

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MONTICELLO EDUCATIONAL SUPPORT STAFF

and

SCHOOL DISTRICT OF MONTICELLO

Case 21
No. 66020
MA-13405

(Nancy Briggs Grievance)

Appearances:

Ms. Chris Galinat, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003 appeared on behalf of the Association

Mr. David Rohrer, Lathrop & Clark, Attorneys at Law, P.O. Box 1507, Madison Wisconsin 53701-1507, appeared on behalf of the District.

ARBITRATION AWARD

On June 27, 2006 the Monticello Educational Support Staff and the School District of Monticello filed a request with the Wisconsin Employment Relations Commission requesting the Commission assign William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. Following appointment, a hearing was conducted on October 31 and November 8, 2006 in Monticello, Wisconsin. A transcript of the proceeding was taken and distributed by November 30, 2006. Post-hearing briefs and reply briefs were filed and exchanged by January 29, 2007.

This Award addresses the discipline of Nancy Briggs, a Cook employed by the District.

BACKGROUND AND FACTS

This dispute involves the discipline of employee Nancy Briggs. Ms. Briggs has been employed by the Monticello School District for 34 years as of the date of the hearing. Ms. Briggs originally began employment with the District as a part time Cook. Approximately ten years later she was asked to promote to the position of Head Cook. As Head Cook

Ms. Briggs reported to the District Administrator, and was responsible for the operation of the District food service operation. She was to insure the safe preparation of food and to direct the operation of the kitchen. Her position was in the collective bargaining unit represented by the Association. Ms. Briggs did not have formal supervisory or managerial authority, but as a practical matter she did direct the work of others, ran the kitchen, and ordered food.

Through her employment, Ms. Briggs has received good evaluations, compliments on her work, and had never been disciplined. A number of witnesses testified as to her effort and hard work, both in the course of performing her job, and as a volunteer to community events. That said, in the Fall of 2004 Karen Ballin, District Administrator convened a conference with Ms. Briggs and her Association representative, to advise Ms. Briggs that she was unhappy that Ms. Briggs made vague comments about the job performance of others, was critical of Ballin's performance, and made negative comments under her breath. The meeting was documented but was not made a formal part of Briggs file, nor was it treated as discipline. There is no dispute in this proceeding that Ms. Briggs is a hard working employee, who donated her time and effort to volunteer on projects outside the scope of her employment.

The kitchen consisted of four employees, in addition to Ms. Briggs. Janet Field, Ms. Briggs' sister, has been with the District for 30 years. Marcia Scofield has been with the District for 4 years. Sylvia Klitzke is a 7 year employee. Diane Disch has been in the kitchen for 31 years. Ms. Briggs has a close relationship with her sister and a strained relationship with Ms. Scofield.

The School Board of Monticello determined to contract out the management of the food service to TAHER, Inc, a private organization. One of the primary reasons underlying the decision was the fact the District was going to a closed campus, meaning that all students would have to stay in house for lunch. As a consequence, the number of lunches to be served would increase. The Board perceived there to be student dissatisfaction with the lunch service reflected by the low high school participation. The administration had been advised that the kitchen was routinely running out of food before the high school service was complete.

A contract was signed with TAHER effective with the beginning of the 2005 School year. TAHER brought in a Food Service Manager, Sheila Killion, to oversee the operation. Ms. Killion worked part time for Monticello, and also directed the food service operation in neighboring New Glarus Schools. Killion, an employee of TAHER, was responsible for the food service operation including the direction of kitchen employees, who remained employees of the Monticello School District. Karen Ballin, District Administrator, continued to be the formal supervisor of the kitchen employees.

The transition to a managed food service operation was not smooth. Initially employees feared and resisted the change. It was a difficult period for all, and particularly difficult for Nancy Briggs. Ms. Briggs was the Head Cook, and in the words of a co worker she was in charge. Ms. Briggs retained her title of Head Cook following the arrival of TAHER. It was the District's view that the transition would be difficult enough without stripping Briggs of her Head Cook status.

Briggs had run the kitchen for over 20 years. She was used to making decisions and had established a protocol for the daily functioning of the operation. Her title of Head Cook was left intact. TAHER was an outside entity. Killion was a part time supervisor, who brought a new, and unwelcome perspective, and who was not on site half of the time. Ms. Briggs, and others, didn't want the change, and resisted much of it. Ms. Briggs did not respect Killion. Enough mistakes were made to confirm Briggs conclusion that Killion was not competent to do the job. Ms. Killions routine absence created a vacuum where decisions had to be made. It further created opportunity to ignore the TAHER initiatives. This contributed to the deteriorating relationship between Briggs and Killion.

TAHER was introduced to District employees on or about August 23 at an orientation meeting held in New Glarus. At that meeting Ms. Killion was introduced as the Food Service Manager. Immediately prior to the start of the new school year there were two days of training of staff, which focused on new food dishes that were to be introduced to the menu that year. Those sessions were filled with tension, stress, and hostility. The TAHER people regarded the whole school staff as uncooperative.

In response, Killion called a meeting of kitchen staff to explain her expectations, and to set out how people were to treat one another. During the course of the meeting, Killion told Briggs that she would have to perform the work of a Head Cook, rather than stand around and let everyone else do the work. Field and Briggs testified that they were told that if they didn't like it they should move on. At the end of the meeting Briggs testified that she was upset, and went to the bathroom to compose herself. She testified that Killion and her supervisor from TAHER followed her into the bathroom to tell her that they would not tolerate her attitude. Field corroborated Briggs testimony that the two women followed her sister into the bathroom. Killion could not recall that happening.

Following the meeting Ms. Briggs met with Ms. Ballin to discuss Briggs attitude. Ballin had observed a hostile climate in the kitchen and what she perceived to be a lack of cooperation. Ballin took Killion's notes of the September 2 meeting, treated them as disciplinary, and placed them in Briggs file. She confirmed that to Briggs in writing on September 9, 2005.

On Friday, September 23 Ms. Killion called another meeting of staff. The purpose of this meeting was to discuss getting work done on time and the attitudes and cooperation of kitchen staff toward one another. It was Killion's observation that the employees were negative, rude and close minded. Ms. Killion advised the employees that if attitudes did not change further actions would be taken. She indicated that starting the next Monday, tasks would be assigned. It was her intent that each employee do the same things each day to learn and become efficient. The staff met again on Monday, September 26. Each employee was given specific assignments and responsibilities. The staff met again on Tuesday, September 27. A dish was not prepared because no one knew who was supposed to do it. Killion did a review of responsibilities. It was at this meeting that Killion directed that Nancy and Janet stagger their breaks, rather than break together. She further indicated that employees were no longer

to launder their clothes at work, but rather were to clean their clothes at home, and not dress on the clock.

The District regarded these matters as disciplinary, and a meeting was held on September 28 with District Administrator Ballin. Ballin summarized the meeting as follows:

DATE: October 7, 2005
TO: Nancy Briggs
CC: Sheila Killion
Ralph Pederson
FROM: Karen Ballin
RE: Disciplinary conference September 28, 2005

The following is a summary of matters discussed with you on September 28th. The conference was called at my request. I advised you to bring a union steward, and Ralph Pederson was your choice to accompany you. Mr. Colle and Sheila Killion were also present.

I asked to speak to you with regard to the September 28th employee disciplinary report I had received from Sheila Killion. Specifically, it notes continuing rudeness and negativity toward the food service director and other employees. It was also noted that these matters have been discussed with you several times but you have not complied with clearly stated expectations to change your behavior.

. . . You were given specific directives on September 26th to change your behavior immediately as your actions and words were affecting everyone in the kitchen.

. . .

On September 28th all of these issues were reviewed once again. I specifically told you:

- Your attitude must change.
- Your rudeness and negativity toward others – co-workers, staff, students, administration, management – must stop.
- You are to demonstrate willingness to work as a member of a team through your words and your actions.
- You are to cease washing uniforms at school and you are too (sic) report to work dressed and ready to start your duties.

- You are to treat others as you wish to be treated.
- You are to do your job and take care of your own business rather than meddling in affairs that do not concern you.

The purpose of our meeting on September 28th was to make certain you were told in the strongest possible terms that your attitude and actions must change and that failure to comply would lead to serious consequences. I further stated that I would prepare a written summary to document the meeting and that I planned to place the documentation in your personnel file as a written warning.

It cannot be stated too strongly that failure to meet the expectations above will lead to further disciplinary action. This may include suspension without pay and/or dismissal. As you are aware, this is the second discipline-related document that I have had to place in your personnel file this year. . . .

On November 3 a meeting of the staff was convened. Ms. Killion and Ms. Ballin were present to advise the kitchen employees of changes. The administration had determined that they were serving more students and needed more help. As a consequence, they determined to add hours to Sylvia and Marcia. It was Ballin`s observation that the atmosphere of the meeting was hostile, and attributed that to Janet and Nancy.

An oven broke, and Killion called a repair man to service the oven. Ms. Briggs suggested a repair man who had customarily worked on the oven, but Killion determined to call the repairman whose name was on the oven tag. According to Killion, Briggs became angry with her. Killion testified that when the repairman arrived, on November 3, Briggs was demanding and hostile toward the repairman, directing him to be careful with the casters the oven sat on. Killion testified that she came out of her office and directed Briggs to knock it off, and apologized to the repairman. Briggs account of the events is different. It was her testimony that she had a list of people who did work in the kitchen, and when she told Killion that there was a repairman who routinely did the work she was ignored. When the repairman arrived the two chatted, and she warned him that the oven was heavy and sat on casters. She indicated that the oven could tip, and she didn`t want the repairman to get hurt. She indicated that Killion did not come out while the repairman was there, but rather that she laid into her the next day.

Killion wrote up a disciplinary report relative to the November 3 incident, recommending a one day suspension. It was forwarded to Ms. Ballin, and led to the issuance of the following:

DATE: November 7, 2005
TO: Nancy Briggs

CC: Sheila Killion, Food Service Manager
Ralph Pederson, MESS Co-president
Bob Haldiman, MESS Co-president
FROM: Karen Ballin, District Administrator
RE: Disciplinary action

I have received an employee disciplinary report dated November 7, relating to problems occurring November 3rd, 2005.

The report is attached. It outlines continuing discourtesy and verbal abuse. Specifically, you continue to treat Sheila and fellow employees with disrespect; you were rude to the oven repair person; and you are mumbling comments under your breath.

Although problems occurred earlier in the day, some of this animosity appears to stem from a meeting between all kitchen staff, Mr. Colle, Sheila and myself on Thursday, November 3rd. The meeting was held to advise everyone of additional hours added to Sylvia's and Marcia's schedules in the hope it would ease the load for everyone. This action was fulfillment of a promise made earlier in the school year to review the situation when you complained the work load was too much. Indeed, the kitchen staff was in need of some relief.

During this meeting, I asked five times if there were any comments or concerns. You said nothing, yet your hostile behavior escalated immediately following the meeting. If you had any specific concerns or issues to raise, you could have brought them up appropriately during the opportunities provided.

At a disciplinary meeting held in my office on September 28th, I made my expectations very clear. . . .

. . .

I am disappointed to find you are choosing not to follow these clear and specific directives. Your actions are creating disharmony and a hostile work environment in the kitchen, and cannot be tolerated any further.

This memo will serve as a formal notice that you are being placed on one day of suspension from your duties without pay. The date of this suspension shall be November 8th, 2005.

We will look forward to your return to your duties November 9th, 2005 with the hope you will choose to amend your behavior to meet the expectations listed above.

The stress of workplace changes was compounded by the very difficult interpersonal conflict and struggle which existed between and among employees, particularly between Briggs and Killion. The Union called a number of witnesses who pointed to Killion as the source of friction. Her competence and management skills were called into question. Briggs was described as a dedicated, committed, hard worker. I found the testimony of Herbert Wilson, the bread delivery man to be insightful. His dealings with Ms. Briggs were pleasant. He was familiar with her, and called her for help out of history and habit. He indicated that Ms. Killion was nice to him, but that she was disorganized. It was his testimony that under Ms. Killion he would deliver orders only to find all the product from the last delivery still on the shelves.

The District called witnesses who indicated that Briggs was the source of the kitchen trauma. She was described as vicious, mean and sabotaging. Killion was described as professional and polite. Briggs was described as frustrated, irritable, mumbling under her breath. I found the testimony of Melody Flesher to be revealing. Ms. Flesher is a teacher who supervises the lunchroom line. She described herself as a personal friend of Ms. Briggs and indicated that their spouses and children were friends. She testified under subpoena. She observed that the change in service was difficult; that things were awkward and that there was resistance to the change. She described an incident in December/January where Ms. Briggs told her in front of students that if she were getting a grade she would get an "F" because she was not doing a good job. She indicated that she was offended, but said nothing. She did pass the comment on to Killion. Flesher described Killion's demeanor as professional and polite. She described Ms. Briggs as frustrated and irritable. Flesher testified that Ms. Briggs would roll her eyes, raise her hands in frustration, and mumble under her breath.

On, or about November 28, 2005 Janet Field and Nancy Briggs, accompanied by Association representatives approached Principal Kenneth Colle, informally with a claim that the November 7 discipline and the sequence of discipline leading to it, violated the contract. Colle replied by memo dated December 7, denying the grievance as untimely as to those events which occurred prior to November 7, and as without merit as to the suspension. A formal grievance was filed on December 16, 2005 contesting the Disciplinary Reports issued on September 2, 9, 28, and the November 7 suspension. The grievance was denied by memo, dated January 16, from Ballin which repeated Colle's defenses and added:

Mr. Colle denied your grievance at the first level on December 7, 2005. According to the grievance timeline in clause 5.04B of the Master Agreement, you have five regularly scheduled work days to appeal that decision in writing to the superintendent. I did not receive your written request at the second level until December 16, 2005, a full two days beyond this deadline....

On New Year's Eve day, Mr. Wilson came to deliver bread to the school. He was not scheduled to work on the Monday following the holidays and needed to deliver on that day. Finding the School locked and unable to locate a custodian he called Ms. Briggs and asked her to let him in. She did so, put the bread away, and put in for the contractually provided 2 hours

call in. When Ms. Killion discovered what had occurred she was irritated with Ms. Briggs over the cost and phoned the bread man to advise him that his call had been expensive to the District and that he should contact her under similar circumstances in the future. Killion talked with Briggs on January 24 about the bread incident and further about Killion's observation that someone, ostensibly Briggs, was making notations on the food production sheets, which are District records. Those notes included when Killion was and was not there, and tasks not done.

During the course of her tenure with the District, Briggs had always taken and saved notes relating to work. She would note serving and ingredient sizes, portions prepared and consumed, and later refer back to her notes for guidance. It was common for her to use the food production sheets.

On or about January 25, 2006 Ms. Killion discovered that Ms. Briggs was not following the menu plan for morning break. Specifically, the District had traditionally put out a variety of cookies, donuts and sandwiches for break. Killion had determined that only one of each should be prepared and served. Briggs disagreed with that decision and the two argued over the merit of the decision. Ultimately Killion directed that the single variety serving be prepared, and the menu reflected that decision. Ms. Briggs complied with the posted menu for a short period of time, and then, in response to what she believed to be student preference, reverted back to the variety menu. Ms. Killion discovered that the menu had been changed, and reported the matter to Ms. Ballin. Ballin convened a disciplinary conference, and summarized the results with the following:

DATE: January 31, 2006
TO: Nancy Briggs
CC: Ellen LaLuzerne
Bob Haldiman
Sheila Killion
Kenneth Colle
Mike Julka
RE: Nancy Briggs disciplinary conference January 25, 2006

On Wednesday morning, January 25th Sheila advised me of continuing problems in the food service area. Specifically, she noted that on January 24th, Nancy Briggs was argumentative with her and behaving disrespectfully, becoming "sassy" and mumbling under her breath when asked about notes that had been written on the food production sheets.

When Sheila came in on January 25th, she found that the menu plan she had developed for the morning snack was not followed despite the fact she had discussed the menu changes with both you and Janet the week of January 9th. The object of the new menu plan was to reduce the number of offerings in order to improve efficiency. You did not agree with the changes when they were

discussed on January 9th and argued that Sheila's version of the menu didn't take any more time to prepare and that "the kids want it that way." Sheila made it clear you were to proceed with the changes and the details of the menu were posted in writing on the menu projection sheet. You argued with Sheila again on January 25th, stating again "this was what the kids wanted."

On the afternoon of January 25th, we met in my office to investigate this situation. I first met with Janet, who confirmed that she had complied with the menu plan and prepared her portion of the menu as directed on a daily basis, with the exception of the two high school exam days. All agreed the exam days were not typical, and adjustments would have been necessary.

When we met with you and showed you the copy of the menu plan for morning breaks, you admitted this had been verbally explained to you on January 9th and that the projection sheets with the detailed menu had been posted. You acknowledged that you understood this was what the food service manager wanted served, yet you failed to follow these instructions and instead reverted to your own plan. When asked why you did not follow a directive that had been given verbally and in writing, you said this was what the kids wanted because it offered more variety. You also stated it did not take more time to prepare a larger variety of items.

We discussed the chain of command and reiterated the food service manager is in charge of the kitchen. Sheila's directives are to be followed without argument or negative comments.

These incidents are a continuation of problems noted previously.

...

Your failure to follow the menu plan disregarded a directive that was explained by the food service manager and posted in writing to avoid any confusion. Your argument on January 25th that you disregarded the menu "because the kids wanted something different" does not present a valid reason to ignore the menu plan. This is especially troubling considering the same argument was made to the food service manager on January 9th, at which time it was rejected. Clearly, you know the students are not in charge of the food service menu. Your actions constitute insubordination.

Even more alarming is the continuation of your pattern of argumentative and disrespectful behavior despite the many conversations you have had with the food service manager and me regarding this problem. I have made it clear in both my spoken and written communication with you that a minimal standard for workplace decorum is critical for the kitchen staff to work together

effectively. While I acknowledge that some days you appear to be working toward positive change, your efforts are not as consistent as these incidents show.

This memo will serve as notice that you are being placed on three days suspension from duties without pay as a result of your actions.

The District is willing to put this matter in abeyance on the condition you agree to cooperatively participate in workplace mediation or counseling as agreed upon by MESS and the District. A timeline for workplace improvement will be developed as part of this process. Any further incidents on your part requiring disciplinary action will take this matter out of abeyance and the District will impose the suspension, as well as any appropriate additional disciplinary action including the potential of discharge.

In short, you have much to gain from your cooperative participation in an effective workplace improvement plan.

The letter of suspension offered the opportunity for mediation. The offer was accepted, and the parties entered into a formal mediation agreement. The Agreement is a three party Agreement involving the Association, the District, and Ms. Briggs. Among its provisions, the document sets forth as a goal the improvement of the working relationships, the resolution of disputes associated with Ms. Briggs' conduct and the discipline regarding same. Mediation did occur, and District witnesses indicated they perceived an improvement in the workplace.

Sometime in May, 2006 Marcia Scofield became curious as to the contents of a box which was kept in a storeroom. The box was one in which Ms. Briggs kept miscellaneous items. Among the box contents included photocopies of food production sheets with handwritten notations. The notations were references to food, who was absent and when they left, what Ms. Scofield was, and was not, preparing. Ms. Scofield prepared food wraps, and was told to exercise discretion in their preparation. She was to use her judgment to assess whether or not food from the previous day could be used the next day. If so, she was to alter the menu to use that food. Ms. Briggs was essentially making book on Ms. Scofield. Briggs had been disciplined for her exercise of discretion relative to the breakfast menu offerings, and she subsequently testified that she did not believe Scofield should have such discretion and that her Association Representative had advised her to keep track of what Scofield did.

The discovery of the contents of the box shocked and upset Scofield. She called Sheila Killion, who advised her to call Karen Ballin. Ballin came to the storage room, where Scofield pointed out the box. Ballin took its contents.

After the end of the Cooks work day on May 10, Ms. Killion began to clean her office. When she left work that night there were things spread across her desk. When the cooks came in the next morning they found waste baskets filled with things Killion was discarding, and

found her office disheveled. Concerned that Killion was going to throw things away, Briggs and Field placed some manuals on a shelf, tossed a manual for an appliance that had been sent to New Glarus into the recycling bin, and took some pencils and erasers and gave them to the day care center. When Killion came in she noticed that someone had been through her things and was angry. She called the kitchen employees in to ask if they had messed with her belongings. All said they had not. Ms. Briggs subsequently indicated that she had moved the manuals back to the shelves. Killion indicated that things were missing, and Janet Field asked what things. Killion replied that they should never mind. Ms. Briggs then returned to say that she had thrown the refrigerator manual into the recycling bin, asked if Killion wanted it back, and retrieved it when Killion asked that she do so.

Killion brought the matter to the attention of Karen Ballin. Ballin determined to conduct an investigation of the incident and the working climate notwithstanding that the mediation was ongoing. On May 12, 2006 Ballin met with Briggs and placed her on paid administrative leave on Friday May 12 and Monday May 15. On May 15 Ballin notified Briggs that she was being transferred from the job classification of Head Cook to the position of Cook.

On May 25, 2006 Killion completed another employee discussion record relating to Briggs work conduct where she described Briggs as very crabby, that Briggs had made rude comments and was mumbling and that there existed a tension in the workplace.

Ultimately, Ballin reimposed the suspension and issued the following memo, which summarizes the District's perspective and frustrations:

Read this letter very carefully. Your employment with the School District of Monticello is in jeopardy. If there is any aspect of this letter that you do not understand, see me immediately.

We last met on June 20, 2006 to assess the results of the mediation process. At that time I indicated to you and Ellen LaLuzerne that I had observed little change in your behavior or attitude and was forced to conclude the workplace mediation had not been a success. As we also discussed, this determination meant that the disciplinary action outlined in my memo of January 31, 2006 (attached), would be imposed. Specifically, the memo states you are to be placed on three days suspension from your duties without pay. Although the memo was prepared in January, it was not provided to you at that time upon the advice and counsel of Ms. LaLuzerne.

...

The District agreed to participate in the workplace mediation process in the hope that concerns regarding disharmony in the kitchen could be resolved without further disciplinary action. As my memo of January 31, 2006 states, you

continued in a pattern of argumentative and disrespectful behavior; you disregarded verbal and written directives from the food service manager; and your actions were having a negative impact on the ability of the kitchen staff to work together effectively. Your actions constituted insubordination. The agreement to enter into the mediation process as a possible means of building teamwork was signed on February 6th, 2006. You signed that agreement.

The first mediation session was held February 7th. . . .

On February 23rd, Sheila advised me you had been writing comments on the production sheets again, despite the fact you were specifically directed not to do this by the food service director on January 24th and by me on January 25th. The notes indicated you were watching and recording the coming and going of other employees, which also seemed to contradict the mediation agreement you made regarding working together as a team. I respected the ground rules of the mediation process and advised Mediator Anne Boley for advice.

Anne's advice to Sheila was to bring the matter up with the entire food service staff. This was done at the March 15th monthly meeting. You admitted at this meeting that you had been making notes on the production sheets. The nature of your notes can only be described as evidence gathering, or "keeping book" on other employees. It is my understanding that the employees who were the targets of your note taking let you know how uncomfortable this made them feel. Sheila stated once again, for the whole group, that the production sheets were for official business items only.

On April 25th, I was advised you had been meddling in the arrangements for the FFA banquet and keeping book again. Specifically, you were spending time on counting, pricing, highlighting invoices, making photocopies and other paperwork that you were aware had already been taken care of by the food service manager. I cannot help but conclude you were engaged in evidence collecting again. While you were engaged in this useless paperwork, your co-workers would have benefited from your help as it was an extra busy day in the kitchen. Your actions do not appear to be in harmony with the agreements you made in mediation.

. . .

On May 1st, the date of the National Honor Society Banquet, you behaved rudely toward your co-workers throughout the day. You were not pleased with Sheila's menu and made it clear. Your comment to the food service manager, your immediate supervisor, was, "I hope you have peanut butter and jelly in case they don't like your food."

. . .

On May 10th, Marcia discovered a box of what appeared to be junk in the kitchen storage area. As you know, the box contained notes about other employees written on copies of production sheets. She was quite upset as many of the notes were about her.

On May 11th, I was out of the office but Sheila contacted me by phone to advise me someone had been in her office and had tampered with items on her desk. Things were not as she had left them the night before, and there were items missing. When Sheila asked you who had been messing with the things on her desk, both you and Janet told her you had not done anything. You said you had not taken anything.

When I investigated May 12th, I asked you if you had been rearranging the items on Sheila's desk, if you had taken a manual off Sheila's desk and thrown it in recycling, and if you had gone through the things on the desk. Your answer to all of the above was "Yes," contradicting your denials to Sheila. I also asked you if you had taken anything off the desk and you told me "No," despite the fact that your sister and co-worker in a separate interview had indicated you had taken pencils, erasers and trinkets from the desk. I asked you what you should have been doing instead of messing with the items on the desk and you replied, "My work." You lied to Sheila with your denials and you lied to me about taking things off the desk. I placed you on paid administrative leave until a meeting could be held with Ellen present.

We met with Ellen on May 15th and you returned to work on May 16th. We agreed to abide by the terms of the mediation agreement and you were warned not to touch anything on Sheila's desk, to mind your own business and refrain from any attempt at retaliation. You were also told that if another employee does something that requires reporting, it is your obligation to bring it to your supervisor's attention rather than take "punishment" into your own hands.

On May 16th, Sheila and I met with you to review your new job description and reassignment from Head Cook to Cook. . . .

On May 25th, both Marcia and Sylvia reported you and Janet were "really crabby" the day before. Sheila witnessed this disrespectful behavior first hand: You were making comments and mumbling under your breath. There was a great deal of tension in the kitchen. Your comment was that it wasn't just you and Janet that were crabby and not speaking to one another. If other employees were being rude and disrespectful toward you, it was your obligation to bring that to your supervisor's attention in an appropriate manner rather than taking punishment into your own hands. This was made very clear to you on May

. . .

Although this recitation of incidents since February certainly warrants a substantial additional suspension without pay or discharge, I have decided not to impose either at this time due to the complexities presented by imposing such discipline for conduct occurring during the period of workplace mediation. In effect, you are being granted a reprieve from a loss of pay or the loss of your job, but there will be no such reprieves in the future. Specifically, your employment with the District will be terminated without further warnings the next time it is verified that you:

1. Are argumentative with supervisory authority; or
2. Are disrespectful of or toward supervisory authority; or
3. Violate a specific directive; or
4. Make negative work related comments while on the job, including inappropriate mumbling under your breath when confronted with work related matters; or
5. Fail to be truthful, forthright, or complete in your responses to questions posed to you by supervisors; or
6. Misappropriate District property.

. . .In my opinion, the District and the Union worked together to provide an atmosphere and the means for the whole food service team to make positive changes; however, this cannot be done without the commitment of every member of the team. Your conduct throughout the process leads me to believe that you are not following through on the agreements you made, but also that your objectionable attitude and conduct identified previously to you in writing and in meetings have not changed despite prior warnings, discipline, and mediation. . . .

Very truly yours,

Karen Ballin,
District Administrator

ISSUES

The parties stipulated the following issues:

Issue No. 1: Is the grievance relative to actions taken prior to November 7, 2006 timely?

Issue No. 2: If so, was there just cause for those actions?

Issue No. 3: Was there just cause for the one day suspension issued on November 7?

Issue No. 4: Was there just cause for the three day suspension originally issued 1/31/06 and subsequently imposed on August 22, 2006?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 5. GRIEVANCE PROCEDURE

5.01 Definitions

- A. **Grievance:** A “grievance” is a claim based upon the interpretation, meaning, or application of any provisions of this Agreement.
- B. **Grievant:** A “grievant” may be an individual employee, group of employees, and/or the Association.

...

- D. **Day(s):** The term “days” when used in this Article, except where otherwise indicated, mean regularly scheduled work days, or during the summer, days when the superintendent is working. Weekends and holidays recognized in this Agreement are excluded.

...

5.03 General Procedure

- A. The number of days indicated at each level will be considered as a maximum. Failure by the grievant to initiate or appeal the grievance according to the following timelines shall be deemed a waiver of the grievance; accordingly, failure by the administration or Board to respond to grievances according to the following timelines shall be deemed a denial of the grievance. The time limits specified may be extended by mutual agreement and must be made in writing.

...

5.04 Initiation and Processing

- A. **Level 1 – Informal Resolution**
 - 1. An earnest effort shall be made to settle the matter informally between the employee and/or the Association

initiated through an informal meeting and discussion with the immediate supervisor, employee and the Association's designated representative. The informal meeting shall occur within twenty (20) days after the facts upon which the grievance is based first occurred.

2. The immediate supervisor will give an answer to the grievance, the grievant and the Association representative within ten (10) days. The grievant(s) shall be required to state the purpose of the discussions and event(s) upon which the discussions are based. If the matter cannot be resolved informally, the grievant(s) may file a written grievance.

B. Level 2 – Written Grievance

1. If the grievant is not satisfied with the outcome of his/her grievance at Level One, or if no decision has been rendered within ten (10) days after presentation of the grievance, s/he may, within five (5) days, file the grievance in writing with the Superintendent. The written grievance shall set forth the facts underlying the alleged grievance, the provisions of the Agreement alleged violated, and the requested remedy. Within ten (10) school days after receipt of the written grievance by the Superintendent, the Superintendent will meet with the grievant and the Association representative(s) in an effort to resolve the grievance.

...

Article 10. FAIR DISCIPLINE, DISMISSAL

...

10.03 Just Cause

No non-probationary employee shall be reprimanded in writing, demoted for disciplinary reasons, suspended without pay, reduced in rank or compensation for disciplinary reasons, discharged or otherwise disciplined without just cause.

POSITIONS OF THE PARTIES

It is the view of the District that the grievance related to actions taken prior to November 7, 2005 is untimely. The District points to the provisions of the grievance procedure and contends that the contract requires compliance with the timelines, or the

grievance is deemed waived. The informal meeting referred to by the Agreement occurred on

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November 28, 2005. The District counts back 20 work days and arrives at October 18, 2005. The District then points to Sec. 5.03 A and contends that any incident which occurred prior to October 18 is waived. Specifically, the challenge to the September 2, 9, and 28 reports is alleged to be waived.

Assuming *arguendo*, that the matters are regarded as timely, the District argues that cause existed for the actions taken before November 7. The District points to the testimony which accuses Briggs of disrupting the workplace and cites Arbitral authority for the proposition that such conduct is disciplinable. It is reasonable for an employer to expect an employee to perform his/her job, to follow supervisory instructions, and to refrain from attacking and disrupting behavior.

It is the view of the District that there was just cause for the three-day suspension originally issued January 31, 2006 and subsequently imposed on August 22, 2006. In the view of the District, two major occurrences precipitated the three day suspension. The first is that Ms. Briggs was downright insubordinate in refusing to implement the menu plan that Ms. Killion had set up. The second is that Ms. Briggs continued to write on production sheets. The suspension was held in abeyance to see if mediation would improve the work climate. Following the mediation, Ms. Briggs went into Ms. Killion's office, and rifled through her belongings. The District contends that Briggs was not honest about her involvement in the situation. It is the view of the District that Ms. Briggs continued to make negative comments about Ms. Killion, and spent time checking up on Killion and Scofield. This occurred after a long and difficult year, and in the view of the District supports its decision to impose a three day suspension.

The Association views this case in a different light. It is the view of the Association that Ms. Briggs is a long time employee with an excellent work record who has been subjected to a radical change in the circumstances of her work life, whose role was never clarified, and whose new supervisor, Killion, made the transition impossible.

The Association believes that the District lacked just cause to impose a one-day suspension. It is the view of the Association that I should consider whether the District had just cause to issue the written reprimands it issued to Ms. Briggs in September and October, 2005. The Association asserts that the November 7, 2005 discipline recites the prior reprimands, and by incorporating them into the November discipline invites a review of those events. The Association contends that those reprimands lack sufficient clarity and specificity, so as to not supply effective notice of the behavior to be avoided.

It is the view of the Association that the District lacked just cause for the November 7, 2005 one day suspension. Again, the Association contends that the reprimand lacks sufficient specificity to withstand scrutiny. The only concrete example cited is relative to the oven repairman, and the Association points to Briggs testimony and concludes that Ms. Briggs did no more than offer a fair and considerate warning that the oven could shift and hurt the repairman. The Association asserts that simply telling an employee that she has been rude, without more,

does nothing to correct the behavior to be corrected.

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It is the further view of the Association that the District lacked cause for a three day suspension, either in January or later in August.

With respect to January, the Association contends that Briggs did nothing wrong in the bread man incident. She was called at home to open the school, did so, and was compensated at the appropriate contractual rate. The Association asserts that Killion caused the problem through insufficient planning, and should have complimented Briggs, rather than reprimand her. In the view of the Association it is telling that Killion suggest a call to a Custodian should the matter arise again. Custodians are paid more and are subject to the same call in pay. In the view of the Association, the only explanation for this directive is retribution. The January 31 reprimand makes reference to sassy remarks. The Association attacks the lack of detail. The Association also attempts to put Briggs attitude toward Killion in perspective. Killion told Briggs to retire on more than one occasion. Killion made no attempt to hide her lack of respect for Briggs. It is the view of the Association that the District's expectation as to Briggs reflects an unrealistic double standard.

It is the view of the Association that the breakfast snacks matter does not justify a suspension. When Briggs tried to explain that it would be no more work to prepare multiple snacks, Killion accused her of being argumentative. When the kids were unhappy, and Briggs tried to remedy the situation she was disciplined. This occurred in the context of Scofield being given considerable latitude to vary from the menu.

The January reprimand did not contain any directive with respect to not leaving notes on the production records. Briggs had historically kept notes on the production record sheets. The sheets were public, and available to Killion throughout the year. This had gone on for 23 years, and only became an issue after the New Years bread delivery incident. The Association contends that on cross-examination Killion acknowledged that some of the notes were useful.

With respect to the August suspension, the Association contends that it was issued after several insignificant incidents occurred. As to the production sheet notes, it is the view of the Association that after being warned not to write on the production sheets, Briggs made only a few notes in February. This was simply a veteran employee struggling to change a life long habit. The notes were innocuous.

It is the view of the Association that Briggs did nothing to meddle in the FFA banquet.

The Association contends that Ms. Scofield went snooping into a box she knew Briggs kept and in the process of going through Briggs things came across startling records. It is the view of the Association that Scofield shouldn't have nosed through Briggs things. Much of what was written on the documents were things Briggs needed to do her job. The documents were not District records, but rather photocopies of those records.

The Association contends that one day, without telling staff, Killion decided to clean

gathered up all the appliance manuals and re shelved them. She also placed the refrigerator manual in the recycling bin. The refrigerator had been sent to New Glarus in the fall. Concerned that the pencils and erasers would be thrown away, Briggs gathered them up and gave them to the day care. When Killion confronted Briggs and Field and declared that something was missing, she was asked what that was, and refused to answer. Had she responded, the Association contends the matter would have been cleared up. Briggs brought the Refrigerator appliance manual up, and asked if Killon wanted it. When Killion said yes, Briggs retrieved the manual.

The District accused Briggs of being crabby on the senior banquet day. It was a double work day, with employees coming to work and providing a school meal, and then going home only to return to prepare an evening banquet. When called on her attitude, Briggs indicated that she wasn't the only one being crabby. It is the Association's contention that the District did not investigate that claim, but proceeded to discipline Briggs.

DISCUSSION

Issue No. 1

I do not believe the grievance filed relative to actions taken prior to November 7, 2005 is timely.

Ms. Briggs was advised as to her attitude by Killion, taken to the Superintendent, with Association representation, and counseled again. She, and the Association, was provided written confirmation, on September 9, that the "disciplinary report" had been received, and was being placed in her personnel file. Under the totality of the circumstances both Ms. Briggs and her Association understood this to be disciplinary.

On September 28 a meeting transpired involving a number of matters. It was summarized by a memo, dated October 7, captioned "disciplinary conference". An Association steward was present at the employers' direction. The document specifies that it will be placed in Briggs file as a written warning. It threatens further disciplinary action including the possibility of discharge, if the conduct persists. It reminds Briggs that it is the second discipline placed in the file. Under the totality of circumstances both Briggs and the Association were on effective notice that this was discipline.

It was the November 7 memo that prompted the November 28 informal conference. By my count, October 25 is 20 work days preceding November 28, not counting Thanksgiving Thursday and Friday.

Issue No. 1 asks if the September 9 and October 7 disciplinary memos are timely under the contract. Article 10.03 provides just cause protection to bargaining unit employees who are disciplined. Written reprimands are specifically included. The two documents at issue specify

that they are written reprimands. Article 5.01 provides a broad definition of what is grievable.

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These two disciplines fall comfortably within the scope of what is grievable. This is a claim that the employer lacks just cause for the discipline imposed on September 9 and October 7. Article 5.03 A specifically addresses the grievance procedure, and regulates the parties use of that procedure. The number of days identified to initiate and process grievances are to be read as maximums. Extensions are to be mutual and in writing. Such was not the case here. The contract provides that the failure to initiate within the specified timelines constitutes a waiver of the grievance.

The Association contends that the matters should be heard because they are referenced in the November 7 memo. I disagree. It is the very nature of progressive discipline that it builds step by step. The severity of discipline increases as a more forceful notice and warning to an employee to modify certain behavior. It is true that Arbitrators go back to review relatively minor discipline previously issued. However, it is typically done under circumstances where the employee had no meaningful opportunity to challenge that discipline. Either the matter was not grievable, or it was grieved, and the Union decided not to proceed to Arbitration over minor discipline. It is expensive and time consuming to challenge every warning through the Arbitration step of the contract. It does not appear that any grievance or other challenge to the prior discipline was ever filed.

Here, the earlier disciplines promised more severe sanctions if the behavior did not turn around. In this proceeding, the Association complains that the earlier warnings lacked specificity and failed to clearly identify the behaviors that were to be modified. If the Association believed that to be the case at the time, some response should have been forthcoming. I believe that all parties understood the references in the memos. The parties also understood that more serious discipline could follow, and that the contract has time limits to raise claims.

In summary, I believe the Associations position is at odds with the words of the contract and contrary to the character of progressive discipline.

Issue No. 2

In light of the disposition of Issue No. 1, I do not regard the question of just cause for those actions to be before me.

Issue No. 3

The record fairly establishes that there was a great deal of stress, negativity, and hostility surrounding the kitchen operation during the fall of 2005. I believe that Ms. Briggs struggled mightily with the changes and the *de facto* loss of status and authority. It was difficult for her to adapt to the changes, and she came around slowly. By November 3 Ms. Briggs had received two letters of warning containing strong wording from Ms. Ballin. It appears to me that the events of November 3 led to the one day suspension. The two different

accounts of the tone and temper of the conversation between Briggs and the repairman, but they differ on the fundamental question of whether Killion spoke to Briggs at all that day. I am not confident in either account of the events of the day. Ms. Briggs objectivity is at times overwhelmed by the certainty of her perspective. Ms. Killion was both combative and argumentative on cross examination.

However, there was another meeting that day where Killion and Ballin advised the kitchen employees that more hours would be allocated to two positions. Ballin observed that Briggs was a source of what she perceived to be hostility at that meeting. This would be consistent with Killion's subsequent report that Briggs hostile behavior escalated.

The association contests the discipline, asserting that all prior warning was too vague and that nothing really occurred relative to the oven repairman. As the Association points out in its post-hearing brief, this case is all about attitude. Much of what the District complains of is subjective and non quantifiable. I believe the record demonstrates that Ms. Briggs had an attitude, and was unwilling or unable to control her behaviors that contributed to stress in the workplace. The Association points to Killion as a mirror image of Briggs, and asserts that Briggs behavior is a reflection of the disrespect she was given by Killion. I believe that Killion aggravated matters at times. There were instances where mountains were constructed of mole hills. That does not explain away Ms. Briggs behavior. Much of the conduct complained of in this proceeding is foreshadowed by Ballin's Fall, 2004 observation, which preceded the arrival of TAHER and Killion by nearly a year.

There is a good deal of testimony that Ms. Briggs is viewed as congenial, cooperative and easy to get along with. There is a good deal that suggests the contrary. I am left with the impression that both can be true. I believe that Ms. Briggs can be easy to work with at certain times and with certain people. I also believe she can be hard on those she is at odds with. The testimony of Killion, Ballin and Flesher has a common theme and comes from such different perspectives it cannot be ignored. In November, I believe the District was confronted with an employee who had been disciplined twice for an attitude and behavior that was disruptive to the workplace. The conduct continued. I do not think it a stretch for this employer to conclude that warnings were not effective. A one-day suspension is appropriate under the circumstances.

Issue #4

Ms. Briggs was given a three-day suspension, issued on August 22, 2006. The District had intended to suspend her in January, but put the suspension in abeyance in the hope that mediation would improve the workplace climate. The discipline was resurrected when further incidents occurred in May, 2006, and the district concluded the mediation had not been successful. The January 31, 2006 memo cites two reasons for the anticipated three day suspension. The first is the contention that there was insubordination relative to the menu for morning breaks. The essence of this matter is that Ms. Briggs was directed to limit the number

posted menu, and Briggs refused. The two women argued and debated the wisdom of the decision. Briggs tried it Killions' way for a couple of days, and decided it was a bad idea, so she reverted back to the traditional offerings. There is no meaningful defense to the claim she was insubordinate.

I do not regard the direct order given Briggs relative to the number of snack offerings to constitute disparate treatment when compared to Scofield's treatment. Briggs was directed to minimize the number of offerings in an effort to be efficient. Scofield was directed to keep an eye on what was eaten, and then to exercise judgment as to what to make the next day. The point was to look at what was left on the first day and determine if it could be used the second. Whatever the merits of either plan, the situations are not parallel.

The second basis for discipline is the allegation that Ms. Briggs was argumentative, disrespectful, sassy, mumbling. The Association attacks this as ambiguous and lacking clarity. This is a far more subjective area than is the insubordination. It is difficult to capture voice tone and inflection. However, it is an ongoing complaint that was observed by a number of witnesses. Ms. Flecher, an unwilling witness, described Briggs mannerisms in unflattering terms. I am convinced that Ms. Briggs behaved in ways that contributed to a poor working climate in the kitchen. Ms. Briggs was not alone. Many of her co workers resented and resisted the imposition of new management. However, the other kitchen workers ultimately reconciled themselves to the new management and moved on. It appears that it was more difficult for Ms. Briggs to move on. It is the view of the Association that Ms. Killion was disrespectful of Ms. Briggs, and contributed to the problem. In many ways Killion was a sparring partner for Briggs. However, the attitudinal problems complained of by the District are noted by Ballin in the fall of 2004.

The District offered to suspend the discipline, in the hope that workplace mediation would turn things around. I regard that as a constructive effort to find an alternative to discipline. It appears to me that the District was looking to avoid disciplining a long-term employee. The mediation appears to have been undertaken in good faith, the Mediator having been drawn from the staff of the Association. Subsequent events caused the District to conclude that the mediation had failed.

What became the third basis for discipline was the note taking on the production records. Briggs had been told to stop writing on the records. She understood this directive because she stopped writing on the originals and started keeping notes on photocopies. I think this is more than a long term employee having a hard time breaking old habits. Ms. Briggs was making book on Scofield and Killion. She did so at work, after she had been told to desist. It appears that her recordkeeping was a topic of the mediation. I agree that Scofield was snooping around Briggs things when she found the production sheets. She had to work to find the documents. That said, I don't think Briggs had any reasonable expectation of privacy with respect to that box. It was a box of work-related materials, in a storage room off the kitchen. I think Ms. Briggs could reasonably anticipate the reaction of Ms. Scofield, if

Similarly, given the history between Briggs and Killion I find it odd that Briggs would feel comfortable going through the things on Killion's desk. There is no meaningful explanation for Briggs throwing the refrigerator manual in the recycling. Ms. Briggs knew what the manual was and she knew where the refrigerator went. Throwing the manual away runs directly contrary to her expressed motive in going over the desk; her concern that Killion might throw things of value away. I find the contention that Briggs lied about the pencils and erasers less convincing. Ms. Killion declared that things were missing. When she was asked what was missing, she declined to answer, and ended the exchange with "never mind". It is possible the mystery of the pencils and erasers could have been cleared up on the spot, had she identified the things to which she was referring. Rather, she engaged in a form of gamesmanship, which led to a magnification of the incident.

Finally, the August memo refers to the same types of antisocial behaviors referenced throughout the year.

Taken together, I believe the events described above support discipline. There is a mix of attitude, insubordination and abusive behavior. The conducts complained of had persisted over the course of a year despite repeated warnings, escalating discipline, and an effort to bring in an outside presence to calm the workplace. Ms. Briggs persisted in the face of a significant effort to modify her behavior.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 20th day of July, 2007.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

