

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NORTHERN EDUCATIONAL SUPPORT TEAM

and

PHELPS SCHOOL DISTRICT

Case 8
No. 53034
MA-9205

Appearances:

Mr. Gene Degner, UniServ Director, Northern Tier - UniServ-Central, on behalf of the Association.

Mr. Greg Oltmanns, Membership Consultant, Wisconsin Association of School Boards, on behalf of the District.

ARBITRATION AWARD

The above-entitled parties, herein "Association" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held on October 2, 1995, in Phelps, Wisconsin. The hearing was not transcribed and both parties thereafter filed briefs which were received by November 17, 1995.

Based upon the entire record, I issue the following Award.

Since the parties were unable to jointly agree on the issue, I have framed it as follows:

Did the District violate the contract when it reduced grievant Judy Wiita's hours and assigned her to a new position and, if so, what is the appropriate remedy?

DISCUSSION

Wiita has been employed by the District since 1991 and was classified as the Head Cook at the time of the 1995 events leading to her reduction in hours and reassignment to another position in the District's school cafeteria.

She previously was counseled about her work a number of times, as she admits that she refused to always wear a hair net even after she was told to do so by District Administrator Thomas L. Strick and the Wisconsin Department of Public Instruction ("DPI") after the latter reviewed the District's food program in 1993.

Wiita also admits that she kept on buying food from Sysco, the District's food supplier, for the private use of other District employees even after Strick told her not to. Wiita testified here that she continued to do so, because in her words, "I disagreed with [Strick]'s orders, I guess."

Wiita further acknowledged that she was at fault in not properly cleaning the school kitchen at the end of the 1994-1995 school year and that she perhaps should have been disciplined for three days as a result of her neglect.

Wiita thus explained that the District had an outdoor barbecue on Thursday, June 1, 1995, 1/ the day before school ended for the year; that she at that time told some of the school custodians that they should freeze some of the leftovers for summer lunches; that she helped students to take in the unused food; that she does not have an excuse for not properly putting away all of the unused food; and that she erred in not coming back and cleaning the kitchen. She added that she normally did not fully clean the kitchen until school reopened in the fall because others used the kitchen during the summer and got it dirty.

Strick elaborated on the kitchen's sorry condition. He said that several janitors on June 10 or 11 complained to him about the kitchen's smell; that he visited the kitchen that day; that there was a "rancid" smell from hot dogs; that the stove was very dirty; that hamburgers in the freezer generated a "terrible smell"; that cheese was moldy and green; that there were about 60-70 outdated small cartons of milk; that the refrigerator was filled with open serving dishes and about 30 small food containers; that peanut butter and jelly were all mixed up in a container; that there were 3-4 beef roasts in the freezer; that food was improperly stored; and that the freezer had about 30-40 pieces of meat. Strick further stated that an inventory of the kitchen showed that Wiita had not properly accounted for all supplies. Wiita did not dispute Strick's testimony that the hot dogs and other foods gave off a bad smell.

In addition, Head Custodian Pam Alsteen testified here that she took away some rotting food before Strick visited the lunchroom, thereby establishing that there was even more rotting food than Strick discovered at the time of his visit.

After visiting the kitchen, Strick on June 13 escorted the District's Board members on a tour of the kitchen. Wiita was asked to meet with Board members on June 13, but she declined to do so because of a prior business commitment.

Strick subsequently informed Wiita via a June 14 letter that the School Board would hold a hearing on June 21 to determine whether she should be disciplined. The District Board subsequently met on June 21 without Wiita who was not present. There, the Board voted to reorganize the kitchen operations by creating and filling the new position of Lunchroom

1/ Unless otherwise stated, all dates hereinafter refer to 1995.

Supervisor, which it subsequently awarded to Robin Boyer, and by reducing Wiita's work schedule from 7 to 3 1/2 hours work per day and by reclassifying her to the newly-created position of Lunchroom Aide. By letter dated June 22, the District informed Wiita of the action it had taken.

Wiita subsequently grieved the District's actions on the ground that it constituted an improper demotion.

In support of the grievance, the Union mainly argues that "This is an issue of discipline, and not reorganization"; that "The actions of the grievant does not warrant this harsh of punishment"; that Wiita was not properly supervised and that her shortcomings were therefore not all her fault; and that the District erred in going through Wiita's personnel file and charging her with prior misconduct. The Union therefore seeks a "more appropriate remedy than that provided by the District."

The District, in turn, argues that it properly exercised its management right to reorganize the food service; that even if it is ultimately determined that it disciplined Wiita, it had cause to demote her; and that the contract in any event limits whatever remedy may be issued here. The District also objects to the Association's claim that the District has violated the contractual fringe benefit proviso on the ground that the Association never cited that proviso in the underlying steps of the grievance procedure as it was required to do. The District further argues that the Association's brief erroneously claims that Wiita has lost family health and dental insurance coverage since the record establishes that she never had it in the first place.

The resolution of this issue turns on one single, undisputed fact: the District's kitchen under Wiita's supervision was little more than a pig-sty in June, 1995. How else, after all, can we describe a kitchen where hot dogs and hamburgers gave off rancid smells; where the stove was filthy; where cheese was moldy and green; and where food was left open and scattered throughout the freezer and refrigerator?

Wiita claims that she was not totally responsible for this mess because she assumed that other District personnel would properly store and/or use some of this food and because she in the past did not really clean the kitchen until the start of the new school year.

I disagree. As Head Cook, Wiita was totally responsible for the kitchen's condition. By failing to see that it was clean, Wiita demonstrated that she could no longer be trusted with supervising the kitchen.

In addition, Wiita has demonstrated that she will not follow reasonable management directives. Thus, she admitted that she refused to wear a hair net after being told by Strick and DPI to wear one and that she kept on ordering food from Sysco for other District employes after Strick told her not to do so because, in her words, "I disagreed with [Strick]'s orders. . ." These

latter two acts constituted rank insubordination. Standing alone, they could have constituted adequate grounds for discharge if the District had previously warned Wiita that such insubordination would not be tolerated and that it would lead to her discharge.

Given such insubordination, the District also may have had adequate grounds to discharge Wiita over her failure to properly clean the kitchen at the end of the 1994-1995 school year. For while some of the District's complaints against Wiita may lack merit, and while it is true that the District before then did not always properly supervise Wiita, the fact remains that she was totally responsible for cleaning the kitchen and that she failed miserably in not doing so. 2/

In such circumstances, the District had ample grounds to conclude that Wiita could not be entrusted with running the kitchen on her own and that someone else must direct her on a daily basis. That is why the District was free to reorganize its kitchen operations and to demote Wiita to her present position pursuant to the Management Rights provision in the contract which gives it the right to "create, combine, modify, and eliminate positions within the school system, not inconsistent with the terms of the Agreement"; "to introduce new or improved methods or facilities, or change existing methods or facilities"; to "determine the methods, means, and personnel by which School District operations are to be conducted"; and to "determine the number and kind of classifications to perform such services, and composition of the work force".

Moreover, it is immaterial whether the reassignment is viewed as a disciplinary measure, since the District in any event has just cause to strip away Wiita's Head Cook duties and to reduce her hours after she demonstrated that she would not perform the most basic of those duties -- cleanliness.

In light of the above, it is my

AWARD

That the District did not violate the contract when it reduced grievant Judy Wiita's hours and assigned her to a new position. The grievance therefore is denied.

Dated at Madison, Wisconsin, this 29th day of December, 1995.

By Amedeo Greco /s/

2/ That is why it is unnecessary to individually address all of the other District complaints levied against Wiita such as giving away food; taking food home; not maintaining proper inventory; not using government commodities; not selling lunch tickets; keeping outdated cartons of milk, etc.

Amedeo Greco, Arbitrator