

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**WASHBURN EDUCATION ASSOCIATION**

and

**WASHBURN SCHOOL DISTRICT**

Case 52

No. 61258

MA-11870

(Jean Fenner Grievance)

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**Appearances:**

**Mr. Barry Delaney**, Executive Director, Northern Tier UniServ – West, appearing on behalf of the Washburn Education Association.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Kathryn J. Prenn**, appearing on behalf of the Washburn School District.

**ARBITRATION AWARD**

At all times pertinent hereto, the Washburn Education Association (herein the Union) and the Washburn School District (herein the District) were parties to a collective bargaining agreement covering the period July 1, 2001 to June 30, 2003, and providing for binding arbitration of certain disputes between the parties. On May 28, 2002, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration on the grievance of Jean Fenner (herein the Grievant) concerning a letter placed in her personnel file by the District Administrator, and requested the appointment of a member of the WERC staff to arbitrate the issue. The undersigned was designated to hear the dispute and a hearing was conducted on September 23, 2002. The proceedings were not transcribed. The parties filed briefs on November 5, 2002. The Union filed a reply brief on November 25, 2002, and the District filed a reply on December 26, 2002, whereupon the record was closed.

**ISSUES**

The parties were unable to stipulate to the framing of the issues. The Union would frame the issues as follows:

Did the District violate the collective bargaining agreement by issuing the January 28, 2002 letter addressed to Jean Fenner and placing a copy in her file?

If so, what is the appropriate remedy?

The District would frame the issues as follows:

Did the District violate the collective bargaining agreement when Principal Hamm drafted a summary of a conference he had with an employee and placed a copy of the conference summary in the employee's personnel file after having provided the employee a copy of the summary?

If not, what is the appropriate remedy?

The Arbitrator is of the view that the Union's proposal adequately articulates the issues in the case and adopts the same.

### **PERTINENT CONTRACT PROVISIONS**

#### ***ARTICLE VIII (RESERVATION OF RIGHTS)***

- A. The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable law, rules and regulations to establish the framework of school policies and projects including, but without limitation because of enumeration, the right:
1. To the executive management and administrative control of the school system and its properties, programs and facilities, and the activities of its employees relative to school functions;
  2. To employ and re-employ all personnel and, subject to the provisions of law or State Department of Public Instruction regulations, determine their qualifications and conditions of employment, or their dismissal or demotion, their promotion and their work assignment subject to this Master Agreement;
  3. To establish and supervise the program of instruction and to make the necessary assignments for all programs of an extra-curricular nature that, in the opinion of the Board, benefit students;

4. To determine means and methods of instruction, selection of textbooks and other teaching materials, the use of teaching aids, class schedules, hours of instruction, length of school year, and terms and conditions of employment.

The exercises of the foregoing powers, rights authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and Wisconsin Statutes; Sec. 111.70, and then only the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

- B. The Board recognizes its obligations pursuant to Section 111.70 to bargaining with the Union regarding the decision and/or the impact of a decision to contract out for fiber optic and/or telecommunications programs prior to the District's implementation when such programs would have an impact on bargaining unit members. The District will notify the union's President and the Unions Negotiations Chairperson of any District decision for the purpose of allowing a reasonable amount of time for negotiations. Any such negotiations would be subject to the impasse procedure of State Statute 111.70 if an impasse is reached.

#### ***ARTICLE XI*** ***(CONDITIONS OF EMPLOYMENT)***

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#### **E. *SCHOOL YEAR AND SCHOOL DAY***

The school contract year for teachers shall be 186 days as per the school calendar of which 180 days will be student days, the remaining six (6) days will be inservice days and parent teacher conferences. All weather/emergency days will be made up without students. It is our understanding that if the District does not meet the time required for the purposes of meeting full state aid that time will be made up. The chronological sequence of the school year shall be determined by the Administration, as negotiated with the Washburn Education Association and approval of the Board. The regular work day for teachers involved in the after-school program shall be established by the District.

At the start of the school year, individual teachers shall have the option to select a regular working schedule of working 7:30 a.m. to 3:30 p.m. or

8:00 a.m. to 4:00 p.m. provided they do not have any meetings or other professional responsibilities scheduled between 3:30 p.m. and 4:00 p.m. If the individual teacher needs to change his scheduled work time, the administration will be notified prior to the change in a timely fashion.

The Board of Education shall make an effort to provide preparation time for each teacher.

The assignment of teachers for duties outside the above mentioned daily hours and/or the working day calendar within this Agreement shall be done on a voluntary basis.

. . .

### ***ARTICLE XVII*** ***(TEACHER RIGHTS)***

- E. Rules and regulations governing employee activities and conduct shall be interpreted and applied uniformly.

. . .

### **BACKGROUND**

The Grievant is a Middle School teacher who, at the time of hearing, had been employed by the District for eight years. She is certified as a K-8 teacher and over the years has been a Title 1 teacher in the Elementary School and has taught 6<sup>th</sup> grade English and 7<sup>th</sup> grade Social Studies and Science in the Middle School. In the 2001-2002 school year, the Grievant was assigned to teach 8<sup>th</sup> grade Science in the Middle School.

Early in 2002, Middle School Principal Mitch Hamm was approached by a parent of one of the Grievant's students concerning problems the child was having in the Grievant's class. The parent had previously spoken with the Grievant, but was dissatisfied with the result of the conversation. On January 22, 2002, Principal Hamm met with the Grievant to discuss job performance issues raised in the meeting with the parent, specifically timely evaluation of student work and the need to review exams with students. At the meeting, Hamm also addressed the issue of objective evaluation of student work. On January 28, 2002, Hamm drafted the following memo, summarizing the January 22 meeting, and placed it in the Grievant's personnel file:

. . .

You will recall that on January 22, 2002, you and I had a conference concerning aspects of your performance as a teacher. During this conference we discussed these topics.

1. Evaluation of student work in a timely manner.
2. The need to review exams with students after they have been evaluated.
3. Objective evaluation of student work.

First, we discussed evaluation of student work in a timely manner. You mentioned to me that over the last semester, there had been times when you got behind and were unable to keep up with grading student assignments. As we discussed, it is very important for student work to be evaluated and returned within a few days. Students need feedback to understand how they are doing in class and more importantly how they have performed relative to the particular learning objectives. If students have not performed at an acceptable level they need to be aware and provided additional opportunities to learn the objectives in a timely manner. The more time that lapses, the more difficult it is for students to learn the objectives needed to move on. In addition, if students fail to learn important concepts, they may have a difficult time moving on in the curriculum. It is my expectation that student assignments are evaluated and returned in a timely manner (3 to 5 days). In addition, students should be provided additional opportunities to to [sic] learn important concepts that they have missed.

Second, we discussed the need to hand back and review student exams after they have been evaluated. In our discussion of this topic you stated that your students did not get any of their exams back to review the entire semester. The only exception would be if an individual student asked to see their exam. As I mentioned in our meeting, this is poor educational practice. As stated above, it is important for students to receive timely feedback and be provided the opportunity to learn important concepts that they may have missed. In addition to providing students with feedback, student exams should also be used by the teacher to assess how the class or classes as a whole are performing. For example, if a large percentage of the students score poorly on a particular portion of the exam, this should put up a red flag for the teacher. Further investigation may reveal that the test contained a poorly written question, or that the instruction provided did not adequately address the learning of the particular objective or concept. Reviewing exams with the class may be helpful in determining why students did not perform well on a particular portion of an exam. In the future, you will be expected to evaluate and return student exams in a timely manner.

Third, we discussed the objective evaluation of student work. You mentioned that essay type questions are incorporated in your exams. These kinds of questions can be subjective in nature, however, as we discussed using a rubric will allow evaluation to be more objective. For example, consider an essay question that requires students to describe how the ear functions. If there are four steps required for the ear to distinguish sound, then student explanations of

these four steps should be used to assess the question. Developing a rubric for each essay question will help to keep subjectivity to a minimum. It is also important that students understand what is expected in their response and how it has been assessed. Through our discussion, I determined that you are using rubrics to evaluate essay type questions. It is expected that in the future you will review exams with students and provide them with the specific criteria used to evaluate their responses.

I appreciate your cooperative attitude concerning the correction of these matters. If I can be of assistance in helping you improve this area of your teaching please do not hesitate to let me know. I will be looking for and recommending that you attend a professional development opportunity in the area of evaluation.

I have received a copy of this memorandum. I understand that my signature does not necessarily constitute agreement with its contents and that I have an opportunity to respond if I disagree.

. . .

Hamm gave the Grievant a copy of the memo and told her that she could file a rebuttal if she wished, although he did not advise the Grievant that the memo would be placed in her personnel file.

On February 6, 2002, Hamm met with the Grievant and Union President Sandy Raspotnik to discuss the Grievant's concerns over the January 28 memo. On February 7, Raspotnik sent a draft summary of the February 6 meeting to the Grievant and Hamm for review. Hamm did not agree with the proposed changes in the January 28 memo and did not include the draft in the Grievant's personnel file. On March 11, 2002, the Grievant filed a rebuttal to the January 28 memo, which was included in her personnel file, as follows:

This letter is in response to the disciplinary letter given to me on January 28<sup>th</sup>. The following points were raised in your letter:

- \*Evaluation of student work in a timely manner.
- \*The need to review exams with students after they have been evaluated.
- \*Objective evaluation of student work.

Your letter implies I don't evaluate and review work in a timely manner. In order to do fair evaluations of detailed work, it is not unreasonable to take the extra time needed. Every effort is made to return work in a timely manner. Short tests and assignments typically are returned within a week. However,

longer assignments requiring extended periods of time to prepare by the students deserve careful evaluation. A prescribed time limit defining "timely manner" does not apply. Timely manner is what is appropriate for the assignment. As a professional, I currently feel I make every reasonable effort to return work within a reasonable time frame and have always done so.

. I [sic] have a 45-minute prep period each day in which to prepare lessons and labs in a new curriculum in science for two grade levels, and grade the work assigned. Extra time is currently being taken out of personal time both before and after school to accomplish these tasks. Students are also given many other opportunities for timely evaluations in the form of frequent labs, discussions, and graded homework or daily assignments.

The second paragraph contains discrepancies between what I said and what you wrote. My students did receive their tests after they were all taken and the grading had been completed. After review, I collected the papers again and saved them, along with other work, for students to use in compiling a mid-year portfolio. Collecting tests is a common practice among teachers at this level. It preserves the work for further evaluation. It also prevents the sharing of tests between students who took the test and other students who have not yet taken the test. If a review is missed due to a student being absent when the review took place, students may make an appointment to see the test privately.

I do not disagree with the statements outlining the theory behind the use of tests to evaluate student progress or unmastered content. I believe I currently use tests to evaluate the mastery on concepts by the grade as a whole. I reviewed concepts many times based on the test results to ensure misconceptions were clarified. The inclusion of these statements in the context of this paragraph implies I am not fulfilling this basic responsibility as a teacher. I strongly protest this implication.

The third paragraph explains the necessity of rubrics to more objectively grade essay answers. Essay questions have been a part of my tests, both text-generated and teacher-generated, all the years I have taught in this middle school. I have always used a rubric to evaluate these answers. During the review process, I tell students what the main points of an acceptable answer would be. I do not feel I am deficient in this area. I also develop rubrics to evaluate research papers, oral presentations, and portfolios, just to name a few assignments that require rubrics for more objective evaluation. Such a rubric was posted in my room concerning the portfolios for the entire duration of the project [sic]

The original letter was inaccurate in many points. Letters to the file are considered a disciplinary action. I protest a letter with this tone being inserted

into my personnel file. I also take issue with the process that led to this letter. The relationship between a principal and teacher is partially one of mentoring. During a mentoring meeting, problems are discussed and possible solutions are considered. The typical follow up to such a meeting should also be a mentoring situation where the progress is evaluated. This letter circumvents this process. The existence of this letter is disciplinary in nature. The placement of this letter in my file is a disciplinary action. The trust between the supervisor and employee has been broken. Whatever may be said in mentoring conversations could now end up in a letter as part of a disciplinary action. If there is a problem, I expect my supervisor to work with me to rectify the issue and my failure to make steps toward solving the problem would be grounds for a disciplinary action.

. . .

Also on March 11, the Union filed a grievance concerning the January 28 memo. The Union characterized the January 28 memo as a letter of reprimand, which allegedly violated the Grievant's due process rights, inasmuch as the complaining parent was not identified. The grievance also objected to Hamm's stated performance criteria as being in violation of several provisions of the contract and further alleged that, under the circumstances, issuing the memo to the Grievant before allowing her to rectify the stated problems was a further contract violation. The Union requested that the January 28 memo and any other reference to the matter be expunged from the Grievant's personnel file. Hamm denied the grievance and the matter proceeded to arbitration through contractual steps of the grievance procedure. Additional facts will be referenced, as necessary, in the discussion section of the award.

### **POSITIONS OF THE PARTIES**

#### **The District**

The District denies that it took disciplinary action against the Grievant. At no time did Principal Hamm suggest, either orally or in writing, that the Grievant was being disciplined or reprimanded. Placing the memo in her record was an effort to memorialize their conversation, as there is no other appropriate place for such documents to be placed, but the Union insists that maintaining such a written record is automatically a form of discipline. In fact, having denied on the record that the memo was disciplinary, the District could not in the future recant and say that it was.

Other arbitrators have ruled that similar documents placed in personnel files do not automatically constitute discipline [Cf; SCHOOL DISTRICT OF WEBSTER, WERC CASE 29, NO. 54370, MA-9656 (CROWLEY, 6/6/97); NORTHLAND PINES SCHOOL DISTRICT, WERC DEC. NO. 29978-A (JONES, 5/2/01)]. The exhibits in the record clearly demonstrate that there



is a distinction between a reprimand and a conference summary. Using the Union's definition of discipline all of the Grievant's performance evaluations would constitute discipline. The memo was merely a recitation of Hamm's performance expectations, which is a requirement under the just cause standard, should it become necessary to impose discipline at some point in the future. NORTHLAND PINES SCHOOL DISTRICT, WERC DEC. NO. 30267-A (SHAW, 7/8/02). The District's only purpose was to help the Grievant improve her performance level.

The District did not violate any other contract provisions. The grievance references alleged violations of Article VI, Section E, Article VI, Section F, Article X, Section B, Article XI, Section E and Article XVII, Section E. Article VI, Section E, does not apply because it is the layoff procedure and the Grievant was not laid off. Article VI, Section F, does not apply because it deals with suspension and the Grievant was not suspended. Article X, Section B, deals with teacher workload. By her own admission, and as supported by the exhibits, the Grievant does not have a greater workload than the other teachers, so this provision doesn't apply. Article XI, Section E, addresses assignment of voluntary duties outside the workday. The Grievant's teaching responsibilities are not voluntary, nor are they extra duties assigned outside the regular workday. Article XVII, Section E, does not apply because there is no evidence that the work expectations contained in Hamm's memo differ from the expectations placed on other faculty members.

To order removal of the memo from the Grievant's file would exceed the Arbitrator's authority. It has been established that the memo is not disciplinary. The Union merely wants to eliminate any record of the January 22, 2002 conference between Hamm and the Grievant. There is no contractual or statutory authority for the arbitrator to order this remedy, therefore the grievance must be dismissed.

### **The Union**

It is a recognized principle of contract interpretation that clear and unambiguous contract language must be applied according to its terms despite the equities on either side. Elkouri and Elkouri, How Arbitration Works, p. 365, 4<sup>th</sup> Edition (1985). Article XVII (E) and Article XI (E) are clear on their face and must be applied accordingly.

Article XVII (E) requires that rules and regulations be applied uniformly. Principal Hamm directed the Grievant to evaluate and return student exams in a timely manner, which he testified would be with 3-5 days. None of the Grievant's previous performance evaluations mention this time frame or refer to any problem with the Grievant's timeliness in returning student work. Hamm testified that there is no District policy requiring the return of work within 3-5 days and that it is possible that other middle school teachers do not do so. The Grievant testified that the faculty has never been directed to return student work within 3-5 days. This was supported by high school teacher James Kouba, who indicated that his average turnaround time is 5-10 days. Clearly, the 3-5 day rule is one applied specifically to the Grievant and, as such, is a clear violation of Article XVII (E).

Hamm's directive also required the Grievant to provide the students with the specific criteria used to evaluate their responses as a way of addressing student concerns over not knowing how they were being evaluated on essays. To correct the problem, the Grievant was expected to provide the students in advance with the points of a specific rubric to prepare for exams. Again Hamm testified, and the Grievant confirmed, that there is no District policy requiring the provision of rubrics to students prior to exams, nor has the faculty, as a whole, ever been given such a directive. This, again, is a case where a rule was created for, and applied to, the Grievant alone, in violation of Article XVII (E).

Hamm's directive also required the Grievant to return student assignments within 3-5 days. The Grievant's evaluations do not mention problems with turnaround time on student assignments. In fact, Hamm acted in response to a complaint from the parent of one student out of 150. Again, this is a rule that has never been codified in the District or disseminated generally to the faculty, but was applied specifically to the Grievant, in violation of Article XVII (E).

Article XI (E) establishes an 8-hour workday and specifies that any duties assigned outside the regular workday shall be done voluntarily. In 2001-2002, the Grievant was involuntarily assigned to teach 7<sup>th</sup> and 8<sup>th</sup> grade Science, even though she had not taught 8<sup>th</sup> grade Science before. In addition, she was required to adopt a new curriculum, which incorporated much more lab work with a commensurate increase in the Grievant's workload. This increased her needed preparation time, as well as the time necessary to correct assignments and exams. She testified to needing 1½ hours of prep time each day, or 7½ hours per week, although the school schedule only provides her with 5¾ hours of prep time during the regular workday each week. In addition to conducting an average of 3-4 labs per week, the Grievant gives exams approximately every two weeks. Assuming that she corrects 3 lab reports per week for each of her 150 students at 3 minutes average to correct each report, this requires 22½ hours per week. Assuming she also gives an exam to half her students (75) each week and spends 10 minutes correcting each one, this would require an additional 12½ hours, for a total of 35 hours spent grading student work. Subtracting her prep time, this requires 29¼ hours outside the regular workday each week, in addition to time spent in class preparation, in order to comply with Principal Hamm's directive that student work should be returned within 3-5 days. Hamm's directive involuntarily mandates that the Grievant work outside the regular 8-hour day and, as such, violates Article XI (E).

### **The District in Reply**

The Union's brief reveals that it concedes that Principal Hamm's January 28, 2002 memo was not disciplinary, but continues to erroneously press its argument that the memo should be removed from the Grievant's personnel file. The District did not apply rules or regulations inconsistently with respect to the Grievant, and so did not violate Article XVII (E). In their January 22 conference, the Grievant admitted that she did not always grade

assignments or return exams in a timely manner. Hamm, in response, merely emphasized his expectation that she do so and established parameters for what his expectations were. The expectations were not unique to the Grievant, because Hamm had previously discussed them at faculty meetings. He had not had occasion to speak to other teachers individually on the point because the problem had not arisen before. The Grievant admitted that Hamm's expectations were not unreasonable and further stated her expectation that if problems arose the Principal would work with her to rectify them. This is essentially what Hamm did in the January 22 meeting and subsequent memo.

As with the timeliness of grading assignments and returning exams, Hamm also sought to assist the Grievant with respect to properly informing students regarding the rubrics used to evaluate exam answers. It is not disputed that the Grievant used rubrics, only that she didn't communicate them sufficiently to the students. This expectation was communicated by Hamm and there is no evidence that the same expectation does not apply to the rest of the middle school faculty. Further, the District asserts that an articulated "expectation" is not the same as a rule or regulation and, therefore, Article XVII (E) does not apply to this case. Rather, this is merely a case of a teacher failing to employ sound educational practices and her supervisor intervening in order to assist her in doing her job better to avoid further complaints in the future.

Article XI (E) also does not apply. The Grievant's teaching responsibilities are neither voluntary nor additional duties assigned outside the regular workday. Timely feedback on student work is part of her teaching responsibilities and applies equally to all the middle school teachers, who all have the same number of students. The Grievant did have to deal with a curriculum change in 2001-2002, but so did many other teachers and she was offered in-service opportunities to help her make the transition. It is also not unusual for all the teachers to spend extra time outside the school day doing schoolwork, as the Grievant herself acknowledged. Also, Hamm did not assign her extra duties outside the workday, he merely reiterated what expects to occur in the classroom, which is the timely return and review of assignments and tests.

Finally, the requested remedy – removal of the memo from the Grievant's file – exceeds the Arbitrator's authority. There has been no violation of the contract and there is no contractual provision that requires removal of a supervisory letter from an employee's personnel file. Hamm's actions were within the purview of management rights and were consistent with sound supervisory practices. Therefore, the grievance should be dismissed.

### **The Union in Reply**

With respect to the subject matter taught, the Grievant has a heavier workload than other faculty. This is because the curriculum requires much more preparation and generates many more daily assignments than that used in the past. Article XI (E) states that: "*The Board*

*of Education shall make an effort to provide preparation time for each teacher.”* The record establishes that the preparation time given the Grievant is wholly inadequate for her to accomplish all her work within the regular workday. Hamm’s 3-5 day requirement for evaluating and returning classwork and exams is impossible to achieve without working outside the school day. As such, it is an involuntary assignment of duties outside the workday in violation of Article XI (E).

The Union disputes that Hamm has relayed his timeliness expectations at faculty meetings, but notes that he admitted that there are no written policies or rules within the District establishing any kind of standard for timeliness in returning assignments or exams. He further admitted that he has never discussed his expectations with other teachers because there had never been previous complaints. The grievance should be sustained.

### **DISCUSSION**

The grievance filed by the Union challenges the January 28, 2002 memorandum on three essential grounds. First, the Union asserts that the memo constitutes a letter of reprimand, which was issued in violation of the Grievant’s due process rights. Second, the Union argues that the expectations set forth in the memo are unreasonable considering the Grievant’s workload and would require her to work outside the regular workday in order to achieve Principal Hamm’s objectives in violation of Article XI (E). Third, the Union contends that by reducing his expectations of the Grievant to writing and placing it in her personnel file, the Principal acted selectively and violated the Grievant’s right to uniform treatment under Article XVII (E). As a proposed remedy, the Union requests removal of the January 28 memo and any other reference to the situation leading up to it from the Grievant’s personnel file.

For a number of reasons, I do not consider the January 28 memo to be a letter of reprimand. In the first place, the document nowhere makes any reference to disciplinary action. In the second place, in the District’s Step II response the District Administrator expressly stated that the memo was not a reprimand and offered to provide a written attachment to that effect. The memo summarizes a conference between the Principal and the Grievant regarding certain of her evaluation practices. The Principal notes that some of the Grievant’s methods do not meet the standards he expects from his faculty and he proceeds to enunciate those standards with the expectation that in the future the Grievant will improve in those areas. The fact that Hamm’s comments are evaluative, and even perhaps critical, in nature, however, does not make the memo disciplinary. Nor does the fact that the memo was placed in the Grievant’s personnel file give it a disciplinary effect.

In NORTHLAND PINES SCHOOL DISTRICT, WERC DEC. NO. 30267-A (SHAW, 7/8/02), Examiner David Shaw made the following observation:

An employer is, however, entitled to place an employee on notice that it views certain conduct as unacceptable; indeed, such prior notice is normally required under the “cause” standard. It is also appropriate to include such a notice in the employee’s personnel file.

In this case, Hamm considered some of the Grievant’s evaluation methods and practices to be below the standards he expects from the middle school faculty, which he communicated to her in the January 22 conference. He advised her of his expectations and made suggestions for ways to improve. He memorialized the substance of the conference in the January 28 memo for future reference in evaluating her progress or in the event that there were future complaints. Thus far, his conduct falls within the parameters of legitimate supervisory methods. The record establishes that all employee records are maintained in one personnel file. Thus, the memo was placed in the Grievant’s file because there was no other alternative, other than destroying it, which would have greatly limited its usefulness as a benchmark or evaluative tool. The memo makes no reference whatever to discipline and, to the extent that the Grievant may have felt it was slanted she was permitted to submit a rebuttal, which she did and which was also included in the file. The District disclaimed in writing and on the record that the memo had any disciplinary character, thus waiving any ability to argue otherwise in the future. In my view, therefore, the memo was not a reprimand.

The Union’s second contention is that Hamm’s evaluation expectations are unreasonable considering the Grievant’s circumstances and require her to work outside the regular workday in violation of Article XI (E). I disagree. Article XI (E) establishes a regular 8-hour workday from 7:30 a.m. to 3:30 p.m. or from 8:00 a.m. to 4:00 p.m., at the individual teacher’s option. It also specifies that the “. . . Board of Education *shall make an effort* to provide preparation time for each teacher.” (Emphasis added) Finally, it makes the assignment of duties outside the school day or school year voluntary. The Grievant testified that the new science curriculum adopted in 2001-2002 required more preparation time because she wasn’t used to it and that the increased number of labs meant much more daily work that had to be corrected. She acknowledged, however, that any teacher must realistically expect to work outside the school day in order to get their work done and that she routinely does so, as do other teachers in the District. She also testified that the 3-5 parameter for returning schoolwork set forth by Hamm is not unreasonable. The Union’s argument appears to be, however, that imposing such a standard in effect *mandates* working outside the school day, which it sees as impermissible.

The issue, as I see it, however, is not whether teachers may be expected to work outside the school day — Hamm did not order or assign the Grievant to any involuntary duties outside the workday. The issue, rather, is what the School District is entitled to expect from its teachers. It is the District’s responsibility to provide a school system for its students that provides them with an education that comports with the standards established by the Department of Public Instruction. It employs professional staff to perform the function of educating the students and employs administrators to operate the District’s schools and

supervise the activities of the District's staff and students. Thus, under Article VIII, it reserves unto itself the administrative control of the school system, which includes such things as: controlling the activities of its employees relative to school functions, determining the conditions of employment of its employees, establishing and supervising the program of instruction, establishing the curriculum and determining the means and methods of instruction. In my view, these powers include the right to expect, and insist, that the students' progress be evaluated regularly and promptly, in order to better help them to succeed. Thus, Hamm was within his authority to tell the Grievant that he expected her to grade and return daily work and exams within a *reasonable* time and there is no evidence that the 3-5 day benchmark he chose was unreasonable. This may mean the Grievant will need to do work outside of school hours, but not because she was assigned to do it involuntarily. Rather, because her job requires it in order to educate the students effectively. The Grievant acknowledged this when she testified that, as a practical matter, no teacher can expect to accomplish all their work within the confines of the regular school day. Preparation and evaluation are extensions of the presentation that occurs in the classroom, not separable additional duties that may be distinguished from the teaching, itself, and the fact that they sometimes must occur outside of school does not constitute an involuntary assignment of duties in violation of Article XI (E).

Finally, the Grievant argues that by placing the January 28 memo in her file, the District violated Article XVII (E) because it treated her differently from other faculty members. Specifically, the Union argues that the 3-5 day expectation for returning assignments and exams and the requirement that the Grievant provide the students with rubrics prior to exams, as set out in the January 28 memo, are unique to the grievant and are not general rules and policies applied to the faculty as a whole. Again I cannot concur.

Hamm met with the Grievant on January 22 in response to a parent complaint. During the course of the meeting, he identified certain of the Grievant's evaluation methods which caused him concern. In response, he advised the Grievant of his expectations, offered suggestions for improvement, and followed-up by summarizing the content of the meeting in the January 28 memo. Hamm testified that this was a unique situation and that he had not in the past had to address these concerns with any other faculty member. The basis for a violation of Article XVII (E) is that the same rules and regulations be applied differently to different people under the same or similar circumstances. In the first place, this is not a matter of rules or regulations; it was a discussion of practices and expectations. Had it been otherwise, one would have expected the January 28 memo to incorporate some mechanism for oversight and assessment to assure future compliance, but there was none. In the second place, there is no basis for comparison because the situation had never arisen before. Had there been evidence that other parent complaints are ignored or that other teachers are held to looser standards, the situation might be different, but such is not the case. Faced with a new situation, Hamm responded reasonably within the scope of his authority and did not violate Article XVII (E).

For the foregoing reasons and based upon the record as a whole, I hereby enter the following:

**AWARD**

The District did not violate the collective bargaining agreement by issuing the January 28, 2002 letter addressed to Jean Fenner and placing a copy in her file. The grievance is dismissed.

Dated at Fond du Lac, Wisconsin, this 17<sup>th</sup> day of April, 2003.

John R. Emery /s/

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John R. Emery, Arbitrator