

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
MINOCQUA, HAZELHURST, LAKE TOMAHAWK SCHOOL DISTRICT
and
UNITED LAKELAND EDUCATORS

Case 53
No. 59203
MA-11219

(Charles Schaffer Grievance)

Appearances:

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, 1901 West River Street, P.O. Box 1400, Rhinelander, WI 54501, on behalf of the Association.

Quarles & Brady, LLP, by **Attorney Thomas N. Shorter**, Firststar Plaza, P.O. Box 2113, Madison, WI 53701-2113, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1999-2001 collective bargaining agreement between Joint School District No. 1, Towns of Minocqua, Hazelhurst and Lake Tomahawk (District) and United Lakeland Educators (Union or Association), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding the reduction in hours of Librarian Charles Schaffer from 100% to 45%. Hearing was scheduled for and held on December 19, 2000, at Minocqua, Wisconsin. A stenographic transcript of the proceedings was made and received by the undersigned by January 19, 2001. The parties agreed to file their initial briefs by February 23, 2001, and reserved the right to file reply briefs 15 working days after the receipt of the initial briefs. All briefs were received by March 21, 2001. By May 7, 2001, the parties submitted supplemental commentary and information regarding licensing requirements for Technology Specialist at the Arbitrator's request. The record was then closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

The parties were unable to stipulate to the issues to be determined in this case. The parties stipulated that the Arbitrator could frame the issues based upon the relevant evidence and argument in the case, as well as the parties' suggested issues. The District suggested the following issues for determination:

Did the District violate Article 2 or 29 of the parties' collective bargaining agreement when, as part of a layoff, it did not allow the Grievant Chuck Schaffer to bump a less senior employee teaching seventh or eighth grade English or a less senior employee in the Technology Coordinator position, after it reduced his hours for the 2000-2001 school year to 45%?

The Union's suggested issue was as follows:

Did the District violate the Grievant's rights under the collective bargaining agreement, particularly Articles 2 and 29 when, as a part of a layoff, it did not allow the Grievant, Chuck Schaffer, to bump a less senior employee teaching seventh or eighth grade English or a less senior employee in the Technology Coordinator position, or a less senior employee in the Learning Resource position, after it reduced Schaffer's hours for the 2000-2001 school year to 45%?

Based upon the relevant evidence and argument in this case and noting particularly the language of the grievance herein, I find that the District's issue is the more reasonable one and it shall be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE 2 – RECOGNITION AND SCOPE

The Board recognizes ULE as the sole and exclusive bargaining representative for regular full time and regular part time teachers, regular shared-time teachers, and librarians in Joint School District No. 1, but excluding the following: temporary, replacements, and per diem substitute teachers, administrators, assistant administrators, supervisors, teacher aides, clerical and custodial employees.

ARTICLE 29 – LAYOFF AND RECALL PROCEDURE

A. Board Rights: This procedure shall apply when the School Board decides to reduce the teaching staff. After the Board has determined where the reduction shall occur, the following procedures shall be used.

B. Notice: In the event that the Board anticipates that layoff or reduction in hours will be necessary for the next contract year, the teacher or teachers so affected will be notified by April 1st of the preceding year. However, the teacher shall be issued an individual teaching contract contingent upon the availability of work. The parties further agree that layoffs may be necessary at such time other than the April 1st date referenced above, in which case, thirty (30) calendar days advance notice shall be given. In such event, this Article shall be followed and shall supersede the individual teacher contract.

C. Selection Criteria: The selection of teachers to be laid off or reduced in hours shall be made according to the following guidelines:

1. Normal attrition resulting from teachers retiring or resigning will be relied upon to the extent possible.
2. Volunteers will be considered next. Teachers who volunteer shall be accorded all rights under this Article.
3. If Steps 1 and 2 are insufficient to accomplish the desired reduction in staff, teachers shall be laid off by the District taking the following factors into consideration.
 - a) Certification
 - b) Districtwide seniority within the following categories.

D. Categories: Teachers shall be placed in categories listed below in which they are currently teaching:

1. Grades K-5.
2. Grades 6-8.
3. Specific Area. Teachers who are required to obtain major certification in a special area in which they are presently teaching shall be placed in individual certification groupings by area (e.g. music, art, guidance, librarians, speech therapy, physical education, industrial arts, home electronics, remedial readings, etc.)

E. Seniority: “Seniority” for the purpose of this Article shall mean Districtwide and shall be applied in inverse order of the earliest date on which the individual teacher involved began his/her first teaching assignment with the District. Seniority shall apply only to continuous employment within the District with part time employees receiving pro rata seniority. However, full time teachers who are reduced to part time shall receive full seniority as provided in Subsection K. If two or more teachers have identical seniority, the Board shall determine, in its sole discretion, which of those teachers shall be laid off. “Certification” will be determined by the current certificates on file in the District office. The practice previously accepted by the DPI of allowing certification to mean “one year above and below” actual certification is no longer applicable.

F. Dual Certification: If a teacher has dual certification, the category of his/her present teaching assignment shall be determinative, unless the teacher has transferred from a teaching assignment in his/her other area of certification. In such case, the teacher may bump a less senior employee in the other categories in order to avoid a layoff. An employee with dual certification not having taught in another category and facing a layoff may bump a less senior employee provided they are qualified.

. . .

J. No teacher may be prevented from seeking and securing other employment during the period he/she is laid off under this Article.

K. Employees who are reduced from full to part time will receive health and dental insurance based upon the following schedule:

- 1) If contract is reduced to 75% or more – Board pays 100% contribution;
- 2) If contract is reduced to 50% or more but less than 75% - Board pays 75% of Board contribution;
- 3) If contract is reduced to less than 50% - Board pays 50% of Board contribution.

With regard to seniority, employees reduced to part time will be credited with full seniority.

With respect to leave days (e.g. sick leave and personal leave) if reduced to less than 50%, they will receive 50% benefits. If 50% or more, they will receive full benefits.

BACKGROUND

The Grievant, Charles Schaffer, has worked for the District for more than 22 years. The Grievant's teaching license is effective through June 30, 2004, and indicates that Schaffer is licensed for K-12 Instructional Library Media Specialist, English Grades 7-12 and Psychology Grades 7-12. As of the end of the 1999-2000 school year, Schaffer had a Masters Degree plus 30 credits in Informational Science (his credits beyond the Masters having been mostly in Computer Science and Technology areas) and was at a step 18 of the salary grid.

In the 1985-86 school year, Schaffer assumed duties as the District's "Computer Instructor" as confirmed in a letter dated March 19, 1993, from then-Administrator Edwin Otto which stated that Schaffer's duties as Computer Instructor had included, but were not limited to the following:

1. Teaching computer classes Grades 1-8
2. Budgeting for computers
3. Inservice for computers
4. Curriculum representative for computer consortium

When Schaffer began computer instructor work, there was no network of computers at MHLT and there were no subordinates in the program to assist him in troubleshooting the hardware and maintaining the machinery. The Grievant stated that he performed these computer instructor duties until approximately 1990 when the District Administration came to Schaffer and asked him to choose between the Computer Technology position and his position as Librarian, as the District was about to create a separate position for Computer Technology. Schaffer chose to remain the School Librarian and the District hired someone else to perform computer/technology duties and to run the then-newly installed computer network for the District. No evidence was offered to indicate that the Grievant had ever been formally given the title of Technology Specialist, that he was paid extra to perform any of these duties or that there was a formal job description for the job at the time Schaffer declined to assume it.

The current incumbent of the Technology Specialist position (Ms. Gravelle) has been employed by the District for approximately eight years. Gravelle is licensed in Speech/Communications (grades 7-12) and English (grades 7-12). The job description for the Technology Specialist reads in relevant part as follows:

Education, Training, and Experience: Minimum licensure by the Wisconsin DPI for the assigned position. Additional coursework in computer science.

Reports to: Director of Instruction and Principal

Terms of contract: Current negotiated agreement with ULE/M-H-LT Board of Education

Evaluation: Performance will be evaluated at least once every three years in accordance with the provisions of the Board Policy, Administrative Rules, and the current negotiated agreement.

Program Goal: To coordinate the use of technology into the curriculum and to assist M-H-LT staff and students in the use of technology to enrich the curriculum and enhance productivity.

Performance Expectations:

1. Organizes and chairs the M-H-LT Technology Committee. Recruits and identifies appropriate representatives to serve on the committee, including K-8 representatives, parents, and community members. Ensures the committee meets regularly throughout the school year.
2. Conducts annual needs assessment on technology needs of staff and students and uses it for long range planning of instructional improvement. Coordinates the needs assessment through the Technology Committee.
3. Consults with the curriculum director to coordinate technology and school curriculum goals for long range improvement planning.
4. Works cooperatively with administration to prioritize and determine budget needs for technology. Works cooperatively with staff, parents, and administration to determine a long range budget proposal for technological advancement.
5. Supervises the routine maintenance of hardware. Supervises the maintenance of repair records of hardware.
6. Supervises the coordination of lab access for both stationary computer labs and mobile units.
7. Supervises the maintenance of the computer labs.
8. Works with staff assistants to effectively trouble shoot routine hardware problems.
9. Provides training to staff and students in the curricular applications of hardware and software.
10. Develops, establishes, and enforces a procedure for hardware and software checkout by staff and students.

11. Orders recommended software after soliciting staff input and securing approval of director of instruction.
12. Maintains inventory of district hardware and software.
13. Provides direct instruction to 6th grade students in technology curriculum as established by the director of instruction.
14. Provides consultation and technical assistance to teachers in the integration of technology into the regular curriculum.
15. Serves as technical coordinator of the network. Provides training to teachers in the instructional capabilities of the network.
16. Schedules monthly meetings with administration.

District Administrator Kranpitz stated herein that Gravelle has many credits toward a special certification which is available in a computer literacy/science area, although she is not certified as yet in that area. Schaffer is not certified in that area.

Schaffer stated herein that he is familiar with the Language Arts program at MHLT through his work as Librarian and that he would be comfortable teaching Language Arts, as he taught it in the past in his prior employment in Colorado. Schaffer stated he is a good writer and has a good grasp of literature. The current incumbent of this position, Lisa Ehlers, has a license in English (grades 7-12) and a 316 Reading license. The job description for a classroom teacher (applicable to an English teacher) reads in relevant part as follows:

Education, Training & Experience:	Minimum licensure by the Wisconsin Department of Public Instruction for the position assigned Additional desirable qualifications may be defined for each specific vacancy
Reports to:	Principal
Terms of Employment:	School year contract negotiated agreement with ULE/MHLT Board of Education
Evaluation:	Performance will be evaluated at least once per three years in accordance with provisions of the Board Policy
Job Goal:	Facilitate student learning and the development of student self-esteem Assist each child in becoming life long learners Implement all Board of Education policies and administrative procedures

Performance Expectations:

Each teacher shall meet the requirements in the following areas:

A. Demonstrates productive teaching techniques

1. Demonstrates effective planning skills
2. Implements the lesson plan
3. Utilizes appropriate evaluation activities
4. Displays a thorough knowledge of Lakeland Area curriculum
5. Provides opportunities for individual differences
6. Ensures efficient student time on task
7. Presents accurate modeling of learning task
8. Employs ongoing timely feedback to monitor student understanding and adjusts teaching accordingly
9. Promotes higher order thinking skills
10. Displays thorough content area knowledge and enthusiasm for teaching
11. Sets appropriate and challenging expectations for student achievement
12. Develops reasonable rules for classroom behavior which are consistent with the school discipline policy
13. Shares responsibility for maintaining acceptable student behavior in all school areas
14. Makes referrals to support personal [sic] for students with suspected learning, and/or social needs.

B. Performs operational responsibilities

1. Demonstrates an organized, structured classroom management syst [sic]
2. Maintains confidentiality of all information
3. Uses allocated time to good advantage

4. Uses supplies, materials, equipment prudently
 5. Sets high standards for student conduct
 6. Participates in departmental and MHLT meetings and in the decision making process
 7. Submits required plans, schedules, reports promptly and accurately
 8. Maintains records as required by District policy
 9. Performs duties assigned outside of classroom effectively
- C. Demonstrates effective interpersonal relationships
1. Demonstrates effective interpersonal relationships with others
 2. Handles problems in a constructive manner through established channels
 3. Encourages and participates in the “MHLT team”
 4. Promotes a positive parent and community interest in school
 5. Promotes positive student self-concept
 6. Promotes student self-discipline and responsibility
- D. Engages systematically in professional development activities that enables improvement of professional skills, knowledge and performance which promote both district and personal goals.
- E. Performs other duties as assigned by the Principal

Seventh Grade English teacher Brian Sutton has been employed by the District for approximately four years. Sutton is certified to teach Theater (grades 1-9) and English (grades 1-8). Sutton is the least senior English teacher at the District. 1/

1/ The Union offered evidence regarding a warning that Sutton was given after Schaffer's hours were reduced in the school year 2000-2001. I find that warning to be irrelevant as it was not before the District when it decided on layoffs for the 2000-2001 school year.

The Union submitted documents which were not contained in Schaffer's personal file. These included several letters of commendations, which Schaffer had received but had not been placed in his personnel file. These included a letter of commendation regarding a technology conference which Schaffer had presented in 1996; a letter of commendation dated 1993; a thank you letter regarding a 1997 Family Fun Night for Science, Math and Technology conducted at MHLT; and a letter of commendation regarding Schaffer's provision of an amateur radio class at the MHLT library. Also not included in Schaffer's personnel file were documents relating to the Center for Studies in Space Communication and Astrological Imaging (SCAI) (not a District-sponsored or approved program). In this program, Schaffer helped students connect with satellites and the Mir Shuttle. Also submitted were a document regarding 1996 gifted and talented coordinator meeting in which Schaffer provided some in-service training was submitted, a Learning Resources Center document which Schaffer put together for a 1991 DPI inspection of the library (which resulted in the library receiving an exemplary rating that year from DPI), a computer curriculum document which Schaffer drafted in 1989 and documents seeking staff development grants from CESA and others which Schaffer was instrumental in putting together. The Union also presented documents pertaining to consulting businesses which Schaffer has become involved, in Northwoods Wildlife Productions and Educational Media Company and Construction Technologies and Learning Laboratory. Finally, the Union submitted documents regarding news articles concerning the District's Science and Computer Fairs as well as documents from Schaffer's 6th Grade Computer Literacy class, offered in 1994-1996 to District students.

Schaffer's Prior Disciplinary Record

Chuck Schaffer has been disciplined in the past and those disciplinary actions can be summarized as follows. In 1998, then-Principal Renee Tennant issued Schaffer the following summary of a June 2, 1998 meeting:

Today we met with a parent to discuss concerns she expressed in a letter directed to my attention. In the letter, she had concerns about a specific incident involving her son and other general concerns about your demeanor with children. Since, we have discussed these issues in the past, it is important to provide a written summary with the intention of recommending measures to improve the situation. In the meeting today, Eve Marlatt was present as the M-H-LT union representative.

The parent expressed concerns about your interactions with children being overly stern to the point of making children fearful. You indicated that in fact you do think it necessary to operate within certain guidelines and expect students to follow those guidelines. You further stated there are times when students are not following those guidelines. You further stated there are times when students are not following instructions and need to be reprimanded,

however, it is not your intention to scare or intimidate children. You indicated to the parent that you would take her feedback into account for purposes of self reflection. In closing, you stated you would make an effort to improve.

After the parent left, we had further discussion. In our conversation I complimented you on the skills and attributes you offer M-H-LT under the umbrella of Instructional Media. You make an effort to stay current in the field of technology and have a broad, yet technical knowledge of media applications. Your skills are valuable to M-H-LT. As professionals dealing with people on a regular basis, our effectiveness is determined through a combination of skills involving the instructional domain and interpersonal communication. Because there have been at least three discussions dealing with concerns expressed to me about the interpersonal issues I am recommending the following as strategies for improvement:

- 1) Have specific responses in mind to deal with specific actions. The responses need to be communicated to students in advance. When a child is not following instructions, give him/her one warning. On the second warning, the student may be given a time-out in the library. When the student continues to act out, contact the office to remove the child. All of these measures can be taken as a matter of course without excessive verbal reprimand on the part of the instructor.
- 2) Use the pink slip/blue slip method as a means of evaluating the class behavior. This method puts positive peer pressure on misbehaving students to improve performance to earn positive class points. I attached sample evaluations to give the classroom teacher when children are returned to class. Classroom teachers in the past have used this method with other specials to improve student performance in class.
- 3) It goes a long way to have the evening reading events with parents invited to attend. These activities promote and celebrate the library to both parents and children in a positive manner.

In summary, it is apparent Mr. Schaffer has an interest in providing enriching educational experiences for children. It will be necessary to support him in the process of monitoring of progress in strategies for improvement through input from Mr. Schaffer and administrative staff.

...

On February 9, 2000, fellow Judy Hutter wrote the following memo to Principal Margaret Wolff and District Administrator Kranpitz regarding "Threat made by Chuck Schaffer." That memo read as follows:

. . .

I am filing a complaint against Chuck Schaffer.

Date: Monday, February 8, 1999

Time: Approximately 1:30 p.m.

Place: Outside my classroom – room 108

I was teaching a math group when Mr. Schaffer came into my classroom stating that he needed to speak to me and motioned for me to follow him into the hall outside my classroom. I followed him into the hallway, assuming there was an immediate need related to one of my students. When I got to the hallway Chuck stood very close to me face to face and said:

“I want you to knock off the looks you’re giving my wife – the faces and the laughing. If you don’t stop it right now, you’ll be sorry.”

He spoke in a louder than needed voice, but the tone of his voice was well controlled, and threatening. He turned around quickly and left. I did not reply.

I am asking you to act on this complaint on my behalf as I am afraid of Mr. Schaffer. I have on one occasion in the past been the victim of his violent temper when I attempted to rescheduled an appointment I had to break due to a student emergency. He, at the time was yelling so loudly that it was heard outside the library walls.

Due to Mr. Schaffer’s threat, I am reluctant to continue to arrive at school early, stay later after school, or walk alone to my car. Mr. Schaffer’s comment “you’ll be sorry” was certainly intimidating and threatening to me and that surely carries over into my work environment, and is interfering with my ability to focus fully on my job.

On February 24, 1999, after conducting an investigation of Hutter’s “complaint,” the District issued Schaffer the following letter:

. . .

This letter represents a summary of our conversation this morning in my office. Mr. Gene Degner was also present. This conversation was in regard to the February 9, 1999 letter from staff member Judy Hutter which addresses her concern about a confrontation between you and her on February 8, 1999 outside her classroom. During our meeting you admitted you had met with her as she described and you did tell you to “stop doing what she was doing or there would be trouble.”

I informed you that such confrontations are inappropriate and that you were advised not use this methodology again. The proper procedure for any employee to follow would be to forward concerns to an administrator for investigation and/or action.

Should you have any questions regarding this matter, please feel free to contact me.

. . .

At the instant hearing, the Grievant explained that in regard to the meeting he had with Principal Tennant in June, 1998, this involved a male student who had complained he was mistreated by Schaffer. The student's parent wrote a letter to the District and Schaffer was called into the office to discuss it with the parent present. Schaffer stated that what does not come out in Principal Tennant's letter is that the parent overreacted and that Schaffer denied mistreating the child as described by the parent. The situation was resolved and Schaffer responded by promising he would be more attentive to these kinds of situations in the future. Schaffer did not grieve or protest the issuance of this letter. Schaffer denied that there were three other discussions dealing with concerns expressed to Tennant about interpersonal relations with Schaffer, stating that maybe this reference in the memo referred to rumors from others that Principal Tennant had heard.

In regard to the accusations made by Judy Hutter, Schaffer indicated that his wife, Kate Schaffer, had been employed as an aide in Ms. Hutter's classroom for several years. Schaffer asserted that Hutter had been abusive to the special education children in her classroom and that his wife had complained to the District about this. At this point, Hutter began harassing the Grievant's wife by dancing around her in the hall, using facial gestures and expressions and staring at his wife. The Grievant stated that his wife came to him and stated she could not stand this treatment anymore and that she wanted to go to the District to complain about it. Schaffer stated that he told her that the District would not listen to her and that he (Charles Schaffer) would speak to Hutter personally about it. Schaffer then admitted that he told Hutter in the hallway at school that if Hutter did not stop the harassing of his wife that there would be trouble. Schaffer stated herein that he meant nothing personal by this, only that the Schaffers would take the circumstances to the administration and that inquiries would be made. Schaffer stated that he did not anticipate that Hutter would complain about his conduct to the District and that he thought it was clever of Hutter to submit a complaint against him stating that she was afraid of him so that the District would become involved and concerned. 2/

2/ It should be noted that teacher Judy Hutter testified herein and indicated that she felt threatened by Schaffer's statements to her and took them seriously. Hutter stated that this was not the first time that Schaffer had "yelled at" her — that when she had had to cancel a meeting at the last moment due to a student emergency, Schaffer had yelled at her that she had been inconsiderate. Hutter also credibly stated that she was unaware that Kate Schaffer had complained about her treatment of special

education students in her classroom. In this regard, there was no evidence to show that Ms. Hutter was ever made aware of Kate Schaffer's complaint. It is also clear from this record that Judy Hutter and Kate Schaffer do not get along.

On May 24, 2000, another incident occurred involving Schaffer, which caused four primary wing teachers to issue the following memo:

. . .

FROM: Pam Knauer
Candi Lucareli
Mary Lu Noel
Kim Widmer

This memo has been generated as a result of the May 24 heated reprimand of a number of our first and second grade students, which was overheard in the classrooms. One student was incorrectly accused of having overdue books, several students returned to class crying, visibly shaken, and one student continued to cry at home that evening. That student is now afraid of the library and the librarian.

In the future, a different method must be followed regarding your contact with our students. It will be necessary for you to notify us in advance of a visit to our classrooms for any student conference. Then, we will schedule a proper time so that class is not interrupted.

A conference with Peg Wolff, you, and ourselves may be scheduled, should you wish to discuss this matter.

. . .

Also, a parent of one of the children who was pulled out of one of these classes wrote the following letter to the District complaining of Mr. Schaffer's conduct:

. . .

On May 23rd a very upsetting incident happened to my daughter Jena. Mr. Schaffer came down to the 1st grade hallway and called several students out of the classrooms. Jena was one of them. He yelled at them for not returning library books to the point that Jena started crying. She was still crying and upset when she returned to the classroom and needed several minutes of

comforting form her teacher Mrs. Noel. This is no way to handle any situation! It was totally inappropriate and must never occur again to any child. Jena was still very upset when she returned home from school off the bus. Her library day was Thursday and she was going to return her book on her designated library day. Jena was afraid to go back to the library and return her book that next day, Mrs. Noel went with her to bring her book back. It is really unfortunate that these kind of experiences stick with a person for the rest of their lives. I sure hope the appropriate action is taken to prevent this type of “loss of control” from occurring again.

. . .

Principal Wolff also spoke with the primary teachers involved, including teacher Lucareli who indicated that Schaffer pulled students out of primary classrooms during instructional time and using a harsh tone of voice, loud enough for the children in the classroom to hear, Schaffer urged the students to return library books that were overdue. Lucareli stated herein that she felt Schaffer’s tone of voice was inappropriate and out of character, as she had never heard him speak that way before to little children. Lucareli felt that Schaffer’s manner was “a bit alarming” but that she would not have been alarmed if Schaffer had taken the same tone with 7th or 8th graders rather than her second grade students.

As a result of parent and teacher contact as well as an investigation of the situation, Principal Wolff issued Schaffer the following “Severe Reprimand” on June 1, 2000:

. . .

RE: Threatening Language to Primary Students on May 24, 2000

Based on the incident reported by staff, students and parents regarding your use of threatening language to selected first and second graders, this letter serves as a notice of severe reprimand. Your behavior in handling a routine procedure was absolutely inappropriate under any circumstances. Not only did you disrupt the learning environment of entire classes by interrupting teachers during instructional time, you removed students to the hallway and proceeding to raise your voice in a very angry and threatening tone. This was heard by numerous staff members up and down the primary hall. You berated young students for not returning overdue library books in such a manner that they returned to class in tears. Books are never more important than students! In one case you even had the wrong student from the wrong class. Your angry tone of voice was so loud in the hallway that students in the class heard everything you said and were quite upset by your behavior. Many indicated that they were afraid of you and of going to the library to check out books. I have received parent complaints as well. Your behavior is indefensible. When I talked to you on the afternoon of

the 24th, you had indicated that you were concerned about the number of overdue books and had been quite stern in reminding students to return these as soon as possible. As you referenced the list, my attention was drawn to the names of 6th and 7th graders. I did not question your judgment at that time and indicated that I would support your efforts in eliciting staff support to get books returned. I then sent an e-mail to all staff asking for their assistance. Never could I have imagined that you would exercise such poor judgment in handling this with first and second graders. This will not happen again. You will follow these procedures when notifying students of overdue books and fines;

1. Class lists will be distributed to classroom teachers. You may not interrupt any class for the purpose of notifying students of overdue books. All communication regarding overdue or missing books will be done through the classroom teacher. You are not to address individual students regarding these matters.

2. I suggest you seek assistance in managing your anger in order to develop more appropriate coping strategies for dealing with adults and children. Your [sic] have received previous notices regarding this in the past, yet the behavior continues. At MHLT it is our mission to assure our parents and children that they will receive a high quality education in a safe and nurturing environment. You have betrayed that mission by your recent behavior.

3. You will submit to me a written apology for your actions to each student you berated in first and second grade and their parents. This needs to be done before the end of the day today. I will review these and mail them out. 3/

3/ Principal Wolff stated that she also received a telephone call from one parent and that she talked to the teachers involved. After investigating the complaints made against Schaffer, Wolff stated she concluded that Schaffer had overreacted and that he should be disciplined for the incident.

. . .

Schaffer did not grieve the receipt of this reprimand. Schaffer stated herein that he pulled the students out of their classrooms “impulsively” and when he was doing it, he knew it was “wrong”. Schaffer stated that he had made a “mistake”. In regards to the letter Ms. Wolff requested of him, Schaffer submitted the following letter of apology to Principal Wolff dated June 5, 2000:

. . .

This letter is to convey my sincere apology and regret to Mrs. Widmer, Mrs. Knauer, Mrs. Noel, and Mrs. Lucareli for my disruption to their classes, and to the students with whom I spoke harshly regarding their overdue books on May 24.

My zeal and concern for getting the books back to the library does not excuse my inappropriate behavior. This incident reflects poor judgment on my part and I make no excuses for it. I did talk to several students to convey my apology the following day, realizing my error. I am regretful that I did not have the opportunity to offer remorse for my manner to each student personally.

. . .

Schaffer did not send this letter to parents or students.

FACTS

The District provides programs for 3-5 year old special needs students and it provides regular educational programs (classroom instruction) for Kindergarten through Eighth grade students. The District does not provide any services for students beyond grade 8. The District had approximately 666 students attending school in 1999-2000. In the spring of 2000, the following teachers retired from the jobs listed next to their names:

Mr. DeLobby	Physical Education teacher
Mrs. Degner	Kindergarten teacher
Mr. Newan	Fourth Grade teacher

One Math teacher and two one-half time Guidance Counselors also resigned. These resignations/retirements were conveyed to the Board prior its deliberations regarding layoffs for the 2000-2001 school year. It was discovered during the process of budgetary preparation and deliberations, which began in February or March of 2000, that due to open enrollment projections, the number of students projected to enroll in MHLT for the 2000-2001 school year would likely decrease significantly. Initially, the District projected that they would receive increased tax revenues of \$100,000 but that District costs would rise by \$145,000 due to revenue caps and the projected decrease in student enrollment. It was at this point that the District began to look into laying off employees or reducing work hours.

Eight special and regular education aides were laid off (seven part-time, one full-time) and one part-time custodian (5.5 hours per day) was laid off. One aide was also reduced from 7.5 hours to 5.5 hours per day. And the Librarian (Schaffer) was reduced from a 100% contract to 45%. District Administrator Kranpitz stated that in determining that these would be the layoffs necessary, the Board of Education did not consider retirements and resignations, which were already being relied on to otherwise meet the District's budget, as those retiring and resigning had had their retirement/resignations approved by the Board many months before the issue of budgetary constraints arose and most of these teachers would have to be replaced in order to maintain the District's educational program.

The Board felt strongly that anyone who provided direct instruction time (face-to-face classroom time) with students should be retained or replaced. Therefore, the Physical Education teacher, Kindergarten teacher, Fourth Grade teacher and Math teacher who retired were replaced in order to continue the District's program. In regard to the two half-time Guidance Counselor positions, the Board considered these to be essential, given recent deaths and bomb threats which have occurred in other school districts. The Board of Education decided to fill both of those positions and not use them to off-set budgetary constraints. Kranpitz and Principal Wolff stated that they looked at all district positions and determined which positions had the most face-to-face contact.

In June, 2000, Kranpitz stated that the District was projecting that 29 students would leave the District due to open enrollment. Kranpitz stated that the District actually lost only 16 students (the number of eighth graders not replaced by newly enrolled students) in 2000-01. On July 14, 2000, District Administrator Kranpitz sent the following letter to the Grievant (a copy to the Union):

. . .

MHLT is facing a budgetary shortfall due to Open Enrollment. This information was finalized with the June 9th deadline for parent notification of participation in the Open Enrollment Program. This shortfall is significant and causes our district to reduce some personnel positions and the work hours for some others.

At the regular Board meeting on July 13, 2000, your position as librarian was reduce [sic] from a full time position to a 45% position. Your selection for reduction follows the language in Article 29 of the current collective bargaining agreement under sections A, B, C and D.

Based on Article 29, item K, the district's portion of your health and dental benefits is reduce [sic] to 50%. Please refer to your contract for the specific language.

. . .

On July 17, 2000, District Administrator Kranpitz sent a letter to Rob Way, the United Lakeland Educators representative at the school district essentially reiterating what had been stated in his letter of July 14th to Schaffer (which Way had received a copy of) but also adding the following:

Would you please notify me by July 24, 2000, at 3:00 p.m. if any ULE members volunteer for reduction/layoff in place of the librarian.

On July 20, 2000, the Union filed a grievance on behalf of Schaffer which stated as follows:

...

STATEMENT OF GRIEVANCE

The District has violated the collective bargaining agreement and the rights of Chuck Schaffer by reducing his contract to forty-five percent (45%) for the 2000-01 school year. Such action is in violation of Article 2, Recognition and Scope and Article 29, Layoff and Recall Procedure.

The District has violated the collective bargaining agreement inasmuch as it did not opt to accomplish the reduction by attrition in accordance with the contract. Mr. Schaffer has certification that allows him to teach 7-12 English, where less senior bargaining unit members are assigned. Further, Mr. Schaffer also has the necessary training, has acted as the Technology Coordinator for the MHLT District, and should have been assigned that position.

Finally, ULE has exclusive bargaining rights for the library and library services, and, unless the District intends to close the library, a professional, non-bargaining unit employee cannot replace Mr. Schaffer to keep the library open and do library services under either DPI regulations or the collective bargaining agreement.

AREAS OF CONTRACT VIOLATED: (Articles/Sections)

Article 2, Recognition and Scope ; Article 29, Layoff and Recall Procedure.

ACTION REQUESTED:

That Mr. Schaffer be immediately reinstated to a one hundred (100%) contract for the 2000-01 school year and that he be made whole, with interest, from the time of the alleged violation.

...

In determining that Schaffer would be the teacher reduced in time, the District looked at his certifications and then discussed items beyond those certifications, such as relevant experience, professional growth planning, demeanor, ability to handle a variety of responsibilities in a professional way and also Schaffer's disciplinary record. Principal Wolff stated that given the pattern over the last several years of Schaffer's inability to handle stressful situations, the District found him unqualified for any other position in the District. 4/ Wolff stated that

because Schaffer had no prior experience working with gifted and talented students and no training therefor, the District never considered Schaffer for the Gifted and Talented (Learning Resource) position. It simply did not occur to them during their deliberations. In regard to the Technology Coordinator position, Wolff stated that she did not believe that Schaffer had held the Technology Coordinator position previously and that the District had looked at prior experience in the District as well as the ability to work with others.

4/ By letter dated August 7, 2000, to the Board of Education President, the Union stated:

It is Mr. Schaffer's position that it is in error that he is laid off, inasmuch as he has the qualifications and has acted as a Technology Coordinator in the MHLT school district and wishes to have a full-time position. Therefore, he is requesting to be bumped into the Technology Coordinator position. In accordance with the collective bargaining agreement, that would be the appropriate action in this situation.

At no time prior to the instant hearing did either Schaffer or the Union suggest that Schaffer should appropriately have been allowed to bump into the Gifted and Talented (Learning Resource) position.

District Administrator Kranpitz stated that Schaffer had dual certification but he had not transferred from another area of certification during his tenure at the District. Therefore, in Kranpitz' view, Schaffer was not entitled to bump a less senior employee in another category unless he was qualified for that category. In regard to qualifications, Kranpitz stated that certification and qualifications are not the same thing to the District. Kranpitz stated that the District considered professional development, demeanor, experience in the District and Schaffer's prior disciplinary record. Also in regard to the Gifted and Talented (Learning Resource) position, Kranpitz stated the incumbent has a 316 reading license, which was the main reason why the District hired her, as well as her certification in English, as the majority of her time would be spent in a classroom setting with gifted students reading and explicating literature.

POSITIONS OF THE PARTIES

The Union

The Union argued that the District violated the contract by refusing Librarian Chuck Schaffer bumping rights; that it manufactured disciplinary reasons for his layoff which denied Schaffer due process under Article 6 of the agreement; that the District could have satisfied its need to cut staff by attrition but failed to do so; and that the District retaliated against Schaffer and his wife but decreasing the benefit contribution levels paid by the District. The Union noted that the 1997-99 collective bargaining agreement provided for new language on dual

certification and gave broader rights to teachers with dual certification to bump less senior teachers in a layoff situation. The Union argued that the second and third sentences of Article 29, Section F, allow Schaffer to bump any of the three positions he has requested in this proceeding: Technology Coordinator, Seventh Grade English Teacher or the Learning Resources (Gifted and Talented) position. In this regard, the Union noted that the use of the words “may bump” means that employees have the option to displace other less senior employees under Article 29, Section F, and the Union noted that no qualifications other than a teaching certificate are required by the job descriptions of these positions.

The Union argued that Schaffer’s work record is essentially clear for the past 22 years except for “a couple of items where the District argued he (Schaffer) was too harsh on younger students.” The Union also contended that the attack by fellow employee Hutter merely demonstrated the vendetta that Hutter has against the Schaffers and the Union urged that Hutter’s evidence was a disgrace to both the District and to Hutter. The Union urged that the District’s attempt to use qualifications against Mr. Schaffer is a mere red herring in an attempt to get the Arbitrator to rule in the District’s favor.

The District had an obligation under Article 29 to reduce staff by attrition and it failed to do so and made essentially no effort to attempt it. The Union urged that Schaffer was in fact reduced because he advocated for the maintenance of the Library Aide position. The dispute with Hutter and the reduction of Schaffer’s wife, showed the “mean-spirited” nature of the District’s attempt to push Schaffer out of his job entirely.

The Union argued that Schaffer has held the job of Technology Specialist while he was the Librarian but chose to stay in the position of Librarian when given the option in the early 90s. In addition, Schaffer has three years of teaching English in Colorado and is certified in English. Thus, the Union argued that Schaffer was more than qualified to teach English over a junior teacher with four years of experience (Brian Sutton). In regard to the Learning Resource (Gifted and Talented) position, the Union contended that Schaffer has shown innovation in his teaching at the District and that he has a general teaching license — the only qualification in the job description for this position. As the current incumbent of the position (Ehlers) has less seniority than Schaffer, the Union urged that Schaffer should have been allowed to bump the Learning Resource incumbent.

In regard to the Seventh Grade English position, the Union argued that because Schaffer had taught English the Denver schools for three years when he came to the District he “transferred” from English to the Library position at that time. The Union noted that the contract does not specifically require that prior teaching must be within the District. Therefore, the Union urged that Schaffer should be allowed an automatic bump into the Seventh Grade English position. In the alternative, the Union argued that the last sentence of Article 29, Section F, should apply to Schaffer and he should be found qualified to assume that position under the last sentence of Article 29, Section F. In this regard, the Union noted that

Schaffer has teaching experience in English, that he has renewed his license every five years and that he has writing skills and a great exposure to literature from his librarian position which all qualify him to teach Seventh Grade English.

The Union argued that Schaffer had all the requirements for the proper licensure of a Technology Specialist through his license as an Instructional Library Media Specialist. Indeed, Schaffer testified that he did virtually all of the work listed on the Technology Coordinator job description except for supervision of the technician, which is now done by that position. In regard to the Learning Resource (Gifted and Talented) position, the Union urged that although Schaffer never worked in that position, the question arises whether he is qualified for it. The Union noted that the incumbent of the position has a K-12 reading license and 7-12 English license and that DPI does not require a specific license for the Learning Resource position. The Union observed that because the evidence showed that Schaffer is an educational innovator and because the job description for the position merely requires only a DPI certified teacher license with an emphasis on curricular and instructional methods that promote and foster a higher order thinking, multiple intelligences, critical thinking and constructivist strategies, Schaffer is highly qualified for the Technology Specialist position.

The Union asserted that Schaffer satisfactorily explained all of the disciplinary incidents in his file and that the District was attempting to use these items from Schaffer's file to bolster its arguments that Schaffer is unqualified for the positions he requested. Yet, the Union noted, the District left Schaffer assigned to instruct youngsters in the Library even though he had been issued these disciplinary actions. In any event, the District's attempt to use Schaffer's post-disciplinary record in this case amounted to double jeopardy.

Therefore, the Union urged that the District violated the contract by failing to use attrition to meet its layoff needs, by failing to seek volunteers until after Schaffer was laid off and by failing to allow Schaffer to bump any of the three positions he has requested herein. Therefore, the Union urged that the Arbitrator sustain the grievance and order Schaffer to be given one of the three positions and made whole along with interest.

The District

The District noted that in the spring of 2000, it had clear evidence of a budgetary shortfall due to levy limits as well as an open enrollment shortfall, which totaled approximately \$142,000. The District argued that in this context, it honored the contract in deciding where to make cuts. The District noted that it was entitled to rely on "normal attrition" "to the extent possible" to avoid unnecessary layoffs. The District also determined that it wished to maintain face-to-face contact and to first cut auxiliary services, which do not involve direct curricular instruction to students in the classroom. This goal was clearly appropriate, in the District's view. In addition, pursuant to the Management Rights clause of the collective bargaining agreement, the District had the right to determine qualifications, to assign employees and it

was entitled to decide upon the “creation, combination, modification or elimination of any teaching position.” In addition, the District’s decision to maintain two half-time guidance counselors was not arbitrary or capricious and, therefore, is not a ground for a ruling in favor of Schaffer.

Because Schaffer was not certified as a Technology Specialist, he was not eligible to bump into that position. Thus, Article 29, Section F, first provides that employees can bump less senior employees in their area of assignment. As there were no less senior employees in Schaffer’s area of assignment he could bump no one under that portion of the contract. Article 29, Section F, also states that a teacher can bump “in other areas of certification” if the teacher transferred from a teaching assignment in that area. The District urged that Schaffer never transferred from any other District teaching assignment and that, therefore, this portion of the contract is not applicable to him. Furthermore, as Schaffer is not certified as a Technology Specialist (which requires a 903 license) he cannot bump under this portion of Article 29, Section F. Finally, Article 29, Section F, provides that a teacher can bump into an area in which the teacher has not taught if “qualified” and certified in that area.

The District urged that Schaffer was not qualified for any of the positions for which he claimed to be eligible. In this regard, the District contended that Schaffer’s case amounts to no more than a disagreement with the District’s determination of his qualifications, as is the District’s right under the Management Rights clause. Indeed, the District noted that Article 29, Section F, does not define qualifications nor does any other portion of the contract define qualifications, leaving these determinations to the District. Contrary to the Union’s assertion, certification alone is not sufficient for a teacher to be deemed qualified under Article 29. Here, the District judged the following factors in determining Schaffer’s qualifications: professional development and recent experience; professional demeanor and ability to handle stress; and ability to think and interact flexibly.

In regard to professional development and recent experience, the District noted that Schaffer last taught Seventh Grade English approximately 25 years ago in Colorado and that significant changes have been made in the curriculum and in the specific training for that position in the past 2 years, to which Schaffer has not been exposed. In regard to the Learning Resource position, the District argued that Schaffer’s supervision of amateur radio students was his only experience in this area. Schaffer does not have a reading license which current incumbent Ehlers possesses. In regard to the Technology Specialist position, the District noted that Schaffer stopped assisting with computers approximately five years ago, before the District installed its computer network and that the position of Technology Specialist is quite different from the duties that Schaffer took on more than five years ago.

Regarding professional demeanor, stress tolerance and interaction with others, the District noted that the District’s classroom teacher job description requires the classroom teacher to develop students’ self-esteem, have effective interpersonal relationships, to handle problems in a constructive manner and through established channels. Given Schaffer’s recent,

repeated and documented misconduct in interacting with students, this is an additional valid reason to support the District's determination that Schaffer was unqualified to bump less senior teachers. Although Schaffer asserted that a conspiracy existed in his treatment by the District, the District noted that the Union failed to submit any evidence to support this contention. The District found Schaffer's pattern of difficulty handling stressful situations rendered him unqualified for the more intense, long-term, frequent contact with students that would be required of a classroom teacher. Therefore, the District urged that the grievance should be denied and dismissed in its entirety.

Reply Briefs

The Union

The Union argued that Schaffer was certified for the Technology Specialist job. In this regard, the Union noted that Schaffer has more certifications than incumbent Gravelle and that his licensure would technically cover the Technology Specialist job as he has a library media specialist license. Also, the Union noted that Schaffer was offered the Technology job by the prior Superintendent. Furthermore, DPI standards imply one is qualified if one is certified and as Schaffer is certified for all three positions he has requested in this case, he must also be qualified therefor.

The Union asserted that there is no limitation in the contract indicating that Schaffer cannot request the Learning Resource (Gifted and Talented) position because it was not listed in his grievance. Schaffer's obligation was to state the facts on which the grievance was based. It was the District's responsibility to look at the seniority list and certifications of its staff and make suggestions to Schaffer regarding which less senior employees he could bump. In this case, the District did not do this. In any event, the Union asserted that placing Schaffer in one of the three positions he has requested would meet the District's primary goal of maintaining a face-to-face- program.

The Union noted that the collective bargaining agreement does not address the notion of being "deemed qualified" as the District has asserted. Rather, the job descriptions for the three jobs that Schaffer has requested require only a general teaching license and certification by DPI, as well as some teaching experience. Schaffer has all of these qualifications and, therefore, the District must have denied him the positions for arbitrary and capricious reasons. The Union noted that the District failed to prove that the incumbents of the three positions Ehlers, Gravelle and Sutton, surpassed Schaffer on the District's listed qualification factors.

As the District has attempted to use prior discipline of Schaffer to disqualify him for positions he has requested, the Union argued that this constituted double jeopardy, essentially an attempt to punish Schaffer twice for the same offenses.

The District

The District contended that Schaffer was not qualified for any of the three positions he requested. The bargaining history added bumping to Article 29, Section F, but also added the requirement that the employee had to be “qualified” in the last sentence. As the contract does not define “qualifications” in Article 29 or in any other area, the District has the right to define qualifications and to determine them, only limited by an arbitrary and capricious standard. The District argued that since Schaffer did not have recent teaching experience or professional development and had a documented history of aggressive behavior, he was properly found unqualified by the District for any of the three positions he requested.

The District urged that it was not double jeopardy to have considered Schaffer’s documented problems with anger management and stress in determining his qualifications for the positions he has requested herein. The District noted that if it cannot consider these types of incidents/documents in determining qualifications, such a result would be ridiculous. The District noted that there was no evidence of record that it had played favorites and there was no evidence actually linking Schaffer’s reduction to his wife’s reduction in order to show that the District had been “mean-spirited.” Similarly, there was no evidentiary link between Schaffer’s letter to advocate for his Library Aide’s position and Schaffer’s own reduction in hours. Finally, the District noted that the contract does not equate certification with qualifications.

In the District’s view, Schaffer has no automatic right to bump the Technology Specialist as he does not have the certification for that position and he never previously held that position. Whether the incumbent of the Technology Specialist position is certified as such is irrelevant, as the contract requires the employee wishing to bump to be certified. The District urged that it is a huge stretch for Schaffer to argue that he was “transferred” from an English position in Denver, Colorado, many years ago when in fact he held three jobs in between that English position and being hired as Librarian at the District. Schaffer’s equation of transfer with any former teaching experience in an area of certification is ridiculous.

The District urged that the contract specifically allows it to replace guidance counselors and to solicit volunteers in the manner in which it did in this case. In this regard, Article 29, Section C, subparagraph 1, only requires the use of attrition “to the extent possible” and the District had good business reasons to fill both the half-time guidance positions, forcing a conclusion that the District’s decision was not arbitrary or capricious. In addition, Article 29, Section C, subparagraph 2, basically implies that the District has to determine the area from which the layoff should occur first and then ask for volunteers. To do otherwise would be illogical. Therefore, the District urged that the grievance be denied and dismissed in its entirety.

DISCUSSION

Schaffer argued for the first time at the instant hearing, that the District should have allowed him to bump Learning Resource (Gifted and Talented) teacher Lisa Ehlers. Ehlers has a 316 reading license as well as an English license and she is in fact less senior than Schaffer.

The labor agreement at Article 29, Section F, uses the verb “may bump” which necessarily requires the laid off employee to initially shoulder the burden to check out his/her options with the District and then to request to bump less senior employees. Article 29, Section F, then shifts the burden to the District once the employee has made bumping requests, to determine whether (in its opinion) the laid off employee is entitled to a requested bump or bumps under the language of Article 29. It is implicit in this scheme that grievances will arise from the process of bumping requests and District denials or approvals thereof.

Therefore, Schaffer’s failure to request to bump Ehlers until five months after he filed his grievance, robbed the District of the opportunity to consider and address that issue prior to the instant hearing. In my view, it is also significant that Schaffer offered no explanation why he failed to request to bump Ehlers prior to the hearing. Fairness requires that there must be some certainty and closure to the bumping process. In these circumstances, it is neither unreasonably nor unfair to foreclose Schaffer from arguing for the first time at hearing that he should have been allowed to bump into the Learning Resource position occupied by Ms. Ehlers. As neither the July 20, 2000 grievance nor the Union’s August 7, 2000 letter to the District can be construed to have raised the Learning Resource position as a possible bump for Schaffer, Schaffer’s untimely request to bump into that position cannot be considered at this time.

Certain facts are not disputed by the parties in this case: the fact that the District experienced a budgetary shortfall caused by levy limits and increased open enrollment requests, which necessitated the outright layoff, in the school year 2000-01, of eight aides, as well as the Grievant and his wife (an aide) who were both reduced in time. It is Schaffer’s timely request to bump into the Seventh or Eighth Grade English positions and the Technology Specialist position that remain in dispute herein.

The Union has argued that under Article 29, Section F, as Schaffer taught English in Colorado, it could be said that he transferred from teaching English in Colorado to his library position in Wisconsin and that he should therefore be allowed to automatically bump into one of the English positions. I disagree. Article 29, Sections C and D, require the District to consider both certification and “District-wide seniority” within the categories in which teachers are “currently teaching” or “presently teaching.” Article 29, Section E, refers to a teacher’s “first teaching assignment with the District” and to “continuous employment within the District.” It is in this context that the reference to transferring from a teaching assignment contained in Article 29, Section F, must be understood. As no reference is made in Article 29 to experience teaching outside the District, it cannot be successfully argued that Schaffer “transferred” from teaching English in Colorado (where he severed his employment) prior to teaching as a librarian in Wisconsin. Therefore, in my view, Schaffer is not entitled to automatically bump into either English position. 5/

5/ I will deal with the question whether Schaffer is “qualified” for the positions, infra.

The next question which must be determined is whether Schaffer “transferred” from the Technology Specialist position to his Library position and is therefore entitled to automatically bump Ms. Gravelle. The evidence herein does not support such a conclusion. In this regard, I note that the Union offered no evidence to prove that Schaffer ever actually held the Technology Specialist position. Rather, the evidence, at best, showed that Schaffer remained at all times a Librarian; that in the early 1990s, he was offered a position which later became denominated Technology Specialist and that he declined to take that position, preferring instead to remain in his Librarian position. Thus, no transfer ever occurred and Schaffer is not entitled to automatically bump into the Technology Specialist position.

The question remains whether Schaffer was otherwise “qualified” for the Seventh or Eighth Grade English or the Technology Specialist positions. 6/

6/ The third sentence of Article 29, Section F, refers to a teacher “not having taught in another category...” rather than using the phrase “not having transferred from another category.” In the entire context of Article 29, Section F, as Schaffer neither taught nor transferred from the Seventh or Eighth Grade English or the Technology Specialist positions within the District, I need not reach the question whether this verbiage (quoted above) would require a different conclusion in another case.

The District has argued that pursuant to its reserved management rights it has the right to set and judge employee qualifications because the labor agreement does not define qualifications and does not otherwise limit its authority in this regard. The Union has strongly resisted this argument. The District is correct that the contract does not specify what items must be considered in determining qualifications and it thereby implicitly leaves to the District the judgment of qualifications under Article 29. Therefore, the standard to be used in this case is whether the District’s judgment of Schaffer’s qualifications was arbitrary, capricious, discriminatory or unreasonable.

The record in this case shows that Schaffer is a very capable and dedicated teacher. Schaffer has 22 years of teaching experience, along with a Masters Degree in library science and 30 credits beyond a Masters. Although he has not taught in a classroom situation in many years, the contract does not state that the lack of classroom teaching experience can trump the last sentence of Article 29, Section F. Therefore, the question that must be addressed in this case is whether the District’s judgment of Schaffer’s qualifications for the Seventh/Eighth Grade teaching position was arbitrary, capricious or discriminatory.

Article 7 – Management Rights reserves to the District the right to “determine . . . qualifications . . . which shall include the creation, combination, modification or elimination of any teaching position deemed advisable by the Board.” As the contract does not describe how the District is to determine qualifications, the Districts’ actions must pass muster under an arbitrary, capricious or discriminatory standard. Based on varying factors, the District found

Schaffer unqualified to fill both of the Seventh/Eighth Grade English slots and the Technology Specialist slot. Both District Administrator Kranpitz and Principal Margaret Wolff testified regarding the decision to reduce Schaffer's hours. Wolff stated that she and Kranpitz came to a consensus in deciding to reduce Schaffer's hours to 45% and that this recommendation was taken to the Board thereafter. In addition, Wolff admitted that at one point during the process, Kranpitz, on his own, took a recommendation to the Board to leave vacant one of the part-time guidance counselor positions and that this recommendation was apparently not accepted by the Board. Thereafter, Kranpitz and Wolff's decision to recommend Schaffer's reduction was then considered by the Board which decided to reduce Schaffer's schedule.

The only factors that Kranpitz specifically mentioned in his testimony, which he stated he and Wolff used to judge Schaffer's qualifications, were professional development and professional demeanor. District Administrator Kranpitz stated that the contract uses the word "qualified" not "certified" and that the qualifications necessary to be hired or to transfer at the District are much greater than the minimum qualifications of graduation from an accredited college and DPI certification. In regard to professional development, Kranpitz stated no criticism of Schaffer. Kranpitz stated that he considered the three written warnings Schaffer received from 1998 to 2000 in determining Schaffer's qualifications. Kranpitz also stated that his and Wolff's concerns about Schaffer's qualifications relative to these warnings were as follows:

. . . We were gravely concerned with Mr. Schaffer's record of interaction under stress and were, looked at it as it would have been administrative malfeasance to place him into a position we knew upfront [sic] would have caused him stress and the likelihood of his repeating these would be very great. (Tr. 219)

Kranpitz stated that a teacher job applicant with a history of aggressive behavior would not be qualified to work at the District (Tr. 222). Kranpitz stated that although, in his opinion, Schaffer was qualified to retain his Librarian position, Schaffer was not qualified for the Seventh or Eighth Grade English positions or the Technology Specialist position because all of those positions required regularly asserting control of a classroom, dealing with students and managing students under stress. However, Kranpitz admitted that he had never observed Schaffer teaching in his Library position and that many District employees have written reprimands in their personnel files. Kranpitz stated that he assumed teachers will make errors of judgment from time to time, but if they do so at the beginning of their careers and then change their behavior so that the same errors are not repeated, such errors should not cause concern in the educational community. Kranpitz therefore implied that Schaffer's misconduct coming as it did at the end of a more than 20-year tenure with the District and involving several incidents of the same type of behavior, evinced a pattern showing that Schaffer was unqualified to take the reins as a classroom teacher.

Principal Margaret Wolff stated that she and Kranpitz applied the following factors in determining that Schaffer's contract should be reduced:

1. Recent training and experience in the position;
2. Professional growth planning;
3. Professional demeanor;
4. Ability to handle a variety of professional responsibilities, including behavior management. 7/

7/ I note that Kranpitz did not mention factors 1, 2 and 4 listed by Wolff and that he only mentioned behavior management as a part of professional demeanor in his list of factors.

Wolff stated that in her view,

. . . Given a pattern over the last several years of difficulty particularly in handling stressful situations, we felt that would not meet our standard of qualifications for those positions. They do require more intense instruction, more intense contact and long-term frequent contact than currently occurs through the library program (Tr. 182).

Thus, Wolff stated that Schaffer was unqualified for both the English positions and the Technology Specialist position based on the above analysis. In regard to the first factor above, Wolff stated that Schaffer lacked recent teaching experience and training in the District's new English curriculum and in the Technology area. Also, Wolff failed to enumerate any deficiencies in the area of factor 2 above. Wolff's use of the phrase "a pattern . . . of difficulty. . ." specifically referred to the three written warnings Schaffer received from 1998-2000 and Wolff indicated she also considered Schaffer's entire work record which (in her view) constituted deficiencies under factors 3 and 4 above.

Although Wolff stated she considered Schaffer's work record in determining his qualifications, she was unable to answer several questions posed by Association Representative Degner regarding the history of Schaffer's work at District. Wolff also admitted never having observed Schaffer's teaching prior to his reduction in hours. It is also significant that the only evaluation of Schaffer in approximately 22 years which occurred in December of 1996, contained no negative comments and was completed by former Principal Renee Tennant (not a witness in this proceeding). 8/

8/ The evaluation covered one class in which Mr. Schaffer had Kindergarten students in the Library during their library time. That evaluation read in relevant part as follows:

Mr. Schaffer is a conscientious professional. He has varied skills and abilities that contribute to his expertise as a Media Specialist. He demonstrates expertise in networking our school-wide computer/communications system. His knowledge of computer hardware operations, and current educational practices relative to new technology (e.g. internet) have been helpful to school-wide

improvement. . . . Mr. Schaffer has worked cooperatively with parents this year in the library with a variety of tasks. He is extremely organized in directing his assistant and parent helpers. . . . Mr. Schaffer prides himself and the school on making educational progress and advances with technology. His input regarding the infrastructure and technical assistance has been valuable.

It is in this context that the District's decision to reduce Mr. Schaffer's contract from 100% to 45% must be analyzed. It is true that the contract does not equate certification with qualifications. However, the testimony of District Administrator Kranpitz and Principal Wolff essentially demonstrates that because the District was overwhelmingly fearful of what Kranpitz and Wolff believed to be Schaffer's potential future behavior based upon the three incidents of misconduct contained in Schaffer's personnel file, the District denied Schaffer the English teaching positions and the Technology Specialist position. 9/

9/ The District argued that Schaffer does not have certification for the Technology Specialist position. The Union resisted this assertion, and stated that because Schaffer has a 902 instructional library media specialist license, he has completed all requirements for the 903 instructional technology specialist license. It appears to the Arbitrator after a review of the relevant DPI regulations and Wisconsin Code sections, as well as the parties' arguments thereon, that Schaffer does not have the proper certification for the Technology Specialist position and, therefore, Schaffer is not entitled to that position under the last sentence of Article 29, Section F.

In regard to the three disciplinary incidents that the District heavily relied upon, I note that the Hutter incident is technically not the same type of incident as the other two. Rather, the Hutter incident involved a fellow teacher, while the 1998 and May, 2000 incidents involved Schaffer's interaction with children. In addition, I note that based upon the testimony herein, Hutter appeared to possess a strong personality. I have difficulty imagining Hutter being truly intimidated by Schaffer. In any event, what is clear from the testimony regarding the Hutter incident, is that the Schaffers and Hutter are at odds and have been so over a period of years. However, this has nothing to do with Schaffer's qualifications as a classroom teacher or his ability to teach students. Therefore, I find that the District was not privileged to use the Hutter incident against Schaffer in determining Schaffer's qualifications as a classroom teacher.

In regard to the 1998 incident involving one student and the May, 2000 incident involving several first and second grade students, I note that the evidence showed that Schaffer followed the District's recommendations regarding his activities in 1998 and that Schaffer performed all of the requirements listed in Principal Wolff's reprimand letter dated June, 2000. In addition, I note that despite these incidents, District Administrator Kranpitz stated that he continued to believe Schaffer was qualified for his library position. Although these two incidents are certainly of concern, I note that Schaffer has already been punished for them. To

constitutes double jeopardy, in my view. Given the lack of any evaluations or observations of Schaffer by the two major decision makers herein (Kranpitz and Wolff), I find that the decision they reached was arbitrary and capricious.

Although the curriculum in the English department has changed, Schaffer is a long-term teacher and clearly has the intelligence and capability to get up to speed on the techniques used in the District's English program. In addition, I note that having been a Librarian over many years, Schaffer has been involved with literature and recommending books to children such that his switch to classroom English teacher should not be overly difficult. Finally, I note that Schaffer did teach English in the Denver Public Schools (albeit many years ago) so that he has some awareness what an English class would entail.

The Union argued that Schaffer was reduced in his contract because he advocated for the maintenance of the Library Aide position and because the District sided with teacher Judy Hutter in a conspiracy against him. I find that there is no evidence to demonstrate that either of these assertions is true. I also note that contrary to the Union's assertions there was no evidentiary link between Charles Schaffer and his wife's reductions in hours which could support the Union's allegation that the dual reductions in the Schaffers' working loads was "mean-spirited." Therefore, the Union failed to prove that Schaffer's contract was reduced for discriminatory reasons.

It is clear that the District job description for a classroom teacher requires a proper license as well as DPI certification. Schaffer possesses these. There is no evidence to show that Schaffer will not be able to meet the job goals of a classroom teacher as stated in the job description. In this regard, it is significant that no evidence was proffered by the District to show that Schaffer failed to facilitate student learning; that he failed to develop student self-esteem; that he failed to assist children in becoming life-long learners and/or that he failed to implement Board of Education policies and procedures as required by the classroom teacher job goals. Furthermore, in his testimony, Schaffer appeared to be genuinely sorry for the May, 2000 incident with the first and second grade students and demonstrated that he was aware that his conduct was wrong and that he should not have spoken to those children in the fashion that he did. I note that Schaffer's assignment as a Seventh or Eighth Grade teacher would not involve teaching small children. In addition, teacher Lucareli stated she would not have been concerned with Schaffer's May, 2000 statements had they been made to older (middle school) students.

In all the circumstances, and given the fact that the District failed to demonstrate that Schaffer was in fact unqualified to serve as a seventh or eighth grade English teacher, basing its decision that he was unqualified on arbitrary and capricious reasons, I issue the following

AWARD

The District violated Article 29 of the parties' collective bargaining agreement, when, as part of a layoff, it did not allow the Grievant, Chuck Schaffer, to bump a less senior employee teaching seventh or eighth grade English, after it reduced his hours for the 2000-2001 school year to 45%. Therefore, the District shall make Chuck Schaffer whole including all wages and benefits and it shall allow Schaffer to bump a less senior employee teaching seventh or eighth grade English.

The language of Article 29 states that the District shall seek volunteers prior to laying off or reducing bargaining unit employees. In future, the District is ordered to seek volunteers prior to laying off or reducing unit employees. 10/

10/ I shall retain jurisdiction, for purposes of the remedy only, for 60 days after the date of this Award.

Dated at Oshkosh, this 29th day of May, 2001.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

