BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ATHENS EDUCATION ASSOCIATION SUPPORT PERSONNEL

and

ATHENS SCHOOL DISTRICT

Case 13
No. 61756
MA-12056

(Teacher Aide Layoff Grievance)

Appearances:

Mr. Larry Holtz, UniServ Director, Central Wisconsin UniServ, 370 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158, on behalf of the Union.

Ruder Ware, by **Attorney Jeffrey T. Jones**, 500 Third Street, Suite 700, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the District.

ARBITRATION AWARD

The Athens Education Association Support Personnel (herein the Union) and the Athens School District (herein the District) were parties to a collective bargaining agreement dated April 19, 1999, which covered the period July 1, 1997 to June 30, 2001 and provided for binding arbitration of certain disputes between the parties. The agreement had expired and the parties were in a hiatus period when the events giving rise to the present grievance occurred. On November 1, 2002, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration regarding the reduction in hours of four Teacher Aides (herein the Grievants) and requested the submission of a panel of WERC staff from which to select to arbitrate the issue. The parties subsequently designated the undersigned to hear the dispute and a hearing was conducted on February 4, 2003. The proceedings were not transcribed. The parties filed briefs by April 10, 2003, and reply briefs by June 17, 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 the issues and agreed to submit the framing of the issues to the Arbitrator.

The Union would frame the issues as follows:

Did the Employer violate Article VIII, Section B of the collective bargaining agreement when it failed to follow the seniority provisions contained within that section of the contract by partially laying off all grievants within the aides classification in varying degrees from 14.2% to 17.8%?

If so, what is the appropriate remedy?

The District would frame the issues as follows:

Whether the District violated the terms of the Collective Bargaining Agreement by reducing the Grievants' work hours?

If so, what is the appropriate remedy?

The Arbitrator frames the issues as follows:

Did the District violate Article VIII of the collective bargaining agreement by reducing the Grievants' work hours and the manner in which it did so?

If not, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE II – MANAGEMENT RIGHTS

A. Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions during the term of the Collective Bargaining Agreement except to the extent such functions and rights is restricted by the express terms of this agreement. These rights include, but are not limited by enumeration to, the following rights:

1. To direct all operations of the School System.

2. To establish and require observance of reasonable work rules.

3. To hire, promote, transfer, schedule and assign employees in position with the School System.

4. To suspend, discharge and take other disciplinary action towards employees.

5. To lay off employees.

6. To maintain the efficiency of School System operations.

7. To take whatever action is necessary to comply with state or federal law.

8. To introduce new or improved methods or facilities.

9. To select employees, establish reasonable quality standards and evaluate employee performance.

10. To take whatever reasonable action is needed to maintain the functions of the School System in unforeseen situations that call for immediate action.

B. The Board retains all rights of management not restricted by the express terms of this agreement.

C. Probationary Period: All employees shall serve a probationary period of 80 individual working days from the date of their employment. Employees who are terminated or who voluntarily quit and are rehired by the School District, shall be considered new employees.

D. Probationary Discipline: An employee who is disciplined during the probationary period shall not have access to the grievance procedure concerning such action.

. . .

ARTICLE VIII – SENIORITY AND JOB SECURITY

A. School District seniority is defined as service by appointed School District employees in the collective bargaining unit covered in this agreement within their current job classification. One full year of seniority shall be granted to any employee who is regularly scheduled to work at least 1,950 hours per year. Seniority for all other employees shall be determined by dividing their

regular hours per year by 1,950 – 2,080 hours based on job title. An employee shall lose all accumulated School District seniority only if such employee:

(1) resigns or is discharged for cause, irrespective of whether he/she is subsequently rehired by the School District.

B. In the event of a work location reduction in force, including reductions caused by the discontinuance of a facility or its relocation, the employees shall be laid off in the inverse order of seniority within the job classification of the employee provided the employee is deemed qualified to fill a remaining position.

C. In the event that within twelve (12) months from the date of a lay-off a vacancy occurs a laid-off employee shall be entitled to recall to work ii the order of seniority.

C. [sic] Notice of recall to work shall be addressed to the employee's last address appearing on the records of the School District, by certified mail, return receipt requested. With five (50 working days from receipt of such notice of recall, the employee shall notify the District in writing, whether or not he/she desires to return to the work involved in the recall. Failure to reply or if there is no desire to return to such work, the employee shall forfeit all of his/her seniority and all rights to recall.

E. Seniority shall not be accumulated during the period of layoff. Upon recall the appointed employee shall have accumulated seniority to the date of layoff.

OTHER RELEVANT PROVISIONS

ARTICLE III – GRIEVANCE PROCEDURE

. . .

D. Arbitration Procedure:

. . .

5. Arbitration Decision: The decision of the arbitrator shall be limited to the subject matter of the grievance and shall be restricted solely to the interpretation of the Agreement in the area where the alleged breach occurred. The arbitrator shall not modify, add to, or delete from the express terms of this Agreement.

. . .

ARTICLE VII – WORK SCHEDULE, HOLIDAYS, VACATIONS

A. Hours: The normal work week for employees shall be Monday through Friday. The normal work day for each employee shall be posted on the initial job posting. The District reserves the right to make changes in the normal work week and/or work day. Such changes shall not be made arbitrarily.

. . .

ARTICLE XIV – ENTIRE MEMORANDUM OF AGREEMENT

This Agreement constitutes the entire agreement between parties and supersedes any an all prior agreements or past practices. Any amendment or agreement supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

BACKGROUND

The Union first organized and bargained its initial contract with the District in 1989. As part of the initial collective bargaining agreement, the parties included Article VIII – Seniority and Job Security, which has remained in the contract, with minor modifications unrelated to this grievance, to the present day. The current form of the language is set forth above.

Beginning in the 2001-2002 school year, the District began to face budget pressures due to declining enrollments. Thus, in the 2001-2002 school year, one teaching position was eliminated by attrition and an additional 1½ teaching positions were eliminated in 2002-2003. On February 21 2002, the District also determined to reduce the hours of work of the nine Teacher Aides for the 2002-2003 school year. The two part-time aides least in seniority in the bargaining unit were to be laid off and the remaining seven were to be reduced in hours. On March 1, 2002, the District Administrator sent the following letter to each of the aides to be reduced:

. . .

This letter is to confirm that on February 21, 2002 the Athens Board of Education voted to make reductions in our support staff. This action was not taken easily or lightly, but the school district has no choice when facing declining enrollment, revenue caps, and a reduction in state aid through the budget repair process.

> As a result, for the next year your position will be reduced by 20% in the hours you work.. [sic] This will mean that your wages will reduce by 20% as will your fringe benefits, including health and dental insurance, if you currently have that benefit. As I mentioned at our meeting on February 27th, specific hours and days of work and job duties have not yet been determined. I have instructed the building principals to seek out your input on these matters, but the needs or our students will have to take top priority.
>
> Since there is so much uncertainty concerning health insurance and negotiations on a new contract have not even begun, we would only be guessing on specific wages and benefits. In the future, and hopefully it will be sooner rather than later, we will be letting you know as best we can where you stand as far as wages and benefits are concerned.
>
> Considering how difficult this entire situation is, I also must ask if anyone might be interested in a voluntary lay-off or reduction of hours. If you are, please let me know as soon as possible.
>
> Feel free to contact me if you have any questions.
>
> . . .

In August, 2002, the Aides received notices confirming and providing the specifics of the reductions. In order of seniority, full-time Teacher Aides Carol Wagner, Shirley Diethelm and Sue Becker were reduced 6 ¼ hours per week, part-time Aide Judy Morse was reduced 2 ½ hours per week, part-time Aide Diane Thompson was reduced 4 hours per week and part-time Aides Linda Literski and Cristi Myers were reduced 2 ½ hours per week. After receiving the letters, the five most senior Aides – Wagner, Diethelm, Becker, Morse and Thompson – filed grievances with the District alleging violations of the layoff language in Article VIII. The two least senior Aides – Literski and Myers – did not grieve the District's action. Subsequently, Wagner's position was restored to 100% due to increased Title 1 funding and she withdrew her grievance. The grievances of the other Aides were denied by the District and proceeded through the steps of the grievance procedure to arbitration. Additional facts will be referenced, as necessary, in the discussion section of this award.

POSITIONS OF THE PARTIES

The Union

The Union asserts that the language of Article VIII is clear and unambiguous. Relying on definitions in standard reference books, layoff means to discharge employees temporarily and reduce means lowering, shortening, condensing, compressing, cutting down, lessening, diminishing, paring down, contracting and shriveling. Thus, over the years, Wisconsin

arbitrators have associated reduction with layoff requiring adherence to the seniority provision of contracts. Cases on point include WAUPUN SCHOOL DISTRICT (KERKMAN, 1979), OAK CREEK-FRANKLIN JOINT SCHOOL DISTRICT (ROTHSTEIN, 1981), LANCASTER COMMUNITY SCHOOL DISTRICT, WERC DEC. NO. 17520-A (KNUDSON, 1980) and MENASHA BOARD OF EDUCATION (MUELLER, 1981). The contract language thus is clear and unambiguous and should be enforced.

Seniority is an important concept in layoffs and reductions. Article VIII was drafted to protect the most senior employees and it is clear that the District should have laid off the Aides in inverse order of seniority as long as the remaining Aides were qualified to perform the functions of those laid off. There is no contention that they were not so qualified, therefore Linda Literski and Cristi Myers should have been laid off before more senior Aides were reduced. This was not done, therefore the Arbitrator should treat the reductions as partial layoffs and reinstate the Grievants.

Assuming the language is not found to be clear and unambiguous, there is no past practice regarding the reduction or layoff of bargaining unit members to assist the Arbitrator. There is, however, bargaining history which supports the Union's position. Evidence of pre-contract negotiations is admissible to interpret the intent of the parties in adopting the language of the contract.

In this case, the language of the Seniority Clause has not changed since it was originally adopted. Carol Wagner was on the original bargaining team for the Union and testified to her recall of the negotiations over the layoff language, as well as providing her bargaining notes. Her evidence indicates that the intent of the parties was that if hours were reduced the cuts were not to be divided among the employees, but layoff was to occur by seniority. The District produced no documents from the original bargain and the testimony of Guy Leavitt, who was Administrator at the time, indicated poor independent recall of the events 13 years ago.

If the District's action is upheld, it will render the seniority language meaningless and will permit the District to layoff employees in any fashion it desires by simply calling it a reduction in hours. This would be an absurd result. The Board acted as it did for ostensibly valid business reasons, although these were never established. In any event, it had a dual goal of cutting costs while maintaining enough Aides to do the work. Unfortunately, the method it chose to accomplish this was a violation of the contract.

The contract makes it clear that the District should have laid off the Aides in inverse order of seniority, which would have resulted in Linda Literski and Cristi Myers. Instead, it reduced the hours of each of the Aides. What is more, the reductions were not based on seniority, either. Thus, Literski and Myers were reduced by 14.2%, as was Judy Morse, but Shirley Diethelm and Sue Becker were reduced by 16.7% and Diane Thompson was reduced by 17.8%. Assuming the District's financial problems were legitimate, it could have looked elsewhere for the savings, laid off the Aides according to contract or, at least, reduced them according to seniority, but it did not. This practice, if upheld, will undercut the seniority

system, which protects the more senior employees. If the District can reduce hours without regard to seniority, along with its ability to set schedules, it can reduce the senior aides to the point of elimination and thus circumvent the bargaining process.

The District

The Union's claim is without merit. Under arbitral law, management retains the right to determine employee schedules, work hours and the number hours to be worked unless specifically bargained away [cf., Elkouri and Elkouri, How Arbitration Works, 5th Ed., pp. 725-726, 730 (1997); Labor and Employment Law (Mathew Bender, 1998)., p. 29-2-6]. Numerous arbitration awards have also sustained management's rights in this area [cf., O'NEAL STEEL, INC., 66 LA 118 (GROOMS, 1976); NORTHCENTRAL COMMUNITY SERVICE PROGRAM BOARD V. SEIU, LOCAL 150 WORKERS, CASE NO. A/P M-00-40 (VERNON)].

Review of the contract here reveals that the District had authority to reduce the Aides' work hours without violating the contract and that Article VIII does not apply. It is well recognized that clear and unambiguous language should be given effect (See: Elkouri, pp. 348-350). Article III prohibits the Arbitrator from modifying or adding to the contract and Article XIV indicates that the contract supercedes any prior agreements or past practices. Finally, the contract must be read as a whole.

The management rights clause vests management with the right: "of all rights of possession, care, control and management that it has by law;" "to direct all operations of the School System;" "to . . . schedule and assign employees in positions with the School System;" "to maintain the efficiency of the School System operations;" "to introduce new or improved methods or facilities;" and "to take whatever reasonable action is needed to maintain the functions of the School System in unforeseen situations that call for immediate action." This is a broad grant of authority not to be restricted except by a specific limitation in the contract. Management retains its authority unless it bargains it away, which it has not done. Article VIII does not expressly restrict management's right to reduce employee work hours and, thus, there has been no violation of contract.

Other provisions support management's position. Article VII, paragraph A, gives the Board the right to make changes in the normal workweek or workday. Thus, management has express authority to set employee work hours. There are no provisions guaranteeing a certain number of work hours during the week, rather, Article VII gives the Board the right to make those determinations. Also, Article IV permits management, when justified, to reduce employees' compensation, which a reduction in hours, if effect, was. Part-time employment is the norm in this unit, as the contract makes clear and the District was more than justified in its action, given the financial constraints it was under.

Contrary to the Union's position, Article VIII(B) does not apply to reductions in work hours, but only layoffs. It is only triggered by a reduction in force, which is a reduction in the number of employees. In fact, paragraph B specifically refers to laid off employees and recall

rights, which clearly implies separation from employment. Further, it is well established that a reduction in hours is not generally considered a layoff (citations omitted). There is no evidence that Article VIII was ever intended to address reductions in hours. If it had been, the parties could have so stated, but they didn't.

It would also be unreasonable to adopt the Union's interpretation of the contract. If the District had laid off the Aides in inverse order of seniority, as the Union argues, three Aides would have had to have been laid off according to the Administrator. Such a result would have harmed the students, the teachers and the District as a whole, which the parties could not have intended. The Union's position is, thus, unreasonable and would lead to irrational results.

The Union in Reply

The Union does not dispute management's right to determine work hours and schedules. However, once an employer bargains wages, hours and conditions of employment with a union, it is required to bargain the issue of layoffs and partial layoffs, regardless of how they are characterized. Elkouri and Elkouri, How Arbitration Works, 5th Ed., pp. 770 (1997).

This Arbitrator, in NECEDAH AREA SCHOOL DISTRICT, WERC CASE 20, NO. 58146, MA-10854 (EMERY, 5/11/00), rejected management's interpretation of the work "reduced" in the layoff clause to only refer to reduction in force and held that management could not reduce the hours of food service workers without reference to the layoff clause. The Arbitrator also found that reductions need not be imposed entirely on the least senior member of the unit, but could be spread through the unit as long as the rules of seniority were observed.

Similarly, in SUPERIOR MEMORIAL HOSPITAL, WERC CASE 21, NO. 50301, A-5165 (SHAW, 9/6/94), the arbitrator included reduction in hours within the meaning of the layoff clause. He found that decoupling layoff from hours reduction would allow circumvention of the seniority provision and also noted that a separate "Low Census" provision of the contract, which allowed bumping in cases where an employee's hours were reduced beyond a certain extent within a year, signified an intention that layoff and hours reduction should be linked. Numerous other cases have supported the proposition that in Wisconsin, a reduction in hours constitutes a partial layoff subject to layoff and seniority provisions, whereas other cases have held that it is not (citations omitted). The main contrary case on point, MID-STATE TECHNICAL COLLEGE, WERC CASE 74, NO. 56695, MA-10383 (JONES, 9/22/99), is distinguishable on its facts. In that case, a senior teacher was reduced because certain course offerings were eliminated and tried to bump the hours of less senior teachers, but was unqualified to teach the courses she attempted to bump into. Here, the Aides are all similarly qualified, so the circumstances are different. Thus, Wisconsin law does not require that a layoff involve total separation from employment.

The District in Reply

The District asserts that the Union's arguments are without merit and are unsupported by the record. The Board's authority to reduce work hours is not restricted by Article VIII(B). The management rights clause gives a broad grant of authority over school operations, limited only by the express terms of the agreement. No provision of the contract, including Article VIII, limits the Board's right to determine employee work hours.

The term "layoff" does not incorporate partial layoff and the term "reduction in hours" is not synonymous with "reduction in force." Numerous arbitration awards support this proposition (citations omitted). The weight of authority holds that a layoff involves a reduction in the workforce or separation from employment, not just a reduction in hours.

The Union has also misread Article VIII(B). Its claim that it encompasses reductions in hours is unsupported by the contract language. This Arbitrator faced a similar situation in NECEDAH AREA SCHOOL DISTRICT, WERC CASE 20, NO. 58146, MA-10854 (EMERY, 5/11/00). In that case, the Arbitrator concluded that the word "reduced" in the layoff language included a reduction in hours based on the contract language and a reference to a reduction in hours elsewhere in the provision. Here, the language does not refer to a reduction in hours or otherwise suggest that it means something other than a reduction in force. In fact, paragraph (D) specifically refers to a desire to return to work, implying a separation from employment.

Also, words should, when possible, be given their usually and ordinary effect. Nothing in the contract suggests that the term "layoff" should be read otherwise than according to its ordinary definition. Major reference works agree that the ordinary meaning of the word "layoff" is a temporary or permanent separation from employment. The word "reducing," as used in Article VIII, refers to a reduction in force, not a reduction in hours, as suggested by the Union. The letter sent to Grievants by the Administrator refers to a reduction in hours, not a partial layoff, and, thus, did not apply to Article VIII.

The case law cited by the Union also fails to support its position that arbitration law in Wisconsin has adopted a more expansive meaning of the term "layoff," which automatically incorporates reductions in hours. Each of the cases cited by the Union is not on point for a variety of reasons. BLACKHAWK SCHOOL DISTRICT was a case where a teacher was reduced to part-time status ahead of less senior teachers, but there was no layoff by seniority clause in the contract. AUBURNDALE SCHOOL DISTRICT was a case where a teacher was reduced in workload in spite of a layoff by seniority provision and the arbitrator expressly found no violation as the term layoff did not encompass a reduction in hours. WAUPUN SCHOOL DISTRICT was also a teacher reduction of workload case where the board of arbitrators again held that under standard layoff language a reduction in hours did not constitute a layoff subject to the layoff provisions of the contract. OAK CREEK SCHOOL DISTRICT also involved reduction of a teacher to part-time. There, the arbitrator held that the term "layoff," as used in the contract, did not include a reduction in hours, but that the past practice of the parties indicated such an intent. There is no such past practice here. LANDCASTER COMMUNITY SCHOOL

DISTRICT was a prohibited practice case, not a grievance arbitration, involving teacher discipline wherein the examiner did not consider the question of whether the layoff provision applied to a reduction of work hours. Finally, the arbitrator in MENASHA BOARD OF EDUCATION did hold a reduction in hours to two teachers to be covered by the layoff provision, but the case was specific to the language of that contract, which dealt with eliminating positions. As can be seen, none of these cases has applicability here.

The Union's argument regarding bargaining history is, likewise, incredible and unsupported in the record. In the first place, contract language, specifically Articles II, III(D)(5) and XIV, prohibit the reference to bargaining history in interpreting the contract. Also, Union Exhibits 2 and 3, which purport to be bargaining notes of Carol Wagner are suspect, in that they were produced very late in the grievance process and the originals only subsequent to the hearing. The originals suggest that the notes were of items to be discussed at a future meeting, rather than matters which had actually come up in negotiations. Further, Ms. Wagner testified that the provision protecting against reductions in hours was a Union proposal. Nevertheless, clear language to that effect did not get inserted in the contract. Under the rule of *contra proferentum*, therefore, the provision should be construed against the proponent, which was the Union. Also, Ms. Wagner's reinstatement had nothing to do with seniority, as the Union suggests, but was purely because she was the Title 1 Aide and funding came in to preserve her position. Finally, Guy Leavitt, who was the Administrator when the language was bargained testified to having no recollection of the issue of reduction in hours having been discussed. According to him, any such agreement would have resulted in specific language being added to the contract. Mr. Leavitt's testimony is, moreover, more credible than Ms. Wagner's because his recollection was better and he had no personal stake in the outcome of the case.

Finally, there is no merit to the claim that a decision in favor of the District will result in bad faith reductions among the senior Aides. The District did not act in bad faith in reducing the Aides in this instance, but had legitimate business reasons for its actions. Further, there is always a danger that an employer will exercise its management rights in bad faith, but that is not a justification for restricting them. Rather, if such did occur, the Union could grieve the action and would have recourse through the arbitration process. If the Union wants to amend the language of Article VIII(B), the proper place to do so is at the bargaining table, not in an arbitration proceeding.

DISCUSSION

In the first instance, the question is whether the terms "layoff" and "reduction," as used in Article VIII of the contract, are clear and unambiguous. Interestingly, both parties assert that the terms are clear and unambiguous, but disagree as to what they mean. The Union maintains that the terms clearly encompass a reduction in hours, whereas the District argues that they do not. While this diversity of opinion might suggest that the terms are, in fact, ambiguous, I do not find them to be so.

The District argues that terms should, where possible, be given their plain and ordinary meaning and I am persuaded that this is so. Thus layoff, as the authorities cited by both parties agree, generally refers to a separation from employment and that is the meaning it attribute to it here. I do so because there is nothing elsewhere in the contract to suggest a broader meaning was intended. The Union suggests that this Arbitrator's decision in NECEDAH AREA SCHOOL DISTRICT, WERC CASE 20, NO. 58146, MA-10854 (EMERY, 5/11/00) supports an interpretation of the term which incorporates reductions in hours, sometimes referred to as partial layoff, but I find that case to be distinguishable on its facts. In NECEDAH, the contract language specifically referred to reductions in hours, whereas here the language addresses reductions in force. Further, the term reduction in force, used as it is in connection with layoff and recall provisions, clearly refers to separation from employment, rather than reduced hours.

I also distinguish SUPERIOR MEMORIAL HOSPITAL, WERC CASE 21, NO. 50301, A-5165 (SHAW, 9/6/94). In that case, the arbitrator did interpret layoff to include reduction in hours, even though the contract did not so specifically provide. His determination was based on the fact that other contract language required the layoff of part-time employees before full-time employees. Thus, theoretically, if layoff did not include reductions in hours, a full-time employee could be reduced to part-time and then be completely laid off before less senior employees without reference to the seniority protections in the layoff clause. Here, there is no such provision requiring part-time employees to be laid off first. Therefore, I agree with Arbitrator Shaw that whether the concept of layoff includes a reduction in hours requires reading it in the context of the contract as a whole, but reach a different conclusion based on the language in place here. Thus, I do not find the reduction of the Grievants' hours by the District to be covered by the layoff provision of Article VIII, Section B.

I am mindful of the potential threat to seniority posed by the possible reduction of the hours of more senior employees. I am also mindful that some of the authorities cited by the Union do find a reduction in hours to be encompassed in the concept of layoff specifically because of the threat to seniority that would otherwise exist. In this instance, however, I do not perceive such a threat because the contract itself contains language which guards against just such a possibility. Under Article VIII, Section A, seniority is accrued according to the number of hours worked per year. Thus, employees working 1,950 hours per year or more accrue a full year of seniority for each year worked. Part-time employees accrue seniority on a pro rata basis. Where accrual of seniority is a function of actual hours worked, any reduction in an employee's hours affects their accrual of seniority and may over time cause them to lose seniority to a less senior employee whose hours were not reduced. This would be inherently unfair. In order to maintain the *status quo* among employees with respect to accrual of seniority, therefore, Article VIII, Section A, must be read as a limitation on management's ability to reduce employees' hours. Thus, as I interpret Article VIII, Section A, senior employees may not have their hours reduced to a level below those employees junior to them. Otherwise, if management could adjust any employee's hours at will, a senior employee could be reduced to a number of hours below a less senior employee and thereby over time lose his or her position of seniority. 1/

1/ Under this language, it is possible that a senior employee could lose seniority anyway if a junior employee works more hours (e.g., a full-time junior employee could, over time, overtake a part-time senior employee and surpass them in seniority). Typically, however, the senior employee would have had a chance under the language of Article IX to post for the position offering more hours before it was offered to a junior employee or posted externally. Thus, the situation would only arise if the senior employee opted to work fewer hours. Where such a situation occurs as a result of the employee's choice, there would be no violation.

In this case, the two most senior aides to be reduced, Shirley Diethelm and Sue Becker were each reduced 6 ¼ hours per week from 37 ½ to 31 ¼. The next employee in seniority, Judy Morse, was reduced a total of 2 ½ hours per week from 17 ½ to 15. The next employee, Diane Thompson, was reduced 4 hours per week from 22 ½ to 18 ½. 2/ Finally, the least senior employees, Linda Literski and Cristi Myers, were reduced 2 ½ hours per day from 17 ½ to 15. Thus, while the hours reduction varied among the employees and the most senior employees, in fact, experienced the greatest reduction in actual hours, their relative positions with respect to accrual of seniority were maintained. Thus, I find that the reductions imposed by the District did not violate the contract.

2/ Prior to the reductions, Diane Thompson was already working more hours than Judy Morse, even though she was less senior. The record does not reveal why this was the case. Thus, although Thompson had more hours than Morse after the reductions, their relative positions did not change.

For the foregoing reasons, and based upon the record as a whole, I issue the following

AWARD

Because the Grievants maintained their respective positions with respect to accrual of seniority, the District did not violate Article VIII of the collective bargaining agreement by reducing their work hours. The grievance is denied and dismissed in its entirety.

Dated at Fond du Lac, Wisconsin, this 9th day of October, 2003.

John R. Emery /s/
John R. Emery, Arbitrator

JRE/anl
6582.doc