

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NORTHERN EDUCATIONAL SUPPORT
TEAM/NICOLET MAINTENANCE

and

NICOLET VOCATIONAL, TECHNICAL
AND ADULT EDUCATION BOARD

Case 14
No. 53212
MA-9272

Appearances:

Mr. Gene Degner, Director, Northern Tier UniServ - Central.

Mr. Robert A. Pound, Director of Human Resources, on behalf of the Board.

ARBITRATION AWARD

The above-entitled parties, herein "Association" and "Board", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, the parties waived a hearing in this matter and filed a jointly entered Stipulated Background, after which they filed briefs which were received by December 6, 1995.

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

ISSUE

The parties have agreed to the following issue:

Does the language of Article XIV, Reduction in Force/Seniority, define seniority as continuous service with the Nicolet Area Technical College District or continuous service only as a bargaining unit member?

STIPULATED BACKGROUND

The issue over the meaning of seniority arose when the College wanted to place a position and the incumbent (Carol Wozniczka, a non-represented support staff employee), into the bargaining unit.

Ms. Wozniczka began employment with the Nicolet Area Technical College on August 16, 1982. During 1988, the Wisconsin Education Association was in the process of attempting to

organize support staff employees at Nicolet Area Technical College for purposes of collective bargaining. During the initial organizational period, Ms. Wozniczka was in a position that would have been included in the bargaining unit. On August 1, 1988, Ms. Wozniczka was appointed to a support staff position for an associate dean of instruction, and that position was not to be included in the new bargaining unit because the position was "supervisory" under M.E.R.A.

Ms. Wozniczka has not been a bargaining unit member at any time during her employment at Nicolet College. When the bargaining unit was certified by the Wisconsin Employment Relations Commission, all employees included in the support staff bargaining unit retained their original seniority date which was the beginning date of employment with Nicolet College. These employees' were not assigned seniority dates effective their first day in the bargaining unit, but rather their first day of service with the district.

In the fall of 1992, Nicolet College became involved in the school-to-work initiative, and Ms. Wozniczka began performing minimal support staff duties for that function. In the fall of 1993, Nicolet hired a school-to-work coordinator, and Ms. Wozniczka began picking up additional school-to-work duties as the program evolved. Since that time, the school-to-work program has grown substantially, and as a result, the duties of the support staff person have increased substantially as well. During this entire time, Ms. Wozniczka was the only person responsible for performing support staff duties for the school-to-work program.

In June, 1995, it became apparent that the school-to-work support staff position had evolved to full time. Ms. Wozniczka had been performing duties of the school-to-work support staff position as a non-represented employee, and when the College decided to make the position permanent it also decided it would be appropriate to assign the position as a bargaining unit position. The parties have further agreed that:

1. The current school-to-work support staff position appropriately belongs in the support staff bargaining unit;
2. Wozniczka is the only trained support staff employee to do support staff work for the school-to-work program and should continue to do that work as a bargaining unit employee;
3. No bargaining history can be ascertained regarding the intent or interpretation of the seniority language in Article XIV. This language has been in the support staff contract for eight years (i.e., since the first contract) and there have been no grievances filed on this issue;
4. The employer and the union agree to abide to the meaning/interpretation presented by the impartial third party in this case. Seniority, as defined in Article XIV, will carry over to all other provisions of the labor agreement where seniority is used or discussed. In addition to Article XIV, seniority is mentioned in Article XV - Vacancies and Reassignments;
5. Placement on the pay scale schedule, vacation accrual, and sick leave accrual are not at issue regarding entry, or re-entry, of employees into the bargaining unit and are not before

the arbitrator in this case;

6. There is no past practice at the College regarding bargaining unit re-entry for support staff;

7. When employees move from a support staff position into a non-represented support staff position, they retain their original date of hire at Nicolet College as their seniority date. For example, Regina Edwards moved from a bargaining unit position into a "confidential" non-represented position on May 1, 1991, and retained her seniority date of July 1, 1990, which was her original date of hire at Nicolet. Lisa Watkins also moved from a bargaining unit position into a "confidential" non-represented position on October 26, 1992, and retained her seniority date of January 3, 1980, which was her original date of hire at Nicolet.

It is within this context that the Association argues that the contractual reference to seniority must be read "at face value" and that it only refers to employees who are in the bargaining unit because the second sentence in Article XIV, Section "A", only clarifies the first; that there is no evidence that the parties ever agreed otherwise in past negotiations; that seniority language in two other contracts involving the District is "irrelevant"; that giving new entries into the bargaining unit more seniority than current bargaining unit members would make a "sham" out of seniority; and that non-bargaining unit personnel such as Wozniczka make a conscious decision to forego bargaining unit seniority when they take a management position.

The District, in turn, contends that the contract is "clear and unambiguous" in providing that seniority is District-wide, as opposed to bargaining unit seniority; that leaving for a management position is not listed as one of the items which constitutes a break in bargaining unit seniority under Article XIV, Section "B"; that its interpretation is buttressed by the fact that the Association's contract with the District covering teaching personnel expressly states in Article XVII, Section "D", that seniority only covers "uninterrupted bargaining unit service"; and that arbitrable law supports its position.

The resolution of this issue turns on Article XIV, Section "A", which states:

A. Seniority. Seniority shall commence from the official beginning date of employment at Nicolet and shall be based upon the actual length of continuous service for which payment has been received by the employee. This policy refers to bargaining unit employees employed one-half time or more and receiving fringe benefits. Employees who are hired to replace bargaining unit members on leave, vacation, or during an initial grant period of one (1) year or less shall not be considered bargaining unit employees. Seniority shall be adjusted for any period of absence without pay taken under Article XIII.

If one only looks to the first sentence of this proviso, the District would prevail because seniority is pegged "from the official beginning date of employment. . ." The Association, however, makes a plausible case to the effect that this first sentence is modified by the second sentence which states: "This policy refers to bargaining unit employes employed one-half time or more and receive fringe benefits." By definition, then, it does not refer to non-bargaining unit personnel if one assumes that the Association's position is correct. Since either of these two interpretations are reasonable, I find that this language is ambiguous on its face.

Normally, a union has zero interest in according seniority to management or non-bargaining unit employes since that would put its own bargaining unit employes with lesser seniority at a disadvantage. Hence, it is fair to assume that, absent clear contract language to the contrary, bargaining unit seniority is only available to bargaining unit personnel. But, this general rule can be rebutted through bargaining history or past practice, neither of which exists here.

Nevertheless, there is one fact which looms large here: the fact that Article XVII of the Association's teaching personnel contract with the District states:

For the purposes of this Article, the commencement of a bargaining unit employee's service in the district shall be the first day of employment under his/her initial contract. Service to the District shall mean only uninterrupted bargaining unit service; non-bargaining unit work, managerial, or administrative shall not count (Emphasis added).

This underlined sentence shows that the parties here knew how to protect bargaining unit seniority when they wanted to. The fact that they did not do so for the support staff bargaining unit shows that they did not want to do so.

As a result, it must be concluded that seniority under the support staff contract consists of District-wide seniority rather than bargaining unit seniority, and that Wozniczka has a seniority date of August 16, 1982.

Based upon the above, it is my

AWARD

The language of Article XIV, Reduction in Force/Seniority, defines seniority as continuous service with the District.

Dated at Madison, Wisconsin, this 26th day of February, 1996.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator