

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

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WAREHAM SCHOOL COMMITTEE *

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-and-

ARB-12-1941

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AFSCME, COUNCIL 93 *

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Gregor A. Pagnini, Esq. - Representing Wareham School Committee

Karen E. Clemens, Esq. - Representing AFSCME, Council 93

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The grievance is denied. The termination of Charlene Hamel was for cause.



Timothy Hatfield, Esq.
Arbitrator
May 21, 2014

INTRODUCTION

On June 18, 2012, AFSCME, Council 93 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department.¹ The undersigned Arbitrator conducted a hearing at the Wareham Town Hall on April 4, 2013, June 17, 2013 and September 13, 2013.

The parties filed briefs on November 5, 2013.

THE ISSUE

The Parties were unable to agree on a stipulated issue. The proposed issue before the arbitrator is:

The Union proposed:

Was there just cause to terminate Charlene Hamel? If not, what shall be the remedy?

The School Committee proposed:

Did the termination of Charlene Hamel violate the collective bargaining agreement? If so, what shall the remedy be?

¹ Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

Issue:

As the parties were unable to agree on a stipulated issue, I find the appropriate issue to be: Was the termination of Charlene Hamel for cause? If not what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article II – Management Rights Clause

The Committee and the Union agree that the Committee and the Superintendent shall retain and reserve all their statutory rights, authority and obligations in the administration of the school department and the direction of its employees.

Further, the Union agrees to be bound by the rules and regulations of the Committee and the Superintendent except as modified by the Agreement.

Article VI – Grievance Procedure (In Part)

A. Definition: For the purpose of this Agreement, a grievance shall be defined as a dispute between a member of the bargaining unit covered by this Agreement or the Union and the Committee over the interpretation or application of an expressed written provision of this Agreement.

Article VII – Arbitration (In Part)

The grievance shall be submitted to an arbitrator who shall be selected mutually by the parties. If the parties do not select an arbitrator within fifteen (15) calendar days from the date of submission of a grievance to arbitration, then either party may request a list of five (5) arbitrators from ... the Massachusetts Division of Labor Relations. ...

The arbitrator shall be bound by the written submission of both parties of the grievance. His decision shall not extend beyond said submission nor alter, amend, or modify the provisions of this Agreement. Nor shall the arbitrator render a decision which shall impinge upon any reserved rights and duties of the Committee. ...

Article XXIV – Evaluation (In Part)

Custodians shall be evaluated annually by their respective Principal and Head Custodian. ... All evaluations pursuant hereto shall be in writing and the employees shall sign to acknowledge that he/she has had the opportunity to review the evaluation report, with the expressed understanding that such signature in no way indicates agreement with the report. The employee shall have the right to submit a written response to the evaluation report, which will become part of the employee's personnel file along with the written evaluation. ...

FACTS

The School Committee and the Union are parties to a collective bargaining agreement that, by its terms, was in effect from July 1, 2010 to June 30, 2013. The collective bargaining agreement covers certain employees of the School Committee, including custodians. Charlene Hamel (Hamel) worked as a custodian for the Wareham Schools from 2004 until her termination on April 17, 2012.

Hamel worked at the Middle School from 2004 until 2009. Hamel received five evaluations while working at the Middle School.² In 2006, Hamel received an evaluation that contained three "needs improvement" marks. In 2007, Hamel received an evaluation with four "needs improvement" marks including the same three from the previous year. In 2008, Hamel received an evaluation with five "needs improvement" marks including the same four from the previous year.

In August 2009, Hamel was transferred to the East Wareham Elementary School. In May 2010, Hamel received an evaluation that contained three marks of "needs improvement", five marks of satisfactory, and two marks of excellent.

² Two of these evaluations were incomplete, as one was given only nine days after she began working, and her last evaluation was given upon her return from a nine-month leave for a back injury.

Noted on this evaluation was the recommendation that Hamel keep a notebook to write down instructions. In November 2011, Hamel was transferred to Minot Forest Elementary School (Minot Forest).³

At Minot Forest, Hamel's direct supervisor was Head Custodian Ann DeMelo (DeMelo). Hamel's first few months at Minot Forest were without incident. Beginning in February, 2011 there was a decline in Hamel's performance. DeMelo, in addition to showing Hamel how to clean certain problem areas during her shift, even spent four hours of her own time attempting to help Hamel with the areas of cleaning that she claimed she needed training on.

On March 14, 2011, Hamel wrote a letter to Ana Miranda (Miranda), the Director of Operations and Finance. The letter contained her denial that she had yelled at her Lead Custodian (Lead), as well as complaints about DeMelo. Specifically, Hamel complained that she was being retaliated against, and slandered. She also complained that DeMelo spoke to her disrespectfully and was trying to bully her. Finally Hamel complained that the four-hour custodian was not helping her but only helping the Lead.

³ The School Committee asserts that the transfer was in response to Hamel's need for more direct supervision. Hamel testified that she was transferred after declining an offer to become Head Custodian at the East Wareham Elementary School. I credit the School Committee on this issue. Due to the School Committee's ongoing concern with Hamel's work performance, I do not find it plausible that the reason behind Hamel's transfer was her rejection of a Head Custodian position at the East Wareham Elementary School.

On March 23, 2011, DeMelo began providing Hamel with notes that described problem areas that needed cleaning or re-cleaning and suggestions for improvements in Hamel's work.⁴

On April 5, 2011, Hamel was suspended for one day by Joan Seamans (Seamans), principal at Minot Forest. The suspension was for leaving the building two times without authorization, and for insubordination for refusal to comply with DeMelo's requests. Seamans stated that in the future, Hamel was expected to do the following:

- 1) If you are given a directive to follow from a supervisor, comply with that directive.
- 2) If you need to leave the building, whether it is during your break or supper, make eye contact and request permission to leave. Inform your supervisor when you will be returning.
- 3) Sign out on the clipboard on the front office counter and sign back in when you return. This is the procedure for all staff.

Hamel did not file a written response to the suspension letter and no grievance was filed on her behalf over the suspension.

Following Hamel's suspension, DeMelo continued to leave notes for her about work that had not been completed in her prior shift and what she needed to do to correct it. DeMelo received complaints from teachers, other custodial staff

⁴ The School Committee asserts that these notes were in response to Hamel's repeated statements that she forgot certain tasks that needed to be done on each shift. Conversely, the Union argues that the notes began appearing only after Hamel complained in writing about DeMelo and were a form of nit-picking and bullying. I credit the School Committee on this issue. As far back as Hamel's 2010 evaluation it was noted that she would benefit from using a notebook to write down instructions and any questions she might have during her shift.

and students about dirty areas. DeMelo brought all of these complaints to Hamel's attention after they were received.

On May 31, 2011, Hamel injured her back at work and went out on injury leave. Hamel had been scheduled to receive her yearly evaluation the next day on June 1, 2011. Hamel's injury kept her out of work until December 12, 2011. On December 16, 2011, Hamel received her June 1, 2011 evaluation. On this evaluation, Hamel received one satisfactory mark, seven needs improvement marks, and two unsatisfactory marks. Attached to the evaluation were six pages of comments and explanations about each of the categories. The comments covered activities that occurred from February to the end of May 2011. Hamel did not file a written response to the evaluation.

On December 29, 2011, Hamel filed a complaint with the Massachusetts Commission Against Discrimination (MCAD). Hamel alleged discrimination based on her back injury and discrimination against the Town and DeMelo. This complaint was ultimately dismissed.

On January 5, 2012, Hamel filed an internal complaint with the school's Title IX coordinator claiming "disability harassment, intimidating and hostile work environment and retaliation." By letter dated January 25, 2012, this complaint was dismissed.

On January 6, 2012 a hearing was held regarding allegations of insubordination and unprofessional behavior by Hamel towards DeMelo. By letter dated January 20, 2012, Seamans suspended Hamel for two-days for insubordination and unprofessional behavior towards a supervisor. Specifically,

Seamans found that Hamel failed to comply with DeMelo's requests to re-clean the work areas identified as dirty. Seamans informed Hamel that in the future, she expected her to:

1. If you are given a directive to follow from your supervisor, comply with that directive. This expectation also was given to you from the previous hearing determination on 4/5/11.
2. If you are given a list of areas that remain dirty and need to be re-cleaned, you are to re-clean that area on your next shift.

Hamel did not file a written response to the suspension letter and no grievance was filed on her behalf over the suspension.

On January 27, 2012, Hamel filed a second internal complaint that was investigated by Title IX Coordinator Robert Louzan (Louzan). Hamel complained that DeMelo ordered her to move a television cart that weighed more than her light duty restrictions allow. In dismissing this complaint, Louzan concluded that there was no evidence that DeMelo had created an intimidating or hostile work environment based on Hamel's disability or that DeMelo had retaliated against Hamel in any way. He also found that Hamel falsely represented an allegation against DeMelo and tried to use a doctor's note dated two days after the alleged incident to support her claim.

On February 15, 2012, DeMelo wrote a report of complaint to Seamans, which stated that Hamel had locked herself inside a custodial closet and failed to open the door when DeMelo knocked. After using her key, DeMelo found Hamel in the closet. DeMelo informed Hamel that the closet door needed to remain open if she was inside, and she needed to be available for requests from students or emergencies.

On February 22, 2012, a hearing was held regarding an incident of Hamel being locked in a custodial closet and concerns related to her job performance. By letter dated March 12, 2012, Seamans found that Hamel had been inside the custodial closet with the door locked and did not answer when DeMelo knocked. Also, Seamans concluded that Hamel had lied about the circumstances that led to her being in the closet and about how the door was opened. Additionally, Seamans found that, even with a reduced work area, Hamel job performance continued to lack improvement. Finally, Seamans found that Hamel's statements during the hearing about her work history at prior schools were inaccurate. Seamans informed Hamel that in the future, she expected her to:

1. If you are given a directive to follow from a supervisor, comply with that directive.
2. You are to keep the closet door open when you are in there. This will make it easy to locate you if needed. You are to keep the closet door closed and locked when you are not in there.
3. I do not expect to see the continuous notations regarding the strong urine odor in the boy's bathroom or the bathrooms having urine stains. It is expected that classrooms will be thoroughly cleaned without dirt under the desks or tables, bathrooms will be thoroughly cleaned and washed as needed, spills in classrooms or hallways will be washed as needed, hall floors will be swept at the start of the shift and finished prior to the end of the shift.

Hamel did not file a written response to the warning letter and no grievance was filed on her behalf over the written warning.

On April 17, 2012, Seamans provided an evaluation to Hamel which contained nine marks of unsatisfactory and two marks of satisfactory. Contained in this evaluation were ten pages of information concerning each section of the evaluation. This information contained extensive lists of specific problem areas

that had been addressed to Hamel by DeMelo and Seamans on multiple occasions. Seamans concluded by stating that there had been no notable progress by Hamel since the last meeting on February 22, 2012. She also noted that since Hamel's last evaluation, there had been a serious decline in Hamel's performance. Seamans stated that the district had repeatedly worked to support Hamel's improvement by hiring a part-time custodian to assist Hamel and by providing individual instruction. Seamans concluded that Hamel's failure to improve had resulted in conditions that were detrimental to the students in the school and recommended Hamel's termination effective immediately. The Union filed a grievance over the termination on the same day, which was denied at all steps of the grievance procedure resulting in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

The School Committee begins by noting that there is no language in the collective bargaining agreement that states that the School Committee needs just cause to terminate a custodian. Had the parties intended a just cause standard it would have been included in the agreement. Instead, the collective bargaining agreement is silent on this issue. In the absence of specific language, there is no contractual authority for the Arbitrator to conclude that the School Committee was required to have just cause to terminate Hamel. The Agreement states that the Arbitrator may not alter, amend or modify the provisions of the agreement. As such, the Arbitrator has no authority to simply apply the just cause standard

where the Agreement's own language indicates that its terms cannot be altered or amended.

However, even assuming arguendo that just cause was applicable here, the facts plainly show that the School Committee met that standard. Hamel had ample notice that she faced termination if her performance did not improve. The documents presented in this case show both the nature and the number of warnings that Hamel was given throughout her years of work as a custodian, which included job evaluations at each of the three schools she worked in, written warnings, notes from her supervisors and disciplinary action.

Hamel never contested any aspect of the numerous evaluations she had or the disciplinary actions taken against her in the eight years that she was with the Wareham School System. While at the Middle School, Hamel's evaluations ranged from three categories marked needs improvement to five categories marked needs improvement. She consistently received needs improvement in the same categories, and her principal spoke to her about what needed to be corrected, yet her performance became increasingly worse the longer she remained at the Middle School.

This trend continued after Hamel's transfer to the East Wareham School. In her only evaluation there, she received three needs improvements in the same categories as her previous Middle School evaluations. Hamel was then moved to Minot Forest School where it was felt she would benefit from increased supervision.

At the Minot Forest School, after her return from injury leave in December 2011, Hamel received an evaluation with eight marks of needs improvements and two unsatisfactory marks. Hamel's final evaluation dated April 17, 2012 contained nine unsatisfactory marks along with a lengthy statement detailing the nature and date of many instances that demonstrated Hamel's poor work performance.

Hamel filed an MCAD complaint alleging disability discrimination against the School Committee and DeMelo on December 28, 2011. This complaint came directly after Hamel received her evaluation which noted that her performance needed significant improvement. This charge was ultimately dismissed. On January 5, 2012, and January 27, 2012, Hamel filed internal complaints against DeMelo that were ultimately dismissed. The second of these charges was filed one week after she received a two-day suspension. The School Committee investigated and took seriously all of these complaints. Yet, Hamel testified at the arbitration hearing that the only reason she filed them was because she knew her job was in jeopardy. Hamel cannot genuinely assert that her complaints were not thoroughly and objectively investigated.

Further, the evidence presented indicates that the School Committee treated Hamel just like any other custodial employee. DeMelo testified that when necessary, she has written notes of the type that she routinely left for Hamel for other employees. Thus, her supervision of Hamel was in no way different than the manner in which she supervised other custodians. The only difference was the amount of difficulty DeMelo had in getting Hamel to comply and the sheer

number of complaints she continued to receive from various sources in the school.

By the time of Hamel's termination on April 17, 2012, it is difficult to conceive what else the Wareham School System could have done to improve her performance. Hamel's evaluations over the first five years of her employment made it clear that her performance was continuing to decline each year she continued to work at the Middle School. Transfers to two different schools did not help; Hamel's performance continued to decline. Once at Minot Forest, Hamel received additional training, repeated hands-on assistance from DeMelo and eventually, even the help of a part-time custodian to assist with her duties. Despite all attempts to help her, Hamel repeatedly refused her supervisor's directives to clean or re-clean certain areas. Instead, she tried to shirk her duties and avoid interaction with her supervisors, by hiding in a closet. There was no improvement in doing the most basic parts of her job. When approached about complaints, instead of addressing the concerns, Hamel became alternately confrontational or defiant. Her refusal to follow orders led to repeated disciplines for being insubordinate.

The School Committee appropriately documented Hamel's performance problems and consistently conveyed that she would need to improve or otherwise face possible termination. Hamel acknowledged at arbitration that she knew her performance needed to improve upon her return from injury leave in December 2011. She further acknowledged that from that time until her termination in April 2012, her performance did not improve. Rather she filed a

number of meritless complaints instead of improving her performance. Thus, from any perspective, termination was appropriate, and the School Committee did not violate the collective bargaining agreement. The School Committee urges that the grievance be denied.

THE UNION

The Union begins by stating that the standard of review in this case is the just cause standard. The Union argues that the Superintendent adopted this standard in the grievance process and the Employer alleged it had met this standard at the arbitration.

As to the merits of the case, the Union asserts that Hamel was not terminated for her job performance but instead was terminated because she was not liked by DeMelo and was set up to fail. The first seven years of Hamel's employment were without incident. It was not until she began working for DeMelo that Hamel had trouble. DeMelo did not want Hamel assigned to her school and retaliated against her when she complained about her.

The termination of Hamel had nothing to do with her work performance and everything to do with DeMelo's mission to have Hamel fired. DeMelo was unhappy that Hamel was being assigned to her school. Once Hamel arrived, everything was fine until Hamel went over DeMelo's head and complained about her. She complained first to the school principal and then to the Superintendent. Once Hamel complained, DeMelo made it her mission to bury Hamel.

Despite the almost daily notes that Hamel received, the employer did not address or warn Hamel that her job was in jeopardy because of her cleaning

ability. Hamel received two suspensions for insubordination and unprofessional behavior. Her first written warning that related to cleaning occurred in March of 2012, by which time Seamans had already made up her mind to terminate Hamel and issued her an unsatisfactory job evaluation.

Hamel was never given the chance to be successful at the Forest Minot School. She was assigned there from November 2010 until her termination in April 2012. The first four months were without incident. After she complained in March 2011, she received constant notes from DeMelo over the next three months, which critiqued her work and she received a one-day suspension for insubordination. Hamel was then out of work for six months on injury leave. When she returned, she was on restrictive duty. Upon her return, she received a performance evaluation that dealt only with the time period after her complaint against DeMelo. In January 2012, she was given a two-day suspension for insubordination and unprofessional behavior. She did not work the remainder of January, worked all but two days in February, and was out ten days in March. The written notice of March 12, 2012, was the first discipline addressing her cleaning performance. After receiving that notice, Hamel only worked twelve days before she was terminated. It is clear that the employer was on a mission to terminate Hamel and not to help her succeed.

It is important to note that all of the notes of concern regarding Hamel's cleaning ability were from DeMelo. There were no concerns about her cleaning raised by teachers, the only complaints by teachers were about restocking paper towels and a barrel being left in the hallway. If Hamel's cleaning had been as

poor as DeMelo's notes claimed, certainly the teachers that use those classrooms everyday would have complained.

Hamel attempted to save her job by bringing to the administration's attention the fact that she was being bullied and retaliated against by DeMelo. Instead of separating the employees to investigate the matter, Hamel was left to work with DeMelo, who continued to build a case against her.

Although the employer will undoubtedly argue that each time Hamel was reprimanded she filed a complaint, this is not true. A close look at the time line reveals that Hamel filed with the MCAD before she was suspended and the internal complaints were the same issues brought up in the MCAD complaint. Additionally, the idea that a four-hour person was hired after Hamel's injury to assist her is also untrue, as Hamel complained before her injury leave about the four-hour person doing the Lead's work and not helping her.

In a termination case, such as this case, the School Committee has the burden of proof to show that the employee failed to meet her job responsibilities. Specifically, the School Committee must establish that Hamel committed the offense charged, and that this misconduct warranted severe discipline. In the present case, the School Committee has not met its burden and did not have just cause to terminate Hamel. The Union asks that Hamel be reinstated and made whole for her losses.

OPINION

The issue before me is: Was the termination of Charlene Hamel for cause? If not what shall be the remedy?

The parties were unable to reach an agreement on a stipulated issue and empowered the undersigned arbitrator to fashion the appropriate issue. During the hearing and in their respective post hearing briefs, the parties disputed the appropriate disciplinary standard that should be applied by the arbitrator when reviewing Hamel's termination. The Union argues for a "just cause" standard, while the School Committee contends that there is no established standard because the Agreement is silent on the issue. However, Superintendent Rabinovitch's treatment of Hamel's grievance demonstrates that he applied a "for cause" standard during the grievance procedure. In his May 18, 2012 Step II grievance answer (Joint Exhibit 25), Superintendent Rabinovitch stated, in part, that:

After reading this file, looking at Mrs. Hamel's past evaluations, and interviewing the three past Head Custodians that have been her supervisors, I have decided to uphold Mrs. Seaman's (sic) decision to terminate Mrs. Charlene Hamel for cause. ...

Thus acting in a manner consistent with how the Employer previously has decided this grievance, I have decided to review whether the School Committee had "cause" to terminate Hamel.

Hamel's time at Minot Forest was tumultuous for many reasons. It is true that prior to her arrival at Minot Forest, DeMelo had some concerns about Hamel's size and ability.⁵ However, I do not subscribe to the theory espoused by the Union that "the termination of Hamel had nothing to do with her work performance and everything to do with DeMelo's mission to have Hamel fired." The parties are in consensus that the first three months of Hamel time at Minot

⁵ Hamel replaced a male employee.

Forest were satisfactory. At this point, however, Hamel's work performance began to decline. The School Committee argues that the decline coincides with the end of a three-month probationary period that Hamel mistakenly believed she was on at her new assignment. The Union claims that there was no legitimate decline in work performance, instead the perceived decline in performance was a ruse created by DeMelo after Hamel complained about her to Miranda. In fact, the Union believes that the notes that DeMelo provided to Hamel about areas that needed to be cleaned and re-cleaned were in fact DeMelo's efforts to retaliate against Hamel for complaining about her. While the Union is correct that the timing of the notes coincided with Hamel's written complaint about DeMelo, it ignores the fact that Hamel's 2010 evaluation noted that Hamel would benefit from using a notebook. DeMelo and Seamans were not the first supervisors to conclude that Hamel would benefit from the ability to refer to written notes and directions. I find that the notes that DeMelo and Seamans decided to begin giving to Hamel were intended to assist her and were not instruments of retaliation or bullying as has been alleged.

