BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHWOOD EDUCATION ASSOCIATION

and

NORTHWOOD SCHOOL DISTRICT

Case 32
No. 62585
MA-12353

(Assignment of School-To-Work Coordinator Grievance)

Appearances:

Barry Delaney, Executive Director, Northern Tier UniServ-West, on behalf of the Northwood Education Association.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by **Christopher R. Bloom**, on behalf of the Northwood School District.

ARBITRATION AWARD

The Northwood Education Association, 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 Northwood School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on October 1, 2003 in Minong, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by November 7, 2003. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

There is some dispute as to what constitutes the issues before the Arbitrator in this case.

The Union states the issues as being:

> Did the District violate Article VIII, Section B (6, c), of the collective bargaining agreement when it did not offer study hall and coordinator positions to part-time teachers Laura Magdzas and Rossina Leal? If so, what is the appropriate remedy?

The District frames the issue as:

> Did the District violate the collective bargaining agreement when it assigned the school-to-work coordinator position to the person occupying the family and consumer education position?

The Arbitrator is satisfied that by the Board President's July 30, 2003 response to the grievance, the Board agreed to incorporate the issue of the assignment of study halls to new teachers into the grievance filed over the assignment of the School-To-Work coordinator position to a new teacher. Therefore, the Union's statement of the issues more accurately sets forth the issues to be decided in this case.

CONTRACT PROVISIONS

The following provisions of the parties' 2001-2003 agreement are cited:

ARTICLE II – MANAGEMENT RIGHTS

. . .

Section B

Without limiting the generality of the foregoing, it is expressly recognized that the Board's operational and managerial responsibility includes:

. . .

9. The creation, combination, modification and elimination of any teaching position, deemed advisable by the Board.

10. The determination of the size of the working force, the allocation and assignment of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employee performance.

. . .

ARTICLE VIII – WORKING CONDITIONS

. . .

Section B – Transfer Procedure

1. A list of anticipated vacancies for the coming school year shall be posted in each school as early in the spring as possible.

. . .

6. Such transfers (voluntary and involuntary) shall be made on the basis of:

   a. Teachers within the system who apply for a vacant position and are certified for the position shall be selected for the position unless the Administration can show that making the transfer would have a negative effect on the education process in the School District. In the event two or more teachers from within the system apply, the teacher with the most seniority within the District shall be selected for the position.

. . .

   c. If study hall and coordinator positions are not filled by full-time employees in order to maintain 100% employment, such positions will be offered to the qualified part-time employee with the most seniority. If the part-time employee with the most seniority rejects the position, the next most senior employee has the next right of refusal unless the Administration can show that making

> the assignment would have a negative impact on the School District.
>
> . . .

BACKGROUND

The Grievants, Rossina Leal and Laura Magdzas, are employed part-time as teachers for the District. 1/ At the end of the 2002-03 school year, in addition to the Grievants, the District employed Nancy Nielcen as a part-time teacher. In order of seniority, Leal is most senior, then Magdzas, and Nielcen is the least senior of the three.

1/ At the time of the hearing, Leal actually had been employed full-time as on the first day she was also assigned a period of English as a Second Language on a day-to-day basis.

Due to retirements and resignations, the District hired six new teachers for the 2003-04 school year. All but one of the positions, the Family and Consumer Education (FACE) position, were posted as full-time positions, and all but one were posted in the Spring of 2003. The FACE position was posted in April of 2003, the posting stating in relevant part:

> SECONDARY FAMILY AND CONSUMER EDUCATION TEACHER
> 60% Position
>
> Possible expansion to 100% with additional duties in one or more of the following areas, based on applicant qualifications: Technology Coordinator; School-to-Work Coordinator; JTPA Coordinator; or other duties.
>
> . . .

Magdzas testified that she had informed High School Principal Lon Bagley in April of her interest in the School To Work Coordinator position, and that he had told her it would be considered. Magdzas testified that her conversation with Bagley took place prior to the FACE position being posted.

Leal testified that she did not ask for a coordinator position or study hall because she assumed she would receive them due to her seniority.

By letter of June 5, 2003 from the Union's representative, Barry Delaney, to Bagley, the Union informed the District it was grieving the District's offering the School To Work

Coordinator position to the candidate for the FACE position, instead of to the most senior part-time teacher, citing Article VIII, B, 6, c, of the parties' agreement.

On June 12, 2003, Dana Hyllengren was hired full-time for the FACE position, which included the School To Work Coordinator position. 2/

2/ What was left of the JTPA Coordinator position had been combined with the School To Work Coordinator position. The duties of the Technology Coordinator were assigned to administrative personnel.

On June 18, 2003, Delaney met with Bagley and then-Superintendent William Stapp for a Step 3 conference on the grievance. At that meeting, Bagley informed Delaney that there were then three part-time teachers in the District – Leal, Magdzas and Nielcen. Bagley also informed Delaney that Hyllengren's schedule had not been finalized and that she might be scheduled for an additional class and the coordinator position reduced to 20%, and that she might be assigned a study hall. Bagley also indicated that three of the new teachers would be assigned study halls. Delaney indicated the Union would amend its grievance due to this new information.

By letter of June 25, 2003 from Delaney to the District's Board members, the Union requested a Step 4 conference with the Board on the grievance and advised the Board that as a result of the information Delaney received at the Step 3 meeting:

> It is the Union's position that the District has or is planning to violate Article VIII (B, 6, c) by offering four outside candidates coordinator positions and study halls prior to offering such positions to current part-time employees.
>
> For relief, the Union is requesting the coordinator and study hall positions be offered to part-time employees.

Delaney met with the Board on July 30, 2003 regarding the grievance. Bagley was present for the Administration, as Stapp had left the District by this time. At that meeting, Bagley informed the Board and Delaney there were only two part-time teachers, as Nielcen was being assigned a study hall, making her full-time. Bagley testified that as the schedule developed, it became apparent that Nielcen would have to pick up a study hall eighth hour, because the teacher who had the study hall in 2002-03 had picked up another class and had to have another preparation period, which would only fit in eighth hour.

By letter of July 30, 2003 to Delaney, the Board President advised the Union it was denying the grievance and the reasons for its decision, and also stated, in relevant part:

> The original grievance dealt with the assignment of coordinator positions only. As a result of your conference with Mr. Stapp, you requested at the grievance hearing that the similar assignment of study halls also be considered part of this same process. Mr. Bagley argued that study halls should not be included in the grievance at this point. The Board agrees to the inclusion of study halls.

For the 2003-04 school year, new hire Special Education teacher Jason Fox was assigned an "MS Support Study Hall". According to Bagley, only special education teachers are assigned such support study halls. In addition, new hire Karen Duffy was assigned a study hall in August, and new hire James Check (who started September 27th) was also assigned a study hall, as was Nielcen. Beginning with the first day of the 2003-04 school year, Leal has been assigned an English as a Second Language class second hour to teach students in one family, making her full-time. According to Leal, although that assignment continued as of the date of hearing, it is on a day-to-day basis and is not part of her individual teaching contract with the District. Leal testified that with this assignment, she had no open periods.

The parties were unable to resolve their dispute and proceeded to arbitration of the grievance before the undersigned.

POSITIONS OF THE PARTIES

Union

With regard to the framing of the issue, the Union notes that it first found out at the Step 3 conference on the School-To-Work Coordinator position grievance that the District would also be assigning study halls to some of the new teachers for the 2003-04 school year. The Union then modified its grievance to include the study hall assignments in its appeal to the Board at the next step of the grievance procedure. When the Board informed the Union that they agreed to the inclusion of study halls within the original grievance, the Union had no need to file a second grievance on that issue. Thus, the Union's framing of the issue should be accepted by the Arbitrator.

The Union takes the position that Article VIII, B, 6, c, of the Agreement, refers to full-time "employees" and not to full-time "positions". In agreeing to the wording, there is no question that the parties were protecting full-time teachers and not full-time positions from being reduced to part-time status. Further, the words "if study hall and coordinator positions are not filled by full-time employees, in order to maintain 100% employment. . ." must have had a meaning when it was agreed to, as parties do not agree to language that has no meaning. Since new teachers, first hired for the 2003-04 year were not employed by the District during the 2002-03 year, the wording cannot be referring to them, since they had no previous 100% employment to maintain prior to the 2003-04 year, and would not have until after the first

workday of the 2003-04 school year. They were hired for the 2003-04 school year, not for the period of time between when they were offered contracts and the first day of work.

Even assuming *arguendo* that new teachers should be considered full-time employees on the day they signed their 2003-04 contracts, the maintaining 100% employment wording does not apply to them. From the time that an employee resigns from his/her employment, through the time the District hires a replacement, there is no full-time employee for whom the District is required to maintain 100% employment. Thus, any available study hall and coordinator positions should be offered to part-time employees, instead of offering such positions to future employees for which the positions have not even yet been posted. The first priority under the language of B, 6, c is to assign such positions to returning teachers who had full-time employment in order to maintain their 100% employment. The second priority is to assign such positions to part-time teachers and then only if there are any left to assign, to new hires.

The Union notes that of the six teachers who left employment at the end of the 2002-03 year, three had study halls assigned to them and one had a 20% FTE School To Work Coordinator position. Of the six new teachers hired for the 2003-04 year, three of them have study halls assigned to them and Hyllengren has a 23% FTE School To Work Coordinator position. Also, the least senior of the three part-time teachers in the District, Nielcen, was assigned a study hall for 2003-04, making her full-time. Thus, there were sufficient study hall and coordinator positions available to permit Leal and Magdzas to become full-time employees or nearly so.

The District claimed that if part-time employees were assigned study hall and coordinator positions, the District would never be able to offer new teachers full-time employment. Besides being irrelevant, the statement is not true. One of the new teachers was hired full-time without having any study halls or coordinator positions. Further, once Leal and Magdzas reached full-time, the District can hire full-time teachers at will.

The District's reliance on a prior arbitration decision is misplaced, as the contract language in issue in this case was not in the parties' 1995-97 agreement, and therefore was not the subject of that arbitration. Thus, the arbitration award could not, and did not, deal with the language that the parties later agreed to include in the agreement. The Union relied on Article VIII, B, 6, a, in its grievance in the prior arbitration, and the arbitrator found there was no support in the language of that provision to assert that study halls constituted "positions". Inclusion of paragraph c, demonstrates the parties have recognized study hall and coordinator duties as "positions", as they refer to them as such. The second reason the grievance was denied in the prior arbitration case was that the then-current agreement did not warrant changing the teaching schedule when there was conflict between study halls offered and when a part-time teacher was available. In this case, the District knew that part-time teachers should

receive assignments of study hall and coordinator positions prior to the teacher schedule being developed for the new school year due to Article VIII, B, 6, c. That provision clearly informs the District that when the teachers resign and before the posting for replacements and the assignment of study hall and coordinator positions are made, that part-time employees have first rights to these positions. In this case, the grievance concerning the School-To-Work position was filed on June 5, 2003, and the teacher who was assigned the position later was not hired until June 12. Both Bagley and Visger testified that they assigned study halls as the last step of completing the teacher schedule, and Bagley testified the schedule was completed in early August. Due to the District's self-imposed timelines for developing the teaching schedule, the District made the decision not to offer Leal or Magdzas the School-To-Work Coordinator position or any of the study halls, prior to the completion of the teaching schedule in August. If they had followed Article VIII, B, 6, c, during the scheduling process, there would not have been a need to change the schedule after it was completed. Unlike in the prior arbitration, here the grievance was filed before the teaching schedule was completed.

Article VIII, B, 6, c, requires that after the study hall and coordinator positions are not filled by full-time employees in order to maintain 100% employment, that study hall positions be assigned to part-time employees on a seniority basis. The District did not do so. Bagley testified that there were three part-time employees, Leal at 77% FTE, Magdzas at 74% FTE and Nielcen at 88% FTE. At the July 30, 2003 grievance conference with the Board, Bagley told the Board that there were only two part-time teachers left, as Nielcen was assigned a study hall for 2003-04, which brought her to full-time status. Leal has nine more years of seniority and Magdzas eight more years of seniority than Nielcen. Bagley conceded he never offered Leal and Magdzas a coordinator or study hall position for the 2003-04 school year. Thus, the District violated Article VIII, B, 6, c in not offering Leal or Magdzas the coordinator or study hall position.

Bagley conceded in his testimony that he believed it was possible to develop a schedule where Leal and Magdzas could have a coordinator position or study hall during the schedule's development. Bagley and Visger testified that the assignment of study halls is the very last thing done on the teacher schedule and that it is done by looking at the periods where study halls are offered and then assigning them to teachers who have no classes during the period when a study hall position is open. According to Bagley, only Leal and Magdzas could not be assigned study halls through this method. The Union asserts that there are long odds for computer-generated classes being offered without study halls or coordinator positions being in the schedule, that would result in the situation where study hall positions and School-To-Work Coordinator positions were not available during the two periods that Leal and Magdzas were not scheduled to work. The odds are so poor that there should be no doubt that the schedule had to be manipulated to obtain such a result. The provision in issue requires the District to factor in the assignment of study hall and coordinator positions for Leal and Magdzas when developing the schedule, and does not allow such assignments to be made or not be made by

chance, much less by manipulating the schedule so as not to assign such positions to Leal and Magdzas. The Union asserts that it can show that without using the District's computer scheduling software and by just eyeballing the schedule, that with a few changes, the School-To-Work Coordinator position and study halls could have been assigned to Leal and Magdzas. Bagley's testimony as to the reasons why he did not change the schedule fails on two counts. While he testified that because of the previous arbitration decision he did not have to change the schedule in order to give study halls to part-time teachers, he subsequently testified that he had not seen the arbitration decision until the day of the hearing in this case. Thus he could not have taken it into account when he made the schedule. Second, he did not take into account Article VIII, B, 6, c, which requires scheduling part-time teachers to study hall and coordinator positions during the development of the schedule, if such positions are not used to maintain 100% employment for returning full-time teachers.

The Union asserts that the evidence establishes that both Leal and Magdzas are qualified for the study hall positions, as well as the School-To-Work Coordinator position. In addition, because of their years of employment in the District, they have come to know many of the private businesses in the District and the individuals who run them, as well as having worked with the students over the years. Thus, they would be more qualified for the coordinator position than a new teacher.

Last, the Union asserts that under Article VIII, B, 6, c, there are only two ways out for the District. The first is if both the most senior and next most senior part-time employees reject the offer of the coordinator or study hall positions. There is no evidence that either Leal or Magdzas would have rejected the offers. The only other way out is if the District could not hire new teachers on a part-time basis. The record is void of any evidence that new teachers cannot be hired on a part-time basis. Bagley testified that none of the new teachers hired were offered part-time employment. Further, the hiring of Leal, Magdzas and Nielcen as part-time teachers in past years shows that hiring new part-time teachers is not prohibitive.

As relief, the Union requests the following:

1. That the District be found to have violated Article VIII, B, 6, c, by not offering the coordinator and study hall positions to part-time employees prior to offering such positions to new employees for the 2003-04 school year and for providing a study hall to a less senior part-time teacher.

2. That the District be ordered to cease and desist from violating Article VIII, B, 6, c, of the agreement.

3. That the District pay Leal as a 100% full-time teacher for the 2003-04 school year retroactive to the beginning of the year plus whatever she is being paid for her short-term English As A Second Language duties as well as recognize Leal as being 100% full-time for the school year for purposes of any future layoffs and or future coordinator or study hall assignments. Leal should be given a choice of the School To Work position or to a study hall assignment.

4. That the District pay Magdzas as a 97% of a full-time teacher for the 2003-04 school year retroactive to the beginning of the year and recognize her as being 97% of full-time for the 2003-04 year for the purposes of any possible future layoffs and/or future coordinator or study hall assignments. Magdzas should be given the option of the School To Work position or study hall assignment, depending on which position Leal rejects. 3/

3/ The Union asserts that assigning three study halls to one teacher is not unique in the District, as during the 2002-03 school year, Hill was assigned four study halls and Woebke was assigned three. Hill also has three study halls this school year.

District

The District first notes that due to the retirement of the then-full-time Family and Consumer Education (FACE) instructor, the District needed to hire a replacement. Due to reductions in student interest, the position was initially posted as a 60% teaching position subject to "possible expansion to 100%" depending upon the qualifications for coordinator positions or other duties. The posting was completed in early March and the deadline for application was April 25, 2003, or until filled. According to Bagley, as the scheduling process progressed, the District determined it had sufficient interest for the FACE position to be 77% classroom instruction. In addition, the District assigned the incumbent the School To Work Coordinator assignment to maintain the position as full-time. After these assignments were made, study halls were assigned to full-time employees based on teachers' availability during study hall periods. Since the study halls are assigned last in August based on conflicts and availability, the District does not know who will be assigned specific study halls until this time. According to Bagley, the District assigned study halls to full-time employees as it had in the past. On June 5, 2003, the Union filed a grievance alleging the District violated the contract by failing to offer the School To Work Coordinator position to a qualified part-time employee. Ultimately, the Board held that it did not violate the intent of the contract language for the administration to replace a 100% position with a 100% position.

The District first asserts that the language of the Agreement supports its interpretation. Article II, B, provides the District the right to create, combine, modify, eliminate, and hire for any teaching position. Article VIII, B, 6, c, permits the administration to assign study hall and coordinator positions to full-time employees in order to maintain 100% employment. In this case, the District previously had a 100% FACE position. Bagley testified that as a result of reductions, the position was potentially reduced to a 60% position in the posting. In accord with 6, c, the District assigned the School-To-Work Coordinator position to the FACE position in order to maintain "100% employment." Therefore, the coordinator position was not offered to a qualified part-time employee. 4/

4/ With respect to the Technology Coordinator position, the District asserts that the Grievants are not qualified to perform the duties of that position.

The Union's argument that 6, c, should be restricted to current employees only is not supported by the explicit language of the Agreement. Section 6, c, does not state it applies only to "current" 100% employees, and the Union's interpretation would be plausible only if the language contained that statement. As Section 6, c, contains no such phrase, the Union's interpretation would add words to the section and therefore cannot be sustained based upon the ordinary popular meaning of the provision.

The Union's interpretation is also flawed in that arbitrators do not favor interpretations which elicit nonsensical or absurd results. It would be nonsensical to give effect to an interpretation which is contrary to the explicit language of the provision. The Union's interpretation would result in the creation of more part-time employees in the District, a result directly contrary to the intent of the provision's stated purpose to "maintain" full employment. As an example, an additional study hall assignment for Magdzas would increase her full-time equivalency by 12½% to 89.5% and reduce a full-time employee to 88%. Thus, creating two part-time employees instead of maintaining one full-time employee and one part-time employee. While this case involves a dispute over a coordinator position which would increase Magdzas to 100%, the same interpretation applies to both coordinator and study hall assignments under Section 6, c. It is clearly not the intent of that provision to create two part-time employees out of a full-time employee's position; rather, Section 6, c, clearly requires the District to assign coordinator and study hall assignments to "maintain 100% employment." Another absurd result of the Union's interpretation is that the District would only be able to hire and advertise for a part-time position, even if the prior position was full-time. Again, resulting in two part-time employees rather than one. The Union's interpretation would place significant restrictions upon the District's ability to recruit and hire new full-time employees, instead mandating the District only hire part-time employees. It would also be contrary to the District's practice of replacing a full-time employee with a full-time employee.

Assuming *arguendo* Section 6, c is susceptible to both the District and the Union's interpretation, past practice must then be examined to determine the intent of the provision. As noted previously, the District's practice is to replace a full-time employee with a full-time employee. Further, the District's practice with respect to the assignment of study halls also clarifies the intent and application of Section 6, c. As a previous arbitration established, the District is not required to separately post study hall positions or vacancies under Article VIII. Rather, the District assigns study halls to full-time positions on the basis of teacher availability as the last step in the scheduling process. Consequently, such study hall positions are not filled by full-time employees until nearly the beginning of the school year. Study hall positions are assigned to full-time employees in order to maintain 100% employment of those positions, and are not assigned to part-time employees. A recent example of the practice was the District's assignment of study halls to the new employees occupying positions in English and Science for the 2003-04 year. Since the assignment of coordinator duties and study halls are both governed by Section 6, c, and the past practice is binding upon Section 6, c, it applies to coordinator assignments as well.

The District concludes that the clear language of the Agreement, as well as the practice, supports the District's interpretation that it was required to assign the School-To-Work Coordinator position to the Family and Consumer Education teacher in order to maintain 100% employment. The District requests that the grievance be denied.

DISCUSSION

With regard to the statement of the issues, the Board President's letter of July 30, 2003, makes clear that the Board agreed to incorporate the issue of assignment of study halls to new hires into the previously-filed grievance disputing the assignment of the coordinator position to a newly-hired teacher. Therefore, the Union's statement of the issues more accurately states the issues to be decided.

Turning to the merits of the grievance, it is first noted that the provision in issue, Article VIII, B, 6, c, did not exist in the parties' 1995-97 Agreement, and was not the provision considered by Arbitrator Honeyman in his award involving these parties and cited by the District in support of its position. The Honeyman award addressed the assignment of a study hall to a teacher who was less senior than the grievant who was a part-time teacher (Magdzas), and the provision in issue was Article VIII, B, 6, a. In his award, Arbitrator Honeyman concluded that a study hall was an assignment, rather than a "position" within the meaning of that term in B, 6, a. The present Article VIII, B, 6, c, refers to "study hall and coordinator positions." (Emphasis added). This would appear to be in response to Arbitrator Honeyman's conclusion that study halls were not "positions". For these reasons, the Honeyman award provides little, if any, guidance in resolving this dispute.

While the District cites its management rights under Article II, B, Article VIII, B, 6, c, specifically addresses the assignment of coordinator and study hall positions, and therefore prevails if there is a conflict between the two provisions.

Looking to the wording of Article VIII, B, 6, c, it is noted that it refers to filling the study hall and coordinator positions with "employees", i.e. "full-time employees in order to maintain 100% employment" or "qualified part-time employees." Use of these terms indicates a bias in favor of existing employees of the District, as opposed to new hires. As the Union notes, the provision refers to maintaining the employment of full-time "employees" not "positions". Thus, the District's assertion that 6, c, permits it to maintain a full-time "position" by offering the study halls and coordinator positions to new hires, is not persuasive.

Also, as the Union notes, assigning study halls to new hires does not "maintain" their 100% employment; rather, it first provides them with 100% employment. Absent evidence otherwise, it is assumed the parties intended the words they used to have their ordinary meaning. The dictionary defines the term "maintain" as:

> **1.** to keep or keep up; continue in or with; carry on. **2.** *a*) to keep in existence or continuance (food ***maintains*** life) *b*) to keep in a certain condition or position, esp. of efficiency, good repair, etc.; preserve (to ***maintain*** roads) . . .
>
> . . .
>
> *Webster's New World Dictionary, Second College Edition*, p. 854.

Employment that did not previously exist, i.e., that has not yet started, cannot be continued with or kept or continued in existence.

The District's assertion that the Union's interpretation will render an absurd result, in that it could result in creating more part-time employees instead of fewer, misses the point of the provision. The intent of the provision appears to be to give current part-time employees the opportunity to go to full-time or move towards it, without affecting the full-time employment of current full-time employees. This is to be achieved by offering the study hall and coordinator positions to current qualified 5/ part-time employees before using those

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5/ The evidence indicates both Leal and Magdzas are qualified for the positions in question, with the exception of the "MS Support Study Hall", as Bagley testified only Special Education teachers are assigned these.

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positions to create a full-time position for a new employee. Moreover, whether doing so would result in an increase of part-time positions depends on how many study hall or coordinator positions are available and how may current part-time employees there are (and who accept the offered work), as well as how many new teachers are being hired and how many classes they are scheduled to teach.

The District asserts a number of practices pertaining to assigning study halls. As to the assertion of a past practice of replacing full-time positions with full-time positions, the record is silent as to when 6, c was negotiated into the parties' Agreement. Thus, the foregoing discussion aside, the extent of that practice under this language cannot be determined. As to a practice of assigning study halls as a last step in creating the schedule and on an availability basis, the record indicates that Bagley informed Delaney at the June 18th Step 3 meeting that three of the new teachers were each being assigned 1½ study halls, well before the schedule was near being finalized. Further, the alleged practices of assigning study halls based upon availability and of not assigning study halls to part-time teachers, are contrary to the wording of 6, c, if that provision is to be given any meaning.

Finally, the assignment of an eighth hour study hall to then-part-time teacher Nielcen, without first offering the study hall to Leal or Magdzas, who are more senior, clearly violates 6, c. That provision does not include a proviso as to availability in the sense that it would permit the District to create a schedule without regard to that provision and then fill study halls based upon who is available at a particular hour. While 6, c, does contain a proviso regarding a "negative impact" on the District, it pertains to offering the positions to the second most senior part-time employee, if the most senior rejects the position. There also has been no showing of such a "negative impact", beyond the assertion that it would require the District to hire part-time employees, rather than replacing a full-time teacher with a new full-time teacher. As discussed previously, that is not necessarily the case. It is also noted that the District has been able to hire teachers on a part-time basis, as evidenced by the Grievants.

Based upon the foregoing, it is concluded that the District violated Article VIII, B, 6, c, of the parties' Agreement when it assigned the School-To-Work Coordinator position and study halls to teachers new to the District, and in assigning a study hall to the least senior part-time teacher, without first offering those positions to qualified part-time teachers based upon seniority.

Remedy

With regard to remedy, Leal is to be paid and treated under the Agreement as having been a full-time employee from the beginning of the 2003-04 school year on the basis that she should have been offered the School-To-Work Coordinator position, making her full-time for the school year. As to the impact of the assignment of the English as a Second Language class

to Leal, it is to be treated in the same manner as having been assigned to an already full-time employee, i.e., to the extent that entitles her to additional compensation beyond what she would receive as a full-time employee. Magdzas, who would have been the most senior part-time employee after Leal was made a full-time employee by accepting the School-To-Work Coordinator position, is to be paid and treated under the Agreement as though she had been offered and accepted the study hall positions assigned to new teachers Duffy and Check, and the study hall assigned to Nielcen. 6/ Given the timing of this Award, the District has the option of placing Leal and Magdzas in those assignments for the remainder of the school year, or only paying and treating them as having those assignments.

6/ While there may be a limit on how many study halls have to be offered to a part-time teacher under Article VIII, B, 6, c, as the Union notes, teachers have been assigned multiple study halls in the past.

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

AWARD

The grievance is sustained. The District is directed to compensate Rossina Leal and Laura Magdzas as to pay and benefits and rights under the Agreement, consistent with the remedy set forth above. For purposes of resolving any issues related to remedy, the Arbitrator retains jurisdiction in this matter, but will relinquish such jurisdiction if not contacted by either of the parties, in writing, within sixty (60) days of the date of this Award.

Dated at Madison, Wisconsin, this 12th day of March, 2004.

David E. Shaw /s/
David E. Shaw, Arbitrator

DES/gjc
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