IN THE MATTER OF ARBITRATION BETWEEN

ELK RIVER INDEPENDENT SCHOOL DISTRICT NO. 728
(Employer)

and

ELK RIVER EDUCATION ASSOCIATION
(Union)

DECISION
(Disciplinary Grievances)
BMS Case No. 11-PA-0395

ARBITRATOR: Frank E. Kapsch, Jr.

DATE AND PLACE OF HEARING: The hearing in this matter took place at the Elk River High School located in Elk river MN on March 9, 10 and 24, 2011.

RECEIPT OF POST-HEARING BRIEFS: Both Parties submitted timely briefs as of April 22, 2011. The arbitrator closed the record on April 22, 2011, upon receipt of the briefs.

APPEARANCES

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JURISDICTION

The Parties stipulated that this Arbitrator has been properly selected in accordance with the provisions of Section 15.8 of the applicable labor agreement and thereby possesses the specific authorities and responsibilities set forth therein to hear and resolve this dispute.

THE ISSUE

Did the Employer, in September, 2010, have just cause to impose disciplinary suspensions and Letters of Reprimand upon Football Coaches Michael Cross, Brad Olson, Mark Leland, Richard Michalak and Michael Breyen? If not, what shall be the remedy?

THE EMPLOYER

The Employer, Elk River School District No. 728, is the eighth largest school district in the State of Minnesota (hereinafter also referred to as District). The District is located in the northwest corner of the Minneapolis-St. Paul metropolitan area and it draws its approximately 12,500 students from about 16 communities. The District is currently comprised of nine elementary schools (grades K-5), four middle schools (grades 6-8) and three high schools (grades 9-12). The District staff consists of some 750 teachers and approximately 800 related support employees.

THE UNION

The Union, Education Minnesota, is a labor organization representing approximately 70,000 teachers employed in virtually all of the school districts and higher education systems in the State of Minnesota. Education Minnesota is nationally affiliated with the National Education Association and the American Federation of Teachers, AFL-CIO. Among the Union's missions are the representation and negotiation of labor agreements covering its members, the promotion of professional development of teachers and political advocacy of their interests and goals.

COLLECTIVE BARGAINING HISTORY

Education Minnesota and its local unit, the Elk River Education Association, is the collective bargaining representative for the approximately 750 teachers employed by the Employer, including those employed at the Elk River High School facility. The bargaining relationship between the District and the Union has been historically incorporated in a series of successive collective bargaining agreements. The current applicable labor agreement (hereinafter referred to as CBA, labor agreement and/or contract) between the Parties was effective July 1, 2009 and is scheduled to expire on June 30, 2011.

BACKGROUND

The following is a compilation of facts from the record evidence and testimony upon which there is no critical or relevant dispute between the Parties:

The principal focus of this situation is the football coaching staff and team members of the Elk River High School Varsity football team during the course of supervised team practice/training occurring at the high school in August, 2010 (all subsequent dates herein are in the year 2010, unless specifically noted otherwise).

The school's football program consisted of some 145 students participating on a Freshman Team (55 players), a Sophomore Team (36 players) and a Junior Varsity/Varsity Team (54 players). The coaching staff consisted of Mike Cross, the Head Football Coach, four (4) freshman assistant coaches, four (4) sophomore assistant coaches and seven (7) junior varsity/varsity assistant coaches.

The student players for the school's football teams had commenced pre-season practice at the school on about August 16. The student players were running on what was referred to as a "two-a-day" practice schedule. On that schedule they practiced at the school facilities from about 8:30 AM to about 11:15 AM with lunch period from about 11:15 AM to 12:00 PM. Practice resumed after the lunch period and finished at about 2:30 PM. The "two-a-day" schedule was to run through August 27.

On August 25, at about 10:00 AM, Terry Bizal, the Principal of Elk River High School, was visited in his office by John Barth, the school's Activities Director. In his capacity as Activities Director, Barth was responsible for oversight of the school's football program.

Barth proceeded to inform Bizal that he and Head Football Coach, Mike Cross, had just finished meeting with the parents of a couple of the football team's varsity players. The parents had come in separately, but each told essentially the same story; that their children had been subjected to "hazing" by other team members during a recent team practice session. According to the parents, their children were wrestled down by other team members and poked in the buttocks with a broomstick. According to the parents, the incident(s) took place in the Wrestling Room at the school facility.

Upon receiving the report from Barth and Cross, Bizal notified the District Superintendent, reviewed District policies as to how to handle the situation and began to lay out a course of action.

The group noted that because of the current "two-a-day" practice schedule, the student players and coaches were present at the school facility that day. Over the course of the next hour and a half or so, Bizal, Barth, Cross and the three Assistant School Principals planned out an investigative procedure with respect to the student players. They decided upon a set of 10-12 basic questions which would be asked of each player during the course of a private, individual interview.

Coach Cross pointed out that the players would be reassembling for afternoon practice at about 12 noon and it was agreed the he would call a "chalk talk" meeting with all the players at that time. During the course of the "chalk talk", the Principal, Assistant Principals and Activities Director would be calling players out of the session for interview.

Based on the parent reports, the group determined that the interviews would initially involve only varsity or junior varsity players, as those reports did not appear to involve the younger freshman or sophomore players.

The interviews took place as planned. From about 12 noon until about 2:30 PM on August 25, the school administrators individually interviewed over 50 of the student players. To insure that the interviews were not contaminated by interviewed players alerting those to be interviewed, the Administrators restricted the use of cell phones by the players to cut off such communications.

Upon completion of the individual player interviews, the interviewers met in a conference room and began outlining and analyzing the interview results. Among the conclusions reached;

- "Hazing" incidents had occurred on August 23-24 in the Wrestling Room wherein, certain student players were accosted by other players, held down on the floor, while other players placed a broomstick on and around their buttocks.
- The interviews also established that a similar "hazing" incident(s) had occurred during the course of preseason football practice at the school in 2009, but apparently no one had ever formally reported that situation to school authorities.
- The preliminary interview results indicated that there were a total of 7 to 8 players who were "victims" of the hazing incidents in 2009 and 2010. About 4-5 in 2009 and about 3 in 2010.
- Freshman and sophomore team members were not involved in the hazing.
- The investigation also established that the perpetrators of the hazing could be broken down into two groups; 1) the "Holders" – these individuals made initial contact with the victims and tackled or otherwise brought them down and to the floor and held them there while the 2) "Pokers" touched and/or probed the victim's buttocks with the end of a broomstick.
- Finally, the investigation revealed that both the perpetrators, most of the victims and those players who were otherwise aware of the hazing program in both 2009 and 2010 were very careful to make sure that the various coaches remained unaware of exactly what was going on.

The investigative findings with respect to the student player participants in the hazing situation were subsequently presented to the Elk River School Board for potential disciplinary action against nine (9) student players. On about August 30, the Board after due consideration, suspended four players for the entire eight-game 2010 football season. The two team captains were removed from those positions and were also suspended from one game. The remaining three individuals were among the "Holders" and were suspended from the team for four games or half the season.

Having completed the interviews of the student-football players on August 25, the District next turned to the coaching staff with regard to their roles and actions

with respect to the hazing incidents. On August 26 and 27 an interview team consisting of Attorney Andrea A. Nodolf, from the Ratwik Law firm, and School Principal, Terry Bizal, commenced a series of individual interviews with the following members of the football coaching staff:

1. Dan Kohler, Assistant Varsity Team Coach (3rd year as coach, not employed by District as teacher).
2. John Pink, Assistant Varsity Team Coach (3rd year as coach, not employed by District as teacher).
3. John Budreau, Assistant Varsity Team Coach (1st year as coach, not employed by District as teacher).
4. Eric Osmoe, Assistant Sophomore Team Coach (2nd year as coach, also employed by the District as a teacher).
5. Aaron Osterman, Assistant Varsity Team Coach (12th year as coach, also employed by District as teacher).
6. Brad Olson, Assistant Varsity Team Coach (9th year as coach, also employed by District as teacher).
7. Mark Leland, Assistant Varsity Team Coach (5th year as coach, also employed by the District as teacher).
8. Mike Breyen, Assistant Varsity Coach and Head Coach, Sophomore Team (18th year as coach, also employed by District as teacher).
9. Richard "Rick" Michalak, Assistant Varsity Team Coach (2nd year as coach, also employed by the District as teacher).
10. Ben Pedersen, Assistant Sophomore Team Coach (1st year as coach, also employed by the District as teacher).
11. Keith Howard, Assistant Varsity Team Coach (33rd year as coach, also employed by District as Guidance Counselor).
12. Mike Cross, Head Football Coach (8th year as Head Coach plus 4 years as an Assistant Varsity Team Coach, also employed by the District as teacher).

In addition to the interviews with the above-named coaches, Ms. Nodolf also conducted additional individual interviews with five (5) student players on August 26 and a general background telephone interview with Activities Director, John Barth, on August 27.

Upon completion of the above interviews, Ms. Nodolf compiled and completed a formal Investigation Report on September 1. In her comprehensive report, she carefully analyzed and organized the myriad of facts disclosed and established by the investigatory interviews and outlined the potential conclusions that could be reasonably drawn from that evidence. Among her Conclusions:

- "Hazing" of certain student football players had indeed occurred during the pre-season "two-a-day" practice sessions at the school in both 2009 and 2010. The hazing incidents all took place in the Wrestling Room, adjacent to the Locker/Shower Room routinely used by the players.

- There was no evidence to indicate that any of the coaches ever had specific knowledge that the hazing was occurring in either 2009 or 2010.
- On August 16, at the commencement of the “two-a-day” practice schedule, Head Coach Mike Cross held a meeting with all the student players and Assistant Coaches. During the course of that meeting, Cross told the players that during their lunch break they were only permitted to eat or hang out in two locations; 1) the “Commons”, a large central open area in the school where students typically ate lunch during the school year or 2) in the Locker Room. All the Assistant Coaches were present in this meeting when Cross made the lunch location announcement.
- At a pre-season mandatory meeting and “retreat” for all the football coaches held in June, Cross discussed the requirements for properely supervising the student-players during the course of the practice schedule and advised them that two coaches would be scheduled for what he called “Locker Room Duty” each day during the course of the “two-a-day” preseason practice schedule. The coaches assigned to such duty were to be present in the Locker Room before and after practice and during the course of the lunch period and be visible and alert to keeping the Room clean and insuring that the players did not engage in “horseplay”.
- In another meeting with the Assistant Coaches on August 15, Cross again reiterated the necessity of properly supervising and monitoring the student- players during the course of the practice schedule and the requirements/assignments for Locker Room duty.
- Ms. Nodolf, however, also noted that Coach Cross did not similarly assign any coaches to be present and monitor the players who opted to eat their lunch in the Commons area.
- Assistant Coaches Dan Kohler, John Budreau, Eric Ostmoe, Aaron Osterman, Ben Pedersen and Keith Howard did not know that student-players were in the Wrestling Room during the lunch period and did not inspect the Wrestling Room in either 2009 or 2010.
- Assistant Coaches John Pink, Brad Olson, Mark Leland and Rick Michalak observed players in the Wrestling Room during the lunch period during the “two-a-day” pre-season practice sessions in 2010. Although they knew that the players were in the Wrestling Room during the lunch period they did not direct the players to leave that room and, consequently, left them in an unsupervised area. Those coaches did not remain in the Wrestling Room after discovering that players were in there. Additionally, those coaches did not inform Head Coach Cross or any other coaches of the players’ presence in the Wrestling Room. Although Coach Breyen said he didn’t observe players in the Wrestling Room in August 2010, he otherwise knew that players were in that room during the lunch period, but did not report this to Head Coach Cross. Additionally, he did not take steps to ensure that the players were properly supervised and observed while they were in the Wrestling Room.
- By allowing the players to use the Wrestling Room, without a coach present, Assistant Coaches John Pink, Brad Olson, Mark Leland, Rick

Michalak and Mike Breyen violated *Section VII, 1, Recommended Safety Guidelines* of the Elk River School District Coaches Handbook. To wit:

> "*Team Supervision – One of the prime responsibilities of a coach is the supervision of their team. This includes all games, practices and pre- and post-game activities. No athlete should be using athletic facilities without a coach present to supervise them. The coach should attempt to be the first 'member of the team' to arrive at the locker room and be the last to lea*ve. *This responsibility cannot be delegated to a student or aide."*

- The investigation revealed that Coach Keith Howard was assigned to Locker Room lunch duty on Tuesday, August 24, but forgot his assignment and ate his lunch in his office.
- Finally, the evidence supports a conclusion that Head Coach Cross did not provide or arrange for the supervision of players in the Commons area during the lunch period. The Commons area was another approved area where the players permitted to eat their lunch. Coach Cross's failure to arrange for supervision of the Commons area during the lunch period also violates Section VII, 1. of the Coaches Handbook, as above.

Ms. Nodolf's Investigation Report was subsequently reviewed by the District Administration and the members of the Elk River School Board.

On September 7, after reviewing and considering the Investigation Report, the Elk River School Board announced its decision with respect to the culpability of the coaching staff with respect to the hazing revelations and issued the following disciplinary actions:

1. <u>Head Coach Mike Cross</u> – Six-day disciplinary suspension without pay from his coaching duties (Aug 26-Sep2) and a Letter of Reprimand. The suspension cost Cross about $734.10. Basis of action; failure to insure that players eating their lunch in the Commons area were appropriately supervised and monitored by the coaching staff. Loss of $734.10 in wages per the suspension.
2. Assistant Coaches <u>John Pink, Brad Olson, Mark Leland, Rick Michalak and Mike Breyen</u> – Each of these coaches received a six-day disciplinary suspension without pay from their coaching duties (a loss of $559.14 each) and a Letter of Reprimand. Basis of action; although each of these coaches were aware that players were in the Wrestling Room during the lunch period and were well aware that this was in violation of Head Coach Cross's lunch period restrictions; they failed to evict the players or alternatively either monitor them while in there and/or report the situation to Cross.

The School Board specifically noted that there was no evidence to indicate that any of the coaches had specific knowledge that there was hazing going on among the players in either 2009 or 2010. It further acknowledged that none of

the coaches could have reasonably foreseen that the hazing incidents would have occurred.

On October 15 the Union filed a Level I Grievance on behalf of Coaches Cross, Olson, Leland, Michalak and Breyen with the District protesting their disciplinary action as indicated above. The grievance was filed pursuant to Article 15, Grievance Procedure, of the current applicable CBA. Article 15 defines a "*grievance*" as;

"…*any controversy between the School Board, and the Association (sic Union) or between the School Board and an employee or group of employees as to: A) interpretation of this Agreement, B) a charge of violation of this Agreement, or C) an alleged violation involving wages, hours or "terms and conditions of employment" as defined in PELRA, as amended (Chapter 179A.o3, Subdivision 19) resulting in an unnecessary hardship*."

The District denied the Level I grievance via letter dated October 22. On October 26 the Union appealed the grievance to Level II and on the same date the District again denied it. The Parties subsequently agreed to move the matter directly to arbitration.

When questioned by this Arbitrator as to why Coach John Pink was not grieving his disciplinary action, the Union said that Coach Pink was not concurrently employed by the District as a teacher and was, therefore, not eligible to file a grievance under this CBA.

The Union has requested that this Arbitrator consider each coach's grievance situation independently, not as a group. The District has advised that it has no objection to that approach and, therefore, each coach's grievance will be considered individually.

ISSUES AND QUESTIONS COMMON TO ALL THE GRIEVANCES

Before moving to consideration of each of the individual coaches' there are several issues and questions, common to all of the grievances that need to be addressed.

1. What is the status of the school athletic coaches relative to the applicable CBA?

   The Union takes the position that, while acknowledging that the school coaches do not have be either licensed or employed by the District as teachers in order to be employed by the District; it takes the position that if a coach is not a teacher, then the coach has no standing with respect to the CBA. By its view, only teachers currently employed by the District, but who are also employed as coaches, are covered by the CBA, relative to their coaching position.

A perusal of the applicable CBA indicates the following:

Article 2 – Recognition

2.1 In accordance with PELRA, as amended, the School Board recognizes the Association as the exclusive representative of ***teachers*** *(emphasis supplied) employed by the School Board…*

2.2 Appropriate Unit

The exclusive representative shall represent all the teachers of the School District, as defined in the Agreement and in said Act.

Article 3 – Definitions

3.2 Teacher - …For purposes of this section the term "teacher" shall mean any person employed by the School Board in a position for which licensure is required by the Board of Teaching or the State Board of Education or in the position of physical therapist or occupational therapist, except Superintendent of Schools, Assistant Superintendent of Schools, Principal or Assistant Principal, who devote more than fifty percent (50%) of their time to administrative or supervisory duties, and other excluded by PELRA.

The only other references to "coaches" in the CBA occur in Article 7.13 and Appendix E.

Article 7.13.1 Coaching Schedule – When placing coaches on the Activities Cluster Schedule, any experience coaching one (1) or more school extra curricular sports in a school year shall be deemed a year's experience for placement on the pay schedule.
7.13.2 deals with the specifics of pay for post-season Activities governed by the Minnesota State High School League.

Appendix E, Activities Cluster Schedule, outlines pay categories for various types of what appear to be extra curricular activities, including coaching of athletics. Most, if not all of the "coach" positions listed in the Appendix are denoted with an asterisk *, indicating that the *"…activity governed by the Minnesota State High School League".* Obviously, football coaches are asterisked.

According to information obtained, via public/judicial notice, from the Minnesota Department of Education and State Board of Teaching;

- The State of Minnesota did issue licenses for coaches employed within the state's education system in the past, but no longer does so. It does permit past coach licenses to be renewed.
- Current employment qualifications for a head varsity coach of an interscholastic sport in a senior high school are set forth in MN Admin Rule 3512.3100 and are as follows:

1. *in the judgment of a school board, the person has the knowledge and experience necessary to coach the sport.*
2. *the person can verify completion of six quarter credits, or the equivalent, or 60 clock hours of instruction in first aid and the care and prevention of athletic injuries and*
3. *the person can verify the completion of a coaching methods and theory course.*

Employment qualifications and standards for Assistant Coaches are not delineated in the statutes and are apparently left to the determination of the employing local authority.

- It is the responsibility of the local school board to determine if the person seeking employment as a head coach meets the specific qualifications and requirements as set forth in Rule 3512.3100, as above.
- The State of Minnesota has never required high school athletic coaches to be licensed teachers.

The review of the CBA, together with the information available from the MN Department of Education, clearly indicates that the "athletic coach" job position is not part of the Union's recognized bargaining unit. However, Sections 7.13 and Appendix E indicate that, as an apparent matter of convenience, the District and the Union have negotiated specific compensation rules and rates for those teachers who choose to contract with the District either as athletic coaches or for other extra curricular activities directly related to their teaching function.

Which brings us back to the Coach John Pink situation. Pink has been employed by the District in the position of Assistant Varsity Football Coach for at least three years. Like his Assistant Football Coach colleagues, Olson, Leland, Michalak and Breyen, he was given a six-day disciplinary suspension and a Letter of Reprimand in September of 2010, but unlike his four colleagues, because he wasn't also under contract to the District as a teacher, he has no redress under the applicable CBA.

Since it is agreed by the Parties that one can be a Coach and employed by the District in that position under contract, without concurrently being employed and under a separate contract as a "teacher"; how can the Teacher/Coaches grieve the disciplinary action imposed upon them solely as result of their coaching role, but grieve it as "teachers"?

I note that the CBA contains no language whatsoever regarding disciplinary action taken with respect to coaches. In order for there to be a valid grievance, the grievant and the Union must be able to point to a specific provision of the CBA which has been violated.

In its initial Grievance letter of October 15, the Union cited the following as the bases for the grievance:

- MN Statute 122A.40, Subd 19.
- District Policy 5015, Due Process Disciplinary Policy
- District Procedure PR5015-1, Due Process Disciplinary Policy
- All applicable provisions of the CBA

I find that the Union's reference to MN Statute 122A.40, Subd. 19 to be inapplicable to this situation because that statute reference only applies to teachers, not coaches, and the grievants, herein, were disciplined by the District solely in their employment role and position as "coaches" – not in their employment role as "teachers.

Likewise, the Union's reference to the District's Due Process Disciplinary Policy #5015 is also inapplicable to this grievance because it clearly states that its purpose "…*is to establish a due process disciplinary procedure for* ***all teachers*** (emphasis supplied) *in the bargaining unit*."

On the other hand, the Union's reference to the District's Due Process Disciplinary Policy #PR5015-1 refers to disciplinary action taken by the District with respect to "employees" and makes no mention of teachers. Furthermore, it is clear that the District, regardless of whether it believed, at the time that discipline was imposed upon the grievants, that they should be treated as "teachers; it did apply the Due Process Disciplinary Policy and Procedure to the situation. Fortunately, from the Union's perspective, since the policy/procedure involves disciplinary action and disciplinary action is a bargainable "term or condition of employment", it provides a necessary and desperately needed "hook" upon which the Union can arguably hang its grievances. Accordingly I find that this policy is applicable to the coaches' grievances, to the extent that it applies to "employees".

Finally, with respect to the Union's grievance reference to "*all applicable provisions of the CBA*", I find that since the disciplinary action imposed upon the grievants included a suspension without pay, then they can argue that the suspension action violates the coaches pay provisions as set forth in Appendix E of the CBA.

2. Did the District violate its Due Process Disciplinary Policy #PR5015-1, section 3.3, which states;

3.3 – No suspension shall take place until a final determination has been made, unless the suspension is the result of action taken place under M.S. 125.12, Subd. 8 (MN Statute), or in case of emergency circumstances.

The Union contends that, per section 3.3 above, the District should have withheld the imposition of the disciplinary suspensions on the coaches "*until a final determination has been made*". The Union further argues that the District does not have a "final determination" until the proposed suspension has been grieved and the grievance has either been informally settled or determined by an arbitrator.

A check of Minnesota Statutes indicates that Statute 125 has been repealed or renumbered under Statute 122A. Specifically, 122A.40 deals with teachers and disciplinary action, but would not be applicable to this matter as we are dealing with the discipline of "coaches", not teachers. The only sections of 122A that speak of coaches are 122A.33; which exempts head coaches from requirements to possess a coaching license and a bachelors degree and 122A.58, which outlines the procedures required to terminate a coach.

In view of the foregoing, I find no merit in the Union's contention and further find that the District's action is in accord with standard employee discipline practices, i.e. disciplinary action should be closely related in time to the offense, in order to be effective.

3. Is the District to be held to a "just cause" standard with respect to the discipline imposed upon the football coaches?

For purposes of a Statement of the Issue, the Parties were unable to agree to a definitive Statement in the hearing. Instead, they agreed that they would each propose a Statement(s) and I could choose one of their proposals or I was also free to formulate my own Statement, based on the record.

Union's proposed Issues:

- Did the District violate the CBA by imposing suspensions before an arbitrator's ruling finding just cause for such imposition?
- Did the District meet its burden to show that it had just cause to discipline the grievants?
- If not, what shall the remedy be?
- Do the Letters of Reprimand issued to the grievants contain false or inaccurate information which, therefore should be expunged?

<u>Employer/District's proposed Issues</u>:

- Does a just cause standard for discipline apply to this grievance?
- Assuming that the arbitrator rules that a just cause standard does not apply to the grievances, does the discipline imposed by the District on the grievants constitute a violation involving wages, hours or "terms and conditions of employment" as defined in

PELRA, resulting in an unnecessary hardship, thereby meeting the definition of a grievance under Article 15 of the current CBA?

- If the arbitrator finds that an implied just cause standard for discipline applies to this grievance, did the District have just cause to discipline the grievants?

With respect to the question as to if a "Just Cause" standard applies or should be applied to this matter, I specifically note that the District, itself, in its grievance response letters to the Union, dated October 22 and 26, states that it is the District's position that the coaches were "…*disciplined for just cause*…". Therefore, with the Union requesting that a "just cause" standard be applied to this matter and the Employer voluntarily agreeing that its action was taken pursuant to and meets a "just cause" standard; a Just Cause standard will be applied.

Upon careful consideration of the specific proposals of the Parties and also weighing the effect of my findings, as above, I have decided to exercise my option to formulate a Statement of the Issue. That Statement appears at the outset of this Decision.

As is typical in most labor contract situations, while the Parties may be in agreement that a "Just Cause" standard should be applied to a particular issue or situation, they are generally unable to offer a clear cut or cogent definition of that standard. In this matter, neither the CBA nor the applicable Minnesota Statutes offer any specific definition of the term "Just Cause".

However, one would expect that - given the myriad of discipline/discharge cases that labor arbitrators have had to deal with over the course of many decades - the labor arbitrators themselves have certainly reached a clear consensus as to the meaning of the term "Just Cause". Wrong! The situation was aptly explained by a seasoned, veteran labor arbitrator who observed that neither he nor his esteemed colleagues have ever been able to reach agreement on an universally accepted definition of the term "just cause", but he noted that he and every other labor arbitrator could readily recognize the presence or absence of "just cause" in any particular case.

There have been a number of attempts and efforts, over the years, to define, codify or systematize the term and concept of "just cause"; unfortunately, none have found universal acceptance. Personally, I find that at least two of them do help me to organize information and also provide at least a basic analytical framework for looking at Just Cause issues.

In 1966 Arbitrator Carroll R. Daugherty, in an appendix to one of his Decisions, suggested that there is a consensus or "common law" of "just cause". Enterprise Wire Co., 46 LA 359 (Carroll R. Daugherty, 1966) He articulated what has become known as the "The Seven Tests of Just Cause". According to Daugherty, a "no" answer to one or more of the following questions normally signifies that just and proper cause did not exist:

1. Did the company give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
2. Was the company's rule or managerial order reasonably related to (a) the orderly, efficient and safe operation of the company's business and (b) the performance that the company might properly expect of the employee?
3. Did the company, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?
4. Was the company's investigation conducted fairly and objectively?
5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
6. Has the company applied it rules, orders and penalties evenhandedly and without discrimination to all employees?
7. Was the degree of discipline administered by the company in a particular case reasonable related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

I, personally, find Daugherty's "Test" to be a useful tool in organizing and analyzing the facts and evidence that come to the fore in discipline cases. However, like many arbitrators, I find that it is rigid and overly mechanical in its application as a true test of "just cause"; in that it fails to recognize and allow for the weighing of the myriad of factors and nuances that are involved in a typical discipline situation.

An alternative view of the "just cause" situation was set forth by Roger I. Abrams and Dennis R. Nolan in "*Toward a Theory of 'Just Cause' in Employee Discipline Cases*", 85 Duke Law Journal 594 (1985). The authors begin by setting forth what they refer to as "The Fundamental Understanding" in the employment relationship:

A potential employer is willing to part with his money only for something he values more highly, the time and satisfactory work of the employee. The potential employee will part with his time and work only for something he values more, the money offered by the employer.

The Fundamental Understanding can be and is modified by collective bargaining agreements and the congruent interests of unions and employers. From the point of view of employees, collective agreements can correct what they perceive to be the major flaw of the Fundamental Understanding – the insecurity of the employment relationship. Thus, the main addition to the Fundamental Understanding that unions seek in collective bargaining agreements is job security through limitations on the employer's power to discipline and discharge employees. Therefore, the basic Fundamental Understanding is modified by a particular collective bargaining agreement, as follows:

Employees will provide 'satisfactory" work, in return for which the employer will pay the agreed wages and benefits, and will continue the employment relationship unless there is just cause to terminate it.

This modification of the Fundamental Understanding obviously limits the employer's power to discipline and discharge pursuant to the common law concept of "Employment at Will", which essentially permits the employer to discipline or discharge employees for any reason or for no reason whatsoever.

Under the modified Fundamental Understanding employee discipline should only be used to fulfill one or more of management's rational interests; 1) rehabilitation – the objective being to cure a specific problem and restore the employee to "satisfactory" work, 2) deterrence – the objective being to deter the errant employee from repeating a certain error by imposing one penalty and threatening to impose a harsher one in the future and 3) protection of profitability – certain employee conduct, though perhaps not prohibited by a specific rule, may still interfere with the employer's operation of the enterprise. This category is something of a catch-all and many of the situations falling within its confines involve off-duty conduct by employees.

Like management, unions also have certain interests and expectations with respect to discipline and discharge of employees. A rational union acknowledges that an employee's failure to meet his or her obligations works to the detriment of other employees as well as the employer. In the short run, an unsatisfactory employee simply makes the jobs of co-workers more difficult. In the long run, continued tolerance of substandard work performance by an employee will endanger the employer's competitive position, and that, in turn, will threaten the wages and even the jobs of the rest of the workforce. Therefore, the economic welfare of the workers, the union and management is interdependent.

The primary interest of the union and the employees in disciplinary matters is fairness. First, they seek fairness in disciplinary procedures;

that is employees must have actual or constructive notice as to their work obligations. Secondly, they seek fairness in the administration of discipline. Disciplinary measures must be based on facts; management must ascertain what actually happened before it imposes discipline and must give the employee an opportunity to explain his or her view of the situation and must allow union representation during the investigation if the employee so requests. Thirdly, discipline should be imposed in gradually increasing degrees, with the exception of certain "capital offenses" and, finally, proof by management that just cause exists for the discipline.

The foregoing concerns for procedural fairness in discipline situations might be termed "Industrial Due Process".

The employee is also entitled to "Industrial Equal Protection" which requires like treatment of like cases. But, related, is the requirement that an employee is entitled to individualized treatment. Distinctive facts in the employee's record or regarding the discipline must be given appropriate weight.

Like Daugherty's "Test", the Abrams & Nolan theoretical construct for Just Cause serves as a useful analytical tool for organizing, assessing, evaluating and considering the numerous facts and pieces of evidence involved in a typical discipline or discharge situation.

CONCLUSIONS ON COMMON ISSUES

Based upon my specific findings, as above, I have reached the following conclusions with respect to the noted Common Issues:

1. The State of Minnesota does not license high school athletic coaches nor does it require that coaches be concurrently licensed and/or employed as teachers. Accordingly, a coach is a distinct job classification, unrelated to a teaching classification. Coaches operate on a separate and distinct employment contract from those of teachers.
2. Some licensed teachers also hold the necessary qualifications to coach high school athletics and, on their own volition, sign separate contracts with school districts to coach, probably for the purpose of supplementing their teaching salary. They could also, alternatively, work at some other supplemental job, but it probably wouldn't be as convenient or lucrative as coaching. I would also presume that there are instances where a teacher employed in one school district, but is employed in another district as a coach.
3. The Recognition Clause in the applicable CBA in this matter does not include "coaches" in the bargaining unit definition. Additionally, the Union takes the position that it only represents coaches who are also licensed

teachers and that coaches, who are not licensed teachers, are not covered by the CBA.

4. The only references in the applicable CBA to “coaches” essentially specify how teachers, who coach, are to be compensated.
5. The Union’s grievance is valid only to the extent that it alleges that the disciplinary suspensions imposed upon the grievants violated the compensation provisions of the CBA and that the overall disciplinary action violated the District’s Due Process Disciplinary Policy #PR5015-1.
6. Finally, the District’s disciplinary action with respect to the grievants shall be subject to a “Just Cause” standard.

THE GRIEVANCES

As previously noted, the Union is specifically grieving the disciplinary suspensions and Letters of Reprimand imposed on Football Coaches Michael Cross, Brad Olson, Mark Leland, Richard Michalak and Michael Breyen by the Employer in September, 2010. As a remedy, the Union requests that the Letters of Reprimand be revoked and expunged and that the suspensions be rescinded and that each coach be made whole for any loss of wages or benefits suffered as a result of the suspensions. Additionally, the Union contends that the Letters of Reprimand issued to the coaches contain statements which are false and/or inaccurate and, if the Letters are sustained, they should be corrected.

MICHAEL “MIKE” CROSS

Background – Mr. Cross has been employed by the District as the Varsity Head Football Coach at Elk River High School for the past eight years and is also an Assistant Track Coach. He also served as an Assistant Football Coach at the High School for four years. He is concurrently employed by the District as a teacher. During the course of his employment with the District, Cross has had no previous record of disciplinary events of any kind.

As Head Coach, Cross is in charge of the entire football program to include the hiring and termination of Assistant Coaches, the development and planning of the program and supervising the student players. Cross reports to Activities Director, John Barth. To assist him in administering the football program, the District employs 15 Assistant Football Coaches. Four of those Assistants work with Freshmen, four with the Sophomores and the remaining seven work with the Varsity Team, with the Head Coach. The football program in 2010 involved a total of some 150 student-players.

In June, 2010, Cross conducted a two-night “retreat” which was attended by all fifteen Assistant Coaches. During the retreat, the Assistants received the *Coaches Handbook*; which set forth their personal duties and responsibilities in detail. One of the duties reviewed and emphasized was the responsibility of each coach for the supervision and conduct, at all times, of the student athletes

under his/her direction during practices and games. The *Handbook* also noted that coaches, in supervising their charges, should insure that they, personally, should be the first individual into the locker room and the last to leave. Cross specifically informed the Assistants that they would each be assigned a schedule to be present in the Locker Room, during the course of the "two-a-day" practice regimen, before and after practice and during the lunch period to make sure they were visible to the players and that there was no horseplay and that the facility was properly cleaned up.

On August 15, 2010, immediately prior to the start of the "two-a-day" practice schedule, Cross held a mandatory coaches meeting attended by all the Assistant Coaches and each coach was presented with a copy of a document entitled *Elk River high School Coaches Expectations*. The document included the daily assignments of the Assistant Coaches to Locker Room duty during the course of the "two-a-day" practice regimen. There were two Coaches assigned to each practice day. Again, it was emphasized that those assigned to Locker Room duty were to be "visible".

Cross held another meeting with all the student-players and the fifteen Assistant Coaches on August 16, 2010, immediately prior to the start of the "two-a-day" practices. During this meeting Cross specifically informed the student-players that they could eat lunch in either the Locker Room or the Commons area. Although he did not specifically state that the Wrestling Room was not an authorized lunch area, but he expected that his Assistants would inform him if they found any players in that room.

During the subsequent course of the practice schedule, none of the Assistant Coaches ever informed him that there were players using the Wrestling Room during the lunch period.

His first knowledge that players had, indeed, been using the Wrestling Room during the lunch periods came on August 25, 2010 when he learned of the hazing incidents that had taken place there.

During his interview by Ms. Nololf on August 27, Cross was specifically asked why he had assigned specific Assistant Coaches to supervise and monitor players in the Locker Room area during the two-a-day practice lunch periods, but had not assigned any coaches to concurrently supervise and monitor the players using the Commons area for lunch? Cross said that there were a ton of other student athletes in the Commons area including cross-country and volleyball and there were not any other coaches supervising the area. He acknowledged that, as a teacher, he is periodically assigned to lunch room supervision and does not leave his students unsupervised during the lunch period.

<u>Basis for Discipline</u> – As outlined in his Letter of Reprimand; failure to meet the supervisory expectations of the District, as outlined in the Football Coaches

Handbook. Although he did assign coaches to supervise the Locker Room during the lunch periods during the August, 2010 practice period, he did not properly follow-up to insure that all student were in authorized areas during the lunch periods. Additionally, he failed to assign coaches to supervise students using the Commons area during the lunch periods.

Discipline – Letter of Reprimand and a six-day, one game, suspension without pay.

Positions of the Parties with respect to the Cross Grievance

The following are summaries of the principal arguments put forth by each of the Parties with respect to the Cross Grievance. I also note that many of the arguments are also applicable to the remaining four grievances.

Employer/District Arguments:

If the Arbitrator chooses to hold the District to a "Just Cause" standard with respect to the discipline of the five grievants, the District is confident that it has met or exceeded the standards articulated by Arbitrator Carroll R. Daugherty in his 1966 "The Seven Tests of Just Cause". Additionally, the District is confident that the circumstances of the disciplinary action also meet the requirements of the "Fundamental Understanding" test of just cause as formulated by Abrams and Nolan.

1. *The District's expectations regarding the supervision of students were well laid out and the coaches were fully aware that they could be disciplined for failing to meet the District's performance expectations. Each coach was fully aware of the importance of properly supervising the student-athletes under their direction via the Coaches Handbook and/or, if they also happened to be teachers, they were additionally aware of that responsibility. Finally, all the coaches were fully aware that any failure or deficiency to fully perform their specified job duties would result in disciplinary action, up to and including termination or non-renewal of their job contracts*.
2. *The District's rules and policies regarding appropriate supervision of students relate to the orderly, efficient and safe operation of its educational business and the level of performance that the District might reasonably expect of its employees. The District has a legal duty to supervise students participating in school-sponsored events and activities and is responsible for ensuring their safety. Its employees are expected to properly carry out that duty at all times. The failure of the grievants to properly supervise student-athletes during practice, including their failure to direct them to leave the unsupervised and unauthorized Wrestling Room, exposed the District to the risk of legal liability for negligent supervision.*

3. *Before issuing the discipline, the District made an intensive effort to determine whether the grievants had, in fact, violated or disobeyed an Employer rule or policy. In this instance, the District employed a third party to conduct a thorough and impartial investigation to determine if any of the coaches had violated the* District*'s supervision expectations. The result was Ms. Nodolf's Investigation Report of September 1, 2010. The District's Director of Human Resources reviewed the Report and made recommendations to the School Board; which ultimately made the final disciplinary determinations.*
4. *The District's investigation was conducted fairly and objectively. During the course of Ms. Nodolf's interviews with the coaches, each was offered the opportunity to have a Union Representative present. Each coach was given an opportunity to review and sign a Data Practices Notice, prior to answering any questions and each witness was provided with an opportunity to provide the interviewer with any additional information they felt was relevant to the situation.*
5. *The District's investigation obtained substantial evidence that the grievants failed to provide appropriate supervision to the student-athletes entrusted to their care during football practice. All of the subject grievants, with the exception of Coach Cross, knew that student players were present and unsupervised in the Wrestling Room during the August practice sessions. They allowed those individuals to remain there unsupervised and they failed to inform Coach Cross of the Wrestling Room situation. The grievants conceded, in the hearing, that they were aware that students need to be restricted to approved areas and that the supervision of students is a critical part of coaches' and teachers' job duties.*

   In the case of Coach Cross, the investigation established that he had no knowledge of student-players being in the Wrestling Room in violation of his specific lunch area restrictions, until confronted by an angry parent on the morning of August 25, 2010. He admitted that, as the Head Coach, he is ultimately responsible for insuring that all the student –athletes are properly supervised at all times when they are present and engaged in authorized activities at the school. When questioned about the students who chose to spend their practice session lunch periods in the Commons area, he admitted that he failed to assign or provide proper supervision for them. He acknowledged that, as a classroom teacher in the school, he and other teachers are routinely assigned to supervise and monitor students using the Commons area during lunch periods. The investigation further noted that during the course of the August practice sessions, he never personally visited the Locker Room during the lunch period to verify that the situation there was normal and under control by the assigned Assistant Coaches.

6. *The record evidence demonstrates that the District applied the disciplinary action to the grievants evenhandedly and without discrimination. In the hearing, the Union raised several previous incidents that they claimed were evidence of disparate treatment;*
    a) *In one such situation, a hockey coach lost his temper and made inappropriate comments to a student-player. For his improper conduct, the District gave him a Letter of Reprimand, a 10 day suspension with out pay and required him to issue an apology to the player.*
    b) *In another, some students had snuck into the Wrestling Room, outside of school hours, and a fight occurred. The students involved were subsequently disciplined, but because the incident took place outside normal school hours and was an unauthorized activity, no staff member was assigned to or responsible for supervising that activity/area. Accordingly, no discipline of staff was appropriate.*
    c) *In another situation, the Union pointed to an incident that occurred at a youth wrestling tournament. The tournament, however, was not an authorized school-supervised activity and, therefore, no school staff were assigned or responsible for student supervision.*
    d) *Finally, the Union also raised an incident where student hockey players were allegedly involved in a fight at the school. The record contains hearsay evidence to the effect that the incident resulted in student injuries and that Activities Director Barth was aware of the incident, but he decided to let the hockey coach handle the matter. Apparently, the coach did discipline the students involved. Barth conceded that he never informed School Principal Bizal of the incident and that, he, Barth, determined that under the circumstances, no discipline of staff was necessary. Therefore, members of the District Administration were not aware of that incident. Whether or not the Administration would have taken disciplinary action against staff members in that situation is entirely speculative.*

    None of these incidents or situations arguably relate to the instant matter and, in any case, certainly do not constitute evidence of disparate or discriminatory treatment.
7. *The degree or level of discipline imposed by the District upon the grievants was reasonably related to the seriousness of the proven offense and the grievants' employment records. The record is clear that the grievants failed to properly perform their duties of supervising and monitoring the conduct of their student charges and that their failure to do so presented the District with a potential legal liability risk. Although the hazing incident, which revealed the supervision deficiencies, was unforeseeable, it is foreseeable that adolescent students may engage in inappropriate conduct if they are not properly supervised. The District did*

recognize the fact that all of the grievants had no previous disciplinary records and, therefore, rejected more severe penalties such as termination or non-renewal of the coaches' job contracts. It should also be noted that the Assistant Coaches had all been recently updated by Head Coach Cross with respect to their supervision duties prior to the commencement of the 2010 football practice schedule, so they were well aware of the importance of that duty. Finally, those coaches disciplined were each aware, at some point during the August practice schedule, that students were in the Wrestling Room during the lunch period and they were also aware or reasonably should have been aware that they were not authorized to be there, but took no action to correct or to report the situation to Coach Cross as a possible problem.

8. *Finally, the District is confident that the discipline meets the "just cause" test per Abrams and Nolan's "Fundamental Understanding*" paradigm.

   > *"Employee discipline should only be used to fulfill one or more of management's rational interests: 1) rehabilitation – the objective being to cure a specific problem and restore the employee to satisfactory work, 2) deterrence – the objective being to deter the errant employee from repeating a certain error by imposing one penalty and threatening to impose a harsher one in the future, and 3) protection of profitability – certain employee conduct, though perhaps not prohibited by a specific rule, may still interfere with the employer's operation of the enterprise."*

   The discipline imposed upon the grievants fits squarely within all three of the above objectives for the District. The District is confident that the discipline will be effective in encouraging the coaches to correct potential future supervision breaches or oversights. The discipline will definitely serve as an effective deterrent to similar problems in the future and while the District is not a profit-making entity, it is responsible for the effective use of the tax-payer provided funds entrusted to it and also protecting the its limited assets from adverse legal liabilities and risks.

Union Arguments and my Findings and Conclusions:

1. *The District violated the CBA by imposing a disciplinary suspension before an arbitrator's ruling finding just cause for the suspension, per Minnesota Stat. 125.12, Subd. 8.* As noted previously, I have found this argument to be inapplicable to this situation and totally without merit.
2. *The District did not apply just cause in this case*. As previously noted, I find that the District did apply a just cause standard to the disciplinary situation. I further find that the District did properly process the matter in accordance with the contractual grievance procedure as set forth in Article 15 of the CBA.
3. *The District has not met its burden of proof to show that it had just cause to discipline this grievant.* I find that the District's and Union's standard of

proof in this type of ordinary discipline situation is the Preponderance of Evidence standard; that is, Is it more likely than not that something is true and correct. This is a lesser standard than the Clear and Convincing Evidence standard or the Beyond a Reasonable Doubt standard of proof applied to criminal matters.

4. *The District's disciplinary action was overly harsh, given the blemish-free record of Coach Cross in both his coaching and teaching roles.* As Head Coach, Cross was ultimately responsible for the supervision and direction of the fifteen Assistant Coaches reporting to him. Collectively, he and the Assistant Coaches were all well aware that they were directly responsible for constant supervision and monitoring of the safety and security of student-athletes entrusted to them; while they engaged in authorized activities at the District's facilities. The record herein clearly establishes that Cross and all the other coaches were also well aware, from either direct experience or from observing other situations; that if anything went wrong on their "watch", there would almost certainly be an investigation and some level of discipline for those found to have been deficient in their duties and responsibilities.

   As to the alleged "harshness" or relative severity of the discipline, I note the following guidance provided by Arbitrator McCoy in his Decision in Stockholm Pipe Fittings Co., 1 LA 160, 162 (McCoy, 1945):

   "*Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and affixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it….The only circumstances under which a penalty imposed by management can be rightfully set aside by an arbitrator are those where discrimination, unfairness or capricious and arbitrary actions are proved – in other words, where there has been abuse of discretion*."

   Like other arbitrators, I will not set aside or modify a disciplinary penalty unless it is obviously unreasonable, unjust or arbitrary or capricious under all the circumstances. In this instance, given Coach Cross' position, level of responsibility and totality of the circumstances, I find that the nature of the discipline imposed by the District is not unreasonable, unjust or arbitrary or capricious and is reasonably suited to the totality of the circumstances.

5. *The responsibility for the hazing misconduct that occurred properly lies with the students who were involved*. The District did, on August 30, 2010, take swift and decisive disciplinary action against each of the student athletes implicated in the hazing incidents. The District then commenced an investigation to determine how the hazing incidents were able to occur in a District facility and apparently thwarted the District's supervision obligation and system intended to keep students safe and secure while on school property. The District then analyzed the investigative finding and concluded that certain coaching staff members

had not fully or properly carried out their supervisory and monitoring duties with respect to their student charges during the “two-a-day” football practice period.

I am also cognizant of the fact that while the District was frantically attempting to fully determine exactly what had occurred and who knew what and when, it was also being publicly confronted by the news media and irate and angry parents and taxpayers all demanding to know how and why the District had permitted student “perps” to run around the school trying to shove broomsticks up their precious children’s butts. To have argued to the media and the parents that the District and its staff had no responsibility for the occurrence of the hazing in the school facility would have certainly led to the equivalent of the grabbing of pitchforks, the lighting torches and the heating of tar pots by members of the community. Accordingly, under the circumstances, laying the total blame for the situation on the errant students was definitely not an option for the District.

6. *The District’s past acceptance of the supervision arrangements demonstrates that it did not warn these coaches that they were violating any District policies or procedures*. All of the coaches were well aware that their primary duty as a coach and as a school staff member was to properly supervise and monitor the students entrusted to their care to insure their safety and security while engaged in authorized activities. Also, in addition to being educated and fully mature adults, the coaches all had extensive and sufficient experience with adolescent boys to know how wily, cunning, devious, deceptive and imaginative they can be. Accordingly, the District should not have needed to draw up detailed “lesson plans” on *How to Supervise and Monitor Adolescent Students During Football Practice*. The policies and instructions issued to the coaches with respect to the supervision of the student-athletes, plus their experience, should have caused the coaches to take an aggressive and active approach to their supervisory duties. They knew or reasonably should have known that they had to be at least as imaginative as their adolescent charges and that a passive, predictable or lackadaisical attitude toward such supervision would inevitably play into the hands of their wily charges and result in problems. Accordingly, I find no merit in this argument.
7. *The District acknowledges, in the Letters of Reprimand, that the hazing misconduct was unforeseeable by the coaches and, therefore, no disciplinary action should have been imposed upon them.* Horse feathers! A careful reading of the Letters of Reprimand clearly indicates that none of the coaches were disciplined for permitting the hazing to occur. In the Letters, the District readily concedes that there was no evidence to indicate that any coach had knowledge of potential or actual hazing until it was formally reported to District officials on the morning of August 25. Therefore, no coach was disciplined for violation of School Board Policy#7026 – Hazing Prohibition.

Instead, the Letters clearly state that the subject coach is being specifically disciplined for failing to meet "…*the supervisory expectations of the District as outlined in the Football Coaches Handbook*". Each Letter then outlines the specific supervisory deficiencies/errors for which discipline is being imposed.
In the case of Coach Cross, his Letter clearly outlines the basis for his discipline, as noted above. Accordingly, this argument is without merit

8. *It is unfair and unjust to discipline these coaches based on the illogical argument that they could have prevented an unforeseeable event – the hazing*. Again, as noted above, the District did not hold any coach responsible for failure to prevent the hazing nor was any coach disciplined on that basis. Accordingly, this argument is without merit.
9. *The District's lack of true change after the hazing incidents came to light when student misconduct is now "foreseeable", makes the imposition of discipline for unforeseeable student conduct even more unjust*. This argument again incorrectly attributes the coaches' discipline directly to the hazing incidents. As previously stated in 8, above, the coaches were not held responsible for nor disciplined for the hazing incident. Accordingly, this argument is without merit.

CONCLUSIONS AND DECISION – MICHAEL CROSS GRIEVANCE

In view of the Parties' arguments, my findings above and the record testimony and evidence, I conclude that the Employer/District has met its burden of demonstrating that that discipline imposed upon Mr. Cross meets the accepted standards of Just Cause. Concurrently, I conclude that the Union's arguments and evidence are insufficient to demonstrate lack of just cause.

Accordingly, the Cross grievance is hereby denied and is dismissed in its entirety and the District's disciplinary action is sustained. See proviso below.

BRAD OLSON

Background: Mr. Olson has been employed by the District as an Assistant Varsity Football Coach for the past nine years. In that capacity, his immediate supervisor is Mike Cross, the Head Football Coach. Olson is currently also employed by the District as a teacher and has held that job position for the past ten years. He is currently also working for the District as a Wrestling Coach. He has no previous disciplinary record as either a coach or as a teacher.

Mr. Olson was interviewed by Ms. Nodolf on August 27, 2010. He was present with all the other football coaches when Coach Cross held a coaches meeting on August 15, prior to the start of the pre-season "two-a-day" football practice schedule. During the meeting Cross informed the coaches of their supervision duties with respect to the student athletes/players. Cross specifically informed

the coaches that two specific assistant coaches to Locker Room duty. That duty involved being present in the Locker Room area before and after practice and during the lunch period. Olson recalled that Cross said that the coaches doing Locker Room duty were to "make sure you are seen by the players."

According to Olson, he had Locker Room duty on Wednesday, August 18, together with Assistant Coach Mike Breyen. During his tour of duty, Olson spent the morning from about 7:50 to 8:30 AM walking around the Locker Room greeting players and helping with things like locker combination problems. During the lunch period from 11:15 to 12 noon, Olson returned to the Locker Room area. He ate his lunch in the coaches office in the Locker Room area. Upon finishing his lunch, he left the coaches office and walked through the Locker Room and also the adjoining Wrestling Room to check on the students. Olson old the interviewer that he understood that the student–players were permitted to eat lunch in the Commons area, the Locker Room or the Wrestling Room.

Olson recalled that when he entered and walked through the Wrestling Room on he 18th, he saw some twenty to twenty-five students lying around on the floor. They had apparently finished eating and were lying there relaxing or taking quick naps. From the Wrestling Room, Olson then proceeded upstairs to check on the the Commons area. He said technically coaches didn't have to check the Commons area, but a volleyball coach had recently complained that the students were leaving garbage on the tables and he decided to check on that.

Mr. Olson also checked the Wrestling Room on August 20 and found about ten students in there during the lunch period.

Olson said that back when he was a student at Elk River High, he would go into the Wrestling Room to relax during the course of football practice. Olson said he didn't inform any of the other coaches or Coach Cross that students were eating lunch in the Wrestling Room. He said that everyone on staff who had worked at the High School for a number of years would know that students went into the Wrestling Room, but acknowledged that not all of the coaches were aware of that fact. Olson pointed out that the doors into and out of the Wrestling Room were always closed and, therefore, someone outside the room wouldn't be able to see into the room nor would they hear noises from inside.

Olson didn't recall seeing any students in the Wrestling Room during the footall practice lunch periods in 2009. He didn't witness any misconduct on the part of students that he found in the Wrestling Room on August 18th or 20th, nor did he hear any rumors or other information regarding hazing or initiation either in 2009 or 2010.

<u>Basis for Discipline</u>: Per his Letter of Reprimand, he failed to meet the District's expectations in regard to the supervision of student athletes. He observed

students in the Wrestling Room during the lunch period on August 18th and, again on the 20th, but did not direct them to leave the room and, subsequently, left them in an unauthorized and unsupervised area. He also failed to inform Coach Cross or any of the other coaches of the presence of the students in the Wrestling Room. The Letter points out that he was aware that the Coaches Handbook provides that "One of the prime responsibilities of a coach is the supervision of their team. This includes all games, practices and pre- and post-game activities. No athlete should be using athletic facilities without a coach present to supervise them." Additionally, the Coaches Handbook provides that, "Each coach is responsible for the supervision and conduct, at all times, of the athletes under his/her direction during practices and games."

Discipline: Letter of Reprimand and six-day, one game suspension without pay.

Positions of the Parties with respect to the Olson Grievance

The specific positions and arguments of each of the Parties, as set forth in the recitation of the Cross Grievance, are incorporated herein, with the exception of those items applicable only to the Cross Grievance.

With respect to Olson' Grievance, the Union specifically argues as follows:

1. Although Olson observed students in the Wrestling Room on two occasions during the practice schedule, he didn't see any of them engaged in misconduct. Additionally, he assumed that it was OK for them to be there; because he had hung out in the Wrestling Room during football practice back when he was a student at Elk River High.
2. He said that most of the other coaches who had been around the school for some period of time were probably aware that student routinely hung out in the Wrestling Room during the football practice lunch period.
3. If Olson had been aware that students were not supposed to be in the Wrestling Room during the lunch period, he would have certainly and immediately ushered them all out and probably would have informed Cross.
4. Olson did check the Wrestling Room as part of his Locker Room duties and obviously made himself "visible" as a coach and supervisor to those who were found in there.

In reviewing Mr. Olson's record testimony I note the following:

- He initially denied hearing Coach Cross specifically state during the August 15 coaches meeting that the student–players were to eat lunch either in the Commons area or the Locker Room, stating that he may have been distracted at the point in the meeting when Cross made that statement.
- Later in his testimony, Olson conceded hearing Cross state in the past that the students were permitted to eat in the Commons area

> or Locker Room and were not permitted to leave the school campus. He just assumed that since Cross didn't say that they couldn't eat lunch in the Wrestling Room, that based on his own personal experience, it was OK for students to also use the Wrestling Room for lunch. He did acknowledge that even though Cross had not specifically stated that the students could not eat lunch in the auditorium, he was aware that the students were not permitted to eat lunch in there during football practice.

Based on the foregoing, I find that Olson failed to listen carefully to Coach Cross' instructions and directives during the August 15 coaches meeting and that, in turn, led to him to making an erroneous assumption regarding the propriety of allowing the students to eat lunch in the unauthorized Wrestling Room. As a result of his incorrect interpretation of Cross' authorized lunch location instructions, he allowed students to remain in the Wrestling Room with no coach present to supervise or monitor them.

CONCLUSIONS AND DECISION – BRAD OLSON GRIEVANCE

In view of the Parties' arguments, my findings and the record testimony and evidence, I conclude that the Employer/District has met its burden of demonstrating that that discipline imposed upon Mr. Olson meets the accepted standards of Just Cause. Concurrently, I conclude that the Union's arguments and evidence are insufficient to demonstrate lack of just cause.

Accordingly, the Olson grievance is hereby denied and is dismissed in its entirety and the District's disciplinary action is sustained. See proviso below.

MARK LELAND

Background: Mr. Leland is employed by the District as an Assistant Varsity Football Coach and is in is fifth year at that position. During that same period he has been concurrently employed by the District as a teacher at the VandenBerge Middle School teaching Physical and Health Education. Mr. Leland has no prior disciplinary record in either his coaching or teaching positions.

Mr. Leland was formally interviewed by Ms. Nodolf on August 27. Leland stated that he was present, as a coach, at all of the of the football "two-a-day" practices that began on August 16. He also attended the coaches meeting conducted by Head Coach Cross on August 15. He acknowledged that during that meeting Coach Cross informed all the Assistant Coaches that two coaches per day were being assigned to Locker Room duty during the course of the "two-a-day" football practice schedule. Cross told the coaches that during their Locker Room duty they were supposed to be visible at all times and should occasionally walk through the Locker Room.

Leland was assigned Locker Room duty, along with Coach Dan Kohler on August 19. He subsequently came down with the flu but continued to attend the scheduled practice sessions and on August 23 was in the Locker Room during the lunch period when Coaches John Pink and Aaron Osterman were in there performing Locker Room duty. He saw both coaches walk around the Locker Room area as part of their duties, but never saw either of them go into the Wrestling Room.

During his assigned Locker Room duty periods, he said he would eat his lunch in the coaches office in the Locker Room and after finishing lunch would walk through both the Locker Room and the adjoining Wrestling Room. Additionally, during the last two weeks of the practice schedule he had occasion to walk through the Wrestling Room on his way to the Training Room. He recalls that at some point during the week of August 16, as he entered the Wrestling Room, he found one student in there and on either August 23 or 24 he walked through the Wrestling room and found two students in there. He was unable to identify the students because most of the lights in the room were off. Mr. Leland acknowledged that he did not inform any of the students found in the Wrestling Room that they were in an unauthorized area nor did he ask them to leave the room. He did not inform Coach Cross or any of the other coaches that he had found students in the Wrestling Room, because he believed that they were permitted to be there. Mr. Leland also said he did not believe that it was part of his Locker room duty to supervise the Wrestling Room.

Mr. Leland was also present during the football “two-a-day” practice schedule in August of 2009, but doesn’t recall seeing any students in the Wrestling Room during that period.

Leland stated that during the course of his coaching duties, in either 2009 or 2010, he never saw nor heard anything to indicate that students were engaging in hazing or other misconduct. With respect to the Locker Room itself, he noted that it contains rows of lockers that are seven feet high – thus limiting the views within the room and requiring coaches to walk around in order to fully view all areas of the room. He further stated that during the periods that he was in the Locker Room during the practice schedule, he never heard any loud screaming, yelling or laughing coming from the Wrestling Room, but pointed out that the students routinely played a stereo in the Locker Room at a level “beyond loud”.

During the interview, Mr. Leland also stated that it was his opinion that the students were going to find some way to do the hazing, but feels that Coach Cross had set up a great system for trying to cope with that by assigning two coaches to Locker Room duty each day.

<u>Basis for Discipline</u>: According to his Letter of Reprimand, Mr. Leland failed to meet the District’s supervisory expectations as outlined in the Football Coaches Handbook. More specifically, he was aware that student football players were in

the Wrestling Room during the lunch periods in August, 2010, but did not direct them to leave; thereby leaving them in an unsupervised area. He also failed to inform Coach Cross or any of the other coaches of the presence of the students in the Wrestling Room. The Letter points out that he was aware that the Coaches Handbook provides that "One of the prime responsibilities of a coach is the supervision of their team. This includes all games, practices and pre- and post-game activities. No athlete should be using athletic facilities without a coach present to supervise them." Additionally, the Coaches Handbook provides that, "Each coach is responsible for the supervision and conduct, at all times, of the athletes under his/her direction during practices and games."

Discipline imposed: Letter of Reprimand and six-day, one game suspension without pay.

Positions of the Parties with respect to the Leland Grievance

The specific positions and arguments of each of the Parties, as set forth in the recitation of the Cross Grievance, are incorporated herein, with the exception of those items applicable only to the Cross Grievance.

Additionally, the Union argues as follows with respect to the Leland grievance:

> Mr. Leland is accused of failing to evict or eject the students that he found in the Wrestling Room during the football practice schedule lunch periods. When asked in the hearing why he didn't ask them to leave, he pointed out that when he was a student and a football player at Elk river High back in the late 1990s, players routinely hung out in the Wrestling Room, among other places, during the course of practice sessions. He also noted that during the course of his five years as an Assistant Football Coach, no one in authority has ever specifically told him that the Wrestling Room was off-limits to the student-players during the practice sessions. If he had been so informed, he would have enforced that rule and would have asked the students found in the Wrestling Room to leave.

In reviewing Mr. Leland's testimony in the hearing, I note that he testified that he was present during the meeting conducted by Head Coach Cross on August 16 at which all coaches and student-players were present. He acknowledged that in the course of that meeting, Coach Cross stated that the student-players were to use either the Commons area or the Locker Room for their lunch period during the course of the practice schedule, but made no mention of the Wrestling Room. He was also queried about his statement to the investigator to the effect that he didn't believe it was his duty to supervise the Wrestling Room. He stated that it was his perception that the Wrestling Room was really part of the Locker Room, but subsequently acknowledged that due to the physical layout of those two areas, a coach in the Locker Room would not be visible to persons in the Wrestling Room. He also acknowledged that he was aware that if an employee failed to meet the performance expectations of his/her employer, that there would

be consequences for that behavior. He further agreed that if a coach had informed Coach Cross that there were students eating or hanging out during lunch in a place he had not authorized, that Cross would have taken action to correct the situation. Finally he also agreed that if the coaches on Locker Room duty, who noted students in the Wrestling Room, had decided that one coach would remain in the Locker Room and the other would occupy the Wrestling Room; that it was possible that the hazing misconduct that took place in the Wrestling Room might not have occurred.

Based on the foregoing, I find that like Mr. Olson, Mr. Leland failed to listen carefully to Coach Cross' instructions and directives during the August 15 coaches meeting and that, in turn, led to him to making an erroneous assumption regarding the propriety of allowing the students to eat lunch in the unauthorized Wrestling Room. As a result of his incorrect interpretation and application of Cross' authorized lunch location instructions, he allowed students to remain in the Wrestling Room with no coach present to supervise or monitor them. As a result, his conduct violated the District's expectations for proper supervision of students.

CONCLUSIONS AND DECISION – MARK LELAND GRIEVANCE

In view of the Parties' arguments, my findings and the record testimony and evidence, I conclude that the Employer/District has met its burden of demonstrating that that discipline imposed upon Mr. Leland meets the accepted standards of Just Cause. Concurrently, I conclude that the Union's arguments and evidence are insufficient to demonstrate lack of just cause.

Accordingly, the Leland grievance is hereby denied and is dismissed in its entirety and the District's disciplinary action is sustained. See proviso below.

RICHARD "RICK" MICHALAK

Background: Mr. Michalak is employed by the District as an Assistant Varsity Football Coach and has held that position for two years. He has also been concurrently employed by the District as a Physical Education teacher at the Salk and VandenBerge Middle Schools.

Mr. Michalak was interviewed by Ms. Nodolf on August 27. He was present at the coaches meeting conducted by Head Coach Cross on August 15. In that meeting he remembers Cross reviewing the Practice Plans and discussing Locker Room duty. Cross instructed the assigned coaches to have a presence in the Locker Room and to make sure the students were not goofing around.

Mr. Michalak was assigned Locker Room duty with Assistant Coach John Budreau on Friday, August 20th. During the lunch period that day, Michalak ate his lunch in the coaches office, located in the Locker Room area, and got up and

walked around the Locker Room area at least once and probably twice. On either August 20 or August 23, Michalak went into the Wrestling Room to locate a player who had failed to clean up his lunch in the Locker Room. In the Wrestling Room he found between five and twenty student-players sitting against the walls of the room. He noted that the lights in the room were low and that the students appeared to be relaxing. He did not observe any of the students engaged in misbehavior or wrestling.

Mr. Michalak was asked whether students wee allowed to be in the Wrestling Room during the lunch period? H said he assumed that they could be in there. Since he assumed that the student could be in the Wrestling Room, he did not instruct them to leave nor did he inform Coach Cross or any other coaches of their presence in the Wrestling Room. He noted that the students knew that a coach could walk through the Wrestling Room at anytime. He said he strictly monitored the Locker Room, but did not monitor the Commons area or the Wrestling Room.

Michalak could not remember whether he went into the Wrestling Room during Locker Room duty last year.

Michalak said he has not seen any students engaged in hazing or initiation-type conduct in either the Locker or Wrestling Rooms this year or last year, not has he heard any rumors or other reports of such activities being planned or carried out by the students.

Michalak told the interviewer that he found Head Coach Cross to be very organized and that he assigned duties to the Assistant Coaches appropriately.

Basis for Discipline: According to his Letter of Reprimand, Mr. Michalak failed to meet the District's supervisory expectations as outlined in the Football Coaches Handbook. More specifically, he was aware that student football players were in the Wrestling Room during the lunch periods in August, 2010, but did not direct them to leave; thereby leaving them in an unsupervised area. He also failed to inform Coach Cross or any of the other coaches of the presence of the students in the Wrestling Room. The Letter points out that he was aware that the Coaches Handbook provides that "One of the prime responsibilities of a coach is the supervision of their team. This includes all games, practices and pre- and post-game activities. No athlete should be using athletic facilities without a coach present to supervise them." Additionally, the Coaches Handbook provides that, "Each coach is responsible for the supervision and conduct, at all times, of the athletes under his/her direction during practices and games."

Discipline imposed: Letter of Reprimand and six-day, one game suspension without pay.

Positions of the Parties and my findings with respect to the Michalak Grievance

The specific positions and arguments of each of the Parties, as set forth in the recitation of the Cross Grievance, are incorporated herein, with the exception of those items applicable only to the Cross Grievance.

Additionally, the Union argues as follows with respect to the Michalak grievance:

1. Mr. Michalak noted in his hearing testimony that when he saw between five and twenty students sitting in the Wrestling Room during the practice lunch period, he was taking a shortcut through the Wrestling Room and was accompanied by Coach Brad Olson; who also saw the students. Michalak was aware that Olson had attended Elk River High as a student and had been a coach at the school for some period of time. Olson gave Michalak no indication that the presence of the students in the Wrestling Room constituted any sort of problem.
2. Mr. Michalak, on the two encounters where he found students in the Wrestling Room, did not witness those individuals engaged in any sort of misbehavior or misconduct – they were just sitting there apparently relaxing. As he stated, if he had seen them engaged in any kind of improper conduct, he would have stepped in, stopped it and reported it.
3. Finally, in the hearing, Mr. Michalak expressed anxiety and concern about being a current probationary, untenured teacher and now having a Letter of Reprimand in his file, as a coach.

In reviewing Mr. Michalak's hearing testimony, I note that he acknowledges that without constant and proper supervision, the students' behavior can be unpredictable. He acknowledged that he heard Cross tell the coaches and student-players during the meeting on August 16, that the students were to use either the Commons area or the Locker Room during the practice schedule lunch period. He also acknowledged that, in hindsight, leaving the students alone in the Wrestling Room without a coach being present, was not exercising proper supervision of them and that since the Wrestling Room was separate from the Locker Room, it required separate supervision. He also conceded that if a coach had been present in the Wrestling Room at the time the students engaged in the hazing thing with a broomstick; that situation would certainly not have occurred. Finally I note that Mr. Michalak acknowledges that his experience with the situation surrounding the hazing incident(s) last August have caused him to be much more aware of and attentive to his role and function in properly supervising the students entrusted to him, both as a coach and as a teacher.

Based on the foregoing, I find that Mr. Michalak failed to properly follow and administer Coach Cross' specific instructions and directives issued during the August 15 coaches meeting regarding where students were properly authorized to spend their lunch period. He allowed students, whom he found in the unauthorized Wrestling Room on two separate occasions, to remain there

without proper supervision. As a result, his conduct violated the District's expectations with respect to the proper supervision of students by coaches.

CONCLUSIONS AND DECISION – RICHARD MICHALAK GRIEVANCE

In view of the Parties' arguments, my findings and the record testimony and evidence, I conclude that the Employer/District has met its burden of establishing that the discipline imposed upon Mr. Michalak meets the accepted standards of Just Cause. Concurrently, I conclude that the Union's arguments and evidence are insufficient to demonstrate lack of just cause.

Accordingly, the Michalak grievance is hereby denied and is dismissed in its entirety and the District's disciplinary action is sustained. See proviso below.

MICHAEL BREYEN

Background: Mr. Breyen is employed by the District as the Sophomore Head Football Coach and an Assistant Varsity Coach. He serves under the direction of Head Varsity Football Coach, Mike Cross. Breyen has been employed as a football coach by the District for some eighteen years. In addition to his coaching job, he has also been employed by he District as a Physical Education teacher for the past seventeen years. Mr. Breyen has no previous disciplinary record as a coach or a teacher.

Mr. Breyen was interviewed by Ms. Nodolf on August 27. He was present at the coaches meeting held by Head Coach Cross on August 15 and does recall Cross reviewing the coaches' supervision duties with respect to the student-players. Cross also talked about the coaches' Locker Room duty assignments and told them to make sure that they were in the Locker Room on their assigned days during the course of the "two-a-day" practice schedule.

Mr. Breyen was on Locker Room duty with Coach Brad Olson on August 18. During his lunch period Locker Room duty, Breyen ate his lunch in the coaches office locate within the Locker Room and collected pledge sheets form players and helped players who were having problems with their personal lockers. Mr. Breyen noted that when he was eating his lunch in the coaches office, he typically kept the door partially closed to reduce the loud music played on a stereo in the Locker Room.

Mr. Breyen told the interviewer that it was his understanding that during their practice schedule lunch periods, the students could eat in the Commons area, the hallway, Wrestling Room or anywhere else they wanted, as it was "their off time to be away". He said that he never went into the Wrestling Room, during the course of his Locke Room duty, but stated that he knew that students did eat lunch in there. He didn't know exactly how many students utilized the Wrestling Room for a lunch location. He stated that he didn't check into the Wrestling

Room because it was not part of his Locker Room supervision duties. Because of the noise level in the Locker Room, he never heard any noises coming from the adjacent Wrestling Room. When asked if other coaches knew that students ate in the Wrestling Room, Mr. Breyen said "no", that it was not common knowledge that the kids ate in there.

Mr. Breyen could not remember if students ate lunch in the Wrestling Room during the practice schedule in 2009, but did remember students eating lunch in the hallway and in the Commons area.

Mr. Breyen said that he neither saw any students poking other students in the buttocks with a broomstick or any other hazing or initiation-type conduct nor did he hear any rumors or reports of such activity, either last year or this year, from students or other coaches. He said he was very surprised when he recently learned of the hazing incident reports.

Basis for Discipline: According to his Letter of Reprimand, Mr. Breyen failed to meet the District's supervisory expectations as outlined in the Football Coaches Handbook. More specifically, he knew that student -players were in the Wrestling Room during the lunch periods in August, 2010, but did not direct them to leave; thereby leaving them in an unsupervised area. He also failed to inform Coach Cross or any of the other coaches of the presence of the students in the Wrestling Room. The Letter points out that he was aware that the Coaches Handbook provides that "One of the prime responsibilities of a coach is the supervision of their team. This includes all games, practices and pre- and post-game activities. No athlete should be using athletic facilities without a coach present to supervise them." Additionally, the Coaches Handbook provides that, "Each coach is responsible for the supervision and conduct, at all times, of the athletes under his/her direction during practices and games."

Discipline imposed: Letter of Reprimand and six-day, one game suspension without pay.

Positions of the Parties and my findings with respect to the Breyen Grievance

The specific positions and arguments of each of the Parties, as set forth in the recitation of the Cross Grievance, are incorporated herein, with the exception of those items applicable only to the Cross Grievance.

Additional arguments by the District relating to the Breyen grievance:

> In the hearing, Mr. Breyen contended that the interview recitation of Ms. Nodolf's session with him on August 27 as set forth in the Investigative Report, falsely or inaccurately indicated that, "*Mr. Breyen stated that he knew that students ate in the Wrestling Room, but didn't know how many*." Instead, he contended that when asked by Ms. Nodolf if he had seen or was otherwise aware of students eating their lunch in the Wrestling Room

during the practice sessions, his actual answer was, "*It wouldn't surprise me if they were*."

However, Breyen's contention as to his actual statement in the interview was challenged in the hearing by testimony from both Ms, Nodolf, the interviewer, based upon her original interview notes and Mr. Bizal, the School Principal, who sat in the Breyen interview. Both contended that Breyen's statement, as set forth in the Investigative Report, is the answer he provided, that "…*he knew that students ate in the Wrestling Room, but he didn't know how many*." Ms. Nodolf noted that if he had answered to the effect that he didn't see nor was he otherwise aware that students were eating in the Wrestling Room during the practice sessions; she wouldn't have bothered to ask him if he knew how many?

Additional arguments by the Union relating to the Breyen grievance:

1. Based on Mr. Breyen's testimony and that of Ms. Nodolf and Mr. Bizal, the Union urges the arbitrator to credit Mr. Breyen as it relates to his exact statement regarding whether he saw or knew that students were eating lunch in the Wrestling Room.
2. It is clear that Mr. Breyen believed that students were permitted to use the Wrestling Room during practice schedule lunch, so the District's allegation that he failed to move kids out of the Wrestling Room to areas they were supposed to be, is not true; because he honestly believed that they could use the Wrestling Room for lunch.
3. It should also be noted that Coach Eric Ostmoe admitted during his interview with Ms. Nodolf that during the football season in 2009 he had on one occasion, just before a game, cut through the Wrestling Room on his way to the Training Room and had seen students in the Wrestling Room. Mr. Ostmoe was not disciplined by the District, even though he admitted seeing students in the Wrestling Room. This oversight occurs in the face of the District's assertion that those coaches disciplined had specifically seen or wee other wise aware that students were in the Wrestling Room during the practice schedule lunch periods.

With respect to the question as to what Mr. Breyen's exact answer was to Ms. Nodolf's interview question as to whether he saw or was aware that students were using the Wrestling Room during the practice schedule lunch periods; I find that his answer, as set forth in the Investigative Report, is the correct one. That is, "…*he knew that students ate in the Wrestling Room, but didn't know how many*." That finding is based on my observation of his demeanor while testifying. He was evasive in answering certain questions, particularly those where he perceived that a "wrong" answer could be personally damaging to his position. Overall, he appeared to be less than fully open, forthright and candid in his testimony, as he appeared to carefully weigh his words to minimize what he may have considered potential bad answers.

As to the contention that Mr. Breyen believed that students were permitted to use the Wrestling Room during the practice schedule lunch periods; that belief was clearly erroneous and contrary to the instruction/direction issued to the coaches and students during the meeting with them on August 16. Accordingly, I find that having been present at that meeting, Breyen either knew or reasonably should have known that the Wrestling Room was not an authorized location for students to use for lunch. Consequently, since he acknowledged that he knew that students were, indeed, using that venue then he had a duty and responsibility to check the Room and ask any students found to leave the area immediately. I also note that he specifically told Ms. Nodolf, during his interview that he didn't check the Wrestling Room because it wasn't part of his Locker Room duty.

With respect to Mr. Ostmoe, the record is devoid of any specific indication as to why he wasn't included in the disciplinary action, but I will surmise that it may be because, unlike those disciplined, he wasn't aware of or didn't see any students in the Wresting Room during the 2010 practice schedule. Additionally, the record doesn't indicate or establish that the Wrestling Room was an unauthorized lunch venue during the 2009 football season or specifically with respect to the actual game season. Finally, I note that Mr. Ostmoe, for whatever reason, was not scheduled by Coach Cross for Locker Room duty during the 2010 practice schedule. Accordingly I find no merit in the Union's contention of disparate treatment with respect to Coach Ostmoe.

CONCLUSIONS AND DECISION – MICHAEL BREYEN GRIEVANCE

In view of the Parties' arguments, my findings and the record testimony and evidence, I conclude that the Employer/District has met its burden of establishing that the discipline imposed upon Mr. Breyen meets the accepted standards of Just Cause. Concurrently, I conclude that the Union's arguments and evidence are insufficient to demonstrate lack of just cause.

Accordingly, the Breyen grievance is hereby denied and is dismissed in its entirety and the District's disciplinary action is sustained. See proviso below.

CLOSING DISCUSSION

I also clearly see why this matter was not amenable to an informal resolution by the Parties themselves. I presume that some or all of these factors and considerations probably contributed to that situation:

- The hazing disclosures obviously caught everyone, except the student-players, completely by surprise. In reviewing the student interviews contained in the Investigation Report, I noted statements by students to the effect that the students kept the whole hazing situation "…*a pretty good secret and made sure no one told*." and that "*the coaches had no clue*" as to what was going on.

- Almost immediately upon the internal revelation of the hazing situation, the matter also became something of a "*media circus"* within the Metro Area, with the news media and irate and angry parents confronting the District for answers as to how and why such a circumstance could have occurred in their school system. In fact, at one point, the situation made national news.
- With the situation quickly going "Public", what perhaps would have normally been handled by the District Administrators, became a formal matter before the School Board.
- In assessing the Investigation Report and the District's staff supervision policies and practices, I'm certain that the Board noted that the hazing situation was revealed by parents, not by the coaches responsible for supervising the student–players. Then the question became, why didn't our supervision system work?
- Given the totality of circumstances in late August and early September of 2010 and the unprecedented and extraordinary nature of the situation, "No Action" was really not a credible or reasonable option for the School Board.
- And all of this because a group of thoughtless, but wily and devious players decided that their high school football experience wasn't full and complete without subjecting certain of their teammates to a stupid, meaningless and humiliating "hazing' practice and with absolutely no concern for the adverse effects of their actions on themselves, their parents, their school, their coaches and their community.

PROVISO

Although I have denied the grievances, I am adding this Proviso to resolve the issue of alleged false or inaccurate statements in the Letters of Reprimand issued by the District to the Grievants in September, 2010.

Each Grievant is hereby authorized to submit a one-page document to the District specifically noting any alleged false or inaccurate statements in his Letter of Reprimand and specifying how the false or inaccurate information should be corrected. These documents may be submitted to the District, via Mr. Bizal, the School Principal, within fourteen (14) business days from the date of issuance of this Decision. The District, upon timely receipt of any such documents from the Grievants, shall make the document a part of the Grievant's Letter of Reprimand, until such time as the Letter may be subsequently rescinded or permanently removed from the individual's official personnel file. The District may also afford this Proviso option to Coach John Pink with a similar deadline.

Dated at Minneapolis, Minnesota this 23rd day of May, 2011.

_____
Frank E. Kapsch, Jr. – Arbitrator

Note: I shall retain jurisdiction in this matter for a period of forty-five (45) calendar days from the issuance of this Decision to address any questions or issues relating thereto.