

BEFORE THE ARBITRATOR

- - - - -  
In the Matter of the Arbitration :  
of a Dispute Between :  
HOWARDS GROVE EDUCATION ASSOCIATION :  
and : Case 9  
: No. 42309  
: MA-5651  
HOWARDS GROVE SCHOOL DISTRICT :  
:  
- - - - -

Appearances:

Mr. Charles S. Garnier, Acting UniServ Director, and Ms. Ellen M. MacFarlane, UniServ Director, Kettle Moraine UniServ Council, appearing on behalf of the Association.  
Mr. Paul C. Hemmer, Mulcahy & Wherry, S.C., Attorneys at Law, appearing on behalf of the District.

ARBITRATION AWARD

The Association and the District above are parties to a 1987-1989 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Association made a request, with the concurrence of the District, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Clifford Klenke. The undersigned was appointed and held a hearing on July 25 and 26, 1989, at which time the parties were given full opportunity to present their evidence and arguments. A transcript of the hearing was made, both parties filed briefs and reply briefs, and the record was closed on November 21, 1989.

ISSUE:

The parties stipulated that the following issue is to be decided by the Arbitrator:

Did the District violate Section 4.1 of the 1987-1989 collective bargaining agreement when it nonrenewed the teaching contract of Clifford Klenke for the 1989-1990 school year? If so, what is the appropriate remedy?

CONTRACT PROVISIONS:

ARTICLE IV - TEACHER RIGHTS AND RESPONSIBILITIES

Section 4:1 No teacher shall be dismissed, non-renewed or disciplined in a manner causing loss of compensation under Appendix F Salary Schedule without just cause.

In all other cases, discipline shall not be for arbitrary or capricious reasons.

Teachers new to the district (employed after 8/27/85), however, shall serve a probationary period of three years during which time the just cause standard for non-renewal or dismissal shall not apply.

Nothing in this clause or agreement shall preclude the immediate suspension with pay and benefits of a teacher by the district when deemed by the Board in the best interest of the district.

(NOTE: All current teachers on probation will be grandfathered into a two-year probationary period.)

Section 4:2 Teachers shall seek to exercise their professional competencies and responsibilities to the best of their abilities. Failure to honor this agreement or to exhibit professionalism in the execution of contracted and/or assigned responsibilities may constitute cause for discipline. Serious misconduct and/or a continuing failure to correct deficiencies previously identified in writing and discussed with the teacher to foster correction, may constitute cause for dismissal or non-renewal.

. . .

ARTICLE V - GRIEVANCE PROCEDURE

Section 5:1 The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of this agreement. A determined effort shall be made to settle any such differences through the use of the grievance procedure, and there shall be no suspension of work or interference with the operations of the district during the term of agreement as per State Statutes.

Section 5:2 For the purpose of this agreement a grievance is defined as any allegation as to the meaning, interpretation and application of any provisions of this agreement.

Section 5:3 Grievances shall be processed in accordance with the following procedure:

Step 1: An earnest effort shall first be made to settle the matter informally between the employee and his/her immediate supervisor or principal. The employee may request the assistance of a representative of the Association at this meeting. If the matter is not resolved, the grievance shall be presented in writing by the employee to the immediate supervisor or principal within twenty (20) working days after the facts upon which the grievance is based first occur or first become known. The immediate supervisor or principal shall give his written answer within five (5) working days of the time the grievance was presented to him in writing.

Step 2: If not settled in Step 1, the grievance may within five (5) working days be appealed, in writing, to the superintendent of schools. Within ten (10) working days after receipt of the written grievance, the superintendent shall meet with the grievant, and the Association representative if requested by the employee, in an effort to resolve the grievance. The superintendent shall give a written answer no later than five (5) working days after meeting with the employee.

Step 3: If not settled in Step 2, the grievance may within five (5) working days be appealed, in writing, to the Board of Education. The Board shall meet with the grievant, and Association representative if requested by the employee, in an effort to resolve the grievance. The Board shall give a written answer within twenty (20) working days after receipt of the appeal.

Step 4: If not settled in Step 3, the grievant may within fifteen (15) days after receipt of the disposition at Step 3 above, demand arbitration of the grievance by notice in writing to the other party.

A. The parties shall attempt to agree on an arbitrator from the staff of the Wisconsin Employment Relations Commission. In the event the parties are unable to agree the arbitrator shall be selected by the parties utilizing the following procedure:

Each party shall select the name of three arbitrators from the staff of the WERC. One name shall be discarded by random. The remaining

five names shall constitute a panel from which the arbitrator will be selected by striking from the panel.

A coin flip shall determine who will strike first.

The arbitrator selected or agreed upon shall be submitted to the WERC as a joint request. In the event the WERC does not honor the request for appointment, the WERC shall appoint an arbitrator from its staff.

B. Arbitration procedures for Step 4.

1. Guidelines

- a. The arbitrator shall meet with the parties as soon as possible after selection.
- b. The expense of the arbitrator, if mutually incurred, shall be borne equally by the parties.
- c. Either party may request that the proceedings be transcribed. In such case, the cost of transcription shall be borne by the party making the request. If the arbitrator requests that proceedings be transcribed, the cost of the transcription shall be divided equally between the parties to this agreement.

2. Disposition

- a. The decision of the arbitrator shall be final and binding upon the parties.
- b. The arbitrator may rescind, confirm or modify disciplinary action, including action resulting in loss of pay to the employee involved.
- c. The arbitrator shall be empowered to interpret the agreement but shall not have the power to add to, detract from, or modify its terms or provisions.
- d. A written copy of the finding and decision of the arbitrator shall be submitted to the parties as soon as practicable after the completion of the hearing.

Section 5:4 The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limits set out for any step, the employee may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped.

Section 5:5 The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the agreement alleged to have been violated, and the relief sought. The grievance to be processed must be signed by the complaining person(s), or in the event of a class grievance on behalf of all teachers, by the officers of the Association.

BACKGROUND:

The Grievant, Clifford Klenke, was an Industrial Arts teacher at the Howards Grove High School between the 1981-82 school year through the 1988-89 school year. On March 29, 1989, the Board of Education for the School District of Howards Grove sent the Grievant the following letter, notifying him that the Board decided not to renew his teaching contract for the 1989-90 school year:

Dear Mr. Klenke:

Pursuant to Section 118.22 of the Wisconsin Statutes, the School District of Howards Grove issued you a timely "Preliminary Notice of Consideration of Non-Renewal" of your teaching contract for the 1989-90 school year. At your request, the Board of Education scheduled and conducted a private conference with you regarding this matter on March 27, 1989 at 8:15 P.M.

Upon completion of the private conference of March 27, 1989, the Board of Education deliberated with regard to the question as to whether or not your teaching contract should be non-renewed. The Board considered all of the testimony and documentary evidence presented, as well as the arguments of the respective parties. Please be advised that by a majority vote of the full membership of the Board, the Board of Education of the School District of Howards Grove has decided not to renew your individual employment contract for the 1989-90 school year. The decision not to renew your teaching contract was based upon the following reasons:

1. Repeated failure to ensure the safety of equipment and a safe working environment in shop areas under your supervision and control.
2. Repeated failure to strictly enforce and ensure student compliance with safety rules.
3. Repeated failure to maintain an acceptable level of housekeeping in shop areas under your supervision and control.
4. Failure to complete in a timely manner curriculum assignments as assigned and agreed upon.
5. Failure to correct unsatisfactory work performance after extensive remedial measures.

On April 25, 1989, the President of the Howards Grove Education Association, Constance Poppy, sent the following letter to the Howards Grove District Administrator, Ronald Albert:

Dear Mr. Albert:

RE: Howards Grove School District Nonrenewal of  
the Contract of Clifford Klenke

The Howards Grove Education Association has unani-mously voted to file a grievance to challenge the action of the Board of March 27, 1989, to nonrenew Cliff Klenke's contract. Please consider this letter in ful-fillment of the contract. Please consider this letter in fulfillment of the requirements of Steps 1 and 2 of the grievance procedure as stated in Article 5 Section 5:3 of the collective bargaining agreement between the School District of Howards Grove and the Howards Grove Education Association.

Please be informed that Charles Garnier, acting UNISERV Director - KMUC, is the representative of the Association and the grievant matter and that all further communication should be copied and sent to Mr. Garnier.

On April 27, 1989, Albert sent the following reply to Poppy:

Dear Mrs. Poppy:

I am in receipt of your letter of April 25, 1989, and this is to inform you that I will not process or take any action on the alleged grievance because of failure to comply with the following in Section 5:5 of the collective bargaining agreement:

1. The specific section(s) of the agreement alleged to have been violated is not enumerated.

2. The relief sought is not enumerated.
3. The grievance is not signed by the complaining person(s).
4. I do not consider that a class grievance exists since only one person could possibly be aggrieved by the action of the Board on March 27, 1989.

On May 3, 1989, Charles Garnier, then Acting UniServ Director of the Kettle Moraine UniServ Council, sent the following letter to Albert:

Dear Mr. Albert:

I have been asked by the Howards Grove Education Association to deal with matters raised by you in your letter of April 27, 1989 to Connie Poppy regarding the Clifford Klenke nonrenewal.

In that regard, I have enclosed a signed copy (sic) of a grievance from Mr. Klenke that meets the provisions of the collective bargaining agreement.

The grievance is being filed at the board of education level because only the school board can reverse its action to nonrenew Mr. Klenke's contract.

If you have any further questions about this matter please contact me.

The following copy of the grievance was attached to Garnier's letter, as mentioned in the second paragraph above:

- GRIEVANCE -

Name of Grievant: Clifford Klenke

Date Filed: April 25, 1989

Level: Board of Education

Statement of Grievance: The District violated  
Section 4.1 of the 1988-89 Agreement when it  
non-renewed the teaching contract of Clifford Klenke  
for the 1989-90 school year.

Relief Sought: The District shall rescind its  
action to nonrenew the grievant's contract for the  
1989-90 school year and make the grievant whole re-  
garding payment of teacher's retirement and fringe  
benefits.

Signature of Grievant(s): Clifford Klenke 5-5-89

On May 16, 1989, Albert sent the following reply to the Grievant:

Dear Mr. Klenke:

I am in receipt of your grievance signed May 5, 1989, and this is to inform you that I will not process this grievance with the Board of Education since it was not filed in a timely manner.

On May 22, 1989, the Grievant sent the following letter to the Board of Education:

Dear Board of Education:

As per step 3 in the grievance procedures Section 5:3, Clifford Klenke is requesting a meeting with the Board of Education to appeal his nonrenewal

for the 1989-90 school year.

Mr. Klenke and his representative will meet with you at your earliest convenience to resolve this issue.

The Grievant and two witnesses for the District were the only people to testify at the arbitration hearing, and much of the testimony given by the District witnesses was disputed by the Grievant. The testimony and parts of the exhibits entered into the record will be set forth in some detail in this background section. Chris Ligocki, the high school principal at the Howards Grove School District for the last two years, testified on behalf of the District, as did David Wolslegel, who is the Local Vocational Education Coordinator and the Director of Curriculum. Wolslegel splits his time with the Kiel School District spending 60 percent of his time at Howards Grove and 40 percent at Kiel. District Administrator Ronald Albert was present during the hearing but did not testify. Former high school principal Donald Benes was not present.

The Arbitrator has broken down the testimony and evidence into five general categories, although some of them overlap each other. However, for the purposes of setting forth the background of this case, those categories are: (1) lesson plans; (2) curriculum; (3) safety and supervision; (4) housekeeping; and (5) evaluations, discipline and rehabilitation.

#### Lesson Plans:

Included in the Grievant's personnel file is the following memorandum from Benes to the Grievant, dated March 14, 1986, which partially referred to lesson plans:

I have not received lesson plans from you yet this year. I want a copy each week for the remainder of the year and I would also like to have a copy of the lesson plans for the year up to this time so I can gain a better understanding of what in the curriculum is being taught.

On May 14, 1986, Benes sent the following message to the Grievant:

On March 14 I sent you a message indicating that I wanted a copy of your weekly lesson plans. These plans help you organize your lessons and also keep me informed as to what in the curriculum is being taught. It also helps a lot when planning new curriculum. Again I want to remind you that I would like to have copies of your lesson plans.

On November 13, 1986, Benes gave the Grievant a teacher evaluation in a format of boxes checked for either "E" for effective, "N" for needs improvement, and "U" for unsatisfactory. Benes marked 21 categories as effective, none as needs improvement, three as unsatisfactory, and 11 categories left blank. The unsatisfactory checks were for the categories of organization and preparation, attendance to routine duties, and concern for health and safety. While the evaluation will be dealt with in a later section, the comments from Benes included the following which are relevant to lesson plans:

The unsatisfactory checks above refer specifically to lesson planning and the wearing of safety glasses. I need to have a copy of your daily lesson plans each week as they indicate your preparation for the classes you teach. They also keep me informed about the curriculum that is being taught.

On November 24, 1986, Benes sent the following message to the Grievant:

As we discussed on November 13, it will be necessary for you to turn in the required lesson plans each week. I have yet to receive any from you. There are a lot of curriculum changes taking place in your area and its important for all of us to be involved with the program.

A chart showing which high school teachers turned in lesson plans on a weekly basis was used for the first time during the 1988-89 school year (see District Ex. #10). The chart was kept by a secretary, Kay Hemb, who marked an "X" for lesson plans turned in, a "T" for those turned in late, and an "O" for those not turned in at all. If plans were not turned in, Hemb would issue a pink slip to a teacher. Ligocki did not consider a pink slip to be a disciplinary measure.

The chart shows that the Grievant did not turn in lesson plans on five occasions, and turned in plans late twice. Fourteen out of the 31 teachers on the chart had perfect records with "X's" marked for each week. Taking the rest of the teachers in alphabetical order, the chart shows that Frank Berger did

not turn in lesson plans on four occasions and was tardy six times. Jim Carlson missed one lesson plan. Jerry Falk did not turn in one plan and four others were late. Maxine Gburek was late once. Jim Gerbig missed two plans and turned in six late. Andy Hanson was tardy seven times. Pam Herr missed one plan. Mark Hinterberg failed to turn in two plans and was tardy with six of them. Tom Jefferis missed one and was late once. Don Klemme did not turn in one plan and was tardy three times. Herm Larson was tardy once. Diane Lau missed one and turned one in late. Dave Simenz missed one plan and turned four in late. John Thome missed one and was late once. Phil Walkenhorst was late once, as was Ed Wyrembeck.

The weekly lesson plans were to be submitted to Ligocki's office by the Monday of the school week, except for some teachers, such as music teachers on a rehearsal schedule who could submit a monthly plan.

Ligocki used lesson plans as evidence that learning activities were being directed toward learning objectives, as well as evidence that the curriculum was being followed. The District would also ask that substitute teachers follow along in the lesson plans. Ligocki reviewed lesson plans, not for content, but for objectives to see that activities were falling within the curriculum and that there was a plan in effect for the week. In the Grievant's case, Ligocki stated that it was difficult to review the activities of the lesson plans without the curriculum having been completed. Ligocki relied on Wolslegel's expertise to determine the appropriateness of what was being taught in the classroom.

The Grievant gave no reason why he failed to turn in lesson plans. He stated that a lesson plan needs to be flexible, because plans may have to be changed depending on circumstances. The Grievant gave the example that he might plan to give a safety demonstration, but then if a student were absent, he would change his plans to book work or something else. If the Grievant planned to be absent, he would provide a substitute teacher with a written lesson plan for that day. Substitute teachers were not expected to run the machinery in the labs, since they came from academic areas such as social studies or math.

#### Curriculum Writing:

Ligocki defined a curriculum project as "everything that is going to be taught in a course, the material that's going to be covered, the topics, the activities that are going to be used, the time line, evaluations, what resources, texts, films are going to be used, basically the outline, the entire syllabus outlining the objectives of a course." (Tr. - 118.)

Wolslegel is the director of curriculum. He explained that the District pays for the development of curriculum in all cases. The staff can choose to write it during the summer, or outside of the school day, or use school time when the District provides a substitute teacher. The Grievant testified that Wolslegel told him and Jerry Falk, the other teacher in the vocational educational department, that they could not get a substitute to write curriculum.

The District is involved in the SEC or School Evaluation Consortium, a group of schools working together through UW-Madison which assists with evaluations of curricula. As part of the evaluation process for curricula, the District prepared a document (District Ex. #22) which was the self evaluation for vocational education disciplines. The document, as well as Wolslegel's testimony, shows that in 1982, Wolslegel and Falk attended the National American Industrial Arts Association International Convention in Milwaukee, which was the beginning of the District's movement from industrial arts into technology education. The relevant portion of the District Exhibit #22 is as follows:

In the spring of 1982, instructor, Jerry Falk, and LVEC, David Wolslegel, attended the AIAA International Convention in Milwaukee. This was the beginning of technology education at Howards Grove. During the following year, 1982-83, a technology education curriculum model and implementation plan were developed. Minor revisions to that basic curriculum model were made over the next couple years based upon input from DPI and WTEA inservices and a complete review of the program using the Technology Education Standards. (See Figure #8.) The Introduction to Technology Education course was the first change implemented for the 1984-85 school year. Due to reduced student enrollment, Larry Thalacker was laid off in the spring of 1985. The T&I Co-op program was also transferred to be run by the agriculture department because of reduced numbers in both the T&I and Ag Co-op programs. The four systems courses-- Communications Systems, Construction Systems, Manufacturing Systems, and Transportation Systems--were implemented for the 1985-86 school year. Some new and

some traditional courses continued to be offered during 1986-87 with the following courses being offered for the first time: Construction Planning, Materials & Processes, and Conversion Devices. The 1987-88 school year will bring about the complete elimination of the traditional courses. The complete model will still not be implemented but the following courses will be offered for the first time: Graphic Communications; Electronic Communications; Electrical & Mechanical Construction Systems; Hard Materials & Processes; Soft Materials & Processes; and Energy Transmission, Control & Storage.

Wolslegel testified that the rough curricula should have been developed and on file before courses are offered. The Grievant was assigned to six curriculum writing projects, which were: (1) introduction to technology; (2) manufacturing systems; (3) construction systems; (4) materials and processes; (5) conversion devices; and (6) energy transmission, control and storage.

In its brief at page 39, the District outlined the following chart as the course, the school year in which the course was implemented, and the date that the curriculum was completed by the Grievant:

<u>COURSE</u>	<u>IMPLEMENTATION DATE</u>	<u>DATE COMPLETED BY THE GRIEVANT</u>
Introduction to Technology Education	1984-85 School Yr.	No Record
Construction Systems	1985-86 School Yr.	June 1989
Manufacturing Systems	1985-86 School Yr.	April 21, 1988
Conversion Devices	1985-86 School Yr.	February 1989
Materials and Processing	1987-88 School Yr.	June 1989
Hard and Soft Materials in Processes	1987-88 School Yr.	June 1989
Energy Transmission, Control and Storage	1987-88 School Yr.	June 1989

While the above chart shows seven courses, the Grievant has been assigned six curriculum writing projects. While the record is not perfectly clear on this matter, it is possible that the above chart, which shows materials and processes as one course and hard and soft materials in processes as another course, is one combined curriculum writing project, due to the same implementation dates, the same dates of completion, and Wolslegel's testimony. It appears that hard and soft materials and processes were combined into one course, although split into two different semesters, and made up one curriculum writing project.

Benes' message (noted earlier in the section on lesson plans) to the Grievant on May 14, 1986, referred to the planning of new curriculum, but only to note that the lesson plans would help keep him informed "as to what in the curriculum is being taught." Benes' evaluation on November 13, 1986, made the same statement. On November 24, 1986, Benes' message to the Grievant noted that there were a lot of curriculum changes taking place in the Grievant's area and it was important for all of them to be involved with the program, but the message was specifically sent to remind the Grievant about the requirement to turn in lesson plans.

On August 28, 1986, a meeting took place with Albert, Benes, Wolslegel, Falk and the Grievant in attendance. The minutes from that meeting were part of District Exhibit #9, page 5, and the following refers to the courses and curricula situation:

Courses of study are written for Introduction to Technology, Communications Systems, Manufacturing Systems, Construction Systems, and Transportation Systems. During the summer of 1986, the following courses of study were worked on as summer projects: Construction Planning, Energy Conversion, and Materials and Processes. These courses will be taught for the first time this school year. Additional new courses will be planned and developed in conjunction with the Technology Education Model and implementation plan. The courses planned for the 1986-87 implementation, but cancelled because of lack of student enrollment, will



be worked on first.

On April 8, 1988, Wolslegel sent the following letter to the Grievant regarding the curriculum writing:

Just a formal note to request what progress you are making regarding the curriculum (course of study) writing for the technology education courses you teach. If you need any assistance, please feel free to contact me to set up time for us to work together.

According to my notes from January, several items that should be completed by now are in progress. I have not received anything from you so I am not sure we have a common understanding.

1. All material as it is written should come to me for review and typing. A copy to Chris Ligocki would be appropriate, but my secretary could do that if you prefer. As you finish each course, please provide me with the appropriate request for payment for extra time you spent outside of contracted hours to complete the curriculum writing.
2. If you need assistance with the course development, contact me for consultation, materials, etc. I also suggest that you talk with Jerry Falk about some things so you have a common agreement and understanding of what is being proposed.
3. My secretary will type the courses on the computer and provide you with copies as soon as possible for proofreading/revisions.
4. The final copies will be placed on file as the official district courses of study to meet Standard K for Curriculum along with the technology education curriculum map and objectives.
5. The Introduction to Technology course was to be finalized jointly by you and Jerry Falk by March 24, 1988.
6. The Construction Systems and Manufacturing Systems courses were to be finalized by April 4, 1988.
7. The Soft Materials & Processes course is to be developed in a rough draft form by April 30, 1988 with the final revisions made by June 30, 1988.
8. The Hard Materials & Processes course is to be developed in a rough draft form by May 30, 1988 and finalized by June 30, 1988.
9. The Conversion Devices and Energy Transmission Control & Storage courses are to be developed in a rough draft form by June 30, 1988. Final work on these courses would be expected by September 30, 1988.

On April 21, 1988, Wolslegel sent the Grievant a note asking him to mark his corrections or additions on copies of the manufacturing course of study.

On June 10, 1988, the Grievant received a teacher evaluation form for 1987-88 with the same format referred to earlier in the section on lesson plans, with boxes check for effective, needs improvement or unsatisfactory, as well as written comments. In this evaluation, the Grievant received 21 checks for effective, one for needs improvement, and four unsatisfactory remarks. Among Ligocki's comments -- all of which will be reproduced in a later section of the background section in this award -- are the following regarding curricula:

3. Curriculum Development. On Thursday, January 28, 1988, you and I met with David Wolslegel. At that meeting, expectations concerning the writing of curriculum were outlined. You were to have completed the Introduction to Technology course curriculum by March 24, 1988. The Construction Systems and Manufacturing Systems; Soft Materials and Processes and Hard Materials Processes course curriculum materials were to have been completed by April 4, April 30, and May 30, 1988 respectively. To date, only the "Manufacturing" course materials have been received.

The development of these curricula is a basic requirement for your position. Assistance was offered by Mr. Wolslegel, yet no due dates have been met. At this time, I will establish September 30, 1988, as the due date for all curricula mentioned above along with the Conversion Devices and Energy Transmission Control and storage curriculum. Mr. Wolslegel continues to be available as a resource.

On September 30, 1988, Wolslegel sent the Grievant the following note regarding the conversion devices course of study:

Attached are your rough draft copy and two copies of the computer printout for the Conversion Devices course of study. Please proofread, correct, and return one copy to Paula as soon as possible. The other copy is for your file.

On October 18, 1988, Wolslegel sent the Grievant the following note regarding the construction systems course of study:

Attached are two copies of the Construction Systems course of study. Please look them over for corrections/additions and return to Paula. Keep one copy for your files.

Also attached is your rough work draft for your reference.

On December 1, 1988, Wolslegel sent the Grievant a note about missing a scheduled meeting, which will be noted in its entirety later in the background section of this award, with the following "P.S." notation regarding curriculum:

We also need to set a definite time schedule to complete the needed curriculum writing that you have not finished.

On January 5, 1989, Wolslegel sent the Grievant the following letter about the curriculum writing, part of which indicated the following:

I feel it is very important that we get together soon to review the progress/lack of progress you have made writing curriculum. As you remember, we worked out a development schedule (January 1988) that should have provided for completion of all courses of study by September of 1988. You have not kept pace with that schedule for several reasons, I think. It is important that we check the progress and quality of some of your work soon. Consideration of contracts for 1989-90 will be coming soon and I'll need some basis on which to make a decision whether to support you and possibly request additional time for you to complete writing your courses of study or recommend non-renewal.

Please do not misunderstand that curriculum writing is the only thing to be considered regarding your continued employment. Safety, housekeeping, and instructional issues were also expressed as concerns previously.

. . .

On February 13, 1989, Ligocki gave the Grievant a performance evaluation in a different format than that which had been used earlier. This evaluation did not contain the categories and boxes for checking the categories as effective, needs improvement or unsatisfactory. Ligocki referred to this evaluation as a "summative" evaluation, which he defined as a compilation of all the activities that have occurred up to that point or a whole employee evaluation. While the entire evaluation will be presented later in this award, the following is related to the curriculum writing:

3. Curriculum Development. Significant and acceptable progress has not been achieved in the development of the Technology Education curriculum. This has been the topic of several meetings between yourself and Mr. Wolslegel. Dave has offered assistance and encouragement to you in an effort to prompt you to achieve the goals set forth in our January 28, 1988 meeting and subsequent evaluation of June 10, 1988.

In that evaluation, I established September 30, 1988, as the date all curricula would be due - in final form. As of this date, the Construction

Systems, Manufacturing Systems, Conversion Devices and Energy Transmissions Control and Storage courses have been submitted. However, the proofing and final corrections have not been returned. The Hard Materials Processing and Soft Materials Processing curricula have not been completed. In our meeting of January 3, 1989, you responded affirmatively when I asked if all curricula for the 1989-90 school year had been written. This is not the case.

Ligocki testified that by February 13, 1989, one curriculum project had been completed, three were in draft form but not completed, and he had seen no evidence of any work of two projects. Ligocki stated that six curriculum projects was a typical number of projects for classroom teachers. While there were other teachers that did not turn in curriculum by the due dates, they may have had a specific reason for that or they were not late to the extent that the Grievant was. Wolslegel recalled that the curriculum assignment for physical education was overdue from last spring (and the record does not reflect whether by last spring, Wolslegel meant the spring of 1988 or the spring of 1989, as the hearing in the matter was held in the summer of 1989). By the date of the hearing, Wolslegel testified that he had no record of the curriculum being turned in for the Introduction to Technology course, except what was on record before the Grievant took it over. The Grievant and Falk were to work on that course jointly.

The courses were offered in the District regardless of whether the curricula for them was finished. Wolslegel suggested to the Grievant that while he was implementing a course, it would be a good time to write down what he did, as that would be one way to accomplish the task, but that the Grievant did not do so.

Wolslegel was concerned that without having a written curriculum reflecting the newer technology education model, the District was getting "... a lot of the same old stuff, industrial arts, manual arts, under a new title called tech. ed." (Tr. - 149) For example, in the area of energy conversion, Wolslegel felt too much emphasis remained on the small gas engine, and that the Grievant's interest in steam engines led him to include steam engines as part of the course, although these were not new forms of conversion.

Wolslegel thought that electric motors should be included in a course as an example of conversion, but this was not included, to his knowledge. Wolslegel wanted more emphasis on processes and less on projects, but felt that the Grievant liked the projects and was not particularly enthusiastic about the technology education model, although the Grievant had instituted some of it. Without the curricula, Wolslegel could not determine what was being taught, although he conceded that even with the curricula, what is included in it is not always being taught.

Ligocki was not able to determine whether the appropriate curricula was being taught, although he reviewed lesson plans to make sure the activities planned were appropriate. However, with no curricula to compare the lesson plans to, he felt he was at a disadvantage and could not be sure of what was being taught. He testified that he felt more or less "held hostage" to relying on the Grievant to teach the appropriate material. The District made its decision to offer certain courses based on the number of students that would enroll or request the course, and then offered the classes because the District could rely on the Grievant to follow through to write the curricula and teach the appropriate material. However, Ligocki and Wolslegel still felt that the Grievant was not moving into the technology education model but was still teaching the old industrial arts curricula. Ligocki did not have the expertise to evaluate the quality of work product that students were turning out and relied on Wolslegel to evaluate that work product. Wolslegel told Ligocki that he was concerned about the activities not fitting the model that the District wanted. Ligocki felt that had the curricula been turned in, it would have been the best evidence of what was going on in the classroom and there would have been no need to take other efforts to determine what was being taught.

The Grievant testified that all the curricula guides has been turned in by the end of the 1988-89 school year. He disputed Wolslegel's assertion that one of them had not been turned in, stating that his curriculum writing assignments had been completed or turned in, including the technology systems curriculum.

The Grievant did not write curricula during the summer because he did construction work in northwestern Illinois, which took a lot of his time. As to working on the curricula projects after school hours, the Grievant was the junior varsity wrestling coach, which took away his time between after school hours, from about 3:30 p.m., up until 6:00 p.m. every day. Wrestling starts the first week in November and ends around the middle of April. While the varsity wrestling ends the last week in February or the first week of March, the Grievant was then involved in the little kids wrestling program through April. There are also all-day tournaments on Saturdays during the wrestling season. The Grievant did work on the curricula on Sundays. The Grievant never asked to be paid for his curricula work outside of the school day.

Without a curriculum for a course, the Grievant would teach such a course with information Wolslegel gave him. He would write a rough outline and try to implement certain things in a class. If what he was trying to implement worked, he would write it down, and if it did not work, he would try something else. The Grievant did not work from a set work-for-word curriculum, and he noted that the curriculum is not always written first and then applied throughout other departments in the high school.

The Grievant denied Wolslegel's assertion that the new forms of technology education did not interest him as much as the older industrial arts model. He gave examples of high technology that he has implemented, such as robotics, working with mechanical systems in gears, different types of energy transfer techniques, doing processes and mass production of projects, pneumatics or compressed air. The Grievant stated that the students did a lot of robotic work the past school year, made a pneumatic arm that they used to pick up something and move it, and have not been doing the same kind of projects as in the past. The Grievant noted that they have not gotten into some high technology areas in construction systems, such as with laser levelers, because a good laser leveler is very expensive and not practical.

Also, the Grievant pointed out that while he and the District would like to have systems in the shop which are run by computer, such as a CAD system, the budget was cut, and he was told that they would not be able to order some of the high technology equipment. During the 1987-88 school year, the majority of the equipment put into the budget went in the communications area, taught by Falk. The Grievant thought that no one in the high school was proficient at running all the newer equipment, but that he was working on becoming proficient in operating newer equipment. If Wolslegel told him that something he was doing was old-fashioned or out of date, he would work toward something else, such as a different type of mass production or a process or a plastic product. He stated that he enjoyed teaching all classes, depending on whether different students helped a class flow smoothly or not. The Grievant denied that he would rather teach the older industrial arts courses, such as woodworking and sheet metal, rather than the newer technology education courses.

#### Safety & Supervision:

The concerns raised by the District in the matter of safety and supervision relate to students or others wearing safety glasses, safety tests administered to people using machines in the labs, conditions of equipment, and students being supervised while in the labs. In some instances, safety concerns overlap with housekeeping concerns.

The following policies are Board policies regarding safety and the use of labs:

455.1

#### LAB SAFETY POLICY

A comprehensive safety instruction program shall be undertaken before anyone can participate in lab activities or operate any piece of machinery. This program shall include:

1. individual study of written material on safety rules;
2. class discussion;
3. lecture and demonstration by the teacher; and
4. passage of a safety test with a grade of 100%. All safety tests will be kept on file in the office student files until at least one year after a student graduates.

Students enrolled in classes such as technology education, chemistry, physics, and art shall be required to wear safety glasses that conform to the USASI codes when hazardous work is being done in the lab(s) and shall use other safety equipment as established by the administration or staff for specific tasks.

Any student who fails to comply with the safety policies shall be subject to disciplinary actions as outlined in Rule 455.1, #6 a-c.

The teacher shall be responsible to document all safety instruction within the written courses of study and lesson plans. Appropriate instructional material such as handouts, worksheets and tests shall be filed as

part of the course of study and AV materials should be referenced in the course of study.

LEGAL REF.: Sections 121.02(1)(i) Wisconsin Statutes  
146.015

CROSS REF.: 455.1-Rule Lab Safety Regulations

APPROVED: August 19, 1980

REVIEWED: September 15, 1981

REVISED: October 4, 1988

455.1-Rule

#### LAB SAFETY REGULATIONS

Students shall comply with the following lab safety regulations:

1. As a prerequisite to all laboratory classes, students must have approved eye protection (glasses or cover goggles) that conforms to the USASI codes. These are to be provided at the student's expense. Purchase can be made through school.
2. Special safety equipment such as welding helmets and goggles, high temperature clothing, etc. will be provided by the school district free of charge.
3. The instructor shall provide safety instruction through reading, written work, discussions, and demonstrations.
4. Any person entering a lab area while activities are in progress MUST WEAR SAFETY GLASSES. Glasses shall be made available to visitors at the door.
5. The teacher or other persons supervising students shall be responsible for the enforcement of these safety policies.
6. Any student who fails to wear safety glasses or to comply with safety policies may be temporarily suspended from participation in class and his/her registration for such course may be cancelled for willful, flagrant, or repeated failure to observe the policy. The following procedure shall be followed:
  - a. Two verbal warnings will be given by the teacher. A written record of such warnings should be kept by the teacher.
  - b. Upon the third verbal warning, the student will be referred to the principal for a verbal warning/conference. The student will lose class credit for that period as it should be treated as an unexcused absence. The principal shall send a letter to the parents explaining the student's unwillingness to cooperate and ask for their cooperation and support.
  - c. Further violations of the safety policies will result in the cancellation of the student's registration in the class and a failing grade will be recorded with a notation of the reason.
7. The teacher shall establish additional safety rules as necessary and appropriate to a safe and healthful working environment in each specific lab.
8. Safety glasses may be rented at a cost of \$.25/period if a student forgets his/her safety glasses on an infrequent basis. The daily rental, however, cannot continue on a regular daily basis.

APPROVED: August 19, 1980

REVISED: September 15, 1989  
October 4, 1988

455.2

#### SUPERVISION OF STUDENTS

When students are in school, engaging in school-sponsored activities, or traveling to and from school on school buses, they are responsible to the school, and the school is responsible for them. School personnel assigned to their supervision serve in loco parentis.

The Board expects all students to be under assigned adult supervision at all times when they are in school, on school grounds, traveling under school auspices, or engaging in school-sponsored activities. School personnel assigned this supervision are expected to act as reasonably prudent adults in providing for the safety of the students in their charge.

In keeping with this expected prudence, no teacher or other staff member shall leave his/her assigned group unsupervised except if an arrangement has been made to take care of an emergency.

During school hours, or while engaging in school-sponsored activities, student shall be released only into the custody of parents or other authorized persons.

The school administration shall assure that anyone who wishes to contact a student during the school day is doing so for proper reasons.

LEGAL REF: Section 120.12(2) Wisconsin Statutes

APPROVED: September 15, 1981

REVISED: October 4, 1988

455.5

#### USE OF TECHNOLOGY EDUCATION LABS

1. Labs may be used by employees of the Howards Grove School District outside of the school day. Others may use a lab in cooperation with scheduled Lakeshore Technical (LTC) classes or other such rentals.
2. Before using a lab, permission must be obtained from an instructor who is responsible for the area. If dangerous equipment is to be used, the instructor must be present.
3. Persons using equipment must be trained and have a written safety test on file in the technology education area.
4. Safety glasses must be worn at all times in the lab when tools and equipment are being used, not just while operating the machines.
5. All materials must be supplied by the individual. Due to tax laws, employees may not purchase materials from the school district.
6. Persons using a lab shall leave it as clean or cleaner than they found it. Failure to do so will result in loss of use privileges.

APPROVED: October 4, 1988

On September 30, 1986, Wolslegel sent the following note to the Grievant and Falk regarding safety, in which he asked for copies of safety tests for the District's files:

As a follow-up to our discussion on safety, I was able to get copies of Safety Rules developed through the U.W.-Stout Industrial Teacher Education Department. I hope that some of this material may be of use to you in the development of safety tests for each specific machine in addition to the general rules. I would appreciate it if you would send me copies of each safety test for our files in the district office as you get them developed. Please indicate who developed the test, when it was written or revised, and what course(s) the test will be used in.

Attached also is a copy of "Let's Teach Safety" which may be useful for you. We can order some of the specific materials listed if you feel it would be of some help.

Wolslegel knew that the Grievant did give safety tests, although the Grievant did not provide copies as suggested. He admitted that the safety tests were probably given on a timely basis. However, Wolslegel testified that the current policy is that copies of the tests are to be kept on file in the principal's office until a student graduates and then destroyed.

The Grievant testified that he conducted safety tests since starting work for the District in 1981, but prior to the current school year, had not been required to turn in the tests to the administration. However, he complied with what he called the "new rule" on turning in copies of the tests. The Grievant felt that anyone -- not just students should have taken safety tests before operating the equipment in the labs. Teachers and administrators, such as Ligocki, Albert, Lindenberg, and Hanson, have worked in the lab but never came to him for a safety test on a particular machine. The Grievant never issued a safety test to other teachers, administrators, or janitors, but knew that they had worked on machines. Falk could have also issued a safety test to other teachers or administrators, but he probably did not, because he would have told the Grievant if he had issued any tests.

On October 17, 1986, Benes sent the following message to the Grievant:

I twice walked into the metal shop during period three and observed a number of students busy working without the required safety goggles. You were working with a group of students in room 11. Safety procedures state that everyone must have approved goggles with cup side shields while in the labs. Please see that all students wear those goggles while in the labs.

In the Grievant's evaluation by Benes dated November 13, 1986, Benes included the following handwritten comments:

As I stated previously, it is also necessary for students to wear approved safety goggles while they are in the labs. Since many of the students were cutting wood and working with a sander they should have been wearing their safety goggles.

Ligocki's June 10, 1988, evaluation containing the following relevant comments on safety:

1. Safety. Specific safety measures in the lab areas continues to be a concern. Safety glasses must be required of all students any time tools or machinery is being used. Earlier this year, we discussed this matter at length. As of this writing, I see that you have taken measures to improve in this area. Continued emphasis is required in this basic area.

Other safety concerns are still present, however. On occasion, I notice that a student or students are left alone in the shop area or the shop is left standing open when you are not present. You need to remedy this situation. The opportunity for injury when these situations occur, outside of your supervision is great. You need to be present when students are present and lock the doors when you are not.

Constantly inspect the area to remedy equipment problems and/or hazards. Hourly inspection and more detailed daily, visual inspections should become a portion of your routine.

Finally, you have been encouraged and will continue to be strongly encouraged to attend the safety seminars. The greater knowledge you acquire in this area, the better.

On December 13, 1988, Ligocki wrote the following note and put it in his own file but not in the Grievant's personnel file:

Spoke with Cliff concerning safety glasses in the lab. Cliff said he would refer students as discipline problems.

This memo was written after Ligocki spoke with the Grievant about students wearing safety glasses. Ligocki recalled that he talked to the

Grievant about a specific student -- Shawn Stange -- who was using a drill press in the shop without wearing safety glasses. The Grievant told students who did not have safety glasses on to put them on. However, he expressed his frustration to Ligocki about the situation and told Ligocki that he would refer those students as disciplinary problems from that point on. Such a procedure was acceptable to Ligocki, although Ligocki stated that the Grievant referred students to him for disciplinary reasons but not for safety reasons.

The Grievant gave three or four verbal warnings about wearing safety glasses to one student -- Robert Bryn -- who still refused to wear the glasses. Bryn further refused to go to the office, and since the Grievant could not leave other students to take him there, the Grievant assigned Bryn to work on a book in the next room. The Grievant told Ligocki about that situation. This was the only student that the Grievant referred to Ligocki -- both for not wearing his safety glasses and for refusing to go to the office. All other students put their safety glasses on when told to do so.

Ligocki's February 13, 1989, evaluation contained the following remarks concerning safety:

1. Safety. On occasion, I have mentioned to you my observations of students in the lab without safety glasses. At the time, the students may have been working directly with equipment for which safety glasses are an absolute necessity or have been in the general area when such equipment is being operated. Your response was to suggest that the offending students be referred for failure to wear the glasses as you instructed them to do and as included in the Shop Safety Policy. Whatever the response, the point remains that all students wear safety glasses in the shop while machinery is being used. Although these instances are fewer in frequency as I observe activities in your classroom, I am very concerned that I should observe any at all.

Shop conditions, which will be addressed specifically, continue to be a major concern. A separate memorandum from myself and Dave Wolslegel dated today outline a number of unsafe conditions observed during an inspection on Friday, February 10, 1989. Such conditions are unnecessary and unacceptable.

The last paragraph above refers to a separate memorandum, which was dated February 13, 1989, to the Grievant from Ligocki and Wolslegel regarding their walk-through view of the technology education labs on February 10, 1989. Because most of the items listed in that memorandum deal with housekeeping items, it will be reproduced later. However, the only safety concerns in that memo appear to be in the following:

- \* Gas tanks (O2 and acetylene) were stored at the arc welding table. Tanks should be stored in separate areas away from the welding area for each type of gas and chained securely in an upright position.
- \* Sheet metal pieces were left sticking out of the edges of the table where someone may get cut on them as they walk past.
- \* An acetylene tank was left in the center of the room, not secured.

Ligocki testified that throughout the two school years he had known the Grievant, he had observed students in the shop without safety glasses on while machinery was being operated. While discussing the February 13th evaluation, the Grievant asked Ligocki to come to his second and sixth hour classes to reinforce the Grievant's rules and efforts about wearing safety glasses. Ligocki expected the Grievant to outline his safety procedures and ask Ligocki to agree with them in front of the students. The Grievant wanted to see whether students who did not have safety glasses on would put them on when the principal showed up.

According to Ligocki, when he attended a class period on February 14th, he found the Grievant working on a machine, and he counted five students in the shop not wearing safety glasses. The Grievant was wearing his glasses, two students without glasses were near the Grievant and three others were in various locations in the lab. The Grievant made no comment to the students about Ligocki's presence.

According to the Grievant, Ligocki arrived near the end of the class period, apparently getting there just before the clean-up bell rang. When the clean-up bell rang, students started cleaning up and putting away their safety glasses. Students typically take their safety glasses off during clean-up time. The Grievant was making a final cut on a board to correct a problem with



another machine. The Grievant stated that the clean-up bell is not a perfect deadline of stopping a machine to clean up, because if someone is halfway through a cut, he should not stop right then, as it would be dangerous and not take much longer to finish the cut.

On February 15, 1989, Ligocki sent the following note to the Grievant regarding the classroom observation on the previous day:

This is a follow-up to our discussion today concerning my observation in your 6th hour class on Tuesday, February 14, 1989. On Monday, a specific item mentioned when discussing the safety procedures in the shop concerned the wearing of safety glasses while machinery was being operated. During this class period, I observed at least five students without glasses while you were operating one of the machines (the planer?).

This is not safe. As I have mentioned, I think it best that students be required to wear their safety glasses anytime they are in the shop(s). The only exceptions would be when a lecture is being given or students are working on paper/pencil projects - when machinery is not to be in use.

If you have any questions, please see me.

During a meeting on August 28, 1986, between Albert, Benes, Wolslegel, Falk, and the Grievant, the matter of safety and safety tests were discussed. The minutes of that meeting contain the following:

Board policies 455.1 and 455.1 Rule (shop safety) were reviewed in some detail. A general safety test and specific tests for each major machine will be given to each student at the start of each class. All tests must be passed with 100% accuracy. The test should be confined specifically to safety and can be written, oral, or demonstration.

Jerry Falk reported on some concerns brought out at the Safety Seminar he attended this summer sponsored by Wausau Insurance. Mr. Albert will secure the "Loss Control Catalog" so that free safety signs can be ordered.

The safety glass procedures were reviewed. Everyone should have approved goggles with cup side shields while in the labs. Additional eye protection should be made available to guests at the door. It was pointed out that many times others, such as maintenance staff, do not use safety glasses. Mr. Albert will talk with Chet about all maintenance people using appropriate safety equipment while in the labs.

. . . .

It was agreed that teachers have the major responsibility to enforce the safety and housekeeping procedures in the labs on an ongoing basis. They should also document safety instruction in courses of study, lesson plans, etc.

Wolslegel testified that the Grievant personally did not like to wear safety glasses because of the tendency of the glasses to fog up due to heat and sweat. Wolslegel stated that the students made comments to the Grievant about problems seeing with them, and the District explained over and over to the Grievant the importance of the safety procedures, as it did not want any chance that someone might be injured. The District could have been liable for its negligence if it did not enforce the state law and its own policy of requiring safety glasses to be worn.

However, the Grievant testified that he believes safety glasses should be worn when machines are being operated or when work is being done with machines.

In giving safety tests on machines to students, the first question deals with wearing safety glasses while operating the machine. The Grievant admitted that there were times when students were working on machines and other students would take their safety glasses off to read a blueprint, and added that they do that because they are students. When he was told by students that they could not read with their safety glasses on, he told them that they would have to try, and that he always said something to students if they did not have safety glasses on at the appropriate times.

If the Grievant observed a student running a machine without safety glasses on, he would tell that student to put the glasses on. He testified

that if a student were in the middle of a cut, he would wait until that cut was finished in order not to scare the person in the middle of something. However, he did not feel he was indifferent to the District's concern about safety glasses. Nor did he have any differences with Ligocki or Wolslegel about the use of safety glasses. The Grievant testified that Wolslegel's comments that he did not believe in safety glasses or their use was false, and that he believes everyone should wear safety glasses when working on machines. He added that he wore them in the summer when working in construction.

The Grievant noted that many times during a class period, teachers from other classes would come into the shop to borrow something, and those teachers would not wear safety glasses, despite the fact that students were working on machines in the shop. Glasses were supposed to be available for visitors and be provided at the door. The Grievant stated that the District should provide a box for glasses for visitors, but admitted that he could have done so but did not.

The Grievant stated that he had two lab assistants. One was working for him doing setups for machines, and the other was trying to learn drafting techniques or architectural drafting. The Grievant allowed these two students to be in the shop during his preparation period, even though he did not have to do this. The student trying to learn drafting was a senior and the class was not being offered during that semester. So the Grievant let this student come during his preparation period. The other student may have on occasion been operating a machine with his safety glasses on, while the person drafting did not have safety glasses on. The Grievant therefore allowed a student to be in the shop without safety glasses on while another person was working on machines, because he was trying to help out two students in a non-structured class.

Wausau Insurance Company is the District's liability carrier. An occupational health and safety consultant, Joan Pomerening-Hanson, sent a report on March 23, 1987, to Albert, following a survey of the District's schools. The Superintendent of Buildings and Grounds, Chet Dobrzynski, accompanied Pomerening-Hanson on a walk-through survey, and she made the following recommendations for the high school:

87-3-4: Wood Shop - Radial arm saw. An adjustable stop shall be provided to prevent the forward travel of the blade beyond the position necessary to complete the cut and repetitive operations. This radial arm saw blade extended beyond the table 6 inches.

87-3-5: Table Saw - This table saw needs to be guarded and should have a hood over the portion of the saw above the table so mounted that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut.

87-3-6: (85-10-9 Resubmitted) Metal Shop - Baldor Grinder. Maintain the tool rest within 1/8-inch from the abrasive wheel and the tongue guard within 1/4-inch from the abrasive wheel.

87-3-7: Metal Shop and Wood Shop - It would be good to keep these rooms clean and orderly and in a sanitary condition.

87-3-8: (85-10-10 Resubmitted) Home Economics Room - Provide a fire blanket.

87-3-9: Chemistry Storage Area - Remove the benzene as it is a human carcinogen and remove the potassium metal, as it is an explosive. Refer to Recommendation 85-10-12 concerning resources and removal processes.

The Grievant was not responsible for the home economics room or the chemistry storage area. The consultant made other recommendations, but those noted above are those relevant in this case.

Regarding the reference to 87-3-4, the radial arm saw in the wood shop, Wolslegel noted that there should be a stop on the track which the saw moves on, so that the blade cannot protrude farther than the table. The stop was gone and the blade was coming out too far. The Grievant stated that it was an old radial arm saw that needed work, and the problem was fixed within a day or two after he got this notice. The table saw, reference number 87-3-5, had a broken guard, and new parts were ordered for it. The Grievant said that it could have taken anywhere from two weeks to a month to get the parts, but once they were received, the table saw was fixed.

Wolslegel stated that neither the radial arm saw nor the table saw were fixed in a timely manner. Wolslegel further added that the Grievant's solution to equipment problems was that the equipment would not be used if there was a problem. The radial arm saw would not necessarily have been in much use during

this period of the semester. Wolslegel noted that the table saw was fixed several times and broken again, and that it was an ongoing problem. Students had a tendency to loosen the guard and let it flop, and it would break again when it flopped. Wolslegel testified that the Grievant's idea in general was that the guards were in the way, while the District felt they were not in the way except during a few occasions. He did not know whether students were allowed to use this equipment while the guards were not in place.

Regarding the baldor grinder (reference number 87-3-6), Wolslegel noted that while this was a concern of the insurance company, he did not see it as a huge problem. Wolslegel stated that one can use the grinder and while using it, take off more than 1/8 inch from the tool rest, and everyone does not adjust it. The Grievant agreed that it is an ongoing problem, because when the grinder is used, the wheel has a tendency to wear away, and this is something that has to be checked all the time.

Turning to safety concerns expressed by Ligocki and Wolslegel in the February 10, 1989, walk-through of the labs, Wolslegel stated that gas tanks should be stored in areas away from the welding area and either chained to the table or another permanent structure. Tanks that are not in use need to be stored in separate areas, and oxygen and acetylene tanks should not be stored next to each other, as well as being chained upright so they cannot fall over.

On the walk through, Wolslegel noted an unsecured acetylene tank left in the center of the room. Covers to tanks were not on. Wolslegel stated there are 2200 pounds of pressure in the acetylene tank, and if it falls over and the valve is knocked off, it is like a rocket going off. Also, there was the possibility of acetone leaking out, creating a fire hazard, if the acetylene tank were tipped over.

The Grievant recalled that the acetylene tank had been there before he came to the District. It was an empty tank, rented from a company in Fond du Lac. After calling the Fond du Lac company to pick it up, no one showed up and the tank has been disposed of since then. Gas tanks are still stored by the welding tables, because the cylinders are chained to the trucks and are to be used that way. According to the Grievant, this was not an unsafe practice.

The Grievant noted that sheet metal pieces are sometimes left sticking out of the edges of a table, because students place metal in there and there can be an edge sticking out.

The Grievant did not know whether Ligocki and Wolslegel came back to the labs to check on whether their concerns had been taken care of, but did not recall them being there to check on it.

The Grievant recalled one instance in the fall of 1988, on a Monday, when he planned to give a safety demonstration speech on the operation of the jointer. When he went to use the jointer, it did not work properly. After trying to make it work, he found that the blades were dull. He was unable to complete that lesson and went on to something else. After school that day, he talked to Ligocki about the jointer. Ligocki explained that he and Albert were in the wood shop working during the weekend, and they had run some painted storm windows over the jointer, which caused the blades to be dull.

On another occasion, the Grievant went to the cabinets to get a square and found that the square had a big nick of aluminum protruding from it. He thought that it must have been run through one of the machines, but when he asked Ligocki and Falk, neither knew how the square came to be damaged. The Grievant only knew that the damage happened during a weekend, but never found out how it happened.

Turning to the supervision of students, Ligocki testified that the Grievant had a student lab assistant during the 1987-1988 school year. The student would receive credit to assist with set up and various other jobs in the shop areas. Ligocki went past the shop on several occasions and found that the lab assistant was using machinery and tools without the Grievant being present. He stated that students should never be in the lab without supervision, and that other students had been present in the lab without the Grievant being there. Ligocki interpreted Board policy regarding the supervision of students to mean that the Grievant should be in the approximate area to provide at least reasonable supervision for the activity that was occurring, and his impression was that the Grievant was not in the particular lab nor in an adjacent area to supervise the lab assistant.

Wolslegel interpreted the Board policy number 455.2, reproduced earlier, to mean that the Board would expect students under any activity to be supervised by the adult supervisor, although he acknowledged that lab assistants are a special group of students singled out to perform certain duties that other students would not do.

The Grievant said that his student lab assistants have corrected papers, set up machines for classes, have done projects for other teachers, or fixed things for the maintenance department. The Grievant was not aware that a lab assistant was in the lab operating a machine while unsupervised, because he

told the student that if he was not in the shop area, the student was not to run a machine. The first time the Grievant heard of the incident was during Ligocki's testimony at the arbitration hearing. If the student had been running a machine while the Grievant was not there, the student was disobeying the Grievant's orders.

The parties agree that there have been no serious injuries in the labs in the District, but only minor scrapes or bruises which are normal.

#### Housekeeping:

The following series of documents, arranged in chronological order, were part of District Exhibits 8, 9, 13, 15, 16 and 26. In some cases, the housekeeping items overlap with safety issues.

The earliest memorandum is from Wolslegel to the Grievant, dated December 22, 1982. The contents are not reproduced here, and the reason for the Arbitrator's disregard of this 1982 memorandum will be noted in the discussion section of this award. Nothing appears in the evidence on record between 1982 and 1986 for the housekeeping concerns, or any other item. On January 13, 1986, Albert sent the Grievant the following message:

Had occasion to go through the wood shop on Sat., Jan. 11, to avoid the gate in the hall, and was quite surprised and upset at the messy condition of the shop. Unless there was a fire drill the last 10 minutes of 8th hr. on Friday -- there is no excuse for the shop not being cleaned, tools put away, cabinets closed, etc. Please keep the shop in an orderly & clean condition hereafter!!

The Grievant acknowledged that Albert's comments were accurate. However, he explained that a bunch of projects had been sprayed with a finish on a Friday and left out to dry over the weekend. On Monday, the projects were put away in a storage room and everything was cleaned up. The Grievant added that no one checked later to see that he had taken care of the situation.

On March 14, 1986, Benes sent the Grievant a message which first referred to lesson plans, and secondly, the following:

The shop needs to be cleaned a little better, tools put away, etc. -- and maintained this way.

On May 19, 1986, Albert, Benes and Wolslegel sent the following letter to both the Grievant and Falk:

On Saturday, May 10, we took the time to visit the Tech. Ed. labs in an effort to follow-up on conversations between Don Benes, David Wolslegel and yourselves regarding the housekeeping and safety practices. The conditions that existed were documented. While we did note some change/improvement in the conditions, we did still find them to be unacceptable. We will address the concerns noted in each lab separately.

#### A. ROOM 11 - COMMUNICATIONS LAB

1. There were a variety of textbooks laying on the tables. These books should be stored with other texts in the lab when not being used.
2. There was a can of solvent on top of the sign press with other general clutter. The solvent should be stored in the finishing area when there is no class using the solvent. When the solvent is needed it should be stored in such a way that safety could be assured.
3. Miscellaneous drafting instruments were left laying on the tables. All instruments should be placed in storage areas and secured after each class. This could be in the locked drawers or other storage areas on panels, etc., for specialty instruments.
4. There were boxes of model trains and other miscellaneous materials on the floor. The boxes have been moved around the lab during the last month or so. Much of this material belongs personally to the teacher and should be taken home.

#### B. ROOM 6 METALS LAB

1. There was a file box, paper and other material

on the steps from Room 11. These materials should all be removed to insure safe passage of students and staff. The file box should be stored and steps swept clean at the end of each period when the lab is cleaned.

2. There were a variety of tools, project parts, instructional materials, stools, etc., laying on the work benches. The benches should be cleaned at the end of each period. All tools should be stored in marked places in tool cabinets. Other materials should be put in the storage racks or taken by students to their locker areas.

3. The storage area under the sheet metal bench was "junked" with short pieces of sheet metal in an unorganized manner. This would be very dangerous for anyone looking for a piece, or someone walking past, if a piece were to slip out at the edge. This area needs to be cleaned and reorganized periodically. Some planning needs to be done to use the smaller and odd-sized pieces. The turning machines could be mounted on the bench and storage built on the side of the table for stakes.

4. The lead screw on the one lathe was still missing. The gear drive on the machine was fixed once by instructor repair but was broken again. David Wolslegel has suggested several times to get a professional repairman to put this machine back in working order.

5. A pile of welding gloves and aprons was on one of the welding benches. It is a safety/fire hazard to have dirty/oily aprons in a site. It would probably be best to place hooks in each welding booth to hang the gloves and apron for that booth.

6. The scrap metal cans were full to overflowing and also placed in front of two welding booths blocking access. The cans should be emptied on a regular basis. The janitors could haul scrap metal to the junk yard when cans are full.

7. An open paint can and brush were left in the shop near the welding area. This is a safety/fire hazard. All flammable material should be in the finish area. They should always be stored properly again after use.

#### C. ROOM 4 - WOODS LAB

1. Scrap pieces of wood, tools, safety goggles, thinner, etc., were left on bench tops. All tools should be returned to their place in the tool cabinets at the end of each hour. Scrap wood should be discarded or placed in the short rack. All flammable liquids should be kept in the finishing room.

2. Assembled projects and project parts were all over the room, while the project storage room was a mess too. This is a difficult time of the year when projects are assembled but not completed to take home. If the project storage area was cleaned out, many of the smaller projects or sub-assemblies could be stored there. An area of the room should be organized to store assembled projects. Discard extra scrap and hand up clamps after finishing assembly.

3. Neither table saw guard was covering the blades in the proper position. One guard was later found broken on one of the tables. The broken guard should be repaired or replaced. The guards should be used for almost every operation and always be returned to a normal position over the blade when an operation is completed.

4. The short rack, project storage room and new lumber area were a mess. Pieces were all over. These areas should be cleaned up on a regular basis. When things get out of hand, they become difficult to get back to order. Without a neat supply area, it is difficult, if not impossible, to control student access and cost of supplies.

5. Material and tools were piled on the radial saw rendering it unusable. All machines and the area around them should be kept clean to prevent safety hazards.

#### D. POWER CONSTRUCTION LAB

1. There was junk (tools, extra parts, scrap material, etc.) on the bench and floor. These areas should be cleaned up at the end of each period.

2. Oil and solvents were left out on the benches. All flammable materials should be stored properly at the end of each period. This could be a fire and safety hazard.

3. There were woodworking tools left on the floor around the storage shed in the process of construction. All tools should be returned to proper tool cabinets at the end of each hour.

4. The tool storage cabinets are clearly marked for each tool and equipped with locks. Many tools were missing and most tool cabinets were open and not locked. There was a place for every tool, but not much was in its place. All tools should be returned to tool storage areas and locked up at the end of each period. This will prevent theft or loss.

In general, the labs were in poor condition. This must be changed immediately! Take the time with your students to get things in order before you go on. Regular preventive measures would keep the labs in good order. We would suggest the following:

1. Use a scheduled time for cleaning the lab each time it is used. Every student should clean up their own mess, plus be assigned to specific cleaning tasks.

2. The instructor should check to see that the assigned student jobs are completed before students are dismissed.

3. The tool storage areas should be organized and used regularly. Every tool should be returned to appropriate storage area at the end of each period. A plan should be made to keep each set of tools in its proper area - snap on in power lab, red handles in woods, etc.

4. You should work with David Wolslegel to develop room and equipment, use plans for both the short - and long-range program needs. These lab areas must be put into good order and kept this way so everyone can make best use of the facilities. We will be checking on the problems and suggested improvements again in the near future.

Both Falk and the Grievant may have used all of the labs on different occasions. Wolslegel testified that the above document was not intended to point fingers at either one, but to point out the problems. The Grievant testified that some type of action was taken to take care of everything mentioned about the condition of the labs. The Grievant recalled that Wolslegel asked him some time later if things had been taken care of, and he told him that they were done.

On August 28, 1986, Albert, Benes and Wolslegel held a meeting with the Grievant and Falk to review curriculum, safety, and housekeeping procedures. The minutes of the meeting include the following concerning housekeeping:

Considerable time, effort, and money were spent this summer to reorganize the labs and to secure new tool storage. Tool cabinets and tools in each lab will be color-coded. At the end of each period everything should be returned to the proper place. A student clean up/personnel plan should be developed for each class and implemented by the teacher.

It was agreed that teachers have the major responsibility to enforce the safety and housekeeping procedures in the labs on an ongoing basis. They should also document safety instruction in courses of study, lesson plans, etc.

Ligocki made it a practice to be in the labs once a week. On most of those visits, the Grievant was present. If Ligocki found the shop to be in an unsatisfactory condition, he would point out what needed to be corrected. On October 27, 1987, Ligocki observed a class conducted by the Grievant. In his report on that classroom observation, the final two sentences of the two page report noted that the Grievant should focus on keeping the shop areas clean and orderly.

On May 31, 1988, Ligocki wrote the following note to his file:

Spoke to Cliff rather directly on Friday, May 27, 1988, regarding the condition of the shop. I indicated to him that there was no excuse for it to look the way it did. (Dusty tools on benches, and in the spraying room, bucket of trash, etc.) I directed him to clean it up immediately.

Ligocki recalled that the Grievant cleaned up the shop as directed.

In the spring of 1988, John Burke, an instructor for Lakeside Technical College wrote a note to Ligocki regarding the condition of the labs. LTC rented facilities from the District to offer courses. Burke's handwritten note contains the following:

This just touches some of the items I feel need to be done in order to make a productive and safe wood shop at Howards Grove. To be quite frank it has to be the most horribly maintained wood shop I've ever been in. The tools are new, but work is needed to make them safe and useful again. Some of the machines and portable tools should not be in use, but are.

I hope this small hasty bit of info will be useful but I feel a meeting of all parties is needed to start putting this shop back into production.

This is a breakdown on maintenance need on major stationary tools in the wood shop.

- 1.) Jointer: Complete overhaul needed. In feed table and out feed tables are not parallel. Sharpen & reset knives.
- 2.) Table saws: Needed -- table platform extension -- all miter gages to be replaced or fixed. Many siding and stationary jigs could be made to make these saws more versatile.
- 3.) Radial arm saw: Longer bench would held and magnetic switch fixed.
- 4.) Bandsaw: Overhaul and fine adjustments needed.
- 5.) Hand Miter Box: Parts and adjustment needed.
- 6.) Disk Belt sander: Adjustment on bevels (make fixters for sanding aids).
- 7.) Power Miter box: (copy not legible on this item)
- 8.) Sharpening: Grinding wheels should be set up to maintain hand tools and knives for jointer, good finishing stones needed.
- 9.) Drill Press: Needs better belt cover. Note - all router bits need to be sharpened. Most portable tools need part or to be fixed. All hand tools -- saws -- chisels -- lathe tools -- screw drivers -- need drastic sharpening (very poor shape). Hand tool cabinets could be moved to the wall where leaves are displayed and reorganized. A complete reorganizing of wood shop is needed.

In the June 10, 1988, evaluation of the Grievant, Ligocki wrote the following comments about housekeeping:

2. Housekeeping. The labs continue to be in disarray. Dust and other refuse is constantly on the floors, benches and machinery. Tools are left lying. This area is a constant mess to say the least. In past memos and evaluation, this problem has been addressed. Yet, no real improvement is seen.

You must take the initiative to correct this situation and find a lasting solution. I have suggested relocation of the tool cabinets, a schedule of hourly clean up duties, but I have

seen no movement on your part in this direction.

Improvement in this area is critical. Because this situation has continued to exist, costly replacement of lost tools has been required. Simply put, the lack of housekeeping has resulted in poor security and has cost the district money. Lack of adequate housekeeping has been cited in the safety report. You must find a permanent solution to this problem.

On December 22, 1988, Ligocki wrote the following note to his own file, although not to Grievant's personnel file:

During 8th hour today, I met with Cliff Klenke in the Woods Shop to discuss the cleanliness of the shop areas. I told him to make sure the shop was cleaned and in presentable condition for over the Christmas Break. He should make sure the kids clean up and to use Friday as a clean up date if necessary.

Ligocki stated that the students cleaned up the shop before going on Christmas break, but during the first week of school in 1989, the shop was back to the same condition. Ligocki also considered use of the class period for clean up an unfortunate use of class time, time that should be used for instruction. He felt that the five minute clean up period should be sufficient to clean the shop, but since the shop had become too dirty, it took the students either the entire period or the entire day to clean it up. 1/

On January 12, 1989, Ligocki put the following note in his own file and not in the Grievant's personnel file:

Asked Cliff to store mat mover in the varsity locker room.

On February 13, 1989, Ligocki gave the Grievant a performance evaluation which included the following comments concerning housekeeping:

2. Housekeeping. This area continues to be unacceptable. Despite all of the attention paid to keeping the shop clean during the past two years by me and several more years by Mr. Benes, Mr. Albert and Mr. Wolslegel, the situation remains virtually unchanged. The shops remain unkept, no real cleanup procedure exists and there is no plan for improvement apparent.

Housekeeping directly affects the level of safety for the students as well as the amount of funds necessary to replace lost or damaged equipment. Unfortunately, I feel the condition of labs transmits a poor image for the value of the program(s) and yourself as an instructor.

Also on February 13, 1989, Ligocki and Wolslegel wrote the following memorandum to the Grievant:

On Friday, February 10, we took additional time to view the technology education labs. We found the following housekeeping and safety conditions to be less than acceptable.

After school with nobody around, lights were left on in the woods and metals areas.

Specific Concerns in the Woods Area Include:

- \* A mat cart was left in front of the lathe taking up needed space. The cart should be stored with the appropriate athletic equipment.
- \* Parts from the other lathe guard were laying around the shop.
- \* Boards were leaning on the lathe.
- \* Circle saw miter guides were laying on the floor, not placed in appropriate racks on the saws.
- \* The bed on the power miter box was cut in many places and needs replacement.

---

1/ Ligocki's testimony (Tr.-100) refers to students using the entire period as well as the entire day. It is unclear which time period he actually meant.



- \* A grinder and vice were laying on the floor under a table.
- \* Wood scraps, brooms and wood pieces were laying around the floor of the shop in several places.
- \* Molds and other parts and materials for the rotational molder were junked on the bench and surrounding area.
- \* Clamps were left laying on the bench, not on the rack.

Specific Concerns in the Metals Area Include:

- \* Gas tanks (O2 and acetylene) were stored at the arc welding table. Tanks should be stored in separate areas away from the welding area for each type of gas and chained securely in an upright position.
- \* Several machines were not cleaned--drill press, metal band saw, and lathes.
- \* Several items were left laying on the bench tops--glue, drill bits, scrap, patterns, boxes, cleaning brushes and machine parts.
- \* The hydraulic press and vice should be bolted to the table top so they are in a usable condition.
- \* Tools in some of the cabinets were laying around, not in the racks provided.
- \* Sheet metal pieces were left sticking out of the edges of the table where someone may get cut on them as they walk past.

Specific Concerns in the Power Area Include:

- \* Tool storage cabinets were unlocked.
- \* Tools missing or laying in the bottom of cabinets, not in storage racks.
- \* Scrap materials, etc. left laying on the benches, not cleaned up.
- \* Many gas cylinder covers were left on the bench in the way. They should be returned to the gas supplier at his next visit. Covers for tanks in use should be stored with those tanks so they don't get lost.
- \* An acetylene tank was left in the center of the room, not secured.
- \* The parts washer was open and part left laying around.
- \* Propane tank and spray cans left laying on the bench.
- \* A number of equipment items related to alternate energy and pneumatics were junked in piles. The equipment from first semester should be stored securely before the start of second semester.

The condition of the labs make it evident that little effort has been made to improve the safety and housekeeping conditions in the labs. While a clean-up chart was on the wall in the woods area, it must not be used or the lab would be in a better condition. No clean-up plan was even seen in the other areas. As we have said several times, a clean-up plan is essential and the teacher must enforce students doing their part to clean-up to insure a safe working condition for all. These conditions must be changed/improved immediately.

The Grievant explained why a couple of items mentioned in the February 13, 1989, memo existed in that condition. The memo referred to parts from a lathe guard laying around at the shop, and the Grievant explained that the lathe had been sold the previous summer but the school kept the lathe guards, which were stacked in the corner. In his opinion, the guards lying in the corner presented no particular hazard, and are currently on another machine. As to the mat cart left in front on the lathe, the Grievant explained that the cart had a broken cross member and was brought into the shop to be fixed. After it was fixed, the cart was put away in another building. The Grievant did not know whether Ligocki or Wolslegel knew the reason for the mat cart being in the shop and that they did not ask him why it was there. The cart was probably moved into the shop in November of 1988 to be repaired.

The Grievant explained why the bed on the power miter box was cut in many places. When the machine is used, the blade goes through the stock and cuts into part of the table. After many cuts of 45 and 90 degrees, the table eventually gets chewed up and the bed on the miter gauge has to be replaced. It is not a matter of misuse of the equipment but rather a function of the use of it. The Grievant noted that different people may differ on when it needs to be replaced.

While the Grievant usually locked storage cabinets, he did not recall why they were found unlocked on February 10th. He gave no reason for some of the items found in certain conditions, such as the circle saw miter guides lying on the floor, the grinder and vice lying on the floor under a table, or wood scraps and pieces lying on the floor. The Grievant was at wrestling practice when Ligocki and Wolslegel visit the labs. Due to the items mentioned in the February 13th memo, the Grievant noted that the labs obviously were not in satisfactory condition, but that there are always things that can be moved and put away. He took care of all the items listed in the memo in prompt manner, but did not know whether Ligocki and Wolslegel went back to the labs to check on conditions or see whether he had followed through on cleaning up everything.

Ligocki stated that there is an academic component to housekeeping and cleanliness, as students coming out of technology education classes and going into the work force will be better employees if they have an appreciation about cleanliness. The Grievant agreed with that, but would not agree that housekeeping and cleanliness are more important than the technical skills to be imparted to students. The Grievant stated that safety and cleanliness are just as important as the technical skills, but the primary reason for having the class is not to have janitor class.

Custodians are not responsible for keeping the labs clean. During the 1988-89 school year, custodians started taking out the trash. Otherwise, the Grievant or the students took care of the trash. Ligocki gave several reasons for the lack of custodial help -- that the students needed to learn cleanup as part of the academic lesson, that the custodians may not have the experience to clean machines and follow safety procedures which students would be taught in cleaning machines, or that the custodians may not notice when routine maintenance needs to be done, where the students or the Grievant would notice.

A clean up bell rings five minutes before the end of the class period. Ligocki felt five minutes was sufficient time to clean up a lab if an adequate routine had been established where students are given certain tasks. Ligocki stated that due to the condition of the shop, the Grievant did not have an adequate method of routine for cleaning the lab. Ligocki's understanding of the Grievant's method for cleaning up was that the Grievant only required students to clean up their own areas, and that the Grievant had resisted a structured cleanup system as suggested to him. Wolslegel also felt that the Grievant objected to a structured system of cleanup and objected to forcing students to clean up more than their own mess. Wolslegel told the Grievant that he did not care what system he used as long as everything got cleaned up. Wolslegel thought that the Grievant never implemented a structured cleanup plan which would require students to do certain jobs.

The Grievant stated that five minutes is usually enough time for cleanup work, although it might not be enough time when there was some mass production equipment laid out on a bench or too few people to do the cleanup work. However, there were occasions where the Grievant would keep students after class to finish cleaning up and write passes for them for their next class. When the Grievant first began teaching at the District, he had a cleanup schedule with jobs on a slotted sign, and students would drop their names in a slide designating their area of required cleanup, in addition to cleaning up their own mess. The Grievant noted that such a system worked well if there were enough students in the class. But the system was designed for 16 people, and if he had only nine students in class, there would be some jobs for which no one was responsible. Wolslegel always suggested to him that he continue to use this system, although it would only work if he had a full class.

Students told the Grievant that they did not want to clean up for someone else's mess, but he would ask for volunteers if more cleanup was needed after the students cleaned up their own areas. Students were not allowed to walk away after making a mess in the labs and have always been taught to clean up their mess. The Grievant tried to use different systems over the years, such as the slide system with assigned jobs, and the allowing of students to clean up their own areas and fill in for the other jobs. Also, a student working on a machine might see that there would be a problem getting that machine cleaned up before class was over and would ask others to help out. He felt that students have always taken the initiative to try to clean up the labs.

The person using the lab would be responsible for cleaning it up, whether the Grievant or another instructor in case the lab was rented or used by an LTC class. Although custodians had been directed not to use equipment in the labs for the last couple of years, the Grievant said they were still using the equipment.

There were problems with storing tools in the labs due to the fact that there was no proper tool storage area until the 1986-87 school year. Before that, some old band cabinets were used for tool storage. During the 1986-87 year, some storage cabinets were received, but when they did not work out well, the tools were hung on the wall. While the Grievant agreed that tools should be returned to racks at the end of class, that was not always the case. Other teachers would borrow tools from the labs.

Evaluations -- Discipline -- Rehabilitation:

The record shows three formal evaluations of the Grievant, one in 1986, one in 1988, and the final one in 1989, as well as a formal classroom observation report in 1987. The Grievant received other evaluations throughout his career, but did not know what happened to them.

The November 13, 1986, evaluation was prepared by Benes. A form with several boxes of categories is on the front of the evaluation, and the boxes are to be checked for effective, needs improvement, or unsatisfactory. Boxes with no checks mean that the category was not observed. The Grievant received 21 checks for effective in such matters as initiative, teaching techniques, class control, to name a few. He received three checks as unsatisfactory in the categories for organization and preparation, attendance to routine duties, and concern for health and safety. Eleven categories were not checked. Benes' handwritten comments at the bottom of the form were the following:

The lessen went very well. Students were working on a model in the wood shop. They appeared to be very aware of the goals and objectives of the class. You were available to talk to each of the students individually during the period. You provided them with constructive input and they respected what you had to say. The unsatisfactory checks above refer specifically to lesson planning and the wearing of safety glasses. I need to have a copy of your daily lesson plans each week as they indicate your preparation for the classes you teach. They also keep me informed about the curriculum that is being taught. As I stated previously, it is also necessary for students to wear approved safety goggles while they are in the labs. Since many of the students were cutting wood and working with a sander they should have been wearing safety goggles.

Shortly after Ligocki arrived in the District, he observed the Grievant during a class period and filed the following classroom observation report on October 27, 1987:

Class Summary:

This particular class period was dedicated to the demonstration of the wood lathe.

At the beginning of the period, the students were instructed to refer to the worksheets on the parts of the lathe during the early part of the demonstration. The students were expressing some frustration at not being able to complete the worksheet but they were calmed and told to complete them during the review.

The first activity was a question/answer session concerning the parts of the wood lathe. Similarities to the metal lathe were highlighted when appropriate. The students were quite attentive and offered answers when able and noted parts on their diagrams when needed. The major portion of the lesson was spent in actual demonstration of the uses of the machine. The instruction was slow and deliberate. Questions were asked at numerous intervals to ensure understanding before proceeding. Safety issues were addressed at appropriate intervals.

The lesson concluded with a demonstration of a more advanced skill the students may be developing at a later time.

Areas of Emphasis:

1. Anticipatory Set: I felt that your selection of the review of the parts of the lathe, completing the worksheet was a very good choice. The purpose of the Anticipatory Set is threefold: (1) to gain the students' attention; (2) to focus the student's attention onto the topic of the lesson, and (3) to gain student involvement. The "review" you conducted met all three criteria. By the end of the review, the students were fully involved and ready for the instruction.
2. Modelling: A great deal of the lesson was spent "modelling" the types of skills needed to operate the lathe, set-up procedures, safety procedures, etc. You were extremely deliberate in your demonstration, pointing out the subtleties that would make operation smoother and safer for the

students.

I could tell that you enjoyed "dazzling" the students. No only was it enjoyable, it is very good technique.

Objective Statement: I did not recognize an objective statement either at the beginning of the lesson or as a reconstruction of the lesson. It is of primary importance that the students know exactly what they are expected to learn and what will be expected from them. Even though it may be obvious to you and, you feel, obvious to the class, it may not be. An objective statement should not be assumed it must be stated. For the student, it is a guide for them to use (and you to use) in checking their understanding as the lesson progresses.

Overall, I believe you delivered the material well. You appeared to be well organized and you accomplished the task you set out to do. Developing the "habit" of a good objective statement will enhance your performance. Finally, I wish for you to continue to focus some of your efforts in maintaining cleanliness and orderliness in the shop areas. A good, orderly environment aids in learning and students should also learn that orderliness is a positive skill in a job performance.

On June 10, 1988, Ligocki gave the Grievant a teacher evaluation using the same form as described before, with boxes checked for different categories. The Grievant received 21 checks for effective, one for needs improvement in the category of promptness, and four unsatisfactory marks for continuity of work, concern for health and safety, classroom appearance, and performance of non-class assignments. Ligocki made the following comments on the bottom of the form:

Throughout this school year and in the previous school years, several concerns have been addressed. These specific concerns fall into four major categories: Safety, Housekeeping, Curriculum Development and Professional Development. During this past year, we have met on numerous occasions, both formally and informally in order to address these concerns, suggest areas of improvement and evaluate progress. Progress in these areas has been unsatisfactory.

1. Safety. Specific safety measures in the lab areas continues to be a concern. Safety glasses must be required of all students any time tools or machinery is being used. Earlier this year, we discussed this matter at length. As of this writing, I see that you have taken measures to improve in this area. Continued emphasis is required in this basic area.

Other safety concerns are still present, however. On occasion, I notice that a student or students are left alone in the shop area or the shop is left standing open when you are not present. You need to remedy this situation. The opportunity for injury when these situations occur, outside of your supervision is great. You need to be present when students are present and lock the doors when you are not.

Constantly inspect the area to remedy equipment problems and/or hazards. Hourly inspection and more detailed daily, visual inspections should become a portion of your routine.

Finally, you have been encouraged and will continue to be strongly encouraged to attend the safety seminars. The greater knowledge you acquire in this area, the better.

2. Housekeeping. The labs continue to be in disarray. Dust and other refuse is constantly on the floors, benches and machinery. Tools are left lying. This area is a constant mess to say the least. In past memos and evaluation, this problem has been addressed. Yet, no real improvement is seen.

You must take the initiative to correct this

situation and find a lasting solution. I have suggested relocation of the tool cabinets, a schedule of hourly clean up duties, but I have seen no movement on your part in this direction.

Improvement in this area is critical. Because this situation has continued to exist, costly replacement of lost tools has been required. Simply put, the lack of housekeeping has resulted in poor security and has cost the district money. Lack of adequate housekeeping has been cited in the safety report. You must find a permanent solution to this problem.

3. Curriculum Development. On Thursday, January 28, 1988, you and I met with David Wolslegel. At that meeting, expectations concerning the writing of curriculum were outlined. You were to have completed the Introduction To Technology course curriculum by March 24, 1988. The Construction Systems and Manufacturing Systems; Soft Materials and Processes and Hard Materials Processes course curriculum materials were to have been completed by April 4, April 30, and May 30, 1988 respectively. to date, only the "Manufacturing" course materials have been received.

The development of these curricula is a basic requirement for your position. Assistance was offered by Mr. Wolslegel, yet no due dates have been met. At this time, I will establish September 30, 1988, as the due date for all curricula mentioned above along with the Conversion Devices and Energy Transmission Control and Storage curriculum. Mr. Wolslegel continue to be available as a resource.

4. Professional Development. In our discussion of January 28, we also discussed the need for you to continue with your personal, professional development as a method of increasing your knowledge base and maintaining your certification. You indicated that you have been involved in course work at UW Platteville and will also be enrolled this summer. I applaud these efforts and encourage you to continue. It is important, however, to forward transcripts to Mr. Albert's office so that appropriate notation may be made in your personal file.

In summary, I want to reiterate what I had explained to you at the January 28 meeting and again on May 27, 1988. Attention to and immediate improvement in the above mentioned area is critical. I, Mr. Albert and Mr. Wolslegel are available to assist should you request. I will meet with you periodically to measure your progress toward these expectations. Failure to achieve these expectations will result in a recommendation for non-renewal of your contract for the 1989-90 school year being made to the Board of Education.

The last evaluation, dated February 13, 1989, did not follow the same format with lists of categories and boxes to be checked. Ligocki wrote the following for this evaluation:

At the end of the 1987-88 school year, I presented you with a summative evaluation of your overall performance during the previous school year. In that document, I focused on four major areas that required improvement for you during the 1988-89 school year. These deficiencies, as outlined, were and are not new concerns. They have been addressed in evaluations and memorandums dating back to 1982. In the June 10, 1988, summary the concerns were, again, identified and suggestions for improvement were outlined. You were also informed that failure to achieve the expectations as outlined would result in a recommendation to the Board of Education for non-renewal of your contract.

To date, I have made these observations concerning your performance.

1. Safety. On occasion, I have mentioned to you my

observations of students in the lab without safety glasses. At the time, the students may have been working directly with equipment for which safety glasses are an absolute necessity or have been in the general area when such equipment is being operated. Your response was to suggest that the offending students be referred for failure to wear the glasses as you instructed them to do and as included in the Shop Safety Policy. Whatever the response, the point remains that all students wear safety glasses in the shop while machinery is being used. Although these instances are fewer in frequency as I observe activities in your classroom, I am very concerned that I should observe any at all.

Shop conditions, which will be addressed specifically, continue to be a major concern. A separate memorandum from myself and Dave Wolslegel dated today outline a number of unsafe conditions observed during an inspection on Friday, February 10, 1989. Such conditions are unnecessary and unacceptable.

2. Housekeeping. This area continues to be unacceptable. Despite all of the attention paid to keeping the shop clean during the past two years by me and several more years by Mr. Benes, Mr. Albert and Mr. Wolslegel, the situation remains virtually unchanged. The shops remain unkempt, no real cleanup procedure exists and there is no plan for improvement apparent.

Housekeeping directly affects the level of safety for the students as well as the amount of funds necessary to replace lost or damaged equipment. Unfortunately, I feel the condition of labs transmits a poor image for the value of the program(s) and yourself as an instructor.

3. Curriculum Development. Significant and acceptable progress has not been achieved in the development of the Technology Education curriculum. This has been the topic of several meetings between yourself and Mr. Wolslegel. Dave has offered assistance and encouragement to you in an effort to prompt you to achieve the goals set forth in our January 28, 1988 meeting and subsequent evaluation of June 10, 1988.

In that evaluation, I established September 30, 1988, as the date all curriculum would be due-in final form. As of this date, the Construction Systems, Manufacturing Systems, Conversion Devices and Energy Transmissions Control and Storage courses have been submitted. However, the proofing and final corrections have not been returned. The Hard Materials Processing and Soft Materials Processing curricula have not been completed. In our meeting of January 3, 1989, you responded affirmatively when I asked if all curricula for the 1989-90 school year had been written. This is not the case.

4. Professional Development. The June 10, 1988, evaluation indicated that I wished for you to continue with a plan for personal and professional development. Although I have some indications that you have put forth some effort in the area of course work, I have no evidence of that fact. I assume you completed the course work you started this past summer, however, I have, nor has Mr. Albert received, transcripts from UW-Platteville. Evidence, as I mentioned, was important. You need to complete your responsibility to follow through on the reporting.

In summary, your efforts to achieve the expectations that have been established for you have been unacceptable. Throughout this school year Mr. Wolslegel has met or attempted to meet with you to help you work on curriculum as well as help you set goals for yourself and aid in self-improvement. These meetings have proven fruitless. You have not followed through and used the assistance. I have made it a point to see you and either direct or suggest actions that I felt were necessary. To date, necessary improvement has not been made.

The February 13, 1989, evaluation was made during that time because the administrative staff was making recommendations to the Board of Education for staffing for the upcoming year. The Grievant's status was in doubt as a result of the June 10, 1988, evaluation, and his performance needed to be evaluated again in order to make a recommendation to the Board. Ligocki chose to use a narrative style of evaluation rather than the form used in previous evaluations in order to make a recommendation to the Board and to address the issues where the Grievant had previously been deficient. Ligocki did not point out any of the Grievant's strengths in the final evaluation because he felt that the Grievant did not have strengths to counter his weaknesses.

Ligocki considered the Grievant's ability as a classroom teacher as satisfactory to the extent he was able to deliver specific information to his students. However, Ligocki also considered the Grievant to be incompetent and inefficient due to the Grievant's deficiencies in the areas of safety, housekeeping, curriculum development, and lesson planning.

The parties differ over what in the record constitutes discipline, particularly matters that might stand as early steps of a progressive disciplinary procedure, such as oral or written warnings. Ligocki considered memos put in the Grievant's file -- including those from Benes -- to be disciplinary in nature. While the first time Ligocki warned the Grievant in writing that his job was in jeopardy was the June 10, 1988 evaluation, Ligocki had verbally told the Grievant before that date that he would not be an employee if the problems identified were not resolved by the end of the 1988-89 school year. Ligocki testified that he had used a progressive system of discipline, moving from verbal to written to non-renewal. At one point, Ligocki told the Grievant that it would be a shame if he lost his job because the shop was not clean. Ligocki did not point to the time he made that statement.

Wolslegel does not have direct responsibility for evaluation of staff, but plays a role in disciplinary matters as far as making recommendations to Ligocki. Wolslegel considered his memos to the Grievant to be disciplinary. He recalled that the Grievant and Falk considered the May 19, 1986, memo about housekeeping in the labs to be a reprimand, because Falk expressed a concern about being reprimanded for things outside of his realm and the Grievant expressed the same concern. Wolslegel thought that he or Benes or Albert had told Falk and the Grievant that the May 19, 1986, memo was a reprimand, it was possible that they did.

Wolslegel told the Grievant that the late submission of the curricula could not go on or he would have to recommend to Ligocki that additional action be taken. Wolslegel testified that before June 10, 1988, he told the Grievant that he could lose his job if he did not show improvement in the areas of house-keeping, safety and curricula development. The first written notice from Wolslegel regarding the consequences of the lack of work on the curricula appears in Wolslegel's January 5, 1989, memo to the Grievant where he mentions the possible recommendation of nonrenewal.

The Grievant testified that memos placed in his file by Benes were not letters of reprimand, and he did not consider Benes' 1986 evaluation to be disciplinary in nature. The Grievant recalled discussing the classroom observation report in 1987 with Ligocki and that Ligocki did not indicate to him that the report disciplined him in any way. When the Grievant received the June 10, 1988, evaluation, Ligocki told him he was not going to be around, so the Grievant signed it and handed it over to a secretary. The Grievant admitted that Ligocki may have told him verbally sometime within two or three months before the June 10, 1988, evaluation, that there was a chance that he would be nonrenewed.

The Grievant did not consider Wolslegel to be a supervisor over him. The Grievant did not recall that Wolslegel ever told him that he would be disciplined for not completing the curricula work up until the fall of 1988.

When Albert, Benes, or Ligocki brought the Grievant's attention to matters of safety or housekeeping, the Grievant did not disregard their comments but realized that he had to correct those areas which the District considered unsatisfactory. However, the Grievant did not consider the comments to be disciplinary measure but rather things that were pointed out to him to be corrected.

Following the final evaluation in February of 1989, Ligocki felt that the Grievant was relatively indifferent to the evaluation, and testified that the Grievant stated that "it was no big deal." Ligocki concluded that the Grievant had not improved his performance and did not intend to improve. The Grievant stated that Ligocki's impression of his attitude was inaccurate, that he considered Ligocki's criticisms to be a big deal, something he had to deal with and to correct. He did not recall ever saying that this was no big deal.

In Wolslegel's memo to the Grievant regarding curriculum writing, dated April 8, 1988, Wolslegel offered to assist the Grievant. The Grievant asked for assistance on the energy transmission control and storage courses. The

Grievant incorporated suggestions from Ligocki and Wolslegel into curriculum writing when he could use them. Wolslegel suggested that the Grievant attend a safety seminar, which the Grievant did, although he did not attend the first one Wolslegel recommended.

During the 1988-89 school year, Wolslegel took the initiative to work with the Grievant to overcome the concerns Ligocki stated in the June 10, 1988, evaluation. Wolslegel asked the Grievant to identify his strengths and weaknesses as a teacher and suggested that they work together to work on the weaknesses. The Grievant considered Wolslegel's suggestion for a self-assessment to be part of Wolslegel's intention to help him. The Grievant did not complete the self-assessment as suggested. The two of them were to meet, apparently sometime in November of 1988, but the Grievant missed the meeting, which prompted the following note from Wolslegel on December 1, 1988:

You missed our last scheduled meeting to discuss ideas and methods on how we may help you improve as a teacher. I indicated to you then that we probably needed to set another meeting, but I have not heard anything from you. I am not sure if you are still interested and/or willing to continue our meeting. I would hope by the time we meet you will have completed a self-assessment that we have discussed and have been able to identify your strengths and weaknesses as a teacher and at least one point in each area (strength and weakness) that you wish to continue to work on. The year is nearly half over and you had still not completed this task when we met last.

plg

P.S. We also need to set a definite time schedule to complete the needed curriculum writing that you have not finished.

The Grievant did not recall why he had missed the meeting, and when Wolslegel asked him about it, the Grievant did not give him a reason. The two of them set up another meeting for January 4, 1989. The Grievant thought the meeting was for January 5th and missed Wolslegel, who showed up on the previous day. On January 5, 1989, Wolslegel sent the Grievant the following note:

I was in the district on Wednesday evening, January 4. I looked for you at Northview, the high school, and Riverview as per the appointment we made December 19, 1988.

I feel it is very important that we get together soon to review the progress/lack of progress you have made writing curriculum. As you remember, we worked out a development schedule (January 1988) that should have provided for completion of all courses of study by September of 1988. You have not kept pace with that schedule for several reasons, I think. It is important that we check the progress and quality of some of your work soon. Consideration of contracts for 1989-90 will be coming soon and I'll need some basis on which to make a decision whether to support you and possibly request additional time for you to complete writing your courses of study or recommend non-renewal.

Please do not misunderstand that curriculum writing is the only thing to be considered regarding your continued employment. Safety, housekeeping, and instructional issues were also expressed as concerns previously. We talked about those items in previous conferences earlier this fall and I attempted to have you set some definite goals for improvement. To my knowledge, you have not followed through with that activity. You have not kept appointments to work on development of the goals or to get assistance to meet such goals.

I am beginning to get to the point where I don't think you care about change or improvement.

I hope you can take the time to respond to these concerns in the very near future. I will be in the district on January 5 & 6, 1989. Please call me to discuss when we can meet. I would take time with you whenever I am free during the day and would be available either evening.

See you SOON!!

The Grievant felt that he had completed with all of the directives given



to him. The Grievant often came back to the labs after wrestling practice to straighten up the labs, and felt that both he and his students took the initiative to clean up before being told to or before the administrators found deficiencies in the labs. When the Grievant realized -- due to the June 10, 1988, evaluation -- that his job was in jeopardy, he made an effort to get everything corrected by the end of the 1989 school year. He stated that all of his deficiencies had been corrected to his satisfaction by the end of the 1989 school year, while acknowledging that someone else might not be satisfied with his performance.

Since the early part of the 1980's, the State Department of Public Instruction has required that teachers not holding lifetime licenses earn six credits every five years in order to retain their licenses and certifications. The parties' labor contract calls for teachers to earn six graduate credits for every five years they advance on the salary schedule or lose the increment step until the credit requirement is satisfied. The Grievant's professional improvement record (District Ex. #17) shows that the Grievant had one credit in the summer of 1981, three credits in the summer of 1985, and two credits in the summer of 1987. The Grievant's transcript from the University of Wisconsin-Platteville (Association Ex. #27) contains a handwritten addition for the summer of 1988, when the Grievant completed a three-credit course in robotics. Between 1981 and 1988, the Grievant earned a total of nine graduate credits.

At the time that Ligocki prepared the June 10, 1988, evaluation, Ligocki thought the Grievant had not completed the required six credits within a five-year period to meet state standards or the contractual requirement. The 1981 one-credit course was too far outside of the five-year period, and therefore, the Grievant's record showed that he had five credits as of June 10, 1988, and still needed one more. The Grievant was frozen on the salary schedule during the 1987-88 school year, but was not aware of it until the private nonrenewal hearing with the Board. On May 5, 1988, the Grievant submitted the necessary transcripts to advance on the salary schedule. Ligocki was aware that the Grievant was to be enrolled in a course in the summer of 1988 and urged him to forward transcripts to the administration. The Grievant did not turn in the transcript of the latest record of the credits until the nonrenewal hearing with the Board.

#### THE PARTIES' POSITIONS:

##### The District:

The District asserts that the Arbitrator is without jurisdiction over the grievance as it was not filed in a timely manner in accordance with the grievance procedure of Article V of the labor contract. The written notice of nonrenewal issued to the Grievant was dated March 29, 1989, and the Association notified the District on April 25, 1989, that it voted to file a grievance challenging the nonrenewal decision. On April 27, Albert responded and stated that the alleged grievance failed to comply with Section 5:5 -- that specific contract sections violated were not identified, the relief sought was not identified, and the complaining employee had not signed the grievance. On May 3, the Association submitted a revised grievance which satisfied the requirements of Section 5:5. However, the District notes that the amended grievance was not filed until 35 days after the nonrenewal notice, and Section 5:3 calls for written grievances to be filed within 20 days. Therefore, the District submits that the grievance has been rendered untimely and the Arbitrator is without jurisdiction over it and the grievance must be denied.

Turning to the merits, the District states that the Board of Education's decision not to renew the Grievant's individual employment contract for the 1989-90 school year was based upon just cause for on several different reasons. The District first submits that the Grievant failed to adhere to Board policy with regard to safety. Both the exhibits and testimony show that the Grievant failed to enforce Board policy and rules regarding the use of safety glasses. The fact that there had been no catastrophic injuries to students is irrelevant and does not excuse the Grievant for failing to apply this important Board policy.

Further, the District contends that the Grievant failed to assure that lab machinery and materials were maintained in a safe condition. The unsafe conditions described in the exhibits and testimony were obvious and should have been corrected immediately by the Grievant, without direction. The failure of the Grievant to assure the safety of equipment and materials within the industrial technology laboratories was a fundamental breach of the Grievant's responsibility as an industrial technology teacher, the District submits. Moreover, the Grievant failed to properly supervise students within the labs, and failed to provide the District with copies of safety tests administered to students.

Summarizing the safety concerns, the District states that the most important responsibility of the Grievant was safety. While students attended classes to acquire knowledge and skills in industrial technology, it was more important that they acquire an appreciation for the importance of safety and that they not be injured. The Grievant viewed safety and cleanliness only

equally as important to technical skills imparted to students. The Grievant never disciplined a student for failing to wear safety glasses, permitted various hazards to exist, and neglected to repair or replace safety devices on saws until directed to do so. The District further notes that as late as February of 1989, the Grievant was engaging in the same acts and omissions regarding safety that he was directed to correct in 1986. Thus, the consideration of safety alone provided the Board with just cause for nonrenewal.

The District asserts that the Grievant failed to assure that the technology education labs were maintained in a proper level of cleanliness and order on a recurring basis. While the Grievant acknowledged that there is an academic opponent to good housekeeping and cleanliness, the Grievant also testified that the students are not enrolled in a "janitor class" and that maintenance skills and cleanliness are not the primary reason for having the class. The Grievant failed to implement any effective system to assure that the labs were maintained, the District claims. The Grievant was directed and encouraged to establish a system to facilitate the clean up of the labs, but did not adopt any method that was sufficient.

The District claims that throughout his employment, the Grievant was apprised of his fundamental responsibility for maintaining proper standards of housekeeping as a technology education teacher. However, the Grievant was reluctant to implement a system which would impose upon students a general obligation for shop cleanup. Accordingly, the District states that the failure of the Grievant to assure proper maintenance and order within the labs gave the Board additional grounds for nonrenewal.

The Grievant failed to complete assigned curriculum projects in a satisfactory manner and within the time period specified, the District notes. The evidence shows that the Grievant failed to meet the original deadlines and further failed to meet revised deadlines for submitting curricula. The late submission of curriculum projects, measured in years, was clearly unreasonable and unacceptable. Additionally, the District claims that the quality of course outlines submitted by the Grievant was unacceptable. Without the curriculum being completed, the District contends that the Grievant failed to incorporate the terms of the technology education model within his classes. Although the Grievant claimed he had incorporated the new technologies in his classes, this was not observed by Ligocki or Wolslegel. In the absence of complete and timely curriculum guides, there is no basis upon which to substantiate the claims of the Grievant. Furthermore, the Grievant was offered assistance regarding curriculum writing and provided with various options to complete the projects on a paid basis. In view of such assistance and options, there was no excuse for his failure to complete the projects assigned to him in a timely manner. The projects were assigned to the Grievant within the scope of his employment as a technology teacher, and the District asserts that the Grievant's failure to submit the projects in a timely manner was unprofessional and provided a clear basis upon which the Board could determine not to renew the Grievant's individual control.

Additionally, the District asserts that the Grievant repeatedly failed to submit lesson plans as directed, and such a failure bordered on insubordination. The Grievant also failed to submit evidence of graduate course work in a timely manner. The District points out that Section 10:1 of the labor agreement provides that teachers must earn six graduate credits for every five years they advance on the salary schedule, and Section 10:5 provides that failure to comply results in loss of increment until those requirements are fulfilled. At the end of the 1986-87 school year, the Grievant had not earned the six graduate credits needed to advance on the salary schedule, and was frozen on the schedule at cell B-5 during the 1987-88 school year. While the Grievant completed a graduate course during the summer of 1988, he did not submit the course transcript until the evening of his private conference with the Board regarding the proposed nonrenewal of his teaching contract. The District argues that the Grievant demonstrated the same casual difference toward reporting professional improvement work as he did toward safety, housekeeping, curriculum writing and lesson plans.

The District claims that the Grievant was afforded ample opportunity to improve his work performance and was offered assistance. In the 1987-88 teacher evaluation, the Grievant was advised that Ligocki, Albert, and Wolslegel were available to assist him should he request such assistance. However, the Grievant did not avail himself of offers of assistance or correct his unsatisfactory work performance.

Additionally, the District asserts that the Grievant was given fair warning of the disciplinary consequences of his unsatisfactory work performance. In the 1987-88 teacher evaluation, Ligocki specifically stated that failure to achieve certain expectations would result in a recommendation for nonrenewal of the Grievant's contract for the 1989-90 school year. Both before and after the evaluation, Ligocki discussed the matter of nonrenewal with the Grievant. Wolslegel told the Grievant that changes would have to be made or a nonrenewal recommendation would come. The Grievant acknowledged that he could not disregard comments of his administrators. Thus, the Grievant had both verbal and written warnings of the disciplinary consequences of his

conduct, the District submits. The Grievant's failure to take appropriate corrective action in the face of such notice and warnings provided the Board with just cause to refuse to renew his contract.

Even though the record shows that the Grievant was given specific notice that his contract could be nonrenewed, the District argues that it was not required to warn him about nonrenewal if he failed to maintain proper standards of safety and housekeeping within the labs. The duty of the Grievant to maintain proper standards of safety and housekeeping go to the core of his job as an industrial technology teacher, and the Grievant knew or should have known that failure to maintain the labs and assure safety conditions within them would subject him to discipline.

The District calls the attitude of the Grievant one of remarkable indifference, approaching safety, housekeeping, curriculum development, professional improvement and lesson plans in a casual manner. It asserts that the Grievant's attention to these matters was directly correlated to the degree of pressure placed on him by administrators, and he did not accept these matters as independent professional responsibilities. While the Grievant had the ability to correct his work performance, he failed to do so. The District concludes that the grievance is without merit and should be denied.

#### The Association:

The Association points out that the Grievant enjoys a grant of tenure, based upon Section 4:1 of the labor contract, of which he cannot be divested in the absence of "inefficiency, immorality, willful and persistent violation of reasonable regulations of the school board, or other good cause." The Association does not dispute that the procedural steps of Wis. Stats., Section 118.22, were correctly applied, but asserts that guidelines outlined by Professor Carroll R. Daughterty for determining just cause for discipline should be the measuring device as to whether the District proved just cause in this case.

The Association contends that the first time the Grievant was officially notified of possible negative consequences of his conduct was in June 10, 1988, evaluation. The Grievant had been teaching in the District since 1981 and had not substantially changed his methods and strategies of teaching over those years. The Grievant thought that his previous principal considered him to be overall a satisfactory teacher, while noting that the previous principal had communicated several areas that needed attention. However, the Grievant did not view previous communications as discipline. The Association submits that communications prior to June 10, 1988, cannot be viewed as discipline where no indications of the consequences had been delineated.

While lesson plans are related to the efficient operation of the District, the Association notes that casual attitude of the administration toward turning in lesson plans belies the importance of this issue. The Grievant's failure to submit lesson plans did not result in a written reprimand, and the Association asserts that the fact that more serious corrective action was not taken suggested that the matter was not taken seriously.

The Association claims that the Grievant made every effort to clean up the industrial arts laboratory without the advantage of custodial assistance. He also made concerted efforts to try several different methods to establish a clean up schedule with his students. The Association notes that one approach suggested by his supervisor was not successful in his lab because of the number of students.

Also, the Association states that the Grievant took measures to try to gain compliance from students regarding the use of safety glasses. The Association notes that there were no serious injuries or safety accidents during the Grievant's tenure at the District. The Grievant even took affirmative action in this area by requesting the assistance of his principal. He also emphasized the wearing of safety glasses on safety tests before using each machine.

As to the matter of a safe working environment in the shop areas, the Association asserts that part of the problem is that the shop areas are not under the Grievant's control. While the District held the Grievant responsible for the shop area, it did not provide the Grievant with complete control. Keys were available to a number of individuals, and it was not unusual for other school employees to use the industrial arts lab.

The Association disputes the District's contention that the Grievant was given the same options as other teachers for time to develop curricula. The Grievant was told by Wolslegel that he could not use a substitute teacher to cover his classes in order to write curricula. The Association notes that the Grievant is not available during the summer for curriculum development because he works a second job, and that during the school year, he serves as a wrestling coach after school for a major portion of the year, including Saturday tournaments. While acknowledging that the six curricula assigned to the Grievant were not submitted on a timely basis, the Association contends

that consideration must be given to the time available to him. Even though his time was limited, the Grievant eventually completed all six curricula only to hear that the District held him responsible for proofing the typed copies.

The Association notes that the administration made an obligatory number of classroom observations, and the Grievant's performance in the classroom has been documented as satisfactory, as Ligocki stated in his observation of October 27, 1987. Moreover, the Association points out that on the June 10, 1988, evaluation, over 20 characteristics in the areas of personal characteristics, instructional and guidance, teacher-staff relationships, and general school services were marked as effective. Yet the administration overlooked the Grievant's strengths in the classroom to concentrate on a few areas that needed attention.

The Association contends that the District's investigation was not conducted fairly and objectively. The Association claims that the District relied upon clandestine visits to the Grievant's lab at night and on weekends to document housekeeping and safety concerns, while the Grievant could not control access to the labs. Administrators, teachers, custodians, and possibly other students had access to the labs without the Grievant's knowledge. The Association notes that administrators were in the lab over a weekend, and the Grievant had problems demonstrating a machine because it was dull from unauthorized use. Custodians borrowed tools from the industrial arts lab, yet the District would hold the Grievant responsible for an unsecured area.

The Association submits that the District's investigation failed to procedure overriding evidence that the Grievant was guilty as charged to support a finding of just cause for nonrenewal. Additionally, the Association argues that the District's conduct lacks consistency over the course of the Grievant's employment. The written record shows a lapse of time between 1982 and 1986. The Association notes that although Wolslegel was present during the eight years of the Grievant's employment, the immediate supervisor changed in 1987. The previous principal, Benes, mentioned some concerns that were cause for continued observation by the present principal, Ligocki. However, the Association argues that the standards were not applied consistently to all teachers. The Association points out that other teachers were not recommended for nonrenewal because they did not turn in weekly lesson plans. The Association questions why other teachers responsible for laboratory settings had access to custodial services while the Grievant did not. The Association asks how many other teachers were assigned six curricula to develop. Moreover, the Association asks why the District overlooked the record of eight years of successful teaching and concentrated on tangential issues.

In looking at whether the degree of discipline administered was reasonably related to the seriousness of the offense and the Grievant's record of service, the Association submits that the recommendation of nonrenewal is just that -- a recommendation. The Association states that the Arbitrator is not confined to a mere acceptance or rejection of the finding of nonrenewal, but that the Arbitrator can and should consider the wide range of disciplinary measures -- probation, reprimand, suspension, etc. -- which the District had at its disposal. The Association acknowledges that disciplinary action was not entirely unwarranted, but that the ultimate sanction of nonrenewal was inappropriate to the circumstances.

Therefore, the Association asserts that the District did not meet the standards of just cause as outlined by Daugherty and required by the labor agreement, and that the District did not prove that the Grievant was incompetent to continue teaching in the District. Therefore, the Association asks that the grievance be sustained and that the District be directed to rescind its action and make the Grievant whole regarding back pay with interest, payment of teacher's retirement, and other fringe benefits.

#### The District's Reply Brief:

The District disputes the Association's contention that it overlooked the strengths of the Grievant. The District asserts that the serious work performance deficiencies of the Grievant regarding safety, housekeeping, curriculum development, professional development and lesson plans are not "tangential" issues, and that these deficiencies went to the essence of the Grievant's employment as a technology education teacher. Citing St. Croix Joint School District No. 1, et al, Dec. No. 12498-B (1975, Greco), the District notes that the WERC has considered that one of the most important duties of a shop teacher is teaching students to care for equipment and make sure that the work area is as safe as possible.

The District notes that Wolslegel rated the Grievant as a "C to C-" teacher, and that both Wolslegel and Ligocki testified that whatever strengths the Grievant may have had were outweighed by his weaknesses. The work performance deficiencies were so overriding, especially in the area of safety, that the Grievant was an unsatisfactory teacher. The District asserts that the Association's attempt to minimize the serious shortcomings of the Grievant should be rejected.

The District objects to the Association's characterization of

administration visits to the labs as "clandestine," pointing out that there is no question the Albert, Ligocki, and Wolslegel are authorized to be present in the labs at any time. The inspections may have occurred when the Grievant would have preferred that the labs not be observed. Further, the District asserts that the record does not support the Association's claim that the Grievant made a concerted effort to try different methods to maintain the labs.

The District contends that the evidence conclusively shows that the Grievant failed to implement any effective system of regular and consistent housekeeping in the labs, which was the primary reason for the unacceptable level of cleanliness and order. The labs were not cleaned by custodians because this was part of the academic lesson to be imparted to students, and that custodians did not have the training and expertise needed to properly clean and maintain the machinery in the labs. The District further asserts that there is no evidence that the labs were maintained at an acceptable level by the Grievant while under his control and then put in a state of disorder by others.

The District submits that it did not demonstrate a casual attitude about lesson plans being turned in, noting that from 1986 on, the Grievant was counseled by both Benes and Ligocki regarding the lesson plan requirement. The Grievant gave no reason why he failed to submit lesson plans. Moreover, all teachers were required to proof-read their curriculum study guides, and this requirement did not excuse the Grievant for his failure to submit a quality work product within the time period specified.

Contrary to the Association's assertion that the District did not prove the Grievant to be incompetent, the District contends that it is not required to prove that the Grievant is incompetent to continue teaching. The Board did not renew the Grievant's contract for incompetence, but for his failure to comply with and enforce Board policy regarding safety and housekeeping, as well as his failure to satisfy other requirements relating to curriculum development, lesson plans, and professional development. The District concludes that it has proved the existence of just cause for contract nonrenewal, and that the Grievant was a marginal teacher who demonstrated himself to be an unsatisfactory employee.

#### The Association's Reply Brief:

The Association points out that the District raises issues in its initial brief that were omitted from the proceedings of the arbitration hearing, as the District did not raise arguments about the timeliness issue or conformance with the grievance procedure during the hearing. The parties stipulated to a single issue: "Did the District violate Section 4:1 of the 1987-89 collective bargaining agreement when it nonrenewed the teaching contract of Clifford Klenke for the 1989-90 school year? If so, what is the appropriate remedy?" By not raising the issue of timeliness or conformance to the grievance procedure during the hearing, the Association was not afforded the opportunity to cross-examine witnesses or rebut allegations of timeliness and conformance made by the District. The Association submits that it appears that the District deliberately omitted the issues to prevent the Association from a fair and equitable defense.

The Association rejects the District's claim that the Arbitrator is without jurisdiction over the grievance as it was not filed in conformance with the requirements of the grievance procedure. Even though the District did not raise the timeliness issue at the hearing, the Association argues that the grievance was timely filed and processed pursuant to the labor agreement. The Association states that a disposition based upon the merits is preferable over a procedural disposition and that the objectives of time limitations in a grievance procedure are to minimize the pressing of stale claims or discourage stalling. The parties have not purposely ignored nor abused the contractual time limits, and the Association contends that undue legalism cited by the District only serve to thwart the process to which the parties have agreed.

Moreover, the Association submits that the April 25, 1989, notice served to notify the District of its challenge to the nonrenewal decision. The revised grievance submitted on May 3, 1989, was a revision to satisfy the requirements of Section 5:5 and was not intended to be a new grievance.

Even if the District were correct that the time lines were overrun by a few days, the Association asserts that such action should not bar the appropriate adjudication of the issue on the merits. However, the Association disputes that the time lines were exceeded where the initial grievance was timely filed and revisions requested by the Superintendent were submitted within days of the request. Under similar circumstances, arbitrators have found procedural flaws to be technical in nature and considered the merits of the grievances. Further, the Association states that the District was not prejudiced by imperfections in the April 25th grievance, as the District had full knowledge of the issue being grieved.

The Association argues that the District waived the issue of timeliness and conformance to the grievance procedure where it failed to raise it during the arbitration hearing and entered into a stipulation of the issue for resolution on the merits.

The Association requests the Arbitrator to fashion an equitable remedy and asserts that the District did not sufficiently prove just cause to nonrenew the Grievant's teaching contract. While the District would focus on safety as the most important responsibility of the Grievant, the Grievant did focus on safety. The Grievant outlined steps he took to get students to wear safety glasses, including referring a student to the office when that student refused to wear the glasses. The Grievant acted in a timely fashion to correct any alleged deficiencies regarding safety and housekeeping, while the District did not follow up with visits to determine the Grievant's compliance.

The Association submits that the District's concern about the delay in reporting professional development courses for advancement on the salary schedule would constitute double jeopardy if considered in this proceeding. The Grievant was disciplined by losing his increment for a year, and cannot be disciplined a second time for the same concern.

The Association also disagrees that the District was not required to warn the Grievant that his individual contract would not be renewed if he failed to maintain standards of safety and housekeeping in the labs. The Association asserts that the District's case lacks consistency over the course of the Grievant's tenure, and the record indicates an inconsistent attitude toward the Grievant's performance and a lack of follow up for correction of any alleged deficiencies.

#### DISCUSSION:

##### Timeliness Issue:

The District asserts that the Arbitrator is without jurisdiction over this grievance because the Association and the Grievant failed to present the grievance within the time period specified by Step 1 of the grievance procedure, and the Association objects to the District raising the timeliness issue after the arbitration hearing where it failed to raise it during the hearing. The Association correctly notes that the parties stipulated to a single issue on the merits at the beginning of the hearing, and the Association was not put on notice during the hearing that it should have to rebut an argument regarding timeliness. This is an unusual case where the Employer has raised the issue before and after the hearing but not during it, except to the extent that the joint exhibits reflect the denial of the grievance on procedural grounds.

If the District's failure to raise the timeliness issue during the hearing has prejudiced the Association, the District would be estopped from raising the issue at a later time. The Association claims it was not afforded the opportunity to cross examine witnesses or rebut allegations of timeliness and conformance to the grievance procedure. However, the Association was aware of the District's argument concerning timeliness and conformance as shown by Albert's responses to the grievance. Albert's first response to the Association's April 25th notice to file a grievance was that the Association had failed to comply with Section 5:5 of the collective bargaining agreement. Once the Association complied with Section 5:5, Albert responded that the grievance was not filed in a timely manner. The District's processing of the grievance prior to the hearing put the Association on notice that timeliness was an issue in dispute, and the Association should have been prepared to rebut such an argument had it been raised.

Where the District raised the issue at the earliest stages of the grievance procedure and up until the hearing, and where the parties put forth evidence of the issue having been raised through exhibits admitted during the hearing, the District is not necessarily estopped from continuing to raise the issue after the hearing. While it would have been preferable for the District to raise all issues to be heard and decided during the hearing, the District's imperfection in procedure has not prejudiced the Association, any more than the Association's imperfections in procedure in filing the grievance have prejudiced the District. Therefore, the timeliness issue will be considered.

The time for filing a grievance started to run when the Grievant received the March 29, 1989, letter from the Board of Education, officially notifying him that the Board decided not to renew his individual teaching contract for the 1989-90 school year. Under Section 5:3 of the labor agreement, a grievant has 20 working days to file a grievance. When the Association filed its letter on April 25th, it had filed a notice within the 20 day period, once weekends are excluded. The question is whether the April 25th letter from Poppy, as president of the local Association, sufficed as a grievance and complied with Sections 5:3 and 5:5 of the labor contract.

Poppy's letter stated that the Association had unanimously voted to file a grievance to challenge the Board's decision not to renew Klenke's contract, and that the letter was in fulfillment of Steps 1 and 2 of the grievance procedure. Albert responded that the Association had not complied with Section 5:5, by failing to enumerate the specific section of the agreement violated and the relief sought, and that the complaining person had not signed a grievance. These defects were promptly corrected by Garnier's letter dated May 3rd, although the Grievant's signature appears alongside of the date of

May 5th.

The District considers the May 3rd letter to be 35 days from the Board's official letter of March 29th. However, the District is apparently counting weekends, while the contract calls for "working days." Therefore, the Arbitrator finds that the revised or corrected grievance was filed in 25 days, which is slightly outside the time limits of Step 1.

Poppy's letter of April 25th only expressed an intent to file a grievance which did not comply strictly with Section 5:5 of the labor contract. Section 5:5 calls for a clear and concise statement of the alleged grievance including facts upon which the grievance is based, the issue involved, the specific section alleged to have been violated, the relief sought, and the signature of the complaining person.

The purpose of Section 5:5, however, is to give the District sufficient notice of an alleged violation, so that unknown persons may not bring vague claims which are not grounded in the labor contract against the District. Thus, Poppy's letter sufficed to fulfill the purpose of Section 5:5: the District knew that the complaining person was Clifford Klenke; the District knew that the issue involved was the nonrenewal decision; the District knew or should have known which section of the labor agreement was allegedly violated, since Section 4 applies to nonrenewal actions; and, certainly, the District could not have had much doubt as to what relief was being sought. Therefore, the District was not prejudiced by omissions in the April 25th letter (which were corrected within a few days in any event).

The Association was not bringing a stale claim against the District. Moreover, a primary purpose of the time limits is to prevent a delay in processing. Here there was none. Poppy's April 25th letter was timely and served to put the District on notice of the grievance. Garnier's May 3rd letter (or even May 5th, if one accepts the date written in by the Grievant's signature) was a timely correction of the procedural defects.

In Seaboard Allied Milling Corp., 82-1 CCH ARB Para. 8308, (Madden, 1982), the Arbitrator stated the following:

It is the consensus among arbitrators -- and a view shared by this Arbitrator -- that the long range interests of the parties to a collective bargaining agreement are better served when disputes are resolved upon their merits rather than upon technical grounds. That is not to say that procedural requirements will not be enforced. What is meant is that such provisions will be strictly construed and, where reasonable doubts exist, they will generally be resolved in favor of finding the issues to be arbitrable.

This is a case where reasonable doubt exists. The Association did not file a grievance in 20 days in absolute compliance with Step 1, although it served the purpose of the grievance procedure in Section 5:5 and quickly corrected the defect. The District did not raise the issue of timeliness during the hearing, although it had the opportunity to do so. There have been procedural omissions on the part of both parties, and the better method is to resolve the case on the merits.

Accordingly, I find that the grievance is timely and properly before me on the merits. The issue to be decided is that which was stipulated.

#### The Merits:

Although the Grievant started his teaching career in the District in 1981, the written record of memoranda and evaluations from the personnel file and the District's files show nothing for the purposes of this decision until 1986. There is one letter in 1982 from Wolslegel to the Grievant regarding shop cleanliness, but because of the gap between 1982 and 1986, this 1982 letter will not be considered. The District apparently would have the Arbitrator note that shop cleanliness is not a recent problem but has existed throughout the Grievant's tenure in the District. However, there is no reason to consider one single document dated four years before the rest of the written record in determining whether the District had just cause not to renew the Grievant's teaching contract. Otherwise, the Arbitrator would have to assume that either nothing was amiss between 1982 and 1986, or that conditions found in 1982 stayed the same but the District failed to address them. Both assumptions are equally suspect and have no basis in fact.

While the parties dispute what in the record constitutes advance warning of discipline, one fact remains clear -- on June 10, 1988, Ligocki clearly warned the Grievant of the possibility of nonrenewal in his evaluation. In that evaluation, Ligocki outlined concerns over safety, housekeeping, curriculum development, and professional development, with the following sentence in conclusion: "Failure to achieve these expectations will result in a recommendation for nonrenewal of your contract for the 1989-90 school year being made to the Board of Education." The Association views the June 10th

evaluation as the first official notice of the possible negative consequences of the Grievant's conduct, and argues that no communications before that date can be viewed as discipline. The Grievant acknowledged that possibly two or three months before the June 10th evaluation, Ligocki told him of the possibility of nonrenewal. Thus, it appears that the District moved progressively from an oral warning to a written warning. Assuming, for the sake of argument, that the Association's position is correct -- that the first official warning came on June 10, 1988 -- the Grievant had one full semester during the fall of 1988 and possibly up through the next two or three months, until the Board action in March of 1989, to meet the District's expectations or suffer the consequences.

The parties also disagree on whether the District was required to warn the Grievant that his individual contract would not be renewed if he failed to maintain proper standards of safety and housekeeping within the technology education labs. This is an issue that is unnecessary to resolve in this case, where the District did in fact warn the Grievant on June 10, 1988, but did not take its subsequent action of nonrenewal until March of 1989. While the Arbitrator would agree that an industrial arts teacher needs no warning about safety issues but perhaps would reach a different conclusion regarding housekeeping, the June 10th warning obliterates the issue of whether or not the District was required to warn the Grievant that he could be nonrenewed if he failed to maintain proper standards of safety and housekeeping.

In order to narrow the issues down to their proper focus, a couple of sub-issues will be dealt with first. The District argues that the failure of the Grievant to satisfy requirements regarding lesson plans and professional improvement was additional evidence of the unsatisfactory nature of the Grievant's performance. Regarding the professional improvement record, the Arbitrator essentially agrees with the Association that the Grievant had been previously disciplined for his professional improvement record by being frozen on the salary schedule. The Grievant corrected the situation. The Grievant's professional improvement record or graduate credits is not a factor that weighs against the Grievant in considering whether or not the District had just cause to nonrenew his teaching contract.

The Grievant admittedly did not turn in all of his lesson plans, missing five weeks of plans in the 1988-89 school year. However, another teacher, Frank Berger, missed four weeks of plans, and the District does not claim that Berger was disciplined for a similar number of missed lesson plans. Because another teacher with a similar record of missing lesson plans and an even worse record for plans submitted late was not disciplined in any fashion, the failure of the Grievant to turn in lesson plans is not a factor to be considered by the Arbitrator in this case.

That brings the focus of this case down to the areas of curriculum development, safety, housekeeping, and failure to correct deficiencies, which are the same areas (not quite coincidentally) considered to be the reasons for nonrenewal by the Board of Education in its March 29, 1989, letter.



### The Curricula:

There are two components to the District's concern about curriculum development. One is whether the Grievant completed required assignments in curriculum writing projects, and the other is whether the Grievant was teaching the newer technology model which would or should have been reflected through the updated curricula.

While there was much testimony from Ligocki and Wolslegel that the Grievant was not moving into the newer technology as rapidly as they expected, the Grievant testified with knowledge and enthusiasm about his endeavors into newer technology. The Grievant credibly disputed the administrators' contentions that he neither enjoyed the newer technology nor incorporated it into his classes. While Ligocki and Wolslegel consistently stated that they could not tell what the Grievant was teaching without having the written curricula to compare to his teaching, they also agreed that the curricula is not necessarily written before courses are offered and taught. If Ligocki did not have the expertise in technology education to determine whether the Grievant was meeting the appropriate education model adopted by the District, Wolslegel had such expertise. Both of them could have found out directly from the Grievant exactly what types of newer technology he had incorporated into his classes and teaching, despite the lack of the written curricula. Additionally, the record does not reflect that the Grievant was directly warned that he would be nonrenewed for the failure to incorporate newer technology into his courses or told that the failure to produce the written curricula was directly connected to the District's perception that he was still teaching the same old industrial arts courses under a new title of technology education.

The District argues that without the curricula being completed, there is no basis upon which to substantiate the claims of the Grievant that he had incorporated new technologies into his classes. However, the District has the burden of substantiating its claim, and its efforts to show that the Grievant was not incorporating new technology have fallen short in this area. The Grievant worked with students with robotics, made apneumatic arm, worked with processes and mass production of projects, and did not work on the same kinds of projects as in the past. Also, the budget for some of the high technology equipment was cut, and some things -- such as laser levelers -- were not practical for the District.

While I find that the District has failed to prove that the Grievant did not incorporate the newer technology into his teaching, the District still had the right to demand that the curricula be written and establish reasonable deadlines for its completion. Whether or not the District needed the written curricula to determine the appropriateness of the Grievant's teaching is irrelevant, where the Grievant had clearly been assigned curricula to be completed. These assignments were part of his regular employment.

The District paid for teachers' time for curriculum writing when done outside of the school day. The fact that the Grievant never asked for pay for time spent on curricula does not indicate one way or the other that the Grievant did not spend any time outside of the school day to do such work, or that he freely gave the District the benefit of doing the work on his own time. The parties dispute whether the Grievant had the option to get a substitute teacher for his classes to write curricula. Even if the Grievant did not have that option, he still had options to write his projects in the summer or after school hours.

The Arbitrator can appreciate the problem the Grievant may have had writing curricula in the summer, as he worked another job in construction in the summertime. However, his primary job was teaching in the District, or at least, it is the job the Grievant seeks to retain in this proceeding. The fact that wrestling practice and Saturday tournaments took away more time during the school year did not relieve him of his obligations in the area of curricula writing. Despite his work as a wrestling coach, the record shows that the Grievant completed most of the curricula assignments during the 1988-89 school year, although it is not known how much of the work was completed in advance of that year.

The Grievant stated that he had turned in all of his assignments in curricula writing by the end of the 1988-89 school year. While the District thought that the Introduction to Technology course was not completed, the real problem is the lateness of the Grievant's submission of the curricula. He had been assigned to these projects at least since 1986, according to the minutes of the meeting with Albert, Benes, Wolslegel, Falk, and the Grievant, which took place on August 28, 1986. Some of the courses in the new technology education model had already been implemented the previous year, but the record does not accurately reflect exactly when the Grievant had been assigned to these projects.

By the early part of 1988, the District was setting deadlines for the Grievant to meet regarding the completion of curricula. According to Ligocki's June 10, 1988, evaluation, the Grievant met with Ligocki and Wolslegel in January of 1988, and the dates of April 4, April 30, and May 30, all in 1988, were established for some of the curricula. By June 10, 1988, the Grievant had

missed some of those dates, and Ligocki established a new due date of September 30, 1988, for all of the curricula material to be completed. This date was established as part of the evaluation that included the warning that the failure to achieve the District's expectations would result in a recommendation for nonrenewal of his teaching contract for the 1989-90 school year.

Despite that warning, the Grievant missed the September 30, 1988, due date for all the curricula work being turned in, except that he had submitted the rough draft for the Conversion Devices course of study. The Grievant must have submitted his rough draft for the Construction Systems course of study in early October, as Wolslegel sent him the copies back for corrections on October 18, 1988. By December 1, 1988, and January 5, 1989, Wolslegel was again reminding the Grievant that the curricula still needed to be completed. Finally, on February 13, 1989, Ligocki's evaluation found that four courses had been submitted but proofing and final corrections were not returned, and two courses were not completed.

The Association notes that after the Grievant submitted his work, he found out that the District would hold him responsible for the proofing and corrections. The District notes that it required the same of all teachers. If the Grievant had even submitted his rough drafts by the time established in the June 10, 1988, evaluation -- the September 30th date -- the Arbitrator might be able to find that he had submitted his curricula work in a sufficient manner to meet the District's concerns. However, even after being warned about nonrenewal, the Grievant did not meet this deadline and have rough drafts submitted for all the assigned work.

While the District apparently never warned the Grievant before 1988 that failure to complete his assigned curricula writing could lead to discipline, it had so warned him during 1988. Although the District had been lax in enforcing its requirements about curricula writing in the past, it was entitled to turn to stricter enforcement once it gave notice of its intent to do so. The District gave the Grievant notice of its intent to enforce its requirement to complete the curricula writing through the June 10, 1988, evaluation. The Grievant should have realized by that date that the era of lax management was over, and he stated that he was aware that he had to correct all the deficiencies pointed out to him. Yet he missed an important deadline set by the District, and continued to miss it by a matter of several months. While the Grievant may have had too many projects to write in one year, these projects were overdue from the previous years, going back to at least 1986.

The Association admits that the six curricula assigned to the Grievant were not submitted on a timely basis, but urges that the Arbitrator consider the time available to him. Despite the Grievant's lack of time in the summer due to another job or lack of the time during the school year due to wrestling practice, the time frame runs over a matter of years. When full consideration of the time is given to the Grievant, he had about three years to complete these assignments, but apparently did not take them seriously until 1988, after being urged throughout 1988 by Ligocki and Wolslegel to complete the work.

The only evidence in the record regarding curricula assignments for other teachers is Ligocki's statement that six was a typical number of assignments, and while other teachers missed due dates, they were not late to the same extent as the Grievant. Other teachers taught courses while the curricula for them was not complete, as did the Grievant. There is no evidence to show that the Grievant was held to a different standard or received disparate treatment.

Accordingly, the Arbitrator finds that the Grievant's failure to submit written curricula assignments within a reasonable time after being warned about the consequences of his conduct gave the District just cause for discipline. The Grievant eventually completed all the work, and if the District's concern over the curricula were the only factor resulting in the nonrenewal of the Grievant's teaching contract, the discipline imposed might have been excessive.

However, there were other factors leading to the nonrenewal, such as safety and housekeeping.

#### Safety:

Safety is such a critical element in the Grievant's job that if the District were able to prove its case in this area alone, the Arbitrator would uphold the District's action and deny the grievance on this basis. However, the record in this area is troubled by disputed testimony and facts.

For example, Wolslegel stated that the Grievant did not like to wear safety glasses, while the Grievant stated that safety glasses should always be worn when working on machines and that he wore them himself, even when working on construction in the summer. Ligocki stated that during the 1987-88 school year, he found a lab assistant using machinery in the labs while the Grievant was not present to supervise the assistant. The Grievant told the student that he could not run a machine unless the Grievant was there to supervise him. Moreover, the Grievant was not aware of this incident until the arbitration hearing. Since the District brought this evidence against the Grievant forward for the first time during an arbitration hearing, it would be improper for me to consider it.

The issue of supervision of students in the labs does not appear to be a definite part of the Board's reasons for nonrenewal, unless one considers the Board's general statement about failure to ensure a safe working environment in areas under the Grievant's supervision to include the direct supervision of students. The evidence on the record is hardly convincing that the Grievant left students unsupervised in the labs. Ligocki stated that he saw "a student or students left alone in the shop area or the shop is left standing open when (the Grievant) is not present" in his June 10, 1988, evaluation. If he only saw "a student" rather than "students" and that student was the lab assistant, which the Grievant did not previously know about, this incident should not be considered to support a finding that the Grievant failed to properly supervise students. If Ligocki were concerned that the shop area was unlocked and students might use it when the Grievant was not present, this concern is a speculative item rather than a direct showing that the Grievant left students unsupervised in the shop. Benes' memo from 1986 refers to observing students in the metal shop without safety goggles while the Grievant was working with students in another room. The point of the memo was that everyone should have been wearing safety goggles, and it was apparently permissible for the Grievant to be working with students in one room while other students were working in another room. All in all, the evidence does not convince the Arbitrator that the Grievant left students unsupervised in the labs or that he was unaware of his responsibility in this area.

As to safety tests, the District claims that the Grievant demonstrated indifference to the matter of safety because he never provided copies of the safety tests. The District overstates its case here, because it was well aware that the Grievant had given safety tests. Wolslegel sent a note to the Grievant in 1986 asking for copies of each safety test for the District's files, which the Grievant did not turn in. However, Wolslegel admitted that the Grievant gave safety tests, probably on a timely basis. The Grievant did not consider Wolslegel to be his supervisor, and did not believe that he was required to turn in the tests to the administration until the 1988-89 school year, and he complied with turning in tests during that year. But he had always given safety tests throughout his tenure, except that he knew that teachers and administrators worked in the labs but had never been given safety tests to work on machines. Thus, the record does not show that the Grievant was negligent or indifferent to the District's concerns in the area of giving safety tests. The fact that he did not turn in copies of the tests until the last year of his employment is irrelevant where there is no evidence that the District required him to do so. Wolslegel's 1986 directive was the only evidence that the Grievant had been directed to do so, and there is no concern expressed about safety tests in any of the evaluations.

However, the problem of getting students to wear safety glasses crops up too many times. The District's policy legitimately required that safety glasses had to be worn at all times in the lab when tools and equipment were being used. The Grievant should have been aware of this policy and taken the strictest measures to enforce it, whether or not he was warned by administrators to do so. Both Benes and Ligocki observed students working in the labs without safety glasses. These observations would not have been made if the Grievant had carried out his basic responsibility. It may have been frustrating for a teacher to constantly remind students that they needed to be wearing safety glasses, but it was part of his duties. The Grievant had sufficient authority to deal with students who disobeyed orders about wearing glasses. He used the authority with one student -- Robert Bryn -- by taking him out of the lab and referring him to the office. The Grievant also had the authority to insist that other teachers, custodians, or anyone entering the labs while machinery was in use wear safety glasses, but did not do so. The Grievant admitted that he could have put a box containing glasses for visitors at the door but did not.

Regarding the February 14, 1989, incident when Ligocki visited a class at the Grievant's suggestion and then claimed that there were five students not wearing safety glasses, the Arbitrator accepts the Grievant's explanation that the cleanup bell rang, and students took off their glasses to cleanup when the Grievant made a final cut on a board. Ligocki did not rebut the Grievant's testimony. However, the Grievant was allowing students to take off their glasses prematurely while he was finishing something on a machine. It may have been only a matter of a few seconds, but it was the Grievant's direct responsibility to see that safety was carried out over and above convenience, even for a minor period of time.

In another incident, the Grievant noted that he had two lab assistants working in the shop during his preparation period. One was operating a machine with safety glasses on and the other was doing some drafting work without safety glasses. The Grievant called this a non-structured class, and appeared to feel that he had stretched himself out to help these students. Nonetheless, the Grievant was aware that a machine was being operated, and even if the student working on drafting was not in close proximity to the other student working on a machine, the Grievant should have been aware that both of them should have been wearing safety glasses, under the District's policies and under the highest regard for safety.

The District correctly asserts that the importance of its safety policies need not be premised upon the number of serious injuries which have occurred. The District's exposure to liability in technology education labs is great, and it had the right to expect the Grievant to enforce safety at all times. Safety in schools and technology education labs should not be a matter of enforcing it most of the time, but all the time. Reasonable people may differ over what is safe or inconvenient. The prudent course is to see that there is no question but what safety is being practiced at all times to the fullest extent. In dealing with students, the Grievant had a responsibility for safety that does not trouble most teachers to this extent -- he was in charge of young people working around dangerous equipment. He could not make choices on their behalf to allow exceptions for wearing safety glasses without exposing himself and the District to great liability.

There is some evidence from Benes in 1986 and some from Ligocki in 1988 that they spoke with the Grievant about the problem of safety glasses, and while this is a large part of the District's case, this is also the area where the Grievant showed the greatest improvement during 1988 and 1989. Ligocki's June 10, 1988, evaluation noted that the Grievant had taken measure to improve in this area. In the February 13, 1989, evaluation, Ligocki noted that instances were fewer in frequency, but he was still concerned that he should observe any instances of students not wearing safety glasses.

In summarizing the issue of the Grievant's failure to enforce policy concerning safety glasses, I find that the District has proved that it did indeed observe students at times not wearing safety glasses while working on machines. I also find that the Grievant showed improvement in this area more so than in perhaps any other area. While the District had just cause to discipline the Grievant for failure to enforce the wearing of safety glasses, the fact that there was significant improvement on the part of the Grievant by the time the District chose to nonrenew his contract is a factor that would go to the degree of discipline imposed, if this were a factor standing alone. Once again, the District's case does not depend on this issue alone but on others.

Part of the concern over safety involves the condition of equipment. The issue of conditions of equipment and conditions of the labs regarding housekeeping and orderliness overlap at times. The problem for the Arbitrator regarding safe condition of equipment is that some of the items brought into evidence are old and were corrected, and the more current items contain disputed testimony over what is a safe condition and what is not.

The District expressed several concerns over safety conditions in the labs through a memo to Falk and the Grievant dated May 19, 1986. While much of that memo referred to clutter and general disorganization, some of the safety items included the following: a can of solvent on top of a press, short pieces of metal under the storage area of the sheet metal bench, dirty or oily aprons and gloves on a welding bench, an open can of paint near the welding area, a broken table saw guard, and oils and solvents left on benches in the power construction lab. The Grievant testified that everything mentioned in the memo was taken care of. The District could have -- but did not -- discipline the Grievant for these conditions in 1986.

In 1987, the safety consultant from Wausau Insurance Company found some items that needed to be changed, such as the radial arm saw, table saw, and baldor grinder. Both the Grievant and Wolslegel agreed that the baldor grinder had an ongoing problem from the use of it, and that it was something that had to be checked all the time but was not a safety hazard from their standpoint. The Grievant recalled that the radial arm saw needed work, and the table saw had a broken guard, and both problems were fixed in a timely manner. Wolslegel recalled that neither the radial arm saw nor the table saw were fixed in a timely manner. However, Wolslegel admitted that the table saw had an ongoing problem because students would loosen the guard and let it flop, and it would be broken and fixed several times.

In 1989, when Ligocki and Wolslegel conducted a survey in February, the safety concerns expressed related to sheet metal pieces sticking out of the edges of a table, gas tanks stored at the arc welding table, and an acetylene tank left unsecured in the center of the room. The Grievant acknowledged that students put sheet metal pieces on the edges of a table where they stick out. Obviously, this was another ongoing problem, as it was mentioned in the 1986 memo. The Grievant and Wolslegel had a difference of opinion about the gas tanks stored by the welding tables. The Grievant stated that they are still stored by the welding tables because the cylinders are chained to the trucks and are to be used that way, which is not an unsafe practice. Wolslegel said the gas tanks should be stored in areas away from the welding area and chained to the table or another permanent structure. The unsecured acetylene tank was empty, not presenting the hazard Wolslegel described, but there really was no explanation of why it was found in the center of the room. The Grievant knew that the tank had been there before he arrived at the District in 1981, but did not state whether it was empty in 1981.

If one accepts the Grievant's explanations for the major safety concerns listed in the February 1989 memo, it would appear that the main safety hazard

was sheet metal pieces sticking out of the edges of a table. But the Grievant was aware that the District was concerned about safety in the past and was evaluating the conditions of the labs for safety for purposes of his continued employment. The labs should have been left in conditions which the District would not question. Even if the acetylene tank were empty and not presenting a safety hazard, it was in a position in the center of a room where an observer could see it and question its presence and potential danger.

Again, the Grievant had a special responsibility regarding the safe conditions of equipment and materials in the labs. The District should not have had to point out to him in 1986 that fire hazards existed in the form of oils, solvents, oily aprons and gloves. The Grievant should have been replacing guards as needed before others could spot a problem. And the Grievant should not have left sheet metal pieces or tanks in positions that would cause the District any concern by 1989. The condition of equipment and materials in the labs gave the District just cause for discipline. While there appears to be noticeable improvement between 1986 and 1989, the degree to which the Grievant had improved conditions before being disciplined goes to the degree of discipline.

The Grievant was reacting to the District's concerns about safety, while he should have always taken the initiative to ensure safety. In both areas of safety glasses and safe conditions of equipment, the Grievant took some action -- as he told students to wear safety goggles and repaired equipment -- but he did not take every action necessary to see that there was absolute compliance with safety measures. For example, the Grievant testified that he referred only one student to the office for safety ". . . because all the other students would have put their glasses on by that time." (Tr. - 351) The phrase "by that time" shows both that the Grievant had improved in this area and that he was reacting to direction. The Grievant even felt that the District or Wolslegel should have provided a box with safety goggles at the door for visitors, while acknowledging that he could have done it. These are some examples of the Grievant's failure to understand that safety in the labs was his responsibility. It is not sufficient for a teacher in the Grievant's area of technology education to react to concerns over safety. Safety is so vital that the Grievant should have been aware of his primary responsibility without any direction from the District.

#### Housekeeping:

Perhaps the Grievant's greatest shortcoming was in the area of housekeeping and cleanliness. Albert, Benes, Wolslegel, Ligocki, and others outside the District, such as Burke and Pomeroy-Hanson, all noted the lack of order and cleanliness in the labs. It may have even been this factor that cost the Grievant his job, as Ligocki testified: "On one occasion very frankly told him it would be a damn shame if he lost his job because the shop wasn't clean." (Tr. - 37.)

The Grievant had logical explanations for some things, such as the condition of the shop mentioned by Albert in 1986, when a bunch of projects were sprayed with a finish on a Friday and left out to dry over the weekend. However, the messages from Benes, Albert, Wolslegel, and Ligocki continued to cover the concerns over tools, scraps, parts of equipment, and other materials left lying around. The Grievant was directed on several occasions to clean up the labs. He was told in the June 10, 1988, evaluation, that improvement in this area was critical, and one should remember that the June 10th evaluation is the one which contained the warning regarding nonrenewal. Yet by December of 1988, Ligocki was again directing the Grievant to clean up the shop, and to use class time if necessary. Although the shop was cleaned up on that occasion, Ligocki found it in a similar condition shortly thereafter.

Some of the items mentioned may seem small and unimportant at first glance, but they show the Grievant's failure to adhere to the District's concerns and directions about housekeeping. The Grievant explained that the mat cart had been pulled into the lab to be fixed, probably in November of 1988. On January 12, 1989, Ligocki asked him to move it. But on February 10, 1989, Ligocki and Wolslegel still found the mat cart in the woods area in front of a lathe instead of being stored with athletic equipment. It does not matter whether or not Ligocki knew that the mat cart needed to be repaired -- the cart had a broken cross member which needed to be welded -- the fact of the matter is that the cart remained in the lab from November of 1988 through February 13, 1989, at the same time the Grievant was being warned about the condition of the shop and during the time which the Grievant knew or should have known that he was being evaluated for purposes of nonrenewal of his teaching contract. In another example, Ligocki told the Grievant in December of 1988 to use classroom time to clear up the shop before the Christmas break. This came after the warning given to the Grievant the previous June, showing that the Grievant remained indifferent to the District's concerns over housekeeping.

The record is quite full of evidence that the shop areas under the Grievant's supervision were often in a state of disarray, and need not be repeated here. While others used labs at various times, the general conditions of the labs were from the use of students under the Grievant's direction. The District continuously asked the Grievant to institute some type of system to

improve the situation, and while the Grievant and Wolslegel dispute what kind of system should be used, the District would have acquiesced to any system which got the job done. Therefore, it was the Grievant's responsibility to use whatever method necessary to put the labs into order to satisfy the District.

While the Arbitrator notes that the Grievant made efforts to clean up the labs, these efforts were insufficient. The Grievant may have indeed been an effective teacher and very capable imparting technical skills to his students.

However, the District made several demands upon the Grievant that went beyond teaching skills, and those demands were within the scope of his duties. The Grievant was aware of the District's dissatisfaction over the conditions of housekeeping in the labs. The District had the right to demand that the Grievant meet its expectations in this area, regardless of how much importance the Grievant would attach to the academic component of housekeeping. Once the Grievant knew of the District's expectations but failed to meet them, he gave the District just cause for discipline.

The Association argues that the administration made clandestine visits to the labs on nights and weekends to document housekeeping and safety concerns, and that the Grievant was only one of many people who had access to the labs. The Arbitrator noted with some interest that Albert and Ligocki used the jointer over a weekend to run painted storm windows over it, causing the blades to be dull and disrupting the Grievant's planned safety demonstration on the jointer the following Monday. However, the administrators' use of the labs on one occasion did not cause them to be in the messy condition found by them on numerous occasions. The Grievant did not claim that the lack of custodial assistance caused the labs to be in the conditions found on several occasions.

While some others outside of the technology teachers may have used tools and not put them away properly, the general state of the labs was not likely from use by others. The Grievant acknowledged that due to the lists of items shown to him, the labs obviously were not in satisfactory condition but added that he always took care of everything. The Grievant was responsible for maintaining the labs in a satisfactory condition before the District needed to tell him to clean up certain things. The administration had the right to visit the labs at any time, and the fact that visits were made at night or on a weekend does not indicate that the administration made clandestine visits to the labs in order to find things wrong. Had the Grievant left the labs in a clean and orderly condition, even "clandestine" visits would not have resulted in the findings reported.

The District was not making unreasonable demands upon the Grievant. While reasonable people may differ over what emphasis housekeeping should have in the evaluation of a teacher, the District made its demands and expectations known to the Grievant. The failure of the Grievant to live up to the District's expectations regarding housekeeping gave the District just cause for discipline.

#### The Remedy:

The Arbitrator has found that the District had just cause to discipline the Grievant for his failure to submit curricula assignments in a timely manner as required by the District, for his failure to ensure safety at all times regarding the wearing of safety glasses and the maintaining of safe conditions of materials and equipment, and for his failure to maintain the labs in a clean and orderly manner as required by the District. While the District has failed in some instances to prove everything it submits in this case, the overriding evidence shows just cause for discipline in the three areas of curricula, safety and housekeeping. The Association argues that the ultimate sanction of nonrenewal of the Grievant's teaching contract was inappropriate discipline for the circumstances. The Association notes that the Arbitrator can and should consider other disciplinary measures, such as probation, reprimand, and suspension, rather than uphold the District's action of nonrenewal. The labor contract, under Section 5:3, gives the Arbitrator the authority to modify disciplinary action, as well as to confirm or rescind it.

The cumulative effect of the Grievant's conduct convinces the Arbitrator that the District's action of nonrenewal is to be upheld. The Grievant improved his performances in the area of curricula work and in the area of safety concerns, but not in the area of housekeeping. The three items must be considered as a whole, as they constitute the record and the reason for nonrenewal. The Grievant had the ability to correct all these items in a timely manner to save his job. If the Grievant had poor teaching techniques, it may have taken him more time to improve his teaching skills. However, the District was not as concerned about his teaching skills as it was about the other deficiencies. The warning of June 10, 1988, gave the Grievant at least one full semester to correct everything. While the Grievant thought he had corrected everything by the end of the 1988-89 school year, he should have corrected everything by the fall semester of 1988 to avoid a recommendation of nonrenewal to the Board. There was sufficient time to submit the curricula, clean up the shop and keep it that way, and to overcome any concerns raised regarding safety issues.

The Association argues that the District chose to overlook the Grievant's

strengths in the classroom. This may be true. But it is not for the Arbitrator to tell the District what emphasis to place upon teaching skills versus housekeeping, safety, or curricula writing. It is enough that the District made its concerns known to the Grievant and gave him sufficient time to correct his deficiencies. The District's concerns over safety certainly offset the Grievant's strengths as a classroom teacher, although the concerns over housekeeping and curricula may not have had the same effect. While there may be evidence in the record tending to show that the Grievant was a competent teacher in the classroom, the District did not base its action on his competency to teach, but focused on the deficient conduct of the Grievant in the other areas. These areas were reasonably related to the Grievant's job, and the District could and did place reasonable requirements upon the Grievant to meet its expectations with regard to the writing of curricula, safety and housekeeping.

The Grievant's failure to meet the District's deadlines for curricula writing and his failure to maintain the labs in an orderly condition amount to insubordination. Insubordination has been defined as the refusal to obey an order from proper authority and a willful disregard of express or implied directions of the employer. 2/ The directions from Ligocki were express -- to submit the curricula by a certain date, to maintain the labs in an acceptable fashion. Yet the Grievant failed to comply with those directions. The directions given to him were related to his job. If the Grievant did not consider such matters as curricula writing and housekeeping to be the more important aspects of his teaching career, he knew or should have known -- at least by June 10, 1988 -- that the failure to comply with the District's directions would lead to severe disciplinary measures. While the Grievant did not show a willful disrespect for the authority of the District, inasmuch as he attempted from time to time to comply with certain directives, the fact of the matter is that he did disregard the directives, as he had the ability and time to comply with all orders but did not.

The Arbitrator has considered alternate remedies, such as suspension or probation, but has rejected them because the cumulative effect of the Grievant's conduct gave the District just cause for nonrenewal. The penalty of nonrenewal, while severe, was not unreasonable. At the time the Board made its decision not to renew the Grievant's teaching contract, the Grievant had not shown acceptable improvement, particularly in the areas of housekeeping and curricula writing. The penalty of nonrenewal must stand or fall upon the reasons and facts at hand at the time of the Board's decision, and the fact that the Grievant eventually submitted all the curricula assignments after the Board's decision does not mitigate the penalty. The improvement shown by the Grievant came after much urging from the District, and the Grievant did not accept his basic

---

2/ See Napoleon Board of Education, 74 LA 303, 306 (Roumell, Jr., 1980), and American Sugar Company, Baltimore Refinery, 69-2 CCH ARB. Para. 8691 (Whyte, 1969).

responsibilities as a teacher. The Arbitrator concludes that the District had just cause for its action, and that the District did not violate the collective bargaining agreement when it decided not to renew the teaching contract of Clifford Klenke for the 1989-1990 school year.

Accordingly, it is my decision and

AWARD

That the grievance is denied.

Dated at Madison, Wisconsin this 10th day of January, 1990.

By \_\_\_\_\_  
Karen J. Mawhinney, Arbitrator