

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

KARL THIEL

v.

MILWAUKEE BOARD OF SCHOOL DIRECTORS

Case 482

No. 72074

MM-6455

Grievance No. 12/060 – Karl Thiel

DECISION NO. 37459

Appearances:

Mr. Greg Beck, MPS District Director, IUOE Local 420, 633 South Hawley Road, Suite 103, Milwaukee, Wisconsin 53214, on behalf of the Grievant.

Ms. Leia Scoptur, Labor Relations Specialist, Milwaukee Public Schools, P.O. Box 2181, Milwaukee, Wisconsin 53201-2181, on behalf of the District.

BACKGROUND

The Grievant, herein, Karl Thiel was discharged from his employment with the Milwaukee Public School District on November 21, 2012 for alleged violations of the District's Employee Rules of Conduct and Building Operations Work Rules. In accordance with the provisions of the District's Employee Handbook, Thiel filed a grievance contesting his discharge. The grievance was sustained at Step 1 of the grievance procedure on December 6, 2012, seeking an adjudication by an Impartial Hearing Officer (IHO). John R. Emery, a staff member of the Wisconsin Employment relations Commission, was selected as IHO and a hearing was conducted on April 15, 2013. The proceedings were transcribed and the transcript was filed on April 24, 2013.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Employer have just cause to discharge the grievant?

If not, what is the appropriate remedy?

APPLICABLE WORK RULES

MPS EMPLOYEE HANDBOOK

Discipline

Generally, discipline is progressive in nature. Disciplinary action may be in any of the following methods: written warning, suspension, demotion, or termination of employment. Specific disciplinary actions will depend on the behavior and frequency of occurrences. Non-probationary employees shall only be disciplined or discharged for just cause, except those employees who otherwise serve at the pleasure of the Board or Superintendent.

Employee Rules of Conduct

The primary objectives for each employee are to protect and further the public's trust and confidence and to perform at a high quality level so that our students, parents, citizens, businesses, representatives of other entities, coworkers and visitors receive high quality services from each employee. In furtherance of those objectives, the Milwaukee Board of School Directors has enacted Administrative Policy 6.07: Employee Rules of Conduct, which sets forth the Board's expectations of conduct for each District employee.

Any employee that violates any District policy, procedure, rule, or regulation, whether written or unwritten, may be subject to disciplinary action, up to and including termination.

The following list of prohibited conduct does not, and is not intended to, constitute the entire list of conduct for which discipline may be imposed:

- Insubordination, including disobedience, failure or refusal to carry out directions, assignments or instructions;

...

- Failure, refusal, or negligence in the performance of assigned duties;

...

- Threatening, harassing, intimidating, interfering with, coercing, injuring, or using abusive language toward students, Board employees, or the public

...

- Failure or refusal to comply with school/departmental work rules, policies, or procedures.

MPS BUILDING OPERATIONS WORK RULES

VII. GENERAL WORK LOCATION PROCEDURES

- A. All employees are expected to demonstrate courtesy and render assistance to members of the public and other employees.

DISCUSSION

Karl Thiel was employed by the Milwaukee Public School District from 1981 until his termination on November 21, 2012. At the time of his discharge, Thiel was employed as a School Engineer II and his duties were essentially custodial in nature. Thiel's personnel record reveals that he has been disciplined numerous times in the past. In July 2008, he received a written reprimand for using inappropriate language toward a subordinate. In August 2008 he received a three day suspension for poor job performance and violations of work rules. In March 2009, he received a one day suspension for failure to perform an assigned task. In October 2009, he received a ten day suspension for poor job performance and failure to carry out assigned duties. All of these actions occurred while Thiel was working as a member of a collective bargaining unit and was subject to a collective bargaining agreement between the District and his Union. None of the disciplinary actions were grieved. Subsequent to the passage of Wisconsin Act 10 and the expiration of the collective bargaining agreement between the District and the Union, Thiel became subject to the disciplinary and grievance policies and procedures adopted by the District and incorporated into its Employee Handbook.

The facts surrounding Thiel's discharge are essentially, as follows. On November 5, 2012, while at work, Thiel encountered two middle school students walking in the hall with a member of the day care staff, Clara Sheriff-Ware. Apparently, one of the students, J.B., was behaving in a way that Thiel deemed disrespectful, leading Thiel to slap the boy on the back of the head. The boy became angry and initially made as if to strike Thiel back, but was restrained from doing so. Thiel then attempted to put the boy in a headlock, but the student pulled away and went into a restroom. Thiel followed the boy into the restroom and attempted to apologize, but the boy rebuffed him and returned to Ms. Sheriff-Ware, who then took him to the principal's office to report the incident. These events were witnessed by Sheriff-Ware and one of Thiel's co-workers, Otis Billings, Jr. The principal, in turn, reported the incident to Michael Gutierrez,

the District's Manager of Building Operations and Thiel's overall supervisor. Gutierrez then directed Building Operations Supervisor Gregory Rivers to gather witness statements regarding the incident and to make a recommendation as to appropriate discipline, if any, for Thiel. Rivers obtained statements from Sheriff-Ware, Billings, the Principal and the student. He also obtained a statement from the student's mother, who stated that she has had interactions with Thiel in the past and instructed him to "not be playing or hitting on my children." After reviewing the statements, Rivers placed Thiel on suspension without pay and recommended his termination. As a result, on November 14, 2012 Thiel was issued a letter by Gutierrez and Director of Facilities and Maintenance Services Gina Spang terminating his employment effective November 21, 2012.

In reviewing the record, I note that the District has codified a just cause standard for discipline into its employment policies. A finding of just cause usually includes establishment that the employee has committed conduct for which discipline is warranted and that the discipline issued is consistent with the seriousness of the misconduct. The District has also adopted a policy of progressive discipline. The policy notes, however, that the particular discipline to be issued "will depend on the specific behavior and the frequency of occurrences." This is tantamount to acknowledging that some serious behaviors may justify departure from the normal disciplinary progression. The provision does not, however, specify which behaviors may warrant departure from the progression. The District argues that Thiel has had several disciplines leading up to his discharge and also that his actions are serious enough to warrant summary discharge. The Union asserts that the discipline is disparate, based on other past incidents by other employees with students that resulted in lesser discipline and argues that based thereon he should retain his employment.

In my view, the discharge issued to Thiel was warranted under the circumstances. The District has adopted rules forbidding employees from engaging in acts that threaten, harass, or injure students and Thiel acknowledged his awareness of these rules. He did not deny his actions and when asked for an explanation for his conduct by his supervisor he merely answered "stupidity." It is also clear from the statements by the witnesses that J.B.'s conduct, while perhaps disrespectful, was not apparently problematic from Sheriff-Ware's perspective and that she felt she had the situation in hand. In short, Thiel acted in a peremptory fashion, imposing corporal punishment on a student in a situation that was under control and where he had no authority to act. He admitted later that his conduct was "stupid."

Given Thiel's knowledge of the rules, his prior direction from J.B.'s mother to leave her children alone and the potential seriousness of the consequences to the District brought about by his actions, his behavior is without excuse. One of the District's cardinal responsibilities is to provide a positive and safe environment for its students and it cannot countenance staff members taking it upon themselves to issue corporal punishment in their discretion. This not only places students and staff at risk, but also potentially exposes the District to liability.

I have reviewed the records regarding previous incidents cited by the Union as comparable cases that did not result in termination and find no basis for relying on them as precedential. To wit: in 1996, G.M., a School Engineer II, was discharged for inappropriate and intimidating behavior toward students; in 2003, M.R., a Building Service Helper I, was

discharged for physical assault of a student and disorderly conduct; in 2004, J.B., a School Engineer III, was discharged for grabbing, pushing and using profanity toward a student. In each case, the District and Union negotiated a settlement that resulted in the employee

returning to work. These occurrences are distinguishable occurred many years past while the District and the Union were operating under a grievance procedure contained in a collective bargaining agreement. The record does not reflect the substance of the negotiations between the parties post discipline, nor does it provide rationale for the District's decisions to reverse the terminations. For these reasons, the previous incidents have little precedential values and are entitled to no weight in evaluating the current situation.

For the reasons set forth above, and based upon the record as a whole, while it is certainly possible that the District could have elected to issue less severe discipline, I find that the discharge issued to Karl Thiel was not disproportionate under the circumstances and should be sustained.

Dated at Fond du Lac, Wisconsin, this 16th day of May, 2013.

John R. Emery /s/

John R. Emery, Impartial Hearing Officer