BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

SOUTHERN DOOR EDUCATION ASSOCIATION

and

SOUTHERN DOOR SCHOOL DISTRICT

Case 31
No. 57904
MA- 10773

(Don Johnson Reduction in Hours)

Appearances:

Mr. David Brooks Kundin, Executive Director, Bayland Teachers United, 1136 North Military Avenue, Green Bay, WI 54303, appearing on behalf of the Association.

Davis & Kuelthau, S.C., by **Attorney Tony J. Renning**, and **Attorney William G. Bracken**, Employment Relations Services Coordinator, P.O. Box 1278, Oshkosh, WI 54902, appearing on behalf of the District.

ARBITRATION AWARD

The Southern Door Education Association (hereinafter referred to as the Association) and the Southern Door School District (hereinafter referred to as the District) requested that the Wisconsin Employment Relations Commission designate the undersigned as arbitrator to hear and decide a dispute concerning the District's decision to reduce the hours of work assigned to teacher Don Johnson. The undersigned was so designated. A hearing was held at the District offices on March 20, 2000, at which time the parties were afforded full opportunity to present such testimony, exhibits, stipulations, other evidence and argument as were relevant to the case. The parties submitted post-hearing briefs which were exchanged through the undersigned on May 20, 2000, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language and the record as a whole, the undersigned makes the following Award.

ISSUES

The parties were unable to stipulate to an issue, and agreed that the Arbitrator should determine the issues in his Award. The Association proposed that the issue be stated as follows:

1. Did the District have just cause to discipline the Grievant? If not,

2. What is the appropriate remedy?

The District believes that the issues are:

1. Is the grievance substantively arbitrable? If so,

2. Did the District violate the collective bargaining agreement when it reduced the Grievant's teaching contract from full-time to part-time for the 1999-2000 school year? If so,

3. What is the appropriate remedy?

The Association stipulated that, if the Arbitrator determined that the reduction in the Grievant's work hours was not an act of discipline, there was no violation of the contract since the District complied with the procedures of Article VI. Accordingly, the issues may be fairly stated as:

1. Is the grievance substantively arbitrable? If so,

2. Was the reduction in the Grievant's contract from 100% to 65% for the 1999-2000 school year? If so,

3. Did the District have just cause to discipline the Grievant? If not,

4. What is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE IV GRIEVANCE PROCEDURE

. . .

5. The decision of the arbitrator shall be final and binding on both parties.

6. The arbitrator shall have no power to add or to subtract from the terms of this Agreement.

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ARTICLE V BOARD'S FUNCTIONS

Except as otherwise specifically provided in this agreement, the Board retains all rights and functions of management and administration that it has by law and the exercise of any such rights or functions shall not be subject to the grievance procedure.

Without limiting the generality of the foregoing, the Board's prerogatives shall include:

- -The management and operation of the school system and the direction and arrangement of all the working forces in the system, including the right to hire, suspend, discharge, discipline, or transfer employees.

- -The right to relieve employees from duty for poor or unacceptable work or for other legitimate reasons.

- -The right to determine location of the schools and other facilities of the school system, including the right to establish new facilities and to relocate or close old facilities.

- -The determination of the layout and the equipment to be used and the right to plan, direct, and control school activities.

- -The determination of the processes, techniques, methods, and means of teaching and the subjects to be taught.

- -The determination of the financial policies of the district, including the general accounting procedures, inventory or supplies and equipment procedures and public relations.

- -The creation, combination, modification, or elimination of any teacher position deemed advisable by the Board.

- -The determination of the management, supervisory, or administrative organization of each school or facility in the system and the selection of employees for promotion to supervisory, management or administrative positions.

- -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.

- -The control and use of the Board's property and facilities.

- -The determination of safety, health and property protection measures where legal responsibility of the Board or other governmental unit is involved.

- -The right to enforce the rules and regulations now in effect and to establish new rules and regulations from time to time not in conflict with this Agreement.

