BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTH CENTRAL TECHNICAL PARAPROFESSIONAL/TECHNICAL ASSOCIATION, CWUC - NORTH, WEA	Case 39 No. 44787 MA-6416
and	
NORTH CENTRAL VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT	

Appearances:
Mr. Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North, appearing on behalf of the Association.
Ruder, Ware & Michler, S.C., Attorneys at Law, by Mr. Dean R. Dietrich, appearing on behalf of the District.

ARBITRATION AWARD

Pursuant to a request by North Central Technical Paraprofessional/Technical Association, CWUC-North, WEA, herein the Association, and the subsequent concurrence by the North Central Vocational, Technical and Adult Education District, herein the District, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on January 25, 1991 pursuant to the procedure contained in the grievance-arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on February 12, 1991 at Wausau, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on March 28, 1991.

After considering the entire record, I issue the following decision and Award.

ISSUES:

The parties were unable to stipulate as to the issues at hearing. The Association frames the issues as follows:

1. Did the District's removal of the TV High School duties from Joan Baures, thus reducing her work schedule by one hour per day and assigning the TV High School duties to a non-union employe of the District violate the collective bargaining agreement?

2. If so, what is the appropriate remedy?

While the District frames the issues in the following manner:

1. Whether the North Central VTAE District violated the provisions of Article III - Management Rights when it eliminated the assignment of Facilitator for TV High School for Adults Program from the Grievant's work assignment for the 1990-91 school year?

2. If so, what is the appropriate remedy?

Having reviewed the entire record, the Arbitrator frames the issues as follows:

1. Whether the District violated the parties' collective bargaining agreement when it eliminated the assignment of Facilitator for TV High School for Adults Program from the Grievant's work assignment for the 1990-91 school year?

2. If so, what is the appropriate remedy?

FACTUAL BACKGROUND:

Since 1980 Joan Baures, hereinafter the Grievant, has been employed by

the District on a part-time basis in various capacities. During the 1989-90 school year, the Grievant held the position of ABE Recruiter/Tutor Specialist/Intake Specialist. In this position, her duties included Facilitator of the District's tutor program; Intake Liaison for Indo-Chinese students enrolled in the District's English as a Second Language Program (ESL), and Facilitator for the District's TV High School for Adults Program. In the latter capacity, the Grievant's duties included explaining the TV High School Program to perspective students as well as the general public; enrolling students in the program; forwarding materials to students; facilitating loan programs for books and videotapes; checking reading tests; monitoring students' progress in the program; answering questions related to the program; assisting students to complete the Department of Public Instruction requirements for GED testing; and submitting status reports in regard to the program to her supervisor.

In the 1989-90 school year, the Grievant worked 25 hours per week. On several occasions, she indicated to her supervisor that she could not perform all of her job duties within this time period. She received some compensatory time for the additional hours she worked to complete her job duties.

In the summer of 1990, Carolyn Michalski, the District's Associate Dean for General Education, was advised that the Adult Basic Education Grant Funds, which provided funding for the TV High School for Adults Program and other general education programs, would be reduced for the 1991 school year and that the District's matching funds for the general education programs would remain the same for the 1990-91 school year. As a result, the budget for the District's Adult Basic Education Programs, including the TV High School for Adults Program, had to be reduced.

Upon reviewing the matter with her supervisor, Associate Dean Michalski concluded that in light of the reduction in funding for the general education programs, there would have to be financial "cutbacks" in a number of areas. As made, these "cutbacks" included: reduction in the work hours of various faculty staff in the Adult Basic Education area; reduction of overload pay for full-time faculty staff; elimination of an Instructional Assistant position at the Wausau Campus; reduction of work hours for an Instructional Assistant at the Medford Campus; elimination of part-time instructors who taught night classes one day a week; reduction of summer work hours for District counselors; elimination of teaching by part-time instructional staff during the summer months; and the reduction of an inservice counseling program from 3 days to 1 day per week.

As part of this "cutback," Associate Dean Michalski reduced the Grievant's work hours from 25 to 20 hours per week. In order to accomplish this, Michalski reviewed the Grievant's job description with an eye toward removing the most clerical aspects of her job. At the same time she tried to emphasize the other aspects of the Grievant's job like the tutoring and the advocacy work. As a result of this process, Michalski decided to remove the TV High School for Adults Program responsibilities from the Grievant's job description, and assign the clerical duties to Bonnie Osswald, a non-union office assistant in the testing center. This allowed the Grievant to focus on her other work duties, namely Coordinator of the Tutor program and Intake/Liaison for the Indo-Chinese students. Michalski assumed the management duties of the TV High School Program.

Osswald was not awarded any additional pay in light of her increased duties. Osswald had previously performed many of the clerical tasks associated with the TV High School for Adults Program.

Assistant Dean Michalski also assigned these additional duties to Osswald for the following reasons: one, the Grievant's reclassification redefined her duties to concentrate them in the areas of the District's Tutoring and Indo-Chinese ESL Programs; two, the Grievant's duties as the Facilitator for TV High School for Adults Program involved mainly clerical duties which Osswald was capable of performing; and three, the Grievant had complained to her supervisor that she was unable to perform all of her duties within the allotted 25 hour work week, the change would give her more time to concentrate on her duties in regard to the District's Tutoring and Indo-Chinese ESL Programs.

On September 5, 1990, the Grievant returned her signed "Letter of Appointment" indicating acceptance of her employment with the District for the 1990-91 school year as a Tutor/Recruitment Assistant. However, the Grievant attached the following note to her appointment letter:

> My signing of this Letter of Appointment does not waive my right to challenge the wages and conditions of employment through the grievance procedure of the union and other legal means.

As noted above, the Grievant's duties as a Tutor/Recruitment Assistant, do not include the duties of Facilitator of the TV High School for Adults Program. She was, however, reclassified as she had requested, and, as a result, she received a pay increase from her former $8.83 per hour rate to a new $11.98 per hour rate.

On September 17, 1990, the Grievant filed the grievance underlying this dispute. On September 24, 1990, the District issued a new job description for the Grievant's position as Tutor/Recruitment Specialist which concentrated her duties in the District's Tutor and Indo-Chinese ESL Programs.

The grievance was processed through the various steps of the grievance procedure without procedural difficulty and is before the Arbitrator for resolution.

At all times material herein, the TV High School for Adults Program has been paraprofessional/technical bargaining unit work.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE I

DEFINITIONS OF EMPLOYEES

A. Regular Full-Time Employees

Employees who are employed for a full workweek and fifty-two (52) weeks per year.

B. School-Year Employees

Employees who are employed for a full workweek, for less than fifty-two (52) weeks per year and for more than thirty-five (35) weeks per year.

C. Regular Part-Time Employees

Employees who are employed for less than a full workweek and for at least six hundred (600) hours per year.

D. Limited-Term Employees

1. Employees who are hired for the replacement of an employee on leave for a specified time period.

2. JTPA or similar program employees.

3. Project employees working ninety (90) days or less.

ARTICLE II

RECOGNITION CLAUSE

The District hereby recognizes the Association as the exclusive bargaining representative for all regular full-time, school-year, and regular part-time technical

and paraprofessional employees of the District, excluding the chief accountant, lead interpreter, bookstore manager, systems analyst, and all supervisory, managerial, confidential, clerical/secretarial, custodial, and limited-term employees.

ARTICLE III

MANAGEMENT RIGHTS

The Board possesses the sole right to operate the District and all management rights repose in it, subject only to the express provisions of this Agreement. These rights include, but are not limited to, the following:

A. To direct all operations of the District

B. To establish work rules and schedules of work

C. To hire, promote, transfer, schedule, and assign employees in positions within the District

D. To suspend, demote, discharge, and take other disciplinary action against employees

E. To relieve employees from their duties because of lack of work or any other legitimate reasons

F. To maintain efficiency of District operations

G. To introduce new or improved methods or facilities

H. To change existing methods or facilities

I. To determine the kinds and quantities of services to be performed as pertains to District operations, the number and kinds of classifications to perform such services, and to create, combine, modify, or eliminate positions within the system

J. To determine the methods, means, and personnel by which the District operations are to be conducted.

. . .

