BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
GREEN BAY AREA SCHOOL DISTRICT	
and	Case 112 No. 41253 MA-5341
GREEN BAY BOARD OF EDUCATION (CLERICAL) EMPLOYEES UNION LOCAL 3055B, AFSCME, AFL-CIO	

Appearances:
Mr. John Dennis McKay, Attorney at Law, 414 East Walnut, Suite 240, P.O. Box 1098, Green Bay, Wisconsin 54305, appearing on behalf of the Employer.
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304, appearing on behalf of the Union.

ARBITRATION AWARD

The Green Bay Area School District, hereinafter referred to as the District or Employer, and the Green Bay Board of Education (Clerical) Employees Union, Local 3055B, AFSCME, AFL-CIO, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission, hereinafter the Commission, to designate a member of its staff as Arbitrator to hear and decide the instant dispute. The Commission designated Coleen A. Burns, a member of its staff, as Arbitrator. Hearing in the matter was held on January 31, 1989, in Green Bay, Wisconsin. The hearing was not transcribed and the record was closed on April 26, 1989, upon receipt of the parties' post hearing briefs.

STATEMENT OF THE ISSUE

The parties were unable to agree upon a stipulation of the issue. The Union frames the issues as follows:

> Did the Employer violate the collective bargaining agreement when it unilaterally changed the hours of the Grievants in violation of Article XIV, Hours of Work - School Closings? If so, what is the appropriate remedy?

The District frames the issues as follows:

> Was it a violation of the collective bargaining agreement when the employer changed the Grievant's hours? If so, what is the appropriate remedy?

The Arbitrator frames the issue as follows:

> Did the District violate the collective bargaining agreement when it changed the Grievant's work hours effective with the 1988-89 school year? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE IV

PRACTICES

> All existing practices pertaining to hours, working conditions, rules and regulations not specifically mentioned in this Agreement shall continue

in force as at present until they are adjusted by mutual agreement between the Employer and the Union. The Employer further agrees to maintain all existing benefits not contained in this Agreement.

ARTICLE X

> Overtime: All work performed over seven and one-half (7 1/2) hours per work day and/or thirty-seven and one-half (37 1/2) hours per work week shall be compensated for at the rate of time and one-half the employee's

rate of pay.

For overtime computation, holidays, vacation time and sick leave shall be considered as time worked. All overtime work will be allotted by the Employer.

ARTICLE XIV

HOURS OF WORK - SCHOOL CLOSING

The present schedule of hours and the present working hours of the Clerical Department shall remain as presently scheduled. The Union shall be notified prior to any changes in hours and such changes shall be the subject of negotiations.

. . .

BACKGROUND

On January 7, 1988, Employer Representative Kampschroer issued the following memo to the Union President DeRubis:

> Effective with the 1988-89 school year the District will modify the hours of the two positions under Job Description Number M523. The hours per week (37.5) and hours per day (7.5) will remain the same; rather than 8:00 a.m. to 4:00 p.m. with 1.5 additional hours of overtime, the two positions will be posted as follows:
>
> Position 1 - 6:00 a.m. to 2:00 p.m.
> Position 2 - 9:30 a.m. to 5:30 p.m.
>
> The District does not feel that 1.5 hours of overtime per student -session day is necessary to do this work; we, however, need the coverage outside the normal central office workshift of 8:00 a.m. to 4:00 p.m. We do have precedence in posting positions outside of "normal" hours (See Job Description Number L564 and Number L590, Data Processing Department; Number H506, Print Center, Number L503, Buildings and Grounds Department; and, Number L520, Food Service Department.
>
> Per Article XIV, paragraph one (1) we are notifying the Union and are aware that such changes are the subject of negotiations. We don't feel this change in hours would require additional compensation because the content of the job description will remain unchanged. We did, however, want to give an early notification to the Union in that you may view this differently and could develop a proposal for your 1988-90 collective bargaining agreement.
>
> We are aware that the reposting of the hours for these positions may result in bumping; we shall be proposing language changes in this area with our proposals for 1988-90 bargaining.

On May 26, 1988, the Union and the Employer met to discuss work schedules for the 1988-89 school year and the Employer issued the following memo:

> On May 26th, James Miller, Ed DeRubis, David Kampschroer and Marie Glasgow met at the request of the unit president to discuss the work schedules for clerical employees for the 1988-89 school year.
>
> At issue were the proposed elimination of overtime and modification of hours for two positions under Job Description M523 and change in schedules by 15 minutes for secretaries employed at the middle and high schools. The union had been notified of both changes in keeping with contract language.
>
> Mr. Miller maintained that the language of the contract requires that the changes in hours be given as proposals for negotiation. If the union needs to consider our "change in hours notification" as impact bargaining, we would submit that no additional compensation is warranted. If the union insists that the "modification of hours" is a subject of negotiations for the 1988-90 agreement, our proposal would be that the change in hours would not warrant additional compensation because the content of the job descriptions would remain unchanged.

On June 7, 1988, Union Representative Miller issued a letter to the District's Personnel Director which stated as follows:

> I am in receipt of your memorandum dated May 27, 1988, concerning the changes in hours in the clerical bargaining unit.
>
> I again refer you to Article XIV concerning the hours of work and any changes in the present working schedule. The language in (sic) clear and unambiguous that the hours of the clerical employee shall remain as presently scheduled and if any changes are to take place it shall be a matter of negotiations.
>
> Should the Board of Education change any of the hours before negotiations are completed and an agreement is reached the Union will have no other alternative but to file grievances under Article XIV, hours of work, and the overtime provision contained on Page 9 of the current labor agreement. The employees will work the hours that you assign them; however, we will retain the right grieve. (sic) The Union would point out to you that there is no need to bump since there has been no agreement on the initial change of the hours.
>
> I would also inform you that any unilateral deadlines placed in communications sent to the Union and/or any of its representatives and failure of the Union to respond within the time limits unilaterally set by you does not in any way indicate that we are in agreement with the matters contained in your letters nor does the Union at any time waive its rights under the terms of the collective bargaining agreement or state law.
>
> I would urge you to reconsider any changes in hours of work for the employees in the clerical bargaining unit before negotiations are completed on a new labor agreement.

A bumping meeting was held in August, 1988 and the two positions in the Employe Relations Department, which had been occupied by Barb Gialdini and Sandy Burskey, were let to bid with the new hours reflected in the Employer's January 7, 1988 memo. The District also posted and let to bid a new Position #3 - involving three consecutive hours - flexible scheduling, which position is not in dispute herein.

Grievant Burskey bid for and was awarded Position #2, with hours from 9:30 a.m. to 5:30 p.m. Grievant Gialdini, who chose not to bid for any of the Employe Relations Department positions, worked the new hours without the payment overtime until she accepted a position at the Keller Elementary School in October of 1988.

On or about September 9, 1988, a grievance was filed alleging that the Employer violated the provisions of Article XIV, Hours of Work, and other pertinent sections of the contract, when it changed the hours of Barb Gialdini and Sandy Burskey. In remedy of this alleged contract violation, the Union requested that the two Grievants be returned to their former positions and be made whole for any loss of wages/fringes. The grievance was denied at all steps and, thereafter, submitted to grievance arbitration.

POSITIONS OF THE PARTIES

Union

There are two sections of the labor agreement which govern the instant dispute, i.e., Article IV, on page 4, lines 7-13 and Article XIV, on page 18, lines 7-22. The position held by Gialdini was in effect prior to 1980 and has been in effect continuously since at least 1980. The position has always contained one and one-half hours of overtime per day during the school days and has been posted in that manner. The instant case is not the first time that the Employer has attempted to discontinue this position without overtime. In 1987, the Employer notified the Union of its intent to eliminate this position and its guaranteed overtime. The Union grieved the proposed change and the Employer, thereafter, reinstated the overtime and settled the grievance. This case involves a past practice of long duration and the entitlement to the one and one-half hours of overtime is reinforced by the settlement of a grievance.

