

ILLINOIS STATE BOARD OF EDUCATION

IN THE MATTER OF THE CHARGES)
FOR DISMISSAL PREFERRED)
AGAINST DARRYL MANCE)
BY)
THE BOARD OF EDUCATION OF)
THE CITY OF CHICAGO)

Board Report No. 93-0428-PE33

Before Raymond E. McAlpin,
Hearing Officer

ILLINOIS STATE
BOARD OF EDUCATION
RECEIVED

MAY 02 1994

APPEARANCES

LEGAL DIVISION

For the Teacher: Arlene Y. Coleman-Romeo

For the Board: Ted G. Goldsmith, Asst. Attorney

PROCEEDINGS

On July 21, 1993 the undersigned was appointed Hearing Officer by the Illinois State Board of Education pursuant to Article XII of the School Code to resolve an appeal by a tenured teacher from his discharge by the School Board of the City of Chicago. Hearings were held during the period of November, 1993 and January, 1994. The hearings were held pursuant to the provisions of applicable Illinois statutes and Illinois State Board of Education rules and regulations governing the termination of tenured public school teachers in this state. The Hearing Officer ordered the Parties to submit briefs and the last

of those briefs was received on March 25, 1994, whereupon the hearing was declared closed.

ISSUES

The Hearing Officer has determined that the following issue is appropriate to this case: Has the Board proven cause for dismissal of Darryl Mance? If not, what is the remedy?

CHARGES AND SPECIFICATIONS

TO THE BOARD OF EDUCATION OF THE CITY OF CHICAGO:

THE INTERIM GENERAL SUPERINTENDENT OF SCHOOLS

hereby prefers the following charge against Darryl Mance, a high school teacher assigned to Schurz High School.

CHARGE

I charge Darryl Mance with excessive absenteeism.

SPECIFICATIONS

1. On April 24, 1991, the Board of Education of the City of Chicago adopted a Warning Resolution against you on the basis that you failed to demonstrate a satisfactory rate of attendance for each school semester.
2. A certified copy of the Warning Resolution was personally served to you on April 29, 1991.
3. The above mentioned Warning Resolution included suggestions that you improve your rate of attendance by being present on no less than 92% of the attendance days in each school semester. It also included a statement that dismissal may be sought if your attendance falls below the percentages suggested in any one school semester.
4. From the date of the Warning Resolution on April 24, 1991, to the end of the 1990-91 school year, you were absent seven (7) days. You have failed to maintain an attendance rate of 92% during that period.
5. During the first semester of the 1991-92 school year, you were absent eighteen (18) days and have failed to maintain an attendance rate of 92%.
6. During the second semester of the 1991-92 school year, you were absent twenty-two (22) days and have failed to maintain an attendance rate of 92%.

7. Between the dates of September 7, 1992 and March 5, 1993, you have been absent twenty-two (22) days and have failed to maintain an attendance rate of 92%.

Respectfully submitted,

Richard E. Stephenson
Interim General Superintendent of Schools

BACKGROUND FACTS

Darryl Mance, a tenured teacher employed by the Board of Education of the City of Chicago for approximately 20 years, was at the time of his dismissal assigned as a math teacher at Schurz High School as he has been since 1983. Mr. Mance worked for two principals at Schurz, Gerald Gallagher and, most recently, Ralph Cusick. Mr. Cusick has been the principal at Schurz since September, 1987. Currently, Mr. Cusick is retired from the Board of Education.

On April 24, 1991 the Board of Education adopted a warning resolution against Mr. Mance stating that he failed to demonstrate a satisfactory rate of attendance. The warning resolution indicated that the teacher must maintain no less than a 92% rate of attendance in each school semester. For the four semesters prior to his dismissal, Mr. Mance maintained an attendance rate of less than 92%. As a result of this, on April 28, 1993 the Chicago Board of Education adopted Report #93-0428-PE33 in which dismissal charges were preferred against Darryl Mance resulting in this tenured teacher dismissal hearing.

BOARD POSITION

The following represents the arguments and contentions made on behalf of the Chicago Board of Education:

Dr. Ralph Cusick, Principal of Schurz High School, became aware of an attendance problem regarding Darryl Mance. As a result of this, he had formal discussions with Mr. Mance during the period 1988 through 1990. This included a 1988 evaluation in which he rated the teacher only as satisfactory because his attendance was not sufficient. In addition to these conferences, Dr. Cusick wrote a number of communications to the teacher which were designed to increase his presence at the school. Dr. Cusick directed Mr. Mance to report to him upon his return from absences. In none of these conferences did Mr. Mance indicate that he had an alcohol problem. The reasons for his absences were listed as personal problems, car problems and various physical ailments. These are also noted in the cause of absence forms introduced by the Board for the period April 21, 1991 through March 5, 1993.

In January of 1991 Dr. Cusick prepared a letter and sent it to the Board requesting a warning resolution be adopted by the Board concerning the teacher's absenteeism. On April 24, 1991 this resolution was adopted. The warning resolution indicated that Darryl Mance had been absent 44 days in the 1989-90 school

year, and 42 1/2 times so far in the 1991 school year. The resolution stated that Mr. Mance should maintain an attendance rate of 92% in each of the school semesters or he could be dismissed from employment.

While Mr. Mance's absenteeism improved slightly, it did not improve sufficiently. Dr. Cusick made several requests to the Board that Mr. Mance be dismissed. Finally, after a period of almost two years and over three school semesters of continuing excessive absenteeism, the Board adopted charges and requested Mr. Mance's dismissal on April 18, 1993. During the period in question, Mr. Mance's attendance record was the worst of any teacher at the school.

Dr. Cusick received a number of complaints during this period regarding Mr. Mance's lack of attendance in the classroom from both students and parents. In addition, there were administrative problems caused in covering his classroom. If no substitute teacher was available, students would have to go to the auditorium or lunch room. Students' morale tends to go down because of a teacher's frequent absenteeism. While there was still no mention of alcoholism during this period, the Board noted that there is a choice of various free health plans to the full-time teachers of the Board of Education. Teachers may elect from various plans which include alcohol treatment programs.

The 92% attendance rating required by the Board is a figure gained by subtracting the 10 sick days and 3 personal business days from the total number of school days in the school year. Mr. Mance's attendance rating improved from 76% to 80%. The 80% rate is not satisfactory. Mr. Mance's overall teacher rating was rated at satisfactory for the 1991-92 school year because of his teaching ability. This rating is actually below average. Because of Mr. Mance's significant attendance problem, there was little educational continuity in his classroom.

Dr. Cusick testified that he did not request a disciplinary suspension for Mr. Mance because he believed that such a procedure was to be used for serious rule violations, not for attendance problems. In addition Principal Cusick stated that Mr. Mance was absent without pay so often that such a punishment would be pointless and without teeth. Dr. Cusick testified further that he has a doctorate in education and has attended inservices for principals concerning specific employee problems. He had many counseling sessions with Mr. Mance and never did he suspect him of having an alcohol problem. While the Board did not have an active Employee Assistance Program at the time of Mr. Mance's attendance problems, Dr. Cusick testified that had he known Mr. Mance was an alcoholic, he would have referred him to a treatment center.

The burden of proof in teacher dismissal proceedings is upon the Board of Education. The applicable standard of proof is the preponderance of evidence standard. The warning resolution adopted by the Board on April 24, 1991 stated that Mr. Mance should maintain an attendance rate of 92% in each succeeding school semester. If he did not, he could be dismissed from his employment for such failure. Subsequent to this warning resolution, Mr. Mance continued his pattern of excessive absenteeism. It was not disputed at the hearing that Mr. Mance failed to maintain the required 92% attendance rate. In fact, Mr. Mance was absent 7 1/2 times in the remaining approximately 35 days of the 1990-91 school year. He was absent 41 times during the 1991-92 school year and 23 times in the portion of the 1992-93 school year before the Board adopted the dismissal charge on April 28, 1993. Dr. Cusick testified that, even if Mr. Mance had not made the 92% goal but had significantly improved his attendance, his dismissal would not have been sought. Mr. Mance improved only about 4% over his pre-warning attendance rate, and that was unsatisfactory improvement, not a border line decision but a significant failure to meet the goals set forth in the warning resolution.

The absences are undisputed. The Board gave Mr. Mance significant time to improve his behavior. Nevertheless, in almost two full years and through four different semesters Mr. Mance never once managed to meet the requirements set forth in

the warning resolution. The only conclusion for the Board is that dismissal was the appropriate outcome for this lack of significant improvement.

The Board of Education has a clear responsibility to educate pupils in its schools and to efficiently operate its facilities. To that end, the Board has the right to dismiss tenured teachers for cause. While cause is not defined in the statute, it has been defined in case law as "some substantial shortcoming which renders continuance in employment in some way detrimental to discipline and effectiveness of service." In addition, the school code provides for written warnings before dismissal if the causes for dismissal are considered remediable. Apparently, the Board of Education felt that Darryl Mance's shortcomings were able to be remediated since they gave him a formal written warning on April 24, 1991. This satisfies the requirements of Section 34-85 of the School Code. Subsequent to the written warning resolution, the teacher continued to be absent approximately 20% of the subsequent school days. The teacher utterly and wholly failed to demonstrate any significant improvement in his behavior. Therefore, the dismissal was proper. The Board supplied a number of citations in support of this position.

In addition to the formal warning resolution of the Board, the teacher has received numerous written and verbal warnings

concerning his excessive absenteeism both before and after the formal written warning resolution. The credible evidence at the hearing shows that the failure to have appropriate attendance by the teacher resulted in a deleterious effect on the school. Both students and parents complained. Obviously, a teacher cannot do his job if he is not in the classroom. In addition, there were considerable administrative and educational problems. The school was frequently unable to cover Mr. Mance's classroom. Under those circumstances students must go to a study hall or the lunchroom. Obviously, there is a lack of continuity of educational instruction even where substitutes are employed, because substitutes often do not know where the teacher is in the lesson plan. At one point Schurz High School was cited by the State of Illinois for its excessive absenteeism by its teachers. If it had not been for Mr. Mance and one other teacher, the school would not have been cited. The teacher's response to all of this was vague. He cited a lack of recollection about the problem his absences caused, even though the employee was absent almost one out of every four days over a three-year period. This absentee rate cannot but affect the quality and continuity of education.

In addition to the above, the teacher has apparently falsified the cause of absence forms over at least a two-year period. Continual violations of school policies over such a long period cannot but damage the credibility of the school

authorities and lead to a tendency to disregard reasonable rules set by the Board. A number of citations were provided in support of the Board's position.

In the Gilliland case the courts ruled, among other things, that conduct resulting in the damage to the District may have been corrected had the teacher's superiors warned him or her. The Board has clearly met this test in this case. The teacher has numerous verbal and written warnings to correct his absenteeism problem. He received a legally mandated formal warning from the Board. Further warnings would have been futile given the teacher's utter failure to improve his behavior over a two-year period. The teacher was unwilling or unable to correct such behavior. The evidence clearly showed that he did not remediate his excessive absenteeism.

The attorney for the teacher attempted to raise, as an alternative argument, that Mr. Mance was not given progressive discipline and that dismissal as a penalty is too harsh under the circumstances of this case. The Board of Education has a rule which grants it the authority to impose disciplinary suspensions of up to 30 days. The fact that disciplinary suspensions may be imposed does not obligate the Board to use such sanctions in every case. Suspensions are utilized for serious one-time transgressions. Mr. Mance was absent so many times that he was routinely receiving absences without pay after

utilizing his 13 paid off days. A disciplinary suspension would have no meaning in such a situation. There is no Illinois law or case law which requires a suspension prior to dismissal. Even if the Hearing Officer would find progressive discipline to be appropriate, the Board took many steps before it adopted dismissal charges against the teacher.

The teacher in an attempt to counter the indisputable evidence of his continued absenteeism, argued that he should not be dismissed because he suffered from alcoholism during the entire time in question. This defense came to the Respondent exactly one day before his pre-suspension hearing on April 18, 1993, two years after the formal warning resolution from his employer. The Board would note that it is not dismissing Mr. Mance for alcoholism or for any disability or even for his failure to receive treatment until three months after his dismissal. The Board simply cannot tolerate a teacher whose attendance is so irregular that he misses one of every four days. The teacher presented no evidence that his dismissal was taken for any reason other than his attendance. It is undisputed that he told no one about his problem, nor is there any evidence to suggest that any school officials should have guessed that such an underlying problem existed. The cause of his dismissal was his failure to correct his absenteeism, not his alcoholism.

During the hearing the Board continually and vociferously objected to the alcoholism defense which occurred after the period of the charge and specification. Such a defense is unfair to the Board because it takes into account information which could not have been considered when it adopted the charge for dismissal. To consider any events beyond the date of adoption of dismissal is to put the Board at a disadvantage. If every person who was disciplined could come back with a defense with no time limitations, no one would likely ever be disciplined.

Even if the Hearing Officer finds it appropriate to evaluate such a defense and testimony, the evidence does sustain this defense. While the teacher spent much time and effort detailing the psychological mechanism of denial, it is at least suspicious that he discovered his alcoholism problem one day before his pre-suspension hearing. In addition to his failure to discover his problem until he was about to lose his job, there is a disturbing piece of evidence in the teacher's own submissions that indicates he was in treatment during the end of 1990 and the beginning of 1991. His entry into treatment, not to mention his relapse for no follow-up, clearly negates his defense that he was in denial for all of this period of time. The Board did not dispute that denial in general exists. It merely argued that the record in this case is full of evidence which casts serious doubt upon denial as a defense in this case. The Hearing Officer must weigh the credibility of the testimony of the teacher who stands

to lose his job and the general testimony by his other witnesses against the serious credibility questions mentioned by the Board.

The second argument by the teacher is that he had a disability, therefore the Board may not dismiss such a person. The teacher can only be considered disabled once he has recovered. He was not recovered until long after the charges were adopted against him. While his counsel attempted to elicit testimony from its witnesses that he had a legally defined disability, such attempts were unsuccessful. Disabled under the law is a legal term and neither of these witnesses can testify as to that legal conclusion. As stated earlier, the Board is not dismissing the teacher for any disability, it is dismissing him for excessive absenteeism. The onus is on the employee to request reasonable accommodation. Neither the Board nor any school personnel knew about an alleged alcoholism problem during any of the time included in the charges, nor was it informed of such until the time of discharge.

The Respondent attempted to infer that Dr. Cusick should have suspected the teacher of alcoholism or that his counseling was ineffective. Dr. Cusick testified that he conferred with Mr. Mance many times. He stated that he asked what his problem was. The teacher said nothing in response about alcoholism. Dr. Cusick even required Mr. Mance to submit to a medical exam and Mr. Mance did not tell the examining physician about his alleged

alcohol problem. Mr. Mance indicated a garden variety of illnesses as the cause of his absenteeism.

The law does not support the Respondent's defense of disability. Under the Americans with Disabilities Act (ADA) there is no indication of any disability during the appropriate time of this case. Employers are required to make reasonable accommodations to persons with known disabilities. Under ADA those who are alcoholics must be in treatment before they can be considered disabled. This defense is really a red herring in that alcoholics are not required to have a lower standard of conduct in response to their duties than other employees.

Therefore, the Board asked that the Hearing Officer find that the children enrolled in the Chicago Public Schools deserve to have a teacher in regular attendance. The Board attempted to give notice and enforce the regular attendance of the teacher over a five-year period including informal written and verbal warnings, an official Board warning and a medical examination. The teacher utterly failed to improve his attendance with any of these methods and, therefore, his conduct is now irremediable, and the Board had valid cause for his dismissal.

RESPONDENT'S POSITION

The following represents the arguments and contentions made on behalf of Mr. Mance:

After his arrival at the school Principal Cusick of Schurz High School began to examine the attendance problem in the school. Specifically, he believed that Darryl Mance had a serious problem with absenteeism. According to the principal, he engaged in several discussions with Mr. Mance, however, he could locate only three notes kept in reference to such conferences; and these conferences lasted no more than 5 to 10 minutes. Mr. Mance, for his part, stated that he was not counseled by Principal Cusick. He met with him very briefly on a few occasions. He rarely saw Principal Cusick in a school as large as Schurz.

Mr. Mance further testified that he used the appropriate phone-in procedures for his absences and had lesson plans available for his substitute. Principal Cusick testified that cadre substitutes are available at Schurz High School. These teachers are specifically hired to cover the classrooms of teachers who are absent at the school. While Dr. Cusick testified that Mr. Mance's classroom was uncovered, he could not remember any single date on which Mr. Mance's classroom was indeed uncovered. He further testified about parental

complaints, yet he did not record any notes regarding these complaints, nor did he on any occasion share this information with Mr. Mance. Mr. Mance testified that he did not receive complaints from any parents regarding his absenteeism. Mr. Mance also testified that after he received the warning resolution, Dr. Cusick did not meet with him to discuss how he could bring his attendance in line with the warning resolution. After the warning resolution was issued, Dr. Cusick did not refer the teacher for a medical examination, although such a request had been made in the past. Mr. Mance indicated he tried to improve his attendance. In fact, his attendance did improve to 81.8% attendance. It is the Respondent's position that Principal Cusick gave limited assistance to Mr. Mance during the period following the warning resolution.

Mr. Mance testified that after work he would stop at a bar and have 7 to 10 bourbons approximately 2 to 3 times per week. On occasion he would stay until closing and consume between 13 to 14 drinks. He would not eat during the time he was drinking. He testified that his drinking was escalating, particularly during his last year of employment with the Board.

The Respondent provided Dr. Bill Moor, an expert in the diagnosis and treatment of alcoholism and substance abuse, who testified on behalf of the Respondent. Dr. Moor talked about Employee Assistance Programs and alcoholism treatment. The Board

acknowledged that they do not have an Employee Assistance Program. The Respondent also provided Earnest Ball, who is a certified drug and alcohol counselor at the VA West Side Hospital. Mr. Mance testified that he did not seek treatment prior to the threat of losing his job as he was in denial. He explained that he had a tendency to feel that he was not an alcoholic and tried to improve his attendance through abstinence. Prior to his dismissal he went to his insurance carrier regarding his consumption of alcohol. He was assessed by Mr. Bruce Fletcher who stated that Mr. Mance had an alcohol abuse problem. He entered the VA's alcoholism program as soon as a bed was available. Mr. Mance successfully completed the program on September 8, 1993. He currently attends AA meetings twice a week and has remained sober.

The School Code provides for the removal of a tenured teacher only for cause. While the Code does not define cause, when the conduct which forms the basis for dismissal of a tenured teacher is remediable, the School Code requires that the Board first give the teacher a reasonable warning. The teacher must be provided with a remediation plan and a remediation period designed to correct those deficiencies. The Hearing Officer must independently confirm a finding that the conduct has occurred and then may consider whether the merits of the underlying allegations constitute cause for dismissal. The Hearing Officer must then examine the facts of the case to determine whether the

Board has correctly determined that the conduct is irremediable. The Board's decision may be overturned if the reasons for dismissal are unproven or the Board has acted in an arbitrary or capricious manner. The Board has the burden of proof, and the standard is the preponderance of evidence. It is the Respondent's position that the Board has failed on numerous scores and, therefore, Mr. Mance must be reinstated to his position as a tenured teacher. The notice of dismissal alleges that the teacher had failed to comply with the requirements of the warning resolution and, thus, his conduct had become irremediable. This was two years after the issuance of the warning resolution. Throughout this two-year period the Board offered no assistance to Mr. Mance in terms of remediating his perceived attendance problems. Dr. Cusick testified that he had counseled with Mr. Mance. This counseling never occurred. Dr. Cusick met with the teacher approximately 4 or 5 times for 5 minutes. At no time was any discussion had regarding how the teacher could bring his attendance in compliance with the mandates of the warning resolution. It is clear that Dr. Cusick's sole desire during this period of time was to eliminate Mr. Mance from Schurz High School. Dr. Cusick wrote to Board officials on several occasions requesting Mr. Mance's dismissal. While all of this was occurring, Mr. Mance was provided no assistance in order to improve his attendance at the school.

Obviously, something was mentally or physically wrong with Mr. Mance during this period of time. The Board has the power to order the mental or physical examination if there seems to exist any disability which might impair the efficiency of such an employee. Dr. Cusick was certainly aware of this Board rule. At no time did he request that Mr. Mance undergo a medical screening in an attempt to find the route cause of Mr. Mance's problems prior to the issuance of the warning resolution nor after the issuance of the warning resolution. Dr. Cusick, who possesses a counseling degree, testified that in counseling you need to find the route cause of an attendance problem and, after doing so, you help the individual remediate by providing services and helping the individual with the problem which was causing the absenteeism. None of this was done in Mr. Mance's case.

After having done nothing for over a two-year period save for requesting Mr. Mance's dismissal on four occasions, the Board now contends that Mr. Mance's absenteeism is irremediable. The Gilliland test prohibits such activity. In this case it is clear that absolutely no assistance was offered to Mr. Mance. Instead the Board sat idly by and now claims that Mr. Mance's conduct has become irremediable. The mere issuance of a warning resolution does not automatically render future conduct irremediable. The Hearing Officer must determine whether or not the conduct charged was remediable and then determine whether irremediability existed on the part of the teacher. The pre-warning resolution conduct

was found by the Board to be remediable. Therefore, the subsequent contact is also remediable and another warning resolution should have been issued. Mr. Mance's conduct could have been corrected and he should have been warned regarding the consequences. Another aspect of the Gilliland case is that the Board must show substantial damage by a preponderance of the evidence to the students, faculty or school. Parental complaints were not proven at the hearing. There was no showing that his classes were uncovered. He complied with all Board rules in terms of reporting his absences and providing substitute lesson plans. No evidence was presented that the educational program of the children was disrupted except for the opinion of the principal which was not supported by any evidence in the record. Therefore, there was no evidence presented that established that any harm occurred either to the students, faculty or school. Mere speculation of the Board is insufficient to prove this charge.

The Respondent then asked the Hearing Officer to find that there is no just cause to sustain the dismissal of Mr. Mance. Given the improvement in the areas cited as deficient in the warning resolution and the surrounding circumstances of this case, the facts at most would support a suspension for 30 days. The Board in its own rules has adopted provisions pertaining to the discipline of employees for violations of Board rules and policies. Rather than taking this next step, the Board instead

moved to dismiss Mr. Mance. Rules of the Board provide for an intermediate step prior to the dismissal of an employee. By virtue of this policy, the Board has adopted a progressive disciplinary system for its employees.

In addition, in this case it is clear that Mr. Mance is an alcoholic. He became aware of this after a pre-suspension hearing at the Board. Immediately following this hearing, he sought treatment for his problem through an intensive in-patient program at the West Side VA Hospital. He has successfully completed this program and has remained sober since that time. Mr. Mance has been an excellent or satisfactory rated teacher with the Board for over 20 years. He sought treatment after being faced with the prospect of losing his job. He successfully completed this treatment on September 8, 1993 and is currently attending AA meetings twice a week.

The Respondent noted that the Board does not offer any Employee Assistance Program, nor did the Board offer any assistance to Mr. Mance after the issuance of the warning resolution. The evidence shows that Mr. Mance can be a productive employee of the Board. Both Mr. Moor and Mr. Ball testified that relapse can be prevented. No evidence to the contrary was presented by the Board.

In addition, the cause for dismissal must bear some relationship to a teacher's ability to perform. In a similar case the Hearing Officer found that there was no nexus between the alleged tardiness of the teacher and her ability to perform in the classroom. The Hearing Officer specifically found that there was no evidence of any damage, let alone substantial damage that was caused by the tardiness as such, and the dismissal was reversed. Mr. Mance was not rated as an unsatisfactory teacher. Mr. Mance had received satisfactory ratings from Principal Cusick. In fact, on the 1990-91 rating Principal Cusick did not note excessive absenteeism as a weakness. This was noted on the 1989-90 rating. There was no evidence presented that Mr. Mance was not able to perform his job as a teacher and that the educational program was somehow disabled. This case stands in stark contrast to cases where the dismissal of a tenured teacher has been upheld. The Respondent cited numerous cases in support of its position.

It is the Respondent's position that absenteeism is insufficient cause to uphold the dismissal of a tenured teacher. There must be some nexus between the conduct complained of and the teacher's ability to perform. No harm was caused either to the school, faculty or students as a result of Mr. Mance's absenteeism. It did not affect his ability to perform in the classroom. No parents, teachers or students were called to

testify regarding their dissatisfaction with Mr. Mance and his educational program.

Finally, it is the Respondent's position that the Americans with Disabilities Act prohibits discrimination against individuals with disabilities. The Board claims to have no knowledge of Mr. Mance's alcohol abuse problem. Dr. Cusick perceived that Mr. Mance had some type of disability. In 1988 Mr. Mance was ordered by Principal Cusick to submit to a medical exam. Under ADA alcoholism is considered a handicap. Therefore, the Board has the obligation to make a reasonable accommodation. It is clear from the record that Mr. Mance was dismissed based on his status as an alcoholic. It was only after the Board learned that Mr. Mance was an alcoholic that he was dismissed from his position as a teacher.

For the foregoing reasons Mr. Mance must be reinstated to his position as a Chicago Public School teacher and be made whole for any loss of salary and other benefits of employment for the period of time for which he was wrongfully suspended from his employment with the Chicago Board of Education.

DISCUSSION AND OPINION

The students of the Chicago Public School System and the citizens of Chicago have the right to expect that their teachers will attend to their classes on a regular and consistent basis. This is a primary and underlying requirement for effective teaching since teachers cannot teach effectively if they are not in the classroom. Given the bare facts of this case and without for the moment inquiring into the underlying causes, the Chicago Board of Education has proven that Darryl Mance engaged in conduct prior to his warning resolution of April 24, 1991 sufficient to cause the Chicago Board of Education to adopt that warning resolution. Mr. Mance, subsequent to that warning resolution, did not in any way significantly improve his attendance to the point where he had remediated his absenteeism deficiency and, therefore, based on the information that was available to the Chicago Board of Education at the time, his dismissal, which appeared in Board Report #93-0428-PE33, was appropriate. This finding is not withstanding the Respondent's claim that Mr. Mance was not given sufficient assistance during the approximately two-year remediation period. During the time prior to the warning resolution and the time subsequent to the warning resolution through his dismissal Mr. Mance's attendance record was excessive.

The Respondent raised the issue as to whether or not the Board met the two-prong test of the Gilliland decision. The Hearing Officer specifically finds that the Board has met both of those tests. Mr. Mance's conduct did damage the students, faculty and school. Students cannot receive an appropriate education when their teacher is missing approximately 20% of the school days. Other faculty, particularly the substitute faculty, have burdens placed on them that are inordinate due to Mr. Mance's attendance, and the school as a whole will operate less efficiently due to his excessive absenteeism. Mr. Mance was warned on many occasions, both formally and informally, both in writing and orally, that his conduct was not acceptable. The school met at least the minimum standards required to try to remediate the teacher. Certainly he was given a substantial period of time to remediate his conduct and, as the record shows, this was unsuccessful. Therefore, given the information at the time the Board's conclusion that Mr. Mance was irremediable was appropriate. The Hearing Officer agrees with the Board contention that an up to 30-day suspension without pay prior to his dismissal was inappropriate in this case. The Board was concerned about the teacher's attendance. To give him another period of time away from school without pay makes little sense under the circumstances of this case.

With respect to the Respondent's argument concerning the reason for his dismissal which must relate to his ability to

perform, the Hearing Officer finds that excessive absenteeism has a direct relationship to a teacher's ability to perform. The teacher cannot be effective if he or she is not in the classroom. The Hearing Officer thinks those in the education industry would generally agree that substitute teachers, while generally caring and interested individuals, are a rather unsatisfactory substitute for the regular teacher.

We come then finally to what has been claimed as the underlying reason for Mr. Mance's absenteeism particularly his absenteeism in the period between his formal warning and his dismissal and that is his alleged alcoholism. The Hearing Officer has reviewed in detail the record of this case and finds that there is sufficient evidence to prove that Mr. Mance was suffering from alcoholism during at least the critical period of this case. The Respondent argued that he would then somehow come under the American with Disabilities Act and the Hearing Officer finds that this is not the case. The Americans with Disabilities Act applies to employers who are aware of disabilities among their employees. The Chicago Board of Education was not aware of Mr. Mance's disability until well after the critical period of this case. He did not enter treatment until some three months after his dismissal. At the time of his dismissal there was no evidence except for a late and at that time unsubstantiated claim on the part of Mr. Mance that he was having some alcohol problems. The Chicago Board of Education cannot be required

under the ADA to provide reasonable accommodations unless it is aware of the disability.

While the ADA does not apply to this case, alcoholism does provide the proximate cause for Mr. Mance's attendance problems. It is not unusual in cases such as this that the victim of alcoholism will deny that he or she has any problem. The question then before the Hearing Officer is, "Does this provide sufficient reason for the Hearing Officer to overturn the dismissal decision by the Chicago Board of Education?" This Hearing Officer is always suspicious when the claim of substance abuse comes up after the dismissal act. However, the record clearly shows that the Respondent was an active alcoholic at the time of his dismissal. Alcoholism is, by the judgement of almost all of the competent authorities in this field, an illness. It is unlikely that the Board would have dismissed Mr. Mance had it been aware of his alcoholism problem prior to the time of his dismissal. Even in the absence of an Employee Assistance Program, the Board would have likely referred Mr. Mance for treatment and, if he successfully completed that treatment, would have then returned him to his tenured teaching position.

The Respondent has successfully completed the course of treatment provided by the West Side VA Hospital for chemical dependencies. He has by all accounts remained sober since that time and has regularly attended the prescribed AA meetings.

There is no sufficient showing that Mr. Mance received unsuccessful prior treatment. Therefore, under the circumstances of this case the Hearing Officer finds that the purposes of the Act would be best served by allowing Mr. Mance another opportunity to show that he can become a productive member of the faculty of the Chicago Public School System.

The Hearing Officer is not, however, providing Mr. Mance with unlimited opportunities. This is a last chance opportunity and is conditioned on the following:

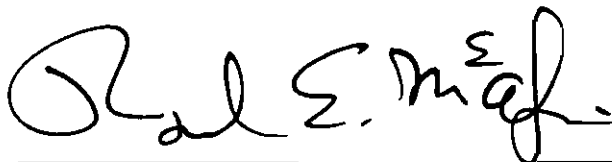
1. That Mr. Mance continue his prescribed treatment for his chemical dependency including whatever meetings he is required to attend.
2. That he remain free of alcohol and other controlled substances from this point forward.
3. That for a period of two school years he be subject to random drug and alcohol screening to certify that he remains drug and alcohol free. These evaluations are to be done at a time and place that will be left to the discretion of the Chicago Board of Education, but not to exceed four evaluations per year for the next two school years.
4. That Mr. Mance demonstrate an attendance rate equal to or better than 90% of the school days during the next three school years.

A violation of any of the above conditions will subject Mr. Mance to immediate dismissal.

AWARD

The Hearing Officer finds that the proximate cause of Mr. Mance's attendance problems during the critical period of this case was due to a chemical dependency. He has outlined a remediation plan for this individual. Any violations of this remediation plan will result in Mr. Mance's being subject to immediate dismissal. The Hearing Officer further orders the Chicago Board of Education to return Mr. Mance to his tenured teaching position at Schurz High School beginning with the 1994-95 school year. The Hearing Officer finds that any back pay award would be inappropriate under the circumstances of this case but orders that Mr. Mance be returned with his seniority intact.

Signed at Chicago, Illinois this 25th day of April, 1994.

A handwritten signature in black ink, appearing to read "Ray E. McAlpin". The signature is stylized with a large initial "R" and a cursive "E".

Raymond E. McAlpin, Hearing Officer