ARTICLE X

LAYOFF AND RECALL

Layoff and recall rights shall be granted to bargaining unit members classified as regular full-time and/or school-year employees. These rights shall be administered in accordance with the following provisions.

A. In the event it becomes necessary to reduce the number of employees on the staff, the employees shall be laid off in the inverse order of their length of service within their position title classification, provided all qualifications are equal to perform the available work with the remaining employees in that position title classification.

B. In the event the District decides to layoff, each employee so affected will be notified at least fourteen (14) calendar days in advance of the effective date of the layoff.

C. Employees who are laid off shall be recalled in reverse order of layoff to vacant positions within a position title classification.

D. Employees shall have reemployment rights for two (2) years following the date of their layoff.

Such reemployment rights shall only exist within the position title classification. Any and all reemployment rights granted to an employee on layoff shall terminate upon failure to accept in writing within ten (10) days any work in their position title classification.

E. Employees laid off shall be given written notice of recall from layoff. The District shall send a registered or certified letter to the Association and said employee at their last known address. It shall be the responsibility of such employee to notify the District of any change in address. Within ten (10) calendar days after the employee receives a notice of recall, he/she must advise the District in writing that he/she accepts the position offered by such notice and will be able to commence employment on the date specified therein. Any notice shall be considered received when sent by registered letter, return receipt requested, to the last known address of the employee in question as shown on the District's records.

F. Employees will not lose their recall rights if they secure other employment during the layoff.

. . .

ARTICLE XXXI

SUBCONTRACTING

The District will inform the Association at least sixty (60) days in advance of the implementation of any decision to contract out for goods or services which result in the layoff, termination, or reduction in the regular workweek (38.75 hours) of bargaining unit employees. However, the District shall not contract out for goods or services which results in the layoff of any bargaining unit employee hired prior to July 1, 1982.

. . .

ASSOCIATION'S POSITION:

In its brief the Association first argues that removal of the TV High School Facilitator duties by the District "creates an unreasonable threat to the job security of the Grievant and the security of the Union as a whole," and attacks the underlying basis of the labor contract. The Association points out that despite the "District's feeble efforts to minimize the paraprofessional nature of the facilitator work" the record is clear that the TV High School Facilitator duties are paraprofessional in nature and bargaining unit work pursuant to the terms of the contract.

The Association also argues that past practice supports its position. In this regard, the District claims the work in question has been assigned uninterrupted to a bargaining unit member for ten years.

The Association further argues that Article XXXI, the subcontracting clause, buttresses its position. In support thereof, the Association claims said clause protects bargaining unit employes hired prior to July 1, 1982, like the Grievant, from loss of work as the result of transferring work out of the bargaining unit. The Association points out that the Grievant is losing twenty percent of her work to an outside source. The Association also feels that the subcontracting clause reinforces its position that the contract as a whole cannot be interpreted to give management "carte blanche" right to siphon off bargaining unit work at will to the harm of bargaining unit members.

Finally, the Association argues that if you balance the interests of management and the bargaining unit, the Association's position will prevail. In this regard the Association claims the District's position is weakened by its failure to prove the transfer of the work outside the bargaining unit was done for financial reasons, and to establish that its decision making process for the cut was reasonable. The Association points out that the cut in the Grievant's workload has a de minimis effect on the budgetary condition of the institution (emphasis supplied). The Association concludes: "To nibble away at this unit's bargaining agreement's rights by assigning well-established

bargaining unit work to non-union District employees cannot be consistent with the standards of a reasonable balancing of rights test."

The Association also cites a number of arbitration awards in support of its position.

It its reply brief, the Association makes the following points:

1. The District's assertions downgrading the Facilitator for TV High School for Adults duties to clerical are without merit.

2. The specific facts of this grievance distinguish this case from the type of arbitral dicta the District uses to justify its position.

