

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
GREAT RIVER EDUCATION ASSOCIATION OF TEACHERS
and
RIVER RIDGE SCHOOL DISTRICT

Case 10
No. 64132
MA-12817

Appearances:

Thomas Fineran, SWEA/WEAC Negotiations Consultant, appearing on behalf of the Association.

Eileen Brownlee, Attorney at Law, appearing on behalf of the District.

ARBITRATION AWARD

The Association and District named above are parties to a 2003-2005 collective bargaining agreement that provides for arbitration of certain disputes. The parties asked the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and resolve the grievance of Cindy Williams. The undersigned was appointed and held a hearing on April 1, 2005, in Patch Grove, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on May 24, 2005.

ISSUES

The parties did not stipulate to the framing of the issues. The Employer asks whether the grievance is timely, and the Arbitrator will address that issue first.

On the merits, the issue is whether the District violated the collective bargaining agreement in the method of compensating the Grievant after reducing her contract from 100% to 75% of full-time employment.

BACKGROUND

The Grievant is Cindy Williams, a high school physical education instructor who got a notice of layoff in February and March of 2004 for the 2004-2005 school year. She started in the District in May of 2000 and worked full time until the Board reduced her time to 75% of full time in the spring of 2004. Her schedule for the 2004-2005 school year shows that she starts work at the 3rd period at the high school and works through the 8th period, working 6 out of 8 periods. She teaches 5 classes and has 1 preparation period.

The Grievant did not initially raise an objection to her reduction in time. In May of 2004, she asked the principal, Rod Lewis, for a schedule so she could prepare for her classes during the summer. On the schedule, she noticed that another teacher, David Goodman, was teaching four high school classes and had only 20 students scheduled in them. The Grievant talked to the District Administrator, Michael Murphy, and asked him how she could be teaching five classes with 118 students and another teacher had only four classes with 20 students. Goodman teaches technology and woodworking classes at both the high school and middle school. Lewis sent the Grievant an e-mail on June 2, 2004, asking her to support her own program without involving others and that the schedule was not complete. The final class schedule was received on August 30, 2004, the first day of in-service.

On September 10, 2004, a teacher from the middle school gave the Grievant a middle school schedule. That is when the Grievant realized that Goodman was teaching four classes at the high school had only one course at the middle school, or a total of five classes. She thought that he was teaching five classes at full-time pay while she was teaching five classes with more students at 75% pay. She filed a formal grievance at Step 2 on September 21, 2004, stating that the District misinterpreted, inequitably applied and/or violated the contract when it reduced her time from 100% FTE to 75% FTE for the 2004-2005 school year. In a response, Michael Murphy, the District Administrator, noted that the grievance was untimely. The Grievant moved to Step 3 on September 30, 2004, which the Board denied, also noting the timeliness issue.

The Grievant admitted that Goodman could have 5 classes, a prep period, and a study hall, which would take him the 7/8 of a full time load in the first semester of 2004-2005. She did not know what his second semester load was. Tonia Wadding is the District librarian and is the president of the Association. She agreed that a teacher who had five classes, a prep period, and supervised a study hall would be at 7/8 of full time, while a teacher with five classes and a prep period would be a 6/8 for 75% of full time.

Kerry Thornton teaches Spanish and English for 7th through 12th grades and travels between the middle school and high school buildings every year. She thought that the District has not counted her travel time as an extra class, it takes 15 minutes to get between the schools. However, Murphy noted that her fifth period is for traveling and lunch. Goodman travels and takes lunch during the sixth period. Murphy also stated that Goodman was teaching six classes in the 2nd semester and had no study hall.

THE PARTIES' POSITIONS

The Association

The Association asserts that the grievance was filed in a timely manner. The Grievant got a schedule on September 10, 2004, that showed her that Goodman was teaching only five classes, and she initiated Step 1 of the grievance procedure on September 15, 2005. She took that grievance to Lewis, who denied the grievance, and she then filed Step 2 on September 21, 2004. Step 2 was denied by Murphy, so she filed Step 3 on September 20, 2004, which was denied by the Board on October 18, 2004. Within 15 days, she submitted the grievance to arbitration. All steps of the grievance process were timely.

The Association submits that while the District did not violate the collective bargaining agreement when it chose the Grievant for a partial reduction for the 2004-2005 school year, it violated the agreement when it did not apply all rules and regulations governing employee activities and conduct with reasonable uniformity throughout the District. All full-time teachers at the middle and high school have at least six teaching classes scheduled and some have a 7th class. Those with six classes have a study hall for their 7th class and all have one prep period. The lone exception is Goodman, who has five classes, one study hall and two prep periods. Thornton has a similar schedule to Goodman's and travels between the middle and high schools, yet she teachers seven classes with one prep period.

The Association points to the language of Article V, D, which states: "All rules and regulations governing employee activities and conduct shall be applied with reasonable uniformity through the District. The Board shall not issue individual teacher contracts which are contrary to the wages, hours and conditions of employment as agreed to by the Board and GREAT." The District did not apply all rules and regulations governing employee activities and conduct with reasonable uniformity throughout the District in terms of Goodman's salary relative to his work schedule and the Grievant's salary relative to her work schedule. Goodman has a 7/8 schedule but receives 100% full time equivalency. The Grievant is available for Goodman's 1st hour study hall but was not scheduled for work. Goodman travels during the 6th hour and has lunch, in addition to the regularly schedule lunch for teachers that runs between 12:18 p.m. and 12:48 p.m. While the District gave Goodman extra prep time for travel and lunch, it did not provide the same extra prep time for Thornton.

The District

The District asserts that the Association bears the burden of proof in this matter and did not meets its burden. The issue is one of contract interpretation and application. The Association claims that Article V, D, was violated by virtue of the fact that the Grievant was issued a 75% full-time contract and Goodman was issued a full-time contract. If it is the Association's argument that the agreement was misinterpreted, the Association must establish a

contractual provision intended by the parties to govern the grievance and an interpretation of that provision which is more persuasive than the District's. The bargaining agreement is silent on the proration of contracts, although there does not appear to be any real dispute that a teacher with five classes and a prep period is employed at 75% of full time.

If the Association's argument is that the agreement was inequitably applied, its burden is no less. The burden of proof is on the Association to show that the District's payment of 75% of salary to the Grievant was discriminatory, arbitrary, unreasonable or capricious. The Board has the authority to establish and supervise the programs of instruction, class schedules, and hours of instruction. The Association has argued that Goodman's schedule is less than full time but he is paid at full time. However, he teaches five classes, supervises a study hall, is entitled to a prep period and is further entitled to travel time under the contract. That exceeds seven periods in an eight period day. In the 2nd semester, he has six classes and the study hall is eliminated. The Grievant has five classes and a prep period, supervises no study halls and has no travel time.

To determine whether contract language is inequitably applied, Arbitrator Crowley stated that standard is that if management's decision was not arbitrary, capricious or unreasonable, or based on mistake of fact, its decision should stand. The boundaries of reasonableness should not be so narrowly drawn that management's judgment must coincide with the arbitrator's judgment. Here, there is no real dispute that the Grievant works 75% of full time. Goodman works 7/8 of full time and is also entitled to travel time during the work day. That the District decided to pay him a full time salary rather than parse out a portion of a class period is reasonable. The Association has not presented any evidence that paying Goodman at a different percentage than the Grievant was arbitrary, capricious, discriminatory or unreasonable.

Further, the District contends that the Association is asking the Arbitrator to modify the terms of the bargaining agreement by requiring the District to pay teachers working at 75% the same salary as it pays full-time employees. The agreement states that the arbitrator shall have no power to advise on salary adjustment, except as to the improper application thereof.

In Reply, the Association

The District argued that the Association needs to show that the Grievant's 75% salary was discriminatory, arbitrary, unreasonable or capricious. The Association believes a case can be made that dissimilar treatment of employees was arbitrary and capricious, considering that the Grievant was available to teach class or supervise study hall, that Thornton gets no extra travel time from the high school to the middle school, and that the Grievant was warned to be careful talking about other classes and to support her own program without involving others.

The Association is requesting that the District enforce teachers' rights section of the bargaining agreement, where all rules and regulations governing employee activities and conduct shall be applied with reasonable uniformity. The District has not applied the scheduling regulation uniformly when it gave Goodman two lunch periods. Employees should be allowed travel time between the two work sties, but Goodman has twice the travel time that Thornton has. The Association believes that the District has made an irrational or arbitrary decision in the manner in which it pays Goodman.

DISCUSSION

As to the issue of timeliness, the District asserted at hearing that the grievance was not timely, and Joint Exhibit #2 indicates that Murphy and Board found the grievance to be untimely because the reduction from full time to 75% occurred in March of 2004. The grievance procedure should have began running in March of 2004, according to the District. However, it was September 10, 2004, that the Grievant learned that Goodman was teaching 5 classes, just like she was, and was being paid at 100% of salary. While Step 1 in the grievance procedure provides for 15 work days following the day the "condition causing the grievance occurred," the Grievant first knew of the condition causing the grievance in September of 2004, not March of 2004. She is not grieving the reduction in hours, but once she felt that another teacher was working the same or similar amount of time, she could grieve that "condition" as inequitable under the "reasonable uniformity" language of Article V. Thus, the grievance is timely.

Article V, D states:

All rules and regulations governing employee activities and conduct shall be applied with reasonable uniformity throughout the District. The Board shall not issue individual teacher contracts which are contrary to the wages, hours and conditions of employment as agreed to by the Board and GREAT.

Article XIX, B, Step 4 states:

The arbitrator shall have no power to advise on salary adjustment, except as to the improper application thereof, nor to add to, subtract from, modify or amend any terms of this agreement.

If the only complaint here was that the Grievant was being paid only 75% of a full-time salary, there would be no case because the Grievant admits that she is working 75%. However, it is another teacher's schedule and full-time salary that drives this case and brings both contract sections noted above into play. As to Article XIX, B, Step 4, there is no

improper application of the salary, as the Association admits that the Grievant works 75%. However, it maintains that under Article V, D, there is a lack of reasonable uniformity in the District because Goodman has a lighter load than all other teachers at 100% salary, and he retained his full salary while the Grievant did not.

The Grievant's schedule and Goodman's schedule are not the same. The difference is slight in terms of the percentage – 6/8 to 7/8, respectively, but it is an important difference. One period alone can make a difference of whether a teacher has a full-time load or not. In order to prove up a violation of Article V, D, at a minimum the Association must show that a similarly situated teacher has been treated differently from the Grievant. It has failed to do this, because Goodman is not similarly situated to the Grievant. He carries a 7/8 load plus travel. She carries a 6/8 load. The fact that she was available to supervise a study hall or take on additional work is irrelevant. The extra work was not offered to her and she is not doing it. There is no violation of Article V.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 9th day of June, 2005.

Karen J. Mawhinney /s/

Karen J. Mawhinney, Arbitrator