

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHLAND PINES EDUCATION ASSOCIATION, Complainant,

vs.

NORTHLAND PINES SCHOOL DISTRICT, Respondent.

Case 47
No. 60358
MP-3764

Decision No. 30267-A

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, 1901 River Street, P.O. Box 1400, Rhineland, Wisconsin 54501, on behalf of Northland Pines Education Association.

Troff, Petzke & Ammeson, Attorneys at Law, by **Mr. Gregory B. Ladewski**, 811 Ship Street, P.O. Box 67, St. Joseph, Michigan, on behalf of the Northland Pines School District.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

On September 13, 2001, Northland Pines Education Association, hereinafter Association, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that the Northland Pines School District, hereinafter District, had committed prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4 of the Municipal Employment Relations Act by issuing a written reprimand to an individual employee without just cause in violation of the terms of the parties' collective bargaining agreement. The Commission appointed the undersigned, David E. Shaw, of the Commission's staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter.

No. 30267-A

The parties entered into discussions in an attempt to resolve the matter, but were unsuccessful. The Association and District agreed to waive the filing of an answer. Hearing was held before the undersigned on March 12, 2002, in Eagle River, Wisconsin, and a stenographic transcript was made of the hearing. The parties completed the submission of post-hearing briefs by May 20, 2002.

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

Having considered the evidence and the arguments of the parties, the Examiner now makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. Northland Pines Education Association, hereinafter the "Association", is a labor organization having its principal offices located in c/o Northern Tier UniServ-Central, at 1901 River Street, Rhineland, Wisconsin 54501-1400. At all times material herein, Gene Degner has been the Executive Director of the Northern Tier UniServ and Steven Glandt has been the Association's President. At all times material herein, the Association has been the exclusive collective bargaining representative for a bargaining unit consisting of "all regularly employed classroom teachers, librarians, and guidance counselors, which shall include teachers hired to replace teachers leaving the Northland Pines system permanently, but which shall not include substitute teachers and shall exclude all managerial and supervisory employees, including the position of Athletic Director/Attendance/Discipline Officer unless such position would include regularly assigned teaching duties."

2. Northland Pines School District, hereinafter referred to as the "District", is a municipal employer which maintains and operates a public school system in Eagle River, Wisconsin. Its principal offices are located at 1780 Pleasure Island Road, Eagle River, Wisconsin 54521. At all times material herein, Linda Kunelius has been the District Administrator and has served as the District's agent in that capacity.

3. At all times material herein, Peter Bugni has been employed by the District as a classroom teacher, and is in the bargaining unit set forth above in Finding of Fact 1.

4. At all times material herein, Jo Ann Krusick has been employed by the District as a paraprofessional. Krusick's duties include playground supervision, working with teachers with at-risk students, and assisting teachers with correcting papers, etc. In addition, for approximately the past four or five years, Krusick has filled in for the District Administrator's Secretary when she is absent, and also assists in that office when they need help.

5. The Association and the District have been parties to a series of collective bargaining agreements covering the wages, hours and conditions of employment of the District's employees in the bargaining unit set forth in Finding of Fact 1, including a collective bargaining agreement covering the period of July 1, 1999 through June 30, 2001. The parties' 1999-2001 Agreement does not include a provision for final and binding arbitration of grievances arising under that Agreement. Said Agreement includes the following provision:

SECTION VI – DISCIPLINE, DISCHARGE AND SUSPENSION

- A. When, in the judgment of the District Administrator a condition or situation warrants, the District Administrator may suspend a staff member pending action by the Board. The final step in any review of such suspension shall decide the status of the teacher's compensation during such suspension.
- B. No teacher shall be required to appear before the Board or its agents concerning any matter which could adversely affect the continuation of that teacher in his/her office, position, employment or the salary or increments pertaining thereto, unless he/she has been given prior written or verbal notice (at least 24 hours) of the reason for such meeting or interview and shall be entitled to have a representative of the Association present to advise him/her and represent him/her during such interview.
- C. In the event that the discipline of a teacher shall have an adverse effect on continuation of employment, the teacher and Association shall receive written notice of the reasons and the disciplinary action being taken.
- D. No teacher shall be dismissed, suspended, reduced in rank or compensation or otherwise disciplined without cause.
- E. All rules and regulations governing employee activities and conduct shall be interpreted and applied uniformly throughout the district.

6. On June 8, 2001, the District was engaged in an interest-arbitration hearing with the District's support staff union being held in the Board's conference room, which also serves as Kunelius' office. Present were the members of the District's Board of Education, Kunelius, the Board's attorney, the arbitrator, Degner and members of the support staff union. The Superintendent's Secretary works at a desk located just outside of the room next to the door to

the room. On that date, Krusick was substituting for the Superintendent's Secretary. At approximately 10:00 a.m., Bugni came in with a document he wished to give to Kunelius. Krusick was standing by the side of her desk, and the door to the conference room was partially open. Bugni peeked into the room to see if Kunelius was available to talk to, and seeing that she was not, then turned to Krusick and gave her the document and asked her to give it to Kunelius. Bugni began to walk away and then turned and said to Krusick, "This is going to really piss her off." Bugni then left. Having heard Bugni's voice, after the arbitration hearing Kunelius asked Krusick what Bugni had wanted. Krusick gave her the document Bugni had brought and told Kunelius that Bugni had given her the document and told her, "Give this to Linda because it will really piss her off." Krusick then told Kunelius that Bugni should not have said that. When Kunelius asked Krusick why she said that, Krusick responded to the effect that Bugni is a friend and he should not have put her (Krusick) in that position, and that it was disrespectful of him.

The document Bugni had given Krusick to give to Kunelius was a military time conversion table and was related to a disagreement Kunelius had had with Bugni and another teacher the day before as to what time they had checked into a motel while at a conference. The motel receipt noted the check-in time in military time and Kunelius disagreed with Bugni's and the other teacher's view of what the military time noted on the receipt converted to in regular time. Bugni had brought the conversion table to show Kunelius that she was wrong and he was right.

A few days later, Kunelius had Bugni and the other teacher come to her office to discuss the matter involving their check-in time, and in the course of the discussion Bugni asked Kunelius why she had them come in again to discuss the matter. Kunelius then took out the military time conversion table Bugni had given Krusick and thanked Bugni for giving it to her. Kunelius then asked Bugni if he remembered his conversation with Krusick when he gave her the document. Bugni told Kunelius he could not remember the conversation verbatim, but that it was to the effect that he asked Krusick to give it to Linda (Kunelius) at her earliest convenience and that it was going to "tick her off." Kunelius then asked Bugni if he had said it was going to "tick me off" or "piss me off." Bugni then said he recalled that he had said it was going to "piss her off."

7. On June 26, 2001, Kunelius sent Bugni a letter which stated, in relevant part, as follows:

Dear Mr. Bugni:

I am writing this letter to you regarding a comment you made when you brought a document on Military Time Conversions to the District Office on June 8, 2001. You gave the document to JoAnne Krusick (substitute secretary for Susie Block) and told her to "give this to Mrs. Kunelius, it's really going to piss her off."

While I can appreciate the frustrations you may feel concerning our discussions on your recent disciplinary actions, as the District Administrator I expect to be treated with respect and courtesy in our professional dealings. Your comment was unprofessional, disrespectful and constituted insubordination. I am providing you with written notice that such conduct is unacceptable. Please be advised that you will be subject to discipline if such conduct continues.

Sincerely,

Linda Kunelius /s/
Linda L. Kunelius
District Administrator

cc: Mr. Duane Frey, Principal
Personnel File

A copy of the letter was placed in Bugni's personnel file.

8. The following grievance was filed on behalf of Bugni regarding Kuenlius' letter of June 26, 2001:

GRIEVANCE FILING FORM

GRIEVANT: Peter Bugni and NPEA

PRESENTED TO: Linda Kunelius, Administrator

PRESENTED BY: Northland Pines Education Association (NPEA)

STEP: 4 DATE OF FILING: July 9, 2001

STATEMENT OF GRIEVANCE:

The District Administrator violated the rights of Peter Bugni by a June 26, 2001, letter of reprimand. Such letter of reprimand is in violation of Article 6, Discipline, Discharge and Suspension, paragraph D. The language used by Mr. Bugni was not disrespectful to Ms. Kunelius as he was not speaking to Ms. Kuenlius at the time. His use of language that would suggest that Ms. Kunelius would be upset with information that he was giving her was certainly correct and she was upset since she felt the need to reprimand Mr. Bugni for it.

AREAS OF CONTRACT VIOLATED (Articles/Sections)

Article 6, Discipline, Discharge, and Suspension.

ACTION REQUESTED:

That the letter of reprimand be removed from Peter Bugni's personnel file and that Ms. Kunelius apologize for writing such a letter of reprimand.

Thomas J. Drushelka /s/

SIGNATURE ON BEHALF OF THE GRIEVANT

The grievance was processed through the parties' contractual grievance procedure culminating in a hearing before the District's Board of Education. By letter of August 6, 2001, the Board responded, in relevant part, as follows:

Steve Glandt, President
Northland Pines Education Association

. . .

RE: Peter Bugni – July 9, 2001 Grievance

Dear Mr. Glandt:

The Northland Pines School District has completed its deliberations following the grievance hearing of July 30, 2001. The June 26, 2001 letter from Mrs. Kunelius to the Grievant was warranted under the circumstances, and was not a violation of any provision of the Agreement alleged in the grievance. Moreover, the June 26, 2001 letter was not a “letter of reprimand”, as alleged in the grievance. The July 9, 2001 grievance is therefore DENIED.

Sincerely,

Tom Christensen /s/
Tom Christensen, President
Northland Pines Board of Education

cc: Mrs. Linda Kunelius, District Administrator
Northland Pines School District

Mr. Duane Frey, Principal
Eagle River Elementary

Mr. Peter Bugni

PERSONNEL FILE

9. Bugni had been issued a written reprimand on May 15, 2001, which stated, in relevant part, as follows:

Memorandum

TO: Mr. Peter Bugni

FROM: Duane Frey

DATE: May 15, 2001

RE: Sick Leave on April 27, 2001 – **WRITTEN REPRIMAND**

This is a written letter of reprimand that will be placed in your personnel file concerning your sick leave request on April 27, 2001.

. . .

The District will also place this letter of reprimand in your personnel file. We want to make very clear to you that any further violations of the sick leave provisions, abuse of the sick leave provision or other acts of insubordination shall result in suspension and possible termination from employment with the District consistent with the personnel policies of the District.

It is unfortunate that we have been brought to this position. However, your recent conduct cannot and will not be tolerated at the District.

If you do have any questions, please do not hesitate to contact me.

cc: Personnel File

10. On September 13, 2001, the Association filed a complaint of prohibited practices with the Commission, alleging that the District, by the actions of Kunelius and its Board of Education, violated the Municipal Employment Relations Act.

11. Kunelius' letter of June 26, 2001 to Bugni does not constitute discipline within the meaning of Article VI, D, of the parties' 1999-2001 Collective Bargaining Agreement. Issuing the letter to Bugni and placing a copy of it in his personnel file did not violate the parties' Collective Bargaining Agreement.

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

CONCLUSION OF LAW

The Letter of June 26, 2001 from Kunelius to Bugni does not constitute discipline within the meaning of Article VI, D, of the parties' 1999-2001 Collective Bargaining Agreement. By issuing said letter and placing it in Bugni's personnel file, the Northland Pines School District, its officers and agents, did not violate the parties' 1999-2001 Collective Bargaining Agreement and did not commit prohibited practices within the meaning of Secs. 111.70(3)(a)1 and 4, Wis. Stats.

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

ORDER

The complaint is dismissed.

Dated at Madison, Wisconsin, this 8th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

David E. Shaw, Examiner

NORTHLAND PINES SCHOOL DISTRICT

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

The Association has alleged in its complaint that the District, by Kunelius' issuing Peter Bugni the letter of June 26, 2001, and placing a copy of that letter in his personnel file, disciplined Bugni without "just cause" in violation of Article VI of the parties' Agreement. As the parties' Agreement does not contain a provision for final and binding arbitration of grievances, the Association filed the instant complaint following the Board of Education's denial of the grievance filed on behalf of Bugni.

While the parties waived the filing of an answer by the District, the District responded at hearing in the matter, denying that Kunelius' letter to Bugni constitutes discipline and asserting that the District has the right to control the environment in its offices.

Association

The Association characterizes what it believes to be the salient facts as follows. The testimony of Kunelius and Bugni indicate that they had a relationship in which they treated each other with respect, although they certainly did not agree on positions and policies and were not afraid to confront each other regarding their differences. Their differences were well known to other employees, including JoAnn Krusick, Kunelius' Substitute Secretary on the day in question, and who had known and worked with Bugni for the last eight years. Setting the stage for the events that occurred on June 8, Kunelius and Bugni had been involved in an argument the day before during which Kunelius repeatedly accused Bugni of being wrong with regard to military time. On June 8, he came to Kunelius' office with information that would prove her wrong. However, when he arrived there, she was not available. Her substitute secretary is not a stranger, but is a colleague with whom he has worked for the past eight years. Bugni, having a document that will prove his boss wrong, a boss that he feels always has to be right, has a certain happiness about being able to prove her wrong, and turning to a "friend and colleague", stated: "This will really piss her off." The Association asserts that that comment cannot be construed as unexpected or wrong. While Bugni's comment was a "slang expression", it simply meant that the document would make Kunelius "angry" or "mad" or would "really irritate her." Such comment is not disrespectful. At the most, the use of the slang expression "pissed off" could be considered unprofessional. It certainly does not rise to the level of "insubordination" which has a well-defined meaning in labor law.

The Union takes the position that while the letter from Kunelius did not state that it was a “reprimand” or “discipline” in the heading, the fact that it accuses Bugni of “insubordination” and was placed in his personnel file constitutes a reprimand and discipline. The term “insubordination” infers a serious infraction of rules occurred between the employer and employee. The Association cites BARNEVELD EDUCATION ASSOCIATION, (Arbitrator Kessler, 8/9/95) wherein the arbitrator found that, contrary to the employer’s assertions, placing a note critical of the employee’s conduct in her personnel file based upon another employee’s complaint to the supervisor, without first obtaining the employee’s response and without further investigation, constituted “discipline” and violated the employee’s procedural rights under the contractual just cause provision. According to the Association, leaving the accusation that Bugni was insubordinate towards the District Administrator in his personnel file would have serious ramifications on his continuous employment with the District. To correct the situation, the letter must be removed.

In support of its position, the Association first asserts that Bugni was acting in a manner that was normal and acceptable. The previous day, he and Kunelius had had a rather contentious argument over “military time” in which she had repeatedly stated that Bugni was wrong. Finding evidence and being able to show that one’s boss was wrong in a situation where they repeatedly claimed to be right would make any employee happy. His expression to the substitute secretary whom he had worked with for the past eight years that Kunelius would be angry, i.e. “pissed off”, was understandable, given his perception that she always had to be right. Bugni felt comfortable telling Krusick that it was going to make Kunelius angry, and felt that the comment was made in confidence. Kunelius testified that she only asked Krusick what Bugni wanted and why he was there, and did not ask what he had said. Krusick’s offer of what Bugni said to her was made of her own volition, and her perception that she needed to tell Kunelius what he said only supports Bugni’s conclusion that Kunelius would be angry. Krusick’s need to go beyond just giving Kunelius the document and instead telling her what Bugni had said, shows that she either feared Kunelius or that she wanted to better herself in Kunelius’ eyes. Krusick’s testimony that the fact that Bugni had made the statement made her uncomfortable shows her fear and lack of respect for Kunelius.

Next, the Association asserts that although Kunelius’ letter indicates that Bugni’s actions were directed at the District Administrator, there was in fact no direct communication between the two, and therefore, Bugni could not have been disrespectful, unprofessional nor insubordinate to her. There was no order, nor command that he refused to carry out, and there was no policy violated. Kunelius even testified that she did not expect Bugni to change the way he talks or communicates with people. Thus, he could not have been insubordinate. Further, describing one’s perception of feelings that he thinks someone might have is not being disrespectful to that person. The slang term “pissed off” in place of “angry”, is not a statement of disrespect. There are no policies regarding the use of slang expressions in the District office. Since there are no policies, and it was never made known to Bugni that the use

of slang expressions in the District office is unacceptable, he cannot be accused of insubordination. It also appears that the District's office is the only place in the District where the administration objects to the use of slang terms. As Kunelius testified, she did not expect Bugni to change the way he talked when he was in the lounge or in one-on-one conversations. As to whether the comment was unprofessional, one has to stretch their imagination to find that the comment "pissed off" between colleagues during the summer recess is unprofessional.

The Association also disputes that Bugni's use of the expression to Krusick was disrespectful or unprofessional towards her. Krusick testified that while she did not like such language, she had never objected to its use at any other time in her relationship with Bugni. As Krusick testified that she had always ignored it in the past, the Association questions why she raised the issue this time. If one agreed that use of slang in a District Administrator's office is unprofessional and that reasonable people should know that, only then could Bugni's expression to Krusick about Kunelius' anticipated reaction be considered unprofessional.

The Association asserts that placing a written accusation that one has been insubordinate in their personnel file constitutes discipline and offers the following definitions of the term:

Webster's New World Dictionary, Second College Edition, defines "insubordination" as: *not submitting to authority; disobedient.*

Black's Law Dictionary, Fifth Edition, defines "insubordination" as:

State of being insubordinate; disobedience to constituted authority. Refusal to obey some order which a superior officer is entitled to give and have obeyed. Term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer. Porter v. Pepsi-Cola Bottling Co. of Columbia, 247 S.C. 370, 147 S.E.2d 620, 622.

Roberts' Dictionary of Industrial Relations, Fourth Edition, Harold S. Roberts, defines "insubordination" as:

A worker's refusal or failure to obey a management directive or to comply with an established work procedure. Under certain circumstances, use of objectionable language or abusive behavior toward supervisors may be deemed to be insubordination because it reveals disrespect of management's authority. Insubordination is considered a cardinal industrial offense since it violates management's traditional right and authority to direct the workforce.

Arbitrator Joseph F. Gentile in Kay-Brunner Steel Products (78 LA 363) states that the proven facts of "a classical case of insubordination" include: (1) the Grievant was given orders, (2) the Grievant refused to obey the orders, (3) the orders came from the Grievant's supervisors, who were known to him, (4) the orders were reasonably related to his job and within the language of the contract, (5) the orders were clear, direct, and understood by the Grievant, (6) the Grievant was forewarned of the possible and probable consequences of his continued actions by specific reference to the contractual guidelines. . . , and (7) the Grievant was neither insulated nor protected from possible disciplinary action by his role as a representative of the employees. . . "

. . .

Under labor law, arbitral authority, and the above definitions, insubordination is a serious infraction. Regardless of the heading on the letter, the fact that an employee has a letter in their personnel file accusing them of insubordination by the highest-ranking officer of the employer is serious discipline. The matter is made even worse by the fact that the District Administrator testified that she chose her words carefully, which indicates that she understood the full context of insubordination and what it meant.

Article VI, "Discipline, Discharge and Suspension", of the parties' Agreement, protects employees against any kind of discipline or reprimand without cause. "Cause" is synonymous with "just cause". One of the protections afforded under "just cause" is that an employee must have reasonable knowledge of the rule they are alleged to have violated. Testimony in this case shows that Bugni did not have knowledge that the use of slang was prohibited in the District office. Further, Kunelius' testimony that she did not expect Bugni to change his behavior at any other point in time shows that there is a mixed interpretation as to the use of slang in the District. The use of slang in the District office is certainly not something that a reasonable person would understand to be prohibited, and a cause for discipline. The "cause" standard protects an employee from the careless use of terms such as "insubordination."

The Association concludes that it is difficult to determine whether it was the use of the slang in the Administrator's office, or if it is the relationship that Krusick had with Kunelius that caused the written discipline to be issued. Bugni's comment under the circumstances certainly cannot be considered to be disrespectful, unprofessional or insubordinate. While the terms "unprofessional" and "disrespectful" are subjective and do not have a clear meaning under labor law, the use of the term "insubordination" is of greatest concern because it is a clearly-defined term in labor law and denotes a very serious infraction. Thus, any reference to "insubordination" in this instance must be removed from Bugni's personnel file and the District found to have violated the "cause" standard in the parties' Agreement.

In its reply brief, the Association asserts that the District is attempting to make light of a serious allegation against Bugni and attempts by ridicule to persuade the Examiner that the objection to being accused of insubordination is a matter unworthy of disagreement. To suggest that Bugni should apologize for having made a simple comment to the Secretary expressing how he felt the Administrator would feel is ridiculous. The District's assertion that because there were no other first-hand witnesses to testify, the leadership of the Association did not support Bugni, is completely false and disregards the fact that this was a comment made by Bugni to the Secretary and no one else heard it.

The District castigates Bugni as one who uses vulgar language for the sake of vulgarity. This is a particularly narrow view of the acceptability of the use of slang language. If the District finds such slang unacceptable, it should post a notice in the Administration building. Bugni did not criticize or call the District Administrator a name, nor in any way defame her, but simply expressed how he felt she would feel when she received his document.

There is a question as to how wide open the door was to the room. If the door was wide open, as Krusick claimed, why did she not mention seeing the Association's UniServ representative (Degner) in the room when she described who was present? The District repeatedly asserts that Krusick was concerned about telling the truth. However, Kunelius did not ask Krusick what Bugni had said; rather, she asked what Bugni had wanted. What he had wanted was for the Secretary to give Kunelius the document. The reason that Krusick told Kunelius what Bugni had said was her fear of Kunelius. Krusick did not object to Bugni's language or expressions. While everyone agrees that this language would not be used in front of students, the conversation only involved Krusick and Bugni, and his comments to her upon leaving were not to be passed on to the Administrator, but were only to indicate to Krusick how he felt Kunelius would react.

The District attempts to discount the language used in the letter as being discipline. That wording indicates that the District has accused Bugni of being unprofessional, disrespectful and insubordinate and states that if the conduct continues, he will be "subject to discipline." In order to continue towards discipline, one must have committed the behavior in question in the past. Those accusations need to be proved by the District before they can be accepted as discipline.

While the District attempts to diminish the import of the wording of the letter by stating that discipline is only a possible action, this ignores the fact that accusing an employee of insubordination is, in and of itself, discipline. Examiner Jones' prior decision supports this. Examiner Jones stated, "A written warning can certainly be considered discipline." While he found that the particular matter in that case was not discipline, his decision was not so broad and far-reaching as to say that every time the District does this, it cannot be considered discipline. The District could have written a letter that said the use of the term "pissed off" or

other such slang terms in the District office is not appreciated, and to please refrain from using such expressions in the future. The District chose not to do that, and chose instead to accuse the employee of insubordination, knowing full well the connotation that term has in labor law.

The Association requests that the Examiner find that the letter constitutes a violation of the “cause” provision of the parties’ Agreement and order the appropriate remedy.

District

The District proposes that the issues to be considered are: 1) Whether the District Administrator’s letter of June 26, 2001 to Bugni constitutes discipline under Article VI of the Agreement and, if not, does the just cause standard apply? 2) Whether the District Administrator acted within her prerogative in writing the letter to Bugni, in which she described his utterance as “unprofessional,” “disrespectful,” and/or “insubordination” and informed him that repeating such conduct in her offices would result in discipline and, if not, what if any, remedy is warranted?

The District takes the position that the letter Kunelius sent to Bugni does not constitute discipline, and that therefore the “just cause” standard in Article VI of the Agreement does not apply. On its face the letter is not discipline. The word “discipline” only appears in the context of possible action if the grievant repeats the specific, unacceptable behavior in the District Administrator’s office. The letter does not state that a violation would result in “further” discipline, but rather, that the disciplinary process would begin with the first recurrence of the specific misconduct. Kunelius is perfectly capable of issuing an unambiguous letter of discipline, e.g. the written reprimand issued in May to Bugni. While Bugni vaguely alleges that the letter is discipline, he cannot say why or how, beyond the fact that the letter was placed in his personnel file and that he interprets the last sentence as a “threat”. By that definition, any directive or work rule constitutes “discipline” in the sense that it draws a line which, if crossed, would result in discipline.

The District cites as on point, the decision in NORTHLAND PINES SCHOOL DISTRICT, DEC. NO. 29978-A (Jones, 5/01), asserting that the examiner in that case rejected a similar claim by the Association. Kunelius’ letter was not a written warning, nor was it discipline of any sort covered by the just cause requirement of Article VI, Section D; rather, it was a notice to Bugni that his behavior was unacceptable and must not be repeated. The letter necessarily must go in Bugni’s personnel file as it is a “notice” to him that may well set the stage for future discipline, in the event he chooses to repeat such behavior under similarly inappropriate circumstances. It also goes without saying that the District Administrator has the prerogative to enforce minimal decorum in her own offices and especially next to an open door to a full-blown arbitration hearing.

The District asserts that Krusick's account of the events should be afforded far greater weight than Bugni's self-interested version. An individual with nothing to gain should be presumed to be more candid and credible than a party in the case. Further, Krusick's demeanor and her conscientious and sincere testimony make her vastly more believable than Bugni.

While Kunelius' letter was not discipline, it delivered a message that was well-founded and richly deserved. Bugni's utterance was vulgar and unprofessional under the circumstances. Bugni acknowledged that the appropriateness of words may depend on the circumstances in which they are uttered or are written, and that "colorful" language should be restricted to private settings and is not for use in the classroom, but only when there is no danger of being overheard. By Bugni's own "standard", his vulgar comment on June 8 was inappropriate. While Bugni does not consider the District's offices to be "hallowed ground", they are a public space and the District Administrator's home base, and as such, certain minimum rules of decorum must be observed by professional staff on the premises. Until now, these rules have been implicit, and are simple matters of common sense and common sensibility; however, when professional staff who lack such qualities turn the office into a locker room, a clear reminder is called for, as was done here. Bugni's denial that the phrase "pissed off" is vulgar, and is only the equivalent of "irritate" or "peeve" and merely "slang", is contrary to the definition of the term in any standard dictionary, and any reasonably mature adult understands that it is not appropriate under the circumstances that were present here.

The District asserts that Bugni's utterance was disrespectful under the circumstances. Bugni makes no bones as to his feelings toward Kunelius. Kunelius displayed remarkable restraint in dealing with Bugni's provocations and attempts to undermine her and has left him alone except to the extent that he breaks the rules. The utterance was disrespectful of Krusick and put her in the position of having to choose to either buy into the crudity and insolence towards Kunelius or telling her the awkward truth. It was disrespectful of Kunelius as well. Bugni fully expected that she would hear his "gleeful vulgarity" either first-hand, or through Krusick. He had wanted to deliver the document to Kunelius in an "in your face" manner, but deprived of that opportunity because of the arbitration hearing, he made the comment out loud. He made no effort to whisper or tone down his voice, and probably spoke louder than usual in hopes that it would be heard inside the other room. Bugni's outburst was reckless and disrespectful to the District as he was in its main offices, and members of the Board were present in the Board Room with the door open.

The District also asserts that while Bugni's utterance was not "insubordination" in the narrow, technical sense of the term, it did have an insubordinate motive, and reflected an insubordinate attitude which under the circumstances, cannot be countenanced. A common synonym for "insubordinate" is "factious", i.e. promoting divisiveness or disunity in an organization. See, e.g. The American Heritage Dictionary (1983). As is clear from Kunelius'

testimony, that is precisely the meaning she intended the term to have in her letter to Bugni. Bugni made his utterance to Krusick with the expectation of a positive, supportive response from her – a laugh, a wink and certainly quasi-conspiratorial silence. By his own admission, Bugni does not hesitate to express his contempt for Kunelius and given this attitude and his evident lack of self-awareness, Bugni obviously presumes that everyone else not only shares his views, but welcomes his unbridled expression of them. Bugni does not allege that his utterance was spontaneous, but admits it was a conscious, deliberately-stated afterthought. It was intended to foster disrespect and disunity. While Krusick may have tolerated his boorishness in other settings and circumstances, she correctly saw the circumstances here as being different.

The District asserts that there is no excuse or justification for Bugni making his comment. While fortunately no one overheard the comment except for Krusick, the record indicates that neither Bugni nor Krusick could have known that to be the case for sure. It was quiet in the room, except for Bugni, and the door to the Board Room was open far enough that Krusick could see Kunelius and Kunelius could see Bugni.

While Bugni complains that Krusick did not have to report what he said to Kunelius and could have ignored it, Krusick was not willing to lie for him. Bugni cannot expect others to always ignore or overlook his inappropriate behavior. Bugni also blames Kunelius for not simply letting the matter drop. He also seems to blame his colleagues and supervisors for not complaining sooner about his coarse language and attempts to excuse himself on the grounds that he is not the only one who uses foul language. Finally, he ridicules Krusick for daring to be offended by his language. However, his most bizarre claim was that his vulgar utterance was made to Krusick “in confidence. . .as a friend.” This allegation has no relevance and in no way mitigates Bugni’s culpability.

The District asserts that Bugni’s tactics should not be countenanced. While there is a good deal of tension between some elements of the professional staff and the administration and Board, this is a minority view, as not one other member of the Association supported Bugni in this case. However, a pattern of evidence emerges of a concerted attempt by some elements of the Association to undermine the District Administrator and engage in pointless bloodletting, such as this case. The Examiner should consider “using his bully pulpit to do good, as well as to do justice.” This is simply an attempt to coerce and intimidate the District and to punish any employees who dare to see the District’s point of view. For the District to overlook such provocation would only invite an even more outrageous statement under even more inappropriate circumstances. No employer can allow its employees to intimidate it into silence, nor abide the conscientious erosion of morale by employees, however disgruntled.

In its reply brief, the District responds that while the Association initially characterizes the discussion between Kunelius and Bugni as a “disagreement about. . . military time”, and a “difference of opinion as to what time military time represented”, it subsequently alleges that there was a heated argument in which the District Administrator “repeatedly accused” Bugni of being wrong. Their conversation was not a “argument” much less a “contentious” one. There was in fact no argument, rather, as Kunelius testified, they discussed the conversion of military time. She had been told one thing by the motel staff and Bugni had related another. Kunelius herself checked into the matter and was already aware of the proper conversion, even before Bugni delivered his document to Krusick the following day.

The Association describes Bugni’s utterance as mere “slang”, and while the terms “slang” and “vulgarity” are not mutually exclusive, there is an important distinction between them. Not all slang is vulgar. “Slang” is defined as “non-standard speech. . .” American Heritage Dictionary. “Vulgarity” is “an expression that offends good taste or propriety.” While inoffensive slang is acceptable in most settings, no reasonably prudent person would assume, much less contend, that vulgar slang is always and everywhere appropriate. There is no need for “policies” regarding the use of slang expressions in the District offices, as inoffensive slang would not reasonably bother anyone, while no reasonable person would use offensive slang in a professional setting.

The District disputes the assertion that manifest disrespect is not insubordination. The arbitral definition of “insubordination” encompasses expressions of disrespect. TWIN COAST NEWSPAPERS, 89 LA 799, 802. Even the definition cited from Roberts Dictionary of Industrial Relations, defines “insubordination” as “use of objectionable language. . .towards supervisors” because it “reveals disrespect of management’s authority.” Insubordination is not limited to disrespect expressed in the very face of the superior, as it is enough if the intended target is the supervisor. According to the District, arbitrators have recognized that some forms of disrespectful/insubordinate utterances are more serious than others. BRYAN FOODS, INC., 109 LA 633. One of the factors to be considered in deciding whether the remark should be regarded as insubordination is whether other employees were present to hear it. It is reasonable to assume that Bugni had hoped that Kunelius and others would hear his remark, which was spoken aloud by the open door, ostensibly to Krusick. However, even if he intended to speak “confidentially” to Krusick, his intent to ridicule her supervisor while she was at her desk, was factious, and thus, insubordinate.

Bugni’s vulgar comment was inappropriate, especially under the circumstances and he has no excuse for making the comment. Further, his rudeness to Krusick and Kunelius also merit correction. The District cites arbitral precedent for the principle that mockery of a supervisor or contemptuous words or behavior toward a supervisor are unacceptable, and that “vulgarity” is punishable where provocative and contemptuous of the individual’s position.

TRI-COUNTY BEVERAGE CO., 107 LA 577 (1996). Further, Bugni's intentions do not excuse his conduct or preclude the District from setting minimum standards of decorum in its own offices.

The District reasserts that the letter is not discipline, and argues that nothing in Article VI precludes the District from placing a non-disciplinary notice in a teacher's personnel file. Regardless, Bugni's vulgar utterance constitutes "just cause". The District suggests that the Examiner may wish to answer that question in dicta. The plain words of the letter, plus Kunelius' testimony, resolve any doubts as to whether the letter could be construed as discipline. Further, the prior decision of Examiner Jones, resolving the identical question is *res judicata*. While the letter, because of its notice function, may underpin future discipline, it is only insofar as it will demonstrate that Bugni knew that certain behavior would result in discipline.

The District asserts that Bugni's attacks on others only aggravate his own culpability. In particular, the allegation that Krusick acted either from fear of Kunelius, or in order to gain favor in Kunelius' eyes belies the facts. Krusick expected no favors from Kunelius, and has not received any from her for telling the truth. Rather than acting out of fear, Krusick believed that attempting to cover up for Bugni by failing to tell the whole truth would hurt her credibility with the District Administrator and the Board. Further, the allegation that a "reasonable and prudent" person would not have understood that Krusick would disclose the utterance to Kunelius is best answered by the response that no "reasonable and prudent" person would have made the utterance in the first place in that setting, nor would they be surprised if others overheard it or heard about it. Finally, the question of why, if Krusick had ignored Bugni's disrespectful comments about Kunelius in the past, did she not do so this time, is answered by the content and context of the utterance in question.

In conclusion, the District requests that in his decision, the Examiner at the least vindicate Krusick's actions and motives, and further requests that the District Administrator's right to set reasonable ground rules for her own offices and to place non-disciplinary letters of notice without the invocation of "just cause" be confirmed.

DISCUSSION

The parties' dispute centers on Kunelius' letter of June 26, 2001 to Bugni, i.e., whether it constitutes discipline and, if so, whether the District had "cause" to issue the discipline. There is little dispute as to the facts, with only minor differences in the testimony in that regard. While at first blush Kunelius' letter might appear to be a "written warning", for the following reasons it is concluded that under the circumstances in this case, the letter does not constitute discipline within the meaning of Article VI, D, of the Agreement.

First, as the District points out, the letter does not state that Bugni is being disciplined, rather, it states that he “will be subject to discipline if such conduct continues.” (Emphasis added). It speaks to the consequences if he engages in such conduct in the future. Also, the Board’s response of August 6, 2001 denied that the letter was a reprimand.

Second, Kunelius testified that the letter was not intended to be discipline, but to place Bugni on notice that she considered his comment to be unprofessional, disrespectful and insubordinate, and therefore unacceptable. The letter states, “I am providing you with written notice that such conduct is unacceptable.” It is also noted in this regard that unlike the discipline Bugni was issued in May of 2001, the June 26th letter was not titled “written reprimand”; rather, it had no heading.

In the context of these facts, Kunelius’ letter constitutes a notice to Bugni that his comment was considered to be unacceptable behavior, and is not discipline for engaging in the behavior. In that regard, it is important to note that the notice does not count as a step in the disciplinary process and does not obviate the need to follow the normal order of discipline. It is also important to remember that at this point it is necessarily only Kunelius’ opinion that Bugni’s comment was “unprofessional, disrespectful and constituted insubordination.” There has been no determination made in those regards by a neutral third party. 1/ An employer is, however, entitled to place an employee on notice that it views certain conduct as unacceptable; indeed, such prior notice is normally required under the “cause” standard. It is also appropriate to include such a notice in the employee’s personnel file.

1/ The District cannot have it both ways. The Examiner expressly declines the District’s invitation to make such a determination in dicta. Whether an examiner or arbitrator would agree with Kunelius in all those regards is left for another day.

For the foregoing reasons, it has been concluded that the District did not violate Bugni’s rights under the parties’ Agreement, and the complaint is being dismissed in its entirety.

While I have declined to gratuitously comment on Bugni’s conduct, I will comment on my view of why JoAnn Krusick informed Kunelius of what Bugni said to her. Bugni made the comment to Krusick in at least a normal conversational voice just outside the Board Room with the door partially open. Afraid the comment had been overheard by those in the Board Room, including Kunelius, Krusick did not wish there to be any question of complicity on her part,

i.e., she did not wish to be viewed as somehow sharing Bugni's opinion of Kunelius or welcoming the comment. Such a desire on her part is understandable and nothing more need be said about it.

Dated at Madison, Wisconsin, this 8th day of July, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

David E. Shaw /s/

David E. Shaw, Examiner