BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS	
	Case 47 No. 45838 MA-6775
and	
LAKE HOLCOMBE SCHOOL DISTRICT	

Appearances:
Mr. Kenneth J. Berg, Executive Director, Northwest United Educators, appear
Weld, Riley, Prenn & Ricci, S.C., by Ms. Kathryn J. Prenn, appearing on behalf

ARBITRATION AWARD

Pursuant to a request by Northwest United Educators, herein the Union, and the subsequent concurrence by the Lake Holcombe School District, herein the District, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on August 8, 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 October 7, 1991 at Holcombe, Wisconsin. The hearing was not transcribed. The parties completed their briefing schedule on November 29, 1991.

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

ISSUES:

The parties stipulated to the following issues. 1/

1. Did the District violate the collective bargaining agreement when it reduced the grievant's contract to an 8/9 contract, effective with the 1991-92 school year?

2. If so, what is the appropriate remedy?

BACKGROUND:

In preparation for issuing teacher contracts for the 1991-92 school year, the District studied and reviewed its staffing needs. As a result of this review, the District partially reduced two of its teachers, Jerry DeBarge and Shirley Hofacker. DeBarge's contract was reduced to a 7/9 contract, while Hofacker's contract was reduced to an 8/9 contract. The reduction in Hofacker's position resulted from a reduction in the number of health classes.

When the grievant's contract was reduced, the District did not say anything to her about the exceptions listed under Article XIII or indicate that

1/ The parties also stipulated that the grievance filed on behalf of Jerry DeBarge is "dropped".

she was not qualified for any of the extra assignments in question.

Both employees subsequently grieved the reduction of their contracts. The District denied both grievances and they were appealed to arbitration. As noted above, the parties stipulated that the grievance filed on behalf of Jerry DeBarge is "dropped." The parties also stipulated that this is a partial reduction case, not a non-renewal under Sec. 118.22 Stats.

The Union acknowledges that there is no dispute regarding whether the reduction in Hofacker's regular teaching position was appropriate. Rather, the dispute focuses on whether the grievant has rights under the collective bargaining agreement to bump into portions of the assignments held by four less senior teachers. These assignments are gifted and talented and at-risk programs, and distance learning supervision. They are (or were) taught by Dean K. Johansen, Linda L. Strop and Gayle Kirkman, and John Gindt, respectively.

The grievant is currently certified in Home Economics and Health, 7-12.

Numerous policy decisions were involved in the District's assignment of the classes in question. They are described in the following paragraphs.

The gifted and talented program is primarily a K-6 program. As such, the District assigned the program to a teacher with an elementary license, Dean K. Johansen. Johansen was also selected for the program because he had a flexible schedule, he had the time, and he was very interested in the program.

The gifted and talented program is a pull-out program which occurs at various times throughout the day. Johansen's flexible schedule allowed him to meet with several gifted and talented students per hour and to handle the individual assignments called for by the program.

Johansen's interest in the gifted and talented program had been demonstrated by his attendance at numerous workshops and meetings related to the program and by his course work (two courses) in the area. Johansen also has had the responsibility for developing the curriculum for the gifted and talented program.

The District's assignment of teachers to the at-risk program also reflects several policy decisions made by the District. Both the K-8 and 9-12 components of the program are assigned to the two teachers who are also the Chapter I teachers for those grade levels. Linda Strop serves as the K-8 Chapter I and at-risk teacher, while Gayle Kirkman serves as the 9-12 Chapter I and at-risk teacher.

The K-12 Chapter I program focuses primarily on reading, and thus, a 316 license is required for the program. The 316 license requires several courses in reading and both Strop and Kirkman have such licensure.

Even though the at-risk program is shown on the master schedule as one period per day, the practice since the beginning of the program has been that the at-risk students are scheduled anytime during the day during the Chapter I time. Kirkman is scheduled with Chapter I students for most of her work day, and, therefore, can work with at-risk students throughout the school day. Strop also has some flexibility in her schedule to accommodate at-risk students. If all the at-risk students had to be scheduled within one class period, a number of students would not get adequate instruction.

Both Strop and Kirkman have attended numerous workshops, meetings, and courses regarding working with at-risk students. As the District's Reading Coordinator, Strop has also had responsibility for developing the District's

remedial reading plan for K-3 students.

The District has also implemented an at-risk task force. The task force meets after school and all teachers are invited to serve on the task force. Although numerous teachers have volunteered to serve on the task force, the grievant has never volunteered for the task force. Moreover, the grievant has not worked with any student in either of the District's two mentor programs.

The District's decision to initially assign Gindt to supervise the distance learning class also flowed from the scheduling process and the policy decision making process. In the case of the grievant's schedule for 1991-92, the District reworked and reshuffled the schedule in a successful effort to prevent her from losing an additional class due to low enrollment. Furthermore, even though she was going to be part-time, the District assigned her a study hall (not all teachers have a study hall assignment, some instead teach an additional period) and a full preparation period, even though not required by the contract. This scheduling process resulted in the grievant teaching a class fourth period which runs until 11:05 a.m. The Japanese distance learning program begins at 11:00 a.m. The District gave this assignment to Gindt because he had a prep period during the fourth period and could be available at 11:00 a.m. for the start of the class. The State requires a certified teacher supervise this class.

However, these plans went astray shortly into the 1991-92 school year. During the spring of 1991, Gindt was assigned responsibility for developing the District's education for employment program as mandated by the Twenty Standards, effective with the 1991-92 school year. Prior to 1991-92, the program was handled by Assistant Administrator Lapp and the District's Local Vocational Education Coordinator (LVEC) who was contracted through CESA. Due to a lack of state funding for 1991-92, however, the District no longer has LVEC services available. As a result, the Carl Perkins' funds (federal monies for special education vocational programs) which were administered by the District's LVEC

must now be administered by District personnel. Since it made sense to consolidate the education for employment program duties and the administration of the Carl Perkins' funds in one position, both responsibilities were assigned to Mr. Gindt.

These additional duties have been much more time consuming than predicted. Shortly before the hearing in this case, Gindt approached Assistant Administrator Lapp stating that he could not get all of the additional work done and that he needed more time during the day. The District did not anticipate in advance of the 1991-92 school year the full extent of the additional workload they had placed on Mr. Gindt.

On October 4, 1991, just prior to the hearing, the District gave the grievant the distance learning assignment which raised her back to 9/9 or a full contract. The District made the assignment because John Gindt needed more time during the day to get his other work done. The grievant now takes her lunch break either third or seventh hour, i.e. between 9:42 - 11:22 a.m. or between 1:00 - 1:41 p.m. in order to do the distance learning supervision. However, she is still not available at the start of said class which according to the District is less than "ideal." Gindt's compensation was not reduced as a result of his loss of the aforementioned assignment.

General certification is all that is needed to teach in the areas of gifted and talented and at-risk, or to supervise the distance learning class.

About six years ago, in response to partial layoffs by the District, the Union proposed that Article XIII be changed to a seniority based layoff clause. The District wanted some exemptions from strict seniority. The parties agreed on three exemptions as currently contained in Article XIII. The parties also agreed on a seniority based layoff clause so long as the employee was both "qualified and certified" to fill the disputed position. This agreement is contained in the language of Article XIII. The second paragraph of Article XIII on down is basically the Board's language.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE VI

MANAGEMENT RIGHTS

1. The Board on its own behalf and on behalf of the electors of the school district, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the school code and laws of the state, the Constitution of the State of Wisconsin, and/or the United States. Such rights, duties, etc., shall include, by way of illustration and not by way of limitation the right to:

   (a) Manage and control its business, its equipment, and its operation and to direct the working forces and affairs of the entire school system within boundaries of the Lake Holcombe Public Schools.

   (b) Continue its rights, policies and practices of assignment and direction of its personnel, determine the number of

personnel, and schedule all the foregoing.

(c) Direct the working forces, including the right to establish and/or eliminate positions, to hire and rehire, evaluate, promote, suspend, non-renew and discharge employees, transfer employees, assign work or duties to employees, including assignments for all programs of an extra-curricular nature, determine the size of the work force and to lay off employees.

(d) Determine the services, supplies and equipment necessary to continue its operation and to determine all methods and means of distributing the above and establishing standards of operation, the means, methods and processes of carrying on the work, including automation or subcontracting thereof or changes therein.

(e) Determine the qualifications of employees, including physical conditions.

(f) Determine the policy affecting the selection, testing or training of employees.

2. In meeting such responsibilities, the Board acts through its administration staff. Such responsibilities include, without being limited to, the establishment of education policies, the construction, acquisition and maintenance of school buildings and equipment; and revision of rules and regulations governing and pertaining to work and conduct of its employees. (The Board and administration staff shall be free to exercise all of its managerial rights and authority.)

3. The listing of specific management rights in this Agreement is not intended to be nor shall be restrictive of or a waiver of any rights of management not listed and specifically surrendered herein whether or not such rights have been exercised by the Board in the past.

4. The Board reserves all rights and responsibilities not specifically nullified by this Agreement.

5. The rights listed herein shall also be subject to the laws and Constitution of the United States and the State of Wisconsin and the express provisions hereof.

. . .

ARTICLE XIII

LAYOFFS

1. When the Board determines that it is necessary to lay off a teacher, in whole or in part, teachers shall be laid off in the inverse order of their initial employment according to the following procedure.

   A teacher whose position is eliminated shall either be transferred to a vacant position for which he/she is qualified and certified, or replace the teacher with the lowest seniority anywhere within the school system in the area in which the teacher whose position is eliminated is qualified and certified at the time of the layoff notice. The teacher with the lowest seniority would then be laid off except:

   (a) If the Board can demonstrate that by the layoff of a teacher a vacancy in a dual teaching assignment (one which requires dual certification) will occur for which no qualified replacement can be found, the teacher with that dual assignment and dual certification shall be exempt from layoff.

   (b) If the Board can demonstrate that by the layoff of a teacher a vacancy in a co-curricular assignment will occur for which no qualified replacement can be found, the teacher with that co-curricular assignment shall be exempt from layoff.

   (c) If (a) or (b) do not apply, the Board can, for legitimate reasons, based on their relative contribution to the District, exempt one teacher from bumping.

Qualified in this section means having taught at least one course for one semester within the past five years in the area of certification in the Lake Holcombe School District or having obtained six semester credits in the area of certification within the past five years or having obtained certification within the past five years in the area. It shall be the sole responsibility of the individual teachers to keep their current certification on file in the office of the Superintendent of Schools. K-6 and 7-12 shall be considered two separate areas for purposes of qualification.

. . .

UNION'S POSITION:

The Union argues that the District violated Article XIII when it partially reduced the grievant's contract and kept less senior teachers at full contract in areas where general but not specific certification is required.

In support thereof, the Union maintains that since the layoff language speaks to partial layoff "the District must do their cutting and transferring

to allow the most senior person to survive with a full contract as long as they are qualified and certified to handle the courses in question." The Union adds that paragraph 2 of Article XIII requires the District, if a vacant position is not available, to "replace the teacher with the lowest seniority anywhere within the school system in the area in which the teacher whose position is eliminated is qualified and certified at the time of the layoff notice." The Union argues that a teacher satisfies the meaning of "qualified" in Article XIII if he/she satisfies any of the three requirements found in paragraph 3. The Union concludes that "Since there is not any specific certification requirements in any of the three areas in question, it would follow that all teachers who are certified in any area and have taught in any area in the last five years would be qualified to teach in any of these areas in question."

In addition, the Union argues that none of the three exceptions to seniority apply. In this regard, the Union claims the first two exceptions have "absolutely no application" to the case at hand. With respect to the third exception - the Board can for legitimate reasons exempt one teacher from bumping - the Union points out that the Board never indicated to the grievant "that they were employing this exception and even if they had, they would have had to indicate which of the three positions they were excepting."

The Union maintains that the District may have thought they were implementing their professional judgment in their actions but that this does not satisfy the requirements of Article XIII.

In conclusion, the Union notes that the grievant is the most senior teacher in the District, that she is certified and therefore qualified to teach in any of the areas in question. In fact, the Union points out that the grievant was assigned to one of these areas, Japanese by Distance Learning, on October 4, 1991, without any shuffling of classes or change in schedule. The Union believes that any of the three classes could have and should have been assigned to the grievant at the start of the 1991-92 school year. The Union requests that the Arbitrator find for the grievant and order the District to make her whole for wages lost for the 1/9 reduction from the beginning of the 1991 school year until October 4.

DISTRICT'S POSITION:

The District first argues that the bumping rights provided by Article XIII are not applicable in the instant case. In this regard, the District points out that in order for the bumping rights to be available, the employee must be both certified and qualified. The employee can meet the "qualified" prong of the test by:

1. having taught at least one course for one semester within the past five years in the area of certification, or

2. having obtained six semester credits in the area of certification within the past five years, or

3. having obtained certification within the past five years in the area. (Emphasis supplied)

The District notes that Article XIII places a further restriction on the definition of "qualified" as it states, "K-6 and 7-12 shall be considered two separate areas for purposes of qualification. (Emphasis supplied) Pursuant to these restrictions, the District argues, "a high school physical education teacher would not be entitled to bump an elementary physical education teacher

even though the high school physical education teacher possessed K-12 certification."

The District concedes that the Union is correct when it argues general certification is all that is needed to teach in the areas of gifted and talented and at-risk, or to supervise the distance learning class. As noted above, the District emphasizes, however, that certification is only one prong of the test; the express language of Article 13 also requires a teacher be "qualified". The District maintains that when the "definition" of "qualified" is applied to the present case "it quickly becomes apparent that the parties did not intend to provide bumping rights for positions for which there is no specific certification required. In this regard, the District states:

> All three options for meeting the definition of "qualified" refer to the area of certification. The parties have agreed that the gifted and talented and the at-risk programs, as well as the distance learning supervisor are not areas for which a specific certification is required. Therefore, the "qualification" test becomes inoperable and is a clear indicator that the parties did not intend to apply bumping rights to these sorts of generic duties. (Emphasis supplied)

The District first applies the above rationale to the distance learning class. In this regard, the District argues this assignment is merely a hybrid of the long line of cases in which arbitrators have held that bumping rights do not apply to general assignments like study hall. The District cites a number of arbitral decisions in support thereof. The District adds that taken to its logical conclusion, if enrollments in the grievant's area of teaching continue to decline, her assignment would consist entirely of supervisory study halls and distance learning classes and she would not be responsible for teaching a single student. The District maintains this would be unreasonable result and not required citing the rationale of Arbitrator Vernon in Loyal School District, Case No. M-83-8 (7/13/85) in support thereof.

Assuming arguendo that bumping rights do apply in this case, the District feels the grievance must still be dismissed because the grievant does not meet any of the specific criteria of the "qualified" test. In this regard, the District notes she has not taught one course in the gifted and talented or the at-risk programs for at least one semester within the past five years or supervised a distance learning class for one semester within the past five years. Nor has she earned six semester credits in the gifted and talented or at-risk areas within the past five years. The District adds the third option for meeting the "qualified" test, i.e. obtaining certification in the area within the last five years, is not applicable because there is no certification for gifted and talented, at-risk or distance learning supervision. The District claims the contractual separation of K-6 and 7-12 further precludes the grievant from bumping into these positions because the grievant is not licensed to work with elementary students.

Finally, the District maintains it has not waived, and may still exercise, its right to exempt one teacher from bumping.

The District next argues that its decisions regarding the programs at issue are policy decisions reserved to it by the contractual management rights clause. The District describes, in its brief, the numerous policy decisions involved in the development and staffing of these classes, and claims "sole authority to make these decisions is vested with the District through its management rights." The District cites Arbitrator Buffett in Ondossagon School District, Case XVI, No. 30617, MA-2628 (4-4-83) in support thereof. In

Ondossagon the District reduced the contract of its high school art teacher. Among its other arguments, the District notes, the Union argued that the teacher, who was certified in Art K-12, had seniority rights to displace first, second, or third grade teachers during the one-hour-a-week art instruction that was being given by the regular classroom teachers. The District points out that Arbitrator Buffett rejected the Union's argument and stated:

> However, the Association's argument does not recognize that such a change would have many ramifications in the education program. For example, the instruction offered by a teacher trained in art education would be different from the instruction offered by a teacher trained in primary classroom education. Also, the instruction of a teacher who came at a pre-established time each week would be different from the instruction of a teacher who could schedule it into each week's lessons with flexibility. The changes proposed by the Association are educational policy choices reserved to the Board by Article X, Management Rights Section 1 . . . .
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> Inasmuch as the layoff provision has no specific language overriding the District's right to establish means, methods and courses of instruction, the layoff provision cannot be interpreted to obligate the District to implement layoffs in such a manner as to interfere with these educational policy choices.
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> (Emphasis supplied)

The District argues that the Union's contentions herein amount to a similar intrusion. "Clearly, such a mandate would be an egregious interference with the District's educational policy choices. The District's decisions regarding the development, qualifications, staffing, and scheduling of the at-risk and gifted and talented programs have not been arbitrary or capricious, but have been founded on sound educational policies. In fact, the Board should be commended for taking the steps it has in the development of these programs." The District concludes these types of policy decisions are reserved to the Board, and there is no contractual provision overriding the Board's authority to make these types of fundamental policy decisions.

In addition, the District argues that the assignment of the grievant to the distance learning class was not made "on the basis of any alleged bumping rights, but rather because she (the grievant) was there and because the District needed some relief for Mr. Gindt."

Lastly, the District maintains that the Union's requested remedy is beyond the scope of the Arbitrator's authority. Part of the problem, according to the District, is the Union's failure to articulate a precise remedy. Furthermore, contrary to the Union assertion that the grievant can bump "any of the three" employees in question, the District argues that even under the best case scenario "Article XIII would still not allow the grievant to select any of the three for its bumping rights are tied to bumping the least senior employee." (Emphasis added) Finally, the District repeats its claim that what "the Union is really requesting the Arbitrator to do is to rework the class schedule, to usurp the Board's educational policy decision-making authority and to come hell or high water find the grievant a full-time position." Such a result, according to the District, exceeds the function and authority of the Arbitrator citing the United States Supreme Court in United Steelworkers v. Enterprise Wheel and Car Corp., 80 S. Ct. 1358, 1361 (1960) and Arbitrator

Vernon in Boyceville Community School District, A/P M-91-1 (4/30/91) in support thereof.

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

DISCUSSION:

At issue is whether the District violated the collective bargaining agreement when it reduced the grievant's contract to an 8/9 contract, effective with the 1991-92 school year.

The District first argues that the bumping rights provided in Article XIII are not applicable herein. For the reasons discussed below, the Arbitrator does not agree.

Article XIII provides that a more senior teacher whose position is reduced or eliminated may bump the teacher with the lowest seniority provided the person is qualified and certified for the position at the time of the layoff notice. As noted by the District, the term "certified" requires little explanation. The District also correctly points out that the parties have expressly defined the term "qualified" in Article XIII. The employee can meet the "qualified" prong of the test by:

> 1. having taught at least one course for one semester within the past five years in the area of certification, or
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> 2. having obtained six semester credits in the area of certification within the past five years, or
>
> 3. having obtained certification within the past five years in the area. (Emphasis supplied).

The District goes on, however, to argue that when the definition of "qualified" is applied to the present case, it becomes apparent that the parties did not intend to provide bumping rights for positions for which there is no specific certification required. The District reaches this conclusion based on the following rationale:

> All three options for meeting the definition of "qualified" refer to the area of certification. The parties have agreed that the gifted and talented and the at-risk programs, as well as the distance learning supervisor are not areas for which a specific certification is required. Therefore, the "qualification" test becomes inoperable and is a clear indicator that the parties did not intend to apply bumping rights to these sorts of generic duties. (Emphasis supplied).

Contrary to the District's assertion, there is no persuasive evidence that the "qualification" test becomes inoperable when dealing with areas where specific certification is not required. Nor is there any "clear indicator" that the parties did not intend to apply bumping rights to the sorts of duties in question. Article XIII does not specifically say this. Nor does the District offer any persuasive evidence of bargaining history to support its interpretation of the disputed contract language.

The District first argues that in the situation with the distance learning class, for example, the case is similar to a long line of cases in which arbitrators have held that bumping rights do not apply to study hall assignments. In the first place this is not a study hall assignment. Secondly, the State requires a certified teacher to supervise the distance learning class. In addition, unlike study hall, actual class room instruction is going on in the distance learning class. This case is distinguishable from those cited by the District.

Likewise, this case is distinguishable from Loyal School District, supra. In that case, according to the District, Arbitrator Vernon stated:

> There simply is no strict requirement to assign such duties (study halls or preparation periods) based solely on seniority. If there were such a requirement, carried to its logical extreme, a senior teacher, in order to be retained, might end up being assigned all study hall work while it cased the partial reduction of seven or eight other teachers, in other subject areas, who each had one study hall assignment. This would be an unreasonable result, based on this language.
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> (Loyal at p. 23; Emphasis supplied)

However, Arbitrator Vernon also stated, as noted in the District's brief, that the contract language in question "speaks to discipline(s) to be retained. Thus, it does not appear to specifically address the seniority rights of employees to be retained for non-teaching duties."

Article XIII is not as specific; it does not identify particular discipline(s) to be retained except in two instances, Section 1, (a) and (b), which clearly are not applicable herein. Otherwise, Article XIII is fairly broadly written: "A teacher whose position is eliminated shall . . . replace the teacher with the lowest seniority anywhere within the school system in the area in which the teacher whose position is eliminated is qualified and certified at the time of the layoff notice." (Emphasis added). It is the language of Article XIII the Arbitrator must interpret, not the more narrow language Arbitrator Vernon apparently relied upon to reach his conclusions in Loyal School District, supra.

The District argues that even if the Arbitrator rules that Article XIII bumping rights do apply in this case, the grievance must still be dismissed because the grievant does not meet any of the specific criteria of the "qualified" test. In this regard, the District notes the grievant has not taught one course in the gifted and talented or the at-risk programs for at least one semester within the past five years. Nor, according to the District, has the grievant supervised a distance learning class for one semester within the past five years. However, contrary to the District's assertion, this is not what Article XIII requires. Article XIII clearly provides that qualified within the meaning of that contractual provision "means having taught at least one course for one semester within the past five years in the area of certification in the Lake Holcombe School District." (Emphasis added) It is undisputed that the distance learning class requires no specific certification. Since there is no specific certification requirements in this area, it follows that all teachers who are certified in any area and have taught in any area in the last five years for the District would be qualified to teach the distance learning class. It is clear that the grievant meets this requirement. It is also clear that the grievant, as the more senior employee, is eligible to bump John Gindt, as the distance learning teacher. 2/

The District argues, contrary to the above, that its decision is a policy

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2/ The District argues that the grievant can bump only the least senior employee in question. However, the District offered no evidence regarding the relative seniority of the employees in question.

decision within its contractually reserved management rights. However, in this case the more generally enumerated management rights must yield to the specific rights afforded teachers in Article XIII pertaining to layoff. The Arbitrator has simply applied the clear language of Article XIII to the facts at hand in order to find that the grievant had a right to replace Gindt as the distance learning teacher. Such an approach is well within his authority as the Arbitrator and conforms to the United States Supreme Court's oft-quoted statement on the function of arbitrators:

> Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.
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> United Steelworkers v. Enterprise Wheel and Car Corp., supra.

as found in the District's brief.

A question remains as to the appropriate remedy. The grievant is currently teaching the Distance Learning Class effective October 4, 1991. The Union requests that the Arbitrator direct the District to make the grievant whole for wages lost for the 1/9 reduction in her contract from the beginning of the 1991 school year until October 4. The Arbitrator believes such an order is appropriate. Having reached this conclusion, the Arbitrator finds it unnecessary to decide the other issues raised by the District. However, as the District correctly points out, it has not waived its right to exempt one teacher from bumping. If the District exercises its right to exempt Gindt from bumping than a grievance may arise as to whether the District exercised this right "for legitimate reasons." Depending on the outcome of such a claim, an issue might also arise regarding the grievant's bumping rights vis-a-vis the other teachers (Johansen, Strop and Kirkman) in question. The District, on the other hand, may decide not to exercise its right to exempt Gindt from bumping at which point this dispute need not proceed any further.

Based on the above, the Arbitrator finds that the answer to the issue as stipulated to by the parties is YES, the District violated the collective bargaining agreement when it reduced the grievant's contract to an 8/9 contract, effective with the 1991-92 school year.

In view of all of the foregoing, it is my

AWARD

That the grievance is sustained, and the District is ordered to make the grievant whole for wages lost for the 1/9 reduction from the beginning of the 1991 school year until October 4, 1991.

Dated at Madison, Wisconsin this 25th day of February, 1992.

By _____
Dennis P. McGilligan, Arbitrator