Prior to her termination, Hamel's disciplinary history at Minot Forest included a one-day suspension on April 5, 2011. The suspension was for leaving the building two times without authorization, and for insubordination when Hamel refused to comply with DeMelo's requests. Hamel did not respond to the letter of suspension and did not file a grievance over this discipline.

On May 31, 2011, Hamel injured her back at work which necessitated an injury leave until December 12, 2011. Hamel, who had been scheduled to

receive her yearly evaluation on June 1, 2011, instead received the evaluation on December 16, 2011. This evaluation contained seven marks of needs improvement and two marks of unsatisfactory. Attached to the evaluation were six pages of comment and explanation about each of the categories. The comments covered activities that occurred from February to the end of May 2011. Hamel, who did not file a written response to the evaluation, instead filed a complaint with MCAD claiming discrimination based on her back injury and discrimination against the Town and DeMelo. The complaint was dismissed, and Hamel on cross examination at the arbitration hearing testified that the reason she filed the complaint was that she felt her job was in jeopardy.

On January 5, 2012, the day before Hamel was scheduled to have a hearing concerning allegations of her insubordination and unprofessional behavior towards a supervisor, Hamel filed the first of two internal complaints with the school's Title IX coordinator claiming disability harassment, intimidating and hostile work environment and retaliation. This claim was dismissed and on cross examination, Hamel admitted that the reason she filed this complaint was because she didn't want to lose her job.

On January 20, 2012, Hamel was suspended for two-days for insubordination and unprofessional behavior towards a supervisor. Specifically, Seamans found that Hamel failed to comply with DeMelo's requests to re-clean the work areas identified as dirty. Hamel did not respond to the letter of suspension and did not file a grievance over this discipline. One week later, on January 27, 2012, Hamel filed a second internal complaint. This complaint was

dismissed and included the notation that Hamel had falsely represented an allegation against DeMelo. Again on cross examination at the arbitration hearing Hamel stated that she filed this complaint because she was concerned about being terminated.

On March 12, 2012, Hamel received a written warning for locking herself in a custodial closet and concerns related to her job performance. Specifically, Seamans noted that DeMelo had found Hamel in a custodial supply closet with the door locked and she had refused to open the door. Seamans also found that Hamel job performance continued to lack improvement. Hamel did not respond to the letter of warning and did not file a grievance over this discipline.

Hamel has a long history of under-performing in her role as a custodian in the Wareham Public Schools. As far back as 2006, Hamel began receiving evaluations with a considerable number of "needs improvement" marks. In fact from 2006 until her termination in 2012, Hamel failed to receive an evaluation with less than three marks of needs improvement, culminating with her 2012 evaluation which contained nine marks of unsatisfactory and only two marks of satisfactory. These subpar evaluations were generated by multiple supervisors/principals across the three different schools that Hamel worked in during this time. The Union's claim that Hamel's first seven years of employment were without incident ignores the fact that while there may not have been any formal discipline, there were two involuntary transfers and repeated evaluations that should have put Hamel on notice that there were significant issues with her job performance.

Based on the evidence presented at the arbitration hearing, which included: (1) Hamel's annual evaluations; (2) her admission that she knew her job was in jeopardy and was aware that her work performance needed to improve; and (3) her testimony concerning her motivation for filing the MCAD complaint and the two internal complaints, I do not agree with the Union's contention that the employer had failed to warn Hamel that her job was in jeopardy because of her cleaning ability until it was too late. Hamel had ample opportunity to improve her work performance and failed to do so. Upon realizing that her employer was not happy with her job performance, Hamel chose to file complaints against the school and DeMelo instead of improving her work performance. In all three of her Minot Forest disciplinary letters, Seamans outlined exactly what was expected of Hamel moving forward, and Hamel's work performance did not improve, but instead got worse.

For all the reasons stated above, the grievance is denied. The termination of Charlene Hamel was for cause.

AWARD

The grievance is denied. The termination of Charlene Hamel was for cause.


Timothy Hatfield, Esq.
Arbitrator
May 21, 2014