

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OOSTBURG EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF OOSTBURG

Case 11
No. 70682
MA-15023

Appearances:

Anthony L. Sheehan, Attorney, Wisconsin Education Association Council (WEAC) – Legal Department, 33 Nob Hill Rd., P.O. Box 8003, Madison, WI 53708-8003, appearing on behalf of the Oostburg Education Association.

Paul C. Hemmer, Davis & Kuelthau, S.C., 605 N. 8th St., Suite 610, Sheboygan, WI 53081, appearing on behalf of the School District of Oostburg.

ARBITRATION AWARD

Pursuant to the terms of the collective bargaining agreement (CBA) between the Oostburg Education Association and the School District of Oostburg, I was selected from a panel of arbitrators provided by the Wisconsin Employment Relations Commission to hear and resolve a dispute between the parties. The dispute involves the School District's suspension of the Grievant, a Technology Education Department teacher, for two days without pay, based on his conduct on December 20, 2010. The conduct at issue related to the Grievant's ordering of supplies for a class project and his interaction with an employee of the supplier.

A hearing was held on July 27, 2011, in the Board of Education Meeting Room in Oostburg, Wisconsin. There is no stenographic or other transcript of the proceedings. A briefing schedule was set, pursuant to which the last brief was received on October 19, 2011.

ISSUE

The parties stipulated to the following statement of the issues:

1. Did the School District have just cause to suspend [the Grievant] from employment without compensation for two days on January 21 and 24, 2011?^[1]
2. If not, what is the appropriate remedy?

FACTS

I. Grievant's Employment History

The Grievant has been employed as a teacher in the Technology Education (Tech Ed) Department by the School District of Oostburg since the 2001-2002 school year. During the 2010-2011 school year, the Grievant taught a variety Tech Ed courses, primarily in the high school. He taught one course every other day in the middle school. His teaching time was split approximately 7/8 high school and 1/8 middle school. At all times material, Principal Scott Greupink has supervised the Grievant at the High School and has been the only principal to evaluate him. The Grievant has received excellent evaluations, has increased the number of students in the Tech Ed program, and, with the exception of the two-day suspension at issue herein has never been formally disciplined. During the Grievant's approximately ten-year tenure, the District granted him a two-year sabbatical and guaranteed his position upon his return.

II. Supply Ordering Procedure and Grievant's Past Non-Compliance

The Grievant's responsibilities include ordering supplies online for student projects, using menu-driven software. When making a purchase request, the teacher inputs relevant information, including the vendor, product description, unit cost, desired quantity, and account number from which the funds are to be drawn to pay for the requisition. The Tech Ed Department has a supply account for purchasing supplies. If the balance in the supply account is negative and/or it has insufficient funds to cover the requested purchase, the computer queries the user whether he/she wishes to do an override. If the user does so, the requisition is automatically sent electronically to the teacher's supervisor, and the supervisor receives an electronic notification that there is a pending requisition requiring approval. The supervisor (Principal Greupink for the Grievant) then selects one of two options offered by the computer: either approve or

¹ The parties stipulated to these issues prior to the arbitration. The version on which they agreed expressly referenced the Grievant's name, which I have omitted. Other than this omission, my statement of the issues mirrors the written version to which the parties stipulated.

disapprove. The supervisor may consider not only the budget but also the educational value of the requisition in making his decision. However, Principal Greupink never approves a requisition if the supply account shows a negative balance. If the supervisor approves the requisition, it is then forwarded to Superintendent Hanes, who also must either approve or disapprove the requisition. If he approves the requisition, it forwards to Kristin DeBruine, the Director of Finance and Personnel, who has the final approval decision. While she never disapproves a requisition based on her perception of its educational value, she may disapprove, and has disapproved, a requisition for budgetary reasons. If approved by Ms. DeBruine, the requisition becomes a purchase order and goes to Ms. DeBruine's bookkeeper to be assigned a purchase order number. Only after a requisition has gone through the entire purchasing approval process and, more specifically, only after a purchase order number has been issued as the last step in that process, is the requisition considered approved and an actual purchase authorized.

Although no requisitions are supposed to be made without a purchase order number, prior to the events of December 20, 2010 (detailed below), the Grievant made multiple purchases without first obtaining a purchase order number. These incidents prior to December 20th prompted Ms. DeBruine to instruct the Grievant at least four times not to make purchases without first obtaining a purchase order number, and Principal Greupink to issue a similar directive at least twice. In response to Ms. DeBruine's instructions in this regard, on several occasions, the Grievant apologized and assured her that he would not make the same mistake again (*i.e.* making purchases without first obtaining a purchase order number).

III. Events of December 20, 2010, Giving Rise to Two-Day Suspension

The events of December 20, 2010, on which the two-day suspension is based are detailed below and fall under two general categories: 1) the Grievant's online order of lacquer and other supplies for a school project, despite insufficient funds, no prior approval from the Principal, and no purchase order number; and 2) the Grievant's unprofessional treatment of Mary Kreutz, an employee of the vendor from which the lacquer was ordered, during a phone conversation.

A. Grievant's Online Requisition of Lacquer

On December 20, 2010, the Grievant sought to place an online requisition to one of the District's vendors, Fasse Paint Company, for two, five gallon containers of lacquer and other supplies to be used for a school project. When the Grievant inputted relevant information, the computer indicated a total cost of \$325.00 for the requisition. Prior to placing the order, the Technology Education Department supply account balance had been negative; therefore, the computer alerted the Grievant to this negative balance and queried whether he wanted to override the system to complete the online portion of the requisition. The Grievant did elect to override the system. After the

\$325.00 was deducted from the supply account,² its balance was shown on the Grievant's computer screen in a red-colored font to be \$707.99 in the negative. Following the Grievant's override, the requisition was automatically forwarded to Principal Greupink, who disapproved the transaction the same day it had been made (December 20th) for lack of sufficient funds. The computer screen indicated in the "Requisition Status" field that the transaction had been disapproved by Principal Greupink. A notice of this disapproval was sent electronically to the Grievant. In addition, Principal Greupink printed the requisition pages signaling the disapproval and placed them in the Grievant's mailbox.

After Principal Greupink disapproved the requisition, the Grievant could have spoken to him to request his approval. Had the Grievant done so, Mr. Greupink could have then consulted with Ms. DeBruine, and, in their discretion, they may have approved the requisition. Nevertheless, the Grievant did not subsequently consult with Principal Greupink to obtain his approval of the purchase and to obtain a purchase order number prior to making the purchase. Instead, the Grievant purchased the lacquer and related supplies via telephone without District approval by calling Fasse Paint Company and placing the order.

B. Grievant's Phone Conversation with Ms. Kreutz

When the Grievant telephoned the Fasse Paint Company to place his order, he spoke with employee Mary Kreutz, who informed him that the lacquer the Grievant had requested was not in stock, but that it could be called in to, and delivered from, the company's local industrial site. This lack of immediate availability frustrated the Grievant and prompted him to complain. An unpleasant telephone discussion ensued, during which the Grievant treated Ms. Kreutz in a rude manner that she considered to be among the worst treatment that she had received from Fasse Paint customers in her thirteen years of employment with the company. Ms. Kreutz advised the Grievant that the lacquer should be available for pickup before 10:00 that morning. The Grievant accepted this. In response to Ms. Kreutz's request for a name and number, the Grievant advised her to call Brian Hanes when the order was ready, and provided her with the School District's central office telephone number. At that time, Brian Hanes was the School District Superintendent.

IV. Events Following Grievant's Phone Discussion with Ms. Kreutz

At approximately 9:30 a.m. that day, Mary Kreutz called the School District central office and asked the receptionist if she could speak to Brian Hanes. She

² The \$325 was the amount inputted by the Grievant and thus the amount for which the Grievant sought approval. The actual total cost of the lacquer and supplies ultimately turned out to be \$278.38. Generally speaking, as was the case here, the amount requested may not mirror the actual cost. The difference here is not indicative of any malfeasance.

identified herself as Mary from Fasse Paint Company. Because Brian Hanes was not available to speak at the time, Ms. Kreutz was put through to Hanes' voicemail, on which she left a message identifying herself and indicating his lacquer was ready for pickup. Neither Mr. Hanes nor Ms. Kreutz knew one another. Mr. Hanes returned Ms. Kreutz's call and she explained the voicemail message. During their discussion, Ms. Kreutz clarified that somebody had placed an order for lacquer and that it was somewhat of a rush order. Mr. Hanes informed her that he had not placed the order, but that the order would be picked up. After the call, Mr. Hanes looked into who had placed the lacquer order and discovered that the Grievant had done so.

Mr. Hanes subsequently discussed the situation with Middle School Principal Steve Harder. They decided to investigate the matter further and met with the Grievant the day before the holiday break. The Grievant confirmed having placed the order for two containers of lacquer. Mr. Hanes and Mr. Harder then called Ms. Kreutz using a speaker phone. During this conversation, Ms. Kreutz again confirmed that the Grievant had instructed her to call Brian Hanes when the lacquer was available for pickup. Mr. Hanes apologized for the Grievant's treatment of her.

When the Grievant had picked up the two, five-gallon containers of lacquer and other supplies during the afternoon of December 20th, he had inquired whether he could leave the lacquer in his vehicle overnight, or whether he should take it inside. Ms. Kreutz had advised that due to cold weather, it would be better to take the lacquer inside. The Grievant thus had taken the lacquer into his house. On the following day, the Grievant had grabbed only one of the two buckets of lacquer and brought it to school. During the later questioning about the incidents at issue by Superintendent Hanes and Middle School Principal Harder noted above, the Grievant offered to (and later that day did) bring the other bucket of lacquer to the school.³

In a letter to Brian Hanes dated January 7, 2011, Principals Greupink and Harder recommended that the Grievant be suspended for two days and detailed their reasons for the recommendation. Following receipt of this letter, Brian Hanes met with Ms. Kreutz in person at the Fasse Paint store. Ms. Kreutz confirmed for the third time that the Grievant had given her Brian Hanes' name to call when the lacquer was ready for pickup. In a letter dated January 14, 2011, Brian Hanes advised the Grievant that he was being suspended without compensation for two working days for his conduct on December 20-23.

³ Although the District's September 7, 2011 letter recommending a two-day suspension referenced *inter alia* the Grievant's unauthorized retention of School District property, the District's briefing does not advance this argument in any significant way. Moreover, I do not find persuasive evidence, nor does the District suggest that the Grievant was attempting to misappropriate the lacquer for his own benefit. Accordingly, I do not rely in any way on the Grievant's delay in returning one bucket of lacquer to the school in my disposition of this grievance.

V. Grievant's Rationale for Lacquer Purchase and Facts Related to Veggie Car

To justify completing the lacquer transaction, despite his knowledge of a negative supply account balance and his lack of a purchase order number, the Grievant asserts that he was relying on the deposit of funds that would have covered the transaction and that he alleges had been promised to be deposited into the Tech Ed Department supply account. More specifically, these additional funds were \$1,800.00 generated by the Grievant's sale of a vehicle, commonly referred to as the "veggie mobile" or "veggie car." This car was denominated as such, because it had been modified by Tech Ed students as a class project to run on vegetable oil.

The relevant facts related to the veggie mobile project, its sale by the Grievant, and the disposition of the proceeds, are as follows. In 2006, the Grievant prepared a proposal requesting funds to purchase a vehicle to be converted to vegetable oil. With the aid of materials the Grievant had prepared, Luke Siebert, another high school teacher in the Tech Ed Department, presented the veggie mobile proposal to the Oostburg Board of Education on June 21, 2006. The Grievant was not present at this meeting. The request for funds for the project was approved, on the condition that the proceeds from the sale of the vehicle after the project's completion would be returned to the District's general fund. Administrators present at this meeting included Brian Hanes and Steve Harder, but not Kristin DeBruine (who did not work for the District at that time) or Principal Greupink.

After the veggie car project had been completed, the Grievant had difficulty selling the vehicle, despite his considerable efforts to sell it on his own time. At some time prior to December 20, 2010, possibly in early December, the Grievant did find a buyer for, and coordinate the sale of, the vehicle for \$1,800.00 cash. The buyer, a local businessman, later facilitated the donation of a high end welder worth thousands of dollars. The Grievant gave the proceeds of the veggie mobile sale to Kris DeBruine, who, at the time, believed and communicated to the Grievant that the \$1,800.00 would be deposited into the Tech Ed supply account. Principal Greupink also confirmed Ms. DeBruine's understanding in a discussion with her, which she then memorialized in an email sent to the Grievant and copied to Mr. Greupink. That email was sent on December 22, 2010, two days after the Grievant had purchased the lacquer from Fasse Paint Company.

Following the December 22nd email, Ms. DeBruine spoke with Principal Harder, who informed her that she was not only mistaken in her understanding that the \$1,800.00 veggie car sale proceeds were to be deposited into the Tech Ed Supply account, but that she had no authority to deposit the funds into that account. Such authority did not exist, because the proposal approved by the Board had required the sale proceeds to be returned to the District's general fund for use on other large projects. Neither Ms. DeBruine nor Principal Greupink knew this, because they had not

been present at the 2006 Board meeting at which the veggie mobile proposal had been made and approved. Because Ms. DeBruine lacked the authority to deposit the sale proceeds in the Tech Ed supply account, the money was deposited to the general fund, pursuant to the conditions of the Board's original approval.

VI. Relevant Contractual Provisions

Provisions of the CBA germane to this dispute include the following:

ARTICLE II: BOARD FUNCTIONS

A. The Board's right to operate and manage the school system is recognized including . . . the right . . . to establish and require observance of reasonable rules and regulations The Board agrees that no employee except those with probationary contracts may be . . . suspended . . . except for just cause.

(CBA, p. 4)⁴

Additional facts and references to the evidence presented are set forth below where appropriate.

ANALYSIS

The first issue is whether the School District had just cause to suspend the Grievant from employment without compensation for two days. Resolving it requires me 1) to determine an appropriate construction of just cause; and 2) to apply that construction to the facts herein.

I. THE APPROPRIATE CONSTRUCTION OF "JUST CAUSE"

The Union acknowledges that while there are many formulations of just cause, one commonly accepted approach consist of two elements: 1) did the employer prove the employee's misconduct, and, if so, 2) did the employer establish that the discipline imposed was justified under all the relevant facts and circumstances. (Union Br. 7) The District does not contest, and I accept, this commonly accepted formulation.⁵

⁴ The last sentence of this provision is repeated verbatim in Article VII: Teacher Discipline, ¶ A.

⁵ See, e.g., Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works* 948 (Alan Miles Ruben ed., 6th ed. 2003):

There are two "proof" issues in the arbitration of discipline and discharge cases. The first involves proof of wrongdoing; the second, assuming that guilt of wrongdoing is established and that the arbitrator is empowered to modify penalties, concerns the question of whether the punishment assessed by management should be upheld or modified. . . .

II. APPLICATION OF JUST-CAUSE STANDARD

I first identify the misconduct that the District alleges the Grievant committed, and whether, in fact, he committed it. I then consider whether the discipline imposed was justified.

A. The Grievant Committed the Alleged Misconduct

The alleged misconduct is outlined in the letter dated January 7, 2011, from Principals Greupink and Harder to Superintendent Hanes. The letter describes *inter alia* the events of December 20, 2010, related to the Grievant's requisition for supplies; Principal Greupink's disapproval of that requisition; the Grievant's telephone order of the supplies to Fasse Paint, despite Mr. Greupink's denial and the absence of an approved purchase order; the Grievant's rude treatment of the Fasse Paint clerk; and the Grievant's representation that he was talking to Brian Hanes.

I find that the evidence substantially supports the alleged misconduct. The Grievant does not dispute that on December 20, 2010, he purchased lacquer and other supplies from Fasse Paint Company over the telephone without first obtaining 1) prior authorization from Principal Greupink after the latter had denied his requisition; and 2) a purchase order number. The Grievant had been instructed multiple times prior to this incident by Ms. DeBruine and Mr. Greupink that he must first obtain proper approval, including a purchase order number, before purchasing supplies. The Grievant had acknowledged and apologized for these errors. As detailed above, however, despite these prior directives and the Grievant's apologies for non-compliance; despite the negative balance in the Tech Ed supply account that showed on the computer screen as the Grievant inputted the December 20th requisition (including the override); despite Principal Greupink's disapproval of the requisition showing on the screen and later memorialized in a printout placed in the Grievant's mailbox; and despite not having obtained a purchase order number reflecting administrative approval of the requisition, the Grievant proceeded to order the supplies from Fasse Paint Company.

In addition, Ms. Kreutz credibly testified regarding the Grievant's rude treatment of her in the midst of his frustration over the delay in lacquer availability. In fact, she described his conduct as among the worst treatment that she had received from Fasse Paint customers in her thirteen years of employment with the company. I find the Grievant's treatment of Ms. Kreutz unacceptable, regardless of whether she responded to him in a manner that he deemed inappropriate. In addition, during three separate discussions with Brian Hanes, one of which included Principal Harder and one of which was face-to-face with Mr. Hanes, Ms. Kreutz confirmed that the Grievant had instructed her to call Brian Hanes when the lacquer order was ready for pickup, had never identified himself, and had left the District's central office number. I find this evidence to be compelling proof that the Grievant did leave Brian Hanes' name in a manner that had the potential to, and did in fact, mislead Ms. Kreutz regarding the Grievant's identity.

B. The Discipline Was Justified

Having found the requisite wrongdoing by the Grievant, I must determine whether the two-day suspension was justified. I conclude that the District had just cause for the discipline, based on the totality of the Grievant's wrongdoings detailed above. The Grievant's reliance on Ms. DeBruine's representation that the \$1,800.00 veggie car sale proceeds would be deposited to the Tech Ed supply account, though mitigating to some extent, does not exonerate the Grievant's disregard for supply-purchasing protocol. The fact remains that at the time the Grievant undertook the electronic requisition, the computer alerted him to the fact that the supply account balance was in the negative. At that point, he either knew or should have known that the \$1,800.00 deposit had not been made. In addition, the computer informed him that Principal Greupink had disapproved the requisition. At this point, consistent with required protocol, the Grievant could and should have attempted to ascertain why the deposit had not been made and/or whether, notwithstanding the supply account's negative balance, Principal Greupink, Superintendent Hanes, and Kristin DeBruine would approve the transaction and enable the issuance of the required purchase order number. Instead, the Grievant knowingly shortchanged the supply-ordering protocol and made an unauthorized purchase by telephoning Fasse Paint Company and placing an order, despite Principal Greupink's express disapproval and the absence of a purchase order number. To make matters worse, he had been directed numerous times in the past not to purchase supplies without first obtaining a purchase order number.

Compounding these errors in judgment was his poor treatment of Ms. Kreutz during the placement of the phone order. While the Grievant's frustration with the delay in obtaining needed supplies on a compressed timeline is understandable, venting that frustration on Ms. Kreutz – who had nothing to do with the lacquer not being immediately available – was inconsiderate, inappropriate, and unprofessional. Treating the employee of an established, School District vendor in a manner that she considered to be among the worst treatment received from customers in her thirteen years of employment, is inexcusable in its own right and potentially detrimental in its impact on the District's reputation.

To make matters still worse, at the conclusion of his disreputable phone conduct, the Grievant gave Brian Hanes' name to Ms. Kreutz. I cannot definitively conclude that the Grievant intentionally misled Ms. Kreutz into thinking that the Grievant was Brian Hanes to expedite the lacquer order or to effectuate some other impermissible objective (although that is a possibility). However, I do think that by giving Ms. Kreutz Brian Hanes' name and not identifying himself, the Grievant created at least the foreseeable potential consequence of misleading Ms. Kreutz regarding the Grievant's identity – a consequence made all the more egregious by the unprofessional behavior that Ms. Kreutz would associate with the name the Grievant had left. In short, whether done deliberately or negligently, the Grievant potentially (and in fact) misled Ms. Kreutz into thinking that he was Brian Hanes, and, therefore, that Brian Hanes had treated her so disrespectfully.

Finally, the Grievant's repeated refusals to obtain proper approval (including purchase order numbers) prior to making purchases using Tech Ed supply account funds undermines a protocol that serves invaluable fiscal, public, and educational purposes. The supply-ordering procedure ensures that teachers don't exceed established budgets; that expenditures of taxpayer monies are authorized; that expenditures beyond supply account limits serve a valuable educational purpose and have an available, alternative funding source; and that appropriate oversight of spending to achieve these objectives exists. That requisitions require approval from Principal Greupink, Superintendent Hanes, and Finance Director DeBruine, as well as the issuance of a purchase order number, is telling. The multilayered safeguards of the requisition-approval process underscore the importance and sensitivity of the policies underlying it and the gravity of flouting it. Although the Grievant had been advised multiple times in the past not to shortchange the procedure, he did so once again on December 20th.⁶

In concluding that the District had just cause to issue a two-day suspension, I rely on the totality of the Grievant's errors in judgment detailed above. In upholding the discipline, I am also mindful of mitigating factors, including the Grievant's otherwise solid employment history, positive evaluations, and professional achievements. In addition, I recognize the value and corrective purpose of progressive discipline, the absence of any prior formal discipline of the Grievant, and the lack of any express warnings that the Grievant could be disciplined for failing to obtain proper approval and purchase order numbers prior to making purchases. The Grievant was nonetheless directed multiple times to obtain proper approval and purchase order numbers prior to December 20th, and he apologized for not having done so. Under these circumstances, I do not deem any assumption of immunity from discipline based on the lack of any express warning about its possibility to be reasonable. That said, I also do not believe that a two-day suspension under the circumstances detailed above is inconsistent with the principle of progressive discipline, which does not necessarily require meting out the most innocuous discipline first or expressly warning of possible discipline. Had the District fired the Grievant based on the same facts, for example, I would not sustain the discharge. But here, given the totality of the Grievant's errors in judgment, I believe that the District had just cause to suspend him for two days without pay, even in light of the mitigating factors.

⁶ The District argues that the Grievant may have deliberately concealed from Kristin DeBruine that pursuant to the Board of Education's approval of the veggie mobile project in 2006, the funds from the sale of the vehicle were to be placed in the District's General Fund, not the Tech Ed Department's supply account. I need not, and do not, draw this conclusion. Although the Grievant helped to draft the veggie mobile proposal, he did not present it to the Board – Luke Siebert did. It is unclear whether the Grievant ever was aware of the conditions the Board had placed on the deposit of the vehicle sale proceeds (i.e. to the General Fund) when it had approved the proposal at the 2006 Board meeting – a meeting that the Grievant had not attended. Moreover, even if he was aware of these conditions when the Board approved the veggie mobile project and funding, it is unclear whether he forgot them and/or whether they evolved over time. Regardless, when the Grievant made the requisition for supplies on December 20, 2010, the \$1,800.00 deposit had not been made to the supply account; the Grievant was aware or should have been aware that the funds weren't there; the supply account was in the negative, requiring an override for the requisition; the Principal disapproved the requisition; notice of his disapproval was sent to the Grievant, and no purchase order number was issued.

Lastly, the Union's suggestions that the District's investigation leading to discipline was biased and that it acted in bad faith do not disturb my conclusion that the discipline should be upheld. Even assuming *arguendo* that Principal Harder had a bone to pick with the Grievant and that the District's investigation was somehow biased by Mr. Harder's involvement, such a bias does not change the facts detailed above on which I conclude that the District had just cause to issue a two-day suspension. Moreover, the District's concerns related to the actual cash sale of the veggie mobile that the Union argues were raised in bad faith have nothing to do with the facts on which I am relying, my reasoning, or the conclusions I draw.

CONCLUSION

For the foregoing reasons, I conclude that the School District of Oostburg had just cause to suspend the Grievant for two days without pay. Accordingly, the Union's grievance is hereby denied.

Dated at Madison, Wisconsin, this 17th day of January, 2012.

John C. Carlson, Jr., /s/

John C. Carlson, Jr., Arbitrator

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