

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

WEST ALLIS-WEST MILWAUKEE EDUCATION
ASSOCIATION

and

BOARD OF EDUCATION OF SCHOOL DISTRICT
OF WEST ALLIS-WEST MILWAUKEE, ET AL.

Case 78
No. 52538
MA-9016

Appearances:

Ms. Priscilla Ruth MacDougall, with Ms. Joanne Huston, Wisconsin Education Association Council, 33 Nob Hill Drive, P. O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the West Allis-West Milwaukee Education Association, referred to below as the Association.

Mr. Mark F. Vetter, Davis & Kuelthau, S.C., Attorneys at Law, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202, appearing on behalf of the Board of Education of School District of West Allis-West Milwaukee, et al., referred to below as the Board.

ARBITRATION AWARD

The Association and the Board are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Robert Christie. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on June 27, 28 and 29 and July 11, 12 and 14, 1995, in West Allis, Wisconsin. Each day of hearing was transcribed, and the parties filed briefs and reply briefs by August 18, 1995.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

Did the Board have good cause, within the meaning of Article XIX, to refuse to renew Robert Christie's teaching contract for the 1995-96 school year?

If not, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE II
BOARD RIGHTS

- A. The Board, on its own behalf and on behalf of the electors of the district, retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon it and vested in it by the laws and the constitution of the State of Wisconsin and of the United States, including, without limitation because of enumeration, but subject to the provisions of this Agreement, the following rights:

. . .

2. Hiring of all employees and, subject to the provisions of law, determining their qualifications and the conditions for their continued employment or for their . . . dismissal . . .

ARTICLE XII
GRIEVANCE PROCEDURE

- A. A "grievance" is a complaint by a teacher or teachers based upon an alleged wrong suffered in respect of a condition of employment specifically covered by this Agreement, or a complaint by a teacher or teachers based upon an alleged wrong concerning the interpretation or application of provisions of this Agreement or compliance therewith. An "aggrieved person" is a teacher or teachers having a grievance. Discharge, dismissal, removal, refusal of employment or disciplinary action against a teacher shall be processed as provided in Article XIX.

. . .

- D. Steps in Grievance Procedure. Grievances shall be resolved, except as otherwise provided, in accordance with the following procedure . . .

Step 3. If the Association is . . . not satisfied with the disposition at Step 2, it may . . . file with the Board a written request for arbitration of the grievance . . . The arbitrator, however selected, shall be limited to determining questions arising under this Agreement and shall not have authority to modify or change any of the terms of this Agreement. The decision of the arbitrator, when within the scope of his authority under this Agreement, shall be final and binding upon the Board, the Association and the aggrieved person.

. . .

ARTICLE XIX
PROCEDURES RELATING TO THE DISCIPLINING
OR TERMINATION OF EMPLOYMENT OF A TEACHER

The following procedures shall govern the . . . dismissal, removal, discharge or other discipline of any tenured teacher . . . during the term of such teacher's individual teaching contract. The term "tenured teacher" shall mean a teacher who has acquired tenure pursuant to the rules and regulations of the Board in effect at the date of execution of this Agreement . . .

- A. Procedure for Tenured Teacher in the Case of Refusal of Employment, Dismissal, Removal, Discharge or Other Discipline.

Step 1. Prior to issue of notice of refusal of employment, dismissal, removal, discharge or other discipline to a tenured teacher, the teacher will be advised in writing by the Superintendent that such action is contemplated and upon written request of the

teacher within five school days . . . of being so advised, afforded the opportunity for a private conference with the Superintendent. If such request is timely filed, such conference shall be held as soon as is feasible, and the teacher may appear at such conference either by himself or together with a representative of the Association or together with anyone else of the teacher's own choosing. The teacher's principal and/or other supervisor may be present at this conference and shall be present if so requested by either the Superintendent or the teacher.

Step 2. If the Superintendent decides to issue written notice after such conference, subsequent proceedings before the Board shall be governed by the provisions of Wisconsin Statute 118.23(3).

Step 3. If refusal of employment, dismissal, removal, discharge or other discipline is imposed by the Board, the Association, provided the teacher has availed himself of the private conference with the Superintendent as provided in Step 1 above and the hearing before the Board as provided in Step 2 above, may within fifteen school days after the Board's action process the matter to arbitration as set forth in Article XII, Section D, Step 3, in the same fashion as a grievance may be processed to arbitration under such Step 3 and the arbitrator shall determine whether the Board's action was for good cause.

BACKGROUND

The Board refused to renew Christie's teaching contract for the 1995-96 school year through written "Findings of Fact, Conclusions and Order" issued after a hearing conducted on

May 20, 1995. Neither Christie nor any Association representative appeared at that hearing. The first portion of the background to the grievance will set forth an overview of the evidence submitted by the administration to the Board on May 20.

I

Christie served the Board as a Spanish teacher for twenty-nine years prior to his non-renewal. From the 1988-89 through the 1994-95 school years, he taught at Central High School. Throughout that period the Principal of Central High School was Ronald Bieri.

Bieri stated his recommendation that Christie's teaching contract not be renewed in a letter to Christie dated December 22, 1994, which states:

After a thorough investigation of the seven parent and student complaints (dated November 22, 1994 through December 6, 1994) received about your teaching performance, I have reached the conclusion stated below. As background for my conclusion I have prepared a historical perspective of the concerns that have been identified with regard to your teaching performance. My recommendation to the Superintendent of Schools related to the most recent incidents follows my conclusion.

In December of 1993 you were suspended for one day without pay due to your failure to satisfy the District's previously identified performance expectations. During the remainder of the 1993-94 school year, you were observed and conferences were held to address your performance (2/11/94 and 5/6/94). Revised job targets were also prepared and discussed with you (3/10/94).

On March 10, 1994 Mr. Sobocinski and I reviewed with you and discussed the following 3 job targets contained in your June 7, 1993 evaluation:

1. Discontinue inappropriate remarks to students.
2. Answer all student questions.
3. Improve parent/teacher communications.

Mr. Sobocinski and I also discussed the following job targets with you and verbally amplified on the job targets as follows:

1. Establish a warm, supportive classroom environment.
 - a) Probe for learner understanding - by actually being pro-active and taking the initiative to communicate with students in order to assess

their level of subject matter comprehension (in other words, ask the students if they understand what you're teaching).

- b) Answer all student questions - do not put students off when they raise their hands and do not ridicule a student's attempt to ask a question.
 - c) Be sensitive and responsive to clues of student distress - by developing a positive rapport with students that fosters two-way open communication.
 - d) Eliminate the use of sarcasm, name calling or verbal put-downs.
 - e) There will be evidence that assignments are written or posted within the classroom.
2. Monitor the group learning process utilized in your classes.
- a) Ask students if they need assistance - there will be evidence that you talk with and listen to your students.
 - b) Monitor the groups' work - always checking for student understanding - determine how all students within each group are actually participating in the learning activity.
 - c) Assign group roles and responsibilities in a clear and concise manner - so that students have a clear understanding of the task and what role they are to assume within the group. Consider the task assigned and the appropriateness for group work as you define it.

The purpose of these job targets and suggestions for improvement was to demonstrate my continuous support of your efforts to

improve your classroom instruction and interacting with your students. An additional purpose was to impress upon you the need for significant and sustained improvement. You were told that this was the last chance for you to improve in the areas identified and that we did not want to have to meet with you to address these areas during the 1994-95 school year. Unfortunately during my investigation of these most recent complaints I have concluded that your performance during the 1994-95 school year has not shown any "significant or sustained improvement." Rather your performance has regressed to the point that it is at the same unacceptable levels regularly identified since the 1989-90 school year. This is exhibited by my investigation of the subject parent and student complaints.

During my investigation of these complaints, I also determined that you have failed to comply with the job targets issued June 7, 1993, March 10 1994 and May 6, 1994 and have continued to engage in the following unacceptable conduct.

1. Ridicule, sarcasm and name calling directed at students.
2. Failure to answer student questions.
3. Assignments not written or posted on the chalkboard.

In view of these facts and your general evaluations, I am hereby recommending to the Superintendent that your contract not be renewed for the 1995-96 school year.

In letters to Christie dated January 5 and 20, 1995, Harold R. Sloan, the Board's Superintendent of Schools, confirmed his decision to accept Bieri's recommendation and to request the Board to act on that recommendation. The Board's President, Robert F. Kitchen, confirmed in a letter to Christie dated January 30, 1995, that the Board would formally consider the non-renewal of his teaching contract. That letter states:

. . .

The Administration believes that it has good cause to support its recommendation that your contract not be renewed. The specific reasons/charges for the Administration's recommendation are as

follows:

1. Failure to provide positive student-teacher rapport and relationships.
2. Failure to develop an atmosphere of mutual respect in your classes.
3. Failure to respond to student questions.
4. Failure to post assignments or write assignments on the chalkboard.
5. Engaging in ridicule, sarcasm, name-calling, and verbal putdowns directed to students.
6. Poor parent-teacher communications.

It is the Administration's belief that you have not responded to prior job targets and suggestions to address identified performance deficiencies in the foregoing areas. In fact, the Administration believes that, rather than exhibiting any significant or sustained improvement in these areas, your performance has regressed to a level which is unacceptable and which warrants the nonrenewal of your contract.

. . .

These six bases were incorporated into the "Conclusions of the Board" as the basis for the "good cause" justifying the Order of non-renewal issued on May 20, 1995.

The documentation submitted to the Board on May 20, 1995, was organized by school year. This organization will be mirrored here.

The 1988-89 School Year

In a memo dated January 18, 1989 from Patricia Hoffman, Supervisor for Language Arts and Social Studies, to James Dottke, the then-incumbent Principal of Central High School, Hoffman noted the creation of a student survey of Christie's Spanish 1, 2 and 3 students. The survey was "not intended as a full measure of Mr. Christie's teaching" but of the following "areas

at issue":

1. Altering teaching strategies that apparently are causing students serious frustration by not receiving help from the teacher during independent or small group study situations . . .
2. Modifying some of the teacher's oral remarks to students. It appears that what the teacher views as humor is often interpreted by students as sarcasm.

The survey was administered to ninety-three students, and sought to measure Christie's performance in seven broad areas. Hoffman summarized the results thus:

The overall summary results are quite positive in the following areas:

#3 Responsibility for Personal Learning . . .

#6 Fair Grading System . . .

The overall summary results show the following items to be areas of concern:

#1 Communication of Purpose . . .

#4 Helping Students . . .

#5 Mutual Respect . . .

The scores were more centrally clustered or average for the following items:

#2 Respective Goals . . .

#7 Learning . . .

Hoffman concluded thus:

While several items identify areas in which Mr. Christie performs well, the survey results appear to corroborate the need for improvement in areas we have discussed earlier:

- Providing students with appropriate help in learning.
- Developing a classroom atmosphere of mutual respect.

These should be regarded as Mr. Christie's job performance targets for the balance of the 1988-89 school year.

The 1989-90 School Year

An internal memo prepared by Bieri in May of 1990 indicates he discussed a "student/teacher incident" with Christie on November 9, 1989 and on December 18, 1989. The memo also notes that Bieri, and other administrative personnel, met with Christie on October 18, 1989, to discuss "the recent telephone calls that had been received by the guidance staff and principal from parents who wanted their son or daughter removed from Mr. Christie's class." The memo also notes two classroom observations made by Bieri in November of 1989. The memo also details meetings between Christie and various administrative personnel on four occasions between October of 1989 and May of 1990. Bieri's memo also documents nine parent or student complaints filed between March and May of 1990. One of those complaints was filed in writing by a student. The remaining complaints were stated orally to Bieri. Each of the complaints was documented by Bieri with a numbered list prefaced in the memo as the "following concerns" regarding Christie.

In a letter to Christie dated May 29, 1990, David W. Carstens, the then-incumbent Director of Personnel, summarized the events of the school year thus:

It is imperative that we specifically address the quality of instruction you are providing to students of Spanish in the West Allis-West Milwaukee School District. To continue your current method and delivery of instruction would mean that you have not addressed the improvement needed nor have we brought to your attention the needed improvement, as a result of the many student and parent complaints we have received.

Carstens' letter then details the survey of the 1988-89 school year and the job targets which resulted from it, before continuing thus:

In a meeting Mr. Bieri held with you on October 18, 1989, Mr. Bieri reviewed an earlier meeting that had been held with both of you present and with three of the counselors from Central High School so you would be cognizant of the parent and student complaints that had been directed to the counselors regarding your behavior and your instruction. Following the review of the earlier meeting with the counselors and discussion, Mr. Bieri stated four distinct areas that needed to be addressed as follows:

1. Mr. Christie was to answer all student questions immediately as they were asked. Mr. Bieri stated that he could not justify to parents a teacher who refuses to answer student questions. Mr. Christie stated that he would comply.
2. Mr. Bieri stated that no sarcastic comments were to be directed toward students. Mr. Christie indicated he could understand how his humor could be misinterpreted.
3. Mr. Bieri informed Mr. Christie that he felt confident the necessary improvements could be made in his teaching style relative to the two points stated above.
4. Mr. Christie stated he did not want Mr. Bieri or myself to receive any additional parent or student complaints.

A number of meetings had been held during the current school year between you and Mr. Bieri and at times included one or more counselors to appraise and discuss with you your behavior and your instruction in respect to student and parent complaints. The basis for the complaints most cited were:

1. Failure to answer student questions.
2. Ridicule of students and your use of sarcasm.

3. Your teaching methodology.

Another administrative concern that was raised was your misuse of class time by involving yourself in personal reading activities during class time.

Specific dates and the nature of the complaint on that date have been discussed with you at the meeting held with you, your representative, Mr. Bieri and myself on Tuesday, May 29, 1990. This specific data and other meetings held with you will be used at a future date if improvement is not shown and it is necessary to discipline. I am putting you on notice in two specific areas. The first is the probability that it may be necessary to consider discipline up to and including immediate dismissal if you do not cease and desist immediately regarding the following:

1. Provide students with appropriate help in learning at all times. This includes response to questions asked by students during class time.
2. Maintain a classroom atmosphere of mutual respect.

Over and above the immediate improvement that is needed, I am listing job targets that must be met by January 15, 1991 so that you provide the standard of instruction that is expected or you will be considered for non renewal at that time. Following are the job-targets that must be met by January 15, 1991.

1. Improved quality of instruction with a focus on teaching methodology, appropriate lesson design, differentiated instruction and assignments and appropriate individual support for students.
2. Improved student teacher relationships.
3. Improved teacher parent relationships.
4. Improved quality communications to students and parents.
5. Improved commitment to the number of and quality of parent teacher conferences.

6. Improved behavior and instruction that results in a positive student attitude reflected in students desiring to enroll in your classes.
7. Commitment to continued professional development reflected in course work at a college or university and/or attendance at appropriate conferences and clinics.

The administration at Central High School and Dr. Janice Cronin, Language Arts & Social Studies Supervisor, will continue to monitor and work with you regarding the improvement needed.

The 1990-91 School Year

Bieri issued Christie the following letter of reprimand, dated March 22, 1991:

Now that I have completed a thorough investigation of the events of March 7, 1991 involving tenth grade student, Steve Angelier, let me state my conclusions.

It seems to me that you exercised your authority reasonably in directing Steve Angelier to complete his assigned work, to be in his assigned seat on time and to discontinue interrupting your class. You also acted responsibly in asking Steve to come after school in order to complete his work and modify his improper behavior.

Had the incident ended there, no problem would exist. Unfortunately, Mrs. Angelier has alleged that you verbalized the following statement to Steve. "If you tell your mother I wouldn't answer your questions, you're dead." In a meeting with Mr. Padek, you and I, held on March 19th, you confirmed that you did make the alleged statement to Steve. I should hardly need to tell you that negative, sarcastic statements directed at a student are not acceptable.

As a result of this unprofessional verbal comment directed at Steve Angelier, I feel obliged to reprimand you formally and to direct that a copy of this letter be filed with your permanent records.

Please be reminded that part of your ongoing performance evaluation involves an improvement objective in the area of improper verbal comment and sarcasm directed toward students. Any repetition of this kind of behavior will not be in your professional best interests. In the future, please work with me in finding acceptable solutions in dealing with students who pose problems to you in class.

Based on several classroom observations, Bieri and an Assistant Principal, John Rudella, executed the following evaluation of Christie's performance in June of 1991:

On May 29, 1990 it was indicated that you were to successfully

meet seven identified job targets by January 15, 1991. Due to a new district evaluation system this date was extended to June 7, 1991. The following evaluation is intended to reflect Mr. Christie's progress toward the identified job targets.

1. Improved quality of instruction with a focus on teaching methodology, appropriate lesson design, differentiated instruction and assignments and appropriate individual support for students.

Bob demonstrated improvement in varied teaching methodology and lesson design; utilized group process to enhance learning, used slide presentations to promote the cultural aspects of language, employed a reward system to promote motivation, test rewrite system to give students a second chance to earn a higher grade.

2. Improved student/teacher relationships.

Student behavioral parameters were well explained - both Mr. Christie and the students operated well within these parameters, Improvement was made in relation to student/teacher interactions - however continued effort is needed in Mr. Christie's relationship with students who fail to meet his standards; i.e., some lower achieving students complained that Mr. Christie did not address their needs. (Failed to answer questions, failed to adequately explain assignments)

3. Improved teacher/parent relationships.

Mr. Christie needs to foster improved parent relations. Complaints were greatly reduced but improvement continues to be a necessity in the areas of parents' meetings, willingness to compromise and meet individual student needs; i.e., parent meeting held March 26, 1991, where Mr. Christie appeared unwilling to adapt curriculum to meet individual student needs by giving assignment in writing.

4. Improved quality communications to students and parents.

The quality of communication to parents and students has improved as evidenced by the significant reduction in reported student and parent complaints (see nos. 2 and 3 above).

5. Improved commitment to the number of and quality of parent/teacher conferences.

West Allis Central initiated an arean (sic) style conference schedule which enabled Mr. Christie and most other staff to greatly increase their parent contact. All evidence points to Mr. Christie having successfully accomplished this target.

6. Improved behavior and instruction that result in a positive student attitude reflected in students desiring to enroll in your classes.

Spanish enrollment continues to increase. However, the less academically inclined student seems to be on the increase and Mr. Christie must continue to modify and develop strategies to successfully meet the needs of this type of student. It appeared that Mr. Christie continued to have difficulty modifying his curriculum and class standards to meet the needs of these students. Several very positive attempts were noted and Mr. Christie was receptive to all administrative suggestions for improvement.

7. Commitment to continued professional development reflected in course work at a college or university and/or attendance at appropriate conferences and clinics.

Mr. Christie attended the Spanish State Convention held during October, 1990. It would be appropriate and necessary for Mr. Christie to attend workshops or conferences on the topics of student management and innovative foreign language curriculum.

COMMENTS:

- Students speak in the foreign language almost the entire class
- Mr. Christie has volunteered for supervisory duties and has been very helpful with school functions
- Lesson planning is appropriate and timely

RECOMMENDATIONS:

- 1) Inappropriate oral remarks to students
- 2) Failure to answer student questions
- 3) Poor Parent/Teacher communications

In order for continued employment with the West Allis-West Milwaukee, et. al. School District, you must exhibit immediate significant and sustained improvement in these three (3) areas, as well as in the other job target areas identified to you on June 10, 1991. Such improvement must occur during the period from today through February 1, 1992. If significant and sustained improvement does not occur during that period, I will be recommending that your contract for the 1992-93 school year be non-renewed . . .

Bieri's concern with "sloppily written" postcards mailed by Christie to parents of his students and with Christie's failure to return a phone call made by the parent of one of his students prompted Bieri to write a letter to Christie dated November 11, 1991, which states:

(Y)ou were reminded that your three job targets should receive your undivided attention because failure to accomplish them prior to February 1, 1992 will result in a recommendation to non-renew your contract for 1992-93.

In a letter to Christie dated December 5, 1991, Bieri set out thirteen specific guidelines grouped under three major headings which constituted "the evidence I would accept as indication that you have met the three job targets outlined in my letter dated October 14, 1991."

In a memo dated February 3, 1992, one of Christie's students complained that he had improperly failed to permit her to exempt herself from an exam. The student's parents further documented their concern over the stress the incident had caused and stated their desire to have her transferred from Christie's class. Bieri investigated the complaints, determined they were well-founded and approved the transfer. On February 3, 1992, Bieri received a complaint from another student's parent that Christie had referred to the student as "not college material." Christie denied the reference.

In a letter to Christie dated February 7, 1992, Bieri noted:

This letter is to inform you that between 10/14/91 and 2/1/92 you did exhibit significant improvement and you did sustain such improvement for that specific time period. I will, therefore, recommend a contract extension for the 1992-93 school year based upon sustained improvement.

I will continue to monitor your performance in the three identified areas that have caused you problems in the past.

1. Inappropriate oral remarks to students
2. Failure to answer student questions
3. Parent/Teacher communications

Bieri and Rudella stated the following in Christie's year-end evaluation:

Based upon sustained improvement between 10/14/91 and 2/1/92 Mr. Robert Christie was given a contract for the 1992-93 school year. Additionally, he was placed on continued job targets as a way of monitoring his performance in those areas in which he has performed in a less than acceptable manner as evidenced by previous observations, parent complaints, student complaints and administrative evaluations.

. . .

The student/teacher relationship in Mr. Christie's classes was somewhat authoritarian (definitely teacher directed). In one Spanish 4 class Bob was very adept at asking probing questions but what discussion there was seemed strained. The students volunteered answers but usually only after Mr. Christie had attempted to extract an answer from them. The students, while polite and positive were also hesitant and tentative in their responses. Students in Mr. Christie's other observed classes also participated in question/answer discussion sessions with similar results.

Mr. Christie's classes were organized and his students were usually on task. Bob would benefit from a more relaxed atmosphere in the classroom where he could relate in a positive manner to the students on a personal basis.

In another class the students reported (in small groups) on the reasons for the existence of economic systems as a means of understanding the Spanish culture. Mr. Christie was again very adept at asking some real thought provoking questions to ascertain the student's knowledge and understanding of the differences between government, economics and religion. To everyone's credit the entire class was conducted in Spanish. At the end of class Mr. Christie summarized the lesson and issued an assignment in Spanish and an additional grammar assignment. Students were also reminded about the tutoring sessions and to complete their test rewrites. The students then finished class by reviewing verbs.

In yet another class the students entered the room and began work immediately. Mr. Christie circulated about the room as students worked - they were making corrections on the previous day's work to earn extra points for grading purposes. The class then divided into working groups to review past work. The groups, which Mr. Christie used in every observed class, sometimes worked well - Mr. Christie circulated about the room to get a pulse on where students were in relation to the assignment. However, Mr. Christie assigned only one specific responsibility for each group (group leader) - this created unnecessary pressure and potential inequity among students. This led to a few students actually completing the work - but all students in a group can earn extra credit for completed work or be censored/reprimanded for not completing the task. This group system has initiated parent and student complaints past and present and we recommend Mr. Christie complete formal training in cooperative learning or discontinue the group process in Spanish I and Spanish II.

The 1992-93 School Year

Bieri stated the following in Christie's May 30, 1993 evaluation:

Mr. Christie's evaluation dated June 10, 1992 continued Bob on three job targets which were as follows along with this evaluator's comments about their progress.

1. Discontinue inappropriate remarks to students -

Mr. Christie has made good effort to minimize any concerns in this area. we have discussed his habit of calling students by their last names which creates a barrier between student and teacher that places too much formality on that relationship. Mr. Christie has agreed to discontinue this practice or habit.

2. Failure to answer student questions - my observations indicated that Mr. Christie
 - a) answered questions after every activity exercise
 - b) answered questions before the end of every class period
 - c) provided assistance to students after school
 - d) answered all questions upon the return of quizzes and tests
 - e) ran tutoring sessions prior to exams
3. Improve parent/teacher communications - This area has improved particularly in light of the following statistics:

Hour 1 12 out of 14 students continuing on to Spanish 4

Hour 3 18 out of 20 students continuing on to Spanish 4

Hour 4 16 out of 18 students continuing on to Spanish 4

Hour 7 17 out of 18 students continuing on to Spanish 4

Many of these students will have Bob as their Spanish 4 instructor.

During all observations the students were attentive and demonstrated appropriate behavior. Mr. Christie always has a variety of learning activities ready for each lesson and often his students utilize the blackboard or engage in a group process to accomplish their assignment. The classes I observed were spoken in almost all Spanish. I was not able to ascertain the number of parent contacts Mr. Christie has initiated this year.

I can find no fault with any instructional methodology or strategy employed in Bob's classroom. If Mr. Christie chooses to open his personality and display his more genuine persona to his students, he will, in my opinion, be a most impressive instructor. Bob is always

at his hall supervision position and has willingly volunteered for outside supervision when given the opportunity

Cronin's June 1993 evaluation of Christie states:

. . .

During the conference following the observation, Mr. Christie was commended for the following:

- utilizing a variety of instructional techniques and strategies,
- expecting on-task behaviors from students,
- having smooth transitions between activities,
- using cooperative groups effectively, and
- expecting students to understand and use the target language for a high percentage of the class period.

Mr. Christie challenges students to achieve high standards when speaking and writing in the target language. While these standards are important and necessary especially during the teaching of a language, I encouraged him to reinforce the parts of the answer that students are getting right. Telling students they are almost right, and then either giving them another chance or calling on another student is better than giving the student a resounding no and then going on to another student. Positive reinforcement helps students to have a better understanding of their strengths and weaknesses and it motivates and encourages them to do their best. Encouragement rather than embarrassment can be used effectively with errors.

The 1993-94 School Year

In a letter to Christie dated October 19, 1993, Bieri summarized "the following alleged complaints against you . . . brought to my attention either directly from the individuals represented or through communication with staff members from Central's Guidance Department":

September 21, 1993
Vicki Jones (Spanish 3)

. . .

Parents met personally with Mr. Dziadowicz and Mr. Christie and complained that Mr. Christie was psychologically abusing Vicki by using sarcastic comments that were directed at a brick but intended for the student. Implication was that the comments were received as personally negative by the student. Allegedly the words "Stupid" and "dumb" were used by Mr. Christie . . .

October 11, 1993
Cathy Murphy (Spanish I)

. . .

Cathy visited Mr. Fraundorf and indicated concern with the teaching style and her discomfort at being able to seek assistance in Mr. Christie's class . . .

October 13, 1993
Group of students (Spanish I - 4th Hour)
Danielle Nichols . . .
Shelley Diehm . . .
Steven Gast . . .
Lisa Trampe . . .
Michelle Whitmore . . .

Six students came to the guidance office and asked to speak with a counselor about the way they were being treated in Mr. Christie's class . . .

October 14, 1993
Danielle Nichols (Spanish I) . . .
Michelle Whitmore (Spanish I) . . .

Danielle Nichols and Michelle Whitmore appeared in my office . . . and wanted to speak with me about Mr. Christie's class. I immediately asked Mr. Padek to join me. We determined that they either were skipping class or were sent by mr. (sic) Christie. Mr. Padek and I refused to hear their concerns at that time, but invited them to return after school to speak with us. We then sent them back to class.

October 14, 1993
Steven Gast (Spanish I) . . .

I received a hand written letter on October 14, 1993 from Steven Gast in which he asked for an appointment to see me about his Spanish class . . . and the way "we" are treated.

October 14, 1993

Rachel M. Pecora (Spanish 3) . . .

I received a call from Mrs. Pecora who complained that her daughter . . . was being detained in Mr. Christie's class, Spanish 3-7th hour, and because of this her daughter missed the bus and often did not have enough bus money with her to get home.

October 15, 1993

Leesa Mallikarjunan (Spanish I) . . .

Leesa Mallikarjunan approached Mr. Heinzelman during his lunchroom supervision and expressed alleged concerns to him about her 4th hour Spanish I class. Her alleged concerns included having difficulty in the Spanish I class and not feeling comfortable going to Mr. Christie and asking for assistance . . .

Bieri conducted an investigative conference regarding these allegations on November 23, 1993. Bieri, Sobocinski, Padek, Christie and Sandy Schwellinger, an Association representative attended this meeting. In an internal memo describing the conference, Padek stated Bieri prefaced the meeting by detailing "that the following were the areas that were of concern":

1. Failure to answer students questions.
2. Ridicule and sarcasm towards students.
3. Leaving students unattended while they were being detained.
4. Use of class time to conduct a survey that was not authorized by the school.

After roughly two hours of discussion, the conference ended.

The results of the conference were communicated to Sloan, who responded in a letter to Christie dated December 14, 1993 which states:

In a letter dated October 19, 1993, from Mr. Ronald Bieri, Principal at West Allis Central, you were apprised of several alleged complaints that had been communicated to him regarding your teaching performance. Then subsequently, on November 23, 1993, Mr. Bieri held an investigative meeting with you for clarification of

the issues as presented in the October 19th letter. The following individuals were present at this meeting: Mr. Phil Sobocinski, Mr. Ronald Bieri, Mr. Jack Padek, Ms. Sandy Schwellinger and you. The alleged complaints appeared to focus mainly in the following areas:

1. Failure to address and answer student questions
2. Ridicule of students and use of sarcasm
3. Teaching methodology that is apparently causing students serious frustration
4. Failure to present homework assignments in a clear and understandable manner (including writing assignments on the chalkboard)

Now that a thorough investigation of the alleged complaints has been completed and reported to me, I find the evidence supports the following:

1. Student assignments have not been clearly given or written on the chalkboard, which was a previous job target (6/10/91).
2. Student questions have not been answered at all times during class hours. This was also a previous job target (12/5/91).
3. Students have been treated with less than mutual respect and have been subject to sarcasm and ridicule through the use of slang terminology and the inanimate brick object introduced into your classroom. This was also a previous job target (12/5/91).

Based upon the above investigative findings and supported by a written communication to you dated 10/14/91, which stated the district's expectation that you exhibit immediate significant and sustained improvement, I have decided that you have failed to satisfy the district's previously identified expectations. Due to your failure to satisfy these expectations and the seriousness of your conduct, I believe that disciplinary action is warranted. Therefore, you will be suspended without pay for one (1) day pursuant to Article IX, Paragraph A, of the Master Agreement.

. . .

Bieri observed Christie's instruction of a Spanish 1 class on February 11, 1994. Among other points, he noted "No assignments were written on the board." Bieri and Sobocinski performed a joint observation of Christie's instruction of a Spanish 1 class on May 6, 1994, and noted the following:

Commendations:

- Utilized a variety of instructional techniques
- Used the target language extensively
- accepted constructive feedback
- Assignments written or posted within the classroom

Recommendations:

- Include more verbal interaction with students, particularly when circulating around the room checking for progress and on-task behavior
- Continue to increase participation in extra-curricular school activities

Mr. Christie has been working on the following job targets and will continue to complete them by the end of Semester I, 1994-95:

1. Probe for learning understanding
2. Answer all student questions

The 1994-95 School Year

During the first semester of the school year, Bieri documented parent or student complaints regarding seven different students from Christie's classes. The administration documented the complaints on a form prepared specifically to track complaints against him. The form poses the following questions:

. . .

2. In what Spanish Class are you currently enrolled? ____ What hour? _
3. What is the specific nature of your complaint?

4. Does Mr. Christie write class assignments on the blackboard?
5. Has there been any instance in your Spanish class this year, where Mr. Christie has used sarcasm directed to you or to other students?
6. Does Mr. Christie answer your questions?
7. Has Mr. Christie called you or any other student names?

Each of the seven forms states a "No" response to Question 4. The form Bieri filled in for Jackie Ziolecki answered Question 1 thus: "Mr. Christie pushed Jackie in the back when checking her assignments - placed his hand on her back and pushed her." The form Bieri filled in for Christy Bozich answered Question 1 thus:

Mr. Christie belittles the students in the class. He will make students feel bad by indicating they don't know what they are doing. On one specific occasion Mr. Christie was kicking Christy's desk and indicating how 'dumb' she was because the assignment was done wrong. Christy actually felt so bad that she began to cry in class. His response to her was sarcastic.

The form Bieri filled in for Kristina Crook answered Question 1 thus:

Harassing remarks and name calling. Kristina was made to sit in the hall outside of her class for 3 of 5 days. Mr. Christie called her "social trash" and he called the class "savage." He singled Kristina and another student named Heather Lambro for ridicule saying "you'll never make it in the real world." Mr. Christie also said to Kristina "How can your mother stand you?"

The various forms noted Christie's use of a number of nicknames including Grumpy, Dumpy, the Polish Princess, Winey, Smiley, Bobsey Twins and Yahoo. The forms also note varying responses to student questions such as:

(W)hen students raise their hands to ask a question Mr. Christie won't call on them. Mr. Christie responds this is my time - you can come after class to ask questions.

I don't raise my hand anymore because he won't answer or we get put down . . .

If a student raises his/her hand Mr. Christie gives the impression of being 'put out' to answer the questions. Some students would raise their hands only to have it ignored.

On occasion he will recognize a student's hand, but his response is usually 'you should know that answer' - Body language generally is a 'now what' response.

After investigating the complaints, Bieri determined to issue the December 22, 1994 letter set forth above.

II

The record submitted by the administration to the Board took roughly one-half of one day. The arbitration hearing, as noted above, spanned several days. As a result, it is unwieldy, if not infeasible, to offer a detailed overview of the evidence submitted at the arbitration hearing. On the facts of this case, however, this is appropriate. The record submitted to the Board underlies the essence of the parties' dispute. Against this background, evidence submitted at hearing will be brought into the DISCUSSION section below only as is necessary to address the parties' arguments.

It is important to stress that this means of structuring this decision gives a less than accurate overview of the entire record. At a minimum, the complexity of the record developed during the arbitration hearing should not be understated. The Board called fourteen witnesses, including three parents, nine of Christie's students and two administrators. Each of these witnesses testified regarding events from the 1988-89 through the 1994-95 school years. The Association called sixty-two witnesses, including twenty-one parents, twenty-seven students, nine teachers (including Christie), three guidance counselors, one college student/classroom observer, and an Association representative. A number of the Association's witnesses testified concerning events preceding the 1988-89 school year.

This rough overview of the evidence submitted at the arbitration hearing serves less to underscore the bulk of the record than to indicate that the picture sketched to the Board offers a striking contrast to that detailed at the arbitration hearing.

THE PARTIES' POSITIONS

The Board's Initial Brief

The Board states the issues thus:

Did the Board have good cause not to renew Robert Christie's contract for the 1995-96 school year?

If not, what is the appropriate remedy?

The Board notes, as preface to its review of the record, that it is important to "put this case in its proper perspective." That perspective, the Board argues, flows exclusively from its avowed reasons for non-renewing Christie's contract. Those reasons are rooted, the Board notes, in "the seven (7) year period from 1988-89 through 1994-95." Because these years comprise the time period the Board viewed in determining to non-renew Christie, that time period "is the only relevant evidence for the Arbitrator to consider in making his decision."

After a detailed review of this seven year period, the Board asserts that "controlling weight" should be given "to the Board's decision" and that the Arbitrator "should not substitute his judgment for that of the Board." Article XIX, Section A requires, the Board notes, that it have good cause to discharge a teacher. This standard is, under arbitral precedent, a "just cause" standard. Noting the administration stated six reasons grounding the non-renewal in its recommendation to the Board, and that the Board entered specific findings and conclusions to support each reason, the Board argues its conclusions define good cause for the non-renewal.

Even if its decision is not afforded controlling weight, the Board argues that "the preponderance of the evidence presented during . . . hearing unequivocally supports a conclusion that the Board had 'good cause' not to renew" Christie's teaching contract. As the vehicle for demonstrating this, the Board uses the seven factor test articulated by Arbitrator Carroll Daugherty to define just cause. 1/

The first factor has been established, the Board argues, since Christie should have been aware of the consequences of his performance from not later than February of 1989, "when the first job targets were identified." Noting that the administration expressly warned Christie on "at least twelve (12) occasions" of the need to address performance deficiencies, the Board concludes

1/ Enterprise Wire Company, 46 LA 359 (Daugherty, 1959).

adequate forewarning of the impending non-renewal is not in doubt.

The second factor has also been met, the Board argues, since the job targets defined "the type of performance that the District has a right to expect from all of its teachers." That neither the Association nor Christie objected to the job targets underscores this conclusion, according to the Board. Whether viewed "(o)n their merits" or "based on the acquiescence of Mr. Christie and the Association," the job targets meet the standard set by the second factor.

The Board then asserts that the third and fourth factors have been met by "a thorough, fair, and impartial investigation" spanning seven years. These factors cannot be considered in doubt, the Board contends, since "(t)he record is void of any evidence indicating the District's process was unfair or not impartial."

The January 30, 1995, notice of consideration of non-renewal of contract issued to Christie states the six reasons underlying the administration's recommendation to the Board. The Board notes that those reasons in turn "formed the basis of the Board's Findings of Fact, Conclusions and Order." A review of the record considered by the Board, and the record adduced in the arbitration hearing establishes, the Board concludes, the existence of "substantial evidence" that Christie "did, in fact engage in inappropriate conduct which formed the basis for the non-renewal of his contract."

The Board asserts that the extended period of time it sought to work with Christie "to address his identified performance deficiencies" manifests "the fairness and even-handedness" required by the sixth standard. The Board stresses, to underscore this conclusion, that no other teacher has had the serious performance problems plaguing him; no other teacher has received as many complaints; no other teacher has been on job targets for so long a period of time; and no other teacher has received the warnings or discipline meted to him. The conclusion that it has met the sixth standard is, the Board concludes, "inescapable."

The Board notes that the seventh standard "utilizes two separate and distinct components." The seriousness of the conduct Christie is accused of has been, the Board argues, amply proven. That he has twenty-nine years of teaching experience cannot, the Board contends, obscure that the non-renewal did not involve a single incident, but "continued performance deficiencies . . . which were never remediated." Relevant arbitral and judicial precedent stresses that long teaching experience and sporadic, but continuing performance deficiencies can "satisfy a 'just cause' standard and uphold a termination."

The Board concludes by contrasting "the admirable efforts of the District's administration and Board to eliminate a cancer from its teaching staff" against Christie's inability to respond to efforts to correct his deficiencies. With this as background, the Board "requests that the Arbitrator affirm the Board's decision to non-renew Mr. Christie's contract for the 1995-96 school year."

The Association's Initial Brief

The Association states the issues posed thus:

Did the School District meet its burden of proving that it had, i.e., that there was, just cause to fire veteran and master teacher Robert Christie?

After an extensive review of the evidence, the Association argues that "(t)he Arbitrator has the right, and responsibility, to review all the testimony presented . . . but should give no innate credibility or deference" to the record developed for the Board's hearing. Noting that the Board's pre-hearing motion to limit evidence and testimony was denied, the Association argues that no deference is appropriate to the record unilaterally developed by the Board, and that the record must be considered to be that developed at the arbitration hearing.

More specifically, the Association argues that the evidence submitted to the Board on May 20, 1995 is "self-serving." Noting that "(l)oss of one's job is capital punishment of the workplace" and, in this case, "the end of the teacher's career as a teacher," the Association urges that any evaluation or documentation not confirmed by testimony at the arbitration hearing be rejected.

Noting that the Board has the burden of proving good cause for discharging Christie, the Association asserts that the most persuasive means of defining just cause is the seven-standard test of Arbitrator Daugherty. An analysis of the evidence demonstrates, according to the Association, that the Board has not met any of the seven standards.

The Association then contends that "(t)he District sorely failed to meet any of the seven standards or its own policy definition of just cause in firing" Christie. The conduct which precipitated the non-renewal is, the Association contends, restricted to seven complaints made during the 1994-95 school year. Even if prior instances can be considered, the Association asserts that "(t)he primary failure of the District to conduct a thorough and fair investigation of the same and to obtain substantial evidence of the truth of same -- is glaring." The absence of an impartial investigation also, the Association adds, demonstrates that the Board treated Christie unlike any other teacher. Beyond this, the Association argues that the Board failed to put him "on actual notice of its intention to fire him," and failed to consider his past record of solid achievement.

Asserting that the Board's 1971 "Tenure of Office Policy" defines its own view of good cause, the Association argues that the Board's failure to make any reference to the policy underscores the weakness of its case.

Returning to the seven standards, the Association asserts that the Board failed to adequately notify Christie of the impending discipline. Rather, the Association contends that the evidence shows only that he "always did whatever he was asked to do, be it unreasonable or not, and received good evaluations in the spring." Beyond this, the Association argues that, stripped to its essence, the sole rule the Board sought to enforce against Christie was that it should receive no complaints about him. Any attempt to erect reasonable rules governing the process of teaching based solely on the shifting sands of student or parent complaints is, the Association argues, unreasonable.

The third and fourth standards cannot have been met, the Association asserts, since "the District simply did not investigate the alleged complaints . . . (a)nd they did not do what little they did in a fair manner." The evidence manifests, the Association avers, a repeated course of conduct by which the District recorded, without investigation, any parent or student comment which put Christie in a bad light. That the Board developed a form to record these complaints manifests, the Association urges, the self-serving nature of the investigation.

The Board's investigation did not, the Association argues, produce any substantial evidence that Christie behaved inappropriately. The Board failed, the Association urges, to "rely on its own evaluators," to consult non-complaining students or parents, to consider that disruptive students behaved differently on days in which an administration evaluator appeared in class, and to apply its rules even-handedly.

The final standard cannot have been met, the Association contends, because the Board failed to consider not just Christie's longevity as a teacher, but the fact that his "teaching record is not just satisfactory, it is outstanding." The Association concludes thus:

(T)he District's nonrenewal of Robert Christie should be voided and Mr. Christie given his 1995-96 teaching contract. And, the administration should be advised to allow the students who testified on behalf of Mr. Christie and any others who want to continue studying with him to do so when school starts at the end of this month, and further not to retaliate against Mr. Christie by not permitting him to teach Spanish 5 and other upper level courses and assigning him only lower level courses.

And, if the Arbitration Award is issued after the onset of the school year, Mr. Christie should be made financially whole for any loss of pay, with interest, and any and all other appropriate relief.

The Board's Reply Brief

The Board asserts that the Association has employed "sarcasm" and personal attacks on Board witnesses to paper over a lack of substance in its case. A dispassionate review of "uncontroverted facts" demonstrates, the Board urges, that the "basic premise of this case is that Mr. Christie has not satisfied the reasonable performance expectations which the District had a right to expect of him as a teacher." The Association has lodged a myriad of arguments to detract from the focus on this basic premise. After a review of the evidence demonstrating this point, the Board posits that moving this matter from a public to a private sector viewpoint highlights that the sanction of discharge "is not only warranted (it) is demanded."

The Board then contends that the documentation reviewed on May 20, 1995 is both relevant and worthy of weight. Noting the absence of any "legal or arbitral authority" for the Association's assertion to the contrary, the Board argues that even the documentation which could be considered hearsay is, under arbitral authority, entitled to weight: "The record is void of any indication that the reliability of the matters contained in those documents was ever questioned or that the veracity of the drafters was ever questioned."

Noting that "both parties have agreed that the appropriate standards to be applied in determining whether there was 'good cause'" are those of Arbitrator Daugherty, the Board asserts that the Association improperly applies those standards and that a proper application of those standards demonstrates good cause for the discharge. The Association mischaracterizes the basis for the non-renewal by asserting it rests solely on the seven complaints of 1994-95 school year. Rather, the evidence establishes that those complaints were the "straw that broke the camel's back." Beyond this, the Board asserts that its investigation of those complaints was fair and comprehensive. The Board cites the absence of any objection from the Association to the investigation process used through the 1994-95 school year to underscore this conclusion.

Even if its "Tenure of Office Policy" is considered applicable, the Board argues that the non-renewal meets its requirements. Noting the Association's failure to point to "the language of the policy stating that a teacher may be refused employment 'for other good cause,'" the Board argues that Christie's failure to meet its reasonable expectations constitutes the good cause the Association refuses to see.

Nor can the adequacy of the notice afforded Christie of the risk of non-renewal be reasonably considered in dispute. The Board notes the irony in Christie's demand that his students understand his stated expectations of them in contrast to his own claim that he could not understand the Board's expectations of him. The Board notes it gave Christie, on March 10, 1994, clear and final warning of the risk of not remediating his conduct.

The Board then contends that its expectations were reasonable and related to his prior performance deficiencies. The Board argues that it did not simply expect him to generate no more

complaints; that no one challenged the reasonableness of requiring him to write out

assignments "until the Association's brief was filed;" that it never required him to do more than to answer all questions during class; and that its imposition of job targets on him alone reflects no more than his singular inability to address his performance deficiencies.

Whatever difficulty the Association may have with the documentation of the complaints against Christie, the Board argues that there is no persuasive evidence that this documentation is less than accurate.

The Board concludes that the "bottom line in this case is whether the punishment fits the offense." The record demonstrates, according to the Board, that Christie was capable of ceasing inappropriate conduct "if and when he so desired." This fact, the Board concludes, makes "his inability to exhibit 'significant or sustained' performance improvement" sufficiently egregious that the sanction of non-renewal was the final, and appropriate, alternative.

The Association's Reply Brief

In an extensive introduction, the Association advances a series of arguments to establish that "(a) bona fide investigation for the truth in this case was -- effectuated by the arbitration hearing" and that the Board's actions undercut the concept of just cause.

The evidence submitted at the May 20, 1995, hearing is, the Association asserts, self-serving and unreliable. The testimony adduced at the arbitration hearing demonstrates, the Association asserts, that a considerable portion of the evidence is untrue or inaccurate. More specifically, the Association points to the testimony of several witnesses. A review of the evidence reveals, the Association urges, that the administration did nothing to attempt to address any underlying complaint against Christie other than to "make book" on him. Beyond this, the Association challenges the Board's selective use of surveys and its mischaracterization of several witnesses.

Noting that arbitral precedent recognizes three statements of the appropriate burden of proof, the Association contends that under any standard the Board has failed to meet its burden. Because of "the defamatory nature of the District's stated reasons" for the non-renewal, and because of various factors making it unlikely Christie can ever teach again, the Association urges that "a combination of the two higher standards" be used to assess the Board's case.

Put in the perspective of the Daugherty standards, the Association argues that the Board's actions manifest a fundamental failure to determine "substantial" evidence of wrongdoing which is traceable to the Board's failure to investigate the complaints against Christie. Against this must be weighed, according to the Association, a series of proven facts indicating that Christie addressed problems communicated to him or did not experience the problems the administration attributed to him.

The Association then contends that even if the Board had proven the misconduct it alleged against Christie, that misconduct would not warrant his termination. More specifically, the Association avers that arbitral precedent sets forth examples of the propriety of lesser degrees of punishment against less experienced teachers found guilty of more egregious misconduct.

The Association concludes that the record will not support the non-renewal and that an award confirming this will serve the Board "as a learning experience about fairness, impartiality and objectivity in dealing with its faculty and students . . ."

DISCUSSION

The parties did not stipulate the issues for decision, but do not dispute that the issue is whether the Board had, within the meaning of Article XIX, good cause to refuse to renew Christie's teaching contract. The parties agree that the application of the seven Daugherty standards defines "good cause."

Within this broad area of agreement, however, certain preliminary differences exist which need to be addressed before applying the Daugherty standards. The Board asserts that the findings of May 20, 1995 should be given "controlling weight." This assertion was posed as an evidentiary matter in a pre-hearing motion to limit evidence. I denied the motion during the first day of hearing. 2/

The post-hearing issue posed by the Board is the degree of deference appropriate to its May 20, 1995 findings. Step 3 of Article XIX requires an arbitrator to "determine whether the Board's action was for good cause." Focusing on the reference to "the Board's action," the Board urges it would be inappropriate to substitute arbitral discretion for "the Board's action." That Step 3 makes arbitral determination of good cause contingent on compliance with Steps 1 and 2 arguably grants the deference sought by the Board some contractual support, since Christie waived any right of participation in the Step 2 hearing.

The controlling deference sought by the Board for its findings is not, on this record, persuasive. A "cause" 3/ standard contemplates, at a minimum, participation by both parties in an evidentiary hearing. 4/ The correspondence exchanged by the parties establishes, at a minimum,

2/ Transcript (Tr.) at 13-17.

3/ References to "cause," "just cause," or "good cause" are generally treated as synonymous terms. See, generally, Hill & Sinicropi, Management Rights, (BNA, 1986).

4/ See Bornstein and Gosline, Labor And Employment Arbitration, (Matthew Bender, 1995) at Section 19.03.

that they understood that Christie's withdrawal from participating in the May 20, 1995 hearing did not preclude access to arbitration. 5/ The Board struggled with Christie's lack of representation at the May 20, 1995 hearing, and acted ex parte to complete the procedures necessary to set the stage for the arbitration hearing.

Against this background, affording controlling deference to the Board's findings cannot be squared with the good cause standard of Article XIX or the facts. The Board acted on May 20, 1995, based on the personnel file developed by its administration, and without the benefit of any non-administration testimony. There is no reason to believe the Board would not have preferred to act on a more complete record, and thus no reason to ignore the benefit of the fully developed record posed here. Denying controlling weight to the Board's findings is not, then, an issue of substituting arbitral discretion for the Board's. Rather, it is a recognition of the more complete evidentiary record made at the Step 3 than at the Step 2 hearing.

The parties have touched upon various burden of proof arguments, particularly on the appropriate quantum of proof. Whether a "preponderance of the evidence," "beyond a reasonable doubt," or "clear and convincing evidence" standard is applied to this record is neither determinative nor helpful. The burden of proof is relevant only where, on review of a fully developed evidentiary record, doubt remains on a significant fact. 6/ Application of the burden of proof determines against which party the doubt will be resolved. Inquiry into the appropriate quantum of proof seeks to dissect the doubt before it is held against a party. These considerations are at best a last resort, for whenever applied, they shield the decision maker from the determination sought by the parties. The record posed here renders the concepts even less useful. No single incident precipitated the non-renewal. The underlying events were observed in classroom settings by a myriad of witnesses. The amount of testimony was considerable as was the feeling underlying that testimony. To resort to burden of proof concepts on this record substitutes doctrine for analysis.

The balance of the discussion of the issue of good cause is structured by the seven Daugherty standards. 7/

I

5/ Employer Exhibits 1 through 5A.

6/ See McCormick on Evidence, First Edition (West, 1954) at Section 307; and Second Edition (West, 1972) at Chapter 36.

7/ The seven questions include explanatory text and twenty-one accompanying notes, and are stated at 46 LA 362-365.

Did the (Board) give to the employee forewarning or foreknowledge of the possible or probably disciplinary consequences of the employee's conduct?

With one exception, the application of this standard cannot be considered in doubt. Schwelling and Christie noted their shock that the administration recommended the non-renewal of his contract. This reflects their belief that Christie had complied with the job targets and their disbelief in the administration's contrary view. Their shock points to a tension between applying the seven standards as a review of the procedures followed by the employer or as a substantive review of the decision to discipline. That tension is implicit in the standards, but cannot obscure that the evidence is replete with notice to Christie of the disciplinary significance of non-adherence to the job targets. Administrative personnel warned him of the disciplinary significance of his conduct in letters dated May 29, 1990; March 22, 1991; October 14, 1991; November 11, 1991; and December 14, 1993. This trail of correspondence ignores conversations between Christie and administrators on the disciplinary overtones of conduct prompting student and parent complaints as well as correspondence and evaluations documenting his job targets. The Board states the point starkly, but accurately, by noting that finding a failure of notice on this record would be an insult to his intelligence.

The exception alluded to above is that both Sobocinski and Schwelling testified that the Board's progressive discipline system may envision a longer suspension prior to non-renewal. The evidence on this point is insufficient to conclude a longer suspension should have preceded the non-renewal. It serves, however, to preface more troublesome issues regarding the process by which the administration concluded Christie's performance posed an intractable problem. Those issues are dealt with in the remaining standards.

II

Was the (Board's) rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the (Board's) business and (b) the performance that the (Board) might properly expect of the employee?

The six bases for the non-renewal are stated in Kitchen's January 30, 1995 letter to Christie and in the Board's May 20, 1995 Conclusions. 8/ These bases are, ultimately, the "managerial order" for which he has been held accountable. That each of them is reasonably related to the orderly operation of a school district and the performance the Board can properly expect of its teachers is not debatable. Whether those bases have a sound basis in fact is a separate question posed by the remaining standards.

8/ The six bases for the non-renewal are individually referred to below as Item 1, 2 etc.

III

Did the (Board), before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

With this standard, the tension alluded to above comes to a head. On its face, the standard requires "an effort" by an employer to establish the factual basis of the discipline. Daugherty's notes imply that it is not enough for an employer to make less than a full inquiry, relying on arbitration to complete the process. 9/ The notes are not, however, free from ambiguity, since Daugherty refers to what may "normally" be expected from an investigation. His reference that an employer "is obligated to conduct itself like a trial court . . . (i)n a very real sense" 10/ implies the reference to "an effort" imposes a considerable burden.

It is unrealistic to assume an employer's investigation can, or should, mirror what can be produced with the input of an adverse party. Thus, the reference to "an effort" will be applied to require less than a judicial inquiry. Thus construed, the Board's actions meet the standard. If the stricter requirement implied by the notes was applied, they would not. This is, on this record, an academic difference. The difficulties underlying the application of this standard are squarely posed by the application of the remaining standards.

The Board notes that a similar procedure governed the processing of complaints filed against Christie. That procedure included: the receipt of a complaint; discussion(s) between administrator(s) or Guidance Counselors and the complaining party; internal discussion among administrators; notice to Christie that an investigation was ongoing; meeting(s) between Christie, sometimes with Association representation, and administrator(s); and an administrative decision based on a review of the meeting(s) and Christie's personnel file. This process is exemplified in the one day suspension documented in Sloan's December 14, 1993 letter, and by the investigation which preceded Bieri's issuance of the December 22, 1994, letter recommending the non-renewal of Christie's contract. It is apparent in both cases that the Board made an effort to determine the existence and the sincerity of the complaints. In each case the Board confronted Christie with the complaints and offered him the opportunity to confirm or deny them before it acted against him. This constitutes an effort, within the meaning of the third standard, to determine if Christie had engaged in conduct proscribed by prior warnings.

This effort, however, is flawed. The six items grounding the non-renewal point to an ongoing course of behavior. The individual complaints were, however, presumed meaningful as

9/ Note 2 at 46 LA 363-364.

10/ Ibid., at 364.

ongoing concerns. This ignores that the source of the complaint itself involves an ongoing teacher/student relationship which is subject to change. For example, Murphy's October 11, 1993 complaint, taken in isolation, appears to highlight an ongoing and fundamental flaw in Christie's performance. Her testimony, however, establishes that her concern not only faded with time, but yielded to the view that Christie is a "totally awesome" teacher. 11/ Similarly, Jones' September 21, 1993 complaint, taken in isolation, reads as a serious indictment

11/ Tr. at 835.

of Christie. The severity of this indictment is, however, more open to question than Bieri's October 19, 1993 memo would indicate. In response to Christie's end of the year survey which sought suggestions for his improvement, Jones stated:

Don't give so many extras! Otherwise I learned a great deal over the year & I guess I enjoyed having you as a teacher. Oh & don't pick on others directly and call them names!

This is less than an unfettered endorsement of Christie, but points out that the underlying source of the complaint involves ongoing behavior. The administrative investigation never questioned whether the factors underlying the complaint changed over time.

More significantly, the validity of the facts alleged in the complaints was never tested by the administration. This is apparent in Padek's summary of Bieri's methodology for the November 23, 1993 investigation:

It was an investigatory meeting to examine the complaints outlined in the letter . . . dated October 19, 1993. Mr. Bieri asked that he be allowed to ask a prepared set of questions, and that he would go through all of his questions giving Mr. Christie an opportunity to respond to those questions as they were asked and that at the end of the prepared questions he would allow Mr. Christie or Ms. Schwelling the opportunity to respond or give a statement if they so desired.

Although Christie's opinion was sought, it is not clear it was afforded any credence. He took the position that a number of the 1993 complaints involved students working in a group he disbanded for poor behavior. That the administration might not credit his opinion is not, standing alone, remarkable. That no effort was made to corroborate it, or his accusers' opinion, is. Five of the nine students listed in Bieri's October 19, 1993 memo were part of the same group. If those complaints manifest no more than resentment at being disciplined, much of the substance of that memo evaporates. There is no persuasive evidence that the facts underlying the complaints of October 13 and 14, 1993 were tested by the administration.

Similarly, Jones' resentment of Christie's use of "Mr. Brick" was treated as valid criticism. The complaint reflected that Christie, if he failed to generate responses to questions or generated half-hearted or erroneous responses, would address a brick. The brick, painted and given a sombrero and mustache by former students, had been given to him as a Christmas present.

He would address "Mr. Brick" with words to the effect that he might as well be conversing with it. Jones took this as an insult to her intelligence. The administration's investigation never learned, because it never sought to discover, whether "Mr. Brick" was regarded as funny or as a tension breaker by students other than Jones. Whether Christie's use of a brick as a tool to teach is appropriate technique is not the issue here. Rather, the point is that the administration did not test this possibility, but presumed Jones' complaint, standing alone, warranted the conclusion its use was improper. Issues of teaching methodology to the side, this is less than a full investigation of disputed fact.

The significance of this point should not be understated. Items 1, 2 and 5 held Christie accountable for not providing "positive rapport" or "an atmosphere of mutual respect," as well as for engaging in "verbal putdowns . . . directed to students." Each Item concerns students generally. The administration's conclusion regarding his treatment of students generally rests on an investigation which rests on the untested complaints of a few individuals.

In sum, the administration made an effort to investigate the complaints against Christie. That effort was sufficient to meet the third Daugherty standard, but troublesome issues concerning the quality of the investigation underlie this conclusion.

IV

Was the (Board's) investigation conducted fairly and objectively?

The Daugherty standards anticipate employer representatives may act as judge and prosecutor, but will "conscientiously perform the judicial role." 12/ This states a laudable, but unrealistic expectation for most labor relations settings. As applied here, the standard demands that an investigation be performed in good faith, in an honest attempt to determine the facts underlying the decision to discipline.

The evidence indicates that administrators did make an honest attempt to determine the facts underlying the complaints against him. Bieri and Sobocinski perceived themselves as advocates for students, and saw the complaints filed against Christie as calls for them to assume that role. As noted above, the investigation prompting their advocacy was flawed. It does not, however, follow from this that the investigation was tainted by bad faith.

This conclusion should not obscure that the failure of the administration to test the complaints beyond determining that each was sincerely advanced indicates less than an objective effort to find fact. Stan Ladich's testimony underscores this point. Ladich testified that in the fall

12/ 46 LA 364.

of 1991, Bieri stated to a complaining parent that he thought he would fire Christie. Ladich noted that Bieri defended this conclusion after Ladich indicated that he did not view it as appropriate to make a comment like that to a parent and that he did not think Christie's problems rose to that level. This states a troublesome undercurrent to the problems surrounding the quality of the administration's investigation of the complaints.

This consideration, however, addresses the thoroughness of the investigation, not its motivation. In each case in which the administration acted against Christie, the action was based on a determination that the complaints had an objective basis. The strength of the basis for that determination poses a distinguishable issue. The administrative investigation is sufficient to meet the fourth standard.

V

At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

For the purposes of this standard, the Board will be taken as the "judge," and the proof will be the documentation presented on May 20, 1995. The charges are Items 1 through 6. In the absence of rebuttal and in the absence of independent verification that proof is substantial.

The proof was not, however, substantial within the meaning of this standard, for it will not stand up to the evidence submitted in arbitration. This conclusion ultimately turns on the complaints filed in the first semester of the 1994-95 school year. The documentation submitted to the Board was, however, a chronology of events dating from the 1988-89 school year. Weaknesses in the documentation of the 1994-95 school year have their roots in that chronology and require a brief overview of the documentation submitted to the Board.

In 1989, the Board implemented a student survey which prompted the job targets underlying Items 1 through 6. The survey was not "intended as a full measure" of Christie's teaching, but as a means to highlight flaws requiring remediation. The flaws the survey highlighted are significant, but difficult to assess over time. No follow-up survey was performed. This is not a significant flaw in the documentation, but prefaces an examination of the documentation which followed. The survey attempted a systematic review of Christie's performance and produced the job targets against which his performance was evaluated. His adherence to those targets was, however, based on anecdotal evidence.

That the evidence regarding Christie's adherence to job targets rests on anecdotal evidence does not, standing alone, make that evidence unreliable. However, the administration did not test the factual basis of the complaints beyond verifying that parent and student complaints advanced sincerely felt concerns. This exposed the documentation of the complaints to two fundamental risks. The first is that the documentation did not accurately reflect the underlying incident. The

second is that the documentation was insufficient to support the bases for the non-renewal.

A review of the documentation submitted to the Board does manifest some inaccuracy. In the 1989-90 school year, Bieri met with Christie in the first semester to discuss a series of parent complaints. He also recorded a number of second semester complaints which included the following:

4/6/90

Meeting with Mrs. Krause regarding her daughter Lisa Krause a grade 9 student enrolled in Spanish II. Mrs. Krause also met with Mr. Bieri on April 5, 1990 . . . Mrs. Krause addressed the following concerns about Mr. Christie:

- 1) Questions that Lisa asks during class are ignored and not answered. Mr. Christie will not recognize students with raised hands.
- 2) The group process (cooperative learning attempt) . . . is not fair because students are not allowed to ask the teacher for assistance.
- 3) Mr. Christie has verbally picked on Lisa in a degrading, sarcastic manner.
- 4) Lisa has indicated that Mr. Christie makes negative comments about other students or uncalled for comments during class.

Lisa Krause's mother testified that she had no independent recall of making these complaints, although she could not deny she may have made them. More significantly, she testified that she shared a favorable parent/teacher relationship with Christie. She also noted she had herself taken Spanish from him and liked him as a teacher. Lisa Krause had little recall of the source of the complaints. She did, however, note that Christie was her hardest teacher, and that she assessed his performance thus:

(H)e prepares you for college well and life . . . 13/ I think he was

13/ Tr. at 940.

one of the teachers that prepared me well for school, discipline, teaching myself, not having the answers given to me. 14/

It is not necessary to conclude that Bieri did not accurately record the complaint to note that it bears no continuing relation to the student's or the parent's view of Christie. Only the cited documentation was, however, presented to the Board.

The weakness in the data noted in Bieri's October 19, 1993 memo has been noted above. None of those weaknesses was made apparent to the Board. Rather, Christie's performance for that year was characterized as a disastrous regression in a "roller coaster ride." 15/ A review of the memo demonstrates, however, that the twelve complaints were filed by nine students. Two of the complaints were ameliorated, if not resolved. Eight of the remaining complaints were filed by students involved in a group disbanded for disciplinary reasons. The memo, however, was presented to the Board as effective documentation of twelve significant complaints. This does not mean the memo had no significance. Rather, it points out that the significance of that memo is subject to doubt never conveyed to the Board.

This does not rebut all of the documentation of events preceding the 1994-95 school year. For example, the testimony of Donna Choinski and Melissa Tocco verifies their complaints of the 1991-92 school year. It must, however, be stressed that the Board did not have the benefit of corroborating first-hand testimony regarding the complaints. The documentation was, then, subject to weakness not apparent its face.

The strength and the weakness of the documentation submitted to the Board coalesce around seven student complaints filed in the first semester of the 1994-95 school year. Those complaints became "the straw that broke the camel's back." Three of the complaints were filed on behalf of students in Christie's Spanish 2 class, first hour. Three others were filed on behalf of students in his Spanish 4 class, sixth hour. The final complaint was filed on behalf of a student in his Spanish 5 class, second hour.

With these complaints, the problems underlying the documentation submitted to the Board come to a head. Five of the students who filed complaints testified. Standing alone, the documentation submitted by the administration at the Board and arbitration hearings affords substantial support for the stated bases for the non-renewal. Ziolecki testified that Christie made statements such as "I'd be better off talking to the blackboard" or "this class will not make anything of themselves." Her testimony offered a moving portrayal of her profound distaste for the class. Ziolecki, who was enrolled in his Spanish 2 class second hour, did not have great

14/ Tr. at 947.

15/ Transcript of May 20, 1995 hearing at 67, 68 and 76.

interest in Spanish, and was not concerned with its implications for her future. Kristy Harvey, enrolled in his Spanish 4 class, sixth hour, did have a more pronounced interest in the academic implications of taking Spanish. Her impressions of Christie, however, tracked Zirolecki's. She viewed his use of nicknames such as "the Polish Princess" as demeaning to students, and his use of humor in a similar light.

The most dramatic testimony regarding the complaints of the 1994-95 school year was that of Christy Bozich, who described the following incident:

- A. I hadn't done my assignment the correct way and I was told that I was going to have an extra, and I remember him walking past my desk and he was going to get some books or something, I don't know, and kicked my desk . . . 16/

16/ Tr. at 174.

- A. He picked up a book off his desk and tapped me with it on the head and said, is there anything up there. . . . 17/
- Q. And what, if anything, did you do or say after Mr. Christie tapped or hit you on the head with the book?
- A. I was really upset and I started crying.
- Q. And what, if anything, did Mr. Christie say to you?
- A. He . . . really sarcastically started saying, oh Christina, don't -- why are you crying? Why are you so upset . . . 18/

Unlike Harvey, neither Bozich nor Ziolecki would state they learned much from Christie. Their testimony manifests students intimidated and for many instructional purposes lost by him. Alanno Yarbrow and Kristina Crook also testified. Their testimony manifests a similar sense of alienation and resentment.

The testimony offered at the arbitration hearing to corroborate the documentation placed before the Board thus affords substantial support for the six bases of the non-renewal. It reflects the strength of the Board's case against Christie, and that strength should not be overlooked. However, as with evidence from prior school years, the documentation of the 1994-95 complaints is subject both to challenge as to its accuracy and as to its sufficiency to support the six bases of the non-renewal.

The arbitration record does show some inaccuracy in the documentation. This does not mean Bieri inadvertently or willfully misstated the information he received. Rather, the inaccuracy reflects an over-simplification of the factual complexity of the incidents underlying the complaints.

A review of some of the allegations made in the student complaints illustrates this point. Bozich's parents complained about Christie's making "remarks to Christy about being an air head." In the absence of any verification of this allegation, it states a personal insult. Bozich testified, however, that Christie did not use that term in referring to her. Her own and her parents' use of the term reflected not what he said, but how he made her feel. Similarly, the documented reference to Christie's "kicking" her desk can connote, standing alone, an aggressive

17/ Tr. at 175.

18/ Ibid.

and intimidating physical act. As demonstrated by Bozich, however, the kick was more of a tap. The documentation submitted to the Board permits no such nuances and illustrates the risk of treating the documentation, without rebuttal, as fact.

Also indicative of the gap between the documentation of a complaint and the underlying facts is Crook's allegation that Christie referred to her as "social trash" and to the class as "savages." The documentation of this complaint reveals no doubt about what was said, in what context it was said or to whom it was directed. Crook's recall of the "social trash" reference was, however, limited. She did testify that the reference to the class being savage reflected Christie's view of the students' inability to sit still and listen to the daily announcements. Neither reference, in light of her own and other testimony, conveys the ramifications the documentation does. The reference to "savages" appears bland.

More significantly, there is no substantial reason to believe the "social trash" reference, if made, carries the significance the documentation implies. Crook testified that the remark was addressed to the class generally, but that she took it personally. Crook and Heather Lambro were acquaintances who were each in the Spanish 5 second hour class. Lambro relayed the "social trash" reference to her mother, Patricia Ochs-Sobczak. Her mother was concerned both with the statement and with the possibility that her daughter might have misconstrued it. She waited until parent teacher conferences and discussed the point with Christie. He denied making the comment and discussed Lambro's problems in the class. Ochs-Sobczak testified she believed his denial and was satisfied with the conference.

Thus, the documentation of the parent/student complaints submitted to the Board did not necessarily convey the complexity of the underlying incidents. This is not a blanket rebuttal of the documentation submitted to the Board. It does, however, underscore that the documentation submitted to the Board was not necessarily accurate.

These and other inaccuracies do not fatally flaw the administration's documentation. The Board's bases for the non-renewal rest less on any particular incident relayed in the parent or student complaints than in a conclusion that the complaints manifest a broad, ongoing and improper course of conduct by Christie. Thus, whatever over-simplification exists in the documentation is not, in itself, a fatal flaw in the evidence. That Christie may not have referred to the class as "social trash" or to Bozich as an "air head" is not fatal to the conclusion that he failed "to provide positive student-teacher rapport and relationships." That Crook and Bozich felt a deep sense of alienation is apparent in the documentation and in their testimony. That evidence is, then, probative of the broadly stated bases for the non-renewal. The documentation reflects the general and emotive nature of the student testimony. Drawing detail from that testimony is an arduous process, and the broadly stated bases for the non-renewal reflect this.

With one exception, however, the breadth of the stated bases for the non-renewal make it impossible to conclude the seven complaints afford substantial evidence that Christie "was guilty as

charged." Taking Ziiolecki's and Yarbro's testimony to establish substantial evidence of Christie's commission of the behavior noted in Items 1, 2, 3 and 5 ignores the testimony of Terence Olson and Jeni Schneider, also students in the Spanish 2 first hour class. Each denied the existence of ridicule or the other behavior noted in Item 5. Schneider and her friend were the recipients of the nicknames "Grumpy" and "Dumpy" complained of by Yarbro. Schneider noted Christie was trying to cheer them up on a day they were in a bad mood. She stated the nicknames did cheer them up a bit. She could not relate any behavior by Christie which would support Items 1, 2, 3 or 5. Olson stated that Christie would answer questions "after the lesson was taught." 19/ He noted that answering questions in the middle of a lesson "can get disrupting." 20/ He took no offense at the nicknames applied to Schneider and her friend, and noted he viewed Yarbro as a disruptive student.

Comparing the testimony of the complaining students to other testimony offers more noteworthy contrasts in the Spanish 4 sixth hour and the Spanish 5 second hour classes. Harvey and Bozich, as noted above, offered compelling accounts of difficulties in the Spanish 4 class. Six other students from that class, however, testified. Guy Stuller testified that Christie never failed to answer student questions, and would use nicknames, such as "Yippy and Zippy" to refer to him and his friend, Ed Lisinski. Neither took any offense. Stuller referred to the sixth hour class as "the only class that I ever really learned and sticks with me." 21/ Scott Sander testified Christie taught him "the most Spanish in all of my four years." 22/ The testimony of the other four students tracks this, with none offering support for the behaviors noted at Items 1, 2, 3 or 5. The contrast to the testimony of the complaining students is stark. To further illustrate, the nicknames regarded by Harvey as demeaning were not so viewed by their recipients. Erika Kuczynski, the "Polish Princess," did not mind the reference, and hoped to have Christie as a teacher for Spanish 5.

Crook's evaluation of the Spanish 5 second hour class and that of other students affords a more conspicuous contrast. Six other students from that class testified. None corroborated Crook's views. Several of these witnesses viewed her as disruptive. Mike Kedor characterized Christie as "probably the best teacher I ever had." 23/ Chris Osowski characterized him as "one of the best teachers I've ever had." 24/ Amy Krause, John Krzyzaniak and Sara Harrington

19/ Tr. at 1209.

20/ Ibid.

21/ Tr. at 649.

22/ Tr. at 694-695.

23/ Tr. at 543.

24/ Tr. at 579.

similarly characterized him. At the end of the year, the class presented him a thank you card. Each student in the class, except Crook, signed the card.

A similar pattern characterizes the testimony of those parents who testified regarding the "parent-teacher communications" of Item 6. Gayle Ziolecki, Barbara Maciejewski and Donna Choinski offered compelling testimony supporting the documentation submitted to the Board. No less compelling, however, is the favorable testimony of Catherine Kedor, Paul and Mary Bockhorst, Vincenza Nancy Stuller, Beth Miller, Paul Murphy, Sharon Gorman, Bonnie Westover, Patricia Ochs-Sobczak, John Lopez, Richard Mlagan, Sandra Schneider, Debbie McKay-Lacy, and Terrence and Cheryl Olson. This testimony offers wide-ranging support for the effectiveness of Christie's communications with parents. Some relate no more than uneventful, if satisfactory, contact. Others are more noteworthy. McKay-Lacy entered a parent-teacher conference with significant concerns which Christie fully addressed. Ochs-Sobczak and Paul Bockhorst related similar accounts. Murphy initially sensed aloofness in Christie, and was concerned about the quality of his performance in the first semester. By the end of the year, however, Christie had addressed those doubts.

The arbitration record thus stands in marked contrast to that presented to the Board. At the May 20, 1995 hearing, no evidence challenging the administration's documentation was offered to the Board regarding parent/teacher communications. In response to questions from the Board, Sloan did note that he had received six or fewer phone calls supporting Christie. None of the calls was documented or corroborated.

There is some support for a conclusion that Christie may have, at different times, been guilty of Item 3. Scott Szweic, a student in Christie's Spanish 2 third hour class in the 1994-95 school year, noted that few questions were asked at the start of the school year and that asking his first question took some effort. This would lend some support to the complaints filed at the start of the year concerning Christie's hostility to questions. Szweic went on, however, to note that his reticence to ask that first question did not reflect Christie's willingness to answer it, or to answer subsequent questions. As noted above, other student testimony indicates that Christie was responsive to questions.

On balance, the record does not manifest substantial evidence of Christie's guilt regarding Item 3. That the Board's expectations on this point varied is worthy of some note. Sloan's December 14, 1993 letter indicates Christie was to answer student questions "at all times during class hours." How class control is maintained under such an expectation is not apparent. More indicative of the Board's reasonable expectation regarding Item 3 is Bieri's December 5, 1991, letter which required Christie to "continue to answer questions after every exercise." The record indicates Christie complied with this directive. Olson's testimony typifies much of the evidence on this point. 25/ The record indicates Christie would ask questions at the close of a lesson, and

25/ See Footnote 19/, 20/ and accompanying text.

would not respond to inappropriate questions. This squares with the job targets placed on him, and makes it impossible to conclude the record affords substantial evidence of Christie's guilt regarding Item 3.

In sum, the record does offer some corroboration for the documentation submitted to the Board to support the six bases for Christie's non-renewal. Documentation preceding the 1994-95 school year is not in itself in dispute here. Flaws within that documentation can, however, be noted such as the Krause complaint of April of 1990 which, though resolved, was treated by the administration as an ongoing and valid complaint. Similar flaws can be noted in the documentation of the Murphys' and, to a lesser degree, the Jones' complaints of the first semester of the 1993-94 school year. All of the documentation of the complaints suffers from the administration's presumption of their validity. This does not, in itself, mean the underlying documentation is without merit, but points to troublesome undercurrents which come to a head in the complaints filed in the first semester of the 1994-95 school year.

The documentation of those complaints poses troublesome issues regarding individual students, but is insufficient to establish substantial evidence that Christie is guilty of the conduct underlying the six bases for his non-renewal. Those six bases assert significant and ongoing performance problems which the complaints of 1994-95 will not support. The concerns of the individual students and parents establish Items 1, 2, 3, 5 and 6 only if no rebuttal evidence is considered. Those Items focus on broad issues affecting students as a group, but the documentation supporting them rests on isolated and untested individual complaints. The testimony of students and parents offered at the arbitration hearing establishes that the record submitted to the Board on May 20, 1995 was incomplete and, in certain respects, inaccurate.

This conclusion does not extend to Item 4 of the six bases for the non-renewal. The evidence establishes that Christie limited systematic posting of assignments to Spanish 1 classes. Christie's position has some support in his June 1991 evaluation which notes that Spanish 1 assignments "must be written on the board" while "(a)ctivities for each class should be written on the board . . ." His conclusion that this implied he had discretion to post assignments in writing for advanced classes at his own discretion is not, in light of that evaluation, unreasonable. However, events after that evaluation, including Sloan's letter of December 14, 1993, the "job targets" meeting of March 10, 1994, and the Performance Appraisal of February 11, 1994, render Christie's conclusion untenable. He failed to implement this job target and failed to understand that the job target sought to insulate him from a common area of student complaint. The documentation submitted to the Board offers substantial evidence that Christie was guilty of the conduct alleged in Item 4.

VI

Has the (Board) applied its rules, orders and penalties evenhandedly and without discrimination to all employees?

The Association argues that the administration treated Christie unlike other teachers. Noting that the administration attempted to resolve parent or student complaints at the lowest level possible with other teachers, the Association points out that the administration treated each complaint against Christie as reason for its own intervention. This, the Association concludes, set him up for the non-renewal.

This view has some support in the evidence. Ladich noted that Christie was a "nuisance teacher" 26/ to the Guidance Counselors. By that he meant Christie's teaching style could be expected to generate a few complaints a year. This was not, to Ladich, unusual or objectionable. Beyond this, it is not immediately apparent why the administration did not attempt to seek a resolution of student or parent concerns with the direct involvement of Christie. As noted above, he was capable of resolving concerns with parents.

It is, however, apparent that Christie's personnel file poses issues never before faced by the administration. It does appear that Christie generated more complaints than other teachers. This undercuts the persuasive force of the Association's arguments. More significantly, the depth of feeling reflected in some of the student complaints appears singular. The Association's argument ignores that Sobocinski and Bieri did have reason to believe at least some of Christie's students needed their advocacy.

At most, the record indicates that at the close of the 1992-93 school year, Bieri hoped that Christie had put the student and parent complaint problems behind him. The complaints of the 1993-94 school year destroyed that hope, and in his mind established a fundamental inability of Christie to change. From at least this point on, the existence of a complaint, without regard to its underlying merit, confirmed his conclusion that Christie was incapable of change. This manifests less discriminatory treatment than a sort of self-fulfilling prophecy.

The evidence will not support a conclusion that the Board's documentation fails to meet this standard.

VII

Was the degree of discipline administered by the (Board) . . . reasonably related to (a) the

26/ Tr. at 1003.

seriousness of the employee's proven offense and (b) the record of the employee in his service with the (Board)?

Each element of this standard must be answered in the negative. Regarding (a), the "no" is somewhat equivocal. Regarding (b), it is not.

As preface to an examination of element (a), it is necessary to stress the non-renewal does not turn on the significance of any single incident. The Bozich testimony set forth above exemplifies this point. Her testimony of that incident raises significant disciplinary issues standing alone. It is, however, difficult to assess precisely what happened. Christie denied the accuracy of her account. He noted that she had a tendency to nod off, and he would tap her desk with his foot to keep her on task. He could recall tapping her lightly on the head, but testified he did so to praise her for a correct answer. There is no solid corroborating testimony from the other students in her class to clarify what happened. This highlights the general and emotive content of the student testimony, which complicates the effort to determine specific fact. Against this background, it appears that Christie somehow addressed Bozich in a fashion which upset her to the point of tears. This is what the record supports. It is also what the administration drew from this incident as well as from the less dramatic incidents relayed in the student complaints.

The administration discharged Christie for creating the dysfunctional instructional atmosphere detailed in Items 1 through 6. That no specific incident should be given controlling significance in evaluating the "seriousness of the proven offense," is manifested by the Board's handling of the complaints. None of those complaints was treated as sufficiently significant to require immediate intervention by the administration on the student's behalf. Rather, each complaint was discussed, documented and added to Christie's personnel file for possible future action against him.

The proven offense turns, then, on Items 1 through 6. Of those six items, the record offers unequivocal support only for Item 4. There is some indication Christie may have, at different times, been guilty of Item 3. Beyond this, the student and parent complaints do manifest some support for Items 1, 2, 5 and 6. That support is, however, anecdotal and insufficient in light of the evidence adduced at arbitration to establish any of Items 1, 2, 3, 5 or 6 as a proven offense. There was a breakdown in Christie's communication with some students and parents, but the overall instructional atmosphere was not dysfunctional.

Other concerns undercut the administration's allegations of the seriousness of Christie's conduct. The students who complained and those who supported him manifest a wide range of academic skill levels. Crook and Harvey have strong academic records, and were alienated by him. No less striking are the academic records of Harrington, Szwiec and others who adamantly support him. A review of the remaining student testimony manifests a wide range of interest levels in Spanish and in academics generally among the complaining and supporting students. This would indicate a complex pattern underlying student reactions to Christie. More to the point,

it indicates Christie's conduct does not manifest recurrent and intractable consistency.

Beyond this, the record indicates Christie was capable of responding to administration concerns. His 1991, 1992 and 1993 evaluations reflect this, as does his dropping the use of "Mr. Brick" even though he enjoyed it and thought his students did too. This conclusion should not, however, be overemphasized. Christie's ongoing failure to implement the basic requirement that he post assignments on the blackboard underscores this. The record as a whole, however, does not show the conduct of an employe incapable of change.

In sum, element (a) of the seventh standard has not been established. The broad and general dysfunctional instructional atmosphere alleged by Items 1 through 6 has not been, with one exception, proven. That exception is Item 4 and that item alone will not support the seriousness of the allegations made against Christie.

Element (b) marks the fundamental failing of the administration's case against Christie. He has served the Board for twenty-nine years. At the May 20, 1995 hearing, that length of service was minimized by the seriousness of the allegations against him and by the absence of any evidence of achievement. His career performance was treated as, at best, adequate with some potential for improvement. Bieri's 1993 evaluation of Christie noted if he "chooses to open his personality . . . he will . . . be a most impressive instructor." No unconditional documentation of achievement was noted. Contacts made to the administration to support his performance record were neither recorded nor corroborated.

This does not square with the record adduced at arbitration. The evidence details that Christie was not only capable of impressive instruction, but that he delivered it.

This should not obscure that the record also documents significant problems between Christie, students and parents. This standard, however, requires an employer to weigh an employe's service against performance problems. That weighing process never took place. The record establishes that Christie moves students deeply. This has positive and negative implications. For example, Christie deeply alienated Crook and Ziolecki. Crook responded aggressively, Ziolecki withdrew. The educational process suffered in both cases. The Board's action of May 20, 1995 focused only on this aspect of his record. This distorts the weighing process required by this standard.

It is impossible to come to grips with Christie's performance as a teacher without considering the profound positive effect he has had on a significant number of students. If the alienation of certain complaining students is to meet the good cause standard, that alienation must be weighed against his educational achievements. The failure of the administration to undertake this weighing process precludes finding good cause for Christie's non-renewal.

VII

The issue of remedy remains to be addressed. As preface to that point, it is appropriate to touch on some of the arguments of the parties. It is impossible to address all of the parties' arguments, but it is of some significance to stress what has been considered in reaching the conclusions stated above. The significant documentation and testimony is that covering the 1988-89 through the 1994-95 school years. Evidence submitted by the Association for periods of time outside of those school years cannot be dismissed as irrelevant, particularly in light of the seventh Daugherty standard, but has played no role in the cause determination.

That the administration did not produce the number of witnesses the Association did is irrelevant to the conclusions stated above. The Board produced what it determined to be a representative sample of the complaints lodged against Christie. The difficulty with this approach is not that the sample was too small. Rather, the difficulty is that the representative sample of the complaints lodged against him does not yield a representative sample of his performance as a teacher.

It must be stressed that the evidence grounding the conclusions stated above rests on testimony and on documents received into evidence. The most significant portion of the arbitration record is the first-hand accounts of the sworn witnesses who were subject to cross examination. The Association offered certain documents in place of or to supplement testimony, and cited, in its reply brief, a "letter to the editor" of a newspaper. Documents submitted where a witness is, for legitimate reason, unavailable may be entitled to weight in some cases. This is not such a case. Granting weight to documentation not received as evidence demeans the effort undertaken by those willing to testify and subverts what should be a straightforward and open hearing process.

The final point to be addressed sets the stage for the issue of remedy. The adversarial process serves well to supply detail necessary to determine disputed fact. It can, however, assume a life of its own. The Award entered below restores the relationship the non-renewal sought to terminate. Some comment on the excesses of the hearing process is appropriate. The record does not support the assertion that the non-renewal sought to excise a cancer. Nor does the record support the assertion that the administration blindly or maliciously turned the operation of the school district over to a handful of parents and students.

The record manifests a breakdown in what was a constructive dialogue. At least through Christie's 1993 evaluation the administration had, with some care, sought to highlight excesses in his teaching which were causing unnecessary distress among students. From at least the 1993-94 school year the dialogue increasingly broke down. Each complaint assumed a life of its own, in some cases independent of its underlying merit.

The good cause determination focuses primarily on the Board's role in that breakdown.

This should not obscure that the complaints filed against Christie have substance or that he also played a role in the breakdown of the dialogue. His ongoing inability to comply with a simple directive to post assignments is inexplicable. As the Board notes, similar conduct would not be tolerated by Christie from his students, and has no place in the employer/employee relationship. Nor does his refusal to implement the directive have a pedagogic basis. Christie's analogizing his rapid delivery of assignments to the announcement of flight times at a Mexico City airport has only superficial validity. It is not unheard of for an airport to post flight times, or to

provide personnel to assist travelers with questions. The analogy attempts to point to the need to place demands on students they will face outside of the classroom. The analogy also, however, points to the arbitrary exercise of authority. Christie's testimony mirrored the problem faced by some of his students. His testimony on direct was expansive and spirited. The contrast with his testimony on cross was stark. Metaphorically put, his testimony flowered on direct and withered on cross. Presumably, the amount of control taken from him on cross played a role. The analogy to his student/teacher relationships should not be lost. The dialogue referred to above was the administration's attempt to soften the edge of his exercise of authority in response to students who were withering under his constraints.

IX

The Award states a general "make-whole" relief. The parties have litigated the non-renewal as an all or nothing issue. The conclusion that the Board lacked good cause to non-renew Christie dictates a general make-whole order.

The Association seeks interest on the financial make-whole. The provision of interest in arbitration is the exception, not the rule. 27/ This record does not provide a persuasive basis to make an exception. Christie chose not to appear at the Board hearing, thus denying the Board the opportunity to weigh at least some of the evidence presented here. This is not to condemn Christie's choice. The issue here, however, is whether an award of interest is appropriate. To do so in this case would punish the Board for failing to consider evidence not placed before it.

The Association also requests that the Board be ordered "not to retaliate" against Christie by "assigning him only lower level courses." The record affords no persuasive basis to conclude that the administration would use its power to assign to punish him. The Award presumes he would be assigned as he would have been but for the Board's refusal to renew his 1995-96 teaching contract.

AWARD

The Board did not have good cause, within the meaning of Article XIX, to refuse to renew Robert Christie's teaching contract for the 1995-96 school year.

As the remedy appropriate to the Board's violation of Article XIX, the Board shall make

27/ See Bornstein and Gosline, Labor And Employment Arbitration, (Matthew Bender, 1995) at Section 42.03.

Christie whole by reinstating him to the position he would have held but for the Board's refusal to renew his 1995-96 teaching contract, and by compensating him for the wages and benefits he

would have earned but for the Board's refusal to renew his teaching contract for the 1995-96 school year. The Board shall expunge any reference to its refusal to renew his teaching contract for the 1995-96 school year from Christie's personnel file(s).

Dated at Madison, Wisconsin, this 19th day of September, 1995.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator