

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MONONA GROVE EDUCATION ASSOCIATION

and

MONONA GROVE SCHOOL DISTRICT

Case 98
No. 63626
MA-12651

(Albers Grievance)

Appearances:

Mr. William Haus, Attorney, Haus, Roman, and Banks, LLP, 148 Wilson Street, Madison, Wisconsin 53703, appearing on behalf of Monona Grove Education Association.

Mr. David Rohrer, Attorney, Lathrop & Clark, Attorneys at Law, 740 Regent Street, Suite 400, Madison, Wisconsin 53701, appearing on behalf of Monona Grove School District.

ARBITRATION AWARD

Monona Grove Education Association hereinafter "Association" and Monona Grove School District, hereinafter "District," mutually requested that the Wisconsin Employment Relations Commission provide them a list of arbitrators from which to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. From said list, the parties selected Lauri A. Millot to hear the dispute. The hearing was held before the undersigned on February 26, 27 and 28, 2008 in Madison, Wisconsin. The hearing was transcribed. The parties submitted post-hearing briefs and reply briefs, the last of which was received by August 6, 2008, whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute and framed the substantive issues as:

Was there just cause for the discharge of the Grievant? If not, what is the appropriate remedy?

BACKGROUND

The Grievant, Sheri Albers, was hired by the District to a high school guidance counselor position for the 1995-96 school-year. During the first three years of the Grievant's employment, she was evaluated twice each year and all six evaluations were very favorable. In the Grievant's February 1998 evaluation, District high school Principal Georgiana Giese wrote that:

Sheri is truly one of the best counselors that I have had the privilege to work with. Her judgment is sound – her thoroughness is impeccable.

During the 2001-02 school-year, the District moved from individual departments to a consolidated student services concept. The Grievant remained the department coordinator. In July 2001 another high school guidance counselor resigned leaving the Grievant as the most senior guidance counselor. The Grievant became the high school guidance department coordinator.

Sometime after May 1, 2002, the District removed the Grievant from the department coordinator position. The removal was grieved and upheld by the School Board. The District continued to pay the Grievant the coordinator additive, but District high school Assistant Principal David O'Connell assumed the responsibilities for student services coordinator.

On December 2, 2002, Giese and the Grievant met consistent with the District's professional development model. The development model contains three phases; phase I is for probationary teachers, phase II is for post-probationary teachers, and phase III is for teachers in need of support. Phase III is further sub-divided into three levels; the awareness level, the assistance level, and the discipline level. The Grievant was placed in the "Awareness Level" of Phase III due to Giese's concerns with the Grievant's job performance and her ongoing negative interactions with her co-workers.

Giese met with the Grievant in September 2003 and informed her that she would remain in the Awareness Level of Phase III. The Grievant returned to work on October 20, 2003. The Grievant remained in Phase III until her discharge.

The Grievant was disciplined on two occasions during the 2003-2004 school-year. The Grievant was issued a letter of reprimand on October 22, 2003, for unprofessional, disrespectful behavior exhibited toward her department colleagues in a meeting on October 21, 2003. The Grievant was suspended for one day on December 15, 2003, for:

- Treating others unprofessionally
- Rude, disrespectful behavior in the workplace
- Not being a team player
- Withholding information when requested
- Poor planning in order to accomplish tasks in a timely manner
- Failure to establish positive communication with your colleagues
- Failure to establish collegial relationships with your colleagues in Student Services

FACTS

The Grievant was terminated by the District on or about April 23, 2004. Two events gave rise to her termination.

The first incident involved the Grievant and student C.C. who was admitted to a medical facility due to suicide ideation on March 5, 2004.

C.C. was a foster child, staying in the home of Lynn Cooper, and enrolled as a 9th grade student at Monona Grove High School. Cooper had housed numerous foster children that had attended District schools. Cooper is an experienced foster parent and is academically trained as a social worker. She has professional experience running a crisis intervention program for ten years in Ohio, working at a Madison area facility for high risk teenage girls, and working with children in need of protective services with Jefferson County. As a result of Cooper's experience and training, many of the foster children she is assigned are high-risk teenage girls.

Prior to the beginning of the 2003-2004 school-year, Cooper telephoned District Social Worker, Illana Strauch, and informed her that C.C. would be enrolling in the District. Cooper provided Strauch background information regarding C.C.'s needs in order to prepare the District, including C.C.'s depression and suicide concerns. Strauch did not share the content of her conversation with Cooper about C.C. with any of the high school guidance counselors or with any member of the administration.

On a Friday in February 2004, C.C. entered the Guidance Office and spoke with District high school Guidance Counselor, Carol Kiley. Kiley did not know C.C. and C.C. was not assigned to Kiley. C.C. told Kiley about her life and her daily struggles. C.C. informed Kiley that she was suicidal, that she had suicidal ideations, and that she had identified specific

methods she might use to commit suicide. Given these disclosures and their inherent risks, Kiley immediately telephoned C.C.'s foster parent. Cooper informed Kiley that she was aware of C.C.'s emotional issues, assured her that C.C. was receiving on-going professional help, and that C.C. had an appointment scheduled for later that day. In addition to telephoning Cooper, Kiley offered to arrange for C.C. to meet with a creative writing teacher to allow C.C. as outlet for her feelings. Kiley never made contact with the creative writing teacher.

On Tuesday, March 2, 2004, Cooper telephoned and spoke to the Grievant during the morning. The purpose of Cooper's call was to inform the Grievant that C.C. was experiencing emotional and psychological difficulties due to the recent break-up with a boyfriend and her ongoing feelings of distance from other students. Cooper informed the Grievant that C.C. was depressed and that she was concerned for C.C.'s safety. Cooper indicated to the Grievant that she believed C.C.'s emotional state was having a detrimental affect on C.C.'s academic performance. Cooper requested that the Grievant check in on C.C. The Grievant did not check on C.C. nor did she ask another staff member to check on C.C. on March 2, 2004 or any other day that week.

Late during the evening of Friday, March 5, C.C. was transported by ambulance to the emergency room and was admitted to Aurora Hospital the following day for mental health treatment due to suicidal ideation.

On Monday, March 8, Cooper telephoned the high school and spoke to O'Connell. Cooper informed O'Connell that C.C. was admitted to the hospital the previous Friday evening and expressed her frustration and disappointment with the District for "dropping the **ball**." Cooper explained to O'Connell that she had asked the Grievant to check on C.C. on March 2 and that the Grievant had failed to follow through.

As a result of Cooper's telephone call, O'Connell consulted with his immediate supervisor, Principal Giese regarding how to proceed. Giese directed O'Connell to speak with Cooper a second time on March 8 to obtain further details as to what Cooper believed had transpired the prior week in relation to her communication with the Grievant.

That same day, Giese sent an email to the Grievant. The email informed the Grievant that she was to meet with Giese and O'Connell the following day regarding student C.C. The email had an attachment that explained that the purpose of the meeting was to address "concerns regarding C.C. [which] were brought to Dave O'Connell's attention today" and informed the Grievant that since discipline may result from the meeting, she could bring an Association representative or legal counsel.

The Grievant responded to Giese's email on March 9 at 10:59 a.m. She asked for further information as to the "concerns." She asserted that the timeframe of the meeting was "unrealistic," that the meeting was "unfair," and that it was "another example of the harassment I feel coming from employees of this school district." The Grievant further informed Giese that she intended to bring legal counsel to the meeting, but that she had not been able to confirm his attendance and that she would contact Giese when he returned her call.

The Grievant telephoned Cooper on March 9. During this call, the Grievant learned that C.C. had shared her emotional concerns with Kiley in February. This conversation occurred prior to the Grievant meeting with District administration.

The Grievant, Giese, O'Connell, the Grievant's legal counsel, and District Director of Student Services, John Faust, met on March 9. The District asked the Grievant a series of questions regarding her handling of C.C. The District specifically inquired as to when she spoke to Cooper and what she did in response to the information Cooper shared. The Grievant explained to the District that she spoke to Cooper on March 5 after sixth hour. She explained that the content of the phone call did not focus on C.C.'s emotional issues, but rather on her academic performance and the possibility of C.C. dropping a class. Finally, she denied that Cooper asked her to check in on C.C. due to C.C.'s emotional vulnerability.

After learning that the District intended to meet with the Grievant again on March 12 to discuss the incident, the Grievant telephoned Cooper during the evening on March 11, 2004. The Grievant told Cooper that she was being investigated, that the investigation could lead to disciplinary action, and she again attempted to discuss the specifics of the March 2 telephone call.

Prior to the start of the March 12 investigatory meeting, the Grievant's representatives informed District administration that Cooper would not support the allegations against the Grievant. As a result, Faust called Cooper. Cooper reiterated her dissatisfaction with the District's handling of C.C. and informed Faust that she did not appreciate the Grievant telephoning her the previous evening regarding the incident.

The March 12 investigatory meeting continued as scheduled. The District asked the Grievant a series of questions focusing on what day the Grievant spoke to Cooper. The Grievant maintained that she and Cooper talked on Friday, March 5. At the conclusion of the March 12 meeting, the Grievant was escorted out of the building, placed on administrative leave with pay, and forbidden from entering District premises unless she was there as a parent.¹

The District formalized the Grievant's status in a letter dated March 16 which read, in relevant part, as follows:

¹ Faust was authorized by Superintendent Schumacker in advance of the March 12 meeting to make a decision as to whether the Grievant was being forthright with the District. If Faust concluded that she was not, then he was authorized to suspend her with pay pending a termination recommendation from Schumacker to the Board of Education.

Dear Ms. Albers:

Please accept this letter as written confirmation of the meeting we had with you and your union representatives on Friday, March 12, 2004. During that meeting, I reported that I had concluded my investigation into the allegations against you related to your failure to follow-up with a student regarding suicidal thoughts, after her foster parent requested that you do so. I also reported that Superintendent Gary Schumacher has been presented with this information, and is considering recommending that the Board terminate your employment effective immediately. However, before a definitive decision regarding your disciplinary action will be presented to the Board, the District's administration intends to investigate two additional allegations of improper conduct.

1. Allegation that you failed to complete Social Security benefit forms for a student (CA) and, as a result of your failure, the student's social security benefits were delayed.
2. Allegation that you communicated poorly and failed to respond to the call of transfer student (TA), and as a result, the student has requested that she be permitted to work with a different guidance counselor.

The District's administration intends to complete the investigation into these allegations without delay. Please provide any relevant information related to these allegations, in writing, within ten (10) days of receiving this letter.

. . .

The Grievant responded to the District's March 16 letter on March 24. After addressing the two new allegations, the Grievant included the following paragraphs as they related to C.C.:

I also wish to respond to your characterization of the communication that transpired between the foster parent and I regarding the foster child. First, as I review my schedule for the week in question, I note that I spent all of Wednesday, March 3, 2004 at the Administration offices involved in a mediation process. My conversation with the parent could not have occurred on that date. As I recall, the conversation occurred in the afternoon during one of the two lunch periods. On Tuesday, March 2, 2004 we had a guidance meeting during fourth hour; I took my "duty free lunch" during fifth hour; during sixth hour I met N.C. to deal with a schedule change; seventh hour I had a student services meeting in the guidance conference room; during eighth hour I met with C.S. regarding a math placement change from A level to B level. I believe that I was making calls to teachers about various matters during ninth hour. On Tuesdays we have an access period when the class schedule is over. I met with A.H. during that period to discuss college planning. I am certain that the conversation with the foster parent could not have occurred on Thursday because I attended a grading committee meeting from 12:45 P.M. to 3:00 P.M. Thereafter I met with some parents (Mr. and Mrs. G).

While I cannot be positive as to the day I spoke to the foster parent, I believe it was Friday because of the following: 1) I recalled that conversation occurring on the day that we had a “crisis” incident with one of the teachers. I prepared a Monona Assistance Team Referral for this student (copy enclosed) as well as the G student. I did these on Friday, March 5, 2004 and I thought my conversation with the foster parent occurred on the same date. I did not submit the referral because I was hoping to talk to the student before doing so. I went to the student’s class on Friday during seventh hour and they were in the midst of a lecture and I decided to not interrupt.

I want to reiterate and make very clear: The foster parent called me to discuss academic concerns related to the student. The purpose of the call was not related to any imminent problem or danger to the student. We were discussing ways that we might help the student to focus and to catch up on her work. The discussion focused on possible course(s) to be dropped to produce an additional study hall. I also discussed the possibility of the student participating in Homework Club. I agreed to talk to the student before any changes were implemented. Your statement that the parent asked me to “follow-up with a student regarding suicidal thoughts” is absolutely false. If there was some imminent threat of suicide, I would not be talking about course changes. The suicidal thoughts previously expressed by the student were mentioned only as background for considering the need for changes in the academic program. The parent specifically told me that the student was seeing Carol Kiley regarding her emotional problems. I did not know this prior to my conversation with the parent. The emotional issues/crises (sic) were apparently going on without my knowledge for quite some time. It would make no sense for the parent to call about dealing with those when she told me that Carol was dealing with the student on these emotional issues.

. . .

The District Board of Education addressed the Grievant’s continued employment during its April 22 Board meeting. The Board adopted the administration’s recommendation and on April 23, 2004 the District’s legal counsel sent the following letter to the Grievant:

Dear Ms. Albers and Mr. Haus:

I write on behalf of the Board as a follow-up to the pre-termination hearing held on April 22, 2004.

