

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
NORTH LAKELAND EDUCATION ASSOCIATION

and

NORTH LAKELAND SCHOOL DISTRICT

Case 7
No. 67089
MA-13751

(Schellinger Grievance)

Appearances:

Mr. Gene Degner, Director, Northern Tier UniServ - Central, P.O. Box 1400, Rhinelander, Wisconsin, 54501-1400, appearing on behalf of the North Lakeland Education Association.

Attorney Steven C. Garbowicz, O'Brien, Anderson, Burgy, Garbowicz & Brown, L.L.P., 221 South First Street, P.O. Box 639, Eagle River, Wisconsin 54521, appearing on behalf of the North Lakeland School District.

ARBITRATION AWARD

The North Lakeland Education Association, hereinafter referred to as the Union, and the North Lakeland School District, hereinafter referred to as the District, are parties to a collective bargaining agreement (Agreement or Contract) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. The parties asked the Wisconsin Employment Relations Commission to assign an arbitrator to hear and resolve the Union's grievance regarding the non-renewal of Stacey Schellinger, hereinafter Grievant or Schellinger. The undersigned was appointed as the arbitrator and held a hearing into the matter in Manitowish Waters, Wisconsin, on October 25, 2007, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed and is the official transcript of the hearing. The parties filed post-hearing briefs by January 20, 2008 at which time the record was closed. Subsequent to the close of the record, the undersigned held a conference call with the representatives of each party on February 15, 2008 for the purpose of clarifying certain substantive contract language appearing to the Arbitrator to be a typographical error. The parties requested time to consult with their respective clients and the undersigned granted that request. After consultation with their respective clients the representatives informed

the Arbitrator that they had previously filed another grievance on behalf of Stacy Schellinger which they had not advanced to arbitration. This additional grievance, Case #8, No. 67931, MA-14054, relates to the issue of just cause and the Grievant's non-renewal and is integral to the determination and resolution of the initial grievance, Case #7, No. 67089, MA-13751. Consequently, the parties and the Arbitrator agreed to a hearing on the just cause issue and to, essentially, combine the two grievances and hold the initial award in abeyance pending the second hearing. The record was re-opened for that reason and the second hearing took place in Manitowish Waters on June 26, 2008. We now refer to the initial grievance as "Schellinger One" and to the second grievance as "Schellinger Two". Initial post hearing briefs in the second hearing were filed by August 10, 2008 and the parties notified the Arbitrator of their mutual agreement not to file replies on August 26, 2008 marking the close of the record in both matters. This Award combines the two grievances and refers to "Schellinger One" or "Schellinger Two" in the body as required for clarification. A duplicate original of the Award is contained in each file.

Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

ISSUES - SCHELLINGER ONE

The parties were able to stipulate to a statement of the issues to be decided by the Arbitrator as follows:

1. Was the grievance filed in a timely manner according to the terms of the contract? If not, what is the appropriate remedy?
2. Did the District violate Stacey Schellinger's rights under the Collective Bargaining Agreement by not crediting her for completion of her probationary period when she was hired for the 2006 - 2007 school year after having taught full time for the District for five years between 1998 and 2003? If so, what is the appropriate remedy?

ISSUES - SCHELLINGER TWO

The parties did not stipulate to the specific wording of the issue to be decided in Schellinger Two, but did agree in principal that the substance of Schellinger Two is whether the District provided just cause to Stacey Schellinger in its decision to non-renew her teaching contract. The parties left it to the Arbitrator to frame the specific wording of the issue. The Arbitrator frames the issue as follows:

Did the District provide just cause for the non-renewal of Stacey Schellinger's teaching contract for the teaching year 2007-2008? If not, what is the appropriate remedy?

**RELEVANT CONTRACTUAL PROVISIONS APPLICABLE
TO SCHELLINGER ONE AND SCHELLINGER TWO**

ARTICLE 4 - GRIEVANCE PROCEDURE

...

- F. The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to interpretation of the contract.

ARTICLE 5 - CORRECTIVE ACTION

1. In the event of any reported deficiencies, the Board, or their designee, shall notify the teacher concerned in writing within five (5) working days of such alleged deficiencies. Either the Board or the board's designee or the teacher and his/her representative will have the opportunity to call a joint meeting within five (5) working days of notification of the allegation in order to determine whether further action is necessary.
2. If, after meeting with the teacher, the Board or its designee determines that there is indeed a deficiency, documentation and the source of the allegation will be made available and:
 - A. The Board, or its designee, shall notify the teacher in writing within five (5) working days of aforementioned meeting indicating expected correction and a reasonable period for correction

OR

- B. Within ten (10) working days of written notification the teacher shall be advised in writing that: he/she will be reprimanded, warned, and/or disciplined for infractions or deficiencies in professional performance. Said meeting shall be held within ten (10) working days of the written notification. Minutes shall be recorded, dated and signed by all represented parties and read aloud at the conclusion of the meeting, copies of which will be given to the Board and the teacher.
3. After completion of a three year probationary period, no teacher shall be discharged, suspended, disciplined, reprimanded or non-renewed without just cause. During this probationary period, a teacher in need of corrective action will be provided with guidance, assistance and written (signed and dated) recommendation for improvement. If these actions are unsuccessful

in facilitating improvement, the teacher may be discharged, suspended, disciplined, reprimanded or non-renewed with just cause.

...

ARTICLE 6 - MANAGEMENT RIGHTS

Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions under the terms of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this agreement. The rights of management shall in all cases be consistent with the terms of this agreement. These rights include, but are not limited to:

A. To direct all operation of the school system;

...

D. To suspend, discharge and take other corrective action against employees;

...

J. To determine the methods, means and personnel by which school system operations are to be conducted;

BACKGROUND

Beginning in 1991 the Grievant was employed by the District as a substitute teacher. For a period of five years prior to school year 2002-2003, the Grievant was employed by the District as a full time teacher. During school year 2002-2003 she received notice of a reduction in force layoff. She remained on layoff for the school years 2003-2004, 2004-2005 and 2005-2006. During the summer of 2006 she became aware of an opening in the District for a 1st grade teacher and applied for the position. After two interviews with Richard Vought, the District's Superintendent, and other administrators, educators and one of the student's mothers, she was offered a position with the District as a teacher. Although she had applied for the 1st grade position, she was eventually given a position which the District referred to as a SAGE/Reading Specialist. She was provided with a teaching contract, given credit for previous years of full time teaching experience (5 years) on the wage grid, and began her duties in the Fall of 2006.

Initially she was placed on the seniority schedule with credit from her initial date of hire going back to 1991. After the school year began several of the other Union member teachers voiced an objection to placing her on the seniority schedule ahead of other teachers because this would give her a more desirable seniority status in the event of future layoffs. The Union brought

this concern to the Administration and, with the Union's consent, she was placed near the bottom of the seniority list and her initial hire date was changed from 1991 to 2006.

During the late Fall of 2006 she experienced some problems in the classroom (the record does not reflect the nature of those difficulties) and attended some meetings with the Superintendent and two or three other teachers regarding those difficulties. On February 26, 2007, she was given a "Preliminary Notice Of Non-Renewal Of Contract" and her employment with the District was terminated at the end of the 2006-2007 school year.

Additional background information, especially with reference to the bargaining history of the parties as it relates to the modification of Article V, paragraph 3 resulting in the provision for a just cause standard for probationary employees, and with reference to her 7th grade reading classroom performance as it relates to her non-renewal and to just cause, will be furnished in the Discussion sections below.

These grievances followed.

THE PARTIES POSITIONS - SCHELLINGER ONE

The Union

The Grievant taught at the District for five years starting in the Fall of 1998. During that time she served a probationary period of three years. Because the District re-employed the Grievant, the Union sets forth a number of reasons why the probationary period should not be reinstated for the Grievant following her re-hire: 1) They would have had past employment records (to review); 2) The contract provided for only one three year probationary period; 3) Seniority is defined in much the same way as the probation language; 4) The parties specifically entered into an agreement dealing with seniority but not probation; 5) Article 27, Paragraph 9 indicates that employees shall be reinstated without loss of benefits accrued from prior years of service in the District; 6) The parties have had many collective bargaining agreements and had they wanted to address the issue of probation they would have done so with a written agreement; 7) When addressing the issue of seniority with the District raised a red flag (sic) for management giving them an opportunity to address other issues regarding returning employees; 8) There is no bargaining history to persuade the (Arbitrator) to interpret (contract language) other than literally as it relates to "a three year probationary period"; 9) There is no past practice to suggest that the contract should be interpreted other than literally; 10) The Grievant was laid off at the end of the 2002-2003 school year and not non-renewed and, consequently, was in good standing at the point of lay-off and at the point of return.

The Grievant had been an excellent full time teacher for five years prior to her layoff. She had served her probationary period during that time. The District had every intention of granting her full seniority until the Union caused her to be dropped to the bottom of the seniority list. The issue of probation was not raised by the Union or by the District until the Spring of 2007 when the District failed to renew her teaching contract.

In reply, the Union argues that the District says it informed the Grievant of her probationary status in October or November of 2006 but cannot recall the exact date. Grievant disputes this assertion with credibility since Vought and Forster talked about “tenure” and the contract does not use the word tenure. Since the Grievant did not know she was on probation until she received the notice of non-renewal, she had no reason to grieve it. So, the grievance was timely filed.

Grievant had taught at the District for five years and would have had adequate evaluations by the administrative staff. As such, bringing her back within a three year period and requiring her to undergo a new probationary period would have certainly required the District to make that clear to her when she was re-hired. Grievant was not brought in as a new teacher. She was brought in as a previously employed teacher with a temporary lapse in employment.

Any argument by the District that her job was a different position than the one she had before she was laid off is negated by the fact that teachers move from various positions within the District and never re-serve a probationary period.

The District

When the Grievant returned to the District as a teacher she began as a new teacher with credit for the years that she taught. Because she was ultimately placed on the seniority schedule as a new hire with credit for time served toward her wages, she was, in effect, a new teacher with no seniority credit. The District says that since she was fully aware no later than December 1, 2006 that she was being treated as a probationary employee she should have filed her grievance at that time. She waited though, and the grievance is now untimely and barred.

New hires are expected to complete a probationary period even if they had served one at their prior employment. She is a new hire and whatever relationship she had previously terminated when her two year recall rights ended. When she was re-hired she became a new employee with the District even though she was given credit for past experience. The District had no responsibility to advise her that she would have to serve a probationary period because the Contract covers that issue and the District would expect her to review it.

Article 6, the management rights section of the Contract, provides for the right of management to direct the operations of the School District and take corrective action against employees such as the Grievant. Also, Article 6 provides that management is empowered to establish reasonable work rules and has a right to establish quality standards and evaluate employee performances.

Since the contract is silent as to what rights a teacher may have after the period of recall has expired, the management rights clause would control and permits the District to require the Grievant to successfully complete a probationary period just as it would with any other new hire from another district with experience.

In reply, the District says that while it may have had employment records from the past regarding the Grievant, the new position for which she was hired is different and by indicating to her that she would retain her experience and credits on the salary schedule in no way indicated to her that the District would waive a new probationary period.

The contract does not anticipate the type of fact situation with which the parties here are confronted. Article V, (3) relating to the three year probationary period anticipates being effective only for a new hire or someone who had not previously been employed in the District. The fact of the matter is that while the Contract provides for “a three year probationary period”, it does not contemplate a re-employment of a teacher who left the employment of the District and came back to fill a different position on the staff.

Because the Union was instrumental in lowering Grievant’s seniority status, it follows that given the status of a new teacher she would have to serve a new probationary period.

The re-employment that is referred to in Article 27 is that which occurs during the two year period following the Notice of Non-Renewal. Grievant’s re-hire did not occur during that two year period and so the language of that paragraph does not apply here.

The parties never contemplated the re-hire of an employee after the expiration of the two year recall period. If they had, they would surely have included some language about it.

No red flag was raised by the seniority discussions with the Union because the District had always had the intention of having the Grievant serve the probationary period.

Whether Grievant was non-renewed or laid off (in 2003) is irrelevant because Article 27 would control and would permit her to have recall rights through two years after her termination of employment. Because she was not recalled within that two year period there is no carry-over of any rights.

DISCUSSION - SCHELLINGER ONE

Timeliness Issue

The Union asserts that the Grievant became aware of her status as a probationary employee no later than December 1, 2006. This is the date of the second and last meeting with Superintendent Vought, the Grievant and other teachers concerning the Grievant’s alleged teaching deficiencies and it is the last meeting at which Vought could have mentioned her probationary status to her. The record is unclear as to whom attended this meeting. The record is unclear as to whom attended the other meeting, too, and precisely what portions of each meeting were attended by whom. Apparently no records of these meetings were kept, no reconciliation of either of them seems to have been generated and no memos or other written indicia of the meeting’s results, conclusions or action items were prepared. If they were, they have not been made a part of this

record. This case is not unlike many situations where the facts are determined in large part by the credibility of the witnesses.

Vought testified that two meetings were held “because of some incidents” which had apparently taken place in the Grievant’s classroom. The first was held on November 28, 2006 and the second was held on December 1, 2006. The record (in Schellinger One) does not indicate the nature of the “incidents” Vought references. He further testified that during one of these two meetings “I did say to Stacey that you are on probation. . .” but was not able to recall during which meeting it was said. He also testified that

“Betty Forster was present and then later on in the meeting Sharon Schmidt was present - there was two of them at parts of both of them and so was Lynn Szot present at both of them.”

On cross-examination Vought testified that he told Beth Matusiewicz of the probationary status of the Grievant:

“I believe I did mention that to Beth too at some point in time before the non-renewal, yes, I do.”

However, Beth Matusiewicz testified that she recalls discussing only the issue of seniority as it related to the Grievant and never discussed her status as a probationary employee with Vought. Betty Forster, one of those present during at least some parts of the two meetings, testified at the hearing. The other two teachers mentioned by Vought as being present for some parts of the meetings, Szot and Schmidt, did not testify. Forster testified, in pertinent part, at pages 42 and 43 of the transcript as follows:

Q. And specifically directing your attention to the 2006-2007 school year, were you present at some meetings that were held with her?

A. I was.

Q. And why were you at those meetings?

A. I was another reading teacher in the building, and at that time Stacey was teaching 7th grade reading. I had 5th, 6th and 8th grade reading.

Q. And your role at these meetings were (sic)?

A. All of the reading teachers were asking to get together and talk.

Q. Okay. Do you recall when those meetings were held?

A. October and November of last year.

Q. Okay.

A. I can't give you exact dates.

Q. And was Mr. Vought present at those meetings?

A. Yes.

Q. And Stacey was present?

A. Yes, and Mrs. Szot.

Q. Now, at one of those meetings was there a discussion about Mrs. Schellinger's status as a probationary teacher?

A. Yes.

Q. And do you recall what was said?

A. Verbatim?

Q. As best as you can recall.

A. That Stacey had returned to our school and was not a tenured teacher; that she was on probation.

Q. And that statement was made by—

A. I believe Mr. Vought.

Q. And was Stacey present when that was said?

A. Yes.

Q. And at those meetings, were either Becky Kayser or Beth Matusiewicz present?

A. No, not to my knowledge.

When asked on cross-examination at page 45 if the Grievant was present when she (Forster), Vought and Szot discussed the fact that the Grievant would need a mentor and who that mentor might be, Forster answered:

A. I don't believe that discussion was in front of Stacey.

Q. So–

A. Just as far as her – as one of us providing mentorship to Stacey, I don't believe she was there.

Forster does not know the date of the meeting, only that it was in October or November of 2006, while Vought's testimony suggests that the meetings were held in November and December. Forster "believes" that it was Vought who told her that the Grievant was on probationary status, or, in Forster's words, "tenured." Forster remembers that the conversation relating to a mentor for the Grievant took place but "believes" that this discussion took place outside the presence of the Grievant. So, it seems clear that parts of the meeting were held in the presence of the Grievant and parts were held without her. In light of the credible testimony of the Grievant to the effect that she was not informed of her probationary status at that meeting, the undersigned concludes that the conversation relating to probation also took place outside the presence of the Grievant and that the passage of time has dimmed or confused facts which were initially correctly perceived by Forster. Such confusion as to past events is not an uncommon phenomenon.

Vought testified that when he initially hired the Grievant there was no discussion of probation and that at that point he had no thoughts as to how she would be treated in that regard:

Q. Now, when you hired Stacey, did you have any thought in your own mind whether she was a new teacher or a former staff member that would be coming back or did you have any thoughts as to how you would be treating her?

A. At that point, no, I didn't. I can't honestly say that I did. (Tr. at p.33, line 23)

While Vought is quite certain he told the Grievant of her probationary status at one of the meetings, he doesn't remember her reaction to being told that:

Q. When you made the comment to her at that meeting that you were considering her to be under a probationary status, what was her response?

A. I don't recall. I mean. This was a year ago. I said it in a manner that it wasn't a statement to her. It was you are a probationary teacher. I was asking her come on, we have to do something about this. It was a plea more than anything else.

Once again, the undersigned believes that time has blurred the specific events in the recollection of the witness and, by virtue of the interests of the parties, caused him to perhaps recall some events in more specific detail than others. I find it odd that he was able to recall what he said to the Grievant, and the reasons for saying it, but was not able to recall her response to his

comments. As with Forster, Vought's recollection of whether the Grievant was present or absent during the various parts of the meetings may be dimmed by time.

The testimony of the Grievant was clear, concise, and direct. She testified that at no time prior to the receipt of her non-renewal notification was she advised that she had been placed on probation and was quite unaware of such status. She had never discussed the issue with Vought, or anyone else, and it was not a condition placed upon her at the time of her re-hire. The record supports that testimony and I find her testimony to be entirely credible.

Union witnesses Matusiewicz and Kayser both testified credibly that during their discussions regarding the seniority issue relating to the Grievant they had never been advised by Vought of the probationary status of the Grievant and that probation was never an issue the Union intended to discuss, nor was it ever discussed.

By reason of the cloudiness surrounding the meetings, the lack of evidence relating to their content and the presence, or lack thereof, of the Grievant and others who may have been involved during those meetings, or during parts of those meetings, and because I find the Grievant to be completely credible, I cannot reasonably conclude that the Grievant received notification of her probationary status prior to her receipt of the non-renewal notice. Therefore, neither she nor the Union had reason to believe the filing of a grievance was necessary or ripe until she received the preliminary notice of non-renewal (Joint Exhibit 16) on February 27, 2007. The District seems to argue that the grievance is time barred because the Grievant knew about her probationary status no later than December 1, 2006 and should have filed the grievance within ten working days thereafter. The Grievant testified that she was not advised of any issue concerning probation until she received the notice of non-renewal on February 27, 2007. Barring this grievance would result in the Grievant receiving the employment equivalent of the death penalty. I embrace the prevailing view regarding continuing violations, i.e. that violations which result in the denial of work and wages on a daily basis constitute continuing violations. (See *PACIFIC MILLS*, 14 LA 387,388 (Hepburn, 1950) and its progeny.) Such is the case here and so the March 26, 2007 filing date satisfies the contractual requirement for filing grievances within ten working days. More importantly, the undersigned notes that the District was not prejudiced in any way by the March 26 filing date, nor does it so argue. Consequently, any technical argument relating to late filing is *de minimis* and the undersigned determines that the grievance was filed within the proper contractual limitations and is not barred by time.

Probationary Status Issue

The Grievant began teaching with the District on a full time basis in the Fall of 1998. She had been a substitute teacher for the District for about seven years prior to beginning full time. During the first five year period of full time employment she successfully served a three year probationary term. This record does not indicate that she had any adverse evaluations or complaints regarding her teaching performance during her probationary period or for the two years that followed before she was laid off, nor does the District make such an argument.

In the Summer of 2006 she applied for an open teaching position with the District. She was required to apply for this position because she had, at that point, exceeded her contractual two year re-call period by about one year. The re-call period is the period following lay off when laid off teachers are given contractual priority for re-hire into open positions for which they are properly certified. She was interviewed twice and, during the second interview, she was told that there were actually two positions available and she was asked which one she would prefer. She stated that she would prefer the 1st grade position rather than the other position which involved teaching a portion of the 2nd graders; setting up breakfast for the 4-K program; 7th grade reading; some 8th grade reading; supporting the 1st grade, 4-K and 5-K with reading centers and, finally, teaching a middle school remediation reading lab. Following this meeting, or perhaps during this meeting, the record is unclear on this point, she was told by Vought that another teacher was to be given the 1st grade position and that she, the Grievant, would be given the second position. She accepted the position and, on July 27, 2006, signed a standard "Teacher Contract" with the District.

At no time during either interview, or during any discussions regarding the position she was eventually awarded, did Vought, or anyone else, discuss probation. The only issue raised related to where she would be placed on the wage scale and her position on the seniority list. She was told that she would be given full wage credit for past years served with the District and placed at that level of pay. She was advised that the Union had some concerns as to where she would be placed on the seniority list. She eventually discovered that she had been placed on the list fifth from the bottom with a new seniority date of 7/24/06, the date of her re-hire. The four teachers below her were also hired on that date. Vought's testimony confirms that he had no thoughts regarding probation at the time of the interviews and at the time of the Grievant's re-hire. The issue was not discussed. The Grievant's testimony is consistent:

Q. Okay. And during that meeting, did you talk about probation?

A. No.

Q. Did you assume you were going to be a probationary teacher?

A. I did not assume that.

Q. Okay. When was the first time that you and Mr. Vought had a discussion about probation?

A. There wasn't a discussion.

Q. When was the first time that you were aware of Mr. Vought's position about your probation?

- A. February 27th when my non-renewal was handed to me with my final evaluation.

(Tr. Page 19, Lines 15 thru 25, Page 20, Lines 1 thru 4)

Although the Grievant testified that she never saw page 2 of Joint Exhibit 9 (the seniority list which initially set forth her original date of hire of 9/3/91), the existence of that list is significant. It, along with the lack of discussion regarding probation during the hiring process; the fact that the individual teaching contract with the Grievant failed to set forth any reference to a probationary period; the fact that there is no evidence of any reference to her as a probationary employee in her personnel file or other school records; and the fact that Vought had no thoughts about probation during the hiring process all lead the undersigned to conclude that Vought, i.e. the District, did not intend that the Grievant serve a second probationary period.

The District argues that when the Grievant returned to the District she was a “new teacher” and because she was ultimately placed on the seniority list as a “new hire” she had no seniority credit. Without seniority credit she should be treated as any new teacher with no seniority credit and should be required to serve another probationary period. Further, says the District, it had no responsibility to notify her of her probationary status because the contract covers that issue. The District’s arguments are unpersuasive.

First, she was not placed on the seniority list as a “new hire”. She was moved from the higher seniority position to the lower seniority position as a result of an agreement with the Union, not as a result of any contractual obligation and not because she was a “new hire.” As the Union points out, “Absent anything in the contract granting a rehired employee seniority after breaking their employment with the district” the general rule to be followed is “if anybody retires, resigns, or otherwise breaks their employment with the employer, which would include extending or losing their recall rights by contract, and then is rehired by the district, the district may place them, at will, on the salary schedule as they would any new employee and their seniority would start over from the date of second employment.” (Joint Exhibit 8) The ‘general rule’ referred to by the Union does not encompass probation; the contract does not tie probationary status to seniority status in any way; and the Union never discussed the Grievant’s probationary status with the District, nor did it intend to. Thus, the District’s second argument, that because the Grievant lost her seniority credit she must necessarily serve a second probationary period, must fail due to the lack of contractual authority supporting it and the lack of any agreement with the Union relating to her probationary status.

The District further asserts that it had no responsibility to advise the Grievant of the need to serve another probationary term because the “contract covers that issue.” The contract does not cover that issue and this argument fails for that reason. The contract states quite clearly, in Article 5, that “After completion of a three year probationary period, no teacher shall be discharged, suspended, disciplined, reprimanded or non-renewed without just cause.” It may be reasonably concluded that the probationary period referred to in Article 5 envisions that the probationary period be served within the District, as opposed to another District, and so it follows that a new

teacher coming from another District must serve a contractual probationary period when he or she joins the staff here. This makes sense because, as Vought stated when asked about the purpose of the probationary period, “. . . the purpose is to see if it’s a fit between the teacher and the district, and it affords the district the opportunity to give guidance but it’s also an opportunity to cull some teachers that aren’t going to make it in the profession.” The District’s purpose has thus been achieved as a result of the first probationary period served by the Grievant. It apparently was “a fit” between the Grievant and the District because she taught there successfully for five years with no adverse evaluations. It also gave the District “. . . the opportunity to give guidance” to her during that period of time and it gave the District “. . . an opportunity to cull” her if it decided she was unable to make the grade. Obviously the District decided that she was able to make it in the profession. The District hired her in 1991 as a substitute and observed her performance in that capacity until 1998, when she was hired as a full time teacher. It observed her performance for five years thereafter, including her three year probationary period, until budgetary considerations, not work related considerations, caused her to be laid off, and then re-hired her at the first opportunity following her lay off. These actions do not strike the undersigned as those undertaken by a District which had any doubts about the Grievant’s ability to do the job and is, I believe, the reason probation was never an issue during the hiring process.

It became an issue, of course, due to circumstances which are not clear in the record but which led Vought, for whatever reason, to become disenchanted with the Grievant and to decide not to renew her contract. Of course, the District could not simply fail to renew that contract without just cause *unless* she was on probation, or so the District thought. The record persuades the undersigned that the District unilaterally decided to take the position that she was on probationary status in order to solve the problem of having to provide just cause. Ordinarily a probationary employee may be terminated, or in this case non-renewed, for any reason and just cause is normally not a factor. In this case, though, that is not true. Article V, paragraph 3 was modified by the parties in the current contract to provide a just cause standard for the non-renewal of probationary teachers. (As Schellinger Two will show, the District and the Union changed the contract language in this regard to add a just cause standard for probationary employees. This modification was the District’s suggestion in an effort to “clean up” contract language. The District agrees that the parties made this change willingly at the bargaining table although it was not aware of the implications of making the change.) So, her status as probationary versus non-probationary as it relates to just cause is a distinction without a difference.

The contract calls for the Grievant to serve a three year probationary period, which she has done successfully. The contract does not require her to serve another one. Of course, the District and the Grievant were free to negotiate another probationary period prior to her re-hire, but did not do so. The Grievant had every reason to believe that she was a non-probationary employee and I am convinced that this is also what the District initially intended. Importantly though, even if she were a probationary teacher, it would have made little difference because, as the analysis in the Schellinger Two Discussion section below will clarify, the contract provides for a just cause standard for probationary employees.

Finally, the District argues that the Grievant was actually hired to do a different job than she had done in the past and that because this was a new position she should serve a new probationary period. The undersigned is not persuaded by this argument either. She was hired to teach and could have been assigned to any number of positions in the District. If a teacher has taught for 10 years as a first grade teacher and returns the next year as a second grade teacher, the contract would not require that teacher to serve another probationary period. In the instant case the Grievant moved from a Title 1 position, generically referred to as “No Child Left Behind” and was required, as such, to teach children with learning difficulties or who were lagging behind. Arguably, this required the Grievant to be able to teach on an even higher level than if she had been teaching students who learned more quickly or more easily. If she had been transferred from the Title 1 position to a regular classroom during her fourth year of teaching, after having served her three year probationary period and before her lay off, no one could have reasonably argued that she should have then been required to serve a second probationary period simply because her position had changed. She would still have been a certified teacher licensed to teach in the State of Wisconsin and would still have been doing what she was hired to do - teach.

In order for the undersigned to find for the District in this case I would be required to add language to the contract and fashion an additional clause covering the unique circumstances, never before encountered at the District and never before considered by the parties, covering this kind of contingency. This I cannot do because it is beyond my authority. The parties themselves must fashion such language at the bargaining table and I suspect that this is exactly what they will now do.

THE PARTIES' POSITIONS - SCHELLINGER TWO

The Union

The basis for the Grievant's non-renewal related to her assignment of teaching reading to seventh grade students for three periods each week for forty minutes each period representing 1/29 of her total workload. The balance of her teaching duties were not considered by the District to be deficient.

Article V - Corrective Action must be read and interpreted as written because it was achieved through bargaining by the parties. The bargaining history of the parties shows that the language contained in Article V, paragraph 3, which provides a just cause standard for probationary employees, is not a mistake but a well-intended change made by the District's bargaining team and adopted for ratification by both parties. That language changes the word “without” to “with” just cause for probationary teachers. Thus, the language reads that “During the probationary period, a teacher in need of corrective action will be provided with guidance, assistance and written (signed and dated) recommendations for improvement. If these actions are unsuccessful in facilitating improvement, this teacher may be discharged, suspended, disciplined, reprimanded or non-renewed with just cause.” The only remaining question is “Did the District violate Article V - Corrective Action, of the 2005-2007 Collective Bargaining Agreement and the

rights afforded Stacey Schellinger therein when it non-renewed her contract for the 2007-2008 school year? If so, what is the appropriate remedy.”

Testimony indicates that while Vought may have sat in for the entire period during his six observations of her reading class starting on 11/29/06, none had a pre-observation conference or a post-observation conference and he never talked with her following any of these observations. Grievant had to seek him out in order to determine why she was being observed so often.

During the meetings of 11/28/06 and 12/01/06 attended by Forster and Szot, no guidance or assistance was provided. Those teachers were at the meeting only for the purpose of witnessing what Vought said.

One must ask what this is all about?. “Answer: Stacey failed some students who became ineligible for basketball or other sports.” In early November Vought, the basketball coach, the athletic director and some parents met with the Grievant to discuss the reasons for failing grades of certain students. The result of that meeting was that a letter was sent to the parents stating how missed assignments could be made up allowing the students to remain eligible to participate in basketball. It is clear that the genesis of the dissatisfaction with the seventh grade reading grades given by the Grievant was athletic participation.

On 11/28/06 Vought had a meeting in which he discussed five items which provided expectations for Stacey. This was not assistance but it did provide direction and expectation to her. Vought observed her over the next six consecutive class periods but did not offer any advice, criticism, assistance or suggestions regarding any of these observations. One week following his last observation Vought advised her that she would be removed from the reading class in the second semester. No other explanation was given nor was any assistance offered.

Grievant applied for a different position, first grade, than she eventually received. This should have been a signal to the District that she might need some orientation in dealing with subjects she had not previously taught. The Contract provides that the District will engage in providing the employee with guidance and assistance should there be deficiencies noted but this was not done with Stacey. It would be a travesty against the protections of the Collective Bargaining Agreement to allow Stacey to be non-renewed for one class period which met three days a week, forty minutes each for one semester. The record is clear that Stacey did not have problems in any other classes she taught. In fact, Vought testified that he observed her second grade class and so no other problems except the seventh grade reading class.

There was no time for Stacey to improve or for anyone to assist her with any deficiencies because Vought had the first meeting on 11/28/06, started his classroom visits the next day and held his final meeting with Stacey three days later on 12/1/06.

The District made its recommendation for non-renewal on February 20. Stacey's evaluation was given to her at the same time as her notice of non-renewal. This flies in the face of the protections provided by the Collective Bargaining Agreement because she had no time to correct anything.

The District

The meetings held in November and December were held to try to correct some of the issues appearing in the classroom. There was never any demonstration to the satisfaction of Vought that the Grievant made any changes.

The requirement for just cause prior to the non-renewal of a probationary teacher found in Article V is contrary to the vast majority of Master Agreements with the Teacher's Unions in the State. The Board ultimately approved the changes as negotiated by their negotiator ". . . without fully appreciating the gravity of the changes that were made. The change from without just cause to with just cause for non-renewing probationary teachers was never discovered by the North Lakeland School District Board and administration until litigating the other grievance involving Ms. Schellinger."

As soon as Vought became aware of the Grievant's deficiencies he scheduled a meeting between some of the parents and Ms. Schellinger in which the specific issues of concern were provided to her and remedies to solve those issues were also provided to her by fellow faculty members of the North Lakeland School District. Therefore she was provided with written notice of the issues that the District felt were arising in her classroom and which needed to be corrected. This happened on more than one occasion: Once on November 17, 2006 with follow up meetings on November 28, 2006 and December 1, 2006 with specific issues highlighted and plans for how to correct them. In observations of her classroom between December 1 and December 20, 2006 Vought failed to notice any changes in her instruction. He thus took the unusual step of removing her from the 7th grade reading class.

It is therefore the District's position that all possible efforts were made to try to provide Ms. Schellinger with notice of the issues that were occurring. They met with her on two occasions to provide assistance on how to correct some of these problems. Forster and Szot indicated they made suggestions to her for correcting some of these problems and Vought evaluated her performance on at least four more occasions and noticed no appreciable improvement. Faced with his attempts to correct her behavior and with the avalanche of parental complaints about her teaching performance and their concerns over the fact that their students did not understand what was expected of them, among other issues, he removed her from this classroom. The District's position is that it had just cause to non-renew her contract.

DISCUSSION - SCHELLINGER TWO

Because the District has agreed that there is no issue surrounding the rather unusual contractual obligation to provide probationary employees with just cause prior to non-renewal

pursuant to the changes made in Article V, paragraph 3, and because the undersigned has determined that the Grievant was not a probationary teacher in any event, the only issue to be determined in Schellinger Two is whether she was provided with just cause to non-renew her teaching contract for the teaching year 2007-2008.

Article V - Corrective Action, provides:

1. In the event of any reported deficiencies, the Board, or their designee, shall notify the teacher concerned in writing within five (5) working days of such alleged deficiencies. Either the Board or the Board's designee or the teacher and his/her representatives will have the opportunity to call a joint meeting within five (5) working days of notification of the allegation in order to determine whether further action is necessary.
2. If, after meeting with the teacher, the Board or its designee determines that there is indeed a deficiency, documentation and the source of the allegation will be made available and;
 - A. The Board, or its designee, shall notify the teacher in writing within five (5) working days of aforementioned meeting indicating expected correction and a reasonable period for correction

OR

- B. Within ten (10) working days of written notification the teacher shall be advised in writing that: he/she will be reprimanded, warned, and/or disciplined for infractions or deficiencies in professional performance. Said meeting shall be held within ten (10) working days of the written notification. Minutes shall be recorded, dated and signed by all represented parties and read aloud at the conclusion of the meeting, copies of which will be given to the Board and the teacher.

...

5. No teacher shall be required to appear before the Board or its agents concerning any matter which could adversely affect the continuation of that teacher in his/her office, position of employment, or the salary pertaining thereto, unless he/she has been given prior written notice of the reason for such a meeting and shall be entitled to have a representative present to advise him/her during such interview.

Prior to November 17, 2006, according to Vought, out of a total of 17 students in the class he had received no less than 15 or 16 complaints from the parents of Schellinger's students. He

testified that he had several letters from the parents complaining about her class. The undersigned is impressed by the fact that not a single one of those letters made it into the record in this case nor did a single parent testify in the matter.

On November 17 Vought held a meeting with some of the parents, the basketball coach, the athletic director and Schellinger to discuss the problem with a few of the basketball players who were failing Schellinger's class and thus ineligible to play. As a result of this meeting, Vaught generated two documents, one dated November 17, the second dated November 20, 2006.

The November 17 document reads in pertinent part:

November 17, 2006

GRADE 7 - Reading Grades

GRADES. . .The classroom teacher has the ultimate say in a student's grade. Grades cannot be changed by the Administration or by the Board of Education. In this matter, had there been direct parental contact there may not have been an issue.

PROGRESS REPORTS Progress reports are to be sent to the parents at approximately mid-way point in the quarter. Progress reports are to be sent if a student is doing failing work and/or is in danger of receiving an unsatisfactory grade. In this case "progress reports" were not sent as the instructor states that the students were not failing at the mid-way point.

COMMUNICATION Communication between parents and the school is essential in the learning process. In this case, it is apparent the there was failed communication from both of the parties. It is the Administrator's directive to always make personal contact with the parents prior to recording a "D" or "F" on a report card. However, since it appears that the student's grades plummeted during the week of 10/30 - 11/3, notice to the parents would have been of a very short duration, but still would have allowed their intervention in the matter and most likely would have prevented our current situation.

It is quite apparent that the students did know that their grades in the course were not at an acceptable level and even when given an extra four (4) days to complete missing assignments, as did other students in the same situation, they did not complete missing work, nor did these students communicate this situation to their coach or their parents. It is essential that the students take responsibility for their actions in this situation, and that any action taken does not enable further action of this nature.

There are two possible alternatives to this situation:

- (1) The students be given one week to turn in missing assignments, with a grade deduction due to late work (from 11/20/06 to 11/27/06 at 8:15 a.m.). Should their grade still be an "F", then they still would be ineligible for basketball. Furthermore, their participation in basketball be subject to disciplinary measures the coach chooses to impose.
- (2) The status quo be maintained and no action taken.

This would not create a precedent...only allow for parental involvement in solution to this matter.

The November 20, 2006 document reads:

November 20, 2006

TO: Dan Wohlleber
Stacey Schellinger
Mark Dumask
7th Grade Parents/Students

FROM: Rich Vought

RE: Assignment/Grades

On 11/17/06, it was mutually agreed that the students be allowed three (3) days to complete missing assignments. This make-up work will include missing assignments and/or assignments that the instructor allows for corrections. Any work needs to be turned into the office by 3:30 on 11/22/06.

As the final grade for these students will not be recorded until after 11/22/06, they are therefore, eligible to participate in extracurricular activities on 11/20/06 and 11/21/06. Further eligibility will be contingent upon the grades earned for the past quarter.

Wohlleber is the AD; Dumask is the basketball coach. Wohlleber is also a teacher; Dumask is not.

Obviously the decision was made to allow the failing students an additional opportunity to meet their responsibilities in the classroom so they could remain eligible to play in a basketball game. The undersigned finds it curious that of the 15 or 16 parents (out of a total of 17) who expressed concern to Vought about Schellinger's class, it was only the few (according to the testimony of the Grievant, three or four) ineligible basketball players and their parents who were the subject of

a special meeting to address these concerns. One would think that with so many parents expressing their displeasure over the reading teacher's failings the Administration would have met with the teacher and with those parents to address the problems which resulted in the student's inability to learn. It did not. In fact, during the entire month of October, Schellinger did not receive a single complaint from any teacher nor did the Administration advise her of any. The first complaint came on November 15th following Schellinger's issuance of failing grades for the Basketball players. Two days later a meeting concerning student's poor grades was held and the agenda for that meeting was about how the rules could be bent so as to allow the failing students to maintain their eligibility long enough to play in a basketball game.

The Grievant did not in agree with this approach. In response to a question from her representative, Mr. Degner, who asked "And so you complied with that directive, on what was determined with the parents and Mr. Vought on the 17th, you complied with that without any hesitation?" , she explained:

"I was concerned that it was going to set precedent in the future. That the students could then chose to do poorly in the class and have alternative times to make up work to participate. This is somewhat against my philosophy.

The work was due. They chose not to do the work. One of the students had never started the project. It was in the bottom of the backpack. He had three days to complete a six-week project.

With hesitation, yes. But I decided as a remedy and hopefully the students could learn from this and be more timely in turning in their work in the future"

While this approach may have been against the Grievant's philosophy, it was clearly not against Administrator Vought's philosophy and, of course, his philosophy prevailed. Contrary to the District's assertion, the meeting of November 17 does not constitute written notice of the issues the District felt were arising in her class. This meeting was held to determine how some basketball players could remain eligible to play in spite of their failing grades.

I now turn to the meeting of November 28, 2006. This meeting took place five working days following the November 17th meeting with the coach, the AD and Vought. The District argues that the "...purpose of this meeting was to cover some of the issues that he (Vought) observed in the classroom." However, the credible evidence contained in this record does not support the assertion that Vought had observed the Grievant's seventh grade classroom between the 17th of November and the 28th of November. In fact, the first time Vought visited her classroom was on November 29th, the day after this meeting. (See District Exhibit 4)He did not hold a pre-observation discussion nor did he inform the Grievant that he was coming to attend her class. Following his observation, he did not discuss his conclusions with her nor did he critique her performance in any way. Vought again visited her classroom on the 1st of December. Again,

he did not announce his intention to visit the classroom nor did he offer any advice regarding her performance in the classroom. These visits continued until 13th of December; all were unannounced and none were discussed or critiqued in any way following the observations.

It is clear that the meeting of November 28, 2006 was called as a direct result of the problems the student athletes were having. Those students had trouble doing their homework on time and this is what led to their poor grades. Vought believed that her expectations for the students were too high. Schellinger was asked at that time to cut back on their homework. District Exhibit 1 is Vought's "agenda" for the November 28th meeting. It says:

Reading: Meeting 11/28/06

Forester...Schellinger...Vought

1. Expectations...high expectations are good but always double check to make certain that they are realistic.
2. Homework...should be utilized very little in the learning process...research has shown that it is counterproductive to the learning process...it is not an effective learning instrument...Instruction and evaluation should take place in the classroom...homework should be limited to creative activities...Time should be given in the classroom for students to complete assignments on which they will be graded...Homework weight in the evaluation process should be very minimal.
3. Instructions should be clear and concise with evaluation criteria clearly defined. The evaluation process should be entirely objective.
4. Instruction need (sic) to be adapted if the majority of the students in the classroom are not doing acceptable work. Instruction needs to be adapted to the needs of the students in all cases.
5. Quality is what we strive for...not quantity

According to the Grievant's testimony she was summoned to the office at the end of the day and given the agenda when she arrived for the meeting. The discussion at this meeting essentially followed this agenda. The agenda was not born of observations Vought had made in the Grievant's classroom, as Vought maintains, because he hadn't made any observations yet. This meeting was a vehicle to aid certain students in maintaining their eligibility to play basketball.

The next meeting took place on December 1, 2006, just three school days following the meeting of November 28th. Vought testified that the purpose of this meeting was because "I wasn't seeing progress." The undersigned questions how much "progress" could have been made between November 28th and December 1st, a period of two school days, during which time he observed

Schellinger's classroom only twice and provided absolutely no post observation critique, constructive or otherwise. The so-called "agenda" for this meeting, found on page two of District Exhibit 4, belies Vought's testimony relating to the purpose of the meeting. It says:

Meeting 12/1/06

1. Send revised report cards to parents with note explaining changes in grade and/or not changes in grades.
2. Letter to all parents in 7th reading on rubric for book reports...and detailed explanation of entire grading system for class. (I.e. Book Reports_% of grade...Tests_%...so forth and so forth) Please remind the parents if they have any question and/or concerns that they should contact you as (sic) their convenience (sic)
3. Reminder the vast majority of the grade for the class should be based on work done in class...Homework should be for reinforcement...and creative activities and should not be used as an evaluation tool.
4. Reminder...This is a reading class and our main goal is to instill the love of reading and critical thinking skills...

(The 4th item was handwritten followed by a circle in which the word 'Homework' was written. A diagonal line was drawn through the circle presumably to denote that homework was disfavored or banned.)

At this meeting Vought, according to the credible testimony of the Grievant, told her that all of these students, referring to the basketball players, should be receiving "A"s or "B"s. Following this meeting, Schellinger complied in all respects with the agenda items.

During the period between the December 1st meeting and December 20th Vought visited Schellinger's classroom on 12/1, 12/6, 12/8 and 12/13. None of these visits was preceded by a pre-observation conference; none were followed by a post-observation conference or critique of any kind. In fact, prior to December 20, 2006, Vought did not speak to Schellinger at all. Schellinger described the nature of these classroom observations and their aftermath in response to Degner's questioning (Tr. 147-150):

- Q. Was there any casual or informal conversations with him about what he observed?
- A. No, we never spoke.
- Q. Did he ask you if you were still giving homework?

A. No, he did not.

Q. Do you recall any other times – Mr. Vought, I believe you were here, and he testified he had taken over your class; do you recall him doing that?

A. I do. In teaching one of the stories out of the literature book that was in the seventh grade curriculum entitled “Nancy”. I was teaching and discussing the story that had been read for homework and he -- In his observation times in the classroom he sat in and amongst the students, in their desks next to them. He took pages of homework from them and reviewed them. Took their books out of their hands and read the story. When I was discussing with them, he interrupted my teaching and lead discussion. I was unable to become part of that.

As they were engaging with him during the discussion, I lost classroom control at that point. He was leading the discussion. It became off task at that point as far as ages of parents and it was not appropriate to the story at hand, but he somewhat took over with the discussion.

Q. Did he indicate to you, following that, why he did that?

A. No, he did not.

Q. Has he ever explained to you why he did that?

A. No, I’ve not spoken with him.

THE ARBITRATOR: Excuse me. I just have a question.

BY THE ARBITRATOR:

Q. You mentioned discussion regarding ages and ages of parents; explain that to me, please.

A. The story was about a little girl who made up an imaginary friend and we were discussing that. Somehow the conversation got off topic and ages of their parents and themselves were trying to be tied into the discussions regarding the age of the little girl. Then mothers’ and fathers’ ages were being discussed. It really didn’t pertain. That was just where that conversation went with him and the students. I wasn’t engaged in it because I had lost control of the classroom.

Q. Could you determine what the point was?

A. No, just general talk. It got lead off track and really had no pertinence to the story at hand, which I was teaching from initially, and which was my agenda for the day, not really.

BY MR. DEGNER:

Q. Did he do that often in your class?

A. Upon entering the classroom with the students, given the nature of the timeframe, he would enter the classroom whistling, humming Christmas songs. He entered every time, take their work from them. A couple of sessions he did take notes on a legal pad. Several of them he engaged in the conversation and the discussion while I was teaching.

Q. You said in some of those that he took notes on a yellow legal pad; did he ever contact you following those and share what he had observed or —

A. No. There was no conversation after the 20th of December when I was removed until I received my notice of non-renewal February 27th.

Q. Was there any -- You indicated that during some of these meetings and when he sat in during your Reading class he made notes on a yellow note pad?

A. I never saw them.

Q. Did he ever follow up with the conversation following that observation?

A. No, he did not.

Q. All of these observations were within a two-week period it appears, correct?

A. November 29th through December 13th, yes.

On December 20, 2006, Schellinger was called to a meeting in the office. Present were Mrs. Forster, Mrs. Szot and Vought. She was handed a letter addressed to the sixth and seventh grade parents (Union Exhibit 13) which read:

December 20, 2006

TO: Sixth and Seventh Grade Parents

FROM: Rich Vought

RE: Reading Instruction

The purpose of this correspondence is to advise you on changes to our Reading Program.

Effective Wednesday, January 3, 2007, Mrs. Forster will be assigned to provide instruction in Reading for all Sixth Grade students, and Mrs. Szot will be assigned to teach Grade Seven Reading. Mrs. Schellinger is assigned, and will provide much needed assistance, to Grade 2.

Feel free to contact me if you have any questions and/or concerns.

The meeting of December 20th lasted about three minutes. Vought did not, nor did anyone else, discuss this change with Schellinger prior to the meeting and she was informed at the meeting that there would be no discussion concerning Vought's decision.

On February 20, 2007, at a special Board meeting, the Board opted to give Preliminary Notice of Non-renewal to Schellinger. They referred to her as a "probationary teacher". This notice is signed by the Board President Daniel Rayala and the Board Clerk, Brian Derber, and dated February 26, 2007. Schellinger was presented with it on the following day, February 27, 2007. (See Joint Exhibit 2) Interestingly, she was also presented with her "Formal Evaluation" for the school year 2006-2007 at the same time. Even more interesting is the fact that this "Formal Evaluation" was prepared by Vought on the same day, February 27, 2007.

So, the sequence of events leading to Schellinger's non-renewal is as follows:

- 11/15/06: First complaint (of which Schellinger is aware) received from parent of failing basketball player.
- 11/17/06: Meeting with coach, AD, basketball parents and Vought re basketball eligibility.
- 11/20/06: Letter from Vought to basketball parents advising of decision to allow basketball students to turn in work late.
- 11/28/06: First meeting with Schellinger/Vought/Forster to deal with failing basketball students - Schellinger told to cut back on homework and become less demanding of her students.
- 11/29/06: First observation of 7th grade class by Vought.
- 12/1/06: Second observation of 7th grade class by Vought.

- 12/1/06: Second meeting with Schellinger/vought/Forster/Szot re sending revised grades to basketball students, etc.
- 12/1/06 - 12/13/06: Total of four classroom observations by Vought, none of which included a pre or post observation conference or critique.
- 12/20/06: Schellinger called to office and given copy of letter to parents advising of her removal from the 7th grade class for upcoming semester. No discussion allowed, and no warning to Schellinger.
- 12/20/06 - 2/20/07: No additional classroom observations; no discussions regarding improvement needed; no contact with Vought
- 2/20/07: Board opts to non-renew Schellinger as a probationary teacher.
- 2/26/07: Board members sign preliminary notice of non-renewal.
- 2/27/07: Schellinger provided with preliminary notice of non-renewal.
- 2/27/07: Vought prepares Schellinger's 2006-2007 Formal Evaluation.
- 2/27/07: Vought gives Schellinger her 2006-2007 Formal Evaluation.

It comes as no surprise to the undersigned that Schellinger's Formal Evaluation fully supports the Board's decision to non-renew Schellinger. After all, that decision was made a week *before* and required some sort of justification, and Vought provided it. What the evaluation fails to do is give Schellinger any opportunity to address the deficiencies Vought set forth in that evaluation, let alone correct them. What is even more remarkable is that Vought never discussed the contents of the evaluation with her prior to preparing it or suggest any way for her to improve. The evaluation relates to that short period of time surrounding the basketball issue and is based upon the rather odd classroom observations by Vought. It does not mention any criticism of her teaching skills in classes other than the 7th grade reading class. The undersigned questions the validity of the evaluation. Vought states that Forster worked with Schellinger in an effort to help her improve. Forster testified that she did not. Vought states that Szot worked with Schellinger. The record does not support that statement. In relation to the "help" given to Schellinger by Forster and Szot, Vought states that Forester and Szot both reported ". . .these efforts met with resistance on the part of Schellinger." The record does not allow the undersigned to draw any such conclusion. In fact, the record compels the opposite conclusion. Neither Forster nor Szot worked

with Schellinger in the manner the evaluation would suggest, and neither one reported (or received) resistance from Schellinger. The weight of this evaluation in terms of evidentiary value is light. The record compels the undersigned to conclude that Vought's criticism of Schellinger, to the extent that it may be considered accurate, was confined to her activities in the 7th grade reading class and that the balance of her teaching duties were more than acceptable. These other duties comprised the vast majority of her teaching job at that time. To say that this series of events emits a disagreeable odor is an understatement.

Union Exhibit 6 is a memo to ten teachers, including Schellinger, from Vought advising that they were going to be evaluated during the 2006-2007 school year. It says:

Please be advised that you will be evaluated during the 2006-2007 school year. The evaluation will follow this format:

- Pre-observation conference
- Observation(s)
- Post-observation conference

The record is not clear as to whether all of these teachers were observed using the above format. It is a fair conclusion that at least some were not. Schellinger certainly was not. If she had been evaluated using this format, it would have provided her with guidance and assistance in taking corrective action, if any were needed.

Article V of the Agreement provides for a reasonable period for correction of a teacher's performance. In the alternative, the teacher must be advised in writing that she will be reprimanded, warned or disciplined for deficiencies in professional performance. Within ten working days thereafter a meeting must be held to discuss any action to be taken and minutes of this meeting must be recorded, dated and signed by all represented parties and read aloud at the conclusion of the meeting. Copies must be given to the Board and the teacher. Schellinger was provided with none of these contractual protections.

Article V also provides that a teacher on probation (which the District unilaterally determined was Schellinger's status) and in need of corrective action must be provided with guidance, assistance and written (signed and dated) recommendations for improvement. Schellinger was not provided with these contractual protections.

This record, even under the most liberal interpretation of imaginative argument, does not support the conclusion that Schellinger was provided with just cause for non-renewal.

In light of the above, it is my

AWARD - SCHELLINGER ONE AND SCHELLINGER TWO

1. The grievance was filed in a timely manner according to the terms of the contract.
2. The District did violate Stacey Schellinger's rights under the Collective Bargaining Agreement by not crediting her for completion of her probationary period when she was hired for the 2006 - 2007 school year after having taught full time for the District for five years between 1998 and 2003.
3. The District did not provide just cause for the non-renewal of Stacey Schillinger's non-renewal.
4. The District shall re-instate Stacey Schellinger as a teacher effective immediately. She shall retain all prior seniority to which she was entitled on the date of her non-renewal. Further, the District shall make her whole in all respects with deductions in back pay for any income she may have earned, including unemployment compensation, during the 2007-2008 school year and for that period from the beginning of the 2008-2009 school year until the date she returns as a teacher with the District.
5. The Arbitrator shall retain jurisdiction over this matter pending the implementation of the above remedy.

Dated at Wausau, Wisconsin, this 13th day of October, 2008.

Steve Morrison, Arbitrator

SM/gjc
7352