

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

THREE LAKES SCHOOL DISTRICT

and

NORTHERN TIER UNISERV COUNCIL - CENTRAL

Case 11
No. 55320
MA-9985

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ - Central, P.O. Box 1400, Rhinelander, WI 54501, on behalf of the Union.

Mr. John L. O'Brien, Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, Arbutus Court, Box 639, Eagle River, WI 54521, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1993-95 collective bargaining agreement between Three Lakes School District (District) and Northern Tier UniServ Council - Central (Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding whether a violation of the collective bargaining agreement occurred when the District issued a letter dated March 21, 1997 to Science Teacher Verdun Cecil. The Commission designated Sharon A. Gallagher to hear and resolve the dispute and hearing was held at Three Lakes, Wisconsin on September 4, 1997. A stenographic transcript of the proceedings was made and received by September 17, 1997. The parties agreed to submit their initial briefs postmarked thirty days after their receipt of the transcript in this case that the undersigned would exchange the briefs for the parties. The parties reserved the right to file reply briefs and agreed that if they chose to do so, these would be postmarked ten working days after their receipt of the other party's initial brief. All documents in this case were received by November 14, 1997 whereupon the record was closed.

ISSUES

The parties were unable to stipulate to an issue or issues for determination in this case. However, the parties stipulated to allow the undersigned to select between the issues they proposed, based upon the relevant evidence and argument in this case.

The District suggested the following issue:

Did the District act within the collective bargaining agreement when it issued a reprimand to Mr. Cecil? If not, what is the appropriate remedy?

The Union suggested the following issue for determination:

Did the District act within the contract when it issued a letter dated March 21, 1997 to Mr. Verdun Cecil? If not, what is the appropriate remedy?

Based upon the relevant evidence and argument in this case, the Union's issue shall be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE XVIII

DISCIPLINE PROCEDURE

A. Any complaints that may jeopardize a teacher's professional status made by a principal, the administrator, or any source, shall be put in writing indicating the name of the complaint and shall be promptly called to the teacher's attention.

B. No teacher who has fulfilled his/her probationary contract requirement shall be non-renewed, suspended, discharged, or disciplined (not to include reprimand) without just cause. Any such action shall be subject to the grievance procedure set forth herein. All written information bearing on any disciplinary action will be made available to the teacher.

. . .

A. A teacher shall at all times be entitled to have present a representative of the Association whenever requested to meet with the administration for the purpose of being warned or disciplined for any infraction of rules or delinquency in professional performance. When a request for such representation is made, no action shall be taken with respect to the teacher until such representative of the Association is present.

. . .

A.No teacher shall be required to appear before the Board to be warned, disciplined, discharged, non-renewed, suspended, or reduced in rank or compensation unless s/he has been given prior notice of the specific reasons for such a meeting or interview and shall be entitled to have a representative of the Association present to advise and represent him/her during such a meeting.

A.No teacher shall be disciplined or reprimanded in the presence of students.

...

BACKGROUND

Verdun Cecil, Grievant, has been the Science Teacher at Three Lakes School District for the past sixteen years. Prior to March 21, 1997, Cecil had never been disciplined by any of his superiors. Richard Parks has been the Principal of the Three Lakes School for grades 7 through 12 for the past four years. As Principal, Parks is Cecil's immediate supervisor; Parks has the responsibility to evaluate teaching staff and the authority to discipline both students and teachers. On March 21, 1997 Parks issued Verdun Cecil the following letter:

This is a letter of reprimand regarding the lack of classroom management observed within your room. On March 12, 1997 we discussed concerns I had regarding the behaviors of students in your classroom and an apparent lack of discipline and management skills being implemented. Based on what I observed on Thursday, March 13, 1997, it has not improved.

Following a meeting you requested with me on March 11, I asked you to stop back on March 12. During our meeting, I explained reasons for three separate occasions where I had an expressed concern about your classroom management. You acknowledged and showed an understanding of my concern and rationale. However, the following day, March 13, as I walked about the school handing out teacher contracts, I again came across a situation involving your classroom management which concerned me. I entered your lab room at approximately 2:15-2:20 pm (sic) to find you assisting a student on the computer while four students stood directly behind you playing hacky sack. We had just discussed improving classroom management the day before. In our meeting on Wednesday, March 19, you told me the reason for the informality of the class. However, in a classroom setting, especially a lab room where we have expensive equipment, I cannot accept allowing students to play hacky

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sack. Your classroom management and control must improve, and incidents of this nature will not be tolerated in the future.

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.

On April 4, 1997, Cecil filed a formal grievance requesting that the March 21, 1997 letter be removed from his personnel file. Cecil later requested additional information from Principal Parks regarding the reasons for Parks having drafted and issued the March 21st letter. Parks issued a memo to Cecil dated April 14, 1997 (which is essentially identical to Parks' testimony) regarding the basis for Parks' issuance of the March 21st letter. Parks' April 14th memo reads in relevant part as follows:

. . .

Situation 1.

On this day, as I was walking about the halls of the building, I was in the back hallway near your room when I heard some loud noises being made by students coming from your lecture room 223. I stepped to the door to find two students acting boisterous and obnoxious up at the front of your classroom. I stepped into your room and noticed you were not in the lecture room. I asked the two students to please return to their seats and be quiet. I stepped to the back of the room to see if you were in the attached lab room. There I observed two students, one on the telephone, by themselves in an unsupervised area. I directed them back into the lecture room, and I stood in front of the lecture room until you returned. After a period of time, you returned to the room and mentioned you had been making some copies. I stood near you at the front of the classroom and in a quiet manner mentioned the names of the students who had been disruptive in the front of the classroom and the students who were in the lab room on the telephone. I also mentioned to you that at a faculty meeting, a few days previous, I mentioned that no teacher should leave students alone in their classroom unsupervised.

Situation 2.

At the beginning of the 6th hour, I observed Patti Antonuk on the telephone in front of the high school office. I walked to her in the hall and requested that she hang up the phone. I asked her to hang it up and get to her class. She had been tardy for other classes already that day. She appeared upset.

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However, she did hang up the phone and proceeded down the hallway. I followed her to her classroom which was a biology class with yourself. I was following a number of feet behind her just to make sure she did arrive at her classroom. After she entered your classroom 223, I continued to walk down the hall.

Upon reaching the door of 222, I could hear Patti mentioning my and Mr. Greb's names. I stopped in the hall to wait for these comments to end. However, I continued to hear Patti's voice so I returned to your classroom door. As I stepped to the door of your classroom, I noticed approximately four students who had been gathered around Patti quickly return to their seats. Not having heard any comments from yourself or your collaborating teacher, I continued into your classroom and stood near Patti where I mentioned to her that the comments and talk needed to end. I hesitated for a few seconds and was surprised (sic) by the noise level and socialization which the rest of the class was doing at the time. I raised my voice in asking all of the students to sit in their seats quietly until they were directed by yourself with the lesson, and that they should come to their classroom everyday entering the classroom sitting quietly until the lesson is ready to begin. I did mention that if they were working on a group activity I could understand the conversation. However, my interpretation at the time was that the students were socializing and being nothing but disruptive to the classroom environment, not working on a lesson. I then exited your room through the attached lab.

Situation 3.

In the afternoon I was again walking about the halls of school. As I walked past your lab room 225, I noticed two students sitting at a lab table. I was aware you had a class going on in 223 at the time. I decided to do some checking into the student schedules to see if they were actually where they were supposed to be. Both students have other classes listed for that period. However, upon checking with their teachers, I did find that they had passes to be with you that hour. I did return back to the lab room to mention to the two girls about our procedures for having passes out of classes, and that I had checked into their being out of their regularly scheduled class. As I approached them, I saw one of the girls slide a small booklet under her science papers. I asked her for the booklet which she then handed to me. I opened the booklet and noticed disgusting things they were writing in the booklet. I took care of this part of the situation as a regular disciplinary issue. . . .

While I was in the lab room, I noticed the lights dimmed in your class room 223. You were showing a video tape. However, I could hear a

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student who was seated near the door which passes from room 223 to room 225 holding a conversation and not watching the video for the lesson. I stepped to the door and more clearly heard this student having a discussion about Star Wars movies instead of following along with the video. It surprised me even more that this student was having the discussion with yourself. You were seated at your desk at the front of the room and the student was seated in the last chair of the row near that door. I believe this discussion was not only inappropriate for that setting but was also disruptive to students who were trying to listen to the video. I made mention to the student that he was in the class to learn about science and not talk about movies. I

also informed him that he should stop the discussion and start listening to the science video. I then left the room.

