

**IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN**

Minnesota Teamsters Public & Law  
Enforcement Employees' Union,  
Local No. 320

and

**BMS Case No. 11-PA-0654**

Independent School District No. 625,  
St. Paul Public Schools

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**NAME OF ARBITRATOR:**

George Latimer  
Assistant James St. Peter

**DATE AND PLACE OF HEARING:**

October 25 and November 7, 2011  
St. Paul, MN

**DATE OF AWARD:**

December 23, 2011

**APPEARANCES**

**FOR THE EMPLOYER:**

Nancy L. Cameron, Deputy General Counsel, SPPS  
Jean Ronnei, Director of Custodial and Nutrition Services  
Dawn George, Nutrition Services Coordinator  
Susan Gutbrod, Manager of Employee Relations  
Joyce Victor, Assistant Manager of Employee Relations

**FOR THE UNION:**

Paula R. Johnston, General Counsel, Teamsters Local 320  
Sami Gabriel, Business Agent, Teamsters Local 320  
Carol Gariepy, Grievant

**STATEMENT OF THE ISSUES**

The stipulated statement of issues is:

1. Did St. Paul Public Schools have just cause to terminate Grievant, Carol Gariepy?
2. If not, what should the remedy be?

**RELEVANT CONTRACT PROVISION**

ATRILCE 17, SECTION 1 – DISCIPLINE AND DISCHARGE: The Employer shall have the right to impose disciplinary actions on employees for just cause.

**INTRODUCTION**

This is a grievance arbitration between Minnesota Teamsters Public & Law Enforcement Employees’ Union, Local No. 320, and Independent School District No. 625, St. Paul Public Schools. Grievant Carol Gariepy grieved her termination in accordance with the labor agreement. On October 25, 2010, a Level 2 grievance meeting was held. The Step 2 grievance was denied on November 5. On November 23 a Level 3 grievance meeting was held. In attendance were Susan Gutbrod, Employee Relations Manager, Sami Gabriel, Business Agent for Teamsters Local 320, and the Grievant. The Step 3 grievance was denied on January 12, 2011. On January 17 the Union notified St. Paul Public Schools that it was appealing the Step 3 grievance to Arbitration. There are no jurisdictional disputes between the parties. Hearings were held on October 25 and November 7, 2011. Briefs were filed by both parties on November 28, 2011 and the record was closed.

**BACKGROUND AND STATEMENT OF FACTS**

Carol Gariepy (herein “Grievant”) is a twenty-two year veteran of the St. Paul Public Schools (herein “Employer”) and has had no prior discipline on her record. During her tenure with Employer she held positions as a Nutrition Services Assistant, Nutrition Services Supervisor I, and a Nutrition Services Supervisor II. During the summers, Grievant occasionally

worked as a Monitor/Supervisor for the Summer Food Service Program (herein "SFSP"). As she had on three previous occasions, Grievant worked as a Monitor for the SFSP in the summer of 2010.

SFSP offers children under the age of eighteen nutritious meals when school is not in session. The primary purpose of the Program is to feed low-income children, but any child can participate in the program regardless of their socio-economic status. Employer was a sponsor for SFSP, which authorized it to provide meal services to children at school sites, community sites, and park and recreation sites. During SFSP, children could have breakfast, lunch, a snack, and two sites provide dinner. Because SFSP was a federally funded and regulated program, the sponsors were required to hire monitors, like Grievant, to ensure the legal requirements were being met at each site.

SFSP monitors were required to attend trainings, at which they would learn about each SFSP site, and how to coach, support, and train the staff at their respective sites. Monitors were taught how to fill out paperwork, conduct 1 and 4 week reviews of their sites, and complete required production records, which were to be filled out on a daily and weekly basis.

Each monitor was expected to visit each assigned site at least once per week and was required to fill out a form for each visit. A site visit differed from a site review (i.e. 1 and 4 week reviews). According to the SPSP 2010 Monitor's Guide,

A site "visit" requires a monitor to ensure that the food service is operating smoothly and that any apparent problems are immediately resolved. A site "review" requires the monitor to determine if the site is meeting all the various program requirements. To accomplish this, a monitor will have to observe a complete meal service from beginning to end. All visits and reviews must be conducted and documented.

At the site visit the monitor was to assure that the paperwork had been completed and that the food was as prescribed. Monitors were to conduct a site visit with staff members to check that

staff had complied with requirements. A site review required that the monitor be on site for the entire duration of the meal service, which could last between twenty minutes to two hours.

Grievant received SFSP Monitor training in 2010 on four different occasions: May 19, June 2, 17 and 24. At the trainings held on June 17, Grievant received a Monitor Guide, which provided the duties SFSP monitors were responsible for fulfilling. As a monitor, Grievant had to use certain forms to confirm her whereabouts throughout the day and week. One such form was the monitor log. The monitor log was used as a tool to help track where they had been throughout the week. The purpose of the monitor log was accountability. The log required that monitors fill in their actual time of arrival and departure from their respective sites. These logs were to be filled out daily and turned in every two weeks.

Grievant was also trained to fill out daily time logs and time reports. The daily time log was a form used to check in and out for a work day schedule. The daily time logs functioned as a time clock. Time reports were the payroll slips each employee was required to submit to his or her manager for signature. These reports contained the number of hours worked per day by the employee.

Sponsor Site Visit Reports were mandated by the Minnesota Department of Education. All monitors, including Grievant, were trained on how to correctly fill out this document.

The Department required monitor presence for the entire meal service when a site visit was being conducted. The Department also required that the monitors report minority participation by use of the USDA SFSP Racial/Ethnic Data Form.

In addition, half-sheet memos were used to supplement site visit reports and were intended to document the visit.

On June 2, 2010, Grievant received training for Programs that were to be held in SFSP and community centers. The monitors were informed that typically the staff working at the community center sites did not have nutrition training. As a result, the monitors would have to train those individuals. The training provided to Grievant showed her how to order and receive food, prepare the menu, food items, meal accountability and production records.

In the summer of 2010, Grievant was a SFSP monitor at ten sites. Grievant's "home base" site was Frost Lake. At "home base" the monitors could check email and use the phone. A monitor could also work from home, as long as it was correctly documented on the monitor log.

On Friday July 2, 2010, Dawn George ("George"), Nutrition Services Coordinator, arrived at Frost Lake and met Shelly Johnson ("Johnson"), the site supervisor at this location. According to George's testimony, Johnson said to her, "Oh, finally someone is here from the office. I was wondering when and who was coming. I was wondering when I would see someone from 1930 Como or a Monitor." As she was leaving Frost Lake, George received a phone call from Grievant who said that she had already been there a couple of times, but was planning on going there later that day. Based on her recent interaction with Johnson, in George's mind, things did not add up. She stated at the arbitration hearing that "a red flag went up."

On July 6 and 7 the Minnesota Department of Education performed an audit of Employer, reviewing files pertaining to meal services. On July 8 during the exit interview the auditors noted that some of the record keeping done by Grievant was incomplete. George stated that this was the second "red flag," especially because it was in such close proximity to the first incident that occurred on July 2.

The auditors noted that the Grievant's and another monitor's Sponsor Site Visit Reports were incomplete. The auditors flagged the Grievant's documents because there were no comments, the date of the visit was changed, the in/out time was not accurate, there were not enough check marks in the required columns, and only five meals were checked. If a site visit report is "incomplete" by these standards, employees should document their visit by using a half-sheet memo. According to George, the other monitor's forms that were flagged as "incomplete" by the auditors had half-sheet memos attached. In its brief, Employer stated, "The [Minnesota Department of Education] deemed these memos to make the site review forms complete and asked to take a copy of the memos to use as a sample for other sponsors." (Emp. Brief at 12, footnote 4). Unlike other monitors, Grievant's paperwork did not include half-sheet memos.

Following the audit, on the week of July 12 George spoke with Jean Ronnei, Director of Custodial and Nutrition Services, about her concerns regarding the Grievant. Ronnei directed George to work with Eileen Cardwell, Assistant Director of Performance Management, Human Resources, to conduct an investigation. George then compared Grievant's time logs with Site Supervisor Johnson's time logs and prepared a report of when Johnson could confirm having seen Grievant at Frost Lake. According to George's testimony, Johnson did not miss any work days the summer of 2010. Based on George's analysis, she could confirm that Grievant was at Frost Lake only three or four times, whereas Grievant had reported having been at Frost Lake seventeen or eighteen times during that period.

George also looked at the hours worked by Michelle Thorud, Nutrition Services Assistant at Frost Lake for SFSP, and asked her about Grievant's presence during those hours. Thorud replied that she had in fact seen George more times that summer than the Grievant.

On August 2, 2010 Grievant received a memo informing her that there was going to be an investigatory meeting on August 3 regarding allegations of misconduct. At this meeting Grievant was read a Tennesen warning by Cardwell and interviewed about the discrepancies in her record keeping on the monitor logs, daily time logs, and time reports. She responded that while she may not have been there during the exact times she wrote down, she was still there.

George also had concerns about the production reports at the Network for the Development of Children of African Descent (“NDCAD”). One of the main problems with the production reports was that there were not enough food components to comply with requirements for reimbursable expenditures. Grievant told George and Ronnei that she thought the NDCAD site should be shut down. Ronnei told Grievant to go back to this site and retrain the staff on producing production reports.

After the investigatory hearing on August 3, Grievant was told to continue working, but was required to call George by 8AM everyday to inform her where she would be that day. George testified that on August 24 around 7:30AM, Grievant called her cell phone and said she was at work. When George looked at her caller ID after the conversation, it said Grievant was calling from her home phone. It is disputed whether Grievant said “at” work or “going” to work. Grievant denied that she claimed to be at work.

## **EMPLOYER POSITION**

Grievant was unable to meet the standards of job performance uniformly established by the Employer. She did not meet the many requirements for Monitors, set forth in the Monitor Guide. She also violated multiple Civil Service Rules, as detailed in the Discharge Letter. Employer argues that Grievant was properly discharged for “committing payroll theft, submitting fraudulent claims for reimbursement for meals at NDCAD, being absent without leave, failing to

do her duties as assigned, incompetent and inefficient performance, and for lying and insubordination in reporting her whereabouts on August 24, 2010.”

An example supporting these allegations is the production report for a lunch service at NDCAD in which milk was the missing component. According to George, in any meal service, milk must be offered to students. Because it was not, the number of reimbursable meals was reduced. The submission of an incomplete meal record jeopardized the integrity of the St. Paul Public Schools’ programs and raised the possibility of claims of fraud against the School District. If Employer was unable to ensure that they were providing nutritious meals to the community of children they were serving, it could not be reimbursed. And based on the paperwork submitted by Grievant it was unclear if the programs she monitored were meeting the standards set by USDA.

Additionally, Grievant lost the Employers trust by “claiming to be working at times and places when she was not” and by submitting “false and fraudulent” monitor logs, daily time logs, and time reports.” George stated that trust in the monitors was essential, that she expected honesty from her monitors, and she believed that Grievant lied about her whereabouts during their conversation on the 24<sup>th</sup>.

Upon this belief, George contacted Ronnei and Cardwell. According to her testimony Ronnei was “disappointed” and “upset” because Gariepy was a good, tenured employee with the District. Because Grievant lied to her supervisor, she lost Ronnei and George’s trust. As a result, they decided to terminate Grievant. On September 10, 2010 Ronnei sent a Loudermill letter to Grievant directing her to attend a Loudermill meeting on September 15.

At the Loudermill meeting on September 15, Grievant was given the opportunity to respond to the allegations being brought against her. At this meeting Grievant said she did not

have a key to Frost Lake, but that the custodial staff let her into the building. Prior to terminating Grievant, Ronnei asked George to gather information from the custodial staff at Frost Lake regarding how many times they let Grievant into the building. According to the information George gathered, Grievant was let into the building no more than three times. Due to these discrepancies, George could no longer trust Grievant to properly do her job. As a result, Grievant was discharged on September 30, 2010. The reasons for her discharge were outlined in her termination letter.

As a result of these inconsistencies and falsifications, she was paid for hours she did not work, which amounted to “theft of time and theft of public funds.” Grievant’s excuse that these falsifications were “unintentional mistakes,” and that she did not intend to cheat or steal, are not convincing to Employer. Furthermore, “The District has terminated employees ... for time card manipulation and time report (time card) theft.” Accordingly, the District is unwilling to employ persons who steal, regardless of their tenure with the company because it is theft of public, taxpayer funds.

Employer does not tolerate theft or fraudulent conduct, and as a result, these facts warrant Grievant’s discharge.

#### **UNION POSITION**

Employer did not have just cause to terminate Grievant. Her discipline record was spotless up until the point of her termination in September of 2010. Grievant concedes that she made mistakes on her time cards, but those were done while she was dealing with personal pressures of having an ill mother move in with her, and a bathroom remodeled as a result of this move. She did not intend to steal from her Employer by making mistakes on her time cards. She

did not commit any other misconduct that would warrant the loss of her job. She was merely sloppy in her record keeping. A series of mistakes does not justify termination or discharge.

Furthermore, the Union argues that because Grievant was disciplined and ultimately terminated for specific reasons stated in the termination letter, those reasons alone must be examined to determine if just cause existed in this case. The reasons listed were:

1. On numerous occasions Gariepy failed to perform assigned work; she failed to report to work locations; she submitted falsified Summer Food Service Program Monitor Log documents and Daily Time Log documents; and she submitted falsified Saint Paul Public Schools Time Report documents, requesting and receiving pay for time that was not worked, including, but not necessarily limited to, the instances listed.
2. On August 24, 2010, Gariepy called her supervisor at 7:33 AM, told her she was at Frost Lake and told her that it was really a mess all over the kitchen. She was not, however, at Frost Lake; she made the call from her home telephone.
3. On July 7, 2010, all of Gariepy's required Monitor paperwork for the SFSP was tagged by the MDE auditing team as incomplete.

It is the Union's position that Employer has failed to prove these three allegations.

The Union put forth the following points to support its position that Employer did not have just cause to terminate the grievant:

- The District did not prove by clear and convincing evidence, let alone beyond a reasonable doubt, that the grievant falsified her daily monitor logs, daily time logs, and time reports.
  - The grievant did not intentionally misrepresent information in her time records. Therefore, she is not guilty of theft.
  - The District did not prove that the grievant was not at the Frost Lake School when she claimed to have been there.
- The grievant did not lie to her supervisor about her whereabouts on August 24, 2010.
- The grievant's work performance with regard to the Minnesota Department of Education audit and the Network of the Development of Children of African Descent was not a failure to adequately perform her duties.

- The paperwork tagged as incomplete by the Department of Education auditors had never been brought to her attention for corrections by her supervisor and had no effect on the results of the audit.
- The grievant did not submit fraudulent documentation for the Network for the Development of Children of African Descent program.
- The grievant was not untruthful during the investigation, the grievance process or the arbitration hearing.

### **ARBITRATOR'S ANALYSIS AND AWARD**

In the forty five years since Enterprise Co. and Enterprise Independent Union (46 LA 359), the standard published by Arbitrator Daugherty has been followed universally and is therefore considered a classic on the question of just cause for discharge.

The questions are as follows: (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 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 an 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 its rules, orders, and penalties even handedly and without discrimination to all employees? (7) Was the degree of discipline administered by the company in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company?

As to the first test, this Arbitrator finds that the Grievant was sufficiently forewarned of a probable disciplinary action when she received the letter on August 2, 2010, which stated “allegations of misconduct have been reported.” The same letter strongly encouraged her to bring her Union representative to the meeting.

Neither the employee at the hearing nor the Union in its brief has argued that the rules of compliance were unreasonable or unfair. The training was ample and there was no question of the Grievant’s ability to follow the rules.

Prior to termination the Employer clearly made an effort to discover whether the employee did in fact violate the work rules. The Employer called two site supervisors and three custodians to verify the employee’s version of what had transpired. The information provided by those interviewed differed materially from the Grievant’s statements.

The interviews of the two site supervisors, Johnson and Thorud, were contemporaneously noted by George as follows:

Dawn George arrived Frost Lake and upon arrival Shelly Johnson stated, oh finally someone is here from the office, I was wondering when and who was coming.

As I was leaving around 9:30 a.m. my district cell phone went off and when I answered it I realized it was Carol G. I informed her that I was just leaving her home, Frost Lake, and she said that she had been there a couple times already but thought it may be nice to do a first week visit. Since the school was being audited, MDE might like that.

Dawn George at Frost Lake to have a confidential conversation with Shelly Johnson. I asked if she could verify the number of times that Carol had been on site when she had been there and her response was that is easy the first time was that first Friday shortly after you (George) left and then again the day before the auditors and the day of the audit. I said that would have been Friday, July 2, Tuesday July 6 and Wednesday July 7. Shelly said yes and Jean was here the day of the audit also.

Arranging for staffing needs at Harambee in Nancy Conway’s absence. Via a phone conversation with Michelle Thorud she told me (George) that it was nice to

see me this summer, she also stated she saw more of me than Carol as she was only there at Frost Lake a few times just around the audit time. (Emp. Ex. 18, emphasis added).

The Arbitrator finds that the site supervisors' reports convincingly establish the Grievant's absence from these sites for an extended period of weeks when her duties required that she be present.

One method of assuring the fairness and objectivity of the investigation is for the employer to engage a higher manager who is detached from the earlier investigation. This the Employer did by calling in Susan Gutbrod, who was at the time, Manager of Employee Relations for the Employer. Although Ms. Gutbrod is no longer employed by the school district she traveled to testify at the hearing and did so with credibility and with no evident personal animus toward the employee. She testified that she applied the Daugherty test and concluded that the termination was justified.

The Employer testified that a number of employees had been fired for outright theft or misstatement of time records. There is no evidence to suggest that this practice has not been evenhanded, nor has the Union claimed disparate treatment.

The decisive determination in this case is raised by the seventh of the Daugherty tests, that is whether the finding of Grievant's misconduct is supported by substantial evidence proving the offense and whether the seriousness of this offense justifies termination in light of the past unblemished record of the Grievant.

Termination has rightly been described as "the capital punishment in employment relations." Termination is the employer's ultimate sanction and should not be upheld in the absence of clear and convincing proof. Since the language of the Employer has been strong and suggestive of criminal offense, the Union understandably argues that such a charge cannot be

upheld in the absence of the level of proof required in a criminal prosecution, i.e. beyond a reasonable doubt. This Arbitrator does not apply the criminal standard of proof in this case. The Union further argues that the Employer must prove the specific language of the charge in the termination letter. That letter charged as follows:

1. On numerous occasions Gariepy failed to perform assigned work; she failed to report to work locations; she submitted falsified Summer Food Service Program Monitor Log documents and Daily Time Log documents; and she submitted falsified Saint Paul Public Schools Time Report documents, requesting and receiving pay for time that was not worked, including, but not necessarily limited to, the instances listed.
2. On August 24, 2010, Gariepy called her supervisor at 7:33 AM, told her she was at Frost Lake and told her that it was really a mess all over the kitchen. She was not, however, at Frost Lake; she made the call from her home telephone.
3. On July 7, 2010, all of Gariepy's required Monitor paperwork for the SFSP was tagged by the MDE auditing team as incomplete.

As to allegation number one, the Union acknowledges and the record demonstrates wide discrepancies between the recorded statements by the Grievant and the facts of record. They attribute this very long list of inaccurate and false statements to mistakes caused by stress from her mother's illness.

The Employer correctly notes that the Grievant, following the investigative meeting on August 3, 2010, turned in precise and proper reports which had previously been anything but accurate. The Employer concludes that her later accurate reporting demonstrates the willful falsification of her previous reports. The Union counters that conclusion with the assertion that remediation was achieved following the investigative meeting. The Arbitrator concludes that the earlier inaccuracies were, if not willful falsification, certainly were with reckless disregard for the facts.

The August 3 meeting was within two weeks of the disputed record keeping dates. The Union attributes Grievant's inability to recall from that recent time to the stress and confusion

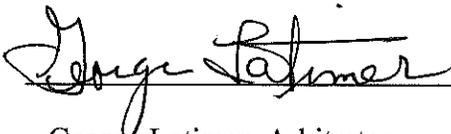
that the Grievant naturally felt upon learning that her job was in jeopardy. At the Loudermill hearing on September 15, Grievant prepared a document with explanations for the discrepancies in her monitor logs, daily time logs, and time reports.

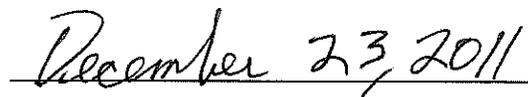
This Arbitrator is not persuaded by the Union's argument that Grievant was unresponsive at the investigatory meeting because she was flustered and unprepared. The Grievant's testimony at the arbitration hearing was equally unconvincing. Repeatedly the Grievant testified in a circular way by asserting that her records must have been accurate because she wrote it that way. In fact on numerous points the Grievant's reports were inexplicable in light of the record.

Grievant's hardship at home with her ill mother was offered as a reason for the misstatements. The Grievant acknowledges she did not inform the Employer of the hardships. The Employer cannot be expected to give allowance for unknown circumstances.

This Arbitrator concludes that in the context of this employee's training and experience, the misstatements and falsehoods are simply not credible as mere mistakes, but were willful and false statements. It is not necessary, nor is it within this Arbitrator's jurisdiction, to conclude theft or fraud. In a supervisory, self-directed role like the Grievant's, trust is a central, crucial expectation. By her conduct Grievant has broken that trust. The Employer's Decision to terminate was well within the Employer's management prerogative, supported by the record, and satisfied the tests for just cause discharge. In light of the Arbitrator's conclusion on the first charge, charges two and three are rendered moot.

The grievance is denied.

  
George Latimer, Arbitrator

  
Date