BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LOCAL 60, AFSCME, AFL-CIO	Case 52 No. 45759 MA-6735
and	
MONONA GROVE SCHOOL DISTRICT	

Appearances:
Mr. Darold O. Lowe, Staff Representative, on behalf of the Union.
Mr. Barry Forbes, Counsel, on behalf of the School District.

ARBITRATION AWARD

The above-entitled parties, herein the Union and District, are privy to a collective bargaining agreement providing for final and binding arbitration before a Wisconsin Employment Relations Commission staff arbitrator. Pursuant thereto, I heard this matter on August 9, 1991 in Monona, Wisconsin. The hearing was not transcribed and both parties filed briefs which were received by September 10, 1991.

Based upon the entire record, I issue the following Award.

ISSUE

> Did the District violate either Section 6.03 or 6.04 of the contract when it unilaterally transferred grievant Carlene Quinlan from Monona Grove High School to Winnequah Middle School and, if so, what is the appropriate remedy?

DISCUSSION

Quinlan, who has worked for the District since 1971 and who is certified as a Helper 2-3, 1/ worked 5.25 hours a day in the Monona Grove High School kitchen where she baked, prepared food, served it, and then cleaned up.

In September, 1990, Jill Olson, a Helper 3, who worked 4.75 hours a day, quit her job at the Winnequah Middle School kitchen. Her vacant job was posted and filled by Barb Loney who was then a Helper 2 and who was already working in that school's kitchen.

The District then changed Loney's former Helper 2 position into a Helper 3 - 2 and transferred Quinlan to that position on November 5, 1990 without posting for it. There, she continued to work 5.25 hours a day doing the same duties as she did previously in the High School. At that time, the District also transferred its entire baking operation from the Monona Grove High School where it was previously located to Winnequah Middle School as a cost-cutting measure aimed at helping reduce the District's 1989-1990 $35,102 deficit and as part of the reorganization of its food service program. The District thus did not fill Quinlan's vacated position at the High School, thereby effectively reducing its kitchen complement there by one employe. As a result, there now are four kitchen employes at the High School compared to 7 at the Middle School. Quinlan grieved her involuntary transfer, hence leading to the instant arbitration.

1/ Quinlan is the only employe classified as a Helper 2-3.

In support of her grievance, the Union argues that the District violated Sections 6.03 or 6.04 of the contract because those "provisions grant worker's rights if their job is eliminated or those of a vacated position" when it failed to either post Loney's vacated position or allow Quinlan to bump to another position. It also claims that these provisions supercede the contractual management's right clause because, in its words, the District "has bargained away its right to transfer the grievant based upon clear language in the Agreement."

The District maintains that it has the right under the management rights clause to move Quinlan the way it did and that it was not required to post Loney's position because moving Quinlan to said position "does not constitute the creation of a 'vacant' or newly-created position or a 'lateral transfer' under Section 6.04 of the contract." It goes on to point out that Quinlan's job duties now are essentially the same that she previously performed at the High School and that the grievance is "absurd" because, if sustained, it would lead to needless and complicated bumping.

The resolution of this issue must first start out by looking at Article XII of the contract, entitled "Management Rights", which provides:

> 12.01 The Board shall have the right to determine the number of employees to be employed, the duties of each employee, the place of their work, and all other matters pertaining to management and operation of the District, including the following:
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> 1. To direct the employees, including the right to assign work and overtime;
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> 2. To establish and require observance of reasonable work rules and schedules;
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> 3. To hire, examine, classify, promote, train, transfer, assign in positions with the school system;
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> 4. To increase, reduce, change, modify or alter the composition in size of the work force, including the right to relieve employees from their duties because of lack of work, and to suspend, discharge or take other disciplinary action against employees for just cause;
>
> 5. To contract out for goods or services, but Employer would have to bargain impact;
>
> 6. To take whatever action is necessary to carry out the functions of the school system in situations of emergency, and to take whatever action necessary to comply with state and federal law;

7. To change or eliminate existing methods, equipment or facilities, and to introduce new or improved methods or facilities.

The exercise of the foregoing shall be limited to the terms of this Agreement.

On its face, then, this language clearly gives the District the right to "direct employes" and to "assign work"; to "transfer" and assign positions within the school system; and to "change or eliminate existing methods, equipment or facilities, and to introduce new or improved methods or facilities." As the District correctly notes, this language supports what it did here.

However, the Union points out that Article XII also has an important caveat because it goes on to provide that the exercise of the foregoing rights "shall be limited to the terms of this Agreement."

Here, Article VI, entitled "Seniority - Proration of Benefits - Probation - Layoff and Rehire", limits the District's otherwise broad discretion by providing in pertinent part:

6.03 In the event that a reduction of the work force shall be necessary because of reasons beyond the control of either party, the first employee laid off shall be the employee with the least seniority provided that the remaining employees are willing and qualified to perform the required duties.

Employees laid off shall retain their seniority with the Employer for fifteen months from date of layoff and shall be called back according to seniority before new employees are hired. Such layoff period shall not be considered as interruptions of continuous service.

6.04 All vacant or newly created positions shall be posted on bulletin boards used by employees of the bargaining unit for a period of eight (8) working days before the position is filled on a permanent basis. All lateral transfers shall be posted. The posting shall list the classification and salary of the position and a general outline of the qualifications required and duties to be performed, and the approximate hours of work. Those employees who are not working during summer months, who before the commencement of the recess have made written request of the business office shall have mailed to them notice of any vacancies that are posted on bulletin boards. Each employee interested in the position shall file a written request for the position with the Food Service Director. The qualified senior employee shall be given the position. The Employer shall make the initial determination as to qualification; however, any employee who feels aggrieved by the Employer's

determination shall have the rights of Article IX, the Grievance Procedure.

. . .

6.07 Employees who are promoted or who transfer shall serve a three (3) month trial period in the new position. During such trial period, employees may return or be returned to their former position at the option of either the employee or the employer.

Contrary to the Union's assertion, however, Section 6.03 is not applicable here because no employees have been laid off. Instead, the District has merely decided to reduce its employe complement by one employe by eliminating the former Helper 2 slot at the Middle School as part of its reorganization to help reduce the District's $35,102 deficit in its food service program. The District clearly has the right under Article XII to thus reduce the size of the work force, to change its existing methods, and to introduce new or improved methods and facilities when it moved its baking operations from the High School to the Middle School. None of this involved a layoff.

That leaves Section 6.04's mandates that "All vacant or newly created positions shall be posted. . ." and that "All lateral transfers shall be posted." Well here, no vacancy exists since the District has chosen not to fill Loney's former Helper 2 position. The District clearly has that prerogative as it is one of the cardinal rules in arbitration that, absent express contract language to the contrary, an employer is not required to fill a vacant position. Absent any vacancy here, the District thus was not required to post for Loney's vacated position.

The Union's case therefore boils down to its claim that Quinlan's new assignment was improper because it represented a "lateral transfer", one which had to be posted under this language.

This interpretation, however, totally negates the District's right to transfer employes under the Management Rights clause. Again, arbitrable law holds that all provisions of a contract should be reconciled if at all possible, as it is not to be lightly presumed that parties agree to contractual language which is to be totally ignored.

That being so, the penultimate question here turns upon whether Quinlan's new assignment represents the kind of "transfer" which the District can unilaterally make under Article XII or whether, instead, it is the kind of "lateral transfer" which must be posted under Article VI, Section 6.04.

Two factors show that it is the former:

One, Section 6.04 itself provides that all postings "shall list the classification and salary of the position and a general outline of the qualifications required and the duties to be performed and the approximate hours of work." Notably absent here is any requirement that the location of the position also must be listed, hence indicating that positions are not limited to a particular job site. For as the District rightly notes: "This

suggests that the District and Union did not contemplate the mere change in the location of a position (without change in occupant of that position) to be covered by Section 6.04."

Two, Section 6.07 states that "Employees who are promoted or who transfer shall serve a three (3) month trial period in the new position." By providing for such a trial period, this language clearly establishes that such positions are different from the positions previously held. Since Quinlan now is doing the very same Helper 3 - 2 duties she formerly did at the High School, it thus follows that this is not the kind of transfer which is subject to such a trial period or the concomitant posting requirement.

Accordingly, given the fact that Section 6.04 does not tie a person's job to a particular location and the fact that Section 6.07 restricts postings to jobs which entail different duties, I conclude that the District did not violate the contract when it unilaterally moved Quinlan from the High School to the Middle School, as it had the right to do so pursuant to the contractual management rights' provision.

In light of the above, it is my

AWARD

That the District did not violate the contract; the grievance is thus denied and dismissed.

Dated at Madison, Wisconsin this 22nd day of November, 1991.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator