BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
HARTLAND TEACHERS EDUCATION ASSOCIATION	:	Case 9 No. 48079 MA-7499
and	:	
HARTLAND-LAKESIDE JOINT SCHOOL DISTRICT NO. 3	:	

Appearances:

Mr. John Weigelt, UniServ Director, Cedar Lake United Educators, 411 North River Road, West Bend, Wisconsin 53095, appearing on behalf of the Association.

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53203, by Mr. Robert H. Buikema, appearing on behalf of the District.

ARBITRATION AWARD

Hartland-Lakeside Joint School District No. 3, hereafter the District, and the Hartland Teachers Education Association, hereafter the Association, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Association, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. On December 1, 1992, the Wisconsin Employment Relations Commission appointed Coleen A. Burns, a member of its staff, as impartial arbitrator. Hearing was held on February 10, 1993, in Hartland, Wisconsin. The hearing was transcribed and the record was closed on May 10, 1993, upon receipt of written argument.

ISSUE:

The parties have stipulated to the following statement of the issue:

> Whether the District complied with the terms of the collective bargaining agreement in the transfer of Jill Coy for the 1992-93 school year?
>
> If not, what should the remedy be?

RELEVANT CONTRACT PROVISIONS:

ARTICLE XII

WORKING CONDITIONS

. . .

J. Vacancies, Transfers, and Reassignments

In the event of a vacancy in any teaching position, that fact should be posted for at least ten (10) school days and teachers already on the staff, who are professionally certified for the position, shall be given the opportunity to apply in writing for transfer to that position. Acceptance of such application for transfer will be determined by the Board. Teachers may request transfers or reassignments in writing.

K. Involuntary Transfer or Reassignments

Where transfer or reassignment may be necessary, the choice of assignment will be by mutual agreement between the teacher or teachers and the District Administrator. In the event an agreement cannot be reached, a teacher has the right to be assigned to any class for which that teacher is certified, provided that the teacher presently assigned to that class has less seniority. Any teacher so displaced may exercise the same right.

Should it become necessary to eliminate a class section in any grade, the teacher being displaced may either bump the least senior teacher at the grade level district wide or any less senior teacher in the district provided he/she is certified for the position.

. . .

ARTICLE IXX

MANAGEMENT RIGHTS

The Board, on its own behalf and on behalf of the electors of the District, hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred and vested in it by the laws and Constitution of the State of Wisconsin, and of

the United States, including, but without limiting the generality of the foregoing, the right:

A. To the executive management and administrative control of the school system, its properties and facilities, and the activities of its employees.

B. To hire all employees and, subject to the provisions of law, to determine their qualifications and the conditions for their continued employment, or their dismissal or demotion; and to promote and transfer all such employees in the best interest of the school. Teachers employed after July 1, 1982 shall serve a probationary period of two (2) contract years. The probationary period is only for new teachers to the District.

C. After due consultation through the Administrator with the appropriate teacher or teacher's committee, to consider recommendations and then:

1. Approve grades and courses of instruction, including special programs, and to provide for athletic, recreational and social events for students;

2. Approve the means and methods of instruction, the selection of textbooks and other teaching materials;

3. Determine class schedules, the hours of instruction, and the duties, responsibilities, and assignments of teachers and other employees with respect to administrative and non-teaching activities, and the terms and conditions of employment.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms

> of this Agreement and then only to the extent such terms are in conformance with the Constitution and laws of the State of Wisconsin and the United States.

BACKGROUND:

Jill Coy, hereafter Grievant, is currently employed by the District as a second-grade teacher at Hartland South Elementary. The Grievant, who has taught in the District for approximately 17 years, was on an approved medical leave of absence for a majority of the 1991-92 school year. At the time that the Grievant went on the leave of absence, she was teaching first grade at the Hartland North Elementary.

On March 20, 1992, Consulting Psychologist Timothy E. Tyre sent the following to the District's Superintendent of Schools:

> Mrs. Jill Coy has been cared for by me on an outpatient basis since November, 1991 following referral from Dr. Gary Hauser. Mrs. Coy initially presented with a combination of depression and episodic anxiety attacks of sufficient intensity to interrupt her normal activities and capacity for work.
>
> Mrs. Coy has responded well to a combination of outpatient psychotherapy treatments and psychotropic medications. Her initial symptomatic complaints have essentially resolved. A return to work date has been specified for early May, 1992.
>
> Concerns remain regarding her immediate supervisor. Successful return to full employment for this patient will be facilitated by reasonable assurance that this supervisory relationship will be monitored to ensure that proper management practices are employed i.e. 1. accessibility of the supervisor when requested. 2. non-inflammatory verbal instructions by the supervisor 3. supervisory support during parent-teacher conflicts as requested.
>
> Under circumstances as outlined above, I anticipate that this woman's ability to perform her regular work duties will have returned to normal and she will be ready for return to work on May 4, 1992.

The Grievant returned to her first grade class at North where she

assisted the teacher who had replaced her until the end of the school year. On May 29, 1992, Patrick F. Kness, the District's Superintendent of Schools, sent the following to the Grievant:

> Please be advised that you will be transferred to Hartland Elementary South for the 1992-1993 school year. As you probably know, South has both a 1st and 2nd grade position presently open. You may have either one of them. I realize you indicated to me you would rather teach second at South because of personalities involved, but the decision will be yours. Due to the posting requirements, please let Tim know your decision by June 3rd.
>
> I'm sorry you don't feel the transfer is an opportunity. I believe it is, both professionally and personally. Since we cannot agree on a voluntary basis, I must exercise the District rights under the collective bargaining agreement for transfer.
>
> The transfer is made for the following reasons:
>
> 1. Based on an administrative reorganization at North, Jack would become your direct supervisor if you stayed in your current position. I believe this would be an unworkable situation and believe that, as a result, a transfer is required.
>
> 2. Based on what you have stated regarding the Principal at North, I believe it would be in the best interest of all persons involved to have a change in your supervisor.
>
> I feel this transfer will be good for you if you give it a chance. You will like working at South. As we have at North, there are some super folks over here.
>
> Again, please let Tim know if you want 1st or 2nd grade by June 3rd.

On June 1, 1992, the Grievant sent the following to Superintendent Kness:

> I have a response to your letter dated May 29,

1992 stating that you intend to interpret the Master Agreement between the Hartland/Lakeside School Board and the Hartland Education Teacher's Association as giving you the right to transfer me involuntarily to Hartland South. I vehemently object to your action.

My decision, which in no way, manner or implication waives my right to challenge your transfer in accordance with the processes outlined in the Master Agreement, is that I would prefer the second grade position. As you told me to do in your letter, I will be "letting Tim Kooi know" by June 3.

I do not believe this would be an "opportunity professionally" and as to your indication that it would be an "opportunity personally", my decisions that concern personal matters are my own.

On June 12, 1992, UniServ Director John Weigelt, on behalf of the Hartland Teachers Education Association, filed the following:

GRIEVANCE COMPLAINT

1. This document constitutes a formal grievance complaint filed in compliance with the provisions of the Master Agreement between the Hartland Teachers Education Association and the Board of Education of Joint School District No. 3, Hartland, Wisconsin. This complaint may be modified by the grievant as necessary.

2. This grievance is filed by the Hartland Teachers Education Association and Jill Coy as parties in interest to the action of which this document complains. It is the contention of the grievants that the District has violated the Collective Bargaining Agreement, specifically Article XII, paragraph K.

3. It is the contention of the grievants that the District has determined to transfer employee, Jill Coy, from her teaching position at North Elementary School to a different position at South Elementary School. Ms. Coy has objected vigorously to such transfer.

4. The position of the grievants is that to continue the transfer, as the District indicates is its intention, is violative of the paragraph identified and, therefore, a breach of the Master Agreement.

5. The grievants demand that the District rescind the action contemplated and immediately assign Jill Coy to her prior position at North Elementary School.

The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES

Association

The District's reliance on the Management Rights clause is misplaced. As recognized in the Management Rights clause, the express language of Article XII, Paragraph K, is controlling.

