

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

LAKE GENEVA TEACHERS' ASSOCIATION

and

LAKE GENEVA JT. SCHOOL DISTRICT #1

Case 20

No. 50707

Decision No. MA-8350

Appearances:

Davis & Kuelthau, S.C., 111 East Kilbourn Avenue, Suite 1400, Milwaukee WI 53202
by Mr. Daniel Vliet, Attorney at Law appearing on behalf of the Lake Geneva Jt.
School District #1.

Southern Lakes United Educators, Council 26, 124 South Dodge Street, Burlington, WI
53105 by Ms. Esther Thronson, UniServ Director appearing on behalf of the Lake
Geneva Teachers' Association.

ARBITRATION AWARD

Pursuant to the grievance procedure contained in their collective bargaining agreement, the Lake Geneva Teachers' Association (hereinafter referred to as the Association) and the Lake Geneva Jt. School District #1 (hereinafter referred to as the District) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as arbitrator of a dispute concerning the refusal of the District to allow music teacher Maria Sharpe to bump another employee in order to preserve her FTE status in the 1993-94 school year. The undersigned was designated and a hearing was held on June 3, 1994 in Lake Geneva, Wisconsin at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. The parties submitted post-hearing briefs, which were exchanged on July 22, 1994, whereupon the record was closed. Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

ISSUE

The parties stipulated that the following issue was to be determined herein:

"Whether the Employer violated Article IV, §B (5) when it refused to allow the grievant to bump into part of another position in order to maintain her FTE? If so, what is the appropriate remedy?"

RELEVANT CONTRACT PROVISIONS

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ARTICLE III - GRIEVANCE PROCEDURE

D. Arbitration

2. Authority of the Arbitrator. It is understood that the function of the arbitrator shall be to provide a binding decision regarding the grievance. The arbitrator shall have no power to advise on salary adjustments, except the improper application thereof, nor to issue any opinions directing the parties to add to, subtract from, modify or amend any terms of this Agreement.

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ARTICLE IV - INDIVIDUAL RIGHTS

B. Layoff Clause

1. When the District reduces the number of full-time teachers or the full-time equivalence of teachers in a given subject area or grade level because of one or more of the following reasons: (1) decrease in the student enrollment, (2) change in curriculum, (3) decline in subject or grade level enrollment, (4) budget limitations, or (5) other legitimate reasons, the Board shall determine the areas in which reduction shall be made.

2. Retention of teachers will be determined by using the criterion of seniority within the certification area where the excess exists. In the event two or more teachers have the

same seniority, the Board will break the tie.

3. Seniority shall mean the length of continuous service in the district. This continuous service shall be pro-rated for part-time teachers. The district administrator will develop a seniority list each school year and will submit the list to the Association for audit.

4. Teachers who are to be considered for layoff will be given a written statement as to why he or she is being laid off. The board will provide these teachers with an opportunity for a conference prior to implementing the layoff.

Preliminary notice of layoff will be given to the teacher(s) in writing sixty (60) days prior to when the layoff will occur.

5. Teachers selected for layoff may request in writing to bump into another teaching position in the district for which they are officially certified and for which they have more seniority in the district.

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10. A full-time teacher who has been laid off can refuse recall to a part-time position without losing recall rights to a full-time position.

A full-time teacher who is reduced to part-time can refuse the part-time layoff and instead elect to be fully laid off.

BACKGROUND

The District provides general educational services to the people of Lake Geneva, Wisconsin. The Association is the exclusive bargaining representative for the District's certified teachers including part-time teachers. The grievant, Maria Sharpe has been a music teacher for 21 years in the District. She was a full-time teacher for her first six years, and since then has worked part-time at a varying level of full-time equivalency (FTE).

During the 1992-93 school year, the grievant worked at 0.87 FTE. At the end of the year, she received a contract for the next year at the same level of FTE. In the summer of 1993, the state legislature passed a budget which, among other things, placed revenue caps on school districts. In response to this measure, the School Board directed Superintendent Harry Van Dyke to develop options for reducing the budget. One of the options included the elimination of the Middle School vocal music class taught by the grievant. The Superintendent told the grievant of this possibility shortly before he met with the School Board on August 10th. The Board chose to

eliminate the vocal class, and the grievant was informed the next day that her contract for 1993-94 school year was being reduced to 0.76 FTE.

On August 23rd, the grievant wrote to Superintendent Van Dyke asking that she be allowed to bump into several classes in order to preserve her 0.87% FTE. In essence, the grievant was seeking to add classes to her schedule. Van Dyke rejected her request, noting that he believed that the contract did not allow for bumping into a part of another position and that her request would require a change in the established class schedules. He informed the grievant that the only position within her certification area occupied by a teacher with less seniority was a 0.65 FTE slot filled by Deanna Karlsen. Since this was fewer hours than she had under the current schedule, he stated his assumption that she would not choose to bump Karlsen. He concluded by noting that she would be paid at the 0.87 FTE rate until the 60th day after she had received notice of her partial layoff, at which time she would go to 0.7755 FTE (the original layoff was modified slightly when the schedule was reviewed).

The instant grievance was thereafter filed, seeking to allow the grievant to claim time from Karlsen's schedule to maintain her status as a 0.87 FTE. Karlsen weighed in on the matter, informing the Association that she did not agree with the grievance, and stating that she would bump other teachers, setting off a chain reaction if her time was reduced. She also threatened legal action against the Association.

The matter was not resolved in the lower stages of the grievance procedure and was referred to arbitration. Additional facts, as necessary, are set forth below.

THE POSITIONS OF THE PARTIES

Position of the Association

The issue before the arbitrator is simple: whether a part-time teacher has the right to maintain full-time equivalency through the bumping provisions of the contract? The Association asserts that the answer is "yes", and that this is the result dictated by the clear language of the contract. The grievant is a teacher who is covered by the collective bargaining agreement. The layoff procedures in the contract call for layoff in inverse order of seniority, and for the right to bump junior teachers within certification areas. The grievant had greater seniority than other teachers within her seniority area, yet she was not allowed to bump into classes taught by those teachers in order to maintain her FTE. While the District retains the right to design jobs, it cannot do so in such a way as to defeat seniority rights under the contract. For that reason, the District should be required to respect the grievant's seniority rights by allowing her to maintain her 0.87 FTE in whatever configuration of classes it chooses to assign.

Position of the District

The District takes the position that the grievant confuses the issue of bumping rights with the more fundamental question of who has the right to define "positions" within the work force. The District does not layoff individuals when it decides to reduce staffing. Instead, the District eliminates positions, leaving the senior employees to seek other positions for which they are qualified. Bumping is a process in which an employee claims an existing position, not an opportunity for the creation of a new position by taking bits and pieces of other jobs. Seniority rights have never been held to extend to claiming some of the duties performed by other employees.

It is the inherent right of management to determine what jobs are necessary. The District performed this task before the legislature slashed its funding. It then accommodated the necessary cuts in the context of the existing class schedule by eliminating the vocal music class taught by the grievant. The fact that there was no junior employee with an equivalent or greater schedule of hours available for bumping is unfortunate for the grievant, but it is not unusual for an employee to find him or herself in such a posture. The alternative is a complete redesign of the schedule, with the potential for multiple bumps. That is the inevitable result if the grievant's position is accepted. This disruptive and unusual interpretation requires solid evidence that it was intended by the parties, and the record is devoid of such evidence.

The language of the contract allows the grievant to bump into a position having fewer, equal or greater hours than she occupied at the time of the reductions. It does not allow her to displace other teachers from portions of their positions. For that reason, the grievance should be denied.

DISCUSSION

At issue in this case is whether a senior teacher who has been reduced in time may claim a portion of another teacher's schedule in order to maintain her pre-reduction FTE. Under the clear language of the contract, the answer is "no".

The layoff language contemplates both full layoffs and reductions in FTE, and allows bumping on the basis of seniority and certification:

1. When the District reduces the number of full-time teachers or the full-time equivalence of teachers in a given subject area or grade level because of one or more of the following reasons: (1) decrease in the student enrollment, (2) change in curriculum, (3) decline in subject or grade level enrollment, (4) budget limitations, or (5) other legitimate reasons, the Board shall determine the areas in which reduction shall be made.

. . .

5. Teachers selected for layoff may request in writing to bump into another teaching position in the district for which they are officially certified and for which they have more seniority in the district.

The right to bump is tied to the availability of a "position in the district" in the senior teacher's certification area. In order for the grievance to be sustained, the word "position" must be interpreted as being the same as "classes". This is not a plausible interpretation.

A "position" is a bundle of duties (in the case of teachers, a bundle of classes and/or supervisions) tied together into a job, created by management to accomplish the educational and administrative goals of the District. Balkanizing positions into separate class and supervision components for bumping purposes suggests that teachers in a layoff setting may design their own jobs. If a "position" is the same as a "class", why could not a full-time teacher facing layoff take individual classes from a number of junior teachers to create a job, leaving those teachers to cherry-pick the classes they desired from other less senior teachers, and so on throughout the District? Given that the parties here agree that upward bumping is permissible, from a part-time into a full-time position, it would also be possible for the grievant to claim sufficient classes from junior teachers, full or part-time, to craft a job with a greater FTE than the one she had before the reduction ordered by the School Board. These are absurd results, but they are entirely permissible under the interpretation urged by the grievant. Certainly the parties could negotiate for these results, or could construct an orderly system to regulate bumping based on classes, but there is nothing in their contract or past history to suggest that they have done so.

Where the exercise of District rights impairs the exercise of contractually guaranteed seniority rights, the District has an obligation to act in good faith. If there were evidence that the available positions were somehow gerrymandered into odd class combinations in order to frustrate the grievant's seniority rights, a case could be made out under the contract's seniority provisions. The grievant's difficulty in bumping does not appear to be connected to any bad faith by the District. Instead, it flows from the fact that the need for reductions only became evident after the positions and class schedules for the school year had already been determined. While it would not have been impossible for the District to construct a position for the grievant at 0.87 FTE or above, nothing in the contract required it to do so at that late date.

The contract is not susceptible to an interpretation that gives the grievant the right to claim individual classes from another teacher's schedule in order to maintain her FTE. A pre-condition of bumping is the existence of a position for the senior teacher to claim. As there was no position available in the District for which the grievant was certified, she was not able to exercise her bumping rights. Accordingly, the grievance is denied.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

AWARD

The Employer did not violate Article IV, §B (5) when it refused to allow the grievant to bump into part of another position in order to maintain her FTE. The grievance is denied.

Signed this 22nd day of September, 1994 at Racine, Wisconsin:

By Daniel Nielsen /s/
Daniel Nielsen, Arbitrator