

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NORTHWOOD EDUCATION ASSOCIATION

and

NORTHWOOD SCHOOL DISTRICT

Case 27
No. 54588
MA-9731

Appearances:

Mr. Barry Delaney, Executive Director, Northern Tier UniServ-West, appearing on behalf of the Union.

Weld, Riley, Prenn & Ricci, by Ms. Kathryn J. Prenn, appearing on behalf of the District.

ARBITRATION AWARD

The Employer and Union above are parties to a 1995-97 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve the grievance of Laura Magdzas, protesting the District's use of a teacher junior to her to handle a study hall. The undersigned was appointed and held a hearing on March 12, 1997 in Minong, Wisconsin, where the parties were given full opportunity to present their evidence and arguments. No transcript was made, both parties filed briefs and reply briefs, and the record was closed on June 25, 1997.

Issues

The Union proposes the following:

1. Did the District violate the collective bargaining agreement when it assigned a study hall position to Joan Miller instead of Laura Magdzas?

The District frames the issue as follows:

1. Did the District violate the collective bargaining agreement when it did not assign the first semester eighth period study hall to the grievant?

Both parties agree that if the answer to the first question is in the affirmative, the second question is:

2. If so, what is the appropriate remedy?

Relevant Contractual Provisions

ARTICLE II - MANAGEMENT RIGHTS

Section A

It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities, properties, and activities of its employees.

Section B

Without limiting the generality of the foregoing, it is expressly recognized that the Board's operational and managerial responsibility includes:

. . .

10. The determination of the size of the working force, the allocation and assignment of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employee performance.

. . .

12. The right to establish and revise the school calendar, establish hours of employment, to schedule classes and assign work loads, and to select textbooks, teaching aids and materials.

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ARTICLE VIII - WORKING CONDITIONS

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Section B - Transfer Procedure

1. A list of anticipated vacancies for the coming school year shall be posted in each school as early in the spring as possible.
2. Whenever a new school is opened, the number of vacancies at each level or in each classification shall be posted in like manner.

3. A revised, up-to-date list shall be posted in the school office and a copy submitted to the President of the Association as new vacancies occur.
4. Requests for transfer shall be submitted in writing to the Superintendent no later than ten days after notice is given.
5. Transfer requests should show preference of school, grade level, and subject.
6. Such transfers (voluntary and involuntary) shall be made on the basis of:
 - a. Teachers within the system who apply for a vacant position and are certified for the position shall be selected for the position unless the Administration can show that making the transfer would have a negative effect on the education process in the School District. In the event two or more certified teachers from within the system apply, the teacher with the most seniority within the District shall be selected for the position.

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Section E - Staff Reduction

Whenever it becomes necessary to decrease the number of employed bargaining unit members, the employees shall be laid off, in whole or in part, by inverse seniority (the employee with the least seniority is laid off first) to every extent possible while filling each bargaining unit duty with an employee who is qualified. The definition of seniority shall be the one in Article VIII (A) of the agreement.

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Section G - School Day

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2. Teachers shall be entitled to a duty free lunch period of thirty (30) minutes unless other arrangements are made on a mutually satisfactory basis.
3. Preparation Period:
 - a. Secondary teachers shall be scheduled for a minimum of one preparation period per day or the equivalent thereof for one semester and a minimum of two preparation periods per day or the equivalent thereof in the other semester.

Preparation periods shall be those periods during which the teacher is not assigned to regular programmed responsibilities.

A teacher may elect to teach a semester class in place of a study hall. No teacher will be fully or partially laid off in future years if a study hall monitor is hired to replace teachers presently serving as study hall monitors.

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Discussion

Grievant Laura Magdzas is employed by the District as a Physical Education and Health teacher, and is certified in pre-kindergarten through twelfth grade for those subjects. First employed in the 1994-95 school year, the grievant had not been able to obtain full-time employment through the current school year. In 1995-96, she was employed at 57 percent of full-time equivalent; the addition of AODA/Health Coordinator work at 20 percent time, in conjunction with a new adaptive physical education class, increased her time to a total of 82 percent of FTE.

In the spring of 1996, the grievant discovered that teacher Joan Miller, who was first employed for the 1995-96 school year and was therefore junior to her, had been assigned a study hall during the eighth hour. Magdzas then approached Principal Lee Block about the matter, and filed a note with him the following day concerning that conversation. In her note, the grievant referred to four possibilities that would enable the study hall to be worked into her existing schedule:

-Move my Elem. PE opposite my Health 8 and keep the studyhall

8th Hr.

-Move the studyhall to 4th Hr. first semester, giving me a studyhall all year.

-Move the studyhall to 3rd Hr. first semester.

-Or, move the studyhall to 1st or 2nd Hrs.

The grievant, Block and union representatives then engaged in a protracted series of discussions during and outside the grievance processing, concerning whether the District could, should, or would like to rearrange matters such that the grievant had the study hall and not Miller. During the course of these discussions, at a school board meeting, the grievant offered a modified schedule to achieve this result. The original form of that schedule was not available at the hearing, and over the District's objection a subsequent typed version was admitted as representing the Union's preferred view of what was possible. That proposed schedule has the net effect of removing a first semester study hall from Joan Miller and adding a study hall in the first semester for the grievant, in the process rescheduling preparations or study halls for a total of six teachers. The grievant testified to the effect that she believed the District had an obligation to post study halls other than those being used to round out the schedule of a full-time teacher, in order to permit seniority bidding among part-time teachers. But the grievant and other witnesses testified that this had never been done, within the memory of any witness. Union and Employer witnesses alike testified that the Union has never previously challenged the District's failure to post such work.

Block testified that his method of generating each new year's schedule is first to ask students to generate nine choices, in order to provide some room for maneuvering. This data is entered into a computer, and the software program demonstrates conflicts as well as enrollment numbers. The Board then decides whether or not to offer classes that have relatively low enrollment. After the necessary classes have been finalized, Block proceeds to take into account coordinator assignments, and then calculates the pool of available periods for study halls. Block testified that if there is an hour when there are only two teachers available, they become the study hall teachers for that hour, and are taken out of the pool for other hours. Block testified that as of May, 1996 the grievant had been scheduled for three sections of physical education in the eighth hour, i.e. at a time when a study hall was needed. Block testified that later the grievant's eighth-hour assignment was expanded to five sections, and that in the meantime Miller was assigned to one of the two study halls because she was available at that hour and the grievant was not. Block testified that he was never shown the Union's proposed schedule admitted into the record as Union 1, or its handwritten predecessor, until the hearing, and that the first that he heard that posting was an issue was at the October 18 board meeting, months after the grievance had been filed.

Block also testified that in his view he met with the Union and with Magdzas to attempt to work something out, but that he regarded this as an attempt to accommodate a request, rather than as a response to a meritorious grievance. Block stated that he had resisted placing the grievant in a

study hall in the third period of the day (which would have been the net effect of Union Exhibit 1 if implemented) because the kindergarten through third grade teachers had expressed a strong preference to have academic subjects taught in the morning when the students were fresh, saving the "special" subjects such as physical education for later in the day. Block further stated that while he believed the grievant would be entitled to the extra work represented by the study hall in preference to Miller on grounds of seniority, if both had been available at the same time, he felt he was not under an obligation to modify the schedule in order to make the grievant available for the additional work.

The Union contends that study halls are "bargaining unit positions" within the meaning of Article VIII(B)(6)(a) of the Agreement, and notes that Union President Scheller testified that most teachers are assigned six periods of regular classes each semester, with one preparation period and one study hall for one semester and two preparation periods the other semester. The Union points out that payment is made at the same rate for study halls as for teaching assignments. The Union points to Article VIII(G)(3)(a) as demonstrating that study hall assignments are bargaining unit work and are part of a teacher's normal work load, and notes that the District fills study hall assignments only with certified teachers.

The Union contends that Article VIII(B)(6)(a) requires the District to select the teacher with the most seniority within the District for the position, contending that since all full-time teachers were already assigned study halls, there were two vacant study halls to be assigned to part-time teachers, and that according to Union Exhibit 1, this could be done consistently with the grievance. The Union contends that the conflicts in scheduling which the District has relied on relate only to the eighth period study hall, but that even as early as May 15, the grievant had suggested to Block that assigning her a third period study hall was one way to work out the conflict. The Union contends that with respect to the District's management rights argument, the general management rights clause is nullified with respect to any issue treated specifically by other contract clauses, and that the right to seniority assignment of vacant study halls is one of those rights.

In its reply brief, the Union argues that the District's contention that an award in the Union's favor would exceed the Arbitrator's authority erroneously assumes that Article VIII(B)(6)(a) does not supersede the management rights clause. The Union contends that Article VIII is more specific and should control the issue at hand. The Union also argues that contrary to the District's brief, the grievant would have ended up with more time if the Union's proposed schedule were adopted; that the record evidence does not support the District's claimed policy of assigning junior high teachers to junior high study halls; and that early discussion of the grievance involved periods other than the eighth hour, thus demonstrating that the grievance was not limited to that time slot.

The District contends that the Union's reliance on Article VIII(B) is irrelevant, because prior to the submission of the written request for arbitration the Union did not allege that the

eighth period first semester study hall should have been posted. The District contends further that the posting procedures contained in Section B refer to teaching positions, not supervisory assignments such as study halls and recess duty. The District notes record testimony to the effect that the Union never challenged a study hall assignment by the District in at least eleven years of Block's service there. With respect to the eighth period assignment, the District contends that assignment of that study hall to Joan Miller was consistent with expressly reserved management rights, arguing that the District had sound management reasons for not moving the study hall to first, second or third hour because the junior high students were scheduled into academic classes at those times, that moving the study hall to fourth hour was rejected for sound management reasons because all of the junior high students were scheduled for technology classes at that time, and that the grievant's request to move elementary physical education opposite "health 8" was rejected because the elementary students were scheduled for lunch at that time. The District further notes that the grievant did not allege that posting was a requirement until later in the grievance process. Finally, the District contends that the requested remedy is beyond the scope of the Arbitrator's authority, because it would usurp the Board's expressly reserved right to establish class schedules and assign work to employees. The District requests that the grievance be denied.

In its reply brief the District contends that the Union's real agenda is to attempt to secure dicta for the proposition that study hall assignments are subject to the layoff clause. The District cites several arbitration awards to the effect that study hall assignments are not teaching positions. The District also argues that the real question is not whether the District could have "played around" with the schedule to provide the grievant with the additional work, but whether it had a duty to do so under the Agreement.

I find that even if the Union's broader version of the issue is chosen over the Employer's narrower definition, the Union cannot prevail in this matter under the language presently in this Agreement. First, I reject the Union's assertion that the study halls constitute "positions" within the meaning of Article VIII(B)(6)(a). They have never been treated as such, the language of that clause implies rounded jobs rather than individual non-teaching assignments, and there is no other support in the Agreement for the concept that study hall assignments, or other aspects of a teacher's work, constitute a "position".

Meanwhile, the contractual language governing assignment of work and scheduling is conspicuously different from the language governing layoff. In layoff situations, I note that Article VIII(E) provides significant seniority-based protection of as much work as may be available to a senior employe, by the language requiring that layoffs be by inverse seniority "to every extent possible while filling each bargaining unit duty with an employee who is qualified." This implies a tension between the "filling" of each "duty", which arguably may require rescheduling work to accommodate that language, and the District's expressly reserved rights in Article II(B)(10) and (12) to "allocation and assignment of work to employees" and "to schedule classes and assign work loads" respectively. Without deciding an issue that is not before me, I must at least note that the comparison between the layoff and management rights clauses does

demonstrate that the parties gave greater significance to seniority in a layoff situation than otherwise. In a situation where a similar conflict was triggered by the layoff or potential layoff of the senior teacher, the Union's argument that the District's rights are not untrammelled might thus carry greater weight. But here, the operation of Article II, B is unopposed by any other collective bargaining agreement language, because this was conspicuously not a layoff situation. 1/

1/ The grievant's work load was actually going up during this period.

It has often been observed that management rights are not absolute even where no other language expressly restricts them. But the conditions normally interpreted as restricting those rights are not evident here. There is no evidence of arbitrary or capricious conduct by the District. The reasons given by Block for his reluctance to reschedule six teachers to accommodate the grievant's request may not all have been "ironclad" once the Union was able to figure out a schedule which did not actually require changing class assignments per se, but on this record the level of administrative difficulty involved in working out schedules is significant, and management time is a resource which the District has a right to take into account. There is, meanwhile, no evidence of an invidious motive with respect to the grievant in particular; not only was Block conspicuously finding additional work for the grievant (including the AODA assignment, which if the Union's theory were correct he would have had to post for other teachers' bids) but he entertained, at some length, possibilities for rescheduling in an effort to accommodate the grievant. Block's admission that he would regard the grievant as having seniority rights over Miller for the disputed work if both were available at the same time, meanwhile, does not warrant extending that principle into conflicted time. Under this Agreement, to do so would clearly violate the reserved rights of the Board expressed in Article II(B), paragraphs 10 and 12.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the District did not violate the collective bargaining agreement by assigning the study hall position to Joan Miller instead of Laura Magdzas.
2. That the grievance is denied.

Dated at Madison, Wisconsin this 18th day of July, 1997.

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator