

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 : Case 45
 WHITNALL SCHOOL DISTRICT : No. 48386
 : MA-7586
 and :
 :
 LOCAL 2, affiliated with MILWAUKEE :
 DISTRICT COUNCIL 48, AFSCME, AFL-CIO :
 :

Appearances:

Mr. David B. Kern, Quarles & Brady, on behalf of the District.
Ms. Monica Murphy, Podell, Ugent & Cross, S.C., on behalf of Local 2 and

Distri

ARBITRATION AWARD

According to the terms of the 1990-93 collective bargaining agreement between Whitnall School District (hereafter District) and Local 2, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them involving the three-day suspension of Grievant Jacob P. Isler. The undersigned was designated arbitrator. Hearing was held at Greenfield, Wisconsin on March 15, 1993. No stenographic transcript of the proceedings was made. The parties submitted their written briefs to the undersigned by April 22, 1993 which the undersigned thereafter exchanged for the parties. The parties waived their right to file reply briefs at the instant hearing.

ISSUES:

The parties stipulated to the following issues for determination in this case:

- 1) Did the District violate the collective bargaining agreement by suspending Jacob Isler for three days on September 15, 1992?
- 2) If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS:

. . . .

3. SCHOOL BOARD FUNCTIONS: The Board possesses the sole right to operate the school system and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to, the following:

- A. To direct all operations of the school system;
- B. To establish reasonable work rules and schedules of work;

- C. To hire, promote, transfer, schedule and assign employees in positions with the school system;
- D. To suspend, demote, discharge and take other disciplinary action against employees;

. . .

BACKGROUND:

The District has a written policy that District facilities should be made available to outside groups/members of the public as much as possible on a year-round basis, as a community service. In conjunction with this policy, the District has a procedure whereby such outside groups can apply to the Building Principal for a building use permit. The Principal then determines whether the requested usage is possible and he/she makes a recommendation to the District's Business Manager whether to approve or deny the permit. The Business Manager then makes the final decision on the matter and sends copies of the application, either approved or denied, to both the Building Principal and to the Maintenance Supervisor in that Building. The groups with approved permits are placed on a calendar in the boiler room at the Middle School by the evening shift supervisor. During Summer, outside group meetings sometimes have to be moved so that building cleaning rotations (waxing floors, etc.), in preparation for the start of School can be completed.

Although the District has no written work rules regarding how to handle or approach members of the public who are in School buildings, the evidence was undisputed that custodial employes are expected to ask members of the public their reason for being in the building as a method of protecting the District's facilities from misuse or vandalism. It is also undisputed that the District expects its employes to accommodate groups, to assist them in finding the rooms they are assigned to and to treat members of the public with courtesy and respect.

The District employs several custodial aides to clean the Middle School. One of these is Jacob Isler. The others are Dennis Cash, Anthony Wolfe and Eileen Wolfe. Mark Hoefs is the District's Maintenance Supervisor and Isler's immediate supervisor. During the Summer of 1992, Anthony Wolfe, who was in his 20's, had long black hair; Dennis Cash wore glasses, a beard and mustache and had long, salt-and-pepper, bushy hair; Isler wore his greying hair short, had a mustache and wore dark horn-rimmed glasses. Eileen Wolfe is the only female custodian at the Middle School.

Mr. Jacob Isler (hereafter Isler) has been employed as a calendar year custodial aide by the District at its Middle School for the past three years. Isler's normal hours of work are from 3 p.m. to 9:30 p.m., Monday through Thursday, on Saturdays from 7:00 a.m. to 1:30 p.m. and on Sundays from 7:30 a.m. to 2:00 p.m.

On May 20, 1991, Isler was counseled regarding certain conduct at work by his immediate supervisor Mark Hoefs and by Middle School Principal Brian McCormick. Mr. McCormick confirmed the matters discussed in a letter dated May 21, 1991 which read in relevant part as follows:

. . .

During the meeting, Mark Hoefs brought up the following concerns:

- 1) Indirect insubordination towards Mr. Hoefs
- 2) Question as to whether you checked door security
- 3) Over-familiarity and visiting with teaching staff

1) We discussed the importance of maintaining a friendly demeanor towards the teachers. However, we do not want you to stand and speak with them for long periods of time as this interrupts the cleaning process. You are not to socialize during working hours.

2) We ask that you make sure that each outside door is locked at the close of your shift should that be your responsibility that day.

3) You are not to speak to anyone about Mark Hoefs or myself in the event that we should give you a corrective procedure to follow.

In review, you are not to socialize during specified working hours. You are not to speak to others about disciplinary measures between yourself, Mark Hoefs, or myself to anyone else. You are to check the building and see that it is left in a secure manner before leaving for home.

Non-compliance with any of the above could lead to a disciplinary hearing and disciplinary action.

. . .

Isler did not grieve the receipt of this letter.

On December 13, 1991, Principal McCormick, on behalf of himself and Supervisor Hoefs issued Isler a written warning regarding his having inappropriately called in an absence. That warning read as follows:

. . .

I'm writing you to inform you, that calling in an absence and leaving a message on voice mail is in direct violation of: Section 16-A.7 of the union contract. Under the terms of the contract you are required to notify your immediate supervisor or principal. Leaving a message on voice mail does not meet this requirement. If you cannot reach your supervisor or the building principal, a message may be left with the school secretary. If you fail to meet this requirement, appropriate action will be taken.

Isler did not grieve the receipt of this warning. Thereafter, Supervisor Hoefs held a meeting with Isler and Custodial employes Anthony Wolf and Eileen Wolf on December 17, 1991. Hoefs issued a memo to Isler on December 18, 1991 regarding this meeting which read in relevant part as follows:

. . . During the meeting, we discussed the following:

- 1) The letter dated 12/13/91 regarding calling in sick
- 2) Your job performance
- 3) The procedure you must follow when calling in sick in the future.

The following conditions were agreed upon:

- 1) The letter would remain in your file at the Middle School. It would only be used as a reference should this ever occur in the future.
- 2) That your job performance must remain at the highest possible standards. e.g. giving your very best in each task.
- 3) That in the future if you call in sick you must notify the building principal, his secretary, or myself in person.

Again, Mr. Isler did not grieve the receipt of this December 18th memo.

Finally, on March 20, 1992, Principal McCormick issued Isler a one-day suspension notice, the suspension to be for the day of March 19, 1992. McCormick's March 20, 1992 letter to Isler stated that reasons for the one-day suspension as follows:

. . . .

This letter is to inform you that you are suspended without pay during your normal working period on March 19, 1992.

The length of the suspension is one day, March 19, 1992. The reasons for your suspension are:

- 1) Failure to do acceptable work as directed by your supervisors.
- 2) Insubordination to your supervisor, Mark Hoefs.
- 3) Tony Wolf reported to Mark Hoefs that you passed a remark that you did not do an assigned task to see if Mark Hoefs, your head supervisor, would catch it.

I find this to be insubordinate and lacking of good team spirit. Should your work continue to not meet the standards set forth by your supervisors, I will not hesitate to recommend further action, up and including termination of employment with the Whitnall School District.

. . . .

Isler did not grieve this one-day suspension.

FACTS:

On September 15, 1992, Principal McCormick notified Isler that he was being suspended without pay for three days. In his letter of September 15th McCormick stated:

. . .

Two Whitnall community members have complained that you have been rude and used inappropriate language with them the week of September 6, 1992. As you have had problems in the past with correct employment procedures, I am suspending you without pay for three days, beginning September 15, 1992 through September 17, 1992.

This suspension is a part of our progressive discipline procedure. Upon your return, I would advise you to do your very best to see that all citizens of this community are treated with respect.

In the future, should there be any more infractions of a serious nature committed by you, I shall take further action, up to and including termination of employment.

. . .

Isler timely grieved the suspension and ultimately the instant hearing was convened thereon.

The events which gave rise to Mr. Isler's three-day suspension are in dispute but they can be summarized as follows. On August 4, 1992, Ms. Jill Majewski and Ms. Patricia Logsden began coaching cheerleading and conducting practices with girls attending the District's Middle School at the District's Middle School Building. Ms. Majewski (hereafter Majewski) was coach of the 7th and 8th grade girls in one group of approximately seventeen girls and Ms. Logsden (hereafter Logsden) was coach of the 5th grade girls, a separate group of approximately 19 girls.

Cheerleading for these groups had never been offered before at the District and neither Majewski nor Logsden had ever coached cheerleading or any other activity at the District. Both Majewski and Logsden have had children attending District schools for the past eight years. Majewski and Logsden were unpaid when acting as cheerleading coaches. They stated however, that the District issued them "contracts" as cheerleading coaches for the 1992-93 school year.

Majewski and Logsden confirmed that the District assigned their groups to use the auxiliary gym in the Middle School for their practice sessions. That gym, also known as the exercise room, is located on the second floor of the Middle School. To reach that gym, one must enter the cafeteria through its main doors, walk a short distance (about 20 feet) to the right to reach a set of stairs (with an open railing on one side) which have double fire doors enclosing them on the first floor. There is a landing half-way up these stairs and one can look down from the stairway landing to the first floor over the railing. The auxiliary gym has a boys locker room on one side and a girls locker room on the other side, both of which contain bathrooms. There is a drinking fountain and a girls' bathroom outside the auxiliary gym but one must

leave the gym and enter the common hallway to reach them. On the second floor of the Middle School there is another gym known as the "Big Gym", separate from but adjacent to the auxiliary gym, which can be reached by entering the auxiliary gym and walking through a short interior hallway.

During the week of August 4, 1992, at the first or second practice conducted by Majewski and Logsden, Logsden was leading both groups of girls up the stairs into the auxiliary gym and Majewski was following behind, assisting in getting the girls upstairs. Majewski, Logsden and three of the girls, Jennifer Craig, Stacy Hamilton and Shawna Gilchrist, testified that they heard Isler say in a loud voice, "Where the hell do you think you are going?" 1/ At this time, Isler was in the cafeteria area and Majewski stated that she was on the landing of the stairway leading to the auxiliary gym. Majewski looked down over the railing and saw a man (whose name she did not know at that time) wearing a tan shirt, brown pants with darker horn-rimmed glasses, greying hair and a mustache. The man was holding a large broom. Majewski explained to the man that they had permission to use the auxiliary gym from 3 to 5 p.m. on Tuesdays and Thursdays for their cheerleading practices.

On August 4 and 6, Miss Craig stated that, once or twice, she and Miss Gilchrist and Miss Hamilton went to the bathroom or to get a drink of water outside the auxiliary gym in the hallway and at those times Isler asked them, "What are you doing?" The girls explained they were going to the bathroom or getting a drink. Isler told them that they could not use the bathroom, that they could not walk in the hallways at all, and that they had made black marks on his (newly waxed) floor. However, the girls testified that they were not wearing shoes on any of these occasions but that they were in their stocking feet. Miss Gilchrist confirmed that she and Miss Hamilton went to get a drink of water on either August 4th or 6th and that Isler accused them of making black marks on the (newly waxed) hallway floor. Miss Gilchrist also stated that she and Miss Hamilton were wearing socks at the time Isler made these statements. 2/

During the next week, at the groups' third or fourth practice, Majewski and Logsden had a further encounter with Isler. On this date, Majewski and Logsden were in the auxiliary gym with their girls. Some of the girls asked if

1/ Isler stated that to his knowledge, he did not recall this confrontation. He also stated that he did not recall using that type of language and that "hell" is not a regular part of his vocabulary. Isler did not deny that the confrontation occurred. Isler and the Union contested the District's assertions that the person who confronted Majewski, Logsden and the girls in August, 1992 was actually Jacob Isler, asserting that the man could have been Wolfe or Cash, that Logsden and Majewski's recollections were flawed and inaccurate because they did not know Isler's name at the time the incidents occurred.

Isler and the Union disputed that the person who confronted Logsden, Majewski and some of the girls in August, 1992, was actually Isler. Craig, Gilchrist and Hamilton had all been students at the District's Middle School and they knew and recognized Isler as the custodian at the Middle School who had confronted them as described herein during August, 1992.

2/ Isler stated that he may have encountered kids "running around in the halls" during this time period. He stated that he probably did what he normally did in these instances, asked the kids not to do this, without yelling or swearing.

they could use the "Big Gym" for practice, because the door to that gym was open and it was empty. Majewski sent some of the girls to find a custodian and ask if they could use the Big Gym. Apparently no one actually sought to get permission to use the Big Gym and Majewski did not further check on the matter.

Majewski thereafter went into the Big Gym with the girls leaving Logsdan and her girls in the auxiliary gym. Thereafter, Isler approached Majewski from behind in the Big Gym and tapped Majewski on the shoulder. This frightened Majewski because her back had been to Isler. Isler asked Majewski, "What do you think you are doing and what is that?" (pointing to a can of soda Majewski had in her hand). Majewski stated Isler's tone of voice was loud, hateful and sarcastic and that he upset some of the girls. Majewski also stated that she stood up and began to apologize, that the girls had apparently not asked permission to be in the Big Gym, and that she had a can of soda in her hand. 3/

Isler told Majewski she was not supposed to be in the Big Gym or have anything (to drink) up on the second floor and asked "Didn't you see the signs?" Majewski stated that she then quickly moved the girls back into the auxiliary gym and that Isler followed very closely behind Majewski as she moved the girls out of the Big Gym. 4/ Logsdan stated that she saw Isler following close behind Majewski, that he looked very angry and that he was treating Majewski like a child, not an adult. 5/

Later, Logsdan and Majewski decided that Majewski's group should move to the High School Gym because Majewski no longer felt welcome at the Middle School and she wanted to avoid any further problems with Isler. Majewski told the 7th and 8th grade girls that they would be moving to the High School to avoid confronting and having to deal with Isler. Logsdan and her fourteen 5th grade girls stayed at the Middle School. Neither Logsdan nor Majewski reported this incident to the District at this time.

The next week, while Logsdan and her fifth grade girls were practicing in the Middle School auxiliary gym, she took the girls out into the hallway to the bathroom and Logsdan stated that Isler yelled at them that they were walking on his waxed floors. Logsdan asked Isler why he was waxing the floors at that time and she stated that she had a contract to use the School for practices. 6/

3/ Majewski stated that she had not realized at this time soda was prohibited in the auxiliary gym.

4/ Logsdan, Craig, Hamilton and Gilchrist essentially confirmed Majewski's testimony regarding this incident, although Majewski recalled more of the details than did the other witnesses. Craig stated that Isler followed two feet behind Majewski. Hamilton stated that Isler followed behind Majewski pretty close to her, and Hamilton and Gilchrist stated that it appeared that Isler wanted to make sure they left the Big Gym. All three girls stated that during this incident, Isler did not look happy.

5/ Isler stated that he didn't recall a soda incident or comment. He stated that he did ask Majewski what she was doing there (in the Big Gym) and he stated that he asked her to leave the Big Gym. Isler explained that the custodians had just waxed that gym. He admitted that he probably did walk out behind the group, but he denied chasing them out. Isler stated that he did not yell at them, although he may have "talked in an assertive voice" to Majewski.

6/ Isler stated he did not recall any confrontations with cheerleading coaches in the hallways of the Middle School and that no one ever asked him to unlock the auxiliary gym girls locker room during August, 1992.

Logsdon and Majewski also stated that since August 4th the District's custodial staff (not Isler) had repeatedly refused to unlock the girls' locker room in the auxiliary gym so that the girls could use the bathroom and get drinks of water during practices, forcing them to go out into the hallway to use the bathroom and drinking fountain there. Both Majewski and Logsdon confirmed that they had spoken to an older female custodian on several occasions about the bathroom situation. Majewski stated that this female custodian had been rude to her when she (Majewski) asked that the girls locker room be unlocked, under the terms of her coaching contract. This female custodian said she knew nothing about it and that she could not do anything about it. The female custodian refused to unlock the girls locker room for Majewski.

Logsdon and Majewski decided to complain to Middle School Principal McCormick about Isler's conduct. Logsdon and Majewski spoke to McCormick briefly about the situation at a Middle School football game held on or about September 6th. McCormick requested that they meet with him at his office at a later date to discuss the matter in detail.

This discussion at McCormick's office occurred on the following Tuesday or Wednesday. Neither Logsdon nor Majewski knew Isler's name at this time, but they described a man with darker hair just starting to grey who was wearing a mustache, darker horn-rimmed glasses and a District custodian's uniform (tan shirt and brown pants). Majewski lodged a formal complaint against Isler at this time. Also during this meeting, Majewski complained about the treatment they had received from the older female custodian who had repeatedly refused to unlock the girls locker room for them but Majewski never lodged a formal complaint about the female custodians' conduct.

Both Principal McCormick and Supervisor Hoefs investigated the situation. McCormick made the decision to issue Isler a three-day suspension after the initial investigation was complete and after having reviewed Isler's personnel file. After the instant grievance was filed, Superintendent Hittman re-investigated the case and personally interviewed all of the witnesses including the three students and their parents, other custodial aide employes, Ms. Logsdon, Ms. Majewski and Mr. Isler. Hittman then decided that McCormick's actions were appropriate. As a settlement proposal, Hittman later offered to reduce the suspension to a two-day suspension but Isler and the Union rejected this offer.

The District offered evidence of four other cases in which it had disciplined employes for, among other things, mistreating members of the public who were authorized to use District facilities. One employe received a one-day suspension in 1989 for not checking to make sure that the strangers in the halls were actually going to a PTO meeting and for the employe's later reluctance to come to school to speak to the police about vandalism which had occurred, the employe's use of foul language on the telephone with a District office employe and the employe's "impatience" with then-principal Kania. A second employe was suspended for 10 days in 1987 for encouraging other employes to defy the appropriate orders of a supervisor and for racial slurs and foul language regarding a supervisor. This suspension was expressly based in part upon this employe's previous work record. A third employe was discharged in 1985 for leaving keys and equipment unattended, failing to report to work as scheduled, failing and refusing to follow orders and to complete assigned tasks, and for his mistreatment of an outside group authorized to use the building. The last case occurred in 1982. There, the employe involved was placed on probation for approximately three months for his mistreatment of an outside group authorized to use the District's building, for threatening to call the police if the group did not leave by 9:30 p.m. on one occasion, and

refusing to accommodate the group's need for extra time in the building.

POSITIONS OF THE PARTIES:

Employer:

The District noted that the Grievant admitted that he knew the proper way to treat members of the public who are authorized to use District facilities. The District urged that the facts showed that Isler did not treat the cheerleaders and their coaches appropriately. In this regard, the District observed that all of the student witnesses unequivocally identified Isler as the custodian who had been involved in the incidents at issue in this case. The District contended that Isler's conduct violated "reasonable standards of behavior" and was "disrespectful and rude." The District also observed that the Union had admitted, during grievance settlement talks, that some discipline of Isler was appropriate.

In regard to Isler's past work record, the District asserted that Isler had received one written warning, two written "reminders" and a one-day suspension in the space of 14 months. The District noted that because Isler never grieved any of these actions, they must stand admitted on the record of this case. In addition, the District contended that its imposition of a 3-day suspension herein was consistent with the pattern of discipline imposed in similar cases in the past: It was based upon the severity of Isler's misconduct as well as his prior work record. In the District's view, the fact that the District offered to reduce the suspension to two days in an attempt to settle the case short of hearing, did not require a conclusion that the District believed the discipline unwarranted or excessive.

In sum, the District asserted that the record demonstrated that Isler had engaged in grave misconduct on three separate occasions and it sought an award sustaining the discipline and dismissing the grievance in its entirety.

Union:

The Union argued that the District lacked just cause to issue Isler the 3-day disciplinary suspension at issue. In this regard, the Union noted that Isler was not timely warned about the possible consequences of his alleged actions relating to cheerleading coaches and other outsiders who use the District's facilities because no written policy exists to guide custodial employes in their treatment of members of the public. Furthermore, the Union contended, the District's record of its past disciplinary actions provided no consistent pattern of action by which employes could be guided.

In addition, the Union asserted, a full investigation of the disputed incidents herein, was only done after the District had administered the discipline and the grievance had been filed. The Union urged that Ms. Majewski, who had been hesitant and unsure in her initial identification of Isler, had testified at the instant hearing in an "exaggerated and self-serving" manner. Thus, the Union urged, the District's initial investigation lacked the fairness and objectivity required to meet the just cause standard.

The Union further argued that the testimony of three student witnesses was more credible, reasonable and consistent than were Majewski and Logsdon's versions of what had occurred. On this point, the Union observed that the students' testimony showed that Isler confronted students who were then unaccompanied by adults in the cafeteria in early August, when he allegedly asked them "what the hell" they were doing there. Although the language used may have been too harsh, the Union asserted, Isler's inquiry was otherwise appropriate in the circumstances. In regard to the incident in the "Big Gym",

the Union observed that Logsdan and Majewski knew they were not supposed to use that room and Majewski acknowledged that drinking soda in the "Big Gym" was prohibited. In the circumstances, the Union asserted, as the students' credible testimony confirmed, Isler's inquiries, actions and language were appropriate: Isler had merely done what the District expected him to do.

In regard to incidents relating to the students' use of the hallways and bathrooms, the Union again urged, the students' credible testimony demonstrated that Isler merely reacted appropriately based on the knowledge he had when he saw apparently unaccompanied students in the newly waxed halls and using just-cleaned bathrooms. The Union further argued that although Majewski and Logsdan had complained about a female custodian's actions, that woman was never disciplined by the District. Also, the Union noted that Isler's prior work record failed to show that he had been disciplined prior to March 20, 1992. In these circumstances, in the absence of just cause and fair treatment, the Union argued, Isler's "punishment" did not fit his "crime" and, the Union implied, Isler's suspension should therefore be set aside.

DISCUSSION:

The decisive questions in this case are, simply put, whether or not Jacob Isler acted in a rude and disrespectful manner on three occasions during August and September, 1992, as the District asserted, and, if so, whether the District acted in an arbitrary, capricious or discriminatory manner in suspending him for three days for the conduct involved. Although the Union attempted to cast doubt upon the quality of the District's investigation and upon the true identity of the custodian who had confronted Logsdan, Majewski and their cheerleading squads, the disinterested, credible testimony of the three student participants made clear that it was Isler who had confronted the coaches and cheerleaders during August through September, 1992. In addition, Isler's failure to recall the incident which occurred on or about August 4th and his failure to recall using the word "hell" simply does not ring true, given the testimony of the three student witnesses which confirmed the incident as well as Isler's use of profanity.

The Union argued that Isler was unaware of the parameters and strictures of the District's unwritten policy relating to treatment of members of the public such that Isler should not be held responsible for failing to live up to an allegedly unknown and imprecise standard. I find the Union's arguments unpersuasive on this point. I note that Isler admitted that treating the public rudely and using profanity in speaking to them is inappropriate conduct for any District employe. Therefore, even under Isler's personal concept of proper decorum in the District, he violated this concept on August 4th, as the credible testimony demonstrates.

The question remains whether Isler engaged in the other conduct alleged by Majewski and Logsdan. I find that the record evidence herein demonstrates that Isler confronted Majewski in the "Big Gym" in a rude and inappropriate fashion, as confirmed by the student witnesses who were present during that confrontation. Even though all the students present did not feel that Isler's actions had been "hateful" as Majewski stated or that he had chased the group out of the "Big Gym" in a condescending fashion as Majewski indicated, I note at this time that the students confirmed that Isler walked out of the "Big Gym" behind them, following closely (within two feet), to make sure they left that gym and all of the students indicated that Isler appeared to be unhappy, to say the least. In addition, Isler admitted that he probably walked out of the "Big Gym" behind the cheerleading group and that he had spoken to Majewski in an assertive voice. In these circumstances, I conclude that it was not unreasonable for Majewski to feel threatened by Isler's having approached her from behind, touching her shoulder and that it was not unreasonable for

Majewski to feel unwelcome and embarrassed by Isler's conduct in the "Big Gym." 7/

There is some question regarding Isler's contact with Logsdan regarding use of the Middle School hallways and the bathrooms during August and September, 1992. I find that given the otherwise consistent testimony of the three student witnesses in this area, it is more likely that Logsdan's recollection of the incident was clear and that Isler (who did not recall the incident) was mistaken.

Having found that Isler engaged in the misconduct as alleged by the District, it remains whether the level of punishment -- a 3-day suspension -- was appropriate. The Union has contended that the District treated Isler unfairly by suspending him for three days, given his past work record and the District's failure to discipline the female custodian that Majewski and Logsdan asserted had also been rude to their groups.

In regard to the conduct of the female custodian, I note that Superintendent Hittman stated, without contradiction, that the District only investigates formal complaints lodged by citizens. Thus, McCormick and Hittman followed District practice in not investigating and disciplining the female custodian because Logsdan and Majewski never formally complained about her conduct.

7/ Where Isler did not recall the soda comment/incident and did not confirm or deny touching Majewski, I have credited Majewski.

In regard to Isler's prior work record, I find it unnecessary to assess and analyze the written warnings/reminders which Isler received prior to March 20, 1992. I note that although the Union asserted that Isler was unaware that he could have grieved the receipt of these documents, the Union failed to prove this assertion. Indeed, Isler admitted, at the time he received this discipline, he knew of the labor agreement and he knew that it was applicable to him. Furthermore, Isler also failed to contest the one-day suspension issued to him on March 20, 1992. In these circumstances, there is no basis upon which to disturb the District's decision to issue Isler a three-day suspension for the misconduct he engaged in. 8/ Thus, in the circumstances of this case, based upon the lack of evidence that the District acted in an arbitrary, capricious or discriminatory manner and based upon the relevant evidence and argument herein, I issue the following

AWARD

The District did not violate the collective bargaining agreement by suspending Jacob Isler for three days on September 15, 1992. The grievances is therefore denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 14th day of May, 1993.

By _____
Sharon A. Gallagher, Arbitrator

8/ In light of Isler's prior work record which essentially stands admitted here, I do not find the evidence of other discipline given to other District workers in allegedly similar circumstances to be particularly pertinent except in one area. This evidence tends to support the District's arguments that it has enforced its policy of proper treatment of the public by its employes in the past and that it has suspended other employes for acting rudely and/or inappropriately toward the public.