

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ALMOND-BANCROFT SCHOOL DISTRICT

and

ALMOND-BANCROFT EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

Case 14
No. 61570
MA-11987

(Patterson Grievance)

Appearances:

Mr. Thomas S. Ivey, Jr., Executive Director, Central Wisconsin UniServ Council, 625 Orbiting Drive, P.O. Box 158, Mosinee, WI 54455-0158, on behalf of the Association.

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

SUPPLEMENTAL AWARD

The original Award in this case, issued on May 30, 2003, read as follows:

. . .

AWARD

The District violated the terms of the collective bargaining agreement when it laid off Linda Patterson, the second most senior Food Service classification employee. However, the District has the right to eliminate positions under Article 3. The District is ordered to eliminate necessary work hours by laying off employees or reducing their hours in inverse order of their assignment to Food Service pursuant to Article 25, Section B. Given the District's decision to eliminate the Lead Cook position, Patterson should be allowed to bump any less senior Food Service employee (after the District has

laid off/reduced less senior employees) who has the same or less hours than she did in her Lead Cook position pursuant to Article 25, Section D. Depending upon what position Patterson decides to bump into, she may be due backpay and benefits for the period covering the 2002-2003 school year. I will retain jurisdiction of this case over the remedy only should the parties have difficulty in that area.

...

The District wrote the Arbitrator, dated June 11, 2003, which read as follows:

...

We have received and reviewed your Arbitration Award in the above-matter. We are respectfully requesting clarification of the remedy which you directed.

You directed the School District to eliminate the necessary work hours by laying off employees or reducing their hours in inverse order of their assignment to the Food Service Department pursuant to Article 25, Section B. You noted that the School District has the right to eliminate the Lead Cook position previously held by Ms. Linda Patterson (5.5 hours per day). However, after the layoff/reduction in work hours of less senior employees, the Lead Cook, Ms. Patterson, is to be allowed to bump a less senior Food Service employee who has the same or less work hours per day than Ms. Patterson possessed.

We believe that the School District has already taken the action that you are directing. As shown by the evidence, the School District provided notification in July of 2002 to the two least senior (by job classification) employees in the Food Service Department. Ms. Pat Leary, the Bookkeeper (5.2 hours per day), and Teresa Gutke, the Assistant Cook (4.0 hours per day), that they would be laid off for the 2002-03 school year. Ms. Gutke, the least senior employee was laid off because her position was eliminated. Ms. Leary was advised that she would be laid off because she was the least senior retained employee and it was expected that, once Ms. Patterson's position was eliminated, Ms. Patterson would bump into her position because the work hours of the position (5.2) were close to Ms. Patterson's work hours as the Lead Cook (5.5).

By letter dated July 31, 2002, Ms. Patterson was notified that her position was being eliminated and that she had the right to bump into another position, as noted in your decision. In accord with the contract language of

Article 25, Section D, Ms. Patterson could bump into a position held by a less senior employee with the same or lesser hours of work, provided that she had the qualifications to perform the duties of the position. In the letter to Ms. Patterson, the District Administrator suggested that she may wish to bump into Ms. Leary's Bookkeeper position since the number of hours to be worked per day in that position (5.2 hours per day) were only slightly less than that of Ms. Patterson's Lead Cook position (5.5 hours per day). However, Ms. Patterson chose to bump into the Cook Server position held by Ms. Linda Wierzba (2.25 hours per day). The Association's basic argument was that the School District had to create a position for Ms. Patterson at her 5.5 hours per day.

Please note that Ms. Patterson could not bump into the Dishwasher position held by Julia Swan because Ms. Swan had more seniority. Ms. Patterson could not bump into the Assistant Cook position held by Ms. Lowell Stucker because Ms. Stucker's position involved more work hour per day (6.25 hours) than Ms. Patterson's Lead Cook position (5.5 hours per day). Thus, in practicality, the two positions available to Ms. Patterson were that of the Bookkeeper position of Ms. Leary, with 5.2 hours per day, and the Cook Server position of Ms. Wierzba, 2.25 hours per day. Ms. Patterson chose to bump into Ms. Wierzba's Cook Server position. Ms. Patterson declined the Bookkeeper position because she felt she was not qualified for the position. Ms. Leary was then reassigned to her Bookkeeper Position for the next year.

Please note that we are not questioning the rationale of your award. However, we do not know what other actions the School District is to take to comply with the remedy directed in your award. Please kindly advise as to the other actions you believe that the School District is to implement in accord with your award. Thank you.

...

The Arbitrator invited the Association to reply to the District's June 11th letter. The Association's response, dated August 7, 2003, read as follows:

...

In a letter, dated June 11, 2003, the District indicated that it believes the actions it took in laying off food service employees meets the standards of your award. The Association disagrees.

The Association concurs that the reduction in Patterson's hours constituted a layoff. The District's notice of layoff/reduction in hours to Ms. Patterson

violated the Contract because contract language requires the District to layoff employees in inverse order of assignment to the classification. It is clear that there were less senior Food Service employees who should have received layoff/reduction notices before Ms. Patterson.

The Association interprets the Arbitrator's award to require the District, in its effort to reduce the Food Service program by a total of 9.5 hours per day, to have first determined the positions, and hours of each, that it needed to retain in order to run the District' Food Service program, including related Food Service responsibilities at Bancroft Elementary. Once this determination was made, the district should have sought volunteers for layoff/reduction in hours from among the bargaining unit employees as a whole [Note: Art. 25, Section B states: When there is a reduction in the number of employees in a job classification, volunteers shall be considered first, then employees in the affected job classification (Emphasis added)."]. If no volunteers were forthcoming, or the employees that chose to volunteer were insufficient in numbers/employment to achieve the district's desired reduction, the district should have:

1. Given [sic] layoff notice to the least senior Food Service employee, Teresa Gutke [(Date Of Hire: 10/25/01) – Assistant Cook – 4 hrs/day]. This would account for 4 of the desired 9.5 hrs/day reduction.
2. Considered the next least senior Food Service employee, Pat Leary [(DOH: 9/19/87) – Book Keeper – 5.2 hrs/day]. There are two options regarding the bookkeeping responsibilities related to the District' Food Service program:
 - a. If the District determined a more senior Food Service employee, or another more senior bargaining unit employee, could have met the Food Service Bookkeeping responsibilities, then Ms. Leary should have been issued a notice of layoff/reduction. Layoff/reduction of Ms. Gutke and Ms. Leary would generate 9.2 of the desired 9.5 hours per day reduction. To achieve additional .3 hours per day, the district would have reduced the next least senior employee, Linda Wierzba [(DOH: 2/1/86) – Cook Server – 2.25 hrs/day], by .3 hours per day, thus achieving the entire 9.5 hrs/day reduction desired by the District.
 - b. If the district determined there was not a more senior Food Service employee, or more senior bargaining unit employee who could be transferred to the bookkeeping

duties, then the District would have the right, under Article 25, Section B, to protect Ms. Leary from layoff based upon the qualifications necessary to perform the bookkeeping work. (However, there is no indication that the District made any determination as to whether or not a more senior Food Service Employee, or more senior bargaining unit employee could assume Ms. Leary's bookkeeping duties. Without such determination, there could be no protection of Ms. Leary's hours.)

If the district decided that they had to retain Ms. Leary as Bookkeeper, then they should have given a layoff notice to the next least senior employee – Linda Wierzba [(DOH: 2/1/86) – Cook Server – 2.25 hrs/day]. Protecting Ms. Leary's position and giving layoff notice to Ms. Gutke and Ms. Wierzba would account for 6.25 of the 9.5 hrs/day that the District declared necessary to reduce from the bargaining unit.

To achieve the additional 3.25 hrs/day required by the District's decision, the district should have given a reduction in hours notice to the next least senior employee, Lowella Stucker [(DOH: 9/23/85) – Asst. Cook – 6.25 hrs/day]; reducing her to 3 hrs/day and achieving the desired 9.5 hrs/day reduction in bargaining unit work.

3. After achieving the desired 9.5 hours per day reduction in Food Service, the task remains to fill the positions, and hours of each, that the District needs to operate its Food Service Program. At this point, according to the Arbitrator, Ms. Patterson, whose Lead Cook position had been eliminated, could exercise bumping rights under Article 25, Section D. Ms. Paterson has indicated that she desired to bump into a position that would retain as many of her 5.5 hours per day as possible.

While the Association agrees that Ms. Patterson's layoff violated the terms of the Contract, we do not believe the actions taken by the District in the summer of 2002 conform to the requirements of the Arbitrator's award. In addition to its failure to layoff/reduce Food Service employees by inverse order of seniority, the District did not give due consideration to all the positions and related hours necessary to the Food Service program before issuing layoff/reduction notices and realigning staff.

In order to achieve a rational, workable conclusion to the appropriate staffing of Food Service in the District, all the Food Service work must be considered. It makes no sense to attempt to implement a scenario that does not consider all the necessary work to be done and the seniority of all the employees involved. To that end, the Association proposes that the parties sit down and consider a resolution to this matter which provides layoff/reduction in hours based upon seniority and which takes into consideration all the work requirements of the District's Food Service program. If we are unable to arrive at a solution to which both parties agree reflects the Arbitrator's award, then the Arbitrator can exercise jurisdiction as retained in the award.

. . .

On August 12, 2003, the District requested a conference call be held by the Arbitrator with District and Association representatives to review the case. The conference call was held on or about August 27, 2003, at which time the parties agreed to attempt to settle the remedy in this case through negotiations.

On November 4, 2003, and March 8, 2004, the District advised that the parties had been unable to settle the remedy and requested that the Arbitrator issue a ruling regarding the remedy herein. The Association did not make any response to the District's requests. On March 15, 2004, the Arbitrator advised the parties she would issue a Supplemental Award regarding the remedy within ninety days of the date of her March 15, 2004 letter.

DISCUSSION

In the original case this Arbitrator held:

. . .

Here, Patterson was the second most senior employee in the Food Service classification. If the District had not decided to eliminate Patterson's position, Patterson would not have been laid off due to her job classification seniority. Thus, the District violated the contract when it laid off Patterson. However, the District specifically retained the right under Article 3 to eliminate positions. The retention of this contractual right must mean that the District had the right to eliminate Patterson's Lead Cook position for financial reasons. 5/ The problem in this case is that the parties did not indicate in the contract how they should deal with senior employees whose jobs have been eliminated.

5/ The Association did not contest the District's assertion herein that it had to eliminate Patterson's position because of financial problems.

What the District should have done here is notify Patterson of the elimination of the Lead Cook position. Then the District should have laid off the least senior Food Service employees by inverse order of their assignment to the classification to equal the number of hours the District needed to save/eliminate (according to Article 25, Section B). In taking these actions, the District would likely have had to decide what positions would be needed at the Almond School and how many hours each position should be assigned in order to perform the remaining work. These kinds of decisions were for the District to make pursuant to Article 3. After reassessing the situation and laying off/reducing the hours of the necessary people, the District should then have invited Patterson to select a bump.

The Association argued that Article 25 Section D only applies to employees who have been laid off or reduced in hours who also possess seniority in two separate job classifications. I disagree. The language of Article 25 Section D clearly shows that all unit employees who are laid off or reduced in hours have bumping rights vis-à-vis less senior employees in the same or a different job classification. In addition, the specific language of Article 25, Section D states that a bump by an employee who has been laid off or whose hours have been permanently reduced can only be made into a position with the same or fewer hours of work. The Association has argued herein that this language would essentially allow the District to get rid of a more expensive/long-term employee. On this point, I note that there is no evidence regarding the parties' intention in including this limitation on bumping rights. As I find the bumping limitation to be clear and unambiguous, and as Article 25 Section D refers to layoffs, I see no rational reason for refusing to apply the clear language of Article 25 Section D and the clear language of Article 25 Section B to this case.

The Association's arguments in its August 7th letter appear to be based on the assumption that the District had to save 9.5 Food Service hours per day by layoffs, without considering the 5.5 hours per day already saved by the District's elimination of Patterson's position. There is no language in the contract which requires such a strict approach. At the end of July, 2002, the District eliminated the half-time Assistant Cook Gutke's position and at the same time it also decided to eliminate Patterson's Lead Cook position at Bancroft. The District anticipated (in error) that Patterson would want to bump into Bookkeeper Leary's 5.2 hour per day position so it laid-off the two least senior Foods Service employees (Gutke and Leary) and it notified Patterson she could bump Leary. At this point, the District had reduced the Food Service classification by a total of 14.7 hours. It is significant that Patterson turned down the 5.2 hour per day Bookkeeper position because she felt that she was not qualified for that position, and she therefore chose Wierzba's Cook/Server job instead. 1/

1/ When Patterson bumped Wierzba, the District was then free to recall Leary or otherwise fill the Bookkeeper position if Leary refused recall.

Article 25, Section D, makes clear that employees entitled to bump can only bump employees less senior than they are and whose jobs have the same or fewer hours than the bumping employee's former position. Thus, when Patterson declined Leary's position, she was left with the only bump remaining allowed by Article 25, Section D, of the contract: to bump into Wierzba's 2.25 hour per day Cook/Server position as Wierzba had less seniority and her Cook/Server position had fewer hours than Patterson's former Lead Cook position. The only other employee with less seniority than Patterson was Stucker, but as her position was 6.25 hours per day, .75 hours more than Patterson's Lead Cook position, Patterson was not entitled to bump Stucker under the clear language of the contract. The District chose not to change the configuration of Food Service hours/positions either before or after Patterson selected her bump and it accepted the savings of 9.5 Food Service hours.

In this Arbitrator's view, the Association's arguments regarding whether and how the District might decide to reorganize or reconfigure positions and what if anything the District might do regarding overall Food Service hours at the District are not issues within this Arbitrator's authority to affect. As stated in the original Award herein, it is up to the District to

. . . decide what positions would be needed to the Almond School and how many hours each position should be assigned in order to perform the remaining work. These kinds of decisions were for the District to make pursuant to Article 3. (5/30/03 Award pp. 17-18).

The District has advised that it has already made these decisions, saving a total of 9.5 Food Service hours per day as the Board had originally directed.

In all of the circumstances of this case and given Patterson's voluntary rejection of the Bookkeeper position and selection of Wierzba's Cook/Server position, there is nothing more the District needs to do. This Arbitrator, therefore, declines to order the District to reorganize or reconfigure its Food Service jobs/hours as requested by the Association herein and issues the following

SUPPLEMENTAL AWARD

As the District has declined to reconfigure and reorganize its Food Service positions and/or hours and as Patterson has rejected the Bookkeeper position and selected the 2.25 hour per day Cook/Server position formerly held by Linda Wierzba, Patterson's decision shall not be disturbed. This Arbitrator now relinquishes jurisdiction of this case.

Dated at Oshkosh, Wisconsin, this 1st day of April, 2004.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator