August 17, 1990

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P.O. Box 8003
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Re: Towns of Oconomowoc & Merton - Village
of Chenequa (Stone Bank School)
Merton Joint School District No. 4
Case 10 No. 44107 MA-6172

Dear Sirs:

This letter constitutes the expedited Award in the above matter. As agreed by the parties in the waivers received August 15, 1990, the discussion which follows will be kept to a minimum.

With respect to the first grievance, my review of the record, including the transcript of the November 28 Board hearing, leads me to agree with two of the Board's then conclusions and disagree with another. I note first that one of the three stated reasons for the initial suspension was "substantially discounted" by the Board following its hearing; I find also that the complaint that the grievant improperly restricted Mrs. Simons from visiting his classroom is overstated.

The testimony received at the arbitration hearing substantially duplicated that in the Board hearing, with the grievant maintaining that he had politely requested Mrs. Simons to discuss the matter with him outside the immediate presence of the students and Administrator Budisch supporting Mrs. Simons' November 28 testimony that the grievant "wouldn't let her" in the room. But it is clear from Budisch's testimony that the matter never came to a head, because the grievant was still explaining his view that he was entitled to some notice of a visit when Mrs. Simons terminated the encounter, by stating she would not make an issue of it and leaving. Thus the grievant did not disobey any direct instruction. Furthermore, even though it is clear that Budisch's preference was to allow unannounced parent visits, the recent course of the grievant/Simons relationship, including a threatened lawsuit, was such that the grievant was not completely unreasonable in questioning whether he was entitled to some notice before these particular parents stepped into a class to observe.

As to the receipt or non-receipt of the disputed student assignments, however, I find nothing unjust about the Board's conclusions or the manner in which they were reached. Clearly there was careful consideration given to the

conflicting accounts before the Board found that the students' version was more persuasive than the grievant's. Like the Board, I find the record does not perfectly establish the truth of the matter; but the balance of probabilities is that the grievant did in fact lose two of the (numerous) assignments given the Simons' child. Whether this was deliberate is a matter of speculation. But given the surrounding circumstances, I find that the grievant was under a duty to be particularly careful with respect to this child. (The record convinces me that in most other respects the grievant did take particular care to avoid problems with the Simons.)

Of three items cited as causes of the November 20-30 suspension, one was essentially dismissed by the Board and one I have found unpersuasive. This leaves a single culpable complaint. But the suspension was with pay, pending the Board's investigation, and the actual discipline imposed was limited to a written reprimand. While the record supports only one of the three items listed in that letter, I do not find a written reprimand to be excessive discipline for the, at least, careless handling of the Simons homework assignments, given the volatility of the relationship and the grievant's concomitant duty to be careful.

This does not mean that all of the conditions imposed by the Board for the grievant's return to the classroom were justified. I find items 1, 2, 3 and 5 of the Board's November 30 letter to be reasonable elements of discipline or management control; but items 4, 6 and 7 impose requirements for which the Board had no just cause. The grievant could reasonably be concerned that the requirement to submit a letter directly to the Simons, worded as specified in item 4, could be used against him by a family apparently bent on litigation. The requirement that he provide evidence of a job search, discussed below, was without foundation. And the statement in item 7 that the grievant was required to agree to all of the conditions, and that failure to respond by a date certain would warrant further discipline, implied that the grievant had to waive his contractual right to file a grievance, and was therefore improper.

The subsequent non-renewal of the grievant's contract was allegedly for failure to satisfy these and related requirements, but the record is devoid of evidence that would justify this action. First, Budisch admitted that following the November hearing no further incident occurred which was even alleged to cause a problem with the Simons. Second, as already noted, the grievant's record was unblemished as to any other student, and Budisch admitted that in general the grievant has been a good teacher. And third, the District based its non-renewal action largely on a contention that the grievant failed to keep an alleged condition of the prior settlement, namely that he seek employment elsewhere. I do not read the prior settlement letter from Swoboda as the Board does, i.e. as containing that statement as a condition of the agreement. On its face it supports the Association's contention that that paragraph is present as a voluntary statement of intent by the grievant and an expression of his distaste

for the District's lack of support for him in his dispute with the Simons. Moreover, the record shows that the grievant has, in fact, sought employment elsewhere.

Overall, I find, the record as to non-renewal supports the Association's contentions. I therefore find that the Board acted without just cause.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the grievant was issued a written reprimand on November 30, 1989 for just cause.

2. That the grievant's teaching contract was non-renewed without just cause.

3. That as remedy the District shall, forthwith upon receipt of a copy of this Award, reinstate the grievant, make him whole for any wages or benefits lost as a result of his non-renewal, and correct its records accordingly.

Very truly yours,

Christopher Honeyman
Arbitrator

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