

ARBITRATION OPINION AND AWARD

In the matter of the arbitration between:

PUBLIC SCHOOLS

and

Union

Case Number: Groty #1

ARBITRATOR – C. KEITH GROTY

Appearances:

Employer

Attorney

Executive Director of Human Resources

Principal

Association

Executive Director

Staff

Grievant

Association President

Witness

Hearing Held: February 13, 2003

Time: 10:00 a.m.

Place: Administrative Offices

Briefs Filed: March 17, 2003

Statement of the Issue

Whether the assignment of the Grievant to teach two courses of U.S. History and two Language Arts classes complied with the terms of the Collective Bargaining Agreement.

Pertinent Contract Clauses

7.914

All principals shall solicit teacher preferences for classes and class schedule each school year. The principal shall work in a collaborative manner with the teachers to develop teacher assignments for the following year. In that process, the following standards shall be considered:

- 1) *Teacher expertise and/or experience*
- 2) *School improvement goals and student achievement needs*
- 3) *Sound rationale for assignments*

7.917

Teachers who have been involuntarily re-assigned between school years within a building and believe that the assignment process described in Section 7.914 was not followed, that the criteria were not used properly, or have any reasons to believe that they have been treated unfairly may: 1) upon request to the Human Resources Services Office within ten (10) calendar days of notification, the teacher may have her/his name placed on the transfer list for the District regardless of the date, and be considered an involuntary transfer with all rights provided to such teachers, and/or 2) request a meeting with the principal and a representative of the Association to discuss the situation and possible alternatives. If the meeting does not resolve the matter, the teacher may appeal to the Human Resources Services Office. In that instance, representatives of that office, the Association, the teacher and the principal will meet within ten (10) calendar days to discuss the problem and seek resolution.

Statement of the Facts

The Grievant, has taught in the Employer's school district for twenty-five (25) years. In 1984, she began teaching at the Middle School. Since 1987, she has taught Language Arts at the school as her only assignment. The parties agree that the Grievant is a highly skilled teaching professional with particular expertise and experience as an eighth grade Language Arts teacher.

In February 2002, the principal of the Middle School circulated a memorandum soliciting from all core teachers their teaching preferences for the 2002-2003 school year. On March 28, 2002, the Principal assigned the Grievant two sections of Language Arts and two sections of U.S. History for the 2002-2003 school year. The grievant had assumed that she would continue to have an all Language Arts assignment.

When notified of her new assignment, the Grievant initiated discussions with the Principal seeking to return to an assignment of only language arts classes. When these meetings failed to alter her assignment, she requested the assistance of the union president, and eventually, through correspondence with the Executive Director of Human Resources and the Superintendent of Schools, requested their intervention.

Finally, she invoked the involuntary transfer rights of Section 7.917. However, when there was not an available assignment the Grievant wanted, she

withdrew her transfer request and chose to pursue her grievance alleging a violation of the contract at Section 7.914.

The matter was processed without resolution through the grievance procedure and presented to arbitration under the terms and conditions of the Collective Bargaining Agreement. A hearing was held at the time and date indicated above. The parties presented their cases through evidence and testimony of witnesses. The case was closed with post hearing briefs. There are no procedural issues barring a finding on the merits in this case.

Findings

The Grievant alleges that the contract was violated at Section 7.914 when she was assigned to teach U.S. History, a subject outside of her teaching expertise and/or experience. Also, the Principal failed to follow the contract by attempting to establish “equity” in assignments by assigning two preparations to the Grievant while assigning another teacher, who had been regularly given two preparations, to only a Language Arts preparation. This was not a “sound rationale for assignments” as required by the contract and an alleged abused the authority by Principal.

In response, the Employer argues that the Principal acted correctly within the authority conveyed to him by the school district and the contract at Section

7.914. Further, the Grievant's individual contract specifically provides that she "is subject to assignment or transfer at the discretion of the Superintendent of Schools of the District." In addressing the specific terms of the contract, it is pointed out that the Grievant's certification, at the time of assignment, qualified her for all subjects for grades kindergarten through eighth. In addition, the Grievant had participation through a methods class on the teaching of history in middle school.

It is argued that the Grievant's expertise in language skills provides an opportunity to teach students in the history classes the utilization of language skills in the study of U.S. History. This would meet the schools stated goal of improving expository writing skills throughout the curriculum.

Finally, the Principal, when conferring with the faculty of the middle school during the 1999-2000 school year, received comments concerning the perceived inequity in teaching assignments when some teachers were assigned only one preparation while others had multiple preparations. At that time, the Principal indicated he would remedy the situation in coming years, as appropriate.

The record establishes that in making the new assignment to the Grievant, the Principal was responding to a request of another teacher for an all Language Arts assignment. That teacher had been assigned Language Arts and U.S. History for a number of years and was nearing retirement. Based upon the concern for assignment equity as expressed a year or so earlier, and this request from another

teacher, the Principal decided to alter the Grievant's pattern of a single preparation and assign her to two U.S. History sections.

Prior to filing her grievance and pursuing it to arbitration, the Grievant availed herself of the provisions the contract in asking for a review of this assignment decision. Using the provisions of Section 7.917, she requested and met with the Principal and a representative of the Association. The record establishes that possible alternatives were discussed at those meetings. One of those suggestions would have changed the assignment to three Language Arts classes and only one History class. This was rejected because it would have broken up another established team of teachers.

The Grievant also asked to be considered to teach a seventh grade World Geography & Culture Class. This was, also, rejected because it would have caused the Grievant to leave all her Language Arts assignment and teach four sections of the seventh grade class.

Finally, the Grievant sought to use the involuntary transfer provisions of the contract to seek another assignment. She withdrew her name from consideration when only a high school English class assignment was available. These matters were further discussed in correspondence to the Executive Director of Human Resources and the Superintendent. When all of these actions failed to change the

assignment, the Grievant chose to pursue her alleged violation of the contract through the grievance procedure.

Conclusions

The contract at Section 7.914 provides wide discretion to the Principal when making assignments and class schedules as long as consideration (emphasis added) is given to teacher expertise and/or experience, school improvement goals and student achievement needs, and sound rationale for assignments. The burden is upon the Grievant to show that the decision of the Principal failed to take these factors into consideration and constituted a significant and clear abuse of the authority granted to him.

In the present case, the Principal recognized teacher certification would not be violated by the assignment of U.S. History classes since the Grievant's certification covered all subjects kindergarten through eighth grade. The first stated contractual criteria, "teacher's expertise or experience," does not state what particular subject expertise or experience must be about. The record clearly establishes that the Grievant's expertise in teaching is exemplary and, as testified to by the Principal, was given consideration in assigning her both Language Arts and U.S. History. It is also clear that a stated goal of school improvement was to improve the writing skills across the curriculum. Given the Grievant's expertise in

Language Arts, it was reasonable to assume that these would be used as she taught U.S. History.

What about the issue of equity in the assignment of single versus multiple preparations? Clearly no single individual, absent specific contractual provisions, has a right to a single preparation when others have multiple preparations. This was recognized by the Grievant when she proposed that she be given three Language Arts and one History assignment. The Arbitrator finds no contractual violation when the Principal attempted to share with other faculty opportunities for single or multiple preparations.

Finally, the Grievant invoked the provisions of Section 7.917 to review the decision of the Principal and her rights under involuntary transfer. Once again she created a situation where, for the Arbitrator to intervene, he must find that her contractual rights were denied or violated. As long as she received the contractual provided review, it is not for the Arbitrator to substitute his judgment where the Administrators acted reasonably and within their authority. Whether the Arbitrator would, under the same circumstances, make this same decision is not relevant. When the Administrator made his decision within the bounds of the Collective Bargaining Agreement and the reasonable exercise of his administrative authority, the arbitrator has no authority to intervene.

Based on the record established in this case, the Arbitrator finds that the Administrator exercised his authority appropriately and reasonably within the provisions of the contract.

Award

Grievance is denied.

C. Keith Groty, Arbitrator

Date