

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

PARK FALLS EDUCATION ASSOCIATION

and

PARK FALLS SCHOOL DISTRICT

Case 31
No. 61573
MA-11990

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, P.O. Box 1400, Rhinelander, WI 54501, appearing on behalf of the Union.

Wisconsin Association of School Boards, by **Attorney Barry Forbes**, 122 West Washington Avenue, Suite 400, Madison, WI 53703, appearing on behalf of the School District.

ARBITRATION AWARD

The Park Falls Education Association, hereinafter referred to as the Union, and the Park Falls School District, hereinafter referred to as the District or Employer, are parties to a collective bargaining agreement (CBA) which provides for final and binding arbitration of certain disputes, which agreement was in full force and effect at all times mentioned herein. The parties asked the Wisconsin Employment Relations Commission to assign an arbitrator to hear and resolve the Union's grievance regarding the District's decision to assign Nola Michalski, hereinafter referred to as the Grievant, to the Title One reading position for the 2002-2003 school year. The undersigned was appointed by the Commission as the Arbitrator and held a hearing into the matter in Park Falls, Wisconsin, on January 7, 2003, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed. The parties filed post-hearing briefs and reply briefs by March 13, 2003, marking the close of the record. Based upon the evidence and the arguments of the parties, I issue the following decision and Award.

ISSUE

The parties were able to stipulate to a statement of the issues as follows:

1. Did the District violate the rights of Nola Michalski when it assigned her to teach Title One for the 2002-2003 school year?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

I. PREAMBLE

The Board of Education for the School District of the City of Park Falls and the towns of Eisenstein, Fifield, and Lake, Price County, Wisconsin (hereinafter referred to as the "Board") and its professional employees represented by the Park Falls Association (hereinafter referred to as the "Association") in order to effectuate the provisions of Section 111.70 of the Wisconsin Statutes and to encourage and increase effective and harmonious working relationships between the Board and the Association, recognize their responsibilities toward each other and the community.

The Board and the Association also recognize that the ultimate aim of education is the continued development and implementation of quality in our educational program and the constant concern for the welfare of our children.

III. MANAGEMENT RIGHTS

The Board, on its own behalf and on behalf of the electors of the District, hereby retains and reserves unto itself, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the Laws and the Constitution of the State of Wisconsin, and of the United States.

The exercise of the rights, powers, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement.

VIII. TEACHER CONTRACTS

. . .

- D. The individual's teacher and extracurricular assignments shall be specified on the contract. A teacher may not give up part of his assignment without the consent of the Superintendent and be eligible for a new contract.

...

- J. All individual teacher contracts shall be written in accordance with the provisions of this agreement.

IX. PROFESSIONAL IMPROVEMENT

...

C. ADDITIONAL CERTIFICATION

A teacher taking course work at the request of the Administration to become certified to teach subjects he or she was not originally hired to teach will be reimbursed for books and tuition.

...

XVIII. REDUCTION IN STAFF

...

- D. Seniority: For the purpose of this provision, seniority shall be computed from the date on which the teacher was first approved for employment by the Board of Education, and shall accrue only in any case of continuous employment in the bargaining unit (commences with bargaining unit employees hired after July 1, 1997). Seniority for work on a part-time basis shall be computed at the same percentage as the teacher's part-time contract. Approved leave shall not be considered an interruption of continued employment for the purpose of this provision.

The District shall provide the Association with a seniority list annually on or about October 1st.

In the event two or more employees, subject to layoff, are equal in seniority, the determining factor shall be administrative recommendation, based on such things as academic preparation, extra-curricular involvement, performance in the classroom and knowledge of subjects taught.

- E. Certification: It shall be the sole responsibility of the individual teacher to keep his/her certification current. Such certification shall be on file in the office of the Superintendent of Schools.

Teachers shall be placed according to their district-wide seniority on any list for which they have provided regular part-time or regular full-time teaching

services to the Park Falls district requiring such certification, providing such services were performed within the last 10 school years, and providing certification in those areas have been kept current.

- F. Recall: Personnel who have been laid off shall have recall rights for three (3) school years commencing with the second year immediately following the last year worked.

When a teaching position becomes available, the Board shall recall laid-off teachers in the reverse order of layoff to any position for which they are certified, providing that they have taught in that certification areas [sic] in a regular part-time or full-time position in the Park Falls District within the 10 year period prior to having been laid off, and providing certification has been kept current in that area.

...

XIX. VACANCIES, TRANSFERS AND REASSIGNMENTS

- A. 1. Notices of vacancies, including extra curricular as well as teaching positions, will be posted on the official bulletin board in each school and sent to the Association president as soon as the Administration is aware of the existence of such vacancies. The parties agree that this language does not provide bargaining unit members with 1st consideration for positions.
2. Such notices shall contain the date of posting, a description of the position, name and location of the school, requirements of the position, name of the person to which the application is to be returned and date by which the application is to be returned.

BACKGROUND

At the time of the events giving rise to this grievance, Nola Michalski had been employed by the District as a teacher for about 22 years and as an aide for roughly 8 years before that. During her 22 years as a teacher, she was assigned first as a fifth grade teacher and then, 3 years later, as a third grade teacher, a position she held until the 2002 – 2003 school year. At all relevant times she was licensed by the State of Wisconsin to teach Kindergarten through eighth grade and further certified (licensed) as a reading specialist. Her reading specialist licensure qualified her to teach the Title One reading program.

In July of 2002, the Grievant received notice from the administration that she was to be assigned to teach the “Title One” reading program during the 2002 – 2003 school year as opposed to working in her regular capacity as a third grade teacher. This grievance followed.

THE PARTIES’ POSITIONS

The Union’s Initial Brief

The Union believes that the District violated the Grievant’s contractual rights by changing the “conditions of employment” she had enjoyed for 22 years. This change violates the CBA’s Preamble in that it tends to upset the harmonious working relationship referred to therein and, hence, fails to further the ends of that particular contractual clause.

The Grievant was not hired because she held 316 licensure. She was hired because she was licensed to teach elementary classes and her movement to a position which required the 316 license was the first time the District had considered her 316 licensure.

Article 9 is also violated. This article obliges the District to pay for the cost of new or additional certification required of its teachers in the event it assigns one of them to a position requiring certification or licensure he or she doesn’t have. This clause is violated, says the Union, because the Grievant was already licensed to teach the class into which she was assigned and therefore the District didn’t have to pay the costs of her licensure as a reading specialist.

The District failed to fill the vacant Title One position via external posting. Because it only posted the position vacancy internally and did not consider any applicants prior to appointing the Grievant to the position, it placed her into a different certification category and blurred the distinction between K-8 licensure and specialized teaching certification like the 316 reading specialist.

The Union also argues that the Grievant’s reassignment “offends” the seniority provision of Article 18. The movement of a 22-year teacher into another assignment, and thus a new “certification category,” without her consent “offends the idea of seniority on the other end of the scale.” The Union says that in doing so, the District placed the Grievant in a position of potentially losing her recall rights in her previous position under Article XVIII and denying her “a future employment right” to which she would otherwise have been entitled.

The District’s Initial Brief

The District argues that it has the right to assign teachers as it deems necessary under the terms of the CBA, in particular Article 3, the Management Rights clause. The CBA contains no restrictions upon the District to effect involuntary transfers of any employee to any position for which he or she is certified.

By transferring the Grievant to the Title One program, the District and the Union both benefited. The District because it could pay for the Grievant's Title One salary out of federal funds thereby freeing up funds it could use to recall a third grade teacher who had been laid off, and the Union because one of its bargaining unit members could be recalled from lay off status.

The Union's Reply

The Union seems to argue that the District ignores Article XIX, which requires that in order for the Grievant to be transferred to a new position she must first apply for the vacancy. Since she did not apply for the Title One vacancy, it was a violation for the District to transfer her into it. It also argues that Article XVIII, Reduction in Staff, requires that a bargaining unit member in lay off status may only be recalled to a position for which he or she is qualified and because Tracy Miller, the laid off teacher who was called back to fill the position vacated by the Grievant, was not qualified to fill the Title One position vacancy, she should not have been recalled.

Because the District did not advertise/fill the Title One vacancy from outside the ranks of its own employees and because of some prior layoffs of teachers with seniority over other teachers who were not laid off, i.e. because the District chose not to reassign more experienced teachers in order to lay off the least senior teachers, the Union contends that this transfer was arbitrary and capricious.

Since the management rights article of the contract is limited to "responsibilities conferred upon it by the laws of Wisconsin" this transfer should have been bargained with the Union.

The District's Reply

The District reasserts its argument that the contract contains no language restricting its right to involuntarily transfer an employee and observes that the Union fails to point to any such language. The District, however, did produce evidence to support its actions. The Grievant was the only teacher certified to teach the Title One program and by transferring her to that position it was able to recall a teacher on lay off status and shift the cost of the Title One position's salary and benefits to federal funding thus creating substantial savings to the District.

Although Article XVIII mandates that an employee loses seniority after ten years of not teaching in a specific teaching area, this does not constitute a restraint or restriction on the district's right to reassign its teacher employees.

DISCUSSION

The Union first argues that the District's transfer of the Grievant to the Title One teaching position without her consent contravenes the Preamble to the CBA. The Preamble contains boilerplate language broadly proclaiming the respective parties' mutual intent to effectuate the State's statutory provisions relating to labor relations and to "encourage and increase effective and harmonious working relationships between the Board and the Association" and to recognize the parties' mutual responsibilities towards each other and the community. According to the Union, when the District transferred the Grievant without her consent it offended the broad references relating to "harmonious working relationships" contained in the Preamble thus constituting a breach of the agreement. As with any other contractual language, the Preamble must be read in light of the entire agreement. Its language may not be isolated from the rest of the agreement. Its meaning must be determined in relation to the contract as a whole. *HEMLOCK PUBLIC SCHOOLS*, 83 LA 474, 477 (DOBRY, 1984) and *GREAT LAKES DREDGE & DOCK CO.*, 5 LA 409, 410 (KELLIHER, 1946). The Arbitrator thus looks to the balance of the contract to give specific meaning to the broad conceptual notions set forth in the Preamble.

The District argues that the "Management Rights" clause gives it the right to transfer its teacher employees as it did in this case. The CBA does reserve to the District the right to operate its business and control the work force "limited only by the specific and express terms of this agreement." These rights are inherent to management in any event and may not be denied unless the exercise of them would constitute a clear violation of the terms of the contract "or are so clearly arbitrary or capricious as to reflect an intent to derogate the relationship." *FAIRWAY FOODS*, 44 LA 161, 164 (SOLOMON, 1965). This is known as the Reserved Rights Doctrine and the undersigned recognizes it as a sound and well entrenched arbitral principle. The question then, is whether the remaining sections of the CBA contain any specific and express terms limiting these rights.

The Union complains that the District's actions violated Article IX, which is entitled "Professional Improvement." Article IX requires that the District reimburse teacher employees for books and tuition expenses they incur for taking course work leading to certification to teach subjects they were not originally hired to teach so long as the course work was taken at the request of the District. In the instant case, the Grievant already possessed the certification necessary to qualify her to teach the Title One reading program into which she was transferred. She possessed that licensure when she was originally hired. No additional course work was required in order for her to become certified to teach the Title One program nor did the District request that she take any. Article IX has no application to the facts of this case.

The Union next suggests that because the District failed to post the Title One vacancy externally and because it failed to consider any applicants before it transferred the Grievant into the Title One position, it violated Article XIX, "Vacancies, Transfers and

Reassignments.” Article XIX though, while clearly requiring the District to post vacancies internally, does not require it to post vacancies externally. Nor does Article XIX contain any mandate requiring the District to consider applicants prior to reassignments. The language of Article XIX is not ambiguous in this regard and the undersigned finds no breach of it flowing from the actions of the District.

The Union argues that the reassignment of the Grievant runs contrary to the seniority provisions of Article XVIII, “Reduction in Staff.” The movement of a teacher with 22 years of experience in one area of teaching to another area of teaching, i.e. into a different “certification category” “offends the idea of seniority on the other end of the scale.” In other words, the Union seems to argue that because the Grievant will lose her recall rights in the certification area of K-8 after 10 years, assuming she doesn’t teach in the K-8 area for the next 10 years, she has, by virtue of this involuntary transfer, lost a “future employment right” to which she would otherwise have been entitled. This argument is flawed because it assumes that the CBA contains a prohibition against an involuntary transfer out of a “certification area” which results in the loss of recall rights after 10 years. It does not. The District is free to transfer, involuntarily, a teacher employee from one “certification area” to another. Once transferred, that teacher’s recall rights in his or her former “certification area” remain intact for a period of 10 years. This provision in Article XVIII has nothing to do with involuntary transfers from one area to another, nor does it prohibit such a transfer. I have reviewed the case of HURLEY EDUCATION ASSOCIATION, XIV, No. 24975, MA-1526 (HOULIHAN, 1979) and, as well reasoned as Arbitrator Houlihan’s analysis is, it is not instructive to the undersigned under the facts of this case other than to offhandedly observe that his statement “On balance, the Employer’s actions seem to be a reasonable accommodation of all of the contractual standards” does apply nicely here.

The Union argues that Article XIX, “Vacancies, Transfers and Reassignments” requires that in order for the Grievant to have been transferred to the new position, she first must have applied for the position. Article XIX clearly requires no such thing. It requires only that notice of a vacancy be posted in a specific place in each school and that it be sent to the Union president when the Administration becomes aware of the vacancy. It also provides that the notice contain the date of posting, position description, name and location of the school, position requirements, contact person and the date by which the application must be returned to the District. Finally, Article XIX confirms the agreement of the parties that its language does not provide bargaining unit members with first consideration for available positions.

The fact that the Grievant was originally hired, according to the Union, because of her license to teach elementary classes and not because of her 316 licensure is quite irrelevant to the issues in this case. It remains that she is licensed under 316 and consequently qualified to teach the Title One reading program. Her individual teaching contract provides that she be a professionally trained and legally qualified teacher and that she will perform services to the District as a teacher. Teaching is what she was qualified to do, and did, prior to her transfer and teaching is what she is qualified to do, and does, now.

Finally, the Union suggests that the transfer here was arbitrary and capricious. It supports this argument with a vague reference to a past layoff of more senior teachers and the District's decision not to reassign them along with the fact that the District failed to fill this vacancy from outside the ranks of the membership. The District was faced with the need to fill the position of the Title One reading teacher. The Grievant was the *only* teacher in the system qualified to fill that position. Since the Title One position was funded by federal dollars, the District was able to move the Grievant into that position and save the funds which otherwise would have been paid to her and, at the same time, allow the District to recall another bargaining unit member on layoff status to fill the vacated K-8 position left by the Grievant. By doing so, the District also saved the dollars being paid towards the laid off teacher's unemployment compensation. The reassignment can hardly be considered arbitrary or capricious. It was based upon a reasonable allocation of available District assets which easily passed contractual requirement muster, and which removed another bargaining unit member from layoff status by bringing her back to work. In short, it was a win/win decision.

AWARD

The District did not violate the rights of Nola Michalski when it assigned her to teach Title One for the 2002-2003 school year.

Therefore, the grievance is hereby denied.

Dated at Wausau, Wisconsin, this 22nd day of April, 2003.

Steve Morrison /s/

Steve Morrison, Arbitrator