

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

CAMBRIDGE SCHOOL DISTRICT

and

CAMBRIDGE EDUCATION ASSOCIATION

Grievance of Ann Voelker  
regarding denial of sick leave  
and one-day suspension

Case 11  
No. 43528  
MA-5996

Appearances:

Mr. David R. Friedman, Attorney at Law, Friedman Law Firm, 30 West Mifflin Street,  
Suite 202, Madison, WI 53703, appearing on behalf of the District.

Ms. Alice A. O'Mahar, UniServ Director, Capital Area UniServ-North, 4800 Ivywood  
Trail, McFarland, WI 53558, appearing on behalf of the Association and Grievant.

ARBITRATION AWARD

The District and Association requested that the Wisconsin Employment Relations Commission (herein WERC) designate the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance arising pursuant to the grievance arbitration provisions of the parties' 1989-90--1990-91 collective bargaining agreement (herein Agreement). The WERC issued the requested designation on February 9, 1990.

The parties presented their evidence and arguments to the Arbitrator at a hearing held in Cambridge, Wisconsin on April 23, 1990. The parties submitted briefs and reply briefs, the last of which was received on July 14, 1990, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issue:

What shall be the disposition of the grievance of Ann Voelker dated  
November 15, 1989?

PERTINENT PORTION OF THE AGREEMENT

ARTICLE VII = INDIVIDUAL RIGHTS

. . .

B. Dismissal or Non-Renewal of Contract

. . .

2. [After the two year probationary period,] teachers may be discharged, non-renewed, suspended, reduced in rank or compensation or deprived of any professional advantage only with just cause.

. . .

A. Sick Leave

1. Each full-time teacher shall be granted twelve (12) days each year at full salary to cover days of illness.

FACTUAL BACKGROUND

The Board operates a K-12 public school district (herein District) in three buildings at two locations: the High School building housing grades 9-12; and a complex including an old and new building which together house the junior high (grades 7-8) and elementary school (grades K-6).

The Association is the exclusive representative of the professional education bargaining unit of the District, including the Grievant, Ann Voelker. The Grievant apparently began as an employe of the District in the 1987-88 school year, and was a nonprobationary employe at all times material to this dispute.

The basic nature of the instant dispute is reflected in the October 9, 1989 disciplinary memorandum, the November 15, 1989 grievance, and the December 11, 1989 District Administrator's grievance response attached to this award and incorporated herein, as Appendix A, B and C, respectively.

Grievant is the District's health teacher, providing instruction to students in high school, and elementary grades, and at some times of the year to certain junior high students, as well. She routinely works mornings at the High School building and then drives a few minutes to work the afternoon at the other complex. Her afternoons typically involve one class period each with three

or four elementary classes grade levels (and hence three or four different preparations) ranging from grade one through six. Grievant ordinarily teaches those elementary classes in her health room in the old building, with the various classes, in turn, being brought to her and taken from her by the respective elementary school teachers involved. However, because the health room is not handicapped accessible, and because one of the elementary classes has a wheelchair-bound child, Grievant routinely travels to one of the elementary classes on her schedule, rather than having that class come to her in the health room.

In addition to her classroom teaching duties, Grievant is responsible for two extra-curricular duties, sophomore class advisor and volleyball coach. The Agreement specifies a percentage of salary as added compensation for each of those activities and states that such activities are voluntary rather than subject to being involuntarily assigned by the District. Both of those extra-curricular duties included activities during the school week leading up to Homecoming 1989, i.e., Monday, October 2 through Friday, October 6. Each high school class was expected to decorate a portion of the High School hallway for a Homecoming project, and each class was expected to plan and build a float for the school's Homecoming Parade. Grievant was therefore responsible for guiding the sophomore class' efforts in both regards. In addition, there were volleyball activities scheduled after school each day Monday-Thursday of that week. The combination of those extra-curricular activities and Grievant's various grading and teaching responsibilities required her to arrive home late and get less sleep than normal on Monday, Tuesday and Wednesday night that week, and to experience a heightened level of fatigue and stress relative to the other weeks of the year.

Thursday, October 5 became a particularly difficult day for Grievant and for the District.

In addition to her morning's work at the High School building, Grievant was ordinarily scheduled on Thursdays to teach four different elementary classes during the five afternoon periods, with the remaining period being preparation time. However, because Friday afternoon's classes were being cancelled in honor of Homecoming, Grievant had offered to reschedule the sixth grade from Friday to her free period on Thursday afternoon so that all of the students facing an examination the following week would have the same degree of preparation for it.

The old building was having roofing work done in an area over the social studies room. Prolonged and heavy wind and rain overcame the plastic covers the roofers had left over their work areas such that there was substantial water leaking into the social studies room at the beginning of the day on Thursday the 5th. It is undisputed that the social studies room was thereby rendered unusable for the entire day.

Upon learning of this the leak, Elementary and Junior High Principal Lowell Holtz made some inquiries of certain staff members in an effort to determine how and where to have the social studies teacher relocated. The librarian told him that the social studies classes could be held in the Junior High School library/media center in the morning but that there were classes scheduled to

come in there in the afternoon. Holtz decided and PA announced that the social studies classes would be relocated to the Junior High School library/media center in the morning.

When it became clear that the social studies room was going to be unavailable for the afternoon, as well, Holtz reviewed the published class schedules and decided that the best solution would be to relocate the social studies teacher to the health room for the afternoon and to have Grievant, the health teacher travel from room to room. He based that decision, in part, on the fact that the elementary school classes Grievant was teaching each had available a self-contained classroom whereas the Junior High students the social studies teacher was teaching did not. Holtz then announced that decision over the building PA system and tried to phone Grievant at the high school. Holtz was informed that Grievant had already left the high school for the elementary school when he called there. Holtz was due to cover a study hall in the junior high math room while the math teacher was away from the building on District business, so he left word with his office personnel to inform Grievant that she would be traveling to all of her afternoon classes due to the need to relocate the social studies teacher whose room had been flooded.

Holtz was in his sixth week of school-in-session, as a principal, having begun work in that position with the District in June of 1989. Holtz previously had worked four years as a public school teacher and then spent several intervening years as a police officer, and as head of security at a state university campus and trainer of law enforcement personnel, before being hired as principal at Cambridge.

Upon arriving at the Junior High-Elementary School complex at about 11:30 AM, Grievant went first to her health room where she did some preparation work and then went to the office at about 11:40. There she received from a secretary the abovenoted message Holtz had left for her. Grievant asked questions about the message, but the secretary referred her to Holtz who was then covering a study hall in the math room. Grievant returned to her room for a short period of time and then went to the math room to talk with Holtz at between 11:45 and 11:50. In that room there were approximately 8 students, with Holtz at the teacher's desk in the front of the room.

While the tenor and content of the ensuing interaction are described somewhat differently by Grievant and Holtz, by both accounts, the conversation was a few minutes in duration, Grievant was leaning or sitting on a stool near the desk at which Holtz was sitting, and Grievant's tone was angry and loud enough for the students to hear. Grievant said at the outset and conclusion that "I think it stinks" in reference to Holtz decision to have her travel from room to room. Holtz told Grievant that being upset would not solve the problem. Grievant responded that she knew as health teacher that it is healthy to verbalize anger rather than hold it in, such that Holtz should not tell her not to express her anger. Holtz told Grievant that he had dealt with the difficulties presented by the water leakage in the best way he could and that all concerned no choice but to try to live with it. At that point, Grievant made a statement referring to the possibility that she would be too ill to teach that afternoon. As Holtz recalled it, Grievant said that

she was not without options, she could call in sick. As Grievant recalled it, Grievant said that she was so upset that she may not be able to compose herself sufficiently to teach her afternoon classes. Grievant further recalled that she explained that she would be teaching five different classes back to back and that she proposed alternatives to the approach Holtz had decided upon, including using the library or finding available Junior High rooms to cover each of the afternoon hours they were needed for social studies. Grievant acknowledged in her testimony that she was so upset that she did not realize there were students in the room, but she denied that she was yelling or shouting. Holtz characterized about half of Grievant's statements as "yelling" which he later defined as talking in a "loud volume with expression." The conversation ended with Holtz unwilling to change his previous decision and Grievant saying, "Well, I think it stinks" and leaving the room demonstrably dissatisfied and angry. A student commented to Holtz that Grievant had certainly been angry. Holtz testified that he tried to cover for Grievant and to reduce the negative impact of the situation by responding to the student that Grievant was showing her strong concern about providing the best health teaching conditions possible for her students, even though Holtz did not believe he was telling the student the truth in that regard.

The math teacher (a non-member of the Association) testified that he was returning to the math room as Grievant was leaving; that he had not heard yelling as he approached the room; that he heard Grievant say with emphasis, "Well I think it stinks" as she was leaving; that he heard a student ask Holtz why Grievant was so angry; that he heard Holtz explain to the student something to the effect, "We have to show both sides to our students at some time;" and that Holtz apologized to the math teacher for the interaction having taken place in front of his study hall students.

It is clear that neither Grievant nor Holtz sought to take their math room interaction out of the presence of the students then in that room. Grievant, as noted, testified that she had not been aware that students were in the math room when she confronted Holtz there. Holtz testified that he made a judgment that it would only have made Grievant more angry and upset if he were to try to relocate the discussion before Grievant calmed down somewhat and that as things turned out his efforts to get her to calm down were unsuccessful.

Grievant testified that she returned to her room, attempted to organize the materials necessary for the room-to-room traveling involved and was overwhelmed with the difficulties and with anger and frustration at what she believed was Holtz' lack of respect for her (communicating the change to her on short notice and through the secretary rather than in person or by phone), with what she took to be Holtz' "blowing off" or lack of concern about Grievant's feelings and needs in the matter, and with the District's apparent disregard for the extra efforts and stress Grievant was experiencing during Homecoming Week. She spoke in her room with teacher Sandy Kahl who testified that she found Grievant trembling and crying, asked what was wrong, that Grievant explained that Holtz had directed her to travel room to room and that although she very much wanted to teach the classes involved before Homecoming, Grievant said, "I just can't do it, I just can't do it." Kahl suggested that Grievant go to the teacher's lounge across the hall rather

than remain alone. Grievant was crying and trembling there, as well. Some of Grievant's colleagues there and later in the Health room expressed the opinion that in Grievant's emotional condition she may be unfit to teach the rest of the day and should consider going home to rest.

