

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LAKELAND EDUCATION ASSOCIATION

and

WALWORTH COUNTY HANDICAPPED
CHILDREN'S EDUCATION BOARD

Case 15
No. 53047
MA-9212

Appearances:

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee,
WI 53202-3101, by Mr. Clifford B. Buelow, Attorney at Law appearing on behalf
of the Walworth County Handicapped Children's Education Board.
Southern Lakes United Educators / Council 26, 124 South Dodge Street, Burlington,
WI 53105, by Ms. Esther Thronson, Executive Director appearing on behalf of
the Lakeland Education Association

ARBITRATION AWARD

The Lakeland Education Association (hereinafter referred to as the Association) requested that the Wisconsin Employment Relations Commission designate a member of its staff as arbitrator to hear and decide a dispute with the Walworth County Handicapped Children's Education Board over the Board's failure to transfer teacher Dianna Niececki to Badger High School for the 1995-96 school year. The undersigned was so designated. A hearing was held on December 18, 1995 in Elkhorn, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. No stenographic record was made. The parties submitted briefs and reply briefs, and the record was closed on February 19, 1996.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

I. Issue

The parties agreed that the following issue should be determined herein:

"Was Article VII, Section (1)(c) of the collective bargaining agreement violated by the Walworth County Handicapped Children's Education Board and, if so, what is the appropriate remedy?"

II. Relevant Contract Language

PREAMBLE

In order to effectuate the provisions of Section 111.70 of the Wisconsin Statutes to encourage and increase effective and harmonious working relationships between the Walworth County Handicapped Children's Education Board being the Board of Education for Lakeland School of Walworth County, (hereinafter referred to as the "Board") and its professional employees represented by the Lakeland Education Association (hereinafter referred to as the "Association"), this agreement is made and entered into on this 1st day of July 1987, by and between the Board and the Association.

ARTICLE I MANAGEMENT RIGHTS

The management of Lakeland School of Walworth County and the direction of the employees in the bargaining unit, including, but not limited to the right to hire, assign and transfer employees, the right to change methods of operation and to reduce the number of employees shall be vested solely in the Walworth County Handicapped Children's Education Board. Nothing in this agreement shall be construed to limit the discretion of the Board with regard to matters affecting the public health, safety or general welfare. The Association recognizes the exclusive right of the Board to establish work rules and that the Board has statutory rights and obligations in connection with the operation of the Lakeland School which shall not be impaired by any provision of this agreement. Nothing in the above article should be interpreted to preclude either side from bargaining on any items that deal with wages, hours, and conditions of employment.

ARTICLE II RECOGNITION

The Board recognizes the Association as the exclusive and sole bargaining representative for the following unit of employees whether under contract, on leave, employed by the Board or as

included in the Board's resolution as passed on the 1st day of July, 1989.

The bargaining unit embraces all certified teaching personnel including classroom teachers, librarians, special teachers, and teachers on leave, but excludes administrators, work experience counselor, educational programmer, nurse, social worker, psychologist, physical therapist and occupational therapist.

Unless otherwise indicated, employees in this unit will be hereinafter referred to as "teachers" and references to male teachers will include female teachers.

**ARTICLE III
NEGOTIATION PROCEDURE**

. . .

B. The Board agrees not to negotiate with any teachers' group or organization other than the Association in regard to any matters concerning questions of wages, hours and conditions of employment.

. . .

**ARTICLE VII
PROFESSIONAL EMPLOYMENT CONDITIONS**

. . .

B. Transfer Policy
1. Voluntary Transfers and Reassignments

. . .

c. In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and that first consideration will be given to those already in the system who are qualified to the extent that they do not conflict with the requirements and best interests of the school system.

. . .

F. Dismissal or Non-Renewal of Contract
1. No teacher will be discharged, non-renewed, disciplined, reprimanded, reduced in rank or compensation,

nor deprived of any professional advantage without just cause. New teachers hired for the 1978-79 school year and thereafter shall serve a two year probationary period. Probationary teachers may be non-renewed without just cause and probationary teachers will not have recourse to the grievance arbitration process for non-renewal. All non probationary teachers may be non-renewed for just cause.

. . .
ARTICLE VIII
WORKING CONDITIONS
. . .

C. Work Day

Full time teachers assigned at Lakeland attendance center shall have assigned a flexible 39.5 hour work week. Teachers assigned to positions outside of Lakeland attendance center shall follow the calendar and workday established in the District to which they are assigned. Such flexible work week shall be limited to daily arrival of not later than 8:30 a.m. and leaving not earlier than 3:15 p.m. Hours may not be carried over from one day to the next to shorten the typical five (5) day work week. Exceptions to this will be the current practice of Fridays, days before holidays, day before scheduled conventions, and staff meetings. Staff meetings and other meetings called by the administration will be attended by faculty members so designated. Every effort will be made to call meetings 48 hours in advance.

Teachers assigned to one of the school districts served by WCHCEB shall follow the calendar and assigned work schedules of the assigned districts. If a district increases or decreases the number of actual teacher work days after the 1990-91 school year, teachers assigned to that district will have their compensation increased or decreased accordingly on a pro-rata daily basis from the WCHCEB salary schedule. Actual work days are defined as student contact, in service, records, etc. excluding holidays, nonpaid convention, etc.

III. Statutes and Administrative Rules

WISCONSIN STATUTES

**115.86 Handicapped Children's Education Board.
(5) BOARD DUTIES.**

(a) The board shall have charge of all matters pertaining to the organization, equipment, operation and maintenance of such programs and may do all things necessary to perform its functions, including, without restriction because of enumeration, the authority to erect buildings subject to county board approval and employ teachers and other personnel. The board shall prepare an annual budget, which shall be subject to approval of the county board under s. 65.90 unless a resolution is adopted under sub.(9) (c), and shall include funds for the hiring of staff, the purchase of materials, supplies and equipment and the operation of maintenance of buildings and classrooms.

. . .

ADMINISTRATIVE CODE

SEC. PI 11.17 Wisconsin Administrative Code. DIRECTOR.

(1) POLICY. To ensure that all children with EEN receive appropriate special education services, the LEA may organize special education services into an administrative structure under a level A certified director. Special education programs shall be implemented through one or more of the following administrative structures:

(a) District. Special education programs operated by a district and administered by a director already employed by the district.

(b) District. Special education programs operated by districts and administered by a director employed by the CESA and contracted by the district. The director shall be considered a district director for each district. Subsection (4) (a) shall be applicable to this section.

(c) CHCEB. Special education programs operated by a CHCEB and administered by a director employed by the CHCEB.

(d) Cooperative agreement (66.30). Special education programs operated by 2 or more districts or CHCEBs through 66.30 cooperative and administered by a director employed under the 66.30 cooperative agreement.

(e) CESA. Special education programs operated by a CESA and administered by a director employed by the CESA.

...

(4) ROLE OF THE DIRECTOR. The function of the director shall be to provide within legal and recognized professional standards an organizational framework in which efficient and appropriate special education leadership can be provided to plan, develop, implement and evaluate appropriate special education offerings to children with EEN. The director shall be the identified administrative leader responsible for all special educational services.

(a) General responsibilities. The director shall be responsible and accountable for the special education administrative structure to the administrator(s) or CHCEB, or both, and shall have requisite authority for budget preparation, administration and supervision of special education services staff; shall be responsible for development, placement, implementation and evaluation of programs and services for children with EEN and shall articulate special education with regular education.

(b) Specific responsibilities. A state-funded director shall be responsible and accountable for the development, implementation and evaluation of the following:

...

2. Administration, supervision and coordination of special education instructional and ancillary personnel for all aspects of programs and services for children with EEN.

...

