

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

and

THE KENOSHA EDUCATION ASSOCIATION

Case 180
No. 66298
MA-13479

(Jessica Christie-Kapellusch grievance)

Appearances:

Jim Scott, Lindner & Marsack, S.C., 411 East Wisconsin Avenue, Milwaukee, WI 53202, appearing on behalf of Kenosha Unified School District No. 1.

Bob Baxter, Executive Director, Kenosha Education Association, 5610 55th Street, Kenosha, WI, appearing on behalf of the Kenosha Education Association.

ARBITRATION AWARD

Kenosha Unified School District No. 1, hereinafter Employer or District, and the Kenosha Education Association, hereinafter Association, are parties to a collective bargaining agreement that provides for the final and binding arbitration of grievances. The Association, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a Commissioner or staff arbitrator to hear and resolve a dispute between them. Commissioner Susan J.M. Bauman was appointed. A hearing was held on February 6, 2007 in Kenosha, Wisconsin. The hearing was not transcribed and the parties presented oral arguments at the end of the hearing, whereupon the record was closed.

Having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, the Undersigned makes the following Award.

ISSUE

The parties stipulated to the following issue:

Did the District violate the collective bargaining agreement by not assigning the Grievant to the Dean of Students position at Lincoln Middle School?

If so, what is the appropriate remedy?

FACTS

The Grievant, Jessica Christie-Kapellusch, began her employment with the District as a counselor at Pleasant Prairie & KSOL/Elementary during the 1999-00 school year pursuant to a Letter of Appointment. A June 7, 2000 evaluation by an administrator indicates that she met District expectations in all respects. She served as a guidance counselor at Forest Park School during the 2000-2001, 2001-2002 and 2002-2003 school years. End-of-year evaluations by the administration again indicate that Ms. Kapellusch met District expectations for each of the three years. Ms. Kapellusch was at Forest Park until September 2006. She is currently a counselor at Jefferson Elementary School.

Pursuant to the terms of the collective bargaining agreement between the Association and the Employer, the Grievant expressed an interest in a voluntary transfer to another position for the 2006-2007 school year. By letter dated May 5, 2006¹, she was advised by Sheronda G. Glass, Executive Director of Human Resources for the District:

There will be an informational teacher reassignment meeting held on Wednesday, May 10, 2006, from 3:30-5:00 p.m. in Room 190B of the Educational Support Center. This meeting will be to discuss positions that will be available for reassignment for the 2006-07 school year. Please complete the attached form and bring it with you to the meeting.

Please plan to attend this important meeting. If you have further questions regarding this matter, please contact me at 653-6333 or at sglass@kUSD.edu. Thank you.

Ms. Kapellusch attended the May 10 arena scheduling meeting. After reviewing the list of available positions, Teaching Opportunities, 2006-2007 Vacancies, she completed the form indicating her 1st, 2nd and 3rd choices, including the position of Dean of Students at Lincoln Middle School as her first choice. The arena scheduling meeting was conducted by Ms. Glass. Members of the bargaining unit who were being involuntarily transferred or returning from an approved leave of absence made position selections, and were awarded positions based on preference and seniority, prior to consideration being given to any of the members of the bargaining unit who were seeking a voluntary transfer to any position, including the Grievant. By the end of the meeting, all of those being involuntarily transferred and some seeking a voluntary transfer had been assigned. The Grievant, however, was not certain whether she had gotten her desired assignment as Dean of Students at Lincoln Middle or not. She spoke with Ms. Glass who advised her that she did not know if the position had been filled already, and suggested that the Grievant speak with Peg Medory, the Principal at Lincoln Middle.

¹ Unless otherwise indicated, all references below are to 2006.

On May 11, Ms. Christie-Kapellusch e-mailed Glass:

Thank you so much for your time AND patience in dealing with all of us yesterday at the Transfer meeting. I had [sic] to bother you again with this, but I was somewhat confused about the Dean position that I took as a voluntary transfer. I know you said something about knowing more on Friday, but wasn't sure what for. I didn't want to take up any more of other's time last night. Could you please explain again and/or verify what is going on with the Dean position at Lincoln and when/if I will know for sure if I got the position.

Again, thanks so much for your time and patience regarding this matter.

Glass responded the next day:

Jessica,

I found out today in our staffing meeting that Peg is planning to move someone in her building into the Dean position, which will open up something else in her building. Exactly what I explained at the beginning of the meeting is happening. If you choose to leave your position, you may not end up in the position that is currently posted due to building reassignment, lay offs, etc.

Ms. Medory had an informal conversation with Dan Bushman, a counselor at Lincoln, about taking the Dean of Students position sometime prior to the arena scheduling meeting of May 10. The incumbent Dean of Students had announced his retirement in the Spring. Bushman's position was supported by Title I money which was going to be decreased for the 2006-07 school year and Medory wanted to keep a valuable employee at Lincoln. Bushman declined the position and advised Medory that he did not think the Dean of Students position would be a good fit for him.

Medory also had a casual conversation with a Social Studies teacher about taking the position of Dean of Students, but she does not recall whether that conversation was before or after the arena scheduling meeting. Both before and after the May 10 arena scheduling meeting, Medory received letters from four (4) staff members at Bradford High School in which they expressed interest in the position of Dean of Students at Lincoln. She also received a letter from Sheb Muhammad, an eighth grade teacher at Lincoln, in which he indicated his interest in the position. Medory scheduled interviews with all five (5) of these individuals for some time in early June.

The Grievant spoke with Principal Medory, in person, on Friday of the first week of June, prior to Medory's interviews of the applicants. Ms. Kapellusch expressed her interest in the Dean position, and indicated to Medory the steps that she had undertaken in order to transfer into the position. Medory was surprised that Kapellusch was interested in the position. Medory did not offer to interview Kapellusch for the position because, according to her, she already had plenty of applicants.

The Dean of Students position is a very important position in the building. Medory understood that she is able to appoint someone to the Dean of Students position based on qualifications, through an application/interview process. She understood that she was able to make the appointment herself without restriction. In accordance with that understanding, Medory, together with others from Lincoln Middle School, interviewed the four candidates from Bradford and Mr. Muhammad. Based on Mr. Muhammad's interview, his excellent record at Lincoln and his aspirations to become an administrator, Medory decided to hire Muhammad as the Dean of Students at Lincoln Middle School. This decision did not result in a vacancy at the school because Muhammad was an eighth grade teacher and the eighth grade staff was being reduced.

Medory interviewed candidates and made the hiring decision in June 2006, almost a month after the arena scheduling meeting at which the Grievant indicated that the Dean of Students position at Lincoln Middle School was her first choice of a position into which she wanted to transfer.

Additional facts, as necessary, will be included in the Discussion, below.

RELEVANT CONTRACT PROVISIONS

XIII. VOLUNTARY AND INVOLUNTARY TRANSFERS AND ASSIGNMENTS

A. The District retains the right to make grade, subject and activity assignments and to make transfers between schools as necessary in the best interests of the District.

B. Insofar as practical, assignments and transfers will take into consideration employe [sic] professional training, experience, specific achievements and service in the District.

C. Applications for transfer may be instituted by any nontenured teacher who has completed a minimum assignment of two (2) years in one (1) building, or any tenured teacher who has completed a minimum assignment of one (1) year in one (1) building, who has regular certification in the grade

and/or subject to which he/she wishes to transfer. Any such teacher wishing another assignment or transfer to another school shall make his/her wishes known immediately after the posting in all school buildings of listings of known vacancies which will occur during the following school year. During the summer such listing will be supplied to the Executive Director of the Association. Persons seeking transfer will obtain a teacher transfer form and follow the procedure described. A letter of application must accompany each request for transfer.

Persons seeking transfer should obtain a teacher transfer form, complete it, and send it to their immediate supervisor for processing. A letter of application which includes a brief description of the reason for the request should accompany the form. If the application is approved the applicant will be informed of the decision and the reassignment of the applicant will thereby be confirmed.

D. In making involuntary assignments and transfers, the convenience and wishes of the individual teacher will be honored to the extent they do not conflict with the instructional requirements and best interests of the school system and pupils. Permanent assignments of transfers will not be made without prior discussion with the teacher involved.

1. A teacher's area of competence, and major/or minor field of study will be considered in determining which teacher is to be transferred or reassigned. Such teachers will be placed in a comparable position wherever possible.

E. Posting of Vacancies

1. After assignments are determined for the ensuing school year and after reassignments have taken place, the District shall post in all school buildings, including the ESC, the following lists, which shall be bid upon at the arena staffing meeting which will be conducted after school hours during the second Wednesday in May and in subsequent postings:

- a. All known teacher vacancies in the District for the next school year.
- b. The District, shall, at the same time, mail a list of all teacher vacancies to the Association.

2. Teachers shall be given consideration for positions posted in E-1-a if an application is submitted on a form (See Appendix K) which is available in each school building, the District Human Resources Office and the

Association office. The original form should be brought to the arena schedule meeting, with a copy provided to the Human Resources Office. The form shall be submitted to the Human Resources Office within ten (10) days of each posting. If offered a position during arena scheduling, the teacher must confirm or reject the offer immediately. If a teacher is the most senior qualified candidate on multiple postings, he/she shall be given the opportunity to select the position of his/her choice.

3. All notices of vacancies shall contain the date of posting, a description of the position, including grade level, subject area and specific courses to be taught, name and location of the school, certification requirements of the position, name of person to whom the application is to be returned and date by which the application is to be returned. In no case shall such date be less than ten (10) days for the posting.

4. Administration will not hire any teachers to fill vacancies before the arena scheduling meeting.

5. The order for filling vacant positions will be done in seniority order beginning with the involuntary transfer list, and then the voluntary transfer list.

6. All certification paperwork for arena scheduling purposes must be filed with the Human Resource Office no later than April 15.

7. In the event that a teacher who is either being involuntarily transferred or is seeking a voluntary transfer is unable to attend the arena scheduling meeting, they may have a proxy indicate their preference for a vacant position. The proxy is the Association President. All proxy requests must be provided to the Association office no later than the first Friday in May.

XXVIII. MAINTENANCE OF STANDARDS

Except as this Agreement shall hereinafter otherwise provide, all salaries, benefits, hours and conditions of employment which are negotiable and which are in effect at the time this Agreement is signed, as established by the rules, regulations and/or policies in force on said date, shall continue to be so applicable during the term of this Agreement.

Practices are defined by the following standard: it must be of long standing duration; it must be consistently applied across the District; and there must be an element of mutual agreement between the parties signatory to this agreement as contained in a memorandum of understanding or other written document.

POSITIONS OF THE PARTIES

It is the position of the Union that the District violated Articles XIII and XXVIII of the collective bargaining agreement between the parties. Article XIII is clear and unambiguous in establishing Ms. Kapellusch's right to the position of Dean of Students at Lincoln Middle School. She attended the May 10 arena scheduling meeting in accordance with the contract; she was advised by Glass on May 12 that she was not assigned to the sought-after position because Principal Medory had selected another individual. But, throughout May and June, Medory interviewed and subsequently hired an internal (to Lincoln Middle School) candidate on June 16. Subsection E of Article XIII requires that the District post vacant positions to be bid upon at the arena scheduling meeting. All known teacher vacancies are to be included, and the list is to be sent to the Association. The position at issue, Dean of Students, is a teacher position as defined by the bargaining agreement, and voluntary transfer applicants are to be given consideration based on their preferences, with the most senior seeking the position to be selected.

The Grievant complied with all of the contractual procedures and is entitled to the position: the contract language does not exclude the Dean of Students position. Although the District contends that posting of the Dean position was made in error, such is not substantiated. Article XXVIII, Maintenance of Standards, requires that any practice of excluding such positions from the procedures of Article XIII must be practices that are of long standing, mutually agreed upon by the parties, and in writing. The position of Dean of Students has not been excluded from the provisions of Article XIII by any means that comply with the provisions of Article XXVIII. Accordingly, the Grievant is entitled to be transferred to the position of Dean of Students at Lincoln Middle School. The grievance should be sustained.

The District argues that Section A of Article XIII is controlling: that the Kenosha Unified School District retains the right to make assignments in the "best interests of the District" and that reassignments within a school are purely at the discretion of the principal. The particular position of Dean of Students has always been filled at the discretion of the building principal. The Employer acknowledges that including the positions of Dean of Students and the Resources position on the 2006-2007 Teaching Opportunities list was in error. However, such a mistake should not disrupt the scheme and practice of application/interview for these positions that has been in place for many years.

The Dean of Students position is a critical position in the District which has traditionally not been filled based on seniority. The District has retained discretion to fill such positions as it sees fit. The Employer points out that Principal Medory delayed the decision as to what staff member should fill the position in question but ultimately selected someone from Lincoln Middle, resulting in a within school reassignment. Finally, although it contends that it is not a consideration, the District points out that the person selected to fill the position, Mr. Muhammad, had greater seniority than the Grievant, Ms. Kapellusch. For all these reasons, the District believes the grievance should be denied.

DISCUSSION

Article XIII describes the manner in which transfers in the Kenosha Unified School District are to take place. Accordingly, it is necessary to review the Article, in its entirety, to determine the rights of bargaining unit members to transfer from one school to another, as well as the obligations which must be met in order to achieve a desired transfer. The Article also preserves certain rights of the District, subject to the remainder of Article XIII.

The District relies on Section A of Article XIII as the basis for its contention that the position of Dean of Students was placed on the list of transfer opportunities and provided to participants at the arena scheduling meeting on May 10 by mistake. The District argues that Section A preserves its right to assign the Dean of Students position to whomever the building principal deems most appropriate. Section A reads as follows:

The District retains the right to make grade, subject and activity assignments and to make transfers between schools as necessary in the best interests of the District.

In essence, the District contends that this opening section of Article XIII takes precedence over the remaining parts of Article XIII and, in effect, reads those articles out of the contract, with respect to the position of Dean of Students.² However, it is a well established tenet of contract interpretation that meaning is to be given to every word, every clause, every sentence, and every section³ of the collective bargaining agreement.

Section E of Article XIII deals specifically with those positions that remain vacant as of the second Wednesday in May, after assignments and reassignments have taken place:

E. Posting of Vacancies

1. After assignments are determined for the ensuing school year and after reassignments have taken place, the District shall post in all school buildings, including the ESC, the following lists, which shall be bid upon at the arena staffing meeting which will be conducted after school hours during the second Wednesday in May and in subsequent postings:

- a. All known teacher vacancies in the District for the next school year.
- b. The District, shall, at the same time, mail a list of all teacher vacancies to the Association.

² The District also contends that the Resource position was incorrectly listed on the vacancy list made available at the arena scheduling meeting. As there is no issue before the Arbitrator relative to that position, it will not be discussed.

³ See, generally, Elkouri & Elkouri, How Arbitration Works, 6th edition, p. 463.

This language clearly allows the District to make assignments and reassignments until the second Wednesday in May. Thus, had Principal Medory offered the Dean of Students position to Mr. Muhammad, or any other member of the bargaining unit, prior to the second Wednesday in May, the date of the arena scheduling meeting, the Grievant would have no claim to the position of Dean of Students.

Section E-1-a. references “all known teacher vacancies” without exception. Had the parties intended to exempt the position of Dean of Students, or any other positions, from this process, they could have done so. Instead, the parties agreed to incorporate into the collective bargaining agreement the language that requires all known teacher vacancies to be included in the listing of positions to be bid upon at the arena scheduling meeting in May.

Section E goes on to specify the steps that a teacher has to take in order to be given consideration for any of these positions:

2. Teachers shall be given consideration for positions posted in E-1-a if an application is submitted on a form (See Appendix K) which is available in each school building, the District Human Resources Office and the Association office. The original form should be brought to the arena schedule [sic] meeting, with a copy provided to the Human Resources Office. The form shall be submitted to the Human Resources Office within ten (10) days of each posting. If offered a position during arena scheduling, the teacher must confirm or reject the offer immediately. If a teacher is the most senior qualified candidate on multiple postings, he/she shall be given the opportunity to select the position of his/her choice.

The record in this case includes no evidence or other indication that the Grievant failed to comply with any of the preconditions listed in Section E-2, and the District does not argue otherwise. Further considerations of Article XIII, Section E include:

3. All notices of vacancies shall contain the date of posting, a description of the position, including grade level, subject area and specific courses to be taught, name and location of the school, certification requirements of the position, name of person to whom the application is to be returned and date by which the application is to be returned. In no case shall such date be less than ten (10) days for the posting.

4. Administration will not hire any teachers to fill vacancies before the arena scheduling meeting.

5. The order for filling vacant positions will be done in seniority order beginning with the involuntary transfer list, and then the voluntary transfer list.

6. All certification paperwork for arena scheduling purposes must be filed with the Human Resource Office no later than April 15.

7. In the event that a teacher who is either being involuntarily transferred or is seeking a voluntary transfer is unable to attend the arena scheduling meeting, they may have a proxy indicate their preference for a vacant position. The proxy is the Association President. All proxy requests must be provided to the Association office no later than the first Friday in May.

Again, the record includes no evidence that the Grievant failed to comply with the preconditions listed, nor does the District argue that she did not comply. Ms. Kapellusch indicated her interest in the position in accordance with the contract language, she was in attendance at the arena scheduling meeting, and she indicated that her number one choice was to be transferred to the position of Dean of Students at Lincoln Middle School.

The District also argues that the Dean of Students position has always been one for which employees applied. The principal interviewed the applicants and then determined the best fit for the position. The District provided evidence regarding the various Dean of Students positions and showed that although most of the time an internal candidate was selected to fill Dean of Students vacancies, on some occasions, a person was selected from another school, particularly when a new Dean of Students position was created. The District presented no evidence as to the timing of the filling of these positions vis-à-vis the contractual arena scheduling meeting, or whether such a meeting even existed at the time of filling of these Dean of Students positions.

As a preliminary matter, it is important to note that the District can reassign a teacher from within a school to a vacant Dean of Students position and can transfer between schools to fill such a position, in accordance with Section A of Article XIII, provided that such assignment, reassignment or transfer occurs prior to the second Wednesday in May. The District must post all positions that are vacant thereafter so that they are available for bid at the arena scheduling meeting in May. There are no exceptions to this, as the parties have also agreed to Article XXVIII, Maintenance of Standards that provides that for practices to be binding, they must be of long standing duration, consistently applied across the District, and must be evidenced by a writing. There has been no agreement to exempt the position of Dean of Students from the terms of Article XIII. Accordingly, because the position was vacant as of the second Wednesday in May, the position was available for individuals to bid upon.

According to the record before me, the only person that bid upon the position at the arena scheduling meeting, and met all the other criteria of Article XIII, Section E, was the Grievant, Jessica Kapellusch.

The District points out, but also indicates that it is not significant, that Sheb Muhammad, the individual who became the Dean of Students at Lincoln Middle School, has greater seniority than the Grievant. The District is correct that this is of no significance in determining that the Grievant should be placed in the position, for very different reasons than cited by the District. Had Mr. Muhammad and the Grievant both attended the arena scheduling meeting, and both had indicated that the position of Dean of Students at Lincoln Middle School was the first choice for transfer, Mr. Muhammad, by virtue of his greater seniority, would have been entitled to the position. However, Mr. Muhammad did not attend the arena meeting and he did not bid on the position. In fact, Principal Medory was unclear if she had discussed the Dean of Students position with Mr. Muhammad prior to the arena meeting of May 10. The record indicates that the Grievant was the only person who, at the arena scheduling meeting, indicated a preference for the position of Dean of Students at Lincoln Middle School. Accordingly, the Grievant should be assigned to the position.

The testimony of Sheronda Glass was that typically the Principal would select a candidate for Dean of Students from the building staff, and that to her knowledge, seniority was not a factor. If this occurs prior to the posting of vacant positions in anticipation of the arena scheduling meeting, it is in accordance with the contract. In fact, at the arena meeting, Glass told the Grievant that she did not think the position in question was still open – Glass thought that Medory had filled the position with an internal candidate. Had the position been filled anytime before the arena meeting on May 10, the District would not have violated the collective bargaining agreement, and the grievance would be denied. However, the position was not filled at the time of the arena meeting, it was properly listed as a vacant position, and the Grievant was entitled to bid on the position and, as the only bidder, to be transferred into the position.

The remedy sought by the Association and the Grievant is that the Grievant be placed in the Dean of Students position. It is clear to the undersigned that such a placement midway through the school year may be very disruptive to not only Lincoln Middle School, but also other schools in the District. The record is not clear that the incumbent, Sheb Muhammad, and the Grievant, Jessica Kapellusch, have similar licensure, other than both being qualified for the position of Dean of Students. Placing Ms. Kapellusch in the position at this time of the year may very well result in a series of bumps and disruptions in many schools. Accordingly, although the appropriate remedy is placement of Ms. Kapellush in the position immediately, I urge the parties to work together such that Ms. Kapellusch's placement into the Dean of Students position is effective at the end of the current school year or the beginning of the 2007-2008 school year.

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

AWARD

Yes, the District violated the collective bargaining agreement between the parties when it did not assign the Grievant the position of Dean of Students at Lincoln Middle School.

The appropriate remedy is to place Ms. Kapellusch in the position as soon as practicable, such time to be determined by the parties.⁴

Dated at Madison, Wisconsin, this 22nd day of February, 2007.

Susan J.M. Bauman /s/

Susan J.M. Bauman, Arbitrator

⁴ If the parties are unable to agree upon a time at which Ms. Kapellusch will assume the duties of Dean of Students at Lincoln Middle School, she is to be placed in the position immediately.