

ARBITRATION OPINION AND AWARD

In the matter of the arbitration between:

PUBLIC SCHOOLS
and
Union

Case Number: **Groty # 6**

ARBITRATOR – C. KEITH GROTY

Appearances:

Employer

Attorney

Superintendent

High School Principal

Teacher

Teacher

Association

Staff

Staff

Staff

Grievant

President

Hearing Held: June 25, 2003

Time: 9:00 a.m.

Place: High School

Briefs Filed: August 15, 2003

Pertinent Contract Clauses

MASTER AGREEMENT BETWEEN

August 25, 2001 – August 15, 2003

ARTICLE 3

- G. No teacher shall be disciplined, reprimanded, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such discipline, reprimand or reduction in rank, compensation or advantage, including adverse evaluation of teacher performance or violation of professional ethics asserted by the Board or any agent or representative thereof shall be subject to the professional grievance negotiations procedure hereinafter set forth. Article 3G does not pertain to probationary teacher non-renewal.*
- J. Seniority is defined as the length of unbroken service within the school district commencing with the date of hire to a bargaining unit position.*
 - 1. Taking an approved leave does not constitute a break in service. Seniority shall continue to accrue during such approved leave.*
 - 2. Seniority is “frozen” when a bargaining unit member is employed within the district in a non-bargaining unit position. Should the employee return to a bargaining unit position, seniority will begin to accrue from the point at which it was “frozen.”*

A seniority list shall be published yearly and kept current. The list shall show the name, date of hire, and date of letter of intent to hire (if available). By October 1 of each new school year, the president and each member shall be provided a copy of the list by the school district. Each member will have fifteen (15) calendar days to challenge the list by notifying the Association in writing. The Association shall notify the Board in writing, within thirty (30) calendar days, of the challenge. The Board and the Association shall meet with ten (10) days to agree upon a resolution to the challenge. Any ties shall be broken at this time by a drawing. The Association president and the superintendent shall conduct the drawing. All employees subject to the drawing shall be invited to attend.

ARTICLE 6

- B. *Since pupils are entitled to be taught by teachers who are working within their area of competence, teachers shall not be assigned, except temporarily and for good cause, outside the scope of their teaching certificates or their major field of study. This section shall not be construed as limiting the Board's right to employ non-certificated individuals as teachers in accordance with Section 1233b of the Revised School Code.*
- C. *Teachers who will be affected by a change in assignments in the elementary school grades and by changes in subject assignments in the secondary school grades will be notified and consulted by their principals as soon as practicable and prior to June 1, preceding the next academic year. Such changes will be voluntary to the extent possible. Nothing in the above precludes a necessary reassignment of staff after June 1 if circumstances dictate.*

ARTICLE 8

- A. *For the purposed of this Article, a vacancy shall be defined as a professional position within the bargaining unit which the Board intends to fill and which is unfilled because it is newly created or because the teacher holding that position is no longer employed by the district.*
- B. *Whenever any vacancy shall occur in the district in any professional position covered by this Agreement, the Board shall publicize the same by giving written notice of such vacancy to the Association (president/designee) and providing for appropriate posting (near the teachers' mailboxes) in every school building and personnel office. Teachers on 26 pays, upon request, will have postings added to their pay envelopes. Those on 21 pays will provide a stamped, self-addressed envelope for such postings. No vacancy shall be filled, except in case of emergency on a temporary basis, until such vacancy shall have been posted at least ten (10) calendar days from time of posting. Emergencies will be handled by the Board based on the merits of each individual case.*

If a vacancy occurs during the school year, the Board may elect one of the following options: (1) post and fill the vacancy in accordance with this article; (2) fill the vacancy by the recall of a teacher on layoff status; and (3) fill the vacancy on an interim basis until the end of the semester or school year at which time the vacancy shall be posted and filled in

accordance with this Article. If the third option is elected, the interim employee shall not be covered by this Agreement and shall be treated as a substitute.

- C. Upon submission of a written application to the superintendent or his/her designee, any teacher will be considered for a vacancy. In filling such vacancy, the Board agrees to give due weight to the professional background and attainments of all applicants and other relevant factors. In the case where a teacher(s) from within the district has equal or better qualifications for said position, as determined by the Board, priority of selection will be given to the teacher from within the district as opposed to an equally qualified candidate outside the bargaining unit. In the event the applicant from the bargaining unit is not selected, said applicant shall be told the reasons why he/she was not selected for this position. Upon request, such reasons of denial will be provided to the teacher in writing.*

ARTICLE 14

A. Definitions:

- 5. Days. The term "days" when used in the section shall, except where otherwise indicated, mean teacher work days.*

C. All grievances shall be handled in accordance with the following procedure:

- 1. STEP ONE. Within fifteen (15) days of the occurrence of the event or condition upon which a grievance claim is based, the aggrieved person shall reduce the grievance to writing, stating the nature of the grievance and the article and section of this Agreement allegedly violated, together with a proposed solution thereto, and shall deliver a copy of the grievance to the designated representative of the Board and to the designated representative of the Association.*

Within five (5) days of the receipt of the grievance, the designated representative of the Board shall meet with the Association or its designated representative in an effort to resolve the grievance. The aggrieved person, shall be present at such meeting. Within five (5) days of the above meeting, the designated representative of the Board shall make a written answer to the grievance, which written answer shall be communicated to the designated representative of the Association. The answer shall either grant or deny the grievance, and if it is denied shall state the reason for denial.

ARTICLE 16

- D. Any teacher who is laid off because of a necessary reduction in personnel shall be offered “bump rights” or the first vacancy in the school district with priority given in the following order:*
- 1. Tenure teachers according to qualifications and certification.
Qualifications and certification are defined as having a teaching certificate for the grade level, and for grades 6th through 12th meeting the requirements for at least a certified teaching minor in the subject area. When more than one teacher is qualified and certified for a position, the teacher or teachers with the most number of years of service in the Public Schools shall be retained or recalled first.*
 - 2. Probationary teachers according to qualifications and certification.
Qualifications and certification are defined as having a teaching certificate for the grade level, and for grades 6th through 12th meeting the requirements for at least a certified teaching minor in the subject area. When more than one teacher is qualified and certified for a position, the teacher or teachers with the most number of years of service in the Public Schools shall be retained or recalled first*
 - 3. Temporary employees.*

STATEMENT OF THE ISSUE

Timeliness – Whether the grievance filed on August 27, 2002 was timely filed under the Step 1 provisions of the grievance procedure.

Merits – Whether the Board appropriately exercised its authority in determining that the less senior candidate from outside the bargaining unit had better qualifications than the grievant.

STATEMENT OF THE FACTS

Timeliness

Article 8, Section C of the collective bargaining agreement provides, in part, that “in the event the applicant from within the bargaining unit is not selected, said applicant shall be told the reasons why he/she was not selected for this position.

Upon request, such reasons of denial will be provided to the teacher in writing.”

Testimony indicated that the grievant had been advised by his principal that he would not be receiving the vacancy, some time between June 10 and June 14, 2002 and that the candidate was hired from outside the district on June 25, 2002.

However, the grievant requested that he be given the reasons why he was not selected in writing. He had a right to this request and to receive such a document.

He received the reasons on August 23, 2002. His grievance was filed on August 27, 2002. Contending a violation of the contract at Article 8, Section C. Since he

filed his grievance within fifteen (15) days of receiving the written reasons as provided for under the contract, the grievance was timely filed.

Merits

On May 3, 2002 vacancies were posted for elementary teachers for a high school social studies teacher and a teacher in the New Directions Program for social studies/English. The posting indicated that a cover letter and resume with a copy of a valid teaching certificate with endorsements was to be submitted to the superintendent by May 13, 2002. In accordance with the posting, the grievant filed his application for the social studies position at the high school. Also among the candidate pool was a teacher from outside the district.

A committee was formed of the principal and two teachers from the Social Studies Department. The list of candidates to be interviewed had been cut to four persons. A series of questions was constructed and the interviews conducted in June. Following the interviews all three of the interviewers agreed that the position should be offered to the candidate who was coming from outside the bargaining unit. It was their judgment that she was stronger in her qualifications in the area of geography and history. Further, she was judged to have an ability to develop curriculum on world history. Further, her sample lesson was better presented and followed in line with teaching objectives. It was also the judgment

of administration that the grievant had strong credentials in special education where his skills were needed. Based on the recommendation of the interviewing committee, the outside candidate was hired on June 25, 2002 with a determination that her qualifications for the vacant position were superior to the grievant's.

When the grievant was notified verbally in late June that he would not receive the position, he requested the reasons in writing. When he received those reasons in writing in late August he filed a grievance under the terms of the collective bargaining agreement. The matter was pursued through the grievance procedure without resolution. The matter was submitted to arbitration under the terms of the collective bargaining agreement. A hearing was held at the date and time indicated above. The matter of timeliness having been resolved there are no further issues baring a finding on the merits in this case.

FINDINGS AND CONCLUSIONS

The contract at Article 8, Section C gives the Board the authority to determine whether the teacher from within the District has equal or better qualifications than the candidate from outside the bargaining unit. This authority has been reserved to the Board by the expressed terms of the contract and should not be superseded by the arbitrator unless the Boards authority exercised with abuse.

The Association argues that the language of Article 16, Section D provides definition for the qualifications and certification that are to be used for grades six (6) through twelve (12) in the selection of the candidates for the vacancy.

However, the language of Article 16, Section D relates to staff reduction and does not apply for the filling of vacancies. Article 8, Section C reserves to the Board the authority of the Board to determine the qualifications for the filling of a vacancy.

The language of Article 8, Section C provides that the Board give “due weight” to the professional background and obtainment of all applicants and other relevant factors. It goes on to state that where from within the district has equal or better qualifications for the vacant position, AS DETERMINED BY THE BOARD, priority of selection will be given to the teacher from the district as opposed to an equally qualified candidate outside the bargaining unit. According to this language the Board has reserved the right and authority through its agents to determine whether a candidate from within the district is equally qualified to a candidate to a candidate outside the bargaining unit. If it is determined by the arbitrator that in the exercise of this authority the Board through its agents without being arbitrary or capricious, then the decision of the Board must stand.

The Association argues that the grievant held certificates and teaching license certification equal to the selected applicant and therefore was equal or more

qualified than the outside applicant. But as found by the Michigan Court of Appeals in *Chester v Harper Woods School District* the terms “certified and qualified” are not synonymous (87 Mich App 235 (1978)). The testimony given at hearing for the selection concern the qualifications which the successful candidate presented to meet the needs of the specific vacant position. Testimony indicated that in judging the professional background and preparation of the candidates the committee judged the experience of the successful candidate as being directed toward geography, world history, and the experience and training to develop world history curriculum. Further, that the successful candidate provided a work sample in teaching an assignment that matched more closely the goals of the curriculum.

Likewise, the committee judged the grievant’s credentials and professional background to be more closely fitted to special education and not the needs of the vacant position. Recognition was given to his very favorable performance ratings and accomplishments in the area of special education but not social studies. Further, in judging the work sample which he provided, they found it lacking in the quality of content and presentation.

Based on the testimony given, “due weight” was given to the factors as outline in the collective bargaining agreement. Further, the persons offering these judgments were qualified by position and/or professional training to foster these judgments. The arbitrator can find no abuse in the exercise of the authority

reserved to the Board by the contract. Whether the arbitrator would have come to the same conclusion in this case is not relevant. Unless he can find that the Board and its agents have abused the exercise of authority reserved to them by the express language of the contract, he will not substitute his judgment. In judging the exercise of authority, the Arbitrator is unwilling to equate certification with qualifications, time in the classroom has a direct measure of experience, or the number of course and credits taken as a proxy for qualifications. As long as these are taken into consideration and the factors used to judge qualification are relevant to the needs of the vacant position, the Arbitrator is unwilling to find that the Board and its agents abused their discretionary authority.

AWARD

Grievance is denied.

C. Keith Groty, Ph.D.
Arbitrator

Date