4. Staff development including in service and continuing education programs for special education instructional and ancillary personnel, regular education personnel, other district personnel, parents and other community personnel.

IV. Background

There is relatively little dispute over the facts giving rise to this grievance. The Walworth County Handicapped Children's Education Board (WCHCEB or Board) oversees the provision of special education services for children in Walworth County, in southeastern Wisconsin. Some of these services are provided through the Lakeland School in Elkhorn, which the Board controls and operates. Some of the services are provided by teachers employed by the Board, who teach at schools operated by regular school districts in the County. There are sixteen such client districts,

including the Big Foot Union High School District and the Lake Geneva School District. Philip Knobel is the administrator of the Board, and Richard Turk is the Assistant Director of Special Education.

The Association is the exclusive bargaining representative for the 85 teachers employed by the Board, including the 55 who are outposted to client districts. The grievant, Dianne Nieciecki, is a teacher who has been employed by the Board for twenty years. During that entire time, she has been assigned as an LD teacher at Big Foot Union High School. On two occasions she had unsuccessfully sought transfers to other schools, but other candidates were selected and she did not challenge the decisions.

In May of 1995, the Board posted an opening for an ED or LD teacher at the Badger High School in the Lake Geneva School District. The grievant was the only staff member to apply for the position. On June 9th, she was given an interview with Rick Turk and two representatives of Badger High School -- Principal Mark Pienkos and Director of Pupil Services Brian Benson. At the interview, Turk spoke favorably about the grievant to the two Bigfoot administrators, and noted that experienced WCHCEB teachers had a right to first consideration. The actual interviewing was done by Pienkos and Benson.

After the interview with the grievant, Badger advised the Board that it wished to interview other candidates. The Board had five applicants for teaching positions, and after screening them Administrator Knobel sent two of them to Badger for an interview with Benson and Pienkos. Turk was also in attendance. After interviewing the candidates, Pienkos and Benson discussed them and each did a ranking. Benson's top choice was applicant Beth Cassidy, with the grievant second and the other new applicant third. Pienkos initially ranked Cassidy second and the grievant third. Benson voiced some concerns about the applicant Pienkos had rated as the top choice and, after consideration, Pienkos agreed and eliminated her from consideration, thus duplicating Benson's rankings. In discussing Cassidy, the two men were favorably impressed with a student teaching practicum she had done in the East Troy schools, some work experience she had had in the Madison schools and the fact that she was on the verge of being certified in both LD and ED. Both men were also aware that Cassidy had done a field practicum some time earlier at Badger. Turk did not participate in the ranking of candidates, although he personally viewed the grievant as the top candidate for the opening.

The Badger administrators told Turk that they wanted Cassidy, and he passed this information along to Knobel. Knobel contacted the Badger administrators, discussed their decision and heard their rationale. He advised the grievant of the decision on June 21st. She and an Association representative met with Knobel and Turk on June 23rd to get an explanation of the decision to pass her over in favor of a new hire. Turk told her that he had supported her bid for the job and that she had interviewed well, but that the Badger administrators wanted Cassidy after all of the interviews were concluded. The instant grievance was filed after this meeting, alleging that the grievant was entitled to the Badger opening under Article VII of the contract. The Board denied the grievance, asserting that the contract merely allowed "first consideration" for current staff, which was satisfied when the grievant was given the opportunity to interview before any other candidate. The Board also asserted that the best interests of the WCHCEB dictated

deference to the staffing choices made by client districts.

The grievance was not resolved in the lower steps of the grievance procedure, and was referred to arbitration. A hearing was held on December 18, 1995 at Lakeland School in Elkhorn. In addition to the facts outlined above, the following testimony concerning bargaining history and contract administration was given:

Jennifer Neis

Jennifer Neis testified that she had been employed by the Board since 1984, and had been active in the Association during that entire time. At the time of the hearing, she was the chief negotiator and Secretary for the Association. Neis stated that the voluntary transfer language had not been an issue in negotiations since she had been with the Board. She expressed the opinion that "first consideration" meant a qualified internal applicant would be the first choice for an opening. Neis also stated her belief that the "best interests" language referred to the specific needs of an educational program, and meant that the teacher had the requisite experience and ability to competently perform the job. In the event that there were two or more internal applicants for a job, Neis opined that the Board could choose among them, without considering seniority. Neis could not recall any other grievances over this language.

Pat Jankowski

Pat Jankowski testified that she had been employed by the Board for 28 years. She expressed the opinion that "first consideration" meant first priority for the job, and said that she was appalled to discover that client districts were being allowed to make staffing decisions.

Philip Knobel

Philip Knobel testified that he had been the Administrator and Director of Special Education at the Board since 1969. In that capacity he has been involved in negotiations and has been responsible for administering the contract. Knobel testified that the Association proposed, in 1973, to modify the language on transfers and assignments. At that time, the language read:

In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored to the extent that they do not conflict with the requirements and best interests of the school system.

The Association proposed to delete the clause relating to the "best interests of the school system" and insert language guaranteeing first consideration to internal applicants:

In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and

that first consideration will be given to those already in the system who are qualified.

According to Knobel, the Board rejected the proposal to delete the "best interests" language, expressing concern that it could impair its ability to be sensitive to the wishes of the client districts. The Board did, however, agree to include language giving first consideration to internal applicants, which the Association had said was not a guarantee of the job:

In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and that first consideration will be given to those already in the system who are qualified to the extent that they do not conflict with the requirements and best interests of the school system.

This language has not been changed since. Knobel said that the language has always been interpreted to mean that internal applicants get the first interviews for jobs, but that client districts have always been allowed to interview prospective teachers. Further, Knobel said that teachers are always advised that they would be placed with client districts only if the client districts agreed. Knobel recalled two specific cases, one in 1975 and another in 1990, where a new applicant was selected over a senior internal applicant. Knobel also stated that there had been cases where he disagreed with the client districts, but deferred to their judgment. He could not recall a case where he did not defer, but did say that there were cases where he had considerable dialogue with districts before a final decision was made.

Additional facts, as necessary, will be set forth below.

V. Arguments of the Parties

A. The Association's Brief

The Association takes the position that the grievant should have been awarded the opening at Badger High School. The contract provides that: "In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and that first consideration will be given to those already in the system who are qualified to the extent that they do not conflict with the requirements and best interests of the school system". Certainly the grievant was given consideration, in that she was interviewed and not rejected out of hand, but the Board failed to give appropriate weight to her experience and qualifications by passing her over in favor of a new teacher with no genuine experience. The record is completely clear that the grievant was not only qualified, but extremely well qualified, for the ED position that was posted.

The Association rejects the Board's attempt to shift responsibility for these transfer

decisions to the client schools. The Board's representative, Richard Turk, testified that he thought the grievant was the top candidate among the three interviewed, yet the Board rejected her based on the opinions of outsiders. While conceding that the Board must maintain good relations with the public schools in the County, the Association argues that the Board cannot abdicate the contractual responsibilities owed to its teachers under the guise of the "best interests" provision of Article VII. The "best interests of the school system" cannot be read as intending more than its plain meaning -- avoiding adverse impacts on unique programs or services and insuring compatibility with students, administration, staff and parents. The bargaining history of Article VII in no way suggests that it was intended to block the transfer of a well qualified teacher to a position teaching the same discipline and age group at a different school.

In the collective bargaining agreement, the Board has agreed to recognize the Association and to refrain from bargaining with others about wages, hours and working conditions. The contract specifically recognizes that it is the Board's responsibility to hire, assign and transfer employees, and it makes no provision for the Board to hand these duties over to others. Likewise, the Wisconsin Administrative Code specifies that it is the directors of Handicapped Children's Education Boards who bear responsibility for evaluating, developing and supervising staff. Nowhere in law or contract is there anything to support the Board's claim that it can delegate its decision making in the area of transfers to client districts. The Board is responsible for the decision to transfer or not, and it must make that decision in a manner consistent with the contract. It has failed to do so, and as a result the grievance must be sustained, and the grievant transferred to Badger High School.

B. The Board's Brief

The Board takes the position that it has fully complied with the contract and that the grievance should be denied. The contract requires that internal applicants be given first consideration for openings. This requirement was satisfied when the Board granted the first interview to the grievant. Suggesting that the contract guarantees anything more ignores the clear language of Article VII. "First" consideration necessarily implies that others will be considered "second", "third", and so on. Moreover, the promise of first consideration is qualified by the phrase "to the extent that they do not conflict with the requirements and best interests of the school system". This language is completely inconsistent with the notion of a guarantee.

The Board points to the history of negotiations over Article VII and asserts that it shows the great degree of discretion retained by the employer in the area of transfers. Prior to 1973, the language read:

In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored to the extent that they do not conflict with the requirements and best interests of the school system.

In negotiations over the 1973-75 contract, the Association sought to change the language to eliminate the "best interests" language and guarantee qualified teachers first consideration:

In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and that first consideration will be given to those already in the system who are qualified.

Philip Knobel's uncontradicted testimony was that this language was presented by the Association as guaranteeing only the first interview to internal applicants. The Board accepted this representation, and agreed to insert the new language but not to eliminate the "best interests" language. Minutes of Board meetings from this set of negotiations demonstrate that the Board did not agree to give up any discretion in making the final choice. If the "first consideration" language actually gave a guarantee of selection, preserving the "best interests" clause would have been irrational, since the resulting provision would have been internally contradictory.

The Board also cites past practice to support its interpretation of Article VII. Since the adoption of the modified language in 1973, the Board has always interviewed internal applicants first, but has always told them that they must interview with and satisfy the needs of the client districts. In several instances, the Board has assigned new hires over current staff when a client district has requested it. One of these cases, involving Pat Schmidt, occurred in 1975, right after the new language was adopted. The Board has a twenty year practice of allowing client districts to have input in staff selection and ignoring seniority if necessary to meet the client districts' desires.

The contract clearly gives the Board the right to act in its own best interests when making transfer decisions. In order to prevail in this grievance, the Association must prove that the Board's decision not to force the grievant on Badger High School was arbitrary or capricious. A decision is arbitrary or capricious only where a prudent person could not have arrived at the same decision under all of the circumstances. In this case, the Board has made the decision that its best interests are served by accommodating its client districts which, the Board notes, have the right to withdraw from the cooperative county-wide special education arrangement if they are unhappy. Moreover, the preference expressed by the Badger administrators for Cassidy is rational, since it was based on their judgment that her specific training and experience best met their specific needs.

Since the contract guarantees the first interview to internal candidates, but reserves to the Board the right to make the ultimate decision based upon its own best interests, the grievance must be denied.

C. The Association's Reply Brief

The Association takes exception to the Board's suggestion that client districts might

summarily withdraw if they disagree with the Board's staffing decisions. State statutes and administrative rules make this a difficult process, requiring approval by the state superintendent and a long notice period. As a practical matter, few of the relatively small districts in Walworth County would attempt withdrawal, since they could not afford to establish their own programs to replace the services provided by the Board. Using this fanciful basis to justify the rejection of a teacher of known ability is, in and of itself, arbitrary and capricious.

The Board's attempt to cite bargaining history is not helpful to its position, since none of the examples cited during negotiations -- change of discipline, change of age group, lack of qualifications -- are presented by the grievant's request. Likewise, the claim of past practice is not persuasive. No grievances were filed in those cases and it must be presumed that the teachers agreed that the decision was in the Board's best interests. The grievant herself had acquiesced in two prior rejections of transfer requests. In this case, however, the grievant and the Association have concluded that selecting Cassidy over the grievant was not justified by the best interests of the Board. Thus the lack of any grievance activity in the past proves nothing, and should not be given any weight by the arbitrator.

D. The Board's Reply Brief

The Board rejects the Association's interpretation of bargaining history. Although the Association argues that the examples used in bargaining to preserve the "best interests" clause do not specifically apply to the grievant, this misconstrues the parties' relative postures in bargaining. It was the Association that sought to eliminate the clause in 1973. The Board had no need to justify its position, other than to say "no". Thus the burden is on the Association to show that the clause does not allow the Board discretion. There is no such evidence.

The Association's assertion that the Board has somehow abrogated its responsibilities is simply not supported by the facts of this case. The Board was represented by Turk during the interviews, and Knobel discussed the decision with Badger's representatives after the interviews. They may have disagreed with the Badger administrators' choice, but they made a sound decision to defer, both because Badger is the best judge of its own needs, and in order to maintain their good relationship with their client district. This deference is precisely the type of consideration that Knobel cited in 1973 as a reason for retaining the "best interests" clause. He advised the Association when the language was negotiated that client preferences would be taken into account when making assignments, and has consistently done so in the twenty years since that set of negotiations. Far from being an abrogation, this deference is part and parcel of the parties' agreement.

VI. Discussion

The issue in this case is what the parties intended by the language used in Article VII,

Section B(1)(c):

- c. In the determination of requests for voluntary reassignments and/or transfers, the wishes of the individual teacher will be honored and that first consideration will be given to those already in the system who are qualified to the extent that they do not conflict with the requirements and best interests of the school system.

Considered in isolation, the phrase "and that first consideration will be given to those already in the system who are qualified" is ambiguous, and its meaning was a point of contention at the hearing. However, the evidence of bargaining history and past practice strongly indicated that it is a procedural requirement, and the parties' post-hearing briefs reflect general agreement that the effect of this language is to obligate the Board to grant an interview to qualified internal applicants before outsiders are considered for a vacancy. The grievant was clearly qualified for the opening at Badger, 1/ and was therefore entitled to be interviewed before any other

1/ The grievant acknowledged that one of her reasons for seeking a transfer to Badger High School was that it was closer to her home than was Bigfoot High School. The Board's brief cites this as her primary motivation. It is clear from her testimony that she also viewed the transfer as an opportunity for professional growth, and this dispute concerns more than just a matter of personal convenience for the grievant. Having said that, it is the Board's reason for not making the transfer, and not the grievant's motives for seeking the job, which are in issue in this case.

candidate was considered. She was given that interview, and thus the "first consideration" clause of Article VII was satisfied.

Putting aside the procedural clause for clarity's sake, the substantive promise in the contract is that "the wishes of the individual teacher will be honored ... to the extent that they do not conflict with the requirements and the best interests of the school system". This creates a presumption in favor of an internal applicant for transfer, but it is a qualified promise. The transfer request will be honored unless the Board can show that transferring the teacher does not meet their requirements, or is not in the system's best interests. There is no argument in this case over the meaning of "requirements". The parties do, however, vigorously dispute what constitutes the "best interests" of the system.

The essence of the Association's argument is that the best interests of the system are served when a qualified and experienced teacher is placed in an opening. Here, Assistant Director Richard Turk testified that he felt the grievant was the best candidate for the job at Badger on the basis of the interviews. The question posed by the Association is how it can be in the best interests of the school system to bypass the candidate whom the Board itself considers to be the best candidate. The answer lies in the breadth of the term "best interests".

Certainly the primary interest of the Board must be the provision of quality special education services, and assignment of qualified personnel is fundamental to that interest. Those services are provided within a defined cooperative structure, and in pursuing its primary educational goal the Board can reasonably be expected to take account of the need to maintain that structure. In the specific area of transfers, the Board is not required to value relative qualifications and experience to the exclusion of all other interests. If this was what the contract required, the parties could easily have expressed that thought. Transfer clauses limiting the employer to consideration of only relative ability and seniority are commonplace, but Article VII, Section B(1)(c) is quite clearly not such a clause. By its express terms, it allows the Board to engage in a much broader balancing before deciding on a transfer request, weighing the decision's impact on the full range of its legitimate interests.

As a cooperative enterprise, the Board has an interest in maintaining harmonious working relationships with the client districts. The teachers it outposts work on a day-to-day basis with the personnel of the client districts and provide services to those districts' students. While the Board's concern that participating districts may withdraw if their staffing preferences are ignored appears to be overstated, a good working relationship encompasses more than just avoiding the disintegration of the cooperative. When assigning teachers, respecting the opinions of the administrators in whose districts a teacher will be working is a reasonable action in furtherance of

the Board's interest in maintaining its cooperative organizational structure. 2/ This is not to say that a policy of deference can be an absolute defense to any transfer decision.

The Association is quite correct in observing that the Board may not abandon its decision making authority in the area of transfers. It is the Board that employs the teachers, and it is the Board which has negotiated the contract. Were the Board to adopt a stance of deferring to a client district which vetoed a transfer because the experienced teacher is a minority, or a union activist, or because the teacher has blond hair while it preferred brunettes for its staff, a citation to good client relations would not overcome the arbitrariness of the underlying decision. The Board bears the ultimate responsibility for the decision to assign or not assign, and to the extent that it chooses to defer to the judgment of others, it assumes the burden of showing that that judgment had some legitimacy.

2/ This conclusion is buttressed by the testimony of Knobel, who stated that the Board has had a policy of deference since at least 1969, and that this policy was communicated to the Association during the 1973 negotiations.

In this case, the Badger administrators selected a teacher with very little experience. At the same time, it must be noted that there is no contention that Cassidy is unqualified for the job, and Benson and Pienkos were able to point to objective facts about her background which caused them to believe that she would better fit their needs than would the grievant. 3/ Reasonable people may disagree with their assessment of Cassidy's qualities versus the grievant's, and Turk did disagree. However, given the choice between two qualified candidates, and the articulation by the Badger officials of legitimate reasons for preferring Cassidy, the Board's decision to defer to the client district cannot be said to violate the contract.

The Association bears the burden of proof in this proceeding. The language used in the contract supports the Board's position that it may consider a broad range of interests, beyond just experience and qualifications, in deciding whether a transfer is in "the best interests of the school system". The desires of client districts fall within this broad range of interests, and both bargaining history and contract administration over the past twenty years support the Board's right to defer to clients on transfer decisions. This does not allow the Board to acquiesce in judgments which have no legitimate basis, but it does allow the Board to refuse a transfer even when it believes the internal candidate to be the best choice for the job. The Board believed that the grievant was the best qualified candidate for the opening at Badger, and there is substantial evidence to support that belief, but the Badger administrators arrived at a different conclusion. Their preference for Cassidy may not have been the best possible decision, but they were able to explain it to the Board in terms of her specific training and their specific needs. Thus there was a legitimate basis for their judgment, and the Board was entitled to accept it.

3/ The Association notes that Cassidy's mother is a Lake Geneva district teacher and her father is a retired Badger administrator. The implication is that the selection may have been influenced more by nepotism than by merit. If proved, this could bear on the legitimacy of Badger's decision. However, there is nothing in the record to support the inference other than the mere fact of the family connection. The Badger administrators offered substantive reasons for their decision, and I have no basis for viewing those reasons as a subterfuge.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

Article VII, Section B(1)(c) of the collective bargaining agreement was not violated by the Walworth County Handicapped Children's Education Board. The grievance is denied.

Dated at Racine, Wisconsin this 8th day of March, 1996.

By _____
Daniel J. Nielsen, Arbitrator