administrators may have relied upon the hearsay statements of other District employees; and that these administrators may not have fully investigated the complaints or been aware of all of the conduct that resulted in the poor relationship between Berns and Complainant does not warrant the conclusion that Solsrud and Knaack's conclusions regarding Complainant's culpability are not bona fide.

Prior to the beginning of the 1997-98 school year, Dodd learned that Complainant had problems with Berns when Knaack advised Dodd that Berns had complained about Complainant. Specifically, Dodd was told that Berns had complained to Knaack that Complainant acted as if he were Berns' supervisor and that Knaack had made a room assignment based upon Berns' complaint that she did not want Complainant in the vicinity while she was teaching. In the summer of 1997, Dodd made Complainant aware of these matters.

When Complainant attempted to explain his side of the issue with Berns, Dodd interrupted him by saying that it was not important who was right or wrong and that the point was that Complainant had alienated many of his foreign language colleagues. Given this point, Dodd's disinterest in hearing Complainant's response is understandable. It is not likely, however, that Dodd would have raised the issue with Complainant if Dodd had not formed an opinion that Complainant bore some responsibility for alienating Berns. Such a conclusion is supported by the fact that Dodd felt compelled to tell Complainant that Complainant was not Berns' supervisor. The evidence of Dodd's disinterest in hearing Complainant's side of the story; the evidence that Dodd relied upon Knaack's hearsay statements regarding Berns' and Complainant's relationship; and the evidence that Dodd did not discipline or nonrenew Complainant for his conduct towards Berns, does not warrant the conclusion that Dodd could not be legitimately concerned about Complainant's conduct towards Berns.

Prior to the end of the 1996-97 school year, Complainant, on multiple occasions, sought to have a classroom dedicated to French. When class assignments were made at the end of the 1996-97 school year for the ensuing school year, Complainant was not assigned a dedicated French room. Rather, the six sections of French were scheduled in five different rooms, with no two consecutive sections of French scheduled in the same room. Complainant had been assigned to teach four of these six sections. When Complainant advised Junior High School Vice-Principal Sheehan that this room assignment was worse than last year, Sheehan responded that he would look into the matter. Subsequently, Complainant was informed that the Foreign Language Department would have a meeting on May 28, 1997.

At the start of this meeting, Solsrud informed the attendees that they had to discuss room assignments and that someone would end up shafted. Given the number of classrooms assigned to the Department, Complainant could not obtain a dedicated French room without depriving a more senior teacher of his/her own classroom.

Berns, the other French teacher, did not support Complainant in his request for a dedicated French room and, in fact, had never sought a dedicated French room. Thus, it was not “French” that sought a dedicated French room, but rather, it was Complainant that sought a dedicated French room. Given Complainant’s statements on the issue, he sought a dedicated French room because he believed that it provided a better learning environment for French students and/or he believed that such a room was necessary in order for Complainant to compete for students in order to retain, or improve upon, his position within the District.

Spanish teachers, particularly Shar Soto, argued that they were entitled to keep their own classrooms because they were more senior. Complainant disputed the validity of this assertion and, during the ensuing discussion, each side accused the other of being hypocritical and uncompromising. Notwithstanding Complainant’s arguments to the contrary, the Spanish teachers, as well as the administrators, may reasonably conclude that teacher seniority is a legitimate factor to be considered in making classroom assignments.

Soto proposed a schedule in which French would be taught in two consecutive sections in each of three rooms. The schedule proposed by Soto would not provide Complainant with a dedicated French room, but it was less onerous upon Complainant than the schedule that had been prepared by Sheehan because it resulted in fewer moves from room to room. This proposal of Soto’s was a reasonable response to Complainant’s complaint to Sheehan that the French schedule was worse than last year.

Complainant objected to Soto’s proposal on the basis that it did not provide a dedicated French room. The meeting ended without a change in room assignments and Solsrud stated that she wanted the staff to work together to find a solution that was agreeable to everyone. At that time, other Departments were able to discuss and agree upon room assignments within their Department.

Complainant responded to Solsrud by developing a schedule in which he, Berns and Dudley were the only Foreign Language Department teachers to teach all of their classes in a single room. Complainant’s proposed schedule resulted in a greater number of teachers moving from room to room and deprived more senior Spanish teachers of their own classroom. On May 29, 1997, Complainant distributed this schedule to the Junior High Foreign Language Department staff. One may reasonably conclude that the May 29, 1997 schedule proposed by Complainant did not offer a compromise between the competing interests of Complainant and the more senior Spanish teachers who wished to keep their own classrooms.



On May 30, 1997, Spanish teachers Soto and Martin met with Knaack to complain about a note that Complainant had sent to teacher aide Maki on May 19, 1997. This note, which stated something like “Oh, cram it” was sent in response to Maki’s request that Complainant send a “study buddy” when sending students to her study hall. Maki’s request was consistent with school policy.

On May 30, 1997, Knaack asked Complainant to meet with him. Complainant met with Knaack on that day and Knaack told Complainant that teachers had complained about Complainant’s treatment of Maki. Complainant and Knaack discussed Complainant’s conduct in sending the note to Maki, but Knaack did not discipline Complainant for this note.

Complainant argues that Soto and Martin’s complaint to Knaack was in retaliation for Complainant’s attempts to obtain a dedicated French room. Inasmuch as those attempts did not involve protected, concerted activity for the purpose of collective bargaining or other mutual aid or protection, such “retaliation” is not unlawful. Evidence that administrators were hostile to Complainant’s attempts to obtain a dedicated French room is not evidence of hostility to protected, concerted activity.

It may be, as Complainant argues, that he intended the Maki note to be a joke. Regardless of whether or not Maki appreciated the “joke,” Complainant’s note to Maki was not appropriate for a teacher to send to an aide in a business setting. Regardless of Soto and Martin’s motivation for complaining about Complainant, it is reasonable for Knaack and other administrators to be concerned about the Maki note.

The District’s administrators may rely upon the Maki note to form opinions of Complainant, such as that Complainant acted unreasonably or that Complainant was not a team player. Neither the fact that Maki did not wish to complain about the note, nor the fact that Complainant was not disciplined, or nonrenewed, for sending the note, provides a reasonable basis to conclude that Knaack and Dodd could not be legitimately concerned about Complainant’s conduct in sending the Maki note.

Reasonably, Knaack considered Complainant to have been unharmed by the Soto and Martin complaint because Knaack did not put anything in Complainant’s file regarding the complaint. Complainant disagreed and requested Knaack to arrange a meeting with Complainant, Knaack, Soto and Martin. Knaack declined to arrange such a meeting because he understood that the resolution being sought by Complainant was to have Soto and Martin apologize to Complainant. Subsequently, Complainant discussed the Maki note with an Association Representative; asked if the Association could mediate between members; and was advised that the Association wanted Complainant to drop the matter.

Complainant did not drop the matter. Rather, on August 5, 1997, he commenced a civil lawsuit against Soto and Martin alleging, *inter alia*, injury to reputation and profession and defamation for making statements that Complainant had verbally abused Maki.

Knaack and Dodd learned of this suit prior to, or at the beginning of, the 1997-98 school year. Knaack and Dodd's knowledge of the Soto-Martin lawsuit provides these administrators with a reasonable basis to reach a variety of conclusions, such as the lawsuit was not reasonable; unjustified; vindictive; likely to have a negative effect upon the Junior High atmosphere; likely to chill other teacher's interactions with Complainant; and/or be an indication that Complainant was not a team player. Indeed, Complainant's own statements, as well as the testimony and written statements of other District staff, confirms that Complainant's suit had a chilling and negative effect upon the Junior High.

The evidence that Dodd and Knaack failed, or refused, to engage in any attempt to resolve either Complainant's complaints against Soto and Martin, or Complainant's lawsuit against Soto and Martin, until a mediation session in January of 1998, does not provide a reasonable basis to conclude that Dodd and Knaack could not be legitimately concerned about Complainant's conduct in suing Soto and Martin and/or the effects of this suit upon the Junior High School. The evidence that administrators did not advise Complainant that his lawsuit against Soto and Martin was inappropriate, unreasonable or unjustified and did not nonrenew or discipline Complainant for bringing this lawsuit does not warrant a conclusion that Dodd and Knaack could not be legitimately concerned about Complainant's conduct in filing such a lawsuit and/or the effects of this suit upon the Junior High School. Inasmuch as Complainant's lawsuit against Soto and Martin does not involve protected, concerted activity, evidence of hostility to Complainant's conduct in suing Soto and Martin does not provide a reasonable basis to infer hostility to protected, concerted activity.

Following the May 28, 1997 meeting of the Foreign Language Department, Complainant contacted, or met with, Sheehan, Solsrud, and Knaack in an attempt to obtain a dedicated French room. Sheehan and Solsrud were each informed by Complainant that Soto and Martin's conduct in complaining about the Maki note had foreclosed any possibility of the Foreign Language Department reaching agreement on room assignments. Solsrud responded to Complainant that she was tired of being in the middle of this issue and would not assure Complainant that she would discuss this matter with Sheehan. Sheehan initially advised Complainant that the room assignments were unchanged because Complainant thought that the Spanish teachers were throwing Complainant a bone. Complainant understood Sheehan to be referencing Soto's May 28, 1997 proposal. When Complainant returned to discuss the matter, Sheehan advised Complainant that the Spanish teachers had a lot of seniority and that a final decision would be made at a subsequent date.

After Sheehan and Knaack advised Complainant that the room assignments would not be changed, Complainant met with Dodd and the District's Assistant Superintendent for Instruction of Pupil Services, Hazaert. Dodd concluded that Complainant had presented reasonable arguments as to why the French program was not being treated in the same manner as Spanish or German and told Hazaert to have Knaack give Complainant a dedicated French room. After Hazaert told Knaack to reexamine the issue, Knaack met with Complainant on July 17, 1997.

At this meeting, Knaack initially resisted the creation of a dedicated French room and argued that the Spanish teachers were more senior; that the success of the French program was more likely to be affected by the quality of the French teacher than the nature of the classroom; that Complainant should compromise by teaching two consecutive sections in each of three classrooms; that classroom assignment matters are normally decided at the Department level; and that Knaack would work with Complainant to get a dedicated French room for the following year. Complainant responded that this would not give Complainant a dedicated French room; that Complainant had tried for years to get a dedicated French room; and that it was unfair to wait any longer.

Eventually, Knaack agreed to give Complainant a dedicated French room and offered Room 11, the smallest of the Foreign Language classrooms. Complainant indicated that he had one class of 32 students; Room 11 would be too cramped; if Complainant had the larger class, than he should be given the largest classroom; and asked for the largest classroom, Room 7. Knaack responded that he was not going to give Complainant Room 7 because it would be not be fair to Spanish to give Complainant the biggest room and that Knaack did not want to take this room away from Haverly. When Complainant responded that he was not aware that classrooms belonged to any one teacher, Knaack raised his voice and responded that he was not going to "stick" it to Haverly. When Knaack offered Room 10, Complainant insisted that he measure Room 7 and 10. At this point in the conversation, Knaack threw up his hands and said "Oh, for Pete's sake." Knaack then accompanied Complainant to the two classrooms and Complainant paced off the dimensions. Concluding that there was not a significant difference between Room 7 and Room 10, Complainant indicated that Room 10 was acceptable.

During the walk to and from these classrooms, each individual continued with their arguments. At one point, Knaack responded that he could solve the large classroom problem by calling parents and telling them that their children could not be in French. Complainant responded that, if Knaack did that, then he was going to take Knaack to court. Knaack reiterated that he did not understand why the Department had not been able to work out the classroom assignments and Complainant responded that he had been stabbed in the back and he was not going to take the short end of the stick after being stabbed in the back. When Knaack again stated that he did not understand why the Department had not been able to work out the classroom assignments, Complainant raised his voice and emphatically stated that he was sick

Page 140  
Dec. No. 29946-L

and tired of hearing Knaack say that, as if it were Complainant's fault; that it was not

Complainant's fault that the Department had not been able to work it out; and that he did not want to hear that anymore. Knaack responded that they did not need to go to war over the matter.

Knaack then developed a schedule and Complainant told Knaack that the schedule did not make sense in that it put a Social Studies teacher in a Foreign Language Department room at a time that the room could be used by a Foreign Language teacher. Knaack responded that he did this because it would cause Complainant to move once, which Knaack considered to be fair to the Spanish teachers who had to move. The meeting concluded with Knaack replacing the French section in the French classroom and indicating that, if he could work out the study halls, that this schedule should work. Complainant, who believed that he had yelled at Knaack, apologized to Knaack for yelling. Complainant, who believed that Knaack had also yelled at him, was surprised that Knaack did not apologize for yelling.

On July 17, 1997, following his meeting with Knaack, Complainant wrote a letter to Dodd that indicated, *inter alia*, that, although Complainant and Knaack had reached agreement on a French room, Knaack had demonstrated and continued to demonstrate antipathy, even outright hostility, to either Complainant personally, or to the French program; that Complainant was fearful that Knaack would try to get back at Complainant; and asked that neither Sheehan, nor Knaack, be assigned as his supervisors because they had treated him unfairly. Complainant attached the various classroom schedules that he deemed to be relevant to his complaints, including Complainant's May 29, 1997 proposal.

On July 25, 1997, Knaack telephoned Complainant. During this telephone conversation, Knaack told Complainant that he had changed his mind and that the French room would be moved to Room 11; Complainant reiterated his concern that the room was too small for his largest class; and Knaack responded that the other Spanish teachers were upset about the room assignment that had previously been agreed upon and that Knaack's decision was final. Complainant initially agreed to the change, but then subsequently told Knaack that Room 11 was not acceptable; that the schedule worked out with Knaack had been fair; and that he did not like the fact that Knaack had made the change without first discussing it with Complainant.

On July 25 1997, Complainant delivered the July 17<sup>th</sup> letter and a letter dated July 25, 1997, to Dodd's office. In the July 25<sup>th</sup> letter, Complainant informed Dodd that Knaack was "still messing" with him. In this letter, Complainant stated various concerns regarding Knaack and Complainant's arguments for the larger classroom. This letter contained schematic drawings of the various Foreign Language Department rooms and enrollment figures that indicated that Complainant's class sizes were 17, 18, 19 and 31 students and that the vast majority of the other language classes were over 23 students, with a general range of 23 to 26 students.

Dodd discussed these letters with Knaack. Knaack told Dodd that Complainant was expressing Complainant's opinion; that Complainant had received a French room and that there was no further conflict. Dodd concluded that Knaack was not hostile to Complainant and decided not to intercede further in the matter.

Having had no response to the letters that were delivered on July 25, 1997, Complainant telephoned Dodd on July 29, 1997. Dodd was not sympathetic to Complainant's concerns and told Complainant that he supported Knaack's room assignment. During this conversation, Dodd told Complainant that Complainant had alienated his colleagues in the Foreign Language Department; Complainant responded that they had alienated him; Complainant brought up Soto and Martin; and Dodd told Complainant that Dodd knew that Complainant also had problems with Berns. Complainant's notes of this conversation indicate, *inter alia*, that Complainant told Dodd that rooms should be assigned on the basis of need and not to soothe teacher egos; that Complainant's 7<sup>th</sup> hour class was by far the largest Foreign language class and that it would not fit comfortably into Room 11; that Dodd suggested that Complainant find a larger room for his 7<sup>th</sup> hour class; that Dodd indicated that one of the perks of seniority was that teachers get the room of their choice and Knaack was trying to preserve some semblance of this tradition; that after Dodd had reiterated his position, Dodd told Complainant that he did not want to discuss the matter any further; that Dodd stated that French was receiving the same consideration as Spanish; that Dodd told Complainant that one of the reasons that Complainant was not given Room 10 was that Berns did not want Complainant doing his preps at the desk in the adjoining small office while she taught her classes; that Dodd, on more than one occasion, told Complainant that he and/or French was being treated fairly; and that when Complainant indicated that he disagreed, Dodd told Complainant that there was nothing further to discuss, and each said "good-bye." In an addendum to these notes, Complainant indicated, *inter alia*, that he had asked for a meeting with Dodd, Knaack and Complainant to discuss room assignment and Knaack's behavior and continued attempts to not give him a French room; Dodd said he did not see any point in that because Complainant had received his French room; that when Complainant asked Dodd if Complainant was being treated fairly when Knaack yelled at Complainant, Dodd responded that he had been in situations like that, when you are frustrated and can't get your point across, that the only way to get your point across is to raise your voice; that Complainant stated that Knaack did not raise his voice, but rather, yelled, and asked if Dodd thought that was proper; that Dodd responded that those things happen; that there was a discussion about the reliability of the student numbers for the 7<sup>th</sup> period class; and that there was a discussion about Complainant's request to not have Sheehan or Knaack supervise Complainant and Dodd indicated that he could not promise anything.

At the time of this discussion, Dodd concluded that Complainant's charges against Knaack were not very serious; that the matter had been resolved when Complainant received his dedicated French room; and that the only reason that Complainant wanted to meet with

Dodd was to have Dodd overrule Knaack's classroom assignment decision. Complainant concluded that Dodd had given a stamp of approval to behavior of Knaack that was hostile and that such approval was not appropriate for a public school system.

Complainant then telephoned School Board Vice-President Leonard to discuss his concerns, including his concern that French was not being treated fairly; that Soto and Martin had maligned him; that Knaack had yelled at him on July 17, 1997; that it was unfair that he have the smallest classroom when he had the largest section; and that he felt that his career was in jeopardy because he had irritated both Knaack and Sheehan and that Dodd thought he was a difficult person who alienated everyone. Leonard appeared to be sympathetic to his concerns and agreed to discuss the matter with Dodd. On August 6, 1997, following Leonard's discussion with Dodd, Leonard and Complainant had a telephone conversation in which Leonard told Complainant that she was not concerned about the room assignment change; that she did not want to discuss this change and that Dodd would meet with Knaack to discuss Complainant's concerns.

On August 7, 1997, when Dodd did not get back to Complainant, Complainant telephoned Dodd. At this time, Complainant was told that Dodd had met with Knaack; that Dodd would not change Knaack's room assignments; that when Complainant asserted that his greater concern was the hostility that had been shown him, Dodd advised Complainant that he would keep Complainant's letter on file; that, if Complainant experienced any further problems, he should come to Dodd; and that Dodd could not guarantee specific working conditions, but would guarantee that Complainant would be treated fairly.

According to Knaack, by the end of the July 17, 1998 meeting, he had concluded that Complainant's attempts to obtain a dedicated French room were unreasonable and uncompromising. Knaack's knowledge of Complainant's conduct provided Knaack with a reasonable basis to reach such conclusions. Knaack's comments to Complainant placed Complainant on notice that Knaack considered Complainant to be uncompromising and unreasonable. The failure of Knaack to discipline or nonrenew Complainant for Complainant's attempts to obtain a dedicated French room does not warrant the conclusion that Knaack could not be legitimately concerned about Complainant's conduct in attempting to obtain a dedicated French room.

According to Dodd, Complainant's attempts to obtain a dedicated French room lead Dodd to conclude that Complainant was obstinate, not a team player and would do almost anything to get his own way. Dodd's knowledge of Complainant's attempts to obtain a dedicated French room provides Dodd with a reasonable basis to form such conclusions. Neither the fact that Dodd originally intervened on the basis that he considered Complainant to have provided good reasons for a dedicated French room, nor the failure of Dodd to specifically advise Complainant that he had acted in an inappropriate manner, warrants the

conclusion that Dodd could not be legitimately concerned about Complainant's attempts to obtain a dedicated French room. Nor would such a conclusion be warranted by the failure of Dodd to nonrenew or discipline Complainant for his attempts to obtain a dedicated French room.

On August 8, 1997, Complainant encountered Sheehan in the Junior High Office and, during the ensuing discussion, told Sheehan that Complainant was going to ask the School Board to invoke a disciplinary hearing against Sheehan and Knaack because both of them had been very unfair in the way that they handled the room assignment issue. Sheehan responded "Oh" and agreed to give this same message to Knaack. Sheehan's response to Complainant during this encounter indicates that Sheehan was not threatened by Complainant's announcement.

On August 26, 1997, Complainant was advised that Sheehan had been assigned as his direct supervisor for the ensuing school year. Complainant sent a letter to Knaack, requesting that Kris Gilmore or Connie Solsrud be his direct supervisor because he was not comfortable with Sheehan because of the turmoil that Complainant went through to obtain a dedicated French room. Knaack denied this request.

On August 27, 1997, Sheehan wrote a letter to Complainant indicating that he and Sheehan agreed that a change in supervision was not necessary. This letter also stated:

Our view always has been, and certainly will remain, that the best source of staff development is the supervision process. The goal of the supervision process is to work with you and all other teachers to help you grow into the most effective teacher you can be. I hope that you can understand this.

At this time there is no relationship between this opportunity for professional growth and ". . . the turmoil I had to go through in the process of getting a room dedicated to French . . ." It is my hope that you are able to see the purpose for which our supervision process operates and are able to enter into the process with a positive spirit. It may be necessary for you to look past any perceived problems of the past summer in order for you to take advantage of this opportunity for professional growth.

On August 28, 1997, Complainant wrote a letter to Dodd in which he advised Dodd, *inter alia*, that he strongly objected to the refusal to accommodate his reasonable request to have either Gilmore or Solsrud be his primary supervisor; that given the turmoil that he was subjected to that Spring by Sheehan and Knaack, their insistence that Sheehan be his supervisor was a clear form of harassment; and that serious issues were raised as to Sheehan's objectivity

and impartiality. Dodd responded with a letter confirming that Sheehan would be Complainant's supervisor. Neither Sheehan, nor Knaack, ever expressed to Dodd that they had hard feelings about the fact that Complainant had gone over their heads.

The record does not demonstrate that, prior to September 9, 1997, Complainant engaged in any protected, concerted activity for the purpose of collective bargaining or other mutual aid and protection. The evidence of Sheehan's, Solsrud's, Knaack's, Hazaert's, and Dodd's conduct prior to September 9, 1997, does not provide a reasonable basis to infer that any of these administrators are hostile to the exercise of Complainant's protected, concerted activity.

Complainant raised certain complaints in a September 9, 1997, letter to Leonard. As set forth in that letter, the purpose of this letter was to have the School Board invoke a disciplinary hearing against Sheehan, Dodd and Knaack for treating Complainant unfairly and because recent actions on their part had made it clear to Complainant that they planned to harass Complainant.

Complainant's conduct in preparing and submitting this letter of September 9, 1997, does not demonstrate that Complainant was engaged in protected, concerted activities for the purpose of collective bargaining or other mutual aid and protection. Rather, the most reasonable construction of the evidence is that, in preparing and submitting this letter, Complainant was furthering a purely individual, rather than a collective concern.

Leonard did not contact Complainant to discuss this letter, but rather, showed this letter to Dodd. Dodd responded that the School Board should hear Complainant's complaints and discipline Dodd if he needed discipline. This conduct of Dodd rebuts Complainant's arguments that Dodd did not want the School Board to consider the complaints or concerns that were raised in the September 9, 1997, letter.

Dodd's response to Leonard indicates that Complainant's going over Dodd's head, or complaining about Dodd to the School Board, did not threaten Dodd. Nor, given the nature of, and the basis for, the allegations contained in the letter of September 9, 1997, would it be reasonable to infer that Dodd, Sheehan, and/or Knaack would be likely to perceive Complainant's conduct in going over their head and complaining to the School Board as threatening.

Dodd subsequently discussed the September 9, 1997, letter with the District's attorney; was advised that there was a contractual procedure to handle such complaints; and reported this advice to the School Board. Complainant's argument that Dodd engaged in this conduct so that Complainant could not get his complaints resolved is not supported by the record evidence.



Pursuant to the direction of the School Board, Dodd responded to Complainant's letter of September 9, 1997 by informing Complainant "that there is a grievance process in place that can be used to address such issues." By this conduct, the School Board evidenced an intent to have complaints against its administrators resolved through the contractual grievance procedure. This conduct of the School Board provides a reasonable basis to infer that the School Board is not hostile to the filing of grievances, or the use of the contractual grievance procedure to process employee complaints. The District's response to the letter of September 9, 1997 does not provide a reasonable basis to infer that Dodd, School Board members, or any other representative of the District, is hostile to the exercise of protected, concerted activity.

Complainant's statements demonstrate that Complainant did not consider the grievance procedure to be the appropriate place to address the issues raised in his letter of September 9, 1997 and that Complainant resented having to use the grievance process to raise these issues with the School Board. Nevertheless, on October 29, 1997, Complainant filed a grievance.

In the October 29, 1997 grievance, Complainant asserted that Sheehan, Knaack and Dodd are hostile to the French program; that this hostility caused the elimination of a French class, with the effect that Complainant was employed at less than full-time; and that Complainant was verbally abused and subject to a hostile work environment because of Complainant's efforts on behalf of French students and the French program. This grievance indicates that, prior to the time that Complainant filed this grievance, he considered Dodd to have the opinion that Complainant was "the type of person who tells other teachers to 'go shove it.'"

The remedies requested in the grievance are a public apology from the three administrators; compensation for the mental anguish caused by the administrators' unfair treatment of Complainant; the assignment of someone other than Knaack or Sheehan as Complainant's primary supervisor; neither Sheehan nor Knaack be permitted to enter Complainant's classroom, except in the case of an emergency or for some other such non-supervisory purpose; increase Complainant's contract to 100% FTE and guarantee Complainant a 100% FTE contract for as long as Complainant chooses to remain at the District; a payment of the difference between Complainant's 1996-97 FTE of 65% and a 100% FTE; beginning with the 2000-01 school year, the District should compensate Complainant at the same rate of pay as a Curriculum Coordinator, since the hostile work environment caused by Sheehan, Knaack and Dodd would prevent Complainant from advancing to this position; and a formal hearing to determine whether or not the actions of Dodd and Knaack, during conversations between Dodd and Knaack concerning Complainant, violated Sec. 134.01, Stats.

The Association assisted Complainant in preparing his October 29, 1997 grievance, but the Association did not sign on to this grievance, in part, because the Association was concerned about the personal nature of the grievance and the corrective action being sought in

Page 146

Dec. No. 29946-L

the grievance. When Complainant's attorney presented this grievance to the School Board, at

Step 3, he stated that the grievance was a personal grievance against the three administrators, not a policy grievance.

The October 29, 1997 grievance asserts that there have been violations of the DCETA collective bargaining agreement. It is evident, however, that Complainant did not initiate the grievance, or raise the claims set forth in this grievance, for the purpose of enforcing the DCETA collective bargaining agreement, or for purposes of any other mutual aid and protection. Rather, Complainant's purpose in initiating the October 29, 1997 grievance, and raising the claims set forth therein, was to further purely individual concerns. The fact that UniServ Director Coffey considered it possible that this grievance would benefit someone other than Complainant does not compel a contrary conclusion.

Knaack acknowledges that he was shocked when he received Complainant's written grievance because he believed that Complainant wanted the administrators reprimanded for personal reasons and that he considered such a reprimand request to be unusual. This response to Complainant's grievance does not provide a reasonable basis to infer that Knaack is hostile to protected, concerted activity.

Dodd acknowledges that, when he initially read the October 29, 1997 grievance, he was perturbed by the allegation that administrators may have violated Sec. 134.01, Stats. During the processing of this grievance, Dodd exhibited unhappiness with Complainant's Sec. 134.01 allegation and expressed his opinion that he considered this allegation to be completely unfounded.

Section 134.01, Stats., states as follows:

**Injury to business; restraint of will.** Any 2 or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of willfully or maliciously injuring another in his or her reputation, trade, business or profession by any means whatever, or for the purpose of maliciously compelling another to do or perform any act against his or her will, or preventing or hindering another from doing or performing any lawful act shall be punished by imprisonment in the county jail not more than one year or by fine not exceeding \$500.

The evidence that Dodd was hostile to Complainant's Sec. 134.01, Stats., allegations, including the evidence that, during the Step 2 meeting, Dodd was visibly agitated when he discussed Complainant's allegation that administrators may have violated Sec. 134.01, Stats.; voiced his opinion that these allegations were off the wall; and stated that it was highly irresponsible for Complainant to have made such allegations does not provide a reasonable basis to infer that Dodd is hostile to Complainant's exercise of protected, concerted activity.

Dodd's testimony demonstrates that he considered the remedies requested in Complainant's grievance of October 29, 1997 to be outlandish. Indeed, one of the reasons that the DCETA did not sign on to this grievance was that Association representatives considered the requested remedies to be problematic. Dodd's opinion regarding the merits of the remedies requested in Complainant's October 29, 1997 grievance does not provide a reasonable basis to infer that Dodd is hostile to the exercise of protected, concerted activity.

Complainant was engaged in protected, concerted activity when he used the contractual grievance procedure to raise the concerns set forth in his grievance of October 29, 1997. Complainant also was engaged in protected, concerted activity when he sought assistance from the DCETA in preparing this grievance and processing this grievance through the contractual grievance arbitration procedure.

Knaack and Dodd met with Complainant at the appropriate Steps of the grievance procedure. Knaack and Dodd provided Complainant with a reasonable opportunity to discuss his concerns when they met to discuss the grievance. It is not evident that, during the processing of the grievance, Knaack or Dodd denigrated Complainant's use of the grievance procedure or Complainant's conduct in seeking DCETA assistance with this grievance.

At the Step 2 hearing, Dodd refused Complainant's request for a copy of the minutes that were being prepared by other administrators. Dodd's refusal does not provide a reasonable basis to infer that Dodd is hostile to Complainant's protected, concerted activity.

Contrary to the argument of Complainant, Dodd does not acknowledge that, when he prepared his Step 2 response, Dodd intended to create, for the School Board's consumption, a dishonest account of the issues presented in the grievance. Rather, the most reasonable construction of the record evidence is that Dodd intended to create, and did create, an account that represented Dodd's view of the relevant facts and arguments. The record evidence does not support Complainant's argument that Dodd grossly misrepresented what occurred at the Step 2 hearing.

Prior to the Step 3 hearing, the Association asked the administration if they would agree to have an Association staff attorney mediate the grievance and the lawsuit against Soto and Martin. Dodd, who was present at the mediation that was scheduled in response to this request, concluded that Complainant, who was represented by his personal attorney, would not settle for less than the corrective action requested in the grievance, which corrective action Dodd considered to be outlandish. This conduct of Dodd's does not provide a reasonable basis to infer that Dodd is hostile to Complainant's protected, concerted activity.

On June 19, 1998, when Complainant met with the School Board at Step 3 of the grievance procedure, he asked for five minutes to read a statement. After twelve minutes, School Board President Fisher indicated that he had heard enough and would not permit Complainant to finish reading his statement. Complainant was permitted to submit this written statement to the School Board.

After Complainant and his attorney indicated that they had nothing more to say, the School Board went into closed session at approximately 8:49 p.m., voted to deny the grievance and, at 8:55 p.m., adjourned the meeting. The School Board's attorney provided the School Board's written response in a letter to Complainant's attorney, dated January 20, 1998, which letter includes the following:

. . . At the conclusion of the Step 3 grievance meeting on Monday, January 19, 1998, the Board voted unanimously to deny the grievance. The reasons for the Board's denial of the grievance include the following:

. . .

15. Many of the issues presented are not grievances as defined by the collective bargaining agreement.
16. No evidence was presented that establishes a violation of Article 2, Article 30, or any other section of the collective bargaining agreement.
17. The grievance was not timely filed since it was not filed within ten (10) working days after the cause of the grievance was known or should have been known by Mr. Mudrovich.

Notwithstanding Complainant's argument to the contrary, the fact that the School Board advised Complainant that there is a contractual grievance procedure for raising complaints and then found that many of the complaints raised by Complainant are not grievances, does not provide a reasonable basis to infer that the School Board has acted in bad faith.

At times during the Step 3 meeting, District representatives appeared to be impatient when they addressed Complainant and, in LaBarge's opinion, made some statements to Complainant and Complainant's attorney that were a bit insulting. The demeanor of the School Board members, as well as their questions, left Complainant with the impression that the School Board members were not interested in the facts, but simply wanted to support their administrators.

The evidence of the School Board members conduct at the Third Step of the grievance procedure reasonably gives rise to an inference that School Board members were abrupt, impatient and "a bit" insulting to Complainant and/or his attorney. However, it is not evident that any School Board member denigrated Complainant's use of the grievance procedure, or Complainant's conduct in seeking the assistance of the DCETA. Given this lack of evidence, as well as the evidence that the School Board suggested the grievance procedure as a vehicle for raising Complainant's claims; the evidence that the School Board met with Complainant at the appropriate steps of the grievance procedure; and the evidence that the School Board provided Complainant with a reasonable opportunity to address the concerns raised in his grievance, the conduct of the School Board members at the Third Step grievance hearing does not provide a reasonable basis to infer that any School Board member is hostile to Complainant's protected, concerted activity.

At the Step 3 meeting, Dodd told Complainant that the allegation that Dodd and Knaack may have violated Sec. 134.01, Stats., was a very serious allegation; stated that he was very unhappy about Complainant having raised such an allegation and appeared to be upset over this allegation. This conduct of Dodd's does not provide a reasonable basis to infer that Dodd is hostile to Complainant's protected, concerted activity.

In summary, the evidence of Knaack's, Dodd's and the School Board members' demeanor and conduct during the processing of the October 29, 1997 grievance does not provide a reasonable basis to infer that Knaack, Dodd or any School Board member is hostile to Complainant's use of the grievance procedure or to Complainant's seeking the assistance of the DCETA to prepare and process this grievance. Nor does such evidence provide a reasonable basis to infer that Knaack, Dodd or any School Board member is hostile to any other protected, concerted activity of Complainant.

After Complainant filed the October 29, 1997 grievance, the District's School Board authorized the District to provide representation to defend Soto and Martin in Complainant's lawsuit. The most reasonable construction of the record evidence is that the School Board provided such representation because it was requested to do so by at least one defendant attorney and the District's legal counsel advised the School Board that the statutes required the District to provide such representation. The evidence of the District's decision to provide such representation does not provide a reasonable basis to infer that the School Board, or any agent of the District, is hostile to any protected, concerted activity upon the part of Complainant.

On March 5, 1999, Attorney Cari L. Westerhoff of the law firm of Ruder & Ware, acting as the attorney for Defendants Soto and Martin, signed a sworn affidavit that certain disbursements should be included in the bill of costs. Among these disbursements was the following:

10/29/97 RJR Telephone conference with R. Dodd re issues related to pending lawsuits against teachers in district and discussion of issues related to possible discipline of teacher.

The above referenced RJR is the District's attorney, Ronald J. Rutlin.

In statements before the Court, Westerhoff said that "When the billing statement says that conferences about pending issues involving teacher, that is specifically Mr. Mudrovich." Relying upon the fact that Complainant's grievance was filed on October 29, 1997; the above telephone log; and Westerhoff's affidavit and statement to the Court, Complainant argues that Dodd wanted to discipline Complainant for filing the grievance.

On its face, the telephone log references a "telephone conference" and a "discussion." Westerhoff's statements to the Court do not make it clear that she was representing that the "discussion" involved Complainant.

Dodd does not deny having a discussion regarding the discipline of a teacher with Rutlin on October 29, 1997, but rather, states that he does not recall such a discussion. Dodd does deny that, on October 29, 1997, he telephoned Rutlin to inquire about whether Complainant could be disciplined for filing a grievance. Given the ambiguity of Westerhoff's statements to the Court; the failure of the telephone log to reference a grievance; and Dodd's denial, the record does not provide a reasonable basis to infer, as Complainant argues, that Dodd wanted to discipline Complainant for filing the October 29, 1997 grievance.

On January 20, 1998, Knaack assigned Complainant to be in an IMC study hall every day. Complainant argues that, by this assignment, Complainant was the recipient of disparate treatment and that this disparate treatment provides evidence of hostility to Complainant's exercise of protected, concerted activity.

Complainant's IMC study hall assignment was made shortly after the School Board issued its response to the October 29, 1997 grievance. The timing of the IMC assignment may be suspicious. However, the most reasonable construction of the record evidence is that this assignment was made for legitimate business purposes, i.e., Knaack assigned Complainant to the IMC study hall because Bjorklund, who was the study hall teacher, was having difficulty with the study hall and Complainant was available to provide assistance.

On January 22, 1998, in response to a complaint from Bjorklund that Complainant was not in the IMC study hall at all times, Knaack issued a memo to all IMC study hall supervisors, reminding them of the need to remain in the IMC throughout the entire period and to not share the assignment with their co-worker. Knaack also responded to Bjorklund's complainant by advising Bjorklund and Complainant that each must be in their study hall at all

times. The evidence of Knaack's conduct in assigning Complainant to the IMC study hall and in responding to Bjorklund's complaint's regarding Complainant's absence from that study hall does not provide a reasonable basis to infer that Complainant was the recipient of disparate treatment, or that Knaack is hostile to Complainant's protected, concerted activity.