Gialdini testified that she had been bumped from a Level III position in 1984 and had attempted to bump into one of the overtime positions, which position was held at that time by employe Fencel. According to Gialdini, both the Employer and Union told her she could not bump into the position because it was guaranteed overtime and her former position was not. She later posted into

the overtime position. Dr. Kampschroer testified that prior to establishing the second position with guaranteed overtime, he contacted the Union, met with the Union and mutually established the position. It was posted on June 18, 1986 (see Joint Exhibit 17, Page 2). Burskey was awarded this position after the posting procedure was completed. She was hired from outside of the bargaining unit. Thus, in this case, there is (1) established past practice over a long period (2) posting this position with overtime (3) that position was reinforced by the settlement of a grievance and (4) reinforced by negotiations to establish the second position.

The Employer notified the Union of its intentions to change these positions and delete the overtime in a letter dated January 7, 1988. In that letter, it clearly states that the Employer was aware that this change was a subject of negotiations. In fact, the Employer suggested that the Union could make a proposal during their regular contract negotiations if they so desired. The Union took the position that the positions in dispute were created by negotiations and must be deleted by negotiations. The Employer unilaterally changed these positions on September 1, 1988 while negotiations for a new collective bargaining agreement were in process. At no time during the process of collective bargaining, did the Employer ever put on the table any proposal to delete the overtime or to change these two positions. The Union maintained the position that any change was a subject of negotiations and no change could be made until completion of negotiations, or a grievance would be filed. The Employer had every opportunity to propose changes in these two positions during negotiations, but they chose not to do so. If the changes were not on the table, not agreed to, did not show up on the tentative agreement nor the final offer of settlement, the Arbitrator must conclude that the proposal of January 7th was dropped by the Employer. The collective bargaining agreement which was settled, was retroactive to July 1, 1988 and did not contain any changes in the language of Article XIV or Article IV.

The Employer did not eliminate the extra hours for calling in substitutes. Rather, the Employer took the extra hours and created a third posting of a three hour flexible schedule. The Employer admittedly changed the starting and quitting times of the positions in dispute to avoid the payment of overtime. At the time that the Employer unilaterally changed the hours, there were negotiations taking place on a new agreement. There was only one set of negotiations taking place, not two. The final settlement of the contract did not contain any agreement to change the hours, shifts and/or methods of paying overtime. It is not the responsibility of the Union to keep the Employer's proposal alive. The Employer is responsible for its proposals just as the Union is responsible for its proposals.

The Union respectfully requests that the Arbitrator find in favor of the Grievant. In remedy of the contract violation, the positions, including the guaranteed overtime, should be reinstated and the Grievants be made whole for any loss of wages and/or fringe benefits.

Employer

Both Grievants are estopped from arguing that they have been harmed in any way. Both are in positions which they bid through proper and recognized bidding processes which were established by both parties. The Union is further estopped from arguing that any harm has come to anyone since it indicated that it would not bargain the matter, but that it would only grieve it. (See Joint Exhibit 3) The stipulation entered into by the parties at the hearing is dispositive of this grievance, "there are no starting and quitting times stated in the contract because such times vary with each work site." The Employer was at liberty to change these hours as it deemed necessary and that is exactly what it did with proper notice to the Union and an express willingness to bargain impact, if any.

The Union has not sustained its burden and the grievance should be denied.

DISCUSSION

As the Union argues, in the fall of 1987, the District did propose to change the hours of the two positions in dispute in the same manner as they were changed in August, 1988. In response, the Union filed a grievance. Thereafter, Dr. Kampschroer forwarded the following letter of 10/22/87 to Union President DeRubis:

> Based upon direction and discussion by the Board of Education at their Employee Relations Committee meeting last evening, Grievance #44 should be dropped.
>
> The Board will reinstate the overtime for the calling of substitute teachers. This commitment is for the remainder of the 1987-88 school year.
>
> I will be working with the Union on the long-range solution to the Board's desire to reduce and/or eliminate clerical overtime from the budget for the 1988-89 school year.

The overtime was reinstated and, apparently, the grievance was not processed any further.

Dr. Kampschroer's letter of 10/22/87 clearly states that the commitment to reinstate the overtime was for the remainder of the 1987-88 school year. Despite the Union's assertion to the contrary, the Employer's conduct in agreeing to reinstate the overtime in 1987-88 did not bind the District to continue the overtime hours in any subsequent school year.

Since at least the early 1980's, there has been a position in the District's Employee Relations Department which has required one and one-half hours of overtime work on student days during the regular school year. When Grievant Gialdini tried to bump into the position sometime around the 1983/84 school year, both the District Representatives and Union Representatives agreed that she could not bump into the position because it was an "overtime position." At the time that Gialdini successfully bid into the position in 1985, the position was posted as "7 1/2 hours per day with an additional 1 1/2 hours from 6:30 a.m. to 8:00 a.m. on Student Days during the school year to call substitutes." Gialdini worked the 6:30 a.m. to 8:00 a.m. overtime from the time she accepted the position until the overtime hours were eliminated at the start of the 1988/89 school year.

When Grievant Burskey was hired into the second position, in August of 1986, the position was posted as "7 1/2 hours per day with an additional 1 1/2 hours either immediately prior to and/or following the normal workday on student days during the school year to call substitutes." Burskey's overtime hours on student days were from 7:30 a.m. to 8:00 a.m. and 4:00 p.m. to 5:00 p.m. Burskey worked these overtime hours from August, 1986 until the overtime hours were eliminated at the start of the 1988-89 school year.

Given the above, the Arbitrator is satisfied that there was a practice pertaining to the overtime hours of the two positions in dispute. However, contrary to the argument of the Union, this practice is not one which is required to be maintained under the provisions of Article XIV. The reason being that there is another provision of the contract which expressly governs the instant dispute and, thus, takes precedence over the general language of the practices clause. Specifically, the first paragraph of Article XIV requires the District to maintain "the present schedule of hours and the present working hours" of clerical employes. This paragraph further provides that the Union "shall be notified prior to any changes in hours and such changes shall be the subject of negotiations."

To be sure, Article X, p.10, line 2, states that "All overtime work will be allotted by the Employer" and, thus, does provide the District with a right to determine when overtime work will be performed and who will perform such overtime work. However, given the fact that Gialdini's position and Burskey's position were posted as "overtime positions," bid as "overtime positions," and continuously worked as "overtime positions" until the change which is the subject of the instant dispute, the undersigned is persuaded that the Employer exercised its right under Article X to create two positions in which overtime was part of the regular work schedule. 1/ Thus, at the time of the change of hours in dispute herein, Gialdini's regular work schedule, on student days, was 6:30 a.m. to 4:00 p.m., and Burskey's regular work schedule, on student days, was 7:30 a.m. to 5:00 p.m. Under the provisions of Article XIV, the Employer was required to maintain each of these work schedules, which were the two employes "present schedule of hours," until the Employer notified the Union of any proposed change in hours and made the proposed change in hours a subject of negotiations.

In the memo of January 7, 1988, Dr. Kampschroer notified Union President DeRubis that, effective with the 1988-89 school year, the two positions in dispute herein, would be reposted to eliminate the 1.5 additional hours of overtime. Union President DeRubis was further notified that the two positions would be reposted to have the following work hours:

Position 1 - 6:00 a.m. to 2:00 p.m.
Position 2 - 9:30 a.m. to 5:30 p.m.

Effective with the 1988-89 school year, the hours of the two positions were

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1/ According to Burskey, after the hours change, she called substitutes between the hours of 4:00 p.m. and 5:30 p.m. Although the other two employes in the Department did not testify at hearing, the testimony of Dr. Kampschroer demonstrates that the Department continued to call substitutes during the time period in which Grievant Gialdini performed such work as overtime work. It is not evident, therefore, that there has been any change in the function underlying the reason for the two overtime positions, i.e., the District continues to call substitutes during hours in which both Grievants performed such work as overtime work.

changed as set forth in the January 7, 1988 memo. Clearly, the January 7, 1988 memo served to notify the Union of the change in hours. The question then becomes whether the changes were made the subject of negotiations.

In its post-hearing brief, the Employer characterizes its position in this matter as follows: "The District was at liberty to change these hours as it deemed necessary and that is exactly what it did with proper notice to the Union and an express willingness to bargain impact, if any." The position that the District's willingness to negotiate the change in hours was limited to bargaining impact is supported by the content of the January 7, 1988 letter, wherein the District did not inform the Union that it was proposing to change the hours in dispute, but rather, informed the Union that "effective with the 1988-89 school year the District will modify the hours of the positions." (Emphasis supplied) This statement is one of a fait accompli. Additionally, in the third paragraph of the letter, when advising the Union that the District was aware that "such changes are the subject of negotiations," the District focused its attention upon "impact" proposals. Specifically, the District advised the Union that no additional compensation would be required because the content of the job description remained unchanged and invited the Union to develop a proposal if the Union viewed the matter differently.

The position that the District was offering to bargain impact is further supported by the testimony of District Representative Kampschroer who characterized the purpose of the memo as stating for the record that the hours change would not involve any change in work content and, therefore, that no additional compensation would be necessary. According to Kampschroer, he understood that Union Representative Miller did not agree with the statements contained in the memo of January 7, 1988. Kampschroer, however, could not recall receiving any written response to the January 7, 1988 memo from the Union. It is not evident that there were any other discussions between the parties concerning the hours change until May 26, 1988. Following this discussion, the Employer issued a memo containing the following:

> Mr. Miller maintained that the language of the contract requires that the changes in hours be given as proposals for negotiation. If the union needs to consider our "change in hours notification" as impact bargaining, we would submit that no additional compensation is warranted. If the union insists that the "modification of hours" is a subject of negotiations for the 1988-90 agreement, our proposal would be that the change in hours would not warrant additional compensation because the content of the job descriptions would remain unchanged.

As a review of this paragraph reveals, the District was again focusing on bargaining the impact of the change in hours, rather than the change itself. It is not evident that, prior to the implementation of the hours change in dispute, the District made any other representation to the Union concerning the District's duty to negotiate the hours change under the provisions of Article XIV.

Given the above, the arbitrator is persuaded that at all times material hereto, the District's offer to make the change in hours a "subject of negotiations" was limited to negotiating the impact of the hours change, rather than the change in hours, per se. The District's position, however, is contrary to the provisions of Article XIV, which require the District to make the change in hours a subject of negotiations. The question then becomes whether the District is correct when it argues that the Union and/or the Grievants are estopped from raising their claims herein.

In arguing that the Union is estopped from claiming that the change in hours is a subject of negotiations, the District relies upon a statement contained in Joint Exhibit #3, i.e., an October 9, 1987 letter from Employer Representative Kampschroer to Union President DeRubis which states "while I remain doubtful that the new posting requires impact bargaining, this issue is moot based upon Miller's comments that the Union is not willing to negotiate over this change in hours, but will grieve the issue." Regardless of the truth of this assertion, it is irrelevant to the instant dispute in that the October 9, 1987 correspondence refers to the 1987/88 hours change, which change was subsequently abandoned by the Employer. Of relevance herein, is the position maintained by the Union after receiving the January 7, 1988 notification of the hours change in dispute herein.

Given the District's memo of May 26, 1988, it is evident that at that time, the Union advised the District that the changes in hours were subject to negotiation. The Union reiterated this position in Union Representative Miller's letter of June 7, 1988, which in relevant part, states as follows:

> I again refer you to Article XIV concerning the hours of work and any changes in the present working schedule. The language in (sic) clear and unambiguous that the hours of the clerical employee shall remain as presently scheduled and if any changes are to take place it shall

be a matter of negotiations.

> Should the Board of Education change any of the hours before negotiations are completed and an agreement is reached the Union will have no other alternative but to file grievances under Article XIV, hours of work, and the overtime provision contained on Page 9 of the current labor agreement. The employees will work the hours that you assign them; however, we will retain the right grieve. (sic) The Union would point out to you that there is no need to bump since there has been no agreement on the initial change of hours.

It is not evident that the Union made any other representation to the District concerning the District's right to change the hours in dispute herein. Accordingly, the undersigned is satisfied that, at all times material hereto, the Union has maintained the position that, under the provisions of Article XIV, the District was required to make the hours change in dispute herein a subject of negotiations.

As the District argues, the Union and the Grievants participated in the "bumping meeting" in August, when the two positions in dispute were let to bid. Contrary to the argument of the District, however, this participation does not bar either the Union or the Grievants from raising the claim of contract violation. Not only were the Grievant, and the Union honoring the principle of "work now, grieve later," but their right to grieve was expressly preserved. In a letter dated August 15, 1988, Union Representative Miller advised District Representative Kampschroer as follows:

> This letter will confirm our telephone conversation of this morning at which time I advised you that we were not in agreement with a number of changes that are contained in the August 3, 1988 memos. We also discussed the meeting that is to be held this afternoon between Marie Glasgow and the officers of Local 3055 B to discuss postings and bumping or what have you. I advised you that because the union was participating in the discussions should not be construed as our agreeing to the changes that were being proposed. We further discussed that because of the closeness of school opening and it being the desire of the union not to interfere with the opening of school or create undo hardships, that the union would help set up the procedure but reserves the right to file grievances on the positions that are in question.

While Kampschroer could not recall receiving this letter and was unable to locate this letter in his files, he did not dispute that the letter was sent. Kampschroer agreed that he and Miller had discussions concerning the "bumping meeting" and that Miller had made it clear that neither Gialdini nor Burskey were waiving any right to grieve the hours change by participating in the "bumping meeting."

To be sure, Gialdini chose not to bid for either of the two positions at the "bumping meeting" and, subsequently, bid into another position at Keller. While it is true that Gialdini's bid occurred after the "bumping meeting," the record demonstrates that there was an agreement that Gialdini could remain in her position, working the changed hours, until Gialdini exercised her bidding/bumping rights. Accordingly, the undersigned is persuaded that Gialdini's bid must be considered to be an extension of the "bumping meeting" and, by exercising her bidding/bumping right, Gialdini has not waived any right to file the instant grievance, or to receive the remedy provided herein. In reaching this conclusion, the undersigned also has given consideration to the fact that the District "dispossessed" the Grievants of their positions when it chose to let the two positions to bid; that the Union is claiming that Gialdini is the employe who has been affected by the District's contract violation; and that the District has not argued that an employe other than Gialdini should be considered to be the affected party.

The Union argues that the District was required to propose the change in hours as a bargaining proposal for the successor agreement. While the District and the Union were certainly free to negotiate the hours change within the context of contract negotiations, Article XIV does not limit such negotiations to contract negotiations. Article XIV states that the changes in hours "shall be the subject of negotiations." It does not state that the changes "shall be the subject of contract negotiations." (Emphasis supplied) The arbitrator, however, does not consider the Union's misconstruction of Article XIV to be fatal to its claim. The reason being that the District's unwillingness to negotiate the change in hours did not stem from its belief that the Union was insisting upon making the change in hours a subject of contract negotiations, but rather, stemmed from a belief that it had the management right to unilaterally change the hours, subject to notification of the change and an offer to negotiate impact, if any.

