BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS	
and	Case 18 No. 42537 MA-5717
UNITY SCHOOL DISTRICT	

Appearances:
Mulcahy & Wherry, S.C., 21 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, Attorneys at Law, by Ms. Kathryn J. Prenn, appearing on behalf of the District.
Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, by Mr. Kenneth J. Berg, appearing on behalf of the Union.

ARBITRATION AWARD

Northwest United Educators, hereinafter the Union, and the Unity School District, hereinafter the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and decide the instant dispute. The Commission appointed Coleen A. Burns, a member of its staff as Arbitrator. Hearing in the matter was held on September 7, 1989 in Balsam Lake, Wisconsin. Hearing in the matter was closed on November 7, 1989, upon receipt of post-hearing briefs.

ISSUE:

The parties were unable to stipulate to a statement of the issue. The Union frames the issue as follows:

> Was the District in violation of at least Article III when it issued the letter of reprimand dated March 31, 1989, and a one-day suspension on April 5, 1989 and on May 16, 1989?
>
> If so, what is the remedy?

The District frames the issue as follows:

> Did the District have just cause when it disciplined the Grievant on March 31, 1989, April 5, 1989, and May 16, 1989?

The Arbitrator frames the issues as follows:

> Did the District have just cause when it disciplined the Grievant on March 31, 1989 by issuing a letter of reprimand?
>
> Did the District have just cause when it disciplined the Grievant on April 5, 1989 by issuing a one-day suspension?
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> Did the District have just cause when it disciplined the Grievant on May 16, 1989 by issuing a one-day suspension?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

III.

RELEVANT CONTRACT PROVISIONS

ARTICLE III - EMPLOYEE RIGHTS

A. Any employee may be disciplined for just cause by the Employer. Any employee who is disciplined shall be given written notice of the reasons for such actions. A copy of such notice shall be a part of the employee's personnel record. Any such action taken by the Employer during an employee's probationary period shall not be subject to the grievance procedure.

ARTICLE XX - GRIEVANCE PROCEDURE

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Section F - Initiation and Processing

It is understood that the function of this arbitrator shall be to give a decision only as to the interpretation and application of specific terms of this Agreement. The arbitrator shall not have power, without specific written consent of the parties, to either advise on salary adjustments, except the improper application thereof, or to issue any decision that would have the parties add to, subtract from, modify or amend any terms of this Agreement. A decision of the arbitrator within the scope of its authority shall be final and binding upon the Board, NUE, and the employees.

BACKGROUND

Jim Branville, hereinafter the Grievant, has been employed as a custodian by the District for approximately six years. On March 31, 1989, the Grievant received a written letter of reprimand which states as follows:

DATE: March 31, 1989
TO: Jim Branville, Custodian
FROM:Ron Monroe, Maintenance and Operations Supervisor
RE:JOB PERFORMANCE

This letter is to inform you that your job performance is unsatisfactory. The above statement is based on observations made by myself and documented for the following dates:

March 14, 1989 March 24, 1989
March 15, 1989 March 27, 1989
March 17, 1989 March 30, 1989
March 23, 1989

During our phone conversation on March 17, 1989 and again on March 30, 1989 when I asked you why so much of your area of responsibility was undone, your reply in both conversations was, "I didn't get to it".

Based on the above information, I am notifying you that you have to show an improvement in your job performance within the next two shifts that you work or action will be taken to start termination procedures. I discussed this with you when you called on March 30, 1989 in the A.M.

The students, staff and the community of Unity School District deserve and have the right to expect a reasonable level of job performance from all district employees.

On April 5, 1989 the Grievant received a one-day suspension without pay. The basis of the suspension was unsatisfactory work performance. On May 16, 1989, Supervisor of Maintenance and Operations, Ron Monroe, confronted the Grievant regarding work left undone. Supervisor Monroe considered the Grievant's conduct to be disrespectful and insubordinate and, as a consequence thereof, issued the Grievant another one-day suspension without pay.

Thereafter, a grievance was filed alleging that the Grievant has been disciplined without just cause in violation of the collective bargaining agreement. The District has denied the grievance and the grievance has been submitted to arbitration.

POSITIONS OF THE PARTIES

District

There is no dispute that the standard to be applied to the disciplinary action taken against the Grievant is the just cause standard. In the present case, the District did have just cause to discipline the Grievant.

District Elementary Principal, Gail Becker, was the Grievant's immediate supervisor from 1986 through the fall of 1988. As Principal Becker testified at hearing, she had several concerns relating to the Grievant's job performance during the period of time she was the Grievant's immediate supervisor. On June 15, 1987, Principal Becker issued the Grievant a letter of reprimand regarding inappropriate comments and language. In a memorandum dated June 18, 1987, Principal Becker admonished the Grievant for his lack of communication and his lack of cooperation in the work place. On September 30, 1987, Principal Becker reprimanded the Grievant for yelling at Principal Becker in a hallway within hearing distance of several persons from the community. As set forth in this letter of reprimand, this written warning followed other discussions between Principal Becker and the Grievant concerning the Grievant's penchant for raising his voice in the halls. On January 6, 1988, Principal Becker conducted a formal evaluation of the Grievant's job performance, which evaluation indicated Principal Becker's concerns that the Grievant was uncooperative, that he lacked initiative, and that he performed the minimal amount of work necessary to get by. The Grievant returned the form unsigned.

Ron Monroe became the Supervisor of Maintenance and Operations in the fall of 1988 and, in that capacity, became the Grievant's immediate supervisor. Early in the school year, Supervisor Monroe began to observe deficiencies in the Grievant's work performance similar to those observed previously by Principal Becker. On September 19, 1988, Supervisor Monroe met with the Grievant to discuss the Grievant's failure/refusal to empty the dust bag on the vacuum cleaner after having been told twice by Supervisor Monroe to do so. When asked why he did not empty the dust bag, the Grievant responded, "I just didn't do it." At the conclusion of the conference, Supervisor Monroe agreed not to place the written warning in the Grievant's file if the Grievant would empty the dust bag.

Due to a non work related injury, the Grievant was on a medical leave from approximately October 2, 1988, through February 2, 1989. During the Grievant's leave of absence, two different substitute custodians were assigned to clean the Grievant's assigned area. As Supervisor Monroe testified, each of the substitute custodians was able to satisfactorily clean the assigned area within the allotted time period. Shortly after the Grievant returned to work, Supervisor Monroe observed that the Grievant was not completing all the assigned work. In a memorandum dated March 1, 1989, Supervisor Monroe pointed out these deficiencies to the Grievant and placed the Grievant on notice that he was expected to complete the assigned work. The Grievant's job performance problems continued and, in a memo dated March 10, 1989, Supervisor Monroe listed the assigned areas that the Grievant had left uncleaned and the dates of these observations. The continuing and growing concerns regarding the Grievant's job performance lead to a meeting with the Grievant, Supervisor Monroe, and District Administrator Lilyquist regarding the District's concern. To rule out any dispute as to which custodian was the cause of the work not being done, the Grievant and Custodian Loberg switched assigned areas for a two week period so as to ascertain where the problem existed. During this trial period, Supervisor Monroe inspected the two work areas and concluded that, day after day, the Grievant had left assigned areas uncleaned. Furthermore, when confronted with the Supervisor's observations, the Grievant would offer no excuse other than "I didn't get to it." To cross check the accuracy and objectivity of Supervisor Monroe's observation, District Administrator Lilyquist also made inspections of the assigned work areas, once prior to the two-week trial period and once during the two-week trial period. District Administrator Lilyquist's observations matched those of Supervisor Monroe. Upon conclusion of the two-week trial period, it became evident that the problem was with the Grievant and not with Custodian Loberg. As a result of the Grievant's continued failure to satisfactorily perform assigned work, the Grievant was issued the March 31, 1989 letter of reprimand. This letter places the Grievant on notice that his work performance is unsatisfactory, lists the observations which form the basis for this conclusion, advises the Grievant as to the District's expectations, and informs the Grievant that further disciplinary could ensue if the Grievant failed to improve his work performance. On the very next day, the Grievant left six classrooms uncleaned. As in the past, the Grievant did not notify Supervisor Monroe that he had left the work undone. When confronted, the Grievant offered his usual response "I didn't get to it." On April 4, 1989 the Grievant again left a classroom uncleaned. On April 5, 1989, the Grievant left a four classroom area in such bad shape that Supervisor Monroe had to withdraw custodial crew from other parts of the building to clean the four classrooms so that the classrooms would

be ready for classes at 8:30 a.m.

Counseling had not improved the Grievant's job performance. Oral and written reprimands had not improved the Grievant's job performance. Accordingly, Supervisor Monroe was justified in concluding that he had no choice but to suspend the Grievant one day without pay. The written notice of suspension again warned the Grievant that his job performance must improve. Of special note is the fact that the substitute custodian assigned to clean the Grievant's assigned areas during the Grievant's suspension satisfactorily cleaned all of the assigned areas.

Upon the Grievant's return to work, his work performance problems continued. On April 6, 1989, Supervisor Monroe found it necessary to leave the Grievant a note to remind him to empty the vacuum after each shift. On April 12, 1989, the Grievant left the Special Education room uncleaned without informing Supervisor Monroe. When Supervisor Monroe learned that there was a problem with the key for that room, he apologized to the Grievant for admonishing him for not cleaning the room. However, Supervisor Monroe pointed out that the whole incident could have been avoided if the Grievant had left him a note informing him of the problem.

As a part of the regular evaluation process and cycle, Supervisor Monroe prepared a written evaluation of the Grievant's job performance on May 1, 1989. That evaluation references the Grievant's areas of deficiency and offers recommendations for correcting these deficiencies. As Supervisor Monroe testified at hearing, the work assigned to the Grievant was within the Grievant's physical restrictions and that those physical restrictions were not the cause of the Grievant's failure to perform the work. The first time that the District heard the argument that the Grievant could not get the work done because of his physical restrictions was at the hearing before the Arbitrator.

On May 15, 1989, Supervisor Monroe had left the Grievant a note asking the Grievant to empty the trash can outside the playground. At approximately 6:50 a.m. the following morning, Supervisor Monroe during his inspection tour, noticed that the trash can was still not emptied. When Supervisor Monroe approached the Grievant to ask him why he had not emptied the trash can, the Grievant's response was "I didn't do it." When Supervisor Monroe told the Grievant to empty the can before going home, the Grievant responded that Supervisor Monroe could stop drinking coffee and do it himself. A discussion ensued and the Grievant told Supervisor Monroe "to get off his back or else." When asked whether he would like to repeat his threat in front of a witness, the Grievant declined. These facts were testified to by Supervisor Monroe and were also documented in contemporaneous notes made by Supervisor Monroe. The Grievant's conduct, which entailed insubordination, resulted in a one-day suspension without pay. The substitute which performed the Grievant's work during this one-day suspension was able to complete all the assigned work in the allotted time.

The Grievant's justification for his failure to perform his work satisfactorily, i.e., that the assigned work cannot be accomplished in the allotted time and that he is unable to accomplish the work because of his physical restrictions, must be rejected out of hand. Substitute custodians have satisfactorily completed the Grievant's work assignment. As District Administrator Lilyquist testified, the District obtained a medical clearance before permitting the Grievant to return to work and specifically requested the Grievant's physician to note which janitorial duties would be outside of the Grievant's physical abilities. Until the arbitration hearing, the Grievant never challenged his physician's restrictions and, furthermore, never made any claim that he was physically unable to perform the work.

The instant case does not involve an employe who could not do the work, but rather an employe who chose not to do the work. In fact, the Grievant admitted that on one day during the two-week trial period, he did not vacuum one square foot "just to see what would happen."

The discipline administered was reasonably related to the seriousness of the Grievant's offense and his prior performance record with the District. The District's conduct has not been unreasonable, excessive, arbitrary or capricious and, therefore, must be sustained.

There is no evidence to support the Union's contention that the Grievant was subject to a different standard. When questioned by the Union as to this standard, Supervisor Monroe testified that it was based on "(1) cleanliness; (2) the employee's job description and (3) the work schedule developed by the employee." When asked how he compared the Grievant's work performance with that of other custodians, Supervisor Monroe testified that he compared it on the basis of "(1) the quality of work of his peers with the same square footage and (2) clean versus uncleaned areas." The Union failed to present a single witness to substantiate its claim that the standards have been applied inconsistently.

The Union's allegation that there has been a work speed up is also unsubstantiated. The record demonstrates that the total custodial hours from 1987-88 to 1988-89 have remained the same. Custodian Loberg admitted that even

though he is no longer required to clean the auditorium, he has enough time to occasionally dust mop the auditorium prior to the end of his shift. While the work has been reshuffled, there is no evidence to support an allegation that a disproportionate share of the work load has fallen upon the Grievant. The Union's argument that Supervisor Monroe did not reprimand the grounds people for not emptying the trash can, is clearly erroneous. Supervisor Monroe testified that he did orally reprimand the groundskeeper. The Union states that it was never indicated by the District that the District had ever negotiated changes in working conditions for the custodian staff. While the District questions the relevancy of this argument, it notes that it is the duty of the Union to request impact bargaining. There is no evidence in the record that the Union ever requested to bargain the impact of the District's decision to realign its custodial staff. The grievance must be dismissed in its entirety.

Union

For five of the six years that the Grievant has been employed as a custodian, he was part of a group of four custodians whose regular cleaning assignment was the elementary and junior high schools. In the fall of 1988, the area cleaned by the above mentioned four custodians was assigned to two people, the Grievant and Willy Loberg, with a small decrease in the area cleaned. The shift in assignments occurred shortly after Ron Monroe became a supervisor for the custodial staff. As Union Exhibits 1, 2 and 3 establish, the two remaining custodians had more work to do after the change in assignments. The District's argument, that there has been no change in the number of custodial employes, misses the point. Of relevance herein, is whether or not there has been a substantial increase in the work load of the Grievant. In 1987-88, the Grievant's work assignment was 24 rooms, 1 auditorium, 1 locker room, 2 bathrooms and 1 1/2 hallways. In 1988-89, his work assignment was increased to 37 rooms, the IMC Center, 6 bathrooms and 3 hallways. Similar increases were made in Willy Loberg's area. The relevant work area was reduced by approximately one-half the area normally served by a full-time custodian, but staff in that area was reduced by two full-time custodians. In other words, two custodians are now assigned the work that three and one-half custodians previously performed.

It is of great significance that the Grievant was involved in an automobile accident on October 2, 1988 and that when he returned to work in February of 1989, he did so with some restrictions. His period of absence coincided with the first four months of the program changing the amount of work to be performed by the custodial staff.

The instant dispute involves a classic case of work speedup. Both the Grievant and Willy Loberg testified that if they performed all of their assigned work, there wasn't any way that they could clean it in the same manner as before the staff reduction. This was substantiated by the supervisor, Ron Monroe, in his letter of March 1, 1989. As Supervisor Monroe acknowledged at hearing, the Grievant wasn't working on February 24, 1989, one of the days listed on the memo of March 1, 1989. Since work was not performed on a day that the Grievant was absent, this strongly refutes the supervisor's argument that the work always gets done when substitutes are used. Willy Loberg, who was also absent on February 24, 1989, testified that his area was poorly cleaned by a substitute when he returned. However, neither he nor the area he works in was written up as unsatisfactory. This evidence strongly suggests that either Supervisor Monroe has a different standard for the Grievant than he does for other employes or he was not accurate when he testified that he visits all areas regularly.

Under cross examination, Supervisor Monroe testified that his standard is that if other people can get the work done, so should the Grievant. Neither the Grievant nor Willy Loberg were ever told what work should be left undone. It is apparent that the way to survive on this job is to make sure you make it to every room, even if its "once over lightly." When the Grievant was absent for the four months, the others were learning the game of how to survive under the new rules. The Employer has a duty to impose the same standard of work performance upon all employes. The District has not indicated that it ever negotiated over the effects of changes and working conditions for the custodial staff.

Principal Becker was not a witness to the incident in which she reprimanded the Grievant for loudly yelling and swearing in front of other school employes. At hearing, the Grievant testified that another employe, Ron Jensen, was the person responsible for the commotion. At a later time, the Grievant was "written up" for poor evaluations from some teachers. When the Grievant conducted his own evaluation program, he came up with five good evaluations before he was told to stop soliciting evaluations.

On May 15, 1989, Supervisor Monroe attached a note to the Grievant's time card, directing him to empty the trash can by the playground. Shortly before the shift was over, Supervisor Monroe saw that the trash can had not been emptied. There were no witnesses to the incident which gave rise to the discipline. The Grievant did carry out the directive and did empty the can before he went home. He did this and some of his other duties after he had

punched out. Testimony at hearing demonstrated that emptying the trash can was never one of the Grievant's duties and that it was raining outside when he emptied it. Also, Supervisor Monroe testified that he did not reprimand the groundsman who neglected to empty the can. Rather than insubordination on the part of the Grievant, it looks more like entrapment on the part of the Supervisor. One can only speculate as to why a supervisor would assign additional duties to a person who he sees is not getting his regular work completed.

As the Grievant testified at hearing, on two occasions he heard the Supervisor boast that eventually all the custodial work will be done by part-time workers or substitutes. The Supervisor testified to the contrary. It is for the Arbitrator to determine who is more accurate.

The District did not have just cause to discipline the Grievant. The rules were neither clear nor was the discipline rendered in a fair manner. Contrary to the assertion of the District, the record does not support the argument that the District conducted an investigation that was fair and objective. Rather, the evidence indicates that the Supervisor seemed to go out of his way to make a case against the Grievant.

There is evidence that the Grievant did not always get his work done. However, one needs to remember that the Grievant was out on disability leave for the first four months of the "new" rules. It simply took the Grievant longer to figure out the level of cleaning that would now be acceptable. He is now getting all of his work done.

Contrary to the argument of the District, it did not apply its rules, orders and penalties without discrimination. The one-day suspension was totally inappropriate. There was no witnesses to the confrontation and the Grievant did empty the trash can before he went home. The Grievant had every right to object to doing duties that he did not regularly do. This is further supported by the fact that the trash can was outside and it was raining. The District's conduct cannot be viewed in any way other than arbitrary and capricious. The grievances must be sustained. The arbitrator must remove the written letter of reprimand and make the Grievant whole for his lost two days of pay.

DISCUSSION

The parties are in agreement that Article III of the collective bargaining agreement requires that the District have "just cause" to discipline the Grievant. Inherent in the "just cause" standard for discipline, is a system of progressive discipline, i.e., oral warning, written warning, suspension and discharge, which system is designed to warn the employe that the employe is engaging in inappropriate conduct and to provide the employe with an opportunity to correct this inappropriate behavior. However, it is generally recognized that an employer may bypass steps in the progressive discipline procedure when confronted with particularly egregious employe misconduct. At issue, is whether the District had just cause to discipline the Grievant on March 31, 1989, April 5, 1989 and on May 16, 1989.

Letter of Reprimand dated March 31, 1989.

On March 1, 1989, the Grievant received a memorandum from Supervisor Monroe which stated, inter alia, "My observation of your area of responsibility is that less of the area is being cleaned each night. Most notable is vacuuming. More areas are being left undone." The memo of March 1, 1989, indicated that the observations which gave rise to the memo were made on February 24, 1989, February 28, 1989, and March 1, 1989. At hearing, Supervisor Monroe acknowledged that the Grievant had not worked on February 24, 1989 and, therefore, he was in error when he listed the February 24, 1989 date. The memo further stated, "Since the areas were cleaned better with two people in the past, I feel you can return to the previous commitment of getting it all done now and in the future." At hearing, Supervisor Monroe clarified this statement. According to Supervisor Monroe, the intent of this statement was to inform the Grievant that the two substitutes who had performed his work while he was on his leave of absence were able to perform all of the work assignments within the work shift.

On March 10, 1989, Supervisor Monroe provided the Grievant with written notice that on March 2, 3, 7, 8, 9, and 10, 1989, Supervisor Monroe had observed that the Grievant had not completed all of his work assignment. The Grievant was further advised that he would be required to attend a meeting with Supervisor Monroe and the District Administrator to discuss the Grievant's work performance, areas of responsibility, work schedules, and new format so as to achieve a satisfactory job performance. The meeting was held on March 13, 1989. At the hearing, the Grievant was represented by a Union representative. In response to the Grievant's statement that it was not possible to complete all of the work assignments in the Grievant's shift, the District arranged for the Grievant and another custodian, Willy Loberg, to switch assigned areas for a two-week period. With the exception of the first evening, when Custodian Loberg was confused as to his assignment, Custodian Loberg was able to complete all of the Grievant's normal work assignments within the normal work shift.

On March 31, 1989, the District issued a written Letter of Reprimand to the Grievant for unsatisfactory job performance. Specifically, the District was disciplining the Grievant for failing to complete his assigned tasks. As set forth in the disciplinary letter of March 31, 1989, the disciplinary letter was based upon observations made by the Grievant's supervisor, Ron Monroe, on March 14, March 15, March 17, March 23, March 24, March 27, and March 30, 1989. As is also reflected in the Letter of Reprimand, Supervisor Monroe had discussed the Grievant's failure to complete his work assignment with the Grievant on March 17, 1989 and again on March 30, 1989.

Contrary to the argument of the Union, the record does not demonstrate that Supervisor Monroe was applying a different standard to the Grievant than to other employes under his supervision. With the exception of the February 24, 1989 date, which Supervisor Monroe acknowledges was in error, the Grievant has not contested any of Supervisor Monroe's assertions that he failed to complete his assigned work tasks. 1/ While it is evident that there has been a reorganization of the maintenance department such that the Grievant and Loberg are responsible for cleaning a significantly larger area than in the past, it is not evident that the expectations of the Employer are unreasonable. Specifically, Custodian Loberg was able to perform each work assignment within the normal work shift. Additionally, while the Grievant was on his leave of absence, the two substitute custodians who rotated into his position were also able to perform the Grievant's work assignments within the normal work shift.

As the Union argues, the Grievant had been on an extended leave of absence due to injuries suffered in an automobile accident. However, as the District argues, when confronted with Supervisor Monroe's observations that the Grievant failed to complete his work assignments within the shift, the Grievant never indicated that he was unable to complete his work assignments due to physical limitations resulting from the automobile accident. The record indicates that the Grievant's only response was "I didn't get to it." The Union does not claim and the record does not demonstrate that any of the work required by the District of the Grievant was work which was restricted by the Grievant's physician's work release. Indeed, the Grievant, who did not make any claim that his failure to perform assigned tasks was due to injuries sustained in the auto accident, stated that he "didn't feel any physical restrictions" when he came back to work.

Given the record presented herein, the undersigned is persuaded that it was reasonable for the District to expect the Grievant to perform his assigned work tasks within the work shift. Thus, the District had just cause to discipline the Grievant for his failure to perform his assigned tasks within his work shift. Prior to the issuance of the March 31, 1989 written reprimand, the Grievant was advised as to the District's expectations with respect to his work performance, the Grievant was informed that disciplinary action could ensue if the Grievant did not improve his work performance, and, thereafter, the Grievant failed to improve his work performance. The Arbitrator is satisfied that the District had just cause to issue the March 31, 1989 Letter of Reprimand to the Grievant.

April 5, 1989 Suspension.

On April 5, 1989, the Grievant was suspended for one day without pay for unsatisfactory work performance. The suspension was issued following Supervisor Monroe's observations that the Grievant failed to complete his work assignments on April 1, April 4, and April 5. As the record demonstrates, on April 5, one of the Grievant's classrooms was so messy that Supervisor Monroe had to summon day custodians to clean the area prior to the start of classes. The Grievant does not dispute that he failed to finish all of his assigned work on these dates. For the reasons discussed supra, the undersigned is persuaded that it was reasonable for the District to expect the Grievant to complete his assigned work areas during his normal work shift and that failure to complete his assigned work within his work shift was grounds for discipline. Prior to the issuance of the one-day suspension, the Grievant was verbally warned that he was expected to complete all of his assigned areas within his work shift and that failure to do so would result in discipline. The Grievant also received a written warning that he was expected to clean all of his assigned work areas and that failure to do so would result in further disciplinary action. Given the circumstances presented herein, the District did have just cause to issue the Grievant a one-day suspension on April 5, 1989.

May 16, 1989 Suspension.

On May 15, 1989, Supervisor Monroe left a note on the Grievant's time

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1/ On March 17, 1989 there was a power outage which affected the Grievant's ability to use the regular vacuum. The Grievant was aware that battery powered vacuums were available, but did not attempt to use any battery powered vacuum.

card requesting that the Grievant empty a trash can which was located outside of the school building. When Supervisor Monroe returned to work on May 16, 1989, he noticed that the Grievant had failed to empty the trash can. When Supervisor Monroe confronted the Grievant regarding this failure, the Grievant responded that "I didn't do it." As the Union argues, there were no witnesses to the ensuing discussion. However, Supervisor Monroe and the Grievant are in agreement as to the substance of this conversation. During the ensuing conversation, the Grievant stated that the outside work was not his responsibility. 2/ When Supervisor Monroe asked the Grievant whether the Grievant intended to comply with his directive, the Grievant replied that he would when he could get to it. Supervisor Monroe then told the Grievant to empty the trash can before going home. The Grievant responded that perhaps Supervisor Monroe should stop drinking coffee and empty it himself. The Grievant went on to state that since Supervisor Monroe assumed his supervisory position, all he did was drink coffee. The Grievant further stated that no one could talk to Supervisor Monroe because Supervisor Monroe always thought he was right and told Supervisor Monroe "to get off his back or else." Supervisor Monroe asked the Grievant if he would care to restate this in front of witnesses, and the Grievant responded "no," whereupon the conversation was terminated. The Grievant did empty the trash can prior to leaving the work site.

Supervisor Monroe's note directing the Grievant to empty the trash can was affixed to the Grievant's time card. There is no evidence that the note stated that the trash can was to be emptied by a specific time. By emptying the trash can at the end of his work shift, the Grievant complied with Supervisor Monroe's written directive. When Supervisor Monroe confronted the Grievant on May 16, 1989, the Grievant did not refuse to empty the trash can, but rather, stated that he would empty the trash can when he could get to it. Supervisor Monroe directed the Grievant to empty the trash can before going home, which the Grievant did. As the Union argues, the Grievant did not refuse to obey any of Supervisor Monroe's work directives. However, such a finding does not invalidate the Employer's conclusion that the Grievant was insubordinate. Use of objectionable language or abusive behavior towards a supervisory employe may also constitute insubordination. The Grievant's conduct on May 16, 1989 which involves, inter alia, a verbal threat to a supervisor was insubordinate and disrespectful to a supervisor. 3/ Accordingly, the undersigned concludes that the Employer did have just cause to discipline the Grievant.

On September 29, 1987, the Grievant confronted his then supervisor, Principal Becker, in a public hallway and yelled at her. On September 30, 1987, the Grievant received written notice that such behavior was not acceptable and could not be excused by the fact that the Grievant was upset. Upon consideration of this prior incident of conduct which exhibited disrespect for supervisory authority, as well as the nature of the Grievant's conduct on May 16, 1989, which involved, inter alia, a verbal threat to a supervisor, the undersigned concludes that the Employer did have just cause to impose a one-day

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2/ Contrary to the argument of the Union, Supervisor Monroe's testimony does demonstrate that he did speak to the Groundsman about his failure to empty the trash can.

3/ At hearing the Grievant stated that when he made the statement "to get off my back or else," he meant that he would file a grievance. The Grievant, however, did not clarify his intent at the time the statement was made.

suspension on the basis that the Grievant had been disrespectful and insubordinate to a supervisor.

Based upon the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

1. The District did have just cause to discipline the Grievant on March 31, 1989 by issuing a letter of reprimand.

2. The District did have just cause to discipline the Grievant on April 5, 1989 by issuing a one-day suspension without pay.

3. The District did have just cause to discipline the Grievant on May 16, 1989 by issuing a one-day suspension without pay.

4. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 20th day of April, 1990.

By _____
Coleen A. Burns, Arbitrator