

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

LYLE TRAUTMANN

Under the Grievance Procedure of

CLINTONVILLE PUBLIC SCHOOL DISTRICT

Case ID: 438.0000

Case Type: IHO

DECISION NO. 35745

Appearances:

John E. Thiel, John E. Thiel Law Office LLC, 5601 Grande Market Drive, Suite K, Post Office Box 7560, Appleton, Wisconsin, appearing on behalf of Lyle Trautmann

Craig T. Maxwell, Law Offices of Craig T Maxwell, 403 South Jefferson, Green Bay, Wisconsin, appearing on behalf of the Clintonville Public School District.

DECISION OF THE IMPARTIAL HEARING OFFICER

On March 25, 2015, the Clintonville Public School District filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint Rodney G. Pasch, Commissioner, to serve as the Impartial Hearing Officer in a proceeding involving the discipline of employee Lyle Trautmann. Trautmann was represented by Attorney John Thiel. A hearing was conducted on May 14, 2015, in the District Office of the Clintonville Public School District. The hearing was not transcribed and the record was closed on May 14, 2015. Having considered the evidence, the arguments of the parties and the record as a whole, I issue the following decision.

ISSUE

The parties stipulated to the issues as follows:

Did the School District act in an arbitrary and capricious manner when they disciplined the Grievant for leaving a class early which

had been assigned to him after normal working hours. If so, what is the remedy?

FACTS

1. Respondent Clintonville Public School District (“District”) is located in Clintonville, Wisconsin.
2. Grievant Lyle Trautmann (“Trautmann”) is a teacher for the District.
3. Trautmann was assigned to a modified teaching schedule that went beyond the standard workday of 7:30 a.m. to 4:00 p.m. by including the After School Alternative Program “Trucking to Success.”
4. Trautmann did not agree with the modified work schedule.
5. On Tuesday October 28, 2014, Trautmann left the Longfellow School without completing his modified assignment in the After School Alternative Program or notifying appropriate supervising staff of his leaving. Trautmann did not fulfill his modified daily assignment because he felt it had been improperly assigned to him under the conditions of his teaching contract.
6. On October 29, 2014, Trautmann again left the classroom at 4:00 p.m. without approval.
7. On October 30, 2014, Trautmann received a letter of reprimand from the District for his October 28, 2014 conduct stating again his modified work schedule that went beyond the standard workday of 7:30 a.m. to 4:00 p.m. in the After School Alternative Program “Trucking to Success.”
8. On November 3, 2014, Trautmann received a two-day suspension for the lack of professionalism and outright insubordination regarding the October 29, 2014 work assignment.
9. On November 6, 2014, Trautmann received a letter of directive from the District again articulating his duty assignment and responsibilities as a teacher.
10. Trautmann filed separate grievances with the District on November 12, 2014, regarding (1) the October 30, 2014 letter of reprimand; (2) the November 3, 2014 two-day suspension letter; and (3) the November 6, 2014 letter of directive.

DISCUSSION

Trautmann was a full-time teacher employed by the Clintonville Public School District for the 2014-15 school year beginning on or about August 21, 2014. In addition to his regular teaching duties, Trautmann's individual teaching contract, under paragraph 6, states:

6. **ADVISORY SERVICES:** The teacher shall take part in such activities as may be reasonably assigned by the Principal or by the Superintendent, including services as class advisor, student advisor, hall duty, assembly duty, and any special duty training, supervising or disciplining students, which may be necessary to introduce for the welfare of the school.

Grievant Ex.4.

Prior to October 24, 2014, Trautmann had received notice from District that his workday schedule had been modified to include working after 4:00 p.m. in the After School Alternative Program, titled "Trucking to Success," located at Longfellow School. Trautmann was also notified by the District that to compensate for the additional time assigned to the program after 4:00 p.m., an equivalent amount of time would be made available to him as free time out of his normal daily schedule to use as he chooses.

Trautmann, in his grievances, argues that management violated District policy when they modified his schedule to work after 4:00 p.m. because it was outside the normal workday. The policy states:

SECTION 2 – PROFESSIONAL HOURS/WORKDAY

2.01 Normal Hours of Work

* * *

Although professionals' work is not limited to any specified number of hours or days per week, the "normal" hours of work for full-time employees in positions authorized as "40 hours per week" are considered to be eight (8) hours per day Monday through Friday not including a duty-free thirty (30) minute lunch period. The actual workday for each building shall be established by the Board. The standard workday for teaching employees is 7:30 a.m. to 4:00 p.m. Teachers will be released when their student responsibilities are completed on Fridays and days immediately preceding breaks.

Grievant Ex.5.

The term "normal" allows a large degree of flexibility in scheduling provided it is for bona fide educational reasons as it was in this case. The policy also allows flexibly because it

does not state the eight hour workday must be consecutive hours. The District also allowed Trautmann the opportunity for commensurate time off for the minutes he would be working after 4:00 p.m. Trautmann confirmed the District had communicated this information to him in advance, and he still chose to leave the worksite unauthorized on October 28, 2014.

Trautmann also states in his first grievance of October 30, 2014, that he should have received a stipend for the work as provided by Section 7.01(C)(2) of Board policy. However, the record clearly confirmed that Trautmann did not have a full workload and was scheduled only to a point to make a full workload. Therefore, the District did not act in an arbitrary and capricious manner when they issued a letter of reprimand on October 30, 2014, as to his October 28 departure.

In the second grievance of October 30, 2014, Trautmann makes the same argument that the District violated Board policy on his workday scheduled on October 29, 2014, and should have been paid a stipend for the extra hours. Trautmann confirmed that he knew he was going against District scheduling directive when again he left early on October 29, 2014. The common theory accepted in labor law is for the employee to carry out the employer directive and grieve later. By not following this precept, in my opinion, Trautmann's action could have severely compromised the safety, security and learning of students in the "Trucking to Success" program. Trautmann also makes two additional arguments: (1) that the District assigned this schedule in retaliation for previous grievances with the District; and (2) the issued suspension constitutes "double jeopardy" for the same violation. I find no factual support for the retaliation argument and with the letter of reprimand covering October 24, 2014; and, with the suspension covering October 29, 2014, there was no "double jeopardy." I also find the District did not act in an arbitrary and capricious manner when issuing a two-day suspension.

The third grievance of November 12, 2014, argues the District violated Board policy when it issued a "letter of directive" on November 6, 2014, clarifying Trautmann's role and schedule in teaching after 4:00 p.m. in the After School Alternative Program "Trucking to Success." The issues and analysis as to this grievance are unchanged from those covered in the three previous paragraphs and need not be repeated here. I find the District did not act in an arbitrary and capricious manner when it issued the "letter of directive" on November 6, 2014.

DECISION

The District did not act in an arbitrary and capricious manner when they issued a letter of reprimand on October 30, 2014.

The District did not act in an arbitrary and capricious manner when issuing a two-day suspension on November 3, 2014.

The District did not act in an arbitrary and capricious manner when it issued the letter of directive on November 6, 2014.

Dated at Madison, Wisconsin, this 23rd day of June 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Rodney G. Pasch, Impartial Hearing Officer