

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between  
**ASHWAUBENON EDUCATIONAL SUPPORT PERSONNEL**  
and  
**ASHWAUBENON SCHOOL DISTRICT**

Case 33  
No. 63282  
MA-12537

(Reduction in Hours Grievance)

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**Appearances:**

**Mr. David B. Kundin**, Executive Director, Bayland UniServ, 1136 North Military Avenue, Green Bay, Wisconsin, appearing on behalf of the Ashwaubenon Educational Support Personnel.

**Mr. Dennis W. Rader**, Attorney, Davis & Kuelthau, S.C., 200 South Washington Street, Green Bay, Wisconsin, appearing on behalf of the Ashwaubenon School District.

**ARBITRATION AWARD**

Ashwaubenon Educational Support Personnel, hereinafter "Association" requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Ashwaubenon School District, hereinafter "District" in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was designated to arbitrate the dispute. The hearing was held before the undersigned on March 11, 2004, in Ashwaubenon, Wisconsin. The hearing was not transcribed. The parties submitted post-hearing briefs and reply briefs, the last of which was received on May 25, 2004, at which time the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

### ISSUES

The parties stipulated that there were no procedural issues in dispute, but were unable to agree to the substantive issue.

The Association proposes the issue as:

Whether the District violated the master agreement when they cut benefits of those 10- and 11-month Educational Associates who had their hours cut last spring? If so, what is the appropriate remedy?

The District proposes the issue as:

Did the District violate the contract when it reduced the hours and certain benefits associated with the reduction of hours of 10- and 11-month positions to 9-month positions? If so, what is the appropriate remedy?

Having considered the facts and arguments of the parties, I frame the issue:

Did the District violate Articles XVIII, XIX and XXI of the labor agreement when it denied certain benefits to the 11- and 10-month Educational Associates whose scheduled hours were reduced to school-year, 9-months, effective June, 2003? If so, what is the appropriate remedy?

### RELEVANT CONTRACT LANGUAGE

#### **ARTICLE II – DEFINITIONS**

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“Regular full-time employees” in each AESP employee job classification are those employees hired to work at least the following hours per week:

- Educational Associates I (9 Month) – 35 hours
- Educational Associate II (9 Month) – 35 hours
- Food Service (9 Month) – 35 hours
- Educational Associates I (10 & 11 Month) & Educational Associate III/Technology (10 Month) – 37 hours; except 35 hours from the first full week after school is dismissed through the last Friday before school resumes

- Administrative Associates – 37.50 hours for 10, 11, and 12 months except 35 hours from the first full week after school is dismissed through the last Friday before school resumes.
- Custodians – (12 Month) – 40 hours

“Regular part-time employees” are employees who regularly work less than a full workday or workweek in each of the above job classifications. Vacation, sick leave and other applicable leaves shall be pro-rated for such employees on the basis of the hours regularly worked per week.

The term “job classification” shall be defined as:

- Educational Associates
- Custodians
- Food Service
- Administrative Associates

The term “job classification pay level” as used herein shall be defined as including the categories of employment so designated on the salary schedule (Appendix A & Appendix B).

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#### **ARTICLE IV – MANAGEMENT RIGHTS RESERVED**

The school board retains and reserves unto itself, without limitation, all powers, rights, authorities, duties, and responsibilities conferred upon and vested in it by the laws and the constitution of the State of Wisconsin and of the United States.

These rights include, but are not limited by enumeration to the right to direct all operations of the school system, its properties and facilities; to establish work rules; schedules of work; hire, promote, transfer, schedule and assign employees in positions within the system; suspend, demote, discharge or take other disciplinary action against employee; to relieve employees from their duties because of lack of work or any other reason not prohibited by law; lay off, including the decision as to the numbers and types of employees to be laid off, reduce in hours; maintain the efficiency of school system operations take whatever action is necessary to comply with state and federal law; to introduce new or improved methods or facilities; to contract out for goods or services; to determine the methods, means and personnel by which the school system operations are to be conducted; to take whatever action is necessary to carry out

the functions of the school system in situations of an emergency, to utilize temporary employees or volunteers, providing employees on layoff or on reduced hours are given first opportunity if qualified.

