

AMERICAN ARBITRATION ASSOCIATION

SOMEPLACE SCHOOLS

CASE: GIROLAMO #2

AAA CASE/MARY PEARS

AND

UNION

ARBITRATOR'S OPINION AND AWARD

BACKGROUND

This dispute arises as a result of the Grievant, Mary Pears, being moved from her position as Secretary at the LONG High School to Secretary at the TREE Middle School. The Union contends the Collective Bargaining Agreement was violated because it specifically provides that "involuntary transfers are to be minimized and avoided whenever possible." The Employer denies any violation of the Agreement, noting its action was for a legitimate reason and in accordance with its Management Rights.

The Grievant was advised of the following Personnel Status Change by notice dated July 31, 2003:

"Mary Pears will begin the 2003-2004 school year as the receptionist at TREE Middle School. Her annual salary will be as follows:

210 days x 7.5 hours per day = 1575 hours x \$14,0917 (Step F32) =
\$22,194.43 + \$1332 (6% Longevity) = \$23,526.43 or \$23,526
(rounded)

This is an internal job transfer from the LONG High School

receptionist to the TREE Middle School receptionist. This is a change from 220 days per year to 210 days per year."

The above was modified on October 14, 2003 to reflect that her work day increased to 220 days per year.

The Grievance in this case is displayed:

"A. Date of Grievance Occurred 08-01-2003

- B. 1. Statement of Grievance (Including applicable contract provision) Article VI, Vacancies, Promotions and Transfers. Section F. Involuntary transfers are to be minimized and avoided whenever possible.
2. Relief Sought: Due to the involuntary transfer of Mary Pears, Mary Pears is to be returned to her Receptionist/Secretary position at LONG High School."

The Grievance was amended as follows:

"Please be advised that the UNION is amending Mary Pears' grievance #0804 to include a violation of Article X Discipline.

Further, we are asking as part of the relief sought that Paula be made whole."

The Employer Answer to the Grievance was as follows:

"C. Disposition by Immediate Supervisor: The district has the right to determine the assignment of all staff within the classification of that staff member. The grievance is denied."

The parties were unable to resolve their differences and a Hearing was convened before the Undersigned on January 21, 2004. At the conclusion of the Hearing, the respective Advocates elected to file Post-Hearing Briefs which have been received and considered.

Mary Pears related that she has been employed with the SOMEPLACE Schools since 1971 and she had been assigned to the LONG High School since 1989. Ms. Pears identified an Evaluation dated June 25, 2002 by the High School Principal wherein her overall job performance is rated as "Outstanding." Ms. Pears described her duties at the High School to include the dispensing of medication to students, answering the telephone, etc. – she was a Receptionist/Secretary. In regard to the transfer herein, the Witness said no explanation was given to her for the action. She said the routine at the Middle School is different than the High School and the change has been stressful for her. Ms. Pears talked to the High School Principal about the move and he responded it was not his decision. The Notice was issued by the Director of Human Resources and Labor Relations, but Ms. Pears never talked to her about the matter. She acknowledged that her Evaluation contained the following Specific Recommendation: "Continue to make the phone a priority." The Principal, according to the Witness, had mentioned the phone in the context of her answering it at a time she was in the mail room and had to go to the front office to answer the phone – she was unaware of any other issue regarding her answering of the phone. She confirmed to sending an e-mail to all at the High School in regard to an unknown individual having a concern "with certain students who come to see me during lunch time;" another "who claimed that the phone rang 30 times and no one answered"; "'someone' doesn't like me telling teachers to turn on the announcements"; and "'someone' doesn't like me answering when books that have been ordered have arrived." Ms. Pears said that for every book sold she receives one free book – she handles the book orders and payment. She denied making the comment "you suck" in an e-mail wherein it is announced she would no longer "have book companies sell books, etc. at LONG." In another e-mail sent by

mistake, the Witness remarks she is "willing to scalp her" – it was intended for the Principal. In regard to the students at her desk at lunch, Ms. Pears said it stopped when the Principal mentioned it to her. She explained that the phone problem was caused by the fact that, if all lines were in use, the phone would ring rather than give a busy signal and another problem arose when she used the rest room and asked the other secretary to answer it in her absence – the Witness heard it ring with no one answering it. In regard to the book sales, she said it had been handled in the same way for many years – she does it the same way at the Middle School.

Van Peaches, the then UNION Director, said that the Union was given no reason for the transfers – Grievant to Middle School and Middle School secretary to LONG High School – and the reference to problems had not been raised – "I'm hearing them for the first time today."

