

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MONONA GROVE EDUCATION ASSOCIATION, Complainant,

vs.

MONONA GROVE SCHOOL DISTRICT, Respondent.

Case 95
No. 62974
MP-3993

Decision No. 30961-C

and

Case 96
No. 63148
MP-4004

Decision No. 30962-C

and

Case 97
No. 63310
MP-4022

Decision No. 30963-C

Appearances:

William Haus, Attorney, Haus, Roman & Banks, 148 East Wilson Street, Madison, Wisconsin 53703-3423, appeared on behalf of the Complainant Association.

David Rohrer, Attorney, Lathrop & Clark, 740 Regent Street, Suite 400, P.O. Box 1507, Madison, Wisconsin 53701-1507, appeared on behalf of the Respondent District.

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FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On November 5, 2003, the Monona Grove Education Association filed a prohibited practice complaint with the Wisconsin Employment Relations Commission (WERC) against the Monona Grove School District. This complaint alleged that a letter of reprimand issued to Sheri Albers violated the parties' collective bargaining agreement because the District lacked just cause for the discipline. The Association contended that this action, in turn, violated Sec. 111.70(3)(a)5, Stats. This case was denominated by the WERC as Case 95. On December 26, 2003, the Monona Grove Education Association filed a second complaint with the WERC against the Monona Grove School District. This complaint alleged that a one-day suspension which had been imposed on Sheri Albers violated the parties' collective bargaining agreement because the District lacked just cause for the discipline. The Association contended that this action, in turn, violated Sec. 111.70(3)(a)5, Stats. This case was denominated by the WERC as Case 96. On February 2, 2004, the Monona Grove Education Association filed a third complaint with the WERC against the Monona Grove School District. This complaint alleged that the District had not honored a grievance settlement agreement involving Albers. The Association contended that this action, in turn, violated Sec. 111.70(3)(a)5, Stats. This case was denominated by the WERC as Case 97. After the complaints were filed, they were held in abeyance pending efforts to resolve them. Those efforts were unsuccessful. On July 7, 2004, the Commission consolidated all three complaints for the purpose of hearing and decision. On September 30, 2004, the Commission appointed Raleigh Jones, a member of its staff, to act as Examiner in these cases to make and issue Findings of Fact, Conclusions of Law and Order, as provided for in Secs. 111.07(5) and 111.70(4)(a), Stats. On November 16 and 26, 2004, the District filed answers denying the allegations. The hearing took place over the course of nine (9) days in Madison, Wisconsin: November 30, December 1, and December 2, 2004, January 11, 12 and 13, March 8 and 9, and June 15, 2005. The hearing was transcribed. The original briefing schedule called for the parties' initial briefs to be submitted by September 9, 2005. That briefing schedule was modified by mutual agreement to allow the parties to engage in further settlement discussions. The parties' settlement efforts culminated in mediation with Commission mediator William Houlihan, but the settlement efforts were unsuccessful. The District's initial brief was filed February 28, 2006. The Association's initial brief was filed August 11, 2006. The parties filed reply briefs by October 16, 2006. On October 26, 2006, the Commission amended its prior order appointing me as Examiner to provide that I have final authority to issue a decision in these cases on behalf of the Commission. Thus, my decision is the final decision of the Wisconsin Employment Relations Commission in these cases. Having considered the record evidence and arguments of the parties, I hereby make and file the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Monona Grove Education Association, hereinafter referred to as the Association, is a labor organization. For most of the times material herein, its president was Steve Wendorff.

2. Monona Grove School District, hereinafter referred to as the District, is a municipal employer which operates a public school system in Monona and Cottage Grove, Wisconsin. Its offices are located at 5301 Monona Drive, Monona, Wisconsin 53716. At all times material herein, Gary Schumacher, Georgiana Giese and David O'Connell were employed by the District as District Superintendent, High School Principal and High School Assistant Principal, respectively.

3. The Association is the exclusive bargaining representative for the District's "certified teaching personnel". "Guidance personnel" are included in the bargaining unit. At all times material herein, Sheri Albers was a guidance counselor at Monona Grove High School (MGHS) and thus was a member of the teacher bargaining unit.

4. The Association and the District have been parties to a series of collective bargaining agreements which govern the wages, hours, and working conditions of the employees in the bargaining unit referenced in Finding 3. The parties' most recent collective bargaining agreement was in effect from July 1, 2003 through June 30, 2005. It contained the following pertinent provisions:

ARTICLE III

MANAGEMENT RIGHTS CLAUSE

3/1/1 The Board's right to operate and manage the school system is recognized, including the determination and direction of the teaching force, the right to plan, direct and control school activities; to schedule classes and assign workloads; to determine teaching methods and subjects to be taught; to maintain the effectiveness of the school system; to determine teacher complement; to create, revise and eliminate positions; to establish and require observance of reasonable rules and regulations; to select teachers; and to discipline and discharge teachers for just cause.

3/1/2 The foregoing enumeration of the functions of the Board shall not be deemed to exclude other functions of the Board not specifically set forth, the Board retaining all functions not otherwise specifically nullified by this Agreement.

...

ARTICLE IX

CONDITIONS OF EMPLOYMENT

...

Section 6: Post Probationary Teachers

9/6/1 No post probationary teacher(s) shall be disciplined or refused renewal of his/her contract without just cause.

...

ARTICLE XIII

GRIEVANCE PROCEDURE

...

Section 4: Miscellaneous

13/4/5 It is agreed and understood by the parties hereto that although the Association may not be a grievant under this procedure nothing herein shall be construed as constituting a waiver of any sort by the Association of its statutory right to independently enforce the terms and conditions of any collective bargaining agreement in effect between it and the District under Section 111.70(3)(a)5 of the Wisconsin Statutes. Further, it is specifically agreed by the parties hereto that the Association may independently seek to resolve such breach of contract claims in proceedings before the Wisconsin Employment Relations Commission and that said Commission is clothed with the necessary jurisdiction to hear and resolve the same.

5. This finding, and Finding 6 through 38, contain background information and provide context for the letter of reprimand and one-day suspension imposed on Albers.

Guidance counselors monitor students' academic progress and help seniors with post-high school planning. They also deal with students' personal issues. Students are assigned to a particular guidance counselor based on their name in the alphabet. Students usually deal with their assigned counselor, but on occasion a student will talk to a counselor who is not their assigned counselor.

For a number of years, there have been three guidance counselors at the high school. Prior to 2001, the three counselors were David Rohde, Sheri Albers and Carol Kiley. Rohde and Albers were full-time and Kiley was part-time until the 2002-2003 school year when she became full-time. Rohde retired in July, 2001. When he retired, he was the coordinator of the guidance department.

6. Being coordinator of the guidance department is an additive. Additives are jobs that are separate from an employee's regular position. Employees are paid extra for additives. If an employee performs an additive, they receive a separate individual contract for that. Additive contracts are not subject to automatic renewal. The District can terminate an employee's additive if they notify the employee by a certain date that the additive is being withdrawn. The date is May 1. If the District does not withdraw the additive by that date, the additive continues with the employee.

7. Sheri Albers began her employment at the high school at the start of the 1995-96 school year. She worked there until her termination in April, 2004. (Note: Her termination is not an issue in this proceeding). In her first year of employment, Albers was evaluated twice by Principal Alan Chittick. Chittick's evaluations of Albers in November, 1995 and January, 1996 were very favorable. In her second year of employment, Albers was evaluated twice by Assistant Principal Georgiana Giese. Giese's evaluations of Albers in November, 1996 and February, 1997 were very favorable. In her third year of employment, Albers was evaluated twice by Principal Giese. (Note: Giese became principal of the high school in July, 1997). Giese's evaluations of Albers in the fall of 1997 and February, 1998 were very favorable. In the February, 1998 evaluation, Giese wrote the following:

Sheri is truly one of the best counselors that I have had the privilege to work with. Her judgment is sound – her thoroughness is impeccable.

The evaluation just referenced was the last one Albers received at the high school. In March, 1999, Giese wrote a letter of recommendation for Albers. It provided in pertinent part:

I am pleased to write this letter of recommendation for Sheri Albers. . . I am a former school counselor so I know specifically what the role of counselor is in the high school setting. I have also known many school counselors throughout my educational career. From my perspective Sheri is one of the best! I say this for the following reasons:

- ❖ Her attention to detail is extraordinary. She compiles data regarding a student that helps in making informed decisions regarding placement in classes or generally helping the student be successful at school.

- ❖ Sheri continues to be a valued staff member as she contributes to our school improvement. She has served on various committees focusing on our school goals. Once again, her attention to detail is impeccable!
- ❖ She is one that I can count on to be pleasant and helpful in all situations.
- ❖ Sheri is a person with high integrity. She is honest, caring, empathetic, and trustworthy – all qualities that are important for any employee.

. . .

8. It is apparent from the letter of recommendation just referenced that Giese thought very highly of Albers in 1999. Giese's view of Albers changed though over time.

9. As noted in Finding 5, Rohde retired from the high school guidance department in July, 2001. Rohde's retirement left Albers as the most senior guidance counselor. After Rohde retired, Albers replaced him as coordinator of the guidance department. Principal Giese picked Albers to fill this additive position.

10. Prior to Rohde's retirement, an interview committee was convened to interview and select his successor. Albers served on that committee along with Guidance Counselor Carol Kiley, School Psychologist Ed O'Connor, Assistant Principal Dave O'Connell, and others. The committee interviewed numerous candidates and ultimately narrowed the list to three finalists. One of the finalists was Steve Fehringer. The majority of the members of the interview committee favored hiring Fehringer, but Albers favored a different candidate. Albers openly expressed opposition to the hiring of Fehringer. She told her fellow committee members that since she was going to be the guidance department coordinator, the new person should be someone acceptable to her. Although Albers vocally opposed the prospect of Fehringer being hired, he was the candidate recommended by the majority of the interview committee. Principal Giese accepted the committee's recommendation and hired Fehringer as a guidance counselor in late May, 2001. Albers was greatly displeased with the decision to hire Fehringer.

11. Shortly after he was hired, Fehringer came into the guidance office to see where he would be working. The day that he came in was a school day, and may have been Senior Class Recognition Day (a day that is a very busy day for Albers). When Albers encountered Fehringer, she said words to the effect of what are you doing here; I'm too busy to deal with you today. Rohde, who was nearby, overheard this. Both Fehringer and Rohde were taken aback by Albers' inhospitable statement.

12. During the summer of 2001, Fehringer came into the guidance office numerous times to work and get a head start on his duties (which did not officially begin until the start of

the 2001-2002 school year). On those occasions, he repeatedly attempted to meet with Albers, but she rebuffed his attempts to meet with her. Since Albers would not meet with him, Fehringer sought and received assistance from Carol Kiley (the other guidance counselor) and Linda Briggs (the secretary in the guidance office).

13. In the spring of 2001, Albers' co-workers in the guidance office observed a dramatic change for the worse in her attitude and behavior in the workplace. In their view, Albers became angry, unpleasant and difficult to work with. Albers did not offer an explanation for her change in workplace behavior. Her co-workers ascribed her change in behavior to the hiring of Fehringer.

14. Whether her change in behavior was attributable to Fehringer's hiring or not, Albers' co-workers could tell that she detested Fehringer because they saw that she almost never interacted civilly, cordially, positively or collegially with him. Conversely, they saw that Fehringer acted civilly to Albers. Albers' co-workers observed Albers disparage, discredit and embarrass Fehringer in front of teachers, students and parents on a continuous basis. When Albers communicated with Fehringer, it was not face to face; it was by e-mail even though their offices were close to one another. Her e-mails to him were civil in tone. Her face to face encounters with Fehringer were not. Albers did not speak to Fehringer unless he directly asked her a question, whereupon her reply, if there was one, was curt, abrupt, demeaning and/or rude. At meetings, she was condescending, patronizing and cold to Fehringer in front of those present. Fehringer knew that Albers opposed his being hired because she told him so. The tense interaction between Albers and Fehringer negatively affected everyone who worked in the student services department. Albers' co-workers asked her to get along with Fehringer, but their requests did not change Albers' behavior toward Fehringer.

15. In August, 2001, a new student services department was created at the high school. The (old) guidance department was merged with the (new) student services department. Albers opposed the creation of a student services department for a variety of reasons which need not be identified here. Despite her opposition to the creation of the (new) department, Albers was given the additive of being the department's coordinator.

16. On August 22, 2001, a meeting was held to realign responsibilities in the new student services department. During the course of that meeting, Albers became upset with co-worker Kiley and threw what Giese described as a temper tantrum. According to Giese, her mouth dropped in shock when this happened.

17. On August 24, 2001, Giese held a meeting with Albers and discussed various topics. The topics addressed in that meeting can be categorized as follows: one topic was the realignment of responsibilities in the new student services department (i.e. the same topic that was addressed at the August 22, 2001 meeting). The other topic was Giese's concerns with

Albers' job performance, specifically her relationship and interactions with her co-workers. At the end of the meeting, Giese asked Albers to stay so they could talk about her outburst during the August 22 meeting and try to find out what was causing this behavior (i.e. the temper tantrum), but Albers declined to talk further. Giese subsequently memorialized what happened at this meeting and the August 22, 2001 meeting in a memo dated September 6, 2001. The portion of the memo dealing with Albers' relationship and interactions with her co-workers is as follows:

I began the meeting by indicating that I have valued your work and your friendship over the past five years. You have been dedicated and concerned, taking your work very seriously. I noted that over the five years that you have been for the most part, very positive. I indicated that I have noticed a distinct change in your attitude and behavior since May, 2001. You have seemed sad, preoccupied, or angry. I asked if there is something that I should be aware of that would account for your mood change.

...

I once again expressed concern about how you have been interacting with your colleagues. Again, you stated that because of the workload that you did not have time to visit with them. I indicated that many of us have heavy workloads. Despite this, I believe that all of us need to take time to be cordial with our colleagues and interact in a positive, professional manner, even when we may disagree with someone.

While I appreciate your dedication to students and attention to detail, I remain extremely concerned about your interactions with your colleagues. I have observed you being unprofessional and discourteous, especially during the past five months. It is my expectation that all employees treat one another professionally, respectfully, be courteous and cordial, and welcome new employees. This is the expectation even when we are busy and have many tasks to accomplish. One of the responsibilities of Department Coordinator is leadership. This is much easier if the coordinator has developed rapport and trust with the people within the department. I believe that this is something that you will need to work especially hard on because you have had a "rocky start" with your department members.

During the past five years, I have seen you be very positive, engaged, and motivated. During the first week of school, I also saw you interacting with some of the staff members at MGHS in very appropriate and meaningful ways. I believe that you truly have the ability to be an outstanding leader if you choose to be.

...

18. On December 14, 2001, Giese sent the following memo to Albers:

...

Re: Meeting to discuss concerns
December 14, 2001

The purpose of this memo is to inform you that I need to meet with you on Monday, December 17, 2001, at the beginning of fourth period in order to discuss continuing concerns related to your job performance as a guidance counselor and a department coordinator at Monona Grove High School. Renee Tennant and Dave O'Connell will also be present at the meeting. You may bring an MGEA union representative if you would like.

I met with you in August and related concerns about your job performance. This was an informal discussion with Steve Wendorff present. At that time, I outlined my concerns regarding your job performance especially in regards to developing positive relationships with your colleagues. A copy of the meeting summary is attached to this memo. During the time since that meeting, I have not seen any improvement. Prior to May, 2001, Renee, Dave and I had been impressed by the quality of your work. However, since that time, we have noted significant, negative changes that are impacting not only your work but also how the Student Services Department is functioning at Monona Grove High School. This ultimately is negatively impacting our students. Specific information and examples will be shared with you when we meet. This meeting will be considered the beginning of the awareness process in order to provide you with specific concerns as well as the development on an improvement plan.

19. On December 16, 2001, Giese sent an e-mail to Association officers Annette Eisman and Steve Wendorff about the situation in the student services department. Therein, Giese opined as follows:

Unfortunately, the situation in the Student Services department has become increasing worse because of the lack of communication on the part of Sheri. In fact, I am truly disappointed in her ongoing unprofessional behavior with her colleagues. It is negatively impacting the ability of the department to work with students.

Dave O'Connell, Renee Tennant, and I will be meeting with her on Monday at the beginning of 4th period to discuss what we have observed and our expectations for her job performance as a department coordinator and a guidance counselor at MGHS.

If she asks you, you are welcome to join us. I had truly hoped that after our informal meeting with her in August that she would make the necessary changes in order to be successful at MGHS.

20. On December 17, 2001, Giese held a meeting with Albers wherein Giese expressed her concerns to Albers about Albers' job performance, specifically her relationship

and interactions with her co-workers. During that meeting, Giese counseled Albers that it was the Employer's expectation that Albers behave professionally, respectfully and cordially with her co-workers. Giese also urged Albers to communicate more with her co-workers than she had been. Giese apparently memorialized what happened at that meeting in a memo dated December 20, 2001, but that memo is not in the record.

21. On February 14, 2002, administration officials met with Albers again to address their concerns regarding Albers' workplace conduct and job performance. Nine people attended this meeting including the Association's and the District's attorneys. The stated purpose of the meeting was "to counsel [Albers] on the appropriate professional behaviors in [her] role of guidance counselor and guidance department chairperson." The meeting commenced with Albers being informed that the written documentation from the meetings held on August 24, 2001 and December 20, 2001 would not go into her (Albers') personnel file. Albers was advised that those two meetings were for the purpose of expressing informally Giese's concerns about Albers' relationship and interactions with her co-workers. (Note: The latter date just referenced [i.e. December 20, 2001] was apparently a mistaken reference to the meeting held December 17, 2001 which, in turn, was apparently memorialized on December 20, 2001). The meeting then continued for about an hour and a half. During that time Albers was counseled: to improve her communication with her co-workers and make it more frequent; to make decisions affecting the department in a collaborative manner; to treat co-workers professionally, collegially and respectfully; to modify her verbal and non-verbal messages with/to her co-workers so they are less harsh, cold and accusatory; and to arrive at work by 7:45 a.m. Additionally, Albers was told that mediator Harry Webne-Behrman would be conducting mediation with the members of the guidance department. Following the meeting, Giese summarized the substance of the meeting in a three page memo to Albers dated February 17, 2002. It provided in pertinent part:

Mike Julka indicated that the documentation from the prior two meetings (August 24, 2001 and December 20, 2001) would not go into your personnel file. These meetings took place so that concerns could be expressed informally regarding your job performance with hopes of remediation. Our concerns focused specifically on your relationship and interactions with your colleagues.

...

Ms. Tennant, Mr. O'Connell, Mr. Briesch, and I then expressed deep concern regarding the communication and leadership components of your jobs. Communication with colleagues remains tense, uncollegial, and infrequent, even after we have informally discussed these concerns on August 24, 2001, and Dec. 20, 2001 with you. This style of communication negatively impacts on your ability to work with and to lead the other guidance counselors. Communication with the counselors and other members of the Student Services department must be professional and frequent. It is imperative that you discuss important matters with your colleagues on a timely basis.

I indicated the importance of regular meetings with Steve Fehringer and Carol Kiley with meeting agendas and minutes. I requested that you meet at least twice per week for at least fifteen minutes to discuss relevant information. (Note: Please note meeting guidelines as established by the department coordinators in November, 2001). I am currently formally aware of only two meetings that have taken place during this school year. If necessary, it is imperative that you meet with Steve and Carol on an as needed basis.

It is the expectation that you conduct frequent meetings with the guidance department with the appropriate documentation. It is also expected that all interactions with your colleagues be professional, kind, collegial, and positive even when there is disagreement with a staff member. **Verbal and nonverbal messages, which are harsh, cold, and accusatory, are simply unacceptable.** Under your leadership, it is also expected that decisions be made in a collaborative manner with Mr. Fehringer and Ms. Kiley that are guidance department-based decisions. On August 24, 2001 and December 20, 2001, I gave you several examples of encounters where your nonverbal and verbal communication has been extremely unsatisfactory. This has continued to be a concern even after repeated requests for improvement. (Note: **Bold** in original).

Mr. Briesch, Mr. O'Connell, Ms. Tennant and I stated that we have seen you act professionally and treat others respectfully over the years that we have worked with you. We feel that this is something that you can do if you choose to do so. We have also witnessed you treat your colleagues in the Guidance Department and Student Services Department unprofessionally on several occasions.

Mr. Briesch gave a specific example of a meeting that took place in your office after school on Feb. 6, 2002. You were present at the meeting as well as Mr. Breisch and Steve Fehringer. Mr. Briesch stated that your tone of voice was harsh, sharp and accusatory. He stated that it felt to him like an interrogation instead of a collegial conversation regarding the upcoming WKCE testing. Later in the week, he talked to me about how uncomfortable he was with the meeting. He stated that he should have confronted you on the behavior at the time. He also stated that even though you were very unprofessional and derogatory in your interchange with Steve Fehringer, that Steve did not respond in the same manner to you. You stated that you thought you could ask him the questions that you needed to ask so that you could get the information regarding the WKCE testing. Mr. Briesch indicated that indeed you could ask the questions, but not in the manner that you did. You stated that since you had not met to discuss these issues, you needed to ask Mr. Fehringer. Mr. Briesch indicated that this is the reason that we are requesting that you have at least two meetings a week to discuss important information.

Mr. Briesch also recounted a meeting that took place in the fall in Mr. Schumacher's office regarding the district equity report. He stated that he was uncomfortable with you nonverbal communication towards Steve Fehringer. He noted a nonverbal coldness and separateness that resulted in what was perceived as inappropriate conduct. Following the meeting, Ann Schroeder asked, "What is going on with Sheri?" Mr. Breisch responded to her that he did not know.

...

I told you that Mr. Harry Webne-Behrman would be conducting mediation with the following people: Sheri Albers, Steve Fehringer, Carol Kiley, Ed O'Connor, Mike Roth, Ilana Strauch,

and Linda Briggs. He will meet individually for 30 minutes with each of the participants by Feb. 26, 2002. A mediation session(s) will be scheduled following the individual interviews. It

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is my expectation that everyone participates willingly and follows Mr. Webne-Behrman's recommendations in order to make the Guidance/Student Services Department more effective.

I also reminded you that the contract states that the workday begins at 7:45 a.m. You often arrive at 8:00 a.m. or later. Students have requested to see you and you have not been present. This is a time when students can meet with you. Please plan to arrive by 7:45 a.m.

In summary, I expect the following:

- All communication with the counselors and members of the Student Services department must be professional, timely, collegial, and positive even when in disagreement with a colleague.
- You must meet at least two times per week with Carol Kiley and Steve Fehringer for at least fifteen minutes with the appropriate documentation and follow the school meeting guidelines.
- If necessary, meet with Steve and Carol more frequently.
- Under your leadership, it is expected that decisions be made in a collaborative manner with Mr. Fehringer and Ms. Kiley that are guidance department-decisions.
- It is important that you discuss important matters with your colleagues on a timely basis.
- Verbal and nonverbal messages which are harsh, cold, and accusatory are unacceptable.
- Treat all people respectfully.

...

- Willingly participate in the mediation training that has been set with Mr. Webne-Behrman and follow his recommendations.
- Be at school by 7:45 a.m.

...

22. Toward the end of the 2001-2002 school year, School Psychologist Ed O'Connor, who was Fehringer's mentor and was well aware of the conflict in the Albers-Fehringer relationship, talked to both administrators and union officials about it (i.e. the conflict between Albers and Fehringer). He told Giese that Albers' negative attitude toward Fehringer and her harsh treatment of him had not changed or mellowed during the year; that things were not getting better between Albers and Fehringer; that he feared for Fehringer's well-being; and that the problems between those two (Albers and Fehringer) were spilling over

and having an adverse impact on the entire department. O'Connor told then-Association President Annette Eisman that Albers' behavior toward Fehringer was causing problems within the department and was regarded by her co-workers as being inappropriate and unprofessional.

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23. Sometime after May 1, 2002 (exactly when is unclear), the District eliminated Albers' additive as the coordinator of the student services department. The Association subsequently filed a grievance which contended that the elimination of Albers' additive did not occur within the time frame referenced in the collective bargaining agreement for doing so. The School Board subsequently upheld the Association's grievance. After that happened, the District paid Albers for the coordinator additive for the 2002-2003 school year, even though she did not assume the coordinator duties. During that school year, Assistant Principal O'Connell served as the de facto coordinator of the department.

24. In mid-2002, the District contracted with mediator Harry Webne-Behrman to conduct mediation with the staff in the student services department. While the mediator's original plan was to conduct mediation with the whole department, that did not occur because some department employees had no interest in participating in mediation with Albers. Their position was that they had done all they could do to try to resolve the situation with Albers, without success. That July, the mediator conducted individual mediation sessions between Giese and Albers, and Fehringer and Albers. The mediation involving Giese and Albers resulted in a written document which contained the caption "Statement of Understandings Reached at Meeting of July 25, 2002". That document listed six "understandings". Item number 4 was as follows:

4. If individual staff members raise concerns about Sheri with Georgi, she will redirect them to speak specifically and directly with Sheri. If there are issues that are unresolved as a result, Sheri and those staff members will both go to Georgi to address the situation.

The mediation between Fehringer and Albers resulted in an impasse with no written document summarizing any "understandings". They did agree though to try to peacefully co-exist with each other.

25. At the beginning of the 2002-2003 school year, School Psychologist O'Connor conferred with Superintendent Schumacher about Albers' ongoing negative behavior toward Fehringer, and expressed concern that the situation between them was not being resolved and was adversely affecting the department. O'Connor also spoke with Giese about six to eight times about the situation involving Albers and Fehringer.

26. About the same time, Association President Steve Wendorff talked several times with administrators Schumacher and Giese about Albers' interactions with her co-workers. He did so at the request of Kiley, Hibner and Fehringer (all co-workers of Albers in the student services department). According to Wendorff, his intent in talking to administrators about this

matter was to persuade them (i.e. the administrators) to not use disciplinary action to try to solve the problem. Wendorff recommended mediation, which had been used in response to an ongoing dispute in his department (the English department). He also recommended a specific

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mediator. Giese subsequently contacted that mediator, but after that mediator learned that mediation had already been conducted by mediator Webne-Behrman, the (second) mediator declined to get involved.

27. On December 2, 2002, Giese met with Albers and again expressed concern with Albers' job performance and her ongoing negative interactions with her co-workers. At that meeting, Giese placed Albers on the "Awareness Level" of Phase III of the District's professional development model. The District's professional development manual states that "the purpose of Phase III is to provide organizational support and assistance to teachers who are not meeting the district's teaching standards." Phase III consists of three levels: the first is the Awareness Level, the second is the Assistance Level and the third is the Discipline Level. An employee can be moved (by the District) from the Awareness Level to the Discipline Level without going through the Assistance Level. Giese told Albers that she (Albers) was being placed at the "Awareness Level" because of Giese's concerns with Albers' job performance and her ongoing negative interactions with her co-workers. The December 2, 2002 Awareness Level document describes the general concern with Albers' job performance as follows:

Since mid-August, 2001, many meetings have taken place with Sheri Albers to discuss concerns related to her job performance. The most recent informal meeting took place on Nov. 21st at 10:30 a.m. in the principal's office. The administration has tried to make Sheri aware of specific concerns. Signs of improvement will be visible for a limited time. However, the changes that have been requested have not been sustained over time.

A formal meeting scheduled to discuss concerns with Sheri Albers job performance took place at noon on December 2, 2002 in the Main Office at MGHS. This meeting was necessary because the numerous informal discussions beginning in August, 2001 until the present regarding specific job performance concerns have not been resolved. This is also in accordance with the Monona Grove Master agreement 9/6/3.

The December 2, 2002 Awareness Level document describes the specific concern with Albers' job performance as follows:

The following areas are of continued grave concern:

Domain 4: Professional Responsibilities

- **Relationships with colleagues:** Teacher's relationships with colleagues are negative or self-serving. UNSATISFACTORY

MGHS staff members continue to report that Sheri's negative attitude, poor communication, and hostility have created a difficult, oppressive working environment. Conversations are often combative and adversarial. Sheri treats people differently dependent upon the situation and who is involved in the discussion. Sheri tries to undermine the credibility and the work of others.

Sheri frequently is disrespectful at meetings by bringing other work (one of the MGHS meeting rules is not to do other work at meetings), arriving late, putting her head down, and engaging in disrespectful conversations. Colleagues express continued frustration because they feel she withholds important

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information. Colleagues have expressed concern regarding her vindictive behaviors. Intimidation and lack of trust are the primary reasons colleagues feel uncomfortable talking to Sheri regarding their concerns or any other issues.

The administration has also observed numerous occasions where Sheri has treated her colleagues disrespectfully and in an unprofessional manner.

- **Decision Making:** Teacher makes decisions based on self-serving interests.
UNSATISFACTORY

Sheri does not maintain an open mind. She is extremely critical of others' suggestions, often advocating and promoting her own ideas. Colleagues have reported vindictive behaviors when they speak in opposition to her suggestions. She rarely shows support for someone else's idea.

The administration has witnessed numerous occasions when Sheri is resisting the opinions and ideas of others, trying to force her own ideas upon the group.

The December 2, 2002 Awareness Level document then specifies the following plan of correction for Albers:

Many hours of meetings and discussions took place during the 2001-2002 school year as well as lengthy mediation in the workplace. The expectation was made clear at that time that Sheri was to treat others respectfully at all times.

This expectation remains. Immediately, Sheri is to treat all colleagues with utmost respect even when in disagreement. When she is offering an opinion or asked to respond to a question, it should be done without sarcasm or vindictiveness. At times, Sheri treats some other people with respect, is positive, and collaborative. But many times, Sheri is disrespectful to her colleagues and others, is negative, and pushes her views to the exclusion of all others. Sheri needs to treat everyone respectfully and be collaborative with her colleagues. (Note: Underline in original).

In addition, Sheri will not try to garner support by demeaning coworkers (including administration) to MGSD staff, community members, and students.

Sheri will be a positive, active participant in all meetings abiding by the established meeting guidelines.

Sheri will establish a positive, open communication style with her colleagues.

Sheri will work to regain the trust of her colleagues.

Sheri is requested to seek outside support if necessary in order to effectively control her emotions at the work site.

We will meet to re-evaluate Sheri's work performance in these areas on January 13, 2003.

The expectation is that while Sheri Albers is an employee in the Monona Grove School District, that she treats each person with respect at all times. Failure to follow this expectation is in itself is reason to move to the Assistance Level or the Disciplinary Level of Phase III.

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28. In January, 2003, Giese scheduled two meetings with Albers and some of her (Albers') co-workers. Giese did not invite Fehringer to either meeting because Giese knew that Fehringer's presence would only inflame Albers. Thus, Fehringer did not attend either meeting. At one meeting, O'Connor and Hibner talked with Albers about her workplace behavior. At the other meeting, Strauch (the school social worker who is part of the student services department) and Kiley talked with Albers about her workplace behavior. Whatever healing or improvement occurred between Albers and her co-workers as a result of what was said during those meetings did not last.

29. About the same time, O'Connor met with Association President Wendorff and shared his experiences with Wendorff about the interactions he had seen between Albers and Fehringer. O'Connor told Wendorff that Albers did not treat Fehringer with professional courtesy. After discussing the matter, it was O'Connor's view that Wendorff felt that Giese had an axe to grind with Albers.

30. In the spring of 2003, Kiley, Hibner and Briggs sought assistance from the Association relative to Albers' interactions with them. The Association representatives essentially told them in response that the Association was not empowered to inject itself into employee versus employee disputes; that was management's job.

31. In the spring of 2003, Albers' contempt for Fehringer continued. An example follows.

Albers was the scholarship coordinator. In that capacity she chaired a scholarship committee that met each May and decided which students would be awarded local scholarships. Fehringer did not participate on that scholarship committee in 2002 (which was his first year of employment). Sometime afterwards, Fehringer told Rohde (the retired guidance counselor) that Albers had not included him on the scholarship committee in 2002. Rohde expressed surprise at Fehringer's exclusion (from that committee) and told him (Fehringer) that he should participate on that committee. Based on Rohde's advice, Fehringer approached Albers in the spring of 2003 and asked to be included on that year's scholarship committee. Albers rebuffed him. Her stated reason for doing so (i.e. not letting him serve on the scholarship committee) was that there was not a binder for him to use during the meeting. The binder that Albers was referring to is a binder containing all the information that the committee considers in deciding how to allocate the local scholarships. Albers was in charge of preparing the binders. When she told Fehringer this (i.e. that there was no binder for him to use), the committee meeting was two weeks away. Albers averred that she did not have enough time to make another

binder. Albers subsequently notified the members of the scholarship committee when it was going to meet. She did not notify Fehringer. On the date that the scholarship committee was to meet, Fehringer learned of the meeting just minutes before it started. He went to Albers and told her he was going to attend the meeting. Albers initially said he could not attend. She then reversed herself and said he could sit in on the meeting and observe, but could not

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participate because he did not have a binder. Fehringer attended the meeting. While he was there, Fehringer shared O'Connell's binder with him. Aside from the binder reason, Albers averred that another reason she would not allow Fehringer to participate on the scholarship committee was because she had already designated Kiley as the one representative from the guidance department, and all of the academic departments had just one representative. According to Kiley though, all of the guidance counselors should be included on the scholarship committee because of the nature of their duties. One of the job duties listed on the guidance counselor's job description is advising students on scholarship opportunities. All counselors are responsible for knowing about scholarships so they can properly advise the students who are assigned to them.

32. Sheila Hibner has been the school-to-work coordinator at the high school since the 2002-2003 school year. Prior to that, she taught business and marketing at the high school for 18 years. The school-to-work coordinator is responsible for those programs that connect students to post-high school education or directly to the work force, including youth apprenticeship programs. Hibner relies on guidance counselors to refer students to her when appropriate. Hibner did not work in proximity to Albers prior to the 2002-2003 school year. Hibner started attending guidance department meetings at the beginning of the 2002-2003 school year. Those meetings were often held weekly. The purpose of these meetings was to update all of the counselors on college deadlines, admissions, scholarship information and incoming mail. Hibner went to Giese frequently in the 2002-2003 school year to tell her that things in the guidance department were going poorly. Giese responded by telling Hibner to go and talk directly to Albers.

33. In early May, 2003, O'Connor, Kiley, Strauch, Fehringer and Hibner collectively went to Giese and complained about Albers. Giese advised them to take up their concerns directly with Albers or to work through the union.

34. On May 6, 2003, Hibner called Superintendent Schumacher and asked him to come meet with the employees in the student services department. He did. When he arrived, five employees from that department were there: Hibner, O'Connor, Strauch, Kiley and Briggs. Albers and Fehringer were not there. Those present then essentially unloaded on Schumacher about Albers. They told him that Albers' general uncooperativeness had created an intolerable work environment; that they could not take it anymore; that it was dysfunctional and ugly in there (meaning the student services department); and that the situation with Albers was making them sick. During the course of the meeting, all five employees requested transfers out of the high school. Schumacher responded that the District did not have openings

for them at other school buildings at that time.

35. In September, 2003, Giese and O'Connell met with Albers and Association representatives and informed them that she (Albers) would remain at the Awareness Level of Phase III of the District's professional development model.

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36. On September 9, 2003, the guidance counselors had a meeting which was probably their first meeting of the school year. At the start of the meeting Albers brought a box in and set it (i.e. the box) in the middle of the table. The box contained mail that was stacked several feet high. All of the mail was unopened. Albers said she was no longer going to be opening the department's mail because it was not her job function any longer because she was not the department coordinator anymore. The other employees discussed who would open the mail and ultimately decided to rotate that task among themselves.

37. On September 10, 2003, Fehringer submitted a document entitled "Work Place Environment Report" to the administration. The first part of that document referenced matters which have already been identified above, so that portion of the document need not be repeated here. The remainder of the document provides as follows:

At present, it is my opinion that the 2003-04 school year has started off with a tremendous amount of negativity and unprofessional behavior on Mrs. Albers part. From this point forward I will once again begin to document these issues, and forward them to administration. This task is unpleasant and cumbersome. Never the less, many attempts have been made to resolve this issue and the advice from the MGEA has not resulted in any observable behavioral changes on Mrs. Albers part. The first two items are significant issues that were left unreported from the 2002-03 school year.

Item #1

...

Item #2

At the beginning of the 2002-03 school year approximately 23% of the student body had 1 course (out of an average of 14 course requests) that would not schedule due to a scheduling conflict. As I met with these students they were naturally disappointed. Several did not understand why all of their course requests did not schedule and apparently sought Mrs. Albers out (or perhaps Mrs. Albers sought them out) in order to obtain an explanation. Mrs. Albers had each of these individuals change Counselors from me to her. She encouraged the parents of these students to write a letter of complaint to administration and request a Counselor change. Many of these letters that came through mention a scheduling conflict as an issue. It is my opinion that Mrs. Albers convinced these students that my inexperience lead to this dilemma. As a matter of fact she told me "I did not understand the community standards and made a terrible mistake in building the master schedule." This could not be further from the truth. Although I cannot prove where the rumors started, many teachers confirm that they heard the master schedule was poorly done because of my incompetence. I mention this issue because it was the origin of students desiring Counselor changes. These requests have continued in the 2003-04 school year. There have been approximately 15 requests in three years. Many of these

requests are unfounded but supported by Mrs. Albers. Mrs. Albers attended a Badger School Counselors Conference in early April 2003. An item on the agenda at this meeting was “how to handle students who wish to change Counselors.” This issue is not uncommon in Guidance. The advice from the Counselors present was – “request to Switch Counselors – most schools do not have a policy or procedure for students/parents wishing to switch or see different counselors. They basically “go with the flow” and the message to all was “don’t take it personally.” Concerns were voiced about students who wanted to switch because they weren’t getting their way

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(schedule change, etc.). When Mrs. Albers returned from this conference she reported in a subsequent meeting that she would continue to encourage parents and students to formally request Counselor changes by writing letters to administration. This goes against the practice that other area schools abide by and seems to serve Mrs. Albers interests in pointing out other Counselors deficiencies for her own purposes. There have been several students from Mrs. Albers caseload that refuse to see her. The complaints from these students and their parents range from Mrs. Albers not returning phone calls, to their perception of her ambivalence toward the son or daughter’s needs. I have not encouraged these students and parents to write letters to administration. Instead I have worked with them as needed and advised them to contact Mrs. Albers directly with their concerns. I currently work with two students from Mrs. Albers’ caseload and have worked with three of her former seniors. It is unethical to use students and parents for their own professional promotion and I will steadfastly refuse to engage in this practice regardless of the circumstances. I will formally request a discussion regarding “changing Counselors” be included as an agenda item in a meeting. My suggestion will be – any student or parent requesting to change Counselors should first be directed to their assigned Counselor in an attempt to work out any difficulty they may be experiencing.

Item #3

A Guidance Counselors meeting took place on 9-9-03. Mrs. Albers’ demeanor during this entire meeting was cold and insensitive. In this meeting Mrs. Albers indicated that she would no longer be responsible for the duties of the Guidance Coordinator as she, as well as the MGEA, advised the team not to assume these responsibilities. An item of concern was getting college information to Lori Midthun for publication in the school newsletter (which, in the past, was a function of the Coordinator). Mrs. Albers suggested this task be left undone. The other members in the meeting rejected this proposal and insisted decided we would collectively pick up the tasks that formerly fell under the coordinator’s responsibilities to insure the students were properly served. It is unethical to purposefully ignore tasks that may impact students in order to promote an individual, group, or political agenda.

38. On September 26, 2003, administrators met with Albers and again expressed concern with Albers’ ongoing negative relationship and interactions with her co-workers. She was counseled to interact positively and professionally with them.

39. This finding, and Findings 40 through 47, deal with the letter of reprimand (Case 95).

In October, 2003, Albers went on a medical leave due to work-related stress for about two weeks. While she was off work on this leave of absence, Association representative Annette Eisman told Giese that no one was to contact Albers at home regarding any work-

related matters. Giese, in turn, notified the guidance counselors of Eisman's directive. The guidance counselors complied with Eisman's directive and had no contact with Albers during that time period. As a result, Albers' co-workers had to hold their work-related questions for Albers until she returned to work.

40. While Albers was gone from work, the remaining guidance counselors decided to establish the agenda for the next guidance department staff meeting differently than what had

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previously been done. They decided to tape a sheet of paper to the wall in the guidance office and anyone who wanted could write an agenda item on the sheet for consideration at the meeting. They called this a "collaborative agenda". This approach for setting the agenda for a staff meeting was new and had not been used before. When Albers was department coordinator, she decided what items would be on the agenda. She prepared the agenda and had it typed up in advance of the meeting. There were a half dozen items on the agenda for the October 21, 2003 staff meeting. Two of the items were scholarship matters and changing student/counselor assignments.

41. Albers' first day back to work was Monday, October 20, 2003. Upon her return to work, she e-mailed the entire school staff that she was back to work and would be working half-days for the remainder of the week. She got a number of welcome back messages in response. None of the welcome back messages were from her co-workers in the student services department or administrators. When Albers was in the office on October 20, she did not see the piece of paper on the wall in the guidance office listing the agenda items for the next day's staff meeting, nor did any of her co-workers bring it to her attention.

42. The guidance department had a staff meeting on Tuesday, October 21, 2003. (Note: Although the guidance department had been subsumed into the student services department for organizational purposes back in August, 2001, the (old) guidance department continued to have staff meetings separate from the student services department). Six people attended that meeting: Albers, Kiley, Fehringer, Hibner, Briggs and Assistant Principal O'Connell. The reason O'Connell was at the meeting was to provide an "administrative presence". He was well aware of the conflict in the student services department and, as noted in Finding 23, had served as the de facto coordinator of the department during the 2002-2003 school year when the department did not have an official coordinator.

43. This finding deals with what happened at the October 21, 2003 meeting. It begins with an overview of the entire meeting. Following the overview, specific details are identified.

According to those in attendance, it was an unpleasant and difficult meeting. The conflict between Albers and her co-workers was palpable. Albers blamed her co-workers for this conflict, while her co-workers blamed Albers. As Albers saw it, her co-workers ganged up on her, attacked and harassed her, and interrogated her relentlessly during the meeting.

That is not how her co-workers saw it. They felt that Albers attacked them, was rude and unprofessional, and was uncooperative in that she would not give them answers to questions that they asked her about. Albers felt put upon, and told her co-workers that repeatedly during the meeting. She asked them to please consider the fact that she had just returned from a two-week absence and had not caught up. During the meeting, Albers was asked questions by her co-workers. She did not answer some of them. Her stated reason for not answering questions was that she did not know the issue was going to be raised (during the meeting), and she had

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not had a chance to prepare. When Albers did speak during the meeting, she raised her voice and used a sarcastic tone, but did not use profanity. Her facial and hand gestures revealed to all those present that she was angry, agitated, frustrated and irritated. She shuffled through papers while people were speaking.

At the meeting's outset, the agenda was distributed. As noted in Finding 40, the agenda for this meeting was done differently than what had previously been done. Albers did not like the new agenda format.

The first topic addressed at the meeting was Financial Aid Night, an annual event sponsored by the guidance department for graduating seniors and their parents which is intended to disseminate information about college financial aid opportunities. Albers was in charge of the Financial Aid Night program. Financial Aid Night is historically held in January, but the date varied from year to year: in 2002 it was on January 17; in 2003 it was on January 22. Fehringer opened the meeting by telling Albers that while she was on leave, a woman from U.S. Bank had come by to offer her services for Financial Aid Night. He then asked her if there was a tentative date yet (for that event). Albers did not answer the question or give any kind of date. Instead, she tersely told her co-workers that after a date was set, it would be printed in the (school) newsletter. This was a frustrating and unacceptable response to Albers' co-workers who felt they often had to extrapolate work-related information from Albers because she would not share it with them. They did not want to wait until the newsletter was published to learn when the event was to be held; they wanted more notice than that so that if people inquired about the meeting's date, they could respond. Albers' co-workers indicated to her that all they were looking for was either a tentative date, or a list of dates that were being considered (for Financial Aid Night), or dates when she expected to hear back from presenters regarding their available dates. Albers did not share any information about the foregoing matters or provide any dates. As a result, this portion of the meeting ended without Albers' co-workers having any idea when Financial Aid Night was going to be in January, 2004.

From there, the topic shifted to scholarship matters. Albers did not want to talk about the topic and said so, specifically saying she did not want to deal with it. When the others tried to talk about scholarships, Albers was resistant to do so. Her co-workers viewed Albers' response on this matter as very uncooperative.

Another topic addressed at that meeting related to the process for changing student/counselor assignments. This was a topic that had been simmering for some time between Fehringer and Albers. The background to this topic is that a substantial number of parents had recently requested, in writing, that the administration change their child's counselor from Fehringer to Albers. Fehringer, Giese and O'Connell suspected that Albers was causing or instigating these requests by parents that Fehringer be removed as their child's counselor and replaced by Albers. Albers had previously denied she was causing or instigating

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these requests. Fehringer raised this topic at the meeting. He averred that the reason he did so was to try to get a department-wide consensus for dealing with these student transfer requests. During the meeting, Fehringer indicated he favored treating these transfer requests informally, and allowing a student to consult with any of the guidance counselors with whom the student felt most comfortable, while keeping the existing formal assignment intact. Albers indicated she favored a formal approach which involved having the student make a written request to the administration to officially change the assignment from one counselor to another. When Fehringer asked for a vote on how to deal with these student/counselor transfer requests, Albers said she abstained. When her co-workers asked what that statement meant, Albers replied that she had no comment. After Albers said that, O'Connell concluded that the contentious topic of student/counselor changes was not going to be resolved, so he tabled the topic.

Later, when Hibner was speaking about an unidentified topic, Albers shuffled her papers and collected her things as if she were leaving. Hibner told Albers that she found Albers' activity of shuffling papers and seeming preoccupied to be disrespectful. Albers replied that she felt the group had disrespected her the entire meeting. Fehringer replied that they had not. Albers then stood up, announced that she had had enough, and left the room. She considered the meeting over. Her co-workers did not though, as there were other topics still to be addressed on the agenda.

44. Following the meeting, Fehringer, Kiley and Hibner met by themselves and decided to document what had just happened at their staff meeting. Their reason for doing so was that they felt Albers' behavior at the meeting was rude and unprofessional, and they wanted Giese to know about it. They subsequently filed written complaints with Giese about Albers' conduct at the meeting. Giese did not solicit these complaints. Fehringer's written complaint provided in pertinent part:

Report regarding workplace environment.

The purpose of this communication is to document another incident of Mrs. Albers unprofessional workplace behavior.

Present at meeting: Dave O'Connell, Steve Fehringer, Sheila Hibner, Sheri Albers, Carol Kiley

Today in our third period Guidance meeting the staff (mentioned above) attempted to discuss a number of issues relevant to our positions. The agenda included scholarships, changing counselors, youth options, and several other guidance related topics.

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Mrs. Alber's became rude, and defensive very quickly. Her tone of voice and facial expressions were disrespectful. She raised her voice several times, interrupted other staff members frequently, and refused to participate in a discussion relevant to the function of our department. Sheila Hibner will be forwarding a more detailed account of this meeting noting the specific comments Mrs. Albers made in the meeting. These incidents hinder our ability to gain information and work effectively with students.

Kiley's written complaint provided in pertinent part:

This is my perspective on the guidance meeting we had on October 21, 3rd hour.

Since Sheri's medical leave of absence Sheila, Steve, Dave and I agreed to write agenda items on a posting outside of the guidance office for discussion at the next week's meeting. Using our collaborative agenda we began the meeting with the intention of bringing Sheri up-to-date on the issues that seemed to be most imminent to us. (i.e. scholarship info, youth options questions, HOBY vs. Wisconsin Leadership Conference, using '2004' to email seniors relevant senior information, parent volunteer projects in the career center, etc.) Steve began the discussion about the topic of scholarship information. He asked Sheri a few basic questions about the specifics of scholarship with the intention of becoming more informed about all of its ins and outs. (broad-based to specific information seeking) Sheri became very upset by this, despite Steve's attempt to ask pertinent questions with an attitude of professional respect. Sheri commented that we were being inconsiderate of her two week absence, that she had a lot to do and to please honor that she had a lot to catch up on. Steve tried to reassure Sheri that we were not putting pressure on her but that these questions were relevant to us doing our job at a higher level and that we were simply seeking her expertise. I did not feel like we were asking for immediate resolution to all questions but that these were items that we needed to address now or in the near future. She said she was sick of us not recognizing that she does share information. Dave responded with 'that is not what he was hearing anyone say.' Sheri said that these were accusations made in the past and she felt this was another example of that. I do not want to address the issues of the past and why that perception may exist, yet emphasize that I did not witness that accusation

overtly or covertly at our meeting on October 21. Sheri became increasingly upset when the topic 'changing counselors' came up. When I asked if we could come to resolution on this it was clear that Sheri's emotional distress impeded our ability to do so. (angry, frustrated gestures & tone) Dave suggested we table the discussion on that topic. Sheila followed up with few other items and we all left the meeting shaken. Sadly, it was upsetting. It also makes for an intolerable work environment.

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Hibner's written complaint provided as follows:

A weekly guidance department meeting took place on Tuesday October 21 during 3rd period (sic). To be quite frank, it was the most awful meeting that I have ever been involved in during my 20 years at Monona Grove High School. I was ashamed to think that this behavior actually had to be tolerated in a professional working environment.

Physically I became sick. My heart raced, my stomach became upset, my head pounded, my hands became weak and clammy. I felt poorly for the remainder of the day and night.

The people in the meeting tried over and over to be kind and accommodating to Ms. Albers. Everyone tried hard to understand and empathize with her current situation surrounding her medical leave.

At the same time, there was a need to share information that was pertinent and timely for students at this high school.

Ms. Albers responded by being rude, disrespectful, demeaning, and hostile. She was on "the attack" for most anything we tried to discuss.

All team members tried to spin and re-spin questions to take the alleged pressure off her. She consistently lashed out, made accusations, raised her voice, used offensive body language and criticized the members of the team.

I was ready to walk out and will do so in the future if she acts in this way.

This was a completely unprofessional and uncalled for demonstration on her part for workplace behavior. I have never witnessed such a thing by members of this staff, no matter how intense the pressure. It is unacceptable in my opinion.

The whole apple cart had been upset, when all we were hoping to accomplish in this meeting was to catch everyone up with updated information through sharing. It took members of the team the rest of the day to unreel from such a

negative and poisonous meeting.

Giese shared these written complaints with O'Connell. He reviewed them and concurred with them that Albers' conduct at the October 21 staff meeting was rude and unprofessional.

45. O'Connell subsequently wrote the following letter of reprimand to Albers:

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TO: Ms. Sheri Albers

FROM: Dave O'Connell, Assistant Principal

RE: Reprimand for meeting behavior on October 21, 2003
October 22, 2003

This letter of reprimand is due to your unprofessional behavior, which I witnessed, at the guidance meeting 3rd period on October 21, 2003.

Beginning in August, 2001, the Monona Grove High School administrators have attempted to make you aware of your unprofessional, disrespectful behavior. You received a formal document on December 2, 2002, requiring the following:

- Sheri is to treat all colleagues with utmost respect even when in disagreement.
- Sheri will be a positive, active participant in all meetings abiding by the established meeting guidelines.
- Sheri will establish a positive, open communication style with her colleagues.
- Sheri will work to regain the trust of her colleagues.
- Sheri is requested to seek outside support if necessary in order to effectively control her emotions at the work site.

In addition, your department colleagues met with you in January, 2003 to express their ongoing frustration and displeasure with your behavior. On September 26, 2003, Ms. Giese, Mr. Schreiner and I met with you to once again focus on your unprofessional behavior. Despite our ongoing attempts over two years to create awareness and asking for behavioral change, you have continued to be unprofessional and disrespectful in the workplace.

During the meeting on October 21, 2003, you were disrespectful, rude, negative, combative, and unwilling to be a team player. During the meeting, you stated that you were feeling "attacked" by your colleagues. At no time during the meeting did any colleague verbally attack you or your job performance. The intent of the meeting was to share information and make people aware of new practices within the guidance staff. Your unwillingness to cooperate, be a team player, or suggest other compromises prohibited the group from making progress. Your unprofessional behavior was intolerable! It has created a hostile, intolerable work environment in the Student Services Department.

As a result of this incident, you are reprimanded for unprofessional, disrespectful behavior.

Repetition of this unprofessional behavior will result in further discipline, up to and including discharge.

. . .

Although this letter bears the date of October 22, 2003, it was not issued to Albers until November 3, 2003 because Albers was absent from school between October 22 (the day following the above-described staff meeting) and November 3, 2003. O'Connell did not talk to

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Albers about her conduct at the October 21, 2003 staff meeting before issuing the letter of reprimand referenced above.

46. On November 5, 2003, the Association filed a prohibited practice complaint with the Wisconsin Employment Relations Commission to have the discipline referenced above heard and decided in the instant proceeding. The complaint alleged that the District lacked just cause for that discipline.

47. The District had just cause to impose the letter of reprimand on Albers referenced in Finding 45.

48. This finding, and Findings 49 through 76, deal with the one-day suspension (Case 96).

On December 5, 2003, Giese notified Albers in writing that administrators wanted to meet with her that day to discuss the following concerns:

- A concern from the guidance meeting on November 18th, 2003.
- A concern from a parent regarding your interaction with her on December 3rd, 2003.
- Two conversations with colleagues (Fehringer, Hibner) on December 3rd, 2003.
- The Kohl Scholarship deadline.
- Accountability during the school day.

You are welcome to bring an MGEA union representative if you desire to do so.

The meeting just referenced was not held December 5, 2003; instead, it was held December 8, 2003. On that date, administrators met with Albers and discussed the matters referenced above. On December 15, 2003, Giese issued a seven-page letter to Albers. That letter addressed six separate items which were identified therein as item 1, item 2, etc. The letter also responded to some questions Albers had raised during the December 8, 2003 meeting. Finally, it imposed a one-day suspension on Albers. In the findings which follow, this letter

will sometimes be referred to as the suspension letter.

The following format will be used for this portion of the decision. The facts pertaining to the six items will be reviewed separately and will track the numbers used in the suspension letter. After that, the applicable portion of the suspension letter will be quoted. Thus, portions of the December 15, 2003 suspension letter will be interspersed into the following findings. Finally, the remainder of the suspension letter will be quoted at the end.

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49. This finding, and Findings 50 through 52, deal with item number 1 in the suspension letter.

The guidance department had another staff meeting on November 18, 2003. At that meeting, the subject of Financial Aid Night was raised, and Albers was asked if there was a date set for that program. (Note: This was the same topic and the same question that was asked of Albers at the October 21, 2003 staff meeting). Albers replied in the negative (meaning that a date was not set for that program). When Albers was pressed about the matter, she tersely told her co-workers that after the date was set, it would be printed in the school newsletter. This response was frustrating and unacceptable to Albers' co-workers because they wanted to know the date before it was released to the public so that if people inquired about the program's date, they could respond. This was the second time Albers' co-workers had tried, without success, to get that information from Albers at a staff meeting. Following that meeting, Albers' co-workers complained to O'Connell that by not giving them the date for the upcoming Financial Aid Night, Albers was intentionally withholding information from them and being uncooperative.

50. Albers did not share any information with her co-workers about the date that Financial Aid Night was to be held until December 12, 2003. On that date at 2:34 p.m., she sent an e-mail to all the high school seniors about the upcoming Financial Aid Night program. Among other things, that e-mail included the date that the program was to be held, namely January 21, 2004. The other guidance counselors were copied on this e-mail. Thus, the other guidance counselors learned of the date for the upcoming Financial Aid Night at the same time as every member of the senior class. Albers indicated that the reason she did not share the January 21, 2004 date for Financial Aid Night with her co-workers sooner than December 12, 2003 was because she did not receive commitments from the presenters until December 1, 2003. On that date, she filled out a room request form wherein she requested a particular room for the Financial Aid Night program. This form was routed to Giese, who signed it the same day. Thus, Albers knew as of December 1, 2003 when Financial Aid Night would be held; the only thing she did not know as of December 1, 2003 was whether the room she requested was available. On December 8, 2003, Albers received the form back confirming that the room she had requested was available. Giese felt that Albers did not need to wait for the room confirmation before sharing the date for Financial Aid Night with her co-workers, because a room would have been available for the Financial Aid Night program on whatever

date was selected. Albers stated that another reason she did not share the date for Financial Aid Night with her co-workers prior to the official announcement on December 12, 2003 was because she did not want to risk the possibility that her co-workers might misinform seniors and their parents with an erroneous date. December 12, 2003 was the last day for announcements to be submitted for the January school newsletter. The date for Financial Aid Night was included in the January, 2004 newsletter.

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51. On December 11, 2003, parent Douglas Kearney came to the guidance office at the high school. He had a number of reasons for doing so. They were the following: 1) his son's transcript had been mailed to the wrong college; 2) Kiley, his son's guidance counselor, had not returned his phone calls; 3) he felt his son had received inadequate assistance from the guidance staff regarding the college application process and financial aid information; and 4) he wanted to find out the deadlines for college applications and financial aid. The first person Kearney spoke with at the guidance office about some of these matters was secretary Linda Briggs. Kearney became agitated and upset during his conversation with Briggs. Kiley heard the commotion, and injected herself into the conversation between Kearney and Briggs. She tried to calm Kearney down and answer his questions. At some point, Kiley told Kearney about the upcoming Financial Aid Night program. Kiley wanted to tell Kearney the date of that program, but could not do so because she did not know the date herself. Kiley told Kearney that the particulars about the program, including the date, would be in the next (school) newsletter. Kearney did not raise the subject of Financial Aid Night during his visit; Kiley did.

52. The portion of the suspension letter which pertains to this matter provides as follows:

1. A concern was expressed regarding the November 18th, 2003 Guidance meeting. I followed up with Steve Fehringer, Sheila Hibner, Carol Kiley and Dave O'Connell. Each of them felt that you purposefully withheld information regarding the annual Financial Aid night presentation to seniors. Rather than providing any kind of useful information to your colleagues, the message that you gave the members of your department is that you would have the information in the monthly newsletter. When I asked you about this, you indicated that you hadn't received official notification that the building was available. Debbie Kondrasuk gave you the form on Dec. 8th, 2003. As of the 9:30 a.m. on Dec. 12th, (sic) the date still had not been communicated to the members of the department so that they could share it with students. In the afternoon on December 11th, 2003, a parent came to the outer office in the Student Services office to inquire about the date of Financial Aid Night for seniors will be (sic). Carol Kiley and Linda Briggs told him that they

did not know the date. The parent became very agitated about the lack of information provided to the parents regarding this date and the failure to inform parents in a timely manner. Carol told him that the date would be in the January newsletter.

In the past, you have been warned about intentionally withholding information from your colleagues and not being a team player. Specifically, in a memo to you on September 6, 2001, verbally at a

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meeting on December 20, 2001, in a meeting on February 14th, 2002, in a memo on February 17, 2002, at a meeting on November 21, 2002, the Professional Development document on December 2, 2002, at meetings on January 21 and January 24, 2003, in a meeting at the Professional Development document (sic) on September 26th, 2003, and in a letter of reprimand from an incident on October 21, 2003, you were advised to refrain from such conduct. After completing our investigation, we have concluded that, once again, you have withheld useful information from your colleagues and failed to act as a team player.

53. This finding, and Findings 54 through 57, deal with item number 2 in the suspension letter.

On December 3, 2003, a parent with the initials N.Z. called Albers. Albers was the counselor for N.Z.'s son. Albers knew N.Z. and had worked with her before. Albers took the phone call from N.Z. at Briggs' work station in the outer office of the student services department. Unbeknownst to Albers, Hibner overheard Albers' side of the conversation with N.Z. In her testimony, Hibner did not describe what Albers said – just how Albers said it, which was loud. Hibner initially assumed that because of Albers' loud voice, she (Albers) was having a disagreement with a family member. At some point though, Albers said something that made Hibner realize Albers was talking to a parent – not a family member. Hibner was shocked by Albers' raised voice with the parent, especially because students were present and could overhear Albers' part of the conversation (just like Hibner could). Hibner described Albers as being disrespectful, rude, hostile and curt to the parent on the other end of the phone call. Albers then transferred the phone call with N.Z. to the administrative office where the call was taken by Michelle Baxter. Baxter is a teacher who was then acting as an interim assistant principal. N.Z. was very upset; she complained to Baxter that Albers had just treated her rudely and was terse and nasty to her. Baxter subsequently told Giese that N.Z. had called and was livid about her treatment by Albers. Baxter asked Giese to call N.Z. back, which Giese did. N.Z. told Giese that Albers had raised her voice to her, was terse, and was unkind to her. N.Z. also told Giese that this was not the first time she had been treated inappropriately by Albers.

54. Albers' phone call with N.Z. was one of the items which Giese discussed with

Albers at their December 8, 2003 meeting.

55. The next day, December 9, 2003, Albers had a conversation with N.Z. Albers averred that the purpose of the conversation was to let N.Z. know that she (Albers) had met with N.Z.'s son, but it is unclear from the record if that was the only thing that was discussed.

56. On December 12, 2003, N.Z. sent the following e-mail to Albers:

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Hello, Sheri,

I just wanted to apologize for yelling, being impatient and generally rude when I spoke with you last week on the phone. By the time I had spoken with you, I had been in tears and overly frustrated in trying to help. . . get to a point where he could possibly still pass some of . . . courses. I had misinformation that I was desperately clinging to and your information popped my fragile balloon of hope. I really am sorry for taking it out on you. Thank you so very much for understanding, and hopefully, one day. . . will graduate.

Sincerely,

N.Z.

Albers averred that she did not request that N.Z. write any document on her behalf.

57. The portion of the December 15, 2003 suspension letter which pertains to this matter provides as follows:

2. I asked you to tell me about your conduct while talking to a parent on December 3rd in the afternoon. You told me that the parent was making requests of you that you could not fulfill without administrative approval. You stated that you were in the outer office of the Student Services office with students present when you were speaking with the parent on the phone. I told you that the parent indicated that you were very rude, disrespectful, and unprofessional to her on the telephone. You did not concur with this assessment. Since December 8, I spoke again with Michelle Baxter who also spoke to the mother. Michelle indicated that the parent confirmed her original statements regarding your rude, disrespectful, and unprofessional demeanor, and the parent also said that you had treated her in this manner previously. Michelle indicated that Sheila Hibner also overheard the conversation. Instead of interviewing students, I spoke to Sheila. She also stated that the conversation was extremely hostile, curt, and terse.

In the past, you have been warned about your disrespectful, unprofessional and rude behavior. Specifically, at a meeting on February 14th, 2002, and in a follow-up memo on February 17th, 2002, you were advised to refrain from such conduct. After completing our investigation, we have concluded that, once again, you have been disrespectful, unprofessional and rude in communicating with a parent.

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58. This finding, and Findings 59 through 63, deal with item number 3 in the suspension letter.

A student named Alex W. was one of the students assigned to Fehringer. On December 2, 2003, Albers received the following e-mail from Alex W. regarding a Beloit College application fee waiver. It provides as follows:

Ms. Albers –

I saw something in the Dec. newsletter regarding an application fee waiver at Beloit if you have your application “endorsed” by an alumnus. None of the people in the guidance office knew what that was about and they suggested that I e-mail you, because you probably put in (sic) in there.

Alex W.

About the same time, Alex W. asked Fehringer if he knew of a Beloit College alumnus who could sign off on his Beloit College application so that he could obtain a waiver of the application fee. Fehringer responded that he did not know of a Beloit College alumnus, but would get back to him with a name. Fehringer indicated his intent was to get that information for Alex W. and then personally give it to him. Either that same day or the next, Fehringer asked Albers if she knew of a Beloit College alumnus. Fehringer told Albers that the reason he wanted a name was because he had a student who needed an alumnus to sign his application in order to get an application fee waiver. Albers tersely replied to Fehringer that she would take care of it. Fehringer did not ask Albers to take care of it though or help the student directly. Instead, all Fehringer asked for was a name, which Albers did not provide. As will be noted in Finding 60, Albers knew a teacher at the high school who was a Beloit College alumnus.

59. Albers knew that in previous years, Beloit College had supplied a special form to its alumni to use for application fee waivers. On December 5, 2003, Albers called the admission office at Beloit College and inquired about the procedure for getting an application fee waiver from an alumnus. She was told to have the alumnus write a letter which requested an application fee waiver for the student.

60. Kate Ziegelmaier is a social studies teacher at the high school and an alumnus of Beloit College. In past years, Beloit College had sent her a form to use for application fee waivers. Ziegelmaier had signed these waiver forms and dropped them off in the guidance office for students to use. After receiving the above-referenced e-mail from Alex W., Albers sent him to Ziegelmaier to get a signed waiver application form. Ziegelmaier told him she did not have any waiver forms to sign. Albers subsequently asked Ziegelmaier to write a letter on behalf of Alex W. seeking an application fee waiver. These facts establish that Albers knew

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that Ziegelmaier was a Beloit College alumnus. Ziegelmaier complied with Albers' request and wrote a letter on behalf of Alex W. seeking an application fee waiver. Her letter was as follows:

December 8, 2003

Dear Mr. Zielinski:

Please accept this note as a waiver for the application fee for Alex W. . . . As a Beloit alum (class of '92) and a Social Studies teacher at Monona Grove High School, I have received waivers in the past to give to students who I believe would be a good fit with Beloit College. I have not received any such form in the last couple years. Our guidance counselor, Sheri Albers, told me to write this note per a discussion with you on December 5. I hope this note suffices. Thank you.

Sincerely,

Kate Ziegelmaier /s/
Kate Ziegelmaier
Social Studies Department Chair
Monona Grove High School

This was the first time Ziegelmaier wrote a letter like the one referenced above seeking a student's application fee waiver from Beloit College.

61. Alex W.'s application to Beloit College ended up in Fehringer's mailbox for him to sign. Attached to his application was Ziegelmaier's above-referenced letter. When Fehringer saw her letter, it convinced him that Albers knew the name of a Beloit College alumnus (i.e. Ziegelmaier), but had intentionally withheld that information from him to undermine him with a student.

62. The matter referenced above was one of the items which administrators

discussed with Albers at the December 8, 2003 meeting. During that meeting, Albers told the administrators that she did not know of a Beloit College alumnus, and that is why she did not give Fehringer a specific name (when he asked for one). She further indicated that the reason she was involved in this matter was because Alex W. had sent her an e-mail wherein he inquired about application fee waivers to Beloit College. Following that meeting, Albers sent two e-mails regarding this matter. In the first e-mail, she forwarded Alex W.'s e-mail dated December 2, 2003 to Giese. In the second e-mail, she notified Alex W. that Ziegelmaier had his application fee letter ready, and he could pick it up from her.

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63. The portion of the December 15, 2003 suspension letter which pertains to this matter provides as follows:

3. On Wednesday, Dec. 3rd, Alex (W.) came to the Student Services office before school to inquire about the Beloit College application waiver. Steve Fehringer told Alex that he didn't know of an alumnus from Beloit College, but that he would look into this and get back to him. Later that morning (because you were not present at 7:45), Steve asked you if you knew of an alumnus. Your response was something like, "I will call Alex in." You did not give Steve the name of an alumnus so that he could get back to Al with this information.

When I asked you about this on December 8th, you indicated that you did not know a Beloit College alumnus and you would have to look into it for Alex. This is why you did not give Steve Fehringer a specific name. You stated that you later found out that Kate Ziegelmaier, MGHS social studies teacher is an alumnus of Beloit College. To investigate this further, Dave O'Connell spoke to Ms. Ziegelmaier. She indicated that she had written similar letters for other students at MGHS. Kate told Dave O'Connell that she had specifically told Dave Rohde and Sheri Albers that she was an alumnus of Beloit College and that she is willing to write a letter of this nature for MGHS students.

In the past, you have been warned about inappropriate interactions with colleagues, the necessity of being a team player, and intentionally withholding information from your colleagues. Specifically, in a memo to you on September 6, 2001, verbally at a meeting on December 20, 2001, in a meeting on February 14th, 2002, in a memo on February 17, 2002, at a meeting on November 21, 2002, the Professional Development document on December 2, 2002, at meetings on January 21 and January 24, 2003, in a meeting at the Professional Development document on September 26th, 2003, and in a letter of reprimand from an incident on October 21, 2003, you were advised to refrain from such conduct. After completing our investigation, we have concluded that,

once again, you have withheld useful information from your colleagues and failed to act as a team player.

64. This finding, and Finding 65, deal with item number 4 in the suspension letter.

One of Albers' job functions was to maintain the scholarship files. The scholarship files are kept in a file cabinet in the outer office of the student services department. On December 3, 2003, Albers went to the scholarship files to update them with recently-received

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information. In doing so, she made two discoveries: 1) that some of the files had star stickers on them; and 2) that the files had been reorganized from the order they had previously been in. Albers asked Hibner, who happened to be walking through the area, who had put the star stickers on the scholarship files. Hibner knew the answer, and explained that a parent volunteer had been asked to help organize a scholarship information database so that scholarship information could be more readily available, and this volunteer had placed stickers on the files to indicate which files she had entered into the database. The parent volunteer had also placed the files in alphabetical order. The reorganization of the files into alphabetical order greatly displeased and upset Albers because it differed from her (i.e. Albers') organizational system of arranging the files by due date. A visibly agitated and angry Albers then pulled all the files out of the file drawer in order to rearrange them back to the way they had been previously (i.e. by due date). As she did this, Albers slammed each batch of files onto the floor. The files were hanging files which have metal strips across the top. Each time more files were slammed together on the floor, there was a loud clang. Students were present when this occurred. Hibner watched this, but did not say anything to Albers. Hibner was so upset by Albers' display of hostility and lack of self-control that she went to the office to get Giese. Hibner wanted Giese to witness the incident herself. Giese was unavailable though, so Giese did not see the incident. Hibner later told Giese what conduct she had observed.

65. The portion of the December 15, 2003 suspension letter which pertains to this matter provides as follows:

4. Also on December 3rd, conversation took place in the student services outer office regarding scholarships with Sheila Hibner. You asked Ms. Hibner about the "stars" on the scholarships. She explained that Carol Kiley had asked a parent volunteer in the Career Center to help organize a database of the scholarships and this was a coding mechanism. In the past, this has not been done in a systematized manner so that this information could be shared with the other counselors. You indicated that after you and Sheila spoke, you then proceeded to go through the scholarships because you had your own organizational system.

When I asked about your demeanor, you indicated that you pulled the

file out of the drawer and placed it on the floor. Sheila stated that you were quite visibly agitated and were slamming the files on the floor. She was so frustrated with your behavior that she came to my office to find me so that I could witness this for myself. I was not available. Following our meeting on December 8th, I asked Sheila if she could have mistaken your demeanor. She indicated that she had not. She felt you were very unprofessional during this interaction.

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In the past, you have been warned about your disrespectful, unprofessional and rude behavior with parents and colleagues. Specifically, in a memo to you on September 6, 2001, verbally at a meeting on December 20, 2001, in a meeting on February 14th, 2002, in a memo on February 17, 2002, at a meeting and the Professional Development document on December 2, 2002, at meetings on January 21 and January 24, 2003, in a meeting at the Professional Development document on September 26th, 2003, and in a letter of reprimand from an incident on October 21, 2003, you were advised to refrain from such conduct. After completing our investigation, we have concluded that, once again, you have been disrespectful, unprofessional and rude in communicating with a colleague.

You asked me why no one had told you about the volunteer trying to organize the scholarships. I followed up with Carol Kiley regarding this matter. Carol said that the counselors have typically received inadequate information on scholarships and that you were made aware of this at a guidance meeting earlier this fall when the volunteer roles were discussed.

66. This finding, and Findings 67 through 69, deal with item number 5 in the suspension letter.

Albers was the scholarship coordinator in the guidance department. She had primary responsibility for dealing with the Kohl Scholarships. These are scholarships for which graduating high school seniors are eligible to apply. There are 100 such scholarships available on a statewide basis. Each high school can nominate a certain number of students for Kohl Scholarships depending on the size of the school. Monona Grove High School (MGHS) was entitled to submit two nominees. On October 1, 2003, the Wisconsin Department of Public Instruction sent an informational packet to MGHS regarding the Kohl Scholarships. That informational packet specified two pertinent deadlines. Students had to submit their completed applications to the school selection committee no later than November 21, 2003. If more than two students apply, a selection committee at the school has to select the two nominees. Applications of students nominated by their schools then have to be forwarded to the regional

selection committee, which is coordinated by their regional CESA, no later than December 5, 2003. Albers subsequently notified the other guidance counselors about the Kohl Scholarships and distributed the application materials to them. Kiley, in turn, disseminated this information to the senior class.

67. No applications were submitted to Albers. On the morning of December 4, 2003, Albers sent the following e-mail to Kiley and Fehringer:

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Hello,

Have any Seniors turned in Kohl Scholarships to you? They are due in the CESA office tomorrow. We can only forward two from our school, so if there are more, decisions will have to be made ASAP. Please let know.

Thank You,

Sheri

Fehringer quickly responded via e-mail that he had no applicants, but he thought Kiley had one. Later that day, Kiley responded via e-mail that she had turned in one Kohl Scholarship application to Giese the previous week. Kiley indicated that the reason she turned in the scholarship application to Giese was because that was what she was told to do. After Giese received the scholarship application from Kiley, she had mailed it to CESA 2 the week before Thanksgiving. Kiley did not tell Albers (until she replied to Albers' December 4, 2003 e-mail) that she (Kiley) had turned in a scholarship application to Giese. Likewise, Giese never told Albers that the scholarship application had been mailed to CESA 2 the week before Thanksgiving. Thus, neither Giese nor Kiley told Albers prior to Kiley's response to Albers' December 4 e-mail that Giese had already mailed in one Kohl Scholarship application to CESA 2.

68. Albers' December 4, 2003 e-mail concerning the Kohl Scholarship applications was one of the items which Giese discussed with Albers at the December 8, 2003 meeting. During that meeting, Giese told Albers that the reason her (i.e. Albers') e-mail was problematic was because Albers had a history of hand-delivering scholarship applications on the day they were due. Giese thought these trips, which apparently were numerous, were unnecessary, caused by poor planning on Albers' part and resulted in additional expense to the District. Giese noted that in the summer of 2003, she had warned Albers against repeating that conduct. Giese felt that when Albers sent out her e-mail inquiring about the status of scholarship applications the day before the CESA deadline, Albers was repeating the same conduct she had been warned to stop.

69. The portion of the December 15, 2003 suspension letter which pertains to this

matter provides as follows:

5. As the person who has been responsible for the scholarships, I reminded you that the Kohl Scholarship applications for students was due on November 21, 2003 at the local level and to CESA 2 on December 5th, 2003. On December 4th at 8:40 a.m., you sent an email to Carol and Steve asking if they had any seniors who had turned in a Kohl Scholarship application. I asked how you planned to proceed and get the

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necessary information from the counselors and then get the applications to Milton by the next day.

You indicated that Steve got back to you and he stated that he did not have an applicant. Carol also got back to you and said that she did have an application and that it had been mailed before the Thanksgiving break to CESA 2 so that it would arrive in a timely manner. You got agitated about this by saying something to the effect that since there were not any additional applications, that this wasn't a problem.

I asked you what you had planned to do if there had been additional applications with such a short turn-around time. You said that you would send them via overnight mail.

As the person responsible for scholarships, you had not communicated your expectations to Steve and Carol in a timely fashion. In the past, you have been warned regarding concerns about your pattern of behavior in regards to making additional trips to the post office, driving applications to CESA 2 thus incurring additional, unnecessary expense and unnecessary time away from work because of your poor planning. These concerns were expressed to you in regards to the mileage and postage reimbursement request in the summer of 2003.

After completing our investigation, we have concluded that, once again, because of your poor planning, you placed yourself in a situation that could have resulted in the District having to incur additional, unnecessary expenses and unnecessary time away from work.

70. This finding, and Findings 71 through 73, deal with item number 6 in the suspension letter.

In her memo to Albers dated February 17, 2002, Giese had directed Albers to henceforth "be at school by 7:45 a.m." That document provided in pertinent part:

I also reminded you that the contract states that the workday begins at 7:45 a.m. You often

arrive at 8:00 a.m. or later. Students have requested to see you and you have not been present. This is a time when students can meet with you. Please plan to arrive by 7:45 a.m.

One of the topics which administrators raised with Albers at the December 8, 2003 meeting was her normal time of arrival at work. Albers insisted that she was at school by 7:45 a.m. Student services department secretary Briggs, who usually arrives at work about 7:30 a.m., averred that Albers routinely arrived at work after 8:00 a.m. Briggs would see Albers coming into the office at that time with her coat and purse. Albers commonly stayed late at the end of the day and worked into the evening.

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71. On December 4, 2003, Assistant Principals Jeff Schreiner and Dave O'Connell and Principal Giese were having a meeting when they observed Jeff Albers arrive at the high school at 10:25 a.m. Jeff Albers is Sheri Albers' husband, and also a district employee. He teaches at another school. Schreiner, O'Connell and Giese later observed Sheri Albers leave the high school with her husband, Jeff Albers, at 11:16 a.m. and get into a car in the student parking lot. The reason they knew it was exactly 11:16 a.m. was because there was a digital clock in the room they were in. Sheri and Jeff Albers then went to lunch at a restaurant a short distance from the high school. After eating, they returned to the high school. Jeff Albers dropped off his wife at the high school about noon, and returned to the school where he teaches, Nichols Elementary School. It is about a three-minute trip between the two schools (i.e. the high school and Nichols). Jeff Albers averred that he looked at the clock in the office at Nichols School when he arrived and it was 12:04 p.m. Albers' lunch period was supposed to last from 11:30 a.m. to 12:00 noon. Albers took about a 45 minute lunch that day (namely from 11:16 a.m. to 12:00 noon).

72. Another topic which administrators raised with Albers at the December 8, 2003 meeting was that Albers was 15 minutes late to a meeting when Sam Mathiason met with the guidance counselors. The date of that meeting is not identified in the record. Albers acknowledged she was late to that meeting.

73. The portion of the December 15, 2003 suspension letter which pertains to this matter provides as follows:

6. The final topic that was discussed on December 8th is your accountability during the school day.

I asked you if you are always at work by 7:45 a.m. You indicated that you are. Your colleagues assert that you are rarely at work before 8:00 a.m.

Your colleagues also claim that you are often not in your office during the school day when people are looking for you. You indicated that you leave your office to talk to teachers and to students during the workday.

I asked you to make Linda aware of where you were going in case someone is looking for you.

I directed you to sign out and to let Linda know if you are leaving the building during the school day. This is not simply an expectation applicable to you. All staff are required to sign out and let someone know when they are leaving the building during the school day.

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I asked you specifically about December 4th, 2003. I indicated that a colleague was looking for you during mid-day and she could not find you. You stated that you had left for lunch at 11:30 and returned at noon. I stated that the staff member felt that you were gone for a longer period of time. You repeated that you were gone from 11:30-noon.

On the morning of Dec. 4th, 2003, Jeff Schreiner, David O'Connell and I were meeting in my office for our weekly meeting as we do most weeks on Thursday morning. Each of us saw Jeff Albers arrive at MGHS at 10:25 a.m. At 11:16 a.m., we all saw you and Jeff Albers leave MGHS and get into a car in the student parking lot. Another colleague saw Jeff Albers drop you off at school at 12:18 p.m. on Thursday. From these observations, it appears that you were gone longer than 11:30-noon as you stated when I asked how long you were gone.

You also missed the 7th period meeting on December 5th. You indicated that you were upset because you had been notified of the need to meet with me so you took a lunch at that time instead of attending the meeting.

I have also learned that you were 15 minutes late to the meeting when Sam Mathiason met with the guidance counselors to discuss changes in the math curriculum.

Frequent meeting absences and tardiness may be a cause for your lack of information.

In the past, you have been warned about your lack of accountability during the school day and tardiness. Specifically, at a meeting on February 14th, 2002 and in a memo on February 17th, 2002, you were advised to arrive at work by 7:45 a.m. and to let Linda know where you will be when you are out of the office. Additionally, you have been directed to sign out when leaving the building during the school day. After completing our investigation, we have concluded that, once again,

you have been tardy and you have failed to take steps to let people know where you will be during the school day.

At the conclusion of the meeting, I asked if you had any additional information to add regarding these situations. You did not.

74. The portion of the suspension letter which related to items 1 through 6 has already been quoted above. The remainder of that letter provides as follows:

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To: Sheri Albers
Fr: Georgi Giese, Principal
Re: Follow-up to meeting on December 8, 2003
December 15, 2003

On December 8th, 2003, we met to discuss the most recent complaints and concerns we have received regarding your conduct in the workplace. As you are aware, these complaints and concerns involve various issues that have been addressed previously in the Professional Development and Assessment documents and meetings, in a letter of reprimand, and in various meetings and conference concerning your conduct. The purpose of this memo is to follow-up with you in regards to the concerns that Dave O'Connell, Jeff Schreiner, and I brought to you on December 8th, 2003. I have done further investigation into these areas as well as the questions that you posed.

. . .

[Items 1 through 6]

Responses to your additional questions:

1. You asked why Sheila Hibner, School-to-Work Coordinator, is involved in the guidance/student services department. I responded that her involvement is to provide the necessary career link to our guidance program.

Dave O'Connell mentioned that the senior exit survey last year indicated that a weakness that MGHS has is in the career area. You asked why you were not made aware of this. The exit survey was shared with the staff at the last faculty meeting of the year as well as during the last inservice of the school year on May 30, 2003.

2. You also expressed frustration in the fact that your colleagues did not welcome you back and offer to bring you up to date on things that you

missed during your extended absence this fall.

Since our meeting on Dec. 8th, I asked Dave O'Connell, Carol Kiley, Steve Fehringer, and Sheila Hibner about this concern. They concurred independently that they had indeed tried to do this at the October 21st meeting. Your reaction to the information that they presented to you was very unprofessional.

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I also learned that there have been three occasions this fall when you have been invited to join them for lunch and have not accepted this offer. Failure to meet with them on a collegial basis for lunch contributes to your isolation from your department members. We have repeatedly requested that you develop collegial relationships in order to develop a better working relationship with them.

3. You asked why we did not come to talk to you informally about concerns regarding your job performance rather than having a formal meeting and investigation with so many people involved.

I will remind you that I tried in August 2001 to meet with you informally to discuss concerns. I had hoped to inquire about some concerns that I had regarding your interactions with your colleagues so that I might be able to better understand your perspective. At that time, you insisted upon an MGEA union representative. Since that time, the MGSD administrators have been trying to create an awareness regarding numerous work-related issues. Any conversation that may result in disciplinary action, the employee may have a union representative present.

4. You asked why I was not redirecting your colleagues to you regarding their specific concerns.

We do redirect your colleagues to you when they come to us with a concern. However, I told you they simply will not come to you. Repeatedly, they have tried to express their concerns and frustrations to you. However, you have always been non-receptive to their input and comments. Frequently, you have reacted in a negative, unprofessional manner when they have tried to ask questions and bring concerns forward. They have indicated to me they do not trust you and are fearful of retribution if they do so.

Conclusion:

As explained above, each of the complaints and concerns we received regarding your conduct has been addressed in a previous document and/or meeting. Many of these concerns and complaints are addressed in your Professional Development Assessment, and others were addressed in the letter of reprimand issued to you because of your behavior at a meeting on October 21, 2003. This letter was issued to you on November 2, 2003. More importantly, these concerns have been ongoing since August 2001:

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- Treating others unprofessionally
- Rude, disrespectful behavior in the workplace
- Not being a team player
- Withholding information when requested
- Poor planning in order to accomplish tasks in a timely manner
- Failure to establish positive communication with your colleagues
- Failure to establish collegial relationships with your colleagues in Student Services

Consequence:

Because you have not fulfilled the expectations that have been set before you, you are suspended from work in the Monona Grove School District on December 16th, 2003 without pay.

Cc: Gary Schumacher
Personnel File

Albers served her one-day suspension on December 16, 2003.

75. On December 26, 2003, the Association filed a prohibited practice complaint with the Wisconsin Employment Relations Commission to have the discipline referenced above heard and decided in the instant proceeding. The complaint alleged that the District lacked just cause for that discipline.

76. The District had just cause to impose the one-day suspension on Albers referenced in Finding 74.

77. This finding, and Findings 78 through 81, relate to the grievance settlement agreement complaint (Case 97).

On June 25, 2003, Albers submitted a written request to be reimbursed \$302.24 for work-related expenses which she incurred during the 2002-2003 school year. Most of this amount was for mileage. Her reimbursement request was done in the same manner she had

done it in previous years. Her reimbursement request was for an amount that was similar to what she had been reimbursed in previous years. Her reimbursement requests had always been granted in previous years. On June 26, 2003, Principal Giese rejected Albers reimbursement request in its entirety. In doing so, Giese wrote the following statement on the reimbursement request:

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Sheri - None of this was approved in advance for mileage reimbursement, therefore will not be paid.

Georgi

An unknown portion of the mileage charge (in the amount sought) was related to Albers' hand delivering of scholarship applications. As noted in Finding 68, Giese thought such hand delivery on due dates was unnecessary, caused by Albers' poor planning and resulted in additional expense to the District.

78. On July 30, 2003, Albers and the Association filed a grievance concerning the matter referenced above. The grievance alleged that the District failed to reimburse Albers for travel and other out-of-pocket expenses incurred on behalf of the District while Albers was performing her job duties and, further, that such failure was contrary to the parties' collective bargaining agreement and past practice. In October, 2003, the parties tentatively settled the grievance and memorialized the grievance settlement terms in writing. The Settlement Agreement document provided in pertinent part:

1. The District will reimburse Albers for the expense reimbursements claim she submitted on June 25, 2003, for the 2002-2003 school year in the amount of \$302.24. Such payment will be made within two weeks following the execution of this Agreement by all parties.

...

5. This Agreement constitutes the complete agreement of the parties concerning this matter. Further, no oral representation and/or promises have been made that are not embodied in this Agreement.

Principal Giese signed the Settlement Agreement document on October 14, 2003 and Albers signed it on November 5, 2003.

79. On November 7, 2003, Principal Giese processed an invoice authorizing payment to Albers for her expenses for the 2002-2003 school year. The amount which Giese

processed was \$279.86. This amount was \$22.38 less than the amount specified in the Settlement Agreement (i.e. \$302.24). The Association subsequently requested that the District pay Albers the amount of \$22.38. In a letter dated February 16, 2004, the District's legal counsel declined to do so, and proffered the following reasons for not paying Albers the \$22.38:

. . . This discrepancy in amounts is explained by the issuance of a previous reimbursement check for \$9.07 to Ms. Albers, Ms. Albers' miscalculation of

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her approved mileage in the amount of \$13.09, and the fact that the District does not pay for tax on meal reimbursement (dated April 15, 2003) which resulted in a deduction of \$.22. . .

80. On February 2, 2004, the Association filed a prohibited practice complaint with the Wisconsin Employment Relations Commission to have the matter referenced above heard and decided in the instant proceeding. The complaint alleged that the District had not honored a grievance settlement agreement involving Albers.

81. The grievance Settlement Agreement referenced in Finding 78 specified that the District was to pay Albers \$302.24 for expenses incurred in the 2002-2003 school year. The District did not pay her that amount. Instead, as noted in Finding 79, it paid her \$279.86. The District did not comply with the grievance Settlement Agreement when it paid Albers \$22.38 less than the figure specified in the grievance Settlement Agreement.

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

CONCLUSIONS OF LAW

1. Since the parties' collective bargaining agreement referenced in Finding of Fact 4 contains a provision which gives the Commission the authority to resolve the merits of Sec. 111.70(3)(a)5 breach of contract claims, the Examiner exercises the Commission's jurisdiction to decide whether said agreement was violated in violation of Sec. 111.70(3)(a)5, Stats. in Cases 95, 96 and 97.

2. In Case 95, the District had just cause within the meaning of Sections 3/1/1 and 9/6/1 of the parties' collective bargaining agreement to impose the letter of reprimand dated October 22, 2003 on Albers. Therefore, the District did not violate Sec. 111.70(3)(a)5, Stats., by imposing that discipline.

3. In Case 96, the District had just cause within the meaning of Sections 3/1/1 and 9/6/1 of the parties' collective bargaining agreement to suspend Albers for one day. Therefore, the District did not violate Sec. 111.70(3)(a)5, Stats., by imposing that discipline.

4. In Case 97, the grievance Settlement Agreement concerning Albers' expense

reimbursement for the 2002-2003 school year is a legally enforceable collective bargaining agreement for the purposes of Sec. 111.70(3)(a)5, Stats.

5. The District did not pay Albers the amount specified in the aforementioned grievance Settlement Agreement. By not paying Albers the amount specified in the aforementioned Settlement Agreement (\$302.24), but instead paying her \$279.86, the District violated a collective bargaining agreement, and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a)5, Stats.

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

ORDER

1. The complaints in Cases 95 and 96 alleging violations of Sec. 111.70(3)(a)5, Stats., are dismissed.

2. As a remedy for the violation noted in Conclusion of Law 5 dealing with Case 97, Respondent Monona Grove School District shall immediately take the following action that the Commission finds will effectuate the purposes of the Municipal Employment Relations Act:

A. Cease and desist from violating the collective bargaining agreement between the Monona Grove School District and the Monona Grove Education Association.

B. Take the following affirmative action:

1) Pay Sheri Albers \$22.38 which is the balance owed her under the parties' grievance Settlement Agreement pertaining to Albers work-related expenses for the 2002-2003 school year plus interest at the statutory rate of 12% (twelve percent) per year.¹ The interest runs from November 5, 2003 (the date Albers signed the grievance Settlement Agreement) through the date this money is paid.

2) Notify all employees represented for the purposes of collective bargaining by the Monona Grove Education Association by posting copies of the Notice attached hereto as Appendix "A" in conspicuous places on its premises where said employees work. The Notice shall be signed by an official of the District and shall

¹ The rate set forth in Sec. 814.04(4), Stats., at the time the instant complaint was filed.

remain posted for 30 days. Reasonable steps shall be taken to ensure that said notices are not altered, defaced or covered by other material.

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- 3) Notify the Wisconsin Employment Relations Commission within 20 days of the date of this Order as to what steps have been taken to comply therewith.

Dated at Madison, Wisconsin, this 14th day of December, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

APPENDIX "A"

NOTICE TO ALL EMPLOYEES

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:

WE WILL NOT violate the collective bargaining agreement between the District and the Monona Grove Education Association.

WE WILL pay Sheri Albers \$22.38 which is the balance owed her under the parties' grievance Settlement Agreement pertaining to Albers' work-related expenses for the 2002-2003 school year, plus interest.

Dated this _____ day of _____, 2006.

Monona Grove School District

THIS NOTICE MUST REMAIN POSTED FOR THIRTY (30) DAYS FROM THE DATE HEREOF, AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY OTHER MATERIAL.

MONONA GROVE SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

Association

Association's Initial Brief

The Association begins with the following overview. It contends that the District committed prohibited practices and violated the collective bargaining agreement when it failed to honor the grievance Settlement Agreement involving Albers, and when it issued a letter of reprimand to Albers and suspended her for one day. According to the Association, there was not just cause for that discipline. It asks that all these violations be remedied.

...

The Association makes the following arguments in the grievance Settlement Agreement case.

The Association addresses the grievance Settlement Agreement case first because it believes it sets the stage, so to speak, for the discipline which followed. The Association avers at the outset that the reason a grievance had to be filed over Albers' expenses was because Giese processed Albers' expense reimbursement request in bad faith. The Association submits that after that happened, it was grieved, and the parties subsequently settled the grievance. The Association avers that when the Settlement Agreement was reduced to writing, it contained a specific and precise amount which the District agreed to pay to settle the grievance, namely \$302.24. The Association asserts that Principal Giese just couldn't "let go", and pay the agreed-upon amount though. Instead, she had to "make an issue out of minutiae that the parties had already disposed of under the terms of the Settlement Agreement", and paid an amount that was \$22.38 less than \$302.24. As an example of how petty Giese was, the Association calls attention to the fact that Giese would not reimburse \$.22 for sales tax which Albers had incurred on a \$4.00 lunch. As the Association sees it, this shows the "degree of triviality to which Principal Giese would go to exercising her unfair and vindictive attitude toward Albers." The Association maintains that the figure that the District paid to Albers should have been the exact number referenced in the grievance Settlement Agreement, namely \$302.24. As the Association sees it, that figure was not subject to renegotiation or reconsideration by Principal Giese, nor was it subject to her unilateral adjustment. However, that's exactly what happened, because Principal Giese ignored the agreed-upon amount referenced in the Settlement Agreement and instead unilaterally imposed her own terms and

paid Albers a different amount. The Association contends that Giese should have honored the Settlement Agreement, paid the specific amount specified therein, and not imposed her own settlement terms. Since Giese did not do that, the Association asks the Commission to find that the District committed a prohibited practice by violating the Settlement Agreement, and order the District to comply with the Settlement Agreement by paying Albers the amount of \$22.38.

...

Next, before moving to the two disciplinary cases, the Association believes it is important to consider that discipline in the context of the Albers-Giese relationship. It notes that Giese's early evaluations of Albers were exemplary, and calls attention to the fact that Giese once said Albers was one of the best guidance counselors she (i.e. Giese) had ever known. It then asks rhetorically "so what happened?" It answers that rhetorical question by noting that in May, 2001, Giese decided she no longer liked Albers and that Albers was seriously flawed. The Association submits that the only thing that happened in May, 2001 though was that "Albers did not agree or favor the candidate" Giese favored to fill Rohde's vacancy (i.e. Fehringer). The Association avers that from that point forward, Giese's attacks on Albers were relentless as she began to "build a book" against Albers to discharge her. According to the Association, "Giese turned 180 degrees on Albers, disowned everything positive she ever said about [her]. . .and launched a depraved and vicious attack against Albers' character." The Association characterizes Giese's prejudicial and intense dislike of Albers as "near-pathological", and her hatred of Albers as "unconstrained".

The Association contends that when problems subsequently arose between Albers and Fehringer, "Giese should have exercised good management skills and told both of them that they would be required to treat each other professionally and do their jobs cooperatively and that they would both be held accountable if they failed to do so." The Association argues that did not happen. Instead, Giese let her animosity towards Albers get the best of her and she took sides against Albers. To support that premise, it notes that Fehringer frequently complained to Giese about Albers. According to the Association, Fehringer had an open door to Giese's office to go in and complain about "anything and everything" related to Albers. The Association asserts that Albers' co-workers were also encouraged to go and complain to Giese about Albers. The Association acknowledges that that is what happened, and all this complaining soon polarized the whole student services department. The Association maintains that while Giese feigned that she was trying to be fair (to all the employees in the department), she wasn't fair to Albers at all. Instead, Giese "let the department wallow in intrigue" and laid all the problems in the department at Albers' feet. The Association argues that Giese decided that the way to fix the problem in the department was to drive Albers out. It is in that context that Albers was subsequently disciplined.

Having commented on Giese's involvement in the Albers-Fehringer conflict, the Association comments next on certain specific matters related to same. Before doing that

though, it characterizes much of what is in the record regarding their conflict as “punch and counterpunch” and “he said/she said”. As the Association sees it, many of their disagreements have little to do with the specific charges that form the stated rationale for the disciplinary action. That said though, the Association maintains that some of Fehringer’s allegations against Albers are belied by the record evidence. First, with regard to the school counselor conference matter, the Association notes that Fehringer claimed he submitted the forms to Albers, but somehow he did not get registered for the conference. The Association avers that is incorrect. To support that premise, it notes that Albers submitted a request for registration and funding for the trip for both Fehringer and herself at the same time on the same document. Second, with regard to the scholarship committee matter, the Association notes that while Fehringer claimed that Albers refused to let him sit in on the meeting, Albers denied that. According to the Association, Fehringer’s testimony is refuted by the food service catering request form which Albers completed which shows that Albers ordered food for 16 people. Albers averred that Fehringer was one of the 16 people. Third, with regard to the counselor transfer matter, the Association notes that while Fehringer accused Albers of causing or instigating requests by students and parents that Fehringer be removed as their assigned counselor and replaced by Albers, the Association contends that no other witness verified this accusation. Fourth, with regard to Fehringer’s claims that Albers did not share information with him and was not civil to him, the Association avers that a number of exhibits show otherwise. According to the Association, these exhibits show: that Albers assisted Fehringer’s assigned students when he was absent and let him know promptly what she did; that when Albers received complaints about Fehringer from others, she did not run to the Administration to make trouble for him; that Albers would inform Fehringer about issues affecting students assigned to him; that Albers offered to help Fehringer with various matters and in one instance, e-mailed information to him to save him the trouble of carrying materials upstairs.

...

Having given that background, the Association now addresses the letter of reprimand.

It sets the stage for what happened at the October 21, 2003 meeting by noting that Albers had been off work for more than two weeks. Since she had been out sick, she did not see the meeting’s agenda before it started, so she did not know what topics were going to be covered in the meeting and had no chance to prepare for them. Building on the foregoing, the Association argues that Albers’ co-workers blindsided her and essentially set her up.

The Association contends that once the meeting started, it was Albers’ co-workers who engaged in unprofessional conduct. They attacked Albers so she had to face them alone. It maintains that while the alleged purpose of the meeting was to “bring Sheri up to date on the issues” because of her absence, the meeting began with Fehringer interrogating her about a number of issues. In response, Albers asked her co-workers to “please” consider the fact that she had just returned from a two-week absence and had not caught up. The Association

submits that “the decent thing to do” under these circumstances, where Albers’ co-workers had to sense the stress Albers was under, would have been to give Albers some time to catch up. That did not happen though. Instead, Albers’ co-workers “smelled blood” and continued their “relentless attack” on her by using their majority status to “take advantage” of Albers. The Association acknowledges that during the meeting Albers felt put upon, and expressed feelings about that, but the Association emphasizes that her language was not offensive.

The Association believes it is interesting that Assistant Principal O’Connell, who was there, did nothing to change the course of what happened during the meeting. As the Association puts it, “O’Connell stood by benignly noting the majority will and using his supervisory authority for nothing constructive.”

The Association notes that following the meeting, Fehringer, Kiley and Hibner wrote up their perceptions of the meeting. According to the Association, their accounts (of what happened) “are not entirely consistent” but nonetheless do establish “that they had a common purpose.” The Association then goes through their documents, line by line, and comments on what they did, or did not, write in their account.

Given the above, it is the Association’s position that there was not just cause for the letter of reprimand. It asks that the discipline be rescinded and appropriate remedies ordered.

...

The Association now addresses the one-day suspension. It sets the stage for its argument by averring at the outset that because of her “visceral dislike” of Albers, “Giese was searching for a pretext to impose discipline” on Albers, and she seized on the six items referenced in the suspension letter. According to the Association, that “laundry list” of charges was baseless, and the record evidence establishes that all of the charges were “proven to be utterly false.” The Association accuses the District of having “a total disregard for the truth and accuracy of the allegations” and manipulating the facts for the purpose of justifying discipline.

It makes the following arguments concerning the first item referenced in the suspension letter (i.e. the Financial Aid Night matter and the Kearney matter). First, it acknowledges that at the November 18, 2003 meeting, Albers was asked for the date for the upcoming Financial Aid Night which she declined to give. According to the Association, Albers’ co-workers “knew full well that the information was not available” yet they pressed her for a date at that meeting anyway knowing she was “unprepared to give them such a date [so] they could then make an issue of it.” As the Association sees it, there was no urgency in announcing or releasing a date at that meeting before the details had been firmed up, and “in fact, it would have been poor judgment to release an unconfirmed or uncertain date so that it could be placed on calendars and disseminated among students and parents.” The Association argues that

Albers' desire to release accurate and confirmed information should not warrant discipline. Second, the Association notes that Albers notified everyone of the date for Financial Aid Night by e-mail on December 12, 2003 at 2:34 p.m. Yet when Giese wrote the suspension letter on December 15, 2003, she included the following sentence: "As of the 9:30 a.m. on December 12th (sic), the date still had not been communicated to the members of the department so they could share it with students." In the Association's view, this statement shows that Giese was more interested in disciplining than in dealing with facts and that is why she cited December 12th at 9:30 a.m. in the suspension letter when she knew full well that the information went out that day at 2:34 p.m. The Association submits that there is no evidence in the record that supports the notion that 9:30 a.m. represented any kind of deadline. The Association further points out that Giese did not explain anywhere in the suspension letter why she did not acknowledge Albers' e-mail of a few hours later. Third, with regard to the Kearney matter, the Association notes that Giese's suspension letter says that Kearney came to the student services office "to inquire about the date of Financial Aid Night". The Association maintains that is simply not true. The Association maintains that the record shows that Kearney came into the office for a number of reasons, but Financial Aid Night was not one of the reasons. It notes that Kearney never raised that topic - Kiley did. It specifically calls attention to Kearney's testimony that he was not upset with Albers; instead, he was upset with Kiley. Building on that, the Association avers that none of the eyewitness' collective testimony supports the allegations made by Giese in item 1 in support of her disciplinary action against Albers. As the Association sees it, "one cannot explain the allegations set forth in item 1 without concluding that Giese was prevaricating for the purpose of creating a pretext for disciplinary action against Albers."

It makes the following arguments concerning the second matter referenced in the suspension letter (i.e. the phone call with N.Z.) First, it avers that "while there have been several characterizations (opinions) about Albers' end of the conversation, there are no specific facts/examples of her statements from which a third party can attempt to judge her conduct." Building on that premise, the Association maintains that "it is not at all clear that Albers did anything wrong" during the phone call with N.Z. According to the Association, the persons who were in the best position to judge the appropriateness of the phone call are those who were privy to both ends of the phone call, namely Albers and N.Z. It avers that "before Albers knew that there was any consideration of discipline related to this incident", Albers received N.Z.'s unsolicited apology. The Association argues that it (i.e. N.Z.'s apology) should be the determining factor on this item.

It makes the following arguments concerning the third matter referenced in the suspension letter (i.e. the Beloit College application fee waiver matter). First, it asserts that even if Giese's statement was accurate and complete, Albers not giving Fehringer the name of a Beloit College alumnus is not a reason for disciplinary action. According to the Association, it is nothing more than "a juvenile reaction to a non incident; a desire to discipline looking for a pretext; and an incomplete/incompetent investigation being substituted as a search for truth."

The Association emphasizes that there is much more to this matter than what Giese chose to talk about in her suspension letter (namely, Fehringer asking Albers for the name of a Beloit College alumnus and Albers not responding with one). What the Association is referring to is that Alex W. sent Albers an e-mail seeking information on this topic before Fehringer talked to her. The Association notes that at the December 8, 2003 meeting, Albers told Giese about Alex W.'s e-mail and later sent her a copy of same, but Giese's suspension letter "totally ignores the existence of the student's e-mail". The Association asks rhetorically what Albers did wrong. As the Association sees it, the answer is nothing. She was contacted by a student who had a request. She called Beloit College and checked out the proper procedure for gaining a fee waiver and responded to the student's direct inquiry. According to the Association, "the speculation about Albers' motives and impugning her motives in providing a response to a direct inquiry from a student and providing a quality level of service to the student is nonsense." The Association avers that Giese's version of this matter is not supported by the documentary evidence or "the evidence provided by a witness uninvolved in the intrigue cultivated by Giese in the student services department" (i.e. Ziegelmaier).

It makes the following arguments concerning the fourth matter referenced in the suspension letter (i.e. the scholarship file matter). First, for the purpose of background, it notes that no one in the guidance office told Albers, after she returned to work, that a scholarship database was being prepared and that the scholarship files had been rearranged. Second, it points out that Albers denied slamming the files on the floor as Hibner said she did; instead, Albers said she dropped or placed them on the floor. The Association acknowledges that dropping files on the floor certainly made some noise, but "one would hardly think it was any big deal worthy of running to the principal's office" which, of course, is what Hibner did. The Association calls attention to the fact that Albers did not know that her (i.e. Albers') actions upset Hibner or that Hibner was running to the principal "with a hysterical complaint". The Association speculates that perhaps Giese had more important things to do than watch Albers drop some files on the floor. Third, the Association contends that "unfortunately, there is no documentation or uninvolved witness to assist in getting to the truth on this item." Finally, the Association claims that "if this incident stood alone, it would be comical; in the aggregate it is ridiculous."

It makes the following arguments concerning the fifth matter referenced in the suspension letter (i.e. Albers' e-mail concerning the Kohl Scholarship deadline). First, it avers that "there was no requirement that Albers send the December 4th e-mail reminder." It notes in that regard that she had provided the scholarship information to the other guidance counselors approximately two months earlier, and "it is not her job to be monitoring her colleagues' work." Thus, the other guidance counselors knew of the December 5, 2003 deadline for submission to CESA. Second, it believes that "what is more significant" (than Albers' December 4 e-mail) was that "no one communicated with Albers" regarding that matter. What the Association is referring to is that Kiley submitted her one application directly to Giese without informing Albers, and Giese, in turn, mailed in that application to CESA the

week before Thanksgiving. According to the Association, Giese's submission of that application to the CESA office the week before Thanksgiving was problematic because by doing that, the school risked the possibility of there being more than two applicants when just two applicants are permitted. The Association avers that Giese changed the procedure for dealing with the Kohl Scholarship (because she had Kiley submit the application directly to her), but she never informed Albers of that change. As the Association sees it, if Giese was going to be coordinating the applications, and the applications were being turned in directly to Giese leaving Albers out of the loop, then Giese should have informed Albers of that. Since she did not, the Association characterizes this charge as a setup.

Finally, it makes the following arguments concerning the sixth matter referenced in the suspension letter (i.e. the "accountability" matter). First, it characterizes this charge as "a mixed bag of vague charges, specific charges and charges without specific attribution as to the source". Second, for background purposes, it notes that Albers' work duties took her all over the high school building, so she was often not at her desk. It submits that when she was not at her desk, her "colleagues" apparently reported that fact to Giese, and Giese, in turn, assumed wrongdoing. Third, the Association avers that the first time that Giese told Albers that her "colleagues" were complaining about her (i.e. Albers) not being in her office when they were looking for her was at the December 8, 2003 meeting. Fourth, with regard to Albers having lunch with her husband, Jeff Albers, on December 4, 2003, the Association avers that Albers did not take an "excessively long lunch break" that day. To support that premise, it cites Jeff Albers' testimony that he returned to his school's office at 12:04 p.m. that day, so this means he dropped off his wife at the high school around noon. It contends that the assertion that a "colleague" saw Jeff Albers drop Albers off at 12:18 p.m. is not confirmed or supported by any first hand testimony in the record.

Given the above, it is the Association's position that the six charges against Albers do not square with the facts, so there was not just cause for the one-day suspension. It asks that the discipline be rescinded and appropriate remedies ordered.

Association's Reply Brief

The Association avers at the outset that prior to the written reprimand and the one-day suspension which are at issue here, Albers was "never disciplined". According to the Association, all the documents that Giese wrote to Albers prior to that formal discipline did not have the status of discipline and, in any event, are stale. Building on that premise, the Association contends that all those documents (i.e. everything that occurred prior to the written reprimand) "are of no value in considering the disciplinary actions which are challenged in these proceedings" and do not establish proof of the events referenced in the Employer's disciplinary letters of October 22, 2003 and December 15, 2003. Noting that the District does rely on documents preceding those dates, the District avers: "it is unfortunate that the District needs to wallow in the irrelevancies of the morass it helped create and foster in the Guidance

Department rather than focusing on its stated bases for imposing the discipline under challenge in this proceeding.”

The Association nonetheless feels compelled to respond to what it calls “gratuitous attacks” on Albers in the District’s initial brief which involve matters which preceded the formal discipline being challenged here.

First, the Association calls attention to the fact that Giese initially gave Albers “rave reviews”, but that Giese’s opinion of Albers changed after Giese concluded that Albers had “fooled and manipulated her”. According to the Association, Giese’s dislike of Albers began before Fehringer was hired – not after he was hired as the District maintains.

Second, the Association responds to the comments which Rohde made to Giese about Albers just before he retired. The Association puts it this way in their brief: Rohde “saw fit to bad mouth Albers to Giese on his way out the door, interject his views on guidance department matters by second guessing Albers, and involve himself and take sides in the interpersonal disputes brewing in the guidance department – all behind the scenes after he retired.”

Third, the Association believes it is significant that after Rohde retired, Giese made her (i.e. Albers) guidance coordinator “at the very time that Ms. Giese claims that she had become alarmed by Ms. Albers’ alleged behaviors.” Later, after the administration involuntarily relieved her (i.e. Albers) of that additive, the District “continued to hold [her] to account” for the guidance functions which went unfilled. As the Association sees it, the District “created a vacuum” and then turned around and complained that Albers had “declined to perform the duties from which she had been involuntarily relieved.” The Association submits that there is “no basis for attacking Albers’ ‘ethics’ for declining to perform the guidance coordinator duties after she had been relieved of that position.”

Fourth, the Association avers that “the District did not observe the distinction between the additive coordinator position and Albers’ teaching position as a guidance counselor, which was covered by her regular teaching contract.” As the Association sees it, the District used Albers’ status a guidance coordinator “to blame her for everything that was amiss in the guidance department.”

Fifth, the Association asserts that Giese’s February 17, 2002 memo “also fails to distinguish between the guidance position held by Albers under her regular teacher contract and her duties as guidance coordinator under her additive contract.” The Association notes that these contracts are separate and distinct under the terms of the collective bargaining agreement.

Sixth, it avers that O’Connor “chose to take” various concerns that he had with Albers to “everybody” but Albers. By “everybody”, it is referring to the administration, co-workers, and union representatives.

Seventh, the Association calls attention to the fact that various members of the student services department refused to participate in mediation with Albers. As the Association sees it, the ones that refused to participate in mediation “apparently preferred their status quo to attempting a process that offered little to lose and much to gain.”

Eighth, the Association notes that in its brief, the District referred to its professional development model. According to the Association, that model does not modify the contractual standard for discipline which, of course, is the just cause standard referenced in the collective bargaining agreement. The Association argues that the District’s suggestion that the Awareness Level “is part of a disciplinary system is a glib attempt to re-characterize evaluative letters as disciplinary in nature.” The Association avers that the December 2, 2002 document is not a disciplinary letter and it cannot be made so, by now describing it as part of a progressive disciplinary program. The Association also maintains that document contains “sweeping judgmental statements.” According to the Association, those statements “reflect an administration that has decided to take sides in a departmental conflict rather than trying to resolve it.”

Ninth, the Association comments on the meetings held between Albers and her co-workers in January, 2003. The Association maintains that at those meetings, Albers was “isolated and confronted”, and Fehringer was completely left out by prearrangement with the administration. The Association believes that in those meetings, the administration “opted for a manipulated process” wherein it played “a thinly veiled partisan role.”

Tenth, the Association contends that when Giese and Schumacher referred this interpersonal conflict to the union to deal with, this encouraged union dissension because the union has “no power or tools for dealing with interpersonal conflict on the job”, and “no way to manage the involved employees.”

Eleventh, with regard to Fehringer’s request to serve on the Scholarship Committee, the Association asserts that neither he nor any other bargaining unit employee is “entitled” to sit on a committee. Additionally, the Association avers that despite his assertion to the contrary, Fehringer was not precluded or excluded by Albers from the committee. To support that premise, it once again relies on the fact that Albers ordered the food for that meeting. As the Association sees it, that food order shows that Albers anticipated Fehringer’s attendance at the meeting.

Twelfth, the Association faults the District for including in their brief Fehringer’s “baseless speculations faulting Albers for whatever ails him.” The Association specifically references Fehringer’s allegation that Albers was responsible for students wanting to change counselors from Fehringer to Albers. It argues that assertion was not proven.

Finally, the Association argues that Giese could have done more than suggest to staff that they take their issues up with Albers directly. She could have directed them to do so. Instead, she made it an option, rather than a requirement. As the Association sees it, this assured failure of an important aspect of the mediation agreement, and was tantamount to not honoring the mediation agreement. The Association also contends that Giese “should not have taken sides” against Albers and should not have maintained an open door for people to come running to her about any and all issues. Instead, she should have insisted that all guidance department people get along, rather than insisting that only Albers get along with her co-workers.

Next, the Association makes the following arguments about the letter of reprimand which Albers received for her conduct at the October 21, 2003 guidance department staff meeting.

First, it notes that prior to the meeting, Albers’ co-workers had changed the method of preparing an agenda for their meeting, but did not tell Albers about the change (prior to the meeting), did not give her a copy of the agenda in advance, and did not tell her what information they wanted her to provide. According to the Association, “there was no excuse for not sharing the agenda; not providing a heads up; giving no forewarning of the expectations of the group and just generally not giving Albers a chance to get caught up herself after a long absence.” Albers’ co-workers either knew or should have known that Albers would not appreciate this treatment because neither would they if they were in Albers’ situation.

Second, the Association disputes the District’s assertion that there was a “breakdown in civility” at the meeting. As the Association sees it, “although the meeting may not have been comfortable and pleasant, it was nowhere close to uncivil.” The Association avers that since Albers felt under attack by her co-workers, there was nothing wrong with her communicating that feeling to those that generated that feeling.

Third, the Association addresses two of the matters addressed at that meeting.

With regard to Financial Aid Night, the Association notes that Albers had not yet finalized the arrangements. As the Association sees it, indefinite arrangements would be of little or no use to anyone. The Association contends that “the better approach would have been to discuss areas that they would like to receive information about and ask Albers to provide the information at her earliest convenience or at some point in the future.” The Association notes that did not happen. Instead, “Fehringer led off with the inquiry like the Lion in the Wizard of Oz. That was a good choice.”

With regard to the process for changing guidance counselors, the Association asserts that the reason Albers chose to abstain was “to avoid any argument.” According to the Association, there is nothing wrong with having a different point of view on a particular

subject. Building on that premise, the Association alleges that there was nothing improper about Albers' disagreeing with or abstaining on the proposed new policy because it was not her call to make since she was no longer the guidance coordinator. The Association maintains that by abstaining, she did not stand in the way, so to speak, of the majority.

Fourth, the Association notes that following the meeting, Kiley, Hibner and Fehringer filed written complaints with Giese about the meeting. According to the Association, their written statements make it clear that they communicated with each other about their plans and intentions for the meeting, and then communicated their feelings afterwards. The Association avers that their written statements, "when read together, belie some key assertions made by the participants in the meeting." The Association then goes through their written complaints line by line and makes what it calls "interpretive commentary" to same. The Association characterizes all of their accounts as self-serving, short on factual details, and long on conclusory assertions.

In sum then, the Association's position is that the factual charges specified in the letter of reprimand are not supported by the record evidence. It avers that Albers did not commit misconduct at the October 21, 2003 meeting, so no discipline was warranted.

Next, the Association makes the following arguments about the six incidents which resulted in Albers' one-day suspension.

With regard to the first item (i.e. the Financial Aid Night matter and the Kearney matter), the Association characterizes this charge as "baseless" and "shows a shameless disregard for the truth." The Association contends that in its brief, the District "distorts" the original charge by rewording it from what Giese wrote in her suspension letter so that the new charge is that Albers disappointed Kiley's expectations because Kiley did not know the date for Financial Aid Night. According to the Association, Kearney did not come into the guidance office to find out about Financial Aid Night and his being upset had little or nothing to do with Financial Aid Night or anything that is attributable to Albers. That being so, the Association asserts that what Giese wrote in Albers' suspension letter was false and was not supported by Kearney's eyewitness account. As the Association sees it, the District owes Albers an apology for "articulating this false charge."

With regard to the second item (i.e. Albers' phone call with N.Z.), the Association avers that "after considering the testimony of Mr. Kearney in relation to the first charge, one must consider with some trepidation the representations being made with regard to Ms. Albers' conversation with the parent, N.Z." The Association faults the District's investigation into the matter, because the District did not interview the students who overheard Albers; instead, the District chose to rely on what the Association calls Hibner's "hysteria and hyperbole". Additionally, the Association points out that N.Z. appeared at the hearing pursuant to a subpoena issued by the Association, but was not called as a witness. The Association once

again cites the “unsolicited” e-mail which N.Z. sent to Albers on December 12, 2003, and notes that the District totally ignored it in its brief.

With regard to the third item (i.e. the Beloit College application fee waiver matter), the Association characterizes the District’s version of this event as “an abstract simplification”. It contends that the facts which the District included in its brief (relative to this matter) vary somewhat from the facts referenced in Giese’s disciplinary letter. Building on that premise, the Association accuses the District of modifying its factual allegation in this matter.

With regard to the fourth item (i.e. the scholarship file matter), the Association characterizes this allegation as “pure nonsense”. It contends that the alleged misconduct in this matter is based totally on Hibner’s opinion that Albers “deposited the files on the floor in an insufficiently gentle manner.” According to the Association, Hibner has a “propensity for drama and hyperbole.”

With regard to the fifth item (i.e. Albers’ e-mail relating to the Kohl Scholarship deadline), the Association contends that Albers’ December 4, 2003 e-mail was not a late notice; instead, it was an extra notice wherein Albers gave her co-workers one last chance to communicate any additional candidates. The Association also notes that in its brief, the District failed to include those facts which relate to “Giese’s deliberate interference with the Kohl Scholarship process behind Albers’ back.” As the Association sees it, Giese’s process for dealing with these scholarships “does not set a good role model for communication with colleagues.”

With regard to the sixth item (i.e. “accountability”), the Association argues that “the gratuitous vague allusions to alleged prior incident of lateness are irrelevant, stale and do not prove this element of the charge.”

In sum then, the Association contends that the six factual charges specified in the suspension letter are not supported by the record evidence. Building on that premise, the Association avers that no discipline was warranted.

Turning now to the Settlement Agreement case, the Association emphasizes that after Giese denied Albers’ reimbursement request, a grievance was filed, and the parties agreed to settle the grievance for a “stated amount certain”. According to the Association, the District had the obligation to honor the settlement and pay what it had agreed to pay in the settlement. Giese should not have reevaluated the merits (of the request) or re-exercised her approval responsibilities. Her opinion that the District had agreed to pay too much is irrelevant. The Association maintains that the time to consider how much to pay for a settlement is before the settlement is agreed upon; not afterwards. The Association submits that once a settlement is agreed upon, as happened here, the District was obligated to honor its agreement and pay the stated amount.

District

District's Initial Brief

The District asserts that it had just cause to issue a letter of reprimand to Albers and to suspend her for one day. It also contends it did not violate the grievance Settlement Agreement involving Albers as alleged by the Association. It elaborates on these contentions as follows.

Before it delves into the facts, the District first addresses the standard which the examiner will use to review the discipline. It notes that the collective bargaining agreement does not provide a definition for just cause. In the absence of same, it asks the examiner to apply the generally accepted "just cause" analysis, which, in its view, has the following two elements: 1) that the employee engaged in some kind of conduct which violates a specific rule or runs counter to a reasonable expectation that an employer would, under the circumstances, hold for its employees; and (2) assuming the first element is established, that the discipline imposed is justifiable based on a reasonable reflection of the facts and any mitigating circumstances.

With regard to the first element, the District avers that expecting co-workers to work in harmony and to avoid conflict that causes a disruption in the workplace is a reasonable expectation of any employer. It cites several court decisions which have confirmed the legitimacy of this expectation on the part of a public employer (i.e. maintaining harmony in the workplace). The District maintains that in both Cases 95 and 96, Albers refused to conform her conduct to the reasonable expectations set by the Employer after numerous attempts to advise her of her improper behavior and numerous directives to correct her behavior. It asserts that failure to heed the directives of employers/supervisors is detrimental in any workplace setting, so it is reasonable for employers to expect that their employees will follow the directives they issue. Albers failed to do that. Specifically, in both cases, she failed to abide by the reasonable expectations of the District regarding the need for collegiality. The Employer believes this was a serious offense deserving of disciplinary action. Finally, the District avers that when O'Connell and Giese "finally decided to take the disciplinary route" and impose, respectively, the written reprimand and the one-day suspension, "they were reacting to a groundswell of opposition by Albers' colleagues to Albers' bad behavior."

With regard to the second element, the District avers that the punishment it imposed does fit the crime, so to speak. First, in Case 95 (where it imposed a written reprimand), it maintains that a written reprimand was just punishment. Similarly, in Case 96 (where it imposed a one-day suspension), it argues that a one-day suspension was an appropriate discipline because Albers had been repeatedly warned and (informally) disciplined for her unacceptable behavior. It contends that when it imposed that formal discipline, it considered the "totality of the employee's record." As the District sees it, the level of discipline which it

imposed should stand, because it was not excessive, unreasonable, or an abuse of management's discretion.

On another matter related to just cause, the District notes that the Association could have taken these cases to grievance arbitration, but instead took the prohibited practice route. It avers that having gone that route, the usual burden of proof is reversed, and the Association has the burden to prove that the District committed prohibited practices by its conduct herein. It further maintains that the Association has to prove that by a clear and satisfactory preponderance of the evidence.

The District makes the following arguments concerning the letter of reprimand. It notes at the outset that the letter of reprimand was issued for conduct that occurred at a guidance department meeting on October 21, 2003. Before it addresses what happened at that meeting though, the District emphasizes the following background.

First, it notes that on August 24, 2001, Giese had a meeting with Albers wherein Giese told Albers that she was behaving unprofessionally with her co-workers and treating them disrespectfully. Giese subsequently memorialized this meeting with Albers in writing wherein she indicated what steps she (Giese) wanted Albers to take to change her workplace conduct. Over the course of the next two years, administrators held several meetings with Albers wherein they tried to get across the message to Albers that she was acting unprofessionally by treating her co-workers with disrespect.

Second, it notes that in the summer of 2002, the administration hired a mediator to work with Albers and her co-workers. The District submits that Giese showed her good faith in this matter by participating in a one-on-one mediation with Albers which culminated in a written document wherein Giese agreed to redirect Albers' co-workers to Albers if they had concerns about her conduct. According to the District, Giese subsequently attempted to follow the agreement she reached with Albers. To support that premise, it notes that several of Albers' co-workers (namely Kiley, Hibner and O'Connor) testified that when they went to Giese to complain about Albers' behavior, Giese told them to take up their concerns first with Albers. The District believes it is ironic that Giese attempted to abide by the mediation agreement, and is now attacked by the Association for supposedly shirking her responsibility to deal decisively with Albers and letting the trouble in the department simmer for so long. As the District sees it, the Association wants to have it both ways: on the one hand criticizing Giese for allegedly not complying with the mediation agreement calling for her to redirect Albers' co-workers to see Albers first, while on the other hand criticizing Giese for not acting quickly enough to quell the disturbance in the department.

Third, it notes that on December 2, 2002, the administration placed Albers on the Awareness Level of Phase III of the District's professional development model, as a result of continued concerns about her job performance. That document indicated that her "negative

attitude, poor communication and hostility [had] created a difficult oppressive working environment. . .”, and that she was to correct it by taking the following steps:

... Immediately, Sheri is to treat all colleagues with utmost respect even when in disagreement. When she is offering an opinion or asked to respond to a question, it should be done without sarcasm or vindictiveness. At times, Sheri treats some other people with respect, is positive, and collaborative. But many times, Sheri is disrespectful to her colleagues and others, is negative, and pushes her views to the exclusion of all others. Sheri needs to treat everyone respectfully and be collaborative with her colleagues. (Note: Underline in original).

In addition, Sheri will not try to garner support by demeaning coworkers (including administration) to MGSD staff, community members, and students.

Sheri will be a positive, active participant in all meetings abiding by the established meeting guidelines.

Sheri will establish a positive, open communication style with her colleagues.

Sheri will work to regain the trust of her colleagues.

Sheri is requested to seek outside support if necessary in order to effectively control her emotions at the work site.

Fourth, the District notes that in January, 2003, several of Albers' co-workers met with her and expressed their ongoing frustration and displeasure with her behavior. The District avers that while Albers vexed nearly all of her co-workers, “she reserved her most spiteful behavior for Fehringer, who had the misfortune of being offered a position in the guidance department despite not being the favorite of Albers.”

Fifth, it notes that in September, 2003, administrators informed Albers that she would remain at the Awareness Level of Phase III of the District's professional development model.

The District maintains that these counseling sessions, written directions and verbal warnings should have alerted Albers to the seriousness of her conduct and gotten her attention.

Having given that context, the Association now addresses the October 21, 2003 guidance meeting. It characterizes that meeting as “more of the same” from Albers in that she was rude, unprofessional and disrespectful to her co-workers. For her co-workers though, the meeting “seems to have been a watershed moment” because afterwards, Hibner, Kiley and Fehringer “took the unprecedented step of filing written complaints about Albers' behavior at the October 21 meeting.” It notes that in those complaints, Kiley called Albers' behavior at the meeting “upsetting” and added that it “makes for an intolerable work environment”, while Hibner described it as “the most awful meeting” that she had ever been involved in during her 20 years at the high school. Assistant Principal O'Connell agreed with these assessments, and subsequently issued the letter of reprimand. The District argues that given the lengths to

which the administration went to try to correct Albers' behavior without resorting to discipline, the issuance of the letter of reprimand for Albers' conduct at the October 21, 2003 meeting was reasonable. As the District sees it, some discipline was justified for Albers' conduct at that meeting, and it believes the discipline that was imposed was proportional to the offense. The District asks the examiner to find that there was indeed just cause for the issuance of a letter of reprimand to Albers.

The District makes the following arguments concerning the one-day suspension.

It notes at the outset that "while some of the six incidents for which Albers drew a one-day suspension may seem small or insignificant in themselves, in the aggregate they could not be ignored, especially given Albers' 2½ year history of rude and unprofessional behavior." It asks rhetorically what did it take to get her attention? Anticipating that the Association will argue that Albers was put under a microscope unnecessarily, the District cites one arbitrator who stated that "usually employees who are being heavily monitored have given management cause for concern." The District agrees with this statement and avers that Albers had given management plenty of reasons to watch her carefully.

The District then goes through the six incidents referenced in the suspension letter.

With regard to the first matter (i.e. the Kearney matter), the District acknowledges that the gist of Kearney's testimony was that he did not come into the guidance office to find out about Financial Aid Night. According to Kearney, he was upset about other matters. One of the topics he was upset about was the lack of financial aid information. According to the District, Kiley wanted to tell Kearney the exact date for Financial Aid Night, because that program is designed to allow students and their parents to get the type of financial aid information that Kearney was apparently seeking. The District speculates that if Kiley had known the date for the upcoming Financial Aid Night, she would have been able to share that information with Kearney when he came in, and "perhaps he would not have remained so agitated." As the District sees it, the point of this incident is that Kiley should have known the date for Financial Aid Night, but Albers would not share it with her.

With regard to the second and fourth matters (i.e. Albers' phone call with N.Z. and the scholarship file matter), the District notes that Hibner witnessed Albers' conduct in both matters. Hibner described Albers' conduct in both matters as rude and unprofessional, whereas Albers said Hibner's description was exaggerated. The District argues that "given the 2½ year history of rude and unprofessional behavior by Albers and the near unanimity of her colleagues' view of her conduct, Albers' credibility should be at rock bottom."

With regard to the third matter (i.e. the Beloit College application fee waiver matter), the District asserts that the Association's contention that Albers was entitled to help the student on her own since she had received an e-mail directly from him does not hold water. Here's

why. Albers never mentioned to Fehringer that she had gotten an e-mail directly from the student. Her only response to Fehringer was a curt – “I’ll take care of it.” The student involved was one of the students assigned to Fehringer, and he had told the student that he would get back to him with the information he was seeking. The District contends that Fehringer was unable to do that, however, because Albers refused to give him what he asked for (i.e. the name of a Beloit College alumnus). According to the District, Albers knew that Ziegelmaier was a Beloit College alumnus. All Albers had to do was give Fehringer her name and Fehringer could have taken it from there. That did not happen though. As the District sees it, Albers’ behavior in this instance harkens back to her ill-tempered refusal to allow Fehringer to participate on the scholarship committee. The District argues that it is only against this backdrop that Albers’ conduct in this instance can be fully understood for what it was – an attempt to hinder Fehringer in the performance of his duties.

With regard to the fifth matter (i.e. Albers’ Kohl Scholarship e-mail of December 4, 2003), the District simply asks two rhetorical questions. First, if Albers needed the information she was asking about in her e-mail, why did she wait until the day before the scholarship nominations were due at CESA 2? Second, if her e-mail was simply a gratuitous communication, why send it?

Finally, with regard to the sixth matter (i.e. “accountability”), the District avers that on December 4, 2003, Albers took an extended lunch break. To support that contention, it cites the testimony of Giese, O’Connell and Briggs. The District argues that what compounded the matter was that when Albers was asked about it at the December 8, 2003 meeting, “she insisted that she did not take more than the [half hour] time allotted.” The District maintains that once again, Albers’ credibility is lacking and her testimony that she only took a half hour for lunch should not be credited. As the District sees it, Albers’ complaints that her comings and goings were being unnecessarily monitored is of no import because even if she was being closely monitored in December of 2003, she can hardly complain that it was without cause. The District notes that she had previously been warned about her failure to arrive in the guidance office by 7:45 a.m.

The District argues that these six incidents show Albers’ continued disrespect for her supervisors and her co-workers, and “undeniably resulted in a continuance of the disruption in the workplace brought on by her misbehavior.” The District’s position is that a one-day suspension for these incidents was a measured response that was totally justified and not excessive under the circumstances. The District asks the examiner to find that there was just cause for the one-day suspension.

The District makes the following arguments concerning the grievance Settlement Agreement case. It claims that “the Association’s attempt to portray the flap over the underpayment of Albers’ reimbursement request as evidence of Giese’s determination to skewer Albers is widely off the mark.” According to the District, Giese’s rationale for paying

\$22.38 less than the amount specified in the settlement agreement was fully explained in Attorney Julka's letter to Attorney Haus dated February 16, 2004, and Giese reaffirmed her rationale in her testimony. It avers that whether her reasoning is acceptable to the examiner or not, "it requires a broad leap to reach the conclusion urged by the Association." That conclusion, of course, is that Giese single-handedly engineered Albers' undoing, and orchestrated the complaints from Albers' co-workers, and the underpayment was part of that plan. The District maintains that the record evidence does not support such a theory. The District acknowledges that while "Albers' reimbursement request that she submitted back in June 2003 may well have come under closer scrutiny than usual by Giese, [but] it is generally acknowledged that employees who fall under close scrutiny have usually given management plenty of reasons to watch the employee carefully." According to the District, Albers had given the administration plenty of reasons to scrutinize her conduct, so she can hardly complain about the level of scrutiny she was under given her work history. The District therefore asks that this complaint be dismissed as well.

District's Reply Brief

The District comments at the outset on the way the Association's initial brief was written. First, it notes that with respect to the disciplinary matters, the Association's brief made no demarcation between fact and argument, but instead intertwined its argument and "disputatious comment" with its statement of the facts. It avers "the Association's factual presentation is so far out of balance" that the examiner should not rely on it, and similarly, the examiner should view the Association's arguments in an unfavorable light. Second, as the District sees it, the Association's entire case has been molded to fit the proposition that Giese became disaffected with Albers because Albers "disagreed" with Giese regarding the choice of Fehringer to replace Rohde in May, 2001. The District characterizes that proposition as flawed and "belied by the facts". In its view, the Association's brief "molds the facts to fit its predetermined thesis." It contends that the record facts do not support the Association's proposition that Giese was "some kind of grand conspirator" who engaged in a vendetta against Albers and manipulated Albers' co-workers into becoming her pawns. The District argues that the Association's theory of the case (i.e. that Giese was bent on revenge against Albers and used Albers' co-workers to carry out her "malicious intentions") "is so far beyond the pale that the examiner should have little difficulty in rejecting it out of hand." The District avers that the discipline which was meted out to Albers "was not the result of a campaign orchestrated from the top down, but rather resulted from an uprising among Albers' colleagues in the department."

Next, the District makes the following arguments about the reimbursement matter. First, it again cites the letter which Attorney Julka sent to Attorney Haus to explain why the amount paid was \$279.86 rather than \$302.24. Second, the District contends that while the Association is certainly entitled to argue that once the Settlement Agreement was signed, the District was obligated to pay the amount specified regardless of its accuracy, "the Association

goes overboard in making this incident the centerpiece of its theory that Ms. Giese was engaged in open warfare with Ms. Albers.” The District asserts that Giese’s decision to pay the lesser amount was not arbitrary and capricious or motivated by “ill will” as the Association alleges. It maintains that regardless of whether or not Giese was justified in paying the lesser amount, “her decision is not evidence of some nefarious plot against Ms. Albers of which she was the alleged mastermind.”

Next, the District makes the following arguments about the letter of reprimand.

First, it disputes the Association’s contention that the October 21, 2003 meeting of the members of the guidance department (which precipitated the letter of reprimand) was a “set-up” wherein Albers was blindsided by her co-workers. Here’s why. It avers that notwithstanding the Association’s contention to the contrary, the meeting’s agenda was not deliberately hidden from Albers. Instead, it was posted in plain view on the wall. Aside from that, the District notes that prior to the meeting, Albers did not inquire of anyone about what was to be discussed at the meeting. Elaborating on that point, the District opines that if Albers was unprepared for the meeting, “it was largely of her own doing.”

Second, the District contends that the topics addressed at that staff meeting (i.e. scholarship information, Financial Aid Night, and changing student/counselor assignments) were not out of the ordinary or new topics (for a departmental staff meeting). The District submits that even if Albers was surprised by the topics on the agenda, they were topics she was familiar with. The District avers that when those topics were raised, Albers’ co-workers were not expecting definitive answers from her; rather, what they were expecting was a willingness to share information and perspectives.

Third, with regard to Albers’ conduct during the meeting, the District quotes from Fehringer’s, Kiley’s and Hibner’s written documents relative to same. According to the District, those documents establish that Albers’ conduct and demeanor during the meeting was rude, disrespectful and unprofessional.

Fourth, the District submits that if Albers’ rude and unprofessional conduct at the October 21, 2003 staff meeting had just been an isolated occurrence or an aberration, the behavior could perhaps be excused. The District stresses however that what happened in the meeting was not an isolated occurrence or an aberration; instead, Albers’ conduct that day was similar to the bad conduct that she had been warned about repeatedly since August, 2001 (i.e. namely, disruptive and negative interactions with her co-workers). According to the District, there was a connection between Albers’ conduct on October 21, 2003 and the events that preceded it.

Fifth, the District argues that after the administration received the written complaints from Albers’ co-workers about her conduct at that staff meeting, it had no choice but to take some disciplinary action against Albers following that meeting.

Finally, with regard to the level of discipline imposed, the District points out that the discipline it imposed was the mildest form of (formal) discipline possible. It asserts that Albers had received “plenty of verbal warnings” prior to this incident, so under the circumstances, a letter of reprimand was entirely appropriate. The District therefore believes it had just cause to impose the letter of reprimand on Albers.

Next, the District makes the following arguments about Albers’ one-day suspension.

It comments at the outset on the Association’s contention that the District turned this proceeding into a “free for all attack” against Albers. It asserts that that contention is ludicrous. According to the District, what happened in this proceeding was that the District took its cue from the Association and merely responded to the Association’s personal attack on Giese.

With regard to the first item (i.e. the Financial Aid Night matter and the Kearney matter), the District makes the following arguments.

First, it asserts that the Association’s contention about the Financial Aid Night matter is off the mark. Here’s why. The District emphasizes that the issue here is not when the announcement about Financial Aid Night appeared in the MGHS newsletter because Albers was not disciplined for having placed the announcement about Financial Aid Night in the January, 2004 newsletter. Instead, it maintains that Albers was disciplined for failing to keep her co-workers apprised of her plans for Financial Aid Night after they had made repeated inquiries. Thus, as the District sees it, the issue is when Albers informed her co-workers about the specifics for Financial Aid Night; not when it was officially announced to the school community. The District emphasizes that while Albers knew as of December 1, 2003 when Financial Aid Night would be held, she did not deign to inform her co-workers in the guidance department until December 12, 2003 when she made the formal announcement via an e-mail sent to the entire senior class. In response to Albers’ contention that she could not have announced the details to her co-workers prior to the time when she received the form back confirming that the room she requested was available, the District avers that there was no need to wait for the room confirmation before sharing the information about Financial Aid Night with her co-workers. To support this premise, the District cites Giese’s testimony that a room would have been available for Financial Aid Night on whatever date was selected.

Second, the District characterizes what happened with Kearney as “more a symptom of the underlying malady infecting the guidance department than the disease itself, however.” It acknowledges that Kearney did not raise the subject of Financial Aid Night during his visit. Be that as it may, the District notes that the reason Kearney came to the guidance office was because he wanted scholarship and financial aid information. According to the District, many of the matters Kearney seemed agitated about were going to be addressed at the Financial Aid Night program, but Kiley could not tell him the date because Albers had kept that information

to herself. It asks rhetorically: “Is it surprising that Ms. Kiley was frustrated at not being able to tell Mr. Kearney with any specificity whatsoever when Financial Aid Night would take place?”

Third, the District responds to what Giese wrote in Albers’ suspension letter about the timing of Albers’ e-mail to the senior class concerning Financial Aid Night (specifically the phrase “[a]s of the 9:30 a.m. on December 12th (sic), the date still has not been communicated to the members of the department, so they could share it with students.” The District acknowledges Giese could have worded it differently. For example, she could just as well have stated that “not until 2:34 p.m. on December 12th did you communicate the date of Financial Aid Night to the members of the department so they could share it with students.” The District asks rhetorically how that would have materially altered the picture. As the District sees it, the more important point is that Albers waited until near the end of the school day on December 12th, the last day for announcements to be submitted for the January newsletter, to communicate the information about Financial Aid Night to her co-workers, who learned the details along with all of the seniors. The District opines that by waiting until the last minute, Albers ensured that none of her co-workers “would be able to ‘leak’ the information to any of the seniors, and thus steal her thunder.”

Finally, it avers that this incident was symptomatic of the lack of collegiality she had previously been warned about. It notes in this regard that she was warned about it in a memo dated February 17, 2002, and again on December 2, 2002 when she was placed on the Awareness Level of Phase III of the District’s professional development model.

With regard to the second item (i.e. Albers’ phone call with N.Z.), the District argues that the e-mail which N.Z. sent to Albers is not enough to overcome the testimony of the District’s witnesses. Here’s why.

First, the District points out that N.Z.’s e-mail was sent four days after Giese met with Albers to go over a number of incidents that had recently occurred, including this incident. The District notes that while Albers testified that she did not request that N.Z. write any document on her behalf, Albers did admit to having a conversation with N.Z. on December 9, 2003 (the day after meeting with Giese). While the purpose of the conversation Albers had with N.Z. on December 9 ostensibly was to let her know that she had met with N.Z.’s son, the District calls the Examiner’s attention to the fact that Albers did not testify that that was the only thing that was discussed.

Second, the District argues that even though N.Z. may have apologized for her part in the December 3, 2003 phone conversation, that does not change the fact that Albers was rude and unprofessional in the guidance department office when she talked with N.Z. The District emphasizes that three District witnesses testified about this matter: Baxter, Giese and Hibner. The District summarizes their testimony as follows. Baxter testified that N.Z. spoke to her

after she had a phone call with Albers, and N.Z. complained to Baxter about how Albers had treated her in their phone call. Giese testified that she called N.Z. after getting a report from Baxter, and N.Z. complained to her about how Albers had treated her in their phone call. Hibner was present in the guidance department on December 3, 2003 and unbeknownst to Albers, overheard Albers' part of the conversation. Hibner testified that she was shocked by Albers' words and tone of voice after she realized that she was talking to a parent.

With regard to the third item (i.e. the Beloit College application fee waiver matter), the District disputes the Association's contention that Albers "did nothing wrong." According to the District, what she did wrong was give Fehringer, with whom she unquestionably had a rocky relationship since he started in the District in the summer of 2001, the brush-off. He asked her if she knew the name of a Beloit College alumnus. That's it. The District notes that rather than simply telling Fehringer that Ziegelmaier was a Beloit College alumnus, Albers dismissed Fehringer's inquiry by brusquely telling him that she would take care of it.

While the Association would prefer this incident to be viewed in isolation, the District's position is that it should not be viewed standing alone. Here's why. The District emphasizes that Albers had been repeatedly told by her supervisors that she needed to treat her co-workers with respect and with a collegial attitude. It specifically calls attention to the fact that when she was placed on the Awareness Level on December 2, 2002, she was told that her relationships with her co-workers were negative or self-serving, and she was given an unsatisfactory rating in this area. The comments included the following: "Sheri tries to undermine the credibility and the work of others. . . . Colleagues express continued frustration because they feel she withholds important information. . . ." She was then given a list of expectations which included the need to "establish a positive, open communication style with her colleagues." As the District sees it, the Beloit College fee waiver incident is simply another example of this unacceptable behavior on her part towards her co-workers.

With regard to the fourth factor (i.e. the scholarship file matter), the District urges the Examiner to reject the Association's attempt to shift the blame for this incident to Kiley and Hibner because they did not give Albers certain information. The District emphasizes that it was Albers, and she alone, that took out all the files from the bottom drawer and slammed them onto the floor. The District argues that Albers' contention to the contrary (i.e. that she did not slam the files on the floor) should not be credited. According to the District, she was not a credible witness.

The District acknowledges that if this incident were viewed in isolation, it could be explained away as Albers simply having a bad day. It maintains that to do so though would be to ignore the cumulative effect of Albers' behavior. The District asserts that the record shows that Albers acted as if the scholarship information was a closely guarded secret not to be shared openly with her co-workers. As the District sees it, Albers did not regard herself simply as being in "a leading role dealing with scholarships" as the Association put it in their

brief. Instead, she acted as if she was the sole proprietor of the scholarship information and it was her own private domain. It was not. All the guidance counselors had an ownership interest in the scholarship information because of the very nature of their duties.

With regard to the fifth item (i.e. Albers' Kohl Scholarship e-mail of December 4, 2003), the District contends that what is significant about this incident is that Albers did not communicate with any of her co-workers about the Kohl Scholarship either prior to the November 21, 2003 local deadline, or at any time prior to her December 4, 2003 e-mail, which was one day before the scholarship applications were due to be turned in to CESA 2. As the District sees it, since Albers was the scholarship coordinator, she should have communicated in a more timely fashion than she did. The District contends she did not send out the e-mail to her co-workers until it was too late to be effective.

With regard to the sixth item (i.e. "accountability"), the District argues that "the weight of the credible evidence supports the District's position with respect to the matter of Ms. Albers' lack of punctuality both when arriving at work in the morning and with respect to her having taken an extended lunch break on December 4, 2003." To support the first contention (i.e. arriving at work after 7:45 a.m.), the District again cites the testimony of Briggs and Rohde that Albers routinely arrived at work after 8:00 a.m. To support the second contention (i.e. that Albers took an extended lunch break on December 4, 2003), it again cites the testimony of O'Connell and Giese that they saw Albers leave the high school with her husband at 11:16 a.m. and get into a car in the parking lot. It also avers that "Briggs testified that she observed Jeff Albers dropping off his wife at the High School at 12:18 p.m." The District asserts that Jeff Albers timeline concerning the events of that day "is simply not credible."

While the Association would prefer this incident to be viewed in isolation, the District's position is that it should not be viewed standing alone. It emphasizes that Albers had been previously warned about not arriving at the high school at the prescribed time of 7:45 a.m. According to the District, this incident shows that Albers was not arriving at school at the prescribed time.

In sum then, the District believes it had just cause to issue the letter of reprimand to Albers and suspend her for one day. It asks that all three prohibited practice complaints be dismissed and the relief requested by the Association denied.

DISCUSSION

This proceeding involves three prohibited practice complaints against the District on behalf of Sheri Albers. The complaints were consolidated for hearing and decision. Case 95 involves a letter of reprimand issued to Albers on November 3, 2003. Case 96 involves a one-day suspension issued to Albers on December 15, 2003. Case 97 involves a grievance

Settlement Agreement which was reached in October, 2003 following the filing of a grievance by Albers over the District's refusal to pay her reimbursement request for expenses for the 2002-2003 school year. The amount of money being disputed in Case 97 is \$22.38. These cases will be addressed in the order just listed.

Albers' Discipline (Cases 95 and 96)

I. **Jurisdiction**

The two complaints involving Albers' discipline (Cases 95 and 96) contend that the District lacked just cause to impose a letter of reprimand and a one-day suspension on Albers. The Association contends that this action, in turn, violated Sec. 111.70(3)(a)5, Stats. That section provides that it is a prohibited practice for a municipal employer:

5. To violate any collective bargaining agreement previously agreed upon by the parties with respect to wages, hours and conditions of employment affecting municipal employees, including an agreement to arbitrate questions arising as to the meaning or application of the terms of a collective bargaining agreement. . .

This provision makes it a prohibited practice for a municipal employer to violate a collective bargaining agreement. While this statutory provision provides one mechanism for enforcing a collective bargaining agreement, it is not the only enforcement mechanism available. Usually, collective bargaining agreements in Wisconsin are enforced via grievance arbitration. The collective bargaining agreement at issue here contains a grievance arbitration provision. Given the existence of same, and the fact that there was no contract hiatus present here, one would think that unresolved contractual claims, such as those at issue here, would be resolved by a grievance arbitrator appointed pursuant to the grievance arbitration provision rather than a WERC examiner hearing the claim as a (3)(a)5 case. However, this collective bargaining agreement is unusual in giving the Association an option of having alleged contractual violations decided either through a prohibited practice complaint based on Sec. 111.70(3)(a)5 or through arbitration. This option is found in 13/4/5 of the collective bargaining agreement which provides as follows:

ARTICLE XIII

GRIEVANCE PROCEDURE

...

Section 4: Miscellaneous

13/4/5 It is agreed and understood by the parties hereto that although the Association may not be a grievant under this procedure nothing herein shall be construed as constituting a waiver of any sort by the Association of its statutory right to independently enforce the terms and conditions of any collective bargaining agreement in effect between it and the District under Section 111.70(3)(a)5 of the Wisconsin Statutes. Further, it is specifically agreed by the parties hereto that the Association may independently seek to resolve such breach of contract claims in proceedings before the Wisconsin Employment Relations Commission and that said Commission is clothed with the necessary jurisdiction to hear and resolve the same.

In this case, the Association opted to have Albers' discipline reviewed by the WERC as Sec. 111.70(3)(a)5 breach of contract claims. Such was its right. The contract language just quoted confers jurisdiction upon the WERC to hear and decide such breach of contract claims. Accordingly, the Examiner invokes the Commission's jurisdiction under Sec. 111.70(3)(a)5 and will act as a de facto arbitrator to determine if the discipline which the District imposed on Albers violated the collective bargaining agreement.

II. The Applicable Standard of Review

Both Sections 3/1/1 and 9/6/1 in the collective bargaining agreement contain just cause provisions. Each provision says that the District needs to have just cause to discipline an employee. Since Albers was given a letter of reprimand and a one-day suspension, the obvious question to be answered is whether the District had just cause for that discipline.

The threshold question is what standard or criteria is going to be used to determine just cause. Arbitrators differ on their manner of analyzing just cause. Some apply the seven-step "Daugherty" standard. Others apply a standard which consists of a two-prong analysis: the first element is whether the employer proved the employee's misconduct, and the second, assuming this showing of wrongdoing is made, is whether the employer established that the discipline which it imposed was justified under all of the relevant facts and circumstances. Of these two approaches, the latter (i.e. the two-prong analysis) is more common. I'm going to apply that standard here.

