

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ALMOND-BANCROFT SCHOOL DISTRICT**

and

**ALMOND-BANCROFT EDUCATIONAL  
SUPPORT PERSONNEL ASSOCIATION**

Case 14  
No. 61570  
MA-11987

*(Patterson Grievance)*

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Appearances:

**Mr. Thomas S. Ivey, Jr.**, Executive Director, Central Wisconsin UniServ Council, 625 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158, on behalf of the Association.

**Mr. Jeffrey T. Jones**, Ruder, Ware, Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the District.

**ARBITRATION AWARD**

Almond-Bancroft School District (hereafter District) and Almond-Bancroft Educational Support Personnel Association (hereafter Association) are parties to a 1999-2000 collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to this agreement, the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding the District's decision to eliminate the Lead Cook position at Bancroft Elementary School, and permanently layoff/reduce Lead Cook Linda Patterson's hours of work. The Commission appointed Sharon A. Gallagher to hear and resolve this dispute. Hearing was scheduled and held at Almond, Wisconsin on December 3, 2002. No stenographic transcript of the

proceedings was made. At the close of the hearing, the parties agreed to submit their initial briefs by February 17, 2003, and to submit reply briefs, if any, by February 28, 2003. The Arbitrator received the last brief by April 8, 2003, 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 before the Arbitrator. However, the parties agreed to allow the Arbitrator to frame the issues based upon the parties' suggested issues as well as the relevant evidence and argument in the case. The Association's suggested issues were as follows:

Did the District violate the terms and conditions of the Master Agreement between the parties, when they issued a permanent reduction in hours notice to Linda Patterson? If so, what is the appropriate remedy?

The District's suggested issues were as follows:

Did the School District violate the terms of the collective bargaining agreement when laying off the Grievant? If so, what is the appropriate remedy?

Based upon the above suggestions as well as the relevant evidence and argument in this case, I find that the District's issues (above) more reasonably state the controversy between the parties. Therefore, the District's issues shall be determined herein.

### **RELEVANT CONTRACT PROVISIONS**

#### **ARTICLE 3 – MANAGEMENT RIGHTS**

- A. The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, except as may be in violation with this contract or current legislation, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by applicable law, rules and regulations to establish the framework of school policies and projects, including but without limitation of enumeration, the right:
  - 1. to the executive management and administrative control of the school system and its properties, programs and facilities.

2. to employ and re-employ all personnel and, subject to the provisions of law and state Department of Public Instruction regulations, determine their qualifications and conditions of employment, their promotion, their work assignment, and for just cause, dismissal or demotion.
- B. The exercising of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement and Wisconsin Statutes 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin and the Constitution and laws of the United States.
  - C. The Board's right to operate and manage the school system is recognized, including the determination to direct and control school activities; to assign work loads; to maintain the effectiveness of the school system; to create, revise and eliminate positions; to establish, and require observance of reasonable rules and regulations; to select and terminate employees. No employee shall be discharged based upon a decision which is unsupported by just cause.
  - D. The Board retains the right to make work assignments and to make transfers. Every effort will be made to assure that assignments and transfers will be based on (1) experience, (2) employee's training, and (3) specific achievements. Assignments and transfers will be made only after prior consultation with the employee involved and with ABESPA.

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#### ARTICLE 23 – TRANSFERS

The School District may transfer employees within job classifications. Involuntary transfers from one position to another position, including involuntary transfers within job classifications from one building to another building, shall be based upon seniority within the job classification. The least senior employee within the job classification shall be the person involuntarily transferred.

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ARTICLE 25 – LAYOFF PROCEDURE

