

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MINOCQUA, HAZELHURST, LAKE TOMAHAWK SCHOOL DISTRICT

and

**NORTHERN EDUCATIONAL SUPPORT TEAM affiliated
with NORTHERN TIER UNISERV - CENTRAL**

Case 54
No. 59204
MA-11220

(Kate Schaffer Grievance)

Appearances:

Quarles & Brady, LLP, by **Attorney Thomas N. Shorter**, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, on behalf of the District.

Mr. Gene Degner, Executive Director, Northern Tier UniServ – Central, P.O. Box 1400, Rhinelander, Wisconsin 54501, on behalf of the Northern Educational Support Team (NEST).

ARBITRATION AWARD

According to the terms 1999-2001 collective bargaining agreement between Northern Educational Support Team (hereafter Union) and Joint School District No. 1, Towns of Minocqua, Hazelhurst and Lake Tomahawk (hereafter District), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to resolve a dispute between them regarding the partial layoff of support staff employee Kate Schaffer. The Commission designated Sharon A. Gallagher to hear and resolve the dispute. The hearing was originally scheduled for December 12, 2000, and was postponed to January 29, 2001. Hearing was not held on January 29, 2001, as the parties wished the undersigned to hear a second dispute between them ahead of this one. The instant case was heard on March 27, 2001, at Minocqua, Wisconsin. A stenographic transcript of the proceedings was made and received by April 10, 2001. The parties agreed to file their initial briefs directly with each other, post-marked May 29, 2001. The parties agreed to reserve reply briefs and those were received by July 5, 2001, whereupon the record was 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 an issue or issues to be decided in this case. However, the parties stipulated that the Arbitrator could frame the issues based upon the parties' suggested issues and the relevant evidence and argument in the case. The Union suggested the following issue:

Did the District violate the collective bargaining agreement, particularly Articles 15 and 18 when it reduced the hours of Kate Schaffer for the 2000-01 school year? If so, what is the appropriate remedy?

The District suggested the following issue for determination:

Did the District violate Articles 15 and 18 of the collective bargaining agreement when, as a part of a layoff, it did not allow the Grievant to bump a less senior employee in the Special Ed or Regular Ed Aide position after it reduced her hours for the 2000-01 school year from 7.5 to 5.5 hours per day? If so, what is the appropriate remedy?

Based upon the relevant evidence and argument in this case, the Union's issue is the more reasonable one and it should be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE 6 – MANAGEMENT RIGHTS

A. The Board posses [sic] the sole right to operate the school system and all management rights reposed [sic] in it except as modified by the specific terms and provisions of this Agreement. These rights include, but are not limited to, the following:

1. To direct all operations of the school system;
2. To establish work rules and schedules of work;
3. To hire, schedule and assign employees to positions within the school system;
4. To suspend, demote, discharge and take other disciplinary action against employees for just cause;

5. To relieve employees from duties because of lack of work or lack of funds;
6. To maintain efficiency of school system operations;
7. To take whatever action is necessary to comply with state or federal laws;
8. To introduce new or improved methods or facilities;
9. To change existing methods or facilities;
10. To contract out for goods and services; provided that such subcontracting out does not result in the layoff of bargaining unit personnel;
11. To determine the methods and means by which school system operations are to be conducted;
12. To take whatever action is necessary to carry out the functions of the school system in situations of emergency.

B. The Board recognizes that the inclusion of this provisions does not alter their duty to bargain the impact of decisions made affecting wages, hours or conditions of employment pursuant to this provision.

ARTICLE 15 – WORK DAY, WORK WEEK, WORK YEAR & OVERTIME

A. Custodians: The normal work week for regular full time custodians shall be 40 or more hours per week.

B. Office Personnel, Aides, Cooks, Food Service Workers: The normal work week for regular full time office personnel, aides, cooks, and food service workers shall be 30 or more hours per week, during the regular scheduled school year. Office personnel may be required to provide services on a [sic] needed basis in the summer months.

...

ARTICLE 18 – LAYOFF

A. Board Rights: This procedure shall apply when the School Board decides to reduce personnel or reduce hours.

B. Selection: Reduction in personnel shall be within each classification. The selection of employees in each classification to be laid off or reduced in hours shall be made according to the following guidelines:

1. Normal attrition resulting from employees retiring or resigning will be relied upon *to the extent* possible.
2. Employees serving in the probationary period shall be considered next.

3. If Steps 1 and 2 are insufficient to accomplish the desired reduction in staff, the least senior employee with the classification in which the reduction is occurring shall be the first to be laid off or reduced in hours provided the remaining employees are capable of performing the available work.

C. Seniority: "Seniority" for the purposes of this Article shall be applied within each classification and shall be applied in inverse order of the earliest date on which the employee commenced work with the District.

. . .

E. Employees laid off or reduced in hours in one classification may bump the least senior employee in a different classification provided they are qualified, have provided services in that classification, and the employee bumped has less Districtwide seniority. Such bumped employee shall then be considered for layoff. This provision shall not be applicable to the classification of custodians.

. . .

APPENDIX A

SALARY SCHEDULE

All employees presently not at the full rate or new hires shall be paid according to the following schedule and paragraphs below:

Start	88% of the new rate of the class to which assigned.
6 months	90% of the new rate of the class to which assigned.
1 year	92% of the new rate of the class to which assigned.
18 months	94% of the new rate of the class to which assigned.
2 years	96% of the new rate of the class to which assigned.
30 months	98% of the new rate of the class to which assigned.
3 years	100% of the new rate of the class to which assigned.

	<u>1999-2000</u>	<u>2000-01</u>
Custodian	\$12.26	\$12.66
Certified Aide 1/ Noncertified Aide	\$10.33	\$10.67
Office Worker	\$9.66	\$9.98
Food Service Worker	\$11.30	\$11.67
Cleaner	\$9.59	\$9.90
Hearing Impaired Interpreter	\$9.86	\$10.18
Nurse	\$14.31	\$14.78
	\$16.63	\$17.17

1/ Now called Regular Aide and Special Education Aide.

BACKGROUND

The District and the Union have been parties to collective bargaining agreements for several years. For the 1999-2001 contract, the parties agreed to amend Appendix A of the salary schedule in that contract to delete references to Certified Aide and Noncertified Aide and replace those references with Certified Special Education Aide and Regular Education Aide, respectively.

The Grievant has been employed by the District as a Certified Aide since 1994. During her first two years of employment, she worked 7.5 hours per day in one of the Special Ed classrooms. On May 16, 1996, then-District Administrator Otto notified the Grievant in writing that she would be laid off for the 1996-97 school year. The layoff notice also indicated that "if conditions should warrant an aide, you will have first recall rights." Schaffer was recalled during the 1996-97 school year and worked half-time thereafter.

From the 1997-98 school year forward, Schaffer held various assignments as either a Noncertified Aide or a Certified Aide, but she was always paid the Certified Aide contractual rate. During her employment, Schaffer took the health insurance coverage provided by the District (95% paid by the District) while her husband (the District Librarian) took the Dental Plan (100% paid by the District). The District also paid Schaffer for holidays and her husband received a tax sheltered annuity (TSA) equal to the cost of a single health insurance premium. During the 1998-99 school year, Schaffer was given an extra assignment of Detention Supervisor after school (3:15 to 4:00 p.m. each day). This was a separate assignment unconnected with her Aide work. For the 1999-2000 school year, Schaffer was assigned as Detention Supervisor for both noon detention and after school detention. 2/

2/ During the 1999-2000 school year, Schaffer was assigned as a Regular Aide in the Kindergarten classroom. In December, District Administrator Kranpitz notified her that a deduction would be made from her pay, the difference between Certified Aide pay and Noncertified Aide pay, as Schaffer had worked as a non-certified aide for that year. Schaffer filed a grievance. The Board ultimately decided to return the difference in pay to Schaffer and to pay her as a Certified Aide for the remainder of the school year. As a result of this dispute, the language of the collective bargaining agreement was changed to reflect, at Appendix A, Certified Special Education Aide pay and Regular Education Aide pay.

During the 1999-2000 school year, the District employed the following Regular Aides and Special Education Aides. The listing below indicates each employee's classification, last and first name, number of work days, work hours per day, hire date and date and type of layoff, as follows:

Regular Aide	Konopacky	Marie	180	8:30-2:30	5.50	9/6/1997	
Regular Aide	Urban	Gail	180	VARIES	5.50	9/14/1998	
Regular Aide	Christian	Betty	161	8:30-2:30	5.50	8/25/1999	Full Layoff 7/00
Regular Aide	Draeger	Barbara	180	8:00-2:00	5.50	8/25/1999	Full Layoff 7/00
Regular Aide	Peckels	Janice	90	8:30-2:30	5.50	8/25/1999	Full Layoff 7/00
Regular Aide	Voorhees	Missy	90	8:30-2:30	5.50	8/25/1999	Full Layoff 7/00
Regular Aide	Wolfe	Patricia	19	8:30-2:30	5.50	1/7/2000	Full Layoff 7/00
SPED	Mendez	Lorri	184	7:30-3:30	7.50	8/26/1993	
SPED	Schaffer	Kathleen	184	8:00-4:00	7.50	11/22/1993	Partial Layoff 7/00
SPED	Larson	Lora	180	8:00-12:00	4.00	8/25/1997	
SPED	Emmerich	Kimberly	184	8:00-3:30	7.00	8/25/1999	Full Layoff 7/00
SPED	Lanier	Elaine	180	9:15-3:15	5.50	8/25/1999	Full Layoff 7/00
SPED	Tyler	Mary	180	8:00-2:00	5.50	8/25/1999	Full Layoff 7/00

In the spring of 2000, District Administrator Kranpitz called the Aides together and indicated that all of the new aides (hired in 1999 and 2000) would be laid off due to budgetary constraints. Later, in early July, Kranpitz called Kate Schaffer and indicated that the Board had decided to cut her husband's (Chuck Schaffer) contract and to retain Gale Urban as the Library Aide.

Kate Schaffer was never notified separately of her partial layoff. Instead, by letter dated August 8, 2000, the District notified Kate Schaffer of her job assignment and her hours of work, which were stated as 5-8 Special Education Aide (5 and one-half hours daily). The first day of school for Schaffer was stated in the letter as August 29, 2000. On August 17, 2000, the Union filed the grievance herein which read in relevant part as follows:

STATEMENT OF GRIEVANCE:

The District has violated the collective bargaining agreement and the rights of Kate Schaffer by reducing her hours for the 2000-01 school year. Such action is in violation of Article 15, Work Day, Work Week, Work Year and Overtime and Article 18, Layoff.

The District has violated the collective bargaining agreement inasmuch as it did not opt to accomplish the reduction in accordance with the contract, Article 18, paragraph B, or by giving Ms. Schaffer the option of exercising her bumping rights.

AREAS OF CONTRACT VIOLATED: (Articles/Sections)

Article 15, Work Day, Work Week, Work Year and Overtime; Article 18, Layoff.

ACTION REQUESTED:

That Ms. Schaffer be immediately reinstated to hours for the 2000-01 school year which are equivalent to those she had for the 1999-2000 school year and that she be made whole, with interest, for any losses suffered from the time of the alleged violation.

...

On August 24, 2000, the District sent its written answer to the Union, denying the grievance:

...

For the 1999-2000 school year Mrs. Schaffer was paid at the certified Special Education Aide pay rate and is again scheduled to be in that same job classification for the 2000-01 school year. Her specific assignment will be different for the upcoming school year, but that is within the rights accorded management under Article 6, Management Rights, paragraph A, item 3. Also Article 6, paragraph A, item 5 gives management the right to relieve employees from duties because of ... lack of funds. Such is the case this year and the record will show many of the regular and special education aides were laid off in July 2000 due to lack of funds.