Parks stated that Situation 1 occurred on February 17, 1997 and that Situations 2 and 3 occurred on February 20th. Parks also indicated that he did not reprimand Mr. Cecil at the time of the February 17th incident. Nor did Parks reprimand or speak to Cecil regarding the two incidents of February 20th at the time of those incidents.

Parks stated that on March 11, Cecil was in the Principal's office on an errand and Parks asked to see him the following day. Parks stated that he told Cecil that he could bring a Union representative with him to the meeting if he chose. On March 12, 1997, Cecil returned to meet with Parks but had no Union representative with him, as no Union representative was available at that time. Parks and Cecil then discussed the incidents which occurred on February 17th and February 20th. Parks stated he did not reprimand Cecil on March 12th.

On March 18th, at Parks' request, Cecil met with Parks and his Union representative to discuss the hacky sack incident of March 13th. Parks stated that he discussed the incidents of February 17th, the two incidents of February 20th as well as the hacky sack incident of March 13th with Cecil at this time. Parks stated that he was not satisfied with Cecil's explanation why the hacky sack incident had occurred and that therefore on March 21, 1997 Parks issued Verdun a written warning. Parks stated that the District had recently replaced several microscopes in Cecil's lab and that he (Parks) did not feel it was appropriate for students to be playing hacky sack around expensive equipment which could have been broken and that he did not understand why students would play hacky sack with a teacher in the room.

Parks believed the definition of reprimand is a statement to an employee that there is behavior that the Employer would like to see altered or changed. Parks stated he believed his letter of March 21st to Cecil was a letter of reprimand. Parks stated that he did not recall if any glassware or breakables were visible during the March 13th hacky sack incident but that students were playing hacky sack near computers on March 13th in Cecil's classroom.

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Parks stated that students are allowed to come to the office to get copies for teachers. Parks stated that he never asked Cecil why "Star Wars" was being discussed in his class on February 20th and that he felt the two students in the adjoining room were Cecil's responsibility, as they had passes to be in his lab at that time. Parks admitted that if the three incidents in February had not occurred and if he had gotten the explanation Cecil ultimately gave him regarding the March 13th hacky sack incident, he might not have issued the March 21, 1997 letter of reprimand on the strength of the hacky sack incident alone.

In regard to the classroom incidents in February and March, 1997, Verdun Cecil stated the following. Regarding the March 13th hacky sack incident, Cecil stated that that class was a small one containing honors students in the senior class and that on the day in question, the students had just finished an intense DNA lab and there was not enough time (20 minutes remaining in the class) to start something new. The lesson was finished and the paperwork was handed in. At that time, a couple of students came to Cecil and explained that one of the other students (Katrina) had been depressed because she had had no birthday celebration at home the previous day. Cecil authorized the students to go to the Home Economics room to get some snacks and something to drink and bring it back to have an impromptu party for Katrina to try to lift her spirits.

At the time that Mr. Parks entered the room, Cecil knew that three students (including Katrina) were playing hacky sack behind him as he was assisting another student on the computer. (The students had been playing hacky sack for about five minutes prior to Parks' entering the room and the game of hacky sack had been subdued and confined to a small area). The students who were playing hacky sack were all soccer players and very good at playing the game and that they were not near any equipment or in danger of damaging school property. The entire party and the game of hacky sack were part of building up student, Katrina.

Cecil stated that the microscopes that had recently been replaced in his laboratory had not been broken by students, but were replaced because they were old and worn out. Cecil stated that he has no rules regarding the playing of hacky sack in his classroom but that he has a general rule that students should not mistreat any equipment or each other in the classroom. 1/ Cecil knew that students had been disciplined for playing hacky sack at school when damage had been done by hacky sacks in the halls and to lights during the current school year.

In regard to the February 17th incident, Cecil admitted that he had left his room unsupervised but he explained that it was because a student who was constantly losing papers needed three copies of documents and Cecil had decided to copy them right away. Cecil stated that students cannot go to the office to get copies because District policy is

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that teachers should simply put documents to be copied in an area for aides to perform that duty and wait for that task to be performed before they get the copies back. Cecil stated that he believed it was important for the student to have the copies immediately and he made the judgment that he should get them for this student immediately.

In regard to the incident of February 20th involving Patti Antonuk, Cecil stated that this was a big class of approximately 26 to 30 students and that he had another teacher, Mr. Phelps (Special Education Teacher) in the classroom to assist him with this class. At the time of the incident, an assignment was on the blackboard and students knew that they were

about to take a major quiz fifteen minutes into the class time. Cecil admitted that the class was not quiet, but he stated that students were working in groups and studying together. At the time Parks entered the room, a student was at Cecil's desk asking questions and Cecil was concentrating on helping her. Also at this time, teacher Phelps was at the other end of the desk helping two students who had questions. At this point, Cecil saw Patti come into the room and go to the back of the class. Cecil stated that he was certain that Patti went to the back of the classroom in the corner and spoke to three or four other girls before Mr. Parks entered the classroom. Cecil admitted that this group of girls was probably not studying for the test but that both he and Phelps were busy and could not address the situation that occurred. 2/

In regard to the "Star Wars" incident, Cecil stated that students were watching the movie in the lecture room; that he (Cecil) was behind the desk in the front of the room and that the television upon which the movie was playing was in the corner of the room. Cecil stated that Parks entered through the lab door and that the two students with the notebook were out of Cecil's view and apparently not doing their work; that Parks must have confronted those two students and then gone through the door into Cecil's lecture room. The student who made the "Star Wars" comments and engaged Cecil in conversation thereon was a student who needs to get attention immediately; that if the student is satisfied, he will get back on task; but that if this student is ignored, he will continue to disrupt the class. Cecil made the judgment that he should speak to this student about "Star Wars" rather than ignore him based upon his experience with that student. Cecil was taken aback by Parks' conduct toward him in the class during this incident.

Cecil stated that in his lab room, microscopes are generally stored in cabinets and glassware is stored in the drawers and that the room is cleaned up regularly. Cecil also stated that if you are standing in the lab room, you cannot see into the lecture room, or vice versa, as there is a solid wall between the two rooms although there is a doorway from the lab room into the lecture room at the rear of these rooms.

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POSITIONS OF THE PARTIES

Employer

The District argued that the just cause standard was met in this case. The District noted that Principal Parks personally observed each incident and talked to Cecil about them; that the incident for which Cecil was disciplined involved potential damage to District property and that the letter issued on March 21, 1997 was clearly a "reprimand" - formal reproof or censure issued from a position of authority. As such, the District urged, just cause was not required under the collective bargaining agreement for such a "reprimand".

The District anticipated that the Union would argue that the letter was not a reprimand within the meaning of the contract but was discipline which should be covered by

the just cause standard of the labor agreement. However, the District noted that Cecil suffered no punishment, no loss of pay and that Cecil did not have to do any extra work or suffer a penalty because of the March 21st letter. Thus, the District argued that the March 21st letter was not discipline and that the just cause standard should not apply to it.

The District noted that discipline and reprimands are referred to separately in the contract. In the District's view, whether just cause is required in this case or not is immaterial, as just cause is specifically not required for a letter of reprimand and this grievance should be denied. Even if just cause is required in this case, the District argued that Parks had ample justification to issue the letter based on the series of incidents and several conversations admonishing the Grievant about his classroom management techniques. Thus, the District urged that the grievance should be denied and dismissed in its entirety.

Association

The Association urged that the District lacked just cause for disciplining Verdon Cecil by its March 21, 1997 letter. The Union noted that Cecil was warned by Parks regarding the incident of February 17th and two incidents which occurred on February 20th. These verbal warnings should have been sufficient and the Union implied it was unfair of Parks to issue his March 21, 1997 letter based upon these same three incidents about which Parks had already verbally warned Cecil.

The fact that Parks offered Cecil a Union representative at the meeting of March 12, 1997 indicated, in the Union's view, that Parks believed that the March 12th meeting was a disciplinary one. In addition, by his own definition, Parks gave Cecil an oral reprimand on March 12, 1997 at their meeting. After March 12th, no incidents of the type which occurred on February 17th and February 20th reoccurred. Therefore those three incidents should have been considered closed.

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In regard to the hacky sack incident of March 13th the Union noted that Parks stated that he would not have issued the reprimand of March 21st to Cecil had the hacky sack incident been the sole incident involved. Yet, the March 21st letter states that Cecil's behavior "will not be tolerated in the future". Thus, the March 21st letter constituted discipline not just a negative evaluation by Parks. The Union asserted that the use of the word "discipline" should require a broad interpretation and that the District failed to produce any evidence to show that the March 21st letter was not disciplinary in nature. Thus, the Union urged that the just cause standard must be applied to the discipline Verdon Cecil received on March 21st.

The Union contended that Parks failed to investigate the incidents fully including those in February and the incident of March 13th. It was also unfair in the Union's view, for Parks to criticize Cecil repeatedly regarding these incidents and also to issue a formal disciplinary letter thereon. It was significant in the Union's view that Parks admitted that

letters such as the one issued to Cecil if placed in a teacher's file could essentially become disciplinary in nature. Based upon these arguments and the evidence of record, the Union asked that the grievance be sustained and that the March 21, 1997 letter be removed from Cecil's file.

REPLY BRIEFS

District

The District pointed out that the Association made several misstatements in its initial brief. For example, the District noted that the Union stated that the Grievant objected to Parks' letter of reprimand being placed in his file because it was discipline while in fact Cecil's objection made no such claim. In addition, the District noted that the Union had misquoted Article XVIII, leaving the parenthetical phrase "not to include reprimand" out of its quotation of that portion of paragraph B.

The District took exception to the Union's argument that the Arbitrator would be allowing the District to repeatedly reprimand an employee for the same incident without being subject to discipline were she to sustain the grievance. The District stated that reprimands are not subject to just cause. The Union's argument that a number of reprimands amounts to discipline is simply incorrect in the District's opinion. The District argued that discipline is distinct from reprimands, as discipline amounts to actual punishment while a reprimand is merely censure or formal reproof and that no number of reprimands will bring about a disciplinary effect. The District noted that the reprimand that Mr. Cecil received was not a punishment and that Mr. Cecil received no other punishment along with his receipt of the written reprimand from Mr. Parks.

The District also took issue with the Union's argument that because Parks suggested to Cecil that Cecil have an Association representative present during their

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discussions, Parks intended to discipline Cecil. The District noted that in Article XVIII, paragraph D it states that teachers shall at all times be entitled to have a representative of the Union present to meet with the administration "for the purpose of being warned or disciplined for any infraction of rules or delinquency in professional performance." Given the broadness of this language, the District asserted that Parks was merely following the clear language of the agreement when he suggested that Cecil have a Union representative present during their conferences.

The District also noted that the Union misquoted Parks' testimony in its brief. The District noted that Parks stated that students are allowed to bring things to the office to be copied; and that the Union failed to prove that it was due to Parks' angry reaction to Patty Antonuk's criticism of him and another teacher that Parks decided to discipline Cecil. Furthermore, the District noted that it found the Union's brief confusing regarding the

various incidents which led to Parks' issuance of the letter of reprimand. Therefore, the District sought denial and dismissal of the grievance in its entirety.

Association

The Association noted that the District had admitted in several areas of its brief that Parks had discussed Cecil's conduct with him on several occasions and that these were essentially oral reprimands of Cecil. Thus, the Association asserted that the issuance of a written letter of reprimand based upon the same incidents that Parks had repeatedly discussed and criticized Cecil regarding constituted discipline. Further, the Union noted that anything that is placed in a teacher's personnel file which addresses that teacher's reputation should be considered discipline. Finally, the Union noted (for the first time) that the fact that Parks criticized Cecil in front of students on at least two occasions also constituted separate violations of Article XVIII, paragraph G, which paragraph prohibits administrators from disciplining or criticizing teachers in front of their students. Therefore, the Association sought that the grievance be sustained and that the written reprimand be expunged from Cecil's record, letting the prior oral warnings by Parks stand.

DISCUSSION

The language of Article XVIII, paragraph B is clear. Paragraph B indicates that non-probationary teachers ". . . shall not be non-renewed, suspended, discharged or disciplined (not to include reprimand) without just cause." On its face, paragraph B excludes reprimands from consideration under the just cause standard of this contract.

The word "reprimand" is defined in the American Heritage Dictionary, New College Ed. (Houton Mifflin Co., 1981), as follows: "To rebuke or censure severely; a severe or formal rebuke or censure." I note that the dictionary describes "rebuke" as

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criticizing or reproofing sharply and that it defines "censure" as severe criticism. This evidence tends to show that a reprimand involves oral or written criticism, reproof or rebuke but not punishment beyond this. As the contract fails to qualify the term "reprimand," it is reasonable to conclude that both oral and written reprimands were intended to be exempt from the just cause standard.

Given the above analysis, the question arises whether Parks' letter of March 21st constitutes a "reprimand" within the meaning of Article XVIII, Paragraph B. I believe based upon the record evidence that it does. In this regard, I note that Cecil suffered no additional punishment as a result of Parks' issuance of the March 21st letter. The fact that the letter of March 21st was placed in Cecil's personnel file does not constitute punishment at this point in time. On this point, I note that Cecil has never before been criticized, either formally or informally, by any supervisor. 3/ Therefore, I must assume that the March 21st letter is the only document (relevant to this case) in Cecil's personnel file which is critical of Cecil's

performance as a teacher. 4/ In the circumstances of this case, because Cecil suffered no additional punishment as a result of Parks' placement of the March 21st letter in his personnel file, the placement of this letter of reprimand in Cecil's file is exempt from the just cause standards applicable to discipline other than reprimands.

Where the contract does not provide a just cause standard for reprimands, a lesser standard can reasonable be inferred. The question arises whether Parks' issuance of the March 21st written reprimand was arbitrary, capricious, discriminatory or done in bad faith. Based upon the record evidence in this case, I find that Parks' actions in issuing the March 21st letter to Cecil were arbitrary.

I note that Parks' letter of March 21st refers to Parks' and Cecil's discussion of Cecil's classroom management skills and student behavior on March 12, 1997. This reference to the prior discussion of the incidents which occurred on February 17 and 20 as well as Parks' statement that Cecil's classroom management skills had not improved showed that the March 21st letter was intended as a formal criticism of Cecil's conduct both on and before March 13, 1997. Therefore, to properly assess the appropriateness of the March 21st letter we must look to the incidents which occurred on February 17 and February 20th and Parks' treatment thereof. In regard to the incident of February 17, it is undisputed that prior to February 17th, Cecil was aware that no teacher should leave his/her students unsupervised in a classroom but that despite this fact Cecil chose to leave his students alone to go to the office to copy certain documents for one student. Thus, Parks' assessment of the February 17th incident was appropriate.

In regard to the incident involving student Patty Antonuk on February 20th while teacher Phelps and Mr. Cecil were present in the classroom, I note that Parks entered Cecil's classroom, found the students to be disruptive, noisy and off-task and asked them to take their seats without inquiring of either Teachers Cecil or Phelps concerning the

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underlying circumstances prior to his (Parks') interference. Similarly, in regard to the incident which occurred later on February 20th involving "Star Wars," Parks interrupted a discussion that a student was having with Cecil, corrected the student (that he should be in class to learn about science and not to talk about movies) and told the student to stop the discussion and start listening to the science video. It is clear that during both February 20th incidents, Parks interfered in the conduct of Cecil's class without first inquiring regarding the underlying circumstances, that Parks' comments to students implied his disapproval of Cecil's teaching performance and that Parks' comments also tended to undermine Cecil's authority over his students.

In regard to the incident of March 13th, I note that although Parks and Cecil discussed the hacky sack incident on March 19, (wherein Parks refused to accept Cecil's explanation for the occurrence of that incident), Parks did not question any other witnesses regarding the incident before he decided to issue the March 21st reprimand to Cecil. In all of the circumstances of this case, and given the fact that Parks based his issuance of the March 21st letter upon his criticism of Cecil's teaching style on February 20, 1997, and March 13, 1997,

I find that Parks' letter of March 21, 1997 was arbitrarily issued and any references thereto must be expunged from Mr. Cecil's file and I issue the following

AWARD

The District did not act within the contract when it issued a letter dated March 21, 1997 to Mr. Verdon Cecil. Therefore the District must remove the letter of March 21, 1997 and any references thereto from Mr. Cecil's personnel file.

Dated at Oshkosh, Wisconsin this 10th day of February, 1998.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

ENDNOTES

- 1/ The District has no policy regarding playing hacky sack in school.
- 2/ There is no evidence on this record that Teacher Phelps was issued a reprimand or counseled for his part in the March 13th incident.
- 3/ No evidence was placed in this record to show the contents of Cecil's personnel file. It was undisputed that Cecil had never been disciplined prior to March 21, 1997.
- 4/ A different conclusion would likely pertain had Cecil been repeatedly reprimanded and had those reprimands been documented in Cecil's personnel file and used by the District in the instant case.
- 5/ In its reply brief, the Union raised for the first time the issue whether Parks' comments to Cecil in front of his class on February 17th constituted a separate violation of Article XVIII, Paragraph G. It is significant that the Union failed to mention this alleged violation in its grievance or to argue it at the hearing herein or in its initial brief. Thus, the Union's having raised this issue in its reply brief is untimely and I have therefore not considered this issue in reaching this Award.