IN THE MATTER OF THE ARBITRATION	)	OPINION AND AWARD
	)	
between	)	VINCENT C. LONGO, ESQ.
	)	ARBITRATOR
CONNEAUT SCHOOL DISTRICT	)	
	)	Bureau of Mediation
and	)	Case No. 2020-0334
	)	
CONNEAUT EDUCATION ASSOCIATION	)	
	)	

GRIEVANT

Chris Walters

ISSUE

Job Abandonment

HEARING

April 14, 2021
Linesville, Pennsylvania

BRIEFS RECEIVED

May 14, 2021

DATE OF AWARD

June 20, 2021

APPEARANCES

For the School District
George Joseph, Esq.
QUINN, BUSECK,
LEEMHUIS, TOOHEY
& KROTO, INC.

For the Association
Richard S. McEwen, Esq.
STAFF ATTORNEY
PSEA/NEA

ADMINISTRATION

The parties mutually selected the undersigned, Vincent C. Longo, Esq., through the Pennsylvania Bureau of Mediation to serve as the arbitrator to hear and decide this dispute. An evidentiary hearing was held on April 14, 2021, in Linesville, Pennsylvania, at which time the parties were afforded a full and complete opportunity to present documentary evidence and to examine and cross-examine witnesses. The parties filed briefs on May 14, 2021, and the matter is now ripe for final disposition.

GRIEVANCE

On October 2, 2020, the Association filed the following grievance:

> STATEMENT OF GRIEVANCE: The District discharged Chris Walters from employment without just cause and contrary to the School Code.
>
> RELIEF SOUGHT: Reinstatement. All other lost emoluments of employment including, but not limited to, leave, pay and benefits. Any other relief deemed appropriate.

ISSUE

The issue presented is whether the grievant abandoned his teaching position and, if not, what is the appropriate remedy.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE III

MANAGEMENT RIGHTS

A. It is understood and agreed that the Board at its discretion possesses the right, except as expressly provided otherwise by this agreement, to determine and

administer school policy, to manage all operations of the school district, including the direction of employees and the right to plan, direct and control the operation of all property of the Board.

B. Rights as stated in this article are not intended nor should they be considered restrictive or a waiver of any other right of the Board not listed whether or not such rights have been exercised by the Board in the past.

ARTICLE VIII

RIGHTS OF PROFESSIONAL EMPLOYEES

A. JUST CAUSE

No employee shall be discharged, disciplined, suspended, reprimanded, reduced in rank or in compensation without just cause. The reason or reasons for the disciplinary action will be made available to the affected employee.

B. STATUTORY SAVINGS CLAUSE

Nothing contained herein shall be construed to deny or restrict to any professional employee such rights as he may have under the Public School Code of 1949 as amended, or the Public Employee Relations Act, Act 195.

C. REQUIRED MEETINGS OR HEARINGS

Whenever any professional employee is required to appear before the Superintendent, Board or any committee thereof concerning any matter which could adversely affect the continuation of the employee in his/her office, position or employment or the salary or any increments pertaining thereto, he/she shall be given one day prior written notice of the reasons for such meeting or interview and may have a representative of the Association present.

...

FACTS

The employer is the Conneaut School District ("District"), located in Linesville, Pennsylvania, approximately an hour-and-a-half north of Pittsburgh. The collective bargaining representative is the Conneaut Education Association ("Association"). The Association represents teachers, librarians, nurses, counselors, and home and school

visitors, and excludes supervisors, first level supervisors, and confidential employees as defined in Act 195. The District and Association are parties to a collective bargaining agreement dated July 1, 2017, through June 30, 2022.

The Association filed the instant grievance protesting the District's determination that the grievant is no longer an employee of the District because he voluntarily abandoned his employment effective September 18, 2020.

This case presents a novel situation involving a global pandemic and efforts by the Commonwealth of Pennsylvania and the District to mitigate the spread of the COVID-19 virus. By March 2020, the COVID-19 pandemic had taken hold in Pennsylvania. In an effort to mitigate the transmission of the virus, the Pennsylvania Secretary of Health on July 1, 2020, issued an order (hereinafter the "July 1 Order") requiring all Pennsylvanians to wear face coverings in certain situations, including "in any indoor location where members of the public are generally permitted."

The July 1 Order permitted five exceptions to the face covering requirement. Included among the exceptions were "[i]ndividuals who cannot wear a mask due to a medical condition, including those with respiratory issues that impede breathing, mental health condition, or disability." After listing the five exceptions, the July 1 Order stated, "Individuals are not required to show documentation that an exception applies."

The Pennsylvania Department of Health subsequently issued a document entitled "Universal Face Coverings Order FAQ" (hereinafter the "FAQ Document"). This document answered frequently-asked questions about the July 1 Order and reiterated the guidance of the July 1 Order that individuals "must wear a face covering unless . . . they have a medical or mental health condition or disability that impedes their ability to

wearing of a face covering. . . ." This document also reiterated the position of the July 1 Order with regard to documentation: "An individual does not need to provide documentation that the individual fits within an exception to the Order."

On July 16, 2020, the Pennsylvania Department of Health and Pennsylvania Department of Education jointly issued guidance for school districts in a document entitled "Public Health Guidance Regarding COVID-19 for Phased Reopening of Pre-K to 12 Schools." This document refers to the July 1 Order and states that "[f]ace coverings, such as masks or face shields, must be worn by all non-students, both staff and visitors (including parents and guardians), while on school property, including during student drop-off and pickup." The document continues, "Individuals must wear a face covering (mask or face shield) unless they have a medical or mental health condition or disability, documented in accordance with the Americans with Disabilities Act, that precludes the wearing of a face covering in school."

In preparation for the 2020 – 2021 school year, the District on August 12, 2020, enacted a policy on masks for employees, including teachers such as the grievant (hereinafter the "Mask Policy"). The District enacted a similar policy for students. The Mask Policy states that employees must wear a face covering while on school property, but provides exceptions in Paragraph G, including the following exception: "Face coverings shall not be required for any individual who is unable to wear a face covering due to a medical condition. . . . Students and staff requesting to be excused from the requirement to wear a face covering shall provide appropriate documentation in accordance with applicable law and regulations." The "applicable law and regulations" are cited in a footnote after this sentence which lists the July 1 Order and the Universal

Face Coverings Order FAQ, both of which state that individuals need not provide documentation that they fall within one of the exceptions.

In an email to all employees dated August 14, 2020, District Superintendent Jarrin Sperry addressed questions and issues pertaining to the District's re-opening plan in light of the ongoing pandemic. Included in the email was a section mandating that employees and students must wear masks or face shields. The email also explained that the District would engage in an interactive process with employees who request an accommodation to the Mask Policy.

Following Mr. Sperry's August 14, 2020, email to all employees, the grievant and Mr. Sperry exchanged 13 emails between August 14 and the first day of school on September 2, 2020. These emails essentially consisted of a "debate" between Mr. Sperry and the grievant regarding the Mask Policy. For example, in an email dated August 14, 2020, the grievant insisted to Mr. Sperry that he is exempt from wearing a mask and that, per Pennsylvania's July 1 Order, he does not have to provide documentation proving his exemption. In an email dated August 20, 2020, Mr. Sperry disagreed, telling the grievant, "I will need documentation regarding your inability to wear a mask and/or a face shield."

The emails continued, with Mr. Sperry explaining to the grievant that if he claims he cannot wear a mask, the parties can engage in an "interactive process" to find a reasonable accommodation for the grievant. The grievant continued to insist that, per the guidance from the Pennsylvania Department of Health, he was not required to provide documentation of his medical condition.

The grievant's final email to Mr. Sperry, dated September 2, 2020, stated as follows:

> When is this "process" going to take place?
>
> I have no desire to miss the first day of school, use my own PTO, get my rights violated and be discriminated all in the same day.
>
> Since masks are not required outside, I will wait until tomorrow morning to check the weather. If suitable, I will hold my first day classes outside.
>
> It appears as though someone already put a sub in for me?

The grievant attended teacher in-service days prior to the first day of school. He did not wear a mask to the in-service sessions and was permitted into the building without incident.

On the morning of September 2, 2020 – the first day of school – the grievant engaged in an "interactive process" with the District. The grievant participated by telephone from the school parking lot. Also present on the phone call, and located in the building, were Mr. Sperry, Principal Dave Maskrey, Association President Mechel Golemberke, and Association Vice-President Bill Stevenson.

At this interactive process meeting, Mr. Sperry outlined a number of different options available to the grievant, including (1) wearing a face mask or face shield and appearing for work; (2) using available sick days; (3) using available personal days; (4) requesting an unpaid leave of absence from the school board; (5) requesting a sabbatical leave of absence; or (6) providing medical documentation of his entitlement to an exemption to the face covering requirement. The grievant suggested other alternatives, such as conducting classes outdoors or teaching remotely via video, but these options were rejected. The meeting concluded with no resolution to their differences and the

District representatives told the grievant he could not report to work without a face covering or documentation exempting him from wearing a face covering.

Subsequent to the September 2, 2020, meeting, Principal Maskrey arranged for a substitute teacher to cover the grievant's classes from September 2 through September 4, 2020, using a floating substitute. Arranging for a substitute teacher is a task that is normally done, via the AESOP System, by the teacher who is going to be absent. In addition to requesting a substitute through AESOP, an absent teacher is required to use AESOP to designate the type of leave time they will be utilizing (e.g., sick day, personal day, FMLA, etc.). The grievant did not enter the AESOP System and designate the type of leave time he would be using.

Over the Labor Day weekend, on September 7 and September 8, 2020, the grievant and Principal Maskrey exchanged emails regarding the grievant's question of whether he was required to arrange for a substitute teacher through the AESOP System. The grievant did not want to duplicate the actions of Principal Maskrey if Principal Maskrey was arranging for a substitute. Principal Maskrey advised the grievant that he would take care of arranging for the substitute as long as the grievant was not able to return to the building. These emails did not include any designation by the grievant of the type of leave he intended to use. At no time during his entire absence did the grievant enter the AESOP System. As a result, his absences were not designated as sick days, personal days, FMLA days, or any other type of leave.

There was no communication between the grievant and anyone from the District between September 8, 2020, and September 18, 2020. On September 18, 2020,

Superintendent Sperry sent the following letter to the grievant, entitled "Job Abandonment:"

> You had previously advised me that you would not wear a mask or other face covering in order to perform your duties as a teacher in the District as required by the Pennsylvania Department of Health mandate. As a follow up to your refusal, we met as part of the interactive process on September 2, 2020; Mechel Golenberke and Bill Stevenson from the Association, as well as Dave Maskrey, Principal at CASH, were also present. You participated by cell phone from your vehicle, since you would not wear a mask into the building for the purposes of the meeting. You explained that you are not seeking any accommodation and that you required no accommodation. You were informed that if you refused to wear a face covering (mask or face shield), you would not be permitted to enter the building unless you provided documentation of your exemption under the Americans with Disabilities Act.
>
> Since that time, you have failed to report to your assigned duties as a teacher, beginning with the first student day on September 2, 2020. You have refused to discuss any possible reasonable accommodation with regard to your medical condition, failed to produce any information supporting your contention that you are exempt from the mandatory face covering requirement. You have also refused to utilize a face shield, which is an acceptable alternative to a face mask. You have failed to report your absences or to utilize any available paid time off. You have likewise not requested that the Board grant you any unpaid leave of absence. Your failure to attend to your work duties has not been authorized for any reason. Moreover, you have failed to communicate with the District regarding your intentions. For these reasons, the District considers you to have abandoned your position of employment with the District. You are considered to have voluntarily terminated your employment at this point. You are no longer considered to be an employee of the District. The Administration will be moving forward to fill the vacancy on a permanent basis.

The Association disagreed that the grievant abandoned his job and filed the instant grievance. The dispute was not resolved via the grievance procedure and proceeded to an arbitration hearing before the undersigned on April 14, 2021, at the District offices in Linesville, Pennsylvania.

Testifying for the District were a magistrate court security officer who witnessed the grievant wearing a face covering at a court proceeding (the grievant was also

photographed by a surveillance camera wearing the face covering), Superintendent Sperry, and Principal Maskrey. Testifying on behalf of the Association were Ms. Golemberke, Mr. Stevenson, the current grievance chair/former Association president, and the grievant.

Mr. Sperry detailed the individual discussions he had with the grievant regarding the requirement that the grievant either wear a face covering or provide documentation exempting him from this requirement. He discussed the various orders from the Pennsylvania Department of Health and Pennsylvania Department of Education. Mr. Sperry discussed what was said at the September 2, 2020, interactive process meeting with the grievant.

Mr. Sperry testified the grievant never used AESOP to designate the type of leave he was using, never requested leave, never gave a reason why he was not appearing for work, and never contacted him until September 18, 2020. Mr. Sperry said that, as the process went along, he was aware that the grievant was claiming an exemption from the face covering requirement. He testified no one from the District reached out to the grievant between September 2, 2020, and September 18, 2020, to inform him that his employment was at risk.

Principal Maskrey testified his secretary arranged for a floating substitute teacher because he knew there was going to be an issue with the grievant not reporting for work. He said his secretary arranged for the substitute for September 2, 3 and 4 and that he was hoping the grievant's dispute with the District would be resolved by then.

Ms. Golemberke testified she was at the September 2, 2020, meeting but did not consider it to be an "interactive process" meeting because the grievant made clear that he

was not seeking an accommodation under the Americans with Disabilities Act. She said the District never used the words "job abandonment" and never told the grievant his job was at risk.

Mr. Stevenson testified the District never told the grievant his job was at risk of abandonment. He said there was no resolution at the conclusion of the September 2, 2020, "interactive process" meeting between the grievant and the District.

The grievance chair/former Association president (his name is unclear from the record) testified that in 2013 he represented a teacher named Joyce Randall who the District dismissed due to job abandonment. He said that, unlike in the grievant's situation, the District attempted many times to contact Ms. Randall prior to deeming her to have abandoned her job. He testified she received a Statement of Charges and was afforded a Loudermill hearing.

Finally, the grievant testified he is a 28-year employee and the former president of the Association in the late 1990s. He said prior to receiving the Job Abandonment letter from the District on September 18 he had no idea the District was considering him to have abandoned his job. He stated he had no intent to abandon his job.

The grievant maintained he cannot wear a face covering due to a mental health condition that has been diagnosed by a medical doctor. He said his mental health condition is a personal matter that he does not discuss with or disclose to anyone, with very few exceptions such as his doctor. He testified that, per the Pennsylvania Department of Health's July 1 Order, he did not believe he was required to provide medical documentation to the District regarding his exemption from wearing a mask. The grievant stated that Principal Maskrey told him there would be substitute teacher

coverage for him until he returned to work. He said he did not access AESOP to arrange for substitute teachers because Mr. Maskrey was performing this task. He said he assumed sick days were being entered for him into AESOP.

The record was closed at the conclusion of the hearing. The parties filed post-hearing briefs on May 14, 2021, and the matter is now ripe for final disposition.

POSITIONS OF THE PARTIES

DISTRICT POSITION

The District contends it permissibly imposed the face covering obligations and required documentation of a claim for exemption. Consistent with directives from the state, the District issued COVID-19 Face Covering Policies for all students and staff. The staff guidance required all staff to wear a face covering when on school property. Staff could be excused from this requirement if they provided appropriate documentation. This would be considered a reasonable accommodation. The Association itself endorsed this policy.

The grievant refused to wear a face covering and refused to provide documentation of his claimed exemption. However, the Pennsylvania Department of Education guidance, as well as the Americans with Disabilities Act, permit employers to request medical documentation when the basis for a claim of disability or its limitations is not obvious. The grievant asserts that his mental health condition does not require an accommodation. However, according to the grievant, the condition causes breathing difficulties and he cannot wear a face covering. Breathing difficulties are a limitation which requires an accommodation.

The grievant offered no evidence of his mental health condition or of its limitations which allegedly prevent him from wearing a face covering. Instead, he offered only his testimony of an unspecified mental health condition. If the condition exists, it constitutes a "medical or mental health condition or disability" which requires documentation in accordance with the ADA. To be granted an exemption, the grievant was required to provide the necessary documentation of his condition where the condition is not otherwise obvious.

The grievant did not assert a claim of, or request an exemption from, the Universal Face Covering mandate in other contexts. For example, he appeared in a district magistrate court wearing a face covering which he kept in his vehicle. He never requested an exemption at magistrate court. It appears the grievant is more concerned with proving his point to the District than working with the District to return to work. There are many ways the grievant could have done so, such as wearing a less-intrusive face shield or providing documentation of his need for an exemption. He did neither.

The District and the grievant engaged in an interactive process during which the grievant was presented with numerous employment and leave options. The grievant takes the position that his unspecified mental health condition is not a disability under the ADA. But his condition clearly meets the definition of a disability under the ADA as a mental impairment that limits a life activity.

The parties had a meeting on September 2, 2020, at which the District presented the grievant with six options. The grievant made it clear to the District that he did not intend to use any paid time off but made no selection with regard to any of the options presented at this meeting or at any time thereafter.

The grievant did not inform the District of his intentions with regard to his ongoing absence from work and abandoned his position. The grievant's last communication with the District was an email to Mr. Maskrey on September 7, 2020. In the interim, he made no decision as to how he was going to proceed, if at all. He did not enter into the AESOP System or choose to use paid sick days or personal days. Even if he had done so, he would have been restricted as to the use of those days by limitations in the collective bargaining agreement. For two weeks the grievant did not appear for work nor explain his absence.

Like the teacher in *Jacobs v. Wilkes-Barre School District*, 355 Pa. 449, 50 A.2d 354 (1947), the grievant failed to report for work and failed to inform the District of his intent with regard to use paid of leave time. He also failed to request a sabbatical or other unpaid time off. He was off work without any official leave status. He did not access AESOP. He did not communicate with the District. He did not submit any lesson plans for the substitute teachers. The District could not divine his intentions and acquiesced in his job abandonment.

The grievant understood the requirements for requesting a substitute and reporting his time off but failed to take these actions to preserve his employment. He is familiar with AESOP. He was not working, did not request a leave of absence, and did not inform the District as to how, or if, he was to be compensated while not working. His conduct does not comport with good common sense.

The grievant was not terminated by the District but rather voluntarily quit and abandoned his position, for which the District was not required to provide due process. The rights asserted by the grievant are for pre-termination or pre-deprivation, not job

abandonment. An express resignation from the grievant is not required. Conduct may constitute a voluntary resignation. Likewise, the just cause provisions of the collective bargaining agreement only apply in the context of disciplinary action. The District took no disciplinary action against the grievant. The grievant voluntarily quit.

The case of Joyce Randall is distinguishable. First, unlike the grievant, the District actually sought to terminate Ms. Randall for excessive absenteeism and neglect of duty. Furthermore, Ms. Randall continued to access AESOP to request substitutes and to document her time off. She attempted to preserve her employment, unlike the grievant.

The grievant's testimony was not credible and should be disregarded. He offered no explanation as to why he could not wear a face shield. He wore a face covering at the magistrate office without claiming an exemption. His testimony was inconsistent and self-serving and should be disregarded in its entirety under the concept of *falsus in uno, falsus in omnibus.*

The grievant abandoned his employment and the grievance should be denied.

ASSOCIATION POSITION

The Association contends the grievant did not abandon his job but rather was discharged. It defies logic for the District to direct the grievant not to come to work and then, when he complies with this direction, claim he abandoned his job. The test espoused in *Jabobs* is whether an employee expressed a definite intention to abandon his or her contract. When an employee is merely absent from work it does not constitute voluntary resignation. It is inconsistent with the law to consider an employee to have

voluntarily quit when a reasonable amount of time has not elapsed and the only action taken was taken by the employer.

Because of an unsettled dispute regarding whether the grievant qualified for an exception to the pandemic face covering requirement, he was told not to report for work unless he complied with the mask requirement or provided medical documentation of a disability under the ADA. However, the grievant is not required to provide medical documentation under the explicit terms of the Department of Health's July 1 Universal Face Coverings Order.

Following the September 2 meeting, there was no resolution of the dispute between the grievant and the District. The grievant emphatically expressed his desire to come to work.

The grievant never expressed any intention to abandon his job. To the contrary, he repeatedly expressed his desire to report to work under an exception to the face covering requirement. Nor did he affirmatively behave like an employee who wanted to abandon his job, as evidenced by his contact with Principal Maskrey during his absence.

Because the record clearly reflects no job abandonment, the only reasonable conclusion is that the District summarily discharged the grievant.

The discharge of the grievant failed to comply with due process. The District failed to follow School Code procedures in the way it implemented the grievant's discharge, violating his due process rights and rendering the termination void *ab initio.* Compliance with the statutory procedures for the removal of a professional public school employee is mandatory.

In initiating the grievant's dismissal, the District failed to comply with any of the requirements of Section 1127 of the School Code, rendering the dismissal void *ab initio.* The school board took no preliminary action, no statement of charges was issued, and no school board hearing was offered.

The District failed to afford the grievant proper pre-termination due process and violated his Loudermill rights. A pre-termination hearing need not be a formal procedure as long as the employee is afforded the basic elements of due process – notice and an opportunity to be heard. Pursuant to *Loudermill*, a public employee is entitled to (1) notice of the charges (2) a summary of the evidence; and (3) an opportunity to be heard. The District failed to meet all three of these elements. Consequently, the attempted dismissal of the grievant was improper and he is entitled to reinstatement with full back pay.

The District lacked just cause to dismiss the grievant. If the District fails to meet its burden of proof on any one of the seven factors of just cause, then just cause for discipline does not exist. The District failed to satisfy at least four of the seven factors.

First, the grievant was never warned of any possible consequences for his conduct. Second, the District lacked substantial evidence that the grievant violated any policy. Third, the District failed to apply its rules and penalties even-handedly. Finally, the penalty of discharge was a disproportionate penalty given the grievant's long service to the District.

The grievant is entitled to statutory interest on all back pay. Section 1155 of the School Code provides that "[i]n the event the payment of salaries of employees of any school district is not made when due, the school district shall be liable for the payment of

same, together with interest at six per centum (6%) per annum from the due date." This plain language mandates that the District is liable for interest on the grievant's back pay. The District clearly failed to pay the grievant the full pay he would have earned pursuant to the collective bargaining agreement had he not been unjustly discharged. Therefore, the law mandates that the District pay interest as set forth in Section 1155 of the School Code on any back pay awarded by the arbitrator.

The grievance should be sustained and the grievant reinstated and made whole with back pay, statutory interest, lost benefits, and any additional relief deemed appropriate.

FINDINGS AND DISCUSSION

The issue presented is whether the grievant abandoned his teaching position with the District and, if not, what is the appropriate remedy. The District maintains the grievant's actions between September 2, 2020, and September 18, 2020, demonstrated his intent to abandon his job. Conversely, the Association takes the position that the grievant's behavior was inconsistent with an intent of job abandonment.

This dispute arose in the novel context of the COVID-19 pandemic. In order to mitigate transmission of the virus in its schools, the District on August 12, 2020, enacted a Mask Policy requiring employees of the District (as well as students) to wear a face covering while on school property. The Mask Policy provided exceptions to the requirement, including a medical exception. If an employee claimed to be unable to wear a face covering for medical reasons, the Mask Policy required the employee to provide "appropriate documentation in accordance with applicable law and regulations."

Prior to the start of the 2020 – 2021 school year, the grievant informed the District that he could not wear a face covering due to a mental health condition. The District asked the grievant to provide documentation of his condition in accordance with the Mask Policy. The grievant refused and cited a July 1 Order from the Pennsylvania Secretary of Health that mandated masks in public places but provided several exceptions to the requirement, including a "mental health condition." Notably to the grievant, the July 1 Order stated that "[i]ndividuals are not required to show documentation that an exception applies."

Thus began a series of email discussions between the grievant and Superintendent Sperry regarding the grievant's claimed medical condition, which he alleged prevented him from wearing a face covering, and whether he was required to provide documentation of the condition.

Some of the discussions between the grievant and the District involved the question of whether the grievant was claiming a "disability" under the Americans with Disability Act or whether the grievant was simply claiming a "medical condition" unrelated to the ADA. The District took the position that the grievant was claiming a disability under the ADA and therefore was required to provide documentation of the disability. The grievant disagreed, maintaining he was not disabled but rather simply had a mental health condition that prevented him from wearing a face covering.

The parties spent a considerable amount of time at hearing on the question of whether the grievant was required to provide documentation of his claimed mental health condition. The District correctly pointed out that it was permitted to create its own policy, and the District's Mask Policy clearly states that "staff requesting to be excused

from the requirement to wear a face covering shall provide appropriate documentation in accordance with applicable law and regulations." The grievant pointed to the July 1 Order from the Pennsylvania Secretary of Health, which the grievant claimed was the basis for the District's Mask Policy and which stated "[i]ndividuals are not required to show documentation that an exception applies."

In the opinion of the undersigned, there was a reasonable disagreement between the grievant and the District on the issue of whether the District had the right to require documentation from the grievant of his claimed medical condition. On one hand, the District's Mask Policy clearly states that, in order to be excused from wearing a face covering, employees must "provide appropriate documentation. . . ." However, the Mask Policy states that employees must provide appropriate documentation "in accordance with applicable law and regulations." The "applicable law and regulations" are cited in a footnote, and the footnote lists the July 1 Order from the Pennsylvania Secretary of Health and the Universal Face Coverings Order FAQ. Notably, both of these documents state that individuals are not required to provide documentation to prove they fall within an exception to the face covering rule. Therein lies the conflict: The District's Mask Policy states one must provide documentation, but the Pennsylvania Secretary of Health documents cited in the Mask Policy state one need not provide documentation.

The undersigned offers no opinion on whether the grievant's interpretation or the District's interpretation is correct. However, the issue of whether the District had the right to require the grievant to provide documentation of his claimed medical condition is a peripheral one. Whether the District or the grievant were "right" about the

documentation requirement is not the issue in this case. Rather, the narrow issue is whether the grievant's behavior demonstrated an intent to abandon his job.

If an employer deems an employee to have voluntarily abandoned his or her job, arbitrators examine whether the employee's actions manifested an intent to resign. The employee's actions can be just that – actions. The employee need not say "I quit." The employee can demonstrate an intent to resign via his or her behavior in lieu of verbalizing an intent to resign or writing a resignation letter.

Upon careful review of the record, the undersigned concludes that the grievant's actions in August and September 2020 did not manifest an intent to abandon his job.

First, between August 14, 2020, and September 2, 2020, the grievant and Superintendent Sperry exchanged 13 emails discussing and essentially debating whether the grievant was required to provide documentation of his claimed medical condition. Neither party conceded and nothing was resolved. But it is this lack of resolution – leaving the matter open-ended – that suggests a lack of finality to the matter. Tellingly, the grievant in a September 2, 2020, email informed Mr. Sperry, "I have no desire to miss the first day of school. . . ." In this same email, the grievant suggested an alternative option to wearing a mask – conducting his classes outside, weather permitting. These are not the comments of an employee who intends to abandon his job. To the contrary, the grievant appeared to be attempting to preserve his job.

Second, the "interactive process" meeting between the grievant and the District on September 2, 2020, likewise involved no demonstration on the part of the grievant of an intent to abandon his employment. Rather, it was akin to a "negotiation" and an attempt by both parties to resolve their dispute and therefore preserve the grievant's employment.

Mr. Sperry provided the grievant with six options: (1) wear a mask or face shield; (2) use sick days; (3) use personal days; (4) request an unpaid leave of absence; (5) request a sabbatical; or (6) provide documentation of his medical condition. The grievant countered with his own options: (1) hold classes outdoors, or (2) teach remotely via video. The grievant's act of providing potential options to wearing a mask belie an intent on his part to abandon his job. In fact, the grievant's actions were consistent with one who is attempting to preserve one's job.

The District correctly points out that, between September 8, 2020, and September 18, 2020, there was no communication between the grievant and the District, and this is problematic to the grievant's cause. Furthermore, the grievant did not access the AESOP System to record his type of leave or arrange for a substitute teacher. This ten-day period of non-communication certainly weighs in favor of the District's position that the grievant abandoned his employment.

However, considering the totality of the facts, I cannot agree with the District that the grievant manifested an intent to abandon his job. First, as noted, the dispute between the grievant and the District regarding whether the grievant was required to provide documentation of his medical condition was unresolved. At no time was there an understanding between the grievant and the District that documentation was required in order for the grievant to be exempt from the face covering requirement. Stated another way, there were still "loose ends" and the parties were at impasse. Furthermore, given the fact that the District's Mask Policy referenced the July 1 Order (which said no documentation is required), it was not unreasonable for the grievant to believe he did not

have to provide documentation. He may have been wrong, but his belief was not unreasonable.

Second, the grievant communicated via email with Principal Maskrey on September 7 and September 8, 2020, regarding whether the grievant should arrange for a substitute teacher via AESOP. Principal Maskrey informed the grievant that he would arrange for the substitute as long as the grievant was unable to return to work. These communications with Principal Maskrey do not manifest an intent to abandon his job. A teacher who has abandoned his job does not concern himself with arranging for a substitute teacher in his absence.

Finally, both the District and the Association cite the Pennsylvania Supreme Court case of *Jacobs v. School Dist. Of Wilkes-Barre TP, et al.*, 50 A.2d 354 (Pa. 1947). In *Jacobs*, as in the instant case, the issue was whether a teacher had abandoned her job. The teacher in *Jacobs* failed to report to work for *two consecutive years.* The Court concluded that this lengthy time period, coupled with her failure to avail herself of the rules governing maternity leave and her failure to notify the school board of her intentions, manifested a "definite intention to abandon the contract." *Id.* at 356. The grievant in the instant case failed to report for work not for two years but for two weeks. *Jacobs* is not dispositive, but it certainly is not helpful to the District's cause.

The grievant's behavior was troubling. Not only did he leave the District "twisting in the wind" with no communication for ten days, but he was willing to place his students and co-workers at risk by not wearing a face covering during a pandemic and not justifying this decision with medical documentation to prove that he legitimately could not wear a face covering. However, the grievant's behavior, as obstinate as I found

it to be, is not germane to the resolution of this matter. Rather, the only issue before me is whether the grievant manifested an intent to abandon his teaching position. All factors considered, he clearly did not. Accordingly, the grievance must be sustained.

AWARD

The grievance is sustained. The grievant shall be immediately reinstated to his former position and made whole in all respects, including lost wages and benefits.

The District shall be entitled to a set off for all interim earnings and/or unemployment compensation benefits received by the grievant.

Jurisdiction is retained to ensure compliance with this award.

Vincent C. Longo, Esq.
Arbitrator
Pittsburgh, Pennsylvania
June 20, 2021