

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ITHACA EDUCATION ASSOCIATION**

and

**ITHACA SCHOOL DISTRICT**

Case 19  
No. 60147  
MA-11536

*(Kathy Harris Grievance)*

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Appearances:

**Mr. Marvin Shipley**, Executive Director, South West Education Association, appearing on behalf of the Association.

**Ms. Eileen Brownlee**, Attorney, appearing on behalf of the District.

**ARBITRATION AWARD**

The above-captioned parties, hereinafter referred to as the Association and the District, respectively, were parties to a collective bargaining agreement which provided for final and binding arbitration of grievances. Pursuant to a request for arbitration, the Wisconsin Employment Relations Commission appointed the undersigned to decide a grievance. A hearing, which was transcribed, was held on September 18, 2001 in Richland Center, Wisconsin. Afterwards, the parties filed briefs and reply briefs, whereupon the record was closed on November 8, 2001. Based on the entire record, the undersigned issues the following Award.

**ISSUE**

The parties stipulated to the following issue:

Did the Ithaca Board of Education violate or misinterpret Article V of the Master Agreement between the Ithaca Education Association and Ithaca Board of Education when it failed to remove the memos of April 3 and 18, 2001, from Principal Flaherty to the grievant? If so, what is the remedy?

**PERTINENT CONTRACT PROVISIONS**

The parties' 1999-2001 collective bargaining agreement contained the following pertinent provisions:

**ARTICLE IV – JUST CAUSE CLAUSE**

No teacher shall be nonrenewed, terminated, or suspended with loss of pay without just cause.

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**ARTICLE V – PERSONAL FILE OF TEACHER**

- A. A teacher shall have the right upon request to review the contents of his/her personnel file in the presence of the Superintendent and to receive one (1) copy at district expense of any document contained therein. A teacher may be accompanied by a local association member at this time. Once every two (2) years, a teacher shall have the right to indicate those documents and/or other materials in his/her file which he/she believes to be obsolete or otherwise inappropriate to retain. Said documents shall be reviewed by the Superintendent and if, in fact, the Superintendent agrees that they are obsolete or otherwise inappropriate to retain, they shall be destroyed.
  
- B. No material derogatory to a teacher's conduct, service, character or personality shall be placed in his/her personal file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his/her signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his/her answer shall be reviewed by the Superintendent, or his/her designee, and attached to the file copy.

- C. It is understood that the central office of the school district shall protect the confidentiality of personal references, academic credentials, and other similar documents received prior to the teacher's initial employment; but it agrees that it will not establish any separate personal file which is not available for the teacher's inspection.

### **BACKGROUND**

The District operates a public school system in Richland Center, Wisconsin. The Association is the exclusive collective bargaining representative for the District's certified teaching personnel. Kathy Harris is the District's librarian and is a member of that bargaining unit.

In 1999, District administrators decided to automate the school library. This effort came to be known as the library automation project. On October 12, 1999, Lynn Koresh, the District's technology coordinator, met with Harris and discussed getting the project started. The first phase of the project required "weeding" of library books so that a shelf list accurately reflected the books on library shelves at the time of the automation. It was envisioned that after the shelf list was done, it would be sent to a company that would use it to prepare the materials needed for the automation (namely, software and bar code labels for the books). One of the items that was discussed at the October 12 meeting was the timetable for Harris to complete the shelf list. The timetable that was discussed was Easter, 2000. Following this meeting, Koresh prepared a document summarizing the meeting which indicated, in pertinent part, that the "goal [was] to send shelf list by Easter [2000]."

On October 25, 1999, Koresh gave a presentation on the library automation project to the School Board. Afterwards, the Board approved it and directed that the project proceed. As part of this approval, the Board granted Harris ten additional paid workdays to weed library books during the 1999-2000 school year. It also granted Harris twenty additional paid workdays to label the books during the summer of 2000.

Following the Board meeting, Koresh told Harris that the Board had approved the library automation project. When she told Harris this, Koresh offered to obtain help for Harris for the weeding phase above and beyond what the Board had approved, but Harris responded that she did not need any additional help.

