

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 68

No. 61628

MA-12012

(Kasch One-Day Suspension)

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 69

No. 61629

MA-12013

(Kasch Three-Day Suspension)

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 70

No. 61869

MA-12088

(Kasch Ten-Day Suspension)

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 71  
No. 61870  
MA-12089

(Kasch – Cleaning Checklist)

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In the Matter of the Arbitration of a Dispute Between

**LOCAL 2414, AFSCME, AFL-CIO**

and

**MUSKEGO-NORWAY SCHOOL DISTRICT**

Case 72  
No. 61871  
MA-12090

(Kasch – Posting Grievance)

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**Appearances:**

**Michael Wilson**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

**Michael Aldana and Lisa Andeen**, Attorneys at Law, Quarles & Brady, appearing on behalf of the District.

### **ARBITRATION AWARD**

The Union and Employer named above are parties to a 2001-2004 collective bargaining agreement that provides for final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint the undersigned to hear five grievances of Thomas Kasch. Hearings were held on January 14, February 10, February 11, and April 10 in 2003 in Muskego, Wisconsin. The parties completed filing briefs on April 2, 2004.

### **ISSUES**

The parties stipulated to the framing of the issues. They are:

1. Did the District have proper cause to issue a one-day unpaid suspension to Tom Kasch on June 12, 2002?
2. Did the District have proper cause to issue a three-day unpaid suspension to Tom Kasch on July 17, 2002?
3. Did the District have proper cause to issue a ten-day unpaid suspension to Tom Kasch on October 28, 2002?
4. Did the District violate the parties' collective bargaining agreement by implementing a daily cleaning checklist for Tom Kasch?
5. Did the District violate Article X of the parties' collective bargaining agreement by denying Tom Kasch's application for a swing shift position in November of 2002?

### **BACKGROUND**

The Grievant in all five cases in this award is Thomas Kasch, an employee with the District for 25 years. On June 1, 2000, he was transferred from a maintenance job to a maintenance/custodial position at Lake Denoon Middle School. That's where all the trouble starts for the purposes of these grievances, although on July 21, 2000, the Grievant was complimented on his work performance and cooperation by his immediate supervisor.

The Grievant has three supervisors involved in this case. Patricia Heller, principal of Lake Denoon Middle School, is the Grievant's supervisor, as well as Gary Rosploch, Buildings & Grounds Supervisor, and Mark Buelow, Head Custodian at the middle school and the Grievant's direct supervisor. The Grievant kept some District-wide maintenance duties when he became a custodian at Lake Denoon. He works a first shift position. When he started at Lake Denoon, he asked Heller and the associate principal, Lynn Johnson, what his duties were as a custodian because he had not done that job before. By October of 2000, Heller started having more substantive talks with the Grievant about the flow of work and his responsibilities. In particular, she noticed problems with custodial support in the lunchroom. The lunch program runs between 11:00 a.m. and 1:00 p.m. on school days, with 800 kids in four groups coming through the lunchroom. Heller wants a custodian in there between 11:00 a.m. and 1:00 p.m. to empty bags, clean and change water, clean up spills, and get ready for the next session.

Heller found that the Grievant was not getting the water changed at the right times and that he was not always in the lunchroom. On October 19, 2000, Heller and Buelow sent the Grievant a memo about the daily routine. The memo states that for lunch clean up, the Grievant is to mop the general traffic areas around the perimeter of the lunchroom, mop the traffic area through the lunch lines in the kitchen, and clean up spills in the lunchroom. Heller and Buelow met with the Grievant on November 11, 2000, and the Grievant asked them what times he was to change the water for the kids who wash the tables. The Grievant is supposed to have hot soapy water for the kids to use. They also discussed maintenance work orders, and the Grievant was concerned about whether he had enough time to do those work orders as well as the school's duties. So Heller said they should look at the data and see how often he was out of the school for district maintenance orders. The Grievant told Heller and Buelow at that meeting that he was not happy being a custodian at the school, that he was a maintenance man. They gave him a phone number for the employee assistance program to talk about his stress. He clearly did not want to be at the school and he wanted his old maintenance position back. Heller found him to be argumentative or verbally combative with her. She found it easier to communicate with him by writing him memos.

On October 10, 2000, Buelow gave the Grievant a checklist with all satisfactory marks and a note of thanks for doing a great job with work orders. On November 29, 2000, Buelow gave him another checklist with all satisfactory marks and a note of thanks for his help with cleaning, maintenance and filling in for him when he's gone.

Johnson sent the Grievant a memo called an "incident report" on May 22, 2001, regarding a leak in the ceiling. A police liaison officer, David Hendrickson, went to find the Grievant in the office that he shared with Buelow, and found him at the desk with his feet on the desk. According to Johnson's memo, the Grievant appeared to be sleeping. When told

about the leak, he said that he would tell Buelow about it. He did not get up to look at it until he was told that the leak was by a light fixture. On May 31, 2001, Heller, Johnson, Buelow, Rosploch, the Grievant and Robert Brown, Union President and Steward, held a meeting about this incident. The Grievant denied sleeping on the job, and said that his foot was on the desk drawer because he was changing shoes. Brown said that he knew the Grievant for 23 years and he was not sleeping. Brown said there was a heightened alert about the Grievant, and the Grievant asked why he was being picked on and said to get off his back.

Hendrickson testified that Heller asked him three or four times on the day of the incident whether the Grievant was sleeping, and he told her that he did not see him sleeping. Heller asked Hendrickson to make a written statement but he did not do so. Hendrickson said he never saw him sleeping but it appeared that he was just waking up, or that perhaps he woke him up when he came into the office area. During those conversations, Heller told Hendrickson that they needed to get rid of the Grievant. Heller denied saying that.

On May 1, 2001, Heller sent the Grievant a memo that amended his daily routine. She noted in the memo that he was to stay in the lunchroom for the entire period between 11:10 a.m. and 1:20 p.m. She noted that he was expected to do these duties daily without constant reminders. Heller testified that she made that comment because she was continually looking for the Grievant to find out where he was and why he wasn't in the lunchroom. She also gave him more direction about changing the water and putting soap in the buckets that the kids used to wash the tables. Instructions changed from time to time regarding how many rags were supposed to be in each bucket, when the water in the buckets was to be changed, and how much soap to put in the water. Buelow told the Grievant a couple of times that the buckets had too little water or too much soap and no rags in them. One of those times occurred after the District changed to a different type of highly concentrated soap.

Heller and Buelow gave the Grievant a memo on June 6, 2001, noting that he punched out at 11:08 a.m. and back in at 11:31 a.m. but was still at his desk on break at 11:50 a.m. and that his lunch break was limited to 30 minutes. His lunch break was supposed to start at 10:40 a.m. and end at 11:10 a.m. If the Grievant varies his schedule, he is supposed to report the reason to Buelow, but he had not reported anything that day. Buelow said the Grievant had a desk to work on work orders and other documents, but on the incident in question, Buelow saw the Grievant still eating at 11:50 a.m. and not filling out any paperwork.

On June 13, 2001, Heller sent the Grievant a memo that amended his daily routine when school was in session. When it was pointed out that something was not done, the Grievant would reply that it was not on his schedule. So the schedule started to list duties in great detail. A similar memo went out on August 28, 2001, with more emphasis about the

lunchroom period. Heller testified that the Grievant needed reminders about making sure brooms and dustpans were there so kids can clean up, as well as making sure that he filled the buckets and put rags in the buckets.

The Grievant was given a work order on October 31, 2001, to take a band saw somewhere for repair. He was supposed to do this job on November 1, 2001, but instead, did it the day before when he got the work order. He was missing from the building and did not respond to his walkie-talkie. When he returned, Heller called him to her office and asked where he was. He got upset and said, "You're just trying to stick it up my ass." She gave him an oral reprimand to using that type of language.

Another daily schedule was issued on November 5, 2001, noting that there was no afternoon break and that it was unacceptable for the Grievant to make a personal telephone call for 15 minutes in the afternoon. He was also reminded to respond to calls by walkie-talkie, to pick up work orders off the clipboard, and to call the main office when leaving and building and when returning. Heller met with the Grievant about the daily schedule on December 13, 2001, and added a note to check the boys' bathroom and went over the schedule with him. This work order added the duties of changing garbage bags when full and sweeping between rows of tables between lunch groups because the Grievant had not been doing those things. Johnson sent the Grievant a memo on November 6, 2001, noting several dates when he was late reporting to the lunchroom. She sent him another memo on November 16, 2001, stating that he did not sweep the floor in between each lunch period and did not replace water buckets before one lunch period. Buelow sent the Grievant a memo on November 13, 2001, telling him to open rooms right away in the morning.

On November 28, 2001, Heller, Johnson and Buelow met with the Grievant about his job performance. He had been absent for about two weeks before this meeting, and the substitutes that worked during his absence never had to be reminded of what to do. The Grievant said that their expectations were unrealistic, that he was doing enough already. He was asked to raise his expectations, and he said they would never be happy with what he was doing, that he was doing all of Buelow's work too.

Heller, Johnson, Buelow, Rosploch, Brown and Robert Rammer, Assistant Superintendent, met with the Grievant on December 13, 2001. He was given a list of expectations. Brown stated that the Grievant could not enjoy the job when he was under a microscope, that someone wanted to reach out and "zing" him.

On January 3, 2002, Heller and Buelow sent the Grievant a memo advising him that he failed to clean up some sawdust, that he failed to call the school in a timely manner one day to let them know he would be absent, that he was seen with his feet on top of a desk despite directions not to do so.

There were other incidents in January of 2002. Buelow told the Grievant not to use the phone in room 419 after the Grievant used it for 25 minutes. Heller told the Grievant to use the staff lounge for lunch and he replied that he was not staff. Another time, Kay Mattson walked into the lounge and was frightened because the light was off and the Grievant was behind the door and on the phone. Buelow sent a memo to the Grievant on January 7, 2002, suggesting he move his desk to the receiving room until Rosploch gave him an ok on it. The Grievant had moved his desk to the water softening room which is right off the receiving room and moved a phone line in there. Rosploch came over to the school and talked with him about it, and it turned into a yelling match. On January 10, 2002, Buelow sent the Grievant a memo to remind him to have the lunchroom set up before his break. Also in January of 2002, Buelow sent memos to tell him which phones to use, to give them feedback if he can't complete his work, and to wear his uniform. After Buelow gave him a memo telling him not to use a phone in the cooks' office, the Grievant told him that he was not a supervisor, but just a janitor that squeals.

In March of 2002, Buelow sent the Grievant a detailed memo regarding his use of telephones during working hours, limiting him to using phones during break times or lunch times, and further limiting him to phones in the staff lounge or the main office. Also in March, Buelow sent him a memo telling him not to put his wet dirty shoes on the chairs in the lounge. The Grievant stopped that but then took off his shoes and had his socks on the chairs and was asked to stop that also. On March 4, 2002, Buelow sent the Grievant a memo noting that he had checked off the task of checking filters on AHV units, but Buelow found that duty was not done and that all the filters needed to be changed. The Grievant responded that the filters were fine. On March 9, 2002, Buelow sent him a memo admonishing him about not giving him information from contractors. The Grievant sent a note back stating that he tells all contractors to talk to Buelow, and that he was told not to talk to contractors on a checklist. On March 27, 2002, Buelow sent him a memo about adding salt to the soft water tank. The task was not completed satisfactorily so Buelow put more details in writing.

In the middle of February of 2002. Heller started using a different format of the daily checklist of duties, with boxes for satisfactory or unsatisfactory performance and a place for remarks. Buelow would fill it out every week and give it to the Grievant. Heller found that the Grievant's performance went up and down, that he might go several weeks with satisfactory ratings at times. During the week of March 18-22, 2002, the Grievant received several checks of unsatisfactory performance. One complaint was that maintenance or work orders were not completed in the morning. Buelow also checked unsatisfactory for the block between 2:00 and 3:00 p.m., and stated that the Grievant does not use time wisely. In April of 2002, he received some unsatisfactory performance ratings regarding the work in the lunchroom.

On April 26, 2002, Buelow was in his office and heard the Grievant singing in the receiving room – the lyrics were: “He’s got a gun, just for fun, and he’s going to blow his brains out.” Officer Nowicki met with the Grievant and asked him about it. He said he was singing along with a song on the radio. Nowicki called the radio station, and no song with similar lyrics was played that morning. The Grievant met with Heller, Buelow, Rosploch, Rammer and Brown and was told that it was unacceptable for anyone to sing or talk about a gun in school. Heller indicated that this was a verbal reprimand.

Also in April of 2002, Buelow gave the Grievant a memo that no preventative maintenance had been done the week before and that the Grievant had the time to do it. He reminded him to fill the water softener and run the generator. Buelow gave the Grievant a note about lunch duty – someone told Buelow that the Grievant was sitting in a salad cooler with his head back on a shelf by salads. He was told not to do that again. The Grievant admitted that he sat on the edge of the salad cooler or what he called the display case, but he just rested on the very edge of it for about 30 seconds. He had a headache that day and rubbed the back of his neck a little but he did not have his head in the salads. He thought he could still view his area from there, although in hindsight, he admitted that it was probably not the best place to sit. There were no students going through the lines at that time.

On May 3, 2002, Heller, Rosploch and Buelow met with the Grievant to talk about improving his performance. They looked at his duties and his work orders. At one point in the meeting, the Grievant got upset and pointed at Heller in what she felt was a threatening manner. He said did not want to read the work orders, the checklists, the memos or speed notes, that it was depressing and demoralizing. He said good work gets one nowhere, that he saw no incentive to do a good job, that he was the only person being watched and was singled out and put on a stricter schedule. Rosploch told him that failure to do his job would be considered insubordination. The week following this meeting, the Grievant met his weekly checklist without any unsatisfactory references. Rosploch testified that he was encouraged by his change in attitude and behavior, and on May 13, 2002, he told the Grievant that he was encouraged by his good week.

