

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**NORTH LAKELAND EDUCATION ASSOCIATION**

and

**BOULDER JUNCTION SCHOOL DISTRICT  
(NORTH LAKELAND SCHOOL)**

Case 10  
No. 61169  
MA-11829

*(Steiner Grievance)*

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Appearances:

**Mr. Gene Degner**, Executive Director, Northern Tier UniServ – Central, on behalf of the North Lakeland Education Association.

**Mr. Robert W. Butler**, Staff Counsel, Wisconsin Association of School Boards, on behalf of the Boulder Junction School District.

**ARBITRATION AWARD**

The North Lakeland Education Association, hereinafter the Association, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Boulder Junction School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on August 20, 2002, in Manitowish Waters, Wisconsin. A stenographic transcript was made of the hearing and the parties submitted post-hearing briefs in the matter by November 20, 2002. By letter of February 28, 2003, the Association requested to reopen the record for the purpose of receiving additional evidence. Over the District's objection, the Association's request was granted and

the evidence received. The District was given the opportunity to respond and did so by submitting additional evidence, which was admitted on March 20, 2003. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

**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 stipulated to the following statement of the issues:

Did the District violate the Collective Bargaining Agreement, in particular Article 27, when it laid off Shannon Steiner for the 2002-2003 school year? And, if so, what is the appropriate remedy?

### CONTRACT PROVISIONS

The following provisions of the parties' 2001-2003 Collective Bargaining Agreement are cited:

### ARTICLE 6 – MANAGEMENT RIGHTS

Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions under the terms of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this agreement. The rights of management shall in all cases be consistent with the terms of this agreement. These rights include, but are not limited to:

- A. To direct all operation of the school system;
- B. To establish and require observance of reasonable work rules and schedules of work;
- C. To hire, promote, transfer, schedule and assign employees in positions within the school system;

- D. To suspend, discharge and take other corrective action against employees;
- E. To maintain efficiency of school system operations;
- F. To take whatever action is necessary to comply with state or federal law, or to comply with state or federal agency decisions or orders;
- G. To introduce new or improved methods or facilities;
- H. To select employees, establish quality standards and evaluate employee performance;
- I. To contract out for goods or services;
- J. To determine the methods, means and personnel by which school system operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the school system in situations of emergency;
- L. To determine the educational policies of the school District;
- M. To determine non-teaching school related activities;
- N. To determine the means and methods of instruction, the selection of textbooks and other teaching material, and the use of teaching aids, class schedules, hours of instruction, length of school year and terms and conditions of employment.

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**ARTICLE 27 – REDUCTION IN FORCE AT NORTH LAKE LAND**

Should declining enrollments or financial conditions necessitate a reduction in the instructional staff, in order to maintain the quality of education provided by teachers who specialize in specific fields the provisions set forth in this Article shall apply in the following order:

1. Timelines: In the event the Board determines the necessity of reduction of teachers in whole or in part for the forthcoming school year, the following procedures will be followed:
  - a. On or before April 15 the Board shall provide a preliminary notice in writing to those employees selected for reduction.
  - b. On or before May 15 the Board will provide final notice in writing to those employees who have been selected for reduction.
2. Normal Attrition: When a staff member leaves, his/her teaching load is assumed by the remaining properly certified members of the faculty.
3. Voluntary contract reduction (not to exceed one year).
4. Early Retirement: Should a staff member wish to take advantage of possible early retirement benefits, the Board will consider this possibility before considering any of the following methods of reducing the staff.
5. Consideration will be given to reduction in number of teacher aides before a reduction in teacher positions.
6. Reduction of the Teaching Staff: All further reductions of the teaching staff will be made on a seniority basis, provided that the remaining teachers are certified to cover all remaining classes. Seniority shall be defined as years of employment as a teacher at North Lakeland Elementary School. Teachers employed on a percentage basis shall be given seniority credit at a rate commensurate with the percentage of employment. If failing to renew the next teacher on the seniority list would create a certification deficit in a required area, the Board has the option of passing over that teacher and selecting for layoff the next teacher on the list whose loss would not affect certification requirements. Upon request a seniority list will be provided to the NLEA and staff no later than April 15<sup>th</sup> of each year.
7. Reduction of Curriculum: Should an entire course of study be dropped from the curriculum, the teacher holding the specialized certificate for that course shall not be hired the following year for that position. If, however, that teacher holds a valid certificate in another subject area still included in the curriculum and has seniority over the current teacher in that area, he/she will be offered that position.

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### BACKGROUND

The Grievant, Shannon Steiner, was hired in 1999 by the District as a middle school math teacher at North Lakeland Elementary for the 1999-2000 school year. Steiner was laid off, but was later recalled, and taught the 2000-2001 school year for the District.

Early in the 2001-2002 school year, the District became aware of declining enrollments and increased costs and the resulting budget problems. In determining how to deal with its budget problems, the District asked the Special Education Director, Matt Collins, whose services the District contracts as an outside consultant from CESA 9 (the area Cooperative Educational Services Agency), to review the District's special education needs and staff and make staffing recommendations before preliminary notices of layoff were to be sent. On March 6, 2002, Collins submitted a memorandum to Patricia Mattek, the Principal of North Lakeland Elementary, recapping his recommendations of February 28, 2002, as to special education staffing for the District. Those recommendations included the following:

- With approximately 20 students needing resource instruction, 2.0 FTE **Special Education Teachers** are recommended.
- With approximately 4 students identified with early childhood needs, .5 FTE **EC: Special Education Teacher** is recommended.
- In support of the special needs of students in the resource programs, 1.0 FTE **Special Education Assistants** are recommended. Within that time, .25 FTE is recommended for clerical support of the special education program. 1/

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1/ Due to a change in the special education student count and their needs, Collins subsequently raised his recommendations to 3.0 FTE teachers: 2.75 Resource Cross-Categorical and .25 FTE Early Childhood.

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On March 5, 2002, Mattek had recommended to the Board that it eliminate two teaching assistants and two teacher positions. The Fifth Grade was moved into the middle school rotation, instead of having two team teachers. Those two teachers were reassigned, one of them, Jean Kaziak, was assigned to teach the math class Steiner had been teaching.

The District issued preliminary notices of layoff to two teachers, Steiner and Stacy Schellinger, on March 15, 2002.

Steiner filed a grievance on March 21, 2002, asserting a violation of Article 27, Sec. 6 of the Agreement and stating in support:

In accordance with our master contract with the North Lakeland School District, I am presenting written grievance to Ms. Patricia Mattek, Principal. According to the contract, layoffs must be made on a seniority basis, **provided the remaining teachers are certified to cover all remaining classes.** This article is being violated as it relates to the teaching of mathematics. I hold certifications in elementary/middle level education (118) and mathematics (400). To the best of my knowledge no other staff member holds a math license. Ms. Marjorie Kilby, Department of Public Instruction Teacher Licensing, verified that any courses offered at both the middle school and the high school level need to be taught by a math certified teacher. All Transition math classes and various leveled Algebra classes are taught at North Lakeland and Lakeland Union High School, and therefore need to be taught by a certified math teacher.

Steiner's grievance was denied and was processed through the steps of the grievance procedure. At Step 3 (the Board level), Steiner submitted a statement of her grievance which read, in relevant part, as follows:

**STATEMENT OF GRIEVANCE:**

In accordance with our master contract with the North Lakeland School District, I am presenting written grievance to the Board of Education. According to the contract, layoffs must be made on a seniority basis, **provided the remaining teachers are certified to cover all remaining classes.** This article is being violated as it relates to the teaching of mathematics. I hold certifications in elementary/middle level education (118) and mathematics. To the best of my knowledge, no other staff member holds a math license. Dr. Peter Burke, Administrator, Department of Public Instruction Teacher Licensing, verified that any courses offered at both the middle school and the high school level needs to be taught by a math certified teacher. All Transition math classes and various leveled Algebra classes are taught at North Lakeland and Lakeland Union High School, and therefore need to be taught by a certified math teacher.

**AREAS OF CONTRACT VIOLATED: (Articles / Sections)**

Article 27 – Section 6

**ACTION REQUESTED:**

I am requesting reinstatement of a full time teaching contract for the 2002-2003 school year.

The Board issued the following response to Steiner's grievance on April 15, 2002:

**THE BOULDER JUNCTION DISTRICT #1 et al BOARD OF EDUCATION HAS DENIED YOUR GRIEVANCE FOR ALL THE SUBSEQUENT REASONS:**

The Board of Education received your letter dated 04/01/02 with regards to a violation of Article 27 of the 1999-2001 collective bargaining agreement between the North Lakeland Education Association and the Boulder Junction Joint School District #1 et al.

The Board met on April 15, 2002 to review your grievance and the collective bargaining agreement.

The Board has determined that the District has complied with all the terms of Article 27, Reduction in Force at North Lakeland.

1. You were provided with a notice of reduction in accordance with the timelines set forth in Article 27.
2. Normal Attrition was not applicable.
3. No one applied for voluntary reduction.
4. Nobody applied for early retirement.
5. The reduction of aides was considered.
6. Section 6, provides that reductions in teaching staff will be made on a seniority basis, provided the remaining teachers are certified to cover all remaining classes.

7. Reduction of Curriculum: Should an entire course of study be dropped from the curriculum, the teacher holding the specialized certificate for that course shall not be hired the following year for that position. If, however, that teacher holds a valid certificate in another subject area still included in the curriculum and has seniority over the current teacher in that area, he/she will be offered that position. The reduction of other areas in the school has facilitated the reduction of your position. You are also the least senior in all other areas were (sic) you presently hold a valid certification.

The Board also denies the grievance as per Article 6, Management Rights. The District retains the right to select curriculum areas for reduction. The District's rights are only restricted by the express terms of the collective bargaining agreement. The relevant language of Article 6:

*Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions under the terms of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the terms of this agreement. The rights of management shall in all cases be consistent with the terms of this agreement. These rights include, but are not limited to:*

- J. To determine the methods, means and personnel by which school system operation are to be conducted.*
- L. To determine the educational policies of the school District.*
- N. To determine the means and methods of instruction, the selection of textbooks and other teacher materials, and the use of teaching aides, class schedules, hours of instruction, length of the school year and terms and conditions of employment.*

For all the specified reasons above your grievance has been determined to lack merit and is therefore denied by the Board.

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By letter of April 29, 2002, the Association filed a request with the Wisconsin Employment Relations Commission for appointment of an arbitrator to hear the Steiner grievance.



On May 14, 2002, the Board issued Steiner the following notice of layoff:

**NOTICE**

**REDUCTION IN FORCE**

May 14, 2002

This letter is to inform you, *Shannon Steiner*, that the Boulder Junction School District #1 et al School Board is invoking Article 27 – Reduction in Force at North Lakeland of the current collective bargaining agreement between North Lakeland Education Association and Boulder Junction Joint School District #1 et al.

Boulder Junction School District #1 et al, will be experiencing declining enrollments and uncertainty of funding which has necessitated a reduction in force.

The Board has considered that no one, to our knowledge, is leaving for employment elsewhere. Nobody has volunteered for reduction or signed up for early retirement. The reduction of teacher's aides has also been considered. All certifications have been reviewed. Staff members have been placed in the appropriate positions as per certification and seniority.

Therefore, we regret to inform you, that you have been selected for notice under the terms of Article 27, in which the Board's rights for layoff and recall are set forth.

Regretfully,

Dale White /s/  
Dale A. White, President  
Boulder Junction School District #1 School Board

The Board passed over Suzanne Paulson, a less senior teacher than Steiner, in laying off Steiner. Paulson is a special education teacher holding licenses in all three areas of special education: Learning Disability (LD), Emotional Behavioral Disability (EBD), and Cognitive Disability (CD) with pre-K certification. Paulson had been hired by the District in the 2001-2002 school year because she has certifications in all three areas. In addition to Paulson, the District employs Patricia Peth-Warye (LD, EBD) and Victor Saeger (LD, EBD) as special education teachers. The District also has four teachers on its staff who possess certifications in special education, but do not currently teach in that area: Jon Berg (EBD); Joan Byram (CD); Christine Dicka (LD, EBD, CD); and Rebecca Kayser (LD, EBD). As with Paulson, the special education certifications of all of those teachers include pre-K.

By letter of May 28, 2002, the Association submitted an amended grievance on behalf of Steiner, which states, in relevant part, as follows:

STATEMENT OF GRIEVANCE:

In accordance with our master contract with the North Lakeland School District, I am presenting written grievance to the Board of Education. According to the contract, layoffs must be made on a seniority basis, provided the remaining teachers are certified to cover all remaining classes. This article is being violated as it relates to the teaching of mathematics. I hold certifications in elementary/middle level education (118) and mathematics (400). To the best of my knowledge no other staff member holds a math license. Dr. Peter Burke, Administrator, Department of Public Instruction Teacher Licensing, verified that any courses offered at both the middle school and the high school level needs to be taught by a math certified teacher. All transition math classes and various leveled Algebra classes are taught at North Lakeland and Lakeland Union High School, and therefore need to be taught by a certified math teacher.

Further, the District has violated the rights of Shannon Steiner by not laying off the least senior employee among the professional staff. They have also violated Article 27 by not giving due consideration to a number of aides for layoff as provided for in that article of the collective bargaining agreement. 2/

AREAS OF CONTRACT VIOLATED: (articles/ Sections)

Article 27, Reduction in Force at North Lakeland – Section 6

ACTION REQUESTED:

I am requesting reinstatement of a full time teaching contract for the 2002-2003 school year.

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*2/ As may be seen from the Association's arguments, the Association has not pursued its original assertions that non-renewing Steiner created a certification deficit in mathematics and that the District had not given due consideration to reducing the number of aides.*

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After the close of the record, the Association requested that the record be reopened for the purpose of submitting newly-discovered evidence that was not available at time of hearing. That request was granted over the District's objection. The Association submitted a newspaper

article which indicated that Suzanne Paulson is one of nine teachers who have been given preliminary notice of layoff for the 2003-2004 school year. The Board was given the opportunity to respond and submitted an affidavit of Board President Dale White which stated that such preliminary notice was given due to the uncertainty of the outcome of this grievance arbitration. The affidavit also stated that Paulson is the only District employee with the ability to perform sign language for hearing-impaired pupils, and that the IEP for a Fifth Grade student requires that the District have an employee who is able to sign. The District also submitted the minutes of the February 10, 2003, Board meeting to support White's affidavit, as well as a newspaper article regarding a Fifth Grade pupil with disabilities indicating her classroom teacher is Paulson and her special education teacher is Wayre.

The parties proceeded to arbitration of their dispute before the undersigned.

### **POSITIONS OF THE PARTIES**

#### **Association**

The Association takes the position that the District violated Article 27, Sec. 6, of the parties' Agreement when it laid off the Grievant, Shannon Steiner, instead of Suzanne Paulson.

According to the Association, after reductions have taken place per normal attrition, voluntary contract reductions, and early retirements, Article 27, Sec. 6, specifically provides that: "All further reductions of the teaching staff will be made on a seniority basis, provided that the remaining teachers are certified to cover all remaining classes." This language does not state that the more senior teacher has to be able to cover the classes of the least senior person on the list, rather, it merely states that, collectively, the remaining teaching staff must be certified to cover the remaining classes. There is a difference between "classes" and "positions". A "position" is the combination of several classes, while a "class" is a singular grouping of students. A "position" may consist of several "classes". Thus, the parties intended that "positions" could be broken up into various classes to accomplish the least senior person being laid off.

The language of Sec. 6 provides an escape clause for the District regarding certification, stating, "If failing to renew the next teacher on the seniority list would create a certification deficit in a required area, the Board has the option of passing over that teacher and selecting for layoff the next teacher on the list whose loss would not affect certification requirements." That language is clear that in order to skip the less senior teacher, not doing so would create a certification deficit. Laying off Paulson instead of Steiner would not have created such a certification deficit. Thus, by laying off Steiner, the District violated her rights under Article 27.

The Association asserts that Association Exhibit 1 demonstrates how the District has the certification and ability to rearrange schedules to cover the certifications Paulson possesses, i.e., LD, EBD and CD. As shown by the exhibit, the District had several options it could have chosen:

<b>SPECIAL EDUCATION ASSIGNMENTS FOR 2002-2003 ACCORDING TO 5/15/02 MEMO FROM MATTEK.</b>			
Peth-Warye, Patricia L.	LD PreK-12	EBD PreK-12	
Saeger, Victor T.	LD PreK-12	EBD PreK-12	
Paulson, Suzanne M.	LD PreK-12	EBD PreK-12	CD PreK-9

<b>OTHERS WITH EEN CERTIFICATION</b>			
Dicka, Christine L.	LD PreK-12	EBD PreK-12	CD PreK-12
Kayser, Rebecca A.	LD PreK-9	EBD PreK-9	
Byram, Joan D.			CD PreK-12
Berg, Jonathan J.		EBD PreK-12	

The District's logic for bypassing Paulson and laying off Steiner is flawed. They attempted to confuse the issue by throwing in Early Childhood. However, a review of the certifications shown in Joint Exhibit 30 shows that there were sufficient teachers with pre-Kindergarten certification in this area so as to give the District sufficient coverage for Early Childhood for their cross-categorical program for EEN (Exceptional Educational Needs) students. The cross-categorical program was defined by District witness, Patricia Mattek, and the Board President, Dale White. Mattek testified to the following:

- Q. And 2.75 are resource cross categorical. What does that mean?
- A. Cross categorical means that anyone certified in special education can serve the population of special needs children.
- Q. Okay. If you have 2.75 in cross categorical, in other words, if you had an LD and EBD, could they serve all of the needs or do you have one for each category?
- A. Well, sometimes when you have a multi-handicapped child, a very critical, my recommendation would be that the teacher who's certified in that area would be the best for the child.
- Q. But in terms of cross categorical under the DPI, as I understand it, does that mean you're running a cross categorical EEN program, right?

A. Sometimes.

Q. Well, how is it listed – it's listed as cross categorical with the DPI?

A. Yes.

Q. So that means that according to the DPI if they're certified in LD and EBD they can serve all three areas?

A. Um-hum.

Q. Okay. Or if they're certified in CD they could serve all three areas?

A. Right.

This means that LD certification can, in a cross-categorical program, service students with needs for CD or EBD and vice-versa, with either of the other degrees. The bottom line, is that given the staff, Mattek indicated the District could make the assignment.

While both White and Mattek wanted to talk about what they personally felt were the needs of the students, their personal feelings are not part of the collective bargaining agreement between the Association and District with regards to layoff. The contract is very clear that seniority is the prevailing criterion by which members of the staff are reduced. Before personal wishes can be honored, the District must first honor the Agreement. The issue is not whether the Board has the right to layoff staff or that they failed to meet the timelines for layoff notices; rather it is that the District violated the clear language of the Agreement that reduction in force will be determined by seniority. The language is very clear that the option of skipping the least senior person may only be exercised when that would leave the District with a certification deficit. As it has been demonstrated that the District has other teachers certified in the areas in which Paulson is certified, laying off Paulson would not have left the District with such a deficit. Thus, the District violated the Agreement when it laid off Steiner instead of Paulson.

In its reply brief, the Association asserts that the District essentially has argued that it acted in good faith and that Steiner is not qualified for special education, and that therefore, a certification deficit would be created by laying off Paulson and keeping Steiner. The District liberally interprets its managements rights clause and narrowly interprets Article 27. The District asserts that its rights are restricted by the contract only to the "precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this collective bargaining agreement." It then claims there is no language in the Agreement that explicitly and clearly and unequivocally restricts its rights. Taken to its conclusion, that argument means there is little protection for employees in the remainder of the Agreement.

The District's reliance on the award in ELROY-KENDALL-WILTON SCHOOL DISTRICT is misplaced as that case is distinguishable. Unlike that case, here there is language in the collective bargaining agreement relating to how employees are to be reduced should a reduction be necessary.

The District wishes to talk about experience; however, it is clear from Article 27 that the only weight given to experience is seniority, which determines who is laid off, with the least senior being laid off first. Seniority is determined by the employee's first day of employment with the District, not their first day on any particular assignment. The District also talks about the quality of the program in arguing for an excuse to bypass the least senior employee. Had the parties to this Agreement wanted experience within a certification and the quality of a program considered, they would have put those criteria in Section 6, along with certification. They did not do so, and therefore, those items are not germane to the issue in this case.

The Director of Special Education made his recommendations based upon what would be the best possible scenario; however, once a layoff occurs, the best possible scenario is not going to be achieved, as there will be a re-ordering of positions, as there was when the District decided to redo the Fifth Grade.

The Association disputes the District's claim that it followed Article 27. That provision specifically provides that, "All further reductions of the teaching staff will be made on a seniority basis, provided the remaining teachers are certified to cover all remaining classes. . . If failing to renew the next teacher on the seniority list would create a certification deficit in a required area, the Board has the option of passing over that teacher and selecting for layoff the next teacher on the list whose loss would not affect certification requirements." It is the relationship between those two sentences that determines the outcome in this case. The first sentence makes it clear that all further reduction, will be made on a seniority basis. There is no doubt from the evidence presented that the remaining teachers were certified to cover all the classes if Paulson had been laid off instead of Steiner. The District is in a cross-categorical EEN program, in which case they only needed people with the exact certifications for the IEP meetings. They do not need staff with all three certifications to teach those students; rather, they need staff which are collectively certified in those three areas for diagnosing students. The District has that availability under the scenarios the Association presented. Depending on how often they need someone with CD certification, the District had the option of two different people.

"Certification deficit" means that there would not be anyone certified to carry out those duties or that there is not the necessary number in any one certification to carry out the remaining duties and assignments necessary. Here, there are a number of people available, and by rearranging staff, the District would have an adequate number of certifications in every

area it required. The District, however, argues that if there is any deficit, they get to determine what that deficit is. It asserts that the deficit is related to the quality of a program that remains and related to the amount of teaching experience in any one certification area. However, neither of those items are included in Sec. 6, or any other paragraph of Article 27.

The Association also disagrees that Article 27, Sec. 7 has any application to this grievance. Section 7 is unrelated to this grievance, inasmuch as the District is required to reduce the total number of teaching staff, and therefore must start at the bottom of the seniority list for layoff. The only exceptions to that are the protections afforded to the District under Sec. 6, as discussed above.

In summary, Association Exhibit 1 demonstrates that there is a sufficient number of people remaining on staff with CD certification so that there would have been no deficit in that certification area. The District was required to rearrange its teaching staff utilizing those certifications. Thus, Paulson should have been laid off. The Association asserts that the fact Paulson was given preliminary notice of layoff for the 2003-2004 school year demonstrates that laying her off would not have created a certification deficit as the District claims. The Association requests that the grievance and its remedy be granted in its entirety.

### **District**

The District takes the position that it exercised its rights under Article 6, Management Rights, of the Agreement, and established the license and experience standards for the special education position in question at a level of multiple certifications in order for the special education teacher to be able to serve special education students with multiple needs, and then assigned staff accordingly. In doing so, the District followed Article 27, both procedurally and substantively. It made reductions based on seniority while also ensuring there would not be a certification deficit. The District considered the Association's proposed remedy and rejected it, based upon the requirements of the individual educational plans (IEP's) under state and federal law, and educational necessity. Thus, the Association has not met its burden of showing that the District violated any part of the Agreement.

The District asserts that under Article 6, Management Rights, of the Agreement, it has the right to assign staff, to select employees and establish their quality standards, to take whatever action is necessary to comply with state and federal law, to determine the personnel by which school systems operations are to be conducted, and to determine educational policy. These rights are restricted by the Agreement only to the "precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of the collective bargaining agreement." The Association argument that the Agreement is silent about the assignment of teachers, and that the layoff provision therefore trumps the management rights provision lacks merit, as Article 6 clearly states that management has the right to assign staff.

While the layoff provision limits management in some respects, the language provides a clear exception where the District does not have to follow seniority, and there is no language in the Agreement that restricts the District's right to assign the remaining staff.

Article 27 clearly states in its opening paragraph that the District shall maintain the quality of education even when reducing instructional staff. The Agreement does not define the "quality of education", and absent clear contract language defining that phrase, the District retains its right to do so under Article 6. The District cites arbitral precedent where an arbitrator relied on a similar management rights provision and found that given the lack of a clear, explicit and unequivocal restriction of management rights, the employer had the right of selection. *ELROY-KENDALL-WILTON SCHOOL DISTRICT* (Arbitrator Gil Vernon). Given the language in Article 6, the District has the right to decide, as a way of establishing quality standards and determining educational policy, what certifications are necessary for the teaching positions and to assign staff accordingly. The District has the right to require more than minimum certification as part of its educational policy and quality standards. The District decided that certification in all three areas of special education would meet the goal of quality education and based on its right to assign staff, assigned Ms. Paulson to the special education position, because she was the only teacher available with all three required certifications. A teacher may be certified in any or all of the three specialized areas, and even though the licenses are all in special education, they are unique, and require different skills.

The quality of education is not furthered by reducing the least senior teacher when that reduction would not only cause a certification deficit, but would also cause the District to displace other more senior teachers to try and fill the certification areas as best possible with the remaining staff. To make the Association's proposed remedy work, an employee who is more senior than Steiner by 14 years would be switched out of her assignment to make room for Steiner. Even assuming *arguendo*, that the remaining staff had the appropriate certifications to cover the remaining positions, educational policy dictates that playing musical chairs with staff does not satisfy the best interests of the children, especially in an area like special education. In this case, this would result in putting Byram, a teacher who only has a certification in CD, into a position that requires the teacher to handle students with needs in LD, EBD and CD. Further, Ms. Byram has not taught special education in the District, nor is there any evidence that she has ever taught special education. Thus, the District would be forced to sacrifice quality education merely to strictly adhere to a seniority concept. The Agreement does not require this result.

Article 27 also prefaces the reduction language by stating that "Should declining enrollments or financial conditions necessitate a reduction in the instructional staff. .." It is clear from the record that reduced enrollment and higher costs forced the Board to make budget cuts. The Board went through the budget trying to make cuts before looking at staff reductions; however, after making cuts in other areas, financial necessity forced the Board to consider reducing staff.



Article 27 includes timelines which must be, and were, followed by the Board in this case. As required the District also looked at normal attrition, voluntary contract reduction, and early retirement before considering reductions in instructional staff. Board members White and Samanski testified that no one voluntarily resigned, nor volunteered for a reduction, nor took early retirement. Article 27 also requires the District to consider reducing teacher aides before reducing teachers. The Board did so; however, aides were not reduced prior to the reduction in teaching staff, as the timelines for notification for the professional staff had to be addressed immediately. Ultimately, aides were also reduced.

Article 27, Section 6, requires the Board to reduce teaching staff “on a seniority basis provided the remaining teachers are certified to cover all remaining classes.” Section 6 also gives management the right to skip over a less senior teacher if non-renewal of that teacher would result in a “certification deficit”, and select for non-renewal “the next teacher on the list whose loss would not affect certification requirements.” The District followed these procedures and exercised its right to skip over Paulson in order to maintain the necessary certifications for the special education program. Article 27 is silent as to who determines the necessary certifications in the remaining areas and does not explicitly define “certification deficit”. Thus, the District retains the right to make those determinations under Article 6. Under Article 6, the District retains the right to establish quality standards for its staff, which include, but are not limited to, certification, experience and training. As a matter of educational policy, the Board reserves the right to determine which certifications it deems necessary for a particular position, as long as this is not done in an arbitrary or capricious manner.

In setting its staffing requirements, the District considered several factors. First, it considered the recommendations of Matthew Collins, the Special Education Director hired as an outside expert from CESA 9. The District also made a staffing decision so that its special education program offerings would comply with the IEP’s in the District, as required by state and federal law. Finally, the standards were set to satisfy the Board’s educational policy goal of having appropriately certified individuals deliver a quality educational program. The District has a statutory obligation to hire qualified teachers. The District determined that hiring a qualified teacher who will satisfy quality standards in this case requires hiring or retaining a teacher with multiple certifications in special education. All of the District’s teachers presently working in special education possess more than one special education license. It is the District’s policy to require multiple certifications so that the teacher can serve more than one need of the special education student, and so that students will not have to have a different teacher for each unique need. Thus, the District’s decision was not arbitrary or capricious.

The special education staffing was based on a recommendation from Collins, who based his staffing recommendations on the needs of the students, the special education certifications

and who could best meet the students' needs. Collins reviewed all the IEP's in the District. Paulson was not reduced because she was identified by Collins as the person the District needed to handle the needs of its special education students it needed to address the next year. White testified that in deciding the reductions, the Board looked at the seniority list and at the specialists required to handle the particular needs of the special education students. The Board determined that the least senior teacher who the District could lay off while still maintaining the necessary certifications was the Grievant. Because Steiner has certifications that other teachers, more senior, also possess, the Board determined that Steiner was the least senior teacher who could be reduced without causing a certification deficit, while Paulson was the only person with certification in all three areas of special education who was available to teach special education.

Continuity in the special education program is crucial. In establishing quality standards, the District considered the benefits of hiring one teacher who could serve the multiple needs of individual students. There are children in the District with needs in all three areas of special education and the District felt that it was important to retain one teacher with certifications in all three areas, who could serve all the needs of one child in order to avoid a situation where a child was constantly being toggled between different special education teachers according to certification, and instead ensure that a child could find some stability with a teacher who was certified to deal with varied special educational needs. While the Association argues that minimum standards to teach special education may be only to have one certification, the record contains no information from the DPI that this is an authorized practice, and no information in the record stating that DPI recommends this practice as the proper avenue to follow in administering a quality educational program where an alternative exists. The District consulted with Collins about the needs of the special education program and relied on his staffing recommendations. According to Board President Dale White, Collins felt it was important because of the needs of the children that the staff be certified in a certain way.

White also testified that it is Board policy to look beyond minimum certification and staffing and look at the needs of the children. When looking at staffing for special education, the Board considered the students' IEP's and addressed all the needs in the IEP's in accordance with federal and state law. Given that needs in all three areas of special education exist in the District, the District's policy is to prefer a teacher with multiple certifications as a way to comply with federal and state law, as well as meet the needs of children in the different areas. Patricia Mattek, the School Principal, also testified that the school hopes to go beyond minimum certification and look at the needs of the children. Thus, despite one license being the minimum requirement for teachers registered with DPI as cross-categorical, depending on the needs of the child she may recommend a teacher with specific special education certification, instead of a teacher with one certification. Further, even though a single special education certification may be acceptable under DPI standards for a teacher listed as cross-categorical, this may not be enough to satisfy IEP requirements.