After Grievant returned to her room to attempt to compose her self and prepare for the afternoon's classes, she found she was unable to do either and was concerned that she might overreact with a student if she tried to teach that afternoon. She called the office and informed the appropriate office secretary that she was going home ill.

Holtz conferred with District Administrator Buehler shortly after the math room incident. Buehler suggested that Holtz speak with Grievant to settle the situation down. They were then informed that Grievant had called in sick and left school for the day. The order of events thereafter is somewhat confused in the record. It is clear that at some point that afternoon, Holtz was told by one or more teachers that Grievant had been quite upset and it was suggested to him that he call her at home to see if she was okay. Holtz offered cover teacher Sandy Kahl's class so that she could do so, and Holtz later called Grievant himself. When Holtz reached Grievant by phone later that day, he told her that he wanted to see her in his office at 7:30 the next morning, Friday, for a fact finding meeting concerning the events of that afternoon and that Grievant was free to bring an Association representative with her.

Grievant testified that upon leaving school she went home and rested the balance of the afternoon and evening, but that she did not consult or see a physician. After receiving Holtz' call, Grievant called an Association representative and arranged for that individual to be present with her at the Friday morning meeting with Holtz.

Grievant attended the October 6 meeting as directed, accompanied by an Association representative. Holtz opened the meeting by stating that they both knew what had happened the day before and that he wanted to discuss why it happened. Grievant explained her feelings as noted above and stated that she had gone home because she felt emotionally unfit to teach the rest of the afternoon. Holtz testified that he asked whether Grievant handle the situation the same way in the future and that Grievant responded that she felt that was the only way she could talk to Holtz. Grievant testified that what she meant by that remark was that Holtz had not communicated the directive to her personally to begin with; that she had asked for Holtz when initially informed of the directive but that he was not then available; and that because the time for her first class was fast approaching she could not wait any longer before talking to Holtz when she finally found him in the math room. Holtz testified that at no point in the October 6 discussion did Grievant acknowledge any wrongdoing or regret for her conduct. Grievant testified, however, that when Holtz asked during the meeting whether Grievant would act the same way in the future, Grievant replied that she would not. The Association representative present at the interview testified that to her recollection the topic of whether Grievant would conduct herself the same in the future was not discussed during the meeting.

Following the meeting and after discussing the matter with District Administrator Michael Buehler and with the District's labor relations counsel, Holtz issued to Grievant the three page memorandum dated October 9,, 1989, (Appendix A). The corrective action imposed by that memorandum was to deny Grievant pay "for the afternoon of Thursday, October 5, 1989, when she went home and refused to teach her classes and meet her coaching responsibilities" and to suspend Grievant without pay on Wednesday, October 11, 1989, and to dock Grievant a prorated amount of her coaching salary "for not meeting her coaching duties on October 5 and 11, 1989."

District Administrator Buehler testified that the District does not dock pay from extracurricular stipends as regards absences associated with valid paid leaves such as sick leave, but where the individual is absent from school without pay, the District does dock a portion of the extracurricular stipend as it has in Grievant's case. Buehler's testimony in that regard was not disputed.

The November 15, 1989 grievance referred to in the STIPULATED ISSUE was then filed (Appendix B). In it, Grievant and the Association request that Grievant be made whole, including reimbursement for all monies deducted as regards October 5 and 11, 1989 and further request expungement from her personnel file of references to any disciplinary actions taken as regards the October 5, 1989 incident.

The grievance was denied by Principal Holtz, appealed, and denied by District Administrator Buehler by a December 11, 1989 memorandum (Appendix C). In that decision, Buehler noted that Grievant's "subsequent and prompt action of cancelling your classes and leaving school reflected the carrying out of the choice you described [in earlier comments to Holtz on October]. . . . Due to the aforementioned unprofessional conduct, insubordinate attitude, attempted misuse of sick leave, abandonment of teaching responsibilities and continued lack of recognition of inappropriate behavior, I find just cause for Mr. Holtz's disciplinary response and I deny your grievance."

The grievance was then appealed to the School Board, denied, and submitted to arbitration as noted above.

At the arbitration hearing, the parties adduced testimony from several witnesses concerning Grievant's condition following her discussion with Holtz and concerning the extent to which the rumor mill had spread accounts of Grievant's confrontation with Holtz in the math room. By all accounts Grievant was physically trembling, crying and emotionally distraught and upset following her discussion with Holtz. Also by all accounts there is an active and effective rumor mill among Junior High students to which Junior High faculty regularly become privy, as well. Despite that, several teachers testified that they had not heard of the math room incident until they were made aware of it months later in the processing of the grievance, whereas several others (including some at the High School) had learned of and commented on the incident on the afternoon it occurred.

## POSITION OF THE DISTRICT

The grievance should be dismissed in its entirety.

Grievant was not paid for the afternoon of October 5, 1989 because she went home without justification and failed to perform her teaching and coaching responsibilities. The Union claims Grievant left work because she was too ill to work. However, according to Holtz, Grievant stated that she could go home sick as an alternative to complying with Holtz' decision that she should travel room to room that afternoon. Holtz' recollections about that conversation should be credited over Grievant's because Holtz was calm whereas Grievant was upset, and because Holtz made notes of the conversation shortly after the interaction whereas Grievant did not.

Grievant did not like Holtz' decision or his refusal to change it. Holtz tried to calm Grievant and to explain the reasons for his decision. She responded that she knew what was best for her mental health and that that was to express her feelings to Holtz as she was doing rather than hold them in. Thus, the sickness she experienced, if any, was not one that was brought on by Grievant herself. Just because Grievant says she was too ill to teach does not make it so. Indeed, Grievant admits that she was stressed out, in part, because she had overloaded herself by taking the voluntary activity of volleyball coach and senior class advisor and by scheduling herself for back to back classes on October 11. No one coerced Grievant to take on all of those additional responsibilities. Furthermore, Grievant does not claim in her testimony that she would not have been unable to teach effectively, but only that she preferred not to let the students see her cry. If a decision was to be made that Grievant should not teach that afternoon, that decision should have been reached jointly with the principal, not unilaterally by the Grievant. Grievant was not the only staff member having a bad day due to the water leakage, but only she complained, called in sick and was abusive to her supervisor in the presence of students. In the circumstances, the District reasonably concluded that Grievant went home on October 5, 1988 in retaliation for what she considered to be an unreasonable decision by Holtz, and that Grievant was not ill. Since Grievant did not work the balance of October 5, 1988, she was appropriately docked for not doing so.

The one day suspension of Grievant on October 11, 1989 was based only on her confrontation with Holtz and not on the fact that she absented herself from school thereafter. Grievant initiated the confrontation, which undisputedly took place in a study hall in the presence of several students and at its end in the presence of another teacher, as well. By all accounts Grievant was angry and upset and she told Holtz twice that she thought his decision "stinks." Holtz described her as shouting and yelling at him, and it is undisputed that Holtz attempted without success to get Grievant to calm down. Holtz further testified that when he explained his decision and told Grievant the situation allowed no one affected much choice, Grievant responded that she did have an option because she could go him sick.

Whatever version of the confrontation is credited, Grievant acted insubordinately in the



presence of students. Holtz did not precipitate the incident by acting unreasonably. He had a serious problem on his hands, and made an informed decision on how best to deal with it. He tried his best to give Grievant notice personally as soon as was possible in the circumstances, and he did not intend any slight when he found it necessary to leave a message rather than inform her personally of the need for her to travel room to room. Other teachers go from room to room, and even Grievant makes one room change on Mondays. The situation involved only three hours in the afternoon. Grievant was not looking for a solution, only for a confrontation when she came to the math room. Holtz surely cannot be blamed for exacerbating the situation thrust abruptly on him by Grievant when he attempted to smile and tell Grievant not to be upset. He did his best to get her to calm down, but was ultimately unsuccessful. Evidence of other instances in which Holtz has been open to rational discussion of alternatives show that Grievant's approach rather than Holtz' obstinance was the cause of the continued difficulty on October 5.

The Union's evidence concerning a Board member's open meeting criticism of a teacher does not establish that the District has a policy permitting District personnel to openly verbally attack one another in the presence of students. The Superintendent successfully took steps to resolve the open meeting situation referred to by the Union, indicating that such open criticisms are not deemed by the District to be business as usual.

When Holtz gave Grievant an opportunity to explain her conduct the following morning, she showed no remorse and expressed no apology; rather she asserted that what she had done was the only way she could talk to Holtz. Even at the arbitration hearing, Grievant's regret seemed only to be that she had not realized that students were present, not that she had abrasively and inappropriately confronted her supervisor.

Grievant's being stressed out does not relieve her of responsibility for her actions. She surely knew right from wrong. While Holtz should perhaps as a matter of formality have asked Grievant during the Friday morning meeting what her recollection of the events of the previous day were, they both basically knew what had happened. Given the fact that Grievant entered the math room with students present and told her supervisor that a decision of his "stinks," "it is exulting form over substance to think that Mr. Holtz had to spend the time going over in detail what transpired the previous day." District Brief at 24. Moreover, if the investigation was defective, which the District denies, it does not justify Grievant's actions, but rather it merely goes to the reasonableness of the penalty imposed.

The decisions of various arbitrators in similar cases support the District's position. The decisions also establish that the Arbitrator's role is not to determine the penalty for misconduct that is found to have occurred, but rather to determine whether the penalty imposed is within the range of penalties management could reasonably impose in the circumstances. In the circumstances, a one day suspension was not excessive and should be upheld. The District Administrator's undisputed testimony was that the District customarily deducts a prorated share of extra-curricular stipends for teacher absences without pay. Such deductions were therefore appropriate on both

October 5 and 11.

In its reply brief, the District makes the following further contentions, among others. The Union brief fails to recognize Holtz' right and duty to direct Grievant's work and the fact that he may from time to time make decisions Grievant does not like but must nonetheless comply with without resorting to insubordinate confrontations and self-help refusals to perform her duties. The procedural defects claimed by the Association cannot be allowed to overcome the need to demonstrate to Grievant through reasonable discipline, the error of her apparent belief "that she could take whatever action she wanted to and confront her principal in any manner she wished to do and be free from discipline." District reply brief at 1.

In any event, the investigation was fair and objective. The Grievant's contention that she did not know what Holtz thought she had done wrong is disingenuous; as an experienced professional, and especially as the health teacher, she surely knew of the importance of maintaining self-control in seeking solutions to one's problems and she also knew that it is inappropriate to angrily confront the school principal in the presence of students. Holtz' comments to teachers following the incident and before the meeting with Grievant show only that he thought discipline might be warranted such that the Union would become involved, not that he was incapable of conducting a fair and impartial investigation. Holtz has not been shown to have been so psychologically wedded to a single point of view that he could not be fair or impartial in conducting the investigation and rendering a decision at its conclusion. The fact that Grievant did not admit in any way during the October 6 interview that her actions the day before may have been inappropriate gave Holtz the same sort of information about whether Grievant is a "good employee" that a review of her work record would have provided.

The grievance should be denied in its entirety. In any event, the District opposes the Association's request for an order that the District not impose further discipline on Grievant; opposes its request that the District provide Grievant with written confirmation of records expungement; and opposes its request that the Arbitrator retain jurisdiction for unspecified purposes and time periods.

#### POSITION OF THE ASSOCIATION

The grievance should be granted in all respects. The credible evidence shows that Grievant was understandably upset about an unreasonable decision made by Holtz. She expressed her opinion to Holtz about that decision, without yelling or shouting, but found Holtz unwilling to take her concerns and feelings seriously and unwilling to alter his decision. She returned to her classroom and tried to carry out his decision, but found she was too emotionally distraught to do so. She therefore properly notified the office and went home ill. Grievant's description of the content of the conversation should be credited over that of Holtz whose testimony shows a willingness to quickly and smoothly deviate from the truth when he chooses to do so, such that Grievant said only that she might be too upset to teach and did not say she was not without options

because she could go home sick.

Even if Grievant made the latter statement during the math room interaction, the evidence establishes that Grievant thereafter attempted to perform her duties, only to find that she was not emotionally fit to do so. Thus, Grievant did not refuse to teach, but rather was incapable of doing so due to illness. Arbitration and related decisions have held that the term "illness" reasonably includes temporary emotional disability. Several witnesses confirmed that Grievant was not able to teach in her condition.

At the heart of this case is the fact that Grievant challenged a decision made by a neophyte principal who could not handle being challenged. Grievant did not verbally attack Holtz, only his decision. Grievant told him his decision "stinks," and that was true. Ironically, it was Grievant's deep concern for her students and for her work that both caused her to become overstressed and prompted her to conclude that she could not teach given her emotional state of upset. Also ironically, Grievant is being disciplined for displaying emotion in front of students but also being disciplined for calling in sick because she did not want display emotion in front of students.

The District has in all respects failed to establish just cause for any discipline under the seven standards delineated by Arbitrator Carroll Daugherty in Grief Bros. Cooperage, Corp., 42 LA 555, 558 (1964). Holtz' comments to teachers between the October 5 incident and his October 6 investigatory interview with Grievant show that he had predetermined that Grievant would not be paid until she came back to work and that discipline would be imposed to which the Union would need to decide how to respond.

Holtz focused that interview solely on "why" Grievant did what she did on October 5, rather than stating and reviewing "what" had occurred from their respective viewpoints and "what" the District thought Grievant had done wrong. That prevented the investigation from fully and fairly hearing Grievant's side of the incident and it rendered it inappropriate to fault Grievant for her alleged failure to express remorse for the whatever Holtz thought she had done that was wrong. For, the arbitration testimony reveals that there is a substantial difference of opinion about what in fact occurred between Grievant and Holtz when they conversed on October 5.

Holtz could not objectively investigate and decide what to do about Grievant's conduct because he was simultaneously acting in the roles of the victim, the witness for the prosecution, the prosecutor, the judge and the executioner. A fair and objective investigation would have revealed that Grievant meant only she would have no other opportunity to talk with Holtz about the problems room-to-room movement presented when she said during the interview that conversing with him in the math room as she did was the only way she could talk to Holtz. Similarly, an objective investigator would have concluded that Holtz exacerbated the situation by smiling and by telling her she should not be upset. Had Holtz taken Grievant seriously and shown her a modicum of respect, she might have calmed down rather than becoming increasingly upset.

Holtz admitted that he never reviewed Grievant's personnel file before he determined the disciplinary penalty to be imposed on Grievant. Moreover, because a Board member engaged in criticism of a teacher in public (on cable television open to students and other staff members) it is not evenhanded of the District to punish Grievant for such an alleged offense. Holtz' decision to have Grievant travel was unreasonable in the first place since he was unaware that it would entail Grievant's moving among five back-to-back classes in order to allow the health room to be used for what turned out to be only one period in the afternoon, given its inaccessibility to a wheelchair student. Despite the obvious unreasonableness of Holtz' unwillingness to change his decision when Grievant informed him of its actual impact on her, Grievant returned to her room and attempted to comply with that decision, but she was overcome with emotion. Thus, according to teacher Sandy Kahl, whose credibility was expressly acknowledged by Holtz, Grievant told Kahl that she wanted very much to get the classes taught because of the Homecoming disruption of Friday classes, but that, "I just can't do it," i.e., not that she just wouldn't do it.

Finally, at no point in their interaction on October 5 did Holtz warn Grievant that her continued conduct in the math room or her going home sick would subject her to discipline.

By way of remedy, the Union requests in its brief that the District be ordered to make Grievant whole in all respects as regards October 5 and 11, and to expunge the October 9 disciplinary memorandum from her record and destroy same and timely affirm to the Association that it has done so. In the alternative, if the Arbitrator finds just cause for discipline, in keeping with progressive discipline, the discipline should be reduced to an oral reprimand limited to only those offenses which the Arbitrator finds the Grievant in fact committed. The Association also requests the Arbitrator to retain jurisdiction for 90 days after award issuance.

In its reply brief, the Union advances additional contentions including the following. Grievant's entitlement to sick leave would not be defeated even if her temporary emotional disability was "self-imposed," just as physical disabilities associated pregnancy would not be defeated by the sometimes "self-imposed" nature of the condition. The District cannot be allowed for the first time in its brief to tie the one-day suspension exclusively to Grievant's math room interaction with Holtz and not at all to Grievant's alleged abuse of sick leave. Holtz did not state at the October 6 interview "what" it was Grievant was being investigated for having done and the October 9 disciplinary memorandum only summarizes her alleged wrongdoings and summarizes the District's responses, without explaining what actions were imposed for what wrongdoing.

Being upset in front of students, alone, is not a legitimate basis for any discipline in this case. "Teachers displaying emotion to students and administrators is an every day occurrence. The students who observed the exchange between the Grievant and Holtz were nonpulsed by it as evidenced by the fact that the incident never made it to the school rumor mill." Association Reply Brief at 8. This was therefore not a confrontational rage incident. Grievant's stress has been proven and is a valid mitigating factor. The arbitration decisions cited by the District are not persuasive since in each the grievants had some prior disciplinary history, whereas Grievant did

not. For those additional reasons, the Arbitrator should conclude the District has failed to meet its burden of proving that any discipline was warranted in this case.

## DISCUSSION

### Denial of Sick Leave for Afternoon of October 5, 1989

Upon consideration of the record as a whole, the Arbitrator is persuaded that Grievant's condition following her math room interaction with Holtz and her subsequent unsuccessful attempt to comply with his directive was such that she was not emotionally fit to teach or coach for the balance of the afternoon, and that she was experiencing an "illness" within the meaning of Agreement Art. VIII.A.

The District's skepticism in that regard is understandable given both Grievant's admitted anger and dissatisfaction with being required to travel room to room for all of her afternoon classes that day and given Holtz' recollection that Grievant had referred to taking sick leave as an option she had for avoiding the inevitability of complying with the directive with which she so angrily disagreed. Given the Grievant's admission that she was so upset that she did not realize there were students in the room, Holtz' recollection of as to the substance of Grievant's statement in that regard is more reliable than Grievant's.

However, the evidence satisfies the Arbitrator that despite her comment about possibly calling in sick, Grievant was in fact ill and therefore entitled to sick leave that afternoon. Grievant had been working long hours earlier that week. She was notified of what was unquestionably a major change in her routine by a secretary rather than by the principal directly. The Arbitrator finds the task Grievant was facing to be a difficult one even considering the availability of the elevator, the gym floor short-cut, Holtz' offer of a student to help carry her materials, the availability of carts for transporting materials, and the time leeway given to teachers who travel from room to room. Travelling as directed would have involved gathering and moving substantial materials repeatedly, in some cases moving between buildings, up and down stairs, and in some if not all instances without an opportunity to return to the health room between classes. Grievant's task was compounded because she had scheduled an extra class that afternoon to avoid giving one group a leg up on their preparations for an examination the following week, and by the fact that with the weekend approaching she felt she needed to do a particularly thorough job to avoid the children losing too much of what they were learning in each class.

Grievant's claim that she was unfit to continue teaching tht day is corroborated in part by the anger she undisputedly exhibited in her interaction with Holtz. Both Grievant and Holtz testified that she was angry, frustrated and upset when she met with Holtz in the math room, and Holtz testified that he was unable to get her to calm down at any time during their interaction.

The results of the math room interaction were not likely to reduce Grievant's anger or

frustration, and the evidence confirms that they heightened Grievant's anxiety and upset. Several teacher witnesses confirmed her physical manifestations of substantial emotional upset at various times after the math room interaction had occurred. Some teachers suggested to Grievant that she may not be fit to teach the rest of the day and that she should consider going home on sick leave for the balance of the day given her condition. Holtz was also told by at least one teacher of her concerns about Grievant's emotional and physical well-being and Holtz acknowledged in his testimony that he took that expression of teacher concern seriously.