Buelow gave the Grievant a work order on May 9, 2002, to repair the lawn where the snowplow damaged it. The Grievant worked on it on four different dates in May – the 14<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup>. Buelow observed him during that time and only noted that the grounds could use a little more dirt in some areas, but also noted on his checklist for the week that he had a good week that he would like to see on a more consistent basis. On June 4, 2002, Heller make a request about the lawns for more work, and Buelow wrote up a work order to have the Grievant finish spreading soil and seed and to cover up a bare spot.



Although Buelow marked the week ending May 24<sup>th</sup> as good, there were some unsatisfactory checks. Buelow had noted the Grievant was not active in the lunchroom, that there was a lot of trash on the floor. If aides see spills on the floor, they should report them to the Grievant so he can clean them up, although that's not their responsibility. Apparently, the aides had not seen the spills on the floor during May 23<sup>rd</sup> and 24<sup>th</sup> when Buelow criticized the Grievant for not seeing them or cleaning them. Buelow thought the Grievant was out of the lunchroom area a lot during those times, but he could have been changing water in a bucket or doing other work. Buelow also noted on the checklist that the front doors were not open on May 23<sup>rd</sup>. Heller reported to Buelow that she could not get in. It takes about 15 to 20 minutes to open all the doors. The Grievant had been told verbally in the past that they wanted the doors open first because the principal and vice principal come early. A teacher also arrives relatively early and uses the back entrance. The Grievant said he would comply and open doors the way they wanted.

On May 23, 2002, a pest control technician, Dave Seliger, came to the school to do some work. Kay Mattson (Heller's administrative assistant) radioed the Grievant, and Heller heard him respond loudly that he did not know anything about it. Heller walked Seliger to the receiving area where Buelow leaves instructions for service people and found the note for him. Seliger told Heller that the Grievant had been rude to him in the past when he was there. Seliger later wrote a letter which stated that he had been there on April 25, 2002, and had asked the Grievant to use his radio to call Buelow, and the Grievant handed him the radio and told him to call Buelow himself. Heller, Buelow and Rosploch met with the Grievant on May 23, 2002, regarding the incident with the pest control technician. They also discussed the front doors not being open at 6:50 a.m., and the Grievant said he would open front doors first in the future. They also discussed the Grievant's unwillingness to assist the technician. The Grievant denied that he was rude and said that next time he wanted a Union representative present.

During the week of May 28<sup>th</sup> to the 31<sup>st</sup>, 2002, the Grievant received more checks of unsatisfactory performance on his checklist. Among the duties he is to do between 6:30 and 8:15 a.m. is to check the copy room for paper. According to Buelow, there was no paper in the copy room one day, and an aide, Maggie Kovac, was looking for paper, but Buelow did not know what time that was. The Grievant testified that he was not aware that they ever ran out of paper, and he and Kovac agreed that she would call him on the walkie-talkie if she needed paper. Then the Grievant and Kovac decided to keep a greater quantity of paper in the copy room, because anything overheard on the walkie-talkie could get written up. Buelow checked unsatisfactory in a couple of areas for lunchroom duty – that the Grievant was out of the area a lot and spills were not cleaned up. Buelow noted that between 11:30 and 11:48 one day, the Grievant was leaning against a vending machine picking his teeth, although Buelow did not observe this himself. The Grievant admitted that he would stand against the wall from

time to time, but he would not have done that for 18 minutes. Buelow marked him unsatisfactory for cleaning up spills but did not know whether or not spills were cleaned up during the time period in question. Buelow noted that he should have a scraper with him every day, and the Grievant said he carries a pocket scraper. The Grievant testified that he would have to leave the cafeteria area to fill up water buckets, to take care of garbage barrels, to respond to radio transmissions, or for personal bathroom needs. If there is a shortage of staff in the kitchen or a dishwasher breaks down, they use Styrofoam which more than doubles the garbage load. Buelow never asked the Grievant why he was out of the area.

During the week noted above, the Grievant was given an unsatisfactory check for work orders and preventative maintenance. The Grievant was on vacation for a week in May of 2002, which would limit the amount of work he could accomplish. Buelow had given the Grievant a memo in March of 2002 telling him that work orders are the top priority, and he could work on preventative maintenance when there were no work orders on his clip board. The preventative maintenance plan for May shows that the Grievant missed running the generator and was asked to run it twice in June. The Grievant said he didn't run the generator in May because he had work orders to do and was on vacation for a week during that month. If he ran the generator before completing his work orders, he would risk criticism for not doing all his work orders before preventative maintenance. Buelow ran the generator during 2000, 2001 and until March of 2002.

The first suspension – for one day – was issued on June 12, 2002. Rosploch drafted it and it states:

On Friday, May 3, 2002, an oral review of your work performance for April 2002 was held to discuss areas of work that were listed as unsatisfactory on your day shift checklist and in need of improvement. You were advised that our expectation of satisfactory work must be met or further discipline would be warranted.

It appears that you understood the district's expectations and counsel given, in that for the next week and one-half (May 6-14) all of your work, behaviors, and cooperation were satisfactory. We even met on Monday, May 13, to encourage you to keep up the good work. However, since you returned from vacation on May 22, 2002, your unsatisfactory work performance and behaviors have returned and are summarized below:

May 22-24, 2002

Unsatisfactory performance noted  
- Front door not open as scheduled

- Work orders not completed
  - Poor grounds work
  - Grounds repair insufficient
- Maintenance paperwork not thorough or timely
- Out of cafeteria during assigned times
- Spills not cleaned up in cafeteria
- Did not sweep cafeteria; trash remained
- Very poor unprofessional public radio response to Administrative Assistant Kay Mattson, when she requested assistance on May 23. This incident was reviewed with you that same afternoon.

May 28-31, 2002

Unsatisfactory performance noted

- Paper in copy room not stocked
- Insufficient feedback to supervisor concerning work order status
- Out of cafeteria during assigned times
- Not active in cafeteria responding to spills, leaning against vending machine picking teeth
- Did not run generator test for month of May as assigned.

On Wednesday, June 12, 2002, at 2:15 p.m., I met with you to discuss these areas of unsatisfactory and inconsistent work. You indicated you felt your work was fine and that management must have had the up and down day.

This unsatisfactory performance and behavior is unacceptable. Your unsatisfactory work is serious and warrants the following action.

At this time you are being issued a one-day suspension, without pay, per Article XXXII, Section 32.013 of the Master Agreement. The day is to be taken on Tuesday, June 18, 2002.

Further infractions will warrant additional disciplinary measures, which may include suspension or discharge.

Rosploch testified that he gave him a one-day suspension because he felt that after the Grievant returned from vacation in May, his old unsatisfactory behaviors were returning. The Grievant testified that between May 31<sup>st</sup> and June 12<sup>th</sup>, no one said anything to him about his unsatisfactory performance. He felt his work could not have changed that much, especially coming back from a vacation. He had worse reports on checklists in the past without being disciplined.

