

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

GREEN BAY EDUCATION ASSOCIATION

and

GREEN BAY AREA PUBLIC SCHOOL DISTRICT

Case 215

No. 61749

MA-12053

Appearances:

Shneidman, Hawks & Ehlke, S.C., by **Attorney Timothy E. Hawks** and **Attorney Michele A. Peters**, 700 West Michigan, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442, appearing for the Association.

Melli, Walker, Pease & Ruhly, S.C., by **Attorney Jack D. Walker**, Ten East Doty, Suite 900, P. O. Box 1664, Madison, Wisconsin 53701-1664, appearing for the District.

ARBITRATION AWARD

The Association and the District are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for final and binding arbitration. The parties selected Arbitrator Dennis P. McGilligan from a panel of staff arbitrators provided to them by the Wisconsin Employment Relations Commission ("Commission"). By letter dated December 17, 2002, the Commission appointed Dennis P. McGilligan as Arbitrator to resolve the dispute set forth below. Hearing on the matter was held on April 1, 2003, in Green Bay, Wisconsin. The hearing was transcribed, and the parties completed their briefing schedule by August 15, 2003.

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.

After considering the entire record, I issue the following decision and Award.

ISSUES

The parties stipulated to the following issue:

Did the School District violate Article IX, Section D 1 when it awarded a physical education teaching position at West High School to an applicant with less seniority than the Grievant?

The parties disagreed on how the remedy portion of the issue should be framed. The Association framed the issue as follows:

If so, what is the appropriate remedy?

The District framed the issue in the following manner:

If a finding is made that the District violated the contract, the remedy should be a declaration of the District's duty.

The Arbitrator adopts the Association's framing of the remedy portion of the issue.

FACTUAL BACKGROUND

General Background

Robert Gaulke ("Grievant") began as a full-time teacher with the Green Bay Area Public School District ("District") in November 1993. Prior to his full-time employment, the Grievant was a substitute teacher for the District for approximately one year. The Grievant's full-time assignments in chronological order within the District are as follows:

- Almost one year as an alternative education instructor at the Broadway Central Office;
- Three years as a special education teacher at Washington Middle School;
- Two years as a special education, emotionally disturbed teacher at Green Bay East High School;
- Three years as a physical education, health and adaptive physical education teacher at Green Bay West High School ("West"); and

- One year as a physical education, health and adaptive physical education teacher at Preble High School.

In addition to his teaching, the Grievant has performed co-curricular duties for the District. He has coached football, basketball and track. He was the boys head basketball coach at West for three years.

Nate Rykal (“Rhkal”) began teaching in the District in 1999 as a physical education teacher at Washington Middle School. At the time of the dispute, Rykal had three years experience in the District teaching physical education at Washington Middle School. He also had three years of coaching experience in the District as an assistant coach in baseball and basketball.

Daniel Nerad (“Nerad”) is the superintendent for the District. John Wilson (“Wilson”) is assistant to the superintendent for human resources. David Neubauer (“Neubauer”) is the principal at West. Steve Brossard (“Brossard”) is the athletic director and a business education teacher at West.

Richard Feldhausen (“Feldhausen”) is the executive director of the Green Bay Education Association (“Association”).

Facts Giving Rise to the Instant Dispute

On March 20, 2002, Neubauer and Brossard informed the Grievant that he would not be renewed as boys head basketball coach at West. The Grievant asked why and was told that he had lost the support of parents and players. He was also told that they were informing him “on that day because the arena staffing meeting was that night in case” the Grievant wanted to go to it. 1/

1/ Arena staffing is a process where the teaching vacancies existing for the next fall as of the date of the arena staffing event are all posted, all employees line up (literally) in unit-wide seniority order, and the procedure starts when “the first person in seniority has their stab at whatever job they’re interested in.”

The Grievant attended the March 20 arena staffing meeting. He bid on the aforementioned position at Preble High School and was granted it. The Grievant’s former physical education position at West was then open for bidding. Amy Phillips signed up for and was awarded the physical education position at West. The Grievant had called Phillips following school on March 20 and informed her that he might bid out of West at arena staffing.

Rykal also attended the March 20 arena staffing meeting. He attended the meeting at the suggestion of Neubauer who advised him that a teaching opportunity might open up at West because the Grievant had lost the coaching position. Rykal left the arena staffing meeting early because Phillips, who had more seniority, took the position at West.

While at arena staffing, Rykal had a conversation with the Grievant. In that conversation, the Grievant advised Rykal that the West position might not be right for Rykal since "he was waiting for a job at East High School." The Grievant also told Rykal that "they'll screw me over the way they screwed him over." The Grievant added that "he would make it hell for whoever they brought in there, referring to the basketball job."

Rykal was offered the position to coach basketball at West the following week. He was offered the position while he was employed at Washington Middle School. He accepted this position at the end of March 2002.

Phillips left the District on or about June 4, 2002. On June 6, 2002, the District posted a bulletin entitled "Teaching Vacancies for the 2002-03 School Year" that contained position number 354. Position number 354 was posted as follows: "**Physical Education and Health at West** (2 sections of Physical Education 10/11; 1.5 sections of Physical Education 9; and 1.5 sections of Health at West)." (Emphasis in the original). Both the Grievant and Rykal signed up for the position.

Neubauer met with Wilson, they looked at the personnel files, and concluded the two applicants "were both equal," and "I needed a basketball coach and so I went after Nate Rykal as a basketball coach, yes." They found no substantial difference in physical education experience, and since the Grievant had just been terminated from the basketball position, Rykal stood out as far as co-curricular requirements.

The District awarded position number 354 to Rykal.

On July 12, 2002, the District provided the Grievant a written denial to his request to transfer to West. After receipt of the denial, the Grievant met with Feldhausen; and filed a grievance against the District. The grievance claimed that the District "granted the transfer to a less senior teacher, Nate Rykal (Seniority Date: 8/27/99) in violation of Article IX of the collective bargaining agreement." For a remedy, the grievance requested that a "voluntary transfer to Position #354 be granted to the most senior candidate, Bob Gaulke, for the 2002-2003 school year."

Coach/Teacher in the Building

West is a very diversified school with many low income students. The District wants coaches in these high poverty schools to also teach in the building where they coach. In this capacity, they can serve as role models; work on academic problems with teachers involving student athletes; help build school spirit; serve as a parent contact and facilitate contact with college recruiters. Coaches who are not teachers in the building where they coach are not immediately available when needed to perform these functions.

The District Athletic Handbook "Philosophy Statement for Co-Curricular Activities" reads:

The Green Bay Public School District believes co-curricular activities are an integral part of the total educational process. Through participation in these opportunities, students can have experiences and training in events not ordinarily obtainable in the general curriculum. Policies have been developed and are implemented to cultivate the high ideals of good citizenship, community involvement and personal growth. The school district considers involvement in co-curricular activities a privilege. Student participation carries with it certain responsibilities and expectations which promote growth toward becoming a responsible member of society. We expect students to be a credit to themselves, their family, school, and community.

The "Objectives" include this guideline:

- Involve teachers and community members as coaches and advisors

They also include these "Objectives for student participants":

...

2. To develop an understanding of the rules of each activity and learn to participate within these rules in accordance with the Green Bay Public Schools' policies and procedures in regards to discipline, attendance, academic expectations, Alcohol and Other Drug Abuse and violence related issues.

...

5. To provide an opportunity to learn respect and fellowship.
6. To develop pride, school spirit, a good attitude, and exhibit good sportsmanship.

Coaches' responsibilities are detailed in a job description. It states the head coach must keep the inventory of equipment, enforce all Board policies, supervise the conduct of participants, coordinate and schedule all activities with the supervisor, enforce all eligibility rules, review the detention record of each player and make sure all players are academically eligible. In sum, a head coach must make sure his athletes can stay in the game, and succeed outside the boundaries of athletic competition.

Michelstetter Award

On July 3, 1995, Arbitrator Stanley H. Michelstetter II issued an Interim Arbitration Award (*Schleis* case) wherein he found that the District violated Article IX, Section D, when it selected a junior employee to fill a vacant teacher position. In reaching this conclusion, Arbitrator Michelstetter reasoned that it was the District's responsibility under this contract provision "to produce credible evidence specifically explaining why its extra-curricular requirements dictate that it accept a less senior person's voluntary transfer request." The District therein opined "that it was to the advantage of West High School both academically and co-curricularly to have the head boys basketball coach at the school full-time." However, Arbitrator Michelstetter found that while this may have been true, "it could also be mere pretext. Other evidence indicates that there have been occasional years in which the head basketball coach has not been a teacher at West." Arbitrator Michelstetter continued:

However, assuming for the sake of argument that the Employer did need to have the head basketball coach present at West as a regular teacher, then why would the Employer have selected Mr. Anderson to be the head boys' basketball coach last year when he was not regularly assigned to West, rather than having selected a teacher who was already a teacher at West. Based upon the record as a whole, I don't believe that the reasons the Employer has offered for its choice of the junior person are its real reasons for this transfer. Accordingly, the Employer has violated Article IX by selecting Mr. Anderson.

Neither the District nor the Association has proposed to change the voluntary transfer language in bargaining since the Michelstetter award.

PERTINENT CONTRACTUAL PROVISION

ARTICLE IX
ASSIGNMENT, TRANSFER, REASSIGNMENT

...

D. Miscellaneous

1. In acting upon requests for voluntary reassignment and/or transfer, the following qualification criteria will be applied:
 - a. Individual qualifications;
 - b. Instructional and co-curricular requirements; and
 - c. Staff availability and experience.

Where the foregoing factors are substantially equal, the preference in assignment or transfer shall be given to the applicant with the greatest number of years of continuous service in the District.

...

POSITIONS OF THE PARTIES

Association's Position

The Association basically argues that the Grievant should have been awarded position number 354 based upon an assessment of the factors under Article IX, Section D 1.

The Association next argues that the District's reliance on the "co-curricular requirement" is a pretext for avoiding the seniority provision.

The Association also argues that this case is analogous to the *Schleis* case and warrants the same outcome in favor of the senior applicant for the position.

For a remedy, the Association requests that the Grievant be awarded position number 354 at West or provided the option to transfer to the position at the end of the academic term.

District's Position

The District first argues that the contract language on its face permits the District to make the judgment it made in this case to award the posted position to the employee who met the co-curricular requirements.

The District also argues that its application of the disputed contract language herein was consistent with the construction of the contract made by Arbitrator Michelstetter in the *Schleis* case. In addition, the District states that unlike *Schlies* there is no showing of a pretext in the instant case.

The District requests that the grievance be dismissed. If a finding is made that the District violated the contract, the District believes that the remedy should be a declaration of the District's duty. The District states that the Grievant should not be awarded the posted position at West because he bid out of the position and because he lacks the "clean hands" necessary for an equitable remedy.

DISCUSSION

At issue is whether the District violated Article IX, Section D 1 when it awarded position number 354 to an applicant (Rykal) with less seniority than the Grievant.

The Association argues that there is such a violation. The District disagrees.

Article IX, Section D 1 states that the following criteria will be applied in filling the disputed teaching position:

- a. Individual qualifications;
- b. Instructional and co-curricular requirements; and
- c. Staff availability and experience.

"Where the foregoing factors are substantially equal," seniority preference is given.

There are two questions to be analyzed: Were the factors under Article IX, Section D 1 substantially equal for the Grievant and Rykal? If so, did the Grievant or Rykal have greater years of continuous service in the District?

In support of its argument that the Grievant should have been awarded the position based upon the above contractual factors, the Association first maintains that the Grievant "possesses not only substantially equal qualifications but has superior qualifications than Mr. Rykal."

On the face of it, the Arbitrator would agree. The posting for position number 354 was for a teacher of Physical Education and Health at West. Unlike Rykal, the Grievant had experience in the District teaching both physical education and health at the high school level. (Emphasis added). In addition, the Grievant had a more varied, broader-based teaching background with the District than Rykal. However, Wilson testified that the District interprets the phrase “individual qualifications” to mean “certified or not.” (Tr. p. 174). This practice is not unreasonable or arbitrary. Both applicants were certified for the position. Therefore, the Arbitrator rejects this argument of the Association.

Likewise, there were no “substantial differences” in the area of staff availability and experience. (Tr. pp. 113-114). Both applicants were available to transfer to position number 354. Both applicants had three years experience teaching physical education. Based on this, the District found no substantial difference in their experience. (Tr. p. 114). There is no reason to disagree with this conclusion.

This leaves the instructional and co-curricular requirements.

The Association asserts that the Grievant met the instructional requirement for both physical education and health while Rykal did not. For three years, the Grievant taught physical education, health and adaptive physical education to high school students at West. (Tr. p. 12). Rykal lacked any instructional experience in health. (Tr. p. 174). Nevertheless, both applicants could meet the instructional needs meaning that they were certified to teach physical education and health at the high school level. Id. Therefore, the Arbitrator also rejects this argument of the Association.

The District claims that “Rykal was found to be superior because of the requirements of his co-curricular position.” In particular, the District asserts “Rykal needed to be at the school to best fulfill the co-curricular position he held, which best fulfills the overall mission of the school.” The question is whether this satisfies the “co-curricular requirements” standard of Article IX, Section D (1).

In his Interim Arbitration Award, Arbitrator Michelstetter found that “co-curricular requirements” were “a legitimate factor upon which the Employer might make its judgment” with respect to employees’ voluntary requests to transfer. GREEN BAY AREA PUBLIC SCHOOL DISTRICT, P. 6 (Michelstetter, 7/95). However, Arbitrator Michelstetter cautioned that while this factor was entitled to weight, the District’s unilateral control over extra-curricular assignments would give it substantial authority to undermine Article IX (D) if the mere fact that someone held an extra-curricular position was automatic license to obtain any regular teaching position. (Emphasis added). Hence, the importance of the term “requirements.” Id. Arbitrator Michelstetter found that it was the District’s responsibility “to produce credible evidence specifically explaining why its extra-curricular requirements dictate that it accept a less senior person’s voluntary transfer request.” Id. (Emphasis added).

In his Order Denying Motion for Reconsideration of the Interim Arbitration Award, Arbitrator Michelstetter explained this duty:

The crux of the issue is the difference in contract interpretation specified in the award. The award finds that the contract term “requirements” is substantive and that the Employer must show that its selection is based upon an extra-curricular “need” rather than its mere desire to have what appears to be a very desirable coach assigned to a teaching position at West High School. As the award notes, the Employer had a desire to have Mr. Anderson become a full-time teacher at West and sought to rationalize its choice in terms of the contract. This does not meet the contractual standard. If the Employer seeks to change this result, it needs to change the collective bargaining agreement, not the terms of the arbitration award. (District Exhibit No. 12).

Likewise, there has been no such showing herein. The extra-curricular requirements do not, contrary to the District’s assertion, dictate that the District accept Rykal’s voluntary transfer request. (Emphasis added). Nor has the District shown that its selection of Rykal was based upon an extra-curricular “need” rather than its strong desire to have the teacher fill the position who already coached boys basketball at the school.

The District’s own witnesses support this conclusion. In this regard, the Arbitrator notes that the job posting did not require coaching at West as a condition for position number 354. (Association Exhibit No. 2, p. 2, Tr. p. 132). Wilson testified that the “District does not require any position to have any co-curricular attached to it, I would agree with that.” (Tr. p. 176).

The District argues, however, that if the “requirements” factor means that the co-curricular requirements must be attached to the teaching position this “would write the co-curricular portion of clause “b” out of existence, because there never is a co-curricular requirement of an instructional position.” The District points out that the teaching and co-curricular assignments are always separate in the District.

The Arbitrator agrees that the co-curricular assignment doesn’t have to be formally attached to the teaching position in order to satisfy the co-curricular portion of Article IX, Section D 1b. However, if the co-curricular requirements were attached to the teaching position, this should satisfy the co-curricular requirements factor of clause “b.” The District points out that job postings for instructional positions never contain a reference to coaching or other co-curricular activity and are never mixed. The District did not, however, claim that this could not be done. As pointed out by Arbitrator Michelstetter: “There may be situations in which the inter-relationship of the extra-curricular position requires the person to be a teacher at the same school.” GREEN BAY AREA PUBLIC SCHOOL DISTRICT, *supra*, p. 7.

Other District witnesses also support a conclusion that it is desirable, but not required to have a coach in a school as a teacher. Brossard, the Athletic Director at West, testified:

Q In fact, it is not currently a requirement for a sport to be offered that it be coached by a teacher at West, is it?

. . .

A Is not a requirement, but it is desired.

Q It's something you would prefer but not something you require, is that a fair summary of your position?

A Yes. (Tr. p. 91)

Daniel Gage is the social studies teacher and girls basketball head coach at West. (Tr. p. 63). At the time he transferred from Southwest to West, he was not coaching at Southwest. (Tr. p. 71). When he transferred into West, there was no coaching requirement if he were to transfer. Id.

The Association asserts that the "co-curricular requirement" was mere pretext for hiring the junior applicant (Rykal). Arbitrator Michelstetter found that the evidence in his case indicated "that the Employer's reason for making the instant transfer is a pre-text for avoiding the seniority provision of this agreement section." GREEN BAY AREA PUBLIC SCHOOL DISTRICT, *supra*, p. 7. In support thereof, Arbitrator Michelstetter noted the successful junior applicant was selected as the boys basketball coach at West before he started work there as a teacher. Id. In addition, "there have been occasional years in which the head basketball coach has not been a teacher at West." Those same factors are present in the instant case.

However, the District makes a very strong case for the desirability of having the head boys basketball coach at West as a teacher. Daniel Sidel is a special education teacher and assistant football coach at West. (Tr. p. 55). He has experience coaching in the school in which he teaches, and he has experience coaching in a school where he does not teach. (Tr. p. 56). The former is better because "I've been able to form a close relationship with the kids who are in the schools in which I teach and coach." In the latter, the relationship is not quite as close. (Tr. p. 57). He also missed problems by arriving "too late to see the teacher," and would be unable to address them on a timely basis. Id.

West does not have a successful athletic program, if measured by "wins and losses." Id. Sidel thinks they are "somewhat successful" in helping their athletes in school. (Tr. pp. 57-58).

West has “a very diverse student body” and many students “don’t have the support systems in place that would enable them to participate in extra-curricular activities, not just sports.” (Tr. p. 59). Money restricts West students, as do cultural differences, and literally physical differences in size. (Tr. p. 60). There is a high proportion of stressful home life. Id. West needs every athlete it can get, replacements are not waiting in the wings. Id. As a result, Sidel tries “a little harder to keep that kid eligible to play, find a way to help him play.” (Tr. p. 61).

Other teachers, coaches and administrators at West also believe that it is better to have coaches, particularly head coaches, in the building in order to support the school mission. (Tr. pp. 68-75, 77-79, 84-87, 93-97, 112, 114-118).

Nerad has expertise in high poverty schools (like West), and wrote a doctoral dissertation on the subject. (Tr. pp. 137-140). He finalized the decision to select Rykal, based upon the experience of his research, including his view that strong staff relationships come not only from support of the classroom functions of teachers, but also from support of the co-curricular programs. (Tr. pp. 142-145). Where students are able to build a relationship with staff members there will be a positive impact on learning. (Tr. p. 142). Coaching is much more “than the time in the gym, being much more than the X’s and O’s on the court but really serving as a key advisor to keep these kids in school and keep them on the correct path.” (Tr. p. 144). Nerad felt that having the coach in the building as a teacher was the “best” way to “support those young people in pursuit of their learning and their basketball.” Id.

The District has a genuine desire/interest in having coaches in the building as teachers. It would like to obtain this result in hiring situations like West where possible. Therefore, the Arbitrator finds that the “co-curricular” consideration is not a pretext in the instant case. However, this desire/interest in having coaches in the building fails to rise to the level of “requirement” because of the haphazard, uneven manner in which the District has gone about trying to implement this philosophy, not only at West but also at other schools in the District. Many head coaches are not teachers in the building where they coach. (Association Exhibit No. 9). The District has no written policy or directive from the superintendent or the Board emphasizing the importance of this commitment to having coaches in the building when filling teacher positions. It has set no concrete goals to achieve this result. The District’s own treatment of Rykal at West (it hired him as coach before he had a teaching job) raises a serious question as to the relative importance it attaches to this goal. The District does not have to demonstrate that it always attains this result. However, the District must demonstrate that it makes a systematic, sustained effort toward achieving this goal instead of using the “co-curricular requirements” only when convenient.

There are no co-curricular requirements in the instant case. Individual qualifications, instruction requirements, staff availability and experience are all substantially equal. Seniority is the tie breaker under Article IX, Section (D) and on that basis the Grievant should have been awarded the position.

The District argues, contrary to the above, that it is permitted a substantial degree of discretion in the voluntary transfer clause. The District believes that it exercised this discretion properly herein because Rykal needed to be at the school to best fulfill the co-curricular position he held and the overall mission of the school.

The Arbitrator agrees with the District that seniority is not as important a consideration when making voluntary transfers as it is when there is an involuntary transfer or layoff. It is also true that the voluntary transfer clause gives the District a great deal of discretion when filling positions as evidenced by its application of the various criteria under Article IX, Section D 1 in this case. However, the District has not established a “requirement” that the disputed position be filled by the boys head basketball coach. Therefore, the Arbitrator rejects this argument of the District.

The District states that it does not agree with Arbitrator Michelstetter’s analysis of the word “requirements” in his Interim Arbitration Award. However, the District filed a motion for reconsideration of the Interim Arbitration Award that was denied by Arbitrator Michelstetter. (District Exhibit No. 12). There is no evidence that the District ever sought to vacate or to modify Arbitrator Michelstetter’s decision based on Secs. 788.10 or 788.11 Stats. Nor has the District sought to change the language of Article IX, Section D in collective bargaining at any time material herein. (Tr, p. 153). The District cannot use the grievance arbitration process to achieve something that it did not obtain (much less seek) at the bargaining table.

Contrary to the District’s assertion, its application of the disputed contract language herein is not consistent with the construction of the contract made by Arbitrator Michelstetter in the *Schleis* case. Having applied the standards articulated in Arbitrator Michelstetter’s Award to the facts of this case, the Arbitrator finds that the answer to the issue stipulated to by the parties is YES, the School District violated Article IX, Section D 1 when it awarded a physical education teaching position at West High School to an applicant with less seniority than the Grievant.

A question remains as to the appropriate remedy.

Remedy

The District argues that if there is a finding of violation, the appropriate remedy is a declaration of violation and an order not to violate the clause in that manner in the future. The District believes that the remedy should not include assigning the Grievant to West because he bid out of the position and because he lacks the “clean hands” necessary for an equitable remedy.

It is true that the Grievant immediately bid out of the position after losing his coaching job. Nevertheless, there is no contractual restriction on his application to return to the position. Therefore, the Arbitrator rejects this contention.

The Arbitrator shares the District’s concern about the Grievant’s comments threatening to undermine the basketball program. However, they were made in the “heat of the moment” after losing his coaching job. There is no evidence that he feels the same way today. Contrary to the District’s assertion, the fact he filed a grievance to enforce his contractual rights is not evidence of improper motivation or pretext. If he ultimately takes the teaching position, and uses that position to undermine the West program then he would be subject to the disciplinary procedure. Therefore, the Arbitrator also rejects this argument of the District.

For a remedy, the Association requests that the Grievant be assigned to position number 354 at West. The Association opines that this remedy would “return the parties to the position they would have been but for the District’s breach of the contract.” However, considering the impact on education, the Association believes this translates to an order that the transition occur at the end of an academic term and that the Grievant be permitted to transfer or not.

In formulating a remedy, the Arbitrator will apply the following standard articulated by the Association:

In form the remedy should be one that would appear to most directly effectuate the intent and purposes of that provision in the labor agreement in connection with which the right was contracted. Elkouri and Elkouri, How Arbitration Works, 5th Edition, p. 394 (1997), *citing* comments by arbitrator Ryder in Proceedings of the 16th Annual Meeting of NAA, 68-69 (BNA Books, 1963).

Here, it is undisputed that where the candidates for a voluntary transfer are assessed as substantially equal, the parties agreed to seniority as the mechanism to award the position. The remedy that would most effectuate the intent and purposes of Article IX, Section D 1 is to award the applicant with the most seniority the teaching position. Since the Grievant has greater seniority, he should be awarded the position.

Based on all of the above and the record as a whole, it is my

AWARD

The grievance is sustained and the District is ordered to: (1) offer position number 354 (Physical Education and Health at West) to the Grievant at the end of the 2003-04 school year; and (2) give the Grievant the option to accept or to decline said position at that time.

The Arbitrator will retain jurisdiction over the application of the remedy portion of the Award for at least sixty (60) days to address any issues over remedy that the parties are unable to resolve.

Dated at Madison, Wisconsin, this 20th day of October, 2003.

Dennis P. McGilligan /s/

Dennis P. McGilligan, Arbitrator

