

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WESTON TEACHERS ASSOCIATION

and

WESTON SCHOOL DISTRICT

Case 33
No. 56872
MA-10442

(Grievance of Machele Christian)

Appearances:

Ms. Angela Dawson, South Central Special Project, on behalf of the Association.

Mr. Barry Forbes, Staff Counsel, Wisconsin Association of School Boards, and **Mr. Matthew Organ**, Human Resources Consultant, Wisconsin Association of School Boards, on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, herein “Association” and “District”, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Cazenovia, Wisconsin, on November 17, 1998. The hearing was not transcribed and both parties filed briefs that were received by December 21, 1998. Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUE

The parties have stipulated to the following issue:

Whether the District violated Article VII of the contract when it failed to award the Weston Works position to grievant Machele Christian and, if so, what is the appropriate remedy?

BACKGROUND

Grievant Christian - an early childhood and special education teacher who primarily teaches 3-5 year olds - has been employed by the District as a full-time teacher for about eight years. Because of declining enrollment, she was reduced from her 100 percent contract in the 1997-1998 school year to a 75 percent contract for the 1998-1999 school year.

In the summer of 1998, the District advertised in a local newspaper for the newly-created position of Weston Works, the primary duties of which include the coordination of job shadows, internships, and apprenticeships focusing on pre-employment skills for high school students. The position is for 10-12 hours per week and it does not require any teacher certification. Students participating in said program do not receive any academic credit.

The job description for said position states:

GOALS

1. To provide field experience opportunities to fit the individual needs of each student in the Weston Works program.
 - a. 90% of Weston Works participants will be Transition students.
 - b. IEP is an integral component of Weston Works.
 - c. Weston Works coordinator will engage Guidance Counselor as a key component of Weston Works.
 - d. Weston Works Coordinator co-facilitates field opportunities, Student Job shadows and exposure to community integration opportunities.
2. To recognize and offer additional support to students who may be “overwhelmed and confused” in relation to future academic and career endeavors post high school.
 - a. Weston Works coordinator will collaborate with school psychologist and guidance counselor to coordinate and appropriate intervention.
 - b. Provide materials appropriate to student’s concerns regarding personal goals and objectives. These materials will provide insightful options and choices to the students.
 - c. To facilitate communication with parents/guardians, and other appropriate agencies within the context of the student’s academic, personal, and career developmental stages.

3. The Weston Works coordinator will work to facilitate the personal development and professional work ethic and responsibilities of each Weston Works/Transition student within the setting of Weston School District appropriate guidelines and under the direction of the School psychologist and IEP committee.
 - a. The IEP will be the catalyst of assessing the goals and objectives appropriate to the personal development of each student.
 - b. The student's present level of functioning will predetermine appropriate steps addressing personal development and work ethic.
 - c. The Weston Works coordinator will participate in the IEP process.
4. The Weston Works coordinator will develop a written Weston-Works plan and outline to be incorporated within the IEP. This plan will be developed at the freshman level and continue throughout the student's high school career.
 - a. Each student will complete a Hilson Personal Profile assessment to be utilized by the student in recognizing their personal strengths and weaknesses.
 - b. Each student will identify and address their personal weaknesses to work on to improve academics each quarter. This will be done by a self report from the student to the Weston Works Coordinator.
 - c. Each student will be monitored by weekly reports documented by the Weston Works coordinator to be incorporated within the contents of the annual IEP. These reports are utilized as an instrument to gauge the weekly progress of each student.
 - d. The Weston Works coordinator will use weekly reports to monitor the consistency of the Weston Works program.

The District created the Weston Works position after federal funding ran out for a former, related position funded by the Federal Job Training Partnership Act ("JTPA"), which also focused on employment skills for targeted students. The earlier JTPA position was established via CESA 3 and it was within the bargaining unit where it was held by a certified teacher.

Grievant Christian applied for the Weston Works position, but was turned down in favor of outside applicant Robin Snelser, who is not a certified teacher.

POSITIONS OF THE PARTIES

The Association asserts that the District violated the contract by not offering the Weston Works position to Christian because said position “is substantially equal” to the former JTPA position; because the JTPA Coordinator position for about 12 years was “held by bargaining unit members when they were available”; and because Christian “is available and qualified to perform the duties of the Weston Works Coordinator.” As a remedy, the Association asks that Christian be awarded said position and that she be made whole for all wages and benefits lost.

The District, in turn, maintains that “The Weston Works position is not a bargaining unit position”; that the work performed by the Weston Works position does not belong to the Association; and that the grievant “is not qualified to perform the Weston Works position.”

DISCUSSION

This case largely turns on the application of Article 1 of the contract, entitled “Recognition” , that states:

Be it hereby resolved that the Board of Education of Weston School District recognizes the Weston Teacher’s Association as the exclusive and sole bargaining representative for all certified personnel employed by the Board for the purpose of negotiation on the matters of wages, hours and working conditions, according to the provisions of section 111.70 of the Wisconsin Statutes, except for the following: Superintendent, High School Principal, supervisory, and/or supportive personnel, and substitute teachers. (Emphasis added).

The Association, as the exclusive representative of all employees in the bargaining unit will represent all such employees fairly and equally. No employee shall be denied Association membership because of race, creed, or sex. Unless otherwise indicated, employees in this unit will hereinafter referred to as “The Association” or “Teachers”.

This language governs this case because it expressly states that the Association only represents “all certified personnel employed by the Board. . .” Since the Weston Works position does not require any kind of teacher certification, it does not constitute bargaining unit work under this recognition clause. Hence, there is no merit to the Association’s claim that such a non-certified position must be offered to Christian.

Other parts of the contract buttress this conclusion. Thus, Article VII, entitled “Teacher Evaluation”, provides in pertinent part:

If the Board of Education determines to reduce the hours of a teacher to less than full time, the reduction shall be done on the basis of in-district seniority in the department, but limited to academic considerations as outlined in the procedure for layoff. A teacher whose hours are involuntarily reduced shall maintain recall rights to a full-time position in the district. If the Board intends to reduce the hours partially or fully of a teacher for the succeeding school year, it shall notify said teacher no later than June 1. Teachers affected by a staff reduction will be notified of vacant positions within the district and area of certification when they occur and offered employment in these positions in reverse order of their lay-off provided a position becomes vacant within 2 years of the teacher being laid off. They will be re-employed only if they accept the offer of employment during the school year with in five working days after receiving the offer, or within fifteen (15) working days if the offer is made for employment at the beginning of the school term. The notice will be sent to the last known address of the employee on file in the district records. No teacher may be prevented from securing other employment during reinstatement shall not result in a loss of credit for previous years of service. No new substitute appointments to complete a contract may be made while there are laid off teachers available who are qualified to fill the vacancies and who have had previous in-district experience in these vacant position. (Emphasis added).

This language also refers to certification because it states that teachers are to be notified of “vacant positions within the district and area of certification when they occur and offered employment in these positions. . .” The phrase “these positions” hence refers to positions requiring certification, thereby excluding the Weston Works position which does not require such certification.

It is true, as the Association points out, that prior incumbents in a JTPA – funded related job were certified teachers within the bargaining unit from 1986-1996. Hence, it is understandable why the Association now asserts that the Weston Works position should remain in the bargaining unit. However, this claim ignores the fact that the contractual recognition clause only covers certified teachers and the further fact that the District under Article II of the contract, entitled “Board Functions”, retains the right to determine job qualifications – which is exactly what it has done here by determining that the Weston Works position does not require teacher certification. That is why the grievance must be denied.

Given this finding, it is unnecessary to determine whether Christian was qualified for said position.

In light of the above, it is my

AWARD

That the District did not violate Article VII of the contract when it failed to award the Weston Works position to grievant Machele Christian.

Dated at Madison, Wisconsin this 7th day of January, 1999.

Amedeo Greco /s/

Amedeo Greco, Arbitrator