III. The Letter of Reprimand

Albers was given the letter of reprimand for her conduct at the staff meeting on October 21, 2003. Here's an overview of that letter. The first paragraph, which was one sentence long, accused her of "unprofessional behavior" at that meeting. The second and third paragraphs contended that administrators had been attempting for several years to make her

aware of her ongoing improper and “unprofessional, disrespectful behavior” and had been trying to get her to change and/or correct her workplace behavior. The fourth paragraph deals with what allegedly happened at the staff meeting (Note: This paragraph will be quoted later). Finally, in the fifth paragraph, Albers is reprimanded for her “unprofessional, disrespectful behavior” at that meeting.

Since Albers was disciplined for “unprofessional behavior”, the threshold question is whether “unprofessional behavior”, in the abstract, runs counter to a reasonable expectation that an employer would hold for its employees. The Association does not quarrel with that proposition (meaning that an employer does have a legitimate interest in maintaining order and harmony in the workplace). That being so, the District has a justifiable concern with, as well as a legitimate interest in, maintaining order, harmony and collegiality in the workplace, as well as avoiding conflict that causes a disruption in the workplace. In the context of this case, the first element of the just cause determination does not turn on the District’s interest in preventing “unprofessional behavior”; instead, it turns on whether Albers engaged in “unprofessional behavior” at the October 21, 2003 staff meeting as alleged. This call obviously turns on the facts involved.

As noted above, the fourth paragraph of the letter of reprimand deals with what allegedly happened at the meeting. That paragraph reads as follows:

During the meeting on October 21, 2003, you were disrespectful, rude, negative, combative, and unwilling to be a team player. During the meeting, you stated that you were feeling “attacked” by your colleagues. At no time during the meeting did any colleague verbally attack you or your job performance. The intent of the meeting was to share information and make people aware of new practices within the guidance staff. Your unwillingness to cooperate, be a team player, or suggest other compromises prohibited the group from making progress. Your unprofessional behavior was intolerable! It has created a hostile, intolerable work environment in the Student Services Department.

The first sentence contains words which are subjective and conclusory in nature. I am referring to the words “disrespectful, rude, negative, combative and unwilling to be a team player.” Just because those words are subjective and conclusory, however, does not make them invalid. It simply means that it is necessary to determine if those subjective and conclusory words are supported by the record evidence.

The first topic addressed at the meeting was Financial Aid Night. Albers was asked if there was a tentative date set for that program. Albers did not answer the question or give any date at all. Instead, the only thing she said was that after the date was set, it would be printed in the school newsletter. That’s it. Albers’ terse response frustrated her co-workers. Here’s why. Like much of what happened between Albers and her co-workers, there was a subtext to it that made this a much bigger issue to the participants than is apparent to an outsider. The subtext pertinent to this particular matter is as follows: the record indicates that Albers’ co-

workers had long felt that Albers kept work-related information to herself and would not share it (i.e. the information) with them. It was their view that Albers hoarded work-related information to herself. It is against that backdrop that when Albers' co-workers asked her about the date for Financial Aid Night, and she refused to provide it, that the participants played out their respective roles in this ongoing inter-office drama (i.e. Albers' co-workers trying to get information from Albers and Albers not sharing it). Albers indicated that the reason she did not share any information with her co-workers about Financial Aid Night at that meeting was because the arrangements (and specifically the date) had not yet been finalized. The problem with this rationale is that Albers' co-workers specifically indicated they did not have to have the final date (for Financial Aid Night); instead, they were simply looking for a tentative date, or a list of dates that were being considered, or dates when she expected to hear back from the presenters regarding their available dates. Albers' failure to share any of that requested information with her co-workers after they asked her for it was not justified. As fellow guidance counselors, they were entitled to advance notice of the details concerning Financial Aid Night and should not have had to wait until the school newsletter was published to learn when the event was to be held.

The topic then shifted to scholarship matters. Albers indicated she did not want to deal with that topic. When her co-workers tried to talk about that topic, Albers was non-responsive to their questions/inquiries. Her failure to be responsive to their questions/inquiries about this topic was also not justified.

Next, the topic shifted to the process for changing student/counselor assignments. During that discussion, Fehringer and Albers staked out their differing approaches to dealing with these student transfer requests. Their differing approaches are denominated here as the informal approach (favored by Fehringer) and the formal approach (favored by Albers). When Fehringer asked for a vote among those present as to which process should be used in the department for dealing with student transfer requests, Albers said she abstained. When she was asked what that statement meant, Albers replied that she had no comment. Once again, there was a subtext to this issue that made it a bigger issue to the participants, particularly Fehringer, than meets the eye. The subtext pertinent to this particular matter is as follows: the record indicates that a substantial number of parents had recently requested that their child's counselor be changed from Fehringer to Albers. Fehringer thought that Albers was causing or instigating these requests and was intentionally undercutting him with students and parents. It is against that backdrop that when Albers was asked to vote, and she refused to vote or elaborate why, that the participants again reprised their roles in their ongoing conflict. The Association first argues that the reason Albers abstained was "to avoid any argument". However, as Albers' co-workers saw it, there was no argument to avoid at that point because the argument on that contentious topic had already occurred. They wanted to make a decision on this issue of departmental concern and that's why they called for a vote. Albers' co-workers viewed her (i.e. Albers') refusal to vote on this issue as uncooperative and unresponsive. Second, the Association maintains that by abstaining, Albers did not stand in

the way of the majority. That assertion is not factually accurate. Here's why. When Albers refused to vote, O'Connell tabled the topic. Thus, no vote was ever taken. By effectively blocking the vote from occurring, Albers did indeed stand in the way of the majority.

Finally, while there were still other topics to be addressed on the agenda, Albers shuffled her papers and collected her things as if she was leaving. Hibner, who was speaking when this happened, told Albers that by doing those things (i.e. shuffling papers and seeming preoccupied) she was being disrespectful. Albers then stood up, announced she had had enough, and left the room. The meeting was not over when Albers walked out. Her leaving the meeting before it was over was not justified.

The foregoing facts establish that during the meeting, Albers did not answer some of the questions put to her and was non-responsive to others. When Albers did speak during the meeting, she raised her voice and used a sarcastic tone. Her facial and hand gestures showed she was angry, agitated, frustrated and irritated throughout the meeting.

Having reviewed Albers' conduct, the next question is whether that conduct constituted "unprofessional behavior". That's certainly how Albers' co-workers saw it. That's also how O'Connell saw it. His perspective is important, of course, because he wrote the actual letter of reprimand. As previously noted, in the fourth paragraph of that letter he used the following terms to describe Albers' behavior at that meeting: "disrespectful", "rude", "negative", "combative", and "unwilling to be a team player". I conclude that those subjective and conclusory terms are supported by the record evidence. Conversely, the Association's contention that Albers committed "no misconduct" at the meeting is not supported by the record evidence.

The Association offers numerous defenses for Albers' misconduct at the meeting which, in its view, should excuse or justify her actions. Those defenses are addressed next.

First, the Association argues that Albers' co-workers essentially set her up at the meeting. To support this contention, it cites the following facts. First, it points out that Albers' co-workers had changed the method of preparing an agenda for the meeting, but did not tell Albers about the change (prior to that meeting). Second, it emphasizes that Albers had been on sick leave for two weeks prior to the meeting. Third, it notes that Albers did not see the agenda before the meeting started and thus did not know what topics were going to be addressed at the meeting. As the Examiner sees it though, those facts do not establish that Albers was set up for an ambush at the meeting by her co-workers. Here's why. I've decided to focus initially on the last point the Association just referenced (i.e. that Albers did not know what topics were going to be addressed at the meeting). That's true. However, notwithstanding the Association's contention to the contrary, it was not up to Albers' co-workers to brief her in advance of the meeting about what topics were on the agenda (and thus what topics were going to be discussed). If Albers wanted to know what topics were on the

agenda, she could have asked her co-workers before the meeting started. She did not. Instead, she went into the meeting blind, so to speak, after being off work for two weeks. That was her choice. Next, with regard to the first point the Association referenced above (i.e. that Albers' co-workers had changed the method of preparing the meeting agenda without telling her), I'm convinced that the problem was not with how the agenda topics had come to be selected (i.e. that a piece of paper had been placed on the wall and anyone who wanted could write down any topic for discussion). Instead, I believe the real problem concerned the topics which they selected for discussion. I'm referring, of course, to the topics of Financial Aid Night, scholarship information and changing student/counselor assignments. Albers simply did not want to talk about those topics. While Albers did not want to talk about them, her co-workers did. Her contention that she was blindsided by those topics and needed time to prepare for them simply does not pass muster. These were all topics that Albers, as the senior guidance counselor in the department and former department coordinator, was very familiar with.

Second, the Association asserts that once the meeting started, Albers was asked lots of questions by her co-workers about those topics. That's true. It's not surprising though when one considers that Albers had been off work for two weeks and had told her co-workers not to contact her during that time. That meant that Albers' co-workers had to hold their work-related questions for her until she returned to work. The staff meeting was the logical place to ask them.

Third, the Association contends that it was Albers' co-workers, not Albers, who engaged in unprofessional conduct at the meeting. The record does not support that assertion. Here's why. Six people attended that meeting and testified about what happened there. While it was Albers' view that she was ganged up on, attacked, harassed and interrogated relentlessly during the meeting, that view was not supported by anyone else present. The view of all the others present was that it was Albers who attacked them during the course of the meeting, was rude and unprofessional, and was uncooperative in failing to answer questions. In order for me to credit Albers' account and find that it was Albers' co-workers who acted unprofessionally at the meeting, I would have to collectively discredit the testimony of the other five meeting participants. I decline to do that. Instead, I credit their collective testimony that during the meeting, Albers was rude, unprofessional and uncooperative.

Fourth, the Association finds fault with Assistant Principal O'Connell, who was at the meeting, for not changing the course of what happened at the meeting. The Association implies that if Albers' conduct at the meeting was as bad as O'Connell made it out to be in the letter of reprimand, then O'Connell should have exercised his supervisory authority during the meeting and done something to change it. O'Connell certainly could have intervened at any point during the meeting. As an example, he could have imposed order on all the participants the way a parent does with fighting children. However, he chose not to do that. That was his call to make. Instead, O'Connell opted to let Albers be herself during the meeting. He was not obligated to rescue Albers from herself.

Fifth, the Association contends that following the meeting, Hibner, Fehringer and Kiley communicated with each other about writing up their statements concerning what happened at the meeting. The Association sees that point as significant. I don't. Next, the Association goes through the written statements of those three employees line by line, and comments on what they did and did not say. I'm not going to do that. I'm also not going to address any of what the Association calls its "interpretive commentary" on the contents of their written statements because, in my view, it is unnecessary to do so. Here's why. I agree with the Association that the written statements which Hibner, Fehringer and Kiley submitted following the meeting are short on factual details and long on conclusory assertions. That's why I have not used those statements as the basis for determining what occurred at the staff meeting. Instead, my determination of what occurred at the staff meeting (i.e. Finding 43) is based entirely on actual witness testimony.

Finally, the Association correctly notes that O'Connell did not talk to Albers about her conduct at the staff meeting before issuing the letter of reprimand. According to the Association, O'Connell should have done so. I find that in this instance, O'Connell did not need to talk to Albers about the underlying facts because he attended the meeting in question. Given his first-hand knowledge of what happened at that meeting, he did not have to talk to Albers before issuing the letter of reprimand.

Having found that the above-referenced defenses do not excuse or justify Albers' misconduct at the October 21, 2003 staff meeting, the next question is whether that misconduct warranted discipline. I find that it did. Here's why.

Albers' rude and unprofessional conduct at the October 21, 2003 staff meeting was not either an isolated occurrence or an aberration in her workplace behavior. Instead, it had happened many times before. When it had happened before, the District had tried a variety of non-disciplinary approaches to alert Albers that her interactions with her co-workers were poor and needed improvement. Specifically, the administration had tried counseling sessions, written directives and verbal warnings. The following is a recap of what the administration had tried.

Giese initially brought her concerns about Albers' conduct and interactions with her co-workers to Albers' attention over two years prior to the incident involved here. The first time was August 24, 2001. At a meeting on that date, Giese told Albers that she was behaving unprofessionally with her co-workers and treating them discourteously and disrespectfully. Giese further told Albers what she was supposed to do to change her workplace conduct. Giese's directives to Albers were as follows: that Albers was to be courteous and cordial with her co-workers; that Albers was to interact with them in a positive, professional manner; and that Albers was to treat her co-workers professionally and respectfully. These directives were subsequently memorialized in writing. In my view, there was nothing obtuse about these directives, or which required Albers to read between the proverbial lines. Giese's directives to Albers were reasonable, clearly articulated, achievable and within Albers' control.

Second, over the next two years, administrators held close to a half dozen meetings with Albers wherein they tried to make it emphatically clear to Albers that she was continuing to act unprofessionally by treating her co-workers with disrespect. In these meetings, she was repeatedly counseled to change her behavior and interact positively, respectfully and cordially with her co-workers. The meeting held February 14, 2002 is noteworthy because nine people attended, including the Association's and District's attorneys. For an hour and a half, all those people focused on one topic – Albers' workplace conduct. During that meeting, Albers was specifically counseled to improve her communication with her co-workers and make it more frequent; to make decisions affecting the department in a collaborative manner; to treat co-workers professionally, collegially and respectfully; and to modify her verbal and non-verbal messages with/to her co-workers so they are less harsh, cold and accusatory. These directives essentially mirror the ones Giese gave to Albers on August 24, 2001.

Third, in the summer of 2002, the administration hired a mediator to work with Albers and her co-workers. Albers and Fehringer participated in a one-on-one mediation. So did Albers and Giese.

Fourth, on December 2, 2002, the administration placed Albers on the Awareness Level of Phase III of the District's professional development model because of concerns it had with her workplace behavior. That document indicated that her "negative attitude, poor communication and hostility [had] created a difficult oppressive working environment. . .", and that she was to change her behavior by taking the following steps:

... Immediately, Sheri is to treat all colleagues with utmost respect even when in disagreement. When she is offering an opinion or asked to respond to a question, it should be done without sarcasm or vindictiveness. At times, Sheri treats some other people with respect, is positive, and collaborative. But many times, Sheri is disrespectful to her colleagues and others, is negative, and pushes her views to the exclusion of all others. Sheri needs to treat everyone respectfully and be collaborative with her colleagues. (Note: Underline in original).

In addition, Sheri will not try to garner support by demeaning coworkers (including administration) to MGSD staff, community members, and students.

Sheri will be a positive, active participant in all meetings abiding by the established meeting guidelines.

Sheri will establish a positive, open communication style with her colleagues.

Sheri will work to regain the trust of her colleagues.

Sheri is requested to seek outside support if necessary in order to effectively control her emotions at the work site.

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In September, 2003, administrators told Albers she was remaining at the Awareness Level. The logical inference to be drawn from this is that administrators still had the same concerns with Albers' workplace behavior in September, 2003 as they had on December 2, 2002. Thus, from their perspective, Albers' workplace conduct was not improving.

The counseling sessions, written directives and verbal warnings referenced above show that the District went to great lengths to try to correct/change Albers' workplace behavior towards her co-workers short of formal discipline.

When Albers engaged in rude and unprofessional behavior at the staff meeting on October 21, 2003, the administration concluded that their non-disciplinary attempts to get Albers to change her workplace behavior towards her co-workers had not worked. It therefore decided to move to formal discipline. It had the right to do that (i.e. impose discipline on Albers for her misconduct at that meeting).

With regard to the level of discipline which was imposed (i.e. a letter of reprimand), it is noted that that discipline is one of the mildest forms of formal discipline possible. I find that given the circumstances present here, a letter of reprimand was not excessive, disproportionate to Albers' misconduct, or an abuse of management's discretion, but rather was reasonably related to Albers' misconduct. The District therefore had just cause to impose the letter of reprimand on Albers.

IV. The One-Day Suspension

My discussion begins with the following overview. The District suspended Albers for one day for her conduct in six separate incidents. By the District's own admission, "some of the six incidents for which Albers drew a one-day suspension may seem small or insignificant in themselves." Be that as it may, the District believes that when considered "in the aggregate they could not be ignored, especially given Albers' 2½ year history of rude and unprofessional behavior." For its part, the Association contends that these six incidents did not happen as described, or were exaggerated, or taken out of context. In the discussion which follows, I find that the District substantiated most of the charges against Albers.

Item 1 in the suspension letter referred to two separate matters which have been identified throughout this decision as the Financial Aid Night matter and the Kearney matter. While Giese lumped both matters together in the same paragraph in item 1, in this discussion they will be addressed separately.

I begin with the Financial Aid Night matter. Another departmental staff meeting was held on November 18, 2003. At that meeting, the subject of Financial Aid Night was raised (just like it was at the October 21, 2003 staff meeting). After the subject was raised, what happened next was literally a repeat of what occurred at the earlier meeting. Albers was asked

if there was a date set for that program, and she replied in the negative. When Albers was pressed on it, she replied that after the date was set, it would be printed in the school newsletter. This was the second time Albers blew off her co-workers with the same line. It was also the second time Albers' co-workers tried without success to get that information from her at a staff meeting. Albers' response frustrated her co-workers; they thought she was intentionally withholding information from them and being uncooperative.

In my discussion on the letter of reprimand, I identified the subtext pertinent to this particular matter. That discussion obviously applies here as well because what happened at the November 18, 2003 staff meeting relative to the Financial Aid Night matter was literally a repeat performance of what happened at the October 21, 2003 staff meeting (i.e. Albers' co-workers once again trying to get information from Albers and Albers not sharing it). The Association argues that Albers' co-workers "knew full well that the information was not available", yet they pressed Albers for a date so "they could then make an issue of it." That assertion is not supported by the record evidence. Insofar as the record shows, Albers' co-workers did not know on November 18, 2003 if a date had been set yet for the Financial Aid Night program, and if so, what the date was. That's why they asked Albers about it. Albers should have shared that information with her co-workers after they asked her for it. She did not offer a justifiable reason for failing to do so. Consequently, this charge against Albers in item 1 has been substantiated.

Another matter which is separate from what happened at the November 18, 2003 staff meeting but still part of the overall Financial Aid Night matter is the timing of Albers' notifying the other guidance counselors about the date for Financial Aid Night. As just noted, Albers did not inform the other guidance counselors of the date for Financial Aid Night at either the October or November staff meetings. She did inform them of the date for Financial Aid Night on December 12, 2003. Here's a recap of how it happened. On December 12, 2003 at 2:34 p.m., Albers sent a formal announcement about Financial Aid Night to all the high school seniors via e-mail. That e-mail included the date that the program was to be held, namely January 21, 2004. The other guidance counselors were copied on this e-mail. Thus, Albers' co-workers learned of the date for Financial Aid Night at the same time as all the seniors did. In item 1 in the suspension letter, Giese essentially faulted Albers for not sharing the date of Financial Aid Night with her co-workers sooner than she did. That was a valid criticism. Here's why. As noted in Finding 50, Albers knew as of December 1, 2003 when Financial Aid Night would be held (namely, January 21, 2004); the only thing she did not know as of December 1, 2003 was whether the room she requested was available. Albers' contention that she needed to wait until she had room confirmation before sharing any information about Financial Aid Night with her co-workers does not pass muster. As Giese noted, a room would have been made available for the Financial Aid Night program on whatever date was selected. Albers knew that her co-workers wanted to know the date for Financial Aid Night because they had made repeated inquiries of her. Once the program's date was finalized on December 1, 2003, Albers should have shared it with her co-workers. She

did not. Instead, as noted above, she sat on that information for almost two weeks and did not share it with her co-workers until December 12, 2003. Albers did not offer a justifiable reason for her delay in notifying the other guidance counselors about the date for Financial Aid Night. That being so, this charge against Albers in item 1 has been substantiated too.

In so finding, I intentionally sidestepped one sentence which Giese used in the suspension letter relative to the matter referenced above because I wanted to address it separately. Here's why. As noted above, since Giese essentially faulted Albers for not sharing the date of Financial Aid Night with her co-workers sooner than she did, Giese could have said something in the suspension letter like this: "You did not communicate the date for Financial Aid Night to the members of your department until December 12, 2003 at 2:34 p.m. That was unacceptable." Had Giese written something like that, her sentence would not have been problematic because the sentence just noted comports with the record evidence. However, what Giese wrote was this: "[a]s of the 9:30 a.m. on December 12th (sic), the date still has not been communicated to the members of the department, so they could share it with students." I find that Giese's choice of words in this sentence was problematic for the following reasons. First, while that statement is factually accurate in that Albers had not communicated the date for Financial Aid Night to the members of her department by 9:30 a.m. on December 12, 2003, it implied that if Albers had told her co-workers of the date by "9:30 a.m. on December 12th", then her notification would have been acceptable. Building on that premise, if notification by that date and time was acceptable to Giese, what about notification five hours later? What I'm referring to, of course, is that Albers did communicate the date for Financial Aid Night to her co-workers by e-mail that same day at 2:34 p.m. The suspension letter makes no reference to same (i.e. to Albers' e-mail of December 12 at 2:34 p.m.). Second, the reference in Giese's letter to "9:30 a.m. on December 12th" also implied that the date and time represented some kind of deadline. There is nothing in the record that supports the notion that "9:30 a.m. on December 12th" was a deadline of some sort. Third, even if it is assumed for the sake of discussion that Giese used the phrase "9:30 a.m. on December 12th" because that is when she wrote this part of Albers' suspension letter, the suspension letter was dated December 15, 2003 (which, of course, is three days after "9:30 a.m. on December 12th"). By including the phrase "9:30 a.m. on December 12th" in the suspension letter dated December 15, Giese unintentionally gave the Association some good material to work with, so to speak, because it made it look like she was more interested in disciplining Albers than in dealing with the facts.

The last point just made also applies to the Kearney matter. As previously noted, Giese lumped the Kearney matter into the same paragraph as the Financial Aid Night matter. In that paragraph, Giese wrote that Kearney came to the student services office on December 11, 2003 "to inquire about the date of Financial Aid Night." That statement is not factually accurate. As noted in Finding 51, Kearney came into the student services office that day for a number of reasons, but getting the date for Financial Aid Night was not one of them. While he was there, Kearney became agitated and upset. In the suspension letter, Giese essentially put the blame

for this on Albers. I conclude that Giese's linking Albers to the Kearney matter was off the mark for the following reasons. First, Kearney's being upset and agitated had nothing to do with Albers. He was not upset with her. If he was upset with anyone, it would have been with Kiley and Briggs because they were the people he dealt with. Second, Kearney's being upset and agitated had little or nothing to do with Financial Aid Night. He was not upset because he did not know the date for Financial Aid Night; he was upset for other reasons. Kearney did not even know about Financial Aid Night prior to walking into the student services office and he did not raise the topic; it was Kiley who raised it. The District speculates that if Kiley had known the date for the upcoming Financial Aid Night, she would have been able to share that information with Kearney when he came in, and "perhaps he would not have remained so agitated." Perhaps. However, the issue here is not what would have calmed Kearney down on the day in question; it is whether Albers can fairly be blamed for Kearney's agitated state on the day in question. I find that Albers cannot fairly be blamed for Kearney's agitated state on that date. As a result, it is concluded that this charge in item 1 has not been substantiated.

In sum then, two of the charges made against Albers in item 1 have been upheld and one has been denied. The charge that Albers failed to share information with her co-workers at the November 18, 2003 staff meeting about the date for Financial Aid Night has been upheld. Albers should have shared that information with her co-workers. The charge that Albers delayed notifying her co-workers of the date set for Financial Aid Night has also been upheld. Albers should have notified them sooner than she did. The charge that Albers was to blame for Kearney's agitated state at the student services office on December 11, 2003 has been denied. Albers cannot fairly be blamed for Kearney's agitated state on that date.

The charge in item 2 is that Albers was rude, disrespectful and unprofessional to a parent in a phone call on December 3, 2003.

Here's a recap of the pertinent facts from Finding 53. On that date, Albers had a phone conversation with N.Z. in the outer office of the student services department. Hibner was nearby and overheard Albers' side of the conversation. Hibner did not know who Albers was talking to, but surmised it was a parent. In her testimony, Hibner did not describe what Albers said to the parent – just how she said it, which was loud. Hibner described Albers as being disrespectful, rude, hostile and curt to the person on the other end of the phone. N.Z. subsequently complained to administrators Baxter and Giese about how Albers had treated her in their phone call. Specifically, N.Z. told Baxter that Albers treated her rudely and was nasty to her. N.Z. told Giese that Albers had raised her voice to her, and was terse and unkind to her.

The Association essentially ignores the facts just referenced and argues instead that the persons who were in the best position to judge the appropriateness of the phone call are those who were privy to both ends of the phone call, namely Albers and N.Z. It emphasizes that N.Z. subsequently sent Albers an e-mail apologizing for her conduct in the December 3, 2003

phone call. According to the Association, N.Z.'s apology should be the determining factor on this charge. Based on the following rationale, I find otherwise. First, N.Z.'s apology was received several days after Giese discussed Albers' phone call with N.Z. at their December 8, 2003 meeting. Following that meeting, Albers knew that Giese was considering disciplining her for her phone call with N.Z. That being so, the Association's assertion that Albers received N.Z.'s apology before she (Albers) "knew that there was any consideration of discipline related to this incident" is not factually accurate. Second, the day after Giese talked to Albers about Albers' phone call with N.Z., Albers had a conversation with N.Z. about N.Z.'s son. It is unclear from the record if that was the only thing that was discussed. Third, even though N.Z. apologized to Albers in her December 12, 2003 e-mail, N.Z.'s apology only applied to, and covered, her (i.e. N.Z.'s) conduct in the December 3, 2003 phone conversation. N.Z.'s apology did not apply to, or cover, Albers' conduct in that same phone conversation. The reason that point is significant is because this case is not about N.Z.'s conduct; it is about Albers' conduct. That being so, N.Z.'s apology does not wipe the slate clean on Albers' conduct. Albers can still be held accountable for her conduct in that phone call. Fourth, N.Z.'s e-mail is not sufficient to overcome the following witness testimony. As previously noted, Hibner described Albers as being disrespectful, rude and hostile to the other person on the phone (which turned out to be N.Z.). While the Association dismisses Hibner's description of Albers' conduct as "hysteria and hyperbole", Hibner's account is supported by what N.Z. told Baxter and Giese when she complained to them about Albers' conduct in their phone call (namely, that Albers had been rude and disrespectful to her). Although Albers felt she did nothing wrong in her phone call with N.Z., that was not how Hibner, Baxter and Giese saw it. In order for me to credit Albers' view that she did nothing wrong in her phone call with N.Z., I would have to collectively discredit the accounts of Hibner, Baxter and Giese. I decline to do that. Instead, I credit their collective accounts that in her phone call with N.Z. on December 3, 2003, Albers was rude and disrespectful to N.Z. That was unacceptable conduct. Consequently, the charge against Albers in item 2 has been upheld.

The charge in item 3 is that Fehringer asked Albers for the name of a Beloit College alumnus, and Albers did not reply with a specific name; instead, Albers said she would talk to Alex W. about it.

Here's a recap of the pertinent facts from Finding 58. In early December, 2003, one of the students assigned to Fehringer, Alex W., asked Fehringer if he knew of a Beloit College alumnus who could sign off on his Beloit College application so that he could obtain a waiver of the application fee. Fehringer told Alex W. that he did not know of one, but would check it out and get back to him with a name. Soon thereafter, Fehringer asked Albers if she knew of a Beloit College alumnus. When Fehringer asked Albers this, he told her why he was asking, namely that he had a student who needed an alumnus to sign his application so that he could get an application fee waiver. Unbeknownst to Fehringer, Albers had recently received an e-mail from Alex W. asking for her assistance in this same matter. Albers tersely told Fehringer that she would take care of it. Fehringer did not ask Albers to take care of it though or help the student; instead, Fehringer simply asked Albers for a name, which Albers did not provide.

As the Association correctly notes, if this matter is looked at standing alone, it can easily be viewed as a small, petty and insignificant matter. Rhetorically speaking, so what if Albers didn't answer Fehringer's question? What's the big deal about it? Why is this small, petty and insignificant matter something that the District considered a disciplinable act?

Partial answers to these rhetorical questions can be deduced from reviewing Findings 10 through 14, 31 and 37 which describe part of the difficult relationship Fehringer had with Albers. Those findings show the subtext that made the verbal exchange between Albers and Fehringer (on the Beloit College alumnus matter) a much bigger issue to Fehringer and the administration than is readily apparent. I believe that the subtext pertinent to this particular matter is referenced in Finding 14. Rather than summarize it, I've decided to quote part of it again:

. . . Albers' co-workers could tell that she detested Fehringer because they saw that she almost never interacted civilly, cordially, positively or collegially with him. Conversely, they saw that Fehringer acted civilly to Albers. Albers' co-workers observed Albers disparage, discredit and embarrass Fehringer in front of teachers, students and parents on a continuous basis. When Albers communicated with Fehringer, it was not face to face; it was by e-mail even though their offices were close to one another. Her e-mails to him were civil in tone. Her face to face encounters with Fehringer were not. Albers did not speak to Fehringer unless he directly asked her a question, whereupon her reply, if there was one, was curt, abrupt, demeaning and/or rude. At meetings, she was condescending, patronizing and cold to Fehringer in front of those present. Fehringer knew that Albers opposed his being hired because she told him so. . .

It was against this backdrop that when Fehringer asked Albers for the name of a Beloit College alumnus, and she did not provide it, that those two played out their respective roles in their ongoing conflict (i.e. Fehringer trying to get information from Albers and Albers not sharing it).

Administrators discussed this matter with Albers at their December 8, 2003 meeting. During that meeting, Albers told administrators that she did not know of a Beloit College alumnus, and that is why she did not give Fehringer a specific name (when he asked for one). The record facts show otherwise. As noted in Finding 60, Albers knew a teacher at the high school who was a Beloit College alumnus, Kate Ziegelmaier, because Albers asked Ziegelmaier to write a letter to Beloit College on behalf of Alex W. seeking an application fee waiver. This established that Albers knew that Ziegelmaier was a Beloit College alumnus.

Albers indicated that the reason she did not respond to Fehringer's request for the name of a Beloit College alumnus was because Alex W. had requested that information from her. That's true. He had. After Albers got Alex W.'s e-mail, she went to work on it right away

even though Alex W. was not one of her students; he was one of Fehringer's students. Specifically, she called Beloit College and inquired about the procedure for getting an application fee waiver from an alumnus. After she got the procedure, she contacted Kate Ziegelmaier and asked her to write a letter on behalf of Alex W. seeking an application fee waiver. After Ziegelmaier wrote the letter, she sent a copy of it to Alex W. so that he knew that she had responded to his inquiry. On its face, her work on Alex W.'s behalf was laudable. However, Fehringer and the administrators essentially questioned Albers' intent in doing this work. They thought that what Albers did, by doing work that Fehringer had not asked her to do, was to intentionally undercut Fehringer in the eyes of that student. Given Albers' history of discrediting, embarrassing and undermining Fehringer in front of others, the Examiner is hard pressed to say otherwise.

I said earlier that if this matter was looked at standing alone, it could easily be viewed as a small, petty, insignificant matter. While it was all those things, it was also, as noted above, part of something that was much bigger. Specifically, it was part of the ongoing conflict between Albers and Fehringer. The record indicates that Albers had been repeatedly directed to share information with her co-workers, and to not discredit or undermine them. Given that history, I find it was misconduct for Albers to not tell Fehringer the name of a Beloit College alumnus when he asked her for one. Albers knew that Kate Ziegelmaier was a Beloit College alumnus, so she could have given Fehringer the name. She did not. Instead, she held on to that information and did not share it with him. Once again, in the context of this case, where the record evidence shows that Albers had been repeatedly directed to share information with her co-workers and not undermine them, it was misconduct for her to not share the requested information with Fehringer and then perform work related to that matter which had the effect of undermining Fehringer. Consequently, the charge against Albers in item 3 has been upheld.

The charge in item 4 is that on December 3, 2003, Albers was rude, disrespectful and unprofessional when she took the files out of a file cabinet and slammed them, batch by batch, onto the floor.

Here's a recap of the pertinent facts from Finding 64. On that date, Albers discovered that the scholarship files that she maintains in a file cabinet had been reorganized without her knowledge. A parent volunteer had reorganized the files while Albers was on sick leave. The parent volunteer had placed the files into alphabetical order. This reorganization greatly displeased and upset Albers because it differed from her (i.e. Albers') organizational system of arranging the files by due date. Albers then pulled all the files out of the file drawer to rearrange them back to the way she wanted them (i.e. by due date). Albers, who was visibly agitated and angry, slammed each batch of files onto the floor, with the metal strips in the files causing a loud clang each time. Students were present when this occurred. Unbeknownst to Albers, Hibner saw the whole thing and was upset by Albers' conduct. Hibner felt Albers was out of control, so she (Hibner) went to the office to get Giese to observe the incident firsthand. Giese was not available though, so Giese did not see the incident.

The Association offers several defenses for Albers' conduct which, in its view, should excuse or justify her actions. Those defenses are addressed next.

First, the Association attempts to shift the blame for this incident from Albers to co-workers Hibner and Kiley on the grounds that they did not tell Albers, after she returned to work from sick leave, that the scholarship files had been rearranged. In my view, that argument misses the mark because these two employees (Hibner and Kiley) bear no responsibility for what happened. The person who bears sole responsibility for this incident is Albers.

Second, at the hearing, Albers denied slamming the files onto the floor; she contended she simply dropped or placed them on the floor. If that was what happened, why would Hibner, as the Association put it in their brief, go "running to the principal's office"? In a school environment, employees don't normally go "running to the principal's office" for routine matters. The fact that Hibner went "running to the principal's office" buttresses the conclusion that what she saw Albers doing that day was not routine. That being so, Hibner's testimony on this point is credited over Albers'.

Having reviewed both Albers' conduct and the Association's defenses to same, the next question is whether that conduct was misconduct. I conclude that it was. Employees are expected to control their temper in the workplace. Failure to do so is unprofessional conduct and a disciplinable act.

In so finding, the Examiner is well aware that if this incident were looked at in isolation, it could be explained away as Albers simply having a bad day. After all, this incident occurred on the same day as Albers' phone call with N.Z. The problem with doing that (i.e. looking at this incident in isolation from everything else in the record) is that it ignores the cumulative effect of Albers' behavior. What I'm specifically referring to is this: the record evidence shows that Albers had thrown temper tantrums before and been counseled to control them. She failed to control her temper on December 3, 2003 when she discovered that the scholarship files had been reorganized and she slammed all the files onto the floor. Consequently, the charge against Albers in item 4 has been upheld.

The charge in item 5 is that on December 4, 2003, Albers sent an e-mail to her co-workers inquiring about the status of Kohl Scholarship applications which were due in the CESA office the next day. According to the charge, Albers should have communicated with her co-workers about the matter in a more timely fashion than she did. The District avers that the e-mail was sent too late to be effective,

Here's a recap of the pertinent facts from Findings 66 through 68. Albers was the scholarship coordinator in the guidance department, so she had primary responsibility for dealing with scholarships. The deadline for submitting the school's two nominees for Kohl

Scholarships was December 5, 2003. The applications had to be received in the CESA office in Milton, Wisconsin by that date. On the morning of December 4, 2003, Albers sent an e-mail to Kiley and Fehringer asking if either of them had any Kohl Scholarship applications, because they were due in the CESA office the next day. The e-mail noted that MGHS could only submit two applications, so if there were more applications than that, “decisions will have to be made ASAP.” Fehringer responded that he had no applications. Kiley responded later that day that she did have one application, but she had already turned in that application to Giese the previous week. Kiley further indicated that Giese, in turn, had mailed the application to the CESA office the week before Thanksgiving. Until she got Kiley’s response, Albers did not know that Giese had already mailed in a Kohl Scholarship application.

This charge differs from many of the others involved herein in that the alleged misconduct is not apparent on its face. What I mean by that is that an outsider could look at the facts addressed thus far (i.e. just Albers’ e-mail of December 4, 2003), and pose the following rhetorical questions in response: So what if Albers waited until the day before the CESA deadline to send an e-mail to her co-workers regarding this matter? What’s the big deal about it? Why is this a disciplinable act?

Those rhetorical questions were answered at the December 8, 2003 meeting where Giese discussed this matter with Albers. During that meeting, Giese told Albers that the reason her (i.e. Albers’) December 4, 2003 e-mail was problematic was because Albers had a history of hand-delivering scholarship applications on the day they were due. Giese thought such hand delivery on due dates was unnecessary, caused by poor planning and resulted in additional expense to the District. Giese noted that she had previously warned Albers against repeating that conduct. It was against that backdrop that when Albers sent her December 4, 2003 e-mail to her co-workers inquiring about the status of scholarship applications which were due at the CESA office the next day, that Giese thought that Albers was repeating the same conduct she had previously been warned to stop.

The Association offers the following defenses for Albers conduct in this matter which, in its view, should excuse or justify her actions.

First, the Association contends that Albers’ December 4, 2003 e-mail was an extra notice wherein Albers gave her co-workers one last chance to communicate any additional candidates. By calling Albers’ e-mail an extra notice, the Association implies that Albers had already communicated with her co-workers regarding this matter. That contention is not supported by the record evidence. Insofar as the record shows, the only communication Albers had with her co-workers about this matter after she distributed the scholarship application materials to them was her December 4, 2003 e-mail. That’s it.

Second, the Association avers that “there was no requirement that Albers send the December 4th e-mail reminder” to Kiley and Fehringer. That’s true. However, it was Albers’

job, as the scholarship coordinator, to submit the Kohl Scholarship applications to the regional CESA office by the deadline date (which was December 5, 2003). Obviously, as part of that process, she needed to check with her co-workers to see if any applications had been submitted to them. Quite frankly, it did not matter how she checked with them (whether it was by e-mail or in person). What did matter though is that she check with them in a timely fashion. Here's why. Under this scholarship program, just two applicants are permitted per school. If more than two students apply, then a selection committee at the school has to select the two nominees. It ultimately turned out that there was just one applicant from MGHS that year. However, Albers did not know that when she sent out her e-mail on December 4, 2003. Had there been more than two applicants, then a selection committee would have needed to convene to decide who the school's two nominees would be. Giese thought that since Albers started this entire process the day before the applications were due at the CESA office, Albers had not allowed sufficient time for that contingency to occur. The Examiner is hard pressed to say otherwise.

Third, the Association contends that "what is more significant" (than Albers' December 4 e-mail) was that "no one communicated with Albers" regarding that matter. What the Association is referring to is that Kiley submitted her one application directly to Giese without informing Albers, and Giese, in turn, mailed in that application to CESA the week before Thanksgiving. The Association avers that since Giese told Kiley to submit the application to her, and Giese subsequently mailed in the application that Kiley gave her, Giese changed the procedure behind Albers' back and cut Albers out of the loop. However, even if that is what happened (meaning that Giese did cut Albers out of the loop), it does not follow from that that Giese's conduct was "more significant" than Albers' conduct. Here's why. Albers did not know when she sent her e-mail on December 4, 2003 that Giese had already gotten an application from Kiley and mailed it in. Insofar as Albers knew on the morning of December 4, 2003, she still had to do the following work related to this matter: 1) collect the applications from her co-workers; 2) if there were more than two applicants, convene a selection committee to decide who the two nominees would be; and 3) ensure the delivery of the application(s) to the CESA office in Milton, Wisconsin by the next day (December 5, 2003). It was Giese's view that Albers should not have waited until the day before the deadline to start this process. Giese's opinion on this matter is significant, of course, because she was empowered by the District to review Albers' work performance and decide if it was acceptable. Giese decided that Albers' work performance in this matter was unacceptable, and she explained to Albers why it was unacceptable at their December 8, 2003 meeting.

Having reviewed both Albers' conduct and the Association's defenses to same, the final question is whether her conduct in this matter was misconduct. I conclude that it was. As noted above, Giese felt that Albers had a history of waiting until close to scholarship deadlines to collect and deliver the scholarship applications. Giese had warned Albers to not repeat her past conduct. Employees are supposed to follow the directives they are given by their supervisors even if they disagree with it. Albers failed to follow Giese's directive when she

waited until the day before the Kohl Scholarship applications were due to collect and deliver those scholarship applications. The fact that she ultimately did not have any application(s) to collect and deliver does not change this. Consequently, the charge against Albers in item 5 has been upheld.

Item 6 in the suspension letter contained five separate charges which Giese denominated as “your accountability during the school day”. These charges were not lumped together but instead were broken down into separate paragraphs. The first charge was this: “Your colleagues assert you are rarely at work before 8:00 a.m.” The second charge was that Albers was often not in her office during the school day. The third charge was that Albers took an extended lunch on December 4, 2003. The fourth charge was that Albers missed a meeting on December 5, 2003. The fifth charge was that Albers was 15 minutes late to a certain meeting.

In briefing this matter, the parties mainly addressed just two of these charges. The charges which they concentrated on were the first and third charges. The Examiner takes his cue on this matter from the parties and will likewise address just the first and third charges. Thus, no further comments will be made about the second, fourth or fifth charges.

As just noted, the first charge was this: “ Your colleagues assert you are rarely at work before 8:00 a.m.” Even if that was true, I find that this charge is too general and overbroad, and as a result, will not be relied upon as a basis for discipline. Here’s why. One of the cardinal rules of disciplinary due process is that an employee charged with misconduct is entitled to be given precise information about the charge they face. Disciplinary notices that do not describe the type, scope and nature of the alleged misconduct are considered to be flawed for lack of specificity. Applying this general principle to this particular charge, I find that this charge lacks sufficient specificity because it does not include a date or dates that Albers was allegedly not at work on time. I consider that defect fatal. Consequently, the first charge will not be relied upon as a basis for discipline.

In contrast, the third charge does contain precise information about the charge against Albers, so it is sufficiently specific. The charge is that on December 4, 2003, Albers took an extended lunch.

I find that Albers did take an extended lunch on that date, albeit not as long as alleged by the District. The following shows this. Albers’ lunch period was supposed to be a half hour between 11:30 a.m. and 12:00 noon. Albers acknowledged that on that date, she left the building and went off site to a restaurant for lunch with her husband, but she insisted she was only gone that day from 11:30 a.m. to 12:00 noon. Thus, Albers averred she was only gone for a half hour. Conversely, the suspension letter averred she was gone for an hour. Administrators testified they saw Albers leave the building at 11:16 a.m. In order for me to credit Albers’ view that she left the building that day with her husband at 11:30 a.m., I would have to collectively discredit the accounts of Giese, O’Connell and Schreiner that they saw

Albers leave that day at 11:16 a.m. I decline to do that. Instead, I credit their collective accounts that when they saw Albers leave the building that day, they looked at a digital clock in the room they were in and saw it was 11:16 a.m. Building on the premise that Albers left the building at 11:16 a.m., she should have returned a half hour later around 11:45 a.m. She did not. By her husband's account, he dropped her off at the high school about noon. While Giese averred in the suspension letter that "another colleague saw Jeff Albers drop you off at school at 12:18 p.m.", that assertion was not confirmed during the hearing by Briggs' testimony (i.e. the employee Giese was referring to in the statement just quoted). That being so, the return time of 12:18 p.m. was not substantiated. It follows from the foregoing that Albers took about a 45 minute lunch that day (namely from 11:16 a.m. to 12:00 noon). A 45 minute lunch is longer than what Albers was supposed to take (i.e. a half hour). I therefore find that Albers did take an extended lunch that day. Employees are not supposed to take a longer lunch break than is authorized. In this instance, Albers did. That was misconduct and a disciplinable act. Consequently, the third charge in item 6 that Albers took an extended lunch on December 4, 2003 has been upheld.

...

It is particularly apparent from the last charge referenced above that Albers' comings and goings at work were being monitored at the time. Presumably her work activities were being monitored too. That's not surprising though given her work history. Albers had given administrators plenty of reasons to scrutinize her conduct. It is not uncommon for problem employees to be put under the microscope. Obviously, that's what administrators did to Albers. Then, they waited and watched. They could do that.

...

Having found that the District substantiated most of the charges against Albers, the next question is whether Albers' misconduct in those instances warranted discipline. I find that it did for the following reasons. With the exception of the extended lunch matter, all the other charges which were substantiated involved matters that administrators had previously addressed with Albers and repeatedly warned her about. Specifically, Albers had received directives to treat her co-workers professionally; to not be rude or disrespectful to her co-workers or others; to not withhold information from her co-workers; to be a team player; and to plan better in order to accomplish tasks in a timely fashion. These directives put Albers on notice what she was supposed to do, and if she failed to comply with them, she would be disciplined. As the above discussion shows, she failed to comply with those directives.

The final question is whether the discipline which was imposed (i.e. a one-day suspension) was justified. I find that it was under the circumstances present here. Prior to the imposition of that discipline, administrators had tried a variety of non-disciplinary approaches to get Albers to change her workplace behavior and work performance. Specifically, Albers

had received counseling sessions, written directives and verbal warnings. In October, 2003, administrators concluded that their non-disciplinary attempts to get Albers to change her workplace behavior had not worked, and it moved to formal discipline, and imposed a written warning. After that written warning was imposed, Albers engaged in conduct that the District considered misconduct. Seven instances of misconduct were substantiated. When those seven instances of misconduct are considered in the aggregate, they warranted further discipline. The level of discipline which commonly follows a written warning is a suspension of some sort. I find that a one-day suspension for seven instances of substantiated misconduct was not excessive, disproportionate to Albers' collective misconduct, or an abuse of management's discretion, but rather was reasonably related to Albers' collective misconduct. The District therefore had just cause to impose a one-day suspension on Albers.

The Grievance Settlement Agreement (Case 97)

I. Jurisdiction

The third complaint (Case 97) contends that the District violated Sec. 111.70(3)(a)5 by allegedly failing to comply with a grievance settlement agreement involving Albers. As previously noted, that section provides that it is a prohibited practice for a municipal employer "to violate any collective bargaining agreement previously agreed upon by the parties. . ."

Normally, the collective bargaining agreement which is involved is the traditional labor agreement between the parties. In this case, though, the "agreement" that is involved is the grievance Settlement Agreement referenced in Finding 78. The threshold question is whether the foregoing constitutes a "collective bargaining agreement" within the meaning of Sec. 111.70(3)(a)5, Stats.

It does. Previous WERC decisions have found that a grievance settlement agreement is a collective bargaining agreement within the meaning of Sec. 111.70(3)(a)5, Stats. See, for example, CITY OF MADISON, DEC. NO. 20656-C, 20657-C (WERC, 9/84) (a MERA case) and STATE OF WISCONSIN (CARAVELLO), DEC. NO. 25281-C (WERC, 8/91) (a SELRA case). These cases support the proposition that a grievance settlement agreement is a collective bargaining agreement within the meaning of Sec. 111.70(3)(a)5 and therefore enforceable as same.

II. Merits

Having so found, the final question to be addressed is whether the District breached the grievance Settlement Agreement as alleged by the Association. Based on the following rationale, I find that it did.

The pertinent facts are contained in Findings 77-79. Here's a recap. In June, 2003, Albers submitted a written request to be reimbursed \$302.24 for work-related expenses she incurred during the 2002-2003 school year. Giese subsequently rejected the reimbursement request in its entirety, whereupon the matter was grieved. Several months later, the parties tentatively settled the grievance and memorialized the grievance settlement terms in writing. The Settlement Agreement document provided in pertinent part:

1. The District will reimburse Albers for the expense reimbursements claim she submitted on June 25, 2003, for the 2002-2003 school year in the amount of \$302.24. Such payment will be made within two weeks following the execution of this Agreement by all parties.

...

5. This Agreement constitutes the complete agreement of the parties concerning this matter. Further, no oral representation and/or promises have been made that are not embodied in this Agreement.

Both Giese and Albers signed the Settlement Agreement document. When Giese later processed the invoice authorizing payment to Albers, the amount Giese authorized was \$279.86. This amount was \$22.38 less than the amount specified in the Settlement Agreement (i.e. \$302.24).

While the District proffered several reasons for not paying Albers the disputed \$22.38, the Examiner is not going to address any of those contentions or delve into the accuracy of any of the numbers. Here's why. The time to consider how much to pay/accept for a settlement is before the settlement is signed; not afterwards. In this case, the parties agreed to settle the grievance by paying Albers a stated amount certain. Once the written Settlement Agreement was signed by both sides, the District was legally obligated to honor its agreement and pay what it had agreed to pay in the settlement. Giese should not have paid a different amount. Her view that the amount specified in the Settlement Agreement was wrong or inaccurate is not controlling. What is controlling is what is in the written Settlement Agreement document.

Having reached that conclusion, the Examiner need not analyze Giese's motives for paying Albers \$22.38 less than what was specified in the Settlement Agreement document. Instead, it suffices to say that the District failed to comply with the Settlement Agreement when Giese paid Albers \$22.38 less than the amount specified in the Settlement Agreement document. In order to remedy the breach of that collective bargaining agreement, the District shall pay Albers \$22.38, plus interest.

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Those arguments not addressed in my discussion were considered, but were deemed unnecessary to decide these matters.

Dated at Madison, Wisconsin, this 14th day of December, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Raleigh Jones /s/

Raleigh Jones, Examiner

REJ/gjc
30963-C

