

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**CHIPPEWA FALLS FEDERATION OF TEACHERS,
LOCAL 1907, WFT, AFT, AFL-CIO**

and

CHIPPEWA FALLS AREA UNIFIED SCHOOL DISTRICT

Case 140
No. 67845
MA-14036

(Schaaf Non-renewal)

Appearances:

Attorney Timothy E. Hawks, Hawks, Quindel, Ehlke & Perry, S.C., 700 West Michigan, Suite 500, P.O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing on behalf of the Chippewa Falls Federation of Teachers, Local 1907.

Attorney Stephen L. Weld, Weld, Riley, Prens & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Chippewa Falls Area Unified School District.

ARBITRATION AWARD

The Chippewa Falls Federation of Teachers, Local 1907, hereinafter referred to as the Federation, and the Chippewa Falls Area Unified School District, (District), are parties to a Collective Bargaining Agreement (Agreement) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. On March 14, 2008 the Federation filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to provide a panel of 5 staff arbitrators from which the parties would select one to hear and resolve the Federation's grievance regarding the allegation that the District violated the Agreement when it failed to renew the teaching contract of Christine Schaaf (Grievant) for the 2008-2009 school year. The District subsequently joined in that request and the Parties selected the undersigned as the arbitrator. Hearings were held on the matter on August 22, September 24, September 25, October 21 and October 22, 2008 in Chippewa Falls, Wisconsin, at which time the Parties were given the opportunity to present evidence and arguments.

The parties agree that this matter is properly before the Arbitrator. The hearings were transcribed and have thus become the official transcripts of the proceedings. The Parties filed post-hearing briefs by January 20, 2008 marking the close of the record. Based upon the evidence and the arguments of the Parties, I issue the following Decision and Award.

ISSUES

The parties were not able to stipulate to the issue to be decided by the Arbitrator.

The Federation sets forth the issue as follows:

Whether the Employer violated the Collective Bargaining Agreement by non-renewing the Grievant, Christine Schaaf, without good cause, in violation of Article V, Section A.1, and on the basis of evaluation measures violative of Article V, Section N.2.

If so, what should be the remedy?

The District sets forth two separate issues as follows:

Issue #1

Did the Employer have cause to non-renew Grievant's teaching contract for the 2008-09 school year?

If not, what is the appropriate remedy?

Issue #2

Did the Employer violate Article V, Section N, Evaluation Procedures, when three different administrators informally observed Grievant's classes on November 30, December 5, and December 6, 2007.

If so, what is the appropriate remedy?

The undersigned adopts the issues as set forth by the District but reverses their order. Issue #1 becomes Issue #2 and Issue #2 becomes Issue #1.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE I

Recognition and Scope

...

Section B. Management Rights

The Board, unless otherwise herein provided, hereby retains and reserves unto itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right: . . .

ARTICLE IV

Grievance Procedure

...

Section C. Procedure for adjustment of Grievance

...

Step IV. If the decision rendered is unsatisfactory to the aggrieved teacher or the Federation, within ten school days after receiving the decision of the Board, the Federation may appeal the decision of the Board directly to the Wisconsin Employment Relations Commission for arbitration by its staff.

...

2. Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, subtracting from, or adding to the provisions of this agreement. . .

ARTICLE V

Working Conditions

Section A. Fair Dismissal Policy

1. Teachers who have more than two years of service in the Chippewa Falls Area Unified District shall not be dismissed suspended or discharged except for just cause.
2. Dismissal or suspension action against any teacher shall follow these procedures:

- a. Notification in writing of dismissal by the Board
- b. Notification in writing on the cause of suspension shall be given within 12 hours of the suspension.
- c. The teacher shall have the right to an informal conference with representation before the Board to insure complete understanding of the charges.
- d. Teachers shall have the right to request a hearing with full benefit of representation with counsel before the Board within ten school days of the receipt of notification.
- e. If the dismissal or suspension is found to be unjustified, full salary and benefits shall be paid from the date of dismissal.
- f. If the teacher and/or Federation are not satisfied, the teacher and/or Federation shall have the right to appeal the decision of the Board to arbitration in accordance with the final steps of the grievance procedure as prescribed in this agreement.

...

Section N. Evaluation Procedures

1. Teacher evaluation procedures are recognized to be a cooperative effort between the teacher and the supervisor with the express purpose of achieving excellence in the area of effective and purposeful classroom instruction.
2. To achieve the maximum benefits for which teacher evaluation procedures exist, it shall be necessary that:
 - a. Prior to visitation, a pre-observation conference will be conducted where the teacher explains the objectives and procedures for the day's lesson.
 - b. A post-observation conference between the teacher and the supervisor making the evaluation may be initiated by either party for the purpose of assisting the teacher in any improvement that may be achieved in this manner.

- c. In the case of any written evaluation, a conference between the teacher and the supervisor or principal may be called by said teacher, supervisor, or principal.
- d. A written evaluation made by any administrator or assistant will be shown to the teacher within 12 working days of the observation before filing.
- e. The intercommunication system shall not be used for observation or evaluation of teachers.

BACKGROUND

Grievant was initially employed by the District to teach biology, general chemistry and physical science in the 1996-97 school year. For five years prior to joining the teaching staff at the District, Grievant taught general science, biology, introductory physical science, chemistry and a chemistry tutorial in the Rockford, Illinois School District.

Near the end of her first semester in 1996 Grievant was evaluated by the District's Assistant Principal James Martell consistent with her status as a probationary teacher. Mr. Martell's evaluation found the learning atmosphere in her class to be excellent, the students very attentive and respectful, and at ease asking questions and participating in discussion. He found her to be very professional in her appearance and in the way she related to the students, teachers, support staff and the administration. He found her to be conscientious in her efforts to enforce class and school rules and he determined that she spent a lot of time communicating with parents about how their children were doing in class. He did note in his evaluation that:

“Ms. Lenz (Grievant) should continue to refine the discipline techniques that are successful for her in class. The number of referrals that I have received from her this year causes me some concern. However, I believe that she has been extremely conscientious in attempting to establish control by contacting parents and following through with class and school policies. I also am well aware that students signed up for her class with the expectation of having a different instructor. It is my hope and belief that the number of referrals will eventually be reduced when students stop testing the limits in her class. This comment is not in any way meant to discourage the instructor from continuing to refer students that participate in serious school rule infractions.”

Grievant was next evaluated, again pursuant to her probationary status, by her Principal, Dr. James Sauter, in January of 1997. Dr. Sauter found her major strengths to be her organizational skills, her use of “proximity” to help monitor and motivate her students and to check to ensure the safety of the equipment, in this case Bunsen burners. During the post-observation conference Grievant and Dr. Sauter discussed:

“. . . possible ways of improving the lesson. One suggestion was to raise your voice level to ensure that students at the back of the classroom can hear. We also discussed the idea of using a “sponge activity” at the beginning of the lesson to help maximize the learning time for students. These approaches may be beneficial to you as you continue to grow and refine your teaching skills. I am enclosing an article by Madeline Hunter that describes and gives examples of how to use sponge activities in classes as one attempts to “soak up” valuable time during lessons. Please read the article, and I hope you find some of the ideas useful.”

Grievant’s third, and final, observation during her first probationary year was conducted by Assistant Principal James Martell. He determined that the learning environment in class was excellent and that the students were very interested in the lab activity being conducted and generally followed Grievant’s instructions quite well. He found her to be very professional in the performance of all of her duties at the high school and found that she:

“continues to demonstrate strength in the areas of planning and organization, classroom management, teaching toward objectives, and rapport with her students. She also continues to use sound teaching methods and strategies in her classes each day. I believe that Mrs. Lenz’s conscientious efforts to establish discipline in her classes are beginning to show dividends. The students in her classes understand her high expectations as far as learning and discipline and are not challenging the limits the way they were during the first semester. Mrs. Lenz has done an excellent job in her first year at Chippewa Falls High School. Her expertise as an instructor coupled with the caring way she deals with students has made her a fine addition to our teaching staff.”

In all areas observed by Martell, save one, he rated her performance as “exemplary”. In the area of “Additional Responsibilities” which included maintenance of records, adherence to the terms of the general teaching contract, attendance at staff meetings and service on staff committees, and provision for professional growth through ongoing programs, workshops, seminars and the like, he rated her performance as “effective”.

During the Grievant’s second year of her two year probationary period she was evaluated on two separate occasions. The first, on October 24, 1997, was performed by Assistant Principal Martell. He observed in the ‘Commendations’ section that:

“Mrs. Lenz was very organized and prepared for today’s lab. As a result of that preparation the students were able to successfully accomplish the objectives that had been set for them. With the exception of the one student, all the students followed her directions and seemed to be able to complete the activity. The students appear to be very comfortable with Mrs. Lenz and her teaching methods. They demonstrated a high level of respect for her and their fellow classmates during the hour.”

And in the 'Comments' section he said:

"It was again a pleasure to be in Mrs. Lenz's class today. The methods and learning activities that were planned and implemented went very well today. Mrs. Lenz continues to demonstrate strengths in the following areas.

1. Planning and organization
2. Knowledge of subject matter
3. Classroom management
4. Communicates effectively
5. Has high expectations for student learning
6. Uses clear models to emphasize and reinforce concepts
7. Uses a variety of teaching methods and activities
8. Rapport with her students
9. Teaches material at a pace that is appropriate"

Grievants' second and final evaluation during her probationary period occurred on January 7, 1998 and was conducted by Principal Sauter. In the 'Commendations' section he noted:

"The major strength of the lesson, Chris, was your effective use of overt and covert active participation. Specifically, students were on task during the entire lesson with the laboratory activity. They set up the lab exercise, recorded data, and worked cooperatively in groups of two to three students. All of the groups had satisfactory results and there was only one minor mishap during the lesson. When the one Bunsen burner had a minor malfunction, you handled this calmly and the group was up and running again without missing a beat.

Safety was stressed and emphasized. Goggles were worn by all students and you carefully went through many precautionary steps.

I commend you, Chris, for your excellent use of active participation during this lesson. The objective of the lesson was achieved. The practices you used have been shown through research to be very effective ways of enhancing learning and retention for students. I encourage you to continue using this good teaching behavior in future lessons."

And under the section entitled 'Suggestions for Instructional Improvement', which is essentially a re-cap of the post-observation conference, he says:

"At the post-observation conference, we discussed possible ways of improving the lesson. You indicated that if you were to redo the lesson again (sic), you would make a greater effort to find out what was going on with the boiling point of water.

It was running consistently about five degrees above 100 degrees Celsius, which was higher than expected.

We also discussed the importance of transfer and how this principle of learning could have been used with this particular lesson. The examples that we generated included how this would be important if cooking with a pressure cooker or when sterilizing instruments using an autoclave. Good thoughts! Research shows us that relating the lesson to real life examples and situations in this way can enhance retention significantly.

I have attached an article that describes some additional ideas about how to use transfer in teaching. Please read the article and I hope you find some of the ideas of value as you continue to grow and develop as a teacher.”

This observation report allowed Dr. Sauter to choose between two choices to describe the Grievant’s overall performance: ‘Satisfactory’ or ‘Unsatisfactory’. He chose ‘Satisfactory’. Thus ended the Grievant’s probationary status and her contract for the following teaching year was subsequently renewed.

The Grievant was next evaluated on February 16, 2001 by Dr. Sauter pursuant to the District’s policy of evaluating its teachers every three years after probation. A pre-conference was held on the day preceding the observation and a post-conference meeting was held in May of that year. In his ‘Commendations’ section Dr. Sauter observed:

“Several good teaching behaviors were evident during the lesson, Christine.

. . .

Another strength was your concern for safety. The students were very diligent in their use of goggles and protective aprons throughout the experiment.

All students were actively participating in the lesson. . . Christine, you are commended for your use of these good teaching behaviors.

. . .

Under the ‘Suggestions for Instructional Improvement’ section he noted:

We discussed possible ways of improving the lesson at the post-observation conference. You did a good job of monitoring and adjusting the lesson into a two-day activity for most of the students. It was difficult for many of the groups to complete the entire lab experiment in one day.

We also discussed the idea of reinforcing the most important or most difficult concepts at the prime times of the lesson-at the beginning or end of the hour. You may find that this can significantly improve retention and learning for students. I will share an article for you to read that may give you some ideas on maximizing learning during prime times.

Over (sic), Christine, I enjoyed the lesson.

As before, he was offered a choice between two possible selections relating to her overall performance: ‘Satisfactory’ or ‘Unsatisfactory’. He chose ‘Satisfactory’. Her “Evaluation Report” showed that she met or exceeded expectations in every category. At the end of this report a ‘Summary’ section was included allowing the evaluator to add additional narrative if desired. Dr. Sauter added the following:

Christine is a capable and competent teacher who shows a genuine concern for the academic needs of her students. She works well with fellow colleagues and is a positive contributor to our school community. Overall, Christine has earned a good performance rating for her efforts at Chi-Hi this year.

The Grievant’s next evaluation occurred, again pursuant to the three year evaluation routine, on May 14, 2004. This evaluation was conducted by Assistant Principal Rebecca Davis. A pre-conference meeting was held on the same day as the observation, May 14, 2004. Davis’ summary of her observation contains a general statement about the classroom work and then an entry entitled “Classroom Climate” and another entitled “General Observations.” Under the entry “Classroom Climate” Davis writes:

The classroom environment was relaxed yet appropriate. The students were on task and felt comfortable asking and answering questions. Christine is very conscientious about enforcing the school rules and regulations. This is reflected in the behavior of her students.

Under the “General Observations” section Davis writes:

Christine is a very hard working teacher. She is meticulous and thorough. Her lessons are very well planned and organized. There is a logical and sequential progression in the lesson. . . She understands the importance of getting grades in on time and returning work to her students in a timely fashion. Christine is extremely conscientious and hard working. She cares for her students and is dedicated to her profession and to her school.

The evaluation report confirms that she met or exceeded expectations in every category rated or observed and, again, the evaluator was allowed to select a performance evaluation from a choice of ‘Satisfactory’ or ‘Unsatisfactory’. Davis chose ‘Satisfactory’.

Grievant was not evaluated in school years 2004-2005 or 2005-2006. The record does not indicate that she was disciplined in any way during those years but does indicate that a relatively high number of 'referrals' (unruly students being referred to the Principal because of classroom behavior) from her classroom were made during those years.

In May, 2006, the Grievant was assigned to teach pre-AP chemistry. She was asked by her supervisor not to discuss the reassignment with other teachers so they would not feel badly about being "passed over." In November of 2006, Dr. Sauter informed her that she was not getting her grades in the pre-AP class in on time. Grievant admitted that her grades were late and explained that she was spending a lot of time prepping for her new class. She also explained that she thought students with excused absences were supposed to make up the missed lab work and was later told that she should just give the students some data so they can proceed with the data analysis with the other students. She explained that she was a careful grader and that she may have spent too much time being more precise on the accuracy of the answers than she needed to have been. But the "overriding factor" relating to her difficulty was what she referred to as the "living nightmare that I was going through at the time." (More detail will be given in the following Discussion section.) She was able to prepare the material and set up the labs but she was having trouble completing the grading of the class work.

In December of 2006 the administration discussed a plan of assistance for the Grievant relating to two areas of endeavor: timely reporting of grades and the frustration of some of her students regarding their inability to get help in class. Grievant was to observe other teachers and report her grades in a more timely fashion. They also discussed some of the issues relating to her personal problems and the administration suggested she seek assistance from EAP. She was not inclined to go to EAP and indicated that she had another source for counseling she would pursue. At the assistance plan meeting on January 8, 2007 she was informed of a complaint regarding the failing grade of one of her students which the complaining parent indicated was due to her failure to give his son extra help in light of her knowledge that he was failing.

On February 16, 2007 she was again evaluated by Dr. Sauter pursuant to the regularly scheduled three-year observation program. A pre-observation meeting was held as was a post observation evaluation. In his Commendations section Dr. Sauter wrote:

The main strength of the lesson, Christine, was your use of transfer. This was used to connect the learning to everyday experiences of your students. For example, the model demonstration and reference to items such as rubbing alcohol, hydro-carbon gas emissions, and trans fat were used to relate to familiar items.

Another strength was the way you used visual reinforcers such as the models and drawings on the board. These were effective in reinforcing the concepts for your more visual learners.

I commend and encourage you to continue using these teaching behaviors in future lessons.

Under his Suggestions for Instructional Improvement section he wrote:

At the post-observation conference, Christine, we also discussed ways of improving the lesson. One area that continues to be of great concern is correcting and returning assignments and tests to students in a timely fashion. You stated that you had done a better job of this with your general chemistry classes, but continued to lag with the pre-AP chemistry classes. This response time needs to be improved.

Another thought was to have students become more involved in their own learning by having them come up to the board and draw some examples. You indicated that you do this on many occasions, especially in the other course.

Dr. Sauter observed that she needed growth (NG) in the following areas:

- Modify district's selected objectives to the correct level of difficulty for the learner.
- Summarize, review, and reteach (sic) appropriately.
- Create a learning environment that is conducive to good learning.
- Develop reasonable rules of classroom behavior.
- Identify and modify factors contributing to student behavior problems.
- Maintain accurate, complete and correct records.

Dr. Sauter found that she "met expectations" in all of the 31 other categories observed but curiously found her overall performance to be Unsatisfactory.

In April, 2007 another plan of assistance was instituted for the Grievant. The areas of concern related to not grading and returning papers and tests in a timely manner and the fact that some students were frustrated at not getting help on work assigned in class. The third area of concern was entitled "Classroom Management-Students are disrespectful to the teacher and talk out of turn." (There was a fourth area of concern relating to her teaching certificate which was resolved shortly thereafter.) At the meeting regarding her plan of assistance Dr. Sauter "explained that he feels she is a capable teacher, but she needs to improve even though it has been somewhat better this semester." He explained that she needed to improve in these areas and if she is unable to do so she cannot teach in the district. They discussed her personal situation and asked if she was getting help. She indicated that she was and they asked if it was helping and she said she thought it was. They encouraged her to get help and told her they would follow up with her on May 1 and "discuss the need for help more with her at that time."

They next met on May 2, 2007 at which time complaints were down regarding her class and she was making headway getting her grades in on time. She felt that the classroom management was getting better and she was working on having more of a student rather than a content focus. After consultation with Mr. Martell, Ms. Jenke and with Christine the Administration decided to assign her to two pre-AP chemistry classes in the next year, 2007-2008. The notes indicate that she was continuing to receive counseling once per month.

In September of 2007 the parties held another “plan of Assistance Conference meeting” attended by Ms. Davis, Candy Jenke, Dr. Sauter and the Grievant. They discussed the fact that grades, exam results, labs and assignments had to be returned and posted in a timely fashion and that class management needed to include “high levels of respect from students toward you and other in the class.” They also reminded her that providing assistance to students in a timely fashion was a must. The Administration was “encouraged by the fact that students seemed to be doing well so far during the first week of school.” They were also encouraged to find that she was still receiving counseling and that this counseling seemed to have a positive impact.

On November 20, 2007 she was notified that a meeting had been scheduled and that she was to attend this “plan of assistance conference.” When she arrived at the meeting she saw a document which was entitled “Non-Renewal Conference” and was, in essence, the agenda for the meeting. This agenda set forth the purpose for the meeting as:

- II. Purpose of the Meeting
 - Summarize the record
 - Discuss the action plan
 - Review the action plan
 - Discuss possible options

It then went on to “Summarize the record” as follows:

We have received parent, student, and staff complaints dating back many years
The last couple of years have been especially difficult
Meetings or class visits on 1/25/06, 11/2/06, 12/22/06, 3/30/07, 5/2/07, 9/10/07,
11/20/07
Earlier years-complaints about classroom management, organizational issues
Strategy-changed teacher assignments from general chemistry to more pre-AP
chemistry hoping this would fix the problem
More recent years-complaints about teaching, organizational issues
Examples: Memo of 1/25/06, Memo of 11/2/06
Many student complaints last year
Assistance given: More intensive monitoring & supervision, areas of concern
clearly identified with corrective activities and timelines (sic), help from colleagues
Now, at the end of the 1st quarter, student, parent, and staff complaints are again
resurfacing. Examples. . .
Any other comments, Jim M. Or Becky D.?

This agenda went on to review the action plans in ‘06 and ‘07 and set forth the fact that she had received an “unsatisfactory” rating for “teaching efforts” in March, ‘07.

The final two sections of this agenda are as follows:

IV. Discuss Possible Options

The Action Plans have been in effect for approximately one year
We have gone to great lengths to help you be successful
You have not met our standards for improvement and are planning to pursue the non-renewal track
This is verbal notice to give you a chance to consider various options
We want to put you on notice so that you have adequate time to prepare
Kathy S.-Can you please share with us some of the options we can explore
Any questions?

V. Timeline (sic)

Please think carefully about your options
We need to know your intent by December 21, 2007

Thank you to everyone for your assistance.

Following the meeting of November 20, 2007 the Administration performed three separate “observations” of the Grievant: one by Dr. Sauter, one by Ms. Davis and one by Mr. Martell. None of these observations followed the normal pre-observation/observation/post-observation protocol as past observations but rather consisted of a notification to the Grievant a short time before the observation and the following observation in the classroom. These observations were completed by the end of 2007. The Grievant received her preliminary notice of non-renewal on January 22, 2008 and the Board formally made the decision to non-renew her contract on February 19, 2008. Following this action the Union requested an independent evaluation of the Grievant’s teaching performance and that request was denied.

THE PARTIES’ POSITIONS

The Federation

The District has failed to carry its burden of proving that it has just cause to non-renew the Grievant for four reasons: (1) It violated the contractually-required procedures to establish shortcomings in Ms. Schaff’s performance; (2) It provided inadequate notice and direction as to corrective procedures and action and regarding the opportunity to rehabilitate; (3) Non-renewal was wholly unnecessary - it is the most severe penalty and far in excess of the seriousness of any performance flaws; and (4) There was ad hoc notice and preparation of the last observations, denying Ms. Schaff a fair process.

The Collective Bargaining Agreement requires that non-renewal of a tenured teacher must be supported by just cause. Article V, Sec. A.1 requires that tenured teachers “shall not be dismissed, suspended or discharged except for just cause.” The concept of just cause incorporates

elements of procedural and substantive fairness. The Agreement does not define just cause. In the absence of such a definition the Arbitrator's job is to define the parameters of just cause based on the facts of the particular case and in light of core concepts of due process and fair dealing free of capriciousness and arbitrariness and in consideration of a reasonable level of discipline compared to the severity of the conduct.

Article V, Sec. N of the parties' Agreement provides for a teacher to be given notice of an upcoming observation and evaluation of her performance and the teacher is to let the evaluator know what her goals for the class will be. The "informal" observations performed by the District in the Fall of 2007 are not recognized by the Agreement and did not include the pre-observation conference required by the Agreement and thus cannot support the decision to non-renew. These evaluations were arbitrary and biased because they occurred after the November 20 (2007) notice to the Grievant that the District would pursue her non-renewal.

The District's message during the meeting on November 20, 2007 was clear to the Grievant and to Union rep Schaller: the District was going to pursue her non-renewal. This course of action was not qualified in any way and she was given two alternatives. The first was to resign and the second was to be non-renewed at the end of the 2007-2008 school year.

The District failed to offer any evidence of objective standards relating to her performance during the 2007-2008 school year which could support just cause for her non-renewal. The absence of this evidence is fatal to the District's claim to just cause. Dr. Maureen Mack, UW-Eau Claire, whose work centers on teacher evaluation, reviewed the District's written evaluations of the Grievant and concluded that the District's evaluations were unclear. They were not done in accordance with the Danielson procedures (explained further in the Discussion section below) and, in short, contained ". . . a lack of high quality, reliable, credible information to make any kind of statement about specifically what was the nature of the problem. . ."

Because the District's reasons for non-renewing the Grievant are subjective they cannot support the basis for her discharge. Student complaints were made to some administrators but not to the Grievant. Complaints about her unavailability to help failing students were credibly rebutted by the Grievant and student complaints about her teaching style, such as telling students to look material up in their notes, were part of her teaching methodology to have the student try to build an understanding based on prior notes "to orient them. . .and see if they could go from there."

As for the District's assertion that the Grievant had problems with student discipline in the classroom, Ms. Davis performed the Grievant's evaluations during the 2004-2005 and 2005-2006 school years and did not comment on classroom discipline. Aside from Mr. Martell's comments on his biology class observation following her first year of teaching for the District, no District supervisor had informed the Grievant that she had made too many student disciplinary referrals prior to the 2006-2007 school year. During that school year she made a number of referrals for discipline in the classroom and none were non-trivial. For example one student exhibited disruptive behavior and unsafe conditions with lab materials, used profanity in the classroom and was disrespectful and disruptive. Another was ejected from class for refusing to follow class rules

or take direction and for using profanity. The Grievant explained that serious offenses include the use of the “F” word; not returning to class for thirty minutes after a trip to the nurse’s office; telling the teacher to be quiet and using profanity; asking another student loudly if she is still a virgin; and using vulgar rap verses and references to other students aloud, all things she had referred students for. Assistant Principal Davis testified that there was not a “normal” number of disciplinary referrals and that she would never discourage a teacher from writing referrals because “I think their job is to teach and my job is to handle discipline.” Davis’ testimony shows the subjective nature of this issue as the basis for the non-renewal. At hearing she admonished the Grievant for being too aggressive about enforcing school rules but in 2004 after observing the Grievant’s general chemistry class she wrote “Christine is very conscientious about enforcing the school rules and regulations. This is reflected in the behavior of her students.

The District implies that a number of students dropped the Grievant’s pre-AP chemistry class because of her teaching skills. She testified, and the District did not rebut, that a number of students dropped during the 2006-2007 school year for reasons unrelated to her teaching.

The evidence supports the conclusion that the Grievant has expertise in science. Chris Rhode, the senior chemistry teacher at the high school, confirmed that pre-AP chemistry is a difficult course to teach and that other teachers had had difficulty adapting to the spiral curriculum nature of the course. During Mr. Kuchta’s first few years teaching pre-AP chemistry, he (Rhode) received concerns from parents and he did a lot of tutoring of Mr. Kuchta’s students. (Kuchta is a nationally recognized teacher and has earned national board certification for teaching chemistry.) During the 2006-2007 and 2007-2008 school year he testified that he did tutor some of the Grievant’s students but that this fact does not reflect poorly on her ability to teach. It only means that she was just beginning in the program.

Rhode testified that her “level of understanding and fluency in chemistry” was not an issue. He felt that procedure and technique were more issues for her relating to “what’s the best way to do this with this kind of a curriculum, with this kind of approach to learning chemistry.” Kuchta teamed up with her to team teach the class during the 2007-2008 school year. He testified that there were no problems with the way she presented the class materials and that she “was direct and confident in the delivering of materials.” Although she appeared to have difficulty establishing a rapport with the students, “[s]he was effective in presenting materials to the class,” and she made herself available to the students by “always pointing out when her office hours were so they could come to see her before school or after school, and so she always made it clear that they could come see her then.” He also observed that she sometimes failed to read into a question and determine if another question lay beyond the first. She did seem to take a long time to return graded assignments but, in his opinion, that did not have an adverse effect on her teaching. He believed that with appropriate mentoring to help her be more confident and expressive with her class, she could conquer the problems that have been identified. He offered to team-teach the Pre-AP chemistry class with her to be her mentor but that it appeared that the District had already decided to non-renew her teaching contract.

Despite the complaints of some of her former students, many view her as one of the best high school science teachers in the District. According to many of the students called to testify on her behalf her classroom technique was appropriate, her assignments were returned in a timely fashion, her office hours were displayed on the board for all to see, and she gave them all the information and as long as you did your problem sets and homework you “did just fine.” She was, according to many who testified on her behalf, “ a great teacher.” Some others knew that some students had complained about her teaching abilities but thought they were complaining because they were getting bad grades and saw nothing in her teaching performance that would justify such complaints.

In a complete analysis of whether there was just cause for non-renewal, the Arbitrator should consider mitigating factors in light of the harshest disciplinary measure imposed, discharge. There is credible testimony about the painful aftermath of the Grievant’s divorce, which distracted her and caused her tardiness in grading. At such a tumultuous time in her life she willingly undertook the responsibility of a new and difficult course. As Charlotte Danielson explained: “When the context of teaching changes the level, the content, or the environment, an experienced teacher can become, in effect, a novice.”

The Grievant is a long-time, experienced and admittedly competent teacher and should be renewed with the support of a mentor and a carefully prepared plan of assistance.

The District

The District has demonstrated just cause for the non-renewal of the Grievant’s teaching contract. The concept of just cause is generally recognized and accepted as encompassing basic standards of fairness. Just cause, according to Arbitrator Jones SAWYER COUNTY, MA-7729 (Jones,1993) addresses two elements, a demonstration of misconduct and a contractually appropriate level of discipline. The Employer must establish the existence of conduct by the Grievant in which it has a disciplinary interest and it must establish that the discipline imposed for the conduct reasonably reflects its disciplinary interest. SCHOOL DISTRICT OF NEW RICHMOND, MA-8376 (McLaughlin, 1994).

It goes without saying that a school district has an interest in teacher performance. To establish just cause for poor performance the District must establish that the Grievant has not performed at an acceptable level and that it’s efforts to improve Grievant’s performance were fair in that she was given notice of her performance deficiencies, advice on how to fix them, and time to fix them (due process and fair dealing) and that her performance did not improve (and in this case, will not).

The Grievant has failed to provide instruction that meets the needs of the students. She cannot “connect” with them and this failure is part of the reason her students were not learning. Kuchta testified that “I would say that she had some problems connecting with the students.” He further observed:

The weakness that I observed, well, grading on a timely manner was an issue; but just it's that personal rapport that seemed to be a weakness, you know, sensing when the students are reaching out kind of and then reaching back. There were moments where she'd do that, and it was really neat because her face would almost light up...That's what I felt she needed to work on.

The Grievant could not, or would not, provide alternative explanations when students were struggling. Highly motivated students were coming to Assistant Principal Davis and to Principal Sauter because they did not feel they were learning. Their complaints carry a common theme. They asked her questions and she was unwilling or unable to explain the material differently and referred them to her "notes." This frustrated the students causing many to seek the assistance of other teachers or students for help.

Although the Grievant argues that during her first year of teaching the pre-AP chemistry course she was going through a divorce and should be given some leeway because of that situation, the same issues appeared again in the 2007-2008 school year. In fact it was in 2007-2008 that the Grievant's 5th hour pre-AP chemistry class considered a mass walkout in order to underscore the extent of their frustrations.

One of the Grievant's students, WF, testified that she went in early one morning for help. She sat in the first desk in the front row of the classroom and the Grievant never acknowledged her by saying good morning or making eye contact with her. She sat for ten minutes and then left to seek help from Rhode. There were students for whom pre-AP chemistry came easily and had no problems in class but even they recognized that other students were struggling and admitted that Grievant, in 2007-2008, would frequently respond to questions with "it's in the materials" or repeat the earlier explanations. Jenke, a bargaining unit member, testified that during the 2007-2008 school year the complaints intensified explaining student complaints as follows:

. . .And a comment was, If I ask her - if I tell her I don't know how to do it, she tells me to look at the notes, but I don't understand the notes so how is that going to help me. That was their frustration.

Kathy Mehls (head of the guidance department) and Guidance Counselor Sally Holldorf testified to similar complaints lodged by students. The method of instruction was not working for them. Guidance Counselor Jennifer Ebner described similar complaints and "just pure panic from students":

. . .when they would ask because they weren't really sure if students were doing it right and they'd ask clarification from the teacher, and she would say that that material was already presented or that was in their packet.

Despite the Administration's efforts the Grievant chose not to believe that students did not understand what she was teaching and, despite the Administration's efforts, she failed to adjust her teaching style. Davis described a situation during the December 6 (2007) observation as a "teaching moment" which the Grievant failed to recognize. She simply went on to the next topic even though a student had indicated that he or she may not have understood the previous topic.

The Grievant has demonstrated an inability to maintain appropriate classroom management as manifested by disrespectful student behavior and a learning environment not conducive to good learning. Students, showing an obvious disrespect for her, simply stopped paying attention in class. Her 7th hour class in 2007-2008 was described by one student, CH, as out of control and disruptive. "Everybody was talking most of the time. Nobody would really pay attention and follow notes very clearly. Students were using cell phones a lot." Other students agreed. Guidance Counselor Ebner testified that she particularly recalls students complaining about "classroom management-type things, class getting off task, not having the ability to bring the class back on task." Martell noted that the students were not engaged, were not even working on chemistry, and were very disrespectful - even though an administrator was in the classroom.

Grievant's failure to provide feedback by the timely grading and return of assignments and tests was a long-standing problem which continued throughout 2007-2008. Frequent concerns expressed by students was the Grievant's failure to grade and return assignments in a timely fashion. In 2004 Davis emphasized the importance of getting assignments and tests back to students in a timely manner. In 2006 Sr. Sauter discussed a student's frustration with her for the same reason. When completing her Professional Growth Plan in 2006-2007 the Grievant selected "Grade assignments and enter grades in Infinite Campus in a timely manner" as her number one "Professional Goal." Despite this she was unable to do so in 2006-2007. She continued to have difficulty getting her grades posted in a timely fashion through mid-November, 2007, and some of her students complained about it. One of her students, JS, testified that her grading was inconsistent, and that she lost some student's tests and assignments and expected them to re-take them. Although parents and students continued to complain through May, 2008, these complaints played no part in the Board's decision to non-renew her, but they do demonstrate her continuing problems. The importance of students getting their assignments back in a timely fashion cannot be understated since pre-AP chemistry is built on a spiraling curriculum where new learning is based on prior learning.

The Grievant had notice of her deficiencies and an opportunity to correct them. She was not "set up to fail." When she struggled with discipline issues with freshman-level students, the District arranged for her to teach motivated, older students. When she struggled with her pre-AP chemistry students, Sauter arranged for her to be aided by Kuchta and Rohde. In December, 2006, Sauter developed a Plan of Assistance for her and met with her to explain the District's concerns. The District offered her assistance in dealing with her personal life through EAP. In April, 2007, the Plan of Assistance was updated to include additional performance concerns and she was informed that her failure to improve in these areas could result in her non-renewal. In the beginning of school year 2007-2008 Sauter met with her during the first week of school to discuss areas of needed improvement and met again on November 20, 2007 to "share with the Grievant

the nature and volume of complaints being received from students, parents and staff.” Although the title of the meeting was set forth as “Christine Schaff - Non-Renewal Conference”, Sauter explained that while he may have used the wrong terminology the intent of the meeting was to discuss that there had been a resurfacing of many of the same performance issues and that her continued employment was in jeopardy. Davis’ testimony supports this assertion. They (the Administration) were keeping a close eye on things but the decision to non-renew her had not yet been made. Following this meeting, the Administration conducted three “informal” observations revealing that she had lost control of her classrooms and that there was no learning taking place.

Formal classroom observations are conducted every third year. Toward the end of that year a summative evaluation is completed by the Administration which incorporates the formal observations as well as other observations of the teacher’s performance throughout the year. Grievant’s required evaluation took place in the 2006-2007 school year and the District followed up during the following year because that evaluation revealed her performance to be unsatisfactory.

Nothing in the Agreement prevents the District from conducting “informal” observations. The Teacher Evaluation Committee came to that conclusion during its work to revise the evaluation process. On November 20, 2007 the Grievant was notified that the Administration would continue to monitor her classes on an informal basis. Union co-president Schaller was present at that meeting and made no objection to the informal observations. Some of the students indicated that Grievant showed a different personality when administrators were in the room - more willing to ask if the students were understanding the material and more willing to explain more. She had more expression.

Grievant’s denial of any wrongdoing is not credible. Although she claims to have been surprised by the decision to non-renew her contract, the District asks how this could have been a surprise in light of the Administration’s efforts to help her become an effective member of the faculty? The Grievant has a strong incentive to deny the charges and the Arbitrator should recognize this in assessing her credibility.

The fact that a high percentage of the Grievant’s 2007-2008 pre-AP students went on to take AP Chemistry the following year does not demonstrate the effectiveness of her teaching. Although her percentage was higher than Rohde’s or Kuchta’s students the District asserts that this higher percentage reflects the much larger number of Grievant’s students (14) who dropped the course and, therefore, were not part of the percentage calculations. Regarding the list of students who dropped her class, her explanations for them are self-serving and (presumably) not worthy of serious consideration by the Arbitrator.

Non-renewal is now appropriate since the Agreement does not require a specific procedure or sequence which must be followed in the imposition of discipline. Arbitrator Raleigh Jones addressed this issue as follows:

. . . Many labor agreements specify a particular sequence which must be followed by the Employer when it imposes discipline. For example, some contracts provide that a verbal warning be imposed first, then a written warning, then a suspension, etc. However, this contract does not contain such language. That being so, it follows that the Employer can impose whatever discipline it believes is appropriate under the circumstances and will pass muster if challenged under the just cause provision. MILWAUKEE AREA TECHNICAL COLLEGE, MA-9956 (Jones, 1998)

Those students who Grievant explained did not have sufficient abilities dropped the class. The high achievers were successful almost without being taught. The others, who wanted to learn or at least get good grades but needed help, were frustrated by the Grievant's failure to meet their learning needs. "The outcome, as explained by Sauter, was that by January, 2008, there was going to be "a mass exodus" from Grievant's classes if the administration did not come up with a plan."

DISCUSSION

I initially consider the issue as to whether the District violated Article V, Section N when three different administrators informally observed Grievant's classroom on November 30, December 5 and December 6, 2007. The Agreement does not specifically provide for "informal" observations, rather it contemplates formal evaluations consisting of a pre-observation conference in order to establish the teaching goals of the teacher during the classroom period to be observed; the observation itself where the administrator observes the teacher's classroom activity; and, generally, a post observation conference with the teacher and the administrator for the purpose of discussing the observations of the administrator and to suggest ways in which the teacher may improve or enhance his or her teaching methodology. In the event any written evaluations are produced as a result of this formal evaluation it must "be shown to the teacher within 12 working days of the observation before filing." The Agreement recognizes that these evaluations are "to be a cooperative effort between the teacher and the supervisor with the express purpose of achieving excellence in the area of effective and purposeful classroom instruction." The Agreement does not address "informal observations" in any way.

The Federation argues that the Administration conducted these three "informal" observations without preceding them with the obligatory conference relating to goals and methods and that they (the observations) may not support the District's decision to non-renew. It further argues that the three observations were arbitrary and biased in that they occurred on the heels of the District's clear notice to the Grievant on November 20 that they intended to follow the non-renewal track. In addition, due process requires that the District follow the Agreement's provisions which mandate a pre-observation conference. The undersigned does not believe that the informal observations conducted by the District were used to formulate the basis for the Grievant's non-renewal. I believe that they were used to bolster the decision the District had already made not to renew the Grievant's contract. The observations were conducted within a very short period of time. The second and third were conducted on successive days leading the undersigned to conclude

that their purpose was something other than an attempt to “achieve excellence in the area of effective and purposeful classroom instruction.”

This having been said, the issue put to this Arbitrator is whether or not such informal observations violate the provisions of the Agreement. The management right’s clause provides the District with the right to observe classroom behavior under its broad penumbra of rights and duties. Indeed, it would be difficult to argue with a straight face that a school district’s administration is not vested with the right to observe the actions of its teachers in the classroom. The administration is required to constantly assess the quality of its faculty and must observe its teachers in order to comply with that duty. The District admits that the three informal observations failed to comply with the Agreement’s provision but urges the Arbitrator to consider them because their purpose was to assess exactly what type of instruction the students were getting in Grievant’s classroom. The District also points out that a joint committee composed of Federation and District personnel had been formed to contemplate issues such as the evaluation process and that this committee had unanimously agreed that nothing in the Agreement prevents an informal observation. It strenuously argues that this “agreement” between District personnel and Federation personnel should validate the three informal observations conducted in this case. The record demonstrates that the committee was in the process of considering a new and improved method of evaluating teachers, among other issues, with the anticipation of making recommendations to the negotiation teams currently negotiating the 2007-2009 Agreement. Before the committee could make any recommendations relating to the issue of modifications to the evaluation process the District and the Union became deadlocked and contract negotiations ceased. The District subsequently imposed a qualified economic offer (QEO) and the article relating to evaluations, Article V, remained unchanged. This fact does not eliminate management’s right to observe what is going on in its school. Therefore, the informal evaluations conducted on November 30, December 5th and December 6th did not violate of the terms of the Agreement. The Federation makes a valid point when it argues that informal evaluations fail to measure up to the due process component of just cause. The District also makes a valid point that these observations were made in order to see what was actually going on in the classroom. Ordinarily that would be the purpose for informal observations. They may form the basis for further action *which complies with the requirements of due process and fair dealing* but, in and of themselves, cannot form the sole basis for termination. While these observations are important and serve to assist in the overall evaluation, they are not all-inclusive. The question is moot, though, because the informal evaluations conducted on 11/30/07, 12/5/07 and 12/6/07 were not used as a basis to make the final decision to non-renew Grievant. As I mentioned above, that decision had been made prior to these informal investigations.

The underlying issue in this case is whether the District had just cause to non-renew the Grievant’s 2008 teaching contract. The District cites this Arbitrator in the case of HURLEY SCHOOL DISTRICT, MA-11758 (Morrison, 2003) wherein the undersigned adopted a definition of just cause originally penned by Arbitrator Platt in “Arbitral Standards In Discipline Cases”, *The Law and Labor-Management Relations*, 223, 234 (Univ. of Mich., 1950) which says:

I believe just cause requires a finding that the employee is guilty of the conduct in which he or she is alleged to have engaged and that the level of discipline imposed as a result of that conduct is reasonably related to the severity of the conduct. Just cause mandates not merely that the employer's action be free of capriciousness and arbitrariness but that the employee's performance be so faulty or indefensible as to leave the employer with no alternative except to impose discipline. Fully entrenched in this definition are the core concepts of due process and fair dealing.

The Grievant was a long-term employee. She had taught in the District for twelve years prior to her non-renewal. Prior to 2006 her evaluations were glowing. In her final evaluation during her probationary period Dr. Sauter commended her for her active participation during the lesson and noted that the objective for the lesson was achieved. He found her overall performance to be satisfactory. Her next evaluation occurred in 2001 and Dr. Sauter observed "Several good teaching behaviors. . ." Overall, he "enjoyed the lesson" and found her performance to be satisfactory stating "Christine is a capable and competent teacher who shows a genuine concern for the academic needs of her students." Assistant Principal Rebecca Davis performed Grievant's next evaluation in 2004 and stated "Christine is extremely conscientious and hard working. She cares for her students and is dedicated to her profession and to her school." She met or exceeded expectations in every category rated by Davis. The undersigned considers the entire record when called upon to review management's disciplinary measures. Included in the entire record is the employee's work record and longevity. The Grievant's work record is excellent and her length of service to the District is significant. She was by all accounts a cooperative, dependable and loyal employee and this history works in her favor in mitigation.

The record demonstrates that the Grievant began having problems in the pre-AP classroom during the first part of 2006. Some of her students complained to the administration that she was ineffective in the classroom and that they were not able to learn the material. Others complained that she was not available to give them extra help and that she failed to explain things in the classroom and, when asked about various things in the materials she would refer them to the notes or the books instead of explaining the material. She was having difficulty in getting grades posted on the computerized system and she was having trouble returning homework assignments and labs in a timely manner. The record also demonstrates that these deficiencies were caused, at least in large part, by what the Grievant credibly testified to as her ". . .living nightmare that I was going through at the time." She testified that this was the "overriding factor" causing her problems. She testified:

"06/07 I was – that was the low point of my teaching and so I know I needed really to improve on it and I was actually very ashamed of myself that I couldn't get myself to do better."

Her living nightmare, as she called it, began shortly after her divorce in November, 2005 when her ex-husband began a relationship with a married member of their church. The affair

became notorious and as an active church member (she was the organist; she sang in the choir when not playing the organ; she served the church as a member of the alter guild; and was the clerk to the vestry of the church) her ex-husband's behavior was "tremendously humiliating" to her. The situation was a scandal in the church and in the vestry causing the church elders to give her ex-husband and his partner warnings to discontinue the "spectacle." To make matters worse, her ex-husband and his partner did not discontinue the affair and upon further investigation by the church it was discovered that her ex-husband, who was the assistant to the priest at the time, was involved with the mishandling of church funds. He was relieved of his duties and forced to turn in the keys to the building and to the two offices he occupied in the church. Because of this, she sought counseling with her family physician in the fall of 2006, and in December of 2006 began treatment with a psychologist. She saw the psychologist about every three weeks until the beginning of 2008 at which time she felt that her "living nightmare" was behind her. The undersigned carefully considers personal problems as mitigating factors if the personal problems appear to be the cause, or a substantial cause, of the behavior leading to discipline. In this case the problems with her teaching in the pre-AP classroom developed simultaneously with her "living nightmare" and the undersigned believes it to be a substantial cause of her difficulties.

Another mitigating factor is the nature of the pre-AP chemistry class itself. The record shows that the Grievant was excited about teaching the class and realized "that with a new subject even with experience it takes two, three years maybe to get a really efficient way to present it. So I thought I've just got to give it my best shot this first year, and I'll make modifications and such in future years as I see it come up." Dr. Maureen Mack testified as an expert witness on behalf of the Grievant. Dr. Mack is uniquely qualified to assess teacher performance and teacher evaluation procedures. She has been involved in supervising and evaluating undergraduate and graduate teachers at the University of Wisconsin-Eau Claire for 30 years and has worked as a consultant in this area for a number of school districts, including Chippewa Falls, over the same period. One of the criticisms the District had of the Grievant was that her teaching level in the pre-AP class was at a basic level. The Administration felt that with as much experience as she had she should be teaching at a much higher level. Dr. Mack, however, pointed out that Charlott Danielson, the developer of the "Danielson Model", a summative evaluation tool which categorizes teacher performance as unsatisfactory, basic (novice proficient), advanced and distinguished, notes that it is not entirely unusual for a veteran teacher to experience difficulty teaching a new course after years of acceptable teaching. This is buttressed by Rhode's testimony regarding the first couple of years Kuchta taught the class. According to Rhode, Kuchta, the nationally recognized teacher, received parent complaints during his initial years of teaching pre-AP chemistry. The record also demonstrates that pre-AP chemistry is a difficult class to learn to teach because of the spiral nature of the learning/teaching process in that class.

The District was also critical of the Greievant because many of her students had to be tutored by other teachers like Rhode. Rhode, though, testified very credibly that the fact that he tutored some of her students should not reflect badly on her abilities to teach. He testified that he tutors many students of other teachers on a regular basis.

The Grievant was assigned to teach pre-AP chemistry in May of 2006. The District asserts that she was assigned to that class because they thought that older, more motivated students would be easier for her to manage in the classroom. That may have been the reason but, if it was, the more credible evidence supports the conclusion that they failed to explain that to the Grievant. The Grievant testified that her supervisor asked her if she would take the class and not to discuss the reassignment with other teachers so they would not feel badly about being “passed over.” In short, the Grievant believed it to be a promotion of sorts.

The District states the reason the Grievant’s contract was not renewed as:

“Despite a Professional Assistance Plan, we find that you are unable to consistently provide instruction and classroom management that meets the standards of the Chippewa Falls Area Unified School District.”

There were actually two Assistance Plans. The first is dated December 19, 2006. A meeting with Dr. Sauter, Davis, Jenke and the Grievant took place on December 22, 2006 to discuss the Plan. They discussed the fact that Kuchta and Rohde were available for assistance and that the Plan included observations of their classrooms and the concern expressed by students, parents and staff members about getting grades posted and returned in a timely fashion, especially the lab grades. As part of the Plan the Grievant agreed to have the grades posted and returned to students within one week of the due date. They also discussed “some of the frustrations that (she has) been having in (her) personal life.” Dr. Sauter suggested that she explore services available through EAP. Dr. Sauter reported that he had received another parent complaint resulting from his son receiving an ‘F’. On February 16, 2007 Dr. Sauter observed the Grievant. The observation followed the dictates of Article V, Sec. N and Dr. Sauter commended her strengths in the areas of use of transfer and her use of visual reinforcers such as the models and drawings on the board. He encouraged her to continue using these “teaching behaviors.” He also noted that an area of concern continues to be correcting and returning assignments and tests to students in a timely fashion and he stated that “This response time needs to be improved.” On March 22, 2007 Martell sent an e-mail message to Dr. Sauter regarding a visit he had received from the mother of one of the Grievant’s students complaining about the Grievant’s delay in getting make-up work to her daughter who had been injured in an accident and who was recovering at home. Curiously, the record does not reflect that this e-mail went to the Grievant nor does the record reflect that she was contacted about it at all. The Narrative Summary of her District Evaluation Report indicates that student services and building administration had received complaints from students and parents concerning class management (some students are disrespectful to her); Some students feel their questions do not get answered in class; and some students and parents complain about assignments, tests and lab grades not being returned in a timely manner. The Summary also notes that she has made a concerted effort to improve but “Some of these problems still persist.” It goes on to note that “she has been having some major challenges in her personal life” and “Our belief is that these personal challenges are negatively impacting her ability to perform her duties as a teacher.” Her rating for the year was ‘unsatisfactory’ but her contract was renewed for the following year.

The second Assistance Plan is dated April 16, 2007. It reiterates that the year has been a challenge for her and repeats essentially the same problems as the first Plan set forth. The record is not clear as to the reason a second Plan was developed. The second Plan required her to improve in these areas and indicated that they would meet again on May 1, 2007. They met on May 2, 2007 and following their conference decided to assign her to “a couple of sections of pre-AP chemistry next year. The group met again at the beginning of the 2007-2008 school year on September 7, 2007. The purpose for this meeting “was to review (her) Plan of Assistance that (they) had established last year, discuss again the various components, and encourage (her) to get off to the best start possible for the upcoming year.” The report of the minutes of this meeting indicated that her students seemed to be doing well during the first week of school. It also advised her that “There will be some occasions where we plan to visit you (sic) class on an informal basis to gain a better sense of how things are going in your classes.” There is no credible evidence in the record that any such visits took place until the “informal observation” on November 30, 2007.

The primary concern addressed in both Plans related to the timely grading of tests, labs and other assignments in the pre-AP chemistry class and to some student’s frustration at not getting enough help in class. The second Plan added classroom management as an area of concern. Also included as a concern on the second Plan related to renewing her teaching license. This was done in a timely manner and was not a subject of her non-renewal. It is important that these issues began to manifest themselves at the juncture of two significant events. First, she had been assigned a new and challenging class, the pre-AP class which the record shows is a difficult class to teach, especially for the new teachers, which is essentially what the Grievant was as she began teaching this class. Second she was living her “nightmare” on the personal front and clearly having significant emotional problems with it. The record supports the conclusion that everyone acknowledged that her personal problems contributed, in large part, to the issues in the classroom. The undersigned is troubled by the lack of evidence relating to the extent of the Administration’s efforts to address the issues in the Plans. There are memos and time-lines and references to student and parent complaints and e-mails about parents discussing the Grievant with other teachers and with Dr. Sauter but they, for the most part, excluded the Grievant. There is precious little evidence of the steps taken to aid her in her effort to overcome the issues. Admittedly, the Administration told her to observe other teachers and Dr. Sauter directed her to fix her deficiencies, but in terms of things like counseling or remedial courses or in depth observation and critique of her teaching in this classroom, the record is lacking.

Another problem with the Plans of Assistance are that they were not given sufficient time to work. The second Plan was first discussed with the Grievant on April 16, 2007 and provided that the “assistance team” would meet with her at least monthly to discuss her progress. They met on May 2nd and the minutes of that meeting indicate signs of improvement. They met again in September, 2007 at the beginning of the school year and the notes indicate that there was some improvement. There was no meeting in October, 2007. The next meeting was held on November 20, 2007 and the evidence leads me to the inescapable conclusion that this meeting was anything but a meeting designed to assist her in her progress.

The agenda for the meeting of November 20, 2007, was labeled by Dr. Sauter as the “Christine Schaaf Non-Renewal Conference.” Essentially, this agenda was nothing more than a re-hash of the problems the Grievant had demonstrated during the previous year and a statement that “Now, at the end of the 1st quarter, student, parent, and staff complaints are again resurfacing.” It reviewed the nuts and bolts of Assistance Plans 1 and 2 and noted that “Some areas have improved - posting grades, correcting papers.” and that “Other areas are still problematic - Teaching rather than dispensing information” and “classroom environment/management”. The environment/management criticisms were: Connecting with students; Developing relationships with students and parents; Creating an environment that is conducive for learning - our students still complain that they are not understanding; and Received an unsatisfactory rating for teaching efforts for the year on March 30, 2007. Under section IV (which should have been VI) the agenda item is:

IV. Discuss Possible Options

The Action Plans have been in effect for approximately one year

We have gone to great lengths to help you be successful

You have not met our standards for improvement and are planning to pursue the non-renewal track

This is verbal notice to give you a chance to consider various options

We want to put you on notice so that you have adequate time to prepare

Kathy S. - Can you please share with us some of the options we can explore

Any questions?

V. (sic) Timeline

Please think carefully about your options

We need to know your intent by December 21, 2007

This meeting is pivotal. Dr. Sauter and Davis testified, not credibly, that what they really meant to impart to the Grievant was that she needed to improve or she would be non-renewed. However, the very credible testimony of Melanie Schaller, who took contemporaneous notes during the meeting, and of Kuchta’s testimony relating to the second semester meeting at which time he volunteered to mentor the Grievant and the comment was made “. . .it was beyond helping Christine and it was helping students” convinces the undersigned that the Grievant was given two options at this meeting. One, resign to avoid the stigma of being fired, or two, look elsewhere for another job. Kathy Schultz warned her that if she failed to perform in the classroom, regardless of the situation, they would take other action. The most reasonable conclusion to be drawn by this commentary, and the conclusion drawn by Schaller, was that at the end of the year the Grievant would not be renewed and she could go find another job or simply resign. In the meantime she had better perform in the classroom or the Administration would pull her out of the class. Schaller’s notes of the meeting she had with Dr. Sauter following the meeting confirm the above conclusions. She asked if they were serious about firing her. He responded “yes”. She asked if this rose to the level of termination and he did not respond. She asked if there was any wriggle room. He said “Too late for that.” And last, but not least, is the summary of the meeting. It confirms that the District is pursuing the non-renewal track and that her options are two. First,

she could resign or she could do nothing, in which case the District would formally begin the process of non-renewal in January, 2008.

So, as of November 20, 2007 the Grievant knew her contract would not be renewed at the end of the school year and so did everyone else. Everything which occurred after this date is irrelevant to the issue of non-renewal.

A word about the student testimony. Each side called about the same number of student witnesses. Some were current students and some were past students. The witnesses for the District all testified essentially that the Grievant failed to get their tests/labs/grades back to them in a timely manner; that she did not have control of her classroom and this made learning difficult; that she did not explain the material well and referred them to their notes if they had a question; that she did not inform them when she would be available for extra help; and in one case, said she had ignored the student when she came in for extra help before school started. The witnesses called by the Federation all reported that the Grievant was a great teacher and ranked her among the top science teachers they had had during their high school years. They testified that she explained the material well; that she answered their and other students' questions adequately; that she did not speak to the board but rather spoke to the class; that she returned their tests/labs/grades in a timely manner; that she posted the times she would be available on the board or elsewhere; and that she ran the classroom well. There was some talking in the back of the classroom but it did not bother them too much. She was occasionally the subject of disrespect by some of the students who were "jerks", and she handled it like all the other teachers. They were well prepared for AP chemistry. The two sides seem to offset each other in terms of the evidentiary value of this testimony and I give it little weight.

It is troublesome that the Grievant was not brought into the conversation when these students complained. One would think that her input would be enlightening and perhaps give some perspective to the complaints of the children. Instead, the Administration seems to have taken the word of the students without further investigation and the District has failed to provide adequate reasons for this decision.

There is no doubt that the Grievant was having difficulty in this classroom and no doubt that the District had to take action to address the problems she was having. The record as a whole leads the undersigned to conclude that the manner in which the District addressed the problem does not meet the requirements of just cause. I do not believe that the actions of the District were just and equitable and, given the weight I have placed on the items of mitigation mentioned above, I do not believe that termination was warranted in this case. The evidence is clear to the undersigned: for at least 10 years before the divorce and all that accompanied it, the Grievant was a great teacher and considered to be an asset to the faculty. The divorce and its nasty aftermath adversely affected the Grievant and her ability to concentrate on her duties in the classroom. Kuchta, who team taught with her and observed her teaching over a long period of time, testified to her strengths and to her weaknesses. He testified that she was "very competent in her knowledge" and "I don't think that there's any gap in her chemistry knowledge, and her knowledge overall of science for high school classroom, I thought was—she doesn't need

anymore.” He also found her organizational skills to be good. Her weaknesses were related to grading in a timely manner and her trouble establishing a rapport with the students. He described this as meaning “sensing when the students are reaching out kind of and then reaching back.” The record supports the conclusion that these weaknesses were attributable, in large part, to her emotional state which the record reflects has now been resolved. She should have taken a leave of absence, which the District offered, in order to deal with and overcome the issues in her personal life. The fact that she did not do so was a judgmental error. If she had done so we may very well not be at this point today. The undersigned faults the Grievant for her failure to take leave but does not believe it warrants discipline.

The Arbitrator is not convinced that, as the District argues, no learning was going on in her classroom. The evidence demonstrates that her students, by and large, went on to do well in subsequent chemistry classes and future academic endeavors. Of course there were some that struggled in her class and either dropped it or sought tutoring. This is not unusual in advanced high school classes.

Regarding the issue of excess referrals on the part of the Grievant, the record supports the conclusion that the District was erratic in terms of these referrals. In a previous evaluation the Grievant was lauded for being very conscientious about enforcing school rules and regulations. At the hearing she was criticized for making too many referrals. The District argues that the reasons for the referrals from 2007 to 2008 were petty but the record supports the conclusion that they were, in most cases, significant violations of school rules.

The undersigned cannot conclude that the causes for her termination were just, equitable, or fair. Arbitrator Platt’s comments present a fair statement of the Arbitrator’s duty in termination cases:

It is ordinarily the function of an Arbitrator in interpreting a contract provision which requires “sufficient cause” as a condition precedent to discharge not only to determine whether the employee involved is guilty of wrong-doing and, if so, to confirm the employer’s right to discipline where its exercise is essential to the objective of efficiency, but also to safeguard the interests of the discharged employee by making reasonably sure that the causes for discharge were just and equitable and such as would appeal to reasonable and fair-minded persons as warranting discharge.” RILEY STOKER CORP., 7 LA 764 (Platt, 1947)

The District asserts that the Grievant could not return to teach at the high school and cannot be an effective teacher. The evidence does not lead me to this conclusion. Kuchta believes that if she were returned to the classroom “With appropriate mentoring, she has the knowledge base that’s really solid, and with someone to work with her on the other issues, and I think the rapport and just expressing herself as being more confident in front of her class, I think the odds (of her becoming an effective and successful teacher) are pretty good. The undersigned agrees with this assessment but is concerned that the stigma attached to her non-renewal may be difficult to overcome and may cause renewed, and perhaps unjustified, complaints from parents and students.

The District will have to be mindful of that potential and consider any future complaints with that in mind.

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

AWARD

1. The Employer did not violate Article V, Section N, Evaluation Procedures, when three different administrators informally observed Grievant's classes on November 30, December 5, and December 6, 2007.
2. The Employer did not have cause to non-renew Grievant's teaching contract for the 2008-09 school year.
3. The Employer shall reinstate the Grievant effective immediately.
4. The Employer shall prepare a Plan of Assistance with the Grievant's input and shall include in such Plan the support of a mentor.
5. The Employer shall make the Grievant whole according to the terms of ARTICLE V, Sec. A, paragraph 2 sub e.
6. The Arbitrator shall retain jurisdiction over this matter for a period of 60 days pending implementation of this award.

Dated at Wausau, Wisconsin, this 17th day of April, 2009.

Steve Morrison /s/ _____
Steve Morrison, Arbitrator