Contrary to the argument of the District, there has been no waiver of the Union's and the Grievants' right to allege that the hours change in dispute herein was contrary to the provisions of the collective bargaining agreement, and neither the Union, nor the Grievants, are otherwise estopped from asserting their claim of contract violation.

In summary, the Arbitrator is persuaded that, at all times material hereto, the Union has maintained the position that the District is contractually required to negotiate the change in hours in dispute herein. While the District has offered to negotiate the impact of any hours change, the District has not agreed to make the change in hours a subject of negotiations. By not making the change in work the Grievants' work hours a subject of negotiations, the District has violated the provisions of Article XIV of the parties' collective bargaining agreement. In remedy of this contract violation, the District is to immediately restore the hours of Grievant Burskey's position to the hours which were in effect prior to the 1988-89 hours change, including the 7:30 a.m. to 5:00 p.m. hours worked on student days. The District is to immediately make Grievant Burskey whole for all wages and fringe benefits lost as a result of the 1988/89 hours change. In complying with the make whole remedy, Grievant Burskey is to be considered due all wages and fringe benefits which she would have received if she had been permitted to work the hours in effect prior to the 1988/89 change, including the 7:30 a.m. to 5:00 p.m. hours on student days. The wages and fringe benefits due under the make whole remedy are to be offset by any wages, including overtime wages, and fringe benefits which Grievant Burskey earned between the time of the hours change and the restoration of the hours by the District.

In further remedy of this contract violation, the District is to immediately restore the hours of the position previously occupied by Grievant Gialdini to the hours which were in effect prior to the 1988/89 hours change, including the 6:30 a.m. to 4:00 p.m. hours worked on student days. The District is to immediately make Grievant Gialdini whole for all wages and fringe benefits lost as a result of the 1988/89 hour change. In complying with the make whole remedy, Grievant Gialdini is to be considered due all wages and fringe benefits which she would have received if she had continued in her position and had been permitted to work the hours in effect prior to the 1988/89 hours change, including the 6:30 a.m. to 4:00 p.m. hours worked on student days. The wages and fringe benefits due under the make whole remedy are to be offset by any wages, including overtime, and fringe benefits which Grievant Gialdini earned between the time of the hours change and the restoration of the hours by the District. In addition, Grievant Gialdini is to be permitted to return to her former position if she, or the Union on her behalf, within fifteen calendar days of the date of this Award, notifies the District of Grievant Gialdini's intention to return to her former position. Upon receipt of timely notification of Grievant Gialdini's intention to return to her former position, the District shall have fifteen calendar days to effectuate the return, unless the Union and the District agree otherwise. Grievant Gialdini's entitlement to wages and fringe benefits under the make whole remedy of this Award is limited to the time
period between the effectuation of the hours change and the restoration of the hours by the District. Upon restoration of the hours of Gialdini's former position, the employe occupying the position at the time of the restoration is entitled to be paid for all hours worked in the position unless, and until, Gialdini is returned to the position in accordance with this Award.

In ordering the immediate restoration of the work hours of the two positions in dispute to the work hours in effect prior to the 1988-89 change, the undersigned is in no way limiting the right of the parties to, thereafter, effectuate a change in hours in accordance with the provisions of Article XIV.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The District violated the collective bargaining agreement when it changed the Grievants' work hours effective with the 1988-89 school year.

2. The District is to immediately restore the hours of the two positions in dispute to the hours which were in effect prior to the change which was effectuated in the 1988-89 school year.

3. The District is to immediately make each of the Grievants whole for all wages and fringe benefits lost as a result of the change in hours effectuated in the 1988-89 school year.

Dated at Madison, Wisconsin this 10th day of August, 1989.

By _____
Coleen A. Burns, Arbitrator