

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 1397, AFSCME, AFL-CIO

and

THE SCHOOL DISTRICT OF SUPERIOR

Case 119
No. 55219
MA-9934

(Grievance of Janet White)

Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East Seventh Street, Superior, Wisconsin 54880, appeared on behalf of the Union.

Mr. Kenneth Knudson, Hendricks, Knudson, Gee and Hayden, Attorneys at Law, 1507 Tower Avenue, Suite 312, Superior, Wisconsin 54880, appeared on behalf of the District.

ARBITRATION AWARD

On May 27, 1997, the Wisconsin Employment Relations Commission received a request from Local 1397, AFSCME, AFL-CIO to provide an arbitrator to hear and decide a matter pending between the Union and the School District of Superior. Following jurisdictional concurrence, the Commission appointed William C. Houlihan, a member of its staff, to hear and decide the grievance. Hearing on the matter was scheduled and postponed on four different occasions. Ultimately, a grievance arbitration hearing was held on September 10, 1998, in Superior, Wisconsin. At the conclusion of the evidentiary hearing, the parties made oral argument and rested.

This arbitration addresses the right of Janet White, the grievant and a bus driver, to exercise her seniority rights to claim a co-curricular bus route.

BACKGROUND AND FACTS

The facts underlying this dispute occurred on December 15, 1996. On that day, while driving her regular morning bus route, Janet White, the grievant, heard a radio call for a driver to make a co-curricular run the next day. This run, the Northland run, was an

assignment to shuttle certain students from the senior high school to Northland. The assignment constituted a 10 to 15-minute drive, and was available due to the anticipated absence of the regular driver. Ms. White radioed the dispatcher that she was available and willing to take the run. In response, she was told that she would not be assigned the run because she was not a city driver. Ms. White's normal regular route ended at the school where the co-curricular route began. Had she been assigned the run, it would have resulted in a 30-minute layover. The route was offered to senior city drivers. The driver who took the route had less seniority than did Ms. White, and a shorter layover.

The District maintains a seniority list which is divided into three subgroups. The first constitutes rural route drivers, and is a list of 26 individuals. The second constitutes intracity drivers, and is a list consisting of 6 individuals. The third is a two-person list of lift-equipped bus operators. Bargaining unit members are listed in order of their seniority date under each of the respective lists. The Superior School District consists of a large geographic area, including the city of Superior and the area surrounding the city. Regular bus routes are assigned by seniority. City and rural routes are filled separately. The pool of drivers overlaps as a result of the "10-mile rule". Article 7, Section 5, set forth below defines the various routes, the 10-mile rule, and the bidding procedure for the seniority filling of those routes.

In addition to the contractually-described morning run, there is a second morning run. That bus run is not addressed specifically by the collective bargaining agreement. The second morning run occurs following the first runs, and is used to pick up elementary school children whose day begins later than the high school and/or junior high school day. The second run is filled by seniority, irrespective of city/rural status. All drivers are in the city upon completion of their initial run.

It was the testimony of Mark LaCore, Director of Transportation, that co-curricular runs (essentially shuttles) are assigned to senior drivers. If the run falls within the city, it is assigned to a senior city driver. If no senior driver is available, the run is thereafter offered, by seniority, to rural drivers. If the run is a rural run, it is offered by seniority to rural drivers. In the event there is no rural driver available, it would be offered, by seniority, to city drivers. According to LaCore, this has been the system in effect since February of 1994. LaCore went on to testify that when these short-term runs arose, they were handled on a case-by-case basis. The analysis included the application of the seniority formula, the availability and proximity of individuals to the work site, and the minimization of layover time. Assignments which generate overtime are not made.

The overwhelming majority of co-curricular runs occur within the city. All but one school falls within the city limits. This results in an imbalance in the assignment of co-curricular runs.

There was a change in the terms of the collective bargaining agreement, the effect of which was to eliminate overtime arising from the assignment of multiple routes. This change eliminated overtime, in contrast to layover time. A number of union witnesses testified to being assigned co-curricular and/or substitute driving within the city, notwithstanding their status as rural route drivers. The most notable was Marlene Case, a long-time bargaining unit member, who testified to taking these short-term assignments in 1993, 1994, 1995, and 1996. District records which show similar assignments to other bargaining unit employees in 1992 and 1994, were made a part of the record.

ISSUE

The parties stipulated the following as the issue:

Did the Employer violate the terms of the collective bargaining agreement and the long-standing past practice, when a senior driver was denied the opportunity to drive a co-curricular route in the City, and if so; the appropriate remedy is to make the grievant whole for any and all lost wages and benefits. Furthermore, the Employer shall assign extra work/routes to drivers according to seniority and proximity provided no overtime is involved.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

Article 6 – Salary Schedule – Paydays – Guaranteed Hours of Work – Shift Differential Pay – Overtime Pay

Section 1.

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- D. All food service workers, custodians, engineers, and bus drivers will request in writing, to their immediate supervisor, an interest to move to a temporarily vacated position. If approved, the employee will begin to receive pay for the position the day they begin, or no later than two (2) working days following the date the request was received.

1. The school district must know or be reasonably assured that a job will be vacated for seven (7) working days or more beyond the receipt of request.
2. The district agrees that any decision regarding a regular employee moving to a position made available as a result of the absence of another regular employee, would not be made in an arbitrary or capricious manner.

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Article 7 – Seniority – Promotions – Layoffs

Section 1. For purposes of this Article, seniority is measured by an employee's date of hire in a classification as defined in Addendum A with the district. No distinction will be made between year around and school year employees in calculating seniority.

Section 2. For the purpose of transfer and filling job vacancies or new positions, seniority shall be maintained by job classification.

- A. The District will annually produce a seniority list and forward that list to the President and Secretary or designee of the Union on or before October 1. The Union will raise any objections to the proposed seniority list on or before November 1 or it will be considered accurate as prepared.

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Section 5. Definition of routes and Bidding Procedures for Bus Drivers

A. Definitions:

1. Regular route: Transporting students to and from school on a daily and regular basis. Such assignments will be subject to the bid process as defined below.

2. Extra-Curricular Route: Transporting students from school to the site of an extra-curricular activity (and vice versa). Such assignments occur on an irregular basis and will be assigned according to “seniority” and “proximity”.
3. Co-Curricular Route: Transporting students to and from school and/or between two or more school sites as needed and on a regular basis. Such routes may be assigned only to drivers who are assigned regular routes (as defined above). Such assignments will be made according to “seniority” and “proximity”.
4. City Route: Any route which begins and ends within the boundaries of the City of Superior and/or the Village of Superior. In order to qualify for assignment to a city route an employee must reside within the boundaries defined above. In addition, senior rural drivers whose residence is ten (10) or fewer miles from the start of an available city route, are eligible for assignment to that route. Bus routes currently being driven by drivers known as “intracity drivers” are covered by the Addendum B to the collective bargaining agreement dated June 22, 1983, and thus may be contracted to private vendors at the discretion of the Board.
5. Rural Route: Any route which either begins or ends (or both) within the boundaries of the School District of Superior but not inside the boundaries of the City of Superior and/or Village of Superior. In order to qualify for assignment to a rural route the employee must reside within the boundaries defined above. In addition, senior city drivers whose residence is ten or fewer miles from the start of an available rural route are eligible for assignment to that route.
6. Deadhead Driver Time: Minutes required to drive to and from the start of a route and to and from the end of a route.

B. Bidding Procedure for Bus Drivers

1. All current bids will be maintained under current practice.

2. The current bidding procedure by area will be eliminated. All future bids for “regular routes” will be governed by seniority and classification. Drivers assigned routes classified as “city routes” may bid for such routes when vacant but will not be eligible to bid routes classified as “rural routes”. Conversely, drivers assigned routes classified as “rural routes” will not be eligible to bid routes classified as “city routes”. Exception to this rule is defined under A4 and A5.
3. Drivers who bid on available rural routes will receive up to one hour and 30 minutes (90 minutes) per day to cover “deadhead driver time.”
4. No other changes in current practice, including payment for “layovers”, which is time spent in town or at a school between runs, will be made.
5. This agreement is subject to approval by attorneys for both the School District and the Union. Any language agreed which is found contrary to the Fair Labor Standards Act shall be null and void.

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POSITIONS OF THE PARTIES

It is the position of the Union that the midday runs such as the one denied the grievant is a co-curricular run. The Union contends that senior employees who are available have seniority rights to such routes. The cost, argues the Union, is marginal. Typically, there is very little down time between such runs. Rural drivers are commonly available, because they have dropped off their students. The Union points to the testimony of a number of its witnesses and contends that these assignments have been made in the past. The Union contends that any cost and/or inconvenience to the employer is minor.

The Employer contends that it enjoys the discretion to make the short-term assignments where there is less than seven days involved. The Employer points out that this was a one-day situation. In making such assignments, the Employer considers whether a city or rural driver should be assigned, the amount of layover time, and the quality of service to be delivered. The Employer notes that the contract has treated rural

and city drivers differently since its inception. The Employer contends that given the reality of its budget caps, any savings is appropriate. The Employer contends that the system proposed by the Union would be difficult if not impossible to administer. The Employer contends that the system of assignment has been in place for years. The contract does not address a one-day substitution.

DISCUSSION

The midday run involved in this dispute is a co-curricular route as defined by Article 7, Section 5, of the collective bargaining agreement. I credit Mr. LaCore's testimony as to how runs are assigned. His testimony with respect to case-by-case consideration and the criteria included within his consideration suggest that there are deviations from assignment by overall seniority as a practical matter. As pointed out in the hearing, some of these replacement driving assignments arise with very short notice. Given the foregoing, I believe that LaCore's testimony is consistent with that of Union witnesses, including Ms. Case. Ms. Case, and others, testified that rural drivers fill in on certain runs at times. The Union produced evidence to support that contention.

There is nothing in this record to support a finding that there exists a practice of the strict application of seniority regardless of which seniority list the driver is on. The assignment of an ongoing co-curricular route is done by seniority. If the co-curricular route is within the city, it is assigned to a city seniority list driver. The Union essentially contends that since a rural driver is in the city, and potentially proximate to the assignment, that rural drivers should be eligible to exercise seniority rights for these short-term/substitute co-curricular routes. However, Section 5(A)3. includes "...on a regular basis" as part of the definition of co-curricular route. On its face, the Article does not address the type of short-term assignment which prompted this case.

Article 6, Section 1(D) addresses employees' rights to move to "a temporarily-vacated position". That provision requires a reasonable assurance that a vacancy exists for seven working days or more. I believe that Article 6 regulates employees' right to short-term vacant assignments. The Article requires a seven-working day threshold for its provisions to kick in. The dispute underlying this grievance involved a one-day assignment. I believe that the Employer enjoys some assignment latitude under Article 6. I do not believe that latitude to be unfettered. Paragraph D(2) applies an arbitrary or capricious standard to certain employer assignment decisions.

In this dispute, the Employer followed a long-established assignment procedure. The decision was made in significant part in order to avoid layover costs. While the Union may quibble with that decision, the decision is rational and is not arbitrary or capricious.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin this 29th day of September, 1998.

William C. Houlihan /s/

William C. Houlihan, Arbitrator