

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**HORICON SCHOOL DISTRICT**

and

**HORICON EDUCATION ASSOCIATION**

Case 23  
No. 62605  
MA-12364

(Koblitz Grievance)

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**Appearances:**

Wisconsin Association of School Boards, by **Barry Forbes** and **Rita Anderson**, Staff Counsels, 122 West Washington Avenue, Madison, WI 53703, appearing on behalf of the District.

WinnebagoLand UniServ, by **Timothy McKeon**, Executive Director, P.O. Box 1195, Fond du Lac, WI 54936-1195, appearing on behalf of the Association.

**ARBITRATION AWARD**

Pursuant to the provisions of the collective bargaining agreement between the parties, the Horicon Education Association (hereinafter referred to as the Association) and the Horicon School District (hereinafter referred to as the Employer or the District) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as arbitrator of a dispute over the part-time teaching schedule of Carol Koblitz for the 2003-04 school year. The undersigned was so designated. A hearing was held on December 16, 2003, in Horicon, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. The parties submitted written arguments on December 19, with the understanding that the Arbitrator would provide an expedited decision on the matter. The result was communicated to the parties on January 3, 2004.

Now, having considered the evidence, the arguments of the parties, the relevant contract language, and the record as a whole, and being fully advised in the premises, the undersigned makes the following Award.

### ISSUES

The parties agreed that the following issues should be resolved herein:

1. Did the Horicon School District violate the layoff and recall provisions of the Master Agreement when it failed to assign an additional math class to Carol Koblitz, who was on layoff/recall status at the time the 2003-2004 Teacher Timetable was approved by the Board?
2. If so, what is the appropriate remedy?

### CONTRACT LANGUAGE

#### **ARTICLE III – MANAGEMENT RIGHTS CLAUSE**

Nothing in this Article shall interfere with the right of the employer, in accordance with applicable law, rules and regulations to:

1. Carry out statutory mandate and goals assigned to the School District utilizing personnel, methods and means in the most appropriate and efficient manner possible.
2. Manage the employees of the School District; to hire, promote, transfer, assign or retain employees in positions within the School District and in that regard to establish reasonable work rules.
4. [sic] Lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and non-productive.
3. [sic] Subject to provisions and conditions of this agreement.

. . .

#### **ARTICLE IX – STAFF REDUCTION**

The Association recognizes the Board's right as stipulated in Article III, Management Rights. The Board recognizes the Association's responsibility to bargain an orderly layoff and recall procedure. Eliminating of teaching positions and reduction in hours in any position for the forthcoming year shall be covered by this article.

**A. LAYOFF PROCEDURE**

Teachers shall be laid off by teaching assignment in inverse order of their initial employment. A list specifying the seniority of each teacher shall be prepared by the Association. A similar updated list shall be supplied annually prior to November 30 for Board verification. The Board shall verify the list in writing no later than December 30.

1. The Seniority List supplied by the Association shall include the rank and name of teacher, first day of work (or other date-criteria if necessary), years of seniority, current teaching assignments and eligible bump area.

. . .

5. Eligible bump area determinations of new staff members will be consistent with the existing bump area columns.
6. Eligible bump areas shall be based on the Department of Public Instruction certifications held by teachers as of October 1 annually and the teachers having experience in that certification within the last five (5) years.

**C.[sic] RECALL PROCEDURE**

Certified teachers shall be recalled in inverse order with the eligible bump area of their being laid off and all benefits to which recalled teacher was entitled at the time of being laid off including but not limited incremental steps on the salary schedule and accumulated sick leave shall be restored in full upon re-employment within the recall period.

1. The recall period shall be any time within two years after the beginning of the next school year following the layoff.

. . .

4. A full time teacher whose position is reduced in hours shall be restored to full time if work becomes available within his/her eligible bump area(s).

**D. BUMPING PROCEDURE**

A teacher affected by layoff shall be eligible to bump a position within the District as stipulated by the seniority list, eligible bump area column. Said

teacher shall bump from the bottom of the list with eligible bump area and shall be eligible to bump into the least senior teacher's position for whatever part is necessary in order to maintain full time status.

## OPINION

### Facts

There is little dispute over the basic facts. The Grievant, Carol Koblitz, began her employment with the Horicon School District on August 12, 1999. She is certified to teach German and math and is assigned to teach math at Horicon High School. Koblitz worked full-time in 2001-02. For the 2002-2003 school year, she was initially reduced to a 15% assignment. The assignment was increased to 50% prior to the start of the year. For the 2003-2004 school year, Koblitz was offered another 50% assignment, and that assignment was then increased to 67% in May of 2003.

The District has declining enrollments, and this has created financial difficulties given the statutory revenue limits. The School Board eliminated several positions in 2003-04, laying off several teachers and not replacing others who had left the District. In constructing the 2003-04 schedule, Horicon High School Principal Jeff Higgins and Guidance Counselor and Association President Karen Sparks put together a number of options for the Board's Curriculum Committee to consider. The Committee and the School Board ultimately elected an option that increased the Grievant's FTE from 50% to 67%. That option also gave 100% assignments to two other teachers, Barb Braun and Sara Moldenhauer.

Barb Braun is a high school math and history teacher who has worked for the District since 1989. From 1989 until the 2002-03 school year, she taught only mathematics. In 2003-04, she taught three sections of mathematics and three sections of U.S. History. Sara Moldenhauer was hired in 2002 as a Spanish teacher. She is also certified to teach history and social studies. In 2002-03, Moldenhauer had a 67% contract to teach four sections of Spanish.

The retirement of a mathematics teachers made math classes available in 2003-04. The final 2003-04 schedule had Braun teaching six sections of mathematics, Moldenhauer teaching 5 sections of Spanish and one section of high school social studies, and Koblitz teaching four sections of mathematics. The instant grievance alleges that the District should have had Braun teach the social studies class assigned to Moldenhauer, and have the Grievant teach one of Braun's math classes, resulting in a 100% assignment for Braun, and 83% contracts for both Moldenhauer and the Grievant.

### Arguments of the Parties

The Association takes the position that the guiding principle in recall and bumping should be seniority and that this must guide all of the Board's decisions, to the extent reasonably possible, in order that senior teachers be returned as nearly as possible to full-time status. Here, the Board could reasonably have had Braun teach a section of social studies, rather than assigning her to a full load of mathematics. That would have allowed the Grievant to receive an 83% contract in 2003-04, while still allowing the junior teacher, Moldenhauer to increase from 67% to 83%. Instead, the Board assigned all of the available mathematics sections to Braun. Since the Grievant does not have bumping rights in social studies, this effectively frustrated her seniority rights vis-à-vis Moldenhauer.

The Association points out that the contract requires that teachers who have been reduced in hours "shall be restored to full-time if work becomes available with his/her eligible bump area." Here the retirement of a math teacher made math classes available for 2003-04. As a teacher whose hours were reduced, Koblitz should have had first priority for claiming that work, so long as the seniority rights of Braun were not implicated and the District was still able to provide the classes it believed were necessary. The District's decision to structure the schedule to benefit the junior teacher, Moldenhauer, who received a substantial increase in her contract, is not necessary to the educational goals of the District, since the same classes could still have been offered if Koblitz had been allowed to teach an additional math section and Braun continued to teach some social studies, and it works an unwarranted hardship on Koblitz. For these reasons, the Association asks that the grievance be sustained, and that the Grievant be awarded an 83% contract for the 2003-04 school year.

The District argues that it has not violated the contract and that the grievance should be denied. Surely, the contract requires the District to offer available work to senior teachers who have been reduced in hours. Here, however, no work was available that the Grievant was competent to perform. The math classes that had been taught by the teacher who retired in 2003-04 were assigned to senior teachers, including Braun. That left Braun's social studies classes available. The Grievant is not certified to teach social studies and she cannot bump the senior math teachers out of their assignments.

The contract does not require the District to schedule and assign classes so as to maximize the Grievant's FTE at the expense of all other considerations. The District points out that Braun is a very highly regarded math teacher, who taught social studies only one year since joining the District. The District has the right to assign her where it feels her talents are best utilized. Moreover, allowing Braun to focus on preparing math classes, rather than having her prep in two subject areas, is a more efficient use of District personnel. Prep time is at a premium when staff is being reduced, and the District is entitled to consider that fact as it constructs the schedule.

The essence of the Association's argument is that the Grievant should be given the right to bump into the classes assigned to senior teachers, or that the District should be required to construct the schedule to achieve the same end. Nothing in the contract even remotely suggests this result. The District retains the right to construct the teaching schedule, and the teachers retain the right to use seniority to claim available slots in that schedule, if possible. Here, the Grievant did not have the seniority to claim any mathematics classes, and did not have the certification to claim the available social studies classes. There has been no contract violation, and the District therefore asks that the grievance be denied.

### **Discussion**

The issue in this case is the extent of the District's obligation to make work available to teachers on layoff. There is no claim that any junior teacher is performing work the Grievant could have performed. Rather, the Association claims that a junior teacher is performing social studies work that could have been assigned to a senior teacher, and one of that senior teacher's math classes could then have been assigned to the Grievant. In other words, work could have been made available for the Grievant, by restructuring the assignments of senior teachers.

Section B(4) of Article IX establishes the right of a reduced teacher to claim available work:

4. A full time teacher whose position is reduced in hours shall be restored to full time if work becomes available within his/her eligible bump area(s).

The question here is whether the math classes assigned to Braun were "available" to the Grievant. Plainly, they were not once they were assigned to Braun. The Grievant did not have the right to bump Braun from these classes, as Braun was senior to her. If there is a violation, it comes from the District's initial decision to assign those math classes to Braun instead of to the Grievant.

The Association's theory of this case presents the problem of whether the junior teacher's right to avoid reduction in hours trumps the senior teacher's and the District's right to have senior teachers teach in their areas of expertise. Braun does not assert such a right in this case, but the meaning of the contract cannot turn on her acquiescence in movement of math classes to Koblitz. Under the Association's theory, the District is obligated to schedule in such a way as to maximize the junior teacher's hours, even if that means gerrymandering the senior teachers' schedules across subject areas. This has the perverse effect of giving junior teachers with limited areas of certification superior claims on classes in their subject areas, and turning the senior teacher with several certifications into a sort of utility player. That is not an impossible result, but it is not suggested by the contract language. The entire structure of the contract instead appears to contemplate a bumping of less senior teachers in order to restore FTE.

Lacking any evidence that the District acted in bad faith in constructing the schedule, I conclude that the District was within its rights in assigning the math classes to the senior teacher, Braun. It follows that there were no classes in the Grievant's bump areas which could be claimed, and the District did not violate the collective bargaining agreement.

On the basis of the foregoing, and the record as a whole, the undersigned makes the following

**AWARD**

The Horicon School District did not violate the layoff and recall provisions of the Master Agreement when it failed to assign an additional math class to Carol Koblitz, who was on layoff/recall status at the time the 2003-2004 Teacher Timetable was approved by the Board. The grievance is denied.

Dated at Racine, Wisconsin, this 8<sup>th</sup> day of January, 2004.

Daniel Nielsen /s/

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Daniel Nielsen, Arbitrator