

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 150**

and

THE SCHOOL DISTRICT OF PEWAUKEE

Case 22
No. 54575
MA-9726

(Grievance of David Haberman)

Appearances:

Mr. Steven Cupery, Union Representative, Service Employees International Union, Local No. 150, 8021 West Tower Avenue, Milwaukee, Wisconsin 53223-3215, appeared on behalf of the Union.

Mr. Mark L. Olson, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appeared on behalf of the District.

ARBITRATION AWARD

On November 4, 1996, the Wisconsin Employment Relations Commission received a joint request from Service Employees International Union, Local No. 150 and the School District of Pewaukee for the appointment of William C. Houlihan, a member of the Commission's staff, to hear and decide a grievance pending between the parties. Hearing on the matter was conducted on February 25 and June 26, 1997 in Pewaukee, Wisconsin. Briefs and reply briefs were submitted, the last of which was received on December 3, 1997.

This Award addresses a two-day suspension given to David Haberman.

BACKGROUND AND FACTS

David Haberman, the grievant, was hired as a Maintenance Technician in June of 1991. The position is a bargaining unit position, which is supervised by Patrick Acker, Director of Buildings and Grounds, and is also subject to the supervision of the school principal where the Maintenance Technician is working.

Mr. Haberman is a journeyman electrician. In his employment application, Haberman claimed the following among his credentials:

Experience and installation and maintenance of commercial and industrial electrification systems; power distribution, motor applications.

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Experience and installation in maintenance of building environmental systems: temperature control

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Troubleshooting experience relating to the above-mentioned systems.

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Developing “preventative maintenance” schedules for electrical distribution and HVAC systems.

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Experience in plumbing applications.

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Mr. Haberman’s application listed approximately 20 years of prior work experience.

Haberman had been employed by the District for a period of 4 ½ years prior to the incident giving rise to this Award. In that period, Haberman had been disciplined on four prior occasions. On November 19, 1993, he received a written warning for leaving tools, supplies and ladders on the floor of the gymnasium after completing some work. When Acker asked him about it, and indicated someone else had to move them, Haberman’s reply was “Shit happens” and that there was no one to help him. On that same day, Haberman evidently took a van to get supplies without checking to see if it was otherwise signed out. It caused

other people to go in search of the van, and for teachers and children to have to wait. On March 29, 1994, Haberman was given a written warning for failing to clean a condenser coil, which lead to a compressor having to be replaced. Haberman had signed a preventive maintenance sheet, indicating that the elementary school kitchen equipment was "OK, coils cleaned". On October 17, 1995, Haberman was given a written warning for his failure to use a proper lock out/tag out procedure. Haberman had left equipment which was being repaired in a position where it could have been turned on accidentally. On November 7, 1995, Haberman was given a written warning for leaving his work station early.

Acker testified to Haberman's extensive training, specifically on HVAC systems. Haberman testified to receiving little such training, none of which was specific to the mechanical problems presented on January 31. Nothing in the record suggests that Haberman received specific formal instruction on how to handle mechanical emergencies the like of which occurred on January 31.

On March 12, 1996, Mr. Haberman was given a two-day suspension for events which occurred on January 31, 1996. The suspension letter, issued by his immediate supervisor, Patrick J. Acker, provides as follows:

To: David Haberman
From: Patrick J. Acker
Date: March 12, 1996
Re: Suspension

This memorandum will advise you of a suspension upon which you will be placed for the reasons which are stated below:

On January 31, 1996, you were called to the Pewaukee Elementary School, as a result of an emergency which had occurred in the building. Specifically, there were two broken water pipes, caused by extreme cold, and it was discovered at 7:15 a.m. on that morning that water was running out of the broken pipes in the school. You were called to the building, in your role as our maintenance expert, to deal with the situation. I have received reports from various people with whom you interacted at the elementary school that you did not handle these emergencies well.

