

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration of a Dispute Between

**SCHOOL DISTRICT OF SOUTH MILWAUKEE**

and

**COUNCIL #10**

Case 46

No. 59774

MA-11403

(Grievance Regarding One-day Suspension of R\_ C\_)

---

Appearances:

**Ms. Jennifer Sielaff**, Director of Personnel/Administrative Services, School District of South Milwaukee, 1225 Memorial Drive, South Milwaukee, WI 53172, appearing on behalf of the District

**Mr. Troy M. Hamblin**, Executive Director, Council #10, 13805 West Burleigh Road, Brookfield, WI 53005, appearing on behalf of the Association and Grievant.

**ARBITRATION AWARD**

At the joint request of Council #10 on behalf of the South Milwaukee Paraprofessional Aides bargaining unit (Association) and of the South Milwaukee School District (District), the Wisconsin Employment Relations Commission designated the undersigned, Marshall L. Gratz, as the Arbitrator to hear and decide a dispute concerning above-noted grievance, arising under the parties' 1999-2001 Agreement (Agreement).

The grievance was heard at the South Milwaukee Community Center on April 25, 2001. The proceedings were not transcribed, but the parties authorized the Arbitrator to maintain an audio tape recording for his exclusive use in award preparation. The parties summed up orally at the conclusion of April 25 hearing, marking the close of the record.

## ISSUES

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

1. Was a one-day suspension appropriate for the incidents that occurred in the library?
2. If not, what shall the remedy be?

## PERTINENT AGREEMENT PROVISIONS

### ARTICLE II - MANAGEMENT RIGHTS

The District possesses the sole right to operate the District 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: . . . E. To suspend, demote, discharge and take other disciplinary action against employees for just cause; . . . .

### ARTICLE XIII - FAIR DISCIPLINE

The District shall utilize progressive discipline in dealing with its employees, except when the alleged conduct giving rise to the disciplinary action warrants a stronger penalty. Progressive disciplinary action is defined as the following:

- A. Oral reprimand, with a statement outlining the oral reprimand in the employee's personnel file;
- B. Written reprimand;
- C. Unpaid suspensions;
- D. Discharge.

At the time disciplinary material is placed in the employee's personnel file, a copy will be provided to the employee.

## BACKGROUND

The District and Association are parties to a collective bargaining agreement covering certain aides and paraprofessional employees of the District. The Grievant, R\_\_ C\_\_, has been employed by the District as the library aide at E.W. Luther Elementary School for about four years.

It is undisputed that "the incidents that occurred in the Library" referred to in ISSUE 1, above, consisted of Grievant's interactions in the Luther library on January 10 or 11, 2001, with the District's Director of Information Technology, Charles Hillman, and with James Willis, a technology vendor for the District.

By memo dated January 26, 2001, to the Grievant and the Association, District Director of Personnel Jennifer Sielaff directed Grievant as follows:

R\_\_, I have scheduled a meeting on Tuesday, January 30, 2001, at 1:00 pm., to discuss concerns that the district has regarding your work performance. The meeting will take place in my offices in the administrative offices at 1225 Memorial Drive. I have also invited [Council #10 Executive Director] Troy Hamblin and [Luther Principal] Fred Kelroy to be present.

You are excused from your scheduled hours at Luther for the duration of the meeting. If you have any concerns regarding staffing, please discuss them with Mr. Kelroy before the meeting

At that meeting, Sielaff identified various incidents that were of concern to the District regarding Grievant's work performance, including Grievant's interactions with Hillman and Willis January 10 or 11, but also including other incidents. In doing so, Sielaff referred to and read from a two page typed letter, copies of which Sielaff ultimately presented to Grievant and had her sign to acknowledge receipt. The letter was dated January 30, 2001, addressed to Grievant and constituted written notice of the one-day suspension at issue in this case. It read as follows:

This letter will serve as official notice of a one day suspension regarding unacceptable conduct that you had demonstrated at school. Specifically, you have acted inappropriately by yelling at students, fellow staff members, administrators and outside vendors.

You have been observed yelling at students to be quiet and to stop asking so many questions. On one occasion, when approached by a staff member and asked if you needed any help, you replied that you could not "do library" with so many questions. On another occasion, you were observed yelling to students and staff that you could not do work with such a mess (meaning technology construction). You did not offer an apology to students or staff members at either time. This behavior is unacceptable. Students within our district are encouraged to ask questions and you should not discourage this process or refuse to answer questions. Further, the disruption of the library due to the technology construction is not the fault of students or staff members. You should act in a professional manner and not yell at students or staff.

On January 11, 2001, an owner of one of the companies the district is working with to improve technology in every school came to the library at E.W. Luther to investigate a concern you had regarding loose wiring. When he entered the library with Chuck Hillman, the district's technology director, you yelled at them that the library was a terrible mess and a danger to students. You alleged that students had been injured by the construction "mess." You then threw posters and a metal bracket off a desk onto the floor. You did not give either gentleman an opportunity to respond, even when they tried to explain that a worker would be there shortly to address your concerns. Mr. Hillman and myself also investigated your safety concern and did not find any student that has been injured due to the technology construction.

On January 15, 2001, two gentlemen asked you how things were going. You were overheard to respond "I can't stand all this shit left around—if you guys would pick up." The gentlemen were visitors to our school and should not have been addressed in this manner.

This behavior is unacceptable. You are an important resource at E.W. Luther and a focal point in the school. It is important that you act in a professional manner towards students, staff and visitors in the school. The district would like you to continue in your role as the library aide; however, further outbursts similar to those described above will lead to further discipline, up to and including termination.

Your suspension will take place on Wednesday, January 31, 2001.

Very truly yours,  
/s/ Jennifer L. Sielaff  
Jennifer L. Sielaff  
Director of Personnel/Administrative Services

Cc: Personnel File

Received by R\_\_ C\_\_ on January 30, 2001: \_\_\_\_\_

The grievance giving rise to this arbitration was filed by Hamblin on January 30, 2001. It read as follows:

The [Association] is filing a step three grievance for excessive discipline and violation of Article XIII of the collective bargaining agreement for the discipline handed out to Ms. C\_\_ on January 30, 2001.

Please let me know when the South Milwaukee Board of Education will hear the grievance.

The Board of Education heard the grievance on February 14, 2001, and voted to uphold the one-day suspension. The Board's grievance denial letter read as follows:

The School Board heard the grievance of R\_\_ C\_\_ on February 14, 2001. Ms. C based the grievance on a violation of Article XIII of the current paraprofessional aide contract. Specifically, her position was that she should not have received a one-day suspension.

The Board first heard evidence from Jennifer Sielaff, Director of Personnel/Administrative Services, regarding alleged incidents with Ms. C\_\_ and students. Ms. Sielaff stated she received this information from Mr. Kelroy and teachers at E. W. Luther Elementary School.

A teacher had observed Ms. C\_\_ yelling at students to be quiet and to stop asking so many questions. On one occasion, Ms. C\_\_ was approached by a staff member and asked if she needed any help. Ms. C\_\_ replied that she could not "do library" with so many questions. On another occasion Ms. C\_\_ was observed yelling around students and staff that she could not work with such a mess from the technology construction. Ms. C\_\_ replied at the hearing that she could not think of a time that this had happened. Ms. C\_\_ believed the first situation could have been a time when children were asking her personal questions and she asked the students to stop asking those types of questions. It was later stated that a student went to a teacher to ask a question because the student could not obtain an answer from Ms. C\_\_.

Another teacher reported that when two gentlemen asked Ms. C\_\_ how things were going, she was overheard to respond "I can't stand all this shit left around -- if you guys would pick up." Ms. C\_\_'s reply to this was that she did not believe that it happened at all and she could not find any of the construction crew that admitted to hearing this.

The Board also heard about conversations that took place in January and February 2000 regarding concerns that Mr. Fred Kelroy had with Ms. C\_\_'s interaction with staff members. This was brought to her attention at that time and meetings were held with Ms. C\_\_, Mr. Kelroy, Mr. Hamblin, and [former District Personnel Director] Mr. Mike Salkowski. Ms. C\_\_ stated that those matters had been resolved.

The Board then heard from Jim Willis, owner of Connectivity Solutions, which is a vendor for the District for the technology updates in all schools. He stated that he went to the library at Luther in response to a concern Ms. C\_\_ had with the wires on the walls. He stated that when he entered the library with Chuck Hillman, the district's technology director, Ms. C\_\_ yelled at them that the library was a terrible mess and a danger to students. Mr. Willis said that he asked Ms. C\_\_ to calm down so he could answer her, and at that time she became even more irate. Ms. C\_\_ threw posters and a metal bracket off a desk onto the floor. She then asked them to leave the library. Mr. Willis said that they then left without being able to communicate with Ms. C\_\_.

Mr. Hillman then stated that the incident happened essentially as Mr. Willis described. Mr. Hillman said he went back in the library to tell Ms. C\_\_ that a worker would be in the library later that day to fix the wires, but he did not know if she heard him. Mr. Hillman expressed frustration that he tried to answer Ms. C\_\_'s concerns but that she would not listen.

At the hearing, Ms. C\_\_ replied that Mr. Willis and Mr. Hillman did come to the library in response to her concerns. She said that she had been concerned about the status of the library during the construction process due to the mess that the workers left in the library. Ms. C\_\_ also said that she was concerned that the wires on the walls would fall and injure children or library property such as computers. When Mr. Willis and Mr. Hillman entered the library, Ms. C\_\_ said that she did not immediately yell, but she did admit to raising her voice at some time. She also stated that she did not throw the posters on the ground, but when she swept her arm gesturing at the library, the posters fell to the ground. When asked if this type of incident could occur again, Ms. C\_\_ said she knew it was inappropriate but, while not an excuse, she had been under a lot of stress and could not foresee those factors coming into place at the same time again. Therefore, Ms. C\_\_ said that this would not happen again.

Based on the evidence presented at the hearing, the Board voted to uphold the one-day suspension.

Following the Association's receipt of the Board's grievance response, Hamblin sent the Board a written notice that the Association intended to proceed to arbitration. Hamblin's letter read, in part, as follows:

I received your letter dated February 19, 2001 regarding the Board's decision to uphold the one-day suspension of Ms. C\_\_. In your letter you mention a number of incidents. However, Ms. Jennifer Sielaff stated at the hearing that Ms. C\_\_ was specifically being suspended for the incident in the library, not the

other incidents listed in the letter or brought up at the hearing. This was not mentioned in your letter, and I would like to make sure it is part of the record.

The Association does not agree with the Board's determination, so we would like to proceed to arbitration. . .

The matter was thereafter submitted for arbitration as noted above. At the arbitration hearing, the District presented testimony by Hillman, Willis and Sielaff. The Association presented testimony by the Grievant and Hamblin.

It is undisputed that Grievant's personnel record was free of any prior disciplinary actions of any kind prior to the January 30, 2001 meeting. However, it is also undisputed that during the previous school year a meeting had been convened as referenced in the Board response above, to discuss communication difficulties that were being experienced between the Grievant and another District employee. After that meeting with Grievant and Hamblin concluded, the District's former Director of Personnel told Hamblin that if further difficulties of the sort discussed during the meeting were experienced in the future that the District would pursue disciplinary action against the Grievant. The District did not communicate that warning to Grievant directly, however.

It is also undisputed that, during the January 30 meeting, the Grievant did not state her recollections concerning any of the incidents referred to by Sielaff in the suspension letter. It is unclear whether Sielaff specifically offered Grievant an opportunity to do so during that meeting; Sielaff testified that she may have done so but was not sure; Hamblin testified that Sielaff did not do so. Sielaff also testified that had Grievant offered a persuasive basis for doing so, Sielaff would have modified the penalty in and wording of the January 30 letter before issuing it to Grievant. It is, however, undisputed that Sielaff at no point said anything to that effect during the meeting.

Many aspects regarding Grievant's interactions with Hillman and Willis in the library are also undisputed. The District's five buildings were all being rewired to enable better use of technology including the Internet. The project spanned some 2.5 months, with work on-going to a limited extent during the school day but to a greater extent at night. Because of its location and function, the library at Luther was significantly affected by the construction activity. On the morning in question, Grievant found that bundles of wires hanging down near the library wall from the corners of the rooms were drooping because they had come loose from the ties temporarily holding them near the ceiling prior to their insertion into external raceways. Grievant also found tables and chairs out of place and tracked with workers' footprints. Grievant reported those conditions to the school custodian and office and then did what she could to prepare the library for the first class of the morning. The school office contacted Hillman who had been meeting on other matters with Willis, and the two went to the library where they spoke with Grievant.

By all accounts, Grievant was upset about the mess left in the library by the workers and apprehensive about the wires falling down and possibly injuring, frightening or upsetting the students. The evidence establishes that during the course of their interaction, Grievant raised her voice at Mr. Hillman and Mr. Willis and ultimately told them leave the library.

Hillman and Willis described the library interactions as outlined in the Board's grievance response.

Grievant testified at the arbitration hearing that when she came to work on the morning of the interactions at issue, she found footprints on the table and books that had been knocked off the counter top and left on the floor. The Grievant testified that she cleaned up and straightened up as best she could, but noticed the wires suspended from the ceiling near the wall were drooping down. She became concerned that if the wires were to fall further they could be quite startling for the students and could potentially disrupt the entire day of some of the special education students who were scheduled to be in the library that day. She also testified that when Hillman and Willis came into the library, she pointed out the problem with the drooping wires. She stated that she did not raise her voice initially, but that she did speak in an angry tone from the beginning of the interactions. When Hillman and Willis did not share Grievant's concern that the falling of the wires could startle the students, Grievant then became angrier and did raise her voice. Grievant denied that she had thrown posters during the interactions. Rather, she explained, when she grasped one of the posters that the workers had taken down and laid on the table, a tack popped off, surprising Grievant and causing her to drop the poster, causing other posters on the table to fall behind the table.

Additional background is set forth in the positions of the parties and in the discussion, below.

### **POSITIONS OF THE PARTIES**

#### **The District**

The January 11<sup>th</sup> incident in the library warrants the one-day suspension imposed by the District in this case. Grievant acknowledges that she became angry and loud during her interactions with Hillman and Willis in the library; that the posters did wind up on the floor during the interaction; and that she ultimately told the two to leave the library. However, both Hillman and Willis credibly testified further that Grievant became loud and irate from the time Hillman and Willis entered the library; that Grievant's lack of control prevented them from effectively communicating with her and responding to her concerns; that efforts on their part to calm her down only further aggravated the Grievant to the point where she threw posters and swept a metal bracket off a desk onto the floor; and ultimately told them to leave the library. Hillman further testified that after the two left the library, Hillman returned shortly thereafter to inform Grievant that a worker would be in the library later that day to fix the wires, and that Hillman found it frustrating that Grievant was unwilling to listen to his efforts to respond to her concerns.



The incident in the library -- as described by Grievant or by the District's witnesses -- was serious enough in and of itself to "warrant a stronger penalty" than a verbal or written warning. Accordingly, the District was within its rights under Article XIII to impose that stronger penalty. Grievant's conduct was unprofessional. It involved Willis, an outside vendor whom she had not met before. The one-day suspension is warranted not only to correct Grievant's misconduct and prevent it from recurring, but also to maintain order and professionalism in the District.

The other instances of conduct on Grievant's part referred to in the District's letters and evidence did not constitute the basis for the one-day suspension in this case. Rather, they show a pattern of unprofessional conduct on Grievant's part that makes it more likely that the District witnesses' version of the library incident were more accurate than the less intense interactions described in Grievant's version of the interactions. They also show that during the previous school year, the District had met with Grievant and Hamblin and attempted in a positive way to help Grievant avoid such incidents in the future.

At the January 30<sup>th</sup> meeting, the Grievant could have offered her side of the story, but she and Hamblin, after hearing Sielaff's review of the information contained in the letter chose not to offer any information at that time. Had Grievant and the Association presented a persuasive basis for some other outcome on January 30, the letter would have been withdrawn or changed before it was issued to Grievant and placed in her file. When Grievant did take advantage of her additional opportunity to respond to the District's concerns at the Board hearing, she did not present a persuasive basis for a different disciplinary outcome. Thus, even if Grievant had responded on January 30 as she did at the Board hearing, the one-day suspension would have been appropriately imposed.

For those reasons, the grievance should be denied.

### **The Association**

The District violated Article XIII of the collective bargaining agreement which specifically calls for progressive discipline. The Grievant's disciplinary record was entirely clean prior to the issuance of the suspension at issue here. The incidents in the library did not warrant skipping two steps in the contractual discipline procedure.

On the day of the library interactions in dispute, Grievant was concerned for the welfare of the students when she noticed the wires hanging down. The ongoing construction process had caused almost daily problems for Grievant and for other staff members. On the day in question as on other occasions, Grievant was forced to clean up after the construction workers in order to put the library back into suitable condition for the students and the Grievant to use it.

In any event, the District did not conduct a fair and impartial investigation in this case. The Grievant was never asked for her side of the story at the January 30 meeting. The District had already decided to impose a one-day suspension when it met with Grievant and Hamblin on that date. The District should, instead, have met with Grievant and Hamblin, discussed the incidents of concern to the District and obtained Grievant's side of the story, and then decided whether and to what extent to discipline Grievant. Furthermore, despite the District's assurances to the contrary at the Board hearing and at the arbitration hearing, the suspension letter appears to base the suspension not only on what happened on in the library in January of 2001, but also on other incidents, as well. If the various incidents listed in the suspension letter warranted a one-day suspension, then the library incident alone would warrant a less severe disciplinary penalty.

For those reasons, the Arbitrator should declare that the one-day suspension violated Article XIII and order the District to reduce the penalty to an oral or written reprimand.

### DISCUSSION

ISSUE 1 asks whether the one-day suspension was appropriate for the incidents that occurred in the library. The initial question in that regard is whether District had just cause to discipline Grievant for the incidents that occurred in the library on January 10 or 11, and if so whether the imposition of a one-day suspension was appropriate in the circumstances.

The Arbitrator is persuaded that the District had just cause to discipline Grievant for the nature of her conduct during her interactions with Hillman and Willis in the library on January 10 or 11. By all accounts, Grievant was angry that the workers had left footprints on the library furniture for her to clean up, had left various library furniture out of place such that she had to move them, and had left wires hanging low from the ceiling near the wall. In addition to reporting the problem appropriately, however, Grievant expressed her anger inappropriately in her interactions with Hillman and Willis. While it is understandable that Grievant would be frustrated by the conditions that she found in the library that morning, that frustration does not excuse the unprofessional manner in which she interacted with Hillman and Willis, whether Grievant's or the District witnesses' versions of the interactions is credited.

The Arbitrator is also persuaded, however, that the District's imposition of a one-day suspension was not appropriate in this case. In Article XIII, the parties have agreed that the District "shall utilize progressive discipline in dealing with its employees except when the alleged conduct giving rise to the disciplinary action warrants a stronger penalty." Because the Grievant had no prior record of discipline, utilization of progressive discipline in this case would have been defined by Article XIII as an "oral reprimand, with a statement outline the oral reprimand in the employee's personnel file." The District would ordinarily be entitled to a reasonable degree of deference to its judgments as to whether the misconduct giving rise to disciplinary action "warrants a stronger penalty" than that otherwise prescribed by the order progressive disciplinary penalties listed in Article XIII. However, in this case, the District's disciplinary action against the Grievant is seriously procedurally flawed.

While the District has asserted both at the Board hearing and at the arbitration hearing that it was basing the one-day suspension only on the January 10 or 11 incidents in the library, both the District's letter of suspension in this case and the Board's letter denying the grievance strongly indicate that the Board was also basing its action on the other incidents referenced in those documents. As the Association argues, if a one-day suspension was warranted by the various misconduct referenced in the Board's suspension letter, it is reasonable to conclude that some lesser penalty would be warranted by only the library interactions with Hillman and Willis referred to in that letter. Salkowski's earlier warning to Hamblin about possible discipline in the event of future misconduct on Grievant's part has not been shown to have been communicated to the Grievant by the District, or to have been memorialized in her personnel file. Accordingly, that warning did not constitute an oral reprimand or any other form of discipline within the meaning of Article XIII.

The District's judgment that a stronger penalty is warranted in the instant circumstances is also undercut by the fact that the District had clearly made up its mind regarding the penalty before it gave the Grievant an opportunity to respond to the District's concerns about her conduct. Sielaff may have intended the letter she was reading from at the January 30 meeting to be subject to withdrawal or change, but it is undisputed that she never told that to Grievant or Hamblin. Nor do the contents of that letter appear in any way to be intended to be a draft subject to modification before issuance. The fact that the Board of Education heard and considered Grievant's responses to the suspension is not a persuasive basis on which to disregard the fact that the District had made up its mind regarding the penalty to be imposed before giving Grievant an opportunity to be heard in the matter.

For those reasons, the Arbitrator concludes that the one-day suspension imposed in this case was not appropriate and did violate Article XIII. By way of remedy, the Arbitrator has ordered the District to reduce the penalty to the default penalty as defined by Article XIII for an employee with no record of prior discipline, to wit, an "oral reprimand, with a statement outlining the oral reprimand in the employee's personnel file." The Arbitrator has also ordered that the conduct referred to in the statement outlining the oral reprimand in the Grievant's personnel file be limited to Grievant's interactions with Hillman and Willis in the library on January 10 or 11, 2001.

### **DECISION AND AWARD**

For the foregoing reasons and based on the record as a whole, it is the decision and award of the Arbitrator on the issues submitted that:

1. The one-day suspension was not appropriate for the incidents that occurred in the library.
2. By way of remedy for the violation noted in 1, above, the District, its officers and agents, shall immediately reduce the one-day suspension of Grievant imposed by the District by letter of January 30, 2001, to an oral reprimand by

a. removing the January 30, 2001 suspension letter and all other records of the one-day suspension imposed by that letter from Grievant's personnel file and record;

b. replacing the suspension letter with a statement outlining an oral reprimand only for Grievant's interactions in the library with Hillman and Willis on January 10 or 11, 2001, and providing a copy of that statement to Grievant and the Association; and

c. making Grievant whole for any wages and benefits she lost by reason of the one-day suspension imposed in this case.

3. The Arbitrator retains jurisdiction for at least 60 days to resolve, at the request of either party, any dispute that may arise regarding the meaning and application of the remedy ordered above.

Dated at Shorewood, Wisconsin, this 23<sup>rd</sup> day of July, 2001.

Marshall L. Gratz /s/

---

Marshall L. Gratz, Arbitrator