Kristen Plum, Assistant Principal at LONG High School, noted she had observed the Grievant on a daily basis. She had also been a member of the "Climate Committee" until October 2000 – the Committee attempts to address anonymous concerns brought to its attention before they become serious issues. In regard to the Grievant, concerns were raised about the phone, students at her work area and book sales. Ms. Plum said she had witnessed the phone ring with no one answering it – she had answered it herself. She also had observed students behind the Grievant's desk – this created a privacy concern. The problem relative to the book sale arose from the Grievant sending an e-mail to everyone even though many teachers did not order books. She recalled a homework issue where the Grievant did not send homework home for an absent student because the student had not been absent three days – a counselor apparently attributed the Grievant's refusal to the fact that they did not get along. Ms. Plum said the above concerns were a source of tension and disruption.

Steve Top, Director of Community Services, has responsibility for the phone service at LONG. He noted the phone is answered by an automated attendant which allows one to contact a known extension. If one remains on the line it then rings. He said that if all lines were in use, the phone would give a busy signal and would not continue to ring. He said phone service has improved — the other Secretary now answers the phone from her desk without having to go to the receptionist area.

Jenny Coins, Assistant Principal of LONG High School, related she had observed the Grievant during work hours. Ms. Coins recalled that when the Grievant was in the mail box area — some 20 steps from her desk — the phone rang and the Witness often answered it. Ms. Coins also noted students were at the Grievant's work area and that was a concern. Some of the earlier problems have been corrected — the book sale is now handled in the Library, the Senior Secretary now assists with the phone answering and students do not congregate in the office. The Witness said the above items were areas of concern in regard to the Grievant.

Cheryl Boat, Director of Human Resources and Labor Relations, confirmed that she implemented the Grievant's "Job Transfer" to the Middle School. Ms. Boat referenced the above concerns and concluded a "fresh start" would be of benefit to the Grievant. In addition to the above problems, she also became aware of a television being on during work hours with inappropriate programs. Ms. Boat said bargaining unit employees — para professionals — have been moved. This is the first time a Secretary has been moved. The Witness said she conferred with various individuals before implementing the move and she has not had any complaints so she believes the transfers have worked to everyone's benefit.

On rebuttal, Ms. Pears said no one had raised an issue as to her phone manners being a

problem –Ms. Boat recalled an incident where the Grievant answered to her, "What do you want?"

In regard to students in her work area, she noted some were interns and on that basis they did answer the phone. As to another concern about students in her work area, she understood the problem was corrected when she told them to remain on the other side of the counter from her work area. Finally, the Senior Secretary did not answer the phone when she was assigned to LONG.

The following provisions of the Agreement are most directly relevant:

" A R T I C L E I I I
RIGHTS OF THE BOARD OF EDUCATION

A. The Board on its own behalf and on behalf of the electors of the school district, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan and of the United States.

B. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules and regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only the specific and express terms hereof and in conformance with the Constitution and laws of the State of Michigan and the Constitution and laws of the United States.

A R T I C L E V I
VACANCIES, PROMOTIONS AND TRANSFERS

* * *

F. Involuntary transfers are to be minimized and avoided whenever possible."

DISCUSSION AND FINDINGS

The Union acknowledges that -circumstances can make involuntary transfers necessary-

— i.e., "if a building closed, or if there were a reduction in staff, or someone's position were eliminated." It is further stressed that the Parties "did not concede that unfettered reassignment of personnel was a management prerogative." Insofar as instructional assistants are concerned, the Union notes:

"An Instructional Assistant may be assigned to work with an individual student, for example, and may move with the student. Or, there may be a need for an Instructional Assistant in a given classroom because of overloads or special needs students and then, the next year, the need is in a different classroom."

The Union is bitterly critical of the Employer action in this case:

"If the District had had a reasonable explanation they would have presented it when the transfer was first contemplated. They could have presented it during the grievance proceedings when it was asked for. There was no pretense of a reason offered."

To the extent that the Climate Committee had involvement, it is noted:

"The building Climate Committee is not mentioned in the Master Contract. The BCC has no authority to hire, fire, evaluate or transfer personnel."

In any event, the extent to which the Grievant bears responsibility for the problems is questioned:

"We were told that certain things improved after Ms. Pears was transferred. The phones are supposedly handled in a more efficient manner. We also learned that a second ringer was installed in the office after Ms. Pears left and that the phones were reconfigured so that the Principal's secretary could answer the phone from her desk when necessary. Could these same changes have been made before transferring Ms. Pears?

The annoying book club was moved to another area, the library, and the book displays are no longer in the office. Couldn't this have been done before transferring Ms. Pears?

We were shown a picture of the office area. It was also pointed out that a new wall was installed, after Ms. Pears left, to

cut down on interference from students. Could this have been done for Ms. Pears?"

It is the Union's view that this case is basically one involving discipline:

" All the reasons brought forth in testimony at the hearing were accusations of unprofessional behavior, dereliction of duty or refusal to comply with directives!"

The problem according to the Union is that "she was disciplined without due process or just cause." It is urged that the transfer was unwarranted:

"Mary Pears, an employee with an excellent record, outstanding evaluations, and over thirty years of loyal service, deserves to be treated with dignity and honesty. The District had no need to make involuntary transfers. The transfers could have been avoided. There was no effort by the District to correct any alleged problems in the building.

Ms. Pears is entitled to the protection of the contract.

She should be reinstated to her position at LONG High School."

The Employer begins by referencing the rights of the Board of Education:

" ... Within its provisions, the Board reserves to itself the right to adopt policies, rules, regulations and practices in furtherance of its responsibilities to operate the School District. Included within these generally stated rights is the right to assign employees. In addition, the School District certainly has the right to use judgment and discretion in connection with its decisions involving any of its inherent rights to manage the School District."

Here, it is stressed that the Grievant was merely moved from one work location to another:

"In the absence of any significant impact on the Grievant's working conditions the assignment of the Grievant to TREE Middle School should not be considered a transfer, but a reassignment and management's discretion and judgment in making the assignment should not be disturbed. At the very least, management's decision should be set aside only in the event that

the Association proves that management abused its discretion. In the absence of such evidence, the reassignment of the Grievant from LONG High School to TREE Middle School should be sustained."

To the extent that this case involves a transfer, the Employer contends:

" ... the Association must bear the burden of showing that the reassignment of the grievant from LONG High School to TREE Middle School could have been avoided and/or could have been 'minimized.'"

Here, it is urged:

" ... the Association provided absolutely no evidence that management failed to minimize or avoid the reassignment of the Grievant."

The Employer denies that it acted in an arbitrary or capricious manner:

" ... the Employer presented significant evidence concerning the tension and conflict that the Grievant caused among her fellow staff members at LONG High School. Significantly, the Grievant's actions were the subject of staff concerns that were raised by the LONG High School Climate Committee. The Climate Committee was described by witnesses to be a way for all staff members to express concerns and to improve the climate at LONG High School. It is also apparent from the testimony that concerns were raised over a considerable period of time and there did not appear to be any improvement in the 'climate.'

In support of the above, the Employer points to the various problem areas – "allowing the phone to ring almost endlessly ... having students congregate around her desk ... Grievant's handling of book orders and book sales ..." as well as her e-mails – and concludes "the Employer's actions in this case were clearly justified." It is argued the Grievance should be denied.

The Employer characterization of this case as a reassignment rather than a transfer is not well founded. It should first be noted that the Notice to the Grievant dated July 29, 2003 is

entitled Job Transfer. Moreover, the term "transfer" connotes movement from one place to another. This is not a case where the Grievant was moved from one desk, office, etc., to another in the same location. It is your Arbitrator's determination that the move from LONG High School to TREE Middle School amounted to a transfer within the meaning of Article VI(F).

Article VI(F) provides:

"Involuntary transfers are to be minimized and avoided whenever possible."

The above provision means that an involuntary transfer must be based on something more than convenience.

In this case, certain problems were articulated but no one at the Hearing attempted to resolve the stated problems. That is to say, none of the witnesses "counseled and mentored" the Grievant in those areas where problems existed. Given the lack of any attempt to rectify areas of concern, it follows that the Grievant's involuntary transfer was implemented without any attempt to remedy the situation. The requirement that "involuntary transfers are to be minimized and avoided whenever possible" requires that some action be taken toward resolving a problem before an involuntary transfer is permissible.

In regard to Article III, it must be noted that it states "the exercise of the foregoing ... shall be limited only to the specific and express terms hereof. ..." Article VI(F) is an express term which limits the rights of the Board of Education.

The Employer contention that "the reassignment did not have any impact on the Grievant's wages, benefit, skills, career or seniority" has a hollow ring. While the concerns voiced at the Hearing may not have been earlier expressed, they were the motivating factor for

the action at issue. The concerns can only be regarded *as* negative in nature in regard to the Grievant. The Employer, after all, has attributed to the Grievant the existence of tension and conflict as justification for moving her to TREE Middle School. The failure to afford her an opportunity to correct any deficiencies cannot be cavalierly disregarded on the basis of no negative impact on her employment.

Based on the above, it is determined the Grievance has merit.

AWARD

The Grievance is Granted. Ms. Pears is to be returned to her former position at the LONG High School.



April 21, 2004