

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SHULLSBURG SCHOOL DISTRICT

and

SHULLSBURG EDUCATION ASSOCIATION

Case 21
No. 61565
MA-11984

Appearances:

Ms. Eileen A. Brownlee, Kramer, Brownlee & Infield, LLC, 1038 Lincoln Avenue, P.O. Box 87, Fennimore, Wisconsin, 53809, appearing on behalf of the Employer.

Ms. Joyce Bos, Executive Director, South West Education Association, P.O. Box 722, Platteville, Wisconsin, 53818-0722, appearing on behalf of the Association.

ARBITRATION AWARD

Shullsburg School District, hereinafter referred to as the District, and Shullsburg Education Association, hereinafter referred to as the Association, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. Pursuant to a Request for Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the discipline of an employee. Hearing on the matter was held on the Employer's premises in Shullsburg, Wisconsin on January 17, 2003. A stenographic transcript of the proceedings was prepared and received by the Arbitrator on January 28, 2003. Post-hearing written arguments and reply briefs were received by the Arbitrator by March 25, 2003. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties agreed upon the following issue:

“Did the District have just cause to suspend the grievant for one year from all coaching activities?”

"If not, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

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SECTION A ARTICLE VIII – TEACHER PLACEMENT

A. The assignment of certified teachers to grade level and/or subject teaching areas will be authorized by the Board.

B. Any teacher desiring transfer to another grade or subject, shall make his/her request on or before the first regular Board meeting in January.

C. The Board shall have the right to assign all co-extra-curricular positions. Each such assignment shall be mutually agreed upon by the Board and teacher when annual co-extra-curricular contracts are issued. Denial to renew a previously held extra-curricular contract shall be pursuant to Section A, Article IX – Non-renewal, Suspension, Discharge. [Emphasis added]

...

SECTION A ARTICLE IX – NON-RENEWAL, SUSPENSION, DISCHARGE

A. Procedures for non-renewal shall be in accordance with Wisconsin Statute 118.22. Reasons for non-renewal of a teacher contract shall not be arbitrary or capricious.

B. No teacher who has completed at least two full time contract years with the District shall be suspended or discharged without just cause. Teachers who have not completed two full time contract years with the District may be non-renewed or suspended without just cause.

C. Nothing in this section shall preclude the immediate suspension without pay of a teacher for violation of rules and regulations, board policies or negligence

in the performance of duties when determined by the administration that such violation or negligent act warrants immediate suspension during the course of investigation and prior to the hearing held on the alleged violation or negligent act.

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BACKGROUND

The District operates a K-12 school system wherein it employ's Timothy B. Strang, hereinafter referred to as the grievant, as a Teacher. The grievant has also been the District's High School Baseball coach for past eleven (11) years and the Junior High Basketball coach for the past ten (10) years. The instant matter involves the grievant's coaching responsibilities and a baseball tournament played in the Metrodome in Minneapolis, Minnesota, during the 2001-2002 school year. Every two (2) or three (3) years the grievant takes the Shullsburg baseball team to play in a baseball tournament hosted in the Metrodome.

In January of 2002 one of members of the district's baseball team received a disciplinary action for violation of the District's Athletic Code. The penalty for the student's actions was for the student to be suspended from playing twenty percent (20%) of the baseball season, or three and eight-tenths (3.8) games with the suspension to commence with the beginning of the District's baseball season. The first game the student was to be suspended was forfeited because the opposing team could not field a sufficient number of players. The second game was played and the student sat out the game. The third game, scheduled for April 2, 2002 during the week of the District's Spring break, was rained out. Prior to leaving for the Metrodome tournament (April 4, 5 and 6, 2002) the grievant contacted the District's Athletic Director Robert Boyle and discussed the student's suspension. The grievant informed the Athletic Director he believed the Metrodome tournament was a once in a lifetime experience, that the rain-out and forfeited game should count towards the student's suspension, and, that he could play the suspended student after he has sat out eight-tenths of the first game of the tournament. The Athletic Director told him to use his best judgment. On April 4, 2002 the team departed for Minneapolis. April 5, 2002 was the first game of the Metrodome tournament and the student sat out eight-tenths (0.8) of the game and played in a second game held on April 5, 2002.

On the evening of Friday, April 5, 2002 the grievant performed a bed check of baseball team members at approximately 11:30 p.m. The grievant then went to his room, which was located in the same hallway, used the security chain on his door and left it ajar so he would hear if anything was amiss. At about 1:00 a.m. the grievant awoke to some noise in the hallway. He saw several students running in the hallway including some of his team members. He stopped one of his students and asked what was going on. The student didn't want to say. He took the student to his room and did a bed check. He found seven or eight boys in one room and after some questions found out his team members had received phone calls from a group of high

school girls from another school who were staying at the same hotel. The girls had said if the boys went to the back parking lot they would give them a show. The students then left their rooms, some with cameras. The grievant then did another bed check, discussed the matter with hotel security and then returned to his room.

On Monday, April 8, 2002 the District's Superintendent, Loras Kruser, became aware that the grievant had let the suspended student play in the Metrodome tournament. Kruser discussed the matter with Boyle and made arrangements to meet with the grievant on Thursday, April 11, 2002. The grievant was not in the school district on April 9, and April 10, 2002. During that time Kruser became aware that pictures taken a student at the Minneapolis hotel were being passed around the high school and that the pictures contained frontal nudity.

Kruser, Boyle and the grievant met after school on Thursday, April 11, 2002. The grievant explained that he believed the rainout and the forfeited game should count towards the student's suspension. Kruser disagreed and directed that the student sit out two more games. The grievant had the student sit out the next two scheduled games, played on April 9 and April 15, 2002. Kruser also wanted the pictures taken at the Minnesota hotel. Kruser nor Boyle had any idea of how the grievant should go about obtaining them. The grievant offered that the only way he could think of was to offer amnesty to the members of the team provided the pictures were turned in. Kruser concluded by telling the grievant he wanted the pictures and for the grievant to do what he needed to do to get the pictures (Tr., p. 48). Shortly thereafter the grievant obtained the photographs and turned them over to Kruser.

Thereafter, on May 20, 2002 Kruser sent the following disciplinary letter to the grievant:

**REASONS FOR RECOMMENDATION FOR EXTRACURRICULAR
CONTRACT TERMINATION**

1. During the baseball team's trip to the Metrodome in Minneapolis, Minnesota, on April 4-6, 2002, you failed to provide proper supervision to the students in that:
 - a. Students were left at the hotel with no one in charge.
 - b. Students left at the hotel and took sexually explicit pictures of a group of girls also staying at the hotel.
 - c. Students were left unsupervised at the hotel hot tub and male and female students were in each other's hotel rooms.
2. When you became aware of the students' misconduct, you failed to take any disciplinary action.

3. During the baseball team's trip to the Metrodome in Minneapolis, Minnesota, on April 4-6, 2002, you permitted a student who was ineligible under the student athletic code as a result of a suspension to play while at the same time, refusing to permit another ineligible student to play as a result of suspension. This action violated the Student Athletic/Activities Code (Board Policy IGDJ -R).

4. You have consistently failed and refused to run the receipts and expenditures of the Miner Baseball Fund, a student activity account, through the school business office in violation of Board Policy IGDG.

For all of these reasons, I have recommended that a hearing be scheduled by the School Board to consider the foregoing and that the Board consider terminating your baseball coaching contract and all other coaching assignments held by you.

Dated this 20th day of May 2002.

/s/ Loras Kruser
Loras Kruser, District Administrator

On June 6, 2002 the Shullsburg School Board met to consider Kruser's recommendation. The grievant was present and the following minutes were taken:

SCHOOL BOARD OF THE SCHOOL DISTRICT OF SHULLSBURG

HEARING MINUTES

June 6, 2002

The next matter on the agenda was a hearing related to an administrative recommendation to terminate the coach contracts of Tim Strang. Mr. Strang appeared at the hearing with his representative, Joyce Bos. Mr. Strang had requested an open hearing.

The school's attorney explained the procedure that would be used at the hearing. Mr. Kruser explained the factual basis of his recommendation and described in detail his reasons for requesting that the Board terminate Mr. Strang's coaching contracts. The reasons for the recommendation are attached to these minutes.

Mr. Strang then explained why he felt the recommendations lacked merit. A number of parents and a student supported Mr. Strang's explanation.

After Mr. Strang concluded his presentation, the Board retired to closed session to determine whether or not it had any questions to ask of Mr. Kruser or Mr. Strang. The Board returned to open session and a number of questions were asked of Mr. Strang, Mr. Kruser and a parent by the Board's attorney on behalf of the Board.

The Board then returned to closed session to deliberate on and discuss the recommendations and the response.

After discussion, the Board reconvened in open session. The Board determined that, during the trip to the Metrodome, sexually explicit pictures of girls from another school had been taken by members of the baseball team and an ineligible student had been permitted to play in a game. It was moved and seconded that Mr. Strang be suspended from coaching for a period of one year (July 1, 2002 – June 30, 2003). Those voting in favor of the motion: all Board members upon roll call vote.

Mr. Strang then read a statement to the Board and tendered his resignation from all extracurricular assignments and activities. It was moved and seconded that Mr. Strang's resignation be accepted and, upon unanimous roll call vote, the resignation was accepted.

In addition the following pertinent minutes were officially recorded by School Board Clerk Emmett Reilly:

...

"The Board finds that Mr. Strang failed to provide proper supervision to the students in that students left the hotel and took sexually explicit pictures of a group of girls.

The Board finds that Mr. Strang permitted an ineligible student to play in the Metrodome and that this violated the Student Athletic Code. This also violated Board policy."

...

On June 6, 2002 the grievant submitted the following letter:

In regards to the Spring 2002 Baseball season, it has been a very enjoyable spring to work with the group of student/athletes on my team. Even though our win/loss record doesn't show profound success it is an improvement over the last few years and helps us come closer to achieving some of our team goals.

Attitude of the players has been the main reason why this season is successful in my eyes. Winning or losing these guys exhibit a will to do their best, which is all I can ask for. I feel our team has believed all season that we can be competitive with any team on the field with us. I'd like to think that the attitude and desire these guys possess is a reflection of themselves, their families and even their coach.

I have always been a person who is positive, outgoing, enthusiastic and determined. I believe this is the way I approach all things in life including teaching and coaching. It is with this attitude that I will explain and if necessary defend any occurrences, situations and rumors that have or have not been a part of this baseball season.

As for the issue of suspension of one of my team's players, it was my understanding as a result of an athletic council meeting and preceding and subsequent discussions with the A.D. that this player would be suspended 3.6 games, which is 20% of an 18 game schedule. I realize 20 games are on the schedule but this was adjusted to 18 because this is closer to the actual # of games that are played on average per season. (In 11 years of coaching spring baseball we have never had a season of 20 games, including tournaments.) In all fairness to the player involved, 18 games is a reasonable number to go by.

At the time of the council meeting I disagreed with 3 major issues. Number one, we did not have a signed referral by anyone indicating that this player was guilty of any crime. Although the player admitted to such offenses when asked, I felt in the absence of a referral by the police or other adult community member that we should not be meeting in the first place. If the A.D. or principal actively sought out code violations every time there was a hint of impropriety then that is all they would spend their time doing. However, we as a council could see that the actions by this young man were heading him down a dangerous path. By stepping in at this time we had the opportunity to help prevent future problems for this player. This I strongly agreed with and would have voted guilty but abstained because I would be his next (in season) coach.

Issue number two dealt with an individual on the coaching staff who was directly involved with the misguided activities of the young man in question. I felt as a matter of ethics that this person should have not only abstained from voting (they did but only after being instructed to do so by the rest of the coaching staff) but also recused themselves of anything associated with this particular meeting and player. Instead, this person influenced the meeting by staying in and not making the council aware of all the facts. I think the council felt that the individual player in question might have seemed to show little remorse for his actions. I felt

uncomfortable with this and questioned this player later. I discovered that he was told, point blank, by the coach that they did not want him to apologize to them. This player was, in my opinion, fearful that other possible retribution might happen by the teacher/coach. He said that he chose to say nothing in the meeting for that reason. If the teacher/coach, ethically, would have not participated in the meeting, then maybe we would have had a different attitude of remorse by the player. However, as it stands we will never know.

The third issue I had with this meeting was one of punishment to be served. I requested that the suspension of 3.6 games be served excluding the Metrodome tournament. Reasoning here was threefold. One, this is a special event that the players have to work and save money for to have the opportunity to do only once every 3 years or so. The school provides none of the funding for this trip. Second, we often play this tournament in the summer (3 of 4 previous trip) were in the summer but due to field availability at the Dome this years trip fell in April. Third, we have set past precedent by allowing a football player to play a Homecoming game while suspended because his mom was driving a considerable distance to see him play (this happened to be a star running back).

Although the council didn't agree with this idea I didn't fight it because at the time of the meeting we had two games scheduled before the Dome trip and I knew that a third was to be changed to the week or two preceding the trip. This was due to a scheduling conflict with the school musical. This would result in the player sitting .6 of the first game of the Dome trip. I still didn't agree with this but I felt that maybe this extreme of a punishment would help to get this individual back on the right track.

As it turns out we had two games cancelled before the trip. One game was cancelled due to rain (even though we practiced outside, River Ridge Illinois didn't want to play because it was a non-conference game that "didn't mean anything" – except to the player in question). The other was cancelled due to Argyle forfeiting because they didn't have enough players. The player on my team sat out our 2nd scheduled game at Warren on 3/26 and I chose to count the game scheduled on 3/25 against Argyle towards a game served. I told the A.D. of my decision and he said that it was my choice because he had no precedent to base any decision on. I chose to do this because this was something totally beyond our control and the player was fully prepared to serve his suspension that night. The third scheduled game was vs. River Ridge, IL. This game was cancelled due to rain and I knew it would not be made up at a later date. The player in question then sat the first 3½ innings or about 1 hr. and 15 minutes of a 4½ inning 1 hr. and 40 minute timed game. This in my opinion constituted more than a .6 suspension. The player was then allowed to play in the 2nd game of the Dome trip on 4/5.

I then sat the player for the following game on Tuesday April 9th vs. East Dubuque. This, I felt, completed the 3.6 game suspension. I realize this was not past practice (except in the case noted previously) but felt that the player was prepared to serve the 3.6 game suspension but was unable to do so because of situations beyond his control. In no other sport does the question of rainouts come into play. In discussions with the football coach he has NEVER had a game cancelled due to weather or other circumstances. On rare occasions the Basketball teams may cancel a game due to inclement weather but that game is ALWAYS made up. In baseball it is not. I believe that I acted in the best interest of the player involved but knew that I would have to defend my position.

After thorough discussion and I feel some apprehension by the A.D. and Superintendent, it was decided that the Argyle game would not count as a forfeit and the player was required to serve another game suspension. He did so in the first game of a doubleheader vs. River Ridge, WI on April 15th.

As I see this, the only question become one of not whether the suspension was served, but did I as a coach hand it down correctly. I believe due to reasons previously stated that I did the right thing for the student/athlete. The suspension itself has been served.

Another MAJOR issue this season is one of practice facilities. As I understood from a School Board committee meeting the field in the back of the school was built for the softball team and that it was to be repaired and then used by that team. In the absence of a clear directive from any level I feel this situation has blown up to the point of ridiculousness. Field use was never a past issue and was always compromised before the current softball coach came into tenure. This softball coach has been unyielding and uncompromising in her position. Although, I applaud the stance she has taken for her players benefit, the fact of the matter remains. The facilities at the school are simply not suitable and are too dangerous to conduct an effective and safe baseball practice. I believe I have shown that I am willing to compromise in this regard. I also feel that the lack of a practice facility, due to games played by the softball team at the park and the giving up of the field that I have done on several occasions, has had a negative effect on my player's skill levels. Reasons stated in the attached sheet should adequately address why this should be a non-issue and the baseball team be given first opportunity to practice at the park.

As for other issues such as intentionally trying to injure girl softball players, I take extreme offense to this accusation. I have devoted my life to the betterment of students and athletes alike. I would NEVER intentionally harm another human being. Case closed.

As for the matter of rumor, rumor, rumor (hooters, hot tubs, etc.) I will only address these issues by not addressing them. I have been a teacher and coach in this community for the last eleven years. I believe my positive contributions speak for themselves. I would not partake or knowingly allow my players to partake in any action that would be illegal or immoral, for that matter. If anyone wishes any specific rumor addressed then I suggest that they stand up and ask the question and I will put to rest any notion of improper activities. If the rumor mill wants to continue to operate with no one having the gumption to step forward and ask ME the truth, then I will not stoop to the level of the gossipers and justify their words by addressing them.

Respectfully submitted, (5/6/02)
Timothy B. Strang

The District does not have any written polices or procedures concerning the duties or responsibilities of teachers who are to supervise students on an overnight stay. The District's Athletic Code is silent concerning whether student suspensions have to be consecutive games. The District's Athletic Code is also silent concerning the impact of forfeitures or cancellation of games on a student's suspension. The record demonstrates that in the past student suspensions have been non-consecutive. The record also demonstrates that this is the first time the grievant has ever been issued any discipline.

District's Position

The District acknowledges that it has the burden to demonstrate the grievant committed the misconduct and that the discipline it imposed was fair and justified. The District contends there can be no question the grievant engaged in misconduct. The District avers the grievant allowed a suspended player to play two baseball games for which the player was ineligible. The District argues the grievant manipulated the rules and manufactured a reason to permit the student to play.

The District points out the grievant was a member of the Athletic Council at the time the student was suspended. The District also points out the grievant argued at the Athletic Council meeting that the discipline should be only for twenty percent (20 %) of a an eighteen (18) rather than twenty percent (20%) of a twenty (20) game season. The District asserts the grievant argued at the Athletic Council meeting that the baseball team never played all its games because of weather and forfeits and the Council therefore reduced the suspension to twenty percent (20%) of eighteen games. The District also points out that the grievant argued before the Athletic Council that the Metrodome games should not be included as part of the suspension because it was a once in a life time experience. The District argues the grievant was aware the Athletic Council appeared to disfavor the idea of excluding the Metrodome games.

The District further argues that Boyle's letter to the student evidences that games that are not played do not count towards suspension. The District points out that in that letter Boyle informed the student his eligibility would be restored on April 2, 2002 unless changed "...due to cancellations, etc." (Employer Exh. 1). The District avers this put the student on notice the suspension would not end on April 2, 2002 if games were cancelled. The District argues that when two of the first three baseball games were not played the grievant carefully avoided returning to the Athletic Council for permission to allow the student to play in the Metrodome tournament. The District contends the grievant unilaterally decided to include the forfeited and rainout game in the student's suspension period. The District argues that although the grievant had a purported consultation with Boyle before leaving for the Metrodome, there is nothing in the record to conclude that Boyle had reinstated the student's eligibility. The District also contends Boyle does not have the authority to restore a student's eligibility and that appeals of Athletic Council decisions are to go the School Board.

The District also points out that upon return from Minneapolis the grievant said nothing to either Boyle or Kruser about having permitted the student to play in two games. Kruser learned of the matter from a parent. The District contends that at the Boyle, Kruser and grievant meeting the grievant argued the student had sat the twenty percent (20%) and that the Metrodome was a once in a lifetime opportunity for a student. The District contends the grievant's confusion over which games do or do not count toward suspension is at best contrived and at worse specious.

The District also argues that there is no question the grievant improperly supervised students during the Metrodome trip. The District points out an inappropriate activity occurred after curfew. The District avers the grievant made no attempt to confiscate photographs, took no steps to discipline team members, nor did he advise other school officials of the matter. The District further argues that when the grievant was confronted with the picture taking incident by Kruser the grievant's response was to grant amnesty to the students. The District concludes that the grievant's failure to maintain sufficient supervision over his team resulted in behavior prohibited by the athletic code of conduct.

The District also contends the grievant's suspension for one year from his coaching duties was justified. The District points out it has the highest expectations students will act in a manner that will do credit to their community. The District points out its policy requires violations be reported to the Athletic Director, that penalties be assessed for misconduct and that coaches enforce those penalties. The District avers the grievant determined he could establish his own rules if he disagreed with the decision of the Athletic Council. The District also argues the grievant violated Wisconsin Interscholastic Athletic Association (WIAA) rules when he allowed an ineligible student to play. The District further argues the grievant's team members learned, when an ineligible student was allowed to play and when their disorderly conduct and curfew violation went unpunished that rules could be broken with impunity. Finally, the District argues the grievant's failure to recognize he did anything wrong demonstrates he does not see the rules as applying to him and that it is unsurprising he used the same standard for his team.

The District also argues that if the Arbitrator concludes the District did not have just cause to suspend the grievant or that a one (1) year suspension is too harsh that it should be entitled to impose a lesser suspension or a written reprimand.

In its reply brief the District asserts the grievant had an obligation to ensure the students were in their hotel rooms after curfew. Further, that he failed to take any action afterwards and when directed to retrieve the photographs used the opportunity to avoid imposing any discipline on his team members. The District avers the grievant was aware of his obligations and he simply failed to follow through in meeting those obligations.

The District also argues the Association contention the grievant was justified in allowing a suspended player to play ignores the fact that on only two occasions did students sit out non-consecutive games, one of which was over the objections of the coach. The District also argues that the Athletic Council reached a consensus that an exception would not be made for this particular student and the Minneapolis trip. The District avers the grievant was at the Athletic Council meeting and chose to disregard their decision. The District points out the grievant argued a consecutive game suspension had been served by the student. In conclusion the District asserts the penalty imposed on the grievant was not too harsh because the grievant did everything he could to undermine the Athletic Council, the Code of Conduct for athletes and even his own rules.

The District would have the undersigned deny the grievance.

Association's Position

The Association points out the District identified two reasons for disciplining the grievant. Sexually explicit pictures of girls from another school had been taken by members of the baseball team and an ineligible student had been permitted to play in a game. The Association contends the District did not demonstrate by a preponderance of the evidence the District had just cause to suspend the grievant.

The Association argues there was no forewarning of the consequences of his actions and no notice given to the grievant. The Association points out the grievant was never given any specific rules or regulations to follow when taking students on a trip, was never told of any possible consequences that would happen to him if students failed to follow his directives, and the District had never reviewed with the grievant the expectation of coaches in terms of responsibility for teams. The Association contends the grievant directed his students to stay in their rooms. When students failed to do so he performed a second bed check and stayed awake until 4:00 a.m. to make sure no one left their room again. The Association contends the grievant did everything reasonably he could do when supervising the trip to Minneapolis.

The Association argues there was no rule given to the grievant to inform him of what the

District expected with respect to supervising students on a field trip. The Association also argues there is no District policy as to how a suspension was to be served when games were canceled. The Association also contends the District did not attempt prior to disciplining the grievant to inform the grievant of what rule or order of management he disobeyed. The Association also points out that when the grievant told Kruser he had no idea how to get the photographs Kruser offered no suggestions or direction on what to do. When the grievant came up with the idea of amnesty Kruser told him to do what you need to do to get the pictures (Tr. p. 92). The Association points out the grievant was successful in obtaining the photographs and turned them over to Kruser.

The Association argues the District did not conduct a fair and objective investigation because it failed to conduct any investigation. The Association also points out Kruser did not ask which student turned in the photographs nor did he direct the Athletic Council to determine whether students should be disciplined for conduct that occurred during the Minneapolis trip.

The Association contends it is unclear why the grievant is being disciplined for something he did not do. He did not violate curfew, leave his room and take photographs. The Association also argues the grievant believed the student had satisfied his suspension.

The Association argues the District did not apply its rules, orders and penalties even handedly. The Association points out students have served non-consecutive suspensions in the past and the District has directed a coach to allow a student to participate in a once in a life time experience. The Association further points out Kruser acknowledged the Athletic Code does not describe how a suspension should be served (Tr. p. 31).

The Association argues that given the grievant's exemplary work record and evaluations the discipline was too severe. The Association points out the grievant had never been disciplined by the District. The Association further points out the grievant did not hide the fact he intended to play the student but discussed the matter with the Athletic Director prior to doing so.

In its reply brief the Association argues the District has attempted to expand the reasons for disciplining the grievant. The Association contends the District is limited to the taking photographs and playing an ineligible player. The Association also argues the District claim to be the initiator of the idea of retrieving the photographs ignores the fact the grievant came up with the sole methodology for retrieving the photographs.

The Association also contends the District's assertion the grievant had some nefarious reason for playing the suspended student to purposely evade the Athletic Council's decision to suspend the student is without merit. The Association argues the rainout occurred on April 2, the team left for Minneapolis at 8:00 a.m. on April 4, and, as the School District was on spring break, it would have been impossible to convene the Athletic Council or the School Board.

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The Association also argues that to prove misconduct the District should have investigated

the matter. The Association avers that instead the District chose to focus on the photographs taken by the students and the District's interpretation of how to serve a student suspension.

The Association would have the Arbitrator sustain the grievance, direct that the grievant's record be cleansed, and to make the grievant whole by directing the District to pay one-half the salary he would of earned coaching baseball and basketball.

DISCUSSION

The record demonstrates that on May 20, 2002 Kruser recommended, as noted above, four (4) reasons to terminate the grievant's extracurricular contracts for coaching assignments. The record also demonstrates that on June 6, 2002 the School Board, in determining to suspend the grievant from coaching duties for the 2002-2003 school year, narrowed its decision to two (2) factors: that the grievant failed to provide proper supervision in that students left the hotel and took sexually explicit pictures, and, that in permitting an ineligible student to play in the Metrodome the grievant violated the Student Athletic Code and Board policy. Whether or not the grievant committed any of the other allegations raised by Kruser was therefore considered by the District and the District chose not to discipline the grievant for those allegations. Thus, for example, the fact the grievant failed to discipline team members for alleged misconduct while in Minneapolis is irrelevant. The School Board was aware of this and chose not to discipline the grievant for failing to discipline any of the students. The Arbitrator notes here that Boyle, Kruser and the Board were aware of which students were on the trip and none referred the matter to the Athletic Council.

The burden is on the District to demonstrate the grievant failed to properly supervise students in that they left the hotel and took sexually explicit pictures. The District has failed to meet this burden. The record demonstrates the District has no written policies, guidelines or rules concerning how to supervise students on an overnight trip. Nor has the District presented any evidence that would lead to a conclusion that the grievant was even lax in his duties concerning the violation of curfew and the taking of the photographs. The District did not dispute the grievant performed a bed check at 11:30 p.m. and did not dispute that all team members were in their appropriate rooms at that time. The District did not even contend the team members were somehow unaware that they were not suppose to leave their rooms after the bed check. The District did not dispute the grievant's testimony he left his door ajar with the chain attached. The District did not dispute the grievant's testimony that when he was awoken by a disturbance in the hallway he checked, found out what was going on, and performed a second bed check making sure all team members were back in their rooms. The District did not even proffer what the grievant did improperly between 11:30 p.m. and 1:30 a.m. Thus the Arbitrator finds the District has failed to meet its burden of proof and concludes the District did not have just cause to discipline the grievant because students broke curfew, left the hotel and took sexually explicit photographs.

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The Arbitrator also finds that, as the Association contends, the District failed to properly investigate this matter. In particular there is no evidence the School Board or Kruser interviewed any of the team members who violated curfew to determine how they were able to do so without

the grievant's knowledge, or, for that matter, to dispute the grievant's claim he did a bed check and kept his door ajar.

The burden is on the District to also demonstrate the grievant violated the Student Athletic Code and Board policy when the grievant allowed an ineligible student to play in the Metrodome. The District has also failed to meet this burden. As noted above, the record demonstrates the District has no policies or guidelines concerning how to deal with student suspensions and rain-outs and forfeitures. There is no evidence the matter has ever been discussed at an Athletic Council meeting or by the School Board. There is no evidence the grievant received a copy of the student's disciplinary notice informing the student would become eligible to play after April 2, 2002, barring cancellations, etc. At most the District could claim the grievant violated the spirit of the Athletic Code had the grievant attempted to hide his actions. However, the record demonstrates the grievant discussed the matter with Boyle and the District presented no evidence to dispute the grievant's claim that Boyle informed him there was no precedent in the District to follow and for the grievant to use his best judgment. As noted above, the District has no policies concerning how cancellations or forfeitures impact on suspensions and there is no mandate that a suspension be a consecutive game if a cancellation or forfeiture occurs. The Arbitrator notes here that the District did not claim the grievant improperly asked the Athletic Director for guidance. There is also no evidence the District informed Boyle he exceeded his authority in this matter. Thus the Arbitrator finds the District has failed to meet its burden of proof and concludes the District did not have just cause to discipline the grievant for permitting an ineligible student to play in the Metrodome tournament.

Therefore, based upon the above and foregoing, and the testimony, evidence and arguments presented, the Arbitrator finds the District did not have just cause to suspend the grievant for one year from all coaching activities. The District is directed to cleanse the grievant's record and to make him whole for all lost wages.

AWARD

The District did not have just cause to suspend the grievant for one year from all coaching assignments. The District is directed to cleanse the grievant's record and make him whole for all lost wages.

Dated at Madison, Wisconsin, this 29th day of April, 2003.

Edmond J. Bielarczyk, Jr. /s/

Edmond J. Bielarczyk, Jr., Arbitrator

EJB/gjc

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