

Before the Arbitrator Nancy D. Powers

In the Matter of:

Special School District #1, Employer

And

Ella Gerbuz, Teacher

Date: May 25, 2011

Appearances

For the Teacher: Marshall Tanick
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For the Employer: Amy Mace
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Statement of Jurisdiction

Ella Gerbuz is a choral music teacher at Southwest High in Special School District #1. She is part of a bargaining unit of teachers, which is covered by a collective bargaining agreement (hereafter CBA). After being laid off from her position as a k-8 choral teacher, she "claimed" an

assignment to teach Senior High Choral Music at Southwest High School for the 2008-2009 school year per the process outlined in the CBA.

After teaching during the 2008-2009 and part of the 2009-2010 school years, Gerbuz was recommended for termination from her position by the School Board on March 20, 2010. Gerbuz timely requested an appeal before an arbitrator. The undersigned was selected by the parties to hear the arbitration. A hearing was held on February 1, 2, 3 and 17, 2011. A record was made of the hearing. Post-hearing briefs were filed and the record was closed on March 15, 2011.

Statement of the Issue

Whether the District has proved by a preponderance of the evidence that Gerbuz should be terminated for insubordination, conduct unbecoming a teacher or inefficiency in teaching? If not, what is the proper remedy?

Relevant Statutory Provisions

§122A. 41 Teacher Tenure Act; Cities of the First Class; Definitions

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Subd. 4 Period of service after probationary period; discharge or demotion.

(a) After the completion of such probationary period, without discharge, such teachers as are thereupon reemployed shall continue in service and hold their respective position during good behavior and efficient and competent service and must not be discharged or demoted except for cause after a hearing. ...

Subd. 6. **Grounds for discharge or demotion.**

(a) Except as otherwise provided in paragraph (b), causes for the discharge or demotion of a teacher either during or after the probationary period must be:

(1) Immoral character, conduct unbecoming a teacher, or insubordination;

...

(3) Inefficiency in teaching or in the management of a school;

...

Subd. 7. **Hearing of charges against teacher.** The

charges against a teacher must be in writing and signed by the person making the same and then filed with the secretary or clerk of the school board having charge of the school in which the teacher is employed. Before the school board discharges or demotes a teacher, the board must notify the teacher in writing and state in reasonable detail its grounds for the proposed discharge or demotion, together with a statement that the teacher may request in writing within ten days after receiving the notice a hearing before the board. The board may have the notice served personally or may send it by certified mail addressed to the teacher at the teacher's last known post office address. The teacher, under subdivision 13, also may elect a hearing before an arbitrator instead of the school board.

Within ten days after receiving the notice the teacher may request in writing a hearing before the board or an arbitrator and it shall be granted. The teacher must be given reasonable notice of the time and place of the hearing before final action is taken. A teacher who fails to request a hearing within ten days is considered to acquiesce in the board's action. If the charge is made by a person not connected with the school system the charge may be disregarded by the school board. If the grounds are those specified in subdivision 6, clause (1), (2), (3), or (4), the notice must also state a teacher may request arbitration under subdivision 13. At the hearing, the school board or arbitrator shall hear all evidence that may be adduced in support of the charges and for the teacher's defense to the charges. Either party has the right to have a written

record of the hearing at the expense of the board and to have witnesses subpoenaed and all witnesses so subpoenaed must be examined under oath. Any member of the school board conducting such a hearing has authority to issue subpoenas and to administer oaths to witnesses.

Subd. 8. **Counsel; examination of witnesses.** Each party appearing before the school board has the right to be represented by counsel, and such counsel may examine and cross-examine witnesses and present arguments.

Subd. 9. **Hearings.** All hearings before the school board must be private or may be public at the decision of the teacher against whom such charges have been filed.

Subd. 10. **Decision, when rendered.** The hearing must be concluded and a decision in writing, stating the grounds on which it is based, rendered within 25 days after giving of such notice. Where the hearing is before a school board the teacher may be discharged or demoted upon the affirmative vote of a majority of the members of the board. If the charges, or any of such, are found to be true, the board conducting the hearing must discharge, demote, or suspend the teacher, as seems to be for the best interest of the school. A teacher must not be discharged for either of the causes specified in subdivision 6, clause (3), except during the school year, and then only upon charges filed at least four months before the close of the school sessions of such school year.

Subd. 11. **Charges expunged from records.** In all cases where the final decision is in favor of the teacher the charge or charges must be physically expunged from the records.

Subd. 12. **Suspension pending hearing; salary.** After charges are filed against a teacher, the school board may suspend the teacher from regular duty. If the teacher is suspended or removed after the final decision, the board may in its discretion determine the teacher's salary or compensation as of the time of filing the charges. If the final decision is favorable to the teacher, the board must not abate the teacher's salary or compensation.

Subd. 13. **Hearing and determination by arbitrator.** A teacher against whom charges have been filed alleging any cause for discharge or demotion specified in subdivision 6, clause (1), (2), (3), or (4), may elect a hearing before an arbitrator instead of the school board. The hearing is governed by this subdivision.

(a) The teacher must make a written request for a hearing before an arbitrator within ten days after receiving a written

notice of the filing of charges required by subdivision 7. Failure to request a hearing before an arbitrator during this period is considered acquiescence to the board's action.

(b) If the teacher and the school board are unable to mutually agree on an arbitrator, the board must request from the Bureau of Mediation Services a list of five persons to serve as an arbitrator. If the teacher and the school board are unable to mutually agree on an arbitrator from the list provided, the parties shall alternately strike names from the list until the name of one arbitrator remains. The person remaining after the striking procedure must be the arbitrator. If the parties are unable to agree on who shall strike the first name, the question must be decided by a flip of a coin. The teacher and the board must share equally the costs and fees of the arbitrator.

(c) The arbitrator shall determine, by a preponderance of the evidence, whether the causes specified in subdivision 6, clause (1), (2), (3), or (4), exist to support the proposed discharge or demotion. A lesser penalty than discharge or demotion may be imposed by the arbitrator only to the extent that either party proposes such lesser penalty in the proceeding. In making the determination, the arbitration proceeding is governed by sections [572.11](#) to [572.17](#) and by the collective bargaining agreement applicable to the teacher.

(d) An arbitration hearing conducted under this subdivision is a meeting for preliminary consideration of allegations or charges within the meaning of section [13D.05, subdivision 3](#), paragraph (a), and must be closed, unless the teacher requests it to be open.

(e) The arbitrator's decision is final and binding on the parties, subject to sections [572.18](#) to [572.26](#).

Findings of Facts

Ella Gerbuz is a choral music teacher in Special School District #1, Minneapolis Public Schools. Gerbuz was born and educated in Russia, coming to this country in 1989, where she obtained her teaching

credentials at the University of Minnesota and Augsburg College. She has taught in the District for over 12 years in the elementary and middle school level. After being laid off from her position as a k-8 choral teacher, she “claimed” an assignment to teach Senior High Choral Music at Southwest High School for the 2008-2009 school year in accordance the process outlined in the Collective Bargaining Agreement (hereafter CBA) between the District and the Minneapolis Federation of Teachers, Local 59.

Southwest High Principal William Smith met with Gerbuz in July of 2008 to review his expectations of the requirements as expressed in the job description, the school's fine arts performance calendar and to discuss the possible issues Gerbuz might have in this new position. Smith laid out a 100 day entry plan including introductions to music Booster Club parents, fine arts staff and student choir leaders.

Prior to her beginning the 2008-2009 school year, at Principal William Smith's urging, Gerbuz attended a Concordia College Choral Instructor's camp. Before the school year began, Smith took Gerbuz to meet with the choir parents booster group and several senior choir members of Southwest Singers, the highest level junior and senior auditioned choir.

Southwest has a very high quality fine arts curriculum. The previous choir director at Southwest was highly regarded and very successful at maintaining a very active choir program and a high standard of

performance for students. Parents were avid supporters, fundraisers and boosters of the Southwest Singers. Smith was concerned that Gerbuz did not “engage” with the parents or students, and seemed very quiet and withdrawn during the meeting with parents and student choir leaders.

Gerbuz,, who had not taught at the high school level before, had a Professional Development Plan (hereafter PDP)to assist her in her adjustment to her new position. All teachers in the District have a personal PDP plan. The plan calls for a Professional Support Committee to provide mentoring and feedback to the teacher. Gerbuz selected the members of her PDP committee. The Instrumental Music Director Keith Liuzzi and other teachers in the fine arts department were on her committee, along with Principal Smith who provided advice and support.

Gerbuz began experiencing problems immediately when school began. After only two weeks of class, 8-9 students dropped out of Southwest Singers. Smith began receiving calls and emails from parents complaining about Gerbuz’s conducting skills. Gerbuz was criticized by a visiting Mexican composer who observed her directing the Southwest Singers choir on four occasions in September 2008. He was participating in a residency program at Southwest in conjunction with Vocalessence, a professional Minneapolis choir.

He stated that Gerbuz was “smaller than the group” and that the students were “hoping for more” and “disappointed.” He was not

optimistic that the choir would be successful considering all the issues Gerbuz would need to address before “she really shows that she is a Choral Conductor”. Smith was alarmed by this feedback.

Parent Teacher conferences were held on October 3, 2008. Several parents expressed concerns about Gerbuz’s conducting skills. Two parents wanted their students removed from her class. Given these concerns and the fact that students were dropping the elective choir in large numbers, Smith removed Gerbuz from conducting the Southwest Singers and hired a part-time director in her place on October 6, 2008.

Gerbuz continued to conduct Dona Voce, an auditioned women’s choir, Freshman Choir, Treble Choir and Keyboarding for the 2008-2009 year.

Smith observed Gerbuz on many occasions during the fall of 2008. There were several meetings with Gerbuz’s PDP committee to discuss ways to support Gerbuz. Liuzzi expressed concerns about Gerbuz’s capability to direct and offered to help her with various problems. Liuzzi often came into Gerbuz’s zero hour choral class and observed and offered suggestions. Gerbuz began to resent Liuzzi’s offers of help.

Gerbuz had two performances in the fall of 2008 in which her choirs performed at a level considered mediocre by her PDP committee and Principal Smith. By mid-December, Liuzzi reported that his relationship with Gerbuz was “strained” and he didn’t know how to help her, and that she

didn't appreciate his help. Gerbuz felt he was undermining her relationship with her students.

On January 5, 2009 in a meeting with Gerbuz, she told Smith she wanted to do a 9th grade original musical. Smith supported the idea and hired an outside group to assist her at her request.

On January 9, 2009, Smith met with Gerbuz to register his worries that she was not progressing into a successful choral director. He shared his impressions from his classroom observations. He told her he felt she was not the person needed for the position. Gerbuz indicated her desire to move to an elementary position within the District.

On January 20, 2009, Smith observed her class again. He later met with Gerbuz to inform her that he was requesting District support and a Mentor as provided in the CBA to help with all of the issues she was having. Pat Teske, District Arts Coordinator and Maureen Cleary, a District PAR Mentor were notified of a need to make an assessment of Gerbuz's needs for mentoring.

The 9th grade musical was presented on January 20, 2009. It only involved 15 students out of a class of 40. Maintaining control of the class was a problem with so few students engaged with the musical.

Gerbuz was requested to help with the high school musical, but not direct it as her predecessor had done. Gerbuz had difficulties working

with the other choir director, so she was told not to accompany the choir, but to assist in other ways. Gerbuz felt “pushed out”.

Smith prepared and presented to Gerbuz a formal “Notice of Concern and Expectation” on February 9, 2009. In it, he detailed the job description and the various areas in which he believed she was not performing at a level expected by him. Among other concerns, he noted that none of her students performed in the “Hot Notes on a Cold Night”, contrary to his expectations. She did not have a positive relationship with the parent booster group. She was not actively recruiting students to choir. Smith was concerned about the survival of the choral program at Southwest. He felt Gerbuz was not leading, taking initiative, or energizing the program or students.

Smith met with Pat Teske, District Fine Arts Coordinator again on February 25, 2009 to discuss his concerns and figure out how to help improve Gerbuz’s conducting skills. On February 26, the director of Vocalessence wrote to Teske with her objections to Gerbuz and shared with her that the professional group was only continuing its relationship with Southwest now that Gerbuz had been replaced as director of Southwest Singers.

Gerbuz met with Pat Teske and Maureen Cleery in the spring of 2009 to help Gerbuz with her difficulties. Gerbuz stated she wanted to move

from Southwest and get a choral position in an elementary school. She was referred to the Union to pursue that option.

On April 27, 2009, Smith met with a human resources labor relations specialist to review his options. He was advised to request a Professional Support Process (hereafter PSP) assessment. The PSP is a more intensive, guided process for teacher mentoring and improvement, which was negotiated as part of the CBA.¹ The PSP process consists of a written plan with a timeline, monitored by the PSP team, consisting of colleagues, teachers who are designated as mentors and the Principal. Smith made the request for a PSP plan for Gerbuz.

During the remainder of the 2008-2009 school year, Smith thought Gerbuz would not be returning for the 2009-2010 school year. However, Gerbuz was unable to find another position, so she planned to return to Southwest for the 2009-2010 school year.

Gerbuz stated at the arbitration hearing that she felt demoralized and harassed by the Principal and the Instrumental Music Director Keith Liuzzi. She believed that they wanted her to leave so that the instructor hired to conduct the Southwest Singers would get her position. She stated that Liuzzi often spoke to her disrespectfully, sometimes in front of students or parents. Gerbuz shared these beliefs with her Union representative and Principal Smith. Smith did not agree that her colleague was acting

¹ CBA pg. 90.

inappropriately and felt Liuzzi was only concerned about maintaining the quality of the choral program at Southwest.

Gerbuz also complained that Smith had told her virtually from her first meeting that she was not prepared to teach at Southwest. She felt he failed to cooperate in helping her succeed at Southwest and removed her from opportunities to learn and develop a successful choral program.

Smith received complaints from parents and students through the end of the 08-09 school year. Some expressed concerns about whether Gerbuz would be the choir director for the following year. Smith saw a continued drop in participation of students, so he hired a part-time teacher to recruit students to choir for the fall.

Gerbuz attended another session of the Concordia choral instructors workshop in the summer of 2009.

On September 14, 2009 Gerbuz met with her PSP team and adopted a guided plan for success as outlined in the CBA². Her team consisted of Principal Smith, Keith Liuzzi, Pat Teske and Maureen Cleary. Her PSP Plan consisted of goals, objectives, strategies for obtaining the goals, resources to be used, indicators of goal achievement and a timeline of September 14 – January 6, 2010 to carry out the plan. She was to meet with her PAR mentors periodically during the process. Gerbuz did not register any objections to the plan, the timeline or her team.

² CBA pg. 90.

Gerbuz began the fall semester teaching four classes, two of which were keyboarding. She was receiving assistance from the PAR mentor Jennifer Cuff, who was designated by the District under a CBA procedure, to serve as a mentor to other teachers³.

Cuff provided services from September through December 2009. Cuff observed Gerbuz's classes on September 24, 29, November 13, December 4 and 10. She noted her concerns and made suggestions to help Gerbuz. Cuff listened to CDs of performances of Gerbuz's choirs from February 24, 2009 to establish a point from which to work. She noted her concerns about the performances and rated them as "fair", using the music adjudication form agreed on by the parties. In mid-December Gerbuz observed another choir director at South High.

The PSP team independently rated Gerbuz's choir performances from the Fall 2009 Fine Arts Festival as part of the plan. The teams's ratings of Gerbuz's choirs performances continued to be only in the fair category throughout the fall of 2009. After a period of counseling and mentoring, and three progress reports, her PSP team recommended referral to a Professional Assistance Review (hereafter PAR) panel⁴, as they all felt further services would not result in sufficient improvement of Gerbuz's skills.

A packet of materials detailing the entire chronology of Gerbuz's teaching at Southwest and the PSP plan and evaluations from the team

³ CBA pg. 93.

⁴ CBA pg. 91.

were provided to the PAR panel. Gerbuz was to provide whatever materials she wished the PAR panel to consider.

Each member of the PSP team provided a written rationale to support their recommendation.

Keith Liuzzi stated: "Based on my observations of and discussions with Ms. Gerbuz and from student feedback, I feel Ella Gerbuz is not an articulate or engaging vocal music teacher, conductor, or performer. Her minimal improvement over the last 16 months in the ability to work with high school students (teaching piano classes and conducting choirs) is not sufficient evidence that she will reach a satisfactory level of musicianship and vocal pedagogy. Using the rubrics from Standards of Effective Instruction, Ms. Gerbuz was rated as "requiring attention" or "developing" in every descriptor in Domain 1: Planning and Preparation – Organization, and Domain 3: Classroom Instruction. When there is no "proficient" rating, after all the support she has received, I feel we need to move to PAR review...."

Jen Cuff stated: "When determining Ella's growth areas in September (2009), a goal was set to move her students from the Fair to Excellent performance category as scored on the High School League Music Adjudication Form. While Ella showed some personal growth in her teaching and implementation of the strategies suggested through the observation feedback, the changes were not enough to move her

students from the fair to excellent category. As one example, there are fundamental and consistent pitch issues within the group that go unaddressed regularly during rehearsals. As a result, performances are not at the highest level. All concert scores as of the December concert remain in the fair category.

It is the responsibility of the conductor to demand a high level of performance from their singers at all times during rehearsals and in concerts. A high school choral conductor needs to have a dynamic personality with persistent attention to detail and refinement. The position of high school choral director is not a good fit for Ella."

Pat Teske stated: "Ella collects data regarding students vocal assessments by listening to students, however, does not document the formative assessments with the clear expectations of what is being assessed with aligned exemplary vocal models. Of the 10 items in Domain 1, my rating of Ella includes 4 "requires attention" and 6 "developing" descriptors.

While another member of the PSP team observed Ella teaching choir classes, Ella's syllabus reflected participation as the main goal of the class with no reference to standards and learning goals. Throughout this year, Ella has revised her syllabus which now includes standards, and she place the rating list of the state adjudication forms on the syllabus. However, no specific learning goals are sited (sic) for students. The ratings

of the first concerts showed a disparity between Ella and her team members (Pat and Jen). For the second concert, Ella and I rated them together and found that our ratings became more aligned, however remained in the fair category.”

Maureen Leary stated: “... While Ella remained professional and cooperative with the PSP process, her rate of growth toward the Indicators in her plan in response to services by her team has not been sufficient to justify continued services within this environment, and does not predict that she would eventually reach a standard of practice suitable for a high school level choir director position... “

Upon review of the materials documenting her participation and progress in the process, the panel unanimously recommended Gerbuz be considered by the Professional Assistance Review committee for termination from her position for failure to achieve a sufficient level of competency.

The PAR committee⁵ is comprised of two teachers, one principal, one labor relations administrator and a PDS mentor not involved with the teacher's PSP team. The PAR committee received all of the documentation from the PSP process.

The PSP team members appear before the PAR panel to discuss the process and their assessments. They answer any questions of the PAR

⁵ CBA Article V, § I.

panel. The Principal also has a meeting with the PAR panel, followed by a meeting with the teacher, then the District's mentor. This meeting was held with Gerbuz on February 24, 2010.

The PAR committee recommendation was unanimous that Gerbuz be referred for discharge.

The school board considered the recommendation and recommended her termination on March 20, 2010 for the statutory reasons of insubordination, inefficiency and conduct unbecoming a teacher

Arguments of the Parties

Argument of the District

The District argues that a preponderance of the evidence supports the District's conclusion that Gerbuz was inefficient in her teaching, was insubordinate and engaged in conduct unbecoming to a teacher under the Minnesota Teacher Termination statute.

Shortly after assuming her position at Southwest, she had performance issues. Many students dropped out of choir. Other students had to be encouraged to stay in choir. Parents complained to the Principal. Principal Smith removed her from the Southwest Singers, hired another individual to conduct the choir and provided Gerbuz with support

through the 2008-2009 school year, continuing into the 2009-2010 school years with the PSP process. Her performance did not improve.

The District argues Gerbuz failed to meet indicator 1 of Goal Achievement in her PSP plan. Gerbuz failed to take the steps necessary to develop an appropriate syllabi for her classes. Gerbuz failed to provide documentation of her assessment of student's abilities. After the PSP recommendation, Gerbuz did provide documentation to the PAR committee, but upon review of the reports and Gerbuz's testimony, the documentation proved to be inaccurate and incomplete. Gerbuz's practices were directly contrary to what the PSP team had been trying to work with her on.

The District argues Gerbuz failed to meet Indicator 2 of Goal Achievement in her PSP Plan. Gerbuz was to establish and maintain high expectations of student's mastery and demonstration of specific vocal and performance skills. Pitch problems in Gerbuz's choirs were noted from the first choir performance. These problems were noted repeatedly in Cuff's observations. Gerbuz's witness Williams noted the pitch problems as did all three evaluators from the MSHSL competition.

The District argues Gerbuz failed to meet Indicator 3 of her PSP plan. Gerbuz's students concert performance was to improve from scores within the Fair range to the Excellent range. There was no improvement. Not even to the "Good" range.

The District contends that Gerbuz's conduct also constitutes insubordination. Gerbuz failed to follow Smith's written notice of concerns and expectations of February 2009. Her choir performances were to improve and Smith gave her specific directions. She was to get from behind the piano and out with the students. Gerbuz ignored this advice. She argued that other techniques were just as successful and she could choose what works for her. Pat Teske had told Gerbuz not to perform a piece of music as it was too elementary for a high school choir. Gerbuz ignored this advice. Gerbuz failed to implement an assessment system that was complete and accurate, in contradiction of her PSP team's advice.

The District contends Gerbuz engaged in conduct unbecoming a teacher. Gerbuz was given over a year to address Smith's performance concerns, yet she failed to do so. She failed to actively engage in the PSP process and follow the directions provided by the plan. She failed to deliver effective and meaningful instruction.

The District argues that its witnesses, both parents and students support the District's concerns about Gerbuz's performance. Gerbuz failed to present any evidence to rebut the District's evidence. All of the students but one who testified were her students prior to 2004. Her two colleagues who testified on her behalf were all from her previous k-8

schools. The two parents who testified were parents of students who took keyboarding, which was a secondary priority in her job description.

The District contends J. Michele Edwards testimony lacked credibility and should be disregarded. Edwards had no experience as a high school choral instructor. She only listened to a cd of Gerbuz's choir. She has no knowledge of current expectations of a high school choral instructor. Her critique of the choir's performance lacked substance.

The District argues the MSHSL rating of Excellent on one performance does not overcome the overwhelming evidence Gerbuz is a poor and ineffective high school vocal instructor. Contrary to Gerbuz's testimony at the hearing, the choir had been working on the pieces for more than two months.

The District argues that the remediability standard does not apply to cities of the first class. However, the evidence is clear that Smith provided Gerbuz more than a year to improve her teaching skills and she failed to do so. Gerbuz cannot be retained as a k-8 teacher. The contract does not permit such a reassignment. Gerbuz is licensed to teach k-12 and should have had the skills to teach at the high school level. Her performance proves she lacked the skills. Gerbuz had issues of classroom management at several schools during her employment with the District. She must be able to teach at any level.

The District contends it complied with the provisions of Minn. Stat. §122A.41 subd. 7 requiring it to “state in reasonable detail its grounds for the proposed discharge”. The grounds referred to in the section are that set forth in §122A.41, subd. 6. Gerbuz had full knowledge of her specific deficiencies which resulted in her discharge through the PSP and PAR processes. She also had Smith’s letter of concerns from February 2009.

The District argues it complied with §122A.41 subd 10. The subdivision does not apply to hearings before arbitrators. But, in any event, the District complied with the section.

Argument of the Teacher

Gerbuz argues that her termination violated Section 122A.41, subd. 10 of the Minnesota Teacher Termination statute. According to Gerbuz, her termination was not timely in that it did not occur at least “four months before the close of the school session of such school year”. Her termination was on March 24, 2010. The school year closed on June 9, 2010. There was not four months before the end of the school year, as required by the statute.

Gerbuz argues that the termination failed to meet the statutory requirement of “reasonable detail” of the grounds for discharge under Minn. Stat. Section 122A.41, Subd. 7. Her notice of proposed termination merely recited the statutory grounds of the termination statute.

Gerbuz argues she did not commit “conduct unbecoming a teacher” under Minn. Stat. §122A.41, Subd. 6(a)(1). Such conduct usually implied some type of illegal or immoral behavior. There is not such a situation in this case. The Minnesota courts have found “conduct unbecoming” to require a high standard. The standard was met in cases where a teacher was found to have stolen money, or threatening a student.

Gerbuz argues that there was also no proof of “insubordination”. Such a finding generally means an intentional failure to follow an order or directive. Minnesota courts have interpreted insubordination as “constant” or continuing “intentional refusal to obey a direct or implied order”. Gerbuz did not refuse to participate or was not unwilling to participate in the process.

Gerbuz argues that she was not an “inefficient “ teacher. Ella had testimony which counteracted the District’s case. Students and experts testified that she was a good teacher before she came to Southwest and while she taught there. She had excellent training. She overcame many barriers immigrants face. She was hard-working, dedicated, sincere, but reserved and soft spoken. She followed a very popular teacher and was in a difficult position. She made a request to transfer to another school, but her request was not acted on.

Gerbuz argues she was not given enough time to meet the high standards expected of her. She was given a list of concerns in the fall of 2009, but did not begin the PSP process until November of 2009, with the process concluding on December 16, 2009. The District's case against her was full of inaccuracies and inconsistencies. She was not a perfect teacher, but certainly not an inefficient one.

Finally, Gerbuz argues that she should be reinstated effective on the date of her proposed termination with back pay and seniority. In the alternative, she argues that a suspension for a period with reinstatement would be appropriate. Gerbuz has 12 years of service with an untarnished record, which should be considered.

Discussion and Decision

The Minnesota Teacher Termination Statute §122A.41 governs the termination of a teacher, in conjunction with the parties collective bargaining agreement.

Regarding Gerbuz's contention that the District failed to timely terminate her in accordance with §122A.41 subd. 10, the language does not apply to teachers who elect a hearing before an arbitrator. Even if the section *did* apply to a hearing before an arbitrator, Gerbuz was given charges during the 2009-2010 school year, but her termination will not be final until the arbitration is concluded, well past four months, in fact *after* the conclusion of the 2010-2011. The statute was not violated.

The charges provided Gerbuz in her notice of intent to terminate her by the District were sufficiently specific. Traditionally, termination notices have listed the statutory grounds the District will use to support its decision. The PSP process provided Gerbuz with adequate documentation about the District's concerns regarding her performance. She knew precisely why she was being terminated.

The District and the Union negotiated an extensive peer mentoring process⁶ to assist teachers who need help meeting the Standards of Effective Instruction of their respective positions. The process is thorough in the provision of peer mentors and feedback to teachers who enter the process.

The PSP process requires written goals, strategies and an evaluation of progress throughout. After the period of assistance, a teacher can be returned to a regular Professional Development Plan, can be extended in the PSP process or referred to a Professional Assistance Review committee for determination of continued employment or termination. The PAR committee is comprised of mentors, teachers, an administrator and a labor relations person, none of whom were involved in the PSP process.

In Gerbuz's case, Principal Smith repeatedly counseled Gerbuz about his concerns regarding her performance. In February of 2009 she was given an extensive memo detailing his concerns. When Gerbuz

⁶ CBA pgs 89-94

decided to remain at Southwest, the District followed this contractual process without flaw beginning in September of 2009, concluding in January of 2010.

Gerbuz was given over a year to improve her performance as a teacher with extensive support and mentoring. When this process failed to produce the results the PSP team felt was necessary, the team made a referral to the PAR committee for a determination of next steps.

The District adopted the PAR committee recommendation that Gerbuz be terminated. The grounds for her termination are those listed in the statute of “inefficient in her teaching”, “insubordination” and “conduct unbecoming a teacher”⁷.

Because I find that the District has established by a preponderance of the evidence that it had cause to find Gerbuz was “inefficient in her teaching” such as to warrant termination, I will not address the issues of whether she was “insubordinate” or engaged in “conduct unbecoming a teacher”

Gerbuz had significant difficulties in her position at Southwest. Smith provided extensive support and feedback to Gerbuz from the beginning of her tenure at Southwest. Choirs under her direction dropped dramatically in numbers. The performances of the choirs she directed were, for the most part, not up to the expectations of the Principal,

⁷ §122A.41 subd. 6.

students or parents. Gerbuz did not successfully recruit students for her choirs. Smith had more complaints from parents about Gerbuz than any other teacher he had ever had on staff.

Gerbuz claimed she was not given a proper chance to develop as a choir director. Smith made what I would consider a valiant effort to balance the need to help Gerbuz with the need to retain the reputation and viability of an elective widely-respected choir program at Southwest. His decision to remove her as director of Southwest Singers was difficult, but necessary in his opinion. Her removal did have an affect on her credibility with students and her colleagues, but her performance with the other choirs did nothing to change opinions.

There is no question that Gerbuz's assumption of the position of Southwest was difficult, given her lack of experience with senior high choirs. But the difficulty doesn't excuse her of the need to perform in the job. She was licensed to teach k-12 vocal music. It was incumbent on her to do what was necessary to meet the demands of her very explicit job description when she accepted the position.

The District is not required to provide on-the-job training, though Smith did as much as he felt he could, by sending Gerbuz to summer choir director training twice and hiring outside help for her 9th grade choir musical, among other things.

Gerbuz chose to interpret colleagues attempts to help and support as attempts to undermine her. The record indicates that colleagues, primarily Liuzzi, lost confidence in Gerbuz's ability and eventually, willingness to develop effectively.

Gerbuz provided student and parent witnesses at the arbitration to support her contention that she was a good teacher. Most of the witnesses were from her tenure as a k-8 music teacher. Two teachers from her k-8 tenure testified that she was a good teacher. None of her colleagues from Southwest, nor anyone from the Union supported her in her contention.

Gerbuz tried to qualify J. Michelle Edwards, a retired choral music college professor, as an "expert witness" on her behalf. Edwards refused to answer questions from the District which went to her credibility, thus her testimony does not qualify. In addition, Edwards only listened to recordings of representative samples of Gerbuz's choir performance. She did not observe Gerbuz teaching or leading a choir. Rating a representative sample is not sufficient evidence from which to judge whether a teacher is performing up to standard. It would be merely one piece of the evidence, along with many other factors, which, together make up a picture of a teacher's competence.

The District and the Union understood the complexity involved in determining whether a teacher is performing adequately. The process

adopted by the parties in their collective bargaining agreement takes these complexities into account. Thus, the PSP, a creature of the contract, is based on the Standards of Effective Instruction adopted by the Minnesota Department of Education. The determination as to whether the teacher is performing is measured by the assessments built in to the PSP and made by both the teacher and the PSP team. Gerbuz participated in this process. She had some objections to her plan, which were incorporated by the team.

There is no question that there was tension between Liuzzi and Gerbuz, as well as between Smith and Gerbuz, but she made no effort to have either removed from her PSP team and did not express objections to their participation or feedback during the PSP process. It was only when Gerbuz was moved to the PAR committee that she expressed these feelings. I believe the evidence supports both Smith and Liuzzi's concerns about Gerbuz's ability. In addition, it is difficult for a teacher to "criticize" another colleague. The PSP process is designed to weed out personality conflicts from legitimate concerns about performance issues.

The PSP team met repeatedly in the fall of 2009 to assess Gerbuz's progress in achieving goals outlined in the plan.

In her PSP plan, the team adequately documented that Gerbuz failed to meet Indicator 1 of Goal Achievement. The PSP team believed that Gerbuz had not provided evidence of her documentation and use of

formative assessment information for instructional planning. Teske had made specific recommendations about syllabi. Gerbuz made some changes but never fully implemented changes the team felt were essential.

The team discussed with Gerbuz the need to regularly document student's performance during the semester. Gerbuz stated she gathered such information by listening and did not keep regular documentation of her assessments. But, at the PAR committee, Gerbuz submitted evidence of some documentation on some skills consisting of pages from her grade book for a two week period in November 2009. In the arbitration hearing, the District cross-examined Gerbuz regarding this evidence of her testing and evaluation practices. It quickly became obvious that Gerbuz could not really explain what her grades reflected. Some grades were even recorded for 8/30/09, a date before the school year began.

The team found that Gerbuz failed to meet indicator 2 of Goal Achievement which had to do with establishing and maintaining high expectations for students. Gerbuz's choirs continued to be off pitch and out of tune. Cuff's observations repeatedly mentioned this and that Gerbuz did not address them during practices. The team's scoring of Gerbuz's choir performances also mentioned the problem.

The team found that Gerbuz failed to meet indicator 3 of Goal Achievement in her plan. Her student concert performances remained in

the “fair” category, which the team believed was inadequate improvement considering the effort expended to support Gerbuz.

The PAR committee reviewed all the documentation provided by the PSP team and Gerbuz. The committee adopted the recommendation of the PSP team.

The District has established by a preponderance of the evidence that Gerbuz’s teaching was “inefficient” and thus, constituted grounds for discharge.

Award

The District’s recommendation to terminate Ella Gerbuz is upheld.

A handwritten signature in cursive script, appearing to read "Barry D. Lewis". The signature is written in dark ink on a light background.

Dated May 25, 2011