BEFORE
VOLUNTARY LABOR ARBITRATION TRIBUNAL

DANIEL R. DELANEY, ESQUIRE
ARBITRATOR

In the Matter of Arbitration Between The

MOON AREA EDUCATION ASSOCIATION,
PSEA/NEA

and

MOON AREA SCHOOL DISTRICT

Grievance Filed: December 22, 2008
Hearing: October 20, 2009
Locale: Administration Offices
Moon Township, Pennsylvania
Record Closed: December 11, 2009
Award: January 11, 2010

OPINION AND AWARD

Summary

The Association claims that the School District breached Article VI, Section B. Just-Cause Provision of the Collective Bargaining Agreement disciplining/suspending a member of the bargaining unit, Lance Erdos, for a period of ten (10) days for alleged inappropriate interactions with a female student. The facts developed during the arbitration hearing and the interpretation of the relevant portions of the Agreement support the conclusion just cause did not exist to support the decision to discipline and, therefore, the grievance is sustained.

A P P E A R A N C E S

For the District: For the Association:

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STATEMENT OF THE CASE

The parties to this case are the Moon Area School District, the employer (“District”), and the Grievant, Mr. Lance Erdos, (“Mr. Erdos” or “Grievant”). The Moon Education Association, PSEA/NEA is the elected bargaining representative of a unit of professional employees including Mr. Erdos (“Association”). The District and the Association bargained and entered into a Collective Bargaining Agreement that is applicable to this matter that spans the years 2005 through 2010 and has been submitted by the parties as Joint Exhibit No. 1 (“Agreement”). Mr. Erdos is a tenured professional employee certified to teach health and physical education. He is a secondary education teacher who has been assigned to the high school for the last seventeen (17) years and has held several teaching assignments, the last of which is physical education which he presently performs on a regular basis.

During the 2007-08 school year, a sophomore female student, identified for the purposes of this hearing as Elizabeth F, (hereafter “Student”) brought to the attention of the senior high school Principal, Michael Hauser, that Mr. Erdos engaged in improper behavior with her that included frequent interactions with her in the building, including extensive conversations, inappropriate touching, and commenting about her appearance, all of which was alleged by the Student, without corroboration. The Principal met with Mr. Erdos and directed him to discontinue his interactions with the Student and later advised him of a second set of circumstances admonishing him for the allowance of a female student to meet with him at times when she should have been assigned elsewhere and under the supervision of another teacher. While the Administration acknowledged Mr. Erdos’ reasoning for having an interaction with the Student, it directed him to thereafter avoid engaging in conversations or in activities with this
Student and other female students that are not related to his professional duties or responsibilities as a teacher. He was warned that a failure to comply with this directive could result in disciplinary actions. He was thereafter warned by the Superintendent, Dr. Donna K. Milanovich, both at a personal meeting on January 22, 2008 and thereafter by her follow-up letter, dated February 11, 2008, wherein he was directed to cease having conversations with students dealing with subjects outside the parameters of his responsibilities as a classroom teacher and that his failure to follow the directive may result in a disciplinary action that may include his dismissal from his teaching position. It is alleged that Mr. Erdos did not heed the directives and warnings and was disciplined on or about December 15, 2008, at which time the District imposed a ten (10) day suspension and submitted a disciplinary letter into his personnel file.

Disagreeing with the action taken by the District, particularly since the District did not accept his reasonings for the interaction with the Student, the Association, on his behalf, filed a timely Grievance immediately thereafter, dated December 22, 2008. The Grievance proceeded for resolution pursuant to the terms of Article V, Grievance Procedure contained in the Agreement. (Joint Exhibit No. 1, pp. 2-4) The matter was not resolved and proceeded to arbitration, wherein I was selected as the Arbitrator to determine the issue submitted, as set forth below.

The first day of hearing was set and held on October 20, 2009 at the Administrative Offices of the Moon Area School District and continued to a second day of hearing on November 12, 2009 at the same location. The District was represented by its Solicitor, John F. Cambest, Esquire, who introduced the testimony of Michael Hauser, High School Principal, Dr. Donna Milanovich, Superintendent, Elizabeth F., the Student involved, and Emily J. Wagner, Guidance Counselor. The witnesses introduced and sponsored School District Exhibit Nos. 1 - 6. The
Grievant, through his local Association, was represented by Mary Jo Miller, Esquire, who directed the testimony of Lance W. Erdos, Grievant, Janine Yodanis, PSEA UniServ Representative, Loni A. Iannessa, MEA President, April M. Hurd, Jennifer Biega, Tom Karczewski, Jason E. Persing, Kevin P. Gallagher and Steve Wellendorf (by stipulated evidence). These witnesses sponsored Association Exhibit Nos. 1 – 4. All of the Exhibits were moved and admitted into evidence and considered in reaching the decision in this matter. The parties requested the opportunity to submit Post-Hearing Briefs, which were due and received on December 11, 2009, at which time the record was closed.

GRIEVANCE AND RELIEF SOUGHT

At the hearing, the parties, by Agreement, jointly submitted the Statement of Grievance and the Requested Action or Relief Sought as prepared by the Association. (Joint Exhibit No. 3) The Grievance was dated and presumably filed on December 22, 2008 and states the following:

“STATEMENT OF GRIEVANCE

CASE NUMBER: 08-3

DATE: December 22, 2008

The Moon Education Association / P.S.E.A. / N.E.A. on behalf of Lance Erdos request a meeting with the Board of Education to hear Grievance 08-3.

