

700-910
WISCONSIN STATE BOARD OF EDUCATION
MILWAUKEE, WISCONSIN 53233

* * * * *
In the Matter of an Arbitration
between
EAU CLAIRE AREA SCHOOL DISTRICT
and
EAU CLAIRE SCHOOLS CLASSIFIED STAFF
FEDERATION, LOCAL 4018, AFT-WFT,
AFL-CIO
* * * * *

Case 50 No. 51684
INT/ARB 7430
Decision No. 28276-A

Appearances:

- Mr. James M. Ward, Attorney, of Weld, Riley, Prenn & Ricci;
representing the District.
- Ms. Patricia Underwood, Representative, Wisconsin Federation
of Teachers; representing the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

Date of Award: August 8, 1995.

ARBITRATION AWARD

The Eau Claire Area School District, hereinafter referred to as the District, and Eau Claire Schools Classified Staff Federation, Local 4018, AFT-WFT, AFL-CIO, hereinafter referred to as the Union, were unable to resolve a dispute regarding the terms and conditions to be incorporated into their 1994-96 collective bargaining agreement. The parties selected the undersigned to hear and determine the matter in dispute, and such hearing was held at the District's offices, Eau Claire, Wisconsin, on April 19, 1995. A transcript of the proceedings was made and the parties filed post-hearing briefs which were exchanged through the arbitrator.

FINAL OFFERS:

Union's Final Offer:

1. All language and salary items contained in the Stipulation of Tentative Agreements between the parties.
2. Except as specified in the Stipulation of Tentative Agreements, the Union's final proposal is that the terms and conditions of the 1992-1994 collective bargaining agreement shall become the terms and conditions of the 1994-1996 collective bargaining agreement.

District's Final Offer:

1. Eliminate Transfer Group G in Section 6.08 of contract between Board of Education and Classified Staff Federation. (Eliminate reference to Group G in 6.08.1 and 6.08.3.)
2. Place position of elementary secretary into Transfer Group B of Section 6.08 of contract.

BACKGROUND:

During the fall of 1988, a request was made to reclassify elementary secretaries from pay level 5 to pay level 3, the same pay level as secondary secretaries. The request was submitted to the Reclassification Committee which agreed that elementary secretaries should be reclassified to pay level 4, as a reclassification to pay level 5 would probably not be approved by the Board of Education as it was an increase of two pay levels. The elementary secretaries were granted a one pay level increase to pay level 4.

The issue of parity between secondary secretaries and elementary secretaries continued to be an issue. On September 19, 1992, another request for reclassification was submitted requesting that elementary secretaries be placed in pay level 3. In March of 1995, the Board approved the reclassification of

elementary secretaries to pay level 3, the same pay level as secondary secretaries. In return for the placement of elementary secretaries in pay level 3, the District requested that elementary secretaries be subject to the same transfer provisions to which secondary secretaries are subject.

Under the 1992-94 collective bargaining agreement, secondary secretaries were in transfer Group B under Section 6.08, Transfer. Section 6.08 states in relevant part: "A qualified employee will be granted a transfer before a new employee is hired, except for positions in Group B." Section 6.08 (4.) states: "A requested transfer within or to a position in Group B may be made at the discretion of the employer." Elementary secretaries had been in Transfer Group G and could transfer into a vacant position based on seniority.

The District proposed that the elementary secretaries be placed in Group B, and in return the cost of the reclassification would not be charged to the total package cost of the 1994-96 collective bargaining agreement although the language contained in Section 7.03 provides: "The cost of reclassification will be included in the calculating of the cost of the successor agreement." The Union rejected the District's position and the parties reached an impasse regarding this issue. The parties proceeded to interest arbitration on the issue.

DISTRICT'S POSITION:

Arbitrators commonly insist that in order for the moving party to sustain its burden of proof in altering the status quo, several conditions must be met. As the proponent of a change in

the transfer rights of elementary secretaries, the District will demonstrate that it has met the generally recognized arbitral criteria for changing the status quo, if indeed, the status quo is truly being changed under its final offer. In Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (12/4/90), Arbitrator Gil Vernon summarized those criteria as follows:

1. If, and the degree to which, there is demonstrated need for the change,
2. If, and the degree to which, the proposal reasonably addresses the need,
3. If, and the degree to which, there is support among the comparables.
4. The nature of quid pro quo, if offered.

The District's final offer does not change the status quo from an overall perspective. Personal secretaries have consistently been placed in Transfer Group B upon being elevated to pay level 3. The Buildings and Grounds Secretary was elevated to pay level 3 and was simultaneously placed in Transfer Group B and there was no objection from the Union. Similarly, the Curriculum and Instruction Secretary was elevated to pay level 3 and simultaneously placed in Transfer Group B without objection from the Union.

The Union now objects to the placement of elementary secretaries in Transfer Group B upon their recent elevation to pay level 3 due to their increased duties and responsibilities which they insist exceed those of the secondary secretaries with whom they have just been equally compensated. The District argues that there is no logical distinction between elementary secretaries and secondary secretaries for transfer purposes. The District submits that its proposal retains rather than changes the status quo.

If its final offer is deemed as changing the status quo, then the District has demonstrated a need for the change. When the transfer language relating to elementary secretaries was negotiated for the 1980-81 agreement, 10 of the 20 elementary secretaries worked part time, four hours per day. At the time, the elementary secretaries were seen as essentially interchangeable. Given this interchangeability, the District had no objection to contract language allowing part-time secretaries to increase their pay by transferring into full-time positions.

By 1994-95, only three of 17 elementary secretaries worked part time, all at six hours per day. Consequently, the ability to upgrade from a part-time position to a full-time position declined in importance. Moreover, as the positions have evolved, the elementary principals have begun to work more closely with their secretaries and have come to rely on them more heavily than in the past. The equities now favor the right of the elementary principal to choose his/her own secretary over the competing right of an elementary secretary to move to a different school to obtain a better paying job. Unlike middle school and high school principals, who have the benefit of support personnel, the elementary principal has nobody to rely on but the elementary secretary.

The Union hastens to emphasize that the elementary secretary is a "building" secretary. As the only clerical employe in the elementary school building, the elementary secretary performs a myriad of tasks. The job description of the elementary secretary specifically includes as one of the objectives of the position

serving as "private secretary" to the elementary principal. It would be ludicrous to suggest that as a "building" secretary, her functions are independent of the elementary principal.

The number and kinds of administrative responsibilities assumed within a building have increased dramatically over the years. As the principals have become less available, secretaries have assumed additional tasks and sometimes tasks of greater responsibility. Both elementary principals Kim Hagen and Mary Seitz testified to the importance of the "team," and of being able to choose their own secretary when a vacancy exists.

The District has recognized the increased responsibilities of the elementary secretaries as is evidenced by the fact that they have been placed in pay level 3. Those elementary principals who chose to respond in writing to the requested reclassification acknowledged that increased responsibilities have been assigned to elementary secretaries.

It is asserted by the District that the "retrocession clause" has proved to be an inadequate remedy for the problems associated with the existing transfer language. Under the existing situation, the only contractual alternative to accepting an undesirable transferee is to allow the transferee to begin a trial period and then apply the retrocession language of Section f6.02, which states:

"An employee who is transferred to a new position shall serve up to a forty-five (45) day trial period, during which the employee shall be returned to the previous position upon request of the employee or the Board."

Literally interpreted, the "retrocession clause" gives an administrator carte blanche authority to send a transferee back to

his/her old job if the administrator isn't happy with the transferee. While this may sound fine in theory, it breaks down in practice.

There is a disruption to the school if a transferee is returned to his/her previous job. Time is wasted on training, and there is no assurance that the next person will be any better than the person being returned to his/her former position. This uncertainty may result in a principal accepting someone with whom the principal is not entirely satisfied.

There is also a possibility that the position vacated by the unsuccessful transferee has been filled during the interim. If the transferee is returned to his/her former position, the replacement employe will also be returned to his/her former position. This could result in a substantial number of changes or a ripple effect in the event a transferee is returned to his/her former position.

This could be avoided if the potential transferee is told prior to the transfer whether the person would be acceptable to the principal.

Given the choice, any rational elementary principal would select the secretarial candidate believed to be someone with whom the principal would have the best chance of getting along well. This is an inherently subjective judgment. By placing elementary secretaries in Transfer Group B, this inherently subjective component is facilitated, inasmuch as the selection is "at the discretion of the employer" per Section 6.08.4. The District's final offer fully addresses this necessary element of discretion.

The Union's reliance on the external comparables to support its position is somewhat misplaced. Only a minority of those comparables feature job posting/transfer language as onerous from the District's standpoint as the transfer language at issue here.

While seniority is a consideration in the selection of an employe to fill a vacant position in every district except River Falls, only Chippewa Falls and Menomonie require that the "most senior" qualified applicant be awarded the position. A favorable comparison with only two of the six comparables obviously does not support the Union's demand to retain the status quo. The majority of comparables consider factors other than strict seniority when filling a position.

The internal comparables support the District's final offer. The parties have recognized that classifications in Transfer Group B are exceptional. The exceptions include personal secretaries to the District's middle management administrators as well as specialized, technically oriented positions. The personal secretaries already in Transfer Group B provide the same kinds of services to the administrators whom they support as do elementary secretaries. That an elementary secretary may perform additional duties in the school does not diminish her role as personal secretary to the elementary principal.

The right of choice with respect to personal secretaries is enjoyed by all other middle management administrators and all top level administrators. Senior high and middle school principals also have the privilege of selecting their own secretaries. The elementary principal is the only administrator who is unable to

choose his/her own personal secretary. Now that elementary secretaries have achieved their long coveted objective of wage parity with secondary school secretaries, the only conceivable justification for perpetuating the anomaly that has previously existed is gone.

The Union may argue that the other positions in Transfer Group B are distinguishable from elementary secretaries because they are full-year, full-time positions, whereas elementary secretaries only work nine months per year. Any purported distinction will not stand close scrutiny. The nine-month duration aspect is irrelevant for comparison purposes because all elementary secretaries work only nine months. The only differential relates to the number of hours worked per day at various elementary schools. Nevertheless, inasmuch as only three of seventeen positions are less than eight hours per day, the differential can be fairly characterized as *de minimis*.

The Union suggests that not enough transfers have occurred among elementary secretaries to represent a major issue; however, there have actually been 23 since the initial collective bargaining agreement was negotiated in 1980. The District believes there have been enough transfers among elementary secretaries to warrant consideration of new transfer language.

The Union also alludes to the need of elementary secretaries to have an avenue of escape when a new principal with whom she clashes comes to her school. Upon being included in Transfer Group B, the elementary secretaries would still have the opportunity to remove themselves from an uncomfortable situation

by requesting a transfer to any vacancy for which they are qualified. The Union's argument presupposes that the senior applicant would be routinely rejected by elementary principals at other schools. One cannot assume the elementary principals would operate in bad faith. In all likelihood, the only senior applicants to be denied transfer by a cross-section of elementary principals would be those with bad reputations throughout the District.

Finally, the Union will undoubtedly argue that under the existing language an elementary principal can send a transferring secretary back to her previous position if the principal is not satisfied with her performance. For the reasons previously stated, this is not a viable alternative to the language proposed by the District.

The District asserts it has provided an adequate *quid pro quo* in exchange for its proposed change in the transfer language. As a result of the negotiations which resulted in the 1990-92 collective bargaining agreement, the parties agreed that the cost of reclassifications would be charged to the subsequent total package cost of the following agreement. The cost of the reclassification was not allocated to the ensuing agreement as the District was contractually entitled to do. This is especially noteworthy in that the parties negotiated an increase in rates of 3.25% in 1994-95 and 3% in 1995-96. Since the total package cost of support staff settlements of 4.11% in 1994-95 and 4.10% for 1995-96 already exceeded the total package costs of the other units, without the cost of reclassification, the District submits

that the Union received an appropriate *quid pro quo* in exchange for the proposed change in transfer language.

For the above reasons, the District requests the arbitrator to award its final offer.

UNION'S POSITION:

It is apparent that the District is attempting to change the status quo by its final offer proposing that the transfer of elementary secretaries be subject to the sole discretion of the District. It is generally recognized by arbitrators that the moving party, in order to sustain the burden of proof in altering the status quo, has several conditions which must be met.

Arbitrator Gil Vernon in Elkhart Lake-Glenbeulah School District supra, summarized those conditions as follows:

- "1. If, and the degree to which, there is a demonstrated need for the change.
2. If, and the degree to which, the proposal reasonably addresses the need.
3. If, and the degree to which, there is support among the comparables.
4. The nature of the quid pro quo, if offered."

While District witnesses testified to their desire for the change, a need was never substantiated. Variables between elementary secretary positions in the District deemed important by District witnesses included the amount of work between a two-section school and a three-section school, sensitivity to students from different races, cultural and economic status, and sensitivity to students from low socioeconomic status. The job description of the elementary secretary, which is applicable to all elementary secretaries, includes meeting the criteria in the job description. The Union recognizes that there may be

differences between a two-section school and a three-section school, however, a three-section school has more staff to meet the work load.

It is further noted by the Union that periodic District-wide meetings are held with elementary secretaries to discuss problems elementary secretaries may be experiencing at their particular schools. It is important to note that all elementary secretaries receive the same training and information at these meetings. There is no differentiating between two-section school and three-section school elementary secretaries or the student population of any particular school(s).

When searching for a need to change the transfer language, one must look to the success or failure rate of the current transfer language. Union Exhibit 3 establishes that elementary secretaries are not "short-timers" in their jobs. Additionally, during their tenure, several elementary secretaries have endured changes in elementary principals--sometimes numerous changes. Working relationships needed to be re-established each time the elementary principal moved.

Does the employer's proposal reasonably address the need? The District has stated that the need is for elementary principals to have the sole discretion in granting transfers for elementary secretaries, including the right to go outside of the bargaining unit. Besides the mention of needing a team player and someone who can handle the pressure of the job, another desire stated by the District witnesses was to choose on the basis of a working relationship. Based on the testimony, it became clear that the

principals wish to use subjective criteria when selecting the elementary secretary, which may result in bypassing someone with several years of experience in the District successfully performing the same duties and responsibilities the principals are requiring. Testimony of Union witness Pat Klabough, an elementary secretary, clearly established that if an elementary secretary was experiencing a problem with an elementary principal the elementary secretary would seek a transfer to another elementary school. However, under the language proposed by the District, the elementary secretary would be precluded from exercising his/her transfer rights thereby eliminating one avenue elementary secretaries have available under the current agreement to address the problem should such situation arise.

The Union recognizes that there may be times when an employe is granted a transfer, and things just don't work out. A reasonable remedy already exists in the collective bargaining agreement to rectify this, should it occur. There are three occurrences in which secretaries returned to their former positions. As Union President Pat Lightfoot testified, whether the employe or the employer requested the employe be returned to the previous position, neither the Union nor the District made any objection to the request to return.

The Union also argues that if the District's final offer is implemented, not only will the voluntary transfer rights for elementary secretaries be diminished, but elementary secretaries will also be denied the ability to expand their hours of work as provided in Section 7.06 - Posting Expanded Hours.

The Union asserts that the external comparables, to which the parties stipulated, do not support the District's final offer. Virtually all of the comparables provide for seniority as a factor in the selection of an employe to fill a vacant position. Clearly, the comparables support the fact that transfer language similar to that currently in the collective bargaining agreement exists in other school districts, along with the trial period option for the employer and the employe thereby supporting the retention of the status quo in the collective bargaining agreement.

The last factor is the nature of the *quid pro quo*, if offered. Unfortunately, the matter of changing the transfer category of the elementary secretaries and the reclassification of the elementary secretaries was always "connected" in the minds of the administration. As District witness Tom Fiedler testified:

"The reclassification committee supported the request, but the administration's perspective was that if there was going to be a change in salary to Pay Group 3, much like we had with the other instances when we moved into Pay Group 3, that subsequent change in transfer would occur."

Section 7.03 of the agreement contains the negotiated process for bargaining unit members to request job reclassification. Reclassification requests are submitted to a joint District and Union committee. If the committee reaches agreement on the reclassification proposal the agreement is submitted to the Board of Education for approval. Throughout the bargaining process, the District always believed that approving the reclassification request from the elementary secretaries was their *quid pro quo* for the transfer category change. However, it remains the Union's

position that Section 7.03 - Reclassification is the procedure for handling reclassification requests that has already been bargained through the normal collective bargaining process. The Union asserts that no *quid pro quo* was offered in exchange for the District's request for a transfer category change for elementary secretaries.

Based on the facts presented and arguments set forth herein it is respectfully requested that the Union's final offer be selected by the arbitrator.

DISCUSSION:

In its final offer the District is proposing that elementary secretaries be placed in Transfer Group B making transfer within or to a position in that transfer group subject to the discretion of the employer and removing seniority as a contractual consideration. The Union objects to the District's proposal primarily, although not exclusively, because it would remove seniority as the factor in making transfers.

Both parties cite the criteria for changing the status quo found in Arbitrator Vernon's award in Elkhart Lake-Glenbeulah School District, supra, in support of their respective positions. The first criterion established by Arbitrator Vernon is: "If, and the degree to which, there is a demonstrated need."

It is readily apparent that the parties' definition of "need" is at variance. The District contends that the circumstances which existed in 1980, when the current contract language governing the transfer of elementary secretaries was incorporated into the collective bargaining, no longer exist. While not

disputing that changes have occurred, the Union contends the present contract language is adequate to address the situation even though circumstances have changed.

In 1980, ten of the 20 elementary secretaries worked part time, four hours per day. At the present time only 3 of 17 elementary secretaries work part time and they work six hours per day. The trend has clearly been for elementary secretaries to become full-time rather than part-time employees. The trend has also been to assign more duties and responsibilities to elementary secretaries as is established by the fact they have been reclassified to pay level 3. The change in duties assigned to elementary secretaries is attributable, at least in part, to the changing nature of the duties assigned to the elementary principals. As the responsibilities assigned to elementary principals have increased, there has been a commensurate increase in the duties assigned to elementary secretaries.

The District asserts that it has become increasingly important that the relationship between the secretary and principal be one of compatibility, understanding, trust and teamwork. While the Union doesn't deny that these may be worthy attributes in the relationship between a principal and a secretary, the Union asserts the District has failed to establish a "need" for its proposed change.

Obviously, if a principal has the discretion to select his/her secretary, the principal can take those subjective factors into consideration when selecting a secretary. Of course there is no assurance that the judgment of the principal will prove to be

correct. However, without any discretion in the selection of the secretary, the principal has no opportunity to consider those factors deemed important by the principal.

The parties have recognized that discretion in the selection of secretaries is important as they have provided in their collective bargaining agreement that the selection of secondary secretaries be at the discretion of the "employer" without regard to seniority as secondary secretaries are in Transfer Group B, the transfer group to which the District proposes that elementary secretaries be assigned. The parties have recognized, at least for pay purposes, the similarity between the secondary secretaries and the elementary secretaries as both are in pay level 3.

In order to have input into the selection of an elementary secretary, the elementary principal must have some role in the selection of the secretary. Under the existing language the principal has no input into the initial selection of a secretary. The principal has only veto power over the retention of a secretary. This can contribute to dislocation of a person who applies for a position, transfers to the position, is rejected during the trial period and returned to his or her former position. Not only is the individual dislocated but all others who might have changed positions as a result of the initial transfer may be dislocated. Although there is no evidence that this has been a significant problem in the past, there is evidence that this has occurred. If the principal participated in the initial selection of his/her secretary, such dislocation may at least be reduced as the principal could indicate to an applicant

who was not acceptable this fact prior to the applicant transferring to the position.

The District's proposal is not without pitfalls, as noted by the Union. A part-time secretary may find it more difficult to obtain a full-time position. However, it must be noted that there is nothing in the District's proposal which would preclude a principal from selecting the most senior applicant; it simply would not be mandated.

The parties interpret the evidence regarding the external comparables differently, each asserting the data supports their respective position. They are both at least partially correct. In all of the external comparables seniority is a factor in the selection of an applicant to fill a vacancy. However, qualifications, in one form or another, are also a consideration. Under the current language of the parties' agreement seniority is the controlling factor in transfers, and under the District's proposal the principal's discretion is the controlling factor. Neither position receives much support from the external comparables. The external comparables are not as compelling in this case as are the internal comparables.

As previously noted, the parties previously agreed that secondary secretaries would be transferred at the discretion of the "employer." It does not appear unreasonable that elementary principals be given the same flexibility enjoyed by high school principals, especially considering the fact that elementary secretaries are now in the same pay level as secondary secretaries.

There is a dispute as to whether the District offered a *quid pro quo* for its proposed change in the contract language. The Union asserts the District requested, as the *quid pro quo* for the reclassification of the elementary secretaries, their placement in Transfer Group B. The District asserts that the *quid pro quo* for the placement of elementary secretaries in Transfer Group B was the Board not charging the cost of the reclassifications to the successor agreement.

The Union doesn't really dispute the fact that the cost of the reclassification was not charged to the successor contract, although the agreement specifically provides that "The cost of reclassification will be included in the calculating of the cost of the successor agreement." This would represent a *quid pro quo* for the placement of elementary secretaries in Transfer Group B.

Unfortunately, the only alternatives available in this case appear to be somewhat extreme; either seniority being the controlling factor, at least at the time the initial transfer is made, or the employer having sole discretion over transfers. There is certainly an alternative which could serve the legitimate needs of both parties, however, the undersigned has no authority beyond selecting one of the final offers before him. Based on the entire record, it is the opinion of the undersigned that the District's final offer, although not without problems, is to be preferred over the Union's final offer.

Based on the above facts and discussion thereon, the undersigned renders the following

AWARD

That the District's final offer be incorporated into the collective bargaining agreement.


Neil M. Gundermann, Arbitrator

Dated this 8th day
of August, 1995 at
Madison, Wisconsin.