

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

NORTHWEST UNITED EDUCATORS

and

LADYSMITH-HAWKINS SCHOOL DISTRICT

Case 32  
No. 54541  
MA-9712

Appearances:

Mr. Alan D. Manson, Executive Director, on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., by Mr. James M. Ward, on behalf of the District.

ARBITRATION AWARD

The above-entitled parties, herein "Association" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Ladysmith, Wisconsin, on February 27, 1997. The hearing was not transcribed and both parties filed briefs and reply briefs which were received by April 18, 1997. Based upon the entire record and arguments of the parties, I issue the following Award.

ISSUE

The parties have agreed to the following issue:

Did the District violate the contract by failing to recall grievants Glen Ralston and Bill Haag as seasonal groundskeepers in the spring of 1996 and, if so, what is the appropriate remedy? 1/

BACKGROUND

The District for a number of years has hired seasonal groundskeepers in the spring and then laid them off in the fall. The groundskeepers worked eight (8) hour days, five (5) days a week at all four (4) of the District's schools when they were so employed.

Groundskeepers Glen Ralston, Charles Harris, Patrick Kelly, Craig Olson, and Bill Haag

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1/ The District at the hearing dropped its timelines challenge to the grievance on a non-precedent basis with the understanding that it could, if necessary, raise this issue at the remedy stage.

thus were recalled and laid off on the following dates (the Notice Date refers to the thirty days lay-off notice they all received under the contract):

<u>Employee</u>	<u>Recalled</u>	<u>Notice Date</u>	<u>Effective Date</u>
Ralston, Glen	5/4/93	11/3/93	12/3/93
	4/8/94	9/19/94	10/22/94
	4/17/95	9/28/95	11/1/95
Harris, Charles	5/4/93	11/3/93	12/3/93
	5/31/94	quit	
Ptacek, Kelly	9/10/93	hired	11/3/93
	5/2/94	8/30/94	10/1/94
	4/27/95	9/28/95	11/1/95
Olson, Craig	05/31/94	hired quit 8/1/94	(flood project)
Haag, Bill	5/31/94	hired	8/30/94
	4/24/95		9/28/95
			10/1/94(flood project) 2/ 11/1/95 (fence project)

Throughout this time, other bargaining unit employees regularly performed some groundskeeper duties. Thus, the job description for the maintenance person states under "Performance Responsibilities": "Snow removal and grounds work as needed." The job description for custodians states under "Performance Responsibilities": "Performing lawn mowing and raking, and other grounds work as assigned." Association President Gene Zillner testified that the custodians and maintenance persons in the past spent about 60 percent of their time on grounds and lawn maintenance before the groundskeepers were recalled.

Because of budgetary considerations which also resulted in the layoff of other District employees, the District - except for a brief time - did not recall any of its groundskeepers in the spring of 1996. 3/ Instead, it assigned groundskeeper duties at all four of its schools to its

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2/ This flood duty was a special project which does not have to be performed each year. In addition, Haag testified that he was pulled off his groundskeeper's job in 1994 and then worked as a custodian "for a couple of months." Haag also has worked as a substitute custodian.

3/ The District recalled grievant Ralston on August 23, 1996, after which he worked ten weeks up to the end of November, 1996. In addition, Kelly Ptacek, one of the laid-off groundskeepers, has accepted a custodial position pursuant to a settlement reached by the

custodians and maintenance persons. Those budgetary considerations also have led the District to conclude that it will phase out the groundskeeper classification in the future.

In this connection, Zillner said that because of his grounds duties, his own work as a maintenance employe has been "delayed or not done at all." Custodian Supervisor Robert Jerness also said that regular custodial and maintenance work has been delayed and that "Nothing was normal. But we made it."

The Association questioned the District's refusal to recall the groundskeepers as soon as it learned about the District's plans. Association Executive Director Alan D. Manson conducted correspondence over this issue with District Business Manager Larry Dalton and he also had various other communications which proved unfruitful.

Manson testified about the parties' bargaining history, saying that the District "insisted there be a wall" so that the groundskeepers could be placed in their own department, thereby preventing them from easily transferring to other bargaining unit jobs. Zillner corroborated Manson's testimony.

In support of the grievance, the Association points to Article 12 of the contract and argues: "The most important sentence in this case is 'No new or substitute appointments may be made while those who were laid off are available to fill vacancies.'" The Association asserts that the District violated this language when it refused to recall the grievants while at the same time it assigned groundskeeping duties to its custodial employees. The Association also contends that "the District cannot cross department lines with temporary reassignments when there are laid off employes who will not be needed as a result" because such a result causes "a custodian to have a substitute appointment as a seasonal groundskeeper. . ." -- something the Association asserts is "an abuse of the intent and language of the Layoff Clause." As a remedy, the Association requests that the grievants be made whole and that the District cease and desist from refusing to recall them.

The District, in turn, maintains that Article 12 does not preclude it from keeping the grievants on layoff status; that it acted properly in reassigning groundskeeping work to custodial and maintenance employes; and that arbitral precedent supports its position.

This case largely turns on Article 12 of the contract, entitled "Layoff", which provides:

If necessary to decrease the number of employees, the Board may lay off in whole or in part the necessary number within a department (custodial, secretarial, aide, bus driver, food service,

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parties.

and seasonal housekeeping) but only in inverse order of the employee's appointment as an employee of the District provided the remaining employees are qualified to do the work. Such employees shall be reinstated in inverse order of their being laid off, within departments, when vacancies occur. Such reinstatement shall not result in loss of credit for previous years of service. No new or substitute appointments may be made while those who were laid off are available to fill vacancies. Seniority shall be based on total continuous employment in the District. All layoff notices shall be issued by June 1 for the ensuing year except as follows: 1) teacher aides may be laid off at the start of the second semester provided they are notified by October 20 of such a layoff; 2) seasonal groundskeepers may be laid off with a 30-calendar-day notice. The notice of recall for any employee who has been laid off shall be sent by certified mail to the last known address of the employee. Employees on layoff shall forward any change of address to their immediate supervisor. (Emphasis added).

The key sentence here is the one reading: "No new or substitute appointments may be made while those who were laid off are available to fill vacancies."

Here, the District has not made any "new" appointments since it did not hire any "new" employees to replace the groundskeepers. The question then becomes whether there have been any "substitute appointments".

It is true - as the Union correctly points out - that other custodial and maintenance employees have been assigned to perform some of the duties formerly done by the groundskeepers. However, such assignments do not constitute "substitute appointments" since the word "appointment" usually refers to a hire. Indeed, Article 9, Section 14, of the contract reflects this understanding since it refers to substitute employees who join the bargaining unit after they work 20 or more consecutive days. Here, there have been no such substitute hires since the District has not increased the number of its custodians.

Rather, all that is involved here is the reassignment of the groundskeepers' duties to custodians and the District's legitimate managerial decision to have less groundskeeping work performed in order to save money. There is no language in the contract which states that groundskeepers are the only ones who can perform groundskeeping duties, just as there is nothing in the contract which requires the District to maintain its former level of groundskeeping services.

To the contrary, the job descriptions for the custodial and maintenance employees expressly provide that said employees are expected to perform groundskeeping duties. Absent any express

contract language to the contrary, it therefore must be assumed that the District retains the right to assign such duties to them even in the face of the District's refusal to recall any of its groundskeepers.

All in all, then, there is no contractual prohibition on what the District has done since the District has only exercised its rights under Article 3 of the contract, entitled "Management Rights", which gives the District the right to assign duties which fall within an employee's job description. Here, custodians and maintenance employes for years have performed groundskeeping duties both before and after the groundskeeper classification was created. In the absence of any express contractual prohibition stating that they cannot continue to do so when the groundskeepers are in lay-off status, it follows that the District was entitled to assign groundskeeper duties to them.

Given all this, it is my

AWARD

That the District did not violate the contract by failing to recall grievants Glen Ralston and Bill Haag as seasonal groundskeepers; their grievance is therefore denied.

Dated at Madison, Wisconsin, this 22nd day of April, 1997.

By Amedeo Greco /s/  
Amedeo Greco, Arbitrator