With regard to Article 18, B, Layoff, there are no positions to bump. Mrs. Schaffer and all aides with less seniority are working 5 ½ hours and at relatively the same time of day, therefore, additional time is not available for Mrs. Schaffer.

...

After studying the budget in the Spring of 2000, District Principal Margaret Wolff and District Administrator Kranpitz essentially recommended to the Board that the Board lay off five Regular Education Aides and three Certified Special Education Aides and partially lay off Kate Schaffer at the July, 2000 Board meeting. Prior to their making this recommendation, Wolff and Kranpitz discussed various options. In the Spring of 2000, Wolff and Kranpitz knew that the District was suffering from declining enrollment; that they would therefore receive decreased State aid; and that due to open enrollment at the District, students were electing to leave the District to attend other schools. Wolff and Kranpitz projected that the District would lose approximately \$100,000 of revenue it needed to operate due to open enrollment, revenue limits and declining enrollment.

Kranpitz and Wolff agreed that providing educational services to students in the classroom was the District's priority. Both Wolff and Kranpitz knew that approximately 82% of the District's budget was spent annually on staff wages and benefits. As a result, Kranpitz and Wolff looked first at the Regular Education Aides for purposes of layoffs. In this regard, the District had hired several of these aides in 1999 and 2000 and there was one probationary Regular Education Aide. These employees were laid off first. Notably, there was one aide, Barbara Draeger, who was in fact a certified teacher who resigned as an aide and took a Kindergarten teacher position at the District in the SAGE program (a Federal program). This was the only attrition in the support staff unit.

Gail Urban, a Regular Education Aide in the library, was never recommended for a layoff because the Board felt that her presence in the library would be of greater assistance to the District given the partial layoff of Librarian Chuck Schaffer. 3/ Also, Special Education Aide Lora Larson was not recommended for a layoff because she had (the previous year) been assigned as a part-time one-to-one aide for a severely handicapped student who had previously attended early childhood classes but would then enter kindergarten in 2000-01. As the handicapped student's IEP (Individual Education Plan) required that she have one-to-one assistance and because Federal statutes require the District to implement each student's IEP and to give each special education student an appropriate education, Larson was assigned to work 5.5 hours per day in the position of the one-to-one aide to this student. The District submitted evidence that it had no choice but to provide a one-to-one aide for the severely handicapped student who was cared for by Lora Larson during the 1999-2000 and 2000-2001 school years and that as Larson had cared for the child in the past, continuity of care for the child was preferred by the District.

3/ Ultimately, Urban's work hours were flexed around the Librarian's reduced work hours so that she worked 11:00 a.m. to 3:15 p.m. on Monday's, 10:00 a.m. to 3:15 p.m. on Tuesdays, and 8:15 a.m. to 3:00 p.m. Wednesday through Friday.

Also, Lorri Mendez, the most senior aide, remained at 7.5 hours per day (more than 30 hours per week) and did not have her benefits cut for the 2000-2001 school year. Mendez is the only aide who has more seniority than Schaffer. 4/ After the layoffs, the support staff employee listing for the 2000-2001 school year read as follows:

REGULAR AIDE	KONOPACKY	MARIE	180	8:30-2:30	5.50	9/6/1997
REGULAR AIDE	URBAN	GAIL	180	VARIES	5.50	9/14/1998
SPED AIDE	MENDEZ	LORRI	184	8:00-4:00	7.50	8/26/1993
SPED AIDE	SCHAFFER	KATHLEEN	180	8:30-2:30	5.50	11/22/1993

SPED AIDE	LARSON	LORA	180	8:00-2:00	5.50	8/25/1997
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4/ The noon detention is now held in the library and is either supervised by Gail Urban or Librarian Chuck Schaffer while the after school detention was given separately to Lorri Mendez in 2000-2001.

It should be noted that all of the aides who are less senior than the Grievant were recalled after the start of the 2000-01 school year and have generally worked between 8:30 a.m. and 2:30 p.m., 5.5 hours per day, the same hours as Schaffer. None of these aides is receiving benefits. It would not be possible for Schaffer and Mendez to have performed all of the available aide work even if the other aides (who were brought back during 2000-2001) had remained laid off. The aides who were brought back during the 2000-2001 school year were brought back at the urging of teachers who requested more aide time from the District.

The District also admitted that it intended to save money and balance its budget by reducing aides below 30 hours so that they would no longer receive benefits, as their benefit packages cost approximately as much as their wages. 5/ The District stated that there has been no significant drop in the number of special education students, indeed, these students have increased steadily in the District over the past two years.

5/ The aides who were recalled mid-year were Kim Emmerich and Mary Tyler.

The custodians (also a part of the bargaining unit) were also advised in the Spring of 2000 that a lay off in their classification might occur. At some point, Wolff and Kranpitz recommended to the Board that each custodian suffer a one-hour decrease in their annual hours. However, the custodial employees complained and ultimately the Board decided to lay off the least senior custodian and retain the remaining custodians without any partial layoffs for them.

POSITIONS OF THE PARTIES

The Union

The Union noted that no notice of layoff was given to Kate Schaffer despite her receipt of one in 1996 when she was laid off. In these circumstances, the Union urged that Schaffer had a reasonable expectation of receiving a layoff notice in this case. The Union also noted that Schaffer was given no contractual options by the District and that this scenario violated the

The Union argued that the District merely reassigned Schaffer's work to other aides in order to deny her health insurance and that his violated Article 15 of the contract. In addition to violating Article 15, the District's failure to notify Schaffer of her options to apply for work hours also violated Article 18 of the collective bargaining agreement. The Union urged that Schaffer should have been allowed to pick up hours from other aides before any other employees were brought back to work from layoff. The Union noted that although the District attempted to reduce all of the custodians by one hour, it ultimately eliminated one custodial position instead. In the Union's view, this is what the District should have done in Schaffer's case, laying off the least senior aide and allowing Schaffer (and other aides) to remain at 7.5 hours per day. In this regard, the Union urged that Schaffer could have taken Gail Urban's Library Aide hours or she could have kept her Detention Supervisor assignment and these would have given her sufficient hours so that she could have remained at 7.5 hours and retained her health insurance.

The hours that were originally given to Schaffer, in the Union's view, were changed "at the whim of a few teachers" who wanted more aide time in the classroom. The District then assigned all aides to the same time period "to have a logical excuse" for denying Schaffer the right to pick hours from other aides to fill out her schedule. The Union argued that the District's actions were "insidious", showed "a vindictiveness" and were "contriving." The Union noted that in 1999-2000, Schaffer had been assigned as Detention Supervisor for three hours per week from 3:15 to 4:00 p.m., and that she had also picked up noon detention hours during that timeframe. This would have given Schaffer sufficient hours to maintain her health insurance. In addition, the District could have taken some of Gail Urban's hours away from her in order to give Kate Schaffer a full schedule. The Union concluded,

It is clear that the Grievant was previously laid off over her run-in with a teacher and that the hate lingers on the part of the District and they have found another way seek [sic] retribution against the Schaffer's.

Therefore, the Union sought an order that the District violated the contract and to make Schaffer whole for all losses suffered including hours and fringe benefits.

The District

The District argued that it was undisputed that it had financial problems which included declining enrollment, a decrease in state revenues due to open enrollment and the pressure of levy limits, all of which converged to require that the District take significant actions to cut its budget. The District argued that it followed the contract by first taking attrition into account, then laying off probationary employees, then laying off the least senior employees so long as the remaining employees were capable of doing the remaining work. The District argued that its method of staff reduction was consistent with the plain and unambiguous language of the

collective bargaining agreement. In this regard, the District noted that the contract allows it to reduce employee “duties due to lack of work” and to select employees for reduction based on criteria other than seniority.

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In addition, the District argued that the contract does not support the Union’s argument that Schaffer should have been able to take (bump into) part of another aide’s position without relinquishing her entire position. As no aide who was recalled has more hours than Schaffer (except the more senior employee Lorri Mendez), the District urged that there was no position for Schaffer to bump into and that her grievance should be denied. Although the Union raised the question whether Schaffer and the other aides had been properly recalled, the District urged that this issue should be disallowed as it arose after the grievance was filed and had been raised at arbitration for the first time.

The District noted that the Union appears to argue that the District had to lay off every aide below Schaffer before it could reduce Schaffer’s hours. The District noted that the contract does not require such action. Indeed, Article 15 is not a guarantee of hours for employees, in the District’s view. Article 18 provides for both layoffs and reductions in hours.

The District contended that it did not violate Schaffer’s bumping rights in this case. The District noted that no full time aide position was occupied by an aide with less seniority than Schaffer and the contract does not include bumping rights into portions of positions, as the Union has argued. The District urged that it fulfilled its obligations in this case — that Schaffer had no bumping rights and the Union presented no evidence on this point. In this regard, the District noted that bumping is to occur “in a different classification”, which implies that bumping must be of positions, not job duties, work time or portions of positions.

In addition, the contract provides that employees who are bumped shall then be considered for layoff. The Union’s interpretation of the layoff language would conflict with Article 6, which allows the District to schedule and assign employees to positions. Absurd results would flow from allowing employees to bump portions of positions, making the bumping process extremely daunting. Finally, no evidence of past practice or bargaining history was submitted by the Union to support its interpretation of the bumping rights language in this case. Therefore, the District urged that the grievance be denied and dismissed in its entirety.

Reply Briefs

The Union

The Union argued that it had addressed the Grievant’s bumping rights in the first paragraph of the grievance when it referenced a violation of the contract by the District’s reducing Schaffer’s work hours, citing Articles 15 and 18. Therefore, in the Union’s view, the District was then on notice that the Union would argue regarding all of Schaffer’s layoff and recall rights. In support of this, the Union urged that the Arbitrator should read the cited

undisputed that Schaffer had the ability to perform all aide work. Because Article 15, Section B, states that the normal workweek “shall be 30 or more hours per week” the District should have tried to maintain Schaffer’s 30 hours per week by laying off the least senior aide before Schaffer’s hours were reduced. On this point, the Union noted that aide Lorra Larson had an additional 1.5 hours added to her 2000-01 schedule as a one-to-one aide to a handicapped student and that these hours should have been given to Schaffer.

The Union also argued that Article 6 states that the District should bargain the impact of major changes in the agreement with the Union. This, the District did not do in this case. The District’s actions make a sham of the seniority provisions of the agreement regarding layoff, recall and reduction in hours, in the Union’s view. The District’s argument that Schaffer has no Article 15 rights because she is a part-time employee after her reduction in hours should be rejected by the Arbitrator.

The Union essentially admitted that the layoff provisions of the agreement allow the employer to reduce employee work hours but it asserted that Article 18, Section B, states that “the least senior employee” should be laid off. As the contract does not use a plural in this regard, the District should have redistributed work hours and then laid off the least senior aide, leaving Schaffer’s work hours at 30 or more. Therefore, granting Lora Larson 1.5 hours of additional work during the 2000-01 school year while reducing Schaffer’s work hours is a direct violation of Article 18 and the Union prayed for a full remedy herein.

The District

The District argued that the Union’s contention that it failed to give Schaffer proper notice of her layoff is without merit. In this regard, the District noted that the collective bargaining agreement does not require any action or procedure regarding notice. Indeed, the simple fact that Schaffer received a “layoff” letter in 1996, standing alone, did not establish a past practice. In any event, Schaffer did receive notice of her partial reduction in hours along with her work hours and this notice was sufficient for the Grievant to be able to file the instant grievance prior to the start of school. Therefore, as no harm was done, the District urged that no foul be found.

The District argued that the Union had provided insufficient proof to show that the District had a duty to assign hours away from other employees so that Schaffer could maintain her full-time status. In this regard, the District noted that there were no positions that the Grievant could have bumped into in order to maintain her full-time status; and that no other aide had been given more hours than Schaffer except the more senior Mendez. The District asserted, therefore, that the Grievant essentially sought to select among the assignments and hours of other aides but that Article 18 does not give her this right and such a right cannot be inferred due to the reservation of management rights contained in Article 6 of the labor

On a secondary point, the District argued that the Custodial grievance is not relevant to this case as Article 18, Section E, explicitly excludes application thereof to custodial employees. Thus, the District argued that to allow bumping of portions of positions as Schaffer has sought, would lead to a chain reaction of bumping hours, minutes and/or duties, which would be extremely disruptive to the District. As the contract does not address how bumping is to proceed and does not specifically detail any rights regarding partial bumping, the District urged that the Union's arguments on this point be rejected.

The District argued that the Union's arguments concerning recall rights are not properly before the Arbitrator. Assuming, *arguendo*, that the Arbitrator finds these arguments appropriate, the District urged, in the alternative, that it had not violated the Grievant's rights. In this regard, the District noted that the Grievant did not raise these issues in her grievance; that the grievance was filed prior to the recall of the two less senior employees recalled after the start of the school year; and that the Union never filed an additional grievance or attempted to expand or amend the instant grievance on this point. In addition, the District noted that the two aides who were recalled (Emmerich and Tyler) did not receive more hours than the Grievant and they were given no benefits; and that they worked the same work hours as the Grievant because this was necessary in order to serve the children during school hours. Therefore, the District argued that no violation of the contract resulted from the recall of Emmerich and Tyler.

The District urged that the Union's argument that the District's actions were spurred by vindictiveness or animus is baseless. In this regard, the District noted that the Union provided no evidence to support its assertion. Indeed, the contract contains no hours guarantee. If the reduction below 30 hours per week is found to violate Article 18, the District noted, this would render the layoff provisions of Article 18 meaningless. In these circumstances, the District argued that the grievance should be denied and dismissed in its entirety.

DISCUSSION

Article 15 states that the "normal workweek" for aides "shall be 30 or more hours per week." I note that the labor agreement also contains Article 18 - Layoff, which details, as far as it goes, the applicable procedure "when the School District decides to reduce personnel or reduce hours." Article 6 of the labor agreement also reserves to the Board the right "to establish . . . schedules of work," to "assign employees to positions within the school system" and to "relieve employees from duties because of lack of work or lack of funds." In these circumstances, the normal workweek stated in Article 15 cannot be construed as a guarantee of a certain number of hours to unit employees.

It is clear from the grievance in this case that the Union asserted that the District violated the contract and the Grievant's rights by reducing her hours in 2000-01, citing

find that the arguments that the Union has made regarding bumping rights and notice of recall fall reasonably within the notion of reduction in hours and layoff and these arguments have been fully considered in this case.

The Union has argued that the District should have notified Kate Schaffer separately of her reduction in hours. Although it would have made good business sense and it would have been more compassionate to notify Schaffer and other unit employees of their partial or complete layoff as soon as possible, along with the reasons therefor and a description of their employment options, if any, I am compelled to find that where, as here, there is no contractual language requiring such layoff notices, the District was not contractually obligated to send separate layoff notices to unit employees as the Union argued in this case. The fact that former District Administrator Otto separately notified Schaffer of her layoff for the 1996-97 school year does not change this conclusion, as there is insufficient evidence to show that a long-standing past practice on this point was created requiring separate layoff notification by this one instance in 1996.

The undisputed facts of this case indicate that the District had to lay off aides due to lack of funds for the 2000-01 school year. The record also demonstrates that the District followed Article 18, Section B, and reduced personnel within each classification, looking first to attrition and then to probationary employees. (Article 18, Section B, Sub. 1 and 2.)

I note that Article 18, Section E, is the provision which addresses bumping. In this section, it states that employees “laid off or reduced in hours in one classification may bump the least senior employee in a different classification provided they are qualified, have provided service in that classification, and the employee bumped has less district wide seniority.” It is clear from the facts of this case that Schaffer has worked both as a regular aide and as a special education aide and that if she had wished to do so, she could have bumped a regular aide (pursuant to the listing contained in Appendix A) as she was qualified and had provided service in both those classifications during her tenure at the District. 6/

6/ Arguments have been made in this case regarding a grievance that was purportedly filed by custodial employees regarding the initial reduction in each custodian’s hours for the 2000-01 school year. I find that the evidence on this point is not relevant to this case and I note particularly that Article 18, Section E, exempts custodial employees from bumping.

The central and most hotly contested issue in this case revolves around the Union’s contention that Schaffer should have been allowed to select duties or hours of other aides whose hours were restored up to 5.5 per day in order to maintain her 30 hour per week status for purposes of health benefits. It is significant that the labor agreement is silent regarding

whether an employee may bump a portion of another employees' position in order to retain their hours in a reduction of hours situation. The contract, however, does address both layoffs

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and reductions in hours and Article 18, Section E, and implies that an employee who is laid off or reduced in hours may bump another employee in a different classification from their position. It is also significant that there is no express language in Article 18, Section E, allowing an employee to partially bump a less senior employee in a layoff or reduction in hours scenario.

Although the Union asserted that the District had all aides working during the same hours of the day based on "vindictiveness" or some based on "insidious" or "contriving" reason, the Union failed to provide any evidence to support its claims. Rather, the record demonstrates that the District assigned aides to assist teachers in the regular provision of teaching services to students during each class day. This is not unreasonable.

In regard to the Union's argument that Schaffer should have been given portions of Gail Urban's or Lora Larson's hours, this would have allowed Schaffer to select portions of one of these positions to bump into which I have already found the contract language does not support. Indeed, the Union's argument in its reply brief that Schaffer should have been allowed to take 1.5 hours of Lora Larson's position would have been impossible, as Ms. Larson was assigned to work the same hours as Schaffer, requiring Schaffer to be in two places at once. In addition, the District submitted unrefuted evidence to show Larson's one-to-one aide assignment to a particular handicapped student was appropriate and preferable, as Larson had been assigned to this student in the past. Regarding Urban's hours, I note that the contract does not require the District to parse or reorganize workloads to accommodate more senior aides. In addition, the detention hours Schaffer had received in prior years were never considered part of her aide contract but were offered to her separately.

The Union has argued that Article 18, Section B, by reference to "the least senior employee" requires a conclusion that the District must redistribute work hours and then lay off the least senior employee in this bargaining unit. I disagree. The District in this case has shown good reasons supported by the record evidence for assigning aide employees as it did in the 2000-01 school year. The fact that Article 18, Section B, does not use a plural form of "employee" means that the District may nonetheless apply Article 18, Section B, *seriatim* in instances, such as this, where it needs to lay off more than one employee.

The Union also argued that under Article 6, Section B, the District must bargain the impasse of decisions made affecting wages, hours or conditions of employment. In this case, in analyzing the grievance concerning Kate Schaffer's reduction in hours, I see no indication that the Union raised Article 6 prior to making such arguments in its brief. Therefore, the Union's Article 6 argument has not be considered in this case.

Based upon the relevant evidence and argument in this case I issue the following

AWARD

The District did not violate the collective bargaining agreement, particularly Articles 15 and 18, when it reduced the hours of Kate Schaffer for the 2000-01 school year. The grievance is, therefore, denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin, this 23rd day of August, 2001.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

SAG/ans
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