BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTH CENTRAL TECHNICAL COLLEGE	Case 47 No. 47082 MA-7171
and	
NORTHCENTRAL PARAPROFESSIONAL/TECHNICAL ASSOCIATION	

Appearances:
Ruder, Ware & Michler, S.C., by Mr. Dean R. Dietrich, 500 Third Street, Suite 700, P
Mr. Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North

ARBITRATION AWARD

North Central Technical College, hereinafter referred to as the Employer, and Northcentral Paraprofessional/Technical Association, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a request for arbitration the undersigned was appointed by the Wisconsin Employment Relations Commission to arbitrate a dispute over the reduction of an employe's work schedule. Hearing on the matter was held in Wausau, Wisconsin on May 5, 1992. Post-hearing arguments and reply briefs were received by the undersigned by June 19, 1992. Full consideration has been given to the testimony, evidence and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

> "Did the Employer violate the collective bargaining agreement when the Employer reduced the grievant's work schedule from forty (40) weeks to thirty-eight (38) weeks?"
>
> "If so, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

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. [Emphasis added]

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.

BACKGROUND

The Employer provides various vocational, technical, and adult education programs in and around the Wausau, Wisconsin area. For the last eight (8) years it has employed James Beyer, hereinafter referred to as the grievant, as a Learning Resource Center Technician working a work schedule of forty (40) weeks per school year at the Employer's Wausau Campus. The grievant's duties include various responsibilities for setting up programs prior to the commencement of the school year and shut down duties after the end of the school year. At the beginning of the 1991-1992 school year the grievant was issued a letter of appointment which stated the Employer agreed to employ the grievant as a full-time employe for a forty (40) week period commencing August

5, 1991 and ending May 29, 1992. 1/ On December 11, 1991 the Employer's Personnel Director, Larry Korpela, issued the grievant a revised letter of appointment changing the grievant's work schedule from forty (40) weeks to thirty-eight (38) weeks. 2/ The grievant was also informed on December 13, 1991 by the Employer's District Director/President, Dr. Donald Hagen, that his work schedule would be revised in accordance with the revised letter of appointment issued by Korpela. On December 20, 1991 the grievant filed the instant grievance alleging the Employer's actions had violated the long standing practice between the Union and the Employer of not revising letters of appointment once they had been issued. Thereafter the grievance was processed to arbitration in accordance with the parties' grievance procedure.

In planning for the 1991-1992 school year the Employer was aware it was facing a shortfall, estimated to be $500,000.00, as a result of a levy limitation placed upon vocational schools by State of Wisconsin Statutes. Joe Giavononi, the Dean of the grievant's program division (Trade and Industrial Division), was directed by the Employer to reduce the division's budget by $150,000.00. One of a number of fiscal planning decisions made by the Employer was to reduce paraprofessional/technical staff to thirty-eight (38) week work schedules. This decision impacted on four (4) other employes besides the grievant (Vi Markoff, Mike Clark, Eileen Presley and Peter Shank). Another fiscal planning decision made was to reduce five (5) paraprofessional/technical staff from fifty-two (52) weeks to thirty-eight (38) weeks.

At the hearing Korpela testified he prepared a letter for Hagen's signature which was sent to all employes affected by the reduced work schedules and mailed to employes on March 5, 1991. The grievant testified he never received such a letter and that had he received such a letter he would not of grieved the Employer's actions. Union Secretary and Grievance Committee Chairperson Eileen Presley testified she did receive such a letter, further, that she did not grieve the Employer's actions in reducing her work schedule. Giavononi testified he discussed the reduced work schedules with all affected employes in his division and that he thought it was also raised in a divisional meeting. The Grievant testified he was never informed his work schedule would be reduced.

UNION'S POSITION

The Union contends the Employer violated the parties collective bargaining agreement when, at mid-term, the Employer unilaterally changed the date of the grievant's ending date of employment from May 29,1992 to May 20, 1992. The Union avers the Employer did not have a legitimate reason to reduce the grievant's work year based upon the unique circumstances of the instant matter. The Union points out there is a long standing practice of establishing the work year for employes in the Spring of the preceding year. The Union acknowledges the March 5, 1991 letter is such a document but points out the grievant never received such a letter. The Union argues subsequent Employer documents, a May 15, 1991 memorandum from Clyde Owens to Korpela requesting a letter of appointment be issued to the grievant for forty (40) weeks, and, the June 27, 1991 letter of appointment, nullify any effect the March 5, 1991 letter may have had.

The Union argues the Employer does not have unrestricted power to reduce

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1/ A copy of the grievant's letter of appointment is contained in Appendix "A".

2/ A copy of the revised letter of appointment is contained in Appendix "B".

the grievant's work year and thus his wages by $857.92. The Union stresses that the financial reasons claimed by the District amount to 0.0027% of the Division's budget while the employe's burden is five percent (5%) of his wages. The Union contends any type of equity balancing clearly favors the grievant. The Union argues the merits of the Employer's financial arguments based on a minuscule amount must be weighed against the clear commitment of the Employer to the grievant for forty (40) weeks of work for 1991-1992. The Union asserts the late notice to the grievant in December of 1991 is an obvious hardship to the grievant. The Union also argues that reason and equity are standards to be used for the interpretation of an ambiguous provision such as legitimate reason(s) and in the instant matter both are unquestionably on the side of the grievant. The Union also points out that the Employer's correction of its alleged mistake leads to a harsh result for the grievant.

The Union also contends a claim by the Employer of a justified concern over the precedent of an award in favor of the grievant is without merit. The Union's position is simply that the sequence of determining the grievant's work schedule was out of sync through no fault of the grievant. The Union concludes that since no measurable harm is done to the Employer's financial condition by sustaining the grievance the equity of the Union's position cannot be denied. Here, the Union again stresses equity must be used in determining the appropriate interpretation of a legitimate reason.

The Union in its reply brief asserts the grievant's testimony, that he never received the March 5, 1991 notification of reduction letter, was unrefuted by the Employer. Thus the Employer's reliance on the March 5, 1991 letter as a key fact in the instant matter does not square with the reality of the record of the hearing. The Union also argues the January list of budget cuts made by the Employer in 1991-1992 are not on point to the $857.92 reduction for the grievant from the $3.5 million budget for the Trade and Industrial Division. The Union contends the December cut in the grievant's salary after the Employer's budget had been established and was operational was unnecessary and totally unfair to the grievant. The Union concludes all the Employer's machinations and protestations with no legitimate basis cannot hide the unfair treatment of the grievant in this particular fact situation.

The Union would have the undersigned sustain the grievance and direct the Employer to make the grievant whole.

EMPLOYER'S POSITION

The Employer contends it had legitimate reasons to reduce the weeks of work of the grievant during the 1991-1992 school year and thus the Employer acted in compliance with Article III of the collective bargaining agreement. The Employer asserts that the financial and fiscal restraints of the Employer for the 1991-1992 school year constituted legitimate reason for the Employer to reduce the grievant's work schedule from forty (40) weeks to thirty-eight (38) weeks. The Employer argues the undisputed testimony of Korpela and Giavononi demonstrate the Employer was experiencing a substantial budget short fall during the planning for the 1991-1992 fiscal year. The shortfall was in excess of $500,000.00 and the budget for the Trade and Industrial division was reduced by $150,000.00. The Employer points out it made a number of fiscal planning decisions including the decision to reduce the schedules of employes who had forty (40) week work schedules to thirty-eight (38) week work schedules.

The Employer also points out four (4) other employes had there work schedules reduced besides the grievant and only the grievant filed a grievance over the matter. The Employer asserts that because the Employer was facing a severe budget crunch due to a 1.5 mil levy limitation it was unable to levy monies to meet budget needs. Therefore the Employer argues it was required to

make budget reductions. The Employer contends that the Employer's conduct in reducing the grievant to a thirty-eight (38) week work schedule, as it did with four (4) other employes, was based on the legitimate needs of the Employer. Therefore the Employer concludes it acted in compliance with Article III of the parties collective bargaining agreement.

The Employer also contends the grievant was advised of the reduction in work weeks. The Employer argues the letter of appointment the grievant received allows the Employer to reduce work weeks. The Employer points out that there is no notice requirement or restriction indicating an employe must be advised of a reduction in work weeks prior to the commencement of the school year. The Employer also points out that Hagen, pursuant to established procedures sent a letter to the grievant on March 5, 1991. The Employer further points out that Giavononi indicated he met with all affected employes and discussed the reduction of work weeks with each of them. The Employer concludes it acted in good faith in advising the grievant on March 5, 1991 of the pending reduction and when Giavononi discussed the matter with him.

The Employer contends the grievant is attempting to take advantage of a bookkeeping error by seeking to enforce a forty (40) week letter of appointment. The Employer argues it corrected this good faith error when Korpela became aware of the problem and issued the grievant a new letter of appointment.

In its reply brief the Employer asserts equity does not support the Union's interpretation of the collective bargaining agreement. The Employer argues that the Employer has the right to "relieve employees from their duties because of lack of work or any other legitimate reason.". The Employer asserts equity does not allow the undersigned to ignore the language of the collective bargaining agreement and the legitimate reasons provided by the Employer for reducing the weeks of work of the grievant.

The Employer also argues the Union has misquoted the applicable collective bargaining agreement language when arguing that the Employer does not have the authority to unilaterally reduce the work weeks of employes. The Employer points out that the Employer's power is unrestricted but for the requirement that the reasons for such action are legitimate and not arbitrary or capricious. The Employer again points out the letter of appointment the grievant received clearly allows the Employer to modify the number of work weeks of work per year at its sole discretion. The Employer further asserts the Union's definition of legitimate (based on logical reasoning; reasonable) supports the Employer's position that it was reasonable to reduce the grievant's work week schedule just as the Employer had for other employes to meet budget constraints.

The Employer also argues the Union's argument that the reduction of the grievant's work week had little impact on the overall fiscal condition of the Employer fails to take into account it was the total accumulated effect of the many changes and reductions, not just the effect of the grievant's reduction on the total budget. The Employer asserts it acted properly in exercising its authority under the collective bargaining agreement and the letter of appointment and that the Union cannot demonstrate this action did not assist the District in dealing with its budget deficit.

The Employer also contends that it complied with appropriate procedures in notifying the grievant of the work week reduction and that any error committed by the Employer does not modify its authority to reduce work weeks. The Employer argues the grievant's receipt or non receipt of the March 5, 1991 letter does not limit the authority of the Employer under Article III and the provisions of the letter of appointment to reduce the grievant's work week

schedule based upon the financial needs of the Employer. The Employer concludes that absent any notice requirement which would prohibit the Employer from reducing the work week schedule based upon the needs of the Employer, the Employer's actions in this matter were legitimate and there is no basis for the grievance.

The Employer would have the undersigned deny the grievance.

DISCUSSION

The record herein demonstrates that in the Spring of 1991 the Employer, in order to deal with a budget deficit, determined to reduce the work schedules of forty (40) week employes to thirty-eight (38) weeks. Letters were sent to the effected employes on March 5, 1991. The grievant disputes receiving such a letter. On June 27, 1991 the grievant was issued a letter of appointment for a forty (40) week work schedule. During the Fall of 1991, while reviewing budget updates, the Employer became aware of the grievant's June 27, 1991 letter of appointment. On December 11, 1991 the Employer issued to the grievant a revised letter of appointment for a thirty-eight (38) week work schedule. Thereafter the instant grievance was filed.

The record also demonstrates that neither the Union nor any of the other four (4) employes whose work week schedules were impacted by the Employer's actions of reducing work week schedules in order to meet its budgetary constraints grieved the matter. Included in these four (4) employes was the Union's Secretary and Grievance Chairperson Eileen Presley. Thus the undersigned finds the Union, when it did not dispute that the Employer's actions commencing in March of 1991 of reducing work week schedules to thirty-eight (38) weeks because of budgetary constraints, did not dispute that the Employer's actions were for legitimate reasons. In the instant matter the distinctions between the Employer's actions as they impacted on the other four employes and as they impacted on the grievant are the grievant's claim he did not receive the March 5, 1991 letter, that he was never made aware his work schedule would be reduced and the fact the grievant was issued on June 27, 1991 a letter of appointment for a forty (40) week work schedule. The Union claims that because of these distinctions and the fact that the Employer's budget was already in place when the Employer took action in December of 1991 to reduce the grievant's work schedule, the Employer no longer had legitimate reasons to reduce the grievant's work schedule.

A careful review of the parties' collective bargaining agreement demonstrates there is not a specific notice requirement the Employer must follow when it determines to reduce the work week schedule of an employe. Thus, even if the grievant did not receive the March 5, 1991 letter informing him his work week schedule would be reduced to thirty-eight (38) weeks or if he was never verbally informed such a reduction would take place, the collective bargaining agreement does not contain a requirement that the Employer had to notify him of the reduction prior to its enactment.

A careful review of the grievant's letter of appointment demonstrates that it is not a guarantee that the grievant shall work a forty (40) week work schedule. The letter of appointment does specifically state that if the Employer does reduce the work week schedule, hours of work and pay would be reduced accordingly. This did in fact occur after the issuance of the December 11, 1991 revised letter of appointment. The undersigned notes here that while there is no evidence in the record that the Employer has ever reduced an employe's work schedule after an employe has been issued a letter of appointment, such a fact does not establish a binding past practice between the parties which would preclude the Employer from reducing work week schedules after a letter of appointment has been issued. Clearly, such a practice would

place restrictions on the Employer's management right under Article III to relieve employes from their duties because of lack of work or other legitimate reasons. However, to support such an allegation the Union would have to demonstrate that the clear language of the collective bargaining agreement allowing management to relieve employes of duties had been amended by mutual action or agreement. The record does not contain any evidence which would demonstrate that the Employer has assented to such a modification of the terms of the collective bargaining agreement or that such a modification was definite, certain and intentional. At most the record demonstrates the Employer has never exercised this Management Right after a letter of appointment had been issued. The fact that the Employer has never exercised this Management Right in this fashion does not establish by itself that the Employer has agreed to a modification of the collective bargaining agreement. Therefore the undersigned concludes there is no evidence to support a finding that the parties have a past practice which prevents the Employer from reducing work week schedules after a letter of appointment has been issued. Absent specific language in the collective bargaining agreement or a binding practice which requires the Employer to comply with the original letter of appointment, the June 27, 1991 letter of appointment does not prevent the Employer from reducing the work week schedule after its issuance.

The undersigned therefore finds that neither the failure of the Employer to notify the grievant of the reduction of his work week schedule, if such a failure in fact did occur, nor the issuance of the forty (40) week work schedule to the grievant, prevented the Employer from reducing the grievant's work week schedule. Such a reduction, however, would have to be in accord with Article III of the parties collective bargaining agreement.

The Union has argued that although the Employer can reduce the work week schedule, the Employer must have a legitimate reason in order to do so. The undersigned notes here that the Employer has used the same rational to reduce the work weeks of at least four (4) other employes, none of whom grieved the Employer's actions. Further, the equity claims raised by the Union can equally be applied to the other four (4) employes (as noted above one of the employes was the Union's Secretary and Grievance Chairperson) who had their work weeks reduced as well as the grievant. The Union has pointed out that when comparing the grievant's lost wages to the Employer's budget concerns, taken individually, the grievant's lost wages are significant, five percent (5%). However, the other four (4) employes also lost five percent (5%) of their wages. The Union is also correct that he budget savings the Employer achieved by reducing the grievant's work schedule, $857.92, is insignificant per employe when compared to the Industrial and Trade Division's total budget or the total amount that was reduced from the Division's budget. However, again, the savings the Employer achieved per any of the other four (4) employes is also insignificant when such a comparison is made. Thus, any of the other four (4) employes could have claimed the reduction of their work week was not equitable. However, the Union did not raise such issues when the Employer notified employes in the Spring of 1991 of the work week reductions nor did it raise such issues when thirty-eight (38) work week schedules letters of appointment were issued to the other four (4) employes. Thus the undersigned finds no merit in the Union's claim that equity resolves the instant matter in the grievant's favor.

The record does demonstrate, as the Union has pointed out, that when the Employer issued the grievant his revised letter of appointment on December 11, 1991 the Employer's budget was already in place. Thus the Union has argued whatever legitimate reasons the Employer had for reducing the work schedules of other employes, these reasons no longer applied to the actions taken by the Employer in reducing the work schedule of the grievant. However, the record demonstrates that during the Spring of 1991 when the Employer developed its

budget, the budget developed was based upon reducing all forty (40) work week schedule employes to thirty-eight (38) work week schedules. Korpela testified that during the Fall of 1991 when he was reviewing budget updates he became aware of the fact that the grievant had been issued a forty (40) work week letter of appointment. It was at this point the Employer began its actions to reduce the grievant's work week. There is no evidence that when the Employer established the budget for the 1991-1992 that included in its total amounts were funds for the grievant to be paid a forty (40) work week schedule. The fact that the budget was enacted does not mean the budget contained amounts to pay the grievant for forty (40) work weeks. Thus the undersigned concludes the actions taken by the Employer were based upon the same reasons the Employer relied upon to reduce the work weeks of the other four (4) employes. Having found above that such reasons, budgetary constraints, to be legitimate reasons to relieve employes of their duties the undersigned concludes the Employer had legitimate reasons to reduce the grievant's work week schedule to thirty-eight (38) weeks.

The undersigned therefore concludes, based upon the above and foregoing and the testimony, evidence and arguments presented, that the only distinction between the Employer's actions of reducing the grievant's work week schedule and the work week schedules of other employes is that the grievant may not of been informed of the Employer's intent to reduce his work schedule and that he was issued on June 27, 1991 a letter of appointment for forty (40) work weeks. Having found that there is no notice requirement in the parties' collective bargaining agreement and having found the letter of appointment does not prevent the Employer from reducing the grievant's work week schedule the undersigned finds the Employer did not violate the parties' collective bargaining agreement when it reduced the grievant's work week schedule from forty (40) weeks to thirty-eight (38) weeks. The grievance is therefore denied.

AWARD

The Employer did not violate the collective bargaining agreement when it reduced the grievant's work week schedule from forty (40) weeks to thirty-eight (38) weeks.

Dated at Madison, Wisconsin this 27th day of August, 1992.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator