

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

WESTON SCHOOL DISTRICT

and

WESTON TEACHERS ASSOCIATION

Case 30  
No. 54038  
MA-9529

Appearances:

Mr. James Gerlach, LaRowe, Gerlach & Roy, S.C., Attorneys at Law, 110 Main Street, P.O. Box 231, Reedsburg, Wisconsin 53959-0231, appeared on behalf of the District.

Mr. James Yoder, Executive Director, South Central United Educators, 2900 Red Fox Run, P.O. Box 79, Portage, Wisconsin 53901-0079, appeared on behalf of the Association.

ARBITRATION AWARD

On May 24, 1996, the Weston School District and the Weston Teachers Association filed a request with the Wisconsin Employment Relations Commission to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. The Commission, on June 10, 1996, appointed the undersigned to hear and decide the matter. A hearing was conducted on August 28, 1996 in Reedsburg, Wisconsin. A transcript of the proceedings was prepared and distributed. The parties submitted post-hearing briefs which were received and exchanged by September 9, 1996.

This arbitration addresses the allegation that the District refused to permit the grievant, David Rasmussen, access to Union representation during the course of an allegedly disciplinary meeting.

BACKGROUND AND FACTS

David Rasmussen, the grievant, was a Technical Education/Driver's Education instructor employed by the Weston Schools. Mr. Rasmussen was being considered for non-renewal during the spring semester, 1996. Harold Justman, Superintendent of Schools, had prepared a recommendation that Mr. Rasmussen be non-renewed at the end of the 1996-1997 school year for presentation to the School Board at a meeting scheduled for the evening of February 12.

At approximately noon on February 12, Mr. Cook, a colleague of Mr. Rasmussen's, complained to Justman that Rasmussen had behaved inappropriately that day when he directed a

student to come to Cook's class, to advise Cook that a hammer with a cracked handle had been broken five weeks earlier in Cook's class, and that Cook was responsible. Cook complained about the timing, the use of the student as a messenger, and the approach. 1/ After talking with Cook, Justman determined that he would talk with Rasmussen to get his side of the story.

It was Justman's testimony that he did not anticipate talking to Rasmussen that day. He further testified that at approximately 3:15 in the afternoon, he saw Rasmussen in the outer office and invited him into his own office so that they could talk. According to Justman, he was seated at his desk, Rasmussen entered his office, and Justman advised him that he wanted to hear his side of the story in the Cook incident. Justman testified that Rasmussen thereafter sat down, reached into his pocket and took out a tape recorder. Justman indicated to Rasmussen that he would not need the tape recorder, whereupon Rasmussen put it back into his pocket. Justman asked again what had occurred and Rasmussen did not respond. Justman thereafter gave an account of the events as he understood them from Cook, and indicates that Rasmussen again did not respond. According to Justman, the only remark made by Rasmussen during the course of their three to five-minute meeting was something to the effect "I purchased the hammer". Justman testified that the door to his office remained open at all times, and that there was no information of substance forthcoming from Rasmussen. He testifies that Rasmussen never requested Union representation, and he (Justman) never denied it. Justman testified that he never insisted that Rasmussen answer questions and that there was no discipline imposed during the course of the meeting.

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1/ Cook reduced his complaint and version of the facts to a memo, dated February 13, 1996, to Justman.

Mr. Rasmussen tells a different story. It was his testimony that Justman had twice come to his classroom during the course of the day. The men did not speak on either occasion. 2/ Rasmussen indicated that he believed Justman wanted to talk to him about the Cook incident and so he took his tape recorder and headed to the main office, where he had other business. According to Rasmussen, Justman called him into his office, and closed the door. As soon as Justman closed the door, Rasmussen testified that he indicated "I think somebody else needs to be here". It is his testimony that Justman indicated that that was not necessary. According to Rasmussen, Justman asked him about the hammer incident and he (Rasmussen) did not respond. It is his testimony that he allowed Justman to talk about his own understanding of the incident and that when he was done talking, he asked to tape the meeting, and according to Rasmussen, Justman said no. Rasmussen testified that he then indicated that "someone from the Union should be here". He testified that his second request was ignored. The meeting thereafter ended. Rasmussen testified that he believed that the meeting could lead to his being reprimanded.

At the conclusion of the meeting on February 12, Mr. Justman amended the recommended non-renewal letter to include the Cook matter in addition to those matters previously listed, as warranting Mr. Rasmussen's non-renewal. Rasmussen grieved his treatment at the meeting, and contends that his rights to union representation were violated. It is the contention of Mr. Rasmussen and his union that all reference to the Cook matter should be expunged from his record, and not considered in any subsequent disciplinary proceeding.

## ISSUE

The parties stipulated to the following issue:

Did the District deny the grievant his Association representation during the course of a disciplinary proceeding? If so, what is the appropriate remedy?

## RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

### ARTICLE II

#### BOARD FUNCTIONS

The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, all powers, rights,

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2/ Justman denies a conscious visit to Rasmussen's classroom. Justman indicates that he may well have stopped by that classroom as part of his normal routine of walking through the building and stopping by classrooms.

authority, duties, and responsibilities conferred upon and vested in it applicable by law, rules, and regulations to establish the framework of school policies and projects including the right:

1. To the executive management and administrative control of the school system, its properties, and employees;

2. To employ and re-employ all personnel and, subject to the provisions of law or State Department of Public Instruction Regulations, determine their qualifications and conditions of employment, or their dismissal or demotion, their promotion and their work assignment;

3. To establish and supervise the program of instruction and to make the necessary assignments for all programs of an extra-curricular nature, that, in the opinion of the Board, would benefit students;

4. To determine means and methods of instruction, textbooks, other teaching materials, and teaching aides, and to implement class schedules, hours of instruction, length of school year, and terms of 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 judgement and discretion in connection Therewith shall be limited only by the specific and express terms of this agreement and Wisconsin Statutes, Section 111.70 and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the United States. The Board recognizes that items in this management rights article are subject to negotiation providing said items do not conflict with this agreement and the laws of the State of Wisconsin.

#### POSITIONS OF THE PARTIES

It is the position of the Association that Rasmussen's testimony is credible, that he requested representation during his meeting with Justman and that his request was denied. The Association contends that the purpose of the meeting was investigatory in nature, with an eye toward discipline. The Association contends that Rasmussen's rights to Association representation was denied, and that the appropriate relief is the expungement of any reference to the incident involved from Rasmussen's record.

It is the position of the District that Justman's testimony is credible, that no request for representation was made. The District contends that should I find that such a request was made, that the meeting was voluntary, that Rasmussen was not compelled to participate, and as a practical matter, no information was supplied. Under any circumstance, the District takes issue with the Association's requested remedy, and argues that Rasmussen suffered no harm.

## DISCUSSION

There is a fundamental dispute of fact as to whether Mr. Rasmussen asked for Union representation during the course of his meeting. The testimony of Rasmussen and Justman is irreconcilable. There is no corroborating testimony or evidence supporting either man's version of the events. As a practical matter, I am in no position to make a credibility determination with respect to this matter.

As a practical matter, Rasmussen sensed that Justman wanted to talk to him about the Cook matter. It was his testimony that he assumed the reason that Justman had come to his classroom on two separate occasions was to initiate such a conversation. He testified that he had business in the central office and sensing that Justman wanted to talk to him, he took his tape recorder with him to the office so that he would have it in anticipation of a conversation with Justman. He was not directed to come to the office. His participation in the investigation was not commanded or coerced. Most meaningfully, it does not appear that he supplied any information with respect to the substance of the matter involving Mr. Cook.

The substance of the entry onto the February 12 letter recommending non-renewal represents no more than a summary of Mr. Cook's memo outlining and confirming his complaint with respect to Mr. Rasmussen. Mr. Justman testified that Rasmussen refused to comment even minimally with respect to the substance of the allegation. Rasmussen testified that he minimized his comments with respect to Justman's inquiries. As a practical matter, assuming the events occurred as Rasmussen claims, the Employer garnered no information, no admissions, nor any advantage from the meeting. According to Rasmussen, there was no meaningful exchange between the men.

The Union contends that the Employer's actions violated the management rights provision of the collective bargaining agreement. It is not apparent to me which provision is violated. The violation claimed is one guaranteed by statute, not contract. Weingarten-style rights are borne of statutory protection. The Union here seeks to enforce those rights through the grievance arbitration process. As a practical matter, there is nothing to suggest that the extraordinary remedy requested by the Union is warranted.

## AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 20th day of September, 1996.

By \_\_\_\_\_  
William C. Houlihan, Arbitrator