The initial question to be determined is whether the transfer was necessary. The District provided the Association with only two reasons for the "necessity" of the transfer, i.e., that the Grievant's husband would be her direct supervisor at North, which would be "an unworkable" situation and, based upon statements made by the Grievant regarding Principal Lillethun, "it would be in the best interest of all persons involved to have a change in the Grievant's supervisor." In explaining why the District did not want Lillethun to supervise the Grievant, the Superintendent mentioned that the Grievant had investigated the possibility of a lawsuit against Lillethun.

There are currently two administrators at North, Principal Lillethun and Assistant Principal Jack Magestro, the Grievant's husband. Other than stating that there was an administrative reorganization at North, the District does not explain why Magestro would be the direct supervisor of the Grievant.

The Superintendent testified that teacher evaluation was the primary concern in establishing the Grievant's supervisor. However, teacher evaluations are performed infrequently and, as the Superintendent recognized, could be performed by an Administrator other than Lillethun or Magestro.

The testimony of the Superintendent demonstrates that the unworkability of having Magestro act as the Grievant's supervisor is that the Superintendent felt strongly about having a husband or wife supervise his/her spouse and that, when Lillethun is absent, Magestro would be supervising the Grievant. While the

Superintendent initially denied having knowledge of situations in which an employe supervised a spouse, either directly or indirectly, upon further questioning it became clear that such situations have occurred.

The testimony of Kay Bolard, President of the Hartland School Board, suggests that she was concerned about the Grievant and did not believe that it was in the school's best interest to have an unhappy teacher. The Association submits that if Bolard had wanted to provide students with a happy teacher, then she should have favored leaving the Grievant at North.

As the Grievant had communicated to the District, the Grievant felt she was able to work effectively at North. Apparently, Lillethun was not opposed to the Grievant's remaining at North because, in his letter of May 1, 1992, to the parents of North students, he said "We are delighted that Mrs. Coy is feeling better and will be rejoining us." The Grievant's personal physician, Dr. Timothy Tyre, stated that the Grievant benefits greatly from a return to North. It appears that only the Superintendent and some members of the Board wanted this transfer. The transfer was not necessary, nor in the best interests of either the Grievant or the District.

The contract language requires that where, as here, an agreement cannot be reached, the teacher has the right to be assigned to any class for which that teacher is certified and where she has seniority over the current employe in that position. The testimony of the Association's witnesses regarding bargaining history and past practice confirms that this is the intent of the language. The Grievant, however, was not given this opportunity.

While the District argues that the transfer was based upon irreconcilable differences between the Grievant and Lillethun, there were no such differences and the transcript does not reveal that anyone used this terminology to describe the relationship between the Grievant and her Principal. The irreconcilable differences exist only in the mind of the District, who failed to contact the Grievant, her physician, or Lillethun in regard to whether they wanted the Grievant to return to North Elementary. In making the transfer decision, the District ignored the best and only medical authority, as well as the Grievant's wishes, and offered no reasons of substance in return.

The transfer of the Grievant must be rescinded as violative of the collective bargaining agreement. The transfer did not meet the test of necessity and the District failed to allow the Grievant to select a position held by a less senior teacher in an area for which she is qualified.

District

The District's fundamental right to make work assignments is clearly established in the Management Rights clause of the parties' collective bargaining agreement, which clause expressly provides the District with the right to assign or "transfer" the Grievant to a teaching position at Hartland South for the 1992-93 school year. The Grievant did not have a contractual right to a particular grade level or building assignment, but rather, the District had the complete discretion to transfer the Grievant "in the best interest of the school".

The record clearly demonstrates that the "best interests" of the District required that the Grievant be transferred to Hartland South because (1) the Grievant has a dysfunctional and irreparable working relationship with Principal Lillethun and (2) if Lillethun were not assigned to supervise the Grievant, then the only supervisory alternative at North would be the Grievant's husband, Assistant Principal Magestro.

The parties' bargaining history demonstrates that the requirements of Article XII, Paragraph K, were negotiated to protect teachers in the event teacher transfers were needed as a result of "overstaffing" in the District.
The requirements of Article XII, Paragraph K, do not apply in this grievance because the Grievant was not transferred to Hartland South as a result of "overstaffing". Assuming arguendo, that Article XII, Paragraph K is applicable, the District submits that it allows the District to make "involuntary" transfers or reassignments so long as the teacher being transferred or reassigned (1) is assigned to a class for which he or she is certified to teach and (2) the teacher who is transferred/reassigned has greater seniority than the teacher being replaced. Mutual agreement is not required before the District can make such transfers or reassignments.

Contrary to the argument of the Association, the District did consider the medical documentation received from the Grievant's doctors before transferring the Grievant to Hartland South. This documentation establishes that the Grievant was first placed on a medical leave of absence because she was diagnosed by Dr. Smith as having "a job related stress disorder" and that Dr. Hauser advised the Superintendent that the cause of the Grievant's condition was the supervisory relationship with Lillethun.

Dr. Tyre's letter of July 20, 1992 was submitted to the District Board of Education on July 22, 1992, during the Board's level II meeting under the contractual grievance procedure. The letter was not available to the District when the transfer decision was made on or about May 29 of 1992. If Dr. Tyre's letter were to be given consideration, it is significant to note that Dr. Tyre refers to his letter of March 20, 1992, which also indicates that the cause of the Grievant's condition was

Lillethun's management style.

It would not be appropriate to have an outside administrator evaluate the Grievant's teaching performance, as suggested by the Association, because an outsider would lack the day-to-day experience needed to properly perform an evaluation of the Grievant's teaching performance. The Association's argument with respect to the District's experience with other married couples is not meritorious.

Lillethun's May 1, 1992 letter was intended to address any concerns that the parents may have had about the co-teaching arrangement between Baker and the Grievant and was not intended to chronicle any differences with the Grievant. Thus, the Association's reliance on this letter is misplaced.

The decision to transfer the Grievant was based upon the best medical information available to the District at the time, averted "reopening the wounds between Lillethun and Coy", and avoided having Grievant being directly supervised by her husband. The Association has failed to show that the District's decision to transfer the Grievant was arbitrary, capricious, unreasonable or otherwise made in bad faith and, thus, the District's decision that the best interest of the school required the Grievant's transfer should not be set aside by the Arbitrator. The grievance is without merit and must be denied.

DISCUSSION

As the District argues, Article IXX, B, does provide the District with the right to transfer employes, such as the Grievant, "in the best interest of the school". As the Association argues, however, Article IXX expressly recognizes that the exercise of such a "management right" is subject to limitation by the "specific and express terms" of the collective bargaining agreement.

It is undisputed that the Grievant was involuntarily transferred from a
first grade teaching position at North Elementary, hereafter North, to a second grade teaching position at South Elementary, hereafter South. The "specific and express terms" of the collective bargaining agreement which limit the District's right to effectuate involuntary transfers is contained in Article XII, K, Involuntary Transfer or Reassignments. 1/

1/ Section J transfer language first appears in the parties' 1976-77 agreement. Language addressing involuntary transfers first appears in the parties' 1977-78 agreement as the second paragraph of Section J, which paragraph was slightly modified in the 1980-82 agreement. In the 1984-86 agreement, the parties bifurcated the transfer language by adding Section K,

The first paragraph of Article XII, K, recognizes that involuntary transfers and reassignments may be necessary. This paragraph does not expressly state that it is the District which determines when such an involuntary transfer or reassignment is necessary. However, given the involuntary nature of the transfer and reassignment, as well as the language of the management rights clause which recognizes that the District has the right to transfer "in the best interests of the school", the most reasonable construction of Article XII, K, is that it is the District, and not the parties jointly, which determines when such transfers and reassignments are necessary.

The second paragraph of Article XII, K, expressly addresses the elimination of a class section in any grade. 2/ It must be concluded, therefore, that the parties intended the first paragraph of Article XII, K, to apply to circumstances other than the elimination of a class section in any grade. If this were not the case, there would have been no need for the parties to adopt the language contained in the second paragraph. The language of Article XII, K, does not otherwise limit, or define, the circumstances which make an involuntary transfer or reassignment "necessary".

Paul Craig, President of the Association, has been on the Association's contract negotiations team for the past two years. 3/ Craig, who is the custodian of the Association's bargaining notes, stated that he could not find any notes regarding the negotiation of Article XII, K. While Craig had an interpretation of the language of Article XII, K, i.e., that the District could not transfer a teacher without the mutual agreement of the teacher, it is not evident that this interpretation was based upon conversations which the parties had during the negotiation of the language, nor upon any factor other than Craig's unilateral construction of the language of Article XII, K.

Suzanne Talmage, who was a District Librarian, retired from the District prior to the 1991-92 school year. Talmage was involved in the negotiation of the parties' initial collective

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Involuntary Transfer or Reassignments. Section K has remained unchanged since the 1986-88 agreement.

2/ Since the instant dispute does not involve the elimination of a class section in any grade, it is the first paragraph of Article XII, K, which is controlling.

3/ Craig was on the Association's negotiations team for another three year period, but he could not recall the dates of this three year period.

bargaining agreement and was on the Association's negotiation team for fourteen years prior to her retirement. According to Talmage, the Association did not intend any circumstance in which the language of Article XII, K, could be used by the District to transfer the Grievant without her consent. 4/ When asked whether the Association's understanding of the contract language was communicated to the District at the time that it was negotiated, Talmage, who acknowledged that she did not have any bargaining notes, stated: "Well, members of the board were there, so I'm sure that it was." 5/ Neither this testimony, nor any of Talmage's other testimony, contained sufficient detail to establish that, at the time that the parties' negotiated the language of Article XII, K, the District either understood that this was the Association's interpretation of Article XII, K, or that the District accepted this interpretation.

Patrick Kness, the District's Superintendent of Schools, was not involved in the negotiation of the parties' initial collective bargaining agreement, but was involved in the negotiation of all of the successor agreements. The Superintendent recalled that the language of Article XII, K, was developed in response to overstaffing situations. This testimony is consistent with Talmage's testimony. The Superintendent also stated that he did not believe that the language prohibited involuntary transfers and reassignments in situations other than overstaffing. 6/

While overstaffing may have been the impetus for the adoption of Article XII, K, the language agreed upon by the parties does not expressly limit the applicability of the language to overstaffing situations. The Superintendent's testimony, like that of Talmage, lacks sufficient detail for the undersigned to determine the content of the parties' negotiation discussions. Neither the testimony of Talmage or the Superintendent, nor any other record evidence, establishes that, when the parties negotiated the language of Article XII, K, there was a mutual understanding that Article XII, K, would be limited to overstaffing situations.

The Superintendent and Talmage agree that the language of Article XII, K, has been used in overstaffing situations. The fact that the language has not been utilized in situations other than overstaffing does not mandate the conclusion that the parties mutually understood that Article XII, K, could not be used in other situations. It is as reasonable to conclude that the right was not exercised in other situations because no other "necessary"

4/ T. at 26.

5/ Id.

6/ T. at 64.

situation had occurred.

Despite any arguments to the contrary, the evidence of the parties' negotiation history and past practice does not persuade the undersigned that the District required consent from the Association to involuntarily transfer an employe pursuant to Article XII, K, nor does such evidence persuade the undersigned that the parties mutually intended the provisions of Article XII, K, Paragraph One, to be limited to overstaffing situations. Nor does such evidence provide a reasonable basis to conclude that the parties mutually intended any interpretation of Article XII, K, other than that reflected by the plain language of the contract.

The record demonstrates that the District's decision to transfer the Grievant was based upon the District's determination that such a transfer was "necessary" and "in the best interest of the school" because it was an unworkable situation to have the Grievant remain at a building in which she would be under the direct supervision of either her husband, Assistant Principal Jack Magestro, or Principal John Lillethun. The Superintendent recommended the involuntary transfer from North and the District's Board of Education unanimously approved the recommendation.