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### **ARTICLE IX – LAYOFF/REASSIGNMENT**

In the event that the district determines to lay off employees within a job classification pay level, the following procedures shall be used:

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6. Full-time employees shall only be reassigned to another full-time position and part-time employees shall only be reassigned to another part-time position except where paragraph nine (9) applies.
7. Employees unable to exercise reassignment within their current job classification pay level shall be assigned to replace the most junior employee in the next lower pay level within their job classification for which they are qualified.
8. Employees unable to be reassigned within their current job classification as defined in paragraph seven (7) shall be assigned to replace the most junior employee in a previously held job classification pay level for which they have established qualifications.
9. Full-time employees unable to exercise seniority within their current job classification as defined in paragraph seven (7), or previously held job classification as defined in paragraph eight (8), shall be assigned to replace the most junior part-time employee in the same or next lower job classification pay level for which they have established qualifications.

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12. Laid off employees may request payment for unused vacation days earned prior to the layoff at the last rate of pay prior to the layoff.

### **ARTICLE XVIII – VACATION DAYS**

<u>Length of Service</u>	<u>Year of Service</u>	<u>Vacation Earned</u>
12 month personnel	1 <sup>st</sup> year	5.0 days

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11 month personnel	1 <sup>st</sup> year	5.0 days
. . .		
10 month personnel	1 <sup>st</sup> year	5.0 days
. . .		

New employees hired on or after October 1<sup>st</sup> will assume the prorated vacation schedule below, and effective July 1 of the next fiscal year they will assume the first year vacation schedule. All others will begin on the first year of the schedule above.

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All vacations must be approved by the immediate supervisor or designee. Vacation days may be taken at any time when students are not in attendance. An employee eligible for ten (10) or more days of vacation may take up to five (5) days when students are in attendance at the sole discretion of the employee. Additional days may be taken when student are in attendance if they are approved by the immediate supervisor.

Upon written notice to the Human Resources Office by June 1, no more than five (5) of the vacations days (non-accumulative) may be carried over to the next fiscal year if the employee so desires. The immediate supervisor or designee may limit the use of vacation leave to no more than one (1) employee at any one time when school is in session. At least one (1) custodian at the high school must be on duty from 8:00 a.m. – 4:00 p.m. during the winter and Spring Break on weekdays not defined as holidays.

Seniority will prevail in vacation assignments. In cases of equal seniority, assignments will be made in order of written requests. Probationary employees are not eligible for vacation during the probationary period. However, such service shall be reorganized for vacation determination. Vacation days must be taken in minimum units of one-half (1/2) day and should be requested in writing at least five (5) days in advance.

**ARTICLE XIX – PAID HOLIDAYS AND SERVICE DAYS**

**PAID HOLIDAYS:**

11 and 12 Month Personnel

July 4<sup>th</sup>  
Labor Day  
Thanksgiving  
Christmas  
New Year's Day  
Good Friday  
Memorial Day

9 and 10 Month Personnel

Labor Day  
Thanksgiving  
Christmas  
New Year's Day  
Good Friday  
Memorial Day

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**ARTICLE XXI – LEAVES OF ABSENCE**

A. Sick leave:

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1. Sick leave accumulative for regular full-time and regular part-time employees shall be as follows (Pro-rated per Article II):
  - a. 12 month personnel – twelve (12) days per year – cumulative to a total of 90 days.
  - b. 11 month personnel – eleven (11) days per year – cumulative to a total of 90 days.
  - c. 10 month personnel – ten (10) days per year – cumulative to a total of 90 days.
  - d. 9 month personnel – ten (10) days per year – cumulative to a total of 90 days.

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**ARTICLE XXVI – LONGEVITY PAY**

Employees who have completed the years of consecutive service, as indicated below, with the Ashwaubenon School District shall receive an annual longevity

pay in addition to their scheduled salary. Longevity payments shall be incorporated into calculations and paid at the same time as the regular payroll. The annual longevity amount shall be as follows:

2001-2002 & 2002-2003

	<u>12th year</u>	<u>18th year</u>	<u>24th year</u>
9 month employees	\$370	\$405	\$445
10 month employees	380	415	455
11 month employees	390	425	465
12 month employees	400	435	475

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**APPENDIX B**  
**2002-2003 SALARY SCHEDULE/JOB CLASSIFICATION**  
**2.75% INCREASE**

<u>Job Classification Pay Levels</u>	<u>Entry Level</u>	<u>2<sup>nd</sup> Year</u>	<u>3<sup>rd</sup> Year</u>
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ADMINISTRATIVE ASSOCIATES

Class I - 12 Month:

Bookkeeper	\$15.46	\$15.97	\$16.61
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Class II - 12 Month:

Secretary to Director of Business Services	\$13.13	\$13.63	\$14.25
Secretary to Director of Pupil Services			
Secretary to High School Principal/Bookkeeper			
High School Registrar/Secretary			

Class III - 12, 11 and 10 Month:

(12 Month)	\$12.76	\$13.25	\$13.90
(11 Month)	12.70	13.19	13.83
10 Month)	12.63	13.13	13.76

District Receptionist Secretary/Sub Caller  
High School Secretaries  
Pupil Service Secretary  
Secretary to the Athletic Director  
Secretary to the Elementary Principal  
Secretary to High School Guidance Director  
Secretary to Parkview Principal

EDUCATIONAL ASSOCIATES

Educational Associate I – 11 Month	\$11.57	\$12.05	\$12.66
Educational Associate I – 10 Month	11.30	11.79	12.40
Educational Associate I – 9 Month	10.78	11.25	11.86
Educational Associate II	9.29	9.78	10.37
Educational Associate III/Technology	11.97	12.46	13.08

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BACKGROUND AND FACTS

During the 2002-2003 school year, the District employed three (3) Education Associates (11 month) and 12 Education Associates (10 month) and 25 Education Associates (9 month). Regular full-time 9- and 10-month Education Associates worked a Monday through Friday 35 hour workweek and 11-month Education Associates worked a Monday through Friday 37 hour workweek. Educational Associate daily work hours varied by location and employee.

In March of 2003, the District identified a need to begin to reduce its operating costs as a result of declining enrollment and changes to the state aid program. The District administration initiated communication with the Association to solicit ideas as to how to reduce costs. District Administrator, Susan Alberti, met on multiple occasions with Association President, Barb Steckart and Association Negotiations Committee chair, Deb Friedl. Steckart and Friedl did not offer Alberti any ideas on how costs could be reduced, but informed Alberti that they believed laying off support staff personnel was not an acceptable method of cost reduction.

At some time prior to June 16, 2003, the Administration informed the Association of the possibility of Educational Associate's hours being reduced. The District presented a reduction-in-hours plan to Steckart and Friedl and sought their approval in exchange for maintaining the hourly rate and longevity pay for the 11-month and 10-month Educational Associates whose hours would be reduced. The Administration believed it was negotiating with Steckart and Friedl. Steckart and Friedl communicated the District's intent to reduce hours to Bayland UniServ Director David Kundin and inquired as to the District's right to reduce employee hours. Kundin acknowledged to Steckart that the District had the right to reduce employee hours. At no time did the District and Association discuss the impact of the reduced hours on employee vacation or sick leave benefits.

On June 16, 2003, Alberti, Steckart, Friedl and Keith Lucius, Director of Business Services, met and the Administration informed the Association of its intent to reduce the 11-month and 10-month Education Associate positions to 9-month positions and to increase all Administrative Associate positions to 12-month positions. The District's Board of Education,



at its June 23, 2003 meeting, approved the elimination of two high school support staff positions and the support staff re-structuring plan estimated by the District to save \$33,190.

On June 24, 2004, the District sent the following letter to the employees affected by the support staff restructuring:

As you know, our school district is facing severe budget cuts as a result of declining enrollment and reductions in state school aid. Over the past several months, the Administrative Team and Board of Education, as well as representatives from both AEA and AESP, have been discussing possible staffing changes that would result in more efficient operations and in some cases, cost reductions.

On Monday, June 23, the Board approved a preliminary budget for 2003-04. This budget includes changes in support staff time, but it does not include the elimination of any support staff positions through lay-offs. Your current position could be affected by this Board decision.

Essentially, support staff will work either a year-round (12-month) or school-year (9-month) schedule. All Educational Associates will now be school-year (9-month) employees with benefits for 9-month employees as indicated in the negotiated agreement. Former ten-month employees will go from 1628 hours to 1384 hours, and 11-month employees from 1785 hours to 1384 hours. Your hourly pay rate will remain what you are currently earning. If you have unused vacation days, you may opt to use them or be paid for them. Your insurance benefits will not change.

In addition, as a school-year employee, you will work 37 hours per week during the school year only, mirroring the teacher calendar except on in-service and convention days. Please refer to the blue calendar (attached) for a breakdown of your work schedule. Note that your building administrator or supervisor will coordinate daily start and end times.

I know this comes as an emotional and financial blow to many of you. . . .

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The restructuring plan was implemented as follows:

Employee	02-03 Rate	02-03 hrs/yr	03-04 Rate	03-04 hrs/yr
Debbie Friedl	12.66	1785	12.66	1383
Janice Eggener	12.66	1785	12.66	1453
Sandra Gorenc	12.66	1768	12.66	1383

Jean Eliason	12.66	1785	12.66	1453
Cleo Matzke	12.40	1628	12.40	1383
Marlene Soquet	12.40	1628	12.40	1418
Nancy Kwala	12.40	1628	12.40	1453
Lou Ann Kozicki	12.40	1628	12.40	1383
Mary Gerrits	12.40	1628	12.40	1383
Lynn Pitts	12.40	1628	12.40	1383
Cheryl Alberts	12.40	1628	12.40	1383
Jean Sarosiek	12.40	1628	12.40	1383
Paula Malloy	12.40	1628	12.40	1383
Barb Steckart	13.08	*1628	13.08	1383

Mary Ellen Sorenson                      Retired prior to start of 03-04

\*Steckart is identified as a 9-month employees on exhibit 9. The Association includes Steckart as a grievant who was previously a 10-month employee reduced to 9-month.

In addition to the reduction in the above-listed employee hours, the District's Board of Education at the June 2003 meeting increased the hours of four (4) 11-month Administrative Associates and three (3) 10-month Administrative Associate positions to 12-month positions. The District made this change because these positions are assigned to provide clerical support to year-round administrators and their absence was detrimental to the efficiency of the administrator. This change resulted in an anticipated additional cost of \$24,364.56 for the 2003-2004 school year.

On or about July 8, 2003, Alberti, Lucius, Steckart, Friedl, and Kundin met to discuss the impact of the reduction in hours on employee benefits. No discussion on this issue had taken place prior to this date. During this conversation, the Association informed the District of its intent to file a grievance. Alberti responded to the Association that in the event that a grievance was filed and the Association was not meritorious, then the contract required that the wages for the Educational Associates be reduced to the 9-month rate. Some members of the Association viewed this communication by the District as a threat.

As a result of the change in working conditions for the 14 11- and 10-month Educational Associates, the Association filed a grievance on January 21, 2004, alleging that the District violated the labor agreement by terminating vacation benefits, terminating vacation time accrual, reducing the sick leave accrual and denying the employees increased longevity pay. The grievance did not challenge the District's right to reduce the hours of the 14 employees. The District denied the grievance on or about January 24, 2004.

## **POSITIONS OF THE PARTIES**

### **Association**

The Association maintains that the District has violated the labor agreement by denying the 10-month and 11-month Education Associates vacation and sick leave benefits subsequent to their reduction in hours.

The District had the right to cut the hours of the Educational Associate I-10 Month and Educational Associate I-11 Month employees, but it did not have the right to deny the employees in these job classifications the contractually negotiated benefits that accrue to these categories. The labor agreement establishes job classifications and the District's decision to reduce an employee's hours does not result in a reclassification to a different job classification. Employees in 11-month and 10-month job classifications receive a higher wage and greater benefits than 9-month employees thus evidencing that these classifications undertake greater responsibilities than 9-month employees. These greater responsibilities have not changed, only the hours have changed and the District desire to unilaterally reclassify these employees violates the labor agreement. If the District were able to do as it has, it would nullify the job classification scheme as negotiated.

The District's reliance on the budget and saving money are merely a pretext for its unilateral reorganization of staff. Had the District really desired to save money, it would not have increased the work hours of eight Administrative Assistant work hours thus making them 12-month employees with the corresponding benefits.

The Association seeks the reinstatement of vacation day accrual and sick leave accrual as the grievants enjoyed in 2002-2003. In addition, the Association seeks that the grievants are made whole for the loss of these benefits for the 2003-2004 year.

### **District**

Education Associates with a 9-month contract do not receive vacation pay and any request by the Association to create a 9-month Educational Associate position with vacation benefits is beyond the dictates of the labor agreement. The agreement creates various employee categories. Educational Associate is defined by the number of months of work. Consistent with this definition, employee benefits are dependent on the 12-, 11-, 10- or 9-month designations. The 9-month position is the only one that specifically does not provide vacation benefits and therefore, the new 9-month employees are not entitled to vacation benefits. Not only is it inconsistent with the contract for the Association to assert that the new 9-month employees are entitled to vacation benefits, it would create a situation where the veteran 9-month employees would not receive vacation while the newly designated 9-month employees would receive this benefit.

The local representative knew and approved the reduction in work hours for the 11- and 10-month employees. The District met with the Association beginning in March of 2003. On June 16, the Association informed the District that it was “okay to go ahead” with the proposed reduction in hours plan. In addition, the Bayland UniServ representative approved the plan to reduce the Educational Associate positions to 9-month status. The District relied upon the approval granted by the Association and the UniServ representative.

There is no contractual restraint on the District to change the 10-month and 11-month Education Associates to 9-month positions. The management rights clause gives the Board the specific right to “reduce hours” and once hours are reduced, benefits are reduced accordingly.

The District admits to violating the labor agreement by not reducing the wages and longevity of the 9-month employees who were previously 10-month and 11-month employees. The District did this to “ease the pain” to the employees. The Arbitrator should dismiss the grievance and order the District to comply with the negotiated labor agreement, including the wage and longevity provisions.

### **Association Reply**

The Association focuses the Arbitrator to the sole issue in this grievance which is whether the District violated the master agreement by cutting benefits from certain employees in certain job categories.

In response to the District’s assertion that Association members were aware of the District’s plan, this is a non-issue. The Association and Bayland staff have never disputed the District right to cut hours from employees. The District never discussed its intent to deny the employees whose hours were reduced their vacation and sick leave, therefore the Association cannot be found to have waived its right to challenge the District’s actions.

Finally, the District cannot be allowed to circumvent the negotiated job classification scheme by unilaterally cutting hours and having benefits disappear and requests that the grievance be upheld.

### **District Reply**

The Association’s argument that the 9-month Education Associates who previously worked 10 months and 11 months remain 10-month and 11-month employees working less hours is flawed. Not only has the Association failed to submit any evidence to support this conclusion, Association witness Friedl testified that she is not performing the same responsibilities as she did when she was an 11-month employee.

The District had no obligation to tell the employees that were reduced to 9-month that they would no longer receive vacation and sick leave benefits. The District, in its June 24 letter, informed the Grievants that they would receive the benefits spelled out in the labor agreement for 9-month employees. As Mr. Kundin stated at hearing, “the language speaks for itself” (Tr. 71, 7-14) and it is not the fault of the District that the employees failed to review the language.

The District relied on the Association’s acceptance of the reduction in hours plan. The Association cannot challenge the District’s implementation of the reduction in hours plan since they cooperated and participated in its creation. *JOHNSON CONTROLS WORLD SERVICES, INC.*, 108 LA 191 (1996). Given that the District was not obligated to include the Association in the reduction plan, the fact that it did and the Association offered its approval to the plan, the Association is estopped from challenging what it consented to and approved.

As to the Association’s assertion that the budget cuts were a pretext to circumvent and re-write the contract, the Association is wrong. First, budget cuts are the plight of all school districts in the state due to the State deficit. Second, regardless of the amount of savings generated by the reduction in hours plan, the District utilized actual, rather than fictitious numbers.

For all of the above reasons, the District requests that the grievance be dismissed.

### DISCUSSION

There is no question that the District had the right to reduce the number of hours the Grievants were scheduled to work. This is so because the management rights clause provides the District the right to “lay off, including the decision as to the number and types of employees to be laid off, reduce in hours” and because the District and Association have so stipulated. The question becomes, what benefits do the Grievants retain, if any, as a result of the District’s action. The Association maintains that the Grievants are entitled to continued benefits as if their hours had not been reduced, while the District asserts that reduced benefits follow reduced hours consistent with the labor agreement. I find the District to be in error.

The District, when faced with a dire budgetary picture, began looking at options. In the process of looking at options, it consulted with the Association. The District believed these meetings with Association President Steckhart and negotiations committee member Friedl resulted in an “agreement” which included the District continuing to pay the 11-month and 10-month employees at that rate (adjusted for 03-04 increases) in exchange for the Association agreeing to the reduction in hour changes. Friedl and Steckhart do not believe an agreement was reached, but acknowledge that they communicated to the District that the Association did not object to the reduction in hours. It is reasonable from this record to conclude that the Association believed that all benefits would remain *status quo* following the reduction in hours

while the District believed that it was only the wages that would not be affected by the reduction in hours. Acknowledging that the parties are at liberty to reach a binding agreement outside the context of the collective bargaining agreement, the evidence clearly establishes that there was no “meeting of the minds” and therefore no agreement was reached. Having found that the parties did not reach an agreement with respect to the reduction in hours, the question is to what benefits, if any, are the Grievants entitled.

The District asserts that the Grievants are now 9-month employees and thus are owed no more than the benefits bargained for 9-month employees. The evidence does not support this conclusion; rather the evidence establishes that the Grievant are 11- and 10-month Educational Associates, albeit they are working less hours than they were previously, and the District’s denial of benefits violates the labor agreement.

The letter of June 24 to the Grievants does not state that the 11- and 10-month Educational Associate positions have been eliminated or that the employees in the positions were re-assigned. Had that been the case, the District would have been contractually obligated to follow the language set forth in Article IX, Layoff, since 11- month and 10- month Educational Associate positions hold a different job classification pay level than the 9-month Educational Associate position and the language specifies what is to occur should a job classification pay level is subject to a lay off action. The District did not utilize the procedure identified in Article IX, therefore, there has been no change to these employees job classification pay level. The District has merely reduced the employee’s hours which is not defined as a layoff per the parties’ agreement. 1/ Although the District’s letter of June 24 states that the Grievants are now school year, 9-month employees, this is a reduction in hours and not a change in title or position.

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*1/ One employee was issued a partial layoff that would have resulted in her hours of work per week being reduced. Her hours were ultimately restored due to restructuring her position.*

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The record establishes that the Grievants work a 37 hour work week which is the work week for the 11- and 10-month Educational Associates and that they continue to receive the negotiated wage rates per Appendix A for Educational Associates 11- and 10-month and their longevity benefits are consistent with the 11- and 10-month Educational Associate calculation. The District Administrator confirmed that the job descriptions have not changed (Tr. p. 32, 21-22) and Friedl testified that she is doing the same work during the school year that she did before she received the June 24 letter. The fact that there is now similarity in the number of annual hours per school year that the Grievants work in comparison to 2002-2003 Educational Associates 9-month does not make the Grievants Educational Associates 9-month. The Grievants are 11- and 10-month Educational Associates working a reduced duration of the calendar year. The question is whether the District’s reduction in vacation, sick and holiday leave benefits violates the labor agreement.

Vacation benefits per Article XVIII are differentiated by the designations “12 month personnel,” “11 month personnel” and “10 month personnel.” The Grievants are 11- and 10-month Educational Associates and are therefore entitled to the vacation benefit for this job classification pay level. The District denied the Grievants their contractually provided vacation leave benefits in violation of the labor agreement.

Sick leave accrual similarly utilizes the designations “12 month personnel,” “11 month personnel,” “10 month personnel” and “9 month personnel” to differentiate the accrual benefits for regular full-time employees. Subsequent to the June 24 letter, the 11-month Educational Associate Grievants have not accrued sick leave in the amount of 11 days per year as the labor agreement requires which is a violation of the agreement.

Eleven-month Educational Associates are entitled to one more paid holiday, July 4, than the 9- and 10-month Educational Associates. The District’s letter of June 24 does not address paid holidays and the record fails to address whether the 11-month employees were afforded July 4 as a paid holiday. There is insufficient evidence to determine whether the District has violated the labor agreement with regard to the paid holiday benefit.

In conclusion, the Grievants continue to do the same work that they did prior to June 24, albeit less hours per year; continue to receive the same hourly wage; and continue to work the 11- and 10-month Educational Associate hours per week. Moreover, at no time did the District initiate layoffs or reassignments for the job classification pay levels of Educational Associate I 11 month or Educational Associate I 10 month consistent with the labor agreement. As such, I conclude that they remain 11- and 10-month Educational Associates. The Grievants are entitled to the negotiated benefits for 11-month Educational Associates and 10-month Educational Associates consistent with their job classification pay level and so long as the Grievants continue to hold these positions, they remain entitled to these benefits.

Having concluded that the District violated the labor agreement when it denied the Grievants the negotiated vacation and sick leave benefits for 11- and 10-month Educational Associates, it is necessary to address the appropriate remedy. The Association asserts that Grievants are entitled to repayment for lost vacation time and the restoration of a vacation leave balance henceforth. In addition, the Association seeks sick leave accrual longevity based on 11- and 10-month job classifications and holiday benefits. I concur that repayment for 2003-2004 vacation leave and the recalculation of sick leave accrual is appropriate, but enforcement of the existing language which would restore vacation leave to the Grievants lacks rationality due to the use-limitations and eligibility limitations that the parties’ have placed on this benefit. As such, I am remanding this benefit to the parties to address at the bargaining table.

**AWARD**

1. Yes. The District violated Articles XVIII and XXI of the labor agreement when it denied the 11- and 10-month Educational Associates whose scheduled hours were reduced to school-year, 9-months, effective June, 2003, their job classification pay level benefits.

2. There is insufficient evidence in the record to determine whether the District violated Article XIX of the labor agreement.

3. The appropriate remedy is for the District to compensate the affected members of the support staff at their hourly rate, for all lost 2003-2004 vacation benefits and recalculate their sick leave consistent with the 11- or 10-month Educational Associate job classification pay level.

4. I will retain jurisdiction over this case for sixty (60) days for the sole purpose of resolving, if necessary, the outstanding issue over vacation benefits, which is remanded to the parties to resolve at the bargaining table. The parties are directed to notify me within sixty days of the status of their settlement efforts.

Dated at Rhinelander, Wisconsin, this 8<sup>th</sup> day of October, 2004.

Lauri A. Millot /s/

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Lauri A. Millot, Arbitrator