It is not feasible to follow the Association's proposed remedy and still maintain the necessary certifications and fulfill the IEP's. Under state law, the District must appoint an IEP team for each student with special education needs. The IEP determines the necessary services for each student based on his/her needs. Once an IEP is formulated, the District must place the student in such a way as to implement the IEP. The District's current special education staff is able to comply with all of the requirements for forming an IEP and is also able to comply with the IEP's of the students in the District. To ensure compliance, the District must maintain a teacher with certifications in all areas of special education. Jon Berg, a Fourth Grade regular education teacher who helped develop special education programs for the District, testified that there must be a teacher on the IEP planning team with certification in the area of the child's needs. State law requires an IEP team to have "at least one special education teacher who has extensive and recent training and experience relating to the child's known or suspected disability." Sec. 115.78(1m), Stats. The evidence fails to demonstrate that any teacher other than Paulson has CD certification, extensive CD training, and District experience teaching students with CD needs. Because the District has children with needs in all three areas, including some children with needs in all areas, the District must have a multiply-certified teacher in order to comply with the law. At the very least, without a multiply-certified teacher, the District would have to place more than one special education teacher on the planning team for an IEP to attempt to comply with the law, an inefficient use of already limited resources. In addition, the IEP team determines whether a teacher with only one special education certification will best meet the needs of the child and if it does not, the IEP may require a teacher with multiple certifications. If the IEP team determines the student needs a teacher with certification in all three areas, the District must provide such a teacher in order to abide by, and appropriately implement, the IEP. Sec. 115.79(2), Stats. Thus, in order to act in accord with state and federal law and ensure that there is a teacher available for children with needs in all three areas, the District must have a teacher with all three special education certifications, given its current student population and those students' current IEP's.

Although a teacher with only one certification can implement an IEP, Berg testified that this should occur "as long as it's felt that that best meets the needs of the child." He also testified that while it is not clear that a multiply-certified teacher will always better serve a child with multiple needs, it is critical to look at the needs of the child, as identified in the IEP, and follow the IEP.

The IEP's of children in the District require a special education teacher with multiple certifications as well as Early Childhood capabilities. There is a student with significant needs and the IEP for that child requires an aide and a special education teacher who holds certifications in all of the areas of special education. The District also has another child with an IEP requiring that the teacher implementing the plan have LD and CD certification. Paulson is the only person available who can deliver these services, because she is currently the only special education teacher with LD, CD and Early Childhood certification. The only

other teacher with the necessary certifications is Dicka, and she is not available to teach special education. The District also has a child with Down's Syndrome in the special education program. White testified that the child requires a teacher with certification in all areas. When the District hired Paulson, it did so with the knowledge that the child with Down's Syndrome was coming to the school, and would require significant services. Article 6 states that management has the explicit right to "take whatever action is necessary to comply with state or federal law." It is clear from the record that the District has more than one IEP requiring a teacher with certifications that only Paulson possesses. Thus, the District cannot follow the Association's proposed remedy without being in danger of violating state and federal law by not following the IEP's of the children in the District.

The Association's remedy was not introduced until the arbitration hearing, and the prior grievances never discussed displacing any of the special education staff with a person from the 1-8 general teaching staff. The Association suggests putting either Dicka or Byram into the special education position. Although Ms. Dicka also has certification in all three areas, she is the only teacher with certification in family and consumer education and guidance. She currently teaches in an area where her unique certifications are necessary and therefore, she is not available to teach special education, despite being multiply certified.

The proposed remedy would also move Byram, a teacher with almost 16 years of seniority, from a general education position into the special education position. Although she has a CD certification, she has never taught special education in the District. Further, Byram is certified in CD only and does not have the certifications required for the special education position and no evidence that she would be able to fulfill the IEP's that the District has for the special education students. This would still be true even if Byram was registered as cross-categorical with DPI. It is unlikely that the District could successfully apply for a provisional license in LD and EBD for Byram. Under Wis. Adm. Code, PI 3.03(6), such request must be in writing with a full explanation and justification of the need and must state that a search was conducted for a fully-licensed teacher and an explanation of why any fully-licensed candidates were not acceptable. Since the District had a fully-licensed candidate employed by the District (Paulson), it would not be able to state that it had done a search and could not find an acceptable candidate. Even if Byram could obtain a provisional license, nothing in the Agreement states that being "certifiable" is sufficient. The Agreement states that when reducing the staff, the District must ensure that the remaining teachers are "certified" to cover the remaining classes. "Certified" and "certifiable" are not interchangeable terms.

The District concludes that the IEP's and educational necessity require it to retain Paulson. It cannot follow the Association's proposed remedy without creating significant teaching deficits in the special education program. The District must ensure that the special education program is in compliance with federal and state law.

The District asserts that it also followed Article 27, Section 7, which provides:

*Reduction of Curriculum: Should an entire course of study be dropped from the curriculum, the teacher holding the specialized certificate for that course shall not be hired the following year for that position. If however, the teacher holds a valid certificate in another subject area still included in the curriculum and has seniority over the current teacher in that area, he/she will be offered that position.*

Due to a decrease in enrollment, the District was eliminating a Fifth Grade split and restructuring the Fifth Grade so that only one teacher would be necessary. The students in the Fifth Grade would receive instruction from specialists, more like a middle school environment. The District also made some curricular changes to help alleviate some of the budget difficulties. Those changes required the reduction to take place in a specific area, in this case, the 1-8 grade area. White testified that the Fifth Grade, as a self-contained class, had essentially been dropped and put in the middle school rotation. This arguably qualifies as “an entire course of study” being dropped, thus triggering Sec. 7. Under that language, the Board can reduce the least senior teacher in that course of study. Steiner is the least senior teacher with the relevant 1-8 certification, and is not certified in special education. Therefore, she could not “bump” Paulson from her position. The language of Sec. 7 specifically states that a teacher must have a “valid certificate” to be offered the job of a less senior teacher. The District also asserts that it would be highly unlikely that it could successfully request a provisional license for Steiner in the special education area for the same reasons discussed above with regard to Byram.

The District also cites arbitral precedent as finding that “certified” does not mean “certifiable.” MENOMONEE INDIAN SCHOOL DISTRICT, (Arbitrator Jones). Thus, the District concludes that it followed all of the procedures in Article 27 in laying off the Grievant, while retaining Paulson so as to avoid certification deficits.

In its reply brief, the District notes that the Association asserts that the contract language is clear that the least senior employee must be laid off first as long as remaining teachers are certified to cover the remaining classes, and further argues that the District must attempt to cover the remaining classes with the remaining teachers “by whatever shuffling is necessary.” The Association fails to recognize that if Paulson is reduced, the remaining staff would not be certified to cover the special education vacancy. As stated previously, the District needs a special education teacher with certifications in all three special education areas to ensure compliance with federal and state law. The District must comply with the IEP’s of the students, and White testified that there are IEP’s in the District that require a special education teacher with certification in CD, EBD and LD. Paulson is the only teacher with certifications in all three areas who is available to teach special education.

The District disputes the feasibility of the Association's recommendation that Ms. Dicka or Ms. Byram take the special education position. Dicka is not available as she is the only teacher in the District with the certifications required for her current position. Byram has never taught special education in the District and there is no evidence that she has taught special education anywhere. Thus, it would be difficult for the District to comply with the requirements of having a teacher with "extensive and recent training and experience related to the child's known or suspected disability" if Byram has no experience teaching CD.

Again, "certification deficit" is not defined in the Agreement. The District has the right to set quality standards, assign staff and determine educational policy. The District also has the right to define the "quality of education" under Article 6. The District has the right to decide what certifications were required for a special education position based on recommendations from an outside expert in the needs of its students. According to how the District defines "certified", placing Byram, with only a CD license, into a special education position would create a certification deficit.

The District disputes the assertion that the contract is silent on reassignment and that therefore the seniority provision governs. Article 6 clearly states that management retains the right to assign staff. The only restriction on the right to assign is the seniority language in Article 27, and that language allows the District to pass over less senior staff, if reducing that staff would create a certification deficit. Reducing Paulson would have created such a certification deficit.

White's testimony did not support the Association's assertion that since the District's special education program is cross-categorical, a teacher with only one special education certification can teach students with needs in all areas. White testified that in filling Paulson's position, the District was aware that it had special needs students and a particular special education student who was coming to the District with needs that had to be addressed. Paulson was hired to address those needs. Further, a teacher who is minimally certified according to DPI may not be able to comply with the IEP's of the students, and may not be able to comply with state and federal requirements in special education programs. Even if the program is registered with DPI as cross-categorical, there is no evidence that Byram is registered as a cross-categorical special education teacher. Thus, she may not be able to satisfy DPI requirements. While without Paulson, the District's program may meet DPI minimal standards, it would likely be in a position where it is impossible to comply with state and federal law. Further, the District retains the right to set quality standards and educational policy that surpasses DPI's minimum certification requirements.

As to the newly-submitted evidence that Paulson has been given preliminary notice of layoff for the 2003-2004 school year, White's affidavit and the minutes of the Board meeting establish that this was done only due to the uncertainty of the outcome of this case.

The District requests that the grievance be denied.

### DISCUSSION

This dispute involves Article 27, Sec. 6, of the parties' Agreement and the interplay of that provision with the District's management rights under Article 6 of the Agreement. Contrary to the District's assertion that Article 27, Sec. 7 is also involved, that provision comes into play when "an entire course of study" is being "dropped from the curriculum." Changing the manner in which Fifth Grade is to be taught (from being team taught by two teachers to making it part of the middle school rotation) does not constitute dropping an "entire course of study" from the curriculum.

Article 27, Sec. 6, provides in relevant part:

6. Reduction of the Teaching Staff: All further reductions of the teaching staff will be made on a seniority basis, provided that the remaining teachers are certified to cover all remaining classes. . . .If failing to renew the next teacher on the seniority list would create a certification deficit in a required area, the Board has the option of passing over that teacher and selecting for layoff the next teacher on the list whose loss would not affect certification requirements. Upon request a seniority list will be provided to the NLEA and staff no later than April 15<sup>th</sup> of each year.

The Association argues that this provision requires the District to layoff the least senior teacher as long as the remaining teachers possess the necessary certifications to teach all of the remaining classes offered, regardless of the reshuffling of assignments that would be necessary to have the teachers with the requisite certification teaching those classes. According to the Association, if Paulson was laid off, there are other teachers in the District with the necessary certifications in special education who could be reassigned to cover Paulson's assignments, leaving Steiner to teach the math assignment from which she was removed or to be reassigned to teach the classes of whoever was reassigned in order to cover Paulson's assignments.

While the District disagrees with the Association's interpretation of Article 27, Sec. 6, it does not really offer an alternative interpretation as to how that provision is to be implemented, other than to assert that reshuffling the teaching staff would not further the quality of education as required by the introductory paragraph of Article 27. That opening paragraph states:

Should declining enrollments or financial conditions necessitate a reduction in the instructional staff, in order to maintain the quality of education provided by teachers who specialize in specific fields the provisions set forth in this Article shall apply in the following order:

. . .

As the wording indicates, the parties agreed to a procedure that would be followed “in order to maintain the quality of education provided by teachers who specialize in specific fields.” It is the procedure they agreed to that is meant to protect the “quality of education”. The provision is not a license for the District to make a subjective determination and then use that standard to determine which teachers it will need to maintain that standard. The protection for the District, and for the teachers, is set forth in Secs. 6 and 7 of Article 27. As noted above, it is Sec. 6 that applies in this case.

To protect the teaching staff, Sec. 6 sets up a general rule that seniority will be followed in reducing staff. This is an express restriction on the Board’s rights to assign and to select employees. To protect the District, Sec. 6 contains a proviso that the remaining staff must be “certified to cover all remaining classes. . .” Consistent with that proviso, Sec. 6 permits the Board the option of passing over a less senior teacher for layoff, if not doing so would create a “certification deficit in a required area,” and laying off the teacher on the seniority list “whose loss would not affect certification requirements.”

The District determines the classes to be offered and then must look at its staff and determine whether there would be the number of teachers needed with the appropriate certifications to cover those classes if the least senior teacher were to be laid off. The term “classes” is analogous to assignments and is broad enough to include particular assignments to special education students and their IEP teams, as well as assignments to teach particular individual classes, or to teach a grade level, e.g., Fourth Grade. The term is not, however, analogous to a “position”, which may consist of a teacher’s aggregate assignments to teach various classes or students or the assignment to teach a grade level. As the proviso in Section 6 references “remaining teachers” being certified to cover the remaining classes, it presumes there would be teachers reassigned in order to have the appropriately-certified teachers covering the classes to be offered.

As the Association asserts, Sec. 6 references “certified” and “certification”. Teachers receive their certification from the DPI and it is the DPI that sets the certification requirements. Section 6 does not list recent experience teaching a particular class or special skills as additional requirements the District may impose. It is the certification that is required by DPI to teach the class, and not a higher level of certification, or experience, or special skills the District would require. While the District may set higher standards in hiring teachers,



Sec. 6 is concerned with who will remain if there is to be a layoff. Again, the protection to the District is that it has the right to ensure that it at least retains the teachers who are certified to cover the classes it will offer.

The District must, however, be able to practically utilize the teacher's certification to cover the class. This means that the teacher with the required certification is available, not only in the sense that the teacher can be assigned to teach the class without creating a certification deficit in another area, but also that if there are other requirements beyond possessing certification in the area, such as the legal requirements regarding IEP teams, the teacher must also meet those requirements so that the District is able to assign the teacher to a student or class and meet state and federal requirements. As the District asserts, pursuant to Article 6, it has the right to take "whatever action is necessary to comply with state or federal law. . ."

North Lakeland Elementary Principal, Patricia Mattek, testified that the District is listed as having a cross-categorical EEN program with DPI. According to Mattek and Association witness Jon Berg, this means that a teacher holding any one of the certifications in special education may be assigned to serve a special education student in the District with needs in an area other than that in which the teacher holds certification, and still be in compliance with state and federal legal requirements. The District cites Sec. 115.78(1m), Stats., as providing that the District is required to have a special education teacher with certification and "extensive and recent training and experience" in the student's specific area of disability on the child's IEP team. However, the District's citation is incomplete, as that statutory provision goes on to state "or, where appropriate, at least one special education provider of the child." Thus, it is not at all clear to the Arbitrator that the District must provide a special education teacher with "extensive and recent training and experience" in the area of the child's disability in order to comply with Sec. 115.78(1m), Stats.

Mattek testified that there are 17 students in the District who require services in the special needs areas other than language and speech. While White testified that some of those students have needs in the CD area or in multiple areas, Mattek testified that the 17 are cross-categorical and that most are included in a regular classroom.

The Association asserts there are four teachers currently on staff who hold certifications that would permit them to provide the services provided by Paulson:

Berg – EBD certification  
Byram – CD certification  
Dicka – LD, EBD and CD certifications  
Kayser – LD and EBD certifications

All four have the same pre-K level licensure as Paulson as far as their certifications in special education.

As indicated, both Byram and Dicka are certified in the CD area. Mattek testified that while Byram has taught 16 years in the District, she has not taught in special education for the District, although according to White, she was a Title I teacher for the District at one time. However, it is noted that Byram's latest CD licensure was issued in 2001 for five years. Presumably, when DPI issues the certification, the teacher meets the requirements to be able to utilize that certification. It appears then that Byram would be available to be given special education assignments.

Mattek testified that Dicka, who like Paulson is certified in all three areas of special education, teaches family and consumer education (FACE), and is the school's guidance counselor. Mattek testified that Dicka is the only teacher in the District with certification to do so. Therefore, Dicka would not be available to teach special education without creating a certification deficit in FACE and guidance counseling. The record is silent as to Dicka's special education experience; however, Dicka's CD licensure was issued in July of 2002 and her LD and EBD licenses were issued in September of 2000. It would appear that she would at least be available to be assigned to be on an IEP team, depending upon when it was scheduled to meet, and that would seem to be within management's control.

Berg has lifetime certification in EBD and extensive experience in special education, including eight years in the District, albeit he has not taught in special education the past six years. Kayser has both EBD and LD certifications which were issued in 1999. While the record is not clear as to whether or not Kayser has been a special education teacher in the District, it appears that both Berg and Kayser could be given special education assignments based upon their certifications.

As noted previously, the record indicates that the District is listed with the DPI as cross-categorical, meaning that a special education teacher certified in one area could be assigned to a student with needs in a different area, e.g., a teacher certified in LD could be assigned to provide services to a student with needs in the areas of CD or EBD and be in compliance with state and federal requirements. Both Mattek and Board President White testified that the District wished to do what best served the students' interests, and felt that should be more than just the minimum required by DPI. While that is a laudable goal, Sec. 6 only sets forth certification as the criterion for determining whether the Board has the option of passing over the less senior teacher. As stated previously, it is the certification the DPI requires to teach the class, and not a higher standard of certifications, experience or special skills (such as signing) the District would impose, regardless of the merits of its intentions.

Berg was teaching Fourth Grade and is certified 1-6, Byram was teaching First Grade and is certified 1-8, Kayser was teaching Third Grade and is certified K-8. The Grievant is certified 1-8. It would therefore appear to have been possible to assign the Grievant to teach classes taught by Berg, Byram or Kayser, if any of them were assigned to special education assignments, without creating a certification deficit. 3/

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*3/ The Arbitrator would note that the post-hearing evidence that Paulson was issued a preliminary notice of layoff for the next school year does not demonstrate anything beyond the District's taking precautionary steps pending the outcome of this case.*

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There is no reason to doubt that the District believed that it was doing what best served its students' needs in retaining Paulson. Nevertheless, given the sufficiently clear and specific wording of Sec. 6, and the certifications possessed by the remaining teachers if Paulson had been laid off, it is concluded that laying off Paulson would not have created a "certification deficit" within the meaning of that provision.

Given the foregoing, it is concluded that the District violated Article 27, Sec. 6, of the parties' Agreement when it laid off the Grievant.

Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following

### **AWARD**

The grievance is sustained. The District is directed to either immediately offer to reinstate the Grievant, Shannon Steiner, to a full-time teaching position for the 2002-2003 school year and make her whole for all lost wages and benefits that she would have earned in the 2002-2003 school year but for the District's actions in laying her off, less whatever payments or wages she received during that time that she would not otherwise have received, or in order to avoid disruption in the educational setting, pay the Grievant the wages and benefits she would have received but for her layoff for the entire 2002-2003 school year (less the offset), rather than immediately placing her in a teaching position.

Dated at Madison, Wisconsin, this 25th day of March, 2003.

David E. Shaw /s/

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David E. Shaw, Arbitrator

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