According to the reports which I received, you were unable to isolate the leaking coils and repair them, and, rather than dealing with the situation, you suggested that school be closed. With the help of other persons, the situation was brought under control, and it was not necessary to close school, despite

your insistence that such was the only way to deal with this emergency. I have also been advised that your attitude on that date was not helpful, that you resisted direction on that date, and stated that you did not wish to be at the Elementary school, despite the need for your presence to deal with those emergency situations.

In addition to the events which occurred on January 31st, 1996, your personnel file indicates a number of instances of poor work performance, failure to follow work instructions, and attitude problems, including incidents on November 23, 1993; March 29, 1994; October 17, 1995; and November 7, 1995. All of these incidents have been documented and you received memoranda dealing with these issues. These incidents, coupled with the inadequate work performance and poor attitude which you displayed on January 31, 1996, lead to the necessity for the issuance of this suspension.

You are being suspended for two days, without pay, with these days to be taken on March 13, 1996 and March 14, 1996. It is my sincere hope that you will take some time to think about your job performance and your attitude, in order to make some positive changes. I will be monitoring progress in these and other areas relating to your work as a maintenance employee. Failure on your part to improve in these areas could result in further disciplinary action.

The events giving rise to this discipline arose on January 31, 1996. On that date, a school day, the outdoor temperature was at 0 degrees, with a significant wind chill. Due to the extremely cold temperature the previous night and early morning, coils on two of the heating units in the Pewaukee Elementary School; one in the teacher's lounge and one in a first-grade classroom, broke. The leaking pipes were discovered at about 7:00 a.m. by elementary school head custodian Cheryl Christian. Christian, and custodial co-worker Candy Miller immediately put barrels under the leaking water and began cleaning up. Christian also radioed Haberman regarding the emergency shortly after 7:00 a.m., and requested his assistance. Upon receipt of the message, Haberman put away the tools he was working with, got his boots, and came to Pewaukee School.

The parties offer significantly differing stories as to what occurred following Haberman's arrival at Pewaukee School. The District relied upon the testimony of Norman Bruce, principal of Pewaukee Elementary School, Patrick Acker and Cheryl Christian. Norman Bruce arrived in the building at approximately 7:15 a.m. It was his testimony that upon his arrival he witnessed water coming from the ceiling of both rooms. He talked with Haberman, and according to Bruce, Haberman indicated that the building had no shut-offs. Bruce testified that he never saw Haberman look for a shut-off. According to Bruce, Haberman indicated that the only solution to their problem was to shut off the boiler and close

the school. Given the timing, it was Mr. Bruce's testimony that it was not possible to call off school because it was a very cold day, with many elementary school children on their way into the building or on bus stops, and no way to return them to their homes. Closing school would have been impractical and expensive.

According to Mr. Bruce, Haberman did not join the effort to look for shut-off valves, but rather was in the hallway talking to teachers, telling them that there were no shut-offs. Haberman, Bruce and Christian went into the basement where Bruce suggested that the circulating pumps be shut down in order to slow the flow of water. That was done. Bruce testified that Mr. Haberman called Cox Plumbing, an outside contractor, to get someone who could come and attend to the problem. According to Bruce, Haberman left the building shortly after 9:00 a.m., following the arrival of the plumbers. At that time, Haberman did not offer to help or to participate in the clean up that was going on.

The plumber informed school officials that the coils had leaked and burst. Following repair, the plumber further indicated that the air had to be bled from the system. Bruce testified that he called Haberman back to bleed the system, and in response to his call, Haberman indicated, "I am not a custodian." Haberman attempted to bleed the system, but rather bled the pressure gauge. His failure to bleed the system delayed the recirculation of hot air. Bruce testified that he then directed Haberman to participate in helping others move furniture. This was approximately 9:30 to 10:00 a.m. and Haberman helped move furniture following this direction.

That afternoon, Bruce testified that he saw Christian attempting to perform electrical work in the ceiling. He testified that the ceiling was wet and that she was uncomfortable doing the work. He asked Christian whether she had called Haberman. She replied that she had, but he was too busy. Following this exchange, Bruce called Superintendent Lee Wille and advised Wille that Haberman was needed at the elementary school immediately. Wille subsequently called Haberman, who was in the midst of another project, and directed him to the elementary school. According to Bruce, Haberman stormed into the office area to perform the electrical work which he had been ordered to do. He performed the work, evidencing an attitude that made clear his resentment at having been so directed.

It was Bruce's testimony that Haberman did little or nothing to contribute to the resolution of the crisis. According to Bruce, Haberman did that which he was ordered to do, and manifested a poor attitude.

Cheryl Christian testified that when Haberman initially entered Pewaukee Elementary School in the early morning, he advised her and Bruce that there was no shut-off, and further indicated that school should be closed. It was her testimony that Haberman attempted to stop

the flow of water by forcing plugs into the leaking pipe. It was her testimony that Haberman never volunteered to clean up any of the mess. Christian testified that she observed Haberman leaving the building following the arrival of the plumber.

Christian testified that she was disconnecting a ceiling fixture on the afternoon of the 31st. She called Haberman for assistance, indicating to him that she had a light that needed attention. It was her testimony that there was water dripping near the fixture. She testified that he advised her that he was in the middle of something else. She responded "okay", and indicated that she really didn't know how to do this procedure and asked him to walk her through it. He did so, and she indicated a willingness to try. It was after that exchange that Norm Bruce appeared, and asked her whether or not she had called Haberman. Christian, who does not like working with electricity and was concerned over the wet conditions, indicated that she had called Haberman, but that he was in the middle of something and did not have time. Bruce then called Superintendent Wille, and Haberman was directed to assist in this project.

John Tall, a custodian, overheard radio communication regarding this crisis, and came to Pewaukee School to assist. Tall went to the two affected rooms to lend assistance. He observed people working in the classroom. He thereafter went to the teacher's lounge and started removing ceiling tiles in search of the shut-off valves. He found the valves and turned them off. Mr. Tall prepared a written summary of his observations relative to January 31st, but did not testify at the arbitration hearing.

A plumber found the shut off valve for the coil in the first grade room. The valve was four to five feet from the coil and screened by a piece of sheet metal. Preventative maintenance service records indicate that Haberman had serviced the system heating coils, at least in April, 1995.

Patrick Acker was on vacation on January 31. Upon his return, he became aware that there was concern over Haberman's performance on that day. Acker conducted an investigation, which consisted of talking with Haberman, Bruce, Christian and John Tall. Based upon this investigation, he concluded that Haberman's performance had been inappropriate and issued the disciplinary memo set forth above, which summarizes his conclusions and observations relative to Haberman.

The Union takes issue with many of the critical facts. The Union relies upon the testimony of Rick Lane, a former district employe, who at the time was a high school custodian, and Haberman. In an effort to stem the flow of water, Haberman called Lane and asked him to bring plugs to the Pewaukee School. Lane did so, and worked with Haberman, as Haberman attempted to force those plugs into the hole from which the water was leaking. It was Lane's testimony that the men realized they needed to find an isolation valve, and Lane

testified that he witnessed Haberman looking for a shut-off valve in the first grade classroom. According to Lane, Haberman traced the pipe backward in his search. Lane testified that he heard Christian say that she did not know if a shut-off valve existed or if it did, where it was. Lane further testified that Tall indicated that he did not think there was a shut-off valve. It was Lane's testimony that a head custodian was expected to be able to handle an emergency such as a broken coil.

The Union called Randall Graborczyk, an air conditioning mechanic, as an expert witness. Graborczyk testified that the shut-off in the teacher's classroom was located in what he characterized to be a "ridiculous location". The shut-off should never have been concealed behind sheet metal. According to Graborczyk, the act of shutting off the circulating pump should have been a last resort, in that it could lead to the freezing of other units.

David Haberman testified. It was his testimony that upon receipt of the phone call on the morning of January 31st, he grabbed his tools and boots and ran over to help. His first stop was in the teacher's lounge, where he asked Christian where the shut-offs were. It was his testimony that she replied "there are no shut-offs". His second stop was the classroom, where he indicated that he shut the fan off. He searched the heating unit for a shut-off and could not find one. It was his testimony that Christian indicated that she did not know whether there was a shut-off. He saw water pouring out of the end cap and determined to try and plug it. Haberman testified that he thereafter went to the basement and began a search for a shut-off which lasted approximately 15 minutes. He testified that he then went back upstairs to the classroom where he called Rick Lane in search of stoppers. He also called Cox Plumbing for assistance. When Lane arrived, Haberman and Lane went downstairs, where they were unable to find shut-offs.

It was only following this sequence of events that Haberman met Bruce. According to Haberman, he indicated that "if we can't isolate this problem, we may have to shut school down". Haberman testifies that he never told Bruce there were no shut-offs, but rather that he could not find the shut-offs.

It was Haberman's testimony that Christian, and not Bruce, asked him to bleed the system. Haberman testified that neither he, nor Christian, knew how to bleed the system. Haberman testified that he helped move furniture without being so directed. It was Haberman's testimony that he did not leave Pewaukee School and subsequently come back, but rather, that he remained and continued to work and did not leave until approximately 9:30 a.m. No one suggested that he stay and clean up. It was Haberman's testimony that he never told Bruce there was no way to remedy the building leak.

Haberman's account of the conversation with Christian relative to the light fixture essentially parallels Christian's. The one significant discrepancy in their recollections is that Haberman testified there was no water running near the fixture. It was his testimony that he was in the middle of installing a water fountain in the High School. In order to clean up old and new water fountains, tools, etc., and to clean up the area involved significant disruption and time. Nevertheless, he did as directed, returned to Pewaukee Elementary School, and performed the electrical work without comment to anyone.

Haberman denies that he stood around talking to teachers. He further denies telling Bruce that he was not a custodian in response to a Bruce directive.

During the winter of 1993, a pipe broke in another wing of the Pewaukee Elementary School. Acker and Haberman worked to identify and repair the leak. They had trouble isolating the leak and had to tear bookshelves out to get to a broken pipe. They subsequently found a shut-off located across the hall, in an unlikely place. Both men knew some shut-off valves existed and that at least some were in unlikely places. The men had a conversation in December, 1995, and talked about creating a valve chart. Acker committed to creating such a chart, but that did not occur prior to the incident.

ISSUE

The parties stipulated on a non-precedential basis that the standard against which this discipline is to be measured is just cause.

The Employer believes the issue to be:

Did the District have cause to impose a two-day unpaid disciplinary suspension upon grievant David Haberman on March 12, 1996, as a result of his poor work performance, poor attitude, and failure to follow direction during an emergency which occurred at the Pewaukee Elementary School on January 31, 1996?

The Union believes the issue to be:

Was the grievant, David Haberman, disciplined for just cause by way of the March 12, 1996 suspension, and if not, what should the remedy be?

POSITIONS OF THE PARTIES

The Employer, pointing to the testimony of its witnesses, characterizes Mr. Haberman's conduct as unacceptable, and argues that Haberman was aware of the probable

consequences of his conduct. The Employer argues that Haberman's job requirements and skills establish that he should have been able to locate the shut-off valves and bleed the heating system, and that he should have handled the whole situation without an attitude. The Employer points to Haberman's job application, to his training, and notes that a part of his regular job duties require him to service the very units that leaked on a regular basis.

The Employer contends that Haberman failed to locate the shut-off valves and bleed the heating system, and throughout the incident exhibited an unacceptable attitude. His inability to locate the shut-off valves, which were no more than three feet from the respective heating units, allowed water to leak into the building for an hour and forty-five minutes longer than necessary, causing considerable additional damage. The Employer notes that the individuals who found the shut-offs did so after spending a relatively short period of time in the search.

The Employer contends that Haberman aggravated the situation in a variety of ways. The Employer claims that Haberman's suggestion that the only solution was to shut down the boiler and to close the elementary school presented both a financial and logistical nightmare. Second, Haberman did nothing to help his supervisors and other staff to locate the shut-off valves. Rather, argues the Employer, he spent the morning either complaining to teachers or attempting to stick corks in the leaking heating system. The Employer contends that he demonstrated an attitude of an unwillingness to assist in handling this emergency. The Employer contends that Haberman had to be called back to the scene of the emergency to help. He demonstrated a poor attitude, which was characterized by his "I'm not a custodian" remark to Bruce.

The Employer emphasizes that Haberman did not perform any clean-up work until he was directed to do so, even though all other employees did so willingly and without direction. The Employer points to the afternoon of January 31. Haberman's presence was requested by Christian, the head custodian, wherein he promptly informed her that he was too busy to help her remove electrical fixtures, even though it involved a hazardous situation with water in the vicinity, and required electrical skill which she did not possess. The Employer contends that Haberman had to be ordered back to the building by the Superintendent. Upon his return, he gave his co-workers the silent treatment demonstrating extreme agitation.

The Employer cites Haberman's prior disciplinary record and concludes that Haberman knew, or should have known, that the probable consequence of his poor work performance, failure to follow direction and his poor attitude would be further discipline.

It is the District's contention that it is no more than requiring that Haberman perform his job, and not exhibit an uncooperative attitude in this matter. The District further argues that it conducted a fair and objective investigation into whether Haberman engaged in the conduct, and that that investigation reveals substantial evidence that he did so.

The Union, relying upon the testimony of its witnesses, contends that the weight of evidence demonstrates that Haberman's work performance on the morning of January 31 was above reproach, and superior to that of his co-worker, Ms. Christian. The Union notes that Christian was not disciplined for her work performance, even though she could not find shut off valves, performed no more work than Haberman, and in some cases, took less initiative.

When Haberman was given direction to assist Christian, he complied forthright. The Union contends that Haberman never told Bruce that there were no shut-off valves, and that he would have to close down the school. The Union contends that Haberman had never been expected to repair heating coils and had not been trained to do these repairs. However, he was disciplined in part for his failure to repair heating coils. The Union contends that while Haberman was upset with Bruce when he came back to the elementary school to remove the light fixtures, that did not rise to the point of discipline. The Union contends that the Employer failed to conduct a proper investigation. Witness Lane was known to the Employer to be present at the scene, working with Mr. Haberman, yet he was not asked about his observations.

The Union contends that the responsibility for isolating the leak did not rest solely with Haberman. The Union points to the testimony of Graborczyk, who indicated that the shut-off valve was not in plain view. Several employes, including Lane, Tall, Bruce and Haberman frantically looked for the shut-off valve in the first grade classroom, but none were able to find it.

The Union points out that Acker could have, and should have, completed a valve chart. Following the emergency of 1993, he promised such a chart, but had failed to deliver. The Union points out that the head custodian had troubleshooting responsibility with respect to the heating system. Yet Christian was not disciplined, nor was her performance found lacking when she could not find shut-off valves nor bleed the system.

The Union contends that Haberman did look for shut-off valves, and participated in the resolution of the crisis. The Union points to the testimony of Lane, who indicated that he saw Haberman kneeling in water, frantically attempting to stop the water coming from the pipe, in contrast to Ms. Christian, who spent her time attempting to catch cascading water. The Union contends that Haberman was not responsible for repairing the damaged coil. The record evidence supports the contention that outside contractors had historically repaired broken or damaged coils. The Union contends that Haberman did not insist nor suggest that school be closed. The Union goes on to argue that Haberman and Lane's testimony indicate that Haberman made a full effort on the morning of the emergency. The Union contends that Haberman did not refuse direction from Ms. Christian. Both accounts of Christian's conversation with Haberman indicate that Christian indicated that she would try, per Haberman's instructions, to attempt to disconnect the fixture on her own.

DISCUSSION

It is my reading of the March 12, 1996 disciplinary memorandum that Mr. Haberman was disciplined for (1), being unable to isolate the leaking coil, (2), being unable to repair the leaking coil, (3), suggesting that the sole resolution to this crisis was the closing of schools, and (4), for demonstrating a poor attitude on that date.

The Union contends that Mr. Haberman did not bear sole responsibility for locating the shut-off valves. I agree with that assertion. It seems to me that all maintenance and custodial personnel were under a common-sense-driven obligation to search for shut-off valves. However, Mr. Haberman is paid for his greater mechanical skills. Additionally, it was his assignment to service the system, and he had done so for a four-year period. His responsibility is greater than Christian's in this area, and certainly surpasses that of Bruce. At a minimum, this background and his job assignment would seem sufficient to permit him to conduct an intelligent search for shut-off valves. This is particularly so under crisis circumstances. It does not appear that anyone conducted a serious search for a shut-off valve in the teacher's lounge until Mr. Tall searched. According to all accounts, it took Tall a matter of moments to locate and turn off the valve.

It does appear that several people, including Mr. Haberman, searched for the shut-off in the classroom. That shut-off was covered by a piece of sheet metal. Haberman testified that he searched on the unit. Lane testified that he witnessed Haberman trace the pipe backward. This search was abandoned. In its stead, Haberman spent time attempting to force plugs into the hole from which water leaked. While I recognize the event to have been an emergency and panic situation, I do not believe that was a constructive course of action. Grabarczyk testified shutting off the circulating pump was a last resort measure. The implication was that it was an unwise decision made by principal Bruce. All accounts indicate that Mr. Haberman was physically present when that decision was made, and his expertise should have suggested that such was an unwise course. While I believe his efforts fell short of what might reasonably have been expected from the maintenance technician, I do not believe that Haberman can be held absolutely liable for failing to find the shut-off in the classroom. By all accounts, it was located in an unlikely position.

The second basis for discipline was Haberman's failure to repair the leaking coils. There is no record support for this contention. It was the uncontradicted testimony of Lane that the District had suffered broken coils on three prior occasions. On each occasion, an outside contractor had been called upon to perform the repair. Haberman testified that he had never previously repaired coils. There is no suggestion that he was trained and/or expected to perform such work.

There is a dispute as to whether Haberman suggested that school be closed. Whether he did or did not, I do not believe that constitutes an independent basis for the imposition of discipline. Assuming, *arguendo*, that he did so, such a comment was borne of his apparent belief that there were no shut-off valves. The underlying problem is that Haberman either believed there to be no shut-off valves, or was incapable of locating those valves. As noted, I believe he should have been a far more constructive contributor in that crisis, given his position as maintenance technician, and his assignment to maintain the system for the four previous years.

The final basis of discipline is Haberman's alleged attitude during the course of January 31, 1996. I believe the weight of the evidence suggests he did have a poor attitude. I credit Bruce and Christian's testimony that Haberman spent time talking to teachers while water flowed around him. I further credit their testimony that he did not participate in the clean-up effort until so ordered. I believe that when the plumber arrived, Haberman left, believing that he had discharged whatever obligation he owed the District. His departure served to prolong the crisis. The plumber indicated the need to bleed the system. Apparently, no one knew how to do that. Had Haberman been on the scene, he could have so indicated, and been directed, averting further delay. When directed back to assist Christian in replacing a light fixture ballast, I believe Haberman reacted angrily and gave her, and whoever else was there, the silent treatment.

Standing alone, I do not believe that Haberman's attitude as manifested on January 31, 1996 would justify the imposition of time off discipline. However, that attitude does not stand alone. Mr. Haberman has been disciplined on four prior occasions relative to his attitude toward his job. I believe that during the course of a crisis an employer has a reasonable expectation that its employees will come forward and make an effort to help contain the crisis. That is particularly the case where the skills needed to address the crisis are those for which the individual was hired. Mr. Haberman was paid as a skilled maintenance technician. The troubleshooting of the HVAC system is one skilled dimension of his job that sets him apart from his colleagues. He is a journeyman electrician. His colleague was reluctant to do electrical work under circumstances which she described as involving running water. Her concern is understandable.

Haberman's marginal work performance during the crisis set the background against which to measure his attitude. On balance, he came up short in both areas. This is the fifth episode of discipline invoked in a 26-month period. All involve work performance and attitude toward the job. I do not believe that a two-day suspension is excessive in that context.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 28th day of January, 1999.

William C. Houlihan /s/

William C. Houlihan, Arbitrator