ARTICLE VI CONDITIONS OF EMPLOYMENT

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L. Teacher Assignments
In general, teachers will be assigned to teach only in those curricular areas in which they are certified.

M. Part-time Teachers
Part-time contracts will be determined by the percentage of the teacher's class load. Teachers who work on individual schedules such as speech and language clinicians, guidance counselors and music teachers will have their contracts defined as a percentage of the school day. All part-time teachers' time will be determined from the beginning of their working day until the end of said day.

. . .

Q. Layoff and Recall

1. Should there be a reduction in the teaching staff or a reduction in hours, the layoffs will be based on certification and district seniority. Seniority shall be defined as length of continuous service in the school district. Part-time teachers hired after September 1, 1984, shall accrue seniority on a prorata basis. Seniority shall not accrue nor be considered interrupted while an employee is on an approved leave of absence. Before a teacher is laid off, such teacher shall be offered a transfer to another position for which such teacher is qualified and certified if that position is open and the teacher desires the position. Layoff notice for

the ensuing year must be given by May 15th. For purposes of interpretation of layoff and recall, there will be three certification areas: K-8, 7-12, and K-12.

2. No teacher may be prevented from securing other employment during the period that he or she is laid off under this section. Such teachers shall be reinstated in inverse order of their being laid off in the organizational unit affected provided they are certified to fill the vacancy. This reinstatement shall not result in a loss of credit for previous years of service.

3. No new or substitute appointments may be made while there are laid off teachers available who are qualified to fill the vacancies.

   Such recall rights shall continue for a period of three (3) years from the effective date of the layoff, which shall be the first day the teacher would have commenced employment but for the layoff.

   Notice to the teacher of an available position shall be mailed by certified mail (return receipt requested) to the last known address of the teacher in question as shown on the District's records. It shall be the responsibility of each teacher on layoff to keep the District advised of his/her current mailing address.

   The response of the teacher to the recall notice shall be in writing and must be received at the administration office within fourteen (14) calendar days of receipt by the teacher. Failure to make a timely response to such notice shall result in termination of all reemployment rights.

   Seniority and the employment relationship shall be broken and terminated if a teacher: (1) resigns or quits; (2) is discharged or nonrenewed; (3) is retired; (4) is on layoff for more than three (3) years; or (5) fails to respond to a recall notice within fourteen (14) calendar days.

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BACKGROUND

The Grievant, Don Johnson, is the only high school agriculture education teacher in the Southern Door School District, with 12 years of service. His immediate supervisor is the High School Principal, Lois Mahaffey. The District Superintendent is Joseph Innis.

The instant grievance concerns the reduction of the Grievant's contract from 100% in 1998-99 to 65% for the 1999-2000 school year. The District asserted that the reduction was the result of low enrollments and a tight budget. The Association believes that the reduction was a form of discipline, resulting from the Grievant's having undergone electrical shock therapy for bi-polar disorder during the 1998-99 school year.

In the 1998-99 school year, the Grievant experienced increasing problems with depression, from which he had suffered for several years. He sought treatment and was diagnosed as suffering from bi-polar disorder, commonly referred to as manic-depressive disorder. He took leave from December 11, 1998, to the end of December to receive treatments. He was hospitalized for a portion of this time and received electrical shock therapy. He returned when school started again in January, with a note from his doctor saying that he was capable of fully resuming his duties.

When he initially returned in January, High School Principal Lois Mahaffey and Superintendent Innis met with him and discussed some items that they identified as performance problems. Mahaffey told him she wanted him to get back to the level of teaching he had previously attained and she identified four areas of concern. She recounted four occasions in 1998 when he had either reported late for work or had called in sick after the school day started. She also observed that while he was gone during December, she tried to locate lesson plans for his classes and found nothing past the end of October. She noted that he had been counseled about this problem in the 1997-98 school year, when he was required to submit the plans to her weekly and meet with her monthly through the end of the school year, and that she had raised this with him before he went on his medical leave. Mahaffey also told him that his evaluative practices needed to be more regular and that he should have some sort of graded work for students twice weekly. Finally, she told the Grievant that he needed to be more actively involved in teaching in his classroom and noted that she had twice found students sleeping in his classes and had found others uninvolved in the work that was assigned. She advised him that she would meet with him bi-weekly during the second semester to review his progress on these issues and provide whatever assistance he required and that she would also make unannounced visits to his classroom. She drafted a memo to the Grievant on these points and had it reviewed by Innis. Innis had her add a line advising the Grievant that "Failure to meet these expectations could result in discipline up to and including discharge." He was given the memo on January 13th.

On January 17th, the Grievant went out on leave again and was again hospitalized and given shock treatment. He returned to work at the end of February. Mahaffey met with him bi-weekly to review his lesson plans, grade book, samples of graded homework and the like. She also increased the number of unannounced visits to his classroom.

On March 9th, the Grievant was presented with a 100% contract for the following year. At the end of April, he was advised by Innis that his position would be reduced to 65% for 1999-2000. This resulted from a consolidation of classes from two sections to one section and the District's decision not to offer him paid parking lot supervision and a paid lunchroom

supervision that had been provided in 1998-99. The standard workload for a teacher in the District is six periods of instruction. Each period of instruction entitles the teacher to one-third of a period of prep time, and thus, six classes will yield two prep periods, for a full eight period day. A teacher may be assigned other student supervisions in lieu of classroom instruction, but these do not generate prep time.

In the first semester of 1998-99, the Grievant taught two sections of Conservation and Natural Resources, one section of Animal Science and one section of Horticulture and Plant Life. He had two periods of prep, one period of study hall and one period of parking lot duty. In the second semester, he taught one section of Introduction to Agricultural Science at the middle school, one section of Animal Science and continued to teach Horticulture and Conservation, which were full year classes. He had two prep periods and one study hall:

First Semester		Second Semester	
Assignment	Enrollment	Assignment	Enrollment
Parking Lot Duty	n/a	Intro to Ag (MS)	12
Horticulture	19	Horticulture	19
Prep Period	n/a	Animal Science	19
Study Hall	n/a	Study Hall	n/a
Animal Science	19	Prep Period	n/a
Conservation	16	Conservation	16
Prep Period	n/a	Prep Period	n/a
Conservation	10	Conservation	10

The schedule proposed for him in the 1999-2000 school year was:

First Semester		Second Semester	
Assignment	Enrollment	Assignment	Enrollment
Prep/Study Hall	n/a	Intro to Ag (MS)	18
Horticulture	17	Horticulture	17
Prep Period	n/a	Prep Period	n/a
Conservation	26	Conservation	26
Animal Science	18	Animal Science	13

This grievance was filed immediately to protest the reduction as an unwarranted act of discipline based on the Grievant's use of sick leave and his having received shock treatments. At the same time, the Grievant spoke with Mahaffey and asked her to suggest to the Board of Education that the Conservation and Horticulture classes be split into two sections each, which would bring him to full-time. Mahaffey did raise that possibility with the School Board, but it was rejected.

The grievance was not resolved in the lower steps of the grievance procedure and was referred to arbitration. At the hearing, in addition to the facts recited above, the following testimony was taken:

The Grievant, Don Johnson, testified that another staff member had approached him at some point and told him that he had been told by another teacher that that teacher had overheard a conversation between Mahaffey and a clerical employe named Jeanquart. According to this teacher, Jeanquart expressed a dislike for the Grievant and said would like to "see him go," to which Mahaffey responded "We're trying." Jeanquart said she wished the District would make him so miserable that he would leave and Mahaffey replied "Well, we're trying to do that also." The Grievant said that he was told the person who overheard the conversation did not want his or her name used for fear of retaliation. The Grievant also noted that, when he met with Mahaffey and Innis to discuss the reduction of his contract, he commented that he didn't know if he could continue to teach in the District at 65% and his impression was that when he said this, Innis could barely keep from grinning.

