

UNION

Case No. 54

AND

GR: Mary T. Appel, Ph.D./
Resignation

SOMEPLACE PUBLIC SCHOOLS

ARBITRATION OPINION AND AWARD

This Arbitration took place on June 27, 2003 in Someplace, Michigan. The Union was represented by Ms. Patricia Carr, Executive Director, Someplace Coordinating Council of UNION. Association witnesses: Dr. Mary T. Appel, Grievant, Dr. F. Peach, President, Union, Superintendent of Schools Carl Truck (adverse) and Mr. Bill Pear, Union Past President. The School District (Employer) was represented by Mr. C. Tang, Attorney. School District witness: Mr. A. Jump, Director, Labor Relations. The Hearing was concluded on the above noted date. Pursuant to the receipt of Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

This grievance arises from the refusal of the School District to rescind a letter

of Resignation dated January 30, 2002 submitted by Mary T. Appel, Ph.D. to become effective at the end of the 2001-2002 school year. This document was presented by Dr. Appel on February 1, 2002 through appropriate administrative channels in the following form (Joint Exhibit #3):

SOMEPLACE PUBLIC SCHOOLS

EMPLOYEE'S RESIGNATION/RETIREMENT

Name	<u>Mary T. Appel</u>	Date Filed	<u>1-30-02</u>
School	<u>Someplace</u>	To Become Effective	<u>End of 2001-</u>
Position	<u>Psychologist</u>		<u>2002 School</u>
			<u>Year -</u>
			<u>June 30, 2003</u>

TO THE SUPERINTENDENT OF SCHOOLS:

For the reason or reasons indicated below, I herewith submit my resignation as an employee of the Board of Education of Someplace, and request that it be accepted to become effective on the above date.

Reason: (If retiring, '**retirement**' is all that needs to be indicated under Reason)

Retirement

Remarks: _____

Years of Service in Someplace _____

Dates _____

Respectfully,

Employee's Signature Request

Request Received:

I have reviewed this request and in my judgment the reasons **are**/are not sufficient. I, therefore, recommend that the resignation **be**/not be, accepted, and that an honorable release **be**/not be, granted. This employee's services **have**/have not, been satisfactory.

/s/

Signature of Principal or Supervisor

Dr. Appel had worked as a School Psychologist in the Someplace Public School District since 1968 and it is undisputed that matters relating to her performance in that capacity are not at issue. It is further not in dispute that the Someplace Board of Education on February 12, 2002 took official action on Dr. Appel's requested Resignation letter, approving her retirement after twenty-seven (27) years effective June 30, 2002 (see Board Minutes of Regular Meeting on February 12, 2002, pages 1 and 2, Volume 40, Report 60 - School District Exhibit #8).

It has been established in these proceedings that on or about February 15, 2002, Dr. Appel contacted Human Resources Department Secretary Sharon Lamp to advise that she wished to rescind her January 30, 2002 letter of Resignation and that subsequently, this request was denied by Administration, to wit (Joint Exhibit #5):

April 22, 2002

Ms. Mary Appel
5021 Green Road
West Bloomfield, MI 48033

Dear Ms. Appel:

This is in response to your letter of February 19, 2002 requesting to rescind your letter of retirement. The Someplace Board of Education acted favorably on your request for retirement on February 12, 2002. Consequently, your request to rescind your original retirement application is denied. Thank you for the many years that you have rendered to the students of the Someplace Public Schools. If I can be of any assistance in the future concerning this matter please do not hesitate to contact me.

Sincerely,

/s/

A. Jump, Director of Labor
Relations

After a personal request for rescission made to the Board of Education on May 12, 2002 by Dr. Appel and UNION Executive Director Patricia Carr which was denied, Dr. Appel filed the instant grievance on June 4, 2002 in the following terms (Joint Exhibit 2a):

SOMEPLACE UNION
GRIEVANCE FORM
NO: 2001.09

Mary Appel
NAME OF GRIEVANT

UNION
BUILDING

PSYCHOLOGIST
ASSIGNMENT

Article(s) and Section(s) of Agreement Grieved: **Appendix A-5 and Article IV**

Date of Incident: Ongoing

*Statement of Grievance:

The Board through its agent violated the contract when it failed to honor a request by the grievant to withdraw and destroy her letter of resignation.

Relief Sought:

1. Letter of resignation dated January 30, 2002, be withdrawn and rendered null and void.
2. Grievant be reinstated to a full time Psychologist position in the District.

3. Any and all relief proper.

.....
STEP 1. INFORMAL CONFERENCE (SUPERVISOR)

Date: May 20, 2002 (Within ten work days of incident)

.....
STEP 2. GRIEVANCE FORMALLY FILED (SUPERVISOR)

Date Filed: June 4, 2002

Grievant's Appeal Statement: There have been several times, both I and Union Representatives, have discussed this matter with the Superintendent, Directors of Labor Relations, and Personnel. In addition, on May 14, 2002, Patricia Carr made a presentation directly to the School Board. To date, I have not received a formal response to my request to withdraw my letter. Yet, it is my understanding, my current position has been filled. Therefore, I believe by contractual rights have been violated and request that this matter be moved forward by filing a formal grievance.

Signature of Grievant: Mary T. Appel /s/ Date: 6-4-02

On June 12, 2002, Human Resources Director G. Rope denied the grievance as being "without merit" (Joint Exhibit #2b). The Association thereafter appealed the grievance to Arbitration and this dispute was heard at that forum on June 27, 2003.

TESTIMONY

In asserting that the School District violated the collective bargaining Agreement by refusing to rescind her January 30, 2002 letter of Resignation, Dr. Appel testified on her own behalf as follows: She had contemplated retiring because she believed that she had a serious medical problem. Therefore, she filled out and submitted the Employee's Resignation/Retirement form on January 30, 2002 and turned it in on

February 1, 2002 (Joint Exhibit #3). Subsequently however, she asked her physician to do more blood work and learned from him on or about February 13, 2003 that a mistake had been made and that her illness was not serious (Union Exhibit #1).

Dr. Appel testified further as follows: On February 14, 2002, she attempted to contact Human Resources Director Gloria Rope for the purpose of withdrawing her Resignation, to no avail but did so inform Human Resources Secretary Sharon Lamp on February 15, 2002. Ms. Lamp advised that her Resignation had already been accepted by the Board of Education (February 12, 2002). Dr. Appel testified that she was told to put her request to rescind in writing which she did in a letter dated February 19, 2002 (Joint Exhibit #4). At about the same time, she contacted the Union. Dr. Appel testified that she was never notified by anyone that her Resignation request would be up for approval at the February 12, 2002 Board Meeting.

Dr. Appel testified additionally as follows: Pursuant to a written request to Board President Ann Tab on May 6, 2002, she and Association Executive Director Patricia Carr addressed the Board of Education on the issue at the May 12, 2002 Board Meeting (School District Exhibit #6). The Board denied her request to withdraw her Resignation and refused to rescind it. About a week later, she met with Superintendent of Schools Carl Truck who advised that her old position had been filled but that the School District had a .5 vacancy for a School Psychologist and that Anyplace Public Schools maintained an interest in hiring a School Psychologist. Dr. Appel testified that she never signed any document indicating that her Resignation was irrevocable and that she became eligible for a full pension under the language at APPENDIX A-5 of the collective bargaining

APPENDIX A-5 - RETIREMENT

A teacher with fifteen (15) years of service in the Someplace Public Schools and who is eligible for State Retirement Benefits, shall receive retirement benefits from the School District as follows:

A teacher who submits his/her intent to retire effective at the end of a given school year and who does so by February 1 of that year, shall receive \$12,000.00 on the effective date of retirement.

Should a teacher under this section miss the February 1st notice deadline to obtain the \$12,000.00 payment, said teacher shall be eligible for a payment of \$10,000.00. This agreement is only operational between February 1st of any given school year and the day before the first teacher report day of the subsequent school year.

Dr. Appel testified that she did receive the above referenced \$12,000.00 in severance pay upon the effective date of her retirement at the end of the 2001-2002 school year. However, it was put in escrow upon the advice of Ms. Carr and the School District was so notified (Union Exhibit #2). Dr. Appel testified that her desire to return to the Someplace Public Schools as a School Psychologist arises from the significant contributions she can make in the lives of students, her great satisfaction in working with children and the love of her role in that capacity.

On cross-examination, Dr. Appel testified that she did not accept the .5 position suggested to her by Superintendent Truck because this would mean that she was not getting her old job back and further, that she had always worked as a full-time School Psychologist.

Union President Frederick John Peach, Ed.D.,

testified as follows: The School Psychologist position previously held by Dr. Appel was filled on April 18, 2002 (Union Exhibit #3). Further, in his experience, he was aware that the School District had "returned" a letter of Resignation to Elementary Teacher K. Poe but admittedly, he did not know whether her Resignation had ever been previously accepted by the Board of Education.

Superintendent of Schools Carl Truck testified as follows (adverse): In 1997, the School District did rescind Ms. Poe's previous Resignation (November 1996) but that no prior Board Action on the Resignation had occurred in that case. He also had requested Dr. Ronald Top to return to the District as a Consultant after he had served as an Associate Superintendent of Business Finance and Administrative Services during the 1996-1997 school year. Superintendent Truck was not certain as to whether Dr. Top had ever submitted a Resignation but it is not in dispute that the Board of Education approved his return. In any event, according to Superintendent Truck, the Top situation did not require a reconsideration of Board action. Regarding the Board's approval of Dr. Appel's Resignation on February 12, 2002, Superintendent Truck testified that the Board duly considered her retirement request in the regular course of business along with fourteen (14) other employees at the same time (School District Exhibit #8). Superintendent Truck confirmed that he met with Dr. Appel after the May 12, 2002 Board meeting during which he informed her about the .5 position and the Anyplace School District prospect.

On cross-examination, Superintendent Truck testified as follows: There is no policy which requires the School District to rescind Resignations; that again, Ms. K.

Poe's Resignation had never been presented to the Board and Dr. Top's prior Resignation was not rescinded. Superintendent Truck testified that he was not aware of any circumstance where the Board of Education had ever rescinded or caused to be withdrawn, a Resignation after it had taken official action to approve same.

UNION Past President Bill Pear referenced a grievance dated 12/04/96 in the matter of Elementary Teacher K. Poe and a subsequent settlement Agreement which declared her November 18, 1996 written Resignation to be null and void (Union Exhibits #6 and 7). But as denoted in the documents, there had been no prior Board action to approve the Resignation and the parties agreed that Ms. Poe would withdraw her pending Claim of Appeal before the State Tenure Commission with prejudice upon the written understanding that neither the Union or the School District was making any admission or concession as to the merits of any position or contention relating to the dispute. In short, the major distinction between the K. Poe matter and Dr. Appel's case is that no Board action had occurred prior to the School District's permission to allow Ms. Poe to withdraw her Resignation. This pivotal element renders the two (2) situations to be fundamentally different.

This concluded the Association's presentation.

In support of the School District's position that no Contract violation exists, Labor Relations Director A. Jump testified as follows: In the event that no Board action has occurred on a Resignation, recession might not be a difficult accomplishment depending upon the circumstances. However, after the Board has taken official action to

approve a Resignation, it is neither required or disposed to rescind that action. In reference to the Board of Education's approval of the fifteen (15) retirements on February 12, 2002 including that of Dr. Appel, no efforts were made to expedite the adoption of those Resignations (School District Exhibit #8). In this, Director Jump confirmed that pursuant to the favorable action of the Board on February 12, 2002 regarding Dr. Appel's Resignation, he informed her in writing on April 22, 2002, that her request to rescind her retirement application was denied (Joint Exhibit #5).

PERTINENT CONTRACT LANGUAGE

APPENDIX A-5 – RETIREMENT

(see page 7 of this Award)

ARTICLE IV – RIGHTS OF THE BOARD

A. Subject to the provisions of this Agreement and except as expressly provided otherwise by the terms of this Agreement, the Board and the Superintendent of Schools reserve and retain rights vested in the Board or in the Superintendent under governing laws, ordinances, rules, and regulations as set forth in the Constitution, and laws of the State of Michigan and the United States, including but without limiting the generality of the foregoing, the right:

- 1 To the executive management and administrative control of the school system and its properties and facilities, and the activities of its employees on the job;
2. To hire all employees and subject to the provisions of law, to

determine their qualifications and the conditions for their continued employment, or their dismissal or demotion; and to promote, and transfer all such employees;

3. To establish course of instruction, including special programs, and to approve the means and methods of instruction;
4. To provide for athletic, recreational, and social events for students, all as deemed necessary or advisable by the Board, and to determine the duties, responsibilities, and assignments of all employees;
5. To adopt reasonable rules and regulations which are not in conflict with this Agreement.
6. To develop and control the budget of the School District;
7. To determine the structure and responsibilities of its school management organization;
8. To determine the number and location of its facilities.

B. The Board recognizes that this agreement sets forth limitations on the above named powers, rights, authorities, duties, and responsibilities, and hereby agrees to be bound by such limitation. Likewise the listing of specific management rights in this agreement is not intended to be, nor shall it be restrictive of, or a waiver of, any rights of management not listed and specifically surrendered herein, whether or not such rights have been exercised by the Board in the past.

C. The Board of Education and the Union pledge, with the signing of this Agreement, to the establishment of an atmosphere whereby teachers are empowered in making good new ideas become realities. The Administration pledges itself to solicit, guide, and develop staff ideas and expertise with regard to restructuring and innovative programming, such that such ideas and expertise may be routinely and expeditiously implemented in the school district. Moreover, the District pledges to supply appropriate resources to achieve such implementation including necessary training. Similarly, the Union pledges to work positively and proactively to develop an atmosphere of cooperation and "can do" with regard to restructuring and innovation.

ISSUE

- 1) Whether this grievance is substantively arbitrable?
- 2) If so, does the refusal of the School District to rescind the Resignation of Grievant Appel, constitute a violation of the collective bargaining Agreement and/or an established past practice between the parties?

D I S C U S S I O N

SUBSTANTIVE ARBITRABILITY

The School District has asserted that this grievance is not substantively arbitrable principally because it fails to raise a grievable claim under the Grievance Procedure of the collective bargaining Agreement at Article XX, Section A entitled PROFESSIONAL GRIEVANCES (Joint Exhibit #1). This contention is predicated upon the School District's position that the Contract provisions alleged to have been violated in this case - APPENDIX A-5 on RETIREMENT and Article IV on RIGHTS OF THE BOARD, do not state or suggest that the School District is required to rescind a Resignation subsequent to its submittal with or without prior Board of Education action (approval) on the Resignation. Commensurately, the School District contends that the Union is requesting an equitable remedy in this matter which is not within the jurisdiction of the undersigned Arbitrator to grant. A Ruling on this issue was reserved at Hearing.

A lengthy discourse is not in order on substantive arbitrability. That is because during and at the conclusion of the Arbitration Hearing, issues of fact and Contract interpretation remained which have required a study of all elements in the disposition of this dispute. While the School District is correct in its early averment that there exists no Contract language in support of the Association's position that the School District is required to rescind a Resignation under any circumstances, a Ruling that would serve to abbreviate a full treatment of this case on the merits, would be premature even though the ultimate conclusion of the undersigned Arbitrator will be the same as that of the School District; that no Contract violation pertains in the matter of Dr. Appel's claim that she is entitled to rescind her January 30, 2002 Resignation. The determination here is that this grievance is substantively arbitrable.

DECISION ON THE MERITS

Dr. Mary T. Appel had rendered services to the Someplace School District as a School Psychologist for upwards of twenty-seven (27) years and retired effective June 30, 2002 with a performance record of recognized accomplishment. There is no doubt that Dr. Appel's professional and personal contributions to students are most appreciated by the School District and have been a source of pride and satisfaction to her. However, Dr. Appel's grievance contention that under the collective bargaining Agreement, the School District is required to rescind her Resignation dated January 30, 2002 and duly submitted to the School District on February 1, 2002, cannot prevail. The grounds for this determination are set forth below.

There is no language in the Contract which states or suggests that the School District is obligated to rescind any employee's Resignation. APPENDIX A-5 on RETIREMENT and Article IV on RIGHTS OF THE BOARD, provisions that have been alleged by the Association to have been violated in this matter, make no references whatsoever to rescissions of Resignations. The upshot is that these sections of the Contract are simply not applicable and there is no language elsewhere in the Contract which would serve to support the Association's position.

It has been established in these proceedings, that after Dr. Appel submitted her letter of Resignation dated January 30, 2002, the Someplace Board of Education took official action at its meeting on February 12, 2002, approving fifteen (15) retirements including that of Dr. Appel (School District Exhibit #8). This Board action occurred prior to Dr. Appel's informal notification to Administration on February 15, 2002 that she wished to withdraw her Resignation followed up by a written request on February 19, 2002 (Joint Exhibit #4). On the evidence, had Dr. Appel asked to withdraw her Resignation before the Board had officially acted on it (approval), the School District might have favorably considered her request. But even in these circumstances, the School District maintained no contractual or policy obligation to do so and such permission to withdraw the Resignation would have been at the School District's discretion. However, the circumstances at bar extend beyond the point at which there could reasonably be such a discretionary retraction. Again, the Someplace Board of Education took action on February 12, 2002 (approval) prior to Dr. Appel's request to rescind her Resignation. This constituted an official disposition on the Resignation and in the absence of a Contract or

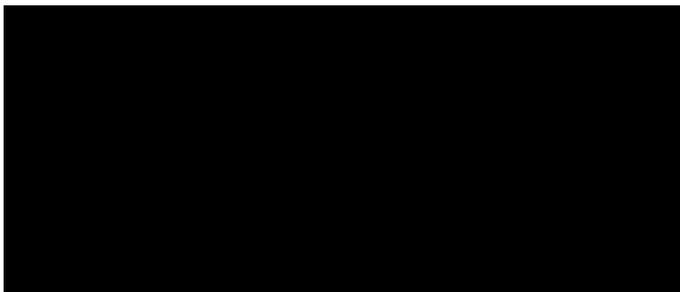
policy requirement to rescind the Resignation to accommodate a change in position by Dr. Appel, the Board axiomatically maintained no obligation to "undo" its official adoption and approval of her Resignation. The upshot is that there simply exists no contractual requirement that the School District rescind Dr. Appel's approved Resignation effective June 30, 2002 and there is no past practice within the School District that would serve to underlie the Association's grievance claim.

No citations in this dispute are necessary. However, it is noted that in Schultz - v- Oakland County, 187 Mich App 96 (1961), the Michigan Court of Appeals ruled that the resignation of a public employee takes effect immediately upon the tender of an unconditional letter of Resignation and there is no need for a formal act of acceptance by the Employer. Further, it has been held in Arbitration that the decision to allow or not to allow an employee to withdraw and retract a Resignation after it has been accepted, is within the sole discretion of the Employer, Reading Paper Box Co., 7 LA 331 (Brand, 1947). The Employer's right to accept or reject an employee's request to withdraw a Resignation, was also upheld in Addressograph-Multigraph Corp., 29 LA 700 (Dworkin, 1957); Borden Co., 38 LA 425 (Morvant, 1962) and Transcon Lines, 40 LA 469 (Marshall, 1963).

Pursuant to this analysis, it is determined in the instant case involving Dr. Appel, that the School District was (is) not contractually obligated to rescind or permit her to withdraw her letter of Resignation dated January 30, 2002; officially approved by the Someplace Board of Education on February 12, 2002. No Contract violation is found. The grievance is denied.

AWARD

No Contract violation is found. The grievance is denied.



Marquette Building
243 W. Congress — Suite 350
Detroit, MI 48226

September 4, 2003