

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

WESTON SCHOOL DISTRICT

and

WESTON TEACHER'S ASSOCIATION and  
SOUTH CENTRAL UNITED EDUCATORS

Case 28  
No. 53184  
MA-9266

Appearances:

LaRowe, Gerlach & Roy, S.C., Attorneys at Law, by Ms. Linda L. Hale, appearing on behalf of the District.

Mr. James M. Yoder, Executive Director, appearing on behalf of the Union.

ARBITRATION AWARD

The Weston School District and the Weston Teacher's Association and South Central United Educators are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Union and District jointly requested that the Wisconsin Employment Relations Commission appoint Thomas L. Yaeger, a member of its staff, to resolve the David Rasmussen grievance. Hearing in the matter was held on November 29, 1995, in Reedsburg, Wisconsin. The parties filed post-hearing briefs on January 8, 1996.

ISSUE:

The parties, at hearing, stipulated to the following statement of the issue:

Whether the Weston School District violated Article VII, E of the Agreement between the Weston Teacher's Association and the Weston Board of Education when it disciplined David Rasmussen with a three day suspension without pay, required him to write a letter of apology and when the Board recommended that Mr. Rasmussen seek counseling?

If not, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE:

ARTICLE VII

TEACHER EVALUATION

. . .

E. No non-probationary teacher shall be non-renewed, disciplined or dismissed without just and reasonable cause. Each teacher entering this school system for the first two years of service shall be considered a probationary teacher. The probationary teacher, prior to dismissal, or non-renewal shall be provided the right to supervisory counsel and suggestions with the appropriate time for correction on his or her part. No probationary teacher shall be disciplined, dismissed, or non-renewed capriciously or arbitrarily. The provisions of a probationary teacher shall be effective from June 1, 1978.

. . .

BACKGROUND:

The grievant, David Rasmussen, has been employed as a driver education instructor for the Weston School District for 18 years. On February 20, 1995, Rasmussen was providing behind-the-wheel driver education training to two students, [X\_] and Jessica Machovec. X\_ was Weston High School's foreign exchange student from [country omitted]. On this day, X\_ drove the car after Jessica had driven first for approximately one hour. This was X\_'s fourth time driving with Rasmussen.

While driving along a stretch of highway marked at 55 miles per hour, Rasmussen directed X\_ to increase her speed. From Jessica and Rasmussen's testimony, it appears that she was then driving under 30-35 miles per hour. X\_ slowly began to press down on the accelerator increasing her speed. However, Rasmussen insisted that she increase her speed more quickly and he placed his hand on her leg and pushed it down causing the vehicle to accelerate faster. Rasmussen continued to hold and squeeze her leg three or four more times. Finally, X\_ asked Rasmussen to stop or she would take her foot off the accelerator completely. At no time was X\_ aware of any pending emergency situation. Rasmussen, however, testified that a truck was approaching from behind, and that was the reason for his pushing X\_'s leg down.

The next day, X\_\_ and her United States mother, [name omitted], made verbal complaints and written complaints to the District Administrator, Harold Justman. Justman conducted an investigation of the situation. He spoke with other students who were taking or had taken Rasmussen's class, Jessica Machovec and Rasmussen.

On March 28, 1995, the District gave Rasmussen notification he was being suspended for three days without pay and required to write a letter of apology to X\_\_. The District also recommended that he seek counseling. Rasmussen complied with all of the disciplinary actions, but on April 6, 1995, grieved the District's actions. That grievance led to the subject arbitration.

#### POSITION OF THE UNION:

The Union asserts that the District's disciplinary actions were excessive and should have been limited to writing a letter of apology to X\_\_, seeking counseling and a one-day unpaid suspension. The Union declares that the discipline administered by the District was not reasonably related to the seriousness of the offense. Furthermore, the Union also contends that Rasmussen was never given any forewarning that his conduct would be objectionable or that if it was, there would be disciplinary consequences.

Foremost, no evaluation of Rasmussen's teaching technique in behind-the-wheel instruction was ever performed, nor did the District provide any evidence that Rasmussen's performance was other than satisfactory. Even though some students did admit that Rasmussen used tactile techniques, none of the students had ever complained to the District or to Rasmussen. In Rasmussen's 18 years of teaching, he was never advised to change his teaching technique. Therefore, the Union asserts that the District is really trying to retroactively punish Rasmussen for inappropriate past behavior.

The Union also maintains that X\_\_'s testimony concerning the incident puts in doubt her veracity. At first, X\_\_ laughed about the incident shortly after it had happened. It was not until later that evening that she found Rasmussen's conduct to be inappropriate. Also, there is some discrepancy between X\_\_'s testimony and Rasmussen's on the facts. For example, X\_\_ was uncertain as to how fast she was actually driving, what the weather was like and where exactly she was driving. X\_\_ stated that she was driving 50 mph in a 55 zone. However, Jessica Machovec stated that she was only driving 20 mph and Rasmussen asserted that she was driving less than 30-35 mph. Also, X\_\_ stated that she does not recall Rasmussen pressing her leg after she reached 50 mph, suggesting that she was not driving 50 mph when he began pressing on her leg.

Similarly, X\_\_ first stated that Rasmussen could have pressed on her leg as many as ten times, but later stated that she could not recall how many times he pressed on her leg. Rasmussen stated that he pressed on her leg three to four times, and Jessica Machovec's testimony confirms the same. Rasmussen and X\_\_ also have conflicting stories as to where the alleged incident occurred.

Lastly, the Union states that X\_\_ had no need to worry about Rasmussen's alleged vengeful tactics because she was assigned to a different teacher for her remaining lessons. Therefore, Rasmussen would have had no opportunity to retaliate against her.

The Union concludes the District's response was not reasonably related to the seriousness of the alleged infractions, and Rasmussen had never been warned his actions would be objectionable. Therefore, it urges the undersigned to find that just and reasonable cause did not exist for the discipline imposed.

#### POSITION OF THE DISTRICT:

On the other hand, the District argues that Rasmussen's conduct was inappropriate, interfered with X\_\_'s privacy, and created a potential for harm.

The District maintains that Rasmussen's behavior was inappropriate based on two previous incidents which had occurred and resulted in disciplinary action being taken against him. Therefore, Rasmussen already knew that some of his teaching methods were intimidating and inappropriate. Nevertheless, Rasmussen continued his intimidating teaching practices in order to get the children to comply with his demands.

Also, Rasmussen's actions endangered himself, the two students in the car, and others driving on the same road. Rasmussen's grabbing and squeezing X\_\_'s leg caused her pain and distracted her from directing her full attention to driving. X\_\_ even asked Rasmussen to stop; however, Rasmussen refused to comply with X\_\_'s request. Ultimately, X\_\_ was forced to remove her foot from the gas pedal in order to stop him.

The District argues there were other alternatives available to Rasmussen in lieu of pressing on X\_\_'s leg. Rasmussen even conceded that he had other options. For example, he could have asked X\_\_ to pull over to the side of the road or simply allowed the approaching vehicle to pass.

The District also asserts that Rasmussen did not treat X\_\_ with respect by continuously grabbing her leg. This conduct goes against the guidelines in the West High School Faculty Handbook which requires teachers to recognize basic dignities of all individuals with whom he/she interacts in the performance of professional duties.

Finally, the District alleges that Rasmussen violated X\_\_'s right to personal privacy. Rasmussen's actions served no legitimate purpose and was unnecessary. The District points out, according to Wis. Stats. 118.31(2) and (3) that no employe of a school may subject a pupil to corporal punishment unless it is used to quell a disturbance, obtain possession of a weapon, for purposes of self-defense, for the protection of property, to remove a disruptive pupil, to prevent a pupil from inflicting harm on him/herself or others or to maintain order and control. However, no

such situation existed which would have justified Rasmussen's actions.

The District concludes that it had just and reasonable cause to impose the discipline it did against Rasmussen, and the record evidence in this proceeding did not rebut that conclusion.

### DISCUSSION:

The basic facts underlying this case are not in dispute. X\_\_ was driving significantly slower than 55 mph during her behind-the-wheel instruction on February 20, 1995. Instructor Rasmussen two or three times directed her to accelerate, but she did not accelerate as rapidly as he wanted. He then placed his hand on her right leg and pushed it down several times to depress the vehicle's accelerator causing her to speed up. X\_\_ and her foreign exchange mother complained to the District, the District investigated, and disciplined the grievant. The thrust of the grievance is that Rasmussen's conduct did not rise to that level of misconduct warranting the discipline that was imposed.

First, let me say that whether Rasmussen grabbed and pushed on X\_\_'s leg three or four times or ten times is not critical to the outcome of this case. X\_\_ testified Rasmussen did it six to ten times, whereas Jessica and Rasmussen testified it occurred three or four times. I have decided to credit Jessica and Rasmussen's version. Jessica had no reason to lie about what she observed. She was only casually acquainted with X\_\_, and had only been in a vehicle with her once before. Thus, I have concluded from Jessica's testimony that X\_\_ was driving slowly, Rasmussen directed X\_\_ two or three times to speed up and when she did not he pressed on her leg three or four times to cause her to speed up.

Thus, the initial question is whether Rasmussen's conduct was inappropriate. The District believes it was because it invaded her privacy, and was distracting her from being attentive to her driving. This, the District believed, created a potentially dangerous and unnecessary situation. The undersigned agrees that Rasmussen, by placing his hand on X\_\_'s leg, would no doubt startle her, particularly where he obviously gave no forewarning he was going to do so. Causing a student to react in an unpredictable way to a startling event while driving a vehicle in itself creates the potential for an accident. From an instructional perspective I have concluded this was clearly an error in judgment on Rasmussen's part. However, he would have me excuse his action as being warranted by the circumstance that a truck was approaching from behind and X\_\_ was driving to slow. Even if there was a truck approaching from behind, and even if it were approaching quickly, the question remains whether this was a safe course of conduct. There was no testimony about oncoming traffic, and what the result could have been had X\_\_ jumped away causing the vehicle to veer right or left. Clearly, it is all speculation as to what could have occurred, but that speculation raises the possibility of a serious accident. It is this aspect of the case that I believe raises the level of seriousness of Rasmussen's conduct. Obviously, he had at least one alternative course of action. He could have, once he concluded X\_\_ was not accelerating

as he wished, directed her to put on her turn signal and pull off onto the shoulder of the road. He acknowledged that alternative during his cross examination, but stated if that alternative were adopted they "would spend most of the time stopped." The undersigned is therefore not persuaded that the fact that a vehicle was approaching from behind excused Rasmussen's conduct. He chose the least safe of at least two options he acknowledged were available to him, and by doing so created the potential for serious harm to himself and the students.

The remaining question is whether the discipline imposed was appropriate or excessive. The grievant had previously been given three and five day suspensions in April, 1993, for what was considered insensitivity to students and inappropriate teaching methods. At that time, he was advised future misconduct could result in his dismissal. Obviously, Rasmussen had been made aware that certain methods he had employed with students were intimidating to students and unacceptable to the District. As I concluded earlier herein, taking hold of and pressing down on X\_\_'s leg to depress the vehicle's accelerator was also an inappropriate instructional procedure under the circumstances then existing. Had this been the first incident of using improper methods with students, the undersigned might have been persuaded that a three-day suspension was excessive. However, this was the third instance where Rasmussen's judgment failed him in his interaction with a student. Notwithstanding that it is a generally accepted fact that teaching classes of teenagers can be difficult at times, this is Rasmussen's profession. Society depends on teachers to have devised strategies to cope with these difficulties in a safe and effective manner. Obviously, the methods he chose to employ with X\_\_ were not safe or effective and could have placed both her, Jessica, and himself in danger. Therefore, I find that in light of Rasmussen's prior record, and his inappropriate conduct in this case, the District did have just and reasonable cause within the meaning of Article VII, E to impose the discipline it did.

Based upon the foregoing and the record as a whole, the undersigned enters the following

#### AWARD

The Weston School District did not violate Article VII, E when it disciplined Rasmussen with a three day suspension without pay, required him to write a letter of apology and recommended that he seek counseling.

Therefore, the grievance is denied.

Dated at Madison, Wisconsin, this 3rd day of April, 1997.

By Thomas L. Yaeger /s/  
Thomas L. Yaeger, Arbitrator

