BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GREEN BAY SCHOOL DISTRICT

and

GREEN BAY BOARD OF EDUCATION EMPLOYEES (MONITOR) UNION, LOCAL 3055C, AFSCME, AFL-CIO

Case 217
No. 62171
MA-12186

Appearances:

Mr. Mark DeLorme, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2010 Memorial Drive, Apt. 206, Green Bay, WI 54303, on behalf of Local 3055C.

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Jack D. Walker**, Ten East Doty, Suite 900, P.O. Box 1664, Madison, WI 53701-1664, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 2002-04 labor agreement between Board of Education Green Bay Area Public School District (District) and Green Board of Education Employees (Monitor) Union, Local 3055C, AFSCME, AFL-CIO (Union) the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding the discharge of Cathy Wellens. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. Hearing was held at Green Bay, Wisconsin, on May 29, 2003. A stenographic transcript of the proceedings was made and received on June 11, 2003. The parties agreed to exchange their initial briefs through the Arbitrator postmarked July 14, 2003, and they reserved the right to file reply briefs ten working days after their receipt of initial briefs. The Arbitrator received the last document on August 12, 2003, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties were unable to stipulate to an issue or issues in this case. However, the Employer suggested the following issue:

> Was Cathy Wellens terminated within an extended probationary period? If not, what is the appropriate remedy?

The Union suggested the following issues for determination in this case:

> Did the District have just cause to terminate the Grievant? If not, what is the appropriate remedy?

The parties stipulated that the Undersigned could frame the issues in this case based upon the relevant evidence and argument and considering their suggested issues. Therefore, on the afore mentioned basis, I have found that the District's issues quoted above shall be determined in this case.

RELEVANT CONTRACT PROVISIONS

ARTICLE II
MANAGEMENT RIGHTS

The Employer, on its own behalf, hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the constitutions of the State of Wisconsin and of the United States including the rights:

1. To the executive management and administrative control of the school system and its properties and facilities;
2. To hire all employees and, subject to the provisions of law and this Agreement, to determine their qualifications and the conditions for their continued employment, or their dismissal or demotion, and to promote and transfer all such employees;
3. To determine hours of duty and assignment of work;
4. To establish new jobs and abolish or change existing jobs;
5. To manage the work force and determine the number of employees required.

The exercise of management rights in the above shall be done in accordance with the specific terms of this Agreement and shall not be interpreted so as to deny the employee's right of appeal.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Employer, 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, Section 111.70, and then only to the extent such specific and express terms are in conformance with the constitution and laws of the State of Wisconsin and the constitution and laws of the United States.

ARTICLE VI
PROBATIONARY AND EMPLOYMENT STATUS

All newly-hired employees shall be on probation for a period of ninety (90) days during the workyear from the date of their employment. The probationary pay rate is ninety percent (90%) of the rate for the employee's classification for the first ninety (90) days.

Continued employment beyond the probationary period is considered as satisfactory completion of probation.

A permanent full-time employee is one who is hired to fi11 a full-time position in the Table of Organization.

A permanent part-time employee is one who is hired to work a regular schedule of hours but less than full time.

A temporary employee is one who is hired for a period not to exceed ninety (90) calendar days except in the case of long-term substitutes replacing regular employees who are on approved leaves of absence (paid or unpaid) and who intend to return to work or any other specified time as agreed to by the parties and who shall be separated on or before the end of said period. However, should a temporary employee be continued in employment as a part-time or full-time permanent employee without a service break, the calendar days of employment shall be considered as a part of the employee's probationary period.

ARTICLE VIII
SUSPENSION - DISCHARGE

Suspension: Suspension is defined as the temporary removal without pay of an employee from h/er designated position.

A. Suspension for Cause: the Employer may for just cause suspend an employee. Any employee who is suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of such notice shall be made a part of the employee's personal history record and a copy shall be sent to the Union. No suspension for cause shall exceed thirty (30) calendar days.

No employee who has completed probation shall be discharged or suspended except for just cause. An employee may be discharged immediately for dishonesty, drunkenness, reckless conduct endangering others, drinking alcoholic beverages while on duty, use of controlled substances or unauthorized absence. An employee who is discharged or suspended, except probationary and temporary employees, shall be given a written notice of the reasons for the action and a copy of the notice shall be made a part of the employee's personal history record and a copy sent to the Union. An employee who has been suspended or discharged may use the grievance procedure by giving written notice to h/er steward and h/er immediate supervisor within ten (10) workdays after such discharge or suspension. Such appeal will go directly to the appropriate step of the grievance procedure.

Usual Disciplinary Procedure: The progression of disciplinary action shall be oral reprimand, written reprimand, suspension and discharge. The above sequence of disciplinary action shall not apply in cases which are cause for immediate suspension or discharge. The Union shall also be furnished a copy of any written notice of reprimand, suspension or discharge. All reprimands shall be effective for one (1) year from the date of reprimand.

FACTS

Cathy Wellens was hired as a Monitor at East High School on September 3, 2002. Wellens began her employment with the District as a "temporary employee" pursuant to Article VI of the labor agreement. As such, the period of time that Wellens worked as a temporary employee without a service break in the first days of the 2002-03 school year were credited to her probationary period. Because of this credit, Wellens' probationary period expired December 1, 2002.

In late November, 2002, Assistant Superintendent for Human Resources, John Wilson, became aware of problems at East High School involving Wellens. Issues involving interpersonal relationships between Wellens and other Union-represented Monitors as well as questions regarding East High School Principal Curt Julian's treatment of Wellens were among these issues. Monitor Union President Sandy Siewert 1/ called Wilson sometime during November, 2002, and stated that Wellens had been unfairly dealt with by Associate Principal Julian and by other Monitors at East High School. Siewert stated that she was concerned about Wellens' continued employment at East High School. Wilson responded to Siewert by suggesting that the District extend Wellens' probationary period by another 30 days. Wilson also talked about the issues Siewert had raised concerning Wellens in some depth. Siewert agreed to extend Wellens' probationary period during this conversation. At this time (November, 2002), Wilson and local Union officials were unaware that Wellens had worked as

a temporary employee prior to her actual hire date as a regular part-time Monitor for the District and that she had thereby earned additional days toward satisfaction of her contractual 90-day probationary period.

1/ Siewert did not testify herein.

During the week of December 1, 2002, Union President Siewert, Union Vice-President Judy Kuiper and Cathy Wellens met with District Senior Personnel Analyst, Edward DeRubis. Siewert and Kuiper had questions about Wellens' employment at East High School and wanted to discuss problems she was having with other Monitors. Kuiper and Siewert also discussed Associate Principal Curt Julian's refusal to allow Wellens to park in a handicapped parking spot (reserved for visitors) next to the school, offering her only a handicapped parking spot across from the school. DeRubis stated that he would talk to Julian about the issues raised. 2/

2/ Neither DeRubis, the Union Representatives nor Wellens realized at this time that Wellens' probationary period had expired on December 1, 2002, due to her status as a temporary employee prior to her hire as a regular employee.

Wilson attended a portion of this meeting between Union Representatives, Wellens and DeRubis. At this time, Wilson stated that they discussed again Wellens' issues, including her conflict with other Monitor employees at East High School, the fact that she was not being allowed to park in a visitor handicap parking space at the High School and Wilson stated that the parties again discussed extending Wellens' probationary period by an additional 30 days and that all parties again agreed to extend her probation. Wilson stated there was discussion of putting the agreement to extend the probationary period in writing, but that the Union did not state that they needed the extension agreement in writing before they would agree. Indeed, Wilson stated that at this meeting, he reminded Siewert that he and Siewert had already agreed to extend Wellens' probationary period by 30 days in their telephone conversation held sometime in November. Siewert confirmed that she had so agreed.

DeRubis stated herein that the District and the Union agreed to extend Wellens' probationary period and that the Union never informed the District that her probationary period had already expired in December, 2002. DeRubis also stated that he did not recall whether Union Representatives asked the District to put the extension of the probationary period into writing for them to review, but that Wellens never asked DeRubis for a written document.

Mr. Wilson stated herein that the District had no practice of putting probationary extensions into writing; that for paraprofessionals, clericals and teachers, extensions of probation have historically been done verbally. In addition, Wilson stated that the termination of a probationary employee is usually verbal and in Wellens' case, she did not receive anything in writing on December 13, 2002, when Associate Principal Julian terminated her employment.

Wellens stated herein that Associate Principal Julian spoke to her on November 15, and gave her an employment review. He stated at this time, that the District wanted to extend Wellens' probationary period but that he did not know if this could be done and that he would have to get back to Wellens on this point.

On December 13, 2002, Julian terminated Wellens' employment stating only that her employment was terminated. Wellens asked Julian what had happened with the probationary period extension and Julian stated that the extension had never gone through. 3/ On December 13, 2002, Associate Principle Julian sent the following probationary employment report on Wellens to Wilson:

> I am recommending that Cathy Wellens **not** be retained as a regular employee. My reason for this recommendation is that Cathy is unable to maintain positive relationships with co-workers. I sat down with Cathy in early November to discuss my concerns. It is my belief that part of the job of supervising people is to point out to them the areas of their performance that are unsatisfactory and to help them improve. Specifically, I was unsatisfied with Cathy's interaction with students. Terry Fondow, principal at East, shared my concern based upon his observation of Cathy in the cafeteria. I gave some suggestions to Cathy about how to interact with students in a less confrontational way (i e. ask rather than demand, be reasonable in your request, be proactive rather than reactive, and smile more often). I also expressed my concern about her obsession on the punishment aspect of discipline referrals rather than focusing on changing behavior. Most importantly, I pointed out the fact that she had complaints that she voiced to others without making any effort to work out a problem or to follow the proper chain of communication (command) to have the problem resolved. I informed Cathy that if she had a complaint about how things were done, she needed to come to me. If she was not satisfied with my response, then she was certainly welcome to go to the next level. As for personality conflicts, she needed to work through those things herself and not let it affect her job performance. I offered to mediate if necessary.
>
> We discussed adding an extension of her probationary period and she agreed that this was a good idea. This would give her a chance to improve and in a sense, give her a second chance. For the first week or two after this discussion, Cathy seemed happier and performed better. However, she soon started exhibiting some of her negative behaviors again. At no time did Cathy come to me with a problem and yet there seemed to be a multitude of problems she was discussing with others. On Thursday, December 5, 2002, I received a

call from the police officer who was on duty during the lunch periods at East. He expressed a grave concern that Cathy was "badmouthing" the other monitors to him. He told me that she often had something negative to say in the past but he felt that this most recent incident could not be overlooked because of the extent of the comments. He thought that I should know. This officer had no idea of the history of Ms. Wellens.

When I questioned Cathy about the incident while talking about her future employment today (December 13), she did not defend nor deny making the comments. She did, however, feel that my recommendation not to hire her was due to her parking in the handicapped stall at East. I explained that this WAS NOT the reason I was recommending termination but her inability to come to me with this particular problem was certainly a symptom of her inability to maintain appropriate interpersonal relationships. For the record, Cathy Wellens was parking in the visitor lot along with our other lunch hour monitors. I told the monitors that they needed to park in the staff lot. A few of the monitors continued parking in the visitor lot in front of the school, so I again instructed them to park in the staff lot. Cathy said nothing but I already knew that she was using the handicapped spot as her reason for parking in front of the school. I therefore took the initiative and told Cathy that there were two handicapped spaces nearby at Joannes and if that was not sufficient, she needed to request that I arrange reserved parking next to the building in the staff lot right behind the school because our lot was not yet lined and marked. I emphasized that the spaces in front of the school had to be kept open for visitors but that we were willing to make accommodations for her—all she needed to do was ask. Cathy acknowledged this understanding. I was already going beyond what is expected of an employer in that I was willing to make the accommodations without Cathy having to actually show that there was a need for such an effort on my part. I asked her why she didn't ask me for any accommodations. Cathy explained that the union president had instructed her to continue to park in the visitor lot and then to grieve the ticket that would be issued. I repeated my assertion that the parking issue was not the reason for severing the employment. It was the comments to a different employee group (the police officer) about her co-workers that made me feel that in the interest of the school, I could not recommend her continued employment.

3/ Julian did not testify herein.

On January 2, 2003, Wellens filed the underlying grievance in this case in which Union President Siewert stated on her behalf "grievant did not receive written notice of termination. . . . was terminated without just cause per Article VIII and violation of written terms of Article VIII." The Union sought reinstatement of the Grievant, a make-whole remedy and an order to follow the contract.

On April 9, 2003, the parties had a grievance settlement meeting at the District. Present for the Union were Siewert, Kuiper and Wellens; present for the District were Wilson and DeRubis. The District suggested a settlement whereby it would pay Wellens' salary through the end of the school year but explained that East High School did not wish to reinstate her. The Union Officers present stated this was unacceptable; that Wellens wanted her job back. At some point during this meeting, Kuiper stated that Wellens had actually been terminated four days after her probationary period had expired. At this point, Wilson asserted that Siewert had agreed with him to extend Wellens' probationary period prior to the end thereof. Union President Siewert agreed she had done so, but stated that the Union had never received anything in writing. Wilson stated herein that at no time did Siewert ask or state that she wanted an extension of Wellens' probationary period in writing from the District. 4/

4/ Kuiper confirmed that in the April 9, 2003 settlement meeting, Wilson reminded Siewert that she had agreed to an extension of Wellens' probationary period and that Siewert had responded yes, but that Siewert also stated that the Union never received anything in writing.

Union Vice President Kuiper stated herein that in early December, when she, Union President Siewert, and Wellens met with District Representative DeRubis, DeRubis stated that he would see if he could do something about "lessening" the number of days Wellens' probationary period would be extended. Kuiper stated that Wilson came into this meeting and asked if DeRubis had gotten anything in writing from the Union regarding the extension of Wellens' probationary period. Kuiper stated that she, Siewert and Wellens did not specifically request that the District send them a document regarding Wellens' probationary period extension. Kuiper stated that at the end of the meeting in early December, she believed that everything was up in the air regarding an extension of Wellens' probation because DeRubis had said he would see what he could do about lessening the period of the extension and he never got back to the Union.

The District did not contest Wellens' unemployment compensation. Both Wilson and DeRubis affirmed that they were unaware of any other employee who had been terminated for the reasons that Wellens was terminated in this case. A list of dates submitted to Unemployment Compensation indicated that Wellens was discharged on December 13, 2002, by Principal Julian for an inability to maintain appropriate interpersonal relationships. The information given to U.C. stated as follows:

> Warnings to employee regarding inappropriate interpersonal relationships. Employee was also informed her probation was to be extended, but was terminated prior to any extension for an incident subsequent to her warning.

Finally, the information given to U.C. also indicated that Wellens had been informed of the above in the week of November 11, 2002, and also on December 6, 2002. Wilson stated that at the time the above document was put together for Unemployment Compensation, the District was unaware that Wellens' probationary period had actually expired on December 1, 2002.

POSITIONS OF THE PARTIES

The District

The District argued that there was an agreement to extend the probationary period of the Grievant by 30 days, which was reached prior to the expiration of her 90-day contractual probationary period. The District noted that this agreement was confirmed by all witnesses who testified herein and that it was also confirmed by the Union President Siewert in early December, at a meeting between the Union and the District. In addition, the Grievant, who testified herein, did not deny that she believed her probationary period had been extended in early December; in fact, the Grievant recounted a conversation with Principal Curt Julian on December 13th, when he terminated her wherein she asked what had happened to the extension of her probationary period.

As Union President Siewert did not testify herein and the Union gave no explanation therefor, District representative Wilson's testimony remained uncontradicted regarding his agreement with Siewert in late November to extend Wellens' probationary period. The fact that the District did not know that Wellens was no longer a probationary employee when the District terminated her on December 13th, does not detract from that fact that a deal was made between Wilson and Siewert in late November to extend Wellens' probationary period. The District noted that in this case, the Union's position is not that there was no agreement, but that the agreement ceased to exist because it was not put into writing in December, 2002. The District urged that a writing was unnecessary, according to the agreement between Wilson and Siewert. The District argued that the oral agreement between Siewert and Wilson rose to the level of a collective bargaining agreement under the case law, citing, CITY OF PRAIRIE DU CHIEN, DEC. NO. 21619-A (SCHIAVONI, 7/84).

In the alternative, the District argued that Wellens' offenses constituted just cause for her discharge. In this regard, the District noted that Wellens was warned regarding her inability to form appropriate interpersonal relationships at East High School and yet after she was warned by Principal Julian, she continued to engage in the same activities she had been warned to cease. The District noted that Wellens had an extremely short tenure at the District, that she offered no explanation or excuse for her conduct and showed no remorse therefor. Furthermore, the District observed that the Union failed to make a claim of disparate treatment in this case.

Based on the above, the District urged that there was an oral agreement between Wilson and Siewert in late November to extend Wellens' probationary period and that that agreement should be enforced. The grievance should, therefore, be dismissed in its entirety.

The Union

The Union argued that Wellens was a permanent employee when she was discharged and that her discharge was without just cause. The Union noted in this regard, that Wellens had received no formal prior disciplinary actions, that there was no proof that she had in fact engaged in the conduct of which she was accused by Principal Julian and there were no other employees in the recollection of District witnesses who had been terminated for an inability to form positive relationships. Furthermore, the Union noted that Principal Julian was not called to testify in this case. As Wellens successfully served a 90-day probationary period, which ended on or about December 1, 2002, she became a permanent part-time employee pursuant to the contract, due to work she performed as a temporary employee.

The Union argued that the District has the burden to show that it had extended Wellens' probationary period and that she was not in fact a permanent employee on December 13, 2002, when the District discharged her. The Union relied upon Union Vice President Kuiper's testimony, urging that the Arbitrator discount the testimony of District representatives Wilson and DeRubis. On this point, the Union noted that Wilson and DeRubis' testimony was certainly less clear than that of Kuiper and failed to demonstrate that the District had gained an agreement to extend Wellens' probationary period or that it had implemented same. The Union noted that Wilson had asked DeRubis to get the extension of the probationary period in writing and that this never happened. Indeed, DeRubis left everything open at the close of the December 6, 2002, meeting, leading the Union to believe that there was no meeting of the minds on an extension of Wellens' probation. The Union noted that although there is no past practice to extend probationary periods in writing, a few weeks after Wellens' discharge, the parties agreed in writing to extend a probationary period of another unit employee.

The Union observed that the parties cannot extend a probationary period if they are unaware of when it expires; that DeRubis left the terms of the extension of Wellens' probation up in the air at the end of the December 6, 2002, meeting and DeRubis stated herein that he believed Wellens had been terminated prior to the extension of her probationary period. Furthermore, on December 13, Principal Julian told Wellens that her probationary period extension had never gone through.

The Union urged that the principle of equitable estoppel should be applied to this case. Here, the District failed to act to extend Wellens probationary period and Wellens relied on the original term of that probationary period to her detriment. The Union also urged that a finding in this case for the District would undermine labor relations. The Union noted that the preamble to the contract indicates that the contract exists "to maintain existing harmonious

relations; to promote the morale, well-being and security of said employees . . . to ensure a proper and ethical conduct of business and relations between the Employer and Union." The Union noted that these goals were not supported by the District's decision to discharge Wellens without cause after her probationary period had expired.

In addition, if a probationary period had been extended for Wellens, the goal of such an extension was not met in that Wellens never had the opportunity to improve her performance and become a permanent employee because she was discharged approximately one week after the supposed extension of her probationary period at the December 6th meeting. As all contracts have an implied covenant of good faith and fair dealing, and the parties should not be allowed to act in an arbitrary, capricious or discriminatory fashion, the Union urged the Arbitrator to sustain the grievance and reinstate the Grievant with full backpay and benefits. On this point, the Union argued that the District was using its assertion that it had extended the probationary period of Wellens in a bad faith manner, citing FORTUNE V. NATIONAL CASH, 115 LRRM 4658 (1977).

Reply Briefs

The District

The District argued that the Grievant never denied the misconduct that the District alleged she engaged in and that the Union never put any evidence into the record regarding either the Grievant's actions or to show that the Grievant was disparately treated. The District urged that it proved just cause by means of documentation, District Exhibit 1 and Union Exhibit 1. As the Union failed to object to District Exhibit 1, the District did not call Principal Julian to support that document and the document stands uncontradicted. The District noted that Wilson and DeRubis testified to the fact that the misconduct that Wellens had engaged in was in fact cause for discharge in the District. In addition, the District noted that Wellens had been counseled by Principal Julian regarding her misconduct so that there was a history of discipline prior to Wellens' termination. Therefore, the District urged that it had proved just cause.

In regard to whether there was an agreement between the Union and the District to extend Wellens' probationary period, the District urged that Wilson's testimony was clear, that there was an oral and complete agreement between Wilson and Union President Siewert to extend Wellens' probationary period by 30-days during their conversation at the end of November, 2002. The District urged that Wilson was a straight-forward and believable witness and that Wellens' probationary period extension did not need to be "implemented." Rather, Wellens only needed to work during that extension in order for the extension to be implemented. Furthermore, the District contended that the Union never proved that it asked for the agreement to be in writing and that it needed to review the agreement before it could become final. The fact that the District did not realize when Wellens' probationary period was over and when the extension began is not relevant to the inquires in this case.

Regarding the Union's equitable estoppel argument, the District noted that there was no evidence submitted by the Union or the Grievant to show that either the Union or the Grievant had relied to their detriment on actions or inactions by the District. In addition, the District noted that Wellens had suffered no detriment because she did receive an extension of her probationary period, as agreed. Finally, the District argued that the Union does not have clean hands in the case because it failed to honor an oral agreement between Siewert and Wilson and under equitable principles, the Union should not be allowed to profit from its bad conduct. Indeed, the District urged that the principles of equitable estoppel should be applied against the Union and in favor of the District as it had relied to its detriment on the agreement between Wilson and Siewert. In all the circumstances, the District urged that the grievance be denied and dismissed either based on the agreement to extend Wellens' probationary period or based upon a finding that the District had just cause to terminate her.

The Union

The Union argued that because District Representative DeRubis testified that the probationary extension for Wellens was never implemented, the Grievant must have become a regular part-time employee before she was termination and she should therefore have been protected by the just cause provision of the labor contract. The Union argued that the District's arguments concerning the alleged agreement reached between Wilson and Siewert mischaracterized testimony of record. In addition, the Union asserted that the District failed to prove that Wellens had ever received any prior discipline and it failed to prove that it had just cause to terminate Wellens. Therefore, the Union urged that the District must bear the penalty for its mistake.

The Union noted that the District failed to call Principal Julian as a witness and that District Exhibit 1 is therefore hearsay, which should be useless in a termination case where the employer has the burden to prove just cause. The fact that the District made a mistake in calculating the Grievant's probationary period is not an error that Wellens should bear. Rather, the District should bear the penalty for its mistake. Finally, the Union urged that despite the District's arguments that if Wellens were reinstated she should serve a new probationary period in its initial brief, the Union argued that this would be inappropriate under the labor agreement and general arbitration practice. Thus, the Union argued that Wellens should be reinstated with full backpay to her part-time Monitor position.

DISCUSSION

The initial question to be answered in this case is whether Wellens' contractual probationary period was extended by mutual agreement of the parties. In my view, the record evidence supports a conclusion that the Union and the District agreed to extend Wellens' probationary period for 30 days at the end of November, 2002. The fact that neither the Union

nor the District realized that Wellens' 90-day contractual probationary period would in fact expire sooner than they assumed, due to Wellens' work as a temporary employee prior to her hire as a regular part-time employee, does not detract from the agreement reached between Wilson and Siewert in late November, 2002.

In this regard, I note that Wilson was the only witness who testified regarding the agreement reached between him and Siewert in their telephone conversation in November, 2002. Therefore, Wilson's testimony on this point stands uncontradicted and is fully credited. In addition, Wilson's testimony herein was clear that he and Siewert agreed that Wellens' probationary period should be extended by 30 days and that at no time did Siewert request that the extension be put in writing or state that she needed to review a written document regarding the extension before her agreement to same could be considered final or complete.

In addition, Union Vice President Kuiper's testimony does not undermine the prior agreement reached between Wilson and Siewert. In this regard, I note that Kuiper was not present when Wilson and Siewert agreed to extend Wellens' probationary period. The evidence regarding the meeting held in early December, 2002, when Kuiper, Siewert and Wellens met with DeRubis, showed that the Union and the District had already agreed to extend Wellens' probationary period by 30 days when this meeting occurred, based on uncontradicted evidence that during the December, 2002, meeting, Wilson popped into the meeting room and confirmed that he and Siewert had previously agreed to extend Wellens' probationary period for 30 days.

The tenor of this meeting, therefore, assumed that an agreement to extend probation had already been reached. Kuiper corroborated Wilson's testimony that Siewert agreed that he and Siewert had reached an agreement to extend Wellens' probationary period in November, 2002. Furthermore, DeRubis and Wilson stated herein without contradiction that no one from the Union requested that Wellens' probationary extension be put in writing before the Union would agree to it. DeRubis also stated herein that Wellens never asked for a written document regarding the extension. Wellens confirmed that she believed the District had agreed to extend her probationary period and she asserted this in her conversations with Julian on November 15, and December 13, 2002. 5/ There is no provision of the labor agreement which requires probationary periods be extended in writing.

5/ Julian had not been present during any of the discussions regarding the extension of Wellens probationary period as demonstrated by his lack of correct information on the subject when he spoke to Wellens in November and December, 2002.

In addition, there was no past practice at the District of putting probationary period extension agreements into writing. The fact that the Union and the District agreed in writing to extend another unit employee's probationary period after the instant case arose, is neither relevant to this case nor does it constitute evidence of past practice.

It is significant to the Arbitrator that it was not until April 9, 2003, after the instant grievance had been filed, when the parties were meeting in an effort to settle Wellens' grievance that, according to Kuiper, Siewert asserted that the Union had never received a written document concerning the extension of Wellens' probationary period. Even on April 9th, Siewert did not make clear to those present that it was her contention that no agreement to extend Wellens' probationary period was ever finalized because no written agreement was received by the Union thereon. On the contrary, Siewert then agreed with Wilson that they had agreed in November, 2002, to extend Wellens' probationary period.

The Union has urged that the principle of equitable estoppel should be applied in this case. I disagree. As discussed above, I have found that the Union and the District entered into an oral agreement to extend Wellens' probationary period by 30 days in November, 2002. At that time, Wellens was still in her 90-day probationary period and would have suffered no detriment by the extension of the that probationary period. Thus, Wellens did not change her position to her detriment based her reliance on the District's extension of her probationary period at that time. In any event, the agreement to extend Wellens' probationary period would not have given Wellens the right to the application of a just cause standard were she discharged during the extension unless such an agreement were specifically reached by both parties. No such agreement was contemplated or reached herein.

The Union has argued that the District has acted in bad faith or was arbitrary, capricious and discriminatory in its treatment of Wellens. In regard to this point, the evidence in this case failed to show that the District acted arbitrarily, capriciously or discriminatorily. In addition, the Union provided no evidence of disparate treatment of Wellens.

Based upon the above analysis, I make the following

AWARD

Cathy Wellens was terminated within an extended probationary period. The grievance is therefore denied and dismissed in its entirety. 6/

6/ As I have found that Wellens was discharged during an extended probationary period, I need not address the various arguments regarding just cause raised by the District and the Union in this case. In addition, the FORTUNE case cited by the Union concerned the discharge of an at-will salesman (who could be terminated without cause). I find this case inapposite.

Dated in Oshkosh, Wisconsin, this 28th day of August, 2003.

Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

SAG/anl
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