ARBITRATOR'S OPINION AND AWARD

TULPEHOCKEN AREA EDUCATION ASSOCIATION	:	Korissa E. Seidel/Termination
AND	:	BOM Case No. 2019-0054
TULPEHOCKEN AREA SCHOOL DISTRICT	:	

Before

A. Martin Herring, Esquire
Arbitrator

Appearances

For the Tulpehocken Area Education Association
Jesika Steuerwalt, Esquire
Pennsylvania State Education Association
4950 Medical Center Circle
Allentown, PA 18106

For the Tulpehocken Area School District
Michael Monsour, Esquire
Kozloff Stoudt
2640 Westview Drive
Wyomissing, PA 19610

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OPERATIVE HISTORY OF THE CASE:

This case involves the termination of a tenured public school teacher Korissa E Seidel (hereinafter referred to as "Seidel").

The Tulpehocken Area Education Association (hereinafter referred to as "Union" and/or "Association", interchangeably) and the Tulpehocken Area School District (hereinafter referred to as "School District", "District", or "Employer" interchangeably) are parties to a Collective Bargaining Agreement (CBA) wherein they agreed to the following contract language:

> Employees will not be discharged or disciplinary suspended without just cause. The Employees must select the method by which they wish to have a determination on the discharge or suspension at the first level (Grievance vs. Tenure Hearing, Local Agency Hearing).
>
> XIX. GRIEVANCE AND ARBITRATION PROCEDURE
> B. General
> 1. The award and decision of the arbitrator shall be final and binding on both parties provided, however, that the arbitrator shall have the authority only to interpret and apply the provision of this Agreement and shall have no authority to add to, detract or alter the same.
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> XXVIII. STATUTORY SAVINGS
> This Collective Bargaining Agreement incorporates by reference such rights as may exist under the Public-School Code of 1949, as amended, and Act 195 of 1970, as amended, and all other state and federal laws and regulations. The rights granted to Employees hereunder shall be deemed to be in addition to those provided elsewhere.

Seidel was terminated by reason of an incident that occurred in her gym class on December 13, 2018 and for lying to the School District administration during its investigation of the December 13th incident. She was terminated on February 9, 2019. Pursuant to the terms of the Collective Bargaining Agreement, the Association representing Seidel and Seidel chose to contest her dismissal through arbitration.

The parties selected me as the neutral arbitrator in this matter. Hearings were conducted on October 29 and October 30, 2019.

The parties have filed complete and extensive briefs, each side presenting their arguments as to why their position should be adopted.

The Collective Bargaining Agreement does not define "just cause"; however, the generally accepted meaning that has evolved in labor-management jurisprudence is that the "just cause" standard is a broad and elastic concept, involving a balance of interests and notions of fundamental fairness. Described in very general terms, the applicable standard is one of reasonableness… whether a reasonable (person) taking into account all relevant circumstances would find sufficient justification in the conduct of the employee to warrant discharge (or discipline.) *RCA Communications, Inc.*, 29 LA 567, 571 (Harris, 1961). See also *Riley Stoker Corp.*, 7 LA 764, 767 (Platt, 1947).

While the issue can be simply stated as to whether or not just cause existed to terminate Seidel, it actually has two distinct parts. The first is the incident itself and the second is the behavior of Seidel, her representatives, and the administration and its representatives during the investigation.

However, prior to dealing with the merits of this case, I am compelled to deal with an issue related to the record and decisions created at the Unemployment Compensation Referee and the Unemployment Compensation Board of Review. The Union wants me to consider the Unemployment Compensation Board of Review Decision.

I find, the consideration of decisions based on evidence not offered before me and conclusions made by others is not helpful. In addition, what occurred both before the Referee

and the Review Board was offered by the parties under a completely different body of law and standard of proof. I will not place in this record nor take into consideration that former litigation.

On December 13, 2018, Seidel was supervising a 7th period physical education class. The school nurse was going to conduct vision testing on the students in that class. So, from time to time during the class students would be called out for testing. Because of the constant interruptions, Seidel decided to permit the students to have a free period. The students were permitted to use the equipment in the gymnasium to play games of their choosing. Seidel remained in the gymnasium observing the students. Some students used School District "scooters" and gymnasium mats, an activity they had engaged in prior to this time, so that they could be pulled around the gymnasium floor. The boys pulled the scooters and the mats and the girls sat on the mats. One of the scooter mats collided with a hockey goal and as a result a student O.T. was injured.

The injured student and another student ran into the locker room. Seidel remained in the gymnasium supervising the remaining students leaving because it was the end of the period, as well as supervising the students for the next period entering the gymnasium. When Seidel was able, she went to the locker room to find that the students had gone to the nurse's office. Seidel remained in the locker room supervising the incoming students and then when able went to the nurse's office. On the way to the nurse's office she made a stop relative to student council issues and to speak to another teacher. When she did arrive at the nurse's office, she was informed by the nurse that the injured student was picked up by her parent(s).

The next day, administrative personnel became aware of the incident. It is unclear to me how the administrative personnel became aware, however it is clear that Seidel did not report the

incident to the administration. But the nurse did file her report. The District claims Seidel violated three District policies: 440; 210.1; and 210.2.

Administration began an investigation. Seidel was interviewed on five different occasions by administration. In addition, administration conducted interviews with the nurse, other personnel, and students. At the conclusion of the investigation the, Superintendent recommended to the Board of School Directors that Seidel's employment be terminated. She was terminated by Board action on February 9, 2019.

The District takes the position that during the investigation by the administration Seidel was untruthful. The District offers that at the first investigatory meeting Seidel was not truthful about knowing the nature of the injury to O.T. Second, she claims she went to the nurse as soon as possible and she did not speak with anyone about the incident. The District further offers the argument that at a second hearing/meeting she again repeated the same untruthful version of what happened after the incident.

The Association counters with the position that all policies of the District were followed by Seidel, and her excellent employment record mitigates against termination. Additionally, the Association urges that Seidel was not untruthful during the investigation. She was, according to the Association, answering questions in a very hostile environment when questioned by the administration and she never was intentionally untruthful, in forgetting inconsequential facts.

ISSUE:

The School District describes the issue as follows:

Was there just cause to discipline/terminate Seidel on the grounds of her immorality and persistent and willful misconduct when the record establishes that she repeatedly lied to the administration and the Unemployment Referee and the Arbitrator?

The Association describes the issue differently:

Whether the evidence presented establishes that the District's termination of Seidel was with just cause and if not, what shall be the remedy?

DISCUSSION:

The parties appear to be in agreement that the standard of proof in this case is a just cause standard as opposed to a School Code and the cases cited thereunder standard. While the School Code and cases decided pursuant to it, may be instructive and perhaps even persuasive, will in this case not be solely determinative.

The incident as described was in my view an exhibition of poor judgement on Seidel's part. Her permission to permit the students to engage in what can best be described as an activity fraught with danger is a difficult decision for her to defend. The injury to O.T. makes her decision even more difficult to defend.

I agree with Seidel that she did not violate Policy 440. This policy requires a teacher to report an injury or accident to the administration **or** school nurse. (emphasis is mine). She did go to the nurse to report the incident and it had already been reported by the students. In effect, Seidel reported it again so there was no need to report to administration.

Also, Seidel did not violate Policy 210.1 &.2. These policies make reference to a teacher treating a non-life threatening injury and offer first aid to an injured student. I come to this conclusion by reason that as I understand the evidence presented to me, she could not follow

these directions because the injured student immediately left the scene with another student to the locker room and Seidel was responsible for the rest of the entire class. But even so, in my view she again demonstrated poor judgment. The situation was acute and needed immediate attention. The injured student was on her own and the students leaving and entering the gymnasium needed supervision. She needed help in supervising, and she needed help so she or someone else could assist the injured student. However, she failed to use her walkie talkie to get immediate assistance.

The District argues forcefully that during the investigation Seidel was untruthful. By way of example, she replied after her supervisory duties in the locker room were completed, she went straight to the school nurse. She did not go straight to the nurse's office. Actually, she made two stops. I am uncertain that the incident about whether the tooth was "knocked out" or "chipped" rises to an untruthful statement, but it does convey at least to me, a failure to grasp the severity of the situation.

I stated at the hearing before me: (p.172,173)

> ARBITRATOR HERRING:...her testimony at those hearings was inconsistent with what your investigation and videotapes showed. I think she's agreed to that.
>
> ARBITRATOR HERRING:… My recollection of her testimony is that to this day she doesn't know what the truth is. So, let's move on to something else.

Her testimony, and my remarks, do not lead to the conclusion that she was not truthful before me, but one again exhibits a mindset of not grasping the seriousness of the incident and the investigation.

I was favorably impressed with the testimony of Superintendent Netznik. I found him to be serious-minded, concerned and trying and wanting to do what is in the best interest of the District. He testified (p.153) that the incident alone was a terminable offense. He also testified

that (p.138) "...in my mind I was being lied to and I have a huge problem with that." He further stated that, (p.139) "...I was not surprised and she had indicated that there was just an indifference that she felt that this was not something to be taken seriously. "She had told (p.140,141) us that she never followed up with the student to determine whether the student was okay. And in my mind, that's not an educator that I believe should be working with this District."

This School District, as every other District, has heavy burden to keep children safe from the activities planned for them as well as keep them safe from themselves. Yes, accidents do happen. But they should not happen in an atmosphere created by the very people who are responsible for safety. The activity in the gym should not have been permitted.

Seidel's attitude during the investigation was, in my view more of a cavalier or uncaring state of mind as opposed to being untruthful. Picking up the tooth from the floor and her comments, failing to get assistance, dealing with a student council issue while on the way to the nurses office, and stopping to talk to another teacher on the way to the nurses office clearly show she is of a mindset that "just doesn't get it."

Seidel's behavior after the incident, her appearing to not be involved with the injury of the child or parents, demonstrates her inability to remain as a fully engaged employee of the District. Seidel singularly, created the atmosphere for the incident and she thereafter singularly created the negative attitude of her behavior after the incident.

The Grievance is denied.

Respectfully submitted,

A Martin Herring

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A. Martin Herring, Esquire
Arbitrator

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AWARD

The grievance is Denied

Respectfully submitted,

A Martin Herring

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Dated: March 13, 2020