

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**EDUCATION ASSOCIATION OF
THREE LAKES SCHOOLS**

and

**THREE LAKES SCHOOL DISTRICT,
BOARD OF EDUCATION**

Case 10
No. 55296
MA-9970

Appearances:

Mr. Gene Degner, Director, NTU-Central, on behalf of the Association.

O'Brien, Anderson, Burgy & Garbowicz, by **Mr. John L. O'Brien**, on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, herein "Association" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Three Lakes, Wisconsin, on October 1, 1997. The hearing was transcribed and the parties thereafter filed briefs that were received by November 18, 1997. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

Since the parties did not jointly agree on the issue, I have framed it as follows:

Did the District properly issue the March 10 and 19, 1997, letters of reprimand to grievant Michael A. Gorney and, if not, what is the appropriate remedy?

DISCUSSION

Grievant Gorney, a shop teacher, in the second week of January, 1997, was supervising a class of students which included eighth grader Chris Karling who is overweight and who is the son of District Administrator George J. Karling. Chris Karling at that time was lying on the

school floor on top of a model road track so that race cars would race over the track. Gorney admits that he at that time told Chris Karling: "Get your fat butt off there."

Nothing was done about this incident until about a month later when Karling's mother (who had heard about the incident from another mother, who had heard about it from her son), told Principal Richard Parks about it. Parks investigated the situation by speaking to Ms. Karling, two students, and Gorney on March 5, 1997. 1/ Parks did not speak to Chris Karling because he at that time no longer attended the District's school. In a meeting held with Parks and Ms. Karling on March 10, Gorney said that he would apologize to Chris Karling in front of his class. Parks never did so, however, because Chris Karling was no longer enrolled.

Parks on March 10 issued Gorney a letter of reprimand which stated:

...

This is a letter of reprimand regarding the incident we discussed on March 5, 1997. I recall we tried to get together the two days previous. However, I was unable to meet. I did appreciate your meeting with me following our faculty meeting

Our discussion was in reference to a comment you had made to a student during class. The comment was made during the last week of the first semester. The situation had been brought to my attention in the middle of February, and I had met with others prior to being able to arrange time to meet with you. As I asked you about your saying something inappropriate to a student, you responded by stating that you did recall the incident. In your words, you said you had briefly gone to your office and as you reentered the hallway you saw a student lying on his stomach on the apparatus which served to keep the line taut for the car racing. The student was laying there with arms and legs extended, as if he was a plane. You told me you commented, "Get your fat butt off of there." You then saw the student was Chris Karling. I also mentioned that you had intended to meet with him to apologize, but he withdrew from school. I informed you that you could have called the home to discuss it with him or his parents.

Regardless, this type of comment is similar to a statement you had made in the office which was directed toward Tim Rutzen in September of 1995. At that time, we spoke in the mail room. I told you that type of comment was not necessary nor appropriate. You agreed.

Now, you have again made an inappropriate statement to a student. This comment is not only inappropriate but may be considered harassment. This type of comment will not be tolerated in the future. Please make the necessary changes in your approach to similar situations so as to be objective, polite and

respectful. I am encouraged that your intent was to visit with and apologize to Chris. However, I wish this would have happened prior to my receiving a phone call from his mother.

I request that you sign this letter indicating you have received it, then return one original to my office so I can place it in your personnel file. You also have the right to submit a written response to this letter which I will review and attach to the file copy.

...

Parks on March 19 subsequently replaced said March 10 letter with another letter of reprimand which deleted references to Gorney's prior involvement with student Tim Rutzen and which stated:

...

This is a letter of reprimand regarding the incident we discussed on March 5, 1997. I recall we tried to get together the two days previous. However, I was unable to meet. I did appreciate your meeting with me following our faculty meeting.

Our discussion was in reference to a comment you had made to a student during class. The comment was made during the last week of the first semester. The situation had been brought to my attention in the middle of February, and I had met with others prior to being able to arrange time to meet with you. As I asked you about your saying something inappropriate to a student, you responded by stating that you did recall the incident. In your words, you said you had briefly gone to your office and as you reentered the hallway you saw a student lying on his stomach on the apparatus which served to keep the line taut for the car racing. The student was laying there with arms and legs extended, as if he was a plane. You told me you commented, "Get your fat butt off of there." You then saw the student was Chris Karling. I also mentioned that you had intended to meet with him to apologize, but he withdrew from school. I informed you that you could have called the home to discuss it with him or his parents.

In a previous situation, we discussed your making an unnecessary and inappropriate comment which you also have recalled. Now, you have again made an inappropriate statement to a student. Please be aware that this comment could conceivably be considered harassment per board policy #1650. This type of comment will not be tolerated in the future. Please make the necessary changes in your approach to similar situations so as to be objective, polite and respectful. I am encouraged that your intent was to visit with and apologize to Chris.

However, I wish this would have happened prior to my receiving a phone call from his mother.

I request that you sign this letter indicating you have received it, then return one original to my office so I can place it in your personnel file. You also have the right to submit a written response to this letter which I will review and attach to the file copy.

Gorney on March 21 grieved said letters, hence leading to the instant proceeding.

In support thereof, the Association argues that these letters should be rescinded because the matter was not immediately brought to Gorney's attention; because the March 10 and March 19 letters represent letters of discipline; and because the incident does not deserve any such letters.

The District, in turn, contends that the letters constituted reprimands and that, as a result, Article VIII, paragraph B, of the contract did not require the District to have just cause for issuing them. Moreover, the District contends that it in any event had "ample just cause" to issue the letters because it is "shattering for a student with a weight problem to be called 'fat' by a teacher, particularly in a classroom setting in front of other students."

I agree. That is why the District properly issued Gorney the letters of reprimand for embarrassing a student in this fashion. 2/ For while Gorney was free to use other appropriate terms if he wanted Chris Karling to pick himself up from the floor, he was prohibited from referring to his weight when it is such a sensitive matter. Indeed, Gorney's reference to "fat ass" is no different, say, that calling a student "gimpy" if he or she has difficulty in walking, or in calling a student "four eyes" if he or she wears glasses. Gorney's failure to recognize this basic point demonstrates that the District had just cause to issue him letters of reprimand so that he never again makes such a hurtful remark in the future.

To be sure, the District did not issue said letters until about two months after the incident. Contrary to the Union's claim, however, there is no reason to overturn the letters on this basis given the fact that Parks acted on this matter as soon as he became aware of it from Chris Karling's mother. Moreover, it is immaterial that Ms. Karling did not file a formal complaint since - absent contract language to the contrary - an employer is generally free to discipline employees on its own even in the absence of a written complaint from a complaining party. I also find, again contrary to the Association's claim, that Parks' investigation was fair even though he never spoke to Chris Karling directly, as the totality of this record shows that Parks spoke to Gorney and others about the incident before issuing Gorney the letters of reprimand. Hence, Gorney was given all of the process to which he was due.

In light of the above, it is my

That the District properly issued the March 10 and March 19, 1997, letters of reprimand to grievant Michael A. Gorney; the grievance is therefore denied.

Dated at Madison, Wisconsin, this 2nd day of December, 1997.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

ENDNOTES

1/ Unless otherwise stated, all dates hereinafter refer to 1997.

2/ This is true irregardless of whether the District is held to the just cause standard found in Article X, VIII, Section B, or whether letters of reprimand are not covered by the just cause standard since said proviso on its face expressly excludes letters of reprimand from its coverage. For purposes of this proceeding, however, the just cause standard is being applied even though it may not be required.

