

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ANTIGO SCHOOL DISTRICT

and

**ANTIGO EDUCATION ASSOCIATION
AFFILIATED WITH CWUC**

Case 58
No. 65397
MA-13215
(Kafka Grievance)

Appearances:

Mr. Michael Burke, Esq., WEAC, 2004 Highland Avenue, Suite L, Eau Claire, Wisconsin 54701 on behalf of the Association and Grievant.

Mr. Jeffrey T. Jones, Esq., Ruder Ware, 500 Third Street, Suite 700, P.O. Box 8050, Wausau, Wisconsin 53202.

SUMMARY OF BENCH AWARD

Hearing in the captioned case was scheduled and held at Antigo, Wisconsin on March 20, 2006 before Wisconsin Employment Relations Commission Arbitrator Sharon A. Gallagher. No stenographic transcript was made. The parties jointly requested that the Arbitrator issue a verbal Bench Award in this case. After hearing the case in which four witnesses testified, receiving all documentary evidence and considering all of the relevant evidence and the parties' arguments at the hearing, the Arbitrator issued her verbal Bench Award on March 20th.

The following summarizes the Arbitrator's Bench Award given on March 20, 2006.

1. The only provision of the 2003-05 labor agreement that is applicable to this case is Article 1, Board Rights which provides in relevant part as follows:

...

The Board's right to operate and manage the school system is recognized, including . . .to discipline, discharge, and non-renew teachers for a just cause.

. . .

2. As this case involved the discipline of Teacher Steve Kafka by issuance of a 2 day unpaid suspension for actions Kafka took or failed to take on September 13, 2005 in his 6th period class, the District had the initial burden of persuasion and burden of proof in this case to show that it had just cause to issue Kafka a 2 day unpaid suspension and that such a penalty was fair and reasonable.
3. There was no dispute between the parties regarding the facts of the incident which occurred in Kafka's classroom during 6th period on September 13, 2005 or regarding the actions taken by Kafka and the District thereafter. No issues were raised regarding the overall fairness of the District's investigation.
4. On September 26, 2005, the District issued a letter (by Principal Zamzow) to Kafka, a copy of which it also placed in his personnel file, which read in relevant part as follows:

This letter is to document improper classroom management which allowed for the serious disregard for the safety of one of your students. Related issues include; sic) failure to properly respond to a student who passed-out in your classroom, and disregard for maintaining a positive and safe learning environment in the classroom.

. . .

It is my opinion, after conducting several interviews and talking with you, that you had full knowledge of these events in your classroom. The fact that you admitted to knowing in advance what the students were planning and then excused yourself from being held accountable for their actions, demonstrates a serious lack of concern for the well-being of all the students in the classroom. The appropriate action by a teacher would have been to stop the other students from pressuring Donovan and to not allow the students to lock him in the stocks.

The two day suspension without pay, removal of the stocks for your classroom, and the letter in your personnel file, is inclusive of the disciplinary action necessary to convey the severity of this incident. It is important that you understand that your lack of action jeopardized the students (sic) health. We are fortunate that at this time it appears that the student has physically recovered from this event.

5. On September 30, 2005 Kafka responded in writing as follows:

In accordance with Section 19, page 11, I am hereby giving formal notice of my intent to lodge a formal grievance concerning the reduction of my salary by 2 days. The reduction in pay occurred on my pay check for September 22.

It is my contention that the decision was a “rush to judgment” so as to appear in a favorable light to the Department of Social Services. Other courses of action were suggested by an Association representative and myself. They were turned down.

The decision of the Department of Social Services that I was guilty of nothing more than an unwise decision does not warrant the reduction in pay.

While I recognize the right of the School Board and their duly appointed representatives to discipline teachers I feel the action of the superintendent and principal was both arbitrary and excessive to fit the circumstances.

. . .

6. Board Policy (of which Kafka was admittedly fully aware) provides that District students have the right to feel safe and cared for while at school and that Teachers are responsible to assure the safety and welfare of their students and to make sure a positive learning environment is maintained (District Exhibits 4 through 7).
7. There is no District rule prohibiting making wagers or gambling.
8. Although he initially took the position that he did nothing wrong on September 13th, Kafka changed his position quickly and accepted responsibility for what happened in his classroom both with District officials, State officials and with his students.
9. No evidence was presented to show that there had ever been a similar incident in the District. No evidence was submitted to show that the District had ever before issued a teacher a 2 day unpaid suspension.
10. Kafka began working for the District as a full-time teacher of Social Studies in 1979-80. In 1980, Kafka received a 2 day paid suspension for insubordination (taking his students to a school assembly when told in advance by his Principal

specifically not to do so). Also in 1980, Kafka was disciplined for becoming physical with a male student who was harassing a female student in Kafka's class. In 1989, Kafka was also verbally counseled for the following "atypical behavior" in the classroom:

. . .

1. Placing students in stocks for inappropriate behavior while in the classroom.
 2. Hitting the chalkboard or the top of a desk with a hammer whenever students were sleeping in class or on occasion when the teacher was upset or angry with the class.
 3. Placing a student desk on top of the teacher's desk and the teacher sitting in this desk to monitor the class when students were taking tests.
11. Normally discipline is progressive, proceeding from counseling to a written warning to suspension of 1, 2 and 3 or more days, followed by discharge. However, where employee misconduct is serious, sometimes it is appropriate to skip some of the normal steps involved in progressive discipline to send the employee a clear message that their conduct was serious and will not be tolerated in the future.
 12. Here, in hindsight, Kafka's acts and omissions on September 13th were serious as they could have ended in tragedy for the student and in liability for the District. Kafka demonstrated in his testimony that he was and is well aware of the dangerous position he put his student and the District into on September 13, 2005.
 13. Normally arbitrators do not disturb employer judgments regarding the level of discipline. However, the Association argued that the District acted unreasonably in imposing a 2 day unpaid suspension herein. I agree.
 14. Given the fact that the District failed to prove it had ever given a 2 day unpaid suspension as a penalty in any case before this, the fact that Kafka received only a verbal counseling in 1989 for acts which appeared to be as serious as those involved herein, and that he received a 2 day paid suspension in 1980 for clear insubordination, a two day unpaid suspension for Kafka's acts/omissions on September 13th was excessive and unreasonable.

AWARD

Therefore, the Arbitrator finds that Kafka engaged in the misconduct alleged but she finds that the penalty for Kafka's acts/omissions was excessive. The Arbitrator therefore orders that the discipline be reduced to a 1 day unpaid suspension and that Kafka be made whole for 1 day's pay/benefits. Kafka's file shall contain this Award.

Dated at Oskosh, Wisconsin, this 31st day of March, 2006.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator