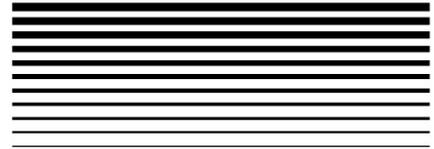


NEGOTIATOR'S NOTEBOOK



Collective Bargaining and Student Achievement: Vacancies and Transfers

Across the country, parents, legislators and community groups are demanding that K-12 schools improve student performance. In Oregon, school- and district-level report cards have focused attention on this issue. To achieve improved student performance, schools and districts need to be able to allocate resources based on the needs of students, not on political or organizational demands or obscure rules in labor agreements.

Collective bargaining agreements create a “standardized” workplace that allocates resources across the district and within individual schools. Agreements specify not only the length of the workday, but often the number of days of instruction, inservice days, grading days and professional development days per year. Ultimately, the amount of time set aside for preparation determines the amount of time teachers spend with students. The wages paid determine how many staff may be employed. Collective bargaining agreements cover all these issues and set defaults for board policy and administrative action. Part of the key work of school boards is to allocate resources within these constraints.

A collective bargaining agreement affects how teaching resources may be allocated within a district. For example, staff at low-performing, high-poverty schools often have less experience than staff at other district schools. If you want to move experienced staff members to these schools, you need to examine the

provisions of collective bargaining agreement vacancy and transfer language.

Vacancy and transfer articles typically create workplace rules about how employees may move from one position or assignment to another. These rules cover posting of vacancies, voluntary transfer possibilities, involuntary or district-initiated transfers, prep time implications for assignment changes, and other employer rights and restrictions.

In dealing with the collective bargaining impacts on management rights, the Employment Relations Board (ERB) has determined that the right of assignment is a permissive subject of bargaining.¹ ERB also has determined that the mechanics and criteria for transfers are a permissive subject of bargaining. See Appendix A for a more complete listing of permissive topics and case law. ERB has recognized that putting the right person in the right place at the right time is a critical responsibility of management.

How does the district fulfill that critical responsibility? By retaining, within the language of the collective bargaining agreement, the right to fill (or even sometimes to create) vacancies without unworkable

¹ A mandatory subject of bargaining generally deals with wages and working conditions. Permissive subjects cover all other areas. A permissive subject of bargaining is a subject that the employer has the choice of whether to negotiate about the subject with the union.



restraints. In this article, we examine the variety of language that can be found in the vacancy and transfer articles of collective bargaining agreements and the possible impacts of that language.

There are three areas that are generally addressed in vacancy and transfer articles. Those are teacher-initiated or voluntary transfers, district-initiated or involuntary transfers, and the various notice requirements.

Teacher-Initiated or Voluntary Transfers

Language covering this type of transfer is often brief. It addresses two different types of voluntary transfers: the general desire by the teacher to move from a particular building or assignment, and the desire to move to a specific assignment.

The language for a general voluntary transfer normally includes a definition, a deadline for the teacher to give notice of the desire to move, an interview, and a notice of acceptance or rejection, with reasons sometimes required if the teacher is rejected. A move to a specific assignment also includes “posting” language, covered in more detail below.

A typical example of teacher-initiated transfer language would be as follows:

□ **Oregon City School District:**

“Teacher-initiated transfers are those in which a teacher requests a transfer from one building to another or to fill a vacated position. Individual staff members may initiate a request for a transfer in writing to the District and may, if desired, consult with the administration on the requested change. If the teacher is qualified for the position sought, the individual shall be entitled to an interview for that position. Any teacher denied a teacher-initiated transfer will be personally notified and

will be given the reason(s) for denial.”

□ Some districts have added criteria, such as the following language from the **Bend-Lapine School District:**

“In acting on applications for voluntary transfer to available openings in grade, subject, building and activity assignments, the District shall apply the following criteria:

1. Individual qualifications including, but not limited to, certification.
2. Instructional requirements for the grades, subjects, buildings and assignments in the teacher’s current position and the position for which the teacher has applied.
3. Staff continuity for evaluation purposes and staff availability and experience mix for the teacher’s current position and the position for which the teacher has applied.
4. Where the foregoing factors are substantially equal, the preference in assignment or transfer shall be given to the applicant with the greatest number of years of service in the District.”

□ An interesting form of voluntary transfer is the language in the **North Clackamas School District** that allows teachers to trade assignments:

“Two unit members may trade assignments by transferring when approved by the responsible unit administrators and a personnel administrator. The trade will be contingent upon the teachers’ certification and qualifications and will be for one school year to coincide with the teachers’ work year. At the conclusion of the year, both teachers will return to previous assignments. If both administrators and both teachers agree, the trade may become



permanent effective the second year. The decision to make the trade permanent will occur by May 1.”

District-Initiated or Involuntary Transfers

Language covering this type of transfer is usually considerably longer than the previous category. This is due to the sometimes emotional nature of employee reaction to an involuntary transfer, and the desire of the district to take action that it believes is in the best interests of students. By its very definition, an involuntary transfer is made despite the teacher’s wish not to be moved from (or sometimes to) a specific position.

This contract language most likely covers such topics as:

- Notice;
- Criteria;
- Reasons;
- Hearing;
- Extra Time;
- Visits;
- Transfer of property;
- New assignment request; and/or
- Limitations on the number of transfers.

The notice language of the contract can vary from the vague “as early as possible” to the more specific “as soon as the decision to transfer has been made,” to the very specific “except in the case of an emergency, no less than 30 days prior to the effective date of the transfer.” The requirement to give a specific amount of time to the teacher was declared to be a permissive subject of bargaining by ERB, when it referred to permissive language that stated “no later than two weeks prior to the beginning of the contract year” in *Springfield Education Association v. Springfield School District No. 19*, 1 PECBR 347, 350-352 (1975).

ERB also declared that the criteria of a transfer were permissive in the *Springfield* case. However, in

spite of its permissive nature, criteria such as that referred to above in the Bend-Lapine contract—voluntary transfer language—is frequently found in sections dealing with involuntary transfers.

Contract language that requires the district to give reason(s) for the denial of the voluntary transfer is sometimes included. In an involuntary transfer situation, the reasons for the transfer are almost always required. The listing of the reasons is frequently combined with the opportunity to have a meeting to discuss the transfer. These meetings can be an informal discussion with the principal (from **Medford**: “A meeting between the member and the Principal at which time he/she will be given the reason for the transfer.”) or can take on the trappings of a full evidentiary hearing before the Superintendent (from **Gresham-Barlow**: “A member who is transferred at District initiative will be extended the opportunity for a meeting with the superintendent, the appropriate building administrators and, at the member’s option, the grievance rep, UniServ rep and other Council officials. The member will have the opportunity to make known his wishes in regard to the transfer.”)

Once the decision is made to transfer an employee involuntarily, the teacher often requests extra time for preparation, visits to the new school, additional tuition reimbursement hours, additional professional development/leave days, or transfer of his or her personal property. Once again, the *Springfield* case declared that the first two are permissive subjects. No ERB cases could be found that deal with other requests. In all likelihood, they also would be considered permissive.

In spite of the *Springfield* ruling that extra-time and visits language is permissive, a number of contracts include language on both subjects. The extra-time language grants from one to five days, at the discretion of the district, and the visits to the new assignment language typically grants that opportunity. Very few contracts contain language that requires the district to move the personal property of the teacher. It is most commonly seen when the involuntary transfer



occurs once school has started. In practice, we speculate that most districts agree to move the property to reduce the stress of the teacher.

The final piece of the involuntary transfer language puzzle is a limitation on the right of the district to frequently transfer a teacher. The language normally restricts the district to a set number of transfers in a set number of years. The following language is typical:

“No employee shall be subject to an involuntary transfer more than three times within any five year period: a) to another building; b) between grade levels within the same building at an elementary school; or c) between departments within the same building.”

Posting

No vacancy and transfer article would be complete without language that addresses the requirements for posting. The posting section of the article typically covers timing, intra- and inter- building transfers, and the granting of an interview.

Timing language refers to when the vacancy occurs and how long the notice will be posted on the appropriate bulletin board. If the vacancy occurs during the school year, most contracts require that notice of vacancy be posted for a certain number of days (varying from five to 15, depending upon the emergent nature of the vacancy). Some contracts even allow the time to be waived. The language found in **West Linn-Wilsonville** is fairly typical:

“When a vacancy occurs in the District, the position will be described and announced to employees. In addition, copies of all postings will be sent to the Association President. During the school year, such notice(s) will be posted on the Association bulletin boards for not fewer than ten (10) days. During the summer, posting will be in the central office. If a vacancy occurs after August 15th or after the

start of school, an exception to the ten (10) day rule may be made after conferring with the Association.”

Which bulletin boards and the length of posting is frequently the subject of negotiations between district and employees. If the vacancy occurs during the summer months, the standard procedure is to mail a notice to employees who have shown an interest in a transfer by supplying an address to the district before leaving for summer vacation. In addition, contracts frequently require the notice to be mailed to the Association if the vacancy occurs during the summer months

Occasionally, contracts require the district to post the notice in the building with the vacancy or within the district before seeking outside applications. This is sometimes coupled with a statement that requires the district to hire from within, if there are qualified applicants. Districts should be careful with any language that requires only internal hiring. A review of contracts shows a great variety of language, but usually it gives “preference” to current employees. Specific language can range from “preference” to “first consideration.” These terms are not defined, and could lead to grievances. The opportunity given to an internal candidate should be set out specifically. If the district wishes to guarantee an interview, the contract should state that. Also, make sure the contract uses the word “qualified,” instead of “licensed.” Although a teacher may have the appropriate license, he or she actually may not have taught the class or grade level for a number of years (if at all), and may not be *qualified* for the position.

You should try to place language in the contract that allows flexibility if a vacancy occurs in the two or three weeks before and after the start of school. The right to waive the posting or the length of the posting can be very helpful. As seen in the **West Linn-Wilsonville** language above, some contracts contain language that allows the association to waive the posting during this time frame. This is not a perfect solution, but it does add some flexibility.

In addition, it is helpful to have flexibility when there is a change in assignments within a building. The



contract should not prevent a building administrator from making internal transfers to match the needs of the students. You can achieve this flexibility by addressing the problem in negotiations and having specific language to deal with it, or defining what a vacancy is (or isn't).

Conclusion

It is important that districts have clear and concise language in the area of vacancy and transfer. Emotions can run high during a period of a transfer, even if it was undertaken voluntarily. Contract language that clearly sets out the expectations of both parties can help ease the trauma. Remember also that if the association attempts to place language in your contract

that you believe will tie your hands, the right of assignment and the mechanics and criteria for transfers are permissive subjects. You do not have to agree to include such language.

There are four cases from ERB that may be helpful to you:

- *Springfield Education Association v. Springfield School District No. 19*, 1 PECBRA 347;
- *Eugene Education Association v. Eugene School District No. 4J*, 1 PECBRA 446;
- *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, 5 PECBRA 2771; and
- *Springfield Education Association v. Springfield School District No. 19*, 7 PECBRA 6357.

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Appendix A

Transfers and Vacancies

Within this category the following items have been declared permissive:

- a. Standards, criteria and mechanics of transfers, including criteria for denying a transfer request;
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-352 (1975).
Oregon Public Employees Union v. State of Oregon, Executive Dept., Case No. UP-64-87, 10 PECBR 51, 69 (1987).
- b. Proposals reading a district shall not unreasonably deny a transfer request;
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-352 (1975).
- c. Notice of involuntary transfer "no later than two weeks prior to the beginning of the contract year";
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-352 (1975).
- d. Proposals subjecting transfer decisions to the grievance procedure;
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-352 (1975).
- e. Proposals requiring a transferred teacher be given priority in filling known vacancies;
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-352 (1975).
Eugene Education Association v. Eugene School District No. 4J, Case No. C-279, 1 PECBR 446, 453-54 (1975).
Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C-61-78, 5 PECBR 2771, 2791-94 (1980); *modified*, 6 PECBR 4953 (1981).
- f. A proposal restricting transfers to no more than two times within five years;
Springfield Education Association v. Springfield School District No. 19, Case No. C-278, 1 PECBR 347, 350-52 (1975).
- g. Proposals requiring all requests for transfers be honored before outside personnel are hired;
Eugene Education Association v. Eugene School District No. 4J, Case No. C-279, 1 PECBR 446,



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453–54 (1975).

Eugene Education Association v. Eugene School District No. 4J, Case No. C–279, 1 PECBR 446, 453–54 (1975).

Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C–61–78, 5 PECBR 2771, 2791–94 (1980); *modified*, 6 PECBR 4953 (1981).

Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C–61–78, 5 PECBR 2771, 2791 (1980); *modified*, 6 PECBR 4953 (1981).

Eugene Education Association v. Eugene School District No. 4J, Case No. C–279, 1 PECBR 446, 453–54 (1975).

Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C–61–78, 5 PECBR 2771, 2791–94 (1980); *modified*, 6 PECBR 4953 (1981).

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Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C–61–78, 5 PECBR 2771, 2791–94 (1980); *modified*, 6 PECBR 4953 (1981).

Gresham Grade Teachers Association v. Gresham Grade School District No. 4, Case No. C–61–78, 5 PECBR 2771, 2791–94 (1980); *modified*, 6 PECBR

h. Transfers on the basis of seniority;

i. Deadlines (precise number of days) by which a district must act on transfer requests;

j. Deadlines by which to post names, assignments, reassignments or transfers;

k. Proposals requiring notice of vacancies to transferring teacher and, if teacher is qualified, automatic placement in that vacancy;

l. Proposals reading transfers may not be used as discipline;

m. Proposals reading that a potential vacancy may be filled on a temporary basis until the end of a semester and then declared vacant;

4953 (1981).



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- n. The length of time a vacancy announcement must be posted before it is filled; *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, Case No. C-61-78, 5 PECBR 2771, 2791-94 (1980); *modified*, 6 PECBR 4953 (1981).
- o. Proposals reading the board is not prohibited from hiring a "racially balanced staff"; *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, Case No. C-61-78, 5 PECBR 2771, 2791-94 (1980); *modified*, 6 PECBR 4953 (1981).
- p. Proposals requiring retraining of existing staff for positions requiring special talent or expertise; *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, Case No. C-61-78, 5 PECBR 2771, 2791-94 (1980); *modified*, 6 PECBR 4953 (1981).
- q. A proposal prohibiting transfer of the association representative (e.g., association president) except for a promotion or to meet reasonable operating needs; *Executive Department, Labor Relations Division, and Oregon State Police v. Oregon State Police Officers' Association*, Case No. UP-11-85, 8 PECBR 7874, 7888 (1985). (Ellis dissenting.)
- r. Proposals requiring the district to interview a teacher being involuntarily transferred for preferences in vacant or open positions; *Springfield Education Association v. Springfield School District No. 19*, Case Nos. C-144-83 and C-161-83, 7 PECBR 6357, 6395 (1984).
- s. Proposals requiring the employee be informed of appropriate vacancies; *Springfield Education Association v. Springfield School District No. 19*, Case Nos. C-144-83 and C-161-83, 7 PECBR 6357, 6394-95 (1984).
- t. Proposals requiring the employee be informed of reasons for not getting a job preference; *Springfield Education Association v. Springfield School District No. 19*, Case Nos. C-144-83 and C-161-83, 7 PECBR 6357, 6394-95 (1984).
- u. Proposals mandating a visit to the site prior to transfer; *Springfield Education Association v. Springfield School District No. 19*, Case Nos. C-144-83 and C-161-83, 7 PECBR 6357, 6395 (1984).
- v. Proposals requiring a specified number of duty free days to prepare prior to transfer; and *Springfield Education Association v. Springfield School District No. 19*, Case Nos. C-144-83 and C-161-83, 7 PECBR 6357, 6395 (1984).
- w. A proposal prohibiting involuntary transfers except for just cause. *Gresham Grade Teachers Association v. Gresham Grade School District No. 4*, Case No. C-61-78, 5 PECBR 2771, 2781-82 (1980); *modified*, 6 PECBR



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4953 (1981).