In March of 1998, the District renewed Complainant's teaching contract for the 98-99 school year. On or about March 10, 1998, Complainant returned his signed contract to the Junior High Office and asked the secretary to give him a receipt for this signed contract. In Complainant's opinion, the secretary appeared reluctant to do so. Knaack and Sheehan then asked Complainant to come into an office; asked what Complainant wanted; Knaack told Complainant that it was not the secretary's job to sign such a receipt; Knaack and Sheehan refused to sign such a receipt; and Knaack indicated that, if Complainant were concerned, then Complainant could take the contract to the central office himself.

In Complainant's opinion, Knaack was angry and the only reason for this anger was that Complainant had filed a grievance against Knaack. It is not evident, however, that during this conversation, Knaack made any reference to the October 29, 1997 grievance.

The failure of the Junior High secretary to automatically provide Complainant with the requested receipt, as well as Knaack's statement that it was not the secretary's job to provide such a receipt, indicates that Complainant's request was unusual. Complainant's conduct in requesting a receipt reasonably implies that Complainant does not trust the Junior High Office to return his contract to the Central Office.

Considering the context of the discussion, as well as Complainant's prior expressions of distrust of Knaack and Sheehan, the most reasonable construction of Knaack's and Sheehan's conduct is that it was a reaction to the implication that Complainant did not trust the individuals in the Junior High Office to return his contract to the Central Office. The evidence that Knaack and Sheehan exhibited hostility to Complainant's request for a receipt, does not provide a reasonable basis to infer that either administrator is hostile to Complainant's filing a grievance on October 29, 1997, or to any other protected, concerted activity.

In April of 1998, Complainant's attorney deposed Sheehan and Knaack in the matter of Complainant's lawsuit against Soto and Martin. Thus, after Complainant had received his renewed teaching contract, Sheehan and Knaack had reason to revisit and reflect upon the effect of Complainant's conduct in suing Soto and Martin. In Complainant's opinion, neither administrator was particularly happy about being deposed. Evidence that these administrators were not happy about being deposed does not provide a reasonable basis to infer that either is hostile to protected, concerted activity.

On or about May 14, 1998, Sheehan posted a "Master Class List" for the 1998-99 school year. In this "Master Class List," Complainant was scheduled to teach an additional, or "extra" French section. Complainant argues that this scheduling establishes that Sheehan had made the decision to offer Complainant a 100% position.

Complainant's argument regarding the effect of the May 14, 1998 schedule is inconsistent with the credible evidence that FTE's are increased through adjustments in the individual teacher contract; the fact that the posted "Master Class List" contains an express caveat that it is subject to change; credible administrator testimony that the posted "Master Class List" is a work in progress; and credible evidence that, at the time that the "Master Class List" was posted, there was uncertainty as to whether or not Berns would be available to teach the "extra" French section.

Complainant's argument is also inconsistent with Sheehan's testimony that he scheduled Complainant to the extra section of French because Sheehan needed a name for that section in order to run the computer program. Complainant argues that Sheehan fabricated this testimony to cover up the fact that, when Knaack learned of Sheehan's assignment of the extra French section to Complainant, Knaack nullified this assignment in retaliation for Complainant's exercise of protected, concerted activity.

On May 15, 1998, Complainant commented to Sheehan that Complainant had been scheduled for five sections of French and Sheehan responded, "That is correct." When Complainant advised Sheehan that he appreciated the additional section, but that his contract was for 80%, Sheehan indicated that he did not know that and would look into the matter.

Sheehan's failure to offer the explanation that he had scheduled Complainant for an extra section because Sheehan needed a name in order to run the computer program is curious. One may reasonably conclude, however, that if Sheehan had made the decision to increase Complainant to a 100% FTE, then Sheehan would have responded to Complainant by telling Complainant to not worry and that his contract would be adjusted accordingly. Sheehan's response on May 18, 1998, reasonably gives rise to an inference that Sheehan had not made a decision to increase Complainant's contract to 100% FTE and that Sheehan was not aware that anyone else had made such a decision.

According to Sheehan, he intentionally used Complainant's name for the "extra" section of French. Thus, Complainant's argument that it is not logical that Sheehan would not correct his "mistake" prior to running the schedule is not persuasive.

Complainant argues that he taught four classes of French at the Junior High in 1997-98 and Berns taught two classes of French at the Junior High in 1997-98. Complainant argues, therefore, that Sheehan's testimony that he arrived at the "extra" French section by subtracting



from the *status quo* is not logical because six French classes were taught in 1997-98 and six French classes were scheduled for 1998-99. (Tr. 2575) The Examiner, however, finds Sheehan's testimony on this point to be ambiguous. There are two aspects of the *status quo*; one relates to the number of French sections and the other relates to who is teaching these French sections. Given the evidence that there was uncertainty regarding Berns' availability to teach the second section of French, it is plausible that Sheehan's ambiguous remarks mean that he added the section that he knew Berns was available to teach and the four sections that Complainant had taught and then determined that there was an "extra" section of French. In other words, the "extra" section of French is "extra" because it could not yet be assigned to Berns. Sheehan's ambiguous testimony as to why he had an "extra" section of French does not persuade the Examiner that Sheehan is a liar, or that he did not assign Complainant the "extra" section of French because he needed a name in order to run the computer program.

Credible testimony of the administrators demonstrates that there was a meeting, in early to mid-May of 1998, in which administrators discussed staffing issues, including Complainant's teaching assignment for the 1998-99 school year. Dodd recalls that, at this meeting, Knaack told Dodd that Knaack was considering making Complainant a 100% FTE teacher, but that Knaack had reservations about Complainant. Dodd's credible testimony on this point gives credence to Knaack's testimony that, on May 18, 1998, Knaack was not willing to increase Complainant to a 100% FTE because Knaack had reservations about Complainant.

Knaack's testimony is consistent with the evidence of Knaack's conduct on May 18, 1998. On that date, Knaack asked Complainant if he were interested in teaching the extra French section. Complainant responded in the affirmative and Knaack indicated that Complainant should provide a written statement of his interest in a 100% position. Had Knaack intentionally nullified a decision by Sheehan to increase Complainant to a 100% FTE, as argued by Complainant, then it would be unlikely for Knaack to have had such a conversation with Complainant. Knaack's conduct of May 18, 1998, reasonably implies that, as of that date, Knaack had not made a decision to either offer Complainant a 100% FTE, or to deny Complainant a 100% FTE.

To be sure, Knaack had not previously asked Complainant for a written statement of interest in having his FTE increased. Knaack, however, had previously asked Complainant to verbally affirm his interest in receiving an increase in his FTE. Knaack's request for a showing of interest in receiving an increased FTE does not warrant an inference that Complainant is the victim of unlawful disparate treatment.

On May 22, 1998, Complainant initiated a conversation with Knaack by asking about a 100% FTE contract and Knaack responded that he was still looking into the matter. This conduct of Knaack's reasonably gives rise to an inference that, as of May 22, 1998, Knaack

had not made a decision to either offer Complainant a 100% FTE, or to deny Complainant a

100% FTE.

In summary, Sheehan's stated reason for scheduling Complainant to an "extra" French section is not inherently incredible and is consistent with other record evidence. The record provides no reasonable basis to discredit this testimony of Sheehan. Nor does the record provide a reasonable basis to conclude that, at any time prior to May 22, 1998, Sheehan, or any other administrator, had made the decision to assign an "extra" section of French to Complainant or to otherwise increase Complainant to a 100% FTE.

According to Knaack, on May 18, 1998, he was not willing to increase Complainant to 100% FTE because he had a variety of concerns, i.e., Knaack did not approve of Complainant's relationship with Berns; Knaack considered Complainant's lawsuit against Soto and Martin to have negatively affected the atmosphere in the Junior High Building; and Knaack was uncertain as to whether or not Berns would be available to teach the extra section. Complainant argues that Knaack's reservations regarding Complainant's conduct are pretextual and that Knaack was not willing to increase Complainant to a 100% FTE because Complainant had engaged in protected, concerted activity.

As discussed above, prior to May 18, 1998, Knaack had not engaged in any activity that would provide a reasonable basis to infer that, at that time, Knaack was hostile to Complainant's protected, concerted activity. The testimony of High School Principal Johansen does not rebut Knaack's testimony that, on May 18, 1998, Knaack was not yet aware of the availability of Berns. Knaack's testimony on this point is supported by Complainant's own written statement, which indicates that, as late as May 28, 1998, Knaack told Complainant that Knaack was still not sure of Berns' availability.

On May 18, 1998, Knaack's knowledge of Berns' prior complaints provided Knaack with a reasonable basis to be concerned about Complainant's relationship with Berns. Knaack's claim that Complainant was responsible for the poor relationship with Berns is consistent with the judgments of Solsrud, the immediate supervisor of both Berns and Complainant. Prior to the time that Complainant engaged in any protected, concerted activity, Knaack responded to Berns' complaints in a manner that indicates that he gave credence to these complaints. For example, Knaack responded to Berns' complaint that Complainant not interrupt her when she was in the classroom and that Complainant not be in her classroom while she was teaching by, initially telling Complainant to not be in Berns' classroom while Berns was teaching and then by providing Complainant with a desk in another classroom. Knaack made his July 25, 1997 classroom assignment decision, in part, on the basis that Berns did not want Complainant in the vicinity when she was teaching. Prior to the start of the 1997-98 school year, Knaack had discussed Bern's complaints against Complainant with Dodd.

Knaack's claim that, on May 18, 1998, he did not approve of Complainant's

relationship with Berns is credible. The fact that, during the 1997-98 school year, Knaack was not asked to intervene between Berns and Complainant does not warrant the conclusion that, on May 18, 1998, Knaack could not have been legitimately concerned about Complainant's relationship with Berns.

Knaack acknowledges that, on May 18, 1998, his opinion regarding the atmosphere in the Junior High was not based on conversations with any teacher, but rather, was based upon his belief that teachers in the Junior High School building were unnaturally quiet. In Knaack's opinion, the unnatural quiet was due to the fact that Complainant's colleagues were concerned that they would be sued if they said something inappropriate. Given the nature of the Soto-Martin lawsuit and the evidence of teacher reaction thereto, Knaack's claim regarding the unnatural quiet at the Junior High and Complainant's responsibility for the same is credible.

In summary, Knaack's claim that, on May 18, 1998, he was unwilling to offer Complainant a 100% position because Knaack did not approve of Complainant's relationship with Berns; Knaack considered Complainant's lawsuit against Soto and Martin to have negatively affected the atmosphere in the Junior High building; and Knaack was uncertain as to whether or not Berns would be available to teach the extra section is credible. The evidence of Knaack's conduct prior to May 18, 1998, supports the conclusion that Knaack's professed concern about Complainant's relationship with Berns is bona fide.

Complainant's claim that Sheehan had assigned Complainant to a 100% position and that Knaack, thereafter, blocked this assignment in retaliation for Complainant's exercise of protected, concerted activity is not supported by the evidence. Rather, the evidence of conduct occurring through May 28, 1998, reasonably leads to the conclusion that, as of that date, Knaack had not made a decision to assign Complainant to an extra French section because Knaack had legitimate concerns regarding Complainant's behavior.

Dodd's testimony consistently demonstrates that, at the staffing meeting in May, 1998, Dodd mentioned that Complainant had previously expressed a concern that the administrators would retaliate against Complainant. Dodd's testimony also consistently demonstrates that Dodd mentioned this concern for the sole purpose of cautioning the other administrators that they could expect some type of legal repercussion if a 100% French position were available and Complainant were not raised to 100% FTE. This conduct of Dodd does not provide a reasonable basis to infer that Dodd is hostile to the exercise of protected, concerted activity.

To be sure, Complainant expressed a concern that the administrators would retaliate against Complainant in his October 29, 1997, grievance. Complainant, however, also expressed such a concern in other forums. By mentioning such a concern, Dodd was not discussing Complainant's grievance. Neither the evidence of Dodd's conduct at the May

Page 156  
Dec. No. 29946-L

staffing meeting, nor any other record evidence, demonstrates that Dodd lied when he stated

that he had not discussed the October 29, 1997 grievance with Knaack from the time of the School Board's January, 1998 decision on the grievance until the time that Dodd decided to recommend Complainant's layoff.

The evidence of conduct prior to May 27, 1998, does not provide a reasonable basis to conclude that Knaack, Dodd, or any other administrator or School Board member, is hostile to Complainant's protected, concerted activity. Nor does such evidence provide a reasonable basis to conclude that Knaack, Dodd, or any other administrator or School Board member, failed to give Complainant a 100% position because of hostility to Complainant's exercise of protected, concerted activity.

Complainant claims that he engaged in protected, concerted activity from May 28, 1998, through June 2, 1998, and that Dodd and Knaack were hostile to this activity. To judge the merits of this claim, it is necessary to consider a series of events beginning in late May of 1998.

At the end of May, 1998, District teacher Kathy Heller stood outside the door of a room in which faculty were celebrating the retirement of a colleague. According to Heller, she was outside the room because she wanted to see if Complainant intended to enter the room; that, at the time, Heller feared that Complainant would do something physically violent because she believed that Complainant had become irrational about "some things;" and that Heller did not observe Complainant engage in any conduct that would cause her to conclude that he would "snap," but rather, based her conclusion regarding Complainant's irrationality upon what she had heard about the lawsuit against Soto and Martin, Complainant's note to Maki, and her understanding of an argument in the office involving Complainant. The fact that Heller now believes her fears to have been irrational does not alter the fact that, in May, 1998, Heller was genuinely apprehensive. Knaack, who attended this retirement celebration, was aware of Heller's conduct.

Heller also sent an unsolicited FYI note to Knaack, dated May 27, 1998, that states, in relevant part, "It is my perception and the perception of many others that the situation with George has become really uncomfortable. He makes me and many others uneasy. I do feel somewhat fearful of him at the Jr. High." In late May or early June of 1998, Knaack received an unsolicited FYI note from District employees Carol Tuszka, Sue Leider, and Kathy Pietsch that stated "We feel threatened by the unstable environment George Mudrovich has created in this building."

It is not evident that the District administrators had a reasonable basis to conclude that Heller, Tuszka, Leider, and Pietsch are untrustworthy. Thus, it is reasonable that Knaack and other District administrators having knowledge of the FYI's signed by these District employees

Page 157  
Dec. No. 29946-L

would conclude that Heller, Tuszka, Leider, and Pietsch were fearful of, or felt threatened by,

Complainant. The fact that Knaack and other District administrators did not react to the concerns expressed by Heller, Tuszka, Leider, and Pietsch by immediately taking action to remove Complainant from the premises or to discuss the FYI's with Complainant does not warrant the conclusion that the District's administrators could not be legitimately concerned about the fears and/or anxieties expressed by Heller, Tuszka, Leider, and Pietsch.

On May 27, 1998, Complainant ran an errand at a time in which he was scheduled to supervise his IMC study hall. Sheehan, who happened upon Complainant as Complainant was in the hallway, told Complainant that he needed to be in his study hall because Sheehan did not want the substitute to be alone in the study hall. Complainant responded, "OK" and returned to his study hall.

Complainant was not engaged in protected, concerted activity when he was running an errand at a time in which he was supposed to be in his IMC study hall. The evidence of Sheehan's conduct on May 27, 1998, does not provide a reasonable basis to infer that Complainant is the recipient of unlawful disparate treatment, or that Sheehan is hostile to Complainant's exercise of protected, concerted activity.

On the morning of May 28, 1998, Complainant went to Knaack to inquire about the status of his teaching contract. When Knaack told Complainant he wanted to see Complainant, Complainant asked "What about now?" Knaack documented Complainant's comment as "loud and negative." Recalling that Sheehan had recently reminded Complainant of the need for Complainant to be in his study hall, Knaack told Complainant that he needed to be in his study hall. Complainant then left the area.

During this encounter with Knaack, Complainant was not engaged in protected, concerted activity for the purpose of collective bargaining or other mutual aid or protection. Knaack's response to Complainant's conduct provides no reasonable basis to infer that Complainant is the recipient of unlawful disparate treatment, or that Knaack is hostile to any protected, concerted activity.

Shortly after noon on May 28, 1998, Complainant was scheduled to be in the IMC study hall with Bjorklund. At that time, however, Complainant was in the main office of the Junior High, depositing money for the French Club. Sheehan walked up to Complainant; confirmed that Complainant was supposed to be in the IMC; and told Complainant to return to the IMC. Complainant, believing that on May 27, 1998, Sheehan had indicated that Complainant should not leave the study hall when there was a substitute teacher, responded that Bjorklund was in the IMC study hall. Sheehan indicated that it was a two-person study hall and that Complainant and Bjorklund were both needed there. Complainant responded that he was just going to take a minute to deposit the money and told Sheehan that Complainant and

Shirley occasionally leave for a couple minutes at a time. Sheehan then told Complainant

“You need to go back to your study hall now, I don’t have time to discuss this.” Complainant, who considered Sheehan to be acting inappropriately, asked if Sheehan enforced the rule so closely with all the other IMC supervisors because Knaack had issued a memo at the beginning of the semester that all IMC supervisors must be in the IMC at all times. Sheehan responded more sternly “I’m not going to discuss this with you. Go back to the Study Hall now.” When Complainant responded by inquiring if Sheehan was going to treat him differently from other teachers, Sheehan told Complainant to go to his study hall now. As Complainant left the office, he told Sheehan “I’ll show you the memo.” The referenced memo was the January 1998 memo from Knaack to IMC supervisors.

Vicki LaPorte, who observed the May 28, 1998, exchange between Sheehan and Complainant, considered Sheehan to have acted respectful toward Complainant. LaPorte considered Complainant’s interaction with Sheehan to be unusual because, in her experience, a teacher who received an instruction from Sheehan generally followed that instruction and, if the teacher disagreed with the instruction, the teacher would come back later to discuss it with Sheehan. LaPorte did not document this encounter between Sheehan and Complainant. Shortly after the encounter, Sheehan documented this encounter on a student referral form that went to Knaack.

Complainant was not engaged in protected, concerted activity when he went to the office to deposit money for the French club, rather than remaining in his IMC study hall as assigned. Nor was Complainant engaged in protected, concerted activity when he ignored a work directive of an immediate supervisor and sought to argue with his supervisor over this work directive in the presence of other staff. The fact that Complainant raised an issue as to whether or not he was being treated differently from other IMC supervisors does not convert Complainant’s conduct into protected, concerted activity.

Complainant’s conduct during this confrontation with Sheehan provides District administrators with a reasonable and legitimate basis to doubt Complainant’s professionalism. Especially in view of the fact that, the day before, this same supervisor had reminded Complainant that he needed to be in his IMC study hall. The evidence of Sheehan’s conduct on May 28, 1998, does not provide a reasonable basis to infer that Complainant is the recipient of unlawful disparate treatment, or that Sheehan is otherwise hostile to the exercise of protected, concerted activity.

At the end of the workday on May 28, 1998, Complainant went to Knaack’s office to ask about teaching the “extra” French section. Given the length of the May 28, 1998, conversation; Complainant’s obvious agitation during this conversation; the evidence that Complainant constructed his account of the conversation after the meeting ended; and the lack of evidence that Complainant has the ability of total recall, it would not be reasonable to

Page 159  
Dec. No. 29946-L

conclude that Complainant’s May 28, 1998, account is a verbatim account. The record,

however, provides a reasonable basis to conclude that in this account, as well as in the other accounts that were written shortly after an encounter, it is likely that, when Complainant attributes a statement to an individual, that this statement, or a similar statement, was made by the individual. The record provides a reasonable basis to conclude that Complainant is less reliable when he is reporting tone of voice and demeanor. To that end, Complainant's conclusions that matters were discussed "confrontationally" or that an individual was "hostile," are not persuasive, *per se*.

Complainant's written account of this May 28, 1998 conversation indicates that Complainant initiated this conversation by inquiring whether there would be an extra section of French for Complainant to teach; that Knaack responded that he had to think about whether or not Complainant would be professional enough to deserve the increase and that Knaack did not think that Complainant was; that he thought he might just hire someone at 20% FTE to fill that slot; that Complainant questioned whether or not Berns would be teaching the "extra" section of French and Knaack responded that he did not know; Complainant then complained that Knaack was not treating all IMC supervisors equally and advised Knaack that, when Complainant observed the 2<sup>nd</sup> period IMC, only one of the two assigned teachers were there; Knaack responded that he was not going to go around checking to see which teachers were and were not in the study hall; when Knaack asked Complainant why Complainant had not told Knaack that Heller and Pietsch were splitting the IMC duty, Complainant responded that it was not Complainant's job to enforce rules; at one point, Knaack raised his voice, jammed his finger on the desk and told Complainant that Complainant was being treated like everyone else; Complainant responded that he was not being treated like everyone else because Sheehan had talked to Complainant in a rude and hostile manner and he doubted that any other IMC supervisor had been talked to that way and complained that neither Knaack, nor Sheehan, bothered to check up on other IMC study hall supervisors; Knaack reiterated that he was not going to go around checking on people; Complainant understood that Knaack did not consider Sheehan to have acted improperly; Complainant then told Knaack that Complainant wanted an apology from Sheehan because Sheehan had "talked to Complainant in a hostile and demeaning manner," or Complainant would file a grievance; and then:

Bob then got hostile himself some more. He said "When are you going to start behaving like a professional? You always take everything so personal, and you're losing the respect of your colleagues. All this stuff you keep going on about should have been forgotten a long time ago, and your keeping on about it isn't helping your respect w/ your colleagues, it's hurting it. You need to stop thinking that it's George here, and everyone against you over there.

Complainant's written account then indicates that Complainant blamed Knaack and Sheehan for

Complainant's losing the respect of his colleagues; referred to the French room assignment controversy; and then:

We exchanged some more confrontational words, then I told him, "I want you to understand that if there is an extra slot open for French next year and you don't give it to me, you're going to have some trouble on your hands."

Bob replied, "I don't have to give you an extra section." Then I replied, "This is just like the other deal. You're not treating me like other teachers. I don't know of any teachers who have been at 60%, 70% or 80% who were told that they had to write a letter requesting a bump up to 100% if there were sections available, and that you asking me to do this shows that you aren't treating me the same as other teachers."

Knaack asked for one example of not treating Complainant fairly this year and Complainant responded that he had been switched to an everyday study hall; Knaack explained why he made the switch; and, following further discussion on the IMC study hall:

The meeting ended by me just saying, "OK, I'm just going to let you know again that if there's a French slot that opens up & you don't give it to me, you're going to have trouble on your hands. And I want an apology from Mike Sheehan about the way he dealt with me, or I'm going to file a grievance tomorrow."

Bob said, "I'd never tell Mike Sheehan that he has to apologize to anyone."

I said, "Fine, you'll have my grievance tomorrow." Then I left.

During this conversation, Complainant placed Knaack on notice that Complainant would file a grievance if Sheehan did not apologize for his conduct on May 28. As set forth in Knaack's written notes of this meeting, Knaack understood Complainant to have also indicated that Complainant would file a grievance if he did not get a full-time job.

Complainant engaged in protected, concerted activity when he announced an intention to file a grievance. It is evident, however, that this exercise of protected, concerted activity occurred after Knaack expressed doubt that Complainant was professional enough to have his teaching duties increased and after Knaack indicated that he was considering hiring someone else for any "extra" French section because Knaack had doubts about Complainant's professionalism. On that date, Complainant did not ask Knaack to explain why Knaack had to

think about whether or not Complainant was "professional enough" to deserve an increased



contract. Nor did Knaack offer an explanation.

Prior to this time, Complainant had engaged in various behaviors that did not involve protected, concerted activity and which provided Knaack with a reasonable and legitimate basis to doubt Complainant's professionalism. This prior conduct included the "loud and negative" behavior toward Knaack that had occurred earlier on May 28, 1998, as well as Complainant's conduct toward Sheehan that had occurred earlier on May 28, 1998. Prior to this time, Knaack had not displayed hostility to Complainant's exercise of protected, concerted activity.

Within context, and in light of previous conduct, it would not be reasonable to interpret Knaack's remarks that he doubted that Complainant was professional enough to have his teaching duties increased and that he was considering hiring someone else for any "extra" French section as evidence of hostility to Complainant's protected, concerted activity in filing the October 29, 1997 grievance. Nor, given the fact that Complainant had not yet announced any intent to file a grievance if Sheehan did not apologize or if Complainant did not receive a 100% position, would it be reasonable to interpret Knaack's concern about Complainant's professionalism to reference either of these two grievances.

When Complainant first raised the issue of filing another grievance by telling Knaack "Look, I want an apology from Mike over the way he talked to me in such a hostile and demeaning manner, or I'm going to file a grievance on this, " Knaack responded:

"When are you going to start behaving like a professional? You always take everything so personal, and you're losing the respect of your colleagues. All this stuff you keep going on about should have been forgotten a long time ago, and your keeping on about it isn't helping your respect w/ your colleagues, it's hurting it. You need to stop thinking that it's George here, and everyone against you over there."

The above criticism of Complainant's professionalism follows immediately upon the heels of Complainant's statement that he would file a grievance. This juxtaposition, standing alone, reasonably implies that Knaack considers filing a grievance to be unprofessional. However, within the context of the entire conversation, the more reasonable construction is that Knaack is being critical of Complainant's judgment that (1) Complainant is being singled out and (2) Sheehan's conduct is hostile and demeaning.

When Complainant first indicated that Knaack would be in trouble if Complainant did not receive an available French section, Knaack responded by stating that he did not have to give Complainant an extra section. On its face, and within the context of the entire discussion, this response of Knaack's was nothing more than the expression of an opinion that

Page 162  
Dec. No. 29946-L

Complainant did not have a right to the extra section of French. When Complainant next indicated that Knaack would be in trouble if Complainant did not receive an available French

section and reiterated his intent to file a grievance if he did not receive an apology from Sheehan, Knaack made no response other than to advise Complainant "I'd never tell Mike Sheehan that he has to apologize to anyone."

In summary, during this conversation with Knaack, Complainant engaged in protected, concerted activity when he announced his intention to file two grievances. The evidence of Knaack's conduct during this conversation does not provide a reasonable basis to infer that Knaack is hostile to such protected, concerted activity, or to any other protected, concerted activity.

On May 29, 1998, Complainant noisily entered the main office of the Junior High and confronted Sheehan, who was with a student. Other students and staff were in the office at this time. During this confrontation, Complainant loudly asked Sheehan if Sheehan had checked to see if Heller and Pietsch were in the study hall; was advised that Sheehan had not; and demanded that Sheehan explain why he had not. Sheehan responded that he had not had the time. Complainant responded by stating his opinion that Sheehan was enforcing the IMC rule against Complainant, but that Sheehan was not interested in enforcing the rule against other teachers. Sheehan made no response to this and Complainant left the area. Sheehan's notes of this interaction indicate that Complainant used a tone of voice that could be considered insubordinate.

LaPorte observed this confrontation and documented this conversation. LaPorte had not previously documented the conduct of a teacher, but had routinely documented the behavior of students who lost control in the office.

During this confrontation with Sheehan, Complainant was asserting that he was the victim of disparate treatment. Complainant, however, did not assert rights under the DCETA collective bargaining agreement. Nor is it evident that he asserted a right on behalf of any employee other than himself. The evidence of Complainant's behavior manifests and furthers an individual, rather than a collective, concern. Complainant was not engaged in protected, concerted activity for the purpose of collective bargaining or other mutual aid and protection during this encounter with Sheehan.

Neither the evidence that Sheehan considered Complainant's tone of voice to be "insubordinate," nor any other credible evidence of Sheehan's conduct toward Complainant during this encounter, provides a reasonable basis to infer that Complainant is the recipient of unlawful disparate treatment, or that Sheehan is hostile to Complainant's exercise of protected, concerted activity. Complainant's conduct during this confrontation with Sheehan is disrespectful of his supervisor and disruptive of the District's normal business operations.

Page 163  
Dec. No. 29946-L

Later in the day on May 29, 1998, Complainant and Association Representative Gums Tuszka met with Knaack and Sheehan. During this meeting, Knaack confirmed that he

considered some of Complainant's conduct to be unprofessional. The only conduct that Knaack defined as "unprofessional" was "You coming in here yesterday like you did was unprofessional."

Complainant asserts that, by stating, "You coming in here yesterday like you did was unprofessional," Knaack is saying that Complainant was unprofessional when Complainant indicated that he would file a grievance if he did not get a full-time position or if Sheehan did not apologize. Giving consideration to the evidence that "yesterday" Complainant was in the office on two occasions to see Knaack and on one occasion to see Sheehan; that on the first occasion with Knaack, Complainant was not engaged in protected, concerted activity and Knaack considered Complainant to have been loud and negative; on the occasion with Sheehan, Complainant was not engaged in protected, concerted activity and acted in a manner that was disrespectful of his supervisor and disruptive of the District's normal business operations; that Knaack had knowledge of Complainant's conduct towards Sheehan; that on the second occasion with Knaack, Knaack questioned Complainant's professionalism prior to Complainant announcing any intent to file a grievance; that Knaack's documentation of the first encounter, unlike Knaack's documentation of the second encounter, indicated that Complainant's behavior was inappropriate, Complainant's interpretation of Knaack's remark "You coming in here yesterday like you did was unprofessional" is not persuasive. Within context, and in light of previous behavior, this remark of Knaack's does not provide a reasonable basis to infer that Knaack was exhibiting hostility to Complainant's protected, concerted grievance activity.

Complainant's notes indicate that he asked "Did you tell me yesterday that you had not yet decided whether you recommend me for that slot for the reason that you thought I wasn't being professional?" and Knaack responded "No, I did not say that." Given the fact that Knaack had said something quite similar to this, Complainant argues that Knaack is a liar. Knaack, however, had just acknowledged that he thought some of Complainant's actions were unprofessional and that he had not made a determination on whether he would recommend Complainant for the "extra" section of French. Thus, the more reasonable conclusion is that Knaack was not lying, but rather, either was not recalling what he had said "yesterday," or was denying that he made the exact statement that was attributed to him by Complainant.

On Monday, June 1, 1998, Complainant went into the office and had a conversation with Sheehan. Complainant's June 7, 1998, account of this conversation indicates that Complainant asked Sheehan if Sheehan had checked to see if Baxter and Nyenhuis were both in the IMC, as the rules require; Sheehan responded no; Complainant asked "Why not?"; Sheehan responded that Complainant knew the answer to that; and that Complainant ended the conversation by voicing his opinion that Sheehan was going out of his way to enforce the rules against Complainant, but that Sheehan did not even care if other teachers followed the same rules.

Page 164  
Dec. No. 29946-L

During this confrontation with Sheehan, Complainant was asserting that he was the victim of disparate treatment. Complainant, however, did not assert rights under the DCETA

collective bargaining agreement. Nor is it evident that he asserted a right on behalf of any employee other than himself. The evidence of Complainant's behavior manifests and furthers an individual, rather than a collective, concern. Complainant was not engaged in protected, concerted activity for the purpose of collective bargaining or other mutual aid and protection during this encounter with Sheehan. Sheehan's conduct during this confrontation does not provide a reasonable basis to infer that Complainant is the recipient of unlawful, disparate treatment or that Sheehan is hostile to Complainant's lawful, concerted activity.

On June 1, 1998, in response to a request from Knaack, Jaworski posted a 30% position that included one section of French and two supervisions. By its terms, the 30% posting was open until 4:30 p.m. on June 19, 1998. On June 1, 1998, Complainant applied for this 30% position by submitting a handwritten letter to Jaworski that includes the following:

Re: French Position at D.C. Everest Junior High for the 1998-99 School Year

Dear Jim:

Although I highly resent that I was not given this extra available section as a matter of course, and that this offer to me was not made because of my efforts to get Roger Dodd, Bob Knaack and Mike Sheehan disciplined for their hostile actions toward me personally, I hereby give notice that I am indeed interested in teaching that extra session, which would raise me from 80% FTE to 100% FTE.

The letter was cc'd to Dodd, Knaack and Sheehan.

When Complainant submitted this letter to Jaworski, he had a discussion with Jaworski. During this discussion, Complainant understood Jaworski to say that it was not the standard practice of the District to offer extra sections to part-time teachers as they become available. When Complainant asked Jaworski to sign Complainant's notes of this conversation, Jaworski refused. In Complainant's opinion, Jaworski became rather upset when Complainant pressed Jaworski to sign a paper indicating that he had refused to sign Complainant's notes.

Given the evidence that Knaack was undecided about offering Complainant the "extra" French section on May 28, 1998 and the evidence that, on May 29, 1998, Knaack told Complainant and Tuszka, that he would post the French section about June 2, 1998, it is reasonable to conclude that Knaack made this posting decision some time between these two meetings.

Page 165  
Dec. No. 29946-L

According to Knaack, he requested the 30% posting because he needed additional

supervision for the 1998-99 school year; he did not want to raise Complainant to a 100% position; and he was optimistic that he could attract a French teacher with a 30% position. Complainant argues that these reasons are pretextual and that Knaack's true motive in posting the 30% position was to retaliate against and/or discourage Complainant's protected, concerted activity. Complainant asserts that the 30% posting provides evidence that Knaack is hostile to Complainant's protected, concerted activity.

At the arbitration hearing, Knaack denied that on June 1, 1998 he had already decided that he did not want Complainant to be a 100% FTE. (Tr. 1025) At first blush, this appears to be contradictory to his testimony in this hearing. However, within context, Knaack's testimony contains a denial that he had decided that Complainant could never be a 100% FTE teacher and suggests that, if Knaack could not hire another French teacher, Complainant would be a candidate for a 100% position.

The complaint does not raise a statutory allegation with respect to the Respondent's conduct in posting the 30% position on June 1, 1998. Thus, the Examiner does not have jurisdiction to determine whether or not this posting violated MERA. The Examiner may consider evidence of this posting to determine the existence, or non-existence, of hostility to protected, concerted activity.

As a result of a change in the 9<sup>th</sup> grade teaching structure, there was a need for additional supervision in the 1998-99 school year. In the past, adding such a supervisory assignment had increased Complainant's contract.

Knaack's claim that he needed additional supervision and Knaack's claim that he wished to obtain this additional supervision by using a part-time teacher are credible. The record provides no reasonable basis to discredit Knaack's claim that he believed that he could attract another French teacher if he posted a 30% position. Complainant's argument that the French program's needs could have been met with a 20% position is correct, but irrelevant.

According to Knaack, he did not want to increase Complainant to a 100% position because Knaack was dissatisfied with Complainant's relationship with his co-workers and Knaack considered Complainant to be responsible for a negative atmosphere in the Junior High. Complainant argues that Knaack's professed concerns are pretextual because there had been no material change in either Complainant's relationship to his co-workers or the atmosphere in the Junior High that would cause Knaack to take such action at that point in time.

Complainant conduct that occurred prior to the 1997-98 school year and, thus, prior to

any protected, concerted activity upon the part of Complainant, provided Knaack with a reasonable basis to be concerned about Complainant's relationship to his co-workers and Complainant's negative effect upon the Junior High. Heller's conduct at the retirement party of late May, 1998; the FYI's received in late May and early June, 1998; Complainant's conduct toward Sheehan in late May; and Knaack's dissatisfaction with the manner in which Complainant approached Knaack on the morning of May 28, 1998 were recent events that provided Knaack with a reasonable and legitimate basis to become significantly more concerned about Complainant's relationship with his co-workers and Complainant's negative affect on the atmosphere in the Junior High.

As Complainant argues, Knaack's decision to not offer available work to an available part-time teacher is contrary to the District's customary practice. However, Complainant's conduct toward other staff, including supervisory staff, and staff reaction to Complainant's conduct is not customary either. The evidence that the District did not follow the customary practice of offering available work to part-time employees does not reasonably give rise to an inference that Complainant is the recipient of unlawful disparate treatment, or that Knaack, or any other agent of the District, is hostile to Complainant's protected, concerted activity.

Knaack's avowed rationale for posting a 30% position is not inherently incredible. Notwithstanding Complainant's arguments to the contrary, Knaack is not required to offer an explanation of why he did not first consult with Solsrud. Neither Dodd's testimony that, in his experience part-time teacher's left the District if they were not increased to full-time, nor any other record evidence, provides a reasonable basis to conclude that Knaack's posting of the 30% position was constructive discharge, or any other attempt to drive Complainant from the District.

Knaack expressly denies that Complainant's grievance activity was a factor in his decision that he did not want to increase Complainant to 100% FTE. (Tr. 1286) At the time of the posting, Complainant had filed only one grievance, i.e., on October 29, 1997 and had announced an intent to file two grievances.

At hearing, Knaack was asked if the grievances that Complainant had filed were a factor in his decision to make the recommendation that Complainant be laid off under Article 32(I) and Knaack responded "No." (Tr. 1148-49) Knaack was then asked to read from Page 908 of the transcript of the prior arbitration hearing:

(Question by Mr. Rutlin): Okay. In terms of your thought processes just having George increase from 80% to a hundred percent, as opposed to issuing the layoff notice and then having him apply with other outside applicants, kind of go through your thought process on that decision.

Page 167  
Dec. No. 29946-L

(Answer by Mr. Knaack) Well, like I said, George had sued colleagues, that

was on my mind. George had a confrontation with Mr. Sheehan. He had threatened Mr. Sheehan and myself. He had a number of grievances, you know, that were being filed for different situations. All those things, I, you know, I thought, well, maybe there's someone out there that we should look at that maybe is as good or better than Mr. Mudrovich.

After reviewing the above testimony, at hearing Complainant asked Knaack the following:

Q: Does that refresh your memory about what you were considering when you decided to recommend my layoff?

A: That was ---the question was my thought process.

Q: Okay.

A: Not my decision making.

Q: Do you see a difference between the thought process and the decision making process?

A: I do; yes (Tr. 1150)

. . .

Q: And it - "All those things," comma, "I" comma, "you know, I thought, well," comma, were you trying to communicate the things that you had mentioned just about what led you to believe that there was someone else to look for?

A: In my thought process; yes. (Tr. 1151)

As noted at hearing, the arbitration transcript includes the following exchange between Association Attorney Pieroni and Knaack:

Q: Right. Uh-huh. Right. You had never seen a grievance like George's grievance that was - - you testified that you were at the Board hearing in which he asked for discipline against the superintendent, the principal and the assistant principal. That was another first for you, I assume?

A: Yeah. I've never seen that, no. I mean, it didn't shock me, I guess, but—

Q: But it seemed?

A: I never seen it. I mean, I hope my relationship with staff is such that they wouldn't have to grieve myself, Dr. Dodd, or Mr. Sheehan.

Q: Okay. And I take it from your testimony, that that was the grievance, you

testified to on direct, that you took into consideration when you recommended that George be laid-off and to have to compete for a full-time job?

A: No.

Q: Well, you said the grievance, and you didn't articulate what it was. Was there another one?

A: Well, George filed a number of grievances. Some of them didn't go anyplace, you know.

Q: Okay. Uh-huh. Well, this grievance was the most significant one, I guess, as far as I know. Up until –

A: It was hard to keep track, because there were different ones filed, but then they were kind of combined. You know, to be honest with you, the grievance is not a big issue in my mind, at all. In fact, it's – you know, I probably shouldn't even have brought it up, because it really didn't make a major affect on me at all, the grievance.

Q: So are you retracting your earlier testimony that the grievance was a factor?

A: Not a major factor, no.

Q: Does it make you uncomfortable that you said that the grievance was a factor?

A: No.

(P. 967-9)

The hearing before this Examiner contained the following exchange between Complainant and Knaack:

Q: Okay. After that direct testimony, did you ever attempt to retract that testimony, that the grievances played a part or that you were thinking about grievances when you decided to look for somebody else?

A: Grievances are not a factor in my decision making.

Q: Did you ever attempt to retract the testimony that you gave that grievances were part of your thought process when you were thinking about the decision to lay me off? Yes or No?

A: As I said before, thought process and decision-making process are two different things in my mind. (Tr. 1158 – 1159)

...

Page 169  
Dec. No. 29946-L

Q: Do you wish to retract today, the statement that you made to the arbitrator



in July of 1999, that my grievances were part of your thought process when you were thinking about laying me off under Article 32(I)?

A: Thought process, but not decision making process.

Q: Well, you're - -

A: I see a definite difference there. (Tr. 1159 – 1160)

. . .

Q: In your thought process. I beg your pardon. You did confirm that my grievances were in your thought process at the time that you decided to recommend my layoff to Dr. Dodd; is that correct?

A: In my thought process; correct.

Q: Did you share those thought with Dr. Dodd?

A: Well, I made – my decision making process was put into effect when I went to see Dr. Dodd for that layoff. ( Tr. 1176)

. . .

Q: When you contacted Dr. Dodd, to tell him that you wanted to recommend my Article 32(I) layoff, did you and Dr. Dodd discuss it?

A: Yes, we did.

Q: What was that discussion.

A: Focused on the reasons that I would be making that decision. (Tr. 1177)

. . .

Q: Okay. Was the fact that I had filed grievances a motivating factor for you to decide to recommend my Article 32(I) layoff?

A: Absolutely not.

Q: Have you ever said anything to the contrary of the answer you just gave me?

A: Not in my decision making; no. (Tr. 1211-12)

. . .

A: Your grievances were not a factor in making my decision for layoff.  
(Tr. 1216)

. . .

Q: In your – during your direct examination, during the arbitration when you were being asked questions by Mr. Rutlin, did you say that my having filed grievances was a motivating factor in your decision to recommend my Article 32(I) layoff?

A: No, it was not a factor.

Q: Did you say it was a factor, yes or no?

A: No. (Tr. 1221)

. . .

Q: I'm looking at Line 8. And you were asked the question by Mr. Pieroni, so are you retracting your earlier testimony that the grievance was a factor, and you answer was "Not a major factor; no." What did you mean by that?

A: That – you're asking me that question?

Q: Yes.

A: In my thought process only, not in my decision making. And that was relating to the testimony or the question by Mr. Rutlin earlier. (Tr. 1223)

. . .

Q: Okay. I want to get away from what he brought up until May 18<sup>th</sup>. But clearly on June 1<sup>st</sup>, you had made the decision, and I believe this, I'm not mischaracterizing this. You did testify that on June 1<sup>st</sup>, it was your opinion that you did not want me in particular to be a 100 percent teacher; is that correct?

A: Yes.

Q: When did you first come to that conclusion?

A: I can't recall.

Q: Well, do you think you did it a week before that or six months before that or when?

A: I can't recall the exact time in that thought process.

Q: Well, I'll put it in a different time frame. Did you decide that before I filed my first grievance or after I filed my grievance?

A: It had nothing to do with grievances. (Tr. 1285-86)

. . .

Q: Okay. Is it your opinion that I was a person who filed grievances frivolously when I was a teacher at D.C. Everest?

A: Filed more grievances than any other teacher I recall.

Q: How many grievances did I file before I was laid off?

A: I don't really recall if there one or two there. I don't know. Some were combined.

Q: But prior to me being laid off – you know I filed the October 29, 1997 grievance before I was laid off, correct?

A: Yes. (Tr. 1543)

. . .

Q: But you're saying that I filed more grievances than anybody else?

A: As an individual, yes.

Q: And so if I filed one or two grievances, that's more than any other teacher filed?

A: Yes, George. (Tr. 1543)

The most reasonable construction of Knaack's testimony, *supra*, is that Knaack thought about the fact that Complainant had filed more than one grievance when he considered laying off Complainant, but that grievances were not a factor in his decision to not increase Complainant to a 100% position. Given this testimony of Knaack's; the failure of the record to demonstrate that, as of June 1, 1998, Knaack had displayed hostility to Complainant's protected, concerted grievance activity; and the fact that Knaack had legitimate reasons for posting a 30% position, the Examiner is persuaded that Complainant's grievance activity was not a factor in Knaack's decision to post the 30% position.

In his testimony, Knaack expressed a concern about the fact that Complainant had filed more than one grievance. Inasmuch as Complainant did not file more than one grievance until June 5, 1998, Knaack's testimony does not provide a reasonable basis to infer hostility to protected, concerted activity that predates June 5, 1998. Knaack's posting of the 30% position does not warrant the inference that Knaack is hostile to Complainant's protected, concerted activity.

Dodd approved of the 30% posting, but such approval was not needed for Knaack to post the 30% position because Knaack had the FTE available. At hearing before the Examiner, Dodd stated that Knaack told Dodd that Knaack was posting the 30% position because he did not want Complainant to be a 100% FTE teacher. (Tr. 610) At hearing before the Arbitrator, Dodd stated that he did not know why the posting was listed as a 30% French position. (732)

Knowing why the 30% French position was posted is not the same as knowing why it was listed as 30% French position. This testimony does not provide a reasonable basis to conclude that Dodd has testified untruthfully. Nor does it provide a reasonable basis to

Page 172  
Dec. No. 29946-L

discredit Knaack's explanation of why he posted the 30% French position. Dodd's approval

of the 30% posting does not provide a reasonable basis to infer that Dodd is hostile to Complainant's protected, concerted activity.

On June 2, 1998, Complainant distributed a note to certain Junior High employees who were in "his group." This note was in response to Complainant's understanding that there were rumors that District employee Holzem had "tattled" to Complainant about a birthday card that Maki had given Holzem last fall and Complainant wished to assure these employees that was not the case. This note included the following:

... Carol had left that card on the table (standing upright) in the basement lounge for all to see.

The only reason this was brought up in the deposition of Carol Maki is that Carol simply refused to admit that her conversations with colleagues are often of an off-color nature (which is true of many adults; Carol only refused to admit this because she wanted to brand me as a verbally abusive person)

It's too bad that these things can end up getting innocent third parties involved, but it appears to me that all that should be laid at the doorstep of Shar Soto + Holly Martin, since they obviously instigated this whole affair in the nastiest, most dishonest way possible.

Surely they didn't consider that their refusal to own up to those actions and apologize for them (said refusal coming a long time before this went to court) would pull some of their friends into the mess that they (Shar + Holly) created. But they should have.

Knaack received a copy of this note from Holzem. On or about June 2, 1998, Knaack received a letter from Maki that states, "I am becoming very concerned about the escalating 'feud' between Mr. Mudrovich and several staff members and myself. His recent note and irrational words and actions make me very uncomfortable."

On or about June 2, 1998, Complainant met with Union Representative LaBarge to discuss filing a grievance on the 30% posting. This meeting with LaBarge involved the exercise of protected, concerted activity. It is not evident that Knaack, or any other administrator was aware of this meeting on June 2, 1998, or at any other time in June of 1998.

On June 2, 1998, Complainant entered the Junior High office during the first hour. LaPorte's contemporaneous written statement is entitled to be given more weight than Complainant's written account because he wrote that account several days after the event. The credible evidence establishes that, at this time, Complainant entered the main office and waited by Knaack's office; when Sheehan entered the office, Complainant walked across the office clapping his hands and tauntingly asked "Have you been over to the IMC to see if Baxter and

Page 173  
Dec. No. 29946-L

Nyenhuis are both there?" Sheehan replied "No;" Complainant became loud and demanded "Why not?;" Sheehan, who was with a student, ignored Complainant; Complainant continued

to question Sheehan in a loud and disrespectful manner; Sheehan escorted a student into his office; and Complainant rudely said, "So, you are just not going to answer any of my questions?"

On June 2, 1998, Complainant was asserting that he was the victim of disparate treatment. Complainant, however, did not assert rights under the DCETA collective bargaining agreement. Nor is it evident that he asserted a right on behalf of any employee other than himself. The evidence of Complainant's behavior manifests and furthers an individual, rather than a collective, concern.

Complainant was not engaged in protected, concerted activity for the purpose of collective bargaining or other mutual aid or protection during this encounter with Sheehan. The evidence of Sheehan's conduct during this interaction with Complainant does not provide a reasonable basis to infer that Complainant is the recipient of unlawful disparate treatment, or that Sheehan is hostile to protected, concerted activity.

Complainant's conduct on June 2, 1998 was disrespectful and disruptive of the District's normal business operations. Complainant's repeated forays into the office to interrogate Sheehan on the issue of whether or not Sheehan had monitored the activities of other IMC study hall supervisors may be reasonably construed to be harassing.

Sheehan directed Complainant to return to his study hall at times in which he observed that Complainant was in a place other than his assigned study hall. At no time did Sheehan monitor Complainant's conduct by checking Complainant's IMC study hall to determine whether or not Complainant was in the study hall. Sheehan's conduct in directing Complainant to return to his IMC study hall and in not checking up on other IMC supervisors does not provide a reasonable basis to infer that Complainant has been the victim of disparate treatment, unlawful, or otherwise. Nevertheless, Knaack responded to Complainant's claim of disparate treatment by questioning IMC study hall teachers to determine if they had left their assignments as reported by Complainant.

On June 2, 1998, Complainant returned to the main office during the second hour. Complainant observed Sheehan sitting at his desk and Knaack standing behind Sheehan. Sheehan and Knaack were reading something that was on Sheehan's desk. Complainant stood in the doorway to Sheehan's office and loudly asked "Have either of you two been in the IMC to check to see if Pietsch and Heller are both in there?" Knaack told Complainant to come into the office and shut the office door. LaPorte then cleared the main office of students so that they would not have to witness what she viewed to be a loud discussion. As LaPorte was starting to clear the office, Gilmore came out of her office and asked LaPorte to clear the office.

Page 174  
Dec. No. 29946-L

LaPorte recalls that Sheehan, Knaack and Complainant were all talking loudly.

Gilmore considered Sheehan and Knaack to be talking loudly, but considered Complainant to be yelling. Gilmore's opinion that Complainant was yelling is documented in her contemporaneous note.

Complainant was not solely responsible for the decibel level of this encounter. It is evident, however, that Complainant's conduct precipitated the ensuing loud discussion. During this discussion, Knaack told Complainant that Complainant had gotten the whole school in a turmoil, that it was going to stop and that Complainant was not going to order Sheehan to do anything any more; Complainant said he had not ordered Sheehan to do anything, but rather, had asked him to do various things; Knaack stated that Complainant walked around like he was king of the school and that Complainant had the whole school in an uproar; Complainant stated that, if there were any problems at the school, it was because Knaack and Sheehan had done their jobs poorly and that Knaack and Sheehan were being paid big bucks to make responsible decisions; Complainant referred to Soto and Martin and stated that Sheehan and Knaack were trying to put that on his shoulders, but it was not going to stay there because Sheehan and Knaack had mismanaged that; Complainant stated that Sheehan and Knaack had made their beds and would have to lie in them and "These things will come back to you in the course of time, just think about that;" Sheehan asked Complainant what he meant by this statement and Complainant told Sheehan that he was a big boy and could figure it out for himself; on several more occasions, Sheehan asked what Complainant meant by that statement; Complainant indicated that he was not going to be more specific, but that things were going to come back on Sheehan and not Complainant. During this conversation, Complainant also stated that Sheehan and Knaack were treating him differently; that they were not responding to his complaints by checking on the other study hall supervision; and now Sheehan and Knaack were posting the extra French section, rather than following the standard practice of giving it to the part-time teacher. Complainant ended the conversation by asking Knaack to step aside so that he could leave the office.

Complainant denies that he made the statement that Knaack and Sheehan had made their bed and would now have to lie in it. Given the credible evidence that Complainant was extremely agitated on June 2, 1998, it is likely that he would not recall everything that was said in the heat of the moment. Complainant has a propensity to make these types of statements. This statement was reported in a relatively contemporaneous document, i.e., the June 3, 1998 letter of discipline. The record provides a reasonable basis to conclude that Complainant is mistaken when he makes this denial and the Examiner so concludes.

In Complainant's opinion, the June 2, 1998 discussion with Knaack and Sheehan was quite unfriendly; Knaack was angry and belligerent; and Knaack stood by the door, as if he were barring Complainant from leaving. In Knaack's opinion, Complainant's temper was uncontrolled; Complainant repeated things violently; and Complainant made threatening

Page 175  
Dec. No. 29946-L

remarks to Sheehan and Knaack. Knaack's view of Complainant's manner and demeanor is

credible.

Given the nature of Complainant's remarks, as well as Complainant's manner and demeanor at the time that he made these remarks, Knaack's testimony that he considered Complainant to have made statements that were threatening is credible. Additionally, the statements contained in the following June 3, 1998 letter of reprimand corroborate this testimony:

It has been brought to my attention that you have, on more than one occasion, called Mr. Sheehan's attention to the fact that your fellow teachers may or may not be carrying out their professional responsibilities. Furthermore, I have been told that you have done so in an unprofessional manner while in front of junior high students and office staff. Please be advised that we do not see this as appropriate behavior for a member of our teaching staff.

I tried to make this perfectly clear when you walked into Mr. Sheehan's office at approximately 8:45 a.m. on June 2, 1998. Quite frankly, however, we are concerned that you may have missed the message since you exhibited behavior that could be described as out-of-control. Yelling loud enough so people in outer offices could understand you and so that students had to be moved to the guidance office is, again, not appropriate behavior for a member of our teaching staff.

Mr. Sheehan and I are very concerned about one of your final statements. You threatened us that we "made our bed and now we'd have to lie in it." When you were asked by Mr. Sheehan for clarification on your intended meaning you commented "These things will come back to you in the course of time, just think about that!" We find this statement that you made, more than once, to be a very threatening statement and remain concerned about your actual intent.

So there can be no misunderstanding, always be prompt to your teaching and supervising duties. Remain on duty for the entire time assigned.

Please be advised that any further actions of this nature may lead to further disciplinary actions including termination.

Notwithstanding Complainant's arguments to the contrary, by making statements that Knaack and Sheehan made their bed and now would have to lie in it and "These things will come back to you in the course of time, just think about that!", Complainant was not announcing an intent to file a grievance, or engaging in any other protected, concerted grievance activity. Nor does

Page 176  
Dec. No. 29946-L

the record provide a reasonable basis to conclude that Knaack or Sheehan understood

Complainant to have been making such an announcement.

During the encounter on June 2, 1998 with Sheehan and Knaack, Complainant asserted that he was the recipient of disparate treatment; rebuked Sheehan and Knaack; and made statements that Knaack could reasonably construe to be threatening. Complainant did not assert rights under the DCETA collective bargaining agreement. Nor is it evident that he asserted a right on behalf of any employee other than himself. Complainant's behavior during the June 2, 1998 encounter manifests and furthers an individual, rather than a collective, concern.

The evidence of Knaack's conduct during this June 2, 1998 confrontation provides a reasonable basis to conclude that Knaack was very unhappy about Complainant's recent conduct toward Sheehan; that Knaack considered Complainant to walk around like he was king of the school; and that Knaack considered Complainant's actions to have created turmoil throughout the Junior High. Knaack did not reference Complainant's grievance activity during the June 2, 1998 confrontation and the record provides no reasonable basis to conclude that, at that point in time, Knaack had any concern regarding Complainant's grievance activity. Complainant's recent conduct and Knaack's knowledge of the same provided Knaack with a reasonable and legitimate basis to conclude that Complainant had acted inappropriately toward Sheehan; that Complainant walked around like he was king of the school; and that Complainant had caused turmoil throughout the Junior High school.

During his June 2, 1998 encounter with Sheehan and Knaack, Complainant was not engaged in protected, concerted activity for the purpose of collective bargaining or other mutual aid or protection. The evidence of Knaack and Sheehan's conduct at the June 2, 1998 encounter does not provide a reasonable basis to infer that Complainant is the recipient of unlawful, disparate treatment, or that Knaack, or Sheehan, is hostile toward any protected, concerted activity.

The disciplinary letter of June 3, 1998 establishes that Knaack viewed Complainant's June 2, 1998 conduct to demonstrate not only that Complainant was not receiving his supervisors' message that Complainant's recent conduct was inappropriate, but also, that Complainant's response to this message was to lose control and threaten his supervisors. This view of Complainant's conduct is reasonable.

The June 3, 1998 disciplinary letter does not reference grievance activity and the record provides no reasonable basis to infer that the letter was in response to any protected, concerted activity of Complainant. Respondent's conduct in issuing the June 3, 1998 letter does not provide a reasonable basis to infer that Complainant is the recipient of unlawful, disparate treatment, or that Knaack, or Sheehan, is hostile toward protected, concerted activity.

Page 177  
Dec. No. 29946-L

On or about June 4, 1998, Knaack received a FYI from employee Lois Klein, dated June 4, 1998, that states "As a side comment, I am concerned about the feelings/tension this



building is suffering due to one person's 'thinking errors' and irrational behavior. It is so unfortunate that our lives are manipulated by one person's misuse of laws designed to protect true victims. In this case I think we are the victims."

On June 5, 1998, Complainant and LaBarge, acting as a Union Representative, met with Knaack regarding his decision to post the 30% position. LaBarge communicated the DCETA position that Knaack should give Complainant a 100% position and Knaack responded that would not happen.

During the ensuing conversation, Complainant questioned Knaack as to whether there had been a posting when Complainant previously had been increased from 50 to 65% and from 65 to 80%. Knaack initially responded that he did not know. Knaack subsequently confirmed that Complainant had been bumped from 3 to 4 classes because it was convenient for the District to do so. Complainant, who believed that Knaack had previously stated that he had to post the extra French section under District policy, asked why Knaack had not followed District policy when he had previously bumped Complainant. Knaack responded by asking Complainant if the District should not have done so and should the District now reduce Complainant's contract. During this conversation, Knaack explained that Complainant was assigned an extra French section on the "Master List" because a name was needed to generate the program; Complainant's name was selected because he taught French; and, therefore, Complainant should not be expecting, on the basis of the master schedule, to have a 100% position. At this June 5<sup>th</sup> meeting, LaBarge and Complainant filed a written grievance on the "Assignment of available French classes," which alleges that "Article 2-C applied in an arbitrary and capricious manner; Article 30."

Complainant was engaged in protected, concerted activity when he and LaBarge met with Knaack to discuss and file his June 5, 1998 grievance. Knaack provided LaBarge and Complainant with a reasonable opportunity to present their grievance. The evidence of Knaack's conduct during the June 5, 1998 grievance meeting does not provide a reasonable basis to infer that Knaack is hostile to Complainant's protected, concerted grievance activity.

Shortly after Knaack received the written grievance, he discussed it with Dodd. It is not evident that Knaack displayed any hostility to Complainant's protected, concerted activity during this discussion with Dodd.

When Knaack received the written grievance on the 30% French posting, he reviewed the contract to determine if there was a section that could be legally grieved; concluded that there was not; and denied the grievance. The evidence of Knaack's conduct in denying the grievance does not provide a reasonable basis to infer that Knaack is hostile to protected, concerted activity.

Page 178  
Dec. No. 29946-L

Between June 4 and June 10, 1998, Knaack made the decision to recommend the layoff

of Complainant. Complainant asserts that this decision of Knaack was motivated by hostility to Complainant's protected, concerted activity.

Knaack claims that he made this decision because he had reached the conclusion that the District could hire a 100% FTE French teacher who was as good, or better, than Complainant. According to Knaack, in reaching this conclusion he considered a variety of factors, e.g., the negative atmosphere in the Junior High school, including Complainant's less than exemplary relationship with Berns and the FYI's; the note that Complainant had written to Maki; the suit against Soto and Martin; Knaack's belief that Complainant had threatened Sheehan and Knaack on June 2; and the fact that Complainant had a number of grievances that were being filed for different situations.

At the time that Knaack reached the conclusion that the District could hire a 100% FTE French teacher who was as good, or better, than Complainant, Knaack had a reasonable basis to be concerned about the negative atmosphere in the Junior High school; the note that Complainant had written to Maki; the suit against Soto and Martin; and Complainant's June 2, 1998 confrontation with Sheehan and Knaack. The most reasonable construction of the record evidence is that Knaack's professed concern about these factors is bona fide.

The FYI's and Complainant's conduct on June 2, 1998 reasonably account for the change in opinion from June 1, 1998, when Knaack was willing to continue Complainant at 80% FTE. They also reasonably and legitimately account for the timing of the decision to recommend Complainant's layoff.

As the record establishes, Knaack discussed some of the "FYI's" with Dodd at the time that he advised Dodd of his decision to post the 30% position. The remainder was shown to Dodd at the time that Knaack recommended Complainant's layoff. Complainant's argument that Knaack could not have been legitimately concerned about the FYI's because he did not show them to Dodd until June 9 or 10, 1998 is not persuasive.

Knaack's testimony demonstrates that he also thought about the fact that Complainant had a number of grievances that were being filed for different situations when he reached the conclusion that the District could hire a 100% FTE French teacher who was as good, or better, than Complainant. By this testimony, Knaack has demonstrated that filing a number of grievances is a negative. Thus, Knaack's testimony has demonstrated that his decision to recommend the layoff of Complainant was motivated, in part, by hostility to Complainant's protected, concerted activity in filing a number of grievances.

Knaack claims that this grievance activity of Complainant was not a "major factor" in his layoff decision. Given the number of legitimate reasons for Knaack's decision to layoff

Page 179  
Dec. No. 29946-L

Complainant; the nature of these legitimate reasons; the timing of these legitimate reasons; and

the evidence of Knaack's discussion with Dodd at the time that Knaack recommended Complainant's layoff, Knaack's claim that Complainant's grievances were not a "major factor" in his decision to recommend Complainant's layoff is credible.

The Examiner notes that, by June 4, 1998, Complainant's behavior toward his supervisors had rapidly escalated from disregarding, to harassing, to threatening; that, from late May, 1998, through early June, 1998, Knaack received four FYI's from six different employees expressing a variety of concerns about Complainant, including that he behaved irrationally and that employees were fearful of Complainant, or felt threatened by Complainant; that Complainant's letter of June 2, 1998 demonstrated that Complainant not only had not put his "feud" with Soto and Martin behind him, but also, that Complainant had broadened his "feud" to include Maki by publicly stating that Maki wanted to brand Complainant as a verbally abusive person; and that, as evidenced by the disciplinary letter of June 3, 1998, Complainant's June 2, 1998 behavior caused Knaack to doubt that Complainant was willing, or able, to alter his inappropriate behavior.

Knaack's decision to layoff Complainant was made prior to the time that the June 1, 1998 posting was supposed to be closed. As Complainant argues, Jaworski's testimony contradicts Knaack's testimony that there were other occasions in which a posting was closed early. It is not evident, however, that Jaworski, who has been the Supervisor of Personnel for six years, is privy to all of the same information as Knaack. This inconsistent testimony provides no reasonable basis to infer that Knaack is a liar.

At the time that Knaack made the decision to recommend the layoff of Complainant, the 30% posting became irrelevant because there was no longer a need to hire into this position. Thus, the fact that Knaack could not think of anything that happened prior to June 10, 1998 that would lead him to conclude that he would not find a part-time French teacher does not provide a reasonable basis to discredit Knaack's explanation of why he recommended the layoff of Complainant.

On or about June 9 or 10, 1998, Knaack met with Dodd and advised Dodd that the District had not received any applications for the 30% position. It is not evident that, at that time, the District had received any application other than that of Complainant. Inasmuch as Complainant was not eligible for a 30% position, Knaack's statement to Dodd does not demonstrate that Knaack is a liar.

Knaack told Dodd that he wanted to layoff Complainant because there had been altercations with Sheehan and Complainant in the presence of support staff and students and that Knaack had received FYI's that indicated that the staff was upset and concerned about Complainant's presence at the Junior High. Knaack also showed Complainant a copy of the

Page 180  
Dec. No. 29946-L

June 2, 1998 letter that Complainant had written regarding Maki's birthday card. Knaack and

Dodd then discussed Article 32(I) and the fact that, if Complainant were increased to 100% FTE, then the District would be deprived of an opportunity to improve upon the position.

The evidence that Knaack did not discuss with Dodd all of the factors that he claims to have considered when he decided to recommend the layoff of Complainant does not warrant the conclusion that Knaack did not consider these other factors. Rather, the most reasonable inference to be drawn from such conduct is that Knaack focused on the “major” factors.

Knaack states that he did not discuss Complainant’s grievances when he recommended the Article 32(I) lay off to Dodd. This testimony is consistent with Dodd’s testimony and provides support to Knaack’s testimony that Complainant’s grievances were not a “major factor” in his decision to layoff Complainant.

Knaack gave Dodd legitimate business reasons for recommending the layoff of Complainant. The record provides no reasonable basis to conclude that, at the time that Dodd received this recommendation, Dodd knew, or had any reasonable basis to know, that Knaack was hostile to any of Complainant’s protected, concerted activity.

According to Dodd, in response to Knaack’s recommendation that Complainant be laid off, he gave consideration to a variety of factors. It is not evident that one of these factors was that Knaack had made this recommendation.

According to Dodd, he made the decision to layoff Complainant because Dodd had concluded that it was possible to improve upon Complainant and that Article 32(I) provided the District with the opportunity to try and improve upon Complainant. According to Dodd, it was appropriate to apply Article 32(I) to Complainant because it was likely that the District could improve upon Complainant because Complainant had been hired from a small applicant pool; Complainant had demonstrated that he was not a team player; Complainant had alienated colleagues; and Complainant was responsible for a negative climate in the Junior High. According to Dodd, he concluded that Complainant was not a team player because Complainant did not act reasonably when he had disputes with others, always had to have his own way, and would do anything to get his own way. Dodd states that, in reaching these conclusions, Dodd gave consideration to Complainant’s repeated questioning of Sheehan and Complainant’s demand that Sheehan apologize. According to Dodd, his conclusion that Complainant was responsible for a negative climate at the Junior High was based upon Complainant’s questioning Sheehan’s authority in front of staff and students, Complainant’s creating a disturbance in the Junior High office on more than one occasion, the FYI’s that were submitted by Junior High staff and Complainant’s lawsuit against Soto and Martin. In Dodd’s opinion, this lawsuit had caused colleagues to avoid Complainant because they were afraid of confrontation and of being sued by Complainant. Dodd states that, in making his decision to

layoff Complainant, Dodd read and gave consideration to Complainant’s notes of the May 28,

1998 confrontation with Sheehan; the June 2, 1998 letter that Complainant had written regarding Maki's birthday card; Gilmore's note and the FYI's. Dodd also states that he gave consideration to his discussions with Sheehan regarding the recent confrontations that had occurred in the Junior High office; statements of LaPorte; and Complainant's recent written statement containing admissions of inappropriate conduct. According to Dodd, he was concerned about Complainant's conduct in repeatedly questioning Sheehan; in not returning to his study hall until after Sheehan had repeatedly directed Complainant to return to his study hall; in demanding that Sheehan apologize; and in causing students to be removed from the office. In Dodd's opinion, Complainant should have immediately complied with Sheehan's work directive and then returned at a later time to discuss any concerns. According to Dodd, he was particularly concerned about the fact that Complainant's inappropriate behavior towards Sheehan occurred in the presence of other staff and students. Dodd's testimony regarding these reasons for deciding to recommend the layoff of Complainant is credible.

Dodd's testimony demonstrates that, at the time that he decided to recommend the layoff of Complainant, Dodd had concluded that Complainant was obstinate; had to have his own way; and would have any kind of conflict to achieve his own way. Dodd's knowledge of Complainant conduct that was not protected by MERA provided Dodd with a reasonable basis to reach these conclusions. The record provides no reasonable basis to conclude that, in reaching these conclusions, Dodd gave any consideration to Complainant's grievance activity, or any other protected, concerted activity.

Dodd's testimony demonstrates that, in addition to the factors discussed above, Dodd's opinion of Complainant was influenced by Complainant's note to Maki; Complainant's proposal to resolve the French room controversy by requiring that most, if not all, of the senior foreign language teachers share rooms, while Complainant would have his own room; and Complainant's insistence on receiving the largest room for his French class, rather than accepting the room that had been assigned by Knaack. Dodd's testimony also demonstrates that a significant factor in Dodd's decision to layoff Complainant was Dodd's conclusion that, if staff who were fearful of Complainant were willing to sign their names to documents saying that they were concerned about the climate at the Junior High, then Dodd was not acting in the best interest of the District by not taking advantage of the contract provision that allowed the District to lay off Complainant and post a 100% position to determine if a better candidate for the 100% French position were available.

Dodd's knowledge of events that occurred after June 1, 1998 reasonably explains why, as late as June 1, 1998, Dodd was willing to maintain Complainant at 80%, but was not willing, on June 9 or 10, 1998, to continue Complainant at 80%. Neither the fact that Complainant had threatened to file a grievance if Sheehan did not apologize to Complainant, nor any other evidence, demonstrates that Dodd's decision to recommend the layoff of

Page 182  
Dec. No. 29946-L

Complainant to the School Board was motivated, in any part, by Dodd's hostility to Complainant's protected, concerted activity.

Given Dodd's testimony regarding statements he made during the May staff meeting, it is evident that Dodd would accept, without further consideration, Knaack's recommendation, or decision, to raise Complainant to a 100% position. This deference is consistent with Knaack's testimony that he had authority to increase Complainant to 100% FTE because he had the available FTE. Knaack, however, did not have the authority to effectuate Complainant's layoff. Rather, Complainant's layoff could only be effectuated by Dodd recommending the layoff to the School Board and the School Board accepting this recommendation.

Having concluded that only Dodd had the authority to effectively recommend Complainant's layoff, the Examiner considers the effect of Knaack's recommendation upon Dodd. It is evident that, but for Knaack's making the recommendation to Dodd, Dodd would not have given consideration to Complainant's layoff on June 9 or 10, 1998. However, it is not evident that, but for Knaack's hostility to Complainant's protected, concerted activity, that Knaack would not have made his recommendation on June 9 or 10, 1998. Given Knaack's testimony that Complainant's grievance activity was not a major factor in Knaack's recommendation to layoff Complainant; the failure of the record to demonstrate that, at that time, Knaack had demonstrated other hostility to Complainant's grievance activity; and the existence of significant, legitimate reasons for deciding to recommend the layoff of Complainant, the Examiner is persuaded that Knaack's layoff recommendation was triggered by the significant, legitimate reasons and not by Knaack's unlawful hostility. Thus, the fact that Dodd's consideration of Complainant's layoff was precipitated by Knaack's recommendation is not sufficient to taint Dodd's decision with Knaack's unlawful hostility.

Given the evidence that Dodd, and not Knaack, had effective authority to recommend the layoff of Complainant; the failure of Dodd to identify Knaack's recommendation as a factor in his decision to layoff Complainant; the evidence that Dodd was aware of and sensitive to Complainant's previously expressed concern that Knaack would not be fair; the evidence that Dodd gave consideration to a variety of legitimate factors, not all of which were identified by Knaack as factors to be considered, when deciding to recommend the layoff of Complainant to the School Board; the evidence that Dodd overturned Knaack's initial decision to deny Complainant a dedicated French room, a decision of far less importance than Complainant's layoff; the evidence that Dodd previously had not allowed Knaack to reduce another foreign language teacher from 100% to 80% FTE; and the evidence that Dodd did not place Knaack on the interview team for the 100% position even though Knaack expressed disappointment in not being of this team, the Examiner is persuaded that Dodd did not defer to Knaack's recommendation to layoff Complainant. Rather, the Examiner is persuaded that Dodd's decision to recommend the layoff of Complainant was based upon Dodd's independent consideration of a number of legitimate factors.

Page 183  
Dec. No. 29946-L

The fact that Dodd indicated that he was willing to jeopardize his job by recommending

the layoff of Complainant does not mean that Dodd actually feared such a result. Indeed, it is evident that Dodd did not fear such a result. Such statements by Dodd are hyperbole, underlining the fact that he had confidence in his decision and confidence that the School Board would support his decision. Complainant's arguments that such statements provide a reasonable basis to infer that Dodd knew that he did not have good reasons to recommend Complainant's layoff, or to infer any unlawful motive on the part of Dodd, are without merit.

In summary, Knaack did not have effective authority to layoff Complainant or to recommend such layoff to the School Board; Knaack's recommendation to Dodd to layoff Complainant was not triggered by Knaack's hostility to protected, concerted activity; Dodd had effective authority to recommend to the School Board that Complainant be laid off; Dodd did not know that hostility to Complainant's protected, concerted activity was a factor in Knaack's decision to recommend the layoff of Complainant; Dodd did not defer to Knaack's judgment that Complainant be laid off; and Dodd's decision to recommend the layoff of Complainant was based upon Dodd's independent consideration of a number of legitimate factors. The Examiner rejects Complainant's argument that Dodd's decision to recommend Complainant's layoff to the School Board is "tainted" by Knaack's hostility toward Complainant's protected, concerted activity.

Given the that the protected, concerted activity to which Knaack was hostile was not the factor that triggered Knaack's decision to recommend the layoff of Complainant to Dodd and the lack of deference accorded to Knaack's recommendation by Dodd, this case may be distinguished from NORTHEAST WISCONSIN TECHNICAL COLLEGE, SUPRA; and GREEN LAKE COUNTY, DEC. NO. 28792-A (4/97). Inasmuch as Dodd did not clearly state an unlawful motive as a reason for his decision to recommend Complaint for layoff, the instant case may be distinguished from MILWAUKEE COUNTY MEDICAL COMPLEX, DEC. NO. 27279-A (Gallagher, 12/92).

On June 10, 1998, Dodd met with Complainant and told Complainant that Dodd had decided to recommend that Complainant be laid off to zero percent under Article 32(I). Dodd also told Complainant that, after the School Board voted on the layoff recommendation, Complainant would be allowed to apply for the 100% position that would be posted. The evidence that, on or about June 10, 1998, Dodd relied upon others, including administrators and the District's attorney, to interpret Article 32(I) does not provide a reasonable basis to infer that Dodd's reliance on Article 32(1) is subterfuge.

When Skadahll had been laid off, Solsrud or Johansen notified her of her layoff. The fact that Dodd came to the Junior High to personally notify Complainant of his layoff and that Knaack did not make any statement during this meeting supports the conclusion that Dodd, and not Knaack, was responsible for this decision. Dodd's conduct in requiring Complainant to

Page 184  
Dec. No. 29946-L

turn in his keys, as well as Knaack's and Sheehan's subsequent reluctance to, or failure to,

allow Complainant on the premises or to use District equipment does not provide a reasonable basis to conclude that any of these administrators are hostile to Complainant's protected, concerted activity. Rather, such conduct is reasonably explained by the fact that the school year was over and that, unless the School Board rejected Dodd's recommendation, Complainant did not have legitimate business reasons to access District property, except as a member of the public. Such conduct is also reasonably explained by Complainant's recent and escalating disruptive conduct toward his supervisors, as well as the FYI's that provided the administrators with a reasonable basis to conclude that other staff members were uncomfortable with or fearful of Complainant.

Complainant recalls that Dodd told him to stay off the premises. The Examiner considers it more likely, as Dodd testified, that he told Complainant to stop at the office and request permission to use the District's facilities. Neither statement, however, would provide a reasonable basis to conclude that Dodd is hostile to Complainant's protected, concerted activities.

On June 10, 1998, Dodd told Complainant that he had used Article 32(I) earlier in the year. This statement is not correct. The record, however, does not provide a reasonable basis to conclude that when Dodd made this statement on June 10, 1998, and when Dodd made a similar statement to the School Board at the grievance meeting in September, 1998, that Dodd knew that his statement was incorrect. Thus, by making these statements, Dodd has not demonstrated that he is a liar, or that he was fabricating reasons to cover up unlawful motive.

As Complainant argues, the District does not have a policy or practice that defines what is, or is not, a small applicant pool. However, the absence of such a policy or a procedure does not mean that the District's administrators could not reasonably judge whether or not Complainant was hired from a small applicant pool.

At the time that Dodd made the decision to lay off Complainant under Article 32(I), he had not investigated to determine the size of the applicant pool for Complainant's initial 50% position with the District. However, Knaack was involved in Complainant's hiring and, thus, was aware of the size of Complainant's applicant pool. Complainant's claim that Dodd could not have known that Complainant had been hired from a small applicant pool is rebutted by Dodd's testimony that he had knowledge of the size of Complainant's applicant pool; Knaack's testimony that he was involved in discussions with Dodd regarding the size of Complainant's applicant pool; and Owens' testimony that, as early as May of 1998, Dodd was aware of, and concerned about, the small size of Complainant's applicant pool. Notwithstanding Complainant's arguments to the contrary, it is irrelevant whether or not Dodd, or any other agent of Respondent, had previously considered the size of Complainant's applicant pool, or the size of any other employee's applicant pool, when making personnel decisions.

Page 185  
Dec. No. 29946-L

In maintaining the position that there was every possibility that Complainant would be a



successful candidate for the 100% position, Dodd was not lying. The “possibility” of course depended on the qualifications of the candidates that applied for the position and Complainant’s ability to persuade the interview team that he was the best candidate.

The District had a French program and that French program needed a teacher. While one may reasonably infer from Dodd’s decision to recommend Complainant’s layoff that Dodd had reservations about automatically increasing Complainant to 100% FTE, one may not reasonably conclude from this decision, or any other record evidence, that Dodd would not have hired Complainant for the 100% position if the interview team had made the determination that he was the best available candidate for the 100% French position.

During the grievance meeting on June 15, 1998, Complainant tried to read from the contract and Dodd cut off Complainant by telling Complainant that he was not interested in having Complainant read from the contract. Complainant and Dodd then engaged in an exchange which included the following: “Dr. Dodd, if you expect to have your job in a week or two you had better listen;” Dodd responded “Are you threatening me?;” Complainant responded “You serve at the pleasure of the board and you better consider how they look at this contract;” Dodd responded “Are you threatening me? It sure sounds like it;” Complainant responded “All I’m saying is that if you, Mr. Knaack, and Mr. Sheehan expect to have your jobs in a week or two you had better think about how a jury views the contract as well;” and Dodd responded “Now you are threatening all of us.” Complainant responded that he was not threatening Dodd, just saying what could happen. Complainant stated that he could not take Dodd’s job away. Dodd responded that he knew that, so if Complainant could not take his job away, the only reason that Dodd would not be there would be if Complainant does physical harm to Dodd. Complainant denied that he was making a physical threat against Dodd. Complainant’s voice rose during this exchange. Dodd stood up when he asked if he was being physically threatened and pointed his finger at Complainant. Complainant responded that he was not threatening Dodd, just saying what could happen. Dodd reiterated that Complainant was threatening him.

For at least twenty minutes prior to this interaction, Dodd had listened to the DCETA representatives’ arguments with respect to the merits of their grievance and had responded to these arguments reasonably and without any apparent hostility. It was not until Complainant made statements that Dodd perceived to be threats that Dodd became agitated. Neither the evidence of Dodd’s reaction to these perceived threats, nor any other evidence of Dodd’s conduct on June 15, 1998, provides a reasonable basis to infer that Dodd is hostile to Complainant’s exercise of protected, concerted activity.

Upon having his memory refreshed at hearing, Dodd recalled that, prior to the June 23,

1998 meeting, he met with two committees of the School Board and, at these meetings, Dodd advised the attending committee members that a number of personnel actions would be on the agenda for consideration at the next School Board meeting, including a recommendation that Complainant be laid off. Dodd further recalled that he mentioned to both committees that Article 32(I) was being used for Complainant's layoff; that this Article states that, when the District makes a part-time position a hundred percent position, then the District can lay the part-time person off and that person has a right to reapply for that position; that he received no response from either committee; and that Complainant's layoff was not on the agenda for discussion by either committee. Neither Dodd's testimony, nor any other evidence, demonstrates that, at these meetings, Dodd attempted to justify Complainant's layoff on the basis that other employees had been laid off under Article 32(I). It is not evident that Knaack was present when Dodd met with these committees of the School Board.

The fact that Dodd initially denied discussing Article 32(I) with School Board members and then, after reviewing previous testimony, recalled that he did do so, does not demonstrate that Dodd was "caught with his hand in the cookie jar." Rather, it demonstrates that Dodd's recollection of events at the earlier proceeding is better than his recollection in this hearing. The inconsistencies in Dodd's testimony regarding discussions with School Board members that occurred prior to June 23, 1998 does not provide a reasonable basis to conclude that Dodd is not a credible witness, or that Dodd is seeking to conceal the fact that Complainant was unlawfully laid off.

Leonard's testimony demonstrates that, consistent with her normal practice, Leonard met with Dodd prior to the June 23, 1998 meeting to discuss matters that would be on the agenda. During this meeting, Dodd informed Leonard that there would be a number of contract adjustments, one of which would be to Complainant's contract. Dodd also explained that the administration was recommending the adjustment to Complainant's contract because there was a provision in the contract that permitted the District to eliminate a part-time position and post a full-time position; that when Complainant's part-time position was originally posted, the applicant pool was not very large; and that inasmuch as a full-time position is desirable, the administration was hopeful that the posting would attract a larger applicant pool. It is not evident that Knaack was present when Dodd met with Leonard.

It is not evident that Dodd offered Leonard another reason for his recommendation. At the time of this discussion, Leonard had an understanding that Article 32(I) had been invoked earlier in the year. Although it is not clear that this understanding came from Dodd, Dodd had such an understanding in June of 1998.

On June 23, 1998, the School Board held a regularly scheduled School Board meeting. At this meeting, Dodd recommended numerous personnel actions, including that Complainant

Page 187  
Dec. No. 29946-L

be reduced from an 80% contract to a 0% contract, effective June 23, 1998. Complainant

was present at this meeting and an unusually large number of citizens addressed the School Board in support of Complainant. No member of the public spoke in opposition to Complainant. The School Board, without discussion and in open session, voted to approve a number of personnel actions, including that Complainant's contract be decreased from an 80% contract to a 0% contract, thereby effectuating Complainant's layoff.

Knaack did not attend the June 23, 1998 School Board meeting. It is not evident that Knaack had any discussions with any School Board member regarding Complainant's layoff prior to the School Board's approval of the June 23, 1998 adjustment of Complainant's contract. Neither the Minutes of the June 23, 1998 School Board meeting, nor any other evidence, establishes that, at the time that the School Board voted to approve Complainant's contract adjustment on June 23, 1998, any School Board member either knew that Knaack had recommended to Dodd that Complainant be laid off or knew the reasons why Knaack had made such a recommendation. Knaack's letter of June 16, 1998 does not require a contrary conclusion.

At hearing, Leonard recalled that she has been on the School Board for nine years. Leonard also recalled that, typically, there is not a great deal of discussion regarding administration's recommendations on personnel actions. In Leonard's opinion, the support demonstrated by the public on behalf of Complainant did not provide a sufficient basis to further investigate administration's recommendation to layoff Complainant. The evidence that members of the School Board were not swayed by the show of public support does not mean that the School Board ignored the members of the public that showed support for Complainant or acted in bad faith.

Inasmuch as the School Board's votes were held in open session, Complainant's argument that the School Board members attempted to conceal their vote on Complainant's contract adjustment is not persuasive. The record does not provide a reasonable basis to infer that Dodd, or any member of the School Board, acted surreptitiously in the manner in which the School Board received and acted upon Dodd's recommendation to layoff Complainant.

The fact that Dodd did not enumerate for the School Board all of the factors that Dodd claims that he considered when he recommended the layoff of Complainant does not warrant the conclusion that Dodd is a liar or that Dodd's claimed factors are pretextual. Rather, the more reasonable conclusion is that Dodd presented the information to the School Board members that Dodd deemed to be relevant.

The evidence that the School Board members accepted Dodd's recommendation to layoff Complainant with little, or no discussion, does not provide a reasonable basis to infer that any School Board member, is hostile to protected, concerted activity, or is seeking to

Page 188  
Dec. No. 29946-L

cover-up an unlawful motive. Rather, the more reasonable conclusion is that the information provided to the School Board by Dodd was sufficient to persuade the School Board that

Complainant should be laid off.

Notwithstanding Complainant's argument to the contrary, it is not evident that Dodd had a need to fabricate reasons for his recommendation to the School Board that Complainant be laid off. Nor is it evident that Dodd fabricated such reasons.

In summary, the evidence of Dodd's conduct, up to and including the School Board meeting of June 23, 1998 does not provide a reasonable basis to conclude that Dodd is hostile to Complainant's protected, concerted activity, or that Dodd's decision to recommend the layoff of Complainant was motivated, in any part, by hostility to Complainant's protected, concerted activity. The evidence of the conduct of the School Board members, up to and including the School Board meeting of June 23, 1998, does not provide a reasonable basis to infer that any School Board member is hostile to Complainant's protected, concerted activity or that their decision to accept Dodd's recommendation to layoff Complainant was motivated, in any part, by hostility to Complainant's protected, concerted activity. Nor does such evidence provide a reasonable basis to conclude that Dodd's decision to recommend the layoff of Complainant, or the School Board's acceptance of the same, was tainted by the unlawful hostility of another.

On June 11, 1998, the District posted a 100% French position. The position's certification requirement was "Certification by the Wisconsin Department of Public Instruction in French (#355)." The "Qualifications" were as follows:

- Successful teaching or practicum experience at secondary level.
- Ability to work as a member of a team in the House Concept.
- Ability to establish and maintain effective professional and public relationships.
- Ability to relate to students.

The posting also included the following: "Applications must be received in the Personnel Department by 4:00 p.m. on Thursday, July 2, 1998."

Dodd's testimony establishes that he chose to not use Knaack or Sheehan on the interview team because they had had recent confrontations with Complainant and he wanted interview team members that were not a party to these confrontations. Dodd's decision to not assign either Knaack or Sheehan to the interview team for the 100% French teacher position was a reasonable management decision and does not provide a reasonable basis for anyone, including the members of the interview team, to infer that Dodd, Knaack, or Sheehan is hostile to Complainant's protected, concerted activity.

Page 189  
Dec. No. 29946-L

Dodd told Hazaert that Johansen and Solsrud would be on the interview team and

Hazaert then told Johansen and Solsrud of their appointment to the interview team. When Dodd chose Hazaert to head the interview team, Dodd knew that Hazaert had some knowledge of Complainant's disputes with Knaack and Sheehan.

According to Dodd, he chose Hazaert because of his authority within the District; his competence, including his competence in administering the Perceiver; and the fact that Hazaert had not been immediately involved in disputes with Complainant. Dodd's stated rationale for selecting Hazaert is reasonable. Given their respective positions within the District, the selection of Solsrud and Johansen is also reasonable.

Dodd handpicked the interview team. The composition of the interview team is not the normal composition for such an interview team. Neither fact, however, provides a reasonable basis to infer that Dodd, or any other representative of the District, is hostile to protected, concerted activity. Nor does either fact provide a reasonable basis to infer that the decisions of the interview team are motivated, in any part, by hostility to protected, concerted activity, or tainted by the unlawful hostility of another.

After instructing Hazaert on the composition of the interview team, Dodd advised Hazaert that Complainant would be interviewed for the 100% position and confirmed that Hazaert was to follow normal procedures and be objective. Contrary to customary District practices, Bouffleur, the successful candidate, was permitted, apparently by Dodd, to submit her application after the deadline. By this conduct, Dodd demonstrated that he was not averse to breaking his own admonition to Hazaert, i.e., that the interview team should follow normal procedures. Given Dodd's rationale for deciding to layoff Complainant and the lack of evidence that Dodd had previously exhibited any hostility to Complainant's protected, concerted activity, it is more reasonable to infer from this conduct that Dodd desired as large and as qualified an applicant pool as possible, than to infer that Dodd was seeking to subvert the application process because Dodd is hostile to Complainant's protected, concerted activity.

It is not evident that Bouffleur was interviewed for any reason other than Dodd allowed her application to be accepted. Regardless of whether or not Hazaert, Johansen, and Solsrud knew that her application had been accepted late, contrary to normal District procedures, Hazaert's, Johansen's, and Solsrud's acquiescence in interviewing Bouffleur does not provide a reasonable basis to infer that any of these individuals is hostile to Complainant's protected, concerted activity, or that any decision of the interview team was tainted by the unlawful hostility of another.

Applications of external candidates are reviewed for the purpose of selecting applicants to be interviewed. Dodd ordained Complainant's interview. Inasmuch as there was no need for the interview team to review Complainant's application in the same manner as those of

Page 190  
Dec. No. 29946-L

other applicants, the evidence that Complainant's application was not available to be reviewed

by the interview team in the same manner as the other applications does not provide a reasonable basis to infer disparate treatment, unlawful or otherwise.

It is not evident that Hazaert concealed, or otherwise prevented Solsrud and Johansen from reading Complainant's application. It is evident that Complainant's application was available to the interview team on the day of the interview. Notwithstanding Complainant's arguments to the contrary, the interview team was not deprived of the opportunity to read the materials contained therein.

It may be, as Complainant argues, that the difference in the availability of Complainant's application was prejudicial to Complainant. It is not reasonable to infer, however, that this difference in availability was due to unlawful hostility, rather than to legitimate reasons, such as the fact that Complainant was an automatic interview and the outside applicants had to be screened to determine who would be interviewed.

Complainant's application letter for the 30% position was erroneously attached to his application for the 100% position. The record fails to establish who attached this letter, or why this letter was attached. Given the fact that the letter expressly states an interest in a 100% FTE, it is likely that whoever attached the letter thought it was appropriate to do so.

To be sure, the letter is dated June 1, 1998. If the members of the interview team had focused upon this date, then they should have known that this letter pre-dated the posting for the 100% position. It is not evident, however, that the members of the interview team made this connection. Nor, given the evidence that they may have received Complainant's application materials on the day of the interview, is it implausible that they would have failed to either focus upon the date or realize that the letter was not in response to the posting that was before them.

The evidence of the attachment of the June 1, 1998 letter to Complainant's application for the 100% position does not provide a reasonable basis to infer that any District administrator is hostile to Complainant's protected, concerted activity. Consideration of this letter by any member of the interview team does not provide a reasonable basis to infer that any decision of the interview team was motivated by hostility to protected, concerted activity, or tainted, in any way, by the unlawful hostility of another.

Complainant referenced certain materials, such as his observation reports, in his application, but did not attach copies of these materials to his application. The interview team did not consider referenced materials when they made the selection decision. It is not evident that this failure to consider was due to any factor other than that these materials were not attached to Complainant's application.

Page 191  
Dec. No. 29946-L

Contrary to the argument of Complainant, the record does not demonstrate that, by

failing to give consideration to materials referenced in the application, the interview team did not follow procedures normally used when interviewing internal candidates. Rather, the record demonstrates that, at times, such materials are reviewed and, at other times, they are not and that such review is discretionary. Moreover, given the fact that Complainant had been laid off from his employment and was applying for a position pursuant to Article 32(I), Complainant was not, strictly speaking, an internal candidate. Such a conclusion is consistent with Dodd's June 10, 1998 statement to Complainant that Complainant would be considered along with the other candidates for the 100% FTE posting.

In summary, the record provides a reasonable basis to infer that the manner in which Complainant's application was processed may have disadvantaged Complainant. However, the evidence of the manner in which Complainant's application was processed does not provide a reasonable basis to infer that such processing was due, in any part, to hostility to Complainant's protected, concerted activity.

Hazaert testified, in general terms, as to the procedure that was used in selecting candidates for the 100% position. Hazaert, however, was not asked to specifically confirm or deny that Bouffleur's application was processed in this manner. Given the lateness of Bouffleur's application, Bouffleur's application probably was not processed in accordance with the procedure recalled by Hazaert. Hazaert's testimony regarding the procedure used to select applicants for interviews does not provide a reasonable basis to conclude that Hazaert is lying under oath, or attempting to cover up an unlawful motive.

Hazaert, Johansen and Solsrud had prior contact with Complainant and had knowledge of some of Complainant's prior conduct, including conflicts with, and criticisms by, other administrators. Some, but not all, of the interview team members had knowledge of Complainant's grievances. The interview team's prior contact with and/or knowledge of Complainant's conduct, including Complainant's grievances, does not provide a reasonable basis to infer that any member of the interview team was hostile to Complainant's protected, concerted grievance activity. Nor does such evidence provide a reasonable basis to infer that any decision of the interview team was "tainted" by the unlawful hostility of another.

Complainant argues that Knaack testified that he believed that Solsrud, Hazaert and Johansen knew that he had recommended that Complainant be laid off. A careful review of Knaack's testimony demonstrates that Knaack did not have any direct knowledge that Solsrud, Hazaert, or Johansen knew that Knaack had recommended that Complainant be laid off. Neither Knaack's testimony, nor any other evidence, demonstrates that any member of the interview team knew that Knaack had recommended that Complainant be laid off.

Solsrud does not recall Knaack consulting her about the layoff, but does recall that

Knaack discussed this layoff with Solsrud. Specifically, Solsrud recalls that Knaack stated that he was following the contractual clause that permitted the District to layoff a part-time teacher in order to hire full-time teacher. According to Solsrud, Knaack did not explain why the District was applying that clause to Complainant. Complainant's layoff made sense to Solsrud because it was consistent with her understanding of District practices and seemed to be similar to what had occurred with Skadahl earlier that year. Solsrud credibly testified that her knowledge of Complainant's layoff did not lead her to conclude that Complainant had been laid off because Knaack and/or Dodd did not want Complainant in the District.

Johansen credibly testified that he did not draw any negative conclusion from the fact that Complainant had been laid off. According to Johansen, he considered Complainant's situation to be similar to that of Skadahl, who he understood had been reduced in position; had reapplied for a position; and then had been interviewed for a position.

Given his/her position within the District, one may reasonably assume that each member of the interview team understood that, if Knaack or Dodd had wished to increase Complainant to a 100% FTE, then either could have done so. The knowledge that Dodd and Knaack did not automatically raise Complainant to a 100% position may reasonably lead to the conclusion that Dodd and Knaack had reservations about automatically raising Complainant to a 100% position. Such knowledge, however, does not also reasonably lead to the conclusion that Dodd and Knaack would object to hiring Complainant at 100% FTE if Complainant were the best available candidate for the position.

Complainant mischaracterizes Johansen's testimony when he argues that Johansen inferred from Hazaert's statements that Knaack would be biased. In fact, Johansen neither inferred, nor believed, that Knaack would be biased. Rather, as Johansen's testimony demonstrates, it was his opinion that Knaack was not appointed to the interview team as a precaution, i.e., to avoid any claim by others that Knaack was biased against Complainant. Johansen credibly claims that, at the time that he was involved in hiring for the 100% French position, he did not know whether Sheehan, Dodd, or Knaack wanted Complainant to be hired, or to not be hired.

Solsrud assumed that Johansen was on the interview team because Knaack and Complainant had had conflict and that Johansen would be more impersonal or impartial. Solsrud credibly claims that she did not have any belief that Knaack, Sheehan or any other administrator did not want Complainant to be a 100% FTE teacher. Thus, it is evident that Solsrud did not conclude from Johansen's appointment to the interview team that Knaack was biased against Complainant obtaining the 100% French position.



conflicts that Complainant had with Knaack. (Tr. 283; 429-431) Nor did he give false testimony regarding his knowledge of Complainant's conflicts or criticisms with Knaack. (Tr. 432; 433; 439)

With the exception of persuading Knaack to give Complainant a dedicated French room, Hazaert was not an active participant in any of Complainant's disputes with staff and supervisors. Given this fact, as well as the passage of time between this hearing and Hazaert's deposition and arbitration testimony, it is not incredible that Hazaert's memory of these events has dimmed. The record does not support complainant's argument that Hazaert is pretending to no longer remember the details of Complainant's disputes.

Complainant's October 29, 1997 grievance did not directly involve Hazaert and was filed approximately three years prior to the start of this hearing. It would not be reasonable to conclude that Hazaert is lying under oath, rather than failing to recollect specific events that occurred several years in the past, when he gave conflicting testimony as to when he first learned of this grievance.

It is not evident that Hazaert gave false testimony regarding the use of Article 32(I), but rather, it is evident that Hazaert gave careless testimony on this issue. For example, Hazaert offered testimony on the use of Article 32(I) when, by his own admission, he did not have the "specific names." (Tr. 268) In subsequent testimony, Hazaert stated that it was his belief that a few teachers had been laid off under Article 32(I), but that he could not think of anybody. (Tr. 2143) Hazaert did not deny that he had, at one time, stated that a half dozen people had been laid off and confirmed that, when he made this statement, he did not have any specific examples. (Tr. 2144) Neither this testimony, nor any other record evidence, provides a reasonable basis to infer that Hazaert falsified this testimony, or any other testimony, to support decisions, or testimony, of Dodd.

It is not evident, as Complainant argues, that Hazaert took every occasion to exercise his discretion in a manner that was prejudicial to Complainant. Contrary to the argument of Complainant, Hazaert's testimony regarding Bouffleur's "Focus" (Tr. 420-28; 2247; 2250) does not establish that Hazaert is a liar, or that Hazaert was indicating that Bouffleur was a predict on "Focus," when, in fact, she was not. Hazaert's explanation that he was using the term "focus" in two different contexts is plausible.

The most reasonable conclusion to be drawn from the credible evidence is that the Perceiver score was not a major factor in the interview team's selection decision. The fact that the Perceiver score was not a major factor in the selection decision does not provide evidence of unlawful, disparate treatment.

Page 194  
Dec. No. 29946-L

Complainant's argument that imposing subjective judgments on an objective measurement, i.e., the Perceiver, indicates unlawful motive is not persuasive. Hazaert

provided a plausible explanation of why he considered Perceiver predicts to be strengthened or weakened by other applicant information.

Solsrud and Johansen, who are both trained to administer the Perceiver, offered no criticisms with respect to Hazaert's scoring. Notwithstanding Complainant's arguments to the contrary, the record provides no reasonable basis to conclude that Hazaert's scoring of the Perceiver was not done in good faith.

As Solsrud's testimony demonstrates, and Johansen acknowledges, each has a limited recall of the interview process. Thus, the fact that Solsrud, Hazaert and Johansen do not have the same recollections of what was discussed and/or emphasized among the members of the interview team when they reviewed the candidates for the 100% French position does not provide a reasonable basis to conclude that any member of the interview team is a liar, or concealing unlawful motive.

It is evident that Hazaert and Johansen considered Bouffleur to be an intern and, for different reasons, each was influenced by this fact when deciding which candidate to select for the 100% French position. The record fails to demonstrate why each considered Bouffleur to be an intern. However, contrary to the argument of Complainant, the fact that Bouffleur's application materials and interview transcript do not expressly reference the fact that Bouffleur was an intern does not warrant the conclusion that Johansen and Hazaert fabricated Bouffleur's intern status to conceal unlawful motive, or for any other reason. In reaching this conclusion, the Examiner has noted that not all statements made at the interview were recorded and transcribed and that members of the interview team checked the references of Bouffleur.

Hazaert gave confusing and conflicting testimony on the issue of whether or not he was impressed by Bouffleur's examples of District initiatives. Thus, it is difficult for the Examiner to determine what, if any, weight Hazaert gave to this specific factor at the time that he assessed the candidates.

Complainant argues that this confusing and conflicting testimony is due to the fact that Hazaert is a liar and is fabricating testimony to conceal unlawful motive. Hazaert's testimony, however, is more likely due to the fact that Hazaert was not particularly focused upon this aspect of the interview because Johansen was responsible for questioning applicants on their knowledge of and use of educational initiatives and models of instructions. The most that can be determined from Hazaert's testimony is that Hazaert does not recall the specific initiatives and educational models that were addressed by Bouffleur, but has a general recollection that she was familiar with different initiatives and provided examples of how she had used some of these initiatives in the classroom. Hazaert's recollection that Bouffleur provided examples of how she had used initiatives in the classroom is consistent with Johansen's testimony.

Page 195  
Dec. No. 29946-L

In ranking the top two applicants, Hazaert ranked Bouffleur as his number one

candidate and Delsarte as his number two candidate. According to Hazaert, his selection of Bouffleur was based on a variety of factors. Hazaert considered Bouffleur's interview to have demonstrated that Bouffleur was eager, spontaneous, extremely positive and excited about the 100% French position. Hazaert considered the fact that Bouffleur had completed her Master's Degree to be an indication that she set high goals for herself and was committed to her career. Hazaert was favorably impressed by Bouffleur's work in a computer lab; her familiarity with a variety of software programs; and the fact that Bouffleur had assisted other teachers in setting up computer programs. According to Hazaert, the primary reason that Hazaert chose Bouffleur was her positive attitude, enthusiasm for the position, high level of commitment to her career, her interest in co-curricular activities, her demonstration that those that had worked with her were very positive about her and her demonstration that she had some background with and could use District initiatives in the classroom. Bouffleur's application materials and interview transcript reasonably support Hazaert's conclusions regarding Bouffleur's qualifications for the 100% French position.

According to Hazaert, his primary reason for not selecting Complainant was that Complainant's interview indicated that Complainant had difficulty getting along with other staff members, as particularly demonstrated by Complainant's response to Johansen's interview questions. While recognizing that it is natural to have conflicts within an organization, statements made by Complainant lead Hazaert to conclude that Complainant did not accept responsibility for any of the conflicts, but rather blamed other staff members and that Complainant wanted a third party, i.e. administrators, to resolve his conflicts. According to Hazaert, Complainant's statements regarding his conflict with other staff did not persuade Hazaert that Complainant could move beyond the conflicts that he had had with other staff members, or work with these staff members in a collegial environment. Hazaert concluded, therefore, that Complainant could not be successful in the 100% French position. Hazaert also considered Complainant's responses to the interview questions to reflect other problems, such as lack of objectivity and innovation. Complainant's application materials and interview transcript reasonably support Hazaert's conclusions regarding Complainant's qualifications for the 100% French position.

The clear and satisfactory preponderance of the evidence does not demonstrate that Hazaert's decision to select Bouffleur, rather than Complainant, for the 100% position is tainted, in any way, by the unlawful hostility of another. The clear and satisfactory preponderance of the evidence does not demonstrate that Hazaert is hostile to Complainant's protected, concerted activity, or that Hazaert's decision to select Bouffleur, rather than Complainant, for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity.

Solsrud considers the process for hiring the 100% FTE French teacher to be the

standard process employed by the District and consistent with her prior experiences with the District's hiring process. In ranking the top two candidates for the 100% position, Solsrud gave consideration to the application materials, the interview and the portfolio that each candidate was requested to bring at the time of the interview. At some point in the interview process, Solsrud saw Complainant's application and was struck by the fact that Complainant had a handwritten application letter. In Solsrud's judgment, Bouffleur and Delsarte stood out from all the other applicants and were her top two choices. Solsrud's final selection of Bouffleur as the top candidate was largely based upon her perception that Bouffleur had submitted a strong portfolio, had strong references, did well on the Perceiver and had a strong interview. Solsrud considered Bouffleur to have done a good job of explaining her teaching philosophy and how she taught. Solsrud, who considered Bouffleur to be a stellar candidate, was particularly impressed by the fact that Bouffleur had a Master's Degree in French and was active in pursuing opportunities to hear and speak French. Bouffleur's application materials and interview transcript reasonably support Solsrud's conclusions regarding Bouffleur's qualifications for the 100% French position.

The clear and satisfactory preponderance of the evidence does not demonstrate that Solsrud's decision to select Bouffleur, rather than Complainant, for the 100% position is tainted, in any way, by the unlawful hostility of another. The clear and satisfactory preponderance of the evidence does not demonstrate that Solsrud is hostile to Complainant's protected, concerted activity, or that Solsrud's decision to select Bouffleur, rather than Complainant, for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity.

Johansen's questioning of Bouffleur indicates that he formed a good opinion of her skills in "Effective Instruction" in background materials that she supplied. Bouffleur did not, as Complainant argues, demonstrate that she did not hold "Effective Instruction" in high esteem. Rather, she indicated that she did not exactly follow what was taught in class, but rather, modified it to meet her needs. (C-10, p. 17)

The fact that Johansen still recalls the cover letter as a negative persuades him that the cover letter may have been a factor in his decision to not rank Complainant in the top two. According to Johansen, his belief that Bouffleur was an intern was a factor in his decision because it lead him to conclude that she had student taught for 18 weeks, rather than 9 weeks, which persuaded him to give more credence to the report from her cooperating teacher. Johansen states that he was not aware that Complainant had been an intern. Johansen recalls that, in determining his top two candidates, he did not rely on the total score of the Perceiver, but rather listened to the questions as they were being asked and used his training in administering the Perceiver to assess the candidates' strengths and weaknesses within the various categories of the Perceiver; he then used his personal interview questions to follow

Page 197  
Dec. No. 29946-L

through on his assessment of the candidate; and that, prior to asking Hazaert for the Perceiver

scores, Johansen had an impression of Complainant's strength and weaknesses. According to Johansen, his primary concern about Complainant was Complainant's failure to demonstrate to Johansen that Complainant was using the methodologies taught by the District in his classrooms and Johansen's conclusion that Complainant had interpersonal skill problems. Johansen states that he had a specific concern that Complainant was weak in "Dimensions of Learning" and was persuaded that Bouffleur demonstrated that she was able to utilize the training that she had received in the classroom. Johansen recalls that Bouffleur demonstrated her use of cooperative learning in the classroom; Complainant demonstrated that he received training from the District and then ignored the training; and Complainant's interview caused Johansen to question whether or not Complainant developed and followed through on lesson plans.

Johansen's conclusion that Complainant had interpersonal skill problems was based upon Complainant's recitation of the problems that he had with administration and other teachers, including Berns. Johansen has supervised Berns for a number of years and gets along quite well with Berns. Johansen states that he had never heard an applicant recite as many conflicts with his peers. In Johansen's opinion, a successful teacher must be able to get along with colleagues and that this ability is especially necessary in the District's middle school, which utilized team teaching. Johansen states that he was especially troubled by the fact that the conflicts were with other members of Complainant's department. In Johansen's view, such conflicts would negatively impact upon the Department's ability to move forward on curriculum and implement new programs. Johansen states that Bouffleur's interview, unlike that of Complainant, was a positive interview and Bouffleur made him more comfortable.

According to Johansen, he selected his top two candidates, *i.e.*, Bouffleur and Delsarte, based upon the knowledge that he gained in the interview process; he was not influenced by the fact that Complainant had filed a grievance; and he chose Bouffleur as his top candidate because he thought that she would do the best job at the Junior High. Bouffleur's and Complainant's application materials and interview transcript reasonably support Johansen's conclusions regarding Bouffleur's and Complainant's respective qualifications for the 100% French position.

The clear and satisfactory preponderance of the evidence does not demonstrate that Johansen's decision to select Bouffleur, rather than Complainant, for the 100% position is tainted, in any way, by the unlawful hostility of another. The clear and satisfactory preponderance of the evidence does not demonstrate that Johansen is hostile to Complainant's protected, concerted activity, or that Johansen's decision to select Bouffleur, rather than Complainant, for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity.

Page 198  
Dec. No. 29946-L

In summary, the interview team selected Bouffleur as the top candidate for the 100% French position and, thereafter, Bouffleur was hired into the 100% French position. It is not

evident that Respondent hired Bouffleur for any reason other than that she had been selected by the interview team as the most qualified candidate. It is not evident that Complainant's application for the 100% French position was rejected for any reason other than the members of the interview team did not consider Complainant to be the most qualified candidate.

### **Conclusion**

Complainant has demonstrated, by a clear and satisfactory preponderance of the evidence, that Principal Knaack gave consideration to the number of grievances filed by Complainant when Knaack was deciding whether or not to recommend the layoff of Complainant to District Administrator Dodd. Inasmuch as Principal Knaack's recommendation to layoff Complainant was motivated, in part, by hostility to Complainant's protected, concerted activity, the Respondent, by its agent Principal Knaack, has violated Section 111.70(3)(a)3, and derivatively violated Section 111.70(3)(a)1, Stats.

Complainant has not demonstrated, by a clear and satisfactory preponderance of the evidence, that either Dodd's decision to recommend the layoff of Complainant to the School Board, or the School Board's acceptance of the same, was motivated, in any part, by hostility to Complainant's protected, concerted activity, or tainted by the unlawful hostility of another. Complainant has not established that Respondent violated Sec. 111.70(3)(a)1 or 3, Stats., when it laid off Complainant.

The clear and satisfactory preponderance of the evidence does not demonstrate that the interview team's decision to select Bouffleur, rather than Complainant, for the 100% French position was motivated, in any part, by hostility to Complainant's protected, concerted activity, or tainted by the unlawful hostility of another. The clear and satisfactory preponderance of the evidence does not demonstrate that Respondent's decisions to hire Bouffleur for the 100% French position and to reject Complainant's application for the 100% French position were motivated, in any part, by hostility to Complainant's protected, concerted activity, or tainted by the unlawful hostility of another. Complainant has not established that the Respondent violated Sec. 111.70(3)(a)1 or 3, Stats., when it did not accept Complainant's application for a 100% French position and did not hire Complainant for a 100% French position.

The appropriate remedy for the violations of Sec. 111.70(3)(a)1 and 3, Stats., established herein is to order the Respondent, its officers and agents, to cease and desist from

considering the number of grievances that an employee has filed when deciding whether or not to recommend the layoff of an employee and to post an appropriate notice. It is not appropriate to reinstate Complainant to any position within the District. Nor is it appropriate to order any other remedy.

Dated at Madison, Wisconsin, this 15th day of August, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Coleen A. Burns /s/

---

Coleen A. Burns, Examiner

CAB/gjc  
29946-L