BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 2 MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO

and

WHITNALL SCHOOL DISTRICT

Case 62
No. 63704
MA-12683

Appearances:

Law Offices of Mark A. Sweet, LLC, Attorneys at Law, by **Gene A. Holt**, 705 East Silver Spring Drive, Milwaukee, Wisconsin 53217, appearing on behalf of the Union.

Quarles & Brady, LLP, Attorneys at Law, by **Michael Aldana**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of the District.

ARBITRATION AWARD

Local 2, District 48, AFSCME, AFL-CIO, hereafter Union, and Whitnall School District, hereafter District or Employer, are parties to a collective bargaining agreement that provides for final and binding arbitration. Pursuant thereto, the Union, with the concurrence of the District, requested that the Wisconsin Employment Relations Commission appoint a member of its staff to arbitrate the instant grievance. Coleen A. Burns was so appointed. A hearing was held on August 12, 2004 in Greenfield, Wisconsin. The hearing was transcribed and the record was closed on October 19, 2004, following receipt of post-hearing written argument.

ISSUES

The parties did not agree on a statement of the issues. The Union frames the issues as follows:

> When management imposed an involuntary transfer against Brian Nechy because a complaint was filed against him, was the action disciplinary in nature?

If so, did the School Board have just cause to reprimand Brian Nechy?

If so, was the School Board's decision to permanently transfer an employee away from a bidded job within their rights under the contract and the appropriate level of discipline in this case if it is permissible under the contract?

Did the School Board violate Brian Nechy's rights under the contract by failing and refusing to treat a similarly situated employee in the same fashion as Mr. Nechy?

The District frames the issues as follows:

Did the Employer violate Article 7, Section D, of the parties' collective bargaining agreement when the Grievant was transferred from elementary school to the high school?

RELEVANT CONTRACT PROVISIONS

3. **SCHOOL BOARD FUNCTIONS**

The Board possesses the sole right to operate the school system and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights include, but are not limited to, the following:

. . .

C. To hire, promote, transfer, schedule and assign employees in positions with the school system;

D. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

. . .

The exercise of such powers, rights, authority, duties and responsibilities by the Board, the adoption of such policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement and then only to the extent such specific and express terms hereof are in conformance with the Constitution and the laws of the State of Wisconsin.

7. PROMOTIONS AND TRANSFERS

A. Qualifications: Promotions or transfers (except as provided in subsection C, D, E, and F below) to another job classification shall be determined on the basis of relative ability, experience and qualifications. Where the above stated factors are relatively equal, seniority shall be the determining factor. Promotion beyond the classification of Custodial Aide shall require experience and/or qualifications as demonstrated by training at a certified training institution in the areas of heating, ventilation, air conditioning service, mechanical equipment repair and service, electrical systems, plumbing systems, masonry, or carpentry as follows:

40 hours for promotion to a Custodian I
120 hours for promotion to a Custodian II
160 hours for promotion to a Custodian III
200 hours for promotion to Maintenance

With prior approval, the District shall reimburse the employee for the enrollment fees for such training courses. The District reserves the right to limit the number of employees for whom it will reimburse such training fees. Training shall be conducted on the employee's own time and shall not be treated as work time for pay purposes. The District shall not show favoritism in granting said reimbursement.

B. Procedure: An employee upon being promoted or transferred to another position or classification, shall serve a trial period of sixty (60) working days in the classification. An employee who does not satisfactorily complete the trial period at the end of the sixty (60) working days shall be returned to his former classification and his former rate of pay. In the event the Board determines an employee is not qualified to fill a position before the end of the sixty (60) working days, the Board reserves the right to return this employee to his former classification and his former rate of pay. Whenever the Board deems it necessary to make a promotion, fill a vacancy due to a quit, discharge, retirement, or death of an employee, or fill a new position in the bargaining unit, the Board will post such position for a period of five (5) working days on the bulletin board established herein. Each employee interested in applying for the job shall endorse his name upon such notice in the space provided.

When an employee is changed to a higher pay grade he/she shall be placed at the step reflecting a wage closest to but not less than his/her wage prior to reclassification. When an employee is changed to a lower pay grade he/she shall be placed at the step reflecting a wage closest to but not more than his/her wage prior to reclassification.

C. Job Posting – No Applicants: In the event a job is posted and no qualified employees apply for said opening, the Board may hire a person from outside the bargaining unit to such vacancy.

D. Shift of Personnel: A vacancy shall not be deemed created and the Board shall not be required to follow the procedure under subsection A and B above, when one employee is assigned to a job of another employee and the employee that is displaced is reassigned to another job even though this may mean that employees are transferred to different buildings. Provided, however, the employees involved remain in the same job classification that they held prior to the job reassignment. Such shifts in personnel shall be based solely on the needs of the School Board for service or for the good of the employees involved. When a shift of personnel occurs the Business Manager or his designee shall inform the employees involved in writing of the reason or reasons for the transfer.

E. Transfers Due to Lack of Work: In the event of reduced work in one building, the Board may transfer any number of employees it deems necessary to one or other buildings. If no employee in said building wishes to transfer voluntarily the transfers shall be made by seniority provided, the employee is qualified to do the work that is available. Employees so assigned shall have recall rights to their previously held assignment for a period of one year from his or her date of transfer.

F. Temporary Assignments: The Board may temporarily assign an employee to any job and shall not be required to follow the procedure under sections A and B above. Any employee temporarily assigned to a job shall not be paid less than his regular wage. In the event that an employee is temporarily assigned to a job with a higher wage rate, said employee shall be paid such higher wage rate provided that he/she assumes all of the duties which would have been performed by the employee regularly assigned to that position on that day. In order to qualify for the higher rate of pay, an employee must work in the higher rated position for at least sixteen (16) consecutive hours.

> The foregoing shall not be paid when a Custodial Aide is assigned on a temporary basis to perform the work of a Custodian I. However, after forty (40) cumulative hours of said assignment within a rolling six (6) month period, the employee will prospectively be paid as a Custodian I, at a level that would result in an increase in pay, provided the employee submits a properly substantiated request for such pay on the employee's time card, and such pay shall be forfeited if such a request is not made. When an employee is temporarily assigned to another job, he/she shall not lose their shift premium. When a Custodian fills in for a higher classification, the Custodian (excludes Custodial Aides) will be paid 6% per hour over his or her then current base rate.

BACKGROUND

On Friday, February 20, 2004, Brian Nechy, hereafter Grievant, was employed by the District as a Custodian I and Joshua King was employed by the District as a Custodian III at the Hales Corners Elementary School, hereafter HCE. Each of these employees was a member of the bargaining unit represented by the Union. King, as Custodian III, functioned as the Head Custodian of the HCE building, with a responsibility to assign and direct the work of building Custodians, including the Grievant.

At approximately 11:00 a.m. on February 20, 2004, the Grievant and fellow Custodian James Frami went to King's office area, which was located near the loading dock of HCE. At all times material hereto, the Grievant has been a member of the Union's Executive Board and Chief Steward of Local 2 and Frami has worked at the District's High School and held the position of Assistant Union Steward.

At that time, the Grievant engaged King in a discussion. Following this discussion, and shortly after 11:00 a.m., King telephoned his immediate supervisor, District Building and Grounds Supervisor Daniel Larsen, and requested to meet with Larsen. Larsen responded that he could meet with King at 1:00 p.m. on that date.

King met with Larsen at 1:00 p.m. The ensuing discussion lasted approximately one hour. During this discussion, King gave an account of his 11:00 a.m. encounter with the Grievant, which, *inter alia*, contained complaints of the Grievant's conduct during this encounter. Larsen told King that he did not react to verbal complaints from anybody on staff, but that he would contact Frami and Nechy, because there were two sides to every story.

On that same day, Larsen contacted Frami, who then came to Larsen's office. Frami gave an account of the 11:00 a.m. encounter with King. After Frami left Larsen's office, Larsen went to HCE to talk to the Grievant. The Grievant gave an account of the 11:00 a.m. encounter with King. When this conversation ended, Larsen advised the Grievant that, on the

following Monday, Larsen would set up a meeting with King and Larsen to iron out the matter before it snowballed. Between 11:00 a.m. and the time that King left for the day, the Grievant and King had further discussion.

When Larsen returned to his office on Monday, he was advised that King had filed a formal written complaint of harassment against the Grievant. Associate Superintendent James R. Hass, the District representative responsible for investigating and disposing of such complaints, conducted an investigation and, on March 10, 2004, issued a written report entitled "Investigation of Harassment." This written report was divided into two sections, *i.e.*, Summary of Investigation and Investigation Completed/Conclusion. A copy of this report was provided to the Grievant when he met with Hass on March 10, 2004.

At the meeting of March 10, 2004, the Grievant was verbally informed that, effective Monday, March 15, 2004, the Grievant was being transferred to Whitnall High School. On March 12, 2004, Hass issued a written memo that advised the Grievant of the following:

> This memo is a follow-up reminder regarding the change effective, Monday, March 15, 2004. Per complaint, please report to Whitnall High School from 2:30 – 11:00 p.m.
>
> Any questions, please contact Mr. Dan Larsen at 525-8450 or 531-1781 (cell)

Following this transfer, the Grievant retained his classification; rate of pay; and shift hours.

On March 10, 2004, the Grievant filed a Step One grievance alleging that Article 7, Promotions/Transfers, Section D, Shift of Personnel, had been violated, because the Grievant is being transferred without cause. The grievance further alleged that "This action was initiated due to a harassment claim filed with the District on 23 February 2004" and requested the following relief: Employee to remain on present shift at same location."

On March 16, 2004, the Grievant presented a Step 2 grievance, which included the following:

> **List applicable violation:** Unfair transfer of Brian Nechy. Is not for the good of the District or for Brian. Article 7 Promo./Trans. Section D Shift of Personnel. Is being transferred without cause.
>
> **Adjustment required:** Transfer Brian back to his former school and starting time. Correct this and any past violations to be made whole. Remove charge from personnel file.

On April 8, 2004, Assistant Superintendent for Business Services Matthew Corby and Hass provided the District's Step 2 response, which states as follows:

> This grievance is denied. The reassignment of Brian Nechy to the high school is dictated by contract Article 7 D of the contract. As an accommodation, Mr. Nechy's work hours have been set to mirror the work hours he had at Hales Corners Elementary School.

The grievance was appealed to Step 3 of the grievance procedure and was denied. Thereafter, the grievance was submitted to arbitration.

POSITIONS OF THE PARTIES

Union

The grievance challenges the involuntary transfer of the Grievant from his bidded job. The Union contends that this transfer represents a disciplinary action. If this contention is sustained, then the Arbitrator must address whether or not there was cause to initiate and maintain the transfer indefinitely. If this contention is not sustained, then the Arbitrator must decide whether the District's decision was "based solely on the needs of the School Board for service or for the good of the employees involved."

Jobs are bid for a specific location. If Article 7, Section D, is given the interpretation advocated by the District, it would render seniority within job assignment meaningless.

It makes little sense to provide recall rights for employees transferred due to lack of work (Article 7, Section E), but to provide the employer with the right to unilaterally remove an employee from a posted assignment without any right to go back to the position. Article 7, Section D, is intended to provide for a temporary period of transfer for the purpose of handling occasional special needs, such as "gang cleaning" the schools during the summer.

The Grievant had every right to believe that his assignment to Hales Corners was his benefit under the terms of the contract and past practices. The fact that the District chose not to label the transfer as discipline does not mean that it was not discipline.

On several occasions, Arbitrator Malamud has considered the claim that an involuntary transfer was not discipline and concluded that disciplinary transfers are not proper. (cites omitted) As Arbitrator Malamud recognized, an involuntary transfer of an employee represents an action which continues to punish an employee indefinitely. As such, it is inherently unfair and lacks just cause.

The parties have stipulated that the decision to transfer was not performance based. As the record establishes, the Grievant did not work with King; did not have a problem with King; and merely relayed concerns from other workers who did have concerns about how King was treating them. The Grievant may have overstepped his role as messenger by using inappropriate language, but no one in management believed that he was harassing King.

The District was faced with a problem with "work relationships." However, the problem was with Josh King and not the Grievant. King was abusive to his co-workers; causing such stress and anxiety that employees became ill or requested transfers. Instead of dealing with King, the District opted to punish the Grievant by transferring him. Management provided a myriad of reasons for their decision to transfer the Grievant, but none provide just cause to permanently transfer the Grievant.

Management responded to King's complaint by conducting an investigation, but was unable to substantiate his complaint. Management ignored complaints of employees who complained about King. Transferring the Grievant based upon an unsubstantiated complaint from King is arbitrary, capricious and represents disparate treatment.

Management admitted that two different employees either took time off from work or requested a transfer as a direct result of the harassment by King. Management ignored the "service needs" of the District by permitting King, the harasser, to remain at HCE, while removing the advocate of the harassed employees.

Whether this case is viewed as a disciplinary matter or a "service needs" issue, there was no justification for the District to transfer the Grievant from his bidded assignment. The grievance should be sustained. The Grievant should be returned to his bidded job assignment at HCE and be made whole for any wages or benefits lost as the result of the illegitimate transfer.

District

The Arbitrator cannot ignore the clear language of Article 7, Section D, of the parties' collective bargaining agreement, which provides the District with the right to unilaterally reassign employees to different jobs and to transfer them to different buildings when the transfer is "based solely on the needs of the School Board for service or for the good of the employees involved" and the "employees involved remain in the same job classification that they held prior to the job reassignment.

The Grievant's transfer followed the District's investigation of a complaint of harassment filed by Head Custodian Joshua King against the Grievant and its determination that it was in the District's best interests to transfer the Grievant and necessary to complete "all building custodial tasks and responsibilities involved of all parties." Thus, the decision was based on "the needs of the School Board for service." Prior to and after his reassignment from HCE to Whitnall High School, the Grievant was classified as a Custodian I.

Regardless of whether or not the Grievant's conduct toward the Head Custodian rose to the level of harassment, the District's conclusion that it was necessary to separate the Grievant from Head Custodian King in order to "get the job done" was reasonable. The District chose to transfer the Grievant, rather than the Head Custodian, because, from a servicing standpoint, transferring a Custodian I was more orderly and efficient. The Union's claim that transferring

the Grievant, rather than King, "makes no sense and represents disparate treatment" is unsubstantiated.

The District's investigation of the harassment report did not result in a finding of harassment. The District never intended, or stated, that the transfer was disciplinary. The Grievant acknowledged this fact when he wrote the following on the March 12, 2004 memo: "no disciplinary action is being taken—remove from personnel file." A poor working relationship between co-workers and the need to restore harmony to the workplace are legitimate, non-disciplinary reasons to involuntarily transfer an employee to a different location. IN RE LEXINGTON (OHIO) LOCAL BOARD OF EDUCATION AND THE LEXINGTON SUPPORT ASSOCIATION, 115 LA 922 (2001)

The Grievant was not demoted, suspended, reprimanded or warned. The fact that the Grievant viewed the transfer to be punitive does not make it so. The District's decision to transfer the Grievant was not disciplinary in nature and, thus, is not governed by the "just cause" provisions of Article 3, Section D.

The Union argues that the District violated the collective bargaining agreement by "permanently transferring an employee away from a bidded job." The record, however, does not establish that the transfer is permanent. More importantly, however, the collective bargaining agreement does not state that a bidded job is permanent and, in fact, employees may be reassigned according to the terms of the collective bargaining agreement.

Article 7, Section E, provides recall rights. The Grievant, however, was not transferred under Section E. The collective bargaining agreement does not provide the Grievant with any right to be retransferred.

The transfer of the Grievant was not arbitrary or capricious. The poor working relationship between the Grievant and King jeopardized the District's ability to properly service its schools. The Grievant's transfer complies with the requirements of Article 7, Section D. The grievance is without merit and should be dismissed.

DISCUSSION

Issue

At the start of hearing, the District objected to the Union's statement of the issues. According to the District, the allegation that the transfer was discipline without just cause was not raised in the earlier steps of the grievance procedure and, thus, is not timely.

Article 8, Grievance Procedure, requires, *inter alia*, that the written grievance contain the "specific section of the agreement alleged to have been violated." The only contract provision cited by the Grievant/Union in the written grievances is Article 7, Section D, (Jt. Ex. #1, 2, and 4).

As the Union argues, the written grievances allege that the "employee is being transferred without cause." (Jt. Ex. #1, 2, and 4) The absence of a specific reference to Article 3, Paragraph D, which requires "just cause" for discipline, reasonably leads to the conclusion that the lack of "cause" claimed in the grievance is a failure to follow this provision alleged to have been violated, *i.e,* Article 7, Section D. The written responses to the grievance indicate that the District reached such a conclusion because they make no reference to discipline and refer only to Article 7, Section D. (Jt. Ex #5 and 7)

At the Step 2 Grievance meeting, the Grievant asked that the harassment complaint be removed from his file and the Grievant was told that there was no harassment to be put in the file; that the investigation did not reach a conclusion of harassment. (T. 111-12; 115) It is evident that the Grievant viewed his transfer as disciplinary and, at this Step 2 meeting, made a note to himself questioning how the transfer could not be disciplinary. (T. 89; 112) At the Step 2 meeting, the Grievant may have stated that he had been disciplined and the District may have denied that he had been disciplined. (T. 115; 124) The undersigned is not persuaded, however, that, at the Step 2 meeting, or at any other time during the processing of the grievance, the Grievant, or the Union, provided the District with reasonable notice that the grievance included a claim that the Grievant had been disciplined without just cause.

The District, unlike the Union, has framed the issue that was presented in the grievance and addressed by the parties during the processing of this grievance. Accordingly, the undersigned has adopted the District's statement of the issue.

Merits

In January of 1996, the Grievant posted into the position of Custodian I at HCE and, consistent with normal District procedures, the posting identified the position by classification, *i.e.*, Custodian I and building location, *i.e.*, HCE. (T. 38; 93-94; (U Ex. #4)) Thereafter, the Grievant received a "Whitnall School District Employment Agreement" that identified his employment as "BUILDING/PROGRAM: Custodian I – Hales Corners." (U Ex. #4)

The "Whitnall School District Employment Agreement," states that the "Details of wages and conditions of employment are outlined in your Union Contract available from your Supervisor or the District Office." It follows, therefore, that the provisions of the Union contract take precedence over any conditions, expressed or implied, that are contained in the "Whitnall School District Employment Agreement."

Neither party offered any evidence of bargaining history. The plain language of Article 7, Section D, expressly recognizes that the District, when shifting personnel pursuant to Article 7, Section D, is not required to follow Section A, which Section requires promotions or transfers to be determined on the basis of "relative ability, experience and qualifications," or Section B, which Section provides for posting and, implicitly, awards the posted position to the successful bidder upon the completion of a 60 working day trial period. Thus, under the plain language of the contract, the Grievant's Article 7 posting rights are not unfettered, but rather, are subject to the District's Article 7, Section D, right to shift personnel.

The District has temporarily transferred Custodians from building to building to perform "gang cleaning." Larsen identified such a transfer as an example of an Article 7, Section D, "needs of the school board for service." (T. 180-81) However, neither Larsen's testimony, nor any other record evidence, establishes that the parties mutually intended all Article 7, Section D, transfers to be temporary, or to involve a right of return.

Indeed, a review of Article 7, Section E and F reveals that, when the parties intend a transfer to be temporary, or the transferred employee to have a recall right, then the parties so state. Giving effect to the plain language of Section D, as well as construing Section D in a manner that is consistent with the other provisions of Article 7, the undersigned rejects the Union's argument that an Article 7, Section D, transfer is temporary, or that an employee transferred pursuant to Article 7, Section D, has recall rights to his former position.

In summary, any right to a Custodian I position at HCE afforded to the Grievant by virtue of his job posting and "Whitnall School District Employment Agreement" is limited by the District's right to effectuate an Article 7, Section D, Shift of Personnel. Such a conclusion does not, as the Union argues, render seniority within job assignment meaningless, but rather, gives effect to the seniority rights that have been established by the agreement of the parties.

The undersigned turns to the question of whether or not the District has effectuated an Article 7, Section D, Shift of Personnel. The conclusion that the Union's statements of the issues are not appropriately before the Arbitrator deprives the Arbitrator of authority to determine whether or not the Grievant has been disciplined without just cause. It does not, however, render irrelevant all Union arguments that the transfer was a discipline disguised as an Article 7, Section D, Shift of Personnel. If the transfer were found to be discipline, then the transfer would run afoul of the Article 7, Section D, stricture that "such shifts in personnel shall be based solely on the needs of the School Board for service or for the good of the employees involved." (Emphasis supplied)

Although Hass consulted with other management employees, the decision to transfer the Grievant was made by Hass and was based upon information that Hass gathered during his investigation of the harassment complaint filed by King against the Grievant. (T. 45-46; 55; 157-58) Hass' investigation lead Hass to the conclusions contained in Section II of his written report of March 10, 2004. (ER #1; T. 46; 157-58) This written report was provided to the Grievant on March 10, 2004. (T. 62; 109)

The March 10, 2004 written report does not state that the Grievant is at fault or has engaged in any wrongdoing. Nor does it state that the Grievant is being disciplined. When the Grievant asked that King's complaint of harassment be removed from his file, he was advised that there had not been any finding of harassment and that the complaint was not in his file. (T. 112) Apparently the Grievant was also told that he was not being disciplined. (T. 115; 124)

According to Hass, he did not conclude that the allegations contained in King's complaint against the Grievant were proven. (T. 55-58; 204-6) Larsen, who assisted Hass in his investigation of the King complaint, recalls that the decision to separate the Grievant and King was not disciplinary because there was "nothing we could prove one way or other . . . " (T. 162)

The undersigned is persuaded that Hass, who made the decision to transfer the Grievant, did not assign blame to the Grievant, but rather, determined that it was necessary to separate the Grievant and King because King's anxieties regarding the Grievant would negatively impact upon these employees' abilities to complete all building and custodial tasks and responsibilities involved and get the work accomplished. (ER #1; T. 52; 55-58; 222) Contrary to the argument of the Union, the record does not warrant the conclusion that the Grievant's transfer involved discipline.

As the Union argues, Hass reached his conclusion to transfer the Grievant prior to completing his investigation on the subsequent complaint filed by the Grievant and other employees against King. (T. 52-53) If the record had established that Hass transferred the Grievant because Hass had concluded that the Grievant had harassed King, then Hass' failure to substantiate the accusations contained in the King complaint and/or complete his investigation of the complaint against King would give rise to the inference that Hass acted in an arbitrary and capricious manner by transferring the Grievant. However, Hass did not transfer the Grievant because he had concluded that the Grievant harassed King. Rather, as discussed above, King transferred the Grievant because he made the judgment that King's anxieties regarding the Grievant would negatively impact upon these employees' abilities to complete all building and custodial tasks and responsibilities involved and get the work accomplished.

Hass interviewed King on February 23, 2004 and then, several days later, followed up with a second conversation. (Er. Ex. #1; T. 203-05) Hass credibly testified that these interviews lead Hass to conclude that King sincerely feared and felt threatened by the Grievant. (T. 55-56; 203-204) Larsen, who interviewed King and was present when Hass interviewed King, also concluded that King sincerely felt threatened by the Grievant. (T. 159) Given Hass' bona fide belief that King feared and felt threatened by the Grievant, Hass' decision to separate the Grievant and Hass was not arbitrary, capricious or discriminatory.

The Union argues that the District's interests would have been better served by transferring King, rather than the Grievant. However, as the District argues, neither the Union, nor this Arbitrator, is empowered to decide what is in the best interest of the District. Rather, under the plain language of Articles 3 and 7, Section D, the decision as to what meets "the needs of the School Board for service" or is "for the good of the employee" is reserved to the District's judgment and discretion.

Hass credibly testified that he considered options other than transferring the Grievant, but that Hass decided that it would be less disruptive to the District's service needs to transfer

the Grievant. (T. 207-208) Larsen credibly testified that, given the differing levels of responsibility in the Head Custodian positions, as well as the varying ability levels of the Head Custodians, it would be more disruptive to the District to transfer King to another Head Custodian position than to transfer the Grievant to another Custodian I position. (T. 160-162) Hass confirmed that he agreed with Larsen's testimony. (T. 208)

In summary, the undersigned is persuaded that the "shift in personnel" that produced the Grievant's transfer was based "solely on the needs of the School Board for service or for the good of the employees involved." Contrary to the argument of the Union, neither the District's decision to separate the Grievant and King, nor the District's decision to transfer the Grievant, rather than King, is an arbitrary, capricious or discriminatory exercise of management's right. Rather, it is consistent with the rights reserved to management in Article 7, Section D, and Article 3 of the parties' collective bargaining agreement.

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

AWARD

1. The Employer did not violate Article 7, Section D, of the parties' collective bargaining agreement when the Grievant was transferred from elementary school to the high school.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 11th day of February, 2005.

Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

CAB/gjc
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