3. The District does not provide good cause for its action. In this regard the Association argues that the District, by its use of a good cause standard, has conceded that removing bargaining unit work could be improper. The Association claims the District did not establish cause because it did not prove a financial need to reduce the Grievant's workload. The Association further argues that the District's contention "a twenty percent loss of job and pay gives the grievant more time for her remaining duties strains credibility." In addition, the Association argues that the Grievant lost money as a result of the District's action. The Association adds that the Grievant and Union are being punished for her assertion of her rights to be properly classified. Finally, the Union maintains that the de minimis reallocation argument of the District is not consistent with its financial necessity argument.

4. In conclusion, the Association argues that a common thread among arbitrators in these types of cases has been a requirement that good reasons must exist for an employe to lose wages by trans-ferring work outside the unit. The Association argues that the reassignment was not made for good cause for all the reasons noted above. The Association maintains that if the District's actions are upheld a "chilling effect on wage equity and job security" on bargaining unit members will occur.

For a remedy, the Association requests the Arbitrator sustain the grievance and order the District to restore the Facilitator of TV High School duties to the Grievant. In addition, the Association asks the Arbitrator to order the District to reimburse the Grievant for the improper reduction of her pay since the beginning of the 1990-91 school year. "This reimbursement should also include 12% daily compounded interest."

DISTRICT'S POSITION:

The District basically argues that its assignment of the disputed work to non-union employes was in accordance with its management rights as set forth in Article III and arbitral law. In support thereof, the District relies on the following arbitral law:

> . . . in the absence of a contrary contractual provision, an employer has the right, whether pursuant to a management rights clause or under the reserved rights theory, to assign work previously performed by a bargaining unit employe to a nonunit employe if the employer has good "cause" to do so.

With respect to the instant case, the District notes the agreement is devoid of any provision which restricts it in regard to the assignment of work to non-unit personnel or protects bargaining unit work. To the contrary, the District alleges, pursuant to the management rights clause, Article III, it is vested with explicit authority to assign work to employes and relieve employes from their duties for legitimate reasons. Also, the District maintains it had good "cause" to assign the disputed duties to Ms. Osswald. Finally, the District argues that the contract provisions relied upon by the Association to support its case (Articles II, X and XXXI) do not explicitly prohibit the District from assigning work previously performed by a bargaining unit employe to non-unit

employes.

With respect to the aforesaid arbitral law argument, the District further notes that:

> Under arbitral law, it is well established that absent a specific restriction in a labor agreement, an employer has the right to reallocate work between bargaining unit and nonunit employees if such action is taken in good faith and not for the purpose of undermining the union.

In particular, the District cites Elkouri & Elkouri, How Arbitration Works, pp. 547-50 (4th Ed., 1985) and a number of arbitration awards for the proposition it acted properly pursuant to the aforesaid arbitral standard by its actions herein. In this regard the District argues the facts support a finding it followed arbitral law in the present case. For example, as noted above, the District claims its actions were in accord with its rights set out in Article III. The District also claims its reassignment of the Grievant's disputed duties to Osswald was done in good faith and for good reason. In this regard, the District notes the Grievant's loss of her duties as the Facilitator for the TV High School for Adults Program was simply part of "cutbacks" due to decreased funding. In addition, the District claims it was just trying to help the Grievant to perform her remaining duties and satisfy complaints from the Grievant that she had an insufficient amount of time to perform all of her work duties. In this context, the District also claims that the reassignment of the Grievant's disputed duties was also a matter of efficiency in that the District was helping the Grievant to perform her job duties better while at the same time responding to Osswald's request that she be assigned more work and respons-ibilities to perform. Finally, the District notes that as a result of the reassignment, Osswald did not receive any additional pay and, compared to the 1989-90 school year, the Grievant did not suffer a loss of pay.

In rebuttal to the Association's claims, the District first argues that none of the contract provisions cited by the Association expressly limit the District's right to assign work previously performed by a bargaining unit employe to a non-unit employe. In this regard, the District notes that the Recognition Clause, Article II, explicitly exempts "managerial" and "clerical/ secretarial" employes from the bargaining unit. Thus, the District claims its assignment of the Grievant's former clerical duties as Facilitator for the TV High School for Adults Program to Osswald, and the managerial duties associated with said position to an Assistant Dean, was in accord with the terms of said clause.

