

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**AFSCME LOCAL 727D**

and

**THE SCHOOL DISTRICT OF THE MENOMONIE AREA**

Case 64  
No. 68669  
MA-14305

(G.B. Termination Grievance)

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**Appearances:**

**Steve Hartmann**, Labor Consultant, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of AFSCME Local 727D.

**Patricia A. Maloney**, Attorney, Ratwik, Roszak & Maloney, P.A., 300 U.S. Trust Building, 730 Second Avenue South, Minneapolis, Minnesota 55402, appearing on behalf of The School District of the Menomonie Area.

**ARBITRATION AWARD**

Local No. 727D, hereinafter referred to as the Union, and The School District of the Menomonie Area, hereinafter referred to as the District, are parties to a collective bargaining agreement (agreement or contract) which provides for final and binding arbitration of certain disputes, which agreement was in full force and effect at all times mentioned herein. On February 20, 2009 the Union filed a Request to Initiate Grievance Arbitration and asked the Wisconsin Employment Relations Commission to assign a staff arbitrator to hear and resolve the Union's grievance regarding the discharge of G.B. (Grievant). The undersigned was appointed as the arbitrator. Hearing was held on the matter on June 24, 2009 in Menomonie, Wisconsin, at which time the parties were given the opportunity to present evidence and arguments. The parties agree that the matter is properly before the Arbitrator. The hearing was not transcribed. The parties filed post-hearing briefs by August 6, 2009 at which time the record was closed. Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

## ISSUES

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

1. Did the School District have just cause to discharge the Grievant?
2. If not, what is the appropriate remedy?

## RELEVANT CONTRACTUAL PROVISIONS

### **ARTICLE II - MANAGEMENT RIGHTS**

. . .

#### SECTION 2:

. . . it is expressly recognized that the Board's operational and managerial responsibilities include:

. . .

6. The right to enforce the reasonable rules and regulations now in effect and to establish new reasonable rules and regulations from time-to-time not in conflict with this Agreement.

. . .

### **ARTICLE IV - DISCIPLINE AND DISCHARGE**

#### SECTION 1:

Discipline, including discharge, is recognized as a management right of the Board; (sic) and may be exercised by the Board, through its designated representatives, in regard to any employee who does not fulfill his/her responsibilities to the Board as an employee or does not comply with Board policies now or hereafter in effect.

#### SECTION 2:

The Employer shall not discharge or discipline any employee without cause. If, in any case, the Employer feels there is just cause for discharge, the employee and his/her steward will be notified, in writing, that the employee has been discharged and the reasons therefore. The Union shall have the right to take up the suspension

and/or discharge as a grievance at the second step of the grievance procedure through the arbitration step if deemed necessary by either party. Any employee found to be unjustly discharged shall be reinstated with full compensation for all lost time and with full restoration of all other rights and conditions of employment.

### **RELEVANT DISTRICT POLICIES**

#### **ACCEPTABLE USE OF INTERNET/TECHNOLOGY RESOURCES POLICY AND GUIDELINE #362**

The School District of the Menomonie Area provides both employees and students with access to many types of technology resources including . . . various types of computers and computer networks, connections to other computers and computer networks via the Internet. . . and a wide range of other educational and supporting office equipment. . . The District’s technology resources are instructional and support tools that help the District fulfill its mission. Employee access to technology resources helps them be more creative, efficient and productive as they obtain, package and deliver information as part of their instructional and support mission of “preparing young people.”

. . .

#### **Responsibilities of the School District of the Menomonie Area**

. . .

2. The Board also recognizes the educational and professional value of an internal network and connections to the Internet. To assure that the Internet/Intranet is used only for purposes related to education, the Board directs the District Administrator to establish procedures for their use. Use of the Internet/Intranet for commercial or political activities is specifically and strictly prohibited.
3. Use of the Internet/Intranet shall support District-approved content standards and shall be relevant and appropriate for student’s ages and abilities.

. . .

5. Users of the Internet/Intranet shall be informed that there is no expectation of privacy by employees and students. District employees charged with maintaining technology resources may monitor or examine all system activities to ensure their proper use.

6. The District shall make every effort to protect students and staff from any misuse or abuse of District-approved Internet/Intranet services.
7. The District shall maintain an Internet filter to control, to the extent possible, access to unacceptable sites and shall inform parents and community of the impossibility of eliminating access to all controversial materials, despite strict monitoring.

...

Employees and students are expected to use technology resources in a manner consistent with their position or role within the District, their responsibilities relative to the completion of the District's mission with which they have been entrusted, and the instructional or support function of the resources they are accessing. "Acceptable use," therefore, is defined as the use of technology resources in the pursuit and/or delivery of information or instructional materials and support of the instructional process. The District Administrator shall provide employees and students with procedural guidelines for acceptable use of technology resources that comply with federal and state laws. Acceptable use guidelines shall:

...

2. Prohibit the access of obscene and/or pornographic information and/or images by any employee or student through any technology.

...

The use of technology resources is a privilege, not a right. Employees and students who fail to abide by District guidelines shall be subject to disciplinary action(s), which may include, but is/are not limited to, the revocation of resource use privilege(s), cancellation of user account(s), and legal action when criminal activity is involved.

...

All employees, students (as well as the parents or legal guardians of minor students) and community members shall, as a condition of their use of technology resources, sign a statement affirming their:

1. acceptance of responsibility for the privilege of using District resources;

2. knowledge of the District's acceptable use of technology guidelines;  
and
3. acknowledgment of possible disciplinary response(s) associated with failure to follow District guidelines.

(Legal and cross references, and signatures omitted.)

APPROVED: August 12, 1996  
November 10, 1997

REVISED: May 14, 2001

#### GUIDELINES FOR ACCEPTABLE USE OF INTERNET/TECHNOLOGY RESOURCES/WORLD WIDE WEB PAGE #362 - RULE

The protocols set forth below provide employees, students and community users with information about technology use responsibilities, guidelines, and examples of acceptable, unacceptable, and prohibited uses, and the disciplinary action(s) that may result from violations of the District's acceptable use of technology policy or guidelines.

...

#### Guidelines for the Ethical Use of Technology Resources

...

5. All users shall refrain from viewing material that is commonly considered offensive, including, but not limited to, hate mail, discriminatory remarks and/or materials, and obscene or pornographic material.

...

#### Consequences for Violation of Policy

...

4. . . . Any employee or student violating the policies, and/or rules and regulations shall be subject to disciplinary action, loss of privileges, and/or criminal prosecution.

ACCEPTABLE USE, BY STAFF,  
OF THE DISTRICT'S ELECTRONIC SYSTEMS

...

The Following Activities are Unacceptable and Prohibited by All Users of SDMA Information and Communications Systems:

1. Sending, displaying or communicating in any way messages and/or pictures deemed offensive including those considered by the average member of society to be racially, sexually, or religiously offensive.

...

10. Any other activity deemed inappropriate for an educational institution or setting.

**Violations:**

Any staff member in violation of this Policy will be subject to discipline as outlined in Board Policy 522.3 and 522.3 Rule.

(Legal and cross references and signature omitted.)

FIRST READING: September 15, 2008  
APPROVED: TBD (Arbitrator's note: The District's brief states that this policy was approved on October 13, 2008. The Union does not dispute this.)

**BACKGROUND**

The Grievant was employed as the Head Building Custodian for the District's Middle School on July 1, 2002. Prior to that time he had been a Custodian/Occasional Major Maintenance worker, a Custodian in the High School, an Electrician, and a Media Communications (AV) Technician, all in the employ of the District.

Policy #362 was in effect during the majority of Grievant's improper use of the District's e-mail and prohibits the use of pornographic material.

Even though the District maintained a spam filtering system, it could not filter all messages from getting through and so the District's policy was that when spam was received by an employee

he or she was supposed to delete it. Also, a real person (as opposed to a spammer) could send e-mails into the system bypassing the filter. The filter cannot review and scan attachments so if there were no obscene or pornographic material in the message itself, it would get through. Grievant testified that he knew the difference between appropriate and inappropriate e-mails at work. He had forwarded an e-mail to another employee (Green) containing pornographic material and kidded him about receiving material which was actually meant for Green. In response to Green's inquiry about what he meant by this comment, the Grievant explained that he knew the difference and just wanted to inform him that this material got through the filter.

Grievant testified that he did not attend a staff meeting during which the Acceptable Use Policy was addressed, even though it was mandatory, but work records show that he was working on that day and testimony showed that in the case of an all-staff meeting he should have been there. Because of the e-mail interchange with Green, Green conducted an investigation into the e-mail messages in Grievant's inbox. During the investigation he discovered several e-mails which appeared to be inappropriate. He then spoke to the administration and received permission to continue the investigation further. In so doing he discovered offensive, obscene and pornographic materials. He also discovered that the Grievant had deleted the copies of his forwarded e-mails and thus could not discover to whom they had been sent. At this point the Grievant was placed on administrative leave and the District asked the Menomonie Police Department to assist them in the investigation.

Sergeant Crouse took possession of the computer and determined that the Grievant had, on at least two occasions, opened pornographic attachments. Other District employees' computers were also investigated and were found not to contain such material. The District asked the Grievant to identify other employees who may have received similar e-mails and the Grievant refused to provide the District with any names. The Grievant was then terminated.

This grievance followed.

### **THE PARTIES' POSITIONS**

#### **The District**

The District had just cause for terminating the Grievant based on his repeated access, retention, and forwarding of offensive, obscene and pornographic materials. The District presented overwhelming evidence of these offenses, all of which violated District policy. Exhibits 18 through 39, and 41 (e-mail messages received from outside sources by the Grievant) all have message titles suggesting pornographic or offensive materials. Sergeant Crouse's investigation found images of naked women, a naked woman pulling a naked man by his penis, women exposing their breasts, pictures of female sexual organs, profane jokes, pictures of an under-aged girl next to the word "fellatio", profanity, pictures of under-aged children next to comments of a profane or sexual nature, and jokes containing racist and homophobic content. The police report proves that the Grievant viewed these images on the District's computer at school.

The Grievant's testimony to the effect that he did not know of the District's policy against this behavior is not credible. All new employees receive the policy, the Grievant was on the technology team at one time and he received a personal e-mail containing the policy. He was asked to sign a copy of this policy but failed to do so, whereupon the policy was placed in his personnel file with notice to him. Grievant's testimony that he believed if an e-mail got through the filter it was not inappropriate is not credible. The e-mails in question were sent by an outside person, not a spammer, so they would have gotten through and the Grievant was aware of that.

Grievant's testimony that he had neglected to delete the offensive e-mails because his memory was not good is belied by his remembering to delete the record of every e-mail he forwarded to others.

Grievant's conduct was immoral and warrants discharge. This conclusion is based on the strong public policy against immoral conduct in schools. Citing CEDARBURG EDUCATION ASSOCIATION V. CEDARBURG BOARD OF EDUCATION, 313 Wis.2D 831, 2008 WL 2812714 (Wis. Ct. App. July 23, 2008), *review denied*, 764 N.W.2D 531 (Wis. Jan. 13, 2009). The importance of CEDARBURG is that the conduct took place on school grounds.

In this case, unlike CEDARBURG, there were numerous instances of accessing pornography instead of only one. While CEDARBURG concerned a teacher, its holding is applicable to all school employees. To keep a custodian on its staff after discovering his use of pornography would violate the public policy identified in CEDARBURG.

Grievant's discipline was not disparate and was appropriate. The District did not find any other employees who violated the policy, thanks in part to the Grievant's refusal to give up the names of other employees who were recipients of these e-mails. Based on forwarded e-mails first discovered by Green, other employees' computers were checked and found not to have any of these materials. In the Fall of 2009 the District did not have the ability to run a search of all e-mail boxes in the District so it attempted to speak with the Grievant and the person who had sent him the e-mails in order to determine the identity of others involved. They both declined to cooperate. The District now has software which will allow it to make such a search. The Grievant's assertion that there were other employees doing the same thing he was discharged for is simply speculation. There is no proof of it.

Based on the number of violations and their egregious nature, discharge is the only punishment for this conduct.

### **The Union**

The CEDARBURG case does not apply here because that case related to teachers, not custodians. He had no direct involvement with students as do teachers.

The District failed to submit any evidence of insubordination. That requires (1) the Grievant be given orders, (2) the Grievant refused to obey orders, (3) the orders came from the



Grievant's supervisors, (4) the orders were reasonably related to his job and within the contractual language, (5) the orders were clear, direct and understood by the Grievant, (6) the Grievant was forewarned of the consequences of his failure to obey with reference to the contractual guidelines, and (7) the Grievant was not protected from possible discipline by his role as a representative of the employees.

There is no evidence that the Grievant was either given or disobeyed any direct order from a supervisor nor that he was informed of the policy by which the employer seeks to terminate him.

The decision of the unemployment tribunal (Administrative Law Judge Larson) should be given great weight. She found that the Grievant did not save the material on his computer; that he did not receive a copy of the employer's policy; that he was credible; that he understood that if the e-mail was being received and going through the employer's filter, that it was not a problem; there were no students in his work area; his actions did not evince a substantial and intentional disregard of the employer's interests or standard of conduct the employer had a right to expect of him; and his discharge was not for misconduct connected with his employment.

There is no evidence the employee was made aware of the District's policy regarding e-mail usage. Key here is whether he had knowledge of Policy #527 and there is no evidence that he did. He testified that he never received a copy of it and the employer cannot provide a signed (by Grievant) copy of it. In the October 24 interview the District tried to get him to admit he knew about it without success. The testimony shows it was on the school's web site but a supervisor in Technology Services could not say when it went on the site.

The District says he was informed of the policy at a staff meeting on August 8, 2008 but failed to put on any witnesses who were at the meeting to testify that the Grievant was there. The Grievant testified that he was working and did not attend the meeting. There is no evidence that he was there. Considering all the staff in attendance, the fact that the District could not find one to testify that he was there "speaks volumes."

The District asserts that when the Grievant worked in AV Tech he would have overheard conversations about internet violations but no actual witnesses testified to this. His role in AV Tech was a mechanical one. He says he was an outsider as it related to computer services and was not given any training in that area and he was not graded highly by his supervisors. He testified that he did not know how to do all of the things with and to e-mails that he was accused of doing.

The Grievant relied on the assurances of the Superintendent regarding the internet filter. He believed that any e-mail that made it through the filter was considered by the District to be OK. Because the e-mails were saved by the server he had no reason to believe he was in any disciplinary jeopardy.

The District has shown animus toward the Grievant and has singled him out for punishment. What started the investigation was a Miller beer ad. Green noticed many e-mails from a retired custodian, and many of them contained questionable material. Green did not even do a

data log to see where e-mails from the outside source were coming from. Woll told Green to check for any of these e-mails to other employees but the testimony shows he had neither the time or the technology to do so. The Grievant cannot be disciplined for behaviors that others may have committed without penalty. The outside source testified that he had sent e-mails to other employees but none was checked by the District. He was never blocked from sending e-mails into the system although the Grievant could not do so. The District permits the purveyor of the material to continue sending materials into the District but terminates the Grievant. This shows animus towards the Grievant.

The Grievant had filed many grievances as an officer of the Union. One of these grievances “involved Sue Molitor, a supervisor in Tech Services for whom the Grievant had worked as the AV Tech who turned him down for a thirty day trial. According to the Grievant she had engineered his departure from the department (the Grievant was laid off April 2001) in order to get a raise for the others in the department. She refused to give him a thirty day trial period as a computer tech in 2002.” Green was also angry and looking for a reason to investigate him. The failure of Green to look as deeply into the others who received (the outside source’s) e-mails strongly supports the fact this employee was singled out.

Termination is excessive. Progressive discipline should be followed. The District’s interests, if any, could have been easily served by a less drastic penalty. The Grievant should be reinstated and made whole with all references to this matter removed from his file. The District should issue the Grievant an apology with a copy to all staff.

### DISCUSSION

This case requires the Arbitrator to determine whether the District had just cause to discharge the Grievant. Clearly the Agreement requires just cause and the parties do not disagree on this point. Few, if any, contracts contain a definition of “just cause” and the Agreement here is no exception. There is no uniform definition of what constitutes just cause and so it becomes the job of the Arbitrator to define such parameters based upon the facts and the evidence of the case. On the function of the Arbitrator in such cases, I agree with Arbitrator Harry Platt. He said:

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 wrongdoing 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. To be sure, no standards exist to aid an Arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what reasonable men, mindful of the habits and customs of industrial life and of the standards of justice and fair dealing prevalent in the community ought to have done under similar circumstances and in that light to decide whether the

conduct of the discharged employee was defensible and the disciplinary penalty just. RILEY STOKER CORP. 7 LA 764, 767 (Platt, 1947)

The undersigned believes that 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. (See Platt, "Arbitral Standards In Discipline Cases", in The Law and Labor-Management Relations, 223, 234 (Univ. of Mich., 1950). Fully entrenched in this belief are the core concepts of due process and fair dealing.

The Union urges the undersigned to ignore the Appeals Court decision in CEDARBURG EDUCATION ASSOCIATION V. CEDARBURG BOARD OF EDUCATION, 313 Wis.2d 831, 2008 WL 2812714 (Wis. Ct. App. July 23, 2008), *review denied*, 764 N.W.2d 531 (Wis. Jan. 13, 2009) on the basis that it relates solely to teachers and has no bearing on a matter relating to a custodian. The District, on the other hand, argues that CEDARBURG stands for the proposition that the State of Wisconsin has a strong public policy against *any* school district employee engaging in immoral conduct and that viewing pornography with District computers, on District property and on District time constitutes immoral behavior. The "protection of children and the promotion of a safe educational environment is a clear and compelling public policy." *Id.* at 4. The undersigned has carefully reviewed CEDARBURG and believes that the District's interpretation is correct. In any event it is not necessary for the undersigned to decide whether CEDARBURG applies to all school district employees or only to teachers. That is for the Court to decide. My job is to decide whether the District has satisfied the contractual requirement for just cause in support of the discharge of the Grievant. In that sense whether CEDARBURG applies to custodial staff or not is irrelevant to the decision I am asked to make.

The Union argues that the District failed to present any evidence of insubordination, one of the reasons for his discharge. The record evidence relating to the insubordination charge is sketchy and seems to relate solely to the Grievant's refusal to give the District the names of persons to whom he may have sent e-mails containing pornographic or other inappropriate material. The evidence supports the conclusion that the District did not *order* him to do so but only asked him if he would divulge the names. There is no evidence that he was informed of the consequences of his failure to comply with the District's request and his refusal to do so does not rise to the level of insubordination.

Prior to May, 2009 the Department of Workforce Development issued its initial determination that the Grievant was not eligible for unemployment benefits. This determination was reversed by Administrative Law Judge Theresa M. Larson on May 8, 2009. The issue before her was whether the employee's discharge was for misconduct connected with his employment. She reversed the Department on the following grounds:

The employee received sexually explicit e-mails and did not save them to his computer.

The employee did not receive a copy of the employer's policy on the use of information or technology resources and that he had asked the library media person what the policy was but did not receive a response.

Misconduct, as applied to unemployment insurance, means:

The intended meaning of the term 'misconduct' . . . is limited to conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. *BOYNTON CAB CO. V. NEUBECK & IND. COMM.*, 237 Wis. 249 (1941)

The Employee was credible that he had not received a copy of the employer's policy relating to e-mail usage; that he had complained to the technology person when he was receiving unsolicited sexually explicit material; that he understood that if the e-mails were getting through the employer's filter it was not a problem; that he was not involving others at work with the e-mails he received; he was not storing them or distributing them or otherwise displaying them to others; and that there were no students in his work area, and rarely non-custodial staff.

She concluded that the employee's actions did not evince a substantial and intentional disregard of the employer's interests, and of the standard of conduct which the employer had a right to expect of him and that he was not terminated "for misconduct connected with his employment, within the meaning of Section 108.04(5) of the statutes."

The Union urges the undersigned to give great weight to the unemployment tribunal. I decline to do so for numerous reasons. I am not constrained to determine the issue before me "within the meaning of 108.04(5) of the statutes" as was she. As mentioned above, my function is to determine whether the District has shown just cause under the terms of the Agreement to discharge the Grievant. The findings of the ALJ were, presumably, based upon the facts and evidence before her and I am not aware of those facts and that evidence. I am aware only of the facts and evidence presented by the parties at the hearing of this grievance and it is upon those facts and that evidence that this matter will be decided. The conclusions I draw from the evidence here may well be, and in fact are, very different than the conclusions drawn by ALJ Larson. Further distinctions between her findings and those of the undersigned will become apparent further in this Discussion.

Next the Union argues that the Grievant was not made aware of the District's policy regarding e-mail usage. Policy No. 362 entitled "ACCEPTABLE USE OF INTERNET/TECHNOLOGY RESOURCES, explicitly prohibits the use of District resources to access obscene or pornographic information or images. District Rule 362 provides that all users refrain from viewing material that is commonly considered offensive, including but not limited to, hate mail, discriminatory remarks and/or materials, and obscene or pornographic material and further provides that distribution or collection of obscene, abusive or threatening material via telephone, video, electronic mail, Internet or other means is unacceptable. Finally, the rule provides that any employee or student violating the policies, and/or rules and regulations shall be subject to disciplinary action, loss of privileges, and/or criminal prosecution.

The Grievant was a member of the technology team. The evidence shows that as a member of the technology team he was part of the group responsible for enforcing the acceptable use policy. Although he was primarily responsible for hardware and did not personally conduct investigations into violations of the policy, he worked closely with those who did. Sue Molitor, the District's Custodial/Maintenance & Computer Network Services Executive Assistant, testified credibly that the Acceptable Use Policy was available to all employees and that it was also on the District's website where the employees clock in and out, twice daily. Also, the Grievant worked on the technology team and took questions from other employees regarding the policy during that time. For the afore-stated reasons I find the Grievant's testimony denying that he knew of the policy to be incredible.

Regarding the Union's argument that the Grievant never signed the copy of Policy No. 527, "ACCEPTABLE USE, BY STAFF, OF THE DISTRICT'S ELECTRONIC SYSTEMS" and thus cannot be held responsible for being aware of it, I find this argument to be without merit. The e-mail was sent to the Grievant on more than one occasion with the request that he sign and return it. He failed to do so whereupon it was placed in his file and he was notified of this action by e-mail. He testified that he does not recall receiving these e-mails but, again, his testimony is not credible. The more reasonable conclusion is that he failed to sign it because he knew he was already guilty of violating it and did not want his signature to appear on the policy.

The Grievant's assertion that he relied on the filtering system to completely eliminate all offensive materials getting through and that, in the event material did get through the filtering system it was appropriate is absolutely outrageous. The materials on the Grievant's computer were terribly offensive, pornographic, racially objectionable and obnoxious. The Grievant's testimony that he perhaps did not recognize them as such because he had once worked in "construction" is also incredible. No reasonable person could view these materials and consider anything about them to be acceptable on any level and they may hardly be deemed appropriate for an educational institution or setting.

The Union argues that the Grievant was singled out for punishment because of the District's animus toward him. The fact that the District did not block the individual who sent the e-mails to the Grievant's computer, the fact that the District did not do a data log and the fact that others were not disciplined (none were found to have violated the policy) does not prove animus

against this Grievant as the Union argues. The record does not support the Union's allegation that animus is shown based on the fact that the Grievant had filed previous grievances or the allegation that Molitor had failed to give him a thirty day trial in the past. Other than the Grievant's own testimony that the District harbored animus toward him, which the Arbitrator does not find credible, no evidence in this record remotely suggests animus as a driving force behind this discipline.

The record clearly shows that the District has provided sufficient evidence to meet its burden of proving that it had just cause to discipline the Grievant. The extensive report of the Police Department's investigation into the Grievant's computer and its contents, along with the un-rebutted testimony of Sergeant Crouse, Menomonie Police Department Forensic Computer Lab Services, affirms that the Grievant took steps to, and did, download and save these offensive and obscene materials. It is unknown whether he forwarded them to others because he managed to delete his forwarded e-mails prior to their investigation, but common sense leads the reasonable person to that conclusion.

I find that the District has proved that the Grievant engaged in immoral behavior consisting of receiving, opening, viewing, and retaining sexually explicit, pornographic, and other inappropriate photographs and materials on a School District computer while on school property; that this behavior violated District's policy; and that the District had just cause to discipline the Grievant. I also find that this behavior warrants the discipline issued by the District.

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

**AWARD**

1. The Employer had just cause to discharge the Grievant.
2. The grievance is dismissed in its entirety.

Dated at Wausau, Wisconsin, this 25th day of September, 2009.

Steve Morrison /s/  
\_\_\_\_\_  
Steve Morrison, Arbitrator

SM/gjc  
7483