BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BENTON EDUCATION ASSOCIATION

and

BENTON SCHOOL DISTRICT

Case 16
No. 62581
MA-12351

Appearances:

Joyce Bos, Executive Director, South West Education Association, 960 North Washington Street, P.O. Box 722, Platteville, Wisconsin 53818-0722, appeared on behalf of the Benton Education Association.

Eileen Brownlee, Kramer, Brownlee & Infield, LLC, Attorneys at Law, 1038 Lincoln Avenue, P.O. Box 87, Fennimore, Wisconsin 53809-0087, appeared on behalf of the Benton School District.

ARBITRATION AWARD

The Benton Education Association and the Benton School District are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Union made a request, in which the concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to layoff and recall. The Commission appointed Stuart D. Levitan to serve as the impartial arbitrator. Hearing in the matter was held in Benton, Wisconsin on September 23, 2003, with a stenographic transcript being available to the parties by October 16. The parties filed written arguments on December 2, 2003, and written replies by December 18.

ISSUE

The parties stipulated to the following statement of the issue:

"Did the District violate the layoff and recall provisions of the collective bargaining agreement with respect to Ms. Marx and Mr. Voight? If so, what is the remedy?"

RELEVANT CONTRACTUAL LANGUAGE

21. STAFF REDUCTION.

. . .

B. Layoff Notices and Effective Date of Layoffs

1. Prior to the sending of notice(s) of intent to layoff, the Board shall notify the President of the Association in writing of the position(s) which it has determined to reduce, together with its reason(s) for reduction(s).

2. The Board shall given written notice to the teacher(s) it has selected for layoff for the ensuing school year on or before March 15 of the school year during which the teacher holds a contract. The layoff of a teacher shall commence on the date that he or she completes the teaching contract for the current school year.

C. Selection for Reduction:

1. For employees hired before June 1, 1994, or hired to a full-time (100%) contract at any date, or who are offered a full-time (100%) contract regardless of date of hire, (when the Board decides to reduce the size of the teaching staff in the number of full-time positions or by reducing the hours of a full-time teacher, the Board shall layoff teachers based upon the following point system (Article 22, Sec. A.). The person having the lowest point total being laid off first "if the remaining staff are or can be licensed to teach the remaining positions".

2. For employees hired after June 1, 1994, and not hired to full time (100%) contract, and not having been offered a full-time (100%) contract, (when the Board decides to reduce the size of the teaching staff in the number of 50% or more of full-time positions or by reducing the hours of a teacher

employed at 50% or more of full-time, the Board shall layoff teachers based upon the following point system (Article 22, Sec. A). The person having the lowest point total being laid off first "if the remaining staff are or can be licensed to teach the remaining positions". The provisions of this section shall not apply to teaching staff employed at less than 50% of full-time.

3. Bumping: Any employee who is selected for reduction may elect in writing, within ten (10) days of receipt of a layoff notice, to assume any supervision assignment or a coaching assignment (in the case of full layoff) or portion of an assignment (in the case of partial layoff) of the employee with the lowest number of points who holds an assignment for which the more senior teacher is certified or able to be certified by the contract date. Any employee who is replaced in this fashion may similarly elect to replace another employee in the District as provided above.

4. Refusal of Partial Layoff: Any employee who is selected for a reduction in hours (partial layoff) and is not able to exercise bumping rights may choose to be fully laid off without loss of seniority or recall rights.

5. At no time will there be more than three employees with less than 50% of full-time contracts who do not have rights under Article 22 equal to those with 50% of full-time or more contracts.

22. LENGTH OF SERVICE.

A. For the purposes of this Article, the commencement of an employee's service in the District shall be the first day of employment under his/her initial contract.

. . .

BACKGROUND

The grievants, Suzanne Marx and Charles Voight, are both veteran teachers in the Benton School District. This grievance concerns the District's reduction of their respective teaching contracts for the 2003-2004 school year to 75%, at a time when there were lower-rated teachers working fuller schedules with assignments that the grievants were qualified to perform.

Voight has been the K-12 art teacher since 1977, making him the most senior teacher beyond elementary school. After holding a full-time appointment as K-12 art teacher in 2001-

02, he took an approved leave of absence for 2002-2003 school year. Marx has worked for the district since 1986, making her the fourth most senior teacher in the junior/senior high. In 2003-03, she held a full-time appointment teaching a variety of health, family and consumer education courses.

By letter dated February 17, 2003, District Superintendent J. Bruce Bradley informed Marx that the school board "has determined to consider your partial layoff for the 2003-04 school year. The reason for considering the possible partial layoff is that the School Board has decided to reduce the FACE and health program position from full-time to 50% of full time due to enrollment, budgetary and financial uncertainties for the 2003-04 school year." By letter of that same date, Bradley gave the same explanation as he informed Voight that the board "has decided to reduce the art program position from full-time to 75% of full time..."

On March 17, Marx and Voight both executed their respective Teacher's Intent of Employment Contract; both added an addendum stating that their acceptance of the offer did not abrogate any of their protected rights under the collective bargaining agreement. On that date, Marx and Voight also notified Bradley that they were each exercising their bumping rights under Article 21 of the collective bargaining agreement.

On or about May 30, the District completed its scheduling for the upcoming school year. Under that schedule, Marx was to work periods 1-5 (out of 8) and Voight was to work periods 2-7.

On June 11, South West Education Association executive director Joyce Bos wrote Bradley as follows:

> This morning we met to discuss the recall to 100% of two Benton Education Association members. It is the Association's position that the members in question should never have received a final lay off due to their seniority in the District. Their seniority allows them to bump a less senior employee who has a study hall or supervision position. Now that the class schedule has been distributed, I am, on behalf of Suzanne Marx and Chuck Voight, notifying the District of their specific choices for bumping. We further understand it is the District's right to assign. Therefore, the following is a listing of those employees less senior that the above-mentioned employees could bump:
>
> Suzanne Marx could bump into Hamilton's study hall for 6th hour, Droessler's Test Prep or Randall's study hall for 7th hour, and Timmerman's Yearbook for 8th hour.
>
> Chuck Voight could bump into Tiedeman's study Hall for 1st hour.

> As per our phone conversation, it was agreed my notification of the positions these members could bump into are in no way a procedural violation of the contract.
>
> Thank you for your attention to this issue.

On June 30, Bradley issued a NOTICE OF INCREASED CONTRCT TIME AS A RESULT OF ELECTIONTO BUMP to Marx, as follows:

> On March 17, 2003, you notified the District of your intent to exercise your bumping rights. Under the criteria set forth in the collective bargaining agreement, you may bump into the portion of an assignment of the employee with the lowest number of points who holds and (sic) assignment for which you are certified or able to be certified by the contract date.
>
> You are hereby notified that, under the criteria set forth in the collective bargaining agreement between the Benton Education Association and the District, the teacher with the lowest number of points who holds an assignment for which you are certified is Carolyn Timmerman. Specifically, you will be assigned to eighth hour Yearbook by virtue of your election to bump into that assignment.
>
> As a result of this exercise of bumping rights, you are notified that your full-time contract will be increased to 75% of full time for the 2003-04 school year.

Also on June 30, Bradley issued a NOTICE OF DENIAL OF REQUET TO BUMP to Voight, as follows:

> On March 17, 2003, you notified the District of your intent to exercise your bumping rights. Under the criteria set forth in the collective bargaining agreement, you may bump into the portion of an assignment of the employee with the lowest number of points who holds and (sic) assignment for which you are certified or able to be certified by the contract date.
>
> You have requested to bump into a study hall assignment. Study halls are not available with respect to the exercise of bumping rights. The collective bargaining agreement states that it is applicable to an assignment or portions of an assignment for which a teacher is certified or be able to be certified by the contract date. This language implies that bumping is allowed into teaching assignments or other academic supervision that requires certification.

Your request to bump into a study hall assignment is denied.

The Association, Voight and Marx filed a grievance on July 11, 2003, claiming of Article 21 of the collective bargaining agreement. As remedy, they requested that the District cease and desist from all individual bargaining with unit employees; that the District offer the grievants "a contract representing the equivalent in hours for the contract year 2003-2004 as they received in their previous contract with the District," and any other remedy "deemed necessary to make the grievants whole." On July 23, the school board voted unanimously to deny the grievance.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Association asserts and avers as follows:

> While the Association does not challenge the District's authority to reduce, schedule or assign employees, the contractual bumping provisions regarding staff reduction take precedence over the District's residual management rights.
>
> The District violated the collective bargaining agreement when it failed to assign grievant Voight to a study hall assignment; such an assignment would be included as a "supervision assignment" referenced in Article 21. The clear and unambiguous language mandates that more senior teachers are entitled to assume such an assignment, as the use of the disjunctive "or" indicates that the requirement of certification only applies to a "teaching assignment" not a "supervision assignment." The District's construction provides no meaning to the phrase "supervision assignment," rendering the language meaningless and leading to an absurd result. That the parties differentiated between a "supervision" assignment and a "teaching" assignment must be given meaning.
>
> Further, the collective bargaining agreement has not been changed since arbitrator McLaughlin ruled for the grievant Marx in a 1993 case which featured the exact same circumstances.
>
> The District also violated the collective bargaining agreement when it failed to assign Marx to the supervision assignments of less-senior teachers. The District's premise that senior employees are only able to bump one individual from an assignment harms the inherent premise of seniority and bumping. The collective bargaining agreement infers that more than one individual with the lowest number of points exists so that employees may be restored to a full schedule.

> Both these long-term employees should have been allowed to bump a less senior employee to maintain their full employment with the District. The grievants should be made whole for wages and benefits they would have earned in the 2003-2004 school year, and reinstated to 100% full-time employment.

In support of its position that the grievance should be denied, the District asserts and avers as follows:

> It is undisputed that Marx was allowed to bump into that portion of the position held by the least senior teacher for which Marx was certified. Not satisfied, however, the Association seeks to have Marx bump into portions of other teachers' positions as well.
>
> The language of the collective bargaining agreement is clearly and unambiguously written in the singular; it does not permit an employee to bump into assignments of any employee with a lower number of points or into assignments of multiple teachers. The agreement provides only that an employee who has been displaced through bumping has the right to utilize the same procedure.
>
> The District followed the contract to the letter, and allowed Marx to bump into a portion of the assignment of the least senior teacher holding an assignment that Marx was certified to teach. There was no contract violation.
>
> Nor did the District violate the collective bargaining agreement by denying Voight permission to bump into study hall. The clear and unambiguous language of the collective bargaining agreement requires that the more senior teacher seeking to bump be certified or able to be certified by the contract date; since study hall supervision does not require certification, and nothing in the collective bargaining agreement identifies this assignment as bargaining unit work, study hall supervision is not an assignment into which teachers may bump. Almost uniformly, arbitrators have declined to permit teachers to bump into schedules for the purpose of filling their schedules. The Association's reading of the text would render the phrase "for which the more senior teacher is certified or able to be certified" superfluous, and thus should be rejected.
>
> In response, the Association posits further that the District improperly used argument in the facts portion of its brief, that the Association provided bumping options at the request of the District, and that the District argues generalities when the parties have bargained specific language. The Association also refutes the District's claim that "yearbook" is a certified teaching position, stating there

is no evidence in the record to support that claim. The Association also contends that under the collective bargaining agreement, "the displacement of an employee through bumping creates the fact that there can be more than one teacher with the lowest number of points," and that a bumped employee may then also bump. The Association asserts "this exact same issue was ruled upon in favor of the grievant in 1994 when the same grievant as in this arbitration was reduced in time and was not allowed to exercise her bumping rights." Finally, noting that the agreement must be read as a whole, the Association asserts there was positions within the district for the grievants to bump into.

In its response, the District reasserts that the 1993 award from arbitrator McLaughlin is not relevant to this proceeding. The District also notes that the Association "does not explain why the singular 'employee' used in the agreement should be construed as plural when the singular is consistently used in the bumping provisions of the contract." Finally, the District rejects the Association's claim that the district is required to establish a schedule allowing the exercise of bumping rights, noting there is "nothing in the contract to support the assertion," and that such a matter is specifically reserved to the District as a management right.

DISCUSSION

Even though this case been filed and processed as a single grievance, it actually presents two distinct questions. The first question, applicable to both grievants, is whether a senior teacher's bumping rights extend into a study hall assignment held by a less senior teacher, or only into a teaching assignment. The second, affecting only Ms. Marx, is whether a teacher may bump more than one lower-rated teacher. 1/

1/ Throughout this discussion, any reference to ratings, ranking or seniority are as defined by Article 22, Section A.

The relevant paragraph of the collective bargaining agreement, paragraph D of Article 21, reads as follows:

3. Bumping: Any employee who is selected for reduction may elect in writing, within ten (10) days of receipt of a layoff notice, to assume any supervision assignment or a teaching assignment (in the case of full layoff) or portion of an assignment (in the case of partial layoff) of the employee with the lowest number of points who holds an assignment for which the more senior teacher is certified or able to be certified by the

> contract date. Any employee who is replaced in this fashion may similarly elect to replace another employee in the District as provided above.

This is the second time the parties have gone to arbitration over bumping. BENTON SCHOOL BOARD (McLaughlin, 2/25/94). Although the District maintains that earlier grievance is not relevant to the current dispute, that award touches on the same language as is before me; almost by definition, the McLaughlin award is thus relevant to the instant matter.

In the earlier proceeding, the grievants (ironically, including the same Ms. Marx who figures in the instant matter) filed a timely notice of intent to exercise their contractual bumping rights. The District, contending this notice lacked sufficient specificity to be valid, refused to process the grievants' bumping requests. The arbitrator found these actions constituted a wrongful denial of the grievant's bumping rights, and ordered that they be made whole for lost wages and benefits.

Because the issue was joined in a preliminary jurisdictional stage, no evidence was offered as to the merits. Nor did the parties litigate what, if any, assignments were available for the grievants to bump into. Thus, the District is largely correct that earlier case provides little legal precedent.

There are, however, two aspects deserving mention. The first is Marx's identification of two study halls supervised by lower-rated teachers as assignments she could bump into. Because the District maintained the bumping request was untimely, it never evaluated the particulars of Marx's request. However, while I understand why District declined to comment on the specifics of Marx's request, it is nonetheless true that nothing in the award indicates that either the District or the arbitrator commented adversely on Marx's notion that study hall constituted a "supervision assignment" that should could bump into as provided for in Article 21, Section D.

Moreover, the arbitrator held in the Award section that the District had violated the collective bargaining agreement by denying the grievants the opportunity to exercise their Article 21 bumping rights while assigning to less senior employees duties the grievants were "qualified to perform…." It is noteworthy that the arbitrator used the more inclusive "qualified," rather than the more specific "certified."

The District contends that the collective bargaining agreement is clear and unambiguous, and provides that teachers may only bump into assignments, both teaching and supervisory, for which they are certified or certifiable. Noting that the Association does not contend that study hall requires certification, and that there is nothing in the collective bargaining agreement which makes study hall supervision bargaining unit work, the District

concludes there is no right to bump into a study hall position. The Association counters by noting that there are no supervisory assignments *other* than study hall, so that to exclude study hall from the bumping process would be to burden the agreement with meaningless and extraneous language.

Contrary to the District's assertion, I do not find the language to be clear and unambiguous. The sentence in question is 76 words long, features several subordinate clauses, two commas and two parenthetical clarifications. The critical question is whether the phrase "an assignment for which the more senior teacher is certified or able to be certified by the contract date" modifies both "supervision assignment or a teaching assignment," or only "teaching assignment." The Association argues that using the term "or" makes the clause concerning certification disjunctive, relating only to *teaching* assignments, and not supervision assignments; the District asserts that the clause applies to both.

In its textual analysis of Article 21, Section D, the Association engages in some wishful citing. It quotes the agreement as allowing a more senior employee to assume "any supervision assignment**,** or teaching assignment" of the lowest-rated employee. (**emphasis** added). Were the sentence to be diagrammed, the inclusion of the comma would indeed buttress the Association's case, by clearly setting off the references to supervision and teaching assignments as separate clauses. Unfortunately for the Association, the collective bargaining agreement does not include the comma which it cites.

Still, the text has ambiguity not acknowledged by the District.

As the District correctly notes in its brief, arbitrators presume that all of the words in a collective bargaining agreement are there purposefully; we abhor language that is meaningless or superfluous. That being the case, the Association asks this critical question – if by "supervision assignment" the collective bargaining agreement does *not* mean study hall, what *does* it mean?

The District offers no answer. While it steadfastly maintains that a study hall is *not* a "supervision assignment" as identified in Article 21, Section D of the agreement, it offers no explanation of what other supervision assignments there are that *would* meet the contractual definition.

The collective bargaining agreement refers to both "supervision assignment" and "teaching assignment." Thus, whatever ambiguity may exist about the application of any other clause in this paragraph, there can be no question about there being two kinds of assignment into which the more senior teacher can bump.

It is clear from the master schedules (Exs.7 and 17) what a teaching assignment is – periods entitled "English 7," "Advanced Computers," "American History" and the like. Titles such as these fill the overwhelming majority of the scheduling grid. One very senior teacher adds Athletic Director, Driver's Ed, BTW to his science and math courses; otherwise, the only other listings on the complete assignment grid are prep (as explicitly provided for in Article 10, Section B), study hall and lunch. 2/

2/ The Association does not claim that either Voight or Marx had a bumping interest into any lower-rated teacher's lunch period, and so I forego any further discussion of this activity.

Thus, two of the three assignments explicitly cited in the collective bargaining agreement – teaching assignments and preparatory time – are clearly evident on the master schedule. Only supervision assignment remains unaccounted for, and only study hall remains undesignated.

The District argues that because no certification is required for study hall supervision, study hall assignments are not available for bumping. The District cites several awards in which commission arbitrators declined to allow teachers to bump into study halls in order to fill their schedules. Upon closer review of the relevant language in the respective collective bargaining agreements, however, I question whether those earlier awards have any persuasive weight.

In FLAMBEAU SCHOOL DISTRICT (Burns, 4/90), the agreement contained the following language:

> A. If the teaching staff is decreased, the School Board will lay off teachers in the inverse order of appointment of such teachers, by department or elementary grades, and subject to the qualifications needed. If vacancies occur, teachers laid off shall be reinstated in the inverse order of being laid off, if qualified to fill the vacancies and within a two (2) year period from the beginning of the school year for which they were laid off. The Board agrees that no new or substitute appointments will be made while there are laid off teachers available who are qualified to fill the vacancies. Qualifications will be based on state certification and experience in the subject or grade level.

Again, it is important to note that this language is different from that before me, in that it contains absolutely no reference to supervisory duties, while being explicit about other instruction-based elements (e.g., state certification) in the recall procedure. As the arbitrator explained:

> A review of the provision reveals that reinstatement rights are limited to "vacancies" for which the laid-off employe is qualified. The provision further states that "Qualifications will be based on State certification and experience in the subject or grade level." Given this language, it is reasonable to conclude that "vacancies" within Article XII, A, are limited to assignments for which there is a requirement of State certification. As the District argues, a study hall is not such an assignment. The undersigned is not persuaded that the language of Article XII, A, provides laid-off employes with a "reinstatement" right to study hall assignments. Nor is such a right established by the evidence of past practice. Id. At 8.

In SOUTH SHORE SCHOOL DISTRICT (Buffett, 7/95), the collective bargaining agreement contained the following language:

> 4. Lay-Off Clause
>
> a. Selection for Reduction
>
> Step 2, Seniority. If further reduction is still necessary, the Board shall select teachers, to be laid off, in the inverse order of length of service in the District(those with the shortest length of service shall be laid off first). This order of lay-off shall be used to every extent possible while filling the remaining positions with employees who are certified for those positions.
>
> b. Recall
>
> If the District has a vacant position available for which a laid off employee is certified according to the District's records, the employee shall be notified of such position and offered employment in that position, commencing as of the date specified in such notice.
>
> c. Definition of "Qualified"
>
> For the purposes of this lay-off clause, "qualified" means certified by the Wisconsin Department of Public Instruction if such certification is required by the position. If DPI certification is not required for the position, "qualified"

> shall mean prior experience that indicates that the individual can successfully perform the assignment.

The arbitrator explained why she found that study halls were not available for bumping:

> The layoff clause, cited above, does not explicitly address the question of whether supervisory assignments, such as study hall and lunchroom duty, are subject to assignment by seniority when there are layoffs and reductions in hours. A conclusion regarding the parties' intent must be reached by inference.
>
> It is understandable that the parties did not deliberately consider this question in their bargaining, for there are few study halls, approximately four among the approximately one-hundred teacher-periods during the day, and only two, half-hour lunch periods. Frequently, the handful of students scheduled for study hall are assigned to study in a room where a class is being taught. On the record in this dispute, supervisory duties of lunch and study halls are not ordinarily a major concern.
>
> As a point of departure, the undersigned declines to assume that supervisory assignments and teaching assignments should necessarily be treated as if they are identical kinds of assignments. In other words, the seniority rights in the event of a layoff does not automatically cover supervisory assignments. Aside from the obvious, common sense differences between these two kinds of work, there is the fact the State Department of Public Instruction (DPI) does not require that supervision be conducted by a certificated teacher, as indicated by the fact that in the elementary schools, lunch supervision is performed by support staff, and the fact that in the high school, supervision is sometimes performed by an administrator, an employe outside the bargaining unit, as when former Principal Paul McGillivray supervised the lunchroom.

There are several reasons why the arbitrator's conclusion that a teacher cannot bump into a study hall assignment is of only minimal consideration in the matter before me. The primary difference, of course, is in the relevant language.

The text before me specifically refers to "supervision assignment or teaching assignment." There is nothing of the sort in the *South Shore* agreement, as the arbitrator notes: "The layoff clause ... does not **explicitly** address the question of whether supervisory assignments" are included in the bumping process. Indeed, that was a primary basis for the award in favor of the employer: "Finding no **explicit** references in the layoff provision to supervisory duties and finding several references to certification and qualification, I conclude that the layoff provision does not cover supervisory assignments." Id at 7. (**emphases** added).

Of course, that holding is *entirely* contrary to the text of the agreement before me, which *does* have an explicit reference to supervisory duties.

In its brief, at page 9, the District asserts that Arbitrator Buffett "expressly noted that there are supervision assignments that require some certification but that study halls do not." I do not believe that assertion is correct. In fact, she says the opposite: "Those references to certification strongly suggest that the layoff provision covers only those assignments which require certification, that is class assignments, and not supervisory assignments." That is, she clearly distinguishes between those assignments which require certification (class) and those which do not (supervisory). Contrary to the district's assertion in its brief, at no time does Arbitrator Buffett state that there are *any* supervisory assignments that require certification. That conclusion is consistent with the record before me, which has no evidence of any supervision assignments *other* than study hall.

The District also cites HORICON SCHOOL DISTRICT (Shaw, 3/10/00) as supporting its position. Again, however, the relevant language betrays the District's cause, as the collective bargaining agreement provides that "(e)ligible bump areas shall be based on 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," with no separate reference to supervision assignments (as there are in the text before me). Further, the factual predicate was distinct; reviewing the specific facts before him, the arbitrator found that there was "not sufficient basis for concluding that the parties intended to confer unique seniority rights upon the Grievant with regard to the high school study halls." For these two reasons, I find this award offers little analysis that bears on the question before me.

We know that the collective bargaining agreement explicitly refers to "supervision assignment." We know that the master schedule includes a Study Hall assignment for each teacher. We know that there is no evidence or argument in the record that there is any supervision assignment *other* than study hall. Knowing all that, it is hard not to conclude that a study hall assignment is a "supervision assignment" as used in Article 21, Section D.

Moreover, I do not believe that including study hall in the group of assignments into which a more senior teacher can bump is contrary to public policy. The class schedule shows that the district has already regarded study hall as an appropriate assignment for teachers; nothing in this award makes bargaining unit work out of something which previously was not. What this award does determine is that a study hall supervised by a certified teacher is a supervision assignment as used in Article 21, Section D.

It is stating the obvious to observe that the purpose of Article 21 is to provide a procedure under which the District's interest in the efficient and effective administration of the educational mission is balanced with the Association's interest in job security. Specifically,

Article 21, Section D provides greater job security for more senior teachers, provided they are able to perform the required duties. Once the District has determined that it is teachers, rather than support staff, who are to oversee study halls, it makes no sense to say that the lowest-rated teacher has a higher claim on such an assignment than does a more senior colleague. Assigning more senior teachers to supervise study halls, rather than lower-rated teachers, is consistent with the purpose and terms of the collective bargaining agreement and implicates no questions about educational policy.

Voight, hired in 1976, and holding a master's degree plus 24 credits, has a total of 40 points, tied for the second-highest score in the entire district, and the highest in the junior/senior high school. Tiedeman, hired in 1990, has a baccalaureate and 24 credits; his 24 total points places him at 15 on the district-wide seniority list. Voight had a contractual right to bump into Tiedeman's first-period study hall; when the District denied Voight's request, it violated his rights under Article 21, Section D.

Marx, hired in 1986, and with a master's degree plus 36 credits, has 29 total points, placing her eighth on the district-wide seniority list and fourth on the junior/senior high roster. There are several lower-rated teachers with study halls, including Timmerman (the lowest-rated), Hamilton, Randall and Droessler. By denying Marx the opportunity to bump into a study hall assignment, the District violated her rights under Article 21, Section D.

In this proceeding, the District has maintained that only the single *lowest*-rated teacher is subject to being bumped, and that assignments cannot be cobbled together simply to maintain a senior teacher at full employment; the association insists that more than one *lower*-rated teacher may be affected, to protect the senior teacher's bumping rights, and has suggested that Marx be able to bump into a study hall held by Hamilton, Droessler (test prep) or Randall.

The District contends the language of Article 21, Section D is clearly and unambiguously written in the singular, and allows only for the bumping of *the* employee with the *lowest* number of points; the language does not, the District contends, provide for the bumping of *an* employee with a *lower* number of points, or into the assignments of more than one teacher. The Association counters that the language doesn't mean that only one employee with the lowest number of points can exist, but rather that more than one employee with the lowest number of points exists so that a more senior teacher may be restored to a full schedule.

Nothing in this award answers the questions of "lower-rated" versus "lowest-rated," or "single bumpee" versus "multiple bumpees." I am, however, prepared to rule on these questions, if necessary.

But before I do so, I believe I should allow the parties the opportunity to fashion a remedy which makes the most operational sense, given the advanced stage of the school year.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

1. That the grievances are sustained. The District will make the grievants whole for wages and benefits lost when the District improperly reduced their 2003-2004 teaching contracts to 75% of full-time equivalency by denying them their rights under Article 21, Section D to bump into available supervision assignments.

2. The District shall honor the grievants' Article 21, Section D bumping rights in a manner consistent with this Award.

3. I shall retain jurisdiction until May 1, 2004, unless relieved of that jurisdiction prior to that time by mutual agreement of the parties.

Dated at Madison, Wisconsin, this 22nd day of March, 2004.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

SDL/gjc
6659