The District also argues that the Grievant was not laid off (she still works 20 hours per work), therefore, Article X has no relevance to the instant dispute.

In regard to the subcontracting provision, Article XXXI, the District concedes it is under certain obligations if it decides to "contract out" for certain goods or services. However, the District contends it did not contract out the Grievant's prior duties, i.e. contract with an outside agency, hence, said contract clause has no relevance to this dispute.

In its reply brief, the District makes the following points:

1. The District has simply assigned a de minimis portion of duties previously performed by a bargaining unit member to non-union employes. This has not and will not lead to the whole sale assignment of current bargaining unit work to non-union employes as alleged by the Union.

2. New Britain Machine Co., 8 LA 720, 722 (1947) is distinguishable from the instant case. There the assignment of duties previously performed by the bargaining unit resulted in the complete lay off of union watchmen. Under those facts, the Arbitrator found that the employer's actions represented an attack on the job security of the union. Colorado Springs Teachers' Association, Arb. Schools Report 156, (2/1/83) is distinguish-able for the same reasons.

3. The contract does not define the "specific types of duties" to be assigned to members of the union. Rather, pursuant to the Management Rights clause, Article III, the District has reserved the right to make assignment of

specific duties to positions.

4. The record does not support a finding that the District was "punishing" the Grievant for doing outstanding work.

5. There is no past practice guaranteeing the Grievant the work in question.

6. Article XXXI does not prohibit the District from the transfer of work but rather, the provision prohibits the District from contracting out goods or services which result in loss of work for bargaining unit employes.

7. In balancing the legitimate interests of management and bargaining unit employes, the former outweighs the latter. The District has established a budgetary justification for its actions.

8. The Union's suggested remedy is inappropriate. The Grievant's work hours would still have been reduced for budgetary reasons even if she had retained the duties of Facilitator of TV High School for Adults Program. Thus, an award of backpay would be inappropriate.

Based on all of the foregoing, the District requests that the grievance be denied and the matter dismissed.

DISCUSSION:

At issue is whether the District violated the parties' agreement when it eliminated the assignment of Facilitator for TV High School for Adults Program from the Grievant's work assignment for the 1990-91 school year.

The resolution of this issue turns primarily upon the applicability of Article III, entitled "Management Rights," which provides in material part:

> The Board possesses the sole right to operate the District and all management rights repose in it, subject only to the express provisions of this Agreement. These rights include, but are not limited to, the following:
>
> A. To direct all operations of the District
>
> B. To establish work rules and schedules of work
>
> C. To hire, promote, transfer, schedule, and assign employees in positions within the District
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> . . .
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> E. To relieve employees from their duties because of lack of work or any other legitimate reasons
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> F. To maintain efficiency of District operations
>
> G. To introduce new or improved methods or facilities
>
> H. To change existing methods or facilities
>
> I. To determine the kinds and quantities of services to be performed as pertains to District operations, the number and kinds of classifications to perform such services, and to create, combine, modify, or eliminate positions within the system
>
> J. To determine the methods, means, and personnel by which the District operations are to be conducted.

The above contract clause clearly gives the Employer the right "to direct all operations of the District"; "to establish schedules of work"; "to maintain

efficiency of District operations"; "to introduce new or improved methods" or "change existing methods"; "to create, combine, modify, or eliminate positions within the system"; and "to determine the methods, means, and personnel by which the District operations are to be conducted." In particular said clause allows the District "to relieve employees from their duties" for any "legitimate reason." Based on same, the Arbitrator finds that Article III, clearly provides a contractual basis for the District's reassignment of the Facilitator for TV High School for Adults Program duties for the 1990-91 school year. A question remains under Article III, Section E, as to whether the District had a "legitimate reason" for its action.

The record indicates, contrary to the Association's contention, that the District had sound budgetary reasons for its reassignment. In the summer of 1990, the District was advised that the Adult Basic Education Grant Funds, which provided funding for the TV High School for Adults Program and other general education programs, would be reduced for the 1991 school year. In addition, the District's matching funds for general education programs would remain the same for the 1990-91 school year. In light of reduced funding for the general education programs, the District found it necessary to cut its budget. It is undisputed that the reassignment of the aforesaid TV High School for Adults Program duties from the Grievant to Ms. Osswald and Associate Dean Michalski allowed the District to save a small amount of money. Consequently, there is a legitimate reason (a reduction in funding) for the District's action.

The Association, however, argues that the cut in the Grievant's workload has a de minimis effect on the budgetary condition of the District (emphasis supplied) while at the same time a deleterious effect on the bargaining unit by assigning well-established bargaining unit work to non-union District employes. It is true that the amount of money the District saved by reassigning the Grievant's TV High School for Adults Program duties is relatively small. However, the District made financial "cutbacks" in a wide number of areas in order to respond to reduced funding. Elimination of the Grievant's TV High School for Adults Program duties, and a reduction in her work hours from 25 to 20 hours per week was just one of many "cutbacks" the District was forced to make to live within its budget. Within this context, the Arbitrator finds that there was a reasonable basis for the District's action reassigning the Grievant's duties. Therefore, the Arbitrator rejects this argument of the Association.

The Association also argues that the District's action in reassigning the aforesaid duties to non-union employes was in retaliation for the Grievant's assertion of her rights to be properly classified. However, the record contains no evidence supporting this allegation. Therefore, the Arbitrator rejects this claim of the Association.

Likewise, the Arbitrator rejects the Association's argument that the District's action, if upheld, will lead to the wholesale assignment of current bargaining unit work to non-union employes. There is no evidence in the record that the District acted in bad faith toward the Grievant. Nor is there any evidence that the District has engaged or intends to engage in "widespread assignment of current bargaining unit work" to non-union employes. The District's reassignment of the Grievant's duties was undertaken within the context of reduced funding for general education programs, and financial "cutbacks" so the District could live within its budget. Based on these specific facts and all of the foregoing, the Arbitrator finds a "legitimate reason" existed within the meaning of Article III, Section E, for the District to relieve the Grievant of her TV High School for Adults Program duties during the 1990-91 school year.

The Association argues, contrary to the above conclusion, that other parts of the contract support its position. In this regard, the Association first contends that the District improperly assigned long-established bargaining unit work to non-bargaining unit employes for the purpose of undermining the union and/or weakening the bargaining unit. However, in the absence of a specific contract provision to the contrary, it is clearly a management function to determine what work shall be performed by bargaining unit employes. Here, neither the Recognition Clause, Article II, nor any other contract provision specifically guarantees the bargaining unit the work in question nor prohibits the District from reassigning the Grievant's TV for High School for Adults Program duties. To the contrary, Article III, specifically gives the District authority to reassign the Grievant's duties in the instant case. In addition, as noted above, the record contains no evidence that the District reassigned duties in the instant case in order to undermine the union or weaken the bargaining unit. Therefore, the Arbitrator rejects this argument of the Association.

Similarly, the Arbitrator rejects the Association's claim that the subcontracting clause, Article XXXI, has been violated. In this regard, the Arbitrator believes the circumstances of this case clearly demonstrate that the TV High School for Adults Program work has not been "contracted out" either in

the traditional sense 1/ or in violation of Article XXXI of the agreement. Article XXXI definitely imposes certain obligations on the District if it decides to "contract out" with a non-District entity for goods or services. It also prohibits "contracting out" under certain circumstances. However, the Arbitrator finds that no violation occurred within the meaning of the first sentence of Article XXXI. In this regard, the Arbitrator notes that the Grievant was not laid off from her position with the District, and no vacancy was created by the District's action. In addition, there was no reduction in the Grievant's work week as defined in the aforesaid contract provision. Therefore, the notice requirements in the first sentence of Article XXXI - i.e. 60 days advance notice to the Association of the implementation of any decision to contract out for services - are not applicable. Likewise, the Grievant is not protected by the language of the second sentence of Article XXXI. It is true that the Grievant was hired prior to July 1, 1982. However, as noted above, the Grievant was not laid off in the traditional sense of the word (she still had a part-time job) or in violation of Article XXXI. Her work hours were reduced. However, there is no language in the agreement which guarantees the Grievant any particular hours of work or any specific number of hours per day or per week. Therefore, the Arbitrator rejects this claim of the Association.

The Association also argues that past practice supports its position. Where contract language is ambiguous and subject to differing interpretations then an Arbitrator may look to past practice to give meaning to the language. However, where the language of an agreement is clear and unambiguous, an Arbitrator generally will not give it a meaning other than that expressed. Here, as noted above, the contract language clearly gives the District the right to act as it did in the instant case. Therefore, the Arbitrator rejects this argument of the Association.

In addition, the Association cites several arbitration awards in support of its position. However, the Association failed to provide adequate citation for Arbitrator Bernstone's award. Therefore, the Arbitrator finds it impossible to comment on said award's applicability to the instant dispute. The other arbitration awards cited by the Association in support of its position are distinguishable from the present case. For example, the Arbitrator agrees with the Association's contention that under certain circumstances the transfer of work customarily performed by employes in the bargaining unit can be regarded as an attack on the job security of the employes whom the agreement covers and therefore on one of the contract's basic purposes. However, unlike New Britain Machine Co., supra, the Grievant herein was not laid off from her job. In addition, the District relied on several very specific provisions of its management rights clause as authority for its actions. In contrast, the employer in New Britain Machine Co., supra, relied on more general provisions in its management rights clause to justify its actions. Finally, the District herein had a legitimate reason for its reduction in the Grievant's work week (lack of adequate funding and the need to "cutback" spending) and there is no persuasive evidence the District acted to undermine the Association or the bargaining unit. Therefore, the Arbitrator rejects the Association's reliance on the New Britain Machine Co., supra.

For similar reasons, the Arbitrator rejects the Association's reliance on Colorado Springs, supra.

Finally, the Association cites Mead Corporation, 75 LA 665 (8/26/80) in support of its position. Arbitrator Gross in that case stated:

> In short, the contracting out of bargaining unit work merely because someone else will do it cheaper constitutes an improper evasion of contractual obligations and, in that sense, it does not matter whether the Company acted in good faith or bad faith since the result is the same.

The Association feels the above describes "the type of attitude of the North Central District exhibited on its decisionmaking process." The record, however, does not support a finding regarding same. Here, unlike Mead Corporation, id, the District did not act merely to save money. It was forced to act due to reduced funding and a need to balance the budget. While it is true, as the Association argues, removing work from the Grievant resulted in de minimis financial savings, this action was taken within the context of numerous other cutbacks and savings designed to cope with a reduced budget. In this light the District's action was for cause, contrary to the Association's assertion, particularly since there is no persuasive evidence in the record that the District acted in bad faith toward the Grievant or in derogation of its responsibilities under the contract. In particular, there is no evidence in the record that this action of the District was part of any broad-based

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1/ The District's discussion in its briefs of a traditional contracting out properly describes that process and I agree that such a traditional contracting out has not occurred in the instant case.

attack on union work or members of the bargaining unit.

The facts of this case call for a sympathetic review of the Grievant's claim. In this regard, the Arbitrator notes that the record supports a finding that the Grievant took her job seriously, and gave more than 100% to her work as the Facilitator for the TV High School for Adults Program. In addition, the Grievant ran this program in an extremely competent manner with a real "personal touch" which many of her students appreciated. 2/ However, the Grievant's rights herein flow from the contract. Based on the specific facts of this case; and all of the foregoing; and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the aforesaid issue is NO, the District did not violate the parties' collective bargaining agreement when it eliminated the assignment of Facilitator for TV High School for Adults Program from the Grievant's work assignment for the 1990-91 school year, and it is my

AWARD

That the grievance is denied and the matter dismissed.

Dated at Madison, Wisconsin this 16th day of May, 1991.

By _____
Dennis P. McGilligan, Arbitrator

2/ Association Exhibits 2, 3 and 6.