

18, 2014. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

- 1) Did the School District have just cause to suspend the grievant for five days without pay?
- 2) If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

Section 9.3

. . . Except in extreme circumstances, personal leave may not be used during opening of school workshop days, nor on advanced scheduled conferences, in-service/staff development day.

FACTUAL BACKGROUND

The grievant, Erin Chisholm, worked for the School District as a Speech and Language Pathologist teacher from 2006 to 2014. In that capacity, she provided special education services to students in the School District's elementary school. During the 2013-14 school year, she provided such services to approximately 50 students. Ms. Chisholm had a clean disciplinary record prior to the incident in question

The School District regularly holds parent-teacher conferences during November and February of each school year. Parents sign up for meeting times with teachers during the fall open house event, and the scheduled time slots carry over from November to the following February. The parties' collective bargaining agreement establishes that teacher attendance at these conferences is mandatory and that teachers may not use personal leave in lieu of attending these "advanced scheduled conferences."

Ms. Chisholm testified that no parents have ever signed up to meet with her during these conferences. The normal pattern, instead, is that parents sign up to meet with regular classroom teachers, and Ms. Chisholm, as a specialist, visits these sessions to greet the parents of her students and to provide them with a quarterly progress report.

In October 2013, Ms. Chisholm began making plans for a winter vacation in Florida with extended family members. Ms. Chisholm testified that since the School District usually scheduled parent-teacher conferences for the week containing Valentine's Day, she made vacation arrangements for the following week. She submitted a personal leave request for February 18, 19, and 20, and the School District approved that request. Ms. Chisholm testified that family members purchased airline tickets and made a non-refundable deposit on a house rental.

As it turned out, Ms. Chisholm erred in gauging the timing of the February 2014 parent-teacher conferences. The calendar adopted by the School Board in May 2013 set the evening of February 18 as the time for the 2014 spring elementary school parent-teacher conferences. This calendar was distributed in hard copy to teacher mailboxes at the beginning of the school year, included in the handbook distributed by the School District to each teacher, and posted on-line on the School District's web site. Ms. Chisholm testified that she consulted the calendar in scheduling her vacation, but conceded that she likely misread the calendar with respect to the date of the parent-teacher conferences.

At a January 20, 2014 staff meeting, Ms. Chisholm learned that the upcoming parent-teacher conference was scheduled for February 18, 2014. Since this date conflicted with her planned vacation, she sent an email to Elementary School Principal Phil Gurbada which stated as follows:

My personal days are the Feb. 18, 19, 20. Conferences are the 18th! I have flights and condo paid for, there is no turning back . . . What should I do? Do I ask for unpaid time-off on the 18th from 5:00-8:30?

Principal Gurbada advised Ms. Chisholm to submit a written request for additional leave time to Superintendent Jon Ellerbusch. Ms. Chisholm submitted such a request, but Superintendent Ellerbusch denied the request based upon the contract language. Ms. Chisholm asked what the consequences would be in the event that she missed the February 18 conferences, and Superintendent Ellerbusch replied that he would need some time to think of an appropriate response.

In a meeting a few days later, Superintendent Ellerbusch informed Ms. Chisholm that he had decided that the sanction for missing the parent-teacher conference would be a suspension of five days without pay. Superintendent Ellerbusch testified that he arrived at this sanction after determining the need for a sufficiently heavy penalty to deter teachers from missing parent-teacher conferences. On January 31, Ms. Chisholm sent an email message informing Superintendent Ellerbusch that she would not be attending the February 18 conferences. The School District responded by imposing a five-day suspension.

POSITIONS OF THE PARTIES

School District

The School District contends that it had just cause to suspend Ms. Chisholm for five days without pay. It is undisputed that Ms. Chisholm failed to attend scheduled parent-teacher conferences in violation of Section 9.3 of the parties' collective bargaining agreement. The School District argues that this conduct warrants a five-day suspension in light of the importance of communications between parents and teachers concerning the educational progress of individual students. The School District further asserts that it made Ms. Chisholm aware of the

penalty that would be imposed in the event that she missed the scheduled conferences, yet she chose not to attend the conferences.

Union

The Union acknowledges that Ms. Chisholm missed the February 18, 2014 parent-teacher conference and that such conferences are important for educational development purposes. The Union asserts, however, that a penalty in the form of a five-day suspension is too severe under the circumstances. In support of this contention, the Union argues that Ms. Chisholm is a long-term employee with no disciplinary record, that her failure to attend the parent-teacher conference was due to a one-time mistake accompanied by exigent financial circumstances, and that there is no risk that such a misstep will be repeated in the future.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See* ELKOURI & ELKOURI, HOW ARBITRATION WORKS 15-23 (7th ed. 2012).

A. The Alleged Misconduct

The parties do not dispute the fact that Ms. Chisholm did not attend the scheduled February 18, 2014 parent-teacher conferences. Pursuant to the parties' collective bargaining agreement, an employee may not use personal leave in order to be excused from an "advanced scheduled conference," such as a parent-teacher conference, in the absence of an "extreme

emergency.” The School District submitted credible evidence to the effect that a vacation is not an extreme emergency and that the School District has not granted non-emergency leave requests in the past. Accordingly, the School District acted within its authority in denying Ms. Chisholm’s leave request for the February 18 conferences. Under these circumstances, the misconduct alleged by the School District is clearly established and the only remaining issue is the appropriate remedial sanction.

B. The Appropriate Remedy

The School District maintains that a five-day suspension is appropriate because of the importance of parent-teacher conferences. As stated in the School District’s post-hearing brief, “parent-teacher conferences are the rare times during the school year when there is a formalized opportunity for parents to meet their children’s teachers.” The Union, for its part, does not contest the importance of parent-teacher conferences in facilitating education development. Superintendent Ellerbusch testified at the hearing that the penalty needs to be sufficiently severe so as to deter teachers from choosing vacation time over their core educational responsibilities such as attending parent-teacher conferences.

The Union argues that a five-day suspension is too severe of a penalty for three reasons. First, the Union notes that the grievant is a ten-year employee with an unblemished work record. While the Union certainly is correct in depicting Ms. Chisholm as an exemplary teacher, that fact, by itself, does not excuse her from fulfilling a significant teaching responsibility.

Second, the Union contends that Ms. Chisholm made an honest mistake in scheduling her vacation for a time that conflicted with the scheduled parent-teacher conferences. Ms. Chisholm credibly testified that she intentionally scheduled her family vacation for a point in time after which the February conferences traditionally had been scheduled. The School District approved

her leave request for February 18-20 long in advance which suggested that her absence during that time period would not be objectionable. And, once committed to her vacation plans, Ms. Chisholm would have experienced significant financial and familial problems in abandoning those plans.

While these contentions are not without merit, the School District makes several compelling counter-arguments. The School District points out that the February 18 date was scheduled for parent-teacher conferences as early as May 2013 and that such information was communicated to teachers in several different ways. The school calendar and the parties' collective bargaining agreement created a clear expectation that teachers would be present during the February 18 parent-teacher conferences. In addition, it is undisputed that Ms. Chisholm knew of the scheduling conflict at least a month in advance of the conference yet decided to give preference to her vacation plans over her teaching responsibilities. Accordingly, while Ms. Chisholm's dilemma is understandable, the School District acted within its rights in deciding to adopt a sanction designed to deter a teacher's choice not to attend mandatory parent-teacher conferences.

Third, the Union argues that a disciplinary sanction should only be as severe as may be necessary to deter future repeat violations. Here, the Union argues, a five-day suspension is too severe because there is little risk that Ms. Chisholm will commit such a misstep ever again. The fundamental flaw in this argument is that Ms. Chisholm was aware of the impending sanction in February 2014 yet decided not to comply with the scheduled conference requirement. It is difficult to conclude that a five-day suspension is too severe of a deterrent remedy when, in fact, it was insufficient to deter Ms. Chisholm's decision under the facts and circumstances of this case.

In the end, I believe that the School District is correct in urging that its penalty not be modified. As the School District cogently argued, the grievant knew her absence was not permitted by the parties' agreement, knew what penalty would be imposed, and yet chose to reject the agreement's mandate. Under these circumstances, the imposition of the pre-announced remedial sanction is not excessive.

AWARD

The grievance is denied.

Dated: September 11, 2014

Stephen F. Befort
Arbitrator