

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

KENOSHA EDUCATION ASSOCIATION

and

KENOSHA SCHOOL BOARD

Case 181
No. 66302
MA-13480
(Padlock Grievance)

Case 182
No. 66303
MA-13481
(Bailey Grievance)

Appearances:

Bob Baxter, Executive Director, Kenosha Education Association, appearing on behalf of the Association.

James Scott, Attorney at Law, Lindner and Marsack, S.C., appearing on behalf of the School District.

ARBITRATION AWARD

The Union and Employer named above are parties to a 2005-2007 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear the grievances of Colleen Padlock and Ronald Bailey. The undersigned was appointed and held a hearing on February 2, 2007, in Kenosha, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. At the conclusion of the hearing, the parties presented oral arguments in lieu of filing briefs, and the record was closed on February 2, 2007.

ISSUE

The parties ask:

Did the Employer violate the collective bargaining agreement when it removed Ms. Colleen Padlock from her position as the Tremper High School world languages department chairperson position? If so, what is the appropriate remedy?

Did the Employer violate the collective bargaining agreement when it removed Mr. Ronald Bailey from his position as the Tremper High School special education department chairperson? If so, what is the appropriate remedy?

BACKGROUND

Colleen Padlock is a Spanish teacher at Tremper High School. She has been with the District for 18 years and has been the chairperson of the world languages department for 10 years. She was never evaluated regarding her duties as the department chair, and she always heard positive things about her performance. On May 9, 2006, she found out by e-mail that the department chairpersons would be required to reapply for their positions. The Principal of Tremper High School, Edward Kupka, sent the e-mail stating that there was a new annual process for department leadership at the high school, which would include an application and interview process to serve as department leader for one school year.

The principals and assistant principals of the District's high schools started thinking about restructuring department leaders in the spring of 2005. Teachers had some input in the process. The title of chairperson was changed to department leader. The role was changed to have a strong sense of collaboration and the leader was to bring the group together for common assessments and other goals. One of the high schools, Indian Trail, already made it clear that the leader or chair was an annual position. A description of the expectations of department leaders was drafted, and it states that department leaders are to coordinate academic subject areas as well as support organizations within the schools.

On May 10, 2006, after receiving Kupka's e-mail, Padlock wanted to speak to him about the matter but he wasn't available. Padlock then spoke to Sue Savaglio-Jarvis, the assistant principal, who told her that Kupka had everything planned and that she should apply for the position.

Kupka sent Padlock a notice on May 19, 2006, that she should plan to have a 10-15 minute discussion with him and Savaglio-Jarvis on May 22, 2006. Padlock was escorting a student to the cafeteria when she passed by the main office and was called in for the interview. Kupka and Savaglio-Jarvis were there, and Padlock was asked three questions. One of the questions was what problems she saw in the Department in trying to get everyone on board with assessments. She was also asked about her biggest obstacle in the department. Padlock wanted an opportunity to share her accomplishments over the years with Kupka and Savaglio. She asked them at the end of the interview if she could share this information, and they said no, they had to meet with someone else. They agreed to meet at another time. Padlock was upset that there was no advance notice of the interview.

Kupka said they asked everyone two questions. One was how did the person see his or her as an instructional leader for the department, and the other was how can they respond in an organizational environment to people who resist change. The same question was asked of all applicants.

Padlock drafted a list of her accomplishments as an educator and department chairperson as well as an application that listed her skills and goals. During the 2005-2006 school year, the last year Padlock served as the department head, she assisted with hiring new teachers, attended monthly meetings and conferences, assisted with the budget, ordered materials, and organized a fund raiser. She brought in different groups and was instrumental in a textbook adoption program. She acted as a liaison between the department and the administration. She made out the master schedule. She recruited students from middle schools. Padlock did not think that Kupka was fully aware of her work as chairperson. She did not provide the draft of her accomplishments before the decision to replace her was made.

Three other people applied for the Department leader position. Mary Towers and Grace Dary were chosen as co-leaders and replaced Padlock. On May 24, 2006, Kupka met with the administrative team and told people who had been chosen as the new department leaders. Kupka determined who the new department leaders would be by looking at who would be good at resolving controversy in some cases and instructional overhaul in other cases, or who would bring a group together through some changed management. Kupka and Savaglio-Jarvis made recommendations for leaders to the administrative team, which included the other principals and assistant principals. Kupka felt there were some instances where Padlock would not be a good leader for what they were looking for, but he did not inform her of that.

The second grievance in this case involved a special education teacher at Tremper, Ronald Bailey, who has been at the high school since 1982. He taught 33 years in the District altogether and has been department chair for 3 years. He was also removed from the chair position and replaced by another person. Bailey was never notified that he was not meeting expectations regarding the chair position, and in fact, received positive comments from Savaglio-Jarvis. In a 2004 evaluation, Acting Principal Ken Dopke noted that he provided steadfast vision and leadership. Bailey heard about the change of department chair positions at

a meeting with Kupka with other department chair people. He did not like having to apply for the department leader position since nothing showed he was not doing an adequate job. As the department chairperson, he made a spread sheet to see where all the students would be and to better place the staff. He worked with testing students and classifying students. He checked to see if anyone needed a substitute or he filled in. He worked with support people and the building administration. He also had to keep track of purchase orders and money for supplies.

Bailey wrote a statement regarding the positive things he had done for the department. During the interview for the position of department leader, he was called into the office by Kupka for a brief interview. He thought it took only about six minutes. Connie Llanas and Alan Beaulieu were chosen to be co-leaders.

The Executive Director of Human Resources, Sheronda Glass, was involved in the changes in department leaders. She had the administrative team change the job description. She gave the principals information on what individuals could or could not do in the leadership roles. She determined that changes could be made to these positions because the positions were appointments which were not subject to a just cause standard for removal from the appointment. The collective bargaining agreement has certain positions (in addition to the regular teachers) which are subject to a just cause standard. Specifically, the coaching positions in Appendix C are subject to just cause and people cannot be removed from those positions without just cause. However, the department chairs, music directors, and positions listed under Appendix D are not subject to a just cause standard.

The Association filed a class action grievance regarding the posting and reapplication process of the department chair positions. Glass recalled that grievance asked that the District not post those positions every year but only as they became vacant. Glass agreed but that the District retained the right to open up those positions and select them as needed. The District reserved the right to remove an incumbent if the incumbent was not meeting performance expectations. Glass was never told by the Association that it considered that a just cause standard would be applicable to these department leader positions.

On January 4, 2007, Bailey was present at a grievance hearing during which Dr. Scott Pierce, the District Administrator, asked a question of Bob Baxter, the Executive Director of the Kenosha Education Association. Pierce asked Baxter to explain the position of the Association regarding the appointment or selection of the department chairs and the position description. Baxter replied that the Association viewed the selection of the Department chairs as being at the discretion of the administration, and that there was no problem with the job description. The Association was focused on the selection process.

Bailey was serving on the Association's negotiation team when department chairs were made paid positions. He did not think that the position could be revoked without doing something wrong. He thought there were supposed to be evaluations but those were never done. Bailey stated that when these positions were shifted from one appendix to another, they left out the just cause standard.

DISCUSSION

The Association cites Articles XVII, XXIII, XXVIII, and Appendix D in its grievance. It believes that the District has been arbitrary and capricious in the interview process, that the chairpersons' work was not evaluated, and that there were no performance concerns that were documented. In Article XXIII, the District has agreed that it will not exercise its judgment and discretion in an arbitrary or capricious manner. The Association claims that Article XXVIII, a maintenance of standards clause, was violated as the action taken was unprecedented. And it argues that Appendix D is violated because neither Padlock nor Bailey will be compensated as department chairpersons. The Association maintains that the District has the right to select the chair if the position is vacant, but it does not have the right to remove the chair unless it has documented and substantiated performance concerns.

The District notes that the term "documented and substantiated performance concerns" sounds strikingly like just cause. The Association has admitted that the District has discretion to pick department leaders, and there is no just cause standard. This might be tempered by the arbitrary and capricious standard. The question is whether the District has the discretion to select who it wants in these positions. There is no performance standard that exists. The District states that this is a judgment call on the part of the administration, and people were not arbitrarily and capriciously removed from these positions.

Article XVII, cited by the Association, is a short statement of management rights. Article XXIII is management responsibilities, and states:

The Association recognizes the prerogative of the District and the Superintendent of Schools to operate and manage the affairs of the district in accordance with its responsibilities under law. The District and the Superintendent shall have all powers, rights, authority, duties and responsibilities conferred upon and vested in them by the laws and the Constitution of the State of Wisconsin and/or of the United States except where modified by specific provisions of this Agreement. In the exercise of the powers, rights, authority, duties and responsibilities by the District or the Superintendent, the use of judgment and discretion in connection herewith shall not be exercised in an arbitrary or capricious manner, or in violation of the terms of this Agreement or of Section 111.70 of the Wisconsin Statutes or in violation of the laws or the Constitution of the State of Wisconsin or of the United States.

The above language calls for the District to not act in an arbitrary or capricious manner in exercising its rights. One of those rights is to select the department chairpersons or leaders. The Association agrees that the District may select the person if the position is vacant, but that it may not remove people without showing they had performance problems. The District is

correct when it states that it does not have to follow just cause in removing department leaders and having them reapply for positions. Both parties agree that these positions, found in Appendix D, are not subject to a just cause standard, and that the just cause standard was left out of this appendix. Therefore, the arbitrary and capricious standard is to be applied to this case.

The District did not act arbitrarily or capriciously. It determined that it wanted a different process for all the high school department leaders. It created a new job description and had people reapply for the positions and opened up all leader positions to all teachers. It did not arbitrarily select some leader positions, such as world languages or special education. Instead, everyone was subjected to the same process.

Everyone was interviewed by Kupka and Savaglio-Jarvis, except in cases where only one person applied for one position available. The same questions were asked of everyone. The fact that interviews were short does not show that they were either arbitrary or capricious. The District had certain qualities in mind for picking leaders, such as being able to resolve conflicts and controversy and helping others move forward with a changed administration. It picked the people it thought would best meet its goals as department leaders. Again, there is nothing arbitrary or capricious here.

The Association also cites Article XXVIII, the maintenance of standards clause. The Association claims that the action taken here is unprecedented. However, that is not necessarily so. The Indian Trail high school already made the selection of chairpersons an annual process. And there is no record about when other chairpersons may have been replaced and how that came about. Although Padlock held her position for 10 years, Bailey had his for only 3 years. The record does not reflect whether he filled a vacant position or replaced someone in that position. Moreover, the maintenance of standards clause cannot wipe out a right that the District has even if the District has not exercised it in some period of time. And then Appendix D cannot be violated where the District has the right to select the department leaders and has not arbitrarily or capriciously exercised its discretion in doing so.

Accordingly, there is no contract violation in either case.

AWARD

Both grievances are denied and dismissed.

Dated at Elkhorn, Wisconsin this 22nd day of March, 2007.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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