At hearing, the Superintendent stated the following: On September 20, 1991, there had been an in-service in which teachers at North, especially the first grade teachers, raised concerns about the number of students, including Special Education students, in the classrooms. While the Superintendent was not present at this in-service, he met with Lillethun and North teachers on September 24, 1991 for the purpose of hearing the teachers' concerns. Some of the teachers were very angry and the Grievant was visibly upset and crying. Following this meeting, the Superintendent met with the Grievant and was informed by the Grievant that her relationship with Lillethun had become almost unworkable. The Grievant told the Superintendent that Lillethun had been harassing her for years and that matters had come to a head that year when, in the Grievant's opinion, Lillethun did not support her when parents complained that the Grievant was not doing what she should for their child. The Grievant further told the Superintendent that she had been having problems with Lillethun for as long as she had been at North, some fifteen years. The Superintendent' testimony concerning these facts was not contradicted at hearing. 7/

Following this conversation the Grievant went on an extended medical leave of absence and did not return to work until the Spring of 1992. During the Grievant's absence, the Grievant was under the care of a psychiatrist who provided information to the

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7/ Neither Coy, nor Lillethun were present at, or testified at, the hearing.

District indicating that it appeared that the Grievant was suffering from a severe anxiety disorder substantially precipitated by stress and harassment at work which rendered the Grievant dysfunctional. The District was also advised by the Grievant's Chiropractor that he was treating the Grievant for a job related stress disorder. Following a referral by her psychiatrist, the Grievant was placed under the care of Dr. Timothy Tyre, a Consulting Psychologist. On March 20, 1992, the District received a letter from Tyre which indicated that the Grievant had responded well to treatment, that the initial symptomatic complaints had essentially resolved, and that a return to work date had been specified for early May of 1992. The letter also contained the following:

> Concerns remain regarding her immediate supervisor. Successful return to full employment for this patient will be facilitated by reasonable assurance that this supervisory relationship will be monitored to ensure that proper management practices are employed i.e. 1. accessibility of the supervisor when requested. 2. non-inflammatory verbal instructions by the supervisor 3. supervisory support during parent-teacher conflicts as requested.
>
> Under circumstances as outlined above, I anticipate that this woman's ability to perform her regular work duties will have returned to normal and she will be ready for return to work on May 4, 1992.

On July 22, 1992, at the hearing before the Board on the grievance challenging the transfer to South, the Association presented the Board with a copy of a July 20, 1992 letter for Dr. Tyre. In this letter, which was in response to the Association's request for an analysis of the Grievant's condition and an opinion regarding the Grievant's return to teaching in another school building and its impact upon the Grievant, Tyre stated that he had understood that the Grievant had returned to her former position without any significant difficulties and that considerable agitation and emotional distress followed the announcement that the Grievant would be transferred to South. Tyre also stated as follows:

> While there may be union/legal implications regarding involuntary transfer actions, the primary emotional dynamic for this woman involves the perception that she successfully resolved a difficult emotional conflict by returning to her classroom and "facing" the source of her problems, i.e., Mr. John

> Lillethan (sic). To be removed from the classroom situation via involuntary transfer interferes with the natural end-stage emotional resolution in this case. Specifically, this patient benefits greatly from a return to the original trauma site and the day to day evidence of her "emotional strength" in having faced this issue and successfully resolved it.

Tyre further indicated that the Grievant had emotional scars which were re-opened by the allegedly abusive and inflammatory managerial style of Lillethun and further indicated that he had reviewed documents and statements of District teachers which had been gathered by the Grievant's attorney in a preliminary action which alleged harassment on the part of Lillethun and stated as follows:

> Although these documents and the interview summaries of teachers from the District are not subject to the rules of evidence and could be construed as self-serving, I am quite impressed with their consistent descriptions of Mr. Lillethan's (sic) management behaviors. This explains in part my specific recommendations for a return to work with certain changes in managerial practices. (See attached letter, March 20, 1992) on his part.
>
> My opinion relative to (the Grievant's) readiness to return to work stands as written. My recommendation is that she be kept in her present classroom setting at the Hartland North Elementary School for reasons as recited. It is difficult to predict with accuracy the impact of involuntary transfer on this patient.

To be sure, Tyre recommended that the Grievant remain at North. However, Tyre's recommendation was conditioned upon changes being made in the status quo of Lillethun's supervisory relationship with the Grievant. 8/ The reasonableness of Lillethun's management style, in general, or his conduct toward the Grievant, in particular, is not an issue in the instant dispute. Notwithstanding Tyre's opinion on the matter, the record

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8/ While the undersigned has no basis to doubt the sincerity of Tyre's opinion, the record does not demonstrate that Tyre's perceptions of Lillethun's conduct toward the Grievant were accurate, or that his criticism of Lillethun's management style were valid.

does not provide any reasonable basis to conclude that Lillethun's conduct toward the Grievant involved harassment, or any other impermissible conduct. Absent such evidence, it cannot be concluded that the District had a duty to alter the status quo with respect to Lillethun's supervision of the Grievant at North.

As the District argues, Tyre did not state that the Grievant would suffer further physical, emotional or medical problems if she were involuntarily transferred. Rather, Tyre stated that "It is difficult to predict with accuracy the impact of involuntary transfer on this patient".

It is evident that the District and the Board of Education believed that the Grievant's best interests were served by transferring her to South. As the Association argues, it may be that the Grievant, who did not wish to be transferred to South, is a better judge of her own best interests than the District. The District, however, was not contractually required to make the transfer decision on the basis of the Grievant's best interest.

As the Association argues, the District could have transferred Lillethun, rather than the Grievant. The undersigned, however, does not have authority to order the District to reassign Lillethun, or Magestro, to another building.

Lillethun's letter of May 1, 1992 was sent to the parents of the children in the Grievant's first grade class to advise the parents of the fact that the Grievant was returning to her classroom and to explain the co-teaching arrangement between the Grievant and Mrs. Baker, the teacher who had taught the Grievant's first grade class while the Grievant was on leave. As the Association argues, in this letter, Lillethun stated as follows: "We are delighted that Mrs. Coy is feeling better and will be rejoining us." As the District argues, one may reasonably conclude that, if Lillethun had any concerns about the Grievant, he would not express these concerns in such a letter. Contrary to the argument of the Association, the remarks made in the letter of May 1, 1992 do not demonstrate that Lillethun was not opposed to the Grievant's remaining at North.

As the Association argues, the record does indicate that Judy Carr, an Assistant Custodian, was supervised by her husband, Bill Carr, who was Head of Building and Grounds. 9/ As the District

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9/ Two of the three relationships relied upon by the Association involve employes married to members of the District's Board of Education. The undersigned does not consider the members of the District's Board of Education to be employes of the District. Moreover, it is not evident that any member of the District's Board of Education acted in a supervisory capacity, or, indeed, acted upon any matter which affected the employe spouse. As the District argues, the District can

argues, the record does not establish the manner in which Judy Carr was supervised by her husband. Regardless of the Carrs' work relationship, the undersigned is not persuaded that the District acted unreasonably when it concluded that it was not workable to have the Grievant supervised by her husband, the Assistant Principal at North.

Lillethun and Magestro were the only administrators at North. While it may have been feasible to have formal evaluations of the Grievant performed by an administrator other than Lillethun or Magestro, the record does not indicate that the problems in the relationship between Lillethun and the Grievant stemmed solely from Lillethun's formal evaluation of the Grievant. Indeed, one of the Grievant's complaints was that Lillethun did not provide appropriate support when she was criticized by parents. It is unrealistic to believe that the Grievant could have remained at North without having any interaction with Lillethun or without being subjected to Lillethun's management and supervisory decisions.

When the Grievant returned to work, she returned to her first grade class at North and assisted the teacher who had been substituting for the Grievant while the Grievant had been on medical leave. According to the Superintendent, employes who are on long term leave, such as the Grievant, have a contractual right to return to the position which they had held at the time of the leave. The Association does not argue otherwise. Given the nature of the Grievant's return to her first grade class at North, as well as the short duration of this return, the fact that the Grievant returned to North at the end of the 1991-92 school year without evident difficulty does not persuade the undersigned that the District did not have a reasonable basis to conclude that it was in the best interests of the school to involuntary transfer the Grievant to South.

Conclusion

Prior to the Grievant's medical leave of absence, the Grievant informed the Superintendent that she had not been happy with Lillethun's supervision for some fifteen years. As demonstrated by the statements of the Grievant's doctors, the stress of the Grievant's relationship with Lillethun caused the Grievant to become dysfunctional at work and necessitated a medical leave of over six months. When the Grievant returned to work, the District was provided with information from the Grievant's Psychologist, Tyre, which indicated that it would not be beneficial for the Grievant to return to the status quo at North. For the reasons discussed above, the record does not

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not control who is elected to the District's Board of Education.

demonstrate that the District had a duty to change the status quo at North.

Given the record presented herein, the undersigned is satisfied that the District had a reasonable basis for determining that the Grievant's involuntary transfer from North to South was "necessary" and "in the best interest of the school" because it was an unworkable situation to have the Grievant remain at a building in which she would be under the supervision of either her husband, Assistant Principal Jack Magestro, or Principal John Lillethun. The undersigned is further satisfied that the decision to involuntarily transfer the Grievant from North to South was consistent with the rights granted to the District under Article XII, K, and Article IXX of the parties' collective bargaining agreement.

Having concluded that the District had the contractual right to involuntarily transfer the Grievant from North to South, the undersigned turns to the issue of what rights, if any, the Grievant had to choose an assignment at South. The language of Article XII, K, provides that the choice of assignment will be by mutual agreement of the Superintendent and the Grievant. If no mutual agreement is reached, then the Grievant "has the right to be assigned to any class for which" the Grievant "is certified, provided that the teacher presently assigned to that class has less seniority." Despite the District's arguments to the contrary, the most reasonable interpretation of this provision is that, when there is no mutual agreement, the affected teacher has the right to choose to be assigned to any class for which the teacher is certified and which is being taught by a less senior teacher.

Given the basis for the involuntary transfer, the Grievant's Article XII, K, assignment rights cannot be exercised to choose a class at North. However, at the time that the Grievant was notified of the involuntary transfer, she had the right to choose to be assigned to any class at South for which she was certified and which was being taught by a less senior teacher. 10/ When the Grievant was notified that she would be involuntarily transferred to South, she was advised that she could choose between teaching a first or second grade class at South. Advising the District that she was not waiving any contractual right to challenge the involuntary transfer, the Grievant told the District that she would teach the second grade class.

It is not clear whether or not the Grievant was certified for any class at South other than the first and second grade classes. If the Grievant had not been certified for any class at South other than the first or second grade, then the District complied

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10/ It is not evident that the Grievant was certified to teach classes at any building other than North or South.

with Article XII, K, when it offered the Grievant the choice of either the first or second grade class at South. By advising the District that she had selected the second grade class, the Grievant exercised her Article XII, K, assignment rights and the District did not have to accommodate the Grievant's subsequent request to teach a first grade class at South.

If the Grievant had been certified for any class other than first and second grade at South and such class was taught by a teacher with less seniority than the Grievant, then the District violated Article XII, K, by limiting the Grievant's choice of assignment to the first and second grade class. Under these circumstances, the Grievant's remedy for the District's contract violation is to have the right to select one of these other classes for the 1993-94 school year. The Grievant may, of course, remain in the second grade class at South if she so desires. However, since the Grievant was offered the choice of the first grade class and exercised this choice by refusing the first grade class, this Award does not entitle the Grievant to select a first grade class at South for the 1993-94 school year.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

1. The District did not violate the collective bargaining agreement by involuntarily transferring the Grievant from North Elementary School to South Elementary School, commencing with the 1992-93 school year.

2. If, at the time that the District offered the Grievant the choice of a first or second grade class at South, the Grievant had been certified for any class other than first and second at South and such a class was taught by a teacher with less seniority than the Grievant, then the District violated Article XII, K, by limiting the Grievant's choice of assignment to the first or second grade class. If such a contact violation occurred, the Grievant is hereby awarded the right to select one of these other classes at South, commencing with the 1993-94 school year.

3. The undersigned will retain jurisdiction for a period of thirty days from the date of this Award to resolve any disputes as to remedy.

Dated at Madison, Wisconsin this 6th day of August, 1993.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator