

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHWEST UNITED EDUCATORS

and

SCHOOL DISTRICT OF SPOONER

Case 35
No. 62570
MA-12345

(Layoff Grievance)

Appearances:

Toby W. Paone, Executive Director, on behalf of Northwest United Educators.

Stephen L. Weld and **Pamela M. Macal**, Weld, Riley, Prens & Ricci, S.C., Attorneys at Law, on behalf of the School District of Spooner.

ARBITRATION AWARD

Northwest United Educators, hereinafter the Union, requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Union and the School District of Spooner, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on September 9, 2003 in Spooner, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by October 15, 2003. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties were unable to agree upon a statement of the issues.

The Union would state the issue as being:

Is layoff by District-wide seniority within the teacher's certification?

The District would frame the issues as being:

- 1) Did the District violate Article XII, E when it did not allow the grievant to bump Hill? If so, what is the remedy?
- 2) The District also asserts that there is a threshold issue of whether the grievance is timely.

The Arbitrator concludes that the issues to be decided are:

- 1) Is the grievance timely? If so,
- 2) Did the District violate Article XII – Layoff when it laid off the Grievant, Jessica Markgren, and did not permit her to bump James Hill? If so, what is the remedy?

CONTRACT PROVISIONS

The following provisions of the parties' Agreement are cited:

ARTICLE VIII – WORKING CONDITIONS

. . .

I. The individual teacher contract shall include:

1. The teaching level: Elementary, Middle School, or Senior High;
2. The subject area(s) in the case of departmentalization (i.e., science, math, social studies, etc.);

. . .

4. Any change in teacher assignment shall be discussed between the teacher and the Superintendent and noted on the file copy of the contract and initialed by the teacher and Superintendent. Any change shall be restricted to the contracted field of the teacher.

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**ARTICLE IX – PROBATION, DISMISSAL, NON-RENEWAL,
AND TEACHER EVALUATION PROCEDURES**

- A. Subject to a three-year probation period for new teachers as set forth in Section B of this Article, no teacher shall be disciplined, reduced in compensation, non-renewed, discharged, placed on probation, or suspended without just cause.
- B. A beginning teacher shall be subject to a three-year probationary period during which the just cause standard shall not apply. At the end of the probationary period, the teacher will either be offered a contract as an established teacher or will be informed that the contract will not be renewed, consistent with Section 118.22 of the Wisconsin Statutes.

...

ARTICLE XI – GRIEVANCE PROCEDURE

- A. Definitions:
 - 1. A grievance is defined as any dispute arising out of the interpretation of (sic) application of the master contract.
 - 2. The term “days” shall mean days other than weekends or holidays.
- B. Procedures:
 - 1. The grievant shall, within 10 days of the event giving rise to the grievance or knowledge of the event, submit the grievance to the Administrative Principal, with or without representation.

...

ARTICLE XII – LAYOFF

When the Board determines that it is necessary to decrease the number of teachers, in whole or in part, for any reason other than teacher performance for a particular teacher or teachers, the Board may layoff the necessary number of teachers according to the following procedures:

- A. The Board determines the assignment area in which the layoff shall occur.
 - B. Inverse district-wide seniority of those teachers who are teaching within the certification in which the Board has determined a layoff shall occur.
 - C. In the event the application of the criteria in subpart B will result in the layoff of a teacher having exceptional academic skills, dual certification, or extracurricular administrative assignments which, in the Board's discretion, make them critical to the educational program of the District, the Board may exempt the teacher from the layoff procedure. This exemption may be invoked once per year by the Board.
- . . .
- E. The laid off teacher shall have bumping rights into other teaching assignment areas in which they are certified and have had at least one semester of teaching experience within the last five years.

BACKGROUND

The District has an elementary school (Kindergarten through grade 4), middle school (grades 5-8), and senior high school (grades 9-12). The elementary school is geographically separate from the middle school and high school, with a separate building and separate principal and staff. Although the middle school and high school are located at the same site, they are considered separate and have separate principals and separate faculty. At the elementary school, each class of students has one teacher who teaches all subjects, while at the middle school, students go to different classrooms throughout the day, and teachers only teach specific subjects.

The Grievant began her employment in the District teaching at the elementary school in August of 2001, and is certified to teach pre-Kindergarten through sixth grade. She taught third grade at the elementary school in both the 2001-02 and 2002-03 school years. Hill began teaching at the middle school in September of 2002, teaching fifth grade social studies during the 2002-03 school year and is scheduled to do the same during the 2003-04 school year. Hill holds certifications to teach political science, history, economics, and broad field social studies in grades 5 through 9 and grades 9 through 12. The Grievant's teaching contract specifies she is to teach at the elementary school. Hill's teaching contract specifies that he is to teach middle school social studies. Both the Grievant and Hill were probationary teachers at the time in question.

In April of 2003, the District's Board of Education determined to reduce the size of its faculty at the elementary school. In May, the District sent layoff notices to the three least senior teachers at the elementary school, including the Grievant, whose layoff notice was dated May 20, 2003. The Grievant's layoff notice included the following statement:

The collective bargaining agreement requires that notice be given to you at this time. Frankly, it is somewhat premature because we do not have a good handle on our state funds. You will be advised if this notice has been rescinded or modified.

There followed conversations between Superintendent Donald Haack and representatives of the Union regarding the interpretation and application of the contractual layoff procedure. On May 30, 2003, Haack sent the Union's representatives the following letter:

To: Larry Flynn, Kenny Bluse, Toby Paone
From: Don Haack
Date: May 30, 2003
Re: Lay-off and bumping rights

As we near the cut-off date for notification of lay-offs in the School District of Spooner, we still have some differences of opinion regarding the interpretation of the language in our negotiated contract. The Board has determined that three elementary positions would be eliminated, and notices have been sent to the three least senior teachers who are teaching within that certification area. Based on our previous conversations, it is evident that NUE-Spooner would file a grievance regarding the proper teachers to whom we should issue layoff notices, specifically that one of the teachers to whom we issued a layoff notice has more seniority than one of the middle school social studies teachers. The elementary teacher is certified PK-6 while the teacher, who is teaching 5th grade social studies is certified 5-9 and 9-12 in political science, history, economics and broad field social studies.

We believe that the language is abundantly clear and that notices were given to the proper individuals based on Article XII of the contract. With the upcoming deadline for issuing layoff notices and the likelihood of a grievance, among the options that we have contemplated are:

1. Issue Jamie Hill a layoff notice in case the hearing goes to arbitration and, until the grievance is settled, hire a long-term substitute to fill in that position in the middle school.

2. Invoke Article XII(C) of the contract giving the Board the right to exempt a teacher from the layoff procedure. It is obvious that Jamie Hill is exceptionally certified for the position he holds and those certifications are seen to be critical to the educational program of the District.
3. Do nothing and allow the grievance to proceed.

Of all of the options available to remedy this situation, a grievance would certainly help clarify the meaning of the language the best. While that is a solution that we would not mind in the least, it could do considerable harm to the educational process in our district. It would undoubtedly lead to much uncertainty among the faculty and could result in the teachers involved to, out of necessity, seeking new employment.

I do not believe that it is necessary to issue Jamie Hill a layoff notice since I believe that our literal reading of the layoff language is correct. I also do not believe that it would be the wise thing to do, because if Mr. Hill were issued a layoff notice he would, out of necessity, seek new employment. This would leave us in a position of looking for a long-term substitute to fill in this position until the grievance was settled.

I also do not believe that it is necessary to invoke the exemption clause, again because I believe that our literal reading of the layoff language is correct. Of the three, this option appears to create the least amount of turmoil on the part of the faculty involved, so if necessary, it would be invoked in the case of a grievance.

It is important to note that this action will set no precedent and that the District's method of determining layoffs will remain the same in the future. If you have any questions regarding this memo, please do not hesitate to contact me.

By letter of June 13, 2003, the Union grieved the layoff of Markgren while Hill was being retained for the 2003-04 school year, which letter stated, in relevant part:

In the notice letter sent May 20, 2003 to Ms. Markgren by the School District of Spooner notifying her of her pending layoff for the 2003-04 academic year, the District stated that "the Board has determined that it will be necessary to reduce the teaching staff within the certification area in which you are currently teaching. Because of your relative lack of seniority within the certification area, it will be necessary to eliminate your position." Ms. Markgren is certified to

teach Pre-Kindergarten through Grade Six and began her teaching career at Spooner on August 20, 2001 and is currently assigned to teach Third Grade at Spooner Elementary.

A less senior teacher, Mr. James Hill, is being retained by Spooner for the 2003-04 academic year ahead of Ms. Markgren. Mr. Hill is certified to teach Political Science, History, Economics and Broad Field Social Studies in Grades Nine through Twelve and Grades Five through Nine. He began his teaching career at Spooner on September 9,, 2002 and is currently assigned to teach Fifth Grade at Spooner Middle School.

At issue in this grievance is whether seniority-based layoffs should be primarily by assignment areas (as alleged by the School District of Spooner) or by certification (as alleged by NUE). The provisions of Article XIII (sic), Sections B, D and E are clear: layoffs are to be given to teachers in inverse district-wide seniority order of those teachers teaching *within the certification* in which the Board has determined the layoff to occur and the laid off teacher can bump into other teaching assignment areas in which they are certified. In short, the certification of the teacher(s) in question is the controlling factor in who gets laid off, not their assignment area.

With her Pre-K through Grade Six certification, Ms. Markgren is qualified to teach Fifth Grade at Spooner Middle School, the position Mr. Hill is currently assigned. Thus the remedy NUE seeks is to invoke Ms. Markgren's bumping rights to Mr. Hill's current Grade Five assignment at Spooner Middle School starting in the 2003-04 academic year.

Finally, there has recently been some question as to the timeliness of this grievance. Although a layoff notice was sent to Ms. Markgren on May 20 and the date of this letter is June 13 (making the filing of this grievance eighteen (18) days upon initial notification as opposed to the required ten (10) under Article XI - Grievance Procedure of the Master Contract), the fact remains that the layoff will not actually occur until July 1, 2003 when Ms. Markgren's contract with the School District of Spooner runs out. She will remain on the Spooner payroll until that date. Thus, NUE contends that since the layoff has not officially happened yet, this grievance is being filed in a timely manner in accordance with Article XI.

Furthermore, numerous good faith discussions and communiqués have taken place between NUE representatives and yourself toward resolution of this matter over the last several weeks and months, making the District's claim that this

grievance is untimely to be both odd and counter-productive to our joint efforts toward resolution of this issue and peaceful labor-management relations in general. Indeed in your letter to NUE representatives dated May 30, 2003 regarding layoff and bumping rights in Spooner, you state "Of all the options available to remedy this situation, a grievance would certainly help clarify the meaning of the language the best." The current grievance is being filed by NUE in that spirit and we ask the School District of Spooner to focus its attention in this grievance on the major substantive issue of proper layoff protocols versus the minor procedural issue of filing timeliness.

...

By letter of June 24, 2003, Haack responded to the grievance and also addressed the timeliness issue as follows:

...

With regards to the timeliness of the grievance, that is very much an issue. The grievance must be filed within 10 days of the event giving rise to the grievance or knowledge of the event. Knowledge of the event can be traced back to at least April 28, 2003 when it was made clear the methodology to be used in laying off teachers according to the Master Contract. The layoff notice sent to Ms. Markgren was dated May 20, 2003. The date of the grievance is well beyond the 10 day limit as stated in the Master Contract.

You correctly quoted my May 30 letter regarding clarification of the layoff language, however you did stop short of my notation that this could do considerable harm to the educational process in our district.

Based on the above factors, the grievance is denied.

The grievance was processed through the parties' contractual grievance procedure. The parties, unable to resolve their dispute, proceeded to arbitration of the grievance before the undersigned. 1/

1/ The grievant was laid off for the 2003-04 school year and the District exercised its right to exempt a teacher, exempting Hill, under Article XII, Section C, of the Agreement, which the Union does not dispute.

POSITIONS OF THE PARTIES

Union

The Union first notes that the issue in this case is the question of what is the correct interpretation of Article XII – Layoff. It asserts the District contends that the controlling variable by which the order of layoffs should occur is seniority within the teacher’s assignment area, with the District determining the teacher’s assignment area, while the Union contends that the controlling variable by which the order of layoffs occur is seniority within the certification area in which a teacher is licensed.

In support of its position, the Union first asserts that the bargaining history between the parties requires a conclusion that basing layoff procedure on assignment area violates the Agreement. Two Union witnesses, who had been members of the Union’s bargaining team from 1981 through 1987, testified that the District attempted both in 1984, and again in 1986, to “clarify” the language of Article XII by proposing to define “assignment area” as grades K-4, 5-8, and 9-12. They further testified that the Union opposed those proposals and that no agreement was reached in that regard on either occasion, and the proposals were withdrawn. Further, the labor counsel for the District who represented the District on those occasions also testified consistent with the testimony of the Union’s witnesses in this regard.

The Union notes that at hearing in this matter, the Union acknowledged the District’s right to exempt Hill pursuant to Article XII, Section C.

With regard to the timeliness of the grievance, while Markgren was notified of her layoff by letter of May 20, 2003, she was under contract to teach through June 6, 2003 and did so. It was only after June 6th that she was actually laid off from her position. Further, the District was not prejudiced or otherwise adversely affected by the filing of the grievance on June 13th. Also, during the period between May 20, 2003 and June 13, 2003, there was constant communication between Superintendent Haack and the Union’s Unit Directors in Spooner, as well as the NUE Executive Director, regarding the issue of layoffs. This is illustrated in Haack’s letter of May 30, 2003 to Flynn, Bluse and Paone. In that letter, Haack writes: “Of all of the options available to remedy this situation, the grievance would certainly help clarify the meaning of the language the best.” The Union finds the claim of untimeliness odd when the District itself encouraged the filing of this grievance. There was also less formal communications between the parties during this time frame, all of which were conducted in good faith, in an attempt to find an acceptable solution. Based on these facts, the Union believes the actual filing of the grievance on June 13th is within the ten working days deadline under the grievance procedure.

The Union requests that the Arbitrator conclude that the District's decision to base its layoff procedure on assignment area, as opposed to certification, to be in violation of the Agreement, and sustain the grievance.

District

The District first asserts that the grievance was not timely under the requirements of Article XI, Section B, 1 of the Agreement, which requires that the grievance "shall" be filed "within ten days of the event giving rise to the grievance or knowledge of the event. . ." The Grievant was notified of her impending layoff by letter of May 20, 2003, and the first letter from the Union informing the District of the grievance was written on June 13, 2003, 18 days after the Grievant was first notified of the layoff. The Union, in fact, concedes in its letter of June 13th that the grievance request is not timely. Thus, the grievance should be dismissed.

As to the substantive issue, the District asserts that the decision to layoff the Grievant did not violate the Agreement, as layoffs are based on assignment area, and not area of certification. Article XII provides a series of integrated steps that must be taken in the order listed to arrive at the individual who will be laid off. Under Section A, the District must select the assignment area in which the layoff will occur. Under Section B, the teacher to be laid off is determined by the seniority of the teachers teaching within that certification area. Then, under Section E, the teacher can assert bumping rights into other teaching areas in which they are both certified and have had at least one semester of teaching experience within the last five years.

Article VIII, Section I, 4 provides that any change in a teacher's assignment area must be discussed by the teacher and Superintendent. Also, in Article VIII, teaching load and subject areas of the teacher's assignment are defined in Section 1 and 2, respectively. Teaching level is defined as elementary, middle or high school, while subject areas are defined in the case of departmentalization. Thus, in Article XII, Section A, determining the assignment area in which a layoff occurs, consistent with Article VIII, means the teaching level and subject area. Each teaching level has its own principal and staff. Further, Article VIII, Section I, 1, provides that a teacher's individual employment contract "shall" include the teaching level which is defined as elementary, middle school or senior high. At both the middle school and high school levels, teachers' assignments are in specific subject areas.

Pursuant to Article XII, Section A, the Board determined that layoffs would occur at the elementary school, comprised of Kindergarten through fourth grade. Accordingly, pursuant to Section B, the District looked at the seniority level of teachers at the elementary school in determining which teachers should be given layoff notices. To allow teacher certification to be the controlling factor in determining layoff, as asserted by the Union, would negate the District's ability to determine the teaching level in which the layoff will occur, as

there are many different types of teacher certifications. Some certifications are subject-specific, while others are grade-specific, and more problematic is the fact that grade ranges for certifications vary greatly, e.g., there are certifications for elementary education for grades 1-8, for grades 1-6 and for elementary/middle education, grades 1-9.

Under the Union's interpretation, the District would be forced to layoff the least senior teacher in the system certified to teach in the area of the layoff, even though the staff member is not presently teaching in that assignment area, i.e., the District would have to look at all of the middle and senior high school teachers who are certified to teach at the elementary level in determining who is to receive the layoffs at the elementary school. This would make the bumping clause of Article XII, Section E, meaningless, as that provision states that the laid off teacher shall have bumping rights into other teaching areas in which they are certified and have had at least one semester of teaching experience within the last five years. There would never be anyone less senior than the teacher being laid off within that particular assignment area, under the Union's interpretation. The bumping clause only works if the initial layoff determinations are made by assignment area, i.e., teaching level and subject area, and then if the person laid off has more seniority and is qualified to teach in the other assignment area, that laid off teacher can bump.

The Union contends that because the District proposed language in past negotiations to clarify the terms of the Agreement, and those attempts were rejected by the Union, one must conclude that the Union's interpretation is correct. However, the District proposed to change the language during negotiations in 1984-85 and 1986-87 in an effort to resolve any ambiguity in the terms by clarifying them. The Union should not be rewarded for refusing to address the District's attempts to clarify an unclear contract provision. Contrary to Union witness Peter's testimony that the District's proposed clarifications would have taken away teachers' layoff and bumping rights, the District was simply attempting to define "teaching area" and was not asking the Union to give up the layoff clause. The District cites B. Landis, *Value Judgments in Arbitration: A Case Study of Saul Wallen*, 63 (1977), ". . . Sometimes language is proposed in order to remove any doubts about the clarity of the clause, but if the language is objected to and is withdrawn to facilitate agreement, it does not automatically follow that the party withdrawing the proposal embraces the opposite interpretation." The District asserts that this is exactly the sort of situation the District was attempting to avoid when it proposed to clarify the language.

The Union argues as an alternative, that Article XII, B, gives the Grievant the right to bump Hill from his fifth-grade teaching position at the middle school, but never addresses the question of whether the Grievant actually meets the requirement to exercise bumping rights outlined in Article XII, Section E. Under that provision, the bumping teacher must be both certified and "have at least one semester of teaching experience (in the new assignment area) within the last five years." While the Grievant meets the requirement of certification, she has

never taught at the middle school level. The requirement of “at least one semester of teaching experience” requires the Grievant have at least one semester of teaching experience in the area she is seeking to bump into. Given the differences between the elementary, middle and senior high schools, this is a logical interpretation. The elementary school classes are entirely self-contained, while middle school teachers only teach specific subject areas. In this case, the Grievant cannot bump because she has never taught fifth grade or any class at the middle school.

Further, the District notes that the Grievant is still within her three-year probationary period and that according to the Agreement, the District has the right to terminate probationary teachers for reasons other than just cause. Granting probationary teachers bumping rights would defeat the purpose of having a probationary period. The District questions whether a probationary teacher who can be non-renewed or discharged without just cause should have the right to bump other employees in other assignment areas. Allowing probationary teachers to bump would place the District in the awkward situation of being better off telling probationary teachers that they did not “work out” or meet their standards, rather than telling them that they are good teachers who are being let go for budgetary reasons, as is the case here.

The District concludes that since the Grievant was the least senior teacher in the assignment area in which the layoff was to occur, she was properly given notice of layoff, and since she did not meet the requirements under the Agreement to exercise bumping rights, the District did not violate the Agreement in that regard and the grievance should be denied.

DISCUSSION

Timeliness

The District notes the ten-day time limit in Article XI, B, 1., and asserts the time limit began running upon the Grievant’s receipt of the May 20th layoff notice, i.e., that notice was the event being grieved and was when the Grievant had knowledge of the event. While notice of layoff can be the triggering event, in this instance the Arbitrator concludes that is not the case.

The May 20th layoff notice itself places the finality of the Board’s decision in question. The last paragraph states that the notice is “somewhat premature” and that Markgren “will be advised if the notice is rescinded or modified.” In addition, the record indicates there were ongoing discussions between Superintendent Haack and the Union’s representatives regarding how the contractual layoff provision was to be interpreted and applied. The ambiguity of the situation is further reflected in Haack’s letter of May 30th to the Union’s representatives, wherein he noted that a grievance would be one option available to resolve the situation. The grievance was submitted on June 13th, i.e., ten days (as defined by the contract) from Haack’s

letter of May 30th. Traditionally, arbitrators have resolved ambiguities as to whether a grievance met the contractual procedural requirements in favor of resolving the merits of the grievance. Under the circumstances here, the Arbitrator finds no basis for doing otherwise in this case and concludes that the grievance is to be considered timely.

Merits

At issue is the interpretation and application of Article XII – Layoff, primarily Sections A and B, and E.

Beginning with Section A, the Board determines where it will reduce teaching staff, i.e., the “assignment area in which the layoff shall occur.” The District relies primarily on Article VIII, Section I, in arguing that “assignment area” means teaching level (elementary, middle school or senior high), and the subject area, if there is departmentalization. In opposing that interpretation, the Union notes that the District twice unsuccessfully attempted to negotiate a similar definition of “assignment area” in Section E into the Agreement, and asserts this demonstrates the District’s acknowledgement that the wording, which is unchanged, did not mean what the District now claims. The Union’s assertion is consistent with how such unsuccessful attempts to change wording have often been construed against the proposing party. 2/ In this case, the record indicates that the present wording of Article XII first appeared in the parties’ 1981-83 agreement. In the negotiations for the successor agreement, the District proposed its definition of “assignment area” in Section E, the bumping provision. The Union made it clear that it did not agree with the District’s definition and the District eventually dropped its proposal. This occurred again in the next round of negotiations for a 1986-87 agreement when the District made a similar proposal. Thus, knowing that the Union did not agree with its proposed definition of “assignment area”, the District twice dropped its proposal and since that time has chosen to leave the wording as it is.

2/ See the discussion in *Elkouri and Elkouri, How Arbitration Works, Sixth Edition, at pp. 454-456.*

With regard to the District’s reliance on Article VIII, Section I, that provision requires each individual teacher contract to include “teaching level” and in the case of departmentalization, the subject area. Subsection 1 defines “teaching level” as “Elementary, Middle School or Senior High.” Subsection 4 of that provision provides that “Any change in teacher assignment shall be . . . noted on the file copy of the contract.” The District asserts that one is to conclude from this that the teaching level and subject area stated on the teaching contract must therefore comprise the “teacher assignment” referenced in subsection 4. While this is not an unreasonable conclusion, it does not necessitate a further conclusion that this then defines the term “assignment area” used in Article XII. This is especially so in light of the evidence as to the bargaining history of Article XII.

Given the strength of that evidence, it is concluded that the term “assignment area” does not refer to the general teaching level; rather, it refers to an assignment to teach a specific grade and/or subject area. In other words, when the Board determines the “assignment area in which the layoff shall occur”, it does not simply decide it will reduce staff at the elementary school level; it decides which positions will be eliminated, e.g., it decides the District will have one less third grade teacher or one less kindergarten teacher.

Having identified the positions to be eliminated, the next step in the layoff procedure under Article XII is Section B. It is at this step that the specific teacher to be laid off (the one who will have to exercise bumping rights under Section E) is identified. Section B provides that inverse district-wide seniority is to be applied to those teachers “teaching within the certification in which the Board has determined a layoff shall occur.” The District’s interpretation essentially ignores the reference to “certification” and looks only at the seniority of the teachers teaching within the “assignment area”, as the District would define that term. It is a principle of contract interpretation that the parties intended the words they used to have meaning, and that an interpretation that gives meaning to all of the words used is favored over an interpretation that does not. Nor is it reasonable to conclude that the term “assignment area” used in Sections A and E is synonymous with the term “certification” used in Section B. Besides the terms being definitionally distinctive on their face, 3/ presumably the parties would have used the term “assignment area” in Section B as they have in Sections A and E, if that is what they had intended. While the District’s interpretation is simple to apply, given the use of the different terms in Sections A and B, it does not comport with the wording of Section B.

3/ A teacher’s “certification” is what authorizes him/her to teach in a particular “assignment area”.

This leads to the question of what is meant by the words “the certification” in Section B, i.e., what “certification” is referenced. 4/ It cannot refer to a specific certification for the assignment area, as the evidence demonstrates there are various certifications that would permit one to teach the grades at the elementary level, some of which would also permit one to teach grades and/or subjects at the middle school and high school levels.

4/ The Union does not really offer a definition, beyond arguing that “the controlling variable by which the order of layoffs should occur is seniority within the classification area in which a teacher is licensed.” The District characterizes the Union’s argument as meaning inverse seniority would be applied to any teacher in the District who is certified to teach in the assignment area where the layoff is to occur.

Seemingly, “certification” in Section B also would not refer to any certification that would permit one to teach in the assignment area in which the layoff is to occur, as that could result in laying off a teacher outside the assignment area who was teaching within a

certification that permitted them to teach elementary grades, and at the same time leave the teacher whose position was eliminated with no assignment, as that teacher would not necessarily be certified to take the assignment of the least senior teacher. 5/ This then could theoretically result in two teachers having to exercise bumping rights for one layoff and the District having to hire a teacher to cover the assignment of the least senior teacher laid off under Section B. This potential result seems unlikely to be what the parties intended.

5/ E.g., the Grievant's position is eliminated and she holds a pre K-6 certification and the least senior teacher teaching in a certification that permits one to teach third grade is teaching at the eighth grade level. The Grievant would not be able to teach at the eighth grade level with her certification.

However, "the certification" in Section B can refer to a specific certification if it is referring to the certification held by the teacher whose position has been eliminated under Section A. This ensures that the teacher whose position is eliminated will at least be certified to teach in the assignment that the least senior teacher is teaching. It is also noted this would not necessarily result in the teacher laid off under Section B being the least senior teacher in the District and effectively having no bumping rights under Section E. Hill, for example, could be the least senior teacher teaching in the Grievant's certification of pre K-6, but have more seniority than a teacher teaching in grades 7-12, for which he is also certified. If Hill had the seniority and the requisite prior teaching experience, he could bump into an assignment area in those grades. This interpretation gives meaning to all of the words used in Sections A, B and E and does not produce an absurd result. Therefore, it is preferable over the other interpretations offered.

Thus, it is concluded that the Board having determined under Section A to eliminate the Grievant's position, it was the certification she held that is referenced in Section B. In this case, the Grievant holds a pre K-6 certification. Hill's teaching assignment was fifth grade social studies, which falls within the Grievant's certification. Assuming Hill was the least senior teacher teaching within the Grievant's certification, it was Hill who should have been laid off under Section B, and have had to exercise whatever bumping rights he had under Section E.

Therefore, the District's determination that the Grievant was to be laid off, and not the least senior teacher teaching within the Grievant's certification, violated Article XII of the parties' agreement. However, as the Board apparently has exercised its right under Section C of that provision to exempt one teacher from layoff, exempting Hill, there is no remedy beyond this finding.

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

AWARD

The grievance is sustained. The District violated Article XII – Layoff, of the parties’ agreement when it laid off Jessica Markgren, rather than the least senior teacher teaching within the certification Markgren holds. However, as the Board has the right under Article XII, Section C, to exempt one teacher per year from layoff, and has apparently exercised that right in this case, there is no further remedy ordered beyond a finding of a violation.

Dated at Madison, Wisconsin, this 30th day of January, 2004.

David E. Shaw /s/

David E. Shaw, Arbitrator

DES/gjc
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