

ARBITRATION OPINION AND AWARD

In the matter of the arbitration between:

COMMUNITY SCHOOLS

and

Union

Case Number: **Groty # 8**

GR: Suspension without Pay

ARBITRATOR – C. KEITH GROTY

Appearances:

Employer

Attorney

Assistant Superintendent

School Principal

Association

Association

Grievant

President

Observer

Hearing Date: September 13, 2005

Time: 10:00 a.m.

Place: Community Schools Administrative Offices

Briefs Filed: October 14, 2005

Statement of the Issues

Whether the grievant was appropriately disciplined for a written “display” on the white board in his classroom.

Second Issue - Arbitrability, Timeliness.

The union stipulated, at the hearing, that it was dropping the issue of prior discipline. Therefore, the issue of arbitrability for timeliness on these issues is moot.

Pertinent Contract Clauses

Master Agreement 2003/2004

ARTICLE II – BOARD RIGHTS

- A. The employer, on its behalf, and on behalf of the electors of the school district, hereby retains and reserves unto itself, without limitations, all powers, rights and authority conferred upon and vested in it by the laws and the Constitution of the State of Michigan and of the United States.*
- B. The exercise of the powers, rights and authorities by the employer, the adoption of reasonable policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms thereof are in conformance with the Constitution and laws of the United States.*
- C. Nothing in this Article is intended to limit any other rights of the Board not expressly included in this article, where the exercise of such rights is not conflicted with any other provisions of this Agreement.*

ARTICLE XII – DISCIPLINE OF TEACHER

- A. *Teachers shall comply with this Agreement and reasonable written rules, regulations and directives adopted by the Board, or its representatives, which are not inconsistent with provisions of this Agreement.*
- B. *Both parties recognize that willful deficiencies in professional performance or other violations of discipline by a teacher reflect adversely upon the teaching profession and create undesirable conditions in the school building. Alleged breaches of discipline of performance shall be promptly reported to the offending teacher.*
- C. *No teacher will be disciplined, demoted, reduced in rank or compensation, dismissed, suspended with or without pay, or reprimanded without just cause.*

Just cause will include, but not be limited to: inefficiency or incompetence; insubordination against the reasonable rules of the Board of Education; chronic tardiness or absence; moral misconduct; or disability, mental or physical, as shown by competent medical evidence.

- D. *Discipline of teachers will be subject to the grievance procedure set forth in the Agreement.*
- E. *If a teacher is to be reprimanded or disciplined for any infraction or delinquency in professional performance by the principal or other administrator, he/she shall be entitled to have a representative of the Association present. All such reprimanding, or disciplining, is to be done in person. A teacher shall, at the time of the occurrence of the incident involved, receive a copy of any written material that is placed in his/her personnel file and may, within one (1) week from receipt of such materials, respond in writing. Such responses shall be placed in the teacher's personnel file. No records concerning a teacher may be kept elsewhere than in that teacher's personnel file. Review of a teacher's written evaluation which states concern with respect to the teacher's performance in an evaluation conference shall not initially be construed as discipline and shall not entitle the teacher to the presence of an Association representative except in cases specified in Section G below.*
- F. *The Board will follow a policy of progressive corrective discipline which includes verbal warning (confirmed on the agreed upon form when deemed appropriate by the administrator), written warning, written reprimand, suspension with or without pay and with discharge as the final and last resort. Any disciplinary action taken against a teacher need not follow the above sequence; however, the penalty shall be appropriate to the misconduct.*

G. If, in a meeting between a teacher and an administrator, a problem arises which causes the teacher to reasonably believe that disciplinary action may be taken with respect to the problem, the teacher may request an Association representative. No further discussion will take place until a representative is present.

ARTICLE XV – GRIEVANCE PROCEDURE

A. DEFINITIONS:

1. A “grievance” is a written complaint regarding any alleged violations, misinterpretation, or misapplication of any provision of this Agreement, or any existing rule, order or regulation of the Board relating to wages, hours, or conditions of employment.

D. PROCEDURE:

When expedient, the aggrieved person will discuss the matter informally with a party of interest prior to registering a written complaint. The number of days indicated at each level should be considered as maximum and every effort should be made to expedite the process. The time limits may be extended by mutual consent. If the grievance is filed on or after June 1, the time limits shall be reduced in order to effect a solution prior to the end of the school year or as soon thereafter as is practicable.

1. Level One. A teacher with a grievance shall file it in writing and discuss it with his/her immediate supervisor, individually, together with an Association representative, or through an Association representative. Level One must be initiated within ten (10) days following the occurrence of the grievance, or within reasonable discovery thereof. Notice in writing that the grievance procedure has been initiated shall be made immediately to the Association. Within ten (10) days from the receipt of the grievance, the immediate supervisor shall indicate his disposition of the grievance in writing, and shall furnish a copy thereof to the Association.

5. Level Five.

b. It is agreed that the jurisdiction of the arbitrator referred to above shall be limited to grievances concerning the interpretation, application, or

administration of this Agreement, as written and expressed; but such jurisdiction shall not include, but specifically excludes, the power to add to or subtract from, or otherwise modify or alter any of the terms of this or any Agreements made supplementary hereto. Neither party shall be permitted to assert in such arbitration proceeding any ground, or rely on any evidence, not previously disclosed to the other party. Both parties agree to be bound by the award of the arbitrator and agree that judgment thereon may be entered in any court of competent jurisdiction.

F. JUST CAUSE GUIDELINES FOR THE ARBITRATOR FOR REVIEWING DISCIPLINE/DISCHARGE:

In reviewing any discipline, including but not limited to oral warning, written warning, reprimand, suspension, discharge, and/or evaluations with “less than satisfactory” ratings, the arbitrator shall use the following guidelines. These guidelines are not meant to be all encompassing but are important to the parties to this agreement.

The purpose of the just cause protection is to make sure the employer has reasonable cause for its discipline and that the employee was treated fairly in administering the discipline.

- 1. The arbitrator shall not rely solely on the procedural aspects of just cause. The arbitrator, while looking at both the procedural and substantive aspects of just cause, will not rely solely on the procedural aspects per se, but will evaluate any errors as to their significance and harm, if any, to the grievant. The procedural aspects will become important only to the degree they negatively impact on the right of the grievant to a fair hearing and just discipline.*
- 2. The investigation must be fair and impartial in the end. If a step or action is not fair and impartial but is later corrected, then just cause shall have been satisfied. For example, if an administrator makes an error in the investigation, but later the administrator or another administrator, corrects it, then the error shall be determined corrected and shall not be fatal. The error and its correction shall, however, be measured against the standard of possible harm to the grievant and possible denial of a fair hearing.*

Statement of the Facts

The grievant was suspended without pay for one day for “insubordination and unprofessional behavior.” This discipline arose from a display of a quotation on the white board in the grievant’s classroom saying “Those who have the guns make the rules.”

The grievant had received a memorandum, dated August 14, 2003 from the Principal, directing him to use only daily quotes in his classroom that were inspirational messages and not inflammatory/controversial in nature. The memorandum directed the grievant to discontinue having his students listen to, read, or write about topics that are not appropriate for eighth (8th) grade public school math students. The grievant was also directed to seek the principal’s opinion in the future if unsure whether something is or is not appropriate. This memorandum was not grieved within the time limits set out in the contract, and was used by the employer to determine the nature and the severity of the discipline.

Findings and Opinion

The employer argues that the grievant knew, or should have known, that the phrase placed on the white board was inappropriate and violated the directive received in 2003. The quote was to be grade and subject appropriate and inspirational.

It is also argued that the level of discipline is appropriate as the grievant had received a warning and directive concerning the use of quotes that he was expected to follow. The employer believes the statement on the white board was inappropriate because it suggested to students they will get the power to control and make the rules by possessing guns. Rather than inspiring students to positive action, it suggests that by having a gun they can impose their way on others.

Making a suggestion of this type in an eighth (8th) grade math class, it is argued, is poor judgment and violates the directive given in writing by his supervisor.

The union argues that the grievant was attempting to warn students of the impending danger of weapons in the possession of the wrong persons. The grievant did not make the connection between the quote and Board policy or the School Codes prohibition of gun possession by a student. The union believes the district's assertion that the quote might inspire students to obtain a weapon and harm others is more than a "giant leap" since it would also require a student to have many other factors operating negatively on them. The union also argues that

the grievant was not told a quote about guns in the wrong hands should be considered as “inflammatory and controversial”.

The union entered a large poster as an exhibit, which was displayed in the middle school library, showing two teachers from the district holding hunting shotguns and a book. There is one word on the poster, “read.” The union believes this sends a message about guns unrelated to reading. Such a display in the library, it is argued, justifies the grievant’s assumption that a quote about guns was not controversial. Finally, the grievant did not willfully disobey the directive not to place “inflammatory or controversial” quotes on his white board. The directive given to the grievant, it is argued, was vague and ambiguous. The grievant was justified in not believing the quote in question violated the directive. Therefore, it is the union position that the discipline was not for just cause as the grievant was never warned that future discipline would not follow progressive standards of verbal and written warnings before suspensions. Also, the punishment is too great for the a ledged offense.

Was insubordinate because he violated a supervisory directive? And if insubordinate, is an unpaid one-day suspension the appropriate discipline?

Based on the stipulations given by the union at the hearing, the arbitrator is not asked to review or judge the issue surrounding the previous warnings and directives given to the grievant. The arbitrator will, therefore, limit his review to the discipline and punishment rising in this case.

The appropriate focus in determining whether there was a violation to be disciplined is not the issue of “guns” alone, but the suggestion in the quote that the way to “rule” or get your way is by having or using guns. With all the violence in our society and in our schools, this is inappropriate. There was no attempt, or should there have been in an eighth (8th) grade math class, by the grievant to explain, as he asserts, that the quote was to show students the danger of guns in the possession of certain persons. The grievant should have known that the quote was inappropriate in the context of school violence, school policy, and legislative action. Focusing on the word gun in the quotation misses the point. It is the suggestion that using guns to enforce ones rules that is clearly inappropriate. Placed in the context of eighth (8th) grade students, only adds to the problem.

The union’s argument that there was a poster showing teachers in hunting gear with guns and the only word on the poster being “read”, misses the point. Guns alone are not the issue. It is the suggestion that guns are the way to rule others that is offensive.

The grievant was insubordinate for failing to follow his supervisor's directive to refrain from using quotes in his classroom that are not related to eighth (8th) grade math. The grievant received adequate direction from his supervisor. He is an experienced professional who has spent many years working with middle school aged students. His failure to recognize and appreciate the controversial and negative impact of the quote supports the disciplinary action of his supervisor.

On the issue of disciplinary penalty level, the measure is not only the progressiveness of the offense but the severity of the offense. The grievant had received notice and direction concerning the use of "inspirational" and "controversial" quotes. His action not only clearly ignored the earlier warning and directive, but involved a quote that would have been inappropriate even if he had never received specific direction. There is no place in the school for using a quote out of context which teaches the use of guns to enforce ones rule over others. If the grievant was teaching a subject where the quote was discussed for its historic or social impact, there may be a different outcome. That is not the situation in this case. The grievant's actions were inappropriate, insubordinate, and failed to respond to earlier counseling. In order to impress upon the grievant the nature and severity of his actions, the one-day suspension without pay is appropriate.

Award

The discipline and penalty of a one-day unpaid suspension was appropriate.

Grievance denied.

C. Keith Groty, Arbitrator
November 11, 2005