In the Arbitration of

DISTRICT OF COLUMBIA

PUBLIC SCHOOLS

and

WASHINGTON TEACHERS UNION, LOCAL 6

OPINION AND AWARD

AAA No. 16-20-1300-0499 AVH
(Termination of Thomas O'Rourke)

Appearances

For DCPS	-	Kaitlyn A. Girard, Esq.
For the Union	-	Lee W. Jackson, Esq. Daniel M. Rosenthal, Esq. Thomas O'Rourke, Grievant
Arbitrator	-	Charles Feigenbaum

The parties to this dispute are the District of Columbia Public Schools (DCPS) and the Washington Teachers Union, (WTU or Union). The Arbitrator was selected under the procedures of the American Arbitration Association. Hearings were held in Washington D.C., on May 14, June 23 and 24, and December 15, 2015.

Both parties were represented at the hearing and had full opportunity to examine and cross-examine witnesses, to offer evidence and to set forth their

positions. A court reporter made a verbatim transcript of the proceedings and both parties filed post-hearing briefs. All witnesses were sworn.

Based on the evidence, the positions argued by the parties, and the observation of witnesses while testifying, I make the following findings and Award.

ISSUE

The parties did not stipulate the issue. Based on the total record, I have determined that there are two issues:

1. Did DCPS commit a process violation with respect to the Grievant's 2010-2011 IMPACT evaluation? If so, what shall be the remedy?

2. Was the Grievant's 2010-2011 IMPACT evaluation the result of anti-union bias? If so, what shall be the remedy?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 3 - FAIR PRACTICES

3.1 DCPS shall not discipline, retaliate against, or discriminate against any Teacher on the basis of:

3.1.1 Membership in any educator organization;
3.1.2 Association with the activities of the WTU; or
3.1.3 For requiring that DCPS adhere to the terms of this Agreement.

ARTICLE 15 - TEACHER EVALUATION

15.3 DCPS's compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.

15.4 The standard for separation under the evaluation process shall be "just cause," which shall be defined as adherence to the evaluation *process* only. [*Italics* in original.]

BACKGROUND

The Grievant worked as a teacher for DCPS from August 2001 until August

2011, first at the Hart Middle School and then at Roosevelt Senior High School. He was terminated at the end of the 2010-2011 school year, as a result of being scored as "ineffective" on IMPACT, the DCPS teacher evaluation system. IMPACT was not collectively bargained. It is, by law, a unilaterally established system developed by DCPS.[1]

The following statements about IMPACT are based on information contained in the IMPACT Guidebook for the 2010-2011 school year.

Group 2 teacher[2] evaluations are based on five factors:

- Teaching and Learning Framework (TLF) - measures instructional expertise and makes up 75% of the IMPACT score.

- Teacher-Assessed Student Achievement Data (TAS) -measures students' learning over the course of the year. It makes up 10% of the IMPACT score.

- Commitment to the School Community (CSC) - measures support and collaboration to school community. It is 10% of the IMPACT score.

- School Value-Added Student Achievement Data (SVA) - measures the impact the teacher's school has on student learning over the course of the school year. It is 5% of the IMPACT score.

- Core Professionalism (CP) - has four components: 1) having no unexcused absences; 2) having no unexcused late arrivals; 3) following the policies and procedures of school or program and the school system; and 4) interacting with colleagues, students, families, and community members in a respectful manner. Teachers lose points from their IMPACT score if rated "Slightly Below Standard" (5 points) or " Significantly Below Standard" (10 points).

There are five "Formal Observations" (classroom observations) of teachers during the school year. Three are by an administrator (princi-

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[1] From the District of Columbia Official Code, §1-617.18: "Notwithstanding any other provision of law, rule, or regulation, during the fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluating District of Columbia Public Schools employees shall be a non-negotiable item for collective bargaining process.

[2] As a social sciences teacher, the Grievant was included in Group 2.

pal or assistant principal) and two by a Master Educator (ME).[3] These take place within certain specified date ranges and are to last "at least 30 minutes." The observations are unannounced except for the first administrator observation.

The written reports of the observations contain narratives and scores assigned by the observers. These are referred to as evaluations. Except for Mr. Mitchell's last evaluation, all were limited to TLF, that is, what was observed in the classroom.

The 2010-2011 TLF had nine sub factors. They were:

- Lead Well-Organized Objective-Driven Lessons
- Explain Content Clearly
- Engage All Students at All Learning Levels in Rigorous Work
- Provide Students Multiple Ways to Engage with Content
- Check for Student Understanding
- Respond to Student Misunderstandings
- Develop Higher-Level Understanding through Effective Questioning
- Maximize Instructional Time
- Build a Supportive Learning-Focused Classroom Community

Ivor Mitchell was the principal of Roosevelt during the 2010-2011 school year. He arrived there in the summer of 2010 and continued as Principal until shortly before the May 14 hearing. He said he is not at Roosevelt at present because he is helping to care for his father in Connecticut who had recently suffered a heart attack.

He conducted three of the five observations of the Grievant during 2010-2011. He described his relationship with the Grievant as "courteous" and "never adversarial." The IMPACT Guidebook stated that the first administrator observation was to take place between September 13 and December 01, 2010. Mr. Mitchell conducted his observation on November 03.

Each TLF sub factor has four levels: "4" (highly effective), "3" (effective), "2"

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[3] The IMPACT Guidebook describes MEs as "impartial, third-party observor(s)" who are "expert practitioner(s) in a particular content area." They are not school based but "travel from school to school, conducting their observations without any knowledge of the Teaching and Learning Framework scores you [i.e., teachers] received from your administration."

(minimally effective), and "1" (ineffective). Mr. Mitchell rated the Grievant as 1 on three sub factors, and as 2 on six sub factors.

The time frame for the second administration observation was from December 01, 2010, to February 28, 2011, and Mr. Mitchell conducted his second observation on February 22. This time there were no 1s; instead the ratings were eight 2s and one 3.

The time frame for the third administration observation was from March 01 to June 15, 2011, and Mr. Mitchell conducted his third observation on May 27. This third observation included CSC and CP as well as TLF. Mr. Mitchell rated the Grievant as follows:

TLF - two 3s, seven 2s
CSC - three 3s, two 2s
CP - one Meets, two Slightly Below and one Significantly Below

Mr. Mitchell said that the documentation of the observation is web-based. He made written notes while observing the Grievant and then entered a summary of his notes into a computer template and these are what are shown on the evaluation forms.

He stated that each class is roughly 80 minutes long and that each of his observations lasted "easily over 60 minutes." He said he conducted post-observation conferences with the Grievant some days after each of the observations and they discussed what Mr. Mitchell had seen, what was commendable and what needed improvement.

Mr. Mitchell said he was aware of the Grievant's Union activity and that he "was a leader within the Union leadership." He interacted with him at discussion of Union issues. He said the interactions were positive; the ideas the Grievant brought to him were reasonable and they would try to come to agreement. He said there were no grievances filed during the 2010-2011 school year and that the Grievant's status as a Union representative had no impact on his evaluations.

On cross-examination he said that when he arrived at Roosevelt he spoke with assistant principals and other school officials and was given a briefing about teachers and other school staff. He was given the names of the teachers, the subjects they taught and their certification levels. He said that was the extent of what he was told about the Grievant. He said he never met or spoke with Adele Acosta, the predecessor principal at Roosevelt.

The November 03, 2011, observation took place on the first week of school in the second advisory. He said there was nothing wrong with this. It was within the IMPACT timeline and the students had already been in school. He did not recall how many other teachers he observed on November 03, but he knew that he wanted to start as soon as he could and he regarded it as very likely that he observed other teachers that day.

The two MEs who observed the Grievant during this school year were Timothy Stroud and Ijeoma Kush. They conducted their observations of the Grievant on November 08, 2010, and March 08, 2011, respectively. These were within the IMPACT timeframes.

They rated the Grievant on TLF as follows:

> Stroud - six 2s, two 1s. Mr. Stroud did not score one sub factor as he considered it not to apply.
>
> Kush - one 3, seven 2s, one 1.

The overall TLF scores for the Grievant's five observations were, in chronological order: 1.67 (Mitchell), 1.75 (Stroud), 2.11 (Mitchell), 2.00 (Kush), and 2.22 (Mitchell).

Mr. Stroud testified that when he entered the Grievant's classroom, the Grievant told him that he was going to give a quiz. Mr. Stroud said that was okay, he would watch the beginning of the class, stop during the quiz, and resume after the quiz for a total of 30 minutes of observation. He asked if that would be all right. The Grievant hesitated, Mr. Stroud said he asked if he

could go forward with the observation and the Grievant said, "Yeah, I guess."

Mr. Stroud said he was familiar with the IMPACT process requirements and that to work an observation around a quiz did not violate those requirements. On such an occasion the ME gets the teacher's permission and proceeds so long as there are 30 minutes available. He said the Grievant did not voice any concern to him other than his initial hesitation.

Mr. Stroud said he was not aware of the Grievant's Union affiliation until the Grievant told him of it at the post-observation conference. Ms. Kush said she did not know of the Grievant's Union activities.

Michelle Hudacsko is the Deputy Chief of IMPACT. She described the IMPACT observation and evaluation process and said that observations begin about three weeks after the start of the school year. That delay does not apply to a new class started later in the year. DCPS distinguishes between the start of the school year and "just transitions throughout the school year." She said that all instructional days are observable within the Guidebook timelines, even where a teacher has a new class. She stated that observations should be 30 minutes.

The Grievant's final IMPACT Report showed his score as 154.[4] A score below 175 is ineffective. Ms. Hudacsko stated that a teacher with a final school year evaluation of ineffective is subject to separation. So is a teacher who receives two consecutive minimally effective ratings. She said that the Grievant's evaluation followed IMPACT guidelines.

On cross-examination, she was asked about the length of observations should take. She reiterated that it was IMPACT policy that an observation should be 30 minutes. She said 29 minutes would be a process violation. When asked if 45 minutes would also be a process violation, she said "[o]bservations are not

[4] Ms. Hudacsko testified that the Grievant's score was reduced from 194 to 154 due to CP deductions.

45 minutes; they're 30. That is IMPACT policy."

She explained the "at least 30 minutes" language in the IMPACT Guidebook as follows:

> The reason those words "at least" are in there because there is because evaluators don't set a timer and walk out. But they leave at the 30-minute mark. It might be that they stay for 30 minutes and 15 seconds or 30 minutes and 45 seconds as something is closing out.
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> What they don't do is wait for a teacher to do the next part of the lesson activity. It's 30 minutes. And then if someone is finishing speaking, you wait for that so you close up and then you leave.
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> * * *
>
> And that allows for fairness across the system, that everyone is observed for the exact same -- exact same amount of time.

She was shown Mr. Mitchell's first evaluation of the Grievant. It showed that he had been in the classroom for at least 36 minutes while the Grievant conducted a "double bingo." She said she did not consider this a process violation, nor did she consider 45 minutes to be a process violation because the IMPACT Guidebook says that an observation should last at least 30 minutes. There could be reasons why an observation "might go a little over 30 minutes."

The Grievant testified that he served on the Roosevelt SCAC (School Chapter Advisory Committee)'s for his last eight years there. SCAC positions were elective and involved supporting the WTU building representative, a shop steward-type position. SCAC members met with principals, usually monthly, and presented issues of teacher interest and concern. The Grievant said he also served as the building representative for two years although he was not the building representative during the 2010-2011 school year.

He said he and his building representative had filed a grievance on his behalf concerning his 2002 evaluation under PPEP, the predecessor to IMPACT.

The Grievant said the result was that a DCPS hearing officer rescinded the evaluation.

Adele Acosta was the Roosevelt principal during his two years as building representative. He described conflicts with her as "almost always conducted very civilly," but they "had some words" about an information request and "I raised my voice at one point." Ms. Acosta never told him she disapproved of his being the building representative or of his SCAC membership, but she did disagree with his reading of the contract.

Mr. Mitchell came to Roosevelt in the summer of 2010, replacing Ms. Acosta. The Grievant said that after he left Roosevelt, he was told by Loraine Cousins, a school business manager, that Mr. Mitchell had told her that Patricia Pride, an assistant principal under Ms. Acosta, had briefed him about the Roosevelt faculty and staff. Ms. Pride had suggested to Mr. Mitchell that he get rid of Ms. Cousins, but Mr. Mitchell told Ms. Cousins that he found her work satisfactory.

The Grievant also testified that Bernard Creamer, who was another assistant principal under Ms. Acosta, and for one year under Mr. Mitchell, told the Grievant after he left Roosevelt that Mr. Mitchell had said at a meeting that scores for teachers were too high and needed to be pruned. Mr. Creamer also told him that Mr. Mitchell said he had a list of teachers he had plans for. The Grievant took this to mean the plans were to get rid of them.

The first year of IMPACT evaluations was 2009-2010. He was rated as "minimally effective" and he was concerned about a possible repeat of that in 2010-2011. Two consecutive "minimally effectives" could result in termination.

The Union entered into the record a document related to the 2009-2010 evaluation. There is the following statement there related to CP-4 Respect, apparently made by Ms. Pride:

> Your argumentative nature about school policy and being asked to support testing for example can get to a point where it is disrespectful when a situation is not changed in your favor. Practice of a more diplomatic tone with students and staff will help get your points across without putting others on the defensive.

Regarding the 2010-2011 observations, the Grievant said that Mr. Mitchell stayed the full period, over 80 minutes, at each of his observations. The first one he conducted was on the third official day of the second advisory, but the Grievant's second day because he had been out sick the day before. The students were not the same students he had taught earlier in the school year; this was a new class.

The second observation was by Mr. Stroud. When he came into the class, the Grievant told him he was giving a quiz that would last 30 to 40 minutes. Mr. Stroud said he would remain and observe if the Grievant would be teaching for 30 minutes after the quiz. The Grievant testified that he asked Mr. Stroud to come back at a different time, but Mr. Stroud remained and observed for 35 to 40 minutes after the quiz.

The Grievant said that when Ms. Kush started to leave, he asked her to stay a little longer so she could observe some activities he had planned for the students. She refused, saying she was leaving.

The Grievant described his relationship with Mr. Mitchell as "cordial mostly in a superficial way." He was asked if he had ever been explicitly criticized on an IMPACT evaluation for speaking out about school policy or disagreements about school policy. The Grievant testified that in a post-observation conference, Mr. Mitchell made a remark that he took to be critical of the CBA. This was that the CBA devoted 10 to 12 pages to the grievance procedure and protecting teachers, but there was nothing about resources available to teachers to help them reach students.

The Grievant described an interaction with Mr. Mitchell in the summer of

2010. It started with a meeting the chair of the social studies department held with most of the teachers in the department, including the Grievant. The teachers were presented with drafts of their teaching schedules for the new school year. The Grievant objected to the department chair about the number and nature of the courses assigned to him. The department chair said he would look into it. After not hearing from him, the Grievant emailed Mr. Mitchell expressing his opinion and the reasons that the schedule would be difficult for him, and asked if Mr. Mitchell could change the schedule.

Mr. Mitchell's email response was critical of the Grievant's request in that it "explains in great detail what you want but there is not one sentence with the word 'students.'" The Grievant said he was "disappointed and a little shocked by the tone. I thought it was scolding and belittling of me." The Grievant said he took Mr. Mitchell's response "as a warning and even a threat."

Nevertheless, Mr. Mitchell's email also invited the Grievant to meet with him to discuss the matter. The result of the meeting was that Mr. Mitchell modified the schedule.

In August, was given a document by Assistant Principal Davia Walker that showed him as assigned to a new classroom. The Grievant described the new room as being in the:

> . . . inner bowels of Roosevelt on the first floor. It had no windows, had no natural light or circulation. It had an old, very smelly carpet. It had -- I noticed after about a day in there no cell phone reception, didn't have a telephone either.

He expressed his concerns to Ms. Walker but they didn't seem to make any difference to her. He later requested and had a meeting with Mr. Mitchell. The Step 3 grievance states:

> Another aggravating issue was Ms. Pride's decision to change my room assignment to an interior classroom on another floor. Despite my objections to this change and a discussion I had with Ms. Walker and Mr. Mitchell at the beginning of last school year, they refused to reverse

> Ms. Pride's decision. I believe his ill feelings toward me and a desire to retaliate began at this time due not only to my defense of my rights per the contract but clearly Ms. Pride had informed him of my strong pro-union stance.

Also in August 2010, the Grievant prepared a draft grievance that challenged the lunch schedule for teachers because it allowed for a 35 minute lunch period, not the 45 minutes in the CBA. He said the grievance was never formally filed because Mr. Mitchell "acceded to our request."

Ricardo Quiros testified that he has taught at Roosevelt for the past 17 years. He is the present WTU building representative at Roosevelt and was the building representative during Mr. Mitchell's tenure. He said he "had a good relationship with Mr. Mitchell. It was very cordial."

When the Grievant came to Roosevelt he "was known for being a big union guy" and Mr. Quiros said he lived up to his reputation. Mr. Quiros described a conflict in the 2009-2010 school year between the Grievant and Principal Acosta. The Grievant was an SCAC member at the time. He wanted the master schedule for classes changed and Ms. Acosta "didn't want it, didn't want to hear it." At one point she told Mr. Quiros that she was "up to here from your friend. You better tell him to watch it or I'm going to IMPACT him out."

Mr. Quiros said that Mr. Mitchell had the reputation that things had to be done his way. If that was done, a teacher's IMPACT scores "should not go down. They should be decent." If a teacher didn't do things his way:

> . . . the possibility would be that there would be a lowering of the score. . . . [I]f there was a difference of opinion with Mr. Mitchell as to one of his directives, he would listen to you, but at the end of that conversation, people should follow through with his suggestions.

Mr. Quiros was asked about his IMPACT scores from Mr. Mitchell. They ranged from 2.8 to 3.5 or 3.6. He described them as "high." He stated that while issues arose with Mr. Mitchell, he never filed a grievance because they "would talk them out."

POSITIONS OF THE PARTIES

DCPS

The Arbitrator should deny the grievance in this matter because the Union has failed to prove that DCPS committed a process violation in conducting the Grievant's 2010-2011 IMPACT evaluation or that the Grievant's 2010-2011 IMPACT evaluation was the result of anti-union bias.

There was no process violation. DCPS adhered to the IMPACT procedures. The Grievant received five evaluations, three from Mr. Mitchell and one each from MEs Stroud and Kush. All evaluations were held for a minimum of 30 minutes and were followed by an evaluation conference within 15 days, as required by the IMPACT guidelines. Further, the testimony of these evaluators, and also that of Ms. Hudacsko, clearly demonstrated that DCPS followed the IMPACT procedures in evaluating the Grievant's teaching performance.

The Grievant argued that Mr. Mitchell's observation on the third day of a new advisory period constituted an IMPACT process violation. However, IMPACT policy as set out in the 2010-2011 Group 2 Guidebook stated that the first cycle for administrator evaluation started on September 13 and ran through December 01. Accordingly, any school day during that timeframe would be an appropriate date for the Grievant to be observed. Further, though DCPS established a short period at the beginning of the school year within which evaluations would not be conducted, this period before September 13th was unique to the commencement of the school year and was not extended to any other school period.

The Union may attempt to argue that Mr. Mitchell's decision to remain for the full class periods constitutes a process violation, but this is simply not the case. Though there was some contradictory testimony concerning the "proper" amount of time for an evaluation, the 2010-2011 IMPACT Guidebook states

that an evaluation must be a minimum of 30 minutes and establishes no maximum amount of time for an evaluation. While it is likely that most IMPACT evaluations last only 30 minutes, an evaluator does not violate the IMPACT process by remaining in a classroom for a longer period.

Mr. Stroud's observation on the day the Grievant gave a quiz was not a process violation. The IMPACT Guidebook does not require evaluators to reschedule evaluations around student assessments or to conduct evaluations in one complete setting without breaks. Instead, IMPACT policy requires only that evaluations must last a minimum of 30 minutes.

Further, though there was no requirement to do so, Mr. Stroud asked the Grievant if he would be comfortable with the evaluation proceeding and only after the Grievant gave an affirmative answer did Mr. Stroud move forward with the evaluation. The Grievant's self-serving testimony that he requested Mr. Stroud to come back another day cannot hold weight here, as there is no corroboration of such a request and no requirement under IMPACT that the Grievant's alleged request be granted.

The Union has failed to establish that the Grievant was a victim of anti-union bias with respect to his IMPACT evaluations. Mr. Mitchell testified that he harbored no animosity towards the Grievant for his Union activity. Further, neither Mr. Stroud nor Ms. Kush were aware of the Grievant's Union activity when the evaluations were conducted and the score reports were finalized. Finally, allegations of anti-union animus by other school leaders at Roosevelt were unsubstantiated and untimely. The claim that the Grievant's IMPACT scores were based on anti-union bias, that school leaders purposefully gave him lower scores to punish him for his Union activity, is unsupported by witness testimony and documentary evidence.

The Union did not present any witness testimony or documentary evidence to corroborate allegations that Mr. Mitchell held hostility towards the Grievant or treated him differently because of his Union activity. In fact, the

Grievant's efforts to illustrate the alleged anti-union bias by Mr. Mitchell had the opposite effect, and instead showed that he was open to dialogue with Union leaders at Roosevelt.

The Grievant characterized Mr. Mitchell's response about the "dispute" concerning his teaching assignments during the summer of 2010, as critical of him, but Mr. Mitchell invited the Grievant to set up a meeting to discuss his concerns in person. Ultimately, Mr. Mitchell took the Grievant's complaint under advisement and a change was made to his teaching schedule, thereby reducing the number of new class preparations for the Grievant's fall schedule. Similarly, Mr. Mitchell acceded to the teachers' request about the length of the lunch period.

Union witness Quiros testified that during his tenure as building representative, the Union never filed even one official grievance at Roosevelt because any issues they had were worked out with Mr. Mitchell.

Finally the Grievant will likely argue that Mr. Mitchell was tainted by anti-union animus from prior Roosevelt administrators, spread by "briefings" upon his arrival at DCPS. However the Grievant himself admitted that prior administrators never made anti-union directly statements towards him, including an admission that interactions with the prior Roosevelt principal, Ms. Acosta, were nearly all "conducted very civilly." Furthermore, Mr. Mitchell testified that he never met Ms. Acosta, though she was the administrator identified by the Grievant as allegedly harboring ill will towards him.

The so-called "briefings" amounted to nothing more than an introduction to Roosevelt, as well as identification of the school's teachers and staff, with their respective job assignments. There was no mention of union activity by the Grievant or other WTU members at the school.

The Grievant has been unable to prove that alleged anti-union sentiment on behalf of DCPS, an allegation that is denied, had any effect on his IMPACT

evaluations or final rating.

The relief requested by the Union -- to rescind or ignore the Grievant's 2010-2011 IMPACT evaluation final rating and resulting termination -- cannot be granted in this case, because doing so would be contrary to the terms of the parties' collective bargaining agreement. In 2013, the District of Columbia Court of Appeals determined, in a case involved the same parties, that evaluation results cannot be disturbed through arbitration.[5] The Court noted that the plain language of the CBA leaves no room for "rescission or amendment of the evaluation judgment on any grounds." The Court determined that a decision to the contrary "would result in the evaluation judgment being 'subject' to the grievance and arbitration procedure in contravention of §15.3."

Though the Union can challenge the Agency's adherence to the IMPACT process and other terms of the parties' collective bargaining agreement, there is no relief available to the Grievant under the terms of the agreement.

Further, any additional request for relief would be untimely under Article 6.5.4 of the CBA. Though the Union may argue the Arbitrator can craft an alternative remedy in accordance with Article 6.4.3.3 of the CBA, such referenced contractual language refers to the Arbitrator's "power to make appropriate awards." This section cannot be relied upon without taking full account of the preceding sentence, which states that the Arbitrator shall have no power to delete or modify the provisions of the CBA "in any way."

As a result, any effort to craft an alternative remedy with respect to the Grievant's removal would require the Arbitrator to add terms to the parties' agreement or, alternatively, to substitute his own evaluation judgment for that of DCPS. Such an alternative remedy would be in direct contravention of the terms of the parties' agreement, specifically the authority vested in the Arbitrator through the parties' arbitration clause, as well as the law of the

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[5] *Washington Teachers' Union v. District of Columbia Public Schools*, 77 A.3d 441, 458 (D.C.

District of Columbia, as established through the Court of Appeals decision in *Washington Teachers' Union.*

DCPS respectfully requests that the Arbitrator deny the grievance at issue in this case because the Union has failed to meet its burden of proof that DCPS violated Article 15 of the CBA and decline to grant the Grievant any relief whatsoever.

WTU

IMPACT was not collectively bargained; instead, the system's standards and procedures were created solely by the District, and the contract gives teachers little ability to challenge their IMPACT scores. They have only one form of protection: they can hold DCPS to the evaluation process that it unilaterally established. The collective bargaining agreement states that any breach of the evaluative process, by definition, constitutes a failure of just cause for termination. Given that express contractual language, and the fact that process is nearly the only protection available to terminated teachers, DCPS should be held strictly liable for any deviation from the evaluation process that it created.

Here, the record demonstrates process violations that are essentially undisputed. Although DCPS's own witness testified that classroom observations were supposed to last approximately 30 minutes, and should not exceed 45 minutes, several observations here lasted more than 80 minutes.

According to Ms. Hudacsko, under the IMPACT process, "Observations should be 30 minutes." She stated that, although the Guidebook says observations should last "at least" 30 minutes, the reason for the inclusion of "at least" was that "evaluators don't set a timer" and thus "they may stay for 30 minutes and 15 seconds or 30 minutes and 45 seconds as something is closing out."

October 10, 2013).

In other words, the process allows for evaluators to **inadvertently** stay for more than 30 minutes, but does not permit them to do so intentionally. Thus, when asked whether an observation of 45 minutes would comply with IMPACT process requirements, Ms. Hudacsko stated unequivocally that "Observations are not 45 minutes; they're 30." She agreed that the purpose of the 30-minute requirement is to provide "fairness across the system," where "everyone is observed for the exact same . . . amount of time." Common sense suggests that an additional reason for the 30-minute requirement is that observations lasting significantly longer than 30 minutes may impose undue stress on a teacher and therefore negatively impact the teacher's performance and TLF score.

In 2010-2011, Mr. Mitchell performed three of the Grievant's classroom evaluations. In each of these observations, Mr. Mitchell stayed for an entire class period, or more than eighty minutes—nearly three times as long as the thirty minutes stated in the Guidebook. For the first observation, Mr. Mitchell chose to come to the Grievant's class on only the third day the class had met, knowing that the Grievant had missed one of the two preceding days on a sick day.

Ms. Hudacsko's testimony establishes that such a long observations are a stark violation of the IMPACT process. Although an evaluator can inadvertently stay for more than 30 minutes, DCPS has not argued (and cannot credibly argue) that such inadvertence caused the violations at issue here.

Although not required for the Grievant to prevail, the evidence also suggests an explanation for these process violations: the Grievant's principal was personally hostile to him based on the Grievant's protected activities. This retaliation against the Grievant provides a separate and independent basis for the Grievant to prevail in this arbitration.

The Grievant was well known within the Roosevelt community for being a "big union guy," who lived up to that reputation. Mr. Mitchell said that he

met with the Grievant to discuss Union-related issues on multiple occasions during the 2010-2011 school year. During that year, and in several previous years, the Grievant served on the school-based SCAC.

During the year prior to his termination, Ms. Acosta told Mr. Quiros that she was furious with the Grievant as a result of his contractually permitted activities and threatened to "IMPACT him out." As for Mr. Mitchell, he earned a reputation at Roosevelt for using the IMPACT system to penalize teachers he did not like.

Mr. Mitchell's reputation for using the IMPACT system to penalize teachers he did not like raises an inference that Mr. Mitchell's poor ratings of the Grievant were pretextual. As courts have recognized, "[a] defendant's failure to follow established criteria or procedures can cast doubt on its asserted legitimate, nondiscriminatory reason for" challenged action.[6] Combined with the Grievant's frequent advocacy on behalf of teachers, and use of contractual processes, the evidence supports a finding that the Grievant's IMPACT score was infected by impermissible bias.

If the Arbitrator finds that DCPS committed IMPACT process violations in this case, and finds either that the Grievant need not demonstrate prejudice or has demonstrated at least some prejudice, then the Arbitrator must craft a remedy. Although Article 15.4 of the CBA specifies that "DCPS's compliance with the evaluation process . . . shall be subject to the grievance and arbitration process" the CBA does not specify remedies for process violations.[7]

We start with several principles that should not be controversial. First, because the CBA makes clear that process violations are grievable, it must also permit a meaningful remedy for such violations. Absent such a remedy, the

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[6] *Farris v. Clinton*, 602 F. Supp. 2d 74, 87–88 (D.D.C. 2009).

[7] If the Arbitrator rules for the Grievant as to liability, a supplemental hearing may be helpful to fully flesh out the subsequent remedy issues. But the current record provides an adequate basis to support a remedy order. For example, if the Arbitrator grants backpay, the pay scales in the collective bargaining agreement can be used to calculate it.

agreement to permit grievances of process violations would be an empty promise, not consistent with the intention reflected in the CBA. Second, the opinion of the D.C. Superior Court in this case indicates that the arbitrator's remedy cannot "rescind," "amend," or "alter the Grievant's 'Ineffective' rating." Third, the opinion does not state any other limitations regarding the possible remedies.

While the Grievant is barred from asking for his IMPACT score to be changed, he can ask that it be stripped of its harmful effects: such a remedy is entirely proper and in use by DCPS. The Grievant should be reinstated with backpay, with his file purged of all references to his discharge, and he should otherwise be made whole.

DCPS may argue that the prohibition on "alter[ing] the Grievant's 'Ineffective' rating" effectively precludes any meaningful remedy here, such as reinstatement or backpay. WTU submits that the limitation means exactly what it says: the Arbitrator cannot order DCPS to change the Grievant's rating, wherever that rating is currently reflected, e.g. in his personnel file. But there is a critical difference between the rating itself and the **consequences** of the rating -- here, the Grievant's termination. A change to the latter is not a change to the former.

Reinstatement and backpay are not only within the Arbitrator's jurisdiction, but appropriate here. Failure to adhere to the evaluation process constitutes a lack of just cause for termination, and "[a]rbitrators almost uniformly award a make-whole remedy where there is no just cause for a discharge."[8] Nothing in the record suggests that the Arbitrator should deviate from these established principles in this case.

DISCUSSION AND FINDINGS

[8] *Discipline & Discharge in Arbitration*, Ch. 13.I.A (Norman Brand & Melissa H. Biren, eds., 3d ed. 2015). The two "essential component[s]" of a make-whole remedy are reinstatement and back pay. *Id.* Ch. 13.II.A.

The matters at issue here are first, whether DCPS committed a process violation with respect to the Grievant's 2010-2011 IMPACT evaluation, and second, whether his rating of ineffective on the 2010-2011 IMPACT evaluation was the result of anti-union bias. As the above sentence indicates, it is the 2010-2011 evaluation that is the matter before me. What happened before that time period is relevant only to the extent, if any, it sheds light on the 2010-2011 evaluation.

I turn first to the claim of anti-union bias. The most troubling evidence in this regard came from Mr. Quiros's testimony. I found him to be a credible witness. I accept that Ms. Acosta told him she was "up to here" with the Grievant and that he should "tell him to watch it or [she would] IMPACT him out."

While troubling, this is immaterial. Ms. Acosta was the principal at Roosevelt in the 2009-2010 school year. She was no longer there in 2010-2011 and, as I discuss further below, I find no probative evidence that Mr. Mitchell was told, warned, or influenced by Ms. Acosta or any other administrator at Roosevelt about the Grievant's Union activities.

With respect to the 2010-2011 school year, I find scant basis for the claim that anti-union bias was a factor in the Grievant's IMPACT evaluation and subsequent termination.

The Grievant was a known Union activist. He grieved his 2002 PPEP evaluation and the evaluation was rescinded. Ms. Acosta was his principal in 2008 and 2009. He described their interactions as generally civil. However, there is one meeting at which they "had words." He raised his voice. She expressed no displeasure of his Union activities to him, but he stated that she did disagree with his reading of the CBA, hardly an unusual or sinister occurrence between Union and management representatives.

He testified that Ms. Cousins told him that that Mr. Mitchell had told her

that Assistant Principal Pride had briefed Mr. Mitchell about Roosevelt faculty and staff. According to Ms. Cousins, Ms. Pride had suggested he get rid of her. Mr. Mitchell did not do so. He told Ms. Cousins he found her work satisfactory.

The Grievant also testified that Mr. Creamer had told him that Mr. Mitchell had said that teacher scores were too high and needed to be pruned, and had also said he had a list of teachers he had plans for. The Grievant took this to mean the plans were to get rid of them.

Both of these recountings are second-level hearsay, and, even more important, they make no mention of either the Grievant or of Union activities. In addition, if what Ms. Cousins had said was accurate, Mr. Mitchell was not unduly influenced by what Ms. Pride told him. He made up his own mind.

The only first-hand testimony in the record about any briefings given Mr. Mitchell when he came to Roosevelt was the testimony of Mr. Mitchell himself. He said he was told the names of the teachers, the subjects they taught, their certification levels, and nothing more. There is no probative evidence in the record that contradicts this testimony.

Finally regarding alleged anti-union bias:

> 1) Assuming that Mr. Mitchell made a remark at the post-observations conference that was critical of the CBA, that is hardly enough to constitute anti-union bias.
>
> 2) Ms. Pride's statement in the 2009-2010 IMPACT evaluation can be seen as bias resulting from the Grievant's Union activities, but that is not necessarily the case. See the reference to having "a more diplomatic tone with students and staff." [My underlining.] Be that as it may, the question before me concerns whether the Grievant's rating as ineffective in 2010-2011 reflects anti-union bias.
>
> 3) There is nothing in the record to show that Ms. Pride's statement, no matter how interpreted, played a role in the 2010-2011 evaluation. Further, with respect to any briefings given to Mr. Mitchell when he came to Roosevelt, there is no testimony (even second-level hearsay) or documen-

tation to show that he was told anything specific to the Grievant and his Union activities, whether from Ms. Pride or others.

4) Mr. Mitchell was annoyed with the tone of the Grievant's email about his course load, but he met with the Grievant and adjusted the course load. The Grievant testified that the draft grievance about the lunch period he prepared was never filed because Mr. Mitchell made the change the Union wanted. Mr. Mitchell did not, however, make the classroom change the Grievant wanted. In his step 3 grievance, the Grievant stated that:

> I believe his ill feelings toward me and a desire to retaliate began at this time due not only to my defense of my rights per the contract but clearly Ms. Pride had informed him of my strong pro-union stance.

5) The record does not support the Grievant's belief in this regard. Mr. Mitchell made some changes the Grievant had requested, but not the classroom change. The latter is not enough to establish "ill feelings toward me and a desire to retaliate." I do not find any support, other than the Grievant's supposition, that Ms. Pride told Mr. Mitchell about the Grievant's Union activism, see 3), above.

6) If, as Mr. Quiros testified, Mr. Mitchell had the reputation that things had to be done his way and that someone's IMPACT score could suffer otherwise, that would be highly improper, but reputations, good and bad, are not always deserved. In any event, I find little support for a leap from Mr. Mitchell's alleged reputation to an assertion that he deliberately gave the Grievant a low IMPACT evaluation as the result of anti-union bias.

7) There is no firm evidence in the record that would lead me to such an assertion. The Grievant's own testimony shows that Mr. Mitchell acceded to some of his requests. Mr. Quiros, the building representative, got high ratings from Mr. Mitchell and stated that he never had to file a formal grievance because he and Mr. Mitchell were always able to talk things out.

8) Finally on this point, the record shows that Mr. Mitchell's evaluations were entirely consistent with, and mostly higher than, those by MEs Stroud or Kush. There is no evidence whatever that points to any anti-union bias on the part of either. The TLF scores they assigned the Grievant were roughly similar to those assigned by Mr. Mitchell. The Stroud and Kush scores were 1.75 and 2.00, respectively. They were higher than Mr. Mitchell's first score of 1.67, and lower than his last two scores, 2.11, and 2.22.

Regarding the claim of process violation, the language in the CBA is quite clear:

> 15.3 DCPS's compliance with the evaluation process, and not the evaluation judgment, shall be subject to the grievance and arbitration procedure.
>
> 15.4 The standard for separation under the evaluation process shall be "just cause," which shall be defined as adherence to the evaluation *process* only.

In *Washington Teachers' Union,*[9] the District of Columbia Court of Appeals reviewed a Superior Court decision that concerned whether a grievance challenging the final performance evaluation ratings of teachers during the 2009–2010 school year was subject to arbitration. The Superior Court had held that the question of whether DCPS had failed to properly follow the evaluation process was arbitrable, but that "the arbitrator cannot, as a remedy for any violation, rescind or amend the evaluation ratings themselves, although the arbitrator is free to craft other remedies."

WTU's argument to the Court of Appeals questioned the Superior Court's jurisdiction but also, and more relevant to the dispute before me:

> WTU argues that the CBA is susceptible of an interpretation that covers the entire dispute and therefore the trial court, in accordance with the presumption in favor of arbitrability, should have denied DCPS's motion to stay. Specifically, WTU argues that reading §§ 15.3 through 15.6 together, "the correct reading is that, when an evaluation is issued without following the IMPACT procedures correctly, that evaluation may be challenged through the grievance arbitration procedure," and "[a]s a remedy, the evaluation obtained in violation of the IMPACT process should be rescinded." WTU argues that "[t]his is not a challenge to the reviewing official's 'evaluation judgment' within the meaning of [§]15.3 because the correctness of that judgment is impossible to determine given the failure to follow the process correctly."

The Court of Appeals disagreed and affirmed the Superior Court's ruling:

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[9] Op. cit.

> . . . [W]e agree with the trial court and the District of Columbia that while an arbitrator can consider whether DCPS complied with the IMPACT process and, if a violation is found, can craft a remedy, the arbitrator cannot rescind or amend a final evaluation, i.e., an "evaluation judgment."
>
> * * * *
>
> In sum, while the CBA contains an enforceable arbitration provision, it also contains an express provision, § 15.3, excluding evaluation judgments from the grievance and arbitration procedure. This provision is unambiguous, and therefore the presumption in favor of arbitration does not apply. [Citation excluded.] Thus, as the trial court concluded, it can be said with "positive assurance" that the parties did not intend challenges to the evaluation judgments to be resolved through arbitration.

The IMPACT Guidebook states that the TLF "is the schools system's definition of effective instruction." The TLF's nine evaluation sub factors cover such topics as "Lead Well-Organized Objective-Driven Lessons, "Explain Content Clearly," "Engage All Students at All Learning Levels in Rigorous Work," etc.

These are the matters that the five observations covered and evaluated. The accuracy of the observations, the interpretations of the sub factors, and the evaluations and ratings of the Grievant's teaching skills and performance, all relate to the content of the evaluations; they reflect the judgments of Mr. Mitchell and MEs Stroud and Kush. These are excluded from arbitral review. What is subject to arbitral review is DCPS's adherence to the IMPACT process.

In addition to concentrating exclusively on the matter of process, I have limited my scrutiny of process to the alleged violations involving the TLF rubric. As will be seen below, there is no need to go further.

During the hearing there were three matters highlighted by WTU as claims

of TLF observation process violations.[10] These were:

1) the day Mr. Mitchell chose for his first observation;

2) the fact that Mr. Stroud conducted his observation during a class period when the Grievant held a quiz;

3) the length of Mr. Mitchell's observations.

The first two of these have not been shown to be process violations. The IMPACT Guidebook clearly stated that the window for the first administrator observation was from September 13 to December 01. Mr. Mitchell conducted his observation on November 03. Obviously, this was within the window and was not a process violation. In this connection, I credit the testimony of Ms. Hudacsko that DCPS distinguishes between the start of the school year and transitions throughout the school year, and that all instructional days are observable within the Guidebook timelines, even where a teacher has a new class.

There is disputed testimony about Mr. Stroud's observation. The Grievant testified that he asked Mr. Stroud to come back at another time because he would be conducting a quiz. Mr. Stroud denied this. I need not resolve this inconsistency. Even assuming, without deciding, that the Grievant did ask, and Mr. Stroud did refuse, it has not been shown that such a refusal would constitute a process violation. The claim is not proven.

The length of Mr. Mitchell's observations is an entirely different matter. His three observations did violate the IMPACT Guidebook.

DCPS has argued that these were not violations because the IMPACT Guidebook says that observations are to be "at least 30 minutes." That is a correct quote from the IMPACT Guidebook, but it is less than the whole story.

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[10]There are also Union claims of other TLF process violations in the record, but I consider these to be essentially disagreements with the evaluators' interpretation of the TLF factors and how they applied them to the Grievant. They are, therefore, disagreements with the content of the evaluations.

Mr. Stroud and Ms. Kush scrupulously observed a 30-minute limit. Mr. Stroud remained in the classroom once he was sure he would have 30 minutes to observe. While the Grievant testified that he wanted Ms. Kush to stay in order to see an activity he had planned, she left after 30 minutes.

It is Ms. Hudacsko's testimony, however, that I find most compelling. On direct, she stated that observations should be 30 minutes. When asked on cross-examination, about the proper length of an observation, she reiterated that it was IMPACT policy that an observation should be 30 minutes. She was asked if 29 minutes would be a process violation and she said it would. When if asked if 45 minutes would also be a process violation, she said "[o]bservations are not 45 minutes; they're 30. That is IMPACT policy." That was not quite as direct as her response about 29 minutes, but I take it to mean the same thing: she was saying that 45 minutes is a violation of IMPACT policy.

She explained:

> The reason that that -- those words "at least" are in there is because evaluators don't set a timer and walk out. But they leave at the 30-minute mark. It might be that they stay for 30 minutes and 15 seconds or 30 minutes and 45 seconds as something is closing out.
> What they don't do is wait for a teacher to do the next part of the lesson activity. It's 30 minutes. And then if someone is finishing speaking, you wait for that so you close up and then you leave.
>
> * * *
>
> And that allows for fairness across the system, that everyone is observed for the exact same -- exact same amount of time.

Her testimony became less certain on the matter of proper length of a classroom observation after she was shown Mr. Mitchell's first evaluation of the Grievant, which showed that he had been in the classroom for at least 36 minutes. She said she did not consider this a process violation, nor did she then consider 45 minutes to be a process violation because of the "at least"

language in the IMPACT Guidebook. There could be reasons why an observation "might go a little over 30 minutes."

I take as more credible what Ms. Hudacsko said before being shown Mr. Mitchell's first evaluation, as opposed to what she said after seeing the evaluation. I consider that the indented portion of her testimony, shown above, is what the IMPACT Guidebook means by "at least 30 minutes."

It is not necessary for me to make a judgment about 36 minutes, or even 45 minutes. In his testimony, Mr. Mitchell stated that each of his three evaluations lasted "easily over 60 minutes," and the Grievant said they lasted for the entire 80-minute class. It does not matter which number is used. Neither can be considered as going "a little over 30 minutes."

This leads me to the final matter I must consider: remedy. I must disagree with DCPS's contention that while the Union can challenge adherence to the IMPACT process, there is no relief available to the Grievant under the terms of the CBA.

DCPS contends that any additional request for relief is untimely. It cites Article 6.5.4 of the CBA:

> Once a grievance has been filed, it may not be altered, except that the Grievant may delete items from the grievance.

DCPS further contends that though the Union may claim that the Arbitrator can craft an alternative remedy, to do so would run afoul of the contractual language stating that the Arbitrator "shall have no power to delete or modify in any way any of the provisions of this Agreement."

It argues that crafting an alternative remedy with respect to the Grievant's removal would require the Arbitrator to add terms to the parties' agreement or, alternatively, to substitute his own evaluation judgment for that of DCPS. This would be in direct contravention of the terms of the parties' agreement, as well as the law of the District of Columbia, as established through the

Court of Appeals decision in *Washington Teachers' Union.*

I disagree with DCPS on both counts. The grievance and the remedy are related, but they are not the same thing. Asking for a new or changed remedy is not altering the grievance. The grievance here makes two assertions: 1) the Grievant's 2010-2011 evaluation was the product of anti-union bias, and 2) DCPS committed process violations. My findings are "no" to 1) and "yes" to 2).

Having found a process violation, indeed three significant process violations, there is now the separate question of what shall be the remedy. DCPS says there cannot be any remedy. The Appeals Court has said that an arbitrator cannot rescind or amend a final evaluation, and, argues DCPS, if I were to craft an alternative remedy, I would be adding terms to the CBA or, alternatively, substituting my own evaluation judgment for that of DCPS. This, it says, would contravene the CBA, as well as the Court of Appeals decision in *Washington Teachers' Union.*

This completely ignores what the Superior and Appeals Courts said on this point:

> . . . [W]e agree with the trial court and the District of Columbia that while an arbitrator can consider whether DCPS complied with the IMPACT process *and, if a violation is found, can craft a remedy*, the arbitrator cannot rescind or amend a final evaluation, i.e., an "evaluation judgment." [*Italics* supplied.]

Further, DCPS sought a stay of this arbitration in Superior Court. The Court granted the stay to the extent that the Union could not challenge "the non-arbitrable final ratings obtained under the IMPACT Instrument," but it also said that:

> If the arbitrator finds that [the Grievant's] IMPACT judgment was a form of retaliation by the DCPS, or that the DCPS did not properly follow evaluation procedure, he/she *must instead find an alternative remedy*. [*Italics* supplied.][11]

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[11] Civil Case No. 2014 CA 000082 B, Calendar II, September 09, 2014.

In the interest of determining what would be an appropriate alternative remedy, I reopened the record to permit WTU to enter two emails into the record. The first is dated March 11, 2015, and is from Union Business Agent Charles Moore to the DCPS IMPACT Team. It asks, "Please provide the actual 'no consequences language' that you use in connection with an IMPACT rating, when warranted."

The second email is the March 12 IMPACT Team's response. As pertinent, it says:

> When a teacher is No Consequences, the following note is placed on their final IMPACT report and their IMPACT dashboard:
>
> > After careful review of your case, we have determined that your final evaluation score and rating will not have consequences for the 2013-14 school year. Neither your employment nor your compensation will be affected by your rating, with one exception. In the event your school needs to excess employees during the 2014-15 school year, your 2013-14 rating will be used to complete the excessing rubric. . . .
>
> The example above is from the 2013-14 school year, and the dates will of course be updated as appropriate each year.

DCPS's response argued that no remedy was required because no IMPACT process violation had been established. It also asserted that the "no consequences" language in the email pertained to the 2013-2014 school year, and no such "information was presented from the school year in question." The email "cannot be credited as establishing the existence of a no consequences 'remedy' for the 2010-2011 school year in which the Grievant was terminated."

This argument is irrelevant. Whether or not DCPS used "no consequences" in the 2010-2011 school year does not relate to my arbitral authority, or to its appropriateness as a remedy in this case.

DCPS further said that even assuming the Union has established that the

"no consequences" status could be used for the Grievant's case, "the mere existence of this status does not establish that it is an appropriate remedy for the instant case."

I agree. Mere availability of a remedy does not make it an appropriate remedy. It is clear to me however, that "no consequences" status is appropriate and adheres to the limits set out in Articles 15.3 and 15.4, and *Washington Teachers' Union.*

DCPS included in its submission a Declaration from Ms. Hudacsko. The Declaration says in pertinent part:

> The only instance which would lead to a teacher not receiving negative consequences associated with their IMPACT score or rating would be due to a process violation surrounding TLF (the teacher's observation metric). A process violation would be, for example, a teacher not receiving a post observation conference or a conference happening outside of the specified time period. This process violation would leave the teacher eligible to receive any positive consequences associated within the final IMPACT score/rating, but would not result in that teacher receiving any negative consequences associated with that final IMPACT score/rating.

I make no judgment about whether an arbitrator is limited to the parameters stated by Ms. Hudacsko; none is needed. The fact is that I have found that Mr. Mitchell's lengthy observations, whether they lasted "easily over 60 minutes" or were for the entire 80-minute class period, were significant TLF observation violations.

Article 15.4 states:

> The standard for separation under the evaluation process shall be "just cause," which shall be defined as adherence to the evaluation *process* only.

I have found that DCPS did not adhere to the evaluation process. That being the case, there was not just cause for the Grievant's termination.

AWARD

This grievance is granted. The remedy shall be as follows:

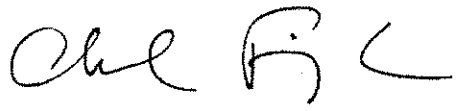
1. The Grievant's 2010-2011 IMPACT evaluation will not be changed. Instead, it will have "no consequences" status as outlined in the IMPACT Team March 12, 2015, email quoted above, and adapted to his situation.
2. The Grievant will be reinstated to his former position at Roosevelt Senior High School, or an alternative position acceptable to him.

3. The Grievant will be restored to the *status quo ante* with respect to IMPACT evaluations. That is, his last IMPACT evaluation of record shall be his 2009-2010 school year evaluation.

4. The question of the proper amount of backpay is complicated. There is a four year and eight month interval between the Grievant's termination (August 12, 2011) and today's Award. Much of that is properly payable as backpay, but part of the responsibility for delay falls on WTU. In order to best work out how much backpay is appropriate:

> The parties are hereby given 45 days from the date of this Award in which to negotiate and resolve any issues relating to backpay and benefits. If they cannot fully resolve those issues, they shall so notify the American Arbitration Association, which will arrange for a supplemental hearing solely to resolve those matters. If the parties decide, prior to 45 days, that they wish a supplemental hearing, they shall so notify the American Arbitration Association.

5. Independent of the above paragraph, the Arbitrator will retain jurisdiction for 45 days from the date of this Award for the sole purpose of resolving any disputes that may arise out of the implementation of this Award.



Charles Feigenbaum

April 04, 2016
Date