

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.

SUPPLEMENTAL ARBITRATION AWARD

On March 22, 2004, I issued the following 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.

Subsequent to that award, the parties notified me that a dispute remained over the application of the award, which they requested I resolve through the reassertion of my jurisdiction. Following that notification, the parties and I engaged in correspondence regarding the factual basis and legal theories involved in this dispute.

In the initial award, I determined that teachers were able to bump into supervision assignments (i.e., study hall) pursuant to the language of Article 21, Section D of the collective bargaining agreement, and left unanswered the question of whether a teacher would be able to bump more than one lower-rated colleague. It is that question to which I now turn.

Before I analyze 21D however, I must state what is *not* at issue, which is the interpretation and application of Article 21, Section C. Whereas 21D defines the bumping process for an employee who is “selected for reduction,” it is 21C that defines the “selection for reduction” process itself. As I review the collective bargaining agreement, it appears that disputes could arise both as to the *identity* of the employee selected for reduction, and also *process* by which the selected employee was allowed to bump. In the grievances before me, the record does not indicate any 21C dispute over the selection of Voight and Marx as the employees selected for reduction, only a 21D dispute over their bumping rights; accordingly, I understand there to be no dispute over their selection, only over their bumping rights. To be explicit – nothing in this award seeks to interpret or apply the provisions of Section 21C pertaining to the *selection* of employees for reduction; I only address the bumping rights of those employees who have been so selected, following their selection.

Turning now to the language at hand, the parties’ positions are clear. 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 *any* 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.

The problem with the Association’s analysis, of course, is that the District is correct – the contractual reference to “the employee with the lowest number of points” is clearly singular, not multiple. The parties put a great deal of work into their point system, and knowingly described the bumping process as affecting “*the* employee with the *lowest* number of points.” The word “lowest” reflects an absolute, not a comparative relationship. I reject the Association’s assertion that more than one employee can be “the lowest” rated as a logical, linguistic and metaphysical impossibility.

Had the parties wished to allow for bumping into assignments held by more than one teacher, they could have easily written language to accommodate that policy (e.g., “of any employee with a lower number of points”) Instead, they placed the entire burden of being bumped on the single employee with the lowest number of points holding an assignment the more senior teacher may assume. That lowest-rated teacher may also then exercise bumping rights, although as a practical matter such an opportunity may be more theoretical than actual.

The Association also asserts that Article 21, Section D includes an implicit “s,” so that the text should be understood to allow the more senior employee to “assume any supervision assignment or a teaching assignment ... or portion of an assignment of the *employees* with the lowest number of points who hold an assignment” for which the more senior-rated employee is certified/certifiable. The problem with such an assertion, of course, is that there is nothing to support the notion that the agreement contains implicit terms. The Association thus asks me to engage in textual deviancy. This I decline to do.

The agreement can be read, understood and applied perfectly well with the reference to employee in the singular, as it is written. It may indeed be *better* to allow for the senior teacher to bump more than one lower-rated colleagues, as the Association argues, but that is not the language the parties have crafted.

Accordingly, I find the collective bargaining agreement provides for only the one employee with the lowest number of points to be a bumping target, and that no further relief or remedy is due the grievants.

Dated at Madison, Wisconsin, this 13th day of August, 2004.

Stuart D. Levitan /s/

Stuart D. Levitan, Arbitrator

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