The District's suggestion, that because Grievant is the District's instructor on stress management and related topics she should have known how to control herself, cuts two ways. It supports the District's skepticism regarding Grievant's claim that she could not calm herself so as to avoid being too sick to work; but it also underscores the degree of Grievant's emotional condition if, knowing what she knows about how people can try to bring themselves back under control, she was unable to do so. Grievant described several techniques that she attempted at various points that afternoon to regain her composure. The observations of the various teacher witnesses establishes to the Arbitrator's satisfaction that Grievant had been unsuccessful in calming herself.

The District's further suggestion that Grievant had brought the stress on herself by taking on too much responsibility, also cuts two ways. While Grievant has some responsibility for pacing herself so that she completes all of her assignments successfully and without risking an emotional breakdown, it was her zeal to pursue the District's and students' benefit that led Grievant to schedule five classes back to back and to work the long hours with the sophomore class in preparation for Homecoming in addition to volleyball practices. Some additional consideration of the unusual impact the room change would have on Grievant given her particularly demanding set of work circumstances would have been quite appropriate once Grievant communicated her situation Holtz in the math room.

On the other hand, the District correctly points out Grievant's approach to the matter in the math room was not one that was likely to bring about a reasoned discussion or a sympathetic response. Because of the abruptness of Grievant's approach, Holtz's responses (in addition to trying to explain his decision), of smiling and telling Grievant that being upset would not help, cannot be faulted even though they may in retrospect have exacerbated Grievant's emotional state. The Arbitrator also agrees with the District that Grievant's stated preference for letting her feelings out made the situation worse and that she should have found a more suitable means of relieving her stress than angrily expressing her frustrations to the principal in front of students.

Nevertheless, despite Grievant's statement to Holtz about having an option of calling in sick and regardless of who was how much to blame for getting Grievant into her trembling and tearful emotional condition following the math room interaction, the Arbitrator finds, in all of the circumstances, that Grievant would not have been able to emotionally compose herself during the balance of the afternoon. The Arbitrator is further satisfied that she absented herself from her

teaching and coaching assignments due to that "illness" and not to retaliate for Holtz' decisions.

It follows that District violated the Agreement by denial of sick leave such that Grievant is entitled to be reimbursed in full for what she would have been paid for Thursday October 5, 1989, including reimbursement for the pro-rata portion of her coaching stipend as regards that day.

#### One Day Suspension Served on October 11, 1989

There remains the one day suspension.

The Arbitrator is satisfied that the District had just cause for disciplining Grievant for her math room conduct. Grievant lost her cool and acted unprofessionally by angrily confronting the principal in front of and in ear shot of several students. Grievant's workload related stress and her pique at initially receiving word of the room change via an impersonal clerical message rather than a first hand explanation help explain her anger and frustration, but they do not excuse her angrily confronting the principal in the presence of students. It is also no defense for Grievant to say that she did not realize that students were present. Had Grievant maintained her self-control, she would have realized students were present and that the discussion should have been taken out of their presence. While Holtz could also have taken steps to steer the interaction out of the students' presence, it was Grievant who initiated the incident in the presence of the students and she therefore must bear responsibility for it occurring there.

It seems obvious to the Arbitrator--as it was to various of the teacher witnesses--that it is inappropriate for a teacher to angrily confront the principal in the presence of students. This is true whether word of the incident spreads to other students or if the only students who ever learn of it are those who were present to see it first hand. The Association's evidence concerning the conduct of a Board member at a cable-televised open meeting does not persuasively establish either that the District has historically condoned such conduct or that the District has treated others who were guilty of it--and who were subject to District disciplinary procedures--differently than it treated Grievant. On that point, Holtz testified that ". . . personally I don't mind if a teacher disagrees and even disagrees to the point where they are angry and yelling as long as it's in private. You can't do that, in my opinion, in front of the kids." (tr.35) For those reasons, the Arbitrator does not find that the District's policy is to condone angry confrontations between a teacher and a principal in the presence of students.

As Grievant testified concerning what she teaches her students, people can make mistakes and need to recognize that mistakes have consequences. Grievant made a mistake by angrily confronting Holtz in the presence of the students as she did, and that mistake should properly be the subject of a disciplinary penalty.

The Arbitrator is persuaded, however, that a one day suspension is an excessive penalty in the circumstances. While the employer's judgment concerning penalty is ordinarily entitled to

significant deference, in this case the justification for such deference is not present. Holtz admitted that he did not acquaint himself with Grievant's unblemished work record before deciding on the penalty and that he was not sure whether Buehler had done so either. The evidence also shows that Grievant and Holtz did not have the benefit of hearing one another's views on what in fact had occurred on October 5 because Holtz focused the investigative meeting from the very beginning only on the "why" and not the "what. The Arbitrator also finds it significant that Holtz did not at any point in the math room interaction warn Grievant that there could be disciplinary consequences for her continuing to angrily confront him in the presence of students or if she were in fact to call in sick after stating that she might do so as a alternative to complying with a work direction with which she had disagreed.

Moreover, it is by no means clear to the Arbitrator that the District did not impose the October 11 suspension, in part, for sick leave abuse and for Grievant's absenting herself in defiance of Holtz and his directive that she travel to all her afternoon classes. The District's attempt in its brief to allocate the suspension entirely to the math room interaction is not supported by either the October 9 suspension notice or by the District Administrator's grievance answer (Appendices A and C). The District is bound by the disciplinary memorandum and cannot reallocate its penalty at the arbitration hearing or thereafter. Even in Holtz' testimony there was no such clear line drawn between the conduct for which the October 5 deductions were made and the conduct for which the October 11 one-day suspension was imposed. (Compare tr.77-78 with tr.79 and 57).

The Arbitrator has concluded above that Grievant did not abuse her sick leave and that she did not absent herself in defiance or avoidance of Holtz' directive. There was no hint of defiance in Grievant's conduct following the math room interaction or since that day. The Arbitrator has found that despite what she said to Holtz in the math room, Grievant concluded in good faith that she was unfit to conduct the balance of her classes and duties that day, and that, as noted above, the evidence confirms her judgment in that regard. Because two of the several bases on which the District appears to have based its October 11 one-day suspension have been held herein to be invalid bases for discipline, the District's determination of penalty is not due the deference it would be due if Grievant were found guilty of all of the misconduct cited in the disciplinary memorandum.

Whatever the allocation of the penalty may have been, this is the first instance in which Grievant has been disciplined for anything in her employment with the District. There is no indication of a prior pattern of conduct on Grievant's part that would make loss of time and pay necessary to impress upon Grievant the improper, unacceptable and unprofessional nature of her math room conduct. While the Arbitrator finds that Grievant did not overtly apologize for her Thursday conduct during the Friday morning meeting, she did explain that it was the result of her having been unusually stressed out, which explanation in and of itself suggests that she did not consider it to have been her normal way of conducting herself. Moreover, Holtz' focusing the October 6 meeting only on why Grievant did what she did rather than on what had happened from



their respective viewpoints prevented Grievant from knowing how Holtz had perceived the events of the previous day and therefore made it less significant that she did not expressly apologize to him for what he thought she had done. Grievant has adequately explained in her testimony what she meant at that meeting when she said that was the only way she could talk to Holtz, to wit, that she got word of the change on short notice, tried once unsuccessfully to talk to Holtz about it, and would have had no other opportunity to speak with him about it except during the time he was in the math room. Finally, it can be noted that at the arbitration hearing, having heard Holtz' testimony as to how he perceived her conduct, Grievant acknowledged in her testimony that a conversation such as she had with Holtz should not have been initiated in the presence of students, and that she would not handle a similar situation the way she did on October 5 in the future.

For the foregoing reasons, the Arbitrator is persuaded that while the math room incident warranted a disciplinary response, a written warning is the maximum penalty for which the District would have just cause in the circumstances.

Accordingly, the Arbitrator has ordered that the one day suspension served on October 11 reduced to a written warning for unprofessional conduct in angrily confronting the principal in the math room in the presence of students on October 5, 1989. Grievant is to be made whole for the loss of pay associated with the one day suspension she served on October 11, 1989, including reimbursement of the portion of her coaching stipend deducted as regards October 11.

The Arbitrator understood the Association's request for retention of jurisdiction to be the somewhat conventional one in case a dispute were to arise as to compliance with the remedial order imposed herein. Given the rather straight forward nature of the remedy herein and the District's expressed preference in the matter, the Arbitrator has chosen not to retain jurisdiction. If the parties mutually request the Arbitrator's assistance in resolving a dispute arising as to the meaning and application of the remedy, the Arbitrator will provide the parties that service. Otherwise, the parties will have to resort to the contractual and/or administrative remedies available to them to resolve any such dispute.

#### DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. The grievance of Ann Voelker dated November 15, 1989 is granted in part and denied in part. The denial of sick leave for the afternoon of October 5, 1989 violated Agreement Art. VIII.A. The District had just cause for imposing discipline in the form of a written warning for unprofessional conduct in angrily confronting Principal Holtz in the presence of students in the math

room on October 5, 1989. The District did not have just cause for imposing any discipline for an attempted abuse of sick leave or for Grievant absenting herself in retaliation for Holtz' October 5, 1989 work directions, because Grievant is not guilty of any such offense. By imposing the one day suspension as set forth in the October 9 disciplinary memorandum, the District violated Agreement Art. VII.B.2. By way of remedy for those Agreement violations,

a. The District shall rescind its denial of sick leave as regards the afternoon of October 5, 1989, and make Grievant whole (without interest) for the monies she lost as a result of that denial. Grievant's absence on that afternoon shall, instead, be charged to Grievant's sick leave account in the customary fashion.

b. In addition, the District shall rescind both its October 9, 1989 disciplinary memorandum and the one-day suspension served by Grievant on October 11, 1989, and make Grievant whole (without interest) for the monies she lost as a result of that suspension. The District shall remove from Grievant's record and give no further effect to the October 9, 1989 disciplinary memorandum, and shall insert in its place a copy of this Award. The copy of this award so placed in Grievant's record shall constitute a written warning to Grievant on account of her unprofessional conduct of angrily confronting Principal Holtz in the presence of students in the math room on October 5, 1989.

2. Except as noted in 1, above, the November 15, 1989 grievance and the requests for relief set forth therein are denied.

Dated at Shorewood, Wisconsin this 12th day of November, 1990.

By Marshall L. Gratz /s/  
Marshall L. Gratz, Arbitrator