

BEFORE THE INDEPENDENT HEARING OFFICER

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In the Matter of the Grievance of

BETTY WALLACE

Under the Grievance Procedure of the

KICKAPOO AREA SCHOOL DISTRICT

Case ID: 70.0002

Case Type: IHO

DECISION NO. 36179

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**Appearances:**

Betty Wallace, 16691 Cherry Valley Road, Hillsboro, Wisconsin, appearing as the Grievant *pro se*.

Shana R. Lewis, Strang, Patteson, Renning, Lewis & Lacy, 660 W. Washington Avenue, Suite 303, Madison, Wisconsin, appearing on behalf of Respondent Kickapoo Area School District.

**DECISION OF THE INDEPENDENT HEARING OFFICER**

The Kickapoo Area School District discharged Betty Wallace from her employment as head night shift custodian, effective December 23, 2015, pursuant to Part 3, Section 9.01, of the employee handbook, for performance deemed unsatisfactory. Wallace requested a hearing before an independent hearing officer (“IHO”) pursuant to Part 1, Section 5.04. James J. Daley, from the Wisconsin Employment Relations Commission, was selected to serve as the IHO in this matter.

The hearing in this matter was held on February 16, 2016, in Kickapoo, Wisconsin. The parties made oral arguments at the end of the hearing and a transcript of the hearing was produced. No written arguments were submitted by the parties. Based upon the evidence and arguments of the parties, the IHO makes and issues the following decision:

**BACKGROUND**

Betty Wallace was employed as the head night shift custodian by the Kickapoo Area School District. Wallace worked evenings with two other custodians, all of whom had different duties primarily defined by the locations that they were responsible for. Employees were instructed to begin a shift at a scheduled start time of 3:00 p.m., but in no case earlier than 2:45 p.m., in order to do the work that was required without the interference of students during the normal school day. During a shift, there was little opportunity for observation of coworkers' actual working duties. Workers would gather for breaks and lunches on occasion. The arrangement created a large amount of independence for the workers to engage in their duties unsupervised.

Wallace was in receipt of an all-staff memo regarding early clock-in issues, dated September 10, 2012, and a direct remedial letter dated May 19, 2015. Wallace responded on May 26 and received a comprehensive list of infractions dated May 29, 2015. Wallace took no further action.

Between November 2 and 6, 2015, District Administrator Doug Olsen was approached by custodian Dan Van Vuren who indicated that Wallace was taking much too long to clean the library, one of her assigned areas. Van Vuren reported a suspicion that Wallace was sitting around watching television during this time and that, when Wallace finished cleaning the library, she immediately proceeded to the breakroom to take additional time off. After receiving this complaint, Olsen requested that Van Vuren document the incidents and subsequently purchased a camera to record the behavior.

On November 11, 2015, Harold Egge, Buildings and Grounds Supervisor, verbally addressed Wallace on issues relating to not performing her work duties, specifically not taking out trash with food refuse. The next day, November 12, 2015, Egge removed three separate trash bags that were full of milk cartons and other refuse that had not been removed. Simultaneously, Van Vuren was recording the time Wallace spent in the library. While Van Vuren indicated that cleaning the library was a 15 minute job, he observed Wallace routinely in the library for periods between 60 and 105 minutes. Van Vuren kept a written record showing the following time spent in the library:

10-21	60 minutes followed by a 30 minute break
10-22	95 minutes followed by a 15 minute break
10-23	75 minutes followed by a 15 minute break
10-26	105 minutes
10-28	60 minutes followed by a 30 minute break
10-29	60 minutes followed by a 30 minute break
11-09	60 minutes followed by a 30 minute break
11-10	60 minutes followed by a 15 minute break
11-11	45 minutes
11-12	105 minutes followed by sitting in office for 15 minutes
11-13	105 minutes
11-16	75 minutes

11-17	130 minutes
11-18	90 minutes followed by a 60 minute break
11-20	60 minutes followed by a 50 minute break

Beginning on November 17, 2015, Olsen had the camera installed in the library to record the actions of Wallace. Olsen subsequently provided detailed documentation as to the activities reflected in his observation of the recording. The testimony supports waste of time as identified by Van Vuren. Testimony regarding the recording indicates that Wallace would take the time of a commercial break to continue doing her work, and then retreat back to the television once the commercials were over. The time spent actually cleaning was excessive as well, possibly in an effort to extend Wallace's proximity to the television. Based on testimony, Wallace would often leave the library and go directly to the breakroom for a separate break in addition to the time spent watching television.

The record shows that coworkers of Wallace would often have to do extra work to make up for her not completing assigned duties, in some cases working beyond the time they would otherwise work in order to finish. This included duties related to game nights as well as routine garbage removal and cleaning.

### **DISCUSSION**

Wallace acknowledges the behavior that the District accuses her of. She offers no contrary summary of events. The only defense offered by Wallace is that she believed she had permission to clock in and out at her own individual discretion and that other employees have also been wasteful of time in relation to the charges of her "stealing time."

There is little need for discussion regarding the issues involving clocking in early by Wallace. The District documented the incidents and Wallace failed to appeal any progressive discipline in a timely manner. The record supports that Wallace fell into a routine of being warned, correcting the behavior for a time, and then falling back to clocking in and out as she pleased. The District attempted several times to work on this issue with Wallace to no lasting effect. No inference of permission to do so is supported by the record.

Wallace admits to the behavior documented by the District in regards to "stealing time." The record does not support any time wasting by other similarly-situated employees, and the testimony of Wallace indicated what would be considered employee socialization or "water-cooler talk" occurring. Not only is this acceptable for other employees to engage in, it is helpful to morale and teamwork concepts **so long as employees accomplish their assigned duties as well.** Wallace fails to establish that any other employee's duties were not fulfilled. In fact, the record reflects strongly that other employees went beyond their assigned duties, namely making up for Wallace's negligent facilitation of her own assignments. The testimony shows garbage that was unemptied with food products, areas of cleaning that were not addressed, and incidents where Wallace left mid-job on mopping and instructed her coworkers to finish the work directly as she left for home. The actions of Wallace were wasteful and deprived the District of work that

was being compensated for and created additional cost by requiring other employees to work beyond their necessary time to finish her duties. The actions of Wallace were not only selfish by increasing the work of coworkers, but the children and staff of the school ultimately were put in an environment that lacked the cleanliness and hygiene that parents and taxpayers entrust the District to provide. Therefore, the negligence of Wallace, the frequency therein, and the lack of responsive corrective action was in direct opposition to the goals of the District and provide just cause for termination.

**DECISION**

Betty Wallace's grievance is denied.

Dated at the City of Madison, Wisconsin, this 7th day of March 2016.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Independent Hearing Officer