The Grievant testified that May 13th was when he first learned that he would be reduced and that he felt it was particularly unusual that the District would wait until only two days before the May 15th deadline for layoff notices to let him know that he would not be given a full contract. He also cited the imposition of conditions on him when he returned from sick leave as an effort to put pressure on him, although he agreed that the question of lesson plans had been raised before he went on leave. He initially testified that he was off work from December until February, but on cross-examination agreed that he had returned for a time in January. He explained that the treatments he had received for his illness had affected his memory and that he could not be sure of dates.

The Grievant expressed the opinion that the reduction in his contract was unwarranted, since the total enrollment in his classes had only gone down by five between 1998-99 and 1999-2000. He noted that if Conservation and Horticulture were split into two section each, the class sizes would be consistent with past offerings of those classes. On cross-examination, he agreed that the Conservation class had been taught in sections as large as 26 students before, but contended that it interfered with his ability to supervise the students properly. He made the same observation with respect to Horticulture — that a class size of 21 was not unheard of, but that it limited his ability to use the small greenhouse that the District had available and made supervision difficult.

Lois Mahaffey denied disciplining or discriminating against the Grievant. She said that she had never made the comments attributed to her in a conversation with Jeanquart or with anyone else, or any similar comments. She opined that, far from treating the Grievant badly, she had actually given him more favorable treatment that other staff members, by assigning him paid parking lot duty in both the 1997-98 and 1998-99 school years to supplement his schedule. No other faculty member had ever been paid to supervise the parking lot and there were people who would do so on a voluntary basis. Mahaffey said that the reduction in the Grievant's schedule came after she met with Superintendent Innis on the proposed class schedules for the year. Since the introduction of revenue caps, Innis had taken a much greater involvement in scheduling and had regularly advised administrators that the District needed to economize. In that meeting, Innis determined that the District could not afford to pay the Grievant to monitor the parking lot or supervise the lunchroom, when volunteers or aides could

be used for those functions. The decision to offer one section of Conservation and Horticulture was based on that fact that the resulting class sizes would be consistent with what had been done in past years and on the fact that high school enrollments in the Agricultural Science program had been declining for years. Mahaffey presented a chart, showing the trend in enrollments between 1991 and 2000:

1991-92 – 131 Students	1992-93 – 146 Students
1993-94 – 130 Students	1994-95 – 121 Students
1995-96 – 116 Students	1996-97 – 94 Students
1997-98 – 89 Students	1998-99 – 83 Students
1999-00 – 75 Students	

Mahaffey agreed that there were other teachers in elective classes with fewer students than the Grievant but full-time contracts. In some cases she noted that the class sizes for those teachers were limited by the availability of equipment. For example, the ceramics class had only one potting wheel, the consumer automotive mechanics class had only one lift and the digital imaging class had only eight computers, necessitating smaller class sizes. In other cases, teachers had small sections because they were teaching distance learning classes for a consortium of school districts. Those teachers also, by a side agreement with the Association, were given an extra prep period.

Mahaffey testified that the Grievant had, in her opinion, done little to promote his program in the face of declining enrollments. He had not proposed any new courses in ten years, although he did at one point investigate the possibility of adding an aquaculture class. He had accepted her suggestion that he have one of his classes do a demonstration project by landscaping a portion of the school grounds, but that proposal died in a School Board committee.

Superintendent Joseph Innis testified that the District's overall enrollments had been steadily declining for several years and that this limited the District's ability to raise money under the State imposed revenue caps. He estimated that new revenues available for 1999-2000 were less than what was needed to carry forward existing staff under the QEO law and that the trend would not improve. In the face of this, he felt it was ridiculous to have faculty members assigned to parking lot supervision, lunchrooms and study halls, when those could be covered by aides. That was the reason that the Grievant was not offered the same fillers in his schedule for 1999-2000 as had been made available in past years. Innis expressed the opinion that if there had not been retirements and reassignments of teachers with multiple certifications, there would have been reductions in teaching contracts before the Grievant's. On cross-examination, Innis testified that the faculty was still supervising study halls in 1999-2000 and he agreed that the assignment of the Grievant to paid parking lot duty in 1997-98 and 1998-99 was not an unreasonable assignment at the time. He expressed the opinion that District's financial condition had worsened since then.

Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES

The Association

The Association takes the position that the Grievant was reduced in hours as an act of discipline. The Grievant was an experienced teacher who encountered mental health problems and sought medical treatment, including shock therapy. In response to this, the District reduced him from 100% to 65%. The District's citation of declining enrollments in his classes is merely a pretext, offered to disguise its true motives. The figures show that he had 140 students in his program in the 1998-99 school year. The following year, when declining enrollments supposedly forced a reduction in hours, he had 135 students. A drop of five students is hardly a justification for a one-third reduction in hours. Seven other teachers had enrollment drops of between 11 and 47 in that same year, with no impact on their job status. Rather, plainly the difference between the Grievant and these other teachers is that none of them had shock treatments.

The proposition that the District was specifically seeking to be rid of the Grievant is buttressed by other evidence in the record. One staff member, who wished to remain anonymous, reported to another teacher that he/she had overheard a conversation between Principal Mahaffey and Kay Jeanquart. Jeanquart and Mahaffey discussed the Grievant's illness and Jeanquart said she would like to see the Grievant gone. Mahaffey replied "We're trying." Jeanquart went on to suggest that the District make it so unpleasant for the Grievant that he would quit. Mahaffey replied "Well, we're trying to do that also." While the direct witnesses would not come forward for fear of retribution, there is no reason to think that this is not true and it is consistent with the other objective facts. Another point that supports the Association's theory of the case is Johnson's observation of Superintendent Joe Innis's reactions during a meeting at which the reduction in hours was discussed. When he was told he was being reduced to 65%, Johnson understandably commented that he didn't know if he could afford to teach in the District for that pay. He observed that Innis was doing all he could to keep from grinning.

The Association notes that the actions of Principal Mahaffey belie her claim to have been the Grievant's friend and instead suggest that she was eager to force him out. She admits that when he returned from his hospitalization, she set as a goal for him a return to the level he was at before he became ill. She followed this immediately with a two page Improvement Plan, which threatened him with termination if he did not meet the Plan's objectives. She then made numerous unannounced visits to his classes, collected his lesson plans and forced him to have bi-weekly meetings with her. When the pressure of this course of action did not force him out, she and Innis reduced his contract. It is patently obvious that the District was embarrassed at having a staff member who had undergone shock treatments and that it was determined to remove him from the work force.

The District

The District takes the position that the reduction of the Grievant's contract was not an act of discipline. The only evidence offered by the Association to support its discipline theory is the Grievant's statement of his perceptions and what someone told him a third person overheard a fourth person say to a fifth person. The Grievant's perceptions of his situation simply do not square with the facts. He believes that his lesson plans had something to do with the reduction in hours, but he was counseled on his lesson plans before the District knew anything about his mental condition. He believes that Mahaffey's classroom observations played a part in the decision to partially lay him off, but he admits that Mahaffey was observing him to help him recover his previous teaching skills. He further admits that no one has ever linked the classroom observations or the problems with his lesson plans to the reduction in hours. He alone believes that there is a linkage.

The Grievant's reliance on the multiple hearsay of Mahaffey supposedly being overheard to say something about making him miserable enough to quit is not entitled to any weight whatsoever. The Grievant could not say who it was that overheard the conversation, but he did say that the conversation was between Mahaffey and Kay Jeanquart. Jeanquart was subpoenaed by the Association, but was not put on the stand. The Arbitrator can and should infer from this that she would have testified adversely to the Grievant.

The theory that the Grievant was in some fashion disciplined is at odds with the objective evidence. Instead, the record supports the District's claim that the reduction in hours was due to a combination of declining student interest in the Grievant's subject area and a tight financial picture for the District. The District has the basic right to manage its own affairs and reducing staff is one of the tools available to it. There is no limitation on the District's right to layoff and the management rights clause expressly provides that the exercise of management's rights will not be subject to the grievance procedure. The reduction of the Grievant's contract was an exercise of the right to allocate and assign work. Accordingly, the grievance is not even arbitrable.

Even if the Arbitrator had jurisdiction to consider the grievance, the record makes it plain that the District had a reasoned and non-discriminatory basis for its decision. Principal Mahaffey and Superintendent Innis both testified that declining enrollments and budget uncertainties were what drove the decision to reduce hours. The evidence is that overall enrollments was the high school have decreased and that enrollments in the elective agriculture courses have dropped precipitously in the 1990's — from 131 in 1991-92 to 75 in 1999-2000. The Grievant is certified to teach only agriculture and his level of employment is necessarily affected by enrollments in agriculture classes. In addition to declining enrollments, the District had budgetary constraints that made it necessary to allocate resources in the most efficient way possible. To assign a highly paid certificated teacher to monitor the lunch room or the parking lot when that work can be done by a teacher's aide makes little economic sense. While the District did assign the Grievant extra supervisions in 1998-99 to bring him to 100%, that was an exception to the general rule and a luxury that the District could not afford over the long term.

The Grievant's assignment for the 1999-2000 school year was based on his work load for that year. The District had reasonable class sizes in line with previous years and offered as many agriculture classes as it could justify. While the Association argues that it could have crafted a full-time position for him, that is not the point. The District is not obliged to manage its affairs so as to insure the Grievant's full-time status. The Grievant himself did nothing to promote the agriculture program and the District cannot be held responsible for the decline in enrollments. The test of the District's conduct is whether it was reasonable under the circumstances. The evidence overwhelming establishes that it was and that necessarily leads to the conclusion that the grievance must be denied.

DISCUSSION

The threshold question in this case is whether the reduction in hours from full-time to .65 FTE was an act of discipline. The District has raised a question of substantive arbitrability and that is the threshold as a matter of law. However, the arbitrability issue is inextricably linked to the parties' differing theories of the case. The District views this as purely an exercise of management rights and, as such, not subject to the grievance procedure. Assuming solely for the sake of argument that any and all exercises of management rights are shielded from the grievance procedure, they are only shielded if they do not conflict with some other section of the contract. Thus, the District's theory is valid only if it is first determined that this was not an act of discipline subject to the "cause" protections of the contract. Accordingly, it is not possible to determine the arbitrability argument without first deciding on the true character of the reduction and once that decision is made, the arbitrability question becomes moot. If it is determined to have been an act of discipline, it is clearly subject to the grievance procedure. Given the agreement of the parties that the reduction, if not an act of discipline, was consistent with the contract, a decision that it was not disciplinary would require dismissal of the grievance.

The partial layoff here does not have the usual characteristics of a disciplinary act. There is no allegation of misconduct, no disciplinary procedures were used and the District denies that it was imposing discipline. The Association's theory of the case is that the reduction in hours was merely the final step in a course of action intended to force Johnson out of the District and that management's explanations are merely a pretext to disguise discrimination against a man who suffered mental illness and received shock treatments. The principal points in support of this theory are:

- Mahaffey immediately imposed stressful conditions on the Grievant when he initially returned from his hospitalization, requiring him to meet with her bi-weekly, share his paperwork with her and subjecting him to frequent unannounced classroom observations. She threatened him with discipline if his performance did not improve;

- Mahaffey told another staff member that she was trying to get rid of the Grievant;

- Innis was visibly pleased when the Grievant commented that he might not be able to afford to remain a teacher if he was reduced to two-thirds time.

- There has never before been a reduction in hours of an incumbent teacher;

- There has been only a five student reduction in the agricultural education enrollments from 1998-99, when he was full-time, and 1999-00 when he was reduced to two-thirds time. Other teachers had far more substantial reductions in their class enrollments, without suffering any reduction in hours.

Mahaffey did impose conditions on the Grievant within a week of his return to school after the shock treatments. However, it appears that the bulk of these conditions were the same ones that had been imposed on him in the previous year when he experienced difficulty in completing adequate lesson plans. Her January 13th memo notes that he was required to submit lesson plans in advance and to meet with her on a monthly basis in 1997-98 as well. Moreover, none of the specific tasks he was directed to do — calling in if he was going to be late or absent, preparing lesson plans consistent with the District's policy on that topic, regularly assessing student performance and closely monitoring students in his classes, is something that is above and beyond the basics required of a high school teacher. Certainly, the timing of the meeting and the memo may be viewed as having been somewhat insensitive. On the other hand, the point in time at which the Grievant had received treatment and was pronounced fit by his doctor is not an irrational moment to lay out for him what the District's expectations would be. It also bears noting that the lesson plan issue was raised with him before he went on leave, but was not addressed because of his absence. On the whole, the meeting and the follow-up memo are consistent with either party's theory of the case. If one assumes bad faith, they can be cited as efforts to ratchet up stress and break him. If one assumes good faith, they can be cited as efforts to give him clear guidance on what he needed to do to once again be successful.

The most obviously damaging piece of evidence against the District would be an outright admission and the Association claims that just such a statement was made. According to the Grievant, a colleague reported to him that another person had overheard Mahaffey and an clerical worker discussing the Grievant. The clerical worker expressed a dislike for the Grievant and Mahaffey said the District was doing everything it could to get rid of him. She then expanded on this statement by saying they were trying to make things so hard on him that he would quit. The problem with this alleged statement is obvious. The Grievant testified to having been told this by someone who said he was told this by someone who said he had overheard this. While hearsay is generally admitted in arbitration proceedings, it cannot be accorded the same weight as direct testimony and where there are multiple levels of hearsay, the weight to be accorded the alleged statements is substantially reduced. Here, the alleged witness to the statements is so far removed from the declarant that it is virtually impossible to give the statement any weight at all. Mahaffey denied saying it. The clerical worker was

available to testify, but was not called. In sum, there is not a trace of direct evidence to establish that these incriminating statements were actually made and I am not able to give any credence to this item of proof in arriving at the decision.

The Grievant's observation that Innis seemed to be barely able to restrain a grin when the Grievant said he might not be able to stay on as a part-time employe is not hearsay, but it is far from persuasive evidence. I do not doubt the sincerity of the Grievant's testimony, but this amounts to proof of what the Grievant thought Innis was thinking during their meeting. As with the fourth-hand statement discussed above, simply describing the proof makes it obvious what the difficulty would be in premising a decision on it.

The Association notes that during Innis's 12 year tenure as Superintendent, there has not previously been a reduction of an incumbent staff member from full-time to part-time. The record supports this proposition as far as it goes, but it also discloses that positions have been eliminated and reduced in other ways. There are teachers who have been hired as part-timers, teachers who have retired have not been replaced and Innis testified to several instances in which teachers were compelled to start teaching in other curricular areas to maintain their full load when enrollments in their primary fields dropped and classes were eliminated. Thus, it appears that other fields have been reduced, but the reduction has been made in such a way that partial layoffs were not required. The Grievant is certified only in agricultural education and cannot be assigned to teach in more robust academic areas to fill out his schedule.

It is true that a full schedule need not consist solely of classroom teaching assignments and that other areas of supervision could have been added to the Grievant's schedule to maintain him at 100%. It is also true that the District is under no contractual obligation to make these assignments available to teachers. The use of faculty for supervisions that can be covered by aides is obviously an expense to the District and Innis testified to the pressures being exerted by overall declines in enrollment and the workings of the revenue caps imposed by the state legislature. In 1997-98, the Grievant was assigned as the parking lot monitor to fill out his schedule. In 1998-99, he was again given this duty and was also assigned lunchroom duty and a study hall to give him a full assignment. He was the only teacher ever paid to be the parking lot monitor. This and the assignment of a paid lunch supervision suggest that Mahaffey was, at least in 1997-98 and 1998-99, attempting to accommodate the dropping enrollments in the Grievant's field by supplementing his schedule beyond any accommodations given to other teachers.

The fact that Mahaffey and the District accommodated the Grievant in 1997-98 and did not repeat the accommodation in 1999-2000 is, of course, open to interpretation. The Association views it as evidence of discrimination. The District attributes it to increased financial pressure and the fact that his basic teaching load dropped. The drop in the teaching load was the result of the administration's decision not to split classes into two sections. The District elected to have one 26 student section of his Conservation and Natural Resource Management class, rather than two sections as had been scheduled in the previous year, when there were also 26 students. The Horticulture class was also identified as a possible candidate

for splitting, as it was projected to have 21 students in one section, whereas it had been as low as 10 in a section in some prior years. Thus, splitting the classes into two sections would, as the Association suggests, have yielded class sizes that were consistent with those in prior years. It is equally true that by having only one section of each course, the class sizes in 1999-2000 were consistent with those in prior years. The class sizes have varied – Horticulture has been as large as 26 in 1994-95 and 1995-96, and as small as 10 in 1994-95 (two sections were offered in 1994-95). Conservation has been as large as 26 and 25 in the two sections offered in 1992-93, and as small as 10 in 1996-97 and 1998-99.

It is clear that the District could have elected to split these classes and generate a schedule that would have kept the Grievant at 100%. Likewise, it could have filled in his schedule with supervisions. Either of those steps, or some combination, would have been consistent with what had been done in prior years. The question is whether the failure to take those steps is necessarily proof that the District targeted the Grievant for a reduction because of his mental health issues. The District did target the Grievant, in the sense that a conscious decision was made to reduce his contract. The timing of the cut, coming shortly after his return from receiving shock treatments, naturally gives rise to a question of the administration's true reasons. However, this suspicion is balanced by persuasive evidence that the District's action was taken as a cost cutting move, prompted by declines in enrollment and the resultant financial pressures generated by the revenue caps. The targeting of the Grievant, a teacher in an elective program where student interest was on a steady decline, was on its face a rational management choice. In not splitting the classes, the District realized class sizes that were not out of the ordinary for those subjects. In having the parking lot and the lunchroom supervised by someone other than a faculty member, the District received the same services at a substantially lower cost. The net effect of these actions was a savings of approximately $15,000 for the District. Given the evidence of pressure from the revenue caps, the fact that the Grievant was not certified in any other area and thus, not eligible to teach non-agricultural classes and the evidence that the parking lot supervision in particular was never before assigned as a paid duty for a faculty member, I cannot find that the District's actions towards the Grievant were triggered by more than a desire to save money.

In summary, the record is susceptible to an interpretation that would support the Grievant's belief that he was discriminated against, but that conclusion requires one to start with that belief and attribute each of the administration's facially neutral acts and decisions to bad faith. Taken at face value, the decisions to consolidate sections into class sizes that were consistent with prior years and to assign lunchroom supervisions and parking lot duty to less expensive personnel were reasonable and within the discretion reserved to management. As the only evidence to support the inference of discrimination is the timing of the decision, and since the timing is equally explained by the need to economize in the face of declining enrollments, I conclude that the District did not engage in act of discipline when it reduced the Grievant's contract for the 1999-2000 school year. Accordingly, the grievance is denied.

On the basis of the foregoing and the record as a whole, I have made the following

AWARD

The reduction in the Grievant's contract from 100% to 65% for the 1999-2000 school year was not an act of discipline. The grievance is denied.

Dated at Racine, Wisconsin, this 28th day of August, 2000.

Daniel Nielsen /s/
Daniel Nielsen, Arbitrator

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