After careful consideration of the information presented by the parties or their representatives and following review of the charges presented by the administration, the Board determined to support the recommendation of the administration that Ms. Albers’ employment contract with the school district be terminated. Accordingly, the Board adopted the recommendation of the

administration and voted to terminate the employment of Ms. Albers effective immediately. This action was taken by majority vote of the full membership of the Board.

Such action may be appealed in accordance with the terms of Article XII of the collective bargaining agreement between the Monona Grove Education Association and the Monona Grove Board of Education.

Please contact me if you have any questions.

. . .

Additional facts, as relevant, are contained in the DISCUSSION section below.

ARGUMENTS OF THE PARTIES

District Initial Brief

The District had just cause to discharge the Grievant because she failed to respond to foster parent Cooper's request to check on student C.C. It is undisputed that Cooper telephoned and spoke to the Grievant on March 2, 2004. Cooper explained C.C.'s mental state and her concern for C.C.'s safety and asked the Grievant to check up on C.C. The Grievant failed to meet the legitimate expectations of her employer and when this incident is viewed in light of the Grievant's disciplinary history, termination was warranted.

The Grievant engaged in a pattern of deception designed to save her job. The Grievant lied about when she got the original phone call from Cooper and she lied about the content of the telephone call. This dishonesty was considered by District officials when making the decision to terminate her. Dishonesty is a serious form of employee misconduct and lying during an investigation is a particularly egregious form of dishonesty. The District lost confidence in the Grievant's ability to work with other employees in the District and in her ability to be truthful in matters affecting the well-being of students. The Grievant had a duty to be honest and trustworthy.

The Grievant failed to timely process the social security benefit forms for a student resulting in the student's benefits being delayed. While this incident is not worthy of termination in and of itself, it adds weight to the District's decision to discharge.

In the event the Arbitrator concludes that the District has not met its burden, a make whole remedy should not be awarded. The Grievant was dishonest with the District. As other arbitrators have concluded, an employee is not entitled to back pay upon reinstatement if the employee lied during an investigation. See *DEARBORN SAUSAGE CO. INC.* 118 Lab. Arb. (BNA) 632 (VanDages, 2003); *ASSOCIATED WHOLESALE GROCERS*, 112 Lab. Arb. (BNA) 1212 (Murphy, 1999).

District in Reply

The District starts with the factual errors and omissions contained in the Association's brief. The District points out that the Association failed to acknowledge the Grievant's disciplinary history. The District's dissatisfaction with the Grievant goes back to August 2001 and what followed was a disciplinary progression.

The District takes issue with the Association's characterization that the District was "predisposed" to terminate the Grievant. There is absolutely no evidence that the District was bent on digging up reasons to get rid of the Grievant. The District was insistent that the Grievant improve her performance. The Grievant's response was to continue to fail to meet the District's legitimate expectations.

Next, the Grievant's telephone call of March 2 was greater than the two or three minutes as that the Association's brief appears to suggest. The Grievant's latest version of the facts establishes that there were multiple issues discussed including C.C.'s participation in homework club, C.C.'s schedule change, and completion of a MAT form for C.C. While the Grievant's version of the call negates any urgency in dealing with the matter, it does not explain how she was unable to recall the telephone call when questioned just days later.

Absent from the Association's facts is the evening of March 8. Also absent from the Association's brief is the Grievant's March 12 telephone call to Cooper. The Grievant's view of that call is markedly different than Cooper's recollection. The Grievant's notes from that call are not an accurate summary of the conversation because she did not record anything that she said, only that which she attributes to Cooper.

Moving to the Association's arguments, it is immaterial that the District did not have a policy to deal with troubled students. The Association appears to be arguing that even if Cooper expressed concern over C.C.'s well-being and asked the Grievant to check on C.C., the Grievant cannot be faulted for not doing so because the District did not have a policy in place to guide her on what to do in that type of situation.

The Grievant's lack of response to C.C. is not comparable to Kiley's handling of C.C. in February 2004. The Grievant ignored Cooper's request. Kiley spent an hour with C.C., telephoned Cooper immediately after the contact, and discussed safeguards. Kiley's response was appropriate and distinctly different than the Grievant's since the Grievant did nothing. The Grievant did not need a policy on how to deal with an emotionally fragile student. Not only should the Grievant have known to check on the fragile student, but Cooper asked the Grievant to check on C.C.

Cooper is a credible witness. She had no interest in the outcome of the arbitration hearing and made that fact clear to everyone she spoke to regarding the situation. In contrast, the Grievant had every reason to lie since she was at the discipline level and was aware that

her job was in jeopardy. The Grievant even said as much to Cooper when she inappropriately called her before the meeting of March 12. The Grievant has a stake in the outcome of the arbitration hearing and it is proper for the arbitrator to take this into account when assessing the Grievant's credibility.

The Grievant did everything she could to persuade the administration that Cooper was mistaken about the date of the phone call. She stood by her original statement that the conversation occurred on March 5 in both the March 9 and 12 meetings with administration asserting that Cooper was incorrect in the date of the conversation. This continued into her March 26 letter, never waived and only changed after nearly four years when the case went to hearing.

The District respectfully requests the Arbitrator rule in favor of the District and dismiss the grievance.

Association Initial Brief

The Association maintains that the District did not have just cause to terminate the Grievant. The record supports a finding that the District was dissatisfied with the Grievant and seized on this opportunity to terminate her without regard to the requirements of the just cause standard.

The District has no set policies or standards that District employees are to follow when presented with a suicidal or depressed student. The failure by administration to set policy or provide guidance to staff creates a scenario where a teacher is left totally on their own to make decisions only to be ridiculed or subjected to administrative second guessing if and when something goes wrong. Lacking a policy or procedure to deal with students experiencing depression and suicidal ideation, the Grievant was denied the notice element in the just cause standard.

Prior to March 2, the Grievant was totally left out of any communication about C.C.'s emotional state and suicidal tendency. Social Worker Strauch was informed of C.C.'s emotional difficulties before the school year began. Guidance Counselor Kiley spoke to C.C. for greater than one hour on February 6 and learned that she was suicidal. Kiley telephoned C.C.'s foster parent who indicated that C.C. was actively receiving treatment. Kiley never informed her colleagues, much less the Grievant who was C.C.'s guidance counselor, or the administration of C.C.'s thoughts of committing suicide by gunshot or hanging.

The Grievant admitted that she had a conversation with Cooper about C.C. While she was initially incorrect as to the date in which she believed it occurred, the phone call related to Cooper's concerns about C.C.'s academic progress. The Grievant recalled that she and Cooper discussed possible schedule changes and other options for C.C. Cooper's call coincided with the mailing of progress reports and C.C.'s emotional issues negatively impacted

to C.C.'s academic issues. The Grievant's recollection contained numerous details regarding C.C.'s academic situation. The purpose of Cooper's call was to follow-up on C.C.'s academic progress otherwise, there was no reason for them to have such a detailed conversation about C.C.'s academics.

Long after the Grievant's discharge, she found the "post it" note which recorded her March 2 conversation with Cooper. That note included specific notations, none of which include any reference to C.C.'s physical or emotional safety. The Grievant testified that at no time did Cooper indicate to her that C.C. was in any kind of imminent danger or that the scheduling issues required immediate attention.

The March 5 MAT form that the Grievant completed supports her recollection of the conversation with Cooper. The District did not believe that Grievant completed the MAT form on March 5, yet it did nothing to investigate whether C.C. was in school on that Friday, whether C.C. was in Health Class when the Grievant indicated she sought out C.C. and whether there was a lecture in progress thus supporting the Grievant's reason why she did not speak to C.C.

Cooper's credibility must be challenged. The District describes Cooper as a foster parent with "significant ties" to the District. Cooper has a close relationship with O'Connell. Cooper did not recall the specific date when she called the Grievant. Cooper did not recall C.C.'s grade level, age, or when C.C. had broken up with her boyfriend. Cooper denied that she said anything to the Grievant about C.C.'s academic situation and admitted that although C.C. was depressed, she may not have said that C.C. was suicidal on March 2. Cooper stated she kept a record of her telephone calls, but could not produce any record of the March 2 telephone call or her call with Faust. Cooper's testimony was filled with uncertainty and inconsistency.

The District's conclusion that C.C. was "in grave danger" is inaccurate. Cooper's actions after her March 2 conversation with the Grievant do not reflect the behavior of a parent who is concerned about the imminent danger to her child. After Cooper allegedly informed the Grievant that C.C. was suicidal, she did not call or go to the school to check on C.C. Cooper's inaction establishes that she did not believe this was an emergency situation.

The District's charge that the Grievant failed to complete a student's social security benefit form which caused the student's benefits to be delayed is patently without basis or merit. The District never investigated the circumstances surrounding the social security forms. There is no record of when the forms were submitted to the guidance office or when they were given to the Grievant. There is insufficient evidence to support this part of the discipline. Moreover, the District's reliance on this event demonstrates its ongoing effort to churn up reasons to discipline the Grievant.

The Association maintains there is no just cause for the Grievant's discharge.

Association in Reply

The District's argument in support of the use of the "preponderance of the evidence standard" is incorrect. The District focused its investigation on whether the Grievant was being honest or lying. It failed to examine the Grievant's statements and explanation for truthfulness. The District jumped to the conclusion that the Grievant was guilty based on its prejudice against the Grievant and its opinion never faltered.

In order for the District to reach the conclusion that the Grievant intentionally lied and fraudulently created documents, it was necessary to believe that Cooper's recitation of the facts was accurate and that the Grievant's was faulty. The problem with that conclusion is that there were multiple discrepancies and illogical conflicts between the record and Cooper's recollection. If Cooper had had prior contact with Strauch and Kiley regarding C.C.'s emotional situation, why would she call the Grievant who had no prior knowledge of C.C.'s? Faust's report indicates that Cooper spoke to the Grievant regarding C.C.'s academic problems, but Cooper had no recollection of that part of the conversation. Cooper is not a reliable witness and the District chose to believe her because they wanted a reason to terminate the Grievant.

The District's investigation does not support discharge. Faust's investigative summary is incomplete and unreliable. Faust was woefully inexperienced in employment investigation and his report evidences this inexperience. The report is neither fair nor reliable and fails to record all that occurred in the meetings. As a result, the investigative summary has limited value and its deficiencies should not be used to benefit the District's just cause argument.

The District's consideration of the Grievant's prior record amounted to double jeopardy. The Grievant must be found to have committed an egregious wrong with regard to C.C. or the termination is excessive. The District cannot use prior discipline as the basis or as "additional reasons for" the Grievant's discharge.

The Association asks that the grievance be sustained.

DISCUSSION

This is a discharge case. The Grievant was progressively disciplined. The termination was premised upon her deviation from acceptable standards of performance as it related to two events, both of which the Union challenges on the basis that they lacked just cause.

Article III of the labor agreement provides the District with the right to "discipline and discharge teachers for just cause". The methodology of a just cause analysis looks first to whether the employee engaged in the behavior for which she was disciplined and second, whether the discipline imposed reasonably reflects the employer's proven disciplinary interest.

While the District has disconnected the charges, items one through three relate to the same incident and the fourth addresses a separate incident. It is necessary at the outset to point out that the District conceded that item four is not a terminable offense viewed alone, but that in concert with the other charges, it supported the District's decision to terminate the Grievant.

The District terminated the Grievant based on a Statement of Charges presented to the Board of Education. That Statement of Charges cited four separate and distinct instances, each supported by a series of statements.

Charge #1

The first charge and its supporting facts, read as follows:

1. Ms. Albers failed to follow up with a suicidal student after being requested to do so by her guardian, which placed the student in grave danger.
 - a. On or about March 2, 2004, Lynn Cooper, a foster parent with significant ties to the School District of Monona Grove, placed a call to Sheri Albers about one of her foster children, C.C., because Ms. Albers was C.C.'s guidance counselor. The purpose of Ms. Cooper's call to Ms. Albers was to alert Ms. Albers about C.C.'s depressed emotional state and to request a schedule change that would allow C.C. to avoid her ex-boyfriend.
 - b. Ms. Albers failed to follow-up with C.C. on March 2, 2004.
 - c. Ms. Albers failed to follow-up with C.C. on March 3, 2004.
 - d. Ms. Albers failed to follow-up with C.C. on March 4, 2004.
 - e. Ms. Albers failed to follow-up with C.C. on March 5, 2004.
 - f. C.C. entered the psychiatric hospital on March 5, 2004, due to significant concerns with depression and potential self-harm.

. . .

The foundation of the District's disciplinary action is its finding that Cooper made the Grievant aware on March 2 that C.C.'s emotional condition was in jeopardy and that the Grievant failed to properly respond to C.C.'s safety needs. The Grievant denies having knowledge of C.C.'s emotional condition and further denies that Cooper asked her to check in on C.C.

The Grievant received a telephone call from student C.C.'s foster parent, Lynn Cooper on March 2, 2004.² Although the Grievant was C.C.'s guidance counselor, this was her first involvement with C.C. and with Cooper as C.C.'s guardian.³ The Grievant and Cooper's recollection of their telephone conversation of March 2 are vastly different and a determination as to what information was communicated is essential to this case. I start by addressing both the Grievant and Cooper's testimony.

The Grievant testified that the purpose of Cooper's call was to discuss C.C.'s academic progress, in light of student progress reports that had been mailed out the preceding Friday. The Grievant testified that she was not informed by Cooper that C.C. was suicidal and no mention was made regarding C.C.'s emotional condition other than her academic performance was likely affected by some personal issues. The Grievant recalled that she and Cooper discussed C.C.'s class schedule and decided that C.C. would drop a class. She further acknowledged that she agreed to find C.C. to speak to her about which class she wanted to drop.

In contrast, Cooper testified that the purpose of her call was to put the Grievant on notice of C.C.'s emotional condition and further, that while it was possible that they discussed C.C.'s academic progress, that was neither the purpose nor the focus of the telephone call. Cooper specifically recalled that she telephoned the Grievant to request that the Grievant "check in" with C.C. because Cooper was concerned for C.C.'s safety.

There is little similarity in the Grievant and Cooper's recollection of their conversation. When the testimony is highly contradictory, it becomes the arbitrator's obligation to "sift and evaluate the testimony to the best of his ability, and reach the best conclusion he can as to the actual fact situation". Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. (2002) p. 415. "By piecing together the parts, the broad outlines of the whole picture emerge." SAMPSEL TIME CONTROL, INC., 18 LA 453, 456 (Gilden, 1951) This is done by considering the surrounding circumstances through whatever means is available and determining which story can be corroborated. I start with the documentation prepared by both sides at the time of the incident.

The Grievant documented her conversation with Cooper in a small two inch by two inch sticky note. The note identified the student, C.C., and the date, "3/2/04", and then **there was** a line which separated those two items from the following words and phrases in

² Throughout the District investigation, the Grievant denied having received this telephone call on March 2. She testified at hearing that at the time the District was conducting its investigation, she did not recall or believe that she had spoken to Cooper on March 2 and rather, that their conversation had occurred on Friday, March 5. It wasn't until after October of 2004, when she found a "sticky note" documenting the call, that the Grievant acknowledged that she had spoke to Cooper on March 2. Given the discovery of the sticky note and the Association's stipulation that the Grievant received Cooper's telephone call on March 2, I will impute the content of that call to the Grievant as of March 2, 2004.

³ The Grievant and Lynn Cooper were acquaintances and had worked together in the past with other students.

descending order “struggling,” “depression,” “Hard time concentrating,” “issue w/ a boy.” In the bottom right corner, separated from the other words by a line, was “Homework Club.” Thus, the Grievant’s own note establishes that she knew on March 2 that Cooper was concerned for C.C.’s mental condition and her academic situation.

Another document which the Grievant prepared was the Monona Grove Assistance Team form (MAT form) that she dated March 5 although she never referenced nor offered it during the District’s investigation.⁴ While I do not believe that this was written on March 5, it is relevant in assessing what did and did not transpire in her conversation with Cooper:

Lynn Cooper, C’s foster mother called to let me know C is struggling with depression (currently under medical care with medication and a therapist”) yet she has fallen behind in her classes. Lynn said she is having a hard time concentrating. I suggested possibly dropping a class to give her an extra study hall since she only has one. Lynn said I should check with her to see if she would want to give up one of these elective courses (art, music). She came to us from a “home school” situation. Maybe IAP placement is appropriate for supervised and structured help. I talked to Lynn about Homework Club.

The final document prepared by the Grievant was her March 24 letter. That letter was submitted to explain and exculpate the Grievant from any wrong-doing. The Grievant admitted in that letter that she was told by Cooper that C.C. was suicidal and that she agreed to check in with C.C., albeit for the purpose of dropping a class.

I next move to the District’s documentation.⁵ Looking first to O’Connell’s notes, he spoke to Cooper twice on March 8. The first call was initiated by Cooper during the morning. Cooper informed O’Connell that C.C. had been admitted to Aurora Adolescent Home over the weekend because of suicidal ideations. Cooper continued stating that she had telephoned the Grievant either Tuesday or Wednesday of the week prior and asked that she “check in with C.C. because she was having a rough day and she was concerned about her suicidal ideation.” Cooper then voiced her concern that the Grievant had never met with C.C. after she had assured Cooper that she would seek out C.C.

⁴ The Grievant maintains that she completed the MAT referral on or before March 5, but that she did not submit it because she wanted to speak with CC. The form is dated March 5. The Grievant never mentioned or produced the MAT form when she met with administration. The content of the MAT form represents the Grievant’s notes of her conversation with Cooper. There is no reasonable explanation as to why she did not produce the form until her letter of March 26. The Grievant created the MAT form after the fact.

⁵ The District investigation records are incomplete in as much as both O’Connell’s notes and Faust’s report memorialize only portions of the content of their conversations with Cooper and the Grievant, but fail to memorialize the entirety to the conversations.

O'Connell immediately informed his supervisor of Cooper's call and was directed to call Cooper to obtain additional information regarding Cooper's conversation with the Grievant. O'Connell asked Cooper five prepared questions and documented her responses:

1. When did you contact Ms. Albers?
 - * It was last Tues. or Wed. I believe it was Tuesday the 3rd.
2. Did you mention that C.C. had suicidal thoughts?
 - * Yes and other people outside of school were also aware of her suicidal ideation.
3. Did you ask Ms. Albers to meet with C.C. on that day?
 - * Yes, I asked her to check in with C on that day because she was having a rough time and I was concerned.
4. Did Ms. Albers agree to meet with C.C on that day?
 - * Yes, she said she would check in with her on that day.
5. Did Ms. Albers check in with C.C?
 - * According to C, Ms. Albers has not checked in with C as of Friday. Lynn talked with C on Thursday evening and C indicated that Ms. Albers has yet to check in with her.

O'Connell testified that he did not recall any discussion of C.C.'s academics during his telephone call with Cooper, but it is clear from Faust's investigation (discussed below) that C.C.'s academic status was a topic of their conversation.

Based on the performance deficiencies identified in O'Connell's conversations with Cooper he informed Principal Giese who informed Superintendent Schumacher. Faust was directed to investigate why the Grievant had not responded to a parent request to follow-up with student C.C. after being informed of her emotional issues and suicidal ideation.

Faust participated in interviews with the Grievant on March 9 and March 11 and also spoke to Cooper on March 12. Faust's investigative notes were not prepared contemporaneously, but were cumulative. Ultimately, Faust concluded that:

1. The telephone call from Ms. Cooper to Ms. Albers occurred in all probability on Tuesday, March 2, 2004 as reported by Ms. Cooper. If the telephone call was not received on Tuesday, March 2, 2004 it occurred no later than Wednesday, March 3, 2004. This conclusion is drawn from the following:

- a. Ms. Cooper reported that she asked C if anyone spoke with her the day of the telephone call and again the following day. Ms. Cooper reported that C informed her that no one from school spoke with her on either of those days. Ms. Cooper reported that C's hospitalization occurred on Friday, March 5, 2004 leading this writer to the conclusion that the timeline shared by Ms. Cooper supports her position and not the position of Ms. Albers that she received the call after 6th hour on Friday, March 5, 2004.
2. Ms. Albers did not follow-up with C.C., a student in great emotional distress with possible suicide ideation, thus placing her at greater risk of self-harm.
3. Ms. Albers did not follow-up with C.C. as requested nor did Ms. Albers share the concerns raised by Ms. Cooper with any other member of the student services staff at MGHS or MGHS administration so that they could follow through with Ms. Cooper's request. Ms. Albers inaction placed C at greater risk of self-harm.
4. Ms. Kiley's involvement and actions with C were not in any manner related to Ms. Cooper's telephone call to Ms. Albers on or about March 2, 2004. Additionally, Ms. Kiley's responses to her involvement with C and Ms. Cooper on February 6, 2004 were appropriate and prudent.

Finally, I must consider the testimony of C.C. as documented by Faust. Faust spoke to C.C. on March 15. C.C. told Faust that Cooper asked her for three consecutive days, likely March 2, 3, and 4, whether anyone from the high school had followed up with her regarding her emotional and academic issues. C.C. further informed Faust that Cooper never told her specifically which District student services staff member it was that should be following up with her.

Ultimately, I am obligated to make a credibility determination. Cooper and the Grievant's testimony conflict. The documentation prepared by both the Grievant and the District personnel establishes that Cooper called and spoke to the Grievant on March 2. The documentation further establishes that Cooper informed the Grievant that C.C. was depressed, possibly that she was suicidal, and that the Grievant agreed to follow-up with C.C. I find that Cooper's version of the salient events more believable and supported by corroborating evidence.

The Union challenges Cooper's credibility pointing out the factual discrepancies in her testimony including the length of time between when C.C. and the boyfriend had broken up and March 2; the failure of Cooper to document the dates of her conversations with District

personnel, including the Grievant, after she told Faust that she kept a log of all telephone calls; and her denial that C.C.'s academic progress was discussed with the Grievant on March 2. I am not persuaded that Cooper's testimony should be disregarded solely because she does not remember all the details from a conversation and event which occurred almost four years ago. Cooper's recollection was reasonable given the purpose of her call, the intervening time between the event and her testimony, and her sincere desire to remain uninvolved in the situation between the District and the Grievant.

I next move to the District's conclusion at the time of the Grievant's termination that C.C. was in grave danger. Schumacher testified that he viewed C.C.'s circumstances as one of the most serious incidents he had had in his educational career explaining that "this was a child who was suicidal, whose foster parent was someone who had good knowledge and expertise in dealing with children that have emotional issues, had a good relationship with the School District, was a credible person, and when she called and expressed grave concern for this foster child and wanted a guidance counselor to follow up on or check up on her". It was this perception of the facts that led the District to terminate the Grievant.

The Association challenges the seriousness of C.C.'s emotional condition as evidenced by the lack of follow-up by Cooper with the high school after March 2. Cooper testified that she was concerned for C.C.'s safety. Cooper telephoned the District on Tuesday and did not receive a return call. Cooper did not call the District on Wednesday or Thursday. The Association asserts that had C.C.'s condition been as serious as the District concluded, Cooper would have followed up with the Grievant or administration on Wednesday or Thursday. Further, the fact that she was satisfied leaving a voice mail message for the Grievant on Friday, points to a less serious situation. I disagree. Cooper's actions must be viewed in context. Cooper was an experienced social worker with insight into high risk adolescent girls. Cooper had been working with C.C. for greater than seven months during which time C.C. had been struggling with emotional issues which were an on-going source of concern for Cooper. That concern was elevated in early March 2004 by a series of events causing Cooper to seek assistance from the District. The fact that Cooper did not react in the way that the Association views reasonable under the circumstances is immaterial. I must accept that Cooper's reaction was reasonable and appropriate given the circumstances.

In conclusion, the first charge stated that the Grievant "failed to follow up with a suicidal student, after being requested to do so by her guardian, which placed the student in grave danger." The evidence establishes that the Grievant received a telephone call from Cooper on March 2, that she agreed to check-in or follow-up with C.C., and that she failed to follow up on March 2, March 3, March 4 and March 5. The record does not support a finding that the Grievant was told by Cooper that C.C. was suicidal, although it is clear that the Grievant was told that C.C.'s mental condition was in jeopardy, unhealthy and that she suffered from depression. C.C. was susceptible to mental health deterioration. The District's characterization of C.C.'s condition as "grave danger" is buttressed by the knowledge that C.C. was admitted to an adolescent home for suicide ideation. While an employee cannot be held accountable for what they cannot know, in this instance, the Grievant was justly warned by Cooper of her concern and that concern was not heeded.

The facts contained in Charge #1 are substantiated.

Charge #2

The second charge and its supporting facts, read as follows:

2. Ms. Albers failed to share a foster parent's concerns about C.C. with any other member of the Student Services staff at Monona Grove High School, nor did she share Ms. Cooper's concerns about C.C. with any member of the administration at Monona Grove High School, so as to allow another District employee to follow up with C.C. in her time of need, which placed the student in grave danger.
 - a. After receiving Ms. Cooper's phone call in which she expressed concerns about C.C., Ms. Albers failed to share Ms. Cooper's concerns with any other member of the Student Services staff at Monona Grove High School.
 - b. As a result of failing to share Ms. Cooper's concerns about C.C. with other District employees, Ms. Albers prevented other District employees from following up with C.C. during her time of depression and suicidal ideation.
 - c. On various occasions over the past two years, Ms. Albers has been directed to work positively and cooperatively with her colleagues in the Student Services Department. Additionally, on December 16, 2003, Ms. Albers served a suspension without pay for one day, because, earlier in the school year, she purposefully withheld information from and failed to work respectfully and professionally with her colleagues in the Student Services Department. Moreover, on October 22, 2003, Ms. Albers received a letter of reprimand related to her unprofessional, disrespectful behavior toward her colleagues in the Student Services Department.

The District found the Grievant's failure to notify administration or colleagues of C.C.'s situation worthy of discipline concluding that had the Grievant informed administration or a colleague, then another staff member could have spoken to C.C. and possibly her ultimate admission to a hospital could have been prevented.

In order for this portion of the discipline to withstand due process scrutiny, there must be a rule, procedure or other obligation that placed the Grievant on notice that she was obligated to inform another staff member(s) and administration of C.C.'s emotional situation.

As Arbitrator Hepburn stated, “Just cause requires that employees be informed of a rule infraction of which may result in suspension or discharge, unless conduct is so clearly wrong that specific reference is not necessary.” Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. (2006) p. 990 citing LOCKHEED AIRCRAFT CORP., 28 LA 829, 831 (Hepburn, 1957). In instances where an employer is enforcing an unwritten rule, the “importance of applying the rule consistently is even more important.” Brand, *Discipline and Discharge in Arbitration*, 1998 p. 79.

Faust and Schumacher both testified that there is no rule, policy or procedure that required the Grievant to inform administration or other student services staff member of C.C.’s emotional health. O’Connell testified in response to questions posed regarding Guidance Counselor Kiley that it was not a requirement for a teacher or guidance counselor who becomes aware that a student is suicidal to advise administration or other guidance counselors of the student’s situation and further that professional judgment dictated although he did not similarly extend professional judgment decision-making to the Grievant. Since the District did not have a rule or procedure that the Grievant violated when she did not inform colleagues or administration as to the content of Cooper’s disclosures regarding C.C., then the question becomes whether the Grievant’s failure to communicate with her co-workers and administration is conduct that is so obviously wrong that the discipline is justified.

The evidence establishes that the Grievant failed to inform her colleagues of Cooper’s concern for C.C.’s safety.⁶ Cooper, as the parent, should be viewed as the individual whose knowledge of, and concern for, her child trumps the opinion of a guidance counselor who has never met or worked with student C.C. If a parent asks a school district employee to check in on a student after explaining that the student suffers from depression and the employee agrees to check in on the student, then public policy dictates that the employee should fulfill the request or arrange for the request to be satisfied.

The Association argues that Kiley’s situation is the same as the Grievant’s. I disagree. In February, Kiley spoke to C.C., C.C. expressed suicidal thoughts, and Kiley immediately telephoned Cooper. In March Cooper telephoned the Grievant and told her that C.C. was going through a difficult time, was depressed, and asked the Grievant to check-up on C.C. The Grievant’s failure is two-fold: first, she failed to follow-up with C.C. as requested by Cooper; and second, she failed to ask a co-worker or administration to follow-up when she could or would not.

It is clear that had either Strauch or Kiley communicated with the Grievant regarding C.C., it is possible that this situation may have been avoided. Strauch knew prior to C.C.’s enrollment in the Fall of 2003 that C.C. was emotionally distraught and at risk of suicide. Kiley became aware in February 2004 that C.C. was depressed, suicidal, under the regular care of a professional and had envisioned the manner in which she would commit suicide.

⁶ Cooper testified that she asked the Grievant, “could she please, if not her, have somebody else check on her during the day”. There is no mention of Cooper’s request for the Grievant to find a substitute to check on C.C. in either O’Connell or Faust’s notes.

Yet, armed with this knowledge, neither Strauch nor Kiley informed the Grievant even though the Grievant was C.C.'s assigned counselor. The District's decision to find fault only with the Grievant is worrisome, but it fails to meet a disparate treatment test.

The Grievant knew that C.C. was suffering from depression and that her foster parent had requested that she check in with her. The Grievant agreed to check in with C.C. and did not. C.C. was ultimately admitted to a medical facility for suicide ideation.

The facts contained in Charge #2 are substantiated.

Charge #3

The third charge and its supporting facts, reads as follows:

3. Ms. Albers provided untruthful and misleading information during an investigatory interview conducted by the District's Administration:
 - a. On March 9, 2004, at 1:45 p.m., Ms. Albers and her Union Representatives, Steve Wendorff and Attorney Willie Haus, met with members of the District's Administration, High School Principal Georgiana Giese, Assistant High School Principal Dave O'Connell, John Faust, Director of Special Education and Student Services, and Shana Lewis, District Legal Counsel, to discuss the allegations related to Ms. Cooper and her foster child.
 - b. During that meeting, Ms. Albers claimed not to have talked to Ms. Cooper until Friday, March 5, 2004, and she suggested that Ms. Cooper never asked her to check in with C.C. at any time prior to March 5, 2004, and she claimed that Ms. Cooper never asked her to check in with C.C. related to her suicidal ideation.
 - c. The evidence collected by the District's administration during the investigation into this matter proved Ms. Albers' statements to be false, misleading, and self-serving.

The District identified two different instances of untruthful or misleading information. The first was the date in which Cooper and the Grievant spoke and the second relates to the Grievant's denial that Cooper asked her to check with C.C.

The Grievant told the District that her conversation with Cooper regarding C.C. occurred on March 5. The Grievant held this position until long after her termination when she found written documentation confirming that she had spoken to Cooper on March 2. The question is whether the Grievant's beliefs at the time the situation was being investigated were innocent mistakes or intentional omissions and mischaracterizations of the truth.

The District began its investigation on March 8 when it received a call from Cooper. The District called the Grievant to a meeting on March 9, presented her with very limited background about the situation and asked the Grievant direct and focused questions. Faust's investigative report indicates that the Grievant told the District that Cooper called her on Friday, March 5, and that she told them that she told Cooper that she would check in with C.C.'s teachers to check on C.C.'s academic progress. The District did not document exactly what it was that the Grievant said in response to Cooper's assertions, but based on how the incident progressed, it is reasonable to conclude that the Grievant denied essentially every aspect of her conversation with Cooper; she denied that it occurred on March 2; she denied that the purpose of the call was C.C.'s emotional condition; she denied that Cooper communicated her fear for C.C.'s safety; and she denied that Cooper asked her to follow-up with C.C.

The Grievant was called to another meeting with District administration on March 11. In that meeting, the Grievant reiterated that her conversation with Cooper occurred on March 5. The Grievant again explained that she recalled that the call from Cooper came in on March 5 after sixth hour and that she was asked to address C.C.'s academic issues. The Grievant did not supplement or offer any new information to the District with regard to her conversation with Cooper.

It wasn't until March 24 that the Grievant made her case as to why the initial telephone conversation occurred on March 5.⁷ That letter contained numerous specific facts which documented her timeline of events. I do not find the Grievant to be timid or unwilling to explain her behaviors; rather I find her to be meticulous and a careful speaker. As a result, it is difficult to understand why she would withhold information during the investigation when it would explain why she believed her conversation with Cooper occurred on March 5.

This brings me to the MAT form dated March 5 and referenced in the March 24 letter. The materialization of this form is highly suspect. This document was first presented to substantiate the Grievant's assertion that her conversation with Cooper occurred on March 5. Yet, it contains a reference to C.C.'s being on medication and in therapy and the Grievant did not learn that C.C. was in therapy until her conversation with Cooper on March 9. The Grievant had every reason on March 9 and March 11 to provide the District with the MAT form. Moreover, since the Grievant was escorted out of the building on March 11 and all of the papers on her desk were just "thrown" together such that the 'sticky note'" was not discovered until years later, it is inconceivable that the Grievant could locate and make the MAT form available on March 24.

⁷ In both the March 9 and March 11 meetings with District officials, the Grievant denied that Cooper made her aware that C.C. was suicidal. Yet, the Grievant writes in her March 24 letter that Cooper put her on notice of the "suicidal thoughts" during their conversation as background to explain her academic difficulties.

Moving to the Grievant's testimony at hearing, this was clearly the most detailed and complete recitation of her conversation with Cooper. The Grievant testified that she pulled C.C.'s progress report out of a large stack of reports in order to speak to Cooper and that she was viewing that report at the time of the call. She also described the number of classes which C.C. was failing; the content of C.C.'s schedule which included art and music and no study hall; her understanding that Cooper wanted her to deal with C.C. academically while Kiley continued to work with C.C. emotionally; and their discussion about dropping a course and the procedure for doing so at that time during the semester. Certainly the Grievant had the benefit of time to review documents and ponder the content of her conversation, but it is incredible that the Grievant could recall the content of the March 2 telephone conversation with this level of specificity after almost four years when she did not offer this information to the District when questioned on two separate occasions, both less than 10 days after the conversation.

I further find it very disconcerting that the Grievant telephoned Cooper on two occasions after learning of the District's concern. She first called on March 9 and then placed a second call on March 11. The Grievant's reason for the first call, to find out how Cooper wanted to proceed with C.C.'s schedule changes given her medical facility admission, while less than believable, is at least job-related. I am more distressed by the second call which cannot reasonably be viewed as job-related. It was during the March 11 call that the Grievant documented Cooper as saying she "did not call to complain" and she "did not want anything to happen" which led the Association to assert to the District that Cooper's position had changed with regard to the incident. This prompted another call to Cooper, by the District on March 12, wherein Cooper reaffirmed her disappointment with the situation and asked that the Grievant stop calling her.

Generally, a witness' recollection of an event will diminish over time. The exact opposite occurred in this instance. The greater the amount of time that elapsed between the March 2 conversation and when the Grievant offered her version, so increased the detail and content of that recollection. This is illogical and is evidence of the Grievant's fabrication of a self-serving story. There is no question that the Grievant was experiencing a heightened level of stress and scrutiny at work during March of 2004. Yet, even in that environment, the Grievant's behavior and lack of forthrightness is incomprehensible.

I find that the facts contained in Charge #3 are substantiated.

Social Security Forms for CA

Charge #4

The fourth charge and its supporting facts, reads as follows:

4. Ms. Albers failed to complete a student's Social Security benefit forms causing the student's benefits to be delayed.

- a. On or about January 29, 2004, a student, C.A., dropped off his Social Security benefit forms to the Student Services office. Secretary Linda Briggs gave Ms. Albers the forms to complete and submit because she is C.A.'s guidance counselor and, therefore, responsible for completing and submitting such documents.
- b. On February 26, 2004, C.A.'s mother called Ms. Briggs and informed her that the Social Security Administration had yet to receive the forms. Later that day, Ms. Briggs told Ms. Albers that the forms had recently been sent to the Social Security Administration.
- c. On February 23, 2004, in a disciplinary level document, Ms. Albers was specifically reminded in writing to "comply with all deadlines. She will insure that adequate time is provided for students and others to complete the necessary paperwork so that scholarship and/or other documents will be mailed or delivered prior to the deadline." On previous occasions, Ms. Albers had been warned about the importance of complying with deadlines for forms that she was expected to complete for students in the context of her position as guidance counselor.
- d. As a result of the delay in Ms. Albers submitting the forms to the Social Security Administration, C.A. missed a social security benefit payment.

...

The District concluded that the Grievant "failed to complete a student's Social Security benefit forms causing the student's benefits to be delayed" and further, that this action violated a February 23, 2004, document which placed the Grievant on notice that the District expected her to "comply with all deadlines. She will insure that adequate time is provided for students and others to complete the necessary paperwork so that scholarships and/or other documents will be mailed or delivered prior to the deadline".

Looking to the facts, student C.A.'s father died in early January 2004. Later during that month, C.A.'s mother obtained and partially completed forms from the Social Security Administration that would allow C.A. to receive payments. The forms required verification from the student's school that he/she was enrolled full time and attending. C.A.'s mother directed her son to take the forms to the high school guidance office and obtain the Grievant's signature.

On February 26, 2004, C.A.'s mother telephoned the guidance office and spoke with Linda Briggs, Guidance Office Secretary. Briggs then went to the Grievant and asked when the forms had been completed because C.A.'s mother had called the Social Security Administration who told her that C.A.'s payment had not been processed because the form had not been submitted. When Briggs asked the Grievant about the form, she told her she did not have time to check on it right then. The following Monday, March 1, Briggs sent the Grievant an email asking about the form. The Grievant responded to the email on March 2 at 2:09 p.m. stating that the form "went out the 20th of February".

Contrary to the position of the District, there is no evidence that the forms were submitted to the Guidance Office on January 29, 2004. There is no question that the student signed the form and that it was dated "January 29, 2004," but that does not establish that the form was actually submitted on that date. C.A.'s mother expected the form to be submitted earlier in January; that is when she told her son to do so. Briggs memorialized that the form was dropped off mid-January, but that was because C.A.'s mother told her so since Briggs had no recollection of C.A. dropping off the form nor did she have a log that confirmed whether the forms were actually submitted on January 29, 2004. The Grievant stated she sent the form to the Social Security Administration on February 20 and there is no credible evidence which negates the Grievant's testimony.

Conclusion

The District terminated the Grievant based on four charges contained in a Statement of Charges. The evidence establishes that charges one through three are substantiated. Charge four is not supported by the evidence and the District acknowledged that the social security issue was not a basis for the termination, but rather was just another example of the Grievant's deteriorating performance.

The issue then becomes what is the appropriate level of discipline. I adopt the view that it is the function of management to decide upon the proper penalty so long as management acts in good faith. Moreover, I am unwilling to substitute my judgment for that of the District when the District honestly exercised its management right and I cannot conclude that the penalty is improper or too severe. In this instance, the Grievant was aware since at least 2002 that her performance was deficient. She was on notice that future disciplinary actions may result in termination. The facts support the Statement of Charges and thus, the termination is upheld.

AWARD

Yes, there was just cause for the District to discharge the Grievant. The Grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 10th day of February, 2009.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator

LAM/gjc
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