The next suspension was over break times. On June 11, 2002, Buelow gave the Grievant a memo about his summer hours to start the next day, and the break time was listed at 8:30 a.m. to 8:45 a.m. Buelow listed that time in order to cover trucks coming in as well as to keep the Grievant separated from other custodians. On July 1, 2002, Buelow found the Grievant in the lounge at 8:55 a.m., which was not his break time. He wrote a memo reminding him that his break was at 8:30 a.m. to 8:45 a.m. and put it behind his time card. When the Grievant got the memo the next day, he made copies of it and hung one by the time clock, put one in the lounge and wrote his break times on the marker board in the lounge. Later that day, Buelow saw the Grievant go into the lounge at 8:45 a.m. and saw him walk out at 9:00 a.m. Buelow told him that he was late for his break, and the Grievant said no, his break was from 8:45 a.m. to 9:00 a.m. Buelow reminded him that he just got a letter about taking his break at 8:30 a.m., and the Grievant said that he must not have read it and that Buelow could write him up, he was good at that. Rosploch testified that when he met with the Grievant over this break time incident, he admitted that Buelow had left him a note about the proper break time, that he took the memo, made copies for others to see, and wrote the break time on the board in the break room. The Grievant told Rosploch that he didn't remember what time he took his break and didn't recall any conversation with Buelow. The Grievant said he made an error in his breaks until it was brought to his attention on July 1<sup>st</sup>, and that he and Buelow never discussed the lunch and break times after he received a memo from Buelow on June 11<sup>th</sup>. He testified that he goofed because he was under a lot of stress at the time. However, he denied that he took his break at the wrong time on July 2<sup>nd</sup> and believed the resulting discipline to be made up.

The Grievant received a three-day suspension from Rosploch on July 17, 2002 in the following letter:

On July 8, 2002 I met with you and your union representative, Joe Gehling, concerning an incident that occurred on July 2, 2002. Also present at this meeting was Mr. Rammer.

On Wednesday, July 3, 2002, I received information from your supervisor, Mark Buelow, pertaining to incidents that occurred on July 1, 2002 and July 2, 2002.

Mr. Buelow stated that on Monday, July 1, 2002, he looked for you to relay a message from Mr. Rammer. Mr. Buelow found you in the lounge at 8:55 a.m., which is not your scheduled break time.

Later that day, Mr. Buelow wrote a memo to you reminding you of a previous discussion and a memo to you dated 6/11/02, which listed your summer work schedule as follows:

Work day: 6:30 a.m.-3:00 p.m.  
Break time: 8:30-8:45  
Lunch time: 11:00-11:30

Mr. Buelow placed the memo by your time card for you to review first thing Tuesday morning, July 2, 2002. Prior to 7:00 a.m. on Tuesday morning, July 2, you made copies of the 7/1/2 memo, and hung it by the time clock. You also wrote your summer schedule on the marker board in the lounge.

While assisting the painter later in the morning of July 2, Mr. Buelow passed the lounge at 8:45 a.m. and noticed you pulling out a chair to sit at the table. When he returned at 9:00 a.m., after finishing with the painter, he met you leaving the lounge and mentioned to you that you were late taking your break. You told him, "No, my break is from 8:45 – 9:00." Mr. Buelow replied, "No, it's not, Tom, you just got a letter reminding you it's 8:30." You said, "Oh, I must not have read it, too bad. If you don't like it, write me up, you're good at that," and you walked away.

In our meeting you were asked to explain why you did not follow your scheduled break times as you were directed. You confirmed that on July 2, 2002, you received a memo dated 7/1/02 from Mr. Buelow about your work schedule. You then stated you checked the 6/11/02 memo you had received earlier, and found Mr. Buelow was correct in listing your break time as 8:30-8:45. You acknowledged you made copies of the 7/1/02 memo and posted it at the time clock. You also acknowledged writing your break times on the information board in the staff lounge.

You said you could not, however, recall any discussion with Mr. Buelow at 9:00 a.m. on Tuesday, July 2, or recall what time you took your morning break that day.

Based on the information I obtained during my review of this matter, I conclude that you did take your break from 8:45 to 9:00 in direct violation of your supervisor's clear order. This defiant and insubordinate behavior is serious and unacceptable. Given the fact that you have been suspended two times in the past year for insubordinate behavior and poor work performance, this behavior is particularly egregious.

At this time you are being issued a three-day suspension, without pay, per Article XXXII, Section 32.013 of the Master Agreement, for insubordination. The days are to be taken July 22-24, 2002.

You have now been suspended without pay on three separate occasions in the last year. You must immediately change your attitude, behavior and work performance. If it has somehow not been clear before this, let me make this clear; your position with the District is in serious jeopardy. Further infractions and/or behaviors will result in additional disciplinary measures, including termination.

During August of 2002, the Grievant received some memos from Buelow about not getting his preventative maintenance work done. Buelow told him on August 16, 2002, that he should get permission to change his lunch break in the future. On August 21, 2002, he confronted Buelow, called him a “fucking dictator” and then went home on sick leave.

Heller testified that there were more problems with the Grievant’s performance in the fall of 2002, that he needed more reminders about duties. She sent him a memo on October 15, 2002 about his break time, when she saw him standing around for 15 minutes before his break time. She asked him if he had something that he was supposed to be doing, and he asked her what she was doing. Heller said she was supervising children. The Grievant asked her if she had a problem with him, and she said that she had a problem with him not working before his break and just waiting to take his break. The Grievant testified that he was aligning the tables. Heller testified that the Grievant had no cleaning materials and was not working. Her memo also stated that she saw him the day before sitting in the custodial closet listening to the radio. He told her he was filling the scrubber, and she accepted that explanation. The memo also mentioned that the week before, he was seen by someone else taking morning breaks longer than 15 minutes on two dates. Heller did not personally observe that, but a library aide reported to her that the Grievant took an extra eight minutes one day and an extra seven minutes the next day. Heller testified that other employees have taken more than their 15 minutes of allowed break time and have not been disciplined.

The Grievant responded in writing to Heller’s memo, noting that he did general cleaning every day, which includes mopping aisles, cleaning walls and pillars, and aligning tables. He stated that at 7:45 a.m., she saw him filling the automatic scrubber, which needs to be attended while being filled or the hose can dislodge and flood the area. He further noted that he was willing to use the time clock to monitor break times. He stated that he was cleaning when Heller noticed him in the hallway, and when he looked at her, she dodged into a doorway. He called her behavior “stalking” and said it was unacceptable to continuously harass him every minute. He was willing to forfeit his day job and work second shift in hope of lowering his stress level. The Grievant’s checklist for the week of October 7 through 11 as well as October 14 through 18 shows that his work was satisfactory up to his break time, and there is no indication that his work was not done. The Grievant testified that there could be

times in the lunchroom duty period where he would not have cleaning materials in his hands. When he aligns tables, he just uses his hands. He felt if he had been inactive for 15 minutes, it would have been reflected on the checklist. He said he was aligning tables, which takes between five to ten minutes, when Heller came up to him. The Grievant testified that he felt he was being harassed by being questioned on the same thing over and over again, while he was never questioned on cleaning the kitchen which is a big cleaning operation. He thought Heller expected the lunchroom to be as clean during lunch periods as it was before 800 kids ate in it, which was unrealistic.

On October 28, 2002, Rosploch gave the Grievant a ten-day suspension in the following letter:

On October 15, 2002, Pat Heller, Principal of Lake Denoon Middle School, wrote a memorandum to you, detailing a number of performance problems she had recently observed. After I received Ms. Heller's memorandum, I met with you on October 21, 2002, to discuss her observations, and to give you an opportunity to respond. On October 24, 2002, I received a follow up memorandum from you, further responding to Ms. Heller's memo.

I will summarize Ms. Heller's observations, your responses, and my conclusions as to each:

1) October 15, 2002

Ms. Heller reported that she observed you at approximately 8:45 a.m. in the Commons area, walking back and forth, or standing and doing no work, for approximately fifteen minutes. She asked you if you had something to do. You answered her by asking what she was doing. You also asked if she had a problem with you. You informed her that you had been washing tables.

You informed me in person, and in your October 24<sup>th</sup> memo, that you do general cleaning every day, that you mop floors, align tables, and spot clean walls and pillars. I asked Ms. Heller about your recollection, and she stated that while you had been performing some cleaning activities earlier in the morning, during the time frame she referenced in her October 15<sup>th</sup> memo, you were not doing any of the work you described, and did not have any cleaning materials or implements in your hands.

2) October 14, 2002

Ms. Heller observed you at 7:45 a.m., sitting in a custodial closet listening to the radio. You stated that you were filling an automatic scrubber, which needed to be attended while filling, so that it would not overflow.

3) October 10<sup>th</sup> and 11<sup>th</sup>, 2002

Your break time is scheduled from 9 a.m. to 9:15 a.m. Ms. Heller reported you taking a break on October 10<sup>th</sup> from 8:55 a.m. to 9:18 a.m. On October 11<sup>th</sup>, she reported that you took a break from 8:57 a.m. to 9:19 a.m. You acknowledged that you took breaks that were longer than scheduled, but stated that your “watch was off,” and that you would pay for any “cents” difference.

As you know, your work performance has been deficient for a long period of time, and you have been given numerous counseling sessions, directives and discipline because of your poor work performance. You have been specifically counseled and disciplined over actions similar to those Ms. Heller reported. You have been warned that while at work, you must perform the duties that have been specifically, and in detail, assigned to you. You have also been counseled, directed, warned and disciplined regarding taking of breaks.

Despite all of these efforts to improve and remediate your performance, you still refuse to do so. Despite knowing when and for how long to take breaks, on October 10<sup>th</sup> and 11<sup>th</sup>, you took breaks that exceeded your allotted time by 50%. On October 15<sup>th</sup>, you wasted fifteen minutes of work time, standing in the Commons area, performing no work.

There can be no question that you are aware of the District’s expectations for your performance; it is apparent that you are just not taking them seriously. This is further demonstrated by your attitude and remarks toward Ms. Heller; e.g., questioning what she was doing, and asking if she had a problem with you.

On July 17, 2002, I wrote a memorandum to you stating, with no uncertainty, that your position with the District was in jeopardy. Three months later, you are engaging in the same type of behaviors. This conduct is simply incomprehensible, given the warnings and counseling you’ve received. Accordingly, I am suspending you for ten days, without pay, effective Tuesday, October 29, through Monday, November 11, 2002.



Tom, you should know that I very seriously considered recommending your termination for these repeated behaviors. Instead I am willing to give you this one last chance to improve and remediate your performance. However, this is your last chance and final warning, and future incidents such as these, or others that you have been warned of, will result in my recommending your termination. I cannot stress in stronger terms or with more urgency, the need to immediate change in your performance and attitude. We are asking for no more than for you to do your job.

The District stipulated at hearing that the incident regarding filling the scrubber (No. 2 above) was not a basis for discipline.

The Grievant had a prior one-day suspension on October 23, 2000, which was upheld in arbitration. His record also includes prior oral warnings as noted above.

On a list of notes made by Heller regarding the Grivet's actions and the supervisor's action, she noted that on February 4, 2002, the Grievant told Cindy Breitbach that he had only two more weeks of looking at Buelow and then he could go on vacation. However, Breitbach testified that he never made such a comment, that he never said anything to her about Buelow.

Rosploch testified that since the Grievant had been given the last ten-day suspension, his work was satisfactory. Heller and Buelow were happy with his performance and his attitude. Rosploch also testified that he was not aware of any other employee who was restricted in terms of what telephones they can use other than the Grievant. He was not aware of other employees who used phones excessively or in places and at times when they should not. Rosploch said other employees have been given staggered breaks, although he was not aware of any employees who took different break times in the summer. Rosploch was not aware of any other employees who have problems with extended breaks or who had performance problems similar to those of the Grievant. Another custodial employee has a checklist of duties similar to that of the Grievant – Linda Abramski who also works at the Lake Denoon School. She has had a checklist for about a year or two. According to Rosploch, she had a problem with not securing the building, so she was given a schedule to follow throughout the day. She was also rated satisfactory or unsatisfactory for each work day.

In October of 2002, the Grievant applied for a vacant position of swing shift in the District. Of the four custodial applicants, he had the greatest seniority. Jan Kuzmic was given the position. She started with the District in 1999. The other applicants did not have performance problems and had recommendations from their supervisors. The swing shift is

designated as a second shift position because the person works more than 50 percent of his or her time on the second shift, although he or she could work the first and third shifts. The swing shift person could be assigned to any school building in the District. Only the high school has a supervisor on the second shift. Rosploch considered that the Grievant had the seniority and relevant experience for the position, but his poor work performance kept him from being selected for the job. Rosploch testified that the Grievant demonstrated several times that he needed direct supervision to stay on task.

Terry Vitlas is a custodian on the second shift at Lake Denoon school who has filled in for the Grievant several times. He has also filled in for Buelow. He testified that during the lunch period, he is standing there, not doing a lot but watching kids. He estimated that perhaps half the time is spent standing around. He stated he could stand around for 15 minutes without doing any work. The custodians were told to stand in one area, but Vitlas said they have to move around. He usually stood outside of the commons area to stay out of the way. Vitlas said that aides help all the time telling him when there are spills to be cleaned up. Instructions changed frequently regarding the number of buckets, rags, soap and water in the two years that the Grievant was there. Vitlas said they started with two buckets and two rags in each one, then went to four buckets with three or four rags in each, then the soap changed and there were different notes about that. The concentrated new soap was thick and it was difficult to get the same amount of soap each time from the gallon jug without a pump on it. A push pump was added to the soap jugs.

Robert Brown (as noted before as the Union President and Steward) is a custodian at Bay Lane Middle School. He noted that he has handled work orders and never been questioned as to how long they take. His work schedule is not as detailed as the Grievant's schedule. While Brown has to do certain duties within certain times, his schedule does not show so much detail with time frames. He receives monthly checklists from his supervisor. Brown takes his break at different times depending on the circumstances of the day. Brown noted that he would have to cut corners many times because of the work load.

The Grievant filed a grievance regarding the checklist. He stated at hearing that to maintain a schedule with variables in the custodial environment is pretty hard. The checklist calls for doors to be unlocked in the time line between 6:30 a.m. and 8:15 a.m., but it really has to be done by 7:45 a.m. The schedule has to be adjusted for contractors coming into the building, radio communications, deliveries, and seasonal work. There are requests from students and staff or even requests for help from Buelow. Staff in the kitchen may ask for his help, or there's an accident in the health room or gym. There are special events, such as plays, where the event requires some extra work. The Grievant frequently gets calls to meet a kid to get into a locker. He feels it is unrealistic to call Heller, Buelow or Rosploch every time he needs to deviate from the schedule on the checklist.

## THE PARTIES' POSITIONS

### The District

The District submits that it had proper cause to issue a one-day unpaid suspension for deficient work performance and other unacceptable behavior during May 22-24, 2002, and May 18-31, 2002. During those periods of time, the Grievant repeatedly violated the District's explicit directives and did not complete numerous tasks assigned on his checklists, including failing to open the front door, failing to complete maintenance paperwork, failing to be working in the cafeteria, failing to clean the cafeteria area, failing to stock the copy room with paper, and failing to run a generator test. The Grievant did not contest those issues when the disciplinary decision was made or offer anything to contradict the evidence. Buelow saw the Grievant out of the cafeteria on numerous occasions on or about May 23-24, 2002. Buelow saw him doing nothing while there was trash on the floor and by the barrels. The Grievant did not dispute that he was rude and unprofessional when asked for assistance with a vendor on May 23, 2002. Heller's testimony is bolstered by a letter from the vendor involved. Moreover, the District asserts that it has raised the same issues with the Grievant innumerable times over the past two years and has warned him that his failure to improve and perform his job would be considered insubordination.

The penalty is appropriate, the District submits, and should not be second-guessed by the Arbitrator. Employees must follow their supervisors' orders or face severe consequences. The Grievant's conduct in repeatedly refusing to remain in the lunchroom for the entire period as directed, failing to perform any work when he was supposed to be working, failing to open doors or perform preventative maintenance warranted a serious penalty. His rudeness is a serious disciplinary infraction in its own right. The District exhausted other means to get the Grievant to comply with its expectations. The Grievant had previously been given a one-day suspension for refusing to comply with directions.

The District further submits that it had proper cause to issue a three-day unpaid suspension for insubordination on July 2, 2002, regarding the assigned break time. It is undisputed that on June 11, 2002, Buelow told the Grievant verbally and in writing that his break time was changed for the summer from 8:45 to 9:00 a.m. to 8:30 to 8:45 a.m. Buelow saw the Grievant still on break at 8:55 a.m. on July 1, 2002, and wrote him another memo reminding him of his correct break time. The Grievant got that memo on July 2, and before his break, he made several copies of it and hung it around the workplace and wrote his break time on the marker board. However, he still took his break outside of his assigned time, and when confronted about it, he stated that he must not have read the memo he got and posted around. The Grievant told Buelow that if he didn't like it, to write him up, he was good at

that. The Grievant tried to claim that Buelow fabricated the July 2<sup>nd</sup> incident. The Grievant's testimony about this is unbelievable. Buelow and Rosploch's testimony is corroborated by documentary evidence.

The penalty is appropriate in light of the seriousness of the offense as well as the prior disciplinary record for similar insubordination. Arbitrators have found that discharge is an appropriate response in cases of far less egregious acts of insubordination. The decision of the appropriate break time was solely within the purview of management and the Grievant was required to follow it or redress it through the grievance process.

The District contends that it had proper cause to issue the ten-day suspension for misconduct on October 10, 11 and 15, 2002. The Grievant did not seriously dispute what the library staff reported – that he took extended breaks in the library on October 10<sup>th</sup> and 11<sup>th</sup>. Additionally, he did nothing for 15 minutes leading up to his break on October 15<sup>th</sup>. Although the Grievant denied he was not doing any work as Heller alleged, his denial lacks credibility. Heller's testimony is corroborated by the memo she prepared and provided to the Grievant that same day. The written response that the Grievant provided is inconsistent with his testimony at the hearing. He first claimed he was cleaning the entire time, but at the hearing, he claimed he was aligning the tables when Heller saw him. When Heller asked him what he was doing on October 15<sup>th</sup>, he challenged her by asking her what she was doing. This was both disrespectful and insubordinate.

The District submits that the Grievant's conduct was particularly egregious given that he had been previously counseled, warned in writing and formally disciplined about the actions that led to this suspension – his unacceptable attitude in dealings with management and his failure to follow management directives regarding his work, and in particular, when he was permitted to take his assigned break. His response to Heller amounted to insubordination, and his use of work time and breaks was a theft of time. The Grievant cannot argue that his refusal to comply with directives regarding his break times was not significant, which he implied by stating that he would repay the District whatever cents it lost as a result of his spending unauthorized time on break. The most compelling evidence that the ten-day suspension was reasonable and necessary comes after the suspension. The Grievant admitted that he changed his attitude towards his work, and the District acknowledged that his performance and demeanor improved following the suspension.

As to the fourth issue, the District states that the work schedule grievance has no merit. The District has the right to assign work, set schedules and determine the manner in which work shall be performed. There is no evidence that the work schedule was unreasonable or set the Grievant up for failure. The creation of the Grievant's work schedule and daily checklist was a response to his failure to perform any task not explicitly written out and explained in

detail. Management reviewed and considered his District maintenance work orders. The Grievant failed to present any evidence to suggest he is unable to perform his work schedule as devised. When he was absent, three other custodians picked up his work schedule and completed the duties in it without incident. The Grievant himself can perform the schedule satisfactorily, and has done so since his most recent suspension. The District has always given him the flexibility to interrupt his schedule to do maintenance orders.

### **The Union**

The Union argues that the District lacked proper cause to suspend the Grievant on June 12, 2002. Heller never testified regarding the alleged failure to have the front doors opened by 6:50 a.m. on May 23, 2002. Mattson never testified regarding the alleged poor public radio response when she requested assistance on May 23, 2002. Kitchen aides who observed cafeteria conditions leading to certain charges never testified. While management representatives claimed that the Grievant's weekly checklists were not disciplinary or used to discipline him, they served a prominent role in discipline, as Rosploch and Heller admitted. With dual supervision by Buelow and Heller, conduct condoned by Buelow was not acceptable to Heller, such as the landscaping assignment. Heller objected to the van parked in the school receiving area overnight while Buelow knew and consented to having the second shift park it there.

The Union asserts that the District offered no direct testimony that the front doors were not opened on time on May 23, 2002. The Grievant's practice was to open the front door last, and he agreed to reverse that order and open the front door first. Moreover, the parties agreed that it took 20 minutes to open the doors, and the Grievant had up to 6:50 a.m., 20 minutes into his shift, to complete the task. Buelow testified that Heller's complained that the doors were not open by 6:45 a.m.

While the District relied on Heller to support the charge that the Grievant responded to Mattson in a poor and unprofessional manner, Heller could not hear the response from her office and Mattson did not testify. The Union wonders whether the Grievant would have been disciplined if he spoke softly into the walkie-talkie. Heller's concern was not about any yelling but about the Grievant's alleged rudeness to Seliger and the failure to assist the pest control technician. Buelow left the building without telling the Grievant what needed to be done.

The Union states that the District failed to supply work orders which were allegedly not filled out adequately between May 22<sup>nd</sup> and May 24<sup>th</sup> and from May 28<sup>th</sup> to May 31<sup>st</sup> regarding insufficient feedback to supervisor about work order status. It is impossible to sort out the May 22-24 charge of maintenance paperwork not being thorough or timely. If the District

argues that the Grievant's offense was the weekly task of checking the water softener and adding salt was not done, the Union objects as that would be a brand new charge. The issue was whether the Grievant did something wrong in preparing the paperwork, not whether he completed the task. There are no work orders in evidence to support the charge that there was insufficient feedback between May 28<sup>th</sup> to May 31<sup>st</sup>. The Grievant should not have been disciplined for not running the generator test in May due to his vacation and holiday as well as the priority of work orders and the ability to run the test twice the following month.

The only witness regarding alleged cafeteria infractions was Buelow, who testified that there were a combination of observations from Heller and lunchroom staff who did not testify. Buelow's investigation of the facts was arbitrary, capricious and unreasonable. Buelow noted on the checklist that the Grievant was out of the cafeteria during assigned times, but he did not know what day or what time or for how long, and he never asked the Grievant where he was. The Grievant might have been filling buckets with water when Buelow walked by. If Buelow saw a spill when he walked by and did not tell the Grievant, it was a set-up. There is too little information to support the alleged about unswept areas. The Union contends that the District failed to prove it had just cause to discipline the Grievant for the May 28<sup>th</sup> to 31<sup>st</sup> cafeteria duty. While he is charged with not being active, Vitlas testified that about 50 percent of the time is spent standing around during cafeteria duty. Finally, Maggie Smith was not called to prove that the copy room was not properly stocked with paper by 8:15 a.m., and Buelow's testimony was hearsay.

Turning to the three-day suspension, the Union points out that management never discussed the revised schedule with the Grievant before July 1<sup>st</sup>. The management issued a revised summer schedule on June 11<sup>th</sup> and never discussed that schedule prior to Buelow confronting the Grievant on July 1<sup>st</sup>. The Grievant's account of what transpired on July 1<sup>st</sup> is consistent with Buelow's reference of a discussion. Buelow's story changed when he became aware that the Grievant had gone to Rammer. While the Grievant claims to have misread the directive to take his breaks from 8:30 to 8:45 a.m., the Union acknowledges that misreading or missing the directive regarding designation of specific break times is not normally a valid defense.

The Union objects to the ten-day suspension, noting first that the District failed to call anyone who witnessed the Grievant taking longer breaks than allotted on October 10<sup>th</sup> or 11<sup>th</sup>. The only evidence that the District presented was hearsay testimony of Heller. Arbitrators have found that just cause has not been proven by such hearsay testimony where the employer has failed to produce the witnesses at hearing. While the District will claim that the Grievant admitted to taking longer breaks and that he made an admission to Rosploch, the Grievant denied that in his memorandum to Heller dated October 22, 2002. He stated that "break time

discrepancy in question” and Rosploch agreed that could mean he was challenging the allegations. The Grievant’s statements regarding his wrist watch being off or paying cents for the difference in time are taking out of context by Rosploch.

No one testified about the Grievant’s standing in the commons area without working on October 15<sup>th</sup> except Heller. While Heller claims to have a clear visual sight of the Grievant, she conceded that about 250 students walked through the hallways at the time in question and could have come between her and her line of vision to the Grievant. The Union finds it most surprising that Heller did not know that bells rang routinely at 8:57 each school day and questions her recollection of the time of events on that day when she was unaware of a loud ringing noise throughout the building. The Grievant acknowledged that he used a poor choice of words in his conversation with Heller, but should he be suspended to 10 days for that? The Grievant could not have anticipated such a severe discipline. A few months before that, he called his supervisor a “fucking dictator” without being disciplined. Anything he said to his other supervisor pales in comparison.

Regarding the work schedule, the Union states: “The grievant testified that he could not recall of any instance where management had refused his request to deviate from his schedule. Accordingly, the grievance is not supported by the evidence.”

## DISCUSSION

### The One-Day Suspension

It can take 20 minutes to open all the doors and it would depend where one started – from the rear or front – to determine what time they would all be open. The Union believes that the Grievant was trying to accommodate a teacher that apparently wanted to come in early through the back door, and he was perfectly willing to reverse the order to accommodate the principal if that’s what was desired. However, the teacher could get in with a key pad number and the doors would not have to be unlocked for her. The Grievant had been told in the past to open the front doors first. He was a couple of minutes late on the day in question which could have meant the difference here. Buelow’s checklist indicates that Heller had to open the front doors on April 30, 2002, at 6:50 a.m. Rosploch’s notes state that the front doors were not open at 6:50 a.m. While Buelow testified that the time was 6:45 a.m., not 6:50 a.m., the five minutes makes little difference here. If this were the only area of concern in the notice of suspension, it might be overturned. However, there were many other deficiencies that led to the suspension.

Regarding paper in the copy room not being stocked – if Smith came to Buelow looking for paper, it is not hearsay for Buelow to report that Smith came to him looking for paper. Buelow marked it down on the checklist. That’s about all that was made of this.

As far as not running the generator test for the month of May as assigned, the Union points out that the Grievant did not work the whole month because he was on vacation. Again, if that were the only concern, discipline would probably be inappropriate. But it is just one of a whole list of things that led to unsatisfactory and unacceptable performance that had been building up over time.

The Grievant’s refusal to help the pest control technician is fairly significant is this disciplinary action. Contrary to the Union’s assertion that Heller could not hear the Grievant’s response on the walkie-talkie, she could hear him yelling on it. That’s why she came out of her office. Since Heller heard the response herself, it was not necessary to have Mattson also testify about the response. Moreover, there was no reason for the Grievant to respond in such a manner or refuse to help out the vendor, even if he didn’t know anything about it. It was part of his job to help out in such situations. Heller found a note on the bulletin board for the pest control technician easily when she went into the receiving area. The Grievant could easily have done the same thing and avoided trouble between himself and the administrative office. The Grievant’s refusal to help is a major reason to uphold the disciplinary action here.

As for the Grievant being out of the cafeteria – Buelow marked unsatisfactory if he walked by three or four times during the week and didn’t see the Grievant in the cafeteria. He also saw trash on the floor that was not getting taken care of when he passed through the area. He didn’t see the Grievant with a mop in his hands to take care of spills. Buelow marked the Grievant as satisfactory at other times when he saw him being active in the cafeteria during lunch duty. The Union contends that Vitlas stood around about half the time, and therefore, the Grievant should not be disciplined for being inactive during the lunch period. However, the Grievant is not being disciplined for standing and watching or waiting, but for either not being there at all or not getting to spills and trash, etc. In the other discipline to be noted below, the Grievant was standing around doing nothing **before** the lunch period, at a time when he should have been doing some work. The Grievant tries now to claim that he was working, getting buckets of water, taking out the trash. The problem is that Buelow was perfectly happy to mark him satisfactory when in fact the Grievant was doing satisfactory work. While Heller may have wanted to get rid of him (Hendrickson’s testimony is fairly compelling on this point), there is no reason for Buelow to make up anything, and in fact, Buelow rated the Grievant satisfactory on many occasions.



### **The Three-Day Suspension**

On the lunch break suspension, the Grievant claimed that he made an error until July 1<sup>st</sup> when the time was brought to his attention. However, he continued to make that same error on July 2<sup>nd</sup> with no explanation, despite having posted the lunch and break time prominently around the area. The Union asserts that the Grievant never talked to Buelow on July 2<sup>nd</sup> – that the only conversation about the breaks occurred July 1<sup>st</sup> – but that would have to rest on the Grievant's recollections. The Grievant testified that he was under so much stress that he inadvertently took his break at the wrong time from June 11<sup>th</sup> to July 1<sup>st</sup>. His recollections are somewhat suspect. He told Rosploch that he couldn't remember when he took his break on July 2<sup>nd</sup>. The fact is that right after the Grievant wrote his break times down in the lounge on July 2<sup>nd</sup>, he took his break at the wrong time. This smacks of clear defiance. The Grievant even had told Buelow that he had not read the memo regarding his break after he photocopied it and hung it up in the lounge and by the time clock and wrote it on the marker board in the lounge. Certainly, there was proper cause for discipline for this kind of insubordination.

The Grievant now claims that after the break time was brought to his attention for the second time on July 1<sup>st</sup>, he never took his break at the wrong time and should not be disciplined for taking a break at the incorrect time on July 2<sup>nd</sup>. I do not believe this, since the record shows that after he posted his break time everywhere with a smart remark about team work on it – which would have to have been the morning of July 2<sup>nd</sup> – he proceeded to take his break at the wrong time.

### **The Ten-Day Suspension**

The Union notes that Heller could not have seen the Grievant during the entire 15 minutes that she reported him standing or walking without working because her line of sight would have been interrupted by children passing in the hallway. However, the passing time is no more than about three minutes. The Grievant claimed that he was aligning tables during that time, but that would have been easily visible to Heller. If the Grievant had been working aligning tables, Heller would not have asked him what he was doing. The Grievant admitted that Heller asked him what he was doing, and admitted that he responded by asking her what she was doing. I find the District's version of the time in question to be more likely than the Grievant's version.

The Union has an interesting theory about the Grievant's question to Heller when he asked her what she was doing. The theory goes something like this – he said things that were a lot worse to another supervisor and got away with it, so why should he be disciplined for something less offensive? The short answer is that the Grievant knew that Heller would not

take that kind of insubordination from him while Buelow had tolerated it before. Heller gave him a verbal reprimand for saying that she wanted to “stick it up his ass.” The other answer, of course, is that the Grievant doesn’t have to come up with something **more** offensive than “fucking dictator” to be disciplined for insubordination.

The extra long break times were admitted by the Grievant to Rosploch, although he also said his watch was off and he would pay for any cents difference. It is not necessary to call the library staff people who reported this when in fact the Grievant admitted the same behavior to Rosploch. While the Grievant later wrote that break time discrepancy was in question, that was different than what he told Rosploch earlier.

There is one troubling aspect to the ten-day suspension notice – it contains an item regarding the Grievant filling a scrubber in a closet. The District admits that it did not discipline the Grievant for that. Why is it included in the disciplinary notice? It should be removed so that the record is straightforward about what the Grievant was disciplined for, should there ever be any occasion in the future to look to this past disciplinary measure.

### **Level of Discipline**

While some of these matters seem small or insignificant in themselves and would not warrant such severe discipline as suspensions, this is one of those cases where one asks – what does it take to get the Grievant’s attention? Apparently it took more extreme measures. There were counseling sessions, directions, speed memos, verbal conversations, verbal warnings (such as for a remark to Heller and for singing about a gun), checklists of duties, a prior one-day suspension for insubordination, and still the Grievant showed poor performance and insubordination toward his supervisors. There were instances where he could have been disciplined and wasn’t (such as calling Buelow a “fucking dictator”). The Grievant believed that he was being put under a microscope unnecessarily, but usually employees who are being heavily monitored have given management cause for concern. Certainly, the Grievant had given management plenty of reasons to watch him carefully.

I find that the suspensions are all for proper cause and the levels of one day, three days and ten days were proper and not excessive under all of the circumstances of this case. Progressive discipline was in order to get the Grievant’s attention. He had a prior one-day suspension before these cases arose. There were other counseling sessions, written directions, etc., and verbal warnings that should have alerted the Grievant to the seriousness of his conduct. The Grievant obviously can do this job when he puts his mind to it, as shown by his satisfactory work record from time to time as well as after the last suspension. And the Grievant appears to be reasonably intelligent and presumably knows exactly when he is being insubordinate to management.

### Checklist Grievance

There is nothing on the record to show that the daily cleaning checklist violates the collective bargaining agreement. Another employee – Linda Abramski – had such a checklist, and it appeared that the Grievant sought that kind of detailed information about his job. He was allowed to deviate from it, and the Union does not seriously dispute the validity of the checklist.

### Posting Grievance

After the hearing and after the briefs were submitted, the Grievant notified the Union that he was no longer interested in the position and the Union withdrew this grievance with prejudice but without precedent. That case is accordingly dismissed.

### AWARD

1. The District had proper cause to issue a one-day unpaid suspension to Tom Kasch on June 12, 2002. This grievance is denied and dismissed.
2. The District had proper cause to issue a three-day unpaid suspension to Tom Kasch on July 17, 2002. This grievance is denied and dismissed.
3. The District had proper cause to issue a ten-day unpaid suspension to Tom Kasch on October 28, 2002. This grievance is denied and dismissed.
4. The District did not violate the parties' collective bargaining agreement by implementing a daily cleaning checklist for Tom Kasch. This grievance is denied and dismissed.
5. The Union withdrew the grievance regarding the application for a swing shift position and this grievance is dismissed.

Dated at Elkhorn, Wisconsin, this 28<sup>th</sup> day of June, 2004.

Karen J. Mawhinney /s/  
Karen J. Mawhinney, Arbitrator