BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOCAL 1101, WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
MUKWONAGO AREA SCHOOL DISTRICT CLASSIFIED EMPLOYEES

and

MUKWONAGO AREA SCHOOL DISTRICT

Case 59
No. 65553
MA-13248

(Health Room Aide)

Appearances:

John Maglio, Staff Representative, AFSCME Council 40, Post Office Box 044316. Racine, WI 53404-7006, appearing on behalf of the Union.

Mark L. Olson and **Daniel J. Chanen,** Attorneys, Davis & Kuelthau, 111 East Kilbourn Avenue, Suite 1400, Milwaukee WI 53202, appearing on behalf of the District.

ARBITRATION AWARD

The Mukwonago Area Public Schools (hereinafter referred to as the District or the Employer) and Local 1101, AFSCME, AFL-CIO, (hereinafter referred to as the Union) requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen as arbitrator of a dispute over a change and eventual elimination of hours for a health room aide. The undersigned was so designated. A hearing was held May 3, 2006, in Mukwonago, Wisconsin, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A stenographic record was made of the hearing, and a transcript was provided on May 20. The parties submitted post hearing briefs, and the District submitted a reply brief, which was received on August 12, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, the relevant provisions of the contract and the record as a whole, the Arbitrator makes the following Award.

ISSUE

The parties were unable to stipulate to a statement of the issue, and agreed that the arbitrator would formulate the issue in his Award. The Union sees the issues as:

1. Did the District violate the collective bargaining agreement when it unilaterally reduced the hours of the health room assistant effective September 1, 2005, and ultimately replaced those reduced hours with non-bargaining unit personnel? If so,
2. What is the appropriate remedy?

The District identifies the issues as:

1. Is the grievance arbitrable? If so,
2. Did the District violate Article 2.01 of the collective bargaining agreement when it reduced the work hours of the health room aides in June of 2005? If so,
3. What is the appropriate remedy?

The procedural issue was raised early on in the processing of the grievance, and is properly presented. The allegation in the Union's phrasing that the health room assistants' hours were replaced by non-unit personnel is a contested fact, and cannot be assumed in the statement of the issue. The issues may be fairly stated as:

1. Is the grievance arbitrable? If so,
2. Did the District violate the collective bargaining agreement when it reduced the work hours of the health room aides for the 2005-2006 school year? If so,
3. What is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

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Article 2: MANAGEMENT RIGHTS

2.01 RIGHTS: The Board and/or its designee (hereinafter the term "Board" shall connote Board and/or its designee) possess the sole right to operate the school system and all management rights repose in it, subject only to the provisions of this contract and applicable law. These rights, included, but are not limited to the following:

A. To direct all operations of the school system;

B. To establish reasonable work rules and schedules of work in accordance with the terms of this Agreement;

C. To hire, promote, transfer, schedule and assign employees in positions with the school system in accordance with the terms of this Agreement;

D. To suspend, demote, discharge, and take other disciplinary action against employees for just cause;

E. To relieve employees from their duties because of lack of work or any other legitimate reason;

F. To maintain efficiency of school system operations;

G. To introduce new or improved methods or facilities, or to change existing methods or facilities provided if such affects the wages, hours, or working conditions of the employees, the Union will be notified in advance and permitted to bargain;

H. To determine the kinds and amounts of services to be preformed as pertains to school system operations, and the number and kinds of positions and job classifications to perform such services;

I. To determine the method, means and personnel by which school system operations are to be conducted;

J. To take whatever reasonable action is necessary to carry out the functions of the school system in situations of emergency;

K. The Union recognizes that Board has the right to contract or subcontract for goods or services, provided no unit employee shall be laid off or suffer a reduction in hours below forty (40) hours per week. Prior to exercising the subcontracting right contained in this section, the District will exhaust the posting provisions set forth in Article 10.

L. Nothing contained in this Article shall be construed as divesting an employee of any right granted elsewhere in this Agreement or the Wisconