

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**MARSHALL JOINT SCHOOL DISTRICT**

and

**MARSHALL EDUCATION ASSOCIATION**

Case 25  
No. 65703  
MA-13294

(Peter Krull Termination)

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**Appearances:**

**Marilyn Townsend**, Attorney at Law, 122 West Washington Avenue, Madison, Wisconsin and **Anthony L. Sheehan**, Staff Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, Wisconsin, appearing on behalf of Marshall Education Association.

**Shana R. Lewis**, Lathrop & Clark, LLP, 740 Regent Street, Madison, Wisconsin, appearing on behalf of the Marshall Joint School District.

**ARBITRATION AWARD**

The Marshall Joint School District, hereinafter District or Employer, and Marshall Education Association, hereinafter Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The parties jointly requested the Wisconsin Employment Relations Commission to appoint Commissioner Susan J.M. Bauman to serve as the arbitrator in this matter. She was so appointed on March 13, 2006. Hearing was held on June 27, June 28, June 29 and July 12, 2006 in Marshall, Wisconsin. The hearing was transcribed. The record was closed on September 12, 2006, upon receipt of all post-hearing written arguments.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

### ISSUE

There are no procedural issues to be decided. The parties were unable to stipulate as to the substantive issues to be determined in this case. However, they agreed to allow the Arbitrator to frame the issues based upon the relevant evidence and argument, as well as the parties' suggested issues. The Association frames the issues as:

Did the employer violate the Grievant's due process rights when it discharged him, and if so, what is the remedy?

Did the Employer have just cause to discharge the Grievant, and if not, what is the remedy?

The Employer states the issues as:

Did the Marshall School District have just cause to terminate Peter Krull?

If not, what is the remedy?

The undersigned adopts the issues as presented by the Association inasmuch as those were the issues presented and argued.

### FACTS

The Grievant, Peter Krull, was first employed by the Marshall School District in 1980 as a business education teacher. Since 1999, Krull has been the Technology Coordinator. In addition, he served as the Athletic Director and as the assistant football coach for numerous years. During the course of his tenure with the District, Krull also served in other extracurricular capacities, including assistant baseball coach, assistant basketball coach, and head basketball coach. He was discharged by the District on February 7, 2006, following a public hearing and two nights of deliberation by the School Board, February 1 and February 7. He timely grieved the termination.

From 2002 through 2005, Krull's wife, Sharon, was also employed by the District, initially as a secretary/assistant and subsequently as a payroll clerk. Sharon Krull voluntarily terminated her employment with the District in February 2005.

Barbara Sramek has been the superintendent (District Administrator) for the Marshall School District since July 1, 2005. Prior to serving in that capacity, she was employed as the Director of Pupil Services and Special Education for the District for three years. Jeffrey Gross has served as the Business Manager since August 2003. In late June 2005, Gross was preparing a year-end payroll report wherein he noted discrepancies regarding payroll records

and voids, particularly with respect to monies paid to Peter Krull. He reported his findings to Sramek. The District's auditors were called in and confirmed the discrepancies. Subsequently, the Marshall Police Department was notified. Both Peter and Sharon Krull were questioned by the police department.

On July 6<sup>th</sup>, Peter Krull was notified that he was on paid leave during the pendency of the investigation. Ultimately, the police determined that Sharon Krull was solely responsible for the overpayments that had been made to Peter Krull, and she was criminally prosecuted. After the police investigation was completed, Sramek, Gross and Dennis Riley, the High School principal, together with Attorney James Ruhly undertook a further investigation of financial matters in the District. Their investigation determined that Peter Krull had engaged in a number of behaviors that the District administrative team felt warranted his discharge. Accordingly, Krull was placed on administrative leave without pay effective January 19, 2006. The School Board agreed with the administrative team's recommendation and Krull was discharged, effective immediately after the Board meeting of February 7.

There are six (6) substantive matters upon which the District administrators recommended, and the Board agreed, to base Peter Krull's termination. They are briefly summarized as follows, with significant additional facts included in the Discussion, below:

#### **Donation of Television Set to the Marshall Volunteer Fire Department**

In addition to his employment as the Technology Coordinator and Athletic Director for the Marshall School District, Krull was a member of the Marshall Volunteer Fire Department and the treasurer of that organization. In approximately 2002, a new building was being constructed for the Fire Department. Krull was in charge of technology for the new building, including computers. He installed a District-owned television, complete with a bar code sticker saying "Marshall Public Schools" on it, and District-owned brackets, in the new fire department building. Though Krull may have mentioned his idea of repaying the firefighters for their assistance at athletic department events, and other volunteering, to then District Administrator Dave Schuler, Krull never received explicit permission to install the television in the Fire Department building. The Marshall Board of Education never took action to approve this "gift" or "loan," nor do the minutes of the Fire Department indicate that the Fire Department ever acknowledged receipt of the television set from the District.

During the time that the television was in the fire department, a District television in the JEDI room needed replacement. Krull, in his capacity as Technology Coordinator, advised Principal Riley that the District had no replacement television sets, and a new set was purchased using contingency funds.

### Unauthorized and Unreported Cash Payments to Track Coaches

Steve Beacom was the boys' track coach for the Marshall School District from 1977 until 2003. Marshall participated in track even before it had a track, which was built in, approximately, 1982. Five years after that Marshall began the Marshall Track Invitational, an event that involves 12 to 16 teams and 300 to 400 athletes. The Invitational, prior to the introduction of extensive use of computers for timing and reporting results, involved a great deal of work for its preparation and on the day of the meet. After about five years of doing this work as the track coach, and with the knowledge that other workers at the Invitational, such as timers, were receiving a stipend for their work, Beacom approached Krull in his capacity as Athletic Director and asked if it would be possible for him to receive some remuneration. Krull indicated that he would look into it.

Subsequently, after the next Invitational, Beacom received an envelope with a cash payment. Thereafter, after each meet, cash in amounts ranging from \$25 to \$50 were paid to Beacom. When Talitha (T.J.) Hansen started working the Invitational as the girls' track coach in 1997, she also received payment in plain white envelopes. When she inquired of Krull as to these monies, she was told that it was payment for her work at the Invitational. These cash payments were not recorded, were not approved by or known to the District, and were not reported as income to the Internal Revenue Service or the Wisconsin Department of Revenue by either the recipients or the District.

The payments came from the cash receipts of the Invitational and, possibly, WIAA track events. Krull instructed the athletic secretaries, initially Joan Wendt and, since 1999, Cathy Millin, to report the total gate receipts at \$100 less than the actual amounts collected. Millin was instructed to put \$50 into each of two envelopes that were then to be given to Beacom and Hansen, respectively. However, neither Beacom nor Hansen received \$50 after every meet.

Although the payments began before Schuler assumed the position of District Administrator, Krull contends that he had the approval of Schuler, in his capacity as District Administrator, to make such cash payments to the track coaches, on the premise that they deserved additional pay, but it has been asserted that listing these individuals on the list of Invitational workers would have raised concerns about paying coaches twice for doing coaching work. Krull also points to the fact that the collective bargaining agreement between the District and the Marshall Education Association provides that Track Invitational Workers are to be paid from meet profits by the Athletic Director. The other track workers were, indeed, paid from the profits of the Invitational, but they are all listed on the Invitational Income and Expense report which was provided to the business office, which paid the workers by check.

### **Failure to Properly Utilize Purchase Orders**

The football jerseys utilized by the District are customized. For many years, Krull, in his capacity as Athletic Director, purchased jerseys from Team Sporting Goods in Marshfield, Wisconsin. District fiscal policies require that, except under certain limited circumstances, a requisition must be completed and sent to the business office for issuance of a purchase order, before orders can be placed. These policies have been in place for quite a while and are reiterated in handouts to faculty, annually, at budget time. Krull had a history of ignoring these regulations.

In October 1998, then District Administrator Mike Davis wrote a memo to Krull regarding purchasing procedures. Therein, Davis referenced a history of concerns with Krull's failure to follow proper purchasing procedures.

Mary Ellen Van Valin was the District's Business Manager prior to Jeff Gross. Van Valin was very concerned that all District purchases be made in accordance with the fiscal policies. She became aware that Krull was ordering football jerseys from Team Sporting Goods early in the year, for the following school year, without a purchase order having been issued. She attempted to work with Krull to ensure that the policies were followed, with limited success. By letter dated July 31, 2000, to Fred Trudeau at Team Sporting Goods, she advised that the "okay to purchase" was not granted in the absence of a purchase order and that should the proper procedure not be followed, she would recommend to the School Board that Team Sporting Goods no longer supply goods to the District. Krull received a copy of this letter.

Despite the July 2000 incident, and prior and subsequent reminders of the need to obtain purchase orders before ordering goods, Krull and Trudeau worked out an "arrangement" whereby Krull would place the order in the early part of the year so that factory discounts could be utilized and there would be sufficient time to customize the jerseys in time for the Fall football season, but Team Sporting Goods would be liable for the merchandise in the event the purchase order was not issued. Additionally, Krull and Trudeau had an understanding that the merchandise would not be shipped until after the purchase order was issued, after July 1, the start of the new fiscal year.

In January 2005, Krull placed an order for in excess of \$450.00 worth of football jerseys, prior to the issuance of a purchase order. Trudeau wrote up the order with the notations "Hold Inv. For PO" and "product shouldn't be sent; should hold product in inventory." However, the jerseys were shipped prior to receipt of the purchase order, and received by the District on April 8, 2005. The shipping document includes the word "HOLD" in the designated space for the P.O. number.

### **Mishandling of the M Club Vending Machine**

As part of his numerous responsibilities, Krull was responsible for the M Club, an organization of students that lettered in various sports. In this capacity, he was the responsible person for the M Club activity fund, including funds generated by the vending machine operated on behalf of the club. The M Club vending machine sold a sports drink like Gatorade to provide an alternative to soda pop for athletes and other students. Krull was responsible for okaying payments to the product supplier for product received and for depositing proceeds into the appropriate depository. Krull delegated some of these activities to his secretary.

The business office debited and credited the M Club account in accordance with the information provided to it by Krull. Each month, the business office generated an account report for each activity fund and provided a copy to the responsible person. Krull contends that he did not receive such reports on a monthly basis, but acknowledges that he never reviewed those he did receive to ascertain whether all of the debits and credits were correct. He also acknowledges that it was his responsibility to ensure that the monthly report was accurate.

Although the District does not emphasize maximizing the profit made by vending machine sales, it is aware that vending machines are inherently profitable operations inasmuch as the product is sold for more than the cost to the District and there are no additional costs to the District attributable to a vending machine. Accordingly, there is significant concern that Krull mismanaged the vending machine because the total profits of the machine over an eleven year period were only \$652.77.

Krull attributes the failure of the M Club vending machine to generate more money to various factors: he contends that other organizations must have used the product; the M Club was charged for product other than sports drink; he was unable to keep the machine filled during the last year of his employment because he was located at the elementary school and the machine is at the high school. Over the period in question, Krull never reviewed the monthly activity fund reports; he never reported to his principal, the business manager, or the superintendent that any product had been taken or used by any other organization; Krull never reported to his administrator any concern that the M Club was being charged for product that was not M Club product, such as juice or soda; he never advised any persons that he was unable to attend to the M Club vending machine because his office had been moved, thereby preventing the possibility of another person taking over the responsibility of operating the M Club vending machine.

### **Cash Missing from the August 27, 2004 Football Game Receipts**

Another part of Krull's responsibilities as the Athletic Director was the oversight of the "gate", monies collected at home athletic events. This process was appropriately delegated by Krull to his secretary, Cathy Millin. For each event, Millin would prepare an initial cash box

containing adult and student tickets and some appropriate amount of money that would be used to make change for those purchasing tickets. After the event, Millin prepared a Ticket Manager's Report showing the reconciliation of the amount in the cash box after the event, minus the initial cash she had put in the box, with the amount collected as a result of the sale of both student and adult tickets. It was not unusual for the reconciliation to be off a few dollars, as during the rush at the gate, the ticket seller might have charged for a student ticket rather than an adult ticket, or may have miscounted some change.

For the August 27, 2004 home football game, Ms. Millin prepared her cash box in the usual manner. She was not present at the end of the game to replace the cash box in the vault, and this task was performed by Krull. As Krull was on the football field at the time that the gate was closed, the record is not clear how the cash box was delivered to him by the ticket taker. The following Monday, Millin attempted to reconcile the cash box and found a \$295 discrepancy. In light of this large and unexpected discrepancy, Millin counted the money several times and then reported the matter to Krull. Krull asked who the ticket taker had been, and advised Millin to count the money again, thinking that she had, perhaps, erred with respect to the cash she had initially put in the cash box. Krull may have also called his wife to ask about it, as Sharon Krull may have had possession of the cash box during the evening.

Millin talked with the ticket taker, Wendy Helgeson, who reported no problems with the cash box and was concerned as to why Millin was contacting her. Millin was never able to determine the reason for the discrepancy.

Krull did not take any other action to investigate the \$295 loss, nor did he report its occurrence to Principal Riley<sup>1</sup>, Business Manager Gross, or the District Administrator at the time.

### **Insertion of Family Members' Names into Records to Provide Payment for Athletic Events**

Yet another aspect of the Athletic Director's position, properly delegated by Krull to Millin, was to hire workers for home events. Millin solicited volunteers, and assigned them to work the events in which they expressed interest. Although there was a computer program in place for recordkeeping purposes, and to ensure that the proper individuals were paid for the events that they worked during the particular athletic season, Millin also kept a paper record of the assignments. At times, Millin did not enter the names of the people who worked an event until sometime after the event had occurred. Krull and Millin were the only persons who had access to this computer program. In the event that Millin was unable to secure sufficient people to work an event, she told Krull about it, usually on the day of the event, and he would find the needed workers.

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<sup>1</sup> Riley may not have yet started working as the Principal at the time of the football game, but did become principal shortly thereafter and the discrepancy was never reported to him until it came to light during the investigation of Krull.

At the end of each athletic season, Millin printed out a listing of the events worked by each individual and sent it to the respective workers for confirmation in preparation for requesting that the Business Manager pay them for the services rendered. After the worker had confirmed the listing was correct, Krull would sign off and the individuals were paid.

Diane Stark has been the high school secretary for twenty-nine years. Stark does not generally work athletic events. However, during the 2000-2001 school year, when her daughter was a junior and “grounded” for the year, Stark worked at some basketball games, on the premise that if she was present, her daughter could also attend. At the end of the basketball season, Stark received a computerized listing of games from Millin showing games she had worked. She reviewed it and noticed that it did not include all the games that she had worked. She took it to Millin and indicated that it was incorrect. Millin reviewed the computer listings and noted that either the name of Krull’s daughter, Becky, or Krull’s wife, Sharon, was listed on games that Stark had worked.

Millin then reviewed her handwritten sheet that showed that Stark had worked the games in question. Stark was paid for the games she had worked, which she had worked alone at the door, without Becky Krull or Sharon Krull being present. Millin brought this matter to Krull’s attention, and he indicated that Millin should pay Stark for working the games.

Krull testified that prior to games, he would check the computer to ensure that all the worker slots were filled. If there were open slots, he would fill in either his wife’s or his daughter’s name, knowing that they would be at the games. Krull also informed Attorney Ruhly that at the end of the season, he would fill in blanks on the computer with the names of his wife or daughter, as he knew they had attended the events. He filled in the blanks in this manner with full knowledge that Millin maintained a paper listing of people who had agreed to work the games and that she often did not fill in the slots on the computer with the names of the people who were going to work until after the game took place or even the end of the season prior to sending pre-payment verification forms to the workers, and he did so without looking at the paper listing to see if any other persons had been assigned to work the events.

## **RELEVANT CONTRACT PROVISIONS**

### **ARTICLE VI – INDIVIDUAL RIGHTS**

#### **C. SUPERVISION OF ALL STAFF:**

3. A non-probationary teacher shall not be discharged, non-renewed, suspended, disciplined, reprimanded or reduced in compensation without just cause.



**EXTRACURRICULAR SALARY SCHEDULE**

CONTEST	APPROXIMATE TIME	APPROXIMATE NUMBER OF WORKERS	TOTAL PER WORKER AND/OR PER EVENT
...	...	...	...
TRACK INVIT. WORKERS			Paid from profits by Athletic Director

**RELEVANT BOARD POLICIES**

**SERIES 500**

**PERSONNEL**

**STAFF CONDUCT**

**522**

Questions relating to staff conduct may be considered by the Board in closed session, in accordance with state law, and shall be considered confidential.

Every employee is expected to subscribe to the codes of ethics prescribed by his/her professional organizations. Further, each staff member is expected to conduct him/herself in a manner that will not conflict with local, state and federal laws, or hamper his/her efforts to teach or perform their duties.

**TEACHERS (JOB DESCRIPTION)**

**531.1**

It is the responsibility of the teacher to help students learn subject matter and skills that will contribute to their development intellectually and socially and are consistent with the philosophy and goals of the school district.

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Other responsibilities

1. Maintain accurate, complete, and correct records as required by law, district policy, and administrative regulation.
2. Abides by Board of Education policy and regulations and the provisions of the current collective bargaining agreement.
3. Cares for and protects school property, equipment and materials.
4. Maintains appropriate communication with parents, teachers, and administration.
5. Maintains appropriate professional courtesy, dependability, and professional credibility.
6. Maintains a positive classroom atmosphere.
7. Performs all other duties or special projects as assigned by the building principal or district administrator.

**TECHNOLOGY COORDINATOR (JOB DESCRIPTION) 531.33**

The district Technology Coordinator provides appropriate computer, audiovisual and other technology related services to enhance the teaching and learning process within the district.

**SERIES 600**

**FISCAL MANAGEMENT**

**GATE RECEIPTS AND ADMISSIONS 653**

Admission receipts of school events shall be adequately controlled. The district administrator and/or his/her designee shall be responsible for the administration and supervision of all phases of school events for which an admission is charged.

Adequate records shall be maintained to provide chronological and accounting data for subsequent review and analysis.

The Board shall review and set admission prices for school events periodically.

**DEPOSITORY OF FUNDS 661**

The Board shall annually choose the official depository (ies) for all school district funds. Checking, savings and investment accounts shall be opened as deemed necessary for the efficient operation of the school district.

Deposits made in any one financial institution shall be limited to the amounts protected by state and federal law, unless under specific conditions approved by the Board.

All funds belonging to the district and under the control of the Board Treasurer shall be accounted for and disbursed directly by the Board in accordance with state law.

**STUDENT ACTIVITY FUNDS 662.1**

The Marshall School Board maintains that in a pure legal sense, all income and receipts from student activities such as class funds, dramatic productions, student government, etc. fall under the responsibility and control of the school board. Even though student groups may undertake activities to raise this revenue, these funds are, nonetheless, considered to be district funds. In all circumstances, the school board, or its designee, has the authority to determine the manner in which these funds will be disbursed.

Activity accounts are used to account for funds raised by the students for the students. Activity accounts are characterized by student involvement and coaching from adult advisors.

The purpose of raising and expending activity money is to promote the general welfare, education, and morale of all the students and to finance approved extracurricular and cocurricular activities of student body organizations.

Student activity money shall be expended in such a way as to benefit those pupils who have contributed to the accumulation of such money except as otherwise noted in this policy. Money collected by the student body as a whole shall be expended so as to benefit the student body as a whole and not for the benefit of a special group.

The management of student activity funds shall be in accordance with sound business practices and accounting procedures.

It is not the intent of student activities to accumulate significant sums for future years. Money raised in a specific academic year should be spent in that same year except as otherwise noted in the administrative rules for this policy.

The Marshall Board of Education designates the district administrator or his/her designee to oversee the operation and proper maintenance of the student activity accounts. All funds will be deposited in the district's official depository, and all interest earned will be kept in an interest account and will not be divided up according to each student activity account. The district administrator/designee may grant disbursements from the interest account to purchase items for the school/student body. Any charges for items not directly chargeable to any one organization, such as check printing costs, fees for stop payment orders, etc., will be paid from this account. No class/organization may maintain an account outside the student activity account. This account will be administered using the same procedures set in place for the Student Activity Fund.

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#### **Administrative Rule**

**662.1**

#### **STUDENT ACTIVITY FUNDS MANAGEMENT GUIDELINES**

1. Each student organization shall elect a treasurer and the treasurer shall reconcile the organization's books with the Business Manager on a regular basis.

2. No student organization may maintain an account outside the student activity account.
  3. All funds shall be deposited in the district's official depository and all interest earned shall be kept in an interest account and shall not be divided up according to each student activity account. . . .
  4. Wisconsin Interscholastic Athletic Association (WIAA) tournament funds shall be accounted for in the general fund under a special project coded account. This account shall be administered using the same procedures set in place for the student activity fund.
  5. A purchase requisition signed by the class/organization treasurer and the advisor must be submitted to the Superintendent or his/her designee for written approval prior to a purchase being made.
  6. All disbursements from the student activity account must be on a check basis and not on a petty cash basis. Advisors shall be required to submit deposits and/or outstanding bills to appropriate personnel within 10 calendar days of receipt. If applicable, building secretaries shall be required to make, at a minimum, weekly deposits to the designated depository.
- . . .
10. No student organization shall operate with a negative balance.

## **PURCHASING**

**672**

The district administrator shall be responsible for the purchase, storage and distribution of all supplies, materials and equipment for the district.

The district administrator shall administer a central purchasing system and is authorized to place orders for all items designated in the budget.

Whenever feasible, purchases of services or goods in the amount of \$2000.00 or more shall be made on the basis of bids. Bids and/or quotations shall also be secured for items of lesser amount whenever this practice could result in a monetary saving to the district. Whenever possible, a minimum of two bids should be obtained.

Whenever reasonable in terms of cost and delivery of goods, items shall be purchased from local merchants.

## **POSITIONS OF THE PARTIES**

The Marshall School District contends that Mr. Krull's actions demonstrate clear and willing violation of many of the policies and procedures of the School District. Such behaviors have resulted in a loss of trust in Mr. Krull's ability to set an appropriate example for students. The District contends that there is just cause for termination of his employment, both as the Athletic Director and as a teacher in the District. In addition, the District asserts that Mr. Krull was fully informed of the matters to be considered by the Board, including the administrators' recommendation to terminate his employment. Board members conducted themselves in a proper manner and acted as fair and impartial decision makers. Krull's due process rights were not violated.

The Association argues that Mr. Krull's due process rights were violated by the Marshall School District in that the School Board, without Krull's prior knowledge, took into consideration the illegal activities of Sharon Krull when the Board voted to terminate Peter Krull's employment. In essence, the Association argues that Peter Krull was found guilty by association with his wife and terminated because the Board felt that Peter Krull knew about or was guilty of the payroll manipulations and overpayments to him that were Sharon Krull's doing. The Association also contends that Board members attempted to organize public opinion against Krull and thereby failed to act as impartial decision makers.

Even if Krull's due process rights were not violated, the Association argues that the District does not have just cause to terminate him. The Association contends that the actions that Krull did or did not take with respect to the television set loaned to the Fire Department, the unauthorized cash payments to track coaches, the failure to properly utilize purchase orders in buying football jerseys, the handling of the M Club vending machine proceeds, the response to the \$295 missing from the football gate proceeds, and the insertion of family member names in the listing of workers at athletic events, were all taken in the interests of the students, school district employees, and the District as a whole. Krull's actions and inactions, while violations of District policies, were not done to benefit Krull personally. Krull has recognized that he made mistakes. While some discipline is appropriate, in light of Krull's long tenure with the District, his lack of any prior discipline, and his cooperation with the investigation and responding to questions of Attorney Ruhly and the administrators, termination is not appropriate.

## **DISCUSSION**

### **Alleged violation of due process**

As a threshold matter, the Association contends that Krull's due process rights were violated when the administrators supposedly made serious allegations against him to the School Board without providing him with notice of such allegations. The Association's argument is

two-fold: that the administration recommendation to discharge was, in part, premised on Krull's involvement in Sharon Krull's illegal payroll manipulations, and that the conduct of members of the School Board demonstrated that they considered such involvement in reaching their decision to terminate Krull. The Association also alleges that Board members were not impartial decision makers and that they attempted to organize community members against Krull.

Clearly, Krull has a property interest in his position as Technology Coordinator and Athletic Director for the District. Thus, Krull's position cannot be taken from him without due process. Due process requires that the employee receive notice and an opportunity to be heard on charges against him. *BOARD OF REGENTS V. PERSONNEL COMMISSION*, 254 WIS. 2D 148. Receipt by a decision maker of new facts, upon which it bases a termination decision, without the employee's knowledge, represents a denial of due process. *MARDER V. BOARD OF REGENTS*, 286 WIS. 2D 252.

The Administrative Recommendation for Disposition of Concerns Regarding Peter Krull included, *inter alia*, the following statement that serves as the basis for one prong of the Association's due process argument:

We are not persuaded that Mr. Krull was uninvolved in, or at least uninformed about, the payroll manipulations that resulted in the unauthorized payment of district funds to Mr. Krull, and about the attempts to cover-up or mask such payments. The totality of the relevant circumstances and evidence suggests a conclusion that Mr. Krull has failed to disclose his actual involvement in or knowledge about those areas of concern. We are continuing our efforts to ascertain the facts in this area.

On its face, this portion of the Recommendation signed on January 12, 2006, by Barbara Sramek, District Administrator, Dennis Riley, Marshall High School Principal, and Jeff Gross, Business Manager, would tend to support the Association's concern. However, this was only a part of the document which also stated, *inter alia*,

We believe that Mr. Krull's performance shortcomings and deficiencies can be described as fiscal nonchalance and designed unaccountability at best. At worst, certain specific conduct for which there is credible evidence would constitute what accurately could be characterized as unlawful and perhaps fraudulent conduct.

We believe credible evidence shows that Mr. Krull was less than completely forthright in his investigatory interview.

Attached to the Recommendation was the report of Attorney Ruhly that set forth the various allegations of wrongdoing, together with evidence thereof. These issues had been delineated to Mr. Krull in a letter from Sramek and Ruhly dated November 1, 2005.

Had the Recommendation and report been provided to the School Board, and the School Board taken action on it immediately, the Association might be correct that Krull's due process rights were violated. However, as noted, the Recommendation is dated January 12, 2006. By letter dated January 19, 2006, Krull and his representatives were provided with a copy of the Investigative Report and notice that "Based upon the conclusions in this Report, the administration for the Marshall School District has decided to recommend that the Board of Education terminate your employment effective immediately." Although the January 12 Recommendation was not provided to Krull or his representatives at that time, copies of both the Recommendation and the investigatory report were made available to the public, including Krull and his representatives, at the Board's hearing on February 1, 2006.<sup>2</sup> Krull had ample opportunity to advise the members of the Board that he had been exonerated by the police of any involvement in the actions of his wife, a fact that was apparent by charges being filed against Sharon Krull and not Peter Krull.

Despite the Association's assertions to the contrary, there is nothing in the record in this case to find that Krull's due process rights were violated by any Board member taking into consideration Sharon Krull's illegal behavior in its decision to terminate Krull's employment. Nor does the record reflect any way in which Board members considered the possibility of Krull's involvement in Sharon Krull's actions as part of its deliberations. Further, Sramek's hearing testimony makes clear that there was no additional evidence linking Krull to his wife's activities. Since no such evidence existed, the Board could not have considered it in its deliberations.

Further, the Association distorts the testimony of several Board members in an attempt to establish that they considered Sharon Krull's actions in deciding to terminate Peter Krull.

Marilyn Herman testified to joining a conversation involving several other community members and John Benson, a member of the School Board at the time. Herman testified to hearing Benson saying, "But you would know if you had \$30,000 extra in your checking account." She did not hear the conversation that preceded that remark by Benson, but Benson did testify that he had been "sort of jumped" by a small group of people who began to ask him questions, including asking whether he thought the Krulls had had enough. Benson framed the

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<sup>2</sup> Although the Association claimed that it had not seen a copy of the Confidential Marshall School District Administrative Recommendation, in a letter to Association attorney Sheehan dated February 13, 2006, Administrator Sramek makes references to same and states "We trust that you already have copies of the documents listed above with the exception of the e-mails . . . we will not be producing new copies of the documents. . . if you need additional copies...please let us know and we would be happy to provide such." No such request was made.

question as “What did Peter Krull do that would merit the school board considering possibly nonrenewing him or punishing him in some way?” Benson acknowledged that he asked the group several questions, including the one that Ms. Herman overheard. While the Association draws the conclusion that because Benson asked this question, and contends that it is the only thing that Benson could think of to say, he must have thought the Peter Krull knew of the payroll manipulations, and he must have taken that into consideration when he voted to discharge Peter Krull.

Herman did not hear or testify to the entire conversation, but only to the one question. She drew a conclusion from that, one that supports the Association’s position. However, it is clear that an entire conversation took place and that the “smoking gun” question was not the first or only one that Benson asked of the group. There is no record of what was said to Benson that engendered his asking that specific question, and there is no basis from which to conclude that Benson considered Krull’s lack of knowledge of the payroll manipulations in forming an opinion that the other behaviors in which Krull engaged warranted Krull’s discharge.

The Association also contends that during the interim between the Board’s first meeting to discuss the Krull matter on February 1, 2006, and the meeting at which it took action on February 7, 2006, Board members attempted to organize public opinion against Krull, in violation of their obligation to be impartial decision makers.

Board member Wayne Kiefer responded to an e-mail message that had been written to Sramek by Amy Meinholz that Sramek in turn forwarded to all members of the School Board. In her message, Meinholz explained why she and her spouse had not been in attendance at the Board meeting of February 1 and that she supported the recommendation of Sramek and the administration to terminate Krull. She also stated, “In the private sector, Peter wouldn’t even have a chance. It wouldn’t even be open for discussion.” In his response to Meinholz, Kiefer thanked her for writing and noted that there was a difference in opinion between what Meinholz had stated and that which was stated by the public at the Board meeting. Kiefer acknowledged that what Krull had done was wrong and that “The question is to the severity of the wrong and that is what we have to decide and that will not be easy.” Kiefer also acknowledged that it is not difficult to fire employees in the private sector, and that in the public sector it is more difficult. Kiefer did indicate a desire to have more people be willing to contact board members, but specifically stated, “we will consider all views when making our decision.” There is nothing in Kiefer’s message to support the Association’s contention that Kiefer was attempting to organize public opinion against Krull, or that he had made a determination as to how he would vote at the next meeting of the School Board.

Board member Annette Kornell urged community member Tammy Grant to submit her e-mail message as a letter to the editor. Grant’s message was one in opposition to Krull, and indicated her surprise at how many people in the community had no problem supporting Krull, “despite his unethical and criminal behavior.” At the Board meeting of February 1, the only persons who spoke against Krull were members of the administration. Kornell’s message to



Grant does not indicate support of Grant's position (which does not connect Krull to his wife's behavior), but rather indicates that she thinks Grant's message is "well-written and thoughtful" and not written by an employee of the District whose opinions might be perceived as biased. Kornell's request to Grant was in support of a public dialogue, not in support of Grant's position, and it does not demonstrate a desire to organize public opinion against Krull. There is nothing inherent in Kornell's message to indicate that she had formed any opinion whatsoever regarding the disposition of the charges against Krull.

Krull's due process rights were not violated in the proceedings leading to his termination by the School Board. There is no question that the investigation of Krull's behavior was against the backdrop of the illegal activities of his wife, actions from which Krull and his family benefited. However, despite the paragraph contained in the Administrative Recommendation to which Krull and his representatives had access prior to the Board's action, there is absolutely no evidence to support the Association's assertion that the Board action was, in anyway, premised on allegations and concerns that Krull had been involved in, or had knowledge of, his wife's actions. The Association has not established that any issues, other than those delineated in Ruhly's investigative report, were discussed at either Board meeting or formed the basis of any individual Board member's decision, or the decision of the Board as a whole.

### **Alleged Lack of Just Cause**

It is against the reality that Peter Krull has been employed by the District for 25 years, initially as a teacher of business education and more recently as the Technology Coordinator, while also serving in various extracurricular capacities including several assistant coaching and head coaching positions, and most importantly as the Athletic Director since 1986, that the various allegations against him must be reviewed. It is also essential to note Krull has not been the subject of any disciplinary action over his long tenure with the District, and that he is viewed by some other employees of the District as an exemplary teacher, having been nominated by colleagues for a Kohl Teacher Fellowship. Also of note is the fact that most, if not all, of the allegations against Krull came to light in the course of a review of the financial matters of the District in which Krull had been involved, subsequent to the discovery of the payroll discrepancies previously mentioned in which Krull played no role and of which Krull had no knowledge.

The collective bargaining agreement between the District and the Association provides that the District may discharge an employee for just cause. The agreement, however, does not define just cause. The parties have not agreed upon a legal standard to be utilized in this matter, other than the two prong analysis utilized by many arbitrators. That standard requires the District to establish the existence of conduct by the grievant in which it has a disciplinary interest, and it must then establish that the discipline imposed for the conduct reasonably reflects its disciplinary interest. *CHIPPEWA COUNTY*, Case 239, No. 64925, MA-13062 (Nov. 2005). As fully discussed below, I find that the District has a disciplinary interest in Krull's conduct and that the discipline imposed, termination, reasonably reflects that interest.

To his credit, Krull willingly participated in the investigation of the allegations against him, responding under oath to questions posed to him by Attorney Ruhly, Administrator Sramek, Business Manager Gross and Principal Riley. He also testified at the arbitration hearing. Unfortunately, while it is clear that Krull was, at least at the hearing, trying to be honest and forthright, his responses at hearing did not always match his responses during the investigatory interview, or the information provided at hearing or to the investigators by others. With respect to some of the allegations, the discrepancies are not significant and, in fact, some of the allegations certainly cannot support a finding that there is just cause for Krull's termination. Other of the allegations and discrepancies, however, are sufficiently significant to support a finding that there is just cause for terminating Krull's employment with the District, both as Technology Coordinator and as Athletic Director. The various allegations are reviewed and analyzed as follows:

### **Donation of Television Set to the Marshall Volunteer Fire Department**

It is undisputed that Krull installed a District owned television set in the Fire Department's new building. This action was undertaken without specific, clear and concise permission from the School District administration.<sup>3</sup> It is apparent that, by policy and practice, School District owned property is never given away without the express authorization of the School Board. Viewed in the most positive light, Krull, on his own, loaned the television to the Fire Department. The District does have a history of lending things, such as tables and chairs, to members of the community. These are, however, short term loans. The television was installed in the fire department building without an established date for its return, and without apparent knowledge by the members of the Fire Department that the television set was "on loan" to it.

Krull was forthright about his provision of the television to the fire department during the investigation and at hearing. However, his contention that Schuler had given him permission to install the television at the fire department defies logic. It is clear, nevertheless, that Krull took no action to disguise the fact that the television was owned by the District, having left the bar code sticker on the equipment. Krull credibly testified that, in his view, he undertook this action on behalf of the District to thank the firefighters for their contributions to the District. Krull received no benefit from his action.

The District certainly has a disciplinary interest in the long term "donation" of District property in the absence of clear authorization. While a violation of District policy, and an action that defies common sense, Krull's donation of the television to the Fire Department warrants discipline, but termination does not reflect the District's disciplinary interest under these circumstances.

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<sup>3</sup> The Association justifies this action by asserting that "Krull discussed the television with Dave Schuler and believed he had authority to donate the television." (Assn. brief at p. 15)

## Unauthorized and Unreported Cash Payments to Track Coaches

One of the responsibilities that Peter Krull undertook as the Athletic Director was the Marshall Track and Field Invitational. He served as the tournament director, and received payment in addition to his salary as a teacher and Athletic Director for performing this responsibility. Together with the track coaches, he would get the workers for the Invitational and, in accordance with the collective bargaining agreement between the Association and the District, the workers, including Krull, were paid from the proceeds of the meet. Krull tried to pay the workers, with the exception of the officials who are contracted, as much as he could for the Invitational and other tournaments Marshall ran in order to show appreciation to these individuals. The amounts the workers were to be paid was determined after the meet. Payments for the tournament director, the officials and the workers were shown on the Marshall Track/Field Invitational Income and Expense Report that was completed after the meet took place. In addition, Krull acknowledged that he would also pay the coaches \$50 in cash.

In sworn testimony during the investigation, Krull stated that he paid one coach in 2004, 2003, 2002, but he wasn't sure how far back, but "It wasn't very far back . . . starting in 2000 at the earliest." According to Krull,

The reason I did that, when we run an invitational, my coaches and myself spend a weeknight acquiring entries from various schools. We spend from after their practice, which is 5:00, probably until midnight, 2:00 in the morning setting up the invitational. With my administrators then, they frowned on my paying my coaches as workers because they were salaried coaches.

Therefore, I said, "I need to pay them." They did the majority of the setup work with me at that time. . . . If I had a profit, I would pay them something.

Krull indicated that this occurred for the Invitational or the WIAA<sup>4</sup> meet that Marshall hosted, during the years that the coaches had to spend a great deal of extra time. As technology was introduced into the process, the coaches didn't have to do as much extra work. Krull testified that when he started making these cash payments, no records were provided to the District reflecting the payments. He also contended that he discussed this with Administrator Schuler at the time who indicated that the Board would frown on Krull's inclusion of the coaches in the worker list since the coaches were salaried and the meet was part of their coaching responsibilities. Krull contends that Schuler knew of the cash payments which were made "off the top" of the Invitational proceeds, and that Schuler "agreed" to the process. That is, the cash payments were made by underreporting the gross proceeds of the meet by \$100. Krull directed his secretary to fill out the report by reducing the gate by \$100. Krull also testified, during the investigation, that although Cathy Millin was directed to do this, he did it himself when Joanie Wendt was his secretary. Krull was unsure as to whether the envelopes with the \$50 cash were given to the coaches, Beacom and Hansen, by Millin or himself.

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<sup>4</sup> Krull's investigatory testimony indicates that no monies were withheld from the gate of WIAA tournaments but that the coaches would receive their cash payment after the WIAA regional or sectional which was always held after the Invitational.

In contrast, at hearing, Krull testified that the cash payments came from the Marshall Invitational or the conference tournament, two meets from which the District is allowed to keep the proceeds. He also testified that in 2000, he had a conversation with Dr. Schuler regarding payment to Beacom and the new girls' track coach, Hansen. Krull contends that this discussion provided authority to make the cash payments because the coaches couldn't be put on the worker list for the Invitational. At hearing, he testified that the payments were "up to \$50, depending upon success of the Marshall invitational." Krull stated that he determined the amount by reviewing the income and expense report from the meet, seeing whether there was a profit or loss. Also at hearing, Krull testified that he began the practice of making cash payments in the middle 80's, rather than the five years or so that he stated during the investigation.

Krull describes the discrepancies between his investigatory testimony and his testimony at hearing by claiming that he was nervous during the investigation, and at hearing he had had time to think about it. He explains the difference between the certainty of the \$50 payments during the investigation and the "up to \$50" at hearing by claiming that he "misspoke" and "poor grammar."

Steve Beacom, who served as the boys' track coach from the 1977-78 school year until Spring 2003, testified that Marshall School District started hosting the Invitational around 1983 at which time he did not receive extra pay for working the meet. Somewhere around the 1987-88 school year he approached Pete Krull in his capacity as Athletic Director and inquired as to whether it would be possible to receive additional payment for the work associated with the Invitational. It was thereafter that Beacom started receiving payments, initially \$25 cash in an envelope. He did not get a payment every year, because if it rained nobody came and money wasn't available. Beacom also testified that he received cash compensation from Krull for other meets as well. Over time, the payments ranged from \$25 to \$50. Beacom never reported this income to the IRS and, to his knowledge, the District was not aware of it.

Talitha Hansen served as the girls' track coach from the 1997-98 school year until 2005. She worked on the Marshall Invitational and some years Krull would give her cash at the close of the invite. Her recollection is that she received \$25. Hansen recollects receiving a cash payment four or five times. She does not recall ever receiving \$50 for her work. The first time Hansen received a cash payment, she called Krull and inquired about it. Krull told her that he had the ability to make the payment for helping him manage the meet and the time and hours she had spent on it. Hansen never reported this income to the IRS and, to her knowledge, the District was not aware of it.

Cathy Millin testified that after an invitational meet, she was asked by Krull to put money for coaches in envelopes because "they work hard and they put in an extremely long day." Millin was clear that she was to take the money for the coaches, \$50 per coach, out before she counted the actual proceeds from the meet. She put the money into envelopes and Krull gave it to the coaches. This process was followed for every Invitational for which Millin

was the athletics activity secretary and Krull was the Athletic Director. In addition, Krull told her to show ticket numbers on the ticket manager's report for the meet, although in actuality she was to throw away the tickets and the money was just collected. She was instructed that the gate receipts were to reflect the actual monies collected, less the \$100 for the coaches. Millin never reported this practice to any of the District's administrators until the investigation into Peter Krull was undertaken in 2005.

Joan Wendt, was the first incumbent in the position of athletic activities secretary. She recalls putting \$50 in an envelope for each coach, boys and girls track coaches. She testified that she was uncomfortable taking the money from the funds collected and putting it in envelopes, but she did it because she was told to, as she did whatever Krull instructed her to do. She didn't tell any administrator about it because she didn't think they would listen.

As with the "donation" of the television set, Krull engaged in activity that, on its face, provided no benefit to him. The track coaches received a small, non-taxed, bonus for their work at the Marshall Invitational and, perhaps, WIAA meets. The problem with this behavior is that, quite bluntly, it is theft. The fact that the monies did not inure to Krull does not, in any way, diminish the fact that it was illegal activity, violated many principles of money management, violated many of the financial policies of the District, and was deceptive. Furthermore, although Krull's hearing testimony was more in line with that of the other witnesses than his sworn statement during the investigation, Krull was present in the room to hear all of that other testimony and his statements still did not match up with those of the witnesses. Viewed in the most favorable light, the coaches received from \$25 to \$50 in cash after the invitational. But, \$100 was subtracted from the gate receipts. If the coaches didn't always get \$50, where did the rest go? If Millin and Wendt are in error, and the amount taken from the proceeds did vary based on the tournament's financial results, Krull still improperly took money from the District, even though he might not have been the beneficiary of the action and even if his intentions were good.

There is no doubt that Krull's direction to Millin and Wendt to undertake this practice and to hide it from the administration,<sup>5</sup> knowing that the School Board would frown on additional payments to contracted coaches for their work on the Invitational,<sup>6</sup> is contrary to the interests of the District. Theft is an issue in which the District has a disciplinary interest.

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<sup>5</sup> Krull contends that he received implicit permission from Schuler in 2000. Schuler denies this, and granting Krull authority to make such cash payments is totally inconsistent with Schuler's role as the District Administrator and his responsibilities in that capacity. Even if Krull implied to Schuler that he was making this cash payments, there is no evidence that Schuler inferred same from his conversation with Krull. Most problematic, however, is that Krull had engaged in this activity for several years before he claims Schuler "okayed" it.

<sup>6</sup> One must wonder why it was proper for the Athletic Director to be paid additional monies as tournament director but coaches could not be paid for their work in setting up, seeding, etc. the tournament, perhaps as assistant tournament directors. One would think an argument can be made that this is work in addition to coaching responsibilities if Krull can be paid \$100 to \$150 to serve as the tournament director.

### **Failure to Properly Utilize Purchase Orders**

Over many years of his employment with the District, Krull ordered football jerseys from Team Sporting Goods in Marshfield. Despite specific instructions to Krull that he was not to place orders without a purchase order in hand, and despite a letter from the District's then Business Manager Van Valin directly to Fred Trudeau, an owner of Team Sporting Goods, Krull continued to order football jerseys before a purchase order had been issued. Krull and Trudeau worked out a verbal "arrangement" whereby Krull would effectively place the order in the early part of the year, prior to the issuance of a purchase order, and Trudeau and Team Sporting Goods would be "liable" in the event that a purchase order was never issued. Krull rationalized this procedure as being necessary to order the custom made jerseys early in the year to ensure that the District got the early ordering discount and that the jerseys would be received in time for the start of the football season in the Fall.

Despite admonitions to not engage in this activity, Krull, for the most part, continued to violate the District's requirement to obtain a purchase order, at least for the football jerseys. Rather than sit down with the Business Manager or the District Administrator to figure out how to effectuate the goal that was in the interests of the student athletes and the District, Krull worked around the rules with Trudeau.

It was apparent at hearing that neither Trudeau nor Krull acknowledged any downside to their "arrangement" even though it had not been reduced to writing and executed by a District administrator. Trudeau admitted that he thought Krull had the authority to enter into such an arrangement, that he was an administrator, as Athletic Directors in some districts do have such authority.

Krull's blatant disregard for direct orders to him to utilize the purchase order procedure, coupled with his insistence that the District would not be liable should the purchase order not be issued (or in the instance that the number of jerseys ordered would not be needed),<sup>7</sup> demonstrate a blatant disregard for authority and unwillingness to recognize the fact that the District would be liable in the event that Trudeau (or Team Sporting Goods, for whatever reason) should renege on this verbal "arrangement." The District, obviously, has a disciplinary interest in having its fiscal policies followed. Had this been a one-time occurrence, it would properly serve as a basis for a verbal warning. Krull, though not officially disciplined for failure to utilize purchase orders, was clearly on notice that he was engaging in activity that was not in the interest of the District. His attempt to demonstrate that others also violated the purchase order policy on occasion (an administrator's book purchase, an individual purchasing candy for a vending machine, and a memo regarding credit card purchases) only serve to underscore Krull's utter disregard for the fiscal procedures utilized by the District and their importance in maintaining an appropriate paper audit trail to account for taxpayer monies.

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<sup>7</sup> Krull testified that he would obtain a purchase order for the number of jerseys he had already ordered, even if it should turn out that all of them were not needed!

### **Mishandling of the M Club Vending Machine**

Krull was the responsible person for the M Club activity fund, including the vending machine that was used to sell sports drinks. As part of the investigation, Principal Riley reviewed the M Club account from September 1995 through June 2005 and created a record that focused solely on debits and credits relating to the vending machine. His findings are summarized in a September 6, 2005 e-mail message to Gross and copied to Sramek:

Please find attached a spreadsheet on All Sport sales since 1995. Since the data came from an accounts payable source, the numbers with a minus mean profit the numbers without a minus mean a loss. The way I read it, there was a profit in 95, 00, 01, 04, and 05 (There was only one deposit, no expenditures in 05.) The eleven year total was a profit of \$652.77 for an average of \$59.34 profit per year. (????) I'll be checking with Pepsi to see how much they charge us for a case of All Sport. FYI, Wendi just told me they made \$2300 last year in soda sales.

Vending machines are generally profitable, because the District charges more for the product than it pays to the vendor. The M Club has a vending machine to raise money for M Club activities. The M Club vending machine sells Gatorade or All Sport to provide an alternative to juice or soda, and to provide a healthy beverage choice for athletes. The District does not contend that the goal of the M Club vending machine is to maximize profit. It believes, however, that Krull failed in his fiduciary duty by his handling of the vending machine over the eleven year period.

The crux of Krull's response is that product that was purchased for the M Club vending machine must have been used by other clubs or organizations; that the M Club was billed for product that was not delivered to the M Club; that in 2005, Krull's office was located in the elementary school and Krull did not have the time to attend to the machine which was located in the high school.

Although the Business office issues monthly account reports to each person responsible for an activity account, Krull alleges that he did not receive the reports on a monthly basis. However, Krull acknowledges that when he did receive them, he did not look at them. Had he done so, he would have been in a position to notice if the account was billed for product that it had not received. He would have been in a position to notify the business office of the discrepancy and have it corrected.

Of note, however, is that the expenditures assigned to the account were only entered by the business office upon receipt of an invoice signed by Krull or Millin at Krull's direction. That is, Krull was responsible, in the first instance, for verifying that invoices reflected product received by the M Club. Additionally, Krull never reported to the administration that any product belonging to the M Club had been lost, stolen, or used by another group.

The National Honor Society operates a candy machine at the high school as a fundraiser. Todd Carroll, a business education teacher for the District, is the person responsible for this account. Carroll was called as a witness for Krull. He acknowledged that he received a monthly printout regarding the activity of the National Honor Society account which he reviewed monthly so he would know how much money is in the account. He also maintains his own records of expenditures and deposits and he, on a monthly basis, matches it against the report from the District. Although Carroll has never discovered that any product designated for the National Honor Society had been lost or stolen, if that occurred he would try to figure out what happened and, if unsuccessful, would notify the administration.

In 2005, Krull's office was relocated to the elementary school. During that school year, there were no expenditures for vending machine product, and only one deposit. This contrasts significantly with account activity in prior years. Krull testified that he was unable to attend to the vending machine. This is logical and reasonable. The problem, however, is that Krull never shared with anybody in a position to do anything about it, that he could not perform his duties with respect to the vending machine. He never asked another faculty member to take over these duties, he never told the principal, the business manager or the district administrator. He simply ignored the situation.

Krull's actions, and more particularly inactions, with respect to the M Club vending machine demonstrate a lack of concern about financial matters and their impact upon the District. They demonstrate, in part, a breach of Krull's fiduciary obligations to the District and the M Club. His explanations for the meager profit earned by the vending machine do not pass muster in any reasonable fashion. Although there is evidence that Krull, like Carroll, allowed students to access the vending machine – filling it with product or emptying the monies – there is no evidence, on this record, that Krull or any of the students took the product or the money. While it is logical that the vending machine should have generated significantly more funds over the eleven year period, it is Krull's lack of attention to the machine, failure to reconcile the monthly reports, and failure to advise his supervisor or another responsible person when he was physically unable to attend to the machine, that rises to the level of concern and provides just cause for discipline at some level.

### **Cash Missing from the August 27, 2004 Football Game Receipts**

After the August 27, 2004 football game, Cathy Millin reported to Krull that the cash box was short \$295. Although small shortages were not unusual, this was a significant discrepancy about which Millin was very concerned. Upon being told of the shortage, Krull directed Millin to recount the money, which she did without any change in the result. Krull also asked who the ticket taker had been, and he may have called his wife who may have had custody of the cash box for some time during the evening in question. Krull did nothing else about the discrepancy. He did not report it to anyone; he did not issue any instructions to change the manner in which the cash boxes were to be handled in the future.



During the investigatory interview, Krull indicated that he did not trust the ticket taker on the night in question, Wendy Helgeson. In fact, prior to the evening in question, Krull had heard rumors about Helgeson that supposedly resulted in a lack of confidence in her. However, Krull did not tell Millin not to use Helgeson as a ticket taker prior to August 27 or thereafter. Indeed, Helgeson continued to serve the District in this capacity on numerous occasions thereafter.

There is no question that Krull should have done more to investigate the missing money. At the very least, he should have reported it to the Principal, the Business Manager, or the District Administrator. He did none of these things. Although there was an attempt at the hearing to imply that Sharon Krull must have taken the money and that, perhaps, Peter Krull was covering up for her, there is no evidence to that effect. The record is clear, however, that money was missing and that Krull, as the responsible party, failed to follow-up on the situation. At hearing, he stated that he did not know what to do about it, so he did nothing. This is clearly the wrong response. On the other hand, the situation was a one-time occurrence. Although there is no question that the District would have a disciplinary interest in the loss of monies for which Krull was responsible, and while Krull's behavior showed a lack of judgment, and perhaps a lack of concern for the District's monies, this, by itself, is not a basis for significant discipline.

### **Insertion of Family Members' Names into Records to Provide Payment for Athletic Events**

Krull does not contest that he inserted the names of his wife and daughter into the computerized records that generated lists of games at which individuals worked for which they were to be paid. While Diane Stark is the only person to have noticed that her listing of games for payment purposes was incorrect, leading to the revelation that Krull's wife Sharon or daughter Becky's name had been inserted, Krull acknowledged that this was not the only occasion on which he inserted a family member name into the records. Although Krull directed Millin to pay Stark, when confronted with the fact that Stark had worked the particular events and neither his wife nor daughter had, this only corrected the problem. It did not exonerate Krull from the initial wrongdoing. Indeed, it is unknown how often Krull family names were inserted and the proper person was not paid. Krull's rationale for this behavior, and the timing of its occurrences, as revealed during the investigatory interview and the hearing, was inconsistent.

Krull and his secretary, Millin, both had access to the computerized recordkeeping system. Millin would normally identify the individuals who would work the games. She entered these on a paper log and, at some other time, entered them onto the computer. Sometimes the computerized entry was made prior to the game, sometimes it was made immediately after the game, sometimes it was not made until the end of the particular athletic season when she was getting ready to print the listing to send to the workers for verification.

When Millin was unable to obtain the needed number of workers for an event, she would notify Krull of this fact and he would find the workers, including, at times, his wife and daughter. During the investigatory interview, Krull testified that his wife was always at middle of the week girls' games and would serve as a crowd control person:

What happens sometimes is this. If we have a girls game or something in the middle of the week and we don't have supervision down listed, my wife is there as well and will act as a crowd control person. Cathy may have gotten somebody since the end of school and has not recorded it, because besides what's in the computer, which is what I see, she also has a manual clipboard that she writes down who she gets as well.

Krull inserted either Sharon's or Becky's names as they would be in attendance at the game, and

. . . I want to cover an event liabilitywise with a responsible person, and if I didn't know Cathy had somebody, I wouldn't know that because I wouldn't get over to the building until after she left.

Krull contended, during the investigatory interview, that he would look at the computer listing around 5 pm and see who would not be there. He then stated that he would fill in blanks in the computer listings at the end of the season, "because he knew he had to cover." He also stated that he has not filled in names since the incident where Millin brought to his attention that someone, Stark, had worked events that Krull's family members were listed as having worked. However, he did not know when that event took place, and acknowledged having engaged in this activity through the last year of his employment when his office was at the elementary school, whereas the Stark matter occurred during the 2000-01 school year.

At hearing, Krull testified that on game days he would check the program on the computer and look at the night's workers. If there was a blank, he would notify his wife or daughter that they were going to be supervising that night. He also stated,

After the game was completed, I would try to insert whoever worked for me, whether my wife or my daughter or if I found someone else. I would try to insert those as soon as I could, which wasn't always the next day or two, and tried to keep it updated.

Krull acknowledged that Millin maintains a manual log and

...I do not go through her desk, I do not go through her things on her desk. If she writes down a supervisor and does not record it on the computer, I don't know that. All I can go by is what I see on the computer. Therefore, if I have my wife or daughter working or another member, I would record that, and then when Diane - or when Cathy comes to update that software, she should have caught the name, knowing that there was two different names for that spot. But again, that's what the verification sheet is for.

On cross-examination, Krull stated that he would enter the family members' names in the computer, "after the event was over and before the end of the year, end of the season."

To his credit, Krull did acknowledge that if a discrepancy was discovered, the non-family member would be paid. However, this does not right the wrong he committed by inserting family member names in the first instance without knowing, for certain, that an additional supervisor was needed. Krull's assurance that non-family members would be paid before a family member is paid does nothing to improve the situation. Krull seemed to think that Millin should have "caught" it if a Krull family name was inserted for someone else, and that the verification sheets sent to workers prior to payment would have caught any other situations where someone worked a game and was not credited for it because a Krull name was inserted. Ultimately, the accuracy of the records rests with Krull. He deliberately made changes to the records without ascertaining all of the information. The fact that only one person, Stark, noticed that her verification sheet did not list all the games she worked, does not alleviate the fact that Krull manipulated the records in such a way that the assumption would be that his wife or daughter worked the event and should be paid for it.

Krull testified that his wife and daughter were at the games anyway. He seems to be implying that because they were there, they were also supervising and should be paid, if nobody else's name shows up on the computer record. In this instance, Krull's behavior violated the trust of the people who worked for the District as well as the taxpayers of the District. While he might not directly have been the recipient of payments that were not due him, the fruits of his actions directly impacted on his family members. If they were working, they, of course, deserved to be paid. If they were not there or just there but not working, payments to them constitutes fraud. The fact that the single instance of such fraud was caught and Stark received payment in no way relieves Krull of having committed such fraud. Krull acknowledges that he engaged in this practice over many years. It is likely that Stark is the only person who noticed the discrepancy because this was the first, and only, year that she worked supervision in contrast to others who worked many games, year after year.

It is obvious that the District has a disciplinary interest in ensuring that its records, including those utilized to pay workers at athletic events, are accurate. Krull engaged in fraudulent activity, akin to falsifying payroll records, by inserting his family members names in the computerized records of persons who worked athletic events.

### Conclusion

In essence, there are six (6) charges against Peter Krull: the donation of a television set to the fire department; the unauthorized and unreported cash payments to the track coaches; the failure to properly utilize purchase orders; the mishandling of the M Club vending machine; the cash missing from the August 27, 2004 football game gate; and the insertion of family member names into records to provide payment for athletic event workers. There is no question that the District has a disciplinary interest in each and every one of these issues. With respect to four of them, however, termination does not properly reflect that disciplinary interest.

As to the donation of a television set to the fire department, this was a one-time, improper act, done with no intent to conceal the action. It was misguided, but by itself would warrant minor discipline, such as a written warning.

As to the failure to properly utilize purchase orders, more severe discipline would be appropriate inasmuch as Krull had been counseled on numerous occasions regarding the need for purchase orders, had repeated reminders along with all faculty members during budget preparation time each year, and annually put the District in a position of financial liability for football jerseys for which no purchase order existed. As Krull had not, however, been previously disciplined for his actions, a short term suspension might be appropriate.

As to the mishandling of the M Club vending machine, the most obvious course of action the District could take would be to remove this responsibility from Krull as he is no longer in a position to tend to the needs of the machine, having his office in the elementary school, and he has demonstrated over the course of ten or more years that he has no interest in assuring that the vending machine in particular, and the M Club account more generally, are maintained accurately. Additional discipline might also be warranted although the District, too, had an obligation to review activity accounts beyond noting that balances were positive.

As to the cash missing from the August 27, 2004 football game receipts, Krull's failure was in the fact that he did not undertake a serious investigation of the situation, and did not report the incident to anybody with authority. This was a one-time occurrence, and the proper response is of the nature of a verbal or written warning.

The remaining two allegations, unreported cash payments to track coaches and insertion of family names into records for payment of workers at athletic events, are of a very different character than the four previously mentioned. As indicated in the discussion above, these actions constitute theft and fraud akin to the falsification of time cards. Unlike in many arbitration cases, the fundamental facts are really not in dispute, leaving no question as to the quantum of proof required: Krull acknowledged that he made cash payments "off the top" to the coaches and he acknowledged inserting the names of family members into payroll records without ascertaining whether they, indeed, worked the athletic events in question. There are a number of discrepancies in the testimony of the various persons involved regarding Krull's rationale, but his rationale for engaging in these activities is not at issue. The only question is the extent to which the District has a disciplinary interest in these actions, and whether that interest is sufficient to support the termination of Mr. Krull's employment.

In the usual disciplinary action, an employee is entitled to progressive discipline, verbal warning, written reprimand, suspension, prior to termination. Summary discharge in lieu of such corrective discipline is deemed to be appropriate for very serious offenses. ELKOURI AND ELKOURI, 6<sup>TH</sup> EDITION, P. 965. Here, we have a pattern of years of undetected behaviors that

can easily be summarized as dishonesty in maintaining records<sup>8</sup>: underreporting of the gate receipts of the Invitational in order to provide cash payments to coaches, and entry of names into records for payment without ensuring that the individuals actually did the work for which they were paid. Dishonesty is among the most serious forms of employee misconduct. Arbitrators usually do not require progressive discipline when the issue is theft, as the behavior involved is incompatible with employer-employee trust. DISCIPLINE AND DISCHARGE IN ARBITRATION, PP. 225-227. Such is the case before this arbitrator, and I find that discharge is appropriate under the circumstances. See, also, CITY OF BARRON (UTILITIES), WERC MA-10438 (Burns, 5/6/99) (just cause to terminate the grievant for falsifying an accident report filed with the City), BROWN COUNTY(MENTAL HEALTH CENTER), WERC MA-9679 ( Honeyman, 05/06/97 ) (termination for falsification of time card regarding lateness after having been previously disciplined for lateness).

Based on the above and foregoing and the record as a whole, the undersigned issues the following

**AWARD**

1. No, Peter Krull's due process rights were not violated in this proceeding.
2. Yes, there is just cause to terminate Mr. Krull's employment with the Marshall School District in both his capacity as Technology Coordinator and as Athletic Director.

The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 31<sup>st</sup> day of October, 2006.

Susan J.M. Bauman /s/

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Susan J.M. Bauman, Arbitrator

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<sup>8</sup> The District's job description for a teacher specifically calls for accurate recordkeeping.