The M.E.A. contends that on or about December 15, 2008, the District disciplined/suspended the grievant without just cause. This places the School District in violation of, among others, Article VI, Section B of the collective bargaining agreement.

Please notify the Association of possible dates as to when the Board of Education can hear Grievance 08-3.
REQUESTED ACTION

Relief sought:

1. Cease and desist all action against grievant
2. Immediately end discipline and return the grievant to work
3. That the Board of Education make the grievant whole in everyway including, but not limited to lost wages and benefits
4. That the Board of Education directs Dr. Milanovich to remove the discipline letter from his personnel file
5. That the School Board directs Dr. Milanovich to adhere to the collective bargaining agreement
6. That any other appropriate relief be granted”

The Association cited Article VI. B. of the Agreement as the principal provision applicable in this matter.

RELEVANT SECTIONS OF THE COLLECTIVE BARGAINING AGREEMENT INVOLVED

The parties submitted the Collective Bargaining Agreement between the District and the Association, effective from 2005 through 2010 ("Agreement") as Joint Exhibit No. 1. The entire Agreement was reviewed in determining the issue submitted herein. The following Articles have significant relevance to this matter, and are incorporated in part for ease in reference as follows:

“ARTICLE V (5) GRIEVANCE PROCEDURE

A. Purpose. The purpose of this procedure is to secure, at the lowest possible level, equitable solutions to the problems which may from time to time arise affecting teachers. Both parties agree that those proceedings will be kept as informal and confidential as may be appropriate at any level of the procedure.

B. Definition.

Grievance (Definition)-A “Grievance” is hereby defined as:

1. A complaint by the Association on behalf of teacher(s) regarding the meaning, interpretation, or application of any provision in the Agreement.
2. An allegation that the local School Board or its agents acted in bad faith or in an arbitrary, capricious manner contrary to the established written Board Policy governing or affecting the teachers covered by this Agreement.

During the arbitration hearing, the Board and the Association shall not be permitted to assert any ground or to rely on any evidence not previously disclosed to the other party. The Arbitrator shall have no power to alter, add, or subtract from the terms of this Agreement. Both parties agree to be bound by the decision of the Arbitrator.”

“ARTICLE VI (6)

RIGHTS OF PROFESSIONAL TEACHERS

A. Statutory Savings Clause. Nothing contained herein shall be construed to deny or restrict to any professional teacher such rights as he/she may have under the Public School Code, or the Public Employee Relations Act 195, or other applicable laws and regulations.

B. Just-Cause Provision. No teacher shall be disciplined, discharged, suspended, or furloughed/laid-off, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. The remedy for any violation of the above provision shall be limited to the Grievance Procedure herein set forth, unless a proceeding is filed under the applicable provisions of the School Code and then the remedy shall be limited to such relief as provided there under . . . .”

ISSUE SUBMITTED

Did the District have sufficient just cause to impose the discipline, which included the Grievant’s suspension, without pay, for a period of ten (10) days beginning December 22, 2008 through January 14, 2009, together with the imposition and inclusion of the disciplinary letter in the Grievant’s personnel file? (Letter dated December 15, 2008 as revised on January 12, 2009, Joint Exhibit No. 2)
CONTENTION OF THE DISTRICT

With the initial burden of proof, the District argues that the Grievant had developed a reputation of acting inappropriately with female students. Relevant to this specific case, he was warned about his inappropriate interactions with the Student involved here, both by the building Principal and by the Superintendent. A subsequent written statement, prepared by the Student, provided sufficient proof to the District that the Grievant had failed to abide by the directives, both oral and written, provided to him by the Administrators, to avoid and refrain from any continuation of the improper interactions with this Student. Substantial just cause existed, consistent with the Agreement, to impose discipline and, in particular, the ten day suspension without pay. The District specifically argued, as follows:

The comments to the student were sexual in nature and constituted immoral conduct that offends the morals of the community, and were sufficient to provide the District with just cause to discipline him.

The Grievant’s own actions supported the conclusion that he was incompetent when he did not command the respect of the community and was intemperate by continuing to participate in the inappropriate interactions with the Student. His refusal to abide by the Administrators’ directives to him to cease any and all inappropriate interactions with the Student constitutes insubordination.

Persistent negligence exists here by his continuous interactions with the Student, and his refusal to abide by the directives of the Administrators. Moreover, verbal sexual harassment is improper conduct, particularly when it violated the established District policies of which the
Grievant was aware and provides an additional substantial basis upon which to find just cause to discipline the Grievant.

The District did not violate any provision of the Agreement that exists under the record of this case and substantial just cause supported the District’s decision to impose the discipline upon the Grievant. The Grievance, therefore, must be dismissed.

**CONTENTION OF THE ASSOCIATION**

As stated in the Grievance filed on behalf of Mr. Erdos, the Association contends that the District, in violation of the Agreement, lacked just cause to suspend Mr. Erdos. Despite his efforts to avoid contact with the Student, who apparently had become obsessed with him, the Student continued to attempt interactions with him. He solicited the assistance of some of his fellow teachers, as well as the assistance of two assistant principals to frequently check the hallway for the presence of the Student, all in an effort to discourage the Student from continuing her access to him. Despite his repeated requests to have the Student removed from her office runner position and returned to a study hall so that she did not have access to him during the second period of each school day, the Administration refused to do so.

Mr. Erdos received no further allegations of inappropriate interactions after he received the February 11, 2008 letter from the Superintendent that confirmed her directive to him to avoid further interactions with the Student until he was summoned to participate in a Pre-Suspension Loudermill hearing. The basis for the hearing was the unsubstantiated allegations made by the Student. No staff members, nor any Administrator observed any of the alleged interactions. At
the hearing, the charges discussed were his insubordination and inappropriate comments. No mention of counseling, fraudulent hall passes or physical contact were raised, although they were introduced at the arbitration hearing. No disclosure and notice, prior to the first day of the arbitration hearing, was given by the District to the Association of the allegations surrounding the physical contact.

Requests were made to interview teachers, who had acted on behalf of Mr. Erdos prior to the arbitration hearing, but the District refused to do so, and interviewed other teachers who were never identified nor called to testify. No adequate investigation took place prior to the discipline being imposed by the District. With the lack of evidence through a failed investigative process, just cause is not present to justify the discipline. The Grievance therefore must be sustained.

**OPINION AND DISCUSSION**

The District was faced with a difficult situation to which it had to react. Allegations were brought to the attention of the high school principal concerning an alleged continuing inappropriate interaction between one of the District’s long-term professional employees, Mr. Erdos, and a high school sophomore who was at a very impressionable age of fifteen (15) during the relevant time. Significantly, one of the school board members arranged to meet with the District’s administration concerning the ongoing interaction of Mr. Erdos and the Student, further exacerbating the need for the District’s appropriate action under those circumstances. The District had little choice but to take the allegations seriously, while considering that the
Student may have been nothing more than an aggressive young female student exhibiting an obsession with this teacher, which is not an uncommon situation in school districts.

Subsequent to its level of investigation over the matter, the District concluded that it had substantial just cause to issue discipline in the form of a ten day suspension, without pay, and to add to the teacher’s personnel file the disciplinary correspondence concerning this matter. More important than the discipline imposed, is the impact upon this teacher’s reputation, family, and ultimately his license to teach within this Commonwealth.

The record is extensive, hearing from thirteen (13) witnesses who traced activities over a period of two school years, the review of which is essential in determining if just cause was present to support the decision to discipline Mr. Erdos.

Underlying Facts

Initiated by Michael Hauser, senior high school Principal, who, during the 2007-2008 school year investigated what he termed to be inappropriate interactions between the Grievant and the Student before he scheduled a meeting with the Grievant. Although Mr. Hauser has no notes from any investigation that he initiated, he recalls that the Student, with whom he had a personal discussion, had authority to be in the hallways of the high school building in her capacity as an office runner, and spent more time “than normal” talking to Mr. Erdos. As a result of what he believed to be inappropriate behavior, Mr. Hauser scheduled his first meeting with Mr. Erdos on December 14, 2007, at which time Steven Wellendorf, Assistant Principal, Susan Kazmierczak, Assistant Principal, and the local Moon Education Association (“MEA”) President, Loni Iannessa, were present.
When Principal Hauser confronted Mr. Erdos during this first meeting about his extended times in conversations with the Student on matters that appeared to be unrelated to his duties as a health and physical education teacher, and his criticism of Mr. Erdos issuing hall passes ("false hall passes") to the Student so that she could spend more time with him, Mr. Erdos categorically denied any improprieties nor that he ever issued false hall passes. Significantly, none were produced at the hearing in evidence. In response, Mr. Erdos requested Mr. Hauser to remove the Student from her office runner position so that she would not have the opportunity to visit with him while he performed his hall duty monitoring on the second floor of the high school building during the second period of each school day. A follow-up letter from the Principal, dated January 11, 2008, refers to Mr. Erdos’ continued casual conversation as being problematic and rejects Mr. Erdos’ reasoning that he was counseling her since he was neither trained nor was he assigned to the position of counselor to perform such activities. Mr. Erdos flatly denied that he ever counseled the Student and commented that Mr. Hauser did not remove the Student from her office runner duty, even though he had requested that this Principal do so several times since the Student was becoming a problem. On the second day of the hearing, Principal Hauser, upon further reflection, did recall that Mr. Erdos had requested that he remove the Student from her office runner job, however, he had refused to do so in that he concluded that Mr. Erdos was the problem in this situation and not the Student.

Not on the basis of any new information concerning Mr. Erdos’ relationship with the Student, but as a follow-up, and subsequent to his meeting with the Principal, the Superintendent, Donna K. Milanovich, convened a meeting with Mr. Erdos on January 22, 2008, along with Principal Hauser, Ronald W. Zangaro, Assistant Superintendent, and Loni Iannessa, MEA President. The Superintendent reviewed Principal Hauser’s letter of January 11, 2008,
commented about Mr. Erdos’ alleged issuing of false hall passes to the Student, his counseling of her, directed Mr. Erdos to comply with District policies, offered in-service training, and clearly warned him to cease and desist any further involvement with this Student or be at risk for disciplinary action that may include his dismissal from his teaching position. (School District Exhibit Nos. 4 and 5 – Policies)

Mr. Erdos was offered the opportunity to comment and refute the allegations, but he declined to do so. He testified that he was advised by the Association’s legal counsel not to add anything at that time, and concluded that he could handle the matter himself, and wanted to maintain the chain of command commencing with his Principal. The Superintendent was not aware of Mr. Erdos’ request to have the Student removed from her office runner job, or that Mr. Hauser had not removed the Student, and only first learned of this request at the first day of the arbitration hearing. In addition, the Superintendent did not recall if she directed any investigation or that she referred the suggestion made by the Association UniServ Representative, Janine Yodanis, that teaching staff, particularly Jennifer Biega and April M. Hurd, be interviewed by the Solicitor for the possible resolution of the matter.

The Superintendent prepared her follow-up letter, dated February 11, 2008, and sent it to Mr. Erdos, but clarified that the third paragraph contained therein addressed a guidance counselor relationship and the issuance of a “false hall pass”, which did not deal with this Student. She received no further information from the Principal that any ongoing problem involving Mr. Erdos and the Student continued after her February, 2008 letter until the Student met with her again on August 22, 2008. Only during the first day of the hearing did the Superintendent learn about the alleged inappropriate touching of this Student by Mr. Erdos from her direct testimony.
The Student’s Allegations

With extreme difficulty, the Student took the witness stand, with her mother in the hearing room at the outset. She expressed her present strong feelings for Mr. Erdos, which continued now as she entered her senior year at the high school, and two school years after she first began her relationship with him. Starting with a seemingly innocent conversation as she passed his hall monitor station during the month of September, 2007, to his alleged final comments that “he would make things better” when she reached the age of 18 (implying a sexual relationship), the Student testified haltingly and with usually one-word answers to the detailed questions of the Solicitor. She stated that Mr. Erdos met and talked with her at his corridor monitoring desk for as much as 35 minutes per session, and that she would avoid other teachers who would be walking down the hallway at the time by ducking into a nearby bathroom until the “coast was clear”. Besides conversations with him in the hallways, staircases and outside the gymnasium where he conducted class, she testified that Mr. Erdos placed his hands on her arm, moved her against the wall in the staircase, patted her buttocks, commented on her appearance (chest and legs) and asked her about her dating to inquire whether she was “doing anything”. When she responded that she was not, he allegedly said that “we will see about that”, presumably meaning that he would change her status as a virgin when she reached the age of 18. These interactions were almost on a daily basis during the period from August, 2007 until January, 2008. During this period, Mr. Erdos allegedly wrote false hall passes for her to use two to three times each week. However, during the second semester of the 2007-2008 school year, the Student stated that her meetings with Mr. Erdos continued daily, but for less duration, and ended
by June, 2008. Throughout their interactions, Mr. Erdos advised her to “stick with the story” he had told her to use when she was confronted and spoke with the District Administrators.

It was not until August of 2008 that the Administration learned from the Student that Mr. Erdos had a continuing association with her. She approached Emily J. Wagner, Guidance Counselor, on August 21, 2009, seeking a change in an assigned gym class that was instructed by Mr. Erdos. Ms. Wagner, who had no prior knowledge of the Student’s involvement with Mr. Erdos, met with her the following day, on August 22, 2008, with Principal Hauser, Scott M. Seltzer, Assistant Principal, the Student’s mother, and Lisa Wolowicz, a School Board member who had approached the Student inquiring about her relationship with Mr. Erdos. (It is unclear from the record whether or not the Superintendent attended this meeting.)

There is a contradiction with the testimony of the Student, who said that she had met with the Administration several times, at which times Ms. Wagner was present and would have learned of her relationship with Mr. Erdos. However, on August 22, 2008, Ms. Wagner privately met with the Student and learned for the first time, according to her testimony, about the Student’s relationship with Mr. Erdos. Ms. Wagner got the impression that the Student had a crush on the teacher. She asked the Student to reduce to writing a chronology of the interactions that occurred between her and Mr. Erdos throughout the year, commencing in September, 2007. The Student left the office and subsequently hand-wrote her statement, which she dated August 26, 2008, and delivered it to Ms. Wagner on August 29, 2008, according to Ms. Wagner’s own personal journal that she maintained in the normal course of her work. Contrary to the Student’s recollection that she wrote her statement the same day that she met with the Administrators and the School Board member on August 22, 2008, her hand-written notes were received by Ms. Wagner on August 29, 2009 and later were forwarded to Principal Hauser.
Ms. Wagner did not limit the Student in disclosing in her written statement any facts or restrict the Student to any page limitation. The Student also did not reveal to Ms. Wagner any of the specific details concerning the alleged touching of her by Mr. Erdos, or any of his comments. The Student’s notes were introduced as School District Exhibit No. 2 and significantly do not contain any reference to Mr. Erdos’ alleged improper touching of her that the Student discussed during her testimony, namely – the holding of her arm, moving her against the wall, patting her on the buttocks, and any comments that he allegedly made concerning her physique (an apparent single happenstance according to the Student’s testimony) and his implication that he would have sex with her when she turned 18 years old. All of that information was shared with the Administration in the preparation of the case, but her allegations concerning his touching of her were not disclosed until her testimony during the first day of the hearing.

Although she met with the Principal several times, the specifics of which were not disclosed by her or by the Principal, she said that the Principal directed her to avoid further contact with Mr. Erdos, which she promptly ignored.

The Student testified that another health and physical education teacher, Kevin P. Gallagher, had told her that Mr. Erdos had commented to him that he really cared about her and would often talk about her each time he got together with him. Mr. Gallagher denied all of these allegations and said that the Student had first approached him about her feelings toward Mr. Erdos. As a result, not only was the scheduled gym class with Mr. Erdos changed, but also the class in which the Student was to attend taught by Mr. Gallagher.

The Student said that she received two to three hall passes each week from Mr. Erdos which she submitted to her classroom teachers whose classes she would enter late. The hall passes were issued to her so that she could spend more time in the hallway with Mr. Erdos. Even
though much has been made about the issuance of these “false hall passes”, to which Mr. Erdos 
flatly denied ever issuing, the Administration’s investigation, nevertheless, did not even produce 
one sample of a false hall pass from any teacher to whom they were delivered. It would have 
been relatively easy to set a trap for Mr. Erdos and collect them once the Administrators knew of 
his alleged mode of operation.

Stating that she did not want to disclose to anyone about her activities with Mr. Erdos, the 
Student testified that there were no witnesses to corroborate any of her allegations involving him. 
The District produced no witnesses in this regard at the hearing.

The Teacher’s Response

Mr. Erdos, the Grievant herein, is married with three sons under the age of ten, and was 
born in November, the same month as the Student involved in this case, and testified that he had 
no idea how she learned of his birth date. When questioned, he flatly denied her testimony that 
he ever touched her, commented about her body or clothing, nor ever implied that he would 
remedy the fact if she was still a virgin when she reached her eighteenth birthday. He testified 
for a substantial period of time during the second day of the hearing. His first contact with the 
Student was her initiation of a conversation with him during the first semester of the 2007-2008 
school year as he reviewed football game tapes and she passed his second period hall monitoring 
desk location on the second floor of the high school building. Knowing he was a football coach, 
the Student shared with Mr. Erdos the fact that her brother played college football. After the 
initial conversation, the Student continued stopping at his location three to four times per week,
which began to make him feel uncomfortable, particularly when she asked questions about his personal life to which he refused to respond.

Believing that he could handle the situation himself, Mr. Erdos instructed her to refrain from stopping at his desk, which had the effect of decreasing her visits. During the period spanning the months of October and November, 2007, he called upon his fellow teachers to assist him in avoiding contact with this Student, but did not report the ongoing situation to the Administration. He testified that he asked Jennifer Biega, with whom he confided about his problem with the Student, to perform frequent hallway patrolling sweeps (“sweeps”) during the second period. Ms. Biega testified that she observed the Student frequently standing by Mr. Erdos’ desk who would promptly leave the area upon her arrival. Mr. Erdos requested that Ms. Biega come out of her classroom into the hallway to make her sweeps. After the Christmas break, Ms. Biega testified that she saw less of the student and elected not to report the situation to the Administration in that Mr. Erdos had told her by then that he had already met with the High School Principal.

In addition, Mr. Erdos asked April M. Hurd, another health and physical education teacher who taught in the same department with him, to refrain from calling the Student to run an errand on his behalf, inasmuch as he needed to keep his distance from her. At a later time involving a baby-sitter situation, Ms. Hurd testified that the Student had the occasion to tell her that she was obsessed with Mr. Erdos and was glad that the school year was soon over. However, the Student also stated that she denied ever discussing her feelings with Ms. Hurd, in contradiction to her testimony. Ms. Hurd did not approach the Administration since she learned that the investigation by the police involving this Student and another had been closed. (Note: Several references were made to other students in which Mr. Erdos may have had some
involvement outside of his teaching role. This reference to a police investigation and his reputation in the community all have been discounted and have not been taken under any consideration in determining this case inasmuch as they had not been introduced as part of the official record in this hearing.)

Mr. Erdos continued to involve his fellow teachers during the first semester and decided that he need not “write her up”. He asked Jason E. Persing, a tenth grade health and physical education teacher, to assist him in “verifying that nothing was going on” between him and the Student. Never disclosing to Mr. Persing the specifics of the problem with which he was dealing, he merely referenced a letter that he had received from the Administration without revealing its contents (presumably, the Hauser letter dated January 11, 2008). Mr. Persing testified, without contradiction, that he accompanied Mr. Erdos to his parked car upon his request, and would see the Student outside the gym door from time to time. He also observed the Student looking into the gym and challenged her, at which time she would produce a hall pass and say that she was on an office errand. Never seeing any interaction between Mr. Erdos and the Student, the frequency of her sightings decreased, particularly during the second semester of the 2007-2008 school year. He decided not to contact the Administration about the Student in that she was an office runner and was not the only student to look into the gymnasium, particularly since some students came into the gym to use the water fountain.

Mr. Erdos continued to attempt a resolution of this aggressive student situation by requesting the assistance of a social studies teacher, Thomas Karczewski, who held class near the hall monitoring desk. Mr. Erdos frequently would ask Mr. Karczewski to come out of his classroom and join him at his desk. Although he had not given him any reason for this request, he later learned from another teacher, Kevin P. Gallagher, that there was something going on
between him and the Student. Mr. Karczewski did not see Mr. Erdos with the Student on any occasion.

On the other hand, as discussed above, Mr. Gallagher, a physical education teacher, testified that he knew both Mr. Erdos and the Student and had his own personal involvement with her. On September 9, 2008, he met with some Administrators who asked him about the Student’s accusations that he had inquired of the Student about her feelings toward Mr. Erdos. Mr. Gallagher expressly denied that this ever occurred. On the contrary, he stated that the Student initiated a conversation with him wherein she expressed her feelings about Mr. Erdos, at which time he suggested that she reschedule her gym class so that she would not be taught by Mr. Erdos or by him. Upon meeting with him, the Administrators determined that Mr. Gallagher had done nothing wrong, but was admonished not to have any future contact with this Student, particularly since she had such a fragile emotion. (Association Exhibit No. 4)

Also as discussed above, Mr. Erdos initially believing that he could handle the aggressive Student himself, repeatedly requested that Principal Hauser remove the Student from her office runner position and that Assistant Principal Steve Wallendorf make sweeps of the hallway to check on the Student’s location and activities with respect to his desk as the hall monitor during the second period of each day. Although the interactions with the Student ceased after January, 2008, the Student thereafter still would approach his monitoring station. To avoid any interaction, Mr. Erdos would either enter the nearby men’s room or into Mr. Karczewski’s classroom. He testified that he had no further interactions through the end of the school year, and none during the summer recess.

Advised by his local Association not to get anyone else involved in the matter, Mr. Erdos did not want to ignore the chain of command and was advised by the Association attorney not to
volunteer any additional information to the Administration. Troubled by the situation, Mr. Erdos did use the District’s EAP and received six counseling sessions, but did not inform the Administration of his use of the program’s benefits. Despite his requests, the Student continued volunteering as an office worker, but ceased her office runner functions during the 2008-2009 school year.

Without any comment from the Administration until September, 2008, Mr. Erdos had not had any further notice from the Administration concerning the relationship with this Student. Only after the Student delivered her written statement, dated August 26, 2008, was Mr. Erdos made aware of the additional information provided in her statement.

The District’s Case

Subsequent to the original and rescheduled Loudermill Pre-Termination/Suspension Hearing (Association Exhibit Nos. 1 and 3), the District, on December 15, 2008, suspended the Grievant for a period of ten days without pay from December 22, 2008 through January 14, 2009 for the following reasons as quoted from the Notice of Suspension, dated December 15, 2008 (Joint Exhibit No. 2):

“... 1. Immorality;
2. Incompetency;
3. Intemperance;
4. Persistent negligence;
5. Insubordination in the performance of your duties; and
6. Improper conduct growing out of your alleged commission of the following:

a) that during the school year 2007-2008, you engaged in conduct by making inappropriate comments to a female student of the Moon Area School District in regard to her age, her dress and potential sexual contact;
b) that after you were given written warnings by Michael A. Hauser on January 11, 2008, and by Dr. Donna K. Milanovich on February 11, 2008, you continued to engage in inappropriate conversations with a female student as outlined above, you continued to engage a female student in meetings in District school buildings during District school hours and that those discussions and meetings were done outside of your professional duties and/or responsibilities as a physical education teacher in the Moon Area School District;

c) that you engaged in or attempted to engage a female student in providing you with information concerning the investigation of your alleged conduct by the Administration of the Moon Area School District and outside law enforcement agencies;

d) the District has taken into consideration the previous oral and written warnings of January 11, 2008 and February 11, 2008…”

In lieu of participating in a Local Agency Hearing, the Association, on behalf of Mr. Erdos, filed its Grievance, dated December 22, 2008 (Joint Exhibit No. 2), pursuant to the grievance procedure in the Collective Bargaining Agreement under Article V, citing the District’s violation of the Just Cause Provision, found under Article VI, Section B, which is quoted above. (Joint Exhibit No. 1, pp 2-4) The District has the initial burden of proof and, by its case-in-chief, attempted to prove, inter alia, that the Grievant’s actions taken towards the Student were immoral; failed to command the respect of the community; lacked the requisite competency; demonstrated his lack of self-control when interacting with his female students; were intemperate; that his actions failed to comply with clear directives and were insubordinate; and all of which amounted to substantial just cause to impose the discipline of the suspension.

Analysis

The Agreement is silent as to what the parties may have concluded constitutes just cause and the provision under Article VI, Section B simply provides that any remedy for a violation of
the provision, shall be limited to the Grievance Procedure. Consistent with the basic premise of just cause, *ie* – fair and objective handling of the matter, the parties to the Agreement agreed in Article V, Section D, 2 that “during the Arbitration Hearing, the Board and the Association shall not be permitted to assert any ground or rely on any evidence not previously disclosed to the other party”.

In the absence of the definition of “just cause”, arbitrators have developed, over the years, a common law definition of the term. *Enterprise Wire Co.*, 46 La. 359 (Daugherty, 1966) Utilizing the seven tests that the distinguished arbitrator, Carroll R. Daugherty devised to determine what the parties meant by the term, arbitrators must use their judgment and all that the parties bargained for in the absence of a precise definition. Moreover, no formula can be developed wherein the facts are submitted with the expectation that an inevitable correct answer would emerge. “There is no substitute for sound human judgment” in the absence of any precise term devised by the parties in an agreement. *Whirlpool Corp.*, 58 La. 421, 427 (Daugherty, 1972); *AFSCME v. City of Reading*, 21 PPER 21046, at Fn2 (Cmwlth. Ct. 1990)

Moreover, the appellate courts have given arbitrators’ decisions deference when they have held that “just cause” is an implied contractual term that can be rationally derived from the Agreement, even in its absence. *PLRB v. Hanover Education Association*, 34 PPER P10 (Cmwlth. Ct. 2003) In the instant case, while the term is not defined, it is, in fact, included in the Agreement under Article V and is limited by the Grievance Procedure to which it refers in Article VI. In consideration of the seven tests, in which Mr. Daugherty was recognized by the American Arbitration Association Lifetime Achievement Award in 1996 for their development, a “no” answer to any of the seven questions calls for the conclusion that “just cause” does not exist in the situation. In this case, three of the seven rules have particular application. **Rule (3)**
provides for the employer to make an effort to determine whether the employee violated its directives; Rule (4) asks whether the employer’s investigation was conducted fairly and objectively, and Rule (5) inquires whether the employer obtained substantial evidence of the employee’s violation. As will be discussed below, affirmative answers are required for each of these rules, and any one answered with a “no” would signify that “just cause” was not present here.

Without question, the District was compelled to take seriously the allegations brought to the Administrators by the Student that Mr. Erdos may have been acting inappropriately with her in his capacity as a professional employee. The rumors that he had a reputation for over fifteen years engaging in inappropriate interactions with female students is not part of this record, and is just that – an unsubstantiated rumor to which the Superintendent made reference in her letter dated February 11, 2008 to Mr. Erdos. (School District Exhibit No. 3) No proof of the matter asserted was introduced and, therefore, the rumor statements were not taken into consideration in the determination of this matter.

The fact that a Board member precipitated a meeting with the Administration and that the mother of this Student took a strong position as a concerned parent are part of this record and lend support to the decision by the District to address the allegations involving one of its teachers and students. However, the statements that were introduced at the first day of this Arbitration Hearing on October 20, 2009, concerning the allegations of the touching of the Student by the Grievant, which neither were contained in the written statement of the Student nor were ever disclosed to the Grievant prior to the first day of this Hearing, are not considered in this case and are excluded under the application of Article V, Section D, 2. of the Agreement. (Testimony of Student; School District Exhibit No. 2; and Joint Exhibit No. 1, Agreement, p. 4)
Without the corroboration of supporting witnesses, or any empirical evidence introduced to support the allegations in this type of case, that more often than not is unavailable, the decision usually turns on the credibility of the individual making the accusations. In this case, no one has come forward to support the allegations of the Student. Admittedly, the Student has a crush on the Grievant, as she shared with another teacher that she was obsessed with him. (April M. Hurd) Having extreme difficulty testifying in this case and “not wanting to take sides”, the Student stated that she still cares and has strong feelings for the Grievant. Never instructed to be brief or to restrict her written statement in any way, the Student did not include in her statement many of the allegations about which she spoke during her testimony, including the allegations of touching her by the Grievant. Instead, the Student raised these allegations, presumably for the first time, on June 8, 2009 during the Hearing preparation, almost one year after her written statement was submitted to the Guidance Counselor. She testified that she wrote her statement the same day of her meeting with the Administration, on August 22, 2008. However, her statement is dated August 26, 2008 and the Guidance Counselor, Emily J. Wagner, testified without contradiction, and with reference to her notes kept contemporaneously with her meeting with the Student, that the statement was delivered to her on August 29, 2008. Moreover, Ms. Wagner testified that she was unaware of the “situation” involving Mr. Erdos until that date, contrary to the Student’s testimony that Ms. Wagner had been involved with her interviews with the Administrators each time she met with them.

Significantly, teacher witnesses, also under oath, contradicted the testimony of the Student. Investigating the alleged inappropriate comments that Kevin P. Gallagher, a health and physical education teacher, who was accused of making comments concerning the relationship between the Student and Mr. Erdos, the District apparently accepted Mr. Gallagher’s explanation
that the Student had approached him and made several inquiries about Mr. Erdos and concluded that “there is no determination of wrong-doing on your part”. (Association Exhibit No. 4, Letter from Principal Hauser to Mr. Gallagher dated September 10, 2008) April M. Hurd, a six-year health and physical education teacher, testified that the Student, while visiting her condominium with her baby-sitter, told Ms. Hurd that she was glad that the school year was coming to a close since she was obsessed with Mr. Erdos. Jason E. Persing, a tenth year Health and Physical Education teacher, testified that he would accompany Mr. Erdos to his parked car from time to time upon request by Mr. Erdos. While these individuals are fellow teachers in the same department with Mr. Erdos, they testified under oath and would have had no apparent reason to have come forth in this proceeding other than to share their personal experiences in this matter when requested to do so.

While she may have been flattered by Mr. Erdos’ initial attention and follow-up conversations as she passed by his hall monitoring desk, the fragile emotions present in this context experienced by this young lady may have caused her to have embellished the details of any relationship with Mr. Erdos. Relegated to the ultimate fact-finder, I conclude there is reason to doubt the Student’s statements in this proceeding.

Now having placed into question the reliability of the uncorroborated allegations of the Student, the record is reviewed to determine if the District has met its burden of proof otherwise. Principal Hauser had reason to meet with the Grievant on December 14, 2007, having had interviewed the Student a week earlier and presumably learned about the alleged allegations between the Student and the Grievant. Principal Hauser also testified that he had a personal observation of them which appeared to be an inappropriate length of time, and had reason to have called her in for a personal interview. However, Principal Hauser apparently neither took
notes, or if he did, he did not maintain notes of this interview or any part of an investigation that was made in this matter. In fact, he first testified that no investigation ensued thereafter, but recanted that testimony during the rebuttal phase of the case, wherein he later stated that there was an investigation. Despite Principal Hauser’s directive to the Student to avoid contact with Mr. Erdos, she testified that she ignored it and continued to interact with him to the extent that she could, which included spending time outside of his health classroom, outside the gym where he was teaching, and near the exit to the parking lot where Mr. Erdos parked his car.

Mr. Erdos was properly admonished by the Principal to avoid any interactions with this Student that could be considered as inappropriate considering his position, which was followed up at a meeting with the Superintendent in support of the Principal’s directives. (Association Exhibit No. 1 and No. 3) The record supports the fact that Mr. Erdos heeded the Administration’s directives to him and the District concluded that no further interactions took place during the second semester of the 2007-2008 school year and through the intervening summer. In fact, Mr. Erdos took remedial actions believing that he could handle the matter himself with the assistance of the Principal. As discussed earlier in this Opinion, Mr. Erdos engaged his fellow teachers to assist him in avoiding the Student. In fact, Assistant Principal Steven Wellendorf, upon Mr. Erdos’ request, conducted hall sweeps to discourage the Student from approaching Mr. Erdos. (Statement admitted by stipulation) It must be concluded that Mr. Erdos did not violate the directives and Rule (3) is answered in the negative.

If the Administration was concerned about the well-being of this Student, who it concluded had a fragile emotion, it is curious why it did not implement Mr. Erdos’ request to have the Student removed from her office runner job and returned to a study period so that she would not have the opportunities to meet with Mr. Erdos in the hallway as he conducted his
monitoring function during the second period of each day. On numerous occasions, Mr. Erdos requested the Principal for this obvious remedy, but Principal Hauser, who acknowledged the requests, ignored them concluding that Mr. Erdos was the problem and not the Student. Irregardless of who actually was the catalyst for such interactions, this step should have been taken despite the fact that the Superintendent had not learned of the request made to the Principal until the first day of this Hearing.

Moreover, if “false hall passes” were being used, as alleged, to foster the opportunities for more interactions, as suggested above, it would have been easy enough to have the receiving teachers turn them into the Administration each time the Student submitted one to them as proof of Mr. Erdos’ misuse. A follow-up confrontation of him with such examples would have been an obvious element of any investigation. Despite the accusations, Mr. Erdos denied writing them for the Students’ use and nothing exists to contradict his denial except for the discredited testimony of the Student.

None of the professional staff were called by the District to testify that they observed any improper interactions between the Grievant and the Student. The teachers who did testify stated, without contradiction, that none of them observed any such interactions between the Grievant and the Student.

There was no basis to discipline Mr. Erdos during the second semester of the 2007-2008 school year and nothing would have suggested any follow-up investigation and possible discipline until the District’s receipt of information from the Student in August, 2008. It had every reason to react to the Board member’s request to meet about Mr. Erdos’ alleged relationship with the Student, particularly in light of the rumors about Mr. Erdos’ reputation. (School District Exhibit No. 3) As a result of that meeting and subsequent submission of the
written statement from the Student, the District had the responsibility to take the written statements seriously which disclosed, despite the fact that the District thought the matter had been concluded, that the interactions had continued during the intervening time period.

Despite the postponement of the first Loudermill hearing on September 29, 2008, which was continued until December 11, 2008, and the request by the PSEA UniServ Representative, Janine Yodanis, to interview several teachers who could support the Association’s contention that Mr. Erdos took reasonable steps to distance himself from an aggressive student, the District did not interview the named teachers who ultimately were called by the Association to testify in this Hearing. The District, however, did interview other teachers whose names were not identified, nor who testified at the Hearing. At both the Loudermill hearing and the Board grievance hearing on the Grievance, held on January 11, 2009, the charges of insubordination and inappropriate comments were discussed (although the degree of comprehensiveness was not made part of this record), but no mention of the allegations of the physical contact were made nor disclosed to the Association representing the Grievant until the first day of the Hearing on October 20, 2009. Rule (4) must be answered in the negative.

The District’s investigation into the allegations of this Student was insubstantial and incomplete. From this record, the District’s burden of proof in support of its charges stemming from Mr. Erdos’ alleged improper conduct, as set forth in the District’s Notice of Suspension, dated December 15, 2008, falls short of what is necessary to have them sustained.

In summary, the District reasonably warned Mr. Erdos based upon its initial information received from the Student’s disclosure and from the personal observation of the Principal. It correctly elected not to impose any discipline and monitored the situation having concluded that the matter was closed as of the second semester of the 2007-2008 school year. The Grievant
took the necessary steps to distance himself from the aggressive and impressionable young female student who had become obsessed with him. No further interactions apparently occurred from any reported observation thereafter, but the issue was raised again only upon the further disclosure of the Student as reduced to her written statement. It was that series of allegations that the District used to form the basis of its charges that ultimately led to the disciplinary procedural writings and the ultimate suspension of Mr. Erdos, all without corroborating substantiation and without adequate consideration of possible countervailing evidence that would have shed a degree of skepticism sufficient to have stopped any further action taken against Mr. Erdos. It is my opinion, therefore, that Rule (5) also must be answered with a “no”.

Given that the District may have had sufficient basis to doubt Mr. Erdos and to ascribe more credibility to the accounts of the Student due to his rumored reputation, it still should have given Mr. Erdos the benefit of the doubt and sought to fully investigate the situation. It would have found, as the record in this case shows, that Mr. Erdos acted to distance himself from the Student that he may well have first encouraged to have an interaction with him that clearly may have been inappropriate. But once warned, he took reasonable actions, requested assistance of the Principal to curtail the Student’s office runner position and the assistance of other Administrators and professional staff to attempt to clear the hallway of her access to him.

The matter is simply reduced to whether I find that the uncorroborated testimony of the Student, as limited by the relevant provision of the Agreement, and without more, is sufficient to establish the burden of proof necessary to sustain the District’s imposition of discipline. I do not so find it to be sufficient and conclude that just cause does not exist.
Accordingly, I find that the District did not have sufficient just cause to have imposed the discipline on the Grievant and hereby sustain the Grievance and direct the District, upon receipt of this Award, to make the Grievant, Lance Erdos, whole for any and all losses sustained, including the payment of his lost wages for the ten day suspension, together with the restoration of any loss of benefits, seniority and retirement contributions for the said period, but without interest. I further direct that this Opinion and Award be included in his personnel file, which will indicate that the Grievance was sustained, and that the letters identified in Joint Exhibit No. 2 be removed from his personnel file and from all records of the District.

Respectfully submitted,

Daniel R. Delaney, Esquire
Arbitrator

Date: January 11, 2010
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