

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

BRUCE SCHOOL DISTRICT

and

NORTHWEST UNITED EDUCATORS

Case 29  
No. 52480  
MA-8990

Appearances:

Northwest United Educators, by Mr. Alan D. Manson, Executive Director, appearing on behalf of the Union.

Weld, Riley, Prenz & Ricci, Attorneys at Law, by Mr. Stephen L. Weld, appearing on behalf of the Employer.

ARBITRATION AWARD

Northwest United Educators, herein the Union, and Bruce School District, herein the Employer, jointly requested the Wisconsin Employment Relations Commission to designate a member of its staff as an arbitrator to hear and to decide a dispute between the parties. The undersigned was designated as the arbitrator. Hearing was held in Bruce, Wisconsin, on June 13, 1995. There was no transcript made of the hearing. The parties completed the filing of post-hearing arguments on July 24, 1995.

ISSUES:

The parties stipulated to the following issues:

Did the Employer have just cause to nonrenew Louise Sterlinske? If not, what is the appropriate remedy?

BACKGROUND:

Sterlinske began teaching for the Employer in 1976 as a full-time Home Economics teacher. In 1989, Sterlinske took on elementary guidance duties as the staffing needs in Home Economics decreased. David Lindau was the Elementary School Principal at that time and continued to occupy said position at all times relevant herein.

On February 16, 1995, the Employer sent Sterlinske a preliminary notice of consideration of nonrenewal of her teaching contract for the following reasons:

. . .

You are further advised that the Board of Education is considering your nonrenewal for the following reasons:

1. Your continuing failure to follow your schedule:
  - a. On September 4, 1991 you were advised in writing by your immediate supervisor Dave Lindau that you failed to follow your schedule on August 30, 1991, by being absent from a kindergarten (K-B) teaching assignment from 1:00 p.m. to 1:20 p.m. and a third grade (3-A) teaching assignment from 1:30 p.m. to 1:50 p.m. and your tardiness on September 4 for a kindergarten (K-A) assignment (schedule from 1:30 p.m. to 1:50 p.m.); you arrived at 1:40 p.m. You were reminded that staff relied on the guidance counselor's schedule and that you were to follow the schedule.
  - b. On February 4, 1992, you failed to appear for your second grade (2-A) guidance assignment, arriving at 1:20 p.m., the ending time. You were asked, in writing, why you failed to follow your schedule; you never replied.
  - c. On March 4, 1992, you were still in your room at 2:00 p.m., with students and teacher from the fourth grade waiting for your scheduled 2:00 p.m. lesson. You were reminded of the need to follow your schedule.
  - d. On December 6, 1993, you failed to attend your scheduled third grade guidance teaching assignment from 9:15 a.m. to 9:45 a.m. You were asked to explain why you had not followed your schedule. You had unilaterally cancelled the class in order to buy groceries for a home ec class. You told the classroom teacher (Ms. Mikunda) that the purchase

order hadn't been signed until 8:45 a.m. that morning. In fact, the purchase order was submitted on Wednesday, December 1, and typed on Friday, December 3. You failed to pick it up until Monday, December 6, at 8:34 a.m.

- e. On Tuesday, December 7, 1993 you were tardy for your kindergarten class scheduled to begin at 9:10 a.m. You explained your tardiness to the classroom teacher by advising that you were purchasing groceries for the home ec class. Couldn't those items have been purchased in the prior shopping trip?
- f. On December 21, 1993, you were tardy, arriving at work at 8:13 a.m.
- g. On February 8, 1994, Principal Lindau was in Ms. Ness' fifth grade class at 10:00 a.m. to evaluate for a scheduled guidance lesson. At 10:15 a.m., Ms. Ness continued teaching after the class waited patiently for your arrival. On returning to his office, Principal Lindau found you in your room. Your explanation was that you unilaterally decided to stay to help your foods class students clean up.
- h. On December 2, 1994, Principal Lindau was in Ms. Ness' fifth grade class at 10:00 a.m. to evaluate for a scheduled guidance lesson. At 10:15 a.m., Ms. Ness continued teaching after the class waited patiently for your arrival. On returning to his office, Principal Lindau found you in your room. Your explanation was that you unilaterally decided to stay to help your foods class students clean up.
- i. On Friday, January 13, 1995, fourth grade teacher (4-B) Olson reported that you were 5-10 minutes late for your 2:00 p.m. assignment. Mr. Olson advised that your chronic tardiness ranged from 5-25 minutes. You told Mr. Olson that the prior teacher had not returned to the classroom, hence

you could not leave. Mr. Olson conferred with Ms. Farrington who advised that she was in her classroom during your entire lesson.

- j. On that same day, Friday, January 13, 1995, fourth grade teacher Michaud went looking for her students at 2:40-2:45 p.m. as your assignment with her students was scheduled to end at 2:35 p.m. Ms. Michaud also checked with Ms. Farrington and, as she suspected, you were not behind schedule because you were waiting for Ms. Farrington as you stated.
- k. Ms. Farrington advised that she was in her room during your entire assignment on January 13, 1995, because she believes you have, in the past, lacked judgment in your presentations. She also advises that, on occasion, she has asked you whether you have another assignment following her class. You replied yes, but it doesn't matter.
- l. On January 20, 1995, you were 15 minutes late for Mr. Olson's class. He reported that he's tired of excuses.

- 2. Frankly, these incidents reflect an attitude that you are above the schedule, that you can do what you want when you want. The incidents reported herein are those in which fellow faculty members complained or Principal Lindau fortuitously discovered. There has been no documentation as to how many other unreported incidents there have been. Your, do what I want when I want, attitude is reflected in your unexcused absences from inservices and staff meetings and one reported incident of your failure to see students in need of counseling because you were too busy working on your computer. Your failure to do what you are scheduled to do when you are scheduled to do it has had a negative impact on our education offering. Our prior efforts to get you to follow your schedule have failed. Hence, we are recommending nonrenewal.

. . .

On March 9, 1990, Lindau sent Sterlinske a handwritten memo advising her, inter alia, of a concern he had received about her being late for sessions of the BABE program. Sterlinske's written response stated that the problem of late starts had been caused by recesses and class location, but the problem had been resolved in December. The response further stated that she had consistently been on time, but that the students had been late.

On September 6, 1990, Lindau met with Sterlinske and discussed with her several items, including the need to follow her schedule.

On September 4, 1991, Lindau sent a memo to Sterlinske stating that she had failed to be present at two scheduled classes on August 30, 1991, and that she had been ten minutes late for a class on September 4, 1991. The memo further stated that she was required to adhere to her schedule and that failure to do so could result in suspension or non-renewal of her contract. In a written response dated September 6, 1991, Sterlinske stated that the guidance schedule was only tentative until September 3, 1991, and that she had been early for the class on September 4, 1991.

On February 5, 1992, Lindau sent a memo to Sterlinske asking why she did not show up until 1:20 p.m. for a class scheduled to start at 1:00 p.m. Sterlinske testified that she made a verbal response to Lindau. Lindau did not recall such a verbal response.

On March 4, 1992, Sterlinske was late in arriving for a class which was scheduled to start at 2:00 p.m. Lindau sent her a memo on that date reminding her that failure to keep to her time schedule for her scheduled guidance classes could result in suspension or nonrenewal of her contract.

On December 6, 1993, Sterlinske canceled a guidance class, which was scheduled to meet from 9:15-9:45 a.m., in order to go to the local grocery store to buy groceries with a purchase order for a home economics class, which class followed the guidance class. Sterlinske turned in the purchase order to the office on December 1, 1993. Although the purchase order was signed on Friday, December 3, 1993, Sterlinske did not receive it until Monday morning, December 6. By the time Sterlinske returned from the store and unpacked the groceries, it was too late to conduct the guidance class.

On December 7, 1993, Sterlinske was ten minutes late for a kindergarten class which was scheduled to start at 9:10 a.m., because she had to go to the grocery store to purchase supplies for a home economics class. She was unable to purchase said supplies on the previous day because she had not received the signed purchase order for the supplies.

On December 21, 1993, Sterlinske arrived at work at 8:13 a.m., rather than by 8:00 a.m. as scheduled.

On February 8, 1994, Lindau sent a memo to Sterlinske. The memo resulted from the cancellation of the class on December 6, 1993, and contained the following statement:

This letter of reprimand will be placed in your file in lieu (sic) of a suspension, and should you fail to meet your assigned duties as an elementary guidance counselor in the future, a non-renewal will be issued.

On December 2, 1994, Lindau was in the fifth grade classroom of Diane Ness to evaluate a guidance lesson which Sterlinske was scheduled to teach at 10:00 a.m. When Sterlinske had not arrived by 10:15, Ness began teaching her lessons and Lindau left the room. Lindau said that as he was returning to his office he saw Sterlinske in her classroom alone. Sterlinske said that she met Lindau in the hallway as she was on her way to Ness' classroom.

In a memo dated December 7, 1994, Lindau advised Sterlinske that he was recommending that the Employer's Board suspend her and consider nonrenewing her contract for the 1995-96 school year.

On January 13, 1995, Sterlinske was late for a guidance class in Rick Olson's classroom. Sterlinske told Olson that she was late because she had to wait for Marlene Farrington, the teacher of the class to which she was giving a guidance lesson immediately prior to teaching Olson's class, to return to the classroom. Farrington said that she did not leave her room while Sterlinske was there on said date. Sterlinske continued the guidance lesson past the scheduled ending time of 2:40 p.m. due to the late start.

On January 20, 1995, Sterlinske arrived ten minutes late for the start of a lesson for Olson's class.

#### POSITIONS OF THE PARTIES:

##### UNION:

Sterlinske had a complex and particularly demanding schedule due to the various demands of her combination of assignments and responsibilities. She was, from time to time because of this schedule, as well as because of human error, late to scheduled assignments. However, her actions were neither ill-intentioned nor insubordinate. No students were left unsupervised as a result of her tardiness. No teacher lost preparation time as a result of her tardiness. Other teachers also have been late to their assignments without being disciplined.

Sterlinske does not deserve to lose her job over the incidents of tardiness presented in the record. While she may deserve some form of punishment, termination is not appropriate. In some of the written memos to Sterlinske, the Employer referred to possible suspension as a potential discipline in the future. In a progressive discipline procedure, an actual suspension, rather than a mere reference to a suspension, would be the form of discipline which follows a written warning, especially for an employe with many years of service.

The Employer did not have just cause to terminate Sterlinske. The Employer should be required to renew the employment contract of Sterlinske.

#### EMPLOYER:

The nonrenewal of Sterlinske was a reasonable action. The record documents a multi-year effort by the Employer to get Sterlinske to follow a schedule, or to get prior approval before deviating from her schedule. Despite those efforts, Sterlinske failed to follow her schedule on three documented occasions in December and January of the 1994-95 school year. The testimony of the witnesses establishes that her tardinesses were disruptive to the whole school. In fact, fellow staff members initiated many of the complaints.

The record contains five years of oral and written attempts to convince Sterlinske that she needed to follow her schedule. The memo of February 8, 1994, specified that said memo was a written reprimand which was being issued in lieu of a suspension, but if Sterlinske failed to meet her duties in the future, then a non-renewal would be issued.

Therefore, a suspension is not an appropriate form of discipline in this situation. Rather, nonrenewal is the appropriate discipline. Accordingly, the grievance should be dismissed.

#### DISCUSSION:

The record establishes that there have been a number of documented instances when Sterlinske either was late for a class or missed a class completely. Sterlinske always had an explanation or reason for the instances when she was tardy for a class. Standing alone, each such incident may seem relatively harmless. However, there was an ongoing pattern of such incidents, which made it difficult for the Employer to tolerate. When a classroom teacher is expecting another teacher to make a presentation to the students during a specific period of time, it is disruptive for the other teacher not to arrive at the scheduled time. Thus, the Employer did have a reasonable basis to discipline Sterlinske.

The record is also clear that, over a period of several years, the Employer has warned Sterlinske on several occasions that her failure to adhere to her schedule of class times was not acceptable and that continued tardiness could result in more severe discipline, including nonrenewal of her contract. The memo dated September 4, 1991, contained that clear message. The memo dated March 4, 1992, contained the same warning. The Employer's letter dated February 8, 1994, specified that the Board had considered several disciplinary actions, including a nonrenewal and a suspension, before issuing the written reprimand. Said reprimand contained a clear message that a nonrenewal would be issued for similar conduct in the future.

All of the reasons given by Sterlinske to explain her tardiness were based on some factor other than her conduct. She never acknowledged that an instance of tardiness was her fault, nor did she ever indicate that she would make a greater effort to avoid being tardy in the future. As noted in the Union's brief, the purpose of progressive discipline is to correct unacceptable behavior by an employe. However, given Sterlinske's unwillingness to acknowledge that she has had a problem with being on time for her scheduled classes, the undersigned is not convinced that a suspension would be any more successful in correcting her conduct than were the written warnings.

Sterlinske did have a complex schedule. However, she had been working with similar schedules for several years. She also had a great deal of input into the creation of her schedule. Thus, a reliance on her schedule as the cause of her tardiness problems over the past few years is not persuasive.

The testimony failed to establish any instances of other teachers who were tardy as frequently as Sterlinske and who had been treated in a different manner.

Based on the foregoing and the record as a whole, the undersigned enters the following

AWARD

That the Employer did have just cause to nonrenew Louise Sterlinske; and, that the grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 23rd day of August, 1995.

By Douglas V. Knudson /s/  
Douglas V. Knudson, Arbitrator