In December, 1999, Koresh asked Harris how the weeding of the library books was proceeding. Harris responded that she had not yet started weeding. Koresh again offered to get Harris some additional help for the weeding phase, but Harris again refused the offer.

On April 11, 2000, Koresh asked Harris again how the weeding of the library books was proceeding. Harris responded that the weeding had been started but was not completed, and would not be completed by Easter. Harris then asked Koresh for two additional paid days for weeding (beyond the ten paid days already approved by the Board), because she had already used nine of the ten days.

Koresh subsequently took Harris' request for additional paid time for the weeding process back to the Board for their consideration. The Board denied the request for additional paid time, but decided that some of the twenty days allocated for labeling could instead be used for weeding.

On May 1, 2000, Koresh asked Harris again how the weeding of the library books was proceeding. Harris responded that the weeding was not yet completed. Koresh suggested to Harris that the portion of the shelf list that was completed be sent in (that, in essence, a partial list be sent), but Harris rejected the idea.

Harris completed the weeding in late May, 2000. When the shelf list was completed, Koresh packed it up herself and mailed it on May 26 to the Company that was going to make the book labels.

The District received the book labels from the Company that made them (Sagebrush) in late July, 2000.

The next phase of the library automation project began in August, 2000. That phase involved placing labels on books. Many of the District's library books were labeled that month by Harris, the library aide and volunteers from the community. Not all of the library books were labeled though. About 110 books could not be bar coded because the labels which were supplied by Sagebrush were incorrect.

In September, 2000, Harris and the library aide entered students' names on a patron list.

In October, 2000, students began using the new automated check-out system in the library.

Over the next several months, Harris tried several times to get the correct labels from Sagebrush for the 110 books that still needed labels. She was not successful in doing so. In March, 2001, Harris told Koresh that about 110 books still needed labels. Koresh subsequently contacted Sagebrush about the missing labels and resolved the problem. Sagebrush sent the correct labels for those books to the District in mid-April, 2001.

In early April, 2001, Koresh told Principal Rick Flaherty that not all the books in the library were labeled and bar coded. Flaherty then sent several memos to Harris regarding the matter. Two of his memos are the subject of the instant grievance.

All of the dates which follow occurred in 2001.

### FACTS

On April 3, Flaherty sent Harris the following memo:

To: Kathy Harris

From: Richard Flaherty

Date: April 3, 2001

Re: Library Automation

CC: Lynn Koresh  
Personnel File

I have been made aware of several issues dealing with the library automation of which I am very concerned. First, it has come to my attention that although the library was to be fully automated and all books bar coded by the beginning of the school year, this is indeed not the case. To my understanding there are approximately 110 books in the library, that do not have bar codes. Further, it is my understanding that we were sent the wrong bar codes for the above stated books last summer. According to Tami Meyer with Sagebrush, this was a mistake on her companies' part, and to rectify this mistake all we needed was a PO sent to the company to receive the correct labels at no charge. The fact that this was not dealt with until March of 2001 is unacceptable.

Secondly, I am concerned that not all books in the library are not being checked out electronically. It is obvious to me that books without bar codes cannot be checked out in this way, but all other books can and should be checked out in this way. Lastly, at this time, I am concerned that all students K-12 have not been properly instructed in the use of *Athena*. I would like you to share with me the times and dates that you have in-serviced the students on the use of *Athena*. I would like you to schedule an appointment with Mrs. Koresh and myself to discuss these issues. I would also like you to respond to this memo in writing so that I can attach your response to this memo.

Two days later (April 5), Flaherty called Harris into his office for a meeting concerning the library automation project. In this meeting, Harris told Flaherty that although she had not yet done so, she would respond in writing to Flaherty's April 3 memo. The two then discussed a timetable for that to occur. Flaherty told Harris that he wanted to have the matter wrapped up by spring break, which was to begin on April 11. Flaherty also told Harris to set up a second meeting and to have her written response to his April 3 memo done by that time. Flaherty meant the foregoing to be an order, albeit one given in courteous language, that Harris was to schedule the next meeting before spring break. Harris did not interpret the foregoing as an order, but as a suggestion (that she was to schedule the second meeting before spring break).

On Friday, April 6, Harris went to Flaherty's office to try to schedule the follow-up meeting, but Flaherty was not there at the time. Harris did not leave him any kind of message about scheduling a meeting.

On Monday, April 9, Harris was ill and did not work.

On Tuesday, April 10, Harris returned to work. She did not attempt to contact Flaherty that day to arrange the follow-up meeting.

Spring break began April 11 and ran through April 16. School resumed on April 17.

On April 18, Flaherty scheduled a meeting with Harris for the following day. He also sent Harris the following memo:

To: Kathy Harris

From: Richard Flaherty

Date: April 18, 2001

Re: Library Automation

CC: Lynn Koresh  
Personnel File

I sent you a memo on April 3, 2001, which addressed three concerns I have with the library program. In that memo, I directed you to respond in writing as well as scheduling a meeting time to discuss the areas of concern. Further, on April 5, 2001 I gave you a verbal directive to schedule that meeting before spring recess Tuesday, April 10, 2001. You did not respond to the memo in

writing, or by scheduling a meeting. This type of insubordination cannot be overlooked. I have scheduled a meeting for Thursday, April 19, 2001 at 12:45 p.m. Bring your written response to the original memo to that meeting. You should also bring union representation to the meeting.

I have provided two copies of this memo. Please sign one and return to me immediately so it may be placed in your personal file.

Signature

Date

No material derogatory to a teacher's conduct, service, character or personality shall be placed in his/her personal file unless the teacher has had an opportunity to review the material. The teacher shall acknowledge that he/she has had the opportunity to review such material by affixing his/her signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to such material and his/her answer shall be reviewed by the Superintendent, or his/her designee, and attached to the file copy.

The meeting referenced above occurred as scheduled on April 19. Four people attended this meeting: Harris, Flaherty, Koresh and Association Representative Marv Shipley. At that meeting, Harris gave Flaherty her written responses to Flaherty's memos of April 3 and 18. Harris' written response to the April 3 memo was six handwritten pages and her written response to the April 18 memo was two handwritten pages. Neither response is reproduced here. In her responses, Harris indicated she was shocked with what Flaherty had written and took umbrage with same, and argued there were extenuating circumstances.

The next day, April 19, Flaherty sent Harris the following memo:

To: Kathy Harris

From: Rick Flaherty, Principal

Date: April 19, 2001

CC: Marv Shipley  
Lynn Koresh

Re: Conference Follow-up

This memo is to be a follow-up to the conference we had today attended by Mr. Shipley, Mrs. Koresh, you, and me.

On April 3, 2001 I sent you a memo that raised three concerns about your job performance, requested that you respond to the issues raised in writing, and asked that you schedule a meeting with me to discuss the issues. On April 5, 2001 I came to you and asked that you make the appointment with me before we left for spring break at the end of the day on April 10, 2001. You neither responded in writing nor made an appointment by the designated time.

On Wednesday, April 18, 2001, I made an appointment with you for today as you had failed to make an appointment. Today you gave me the written response that I had requested on April 3<sup>rd</sup>. I have attached your memo to a copy of my original memo, and will ask that you sign it so I may place it in your file. You need to know that I appreciate your responses to my concerns, but it would have been much better had the responses come in a more timely manner, and had you scheduled the meeting as requested.

I am concerned with your failure to make an appointment within the deadline period that I had established. I repeat that "This type of insubordination can not be overlooked," and have placed the signed copy of my April 18, 2001 memo in your file.

In our meeting today, Mr. Shipley requested that none of this material be placed in your personal file.

The only argument that could possibly be made that could dissuade me from placing the materials in the file would be that you did not understand that I wanted you to respond in writing by a certain time, and that I wanted you to make an appointment by a certain time. It is clear from your own memos that you knew that I wanted things done by a certain time, but that you decided to apply your own deadline. This is unacceptable. It is clear that when a supervisor directs that things be done and uses courteous language and demeanor that the courtesy does not diminish the employee's responsibility to perform the required tasks.

I will be placing the materials connected with both my memo of April 3<sup>rd</sup> and my memo of April 18<sup>th</sup> in your personal file.

Signature

Date

Harris then filed the instant grievance. The grievance alleged that Flaherty's memos of April 3 and 18 should be removed from her personal file. The District refused to remove them. The grievance was processed through the contractual grievance procedure and appealed to arbitration.

### **POSITIONS OF THE PARTIES**

#### **Association**

The Association contends that the memos which Principal Flaherty wrote to Harris on April 3, 18 and 19 were inaccurate and erroneous. Building on that premise, the Association asserts they should not have been placed in Harris' personal file. As the Association sees it, it was arbitrary and capricious not to remove them. The Association believes that the District violated the collective bargaining agreement when it failed to remove the aforementioned memos from Harris' file. It elaborates on this contention as follows.

The Association avers at the outset that since Principal Flaherty placed three memos in Harris' personal file (i.e. his memos of April 3, 18 and 19), he was obligated to ensure that the memos were accurate. In the Association's view, that was not the case. To support this premise, the Association notes that while the memos requested information from Harris, Flaherty then went on to state his view of the facts. According to the Association, some of the "facts" contained in the memos are not "facts", but instead are Flaherty's opinions. The Association believes this shows that the questions which Flaherty posed in the memos were only rhetorical, and were therefore not meant to actually elicit facts from Harris because he (Flaherty) had already decided what the facts were that he wanted to hear. Additionally, the Association characterizes the memos (collectively) as accusatory and condemnatory in tone, and contained innuendoes which were meant to chastise Harris. As the Association sees it, this establishes that Flaherty's memos were inaccurate, erroneous and "did not represent the truth or reality." The Association maintains that erroneous memos should not remain in Harris' personal file.

Next, the Association argues that Harris was not insubordinate in her actions. For background purposes, the Association notes that insubordinate conduct generally involves the following: 1) refusal to obey direct and lawful orders or 2) demonstrating contempt or serious disrespect to supervisors in the conduct of their official duties. The Association contends neither occurred here. With regard to the first category, the Association maintains that Flaherty never gave Harris a direct order to establish a meeting date on or before a given timeline. To support this premise, the Association calls attention to the fact that Flaherty wrote in his April 3 memo: "I would like you to schedule an appointment with Ms. Koresh and myself to discuss these issues." According to the Association, the word "like" does not constitute a direct order. Rather, it was a request for Harris to set up a meeting with him.

Next, the Association argues that even though Flaherty did not give Harris a direct order, she nonetheless attempted to comply with his wishes. To support this contention, it notes that Harris attempted to schedule a meeting with Flaherty on April 6, but he (Flaherty) was not available at the time. As the Association sees it, this establishes that Harris did not willfully ignore Flaherty's wishes. Instead, it shows that Harris attempted to comply with Flaherty's request that she set up a meeting, but she was unable to do so because of the very restrictive time available before spring break began. Turning now to the second category of insubordination (i.e contempt or disrespect to supervisors), the Association maintains there is no record evidence of contempt, disrespect or insulting behavior by Harris to Principal Flaherty. To support this premise, it avers that Harris' responses to Flaherty's memos of April 3 and 18 do not contain any offensive or disrespectful language. The Association therefore believes that the charge of insubordination against Harris should not pass muster.

Aside from the arguments just noted, the Association also addresses the following arguments which, in their view, are raised by the District. First, the Association reads the District's initial brief to raise a procedural objection to the instant grievance. The Association avers that the District did not raise any procedural arbitrability questions when the grievance was being processed. It cites *Elkouri* for the proposition that when an employer does not raise a procedural arbitrability question until the hearing, that claim is usually not addressed by the Arbitrator. The Association asks the Arbitrator to do that here. Second, it contends that the District's attempt to paint Harris as uncooperative because she did not want help weeding should be unavailing. In this regard, it calls attention to the fact that when a fellow teacher became seriously ill last year, Harris voluntarily assumed some of his extra-curricular activities.

The Association asks that the Arbitrator sustain the grievance and issue whatever remedy he deems necessary to make the grievant whole. As the Association sees it, such an order should include the following components: 1) removal of Flaherty's April 3, 18 and 19 memos from Harris' personal file; 2) removal of all material which relates to those memos; and 3) a written apology from Flaherty and Koresh to Harris.

### **District**

The District contends it was entitled to place Flaherty's memos to Harris of April 3 and 18 in Harris' personal file. It contends it did not violate Article V of the collective bargaining agreement when it refused to remove those memos from her file. It elaborates on this contention as follows.

The District begins its analysis by reviewing the contract language which is alleged to have been violated, namely Article V. For background purposes, the District notes that that article governs how items are placed in an employee's personal file, and under what

circumstances they may be removed. As the District sees it, just two sections of that article are pertinent here – Sections A and B. The District interprets Section A to give teachers the right to review their personal file and, once every two years, to seek the removal of obsolete or inappropriate material. The District interprets Section B to give teachers the right to file a written response to that material. Before applying this language to the instant facts, the District notes, for background purposes, that the Association does not challenge the placement of either memo in Harris’ personal file. Instead, the Association challenges the District’s failure to remove the letters. The District avers that Harris never made a request to review her personal file or otherwise invoke the procedure described in Article V, Section A. Rather, she replied in writing to the memos, and as part of her replies, requested that Flaherty’s memos be removed from her file. The District avers that at no time did Harris avail herself of the procedure specified in Article V for requesting removal of documents from a personal file. That being so, the District maintains that Harris did not attempt to have either memo removed via the procedure specified in Article V, Sections A and B. According to the District, what the Association is essentially trying to do here is get the Arbitrator to add a third option to the collective bargaining agreement whereby teachers could seek removal of material from their personal file that they find offensive. That option, if added, would allow teachers to seek removal of material from their personal file directly via the grievance and arbitration procedure. Citing language from the contractual grievance and arbitration procedure concerning the authority of the Arbitrator, the District contends that the Arbitrator should decline to do that. The District asks the Arbitrator to enforce the plain meaning of Article V and not to rewrite it or add something to it.

Next, the District turns its attention to the April 3 and 18 memos in question. With regard to the April 3 memo, the District avers that in that memo, Flaherty identified three areas of concern: 1) whether all of the library books had been properly bar-coded, and if not, why it had taken until March to do this; 2) whether all students had been instructed in the use of the library software; and 3) whether the electronic check-out system was being consistently used. The District interprets this memo to direct Harris to supply Flaherty with answers and/or information about these concerns, and to direct Harris to set up a meeting wherein the matter could be discussed further. According to the District, there was nothing unreasonable about Flaherty’s request for answers and/or information. The District notes that after spring break came and went, and Harris had still not responded, Flaherty sent her a follow-up memo (the April 18 memo). The District points out that in that memo, Flaherty noted that Harris had neither set up a meeting prior to spring break nor supplied her written response to his April 3 memo, so he had set up a meeting for the next day (April 19). The District argues that all these statements were accurate, appropriate and timely. It further avers that if Harris had simply responded to Flaherty’s first memo in a timely fashion, there would not have been a second memo.

Finally, the District addresses the Association's argument that Harris was not insubordinate. According to the District, the record facts belie that assertion. To support that premise, it again cites the following: 1) that Flaherty sent a memo to Harris telling her he wanted answers to certain questions and a meeting to discuss those answers; 2) that Flaherty followed this by meeting with Harris and telling her he wanted her written response before their next meeting and that he wanted the meeting held prior to spring break; 3) that Harris understood that Flaherty wanted the matter taken care of prior to spring break, but for her this was a "low priority item"; and 4) that Harris acknowledged that she made only one attempt to contact Flaherty (on a date that she knew he was very busy), and used none of a plethora of communication options to even attempt to schedule the meeting with him.

The District therefore maintains it did not violate the collective bargaining agreement by refusing to remove the April 3 and 18 memos from Harris' personal file. The District argues that if the Arbitrator finds otherwise, and finds a contractual violation, then the appropriate remedy should be to remove the memos and place a memorandum in her file which indicates that she utilized her biennial right to request that certain materials be removed from her file.

### DISCUSSION

The Association reads the District's initial brief to raise a procedural objection to the instant grievance. If the District raised a procedural objection to the arbitrability of the instant grievance, that claim would obviously have to be addressed prior to a consideration of the merits of the grievance. In this case, though, it is unnecessary to address the procedural arbitrability of the instant grievance for the following simple reason: the District did not raise it as an issue. In my view, the Association simply misread the District's initial brief to raise that claim when, in point of fact, it did not do so. That being the case, there is no procedural arbitrability claim which needs to be decided.

Having so found, the focus now turns to the merits of the grievance.

The pertinent background to this case is this: On April 3 and 18, 2001, Principal Flaherty wrote memos to Harris concerning the library automation project. Those memos were subsequently placed in her personal file. Harris took umbrage with them and wants them pulled from her file, but the District refused to do so.

The question to be answered here is whether the District violated Article V of the collective bargaining agreement when it failed to remove those two memos from Harris' personal file. I answer that question in the negative, meaning that the District did not violate the collective bargaining agreement by refusing to remove those memos from Harris' personal file. My rationale follows.

Since the stipulated issue references Article V, that is the logical starting point for purposes of discussion. Article V, which is entitled “Personal File of Teacher”, governs how items are placed in an employee’s personal file, and how items can be removed from same. Thus, it deals with how items go into, and come out of, an employee’s personal file. Section A of that article specifies that teachers have the right to review their personal file in the presence of the Superintendent and once every two years, to seek the removal of obsolete or inappropriate documents and/or materials. Removal of items is not automatic. Instead, the process works as follows: first, the teacher determines which documents and/or materials they want removed; then, the Superintendent reviews those documents. If the Superintendent agrees that the documents and/or materials are “obsolete or otherwise inappropriate”, the documents are removed and destroyed. It is implicit from the foregoing though that if the Superintendent does not agree that the documents are “obsolete or otherwise inappropriate”, then the documents stay in the file. Section B of that article specifies that no material that is “derogatory to a teacher’s conduct, service, character or personality” will be placed in his/her personal file “unless the teacher has had the opportunity to review the material.” What this means is that before any material which arguably falls into any of the foregoing categories goes into a teacher’s personal file, they get the chance to see it and review it. They do not get to veto it, however, or prevent items from going into their file. After the teacher sees it and reviews it, they have the right to file a written answer/response to that material. The employee does not have to file a written response, but if they do, it is attached to the original document and/or materials. Section C of that article specifies that the District will protect the confidentiality of references, credentials and documents received prior to the teacher’s initial employment. It also specifies that the District will not create a “separate [personal] file which is not available for the teacher’s inspection.”

Having just reviewed all three sections of Article V, the threshold question is whether all are applicable here. They are not. Neither side contends that Section C has any bearing on, or applicability to, this case. That being so, just Sections A and B are involved here. Those sections will now be applied to the record facts.

Attention is focused first on Section A. Notwithstanding the Association’s contention to the contrary, Harris did not even attempt to invoke or utilize the procedure specified in Section A. The following facts show this. She never sought to review her personal file in the presence of the Superintendent for the purpose of designating the documents she believed to be inappropriate. Additionally, she never sought her biennial right to request destruction of materials from her personal file. Instead, she simply filed the instant grievance.

Turning now to Section B, it has already been noted that Section B does not give employees the right to veto unfavorable items from going in their personal file. Instead, it simply gives them the right to see it (i.e. the unfavorable material), review it and respond to it (if they are so inclined). All that happened here. Flaherty gave Harris the opportunity to see

and review his memos before they were placed in her personal file. Harris then availed herself of her contractual right to make a written response to Flaherty's memos which were attached to same.

The foregoing facts show that Harris did not attempt to have either memo removed via the procedure specified in Article V, Sections A and B. Perhaps recognizing this, the Association chose a different litigation approach: it argues that the memos should nonetheless be removed from Harris' personal file because, in their view, the memos are inaccurate, inappropriate and erroneous. This argument appears to have a contractual basis because the word "inappropriate" is used in Section A. Specifically, it is found in the following phrase from Section A: "obsolete or otherwise inappropriate to retain." The Association extrapolates the word "inappropriate" from that phrase and asks me to determine if the two memos which Flaherty wrote were "inappropriate". The problem with this contention is that I am not empowered, under this contract, to make that call. The following shows why. The last sentence of Section A makes it clear that the Superintendent gets to determine if the items in a personal file "are obsolete or otherwise inappropriate to retain." Under this language, it is his call to make, and his call alone. Nothing in either Article V, Section A or elsewhere in the collective bargaining agreement gives an arbitrator the authority to second-guess the Superintendent's call governing what items in a personal file are retained or destroyed. While there are no doubt some teacher contracts that give an arbitrator authority to determine if a particular item which is placed in a teacher's personal file is inaccurate, inappropriate or erroneous, this particular contract does not. Instead, this particular contract creates a very limited mechanism for removing items from an employee's personal file. Specifically, it leaves that authority exclusively to the Superintendent. Were I to do what the Association asks me to do (i.e. review the memos in question and find them inaccurate, inappropriate and erroneous), I would be adding a new step to Article V, Section A that does not currently exist. Such a step needs to be obtained through negotiation – not arbitration.

Perhaps recognizing this, the Association chose still another theory to litigate this case. That theory was to implicitly characterize this case as a discipline case, as opposed to a contract interpretation case. The factual basis for the Association's contention is that Flaherty's second memo (the April 18 memo) states in pertinent part: "This type of insubordination cannot be overlooked." Thus, Flaherty's second memo characterizes Harris' conduct as insubordination. In labor relations circles, the word "insubordinate" refers to people or their actions who are not submissive to established authority. Employers oftentimes discipline employees for insubordinate behavior. When this happens, employees sometimes challenge the discipline on the grounds that the employer did not have just cause to impose same.

The basic question is whether just cause applies to this case. Based on the rationale which follows, I find it does not. What traditionally happens in arbitrating discipline cases is that the parties stipulate to an issue which references the contractual just cause provision, or if there is no stipulated issue, reference that contract provision in their own wording of the issue. That did not happen here. The reason it did not happen here becomes apparent when that clause, which is found in Article IV, is examined. The just cause provision contained in this contract only covers non-renewals, terminations and suspensions with loss of pay. None of these things occurred here. Specifically, Harris was not non-renewed, terminated or suspended for her conduct. At most, Harris received two written warnings from Flaherty. Written warnings are not covered by Article IV. The parties could have included them in its coverage, but chose not to. That was their call to make. In light of the relatively narrow scope of the just cause provision contained in Article IV, plus the fact that the parties stipulated to an issue which referenced just Article V, the undersigned is not empowered to utilize the traditional just cause analysis here to determine if Harris was, or was not, insubordinate by her actions. Consequently, no comment is made concerning same.

Based on the foregoing, it is held that the District did not violate the collective bargaining agreement by its actions herein.

Any matter which has not been addressed in this decision has been deemed to lack sufficient merit to warrant individual attention.

In light of the above, it is my

### **AWARD**

That the Ithaca Board of Education did not violate or misinterpret Article V of the Master Agreement between the Ithaca Education Association and Ithaca Board of Education when it failed to remove the memos of April 3 and 18, 2001, from Principal Flaherty to the grievant. Therefore, the grievance is denied.

Dated at Madison, Wisconsin this 18th day of December, 2001.

Raleigh Jones /s/

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Raleigh Jones, Arbitrator

REJ/gjc  
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