

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**MANITOWOC EDUCATIONAL PARAPROFESSIONALS,  
KETTLE MORAINÉ UNISERV, WEA**

and

**MANITOWOC SCHOOL DISTRICT**

Case 50  
No. 58750  
MA-11046

(Jan Maier Grievance)

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Appearances:

**Mr. James R. Carlson**, UniServ Director, Kettle Moraine UniServ Council, N7778 Rangeline Road, Sheboygan, Wisconsin 53083, appearing on behalf of the Manitowoc Educational Paraprofessionals.

**Mr. Robert Huston**, Director of Human Resources, Manitowoc Public Schools, P.O. Box 1657, Manitowoc, Wisconsin 54221-1657, appearing on behalf of the Manitowoc School District.

**ARBITRATION AWARD**

Pursuant to the provisions of the collective bargaining agreement between the parties, Manitowoc Educational Paraprofessionals (hereinafter referred to as the Association) and the Manitowoc Board of Education (hereinafter referred to as the Employer or the District) requested that the Wisconsin Employment Relations Commission designate a member of its staff to serve as arbitrator of a dispute concerning the proper classification of Jan Maier during the 1999-2000 school year. The undersigned was so designated. A hearing was held on July 10, 2000, in Manitowoc, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted the case on oral arguments and requested the issuance of a truncated award on an expedited basis.

Now, having considered the testimony, exhibits, other evidence, contract language, arguments of the parties and the record as a whole, the undersigned makes the following Award.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

### ISSUE

The issue before the Arbitrator is:

Did the District violate the collective bargaining agreement when it failed to place the Grievant, Jan Maier, in the Job Title Group III for all or part of the 1999-2000 school year?

### RELEVANT CONTRACT LANGUAGE

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#### 5.0 PROBATION

. . .

5.2 Employees who move from one job title to a new one, by posting procedure or otherwise shall serve a sixty (60) work day trial period in that new position. During that trial period the Employer may return the employee to the former or like position by notifying the employee of the reasons, if the former or like position is vacant. The Employer's reason(s) for the return of the employee to the previous or like position shall not be unlawful or arbitrary or capricious. If during the trial period the employee wishes to return to the former position, the employee shall notify the Employer of the reasons and shall be granted that request, if the former or a like position is vacant. Whether the return is initiated by the Employer or employee, if a former or like position is not vacant, the employee shall continue in the new position until such vacancy occurs.

. . .

#### APPENDIX J

#### LETTER OF UNDERSTANDING PRESCHOOL ASSISTANT POSITION

The parties agree, via their signatures to this Collective Bargaining Agreement, to the terms and conditions outlined below relative to the newly created (1999-2000 school term) position of Preschool Assistant as follows:

The Preschool Assistant Job description (attached) will replace the CWD Early Childhood aide positions and Home Visitor positions at Riverview School. Current employees in these positions will be moved to the status of Preschool Assistant and will not realize a loss of pay, hours, or benefits. Preschool Assistants will be in job Title Group III for pay purposes. If the District intends to transfer staff working in these positions with the child being transitioned to the next year's grade or education level, it will do so without the employee realizing a change in job category unless the District has sufficient reason not to effectuate the employee transfer.

EXPLANATION OF JOB TITLE GROUPS FOR SALARY SCHEDULE ONLY:

Job Title Group I:

- Area Aide
- Bus Duty Supervisor
- Instructional Aide
- Noon Lunch Supervisor

Job Title Group II:

- CWD Support Staff
- In School Suspension/Detention Room Manager
- Job Coach
- Library Clerk (secondary)
- Library Aide (elementary)
- P.A.S.S. Aide
- Title I Reading Aide and District Funded Reading Aides
- Health Care Aide (secondary)

Job Title Group III:

- ESL Assistant
- Preschool Assistant

Job Title Group IV:

- Library Media Manager (elementary)
- Bilingual Interpreter\*
- Children's Center Coordinator (currently not being filled)

\* Newly hired Bilingual Interpreters will be paid at \$9.96 per hours (Job Title IV, Step 9) for the 1999-2000 school term. In the future, newly hired Bilingual

Interpreters will be paid at the rate reflected in Job Title IV, Step 9 unless otherwise mutually determined by the Union and the Board.  
(See Section 18.2 for more details)

### **BACKGROUND**

This grievance involves the claim of Jan Maier, an aide working with autistic children. Ms. Maier asserts that she should have been classified as a Preschool Assistant during the 1999-2000 school year. That job was created by the merger of two other positions — CWD Early Childhood Aide and Home Visitor — at Riverview School, the District's center for special education. The merger was accomplished through collective bargaining over the 1999-2003 contract. According to the Grievant, in the 1997-98 school year she was a half-time Home Visitor and half-time CWD aide at Riverview. Although she asked to remain at Riverview in the following year, she was instead assigned to another school to aid in the transitioning of an autistic child from kindergarten to elementary school. At the end of the year, she asked to be returned to Riverview as CWD/Autistic Aide. On the "Staff Needs" form she submitted in late May, she wrote:

I would like to return to Riverview School and work with "special need" students in the preschool/kindergarten setting. I would like to help that student/students transition to first grade when ready.

Maier said she received a call in June from Jan Sinor, the Director of Special Education, saying that her request had been approved and the principal of Riverview would contact her. Later, Marcia Flaherty did phone her and told her she would work half days in preschool and half days in kindergarten.

During this time, negotiations over the new contract were on-going and Maier was a member of the Association's bargaining team. She was concerned that personnel in the new Preschool Assistant classification could be penalized if they followed a child who was being transitioned to a higher grade level, since the new job was specific to the Riverview. As a result, the parties agreed that staff who followed a child to another school to assist in transitioning would not be penalized.

Maier testified that she reported in August on the in-service day to prepare for the year's assignment. The Preschool teachers were not ready yet, so she went to the kindergarten room and worked with those teachers on orientation for the coming year. Her meeting with the kindergarten faculty lasted four hours, after which she went to the in-service. Flaherty saw her there and told her that a new autistic child was coming into the kindergarten in the afternoon and that the support person assigned to the child had declined the job. Flaherty said she needed someone to do the job and asked what she thought. According to Maier, she replied that she had no problem working with the child, but that the contract with the Preschool job was not yet ratified, and she didn't want to be moved out of Group III by not working in

the Preschool. Flaherty told her she would need Human Resources Director Robert Huston's approval for an arrangement to keep her in the higher pay grade. Maier was assigned to work with the second kindergarten autistic child and did not receive the level III pay. Instead, she was paid for the year at Level II as a CWD/Autistic Aide. Thus, she filed the instant grievance.

Flaherty testified that the Grievant was neither a CWD Early Childhood Aide nor a Home Visitor in 1998-99, and thus, did not move into the Preschool Assistant position. Five incumbent employees became Preschool Assistants and one new Preschool Aide job was posted for 1999-2000, but the Grievant did not post for it. In fact, Flaherty said the Grievant never mentioned wanting to be a Preschool Assistant until the grievance was filed. The job she was hired for at Riverview was as a CDW Aide in level II. While she did consult with the CDW faculty and was originally intended to work half-time as an autism aide in the preschool, she did not perform any preschool work in 1999-2000. Her job was a one-on-one assignment with one autistic kindergartener in the morning and another in the afternoon. A Preschool Assistant, in contrast, worked with the entire preschool population at Riverview, generally in groups of five or more. The transitions referred to in Appendix "J" were transitions of groups of students. On cross-examination, Flaherty agreed that the Grievant's job duties in 1998-99 included transition work with students and that this was a normal part of an Autism Aide's job. However, she pointed out on redirect examination that the transitioning language in Appendix "J" referred to persons already holding Preschool Assistant jobs and was not designed to grant an upgrade to all persons doing transition work. It merely protected the Preschool assistants from being downgraded if they followed students to another school.

Called adversely, the Grievant conceded that her "Staff Needs" form for 1999-2000 asked for a CDW/Autism job, not a Preschool Assistant or its predecessor title, the EEN Early Childhood aide. She explained that while she knew the vacant EEN position was in line for an automatic upgrade to Preschool Assistant, she wanted to keep doing the same job she was already doing. She agreed that she was not actually classified as a Home Visitor in 1997-98, but that she had performed many of the same duties. She also agreed that no one had actually ever told her that she would be classified as a Preschool Assistant at Riverview. However, she said she believed that when Sinor said she would honor her request on the "Staff Needs" form, that meant she would be doing the Preschool Assistant's job, since the duties she described included transitioning.

Additional facts, as necessary, are set forth below.

## **ARGUMENTS OF THE PARTIES**

### **The Position of the Association**

The Association takes the position that the Grievant is entitled to occupy the Preschool Assistant in Job title Group III for the 1999-2000 school year. The principal question is whether she actually filled the job. The distinguishing feature of the job is transitioning

students. This is work she had been doing. She specifically asked to do transitioning in the 1999-2000 school year and she was told her request would be honored. She reported for work on the in-service day and began performing her duties. Management subsequently reassigned her to a lower rated job, but even in that job she continued to perform transitioning work. Even if she did not perform a sufficient amount of transitioning work in the course of the 1999-2000 school year to justify calling her a Preschool Assistant, the fact remains that she embarked on the job when she reported for the in-service. Thus, under Article 5 of the contract, she should have been given the right to return to that position if it was, or if it became, vacant. For these reasons, the Grievant should be classified as having been in Job Title Group III during the 1999-2000 school year.

### **The Position of the Employer**

The District takes the position that the Grievant earnestly wishes she had been in Job Title Group III during the 1999-2000 school year but was not entitled to that classification. Likewise, she wishes that she had been an EEN Early Childhood Aide in the 1998-99 school year, but she was not. The Grievant's claim flies in the face of the entire purpose of Appendix "J" of the contract. That provision was designed to ensure that staff members who followed a child from one grade to another were not penalized for the move. The Grievant did no transitioning of students at Riverview School, and thus, cannot claim that Appendix "J" in anyway applies to her. She was not a Preschool Assistant, in part because she never asked to be a Preschool Assistant. She was on the bargaining team and knew that the job was being created, yet she never indicated an interest in the job or submitted any request to be assigned to such a position. She simply was not assigned to the job, and this grievance cannot change that fact.

The District dismissed the Association's claim that the Grievant somehow has the right to claim a Preschool Assistant job under Article 5 of the contract. Section 5.2 gives people who have been moved from one job to another the right to return to the old job if they make a timely request. Here, she never had a Preschool Assistant job, so she can hardly return to a job she never had. The Grievant is a good employe and she has every expectation that if she applies for a Pre-School Assistant position, she will receive every consideration. However, she cannot claim it as a matter of right through this grievance.

### **DISCUSSION**

The Grievant seeks to be classified as a Preschool Assistant for the 1999-2000 school year, a higher level of pay than she receives as a CDW Aide. In part, her claim is based on the fact that she performed transitioning duties with students and this is specifically mentioned in Appendix "J":

The Preschool Assistant Job description (attached) will replace the CWD Early Childhood aide positions and Home Visitor positions at Riverview School. Current employees in these positions will be moved to the status of Preschool Assistant and will not realize a loss of pay, hours, or benefits. Preschool Assistants will be in job Title Group III for pay purposes. *If the District intends to transfer staff working in these positions with the child being transitioned to the next year's grade or education level, it will do so without the employee realizing a change in job category unless the District has sufficient reason not to effectuate the employee transfer.* (Emphasis added.)

The Appendix mentions transitioning in the context of protecting Preschool Assistants from a loss of pay or status as a result of performing transitioning work. However, it is clear from the Appendix that transitioning students is not the basis on which one may initially claim the job of Preschool Assistant. Rather, it is a basis on which one may not lose the job. Before the highlighted portion of Appendix "J" comes into play, an employee must already be classified as a Preschool Assistant. Thus, the point on which this grievance turns is whether the Grievant was a Preschool Assistant, or in one of its predecessor titles, as the 1999-2000 school year commenced.

The Preschool Assistant was created from the merger two other titles — CWD Early Childhood Aide and Home Visitor. While the Grievant described many duties of these positions that she believed she had performed in 1997-98 and 1998-99, in fact it appears that she never held either title. If, however, she was assigned to one of these titles for the 1999-2000 school year, she should have become a Preschool Assistant for that year or, if the District's needs changed after the assignment was undertaken and the assignment was changed, she should have had the right to claim the first opening in that classification.

The Grievant testified that she sought to work in the Preschool and was told that she would. It appears that she may have misinterpreted what Flaherty and Sinor said to her. Her request was "to return to Riverview School and work with 'special need' students in the preschool/kindergarten setting." She also asked to help transition students to a higher grade when they were ready. While she was told that her request would be honored, the record strongly indicates that the Administrators were referring to the transfer back to Riverview, and an assignment in the general field she mentioned. The Preschool Assistant is not the only job that involves working with special needs children, and Flaherty and the Grievant agreed that transitioning work is part and parcel of an Autism Aide's job. Thus, Sinor and Flaherty did give the Grievant the assignment she described, by assigning her as an Autism Aide. The Grievant acknowledges that she did not post for any job other than CDW/Autism Aide for the 1999-2000 school year, which would have been the surer way to secure a Preschool Assistant's position. As it stands, while she may sincerely believe that she was destined to perform the duties of a Preschool Assistant, the District did not share that belief, and the objective evidence indicates that she was simply wrong.

The Grievant had three possible routes to securing a Preschool Assistant's job. She could have held one of the predecessor titles; she could have posted into the job; or she could argue that she actually performed those duties and was effectively a Preschool Assistant, but was misclassified. The record shows that she did not hold either a CWD Early Childhood Aide or a Home Visitor job and she never posted for one of those jobs or made a formal bid to become a Preschool Assistant. As for her actual duties, the Grievant did not perform any work in the Preschool program in 1999-2000, and the District never intended or gave her any reason to think that it intended to have her perform duties other than those of a CWD/Autism Aide. As there is no evidence that the Grievant ever was a Preschool Assistant, it follows that she has no claim on that title. Accordingly, the grievance is denied.

On the basis of the foregoing, and the record as a whole, I have made the following

**AWARD**

The District did not violate the collective bargaining agreement when it failed to place the Grievant, Jan Maier, in the Job Title Group III for all or part of the 1999-2000 school year. The grievance is denied.

Dated at Racine, Wisconsin, this 22<sup>nd</sup> day of August, 2000.

Daniel Nielsen /s/

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Daniel Nielsen, Arbitrator