- A. Seniority Classifications: Seniority within job classifications shall be used for purposes of layoff, a permanent reduction in work hours, and recall. Job classifications are as follows:
1. Custodian
  2. Secretarial
  3. Food Service
  4. Teacher Aides
  5. Maintenance
- B. Layoff/Reduction in Hours: The School District shall implement a layoff or a permanent reduction in work hours pursuant to the following procedures: When there is a reduction in the number of employees in a job classification, volunteers shall be considered first, then employees in the affected job classification. If there are insufficient volunteers, employees in the classification in which the layoff or reduction occurs will be laid off or reduced in hours in the inverse order of their assignment to the classification, provided the employee(s) remaining are qualified to perform the work. The School District shall give notice of a layoff or reduction of work hours by August 1 of the school year that the layoff or reduction is to take effect.
- C. Exceptions From Notice: The School District may implement a layoff or permanent reduction in work hours immediately, and without notice, in emergency situations. Emergency situations include unforeseen circumstances which necessitate a reduction in the workforce or work hours. Such circumstances would include, for example and without limitation, unforeseen damage to a school building or hazardous weather conditions requiring a complete or partial closure of a school building. Also, the School District need not provide notice of a layoff or a reduction in work hours with respect to a Special Education Aide when the layoff or reduction is the result of the loss of a special education student specifically and individually assigned to the Special Education Aide. The Aide may exercise bumping rights under Paragraph D notwithstanding the August 1 notice of layoff date in Paragraph B.
- D. Bumping: Employees who are to be laid off or whose work hours are to be permanently reduced may “bump” a less senior employee in the same or a different job classification with the same or lesser hours of work

provided the bumping employee has the qualifications to perform the duties of the position at the time the bumping is to occur. The School District shall determine whether the bumping employee has the necessary qualifications. For purposes of this provision, seniority means District Seniority. District seniority is defined as the length of an employee's total employment with the School District.

A bumping employee shall provide written notice of intent to bump within three (3) calendar days of receiving a written notice of layoff or a reduction in work hours. The number of bumps that may occur with respect to any particular layoff or reduction in work hours is limited to three such bumps.

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### **BACKGROUND**

The District operates two schools in north-central Wisconsin, Bancroft Elementary School and the Almond School. The initial labor agreement between the parties is the 1999-2002 Agreement. The bargaining unit involved in this case contains Food Service employees, Educational Assistants, Custodians, and secretarial employees. Ms. Lynn Winn, is the full-time principal at the Almond School and she acts as principal of Bancroft Elementary on a part-time basis as well. Bancroft Elementary School normally operates two Kindergarten classes: one has 23 to 24 students, and the other has 16 or more students. The District also operates an Early Childhood program for four children at Bancroft Elementary. Melissa Henske works as a 61% (FTE) SAGE Kindergarten teacher at Bancroft. There are also two full-time Kindergarten teachers employed at Bancroft: Mrs. Thompson and Mrs. Iwinski. Principal Winn is only present at Bancroft Elementary occasionally but she does conduct regular staff meetings with the teachers and staff at the school.

The seniority of Food Service employees as of July, 2002 and employee work hours for 2001-02 were as follows:

**REVISED: July 24, 2002**

<b>POSITION</b>	<b>EMPLOYEE'S NAME</b>	<b>CONTRACT STARTING DATE DISTRICT SENIORITY</b>	<b>JOB CLASSIFICATION SENIORITY</b>	<b>HOURS WORKED IN 2001- 02</b>

...

<b>FOOD SERVICE</b>				
Assistance Cook	Teresa Gutke	10/25/01	10/25/01	4.0 hrs.
Book Keeper	Pat Leary	9/1987	9/1987	5.2 hrs.
Cook Server	Linda Wierzba	2/01/86	2/1/86	2.25 hrs.
Assistance Cook	Lowella Stucker	9/23/85	9/23/85	6.25 hrs.
Dish Washer	Julia Swan	4/76	4/76	3.25 hrs.
Lead Cook	Linda Patterson	8/23/76	8/23/76	5.5 hrs.

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At the end of July, 2002, the District sent layoff/reduction in hours notices to nine bargaining unit employees. At this time, the District notified Pat Leary, a Food Service Bookkeeper, and Teresa Gutke, the least senior food service employee, of their layoffs, 1/ as follows:

...

With regret, I must indicate to you that the board of education has a need to reduce staff, due to budget constraints. I regret to report that it will be necessary to lay you off for the 2002-2003 school year. I will attempt to contact you by phone and see if you desire to meet in person to review this employment notice. To comply with the master association contract, I am also sending you this notice via the mail. If you have any further questions about this decision and how it impacts you, please feel free to contact me.

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1/ Both employees received identical letters.

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Until the Summer of 2002, the grievant, Linda Patterson, was employed as Lead Cook at Bancroft Elementary School. On July 31, 2002, District Administrator Lumb called Patterson and read her the contents of the following letter 2/:

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2/ Lumb also put a copy of this letter in Patterson's mailbox on July 31, and Patterson received it on August 1, 2002. Lumb also mailed a copy of his July 31 letter to Patterson.

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. . .

As you know, the District is undergoing financial stress. I believe that you are also aware that the board voted to eliminate you're the lead cook position at Bancroft School and an additional person in the food classification. You are hereby notified that your Lead Cook position has been eliminated.

We are following contract language and have served layoff notices to the least senior persons in the foods classification. If you feel that you may be qualified and we concur, there is a current food opening as the food service bookkeeper. Because this position requires a lesser number of work hours per week, please consider this letter also as notice of a reduction in work hours for this coming school year.

Since a reduction in hours allows you bumping rights, please contact me within three days if you have an intention to exercise these rights.

I will attempt to contact you by phone and see if you desire to meet in person to review this employment notice. To comply with the master association contract, I am also sending you this notice via the mail. If you have any further questions about this decision and how it impacts you, please feel free to contact me.

. . .

Prior to July, 2002, Patterson worked as the Lead Cook at Bancroft Elementary (without any assistance by other food service employees) for many years. Her job description as Lead Cook at Bancroft 3/ read as follows:

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*3/ Certain handwritten changes were made to this job description as submitted into the record in this case. These changes were not explained on the record. As the Employer did not object to the admission of the Lead Cook job description, the changes made thereon are shown above.*

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#### ALMOND-BANCROFT SCHOOL DISTRICT

POSITION: Lead Cook Bancroft

REPORTS TO AND EVALUATED BY: Head Cook & Superintendent

BASIC FUNCTION: To serve the Bancroft students attractive and nutritious meals in an atmosphere of efficiency, cleanliness & warmth.

**PRIMARY RESPONSIBILITIES:**

1. Supervises and prepares meals at Bancroft Elementary School.
2. Supervises and assists in the serving of the meals at Bancroft Elementary School.
3. Supervises and assists in the clean up of kitchen and lunch room.
4. Supervises and instructs kitchen personnel in the safe, proper and efficient use of all kitchen equipment.
5. Checks and verifies food shipments into the Bancroft School.
6. Determines the quantities of each food to be prepared daily.
7. Determines the size of servings to meet the necessary requirements with regard to the ages of those served.
8. Orders, on a weekly basis, all necessary supplies.
9. Confers with the Superintendent or Head Cook regarding any problems or concerns.
10. Other duties as required to accomplish the basic function of the position.
11. Other duties as assigned to accomplish the basic function of the position.

After receiving notification that her position at Bancroft had been eliminated and that she would be laid off and/or her hours would be reduced, Patterson wrote to Superintendent Lumb, as follows in a letter received by the District August 1, 2002:

I, Linda M. Patterson, employee of Almond-Bancroft Schools, am providing written notice of intent to “bump” as stated in the contract between Almond-Bancroft School District and A.B.E.S.P.A.

In his July 31<sup>st</sup> telephone call to Ms. Patterson, Lumb discussed with her the possibility that she might bump food service bookkeeper Pat Leary, whose hours were 5.2 hours per week, slightly less than Patterson’s hours at Bancroft Elementary. Patterson did not agree to this at that time.



On August 20, 2002, the Union filed the instant grievance which read, in relevant part, as follows:

. . .

**Statement of the Grievance:**

The District violated the terms and conditions of the Agreement when they gave a reduction in hours notice to Linda Patterson, a Food Service employee in the District. Article 25 – Layoff Procedure clearly indicates, “. . .employees in the classification in which the layoff or reduction occurs will be laid off or reduced in hours in the inverse order of their assignment to the classification. . .” Linda Patterson is senior to other employees in the Food Service job classification whose hours were not reduced.

Further, the District’s action attempts to circumvent Linda Patterson’s rights under the Transfer provisions of Article 23, which clearly state that involuntary transfers “. . .shall be based upon seniority.” Although Linda Patterson’s assignment has been eliminated, she still has seniority over other employees in the Food Service job classification. The district should have implemented Article 23 and transferred Mrs. Patterson to a new assignment preserving her hours of employment.

**Relevant Contract Provisions:**

Article 25 – Layoff Procedure

Article 23 – Transfers

Any other relevant articles or sanctions that may be found to apply.

**Remedy Requested:**

The Association requests that:

1. The layoff/reduction of hours notice issued to Linda Patterson be rescinded, and
2. The District implement the provisions of Article 23 – Transfers when reassigning, Mrs. Patterson or any other employee(s) within a job classification.

. . .

On September 6, 2002, Patterson sent the following letter to Superintendent Lumb in response to a letter Lumb apparently sent Patterson regarding her bumping selection:

. . .

This letter is in response to the letter I received on 9/6/02 at 3:00pm. I do not believe I should be bumping anyone, because I should not have had my hours reduced. But in compliance with the Administration's letter of 9/4/02, I would choose to work in a position which would come as close as possible to retaining my full 5.5 hours. Based upon what I believe to be my qualifications, and information provided by the District, that would be the position of Cook/Server. I will continue to pursue the grievance relating to the reduction of my work hours.

. . .

Thereafter, Patterson appeared at the District and informed the Superintendent that she wished to bump Cook/Server Linda Wierzba, who then worked 2.25 hours per day, serving lunch at Almond School. The District had not made any preparations to layoff Wierzba and had not discussed the possibility of a layoff with her, District Administrator Lumb requested that Patterson wait several days so that he could formally notify Wierzba that she was being bumped. In response to this, Patterson left the following note at the District:

I, Linda M. Patterson, reported on September 9, 2002, to work at the Almond-Bancroft School. On September 6, I informed the Administrator that I intended to exercise my contractual right to bump the Cook/Server position. I was informed at this time not to go to work, but to return home.

On September 10, 2002, District Administrator Lumb sent Wierzba the following letter:

. . .

Please be advised that I have received a request from a senior staff member to bump into your position. Linda Patterson will receive training on Wednesday, September 11, during your regular work hours. She will exercise her bumping rights on Thursday, September 12, 2002.

Wednesday, September 11, 2002 will be your last day working in the cook/server position.

I personally want to thank you for all of your assistance as you (sic) working the foods and custodian area. If I can assist you in any way with your reemployment situation please let me know.

. . .

On September 12, 2002, Patterson began working as the Cook/Server at Almond School for 2.25 hours per day. Thereafter, Patterson filed the instant grievance.

On December 2, 2002, the Association notified the District that it intended to argue an additional issue at the hearing in this case, that the Employer never truly eliminated Patterson's Lead Cook position at Bancroft School. In pursuit of this argument, the Association offered evidence regarding a comparison of Educational Assistant Lorrie Ammel's food service duties in 2001-02 compared with those duties in 2002-03.

For the reasons stated in the Discussion section of this Award, I have not decided this issue nor have I considered the evidence proffered by the Association on this issue. Therefore, it is not necessary to summarize the Association's evidence on this point.

The Association also submitted evidence to show that Patterson, although not involved in the organizational campaign for the Union, was a member of the bargaining committee that negotiated the effective labor agreement (the first contract between the parties); that Patterson had served as vice-president of the Union in 1998 and president for approximately six months when the bargaining committee chair, Pat Lanz, quit her position; and that Patterson has also acted as Union treasurer for the last two year period.

In addition, the Association offered evidence regarding an insurance meeting at the District in which District Administrator Lumb described the impact of increases in health insurance premiums for 2002-03. It is undisputed that Patterson asked Lumb questions at this meeting regarding the costing he had done concerning health insurance overall costs to the District for that year. Patterson made the suggestion that Lumb had included in costs regarding organized employees, costs for increased insurance premiums for non-organized employees of the District. Lumb thereafter corrected his documents and his costing to remove non-organized employees therefrom.

Patterson stated herein that she had no reason to believe that the Board of Education had some ulterior motive in eliminating her position or laying her off. Patterson also stated that she had refused previously and that she would not now want to bump into Pat Leary's Food Service Bookkeeper position because she does not feel that she could perform the job and because she enjoys cooking and serving food to students.

### **POSITIONS OF THE PARTIES**

#### **District**

The District argued that it had not violated the labor agreement when it exercised its management right to eliminate the Grievant's position at the Bancroft School and when it

allowed the Grievant to bump a less senior employee at the Almond School. The District noted that the Union argued that only Article 25, Section B should apply to this case, while the District argued that both Sections B and D of Article 25 should be applied. In this regard, the District noted that the contract language contained in Article 3 allows the Board to eliminate positions and to change Food Service operations in a clear and unambiguous manner. Indeed, the District noted that Article 3 refers to the District's right to "create, revise and eliminate positions." Therefore, the District exercised its management right in the Summer of 2002 to eliminate the Head Cook position at the Bancroft School, and to lay off an Assistant Cook position held by the least senior Food Service employee in the District at the Almond School.

The District asserted that due to financial problems, it made a decision to eliminate the Lead Cook job at Bancroft, and to have all hot food sent fully prepared from the Almond School and merely served at the Bancroft School. These decisions, the District argued, were rational and reasonable, and were necessitated by the District's need to cut costs in the Food Service Department. Furthermore, as the Association failed to argue that the District's decision was not in fact based on its financial problems, the Association failed to show that the District's decision to downsize the Food Service Department was arbitrary or capricious.

The District noted that the Association had argued that all Food Service employees who are less senior than the Grievant should have been laid off, or had their hours reduced before the Grievant's job was eliminated at the Bancroft School. On this point, the District argued that it properly applied Article 25, Section D to allow the Grievant to bump into a position at the Almond School after her job at Bancroft was eliminated.

The District observed that several arbitral rules of contract construction support its interpretation of the labor agreement in this case. Specifically, the District urged that its arguments would construe all provisions of the labor agreement as a whole, while the Association's arguments would render meaningless Article 25, Section D. In addition, as the contract language in Article 3 is clear and unambiguous, no interpretation by the Arbitrator of that clause is necessary. Even if the Arbitrator found that the language of Article 25, Sections B and D were ambiguous, where both parties have suggested equally believable interpretations, the District urged that the Association has failed to meet its burden of proof to show that its interpretation was the more reasonable one.

Thus, the District argued that if the Arbitrator were to employ the Association's interpretation of the contract language in this case, the District would always have to lay off the least senior employee in the Food Service classification under Article 25, Section B and this would then render Article 25, Section D meaningless because there would never be a less senior employee in the same classification for the more senior employee who has been laid off to bump. The Association's position would also nullify the clear management rights contained in Article 3 and would require the District to layoff all Food Service employees below the

Grievant, and maintain the Grievant's Lead Cook position at the Almond School, along with the Dishwasher position at Almond, leaving no Lunch Server or Bookkeeper in the Food Service Department. This, the District argued, was inefficient and not consistent with the District's decision to eliminate cooking services at the Bancroft School.

As the District had the right to eliminate the Grievant's position, the District urged that the Arbitrator deny and dismiss the grievance, and find that no violation of the labor agreement has occurred, particularly where, as here, the Employer's interpretation of the contract language shows that the parties intended that a more senior employee could be reduced or laid off and that a bump would in fact be meaningful.

### Association

The Association argued that under the clear language of Article 25, Sections A and B, the Grievant should not have been given a notice of layoff/reduction in hours in July of 2002. Thus, the Association urged that less senior employees should have received notices of layoff/reduction in hours because the contract lists Food Service as a "classification". The District therefore should have maintained the Grievant's hours, but reduced or laid off less senior employees and then used the transfer provisions of the contract to assure that the District had appropriate people in the remaining jobs. This would have been true, in the Association's opinion, regardless whether the District eliminated the Grievant's job or not.

Therefore, the District could have laid off the least senior Assistance Cook, Gutke, reduced Wierzba by .3 hours per day and laid off Bookkeeper Leary to equal the hours the District needed to save/eliminate. The Association noted that the 5.2 hours per day of bookkeeping might have been covered by either Wierzba or Stucker who may have been qualified to take that position, or Wierzba could have been laid off by 2.25 hours per day and Stucker reduced by 3.25 hours per day in order to equal the appropriate number of hours the District reduced employees prior to the filing of the grievance.

The Association contended that the District's insistence that the Grievant make a bumping decision was inappropriate, and contrary to the clear language of the agreement. In this regard, the Association argued that bumping is a limited option available only to employees who have seniority in more than one job classification as defined by the labor contract, thus making their District-wide seniority important. As the Grievant had never worked in a different job classification at the District, the Association argued that the Grievant had no right to bump under Article 25. The above analysis proves that the Association's approach in this case would keep the District from manipulating the system in order to get rid of a long-term employee or employees by laying them off.

The Association urged that the District did not eliminate the work of the Lead Cook at Bancroft, and that that work remained “substantially intact.” Therefore, the Grievant’s reduction in hours is not supported by the contract or by fairness. In this regard, the Association noted that 9.5 hours per day of Food Service at Bancroft were reduced to 3 hours, yet various other people, including Lori Ammel and teachers performed the work that the Grievant formerly performed. In addition, the Association noted that although Ammel got a layoff notice on July 31, 2002, the District never implemented it. Rather, the District reassigned Ammel (and other employees including teachers) to perform Food Service duties previously done by the Grievant. In 2001-02 Ammel did Food Service work for about 35 minutes at lunch, counting lunch attendance and serving food. However, in 2002-03, the Association contended that Ammel performed Food Service duties for approximately 3 hours per day, including breakfast duties, lunch duties and clean up. These duties were formerly performed by the Grievant, and were the type of duties that are listed in the job description for Lead Head Cook.

The District has been enriched by cutting the Grievant’s hours because they have indicated that they will no longer pay the Grievant’s 100% health insurance premiums which were grandfathered in under the support staff contract at its inception. Thus, the Union sought that the grievance be sustained and that the Grievant be made whole.

### **Reply Briefs**

#### **District**

The District argued that adoption of the Association’s interpretation of the contract in this case would allow the Union to create an entirely new position for Patterson, to control the number of positions in Food Service in the District, and to control the number of hours allocated to each of those. Where, as here, the employer has retained the right to determine employee positions, hours, work schedules and the number of hours worked by each position, the union has the burden of proof to show that some limitation has been placed on these rights. The District argued the Association failed to prove any such limitation. In the District’s view, Article 25 D, not Article 25 B, must be applied in this case. The Association’s interpretation would lead to harsh and absurd results, requiring the District to employ Patterson as the only Cook in the District, retain the more senior Swan as the Dish Washer, and to employ no other Food Service employees. Here, the District has specifically reserved the management right to “eliminate positions”. Thus, the Association’s interpretation must be rejected because it would create a new position for Patterson and this would violate Article 3 of the labor agreement.

In addition, use of the transfer article of the labor agreement, as the Association urged, would be inappropriate, as it would abrogate Patterson’s right to bump a less senior employee under Article 25 D. Thus, use by the District of its right to involuntarily transfer Patterson

would violate her right to bump under the contract. Furthermore, the Association's interpretation of Article 25 B makes Article 25 D surplusage, because less senior employees would already have been laid off so that there would be no one for a more senior employee to bump.

Based on the evidence and bargaining history herein, the District noted that any ambiguities in the contract language should be construed against the Association because it was the Association that proposed the Food Service Department as a job classification under Article 25. Furthermore, the District noted that there was no credible record evidence that the District's decision to eliminate Patterson's Food Service position was based on the cost of health insurance for her position.

The Association's argument that the District did not eliminate Patterson's position, in the District's view, is not properly before the Arbitrator. In this regard, the District noted that the Association raised the issue of the alleged failure to eliminate Patterson's Lead Cook position only days before the hearing in this case, and as such the Arbitrator should find that she has no jurisdiction to decide this newly-raised issue which the District had no opportunity to address during the processing of the grievance.

Even if the Arbitrator finds that the alleged failure to eliminate Patterson's position is properly before her, the District urged that it did eliminate Patterson's job under the facts of this case. In this regard, the District noted that Ammel's position in 2002-03 added just one hour of Food Service work to her position from the prior year, not a substantial amount of work, and that Ammel did not perform any cooking duties, which had been the majority of Patterson's job in 2001-02. Finally, the District noted that the Association was aware that Ammel had been given serving duties in 2002-03, but that it did not object, and that the District agreed to pay Ammel at the higher rate (her Educational Assistant rate) for the extra time she worked. Based on all of the above, the District urged that the Arbitrator deny and dismiss the grievance in its entirety.

### **Association**

The Association urged that the management rights clause (Article 3) of the labor agreement does not give the District *carte blanche* to lay off or reduce the hours of employees. In this regard, the Association noted that Article 3 provides that management rights may be specifically modified by the express terms of the contract. Here, specific language regarding seniority, layoff and reduction in hours as well as transfers modifies and would govern over the general language of Article 3. The District's interpretation would result in the District being allowed to lay off or apply bumping within each school instead of across the Food Service classification, in violation of the clear language of the contract.

The Association noted that it has never argued that the District could not eliminate Patterson's job or that it must have a Lead Cook position in the District. Rather, as Patterson was the second most senior Food Service employee, the District should have laid off or reduced employees less senior than Patterson and then transferred Patterson to fill whatever spot was left. If remaining employees were not qualified for the positions open, then the District could keep less senior qualified employees and move the more senior Patterson to fill in hours. Finally, the Association noted that the layoff/reduction in hours provisions of the contract and the bumping provisions do not conflict with Article 3.

The Association argued that it is not relevant whether Patterson was qualified for the Bookkeeper position or whether she could have bumped another employee, or who Patterson would have bumped because Patterson should not have been reduced in hours in any event. In this regard, the Association noted that classification seniority is determinative in a layoff situation; that volunteers are to be taken first, and then the least senior employees in the classification (Food Service) must be laid off in inverse order of classification seniority; and employees may then bump after they have been laid off.

The Association disputed the District's assertion that the Grievant could have taken Ammel's Food Service duties, but that she did not do so because it involved too few hours. On this point, the Association noted that this assertion is not only disingenuous, but also misstates the facts of record. Thus, there was no evidence in the record to prove that either the Association or Patterson knew about Ammel's Food Service hours/assignment and Ammel herself stated herein that she never received the August 14th letter from Superintendent Lumb indicating that she would be required to perform Food Service duties in 2002-03. Finally, the only bump that Patterson was offered by the District was to the Bookkeeper position, so the Ammel option was never offered to Patterson. In all the circumstances, the Union urged that the grievance be sustained and that the Grievant be made whole.

### **DISCUSSION**

The first question that must be answered in this case is whether the issue of the elimination (or non-elimination) of Patterson's Lead Cook position is properly before me. In my view, it is not. Close analysis of the grievance form shows no reference to an allegation that the District had not in fact eliminated Patterson's position. In addition, the form only referred to Articles 25 and 23 as relevant without any reference to Article 3 Section C, which refers to the elimination of positions. In addition, the evidence is undisputed herein that the issue whether or not the District had in fact eliminated Patterson's position at Bancroft School was not raised during the processing of the instant grievance. Indeed, the Association did not raise the elimination issue until approximately one day before the instant hearing in the form of a facsimile sent to the District Counsel Jones. Thus, the District never had the opportunity to address the issue at any time during the processing of the grievance. As this issue was first



formally put before the District on the date of the instant hearing, I find that it is not properly before me, and I have not considered it or any evidence proffered regarding this issue in reaching the Award herein.

Turning to the issues raised by the grievance, I note that Article 25 Section A clearly states that “Food Service” is a “job classification” for purposes of layoff/reduction in hours and bumping. The question then arises whether the District’s elimination of Patterson’s Lead Cook position triggered the operation of Article 25, Section B or D or both. Article 25 consistently refers to layoffs as well as permanent reductions in work hours as being covered thereby. As a general rule, however, the complete elimination of a position and the concomitant reduction in work hours down to zero constitutes a layoff, not a reduction of hours. Here, the District’s action reduced the number of employees in the Food Service classification. As such, the District’s decision to eliminate the Lead Cook position which resulted in Patterson’s losing all hours of work at the District constituted a layoff. The District has failed to adequately explain why the action it took concerning Patterson was not “a layoff”. 4/

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*4/ Indeed, the July 31<sup>st</sup> letter read/sent to Patterson indicated that her Lead Cook position had been eliminated, that her hours of work would be reduced for the coming school year, and indicated that she would be able to exercise a bump into a position with fewer work hours, apparently pursuant to Article 25 Section B.*

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Here, Patterson was the second most senior employee in the Food Service classification. If the District had not decided to eliminate Patterson’s position, Patterson would not have been laid off due to her job classification seniority. Thus, the District violated the contract when it laid off Patterson. However, the District specifically retained the right under Article 3 to eliminate positions. The retention of this contractual right must mean that the District had the right to eliminate Patterson’s Lead Cook position for financial reasons. 5/ The problem in this case is that the parties did not indicate in the contract how they should deal with senior employees whose jobs have been eliminated.

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*5/ The Association did not contest the District’s assertion herein that it had to eliminate Patterson’s position because of financial problems.*

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What the District should have done here is notify Patterson of the elimination of the Lead Cook position. Then the District should have laid off the least senior Food Service employees by inverse order of their assignment to the classification to equal the number of hours the District needed to save/eliminate (according to Article 25, Section B). In taking these actions, the District would likely have had to decide what positions would be needed at

the Almond School and how many hours each position should be assigned in order to perform the remaining work. These kinds of decisions were for the District to make pursuant to Article 3. After reassessing the situation and laying off/reducing the hours of the necessary people, the District should then have invited Patterson to select a bump.

The Association argued that Article 25 Section D only applies to employees who have been laid off or reduced in hours who also possess seniority in two separate job classifications. I disagree. The language of Article 25 Section D clearly shows that all unit employees who are laid off or reduced in hours have bumping rights vis-à-vis less senior employees in the same or a different job classification. In addition, the specific language of Article 25, Section D states that a bump by an employee who has been laid off or whose hours have been permanently reduced can only be made into a position with the same or fewer hours of work. The Association has argued herein that this language would essentially allow the District to get rid of a more expensive/long-term employee. On this point, I note that there is no evidence regarding the parties' intention in including this limitation on bumping rights. As I find the bumping limitation to be clear and unambiguous, and as Article 25 Section D refers to layoffs, I see no rational reason for refusing to apply the clear language of Article 25 Section D and the clear language of Article 25 Section B to this case.

The Association has argued that the District should have laid off other less senior Food Service employees and then transferred employees to suit its operational needs under Article 23 of the labor contract. I disagree. Article 23 specifically states that the least senior employee within the job classification shall be the person involuntarily transferred. Had the District involuntarily transferred Patterson (an employee with great seniority), it would have thereby destroyed her bumping right under Article 25 Section D. In addition, I note that nothing in Article 23 addresses the issue of transfers surrounding layoffs or reductions in hours, which specificity would be required to accomplish what the Union has contended should have been done in this case.

The District has argued that if it were required to follow the above procedure whenever it decided to eliminate a position, it would cause undue disruption and be unreasonably burdensome. This may be true. But to do otherwise would abrogate senior employee rights to bump pursuant to Article 25 Section D where the District has determined that it must eliminate their positions pursuant to Article 3.

Given the circumstances of this case, I believe that Article 25 Section D must be applied herein based upon the clear language of the contract and a lack of any alternative provisions. I therefore issue the following

**AWARD**

The District violated the terms of the collective bargaining agreement when it laid off Linda Patterson, the second most senior Food Service classification employee. However, the District has the right to eliminate positions under Article 3. The District is ordered to eliminate necessary work hours by laying off employees or reducing their hours in inverse order of their assignment to Food Service pursuant to Article 25, Section B. Given the District's decision to eliminate the Lead Cook position, Patterson should be allowed to bump any less senior Food Service employee (after the District has laid off/reduced less senior employees) who has the same or less hours than she did in her Lead Cook position pursuant to Article 25, Section D. Depending upon what position Patterson decides to bump into, she may be due backpay and benefits for the period covering the 2002-2003 school year. I will retain jurisdiction of this case over the remedy only should the parties have difficulty in that area.

Dated at Oshkosh, Wisconsin, this 30th day of May, 2003.

Sharon A. Gallagher /s/

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Sharon A. Gallagher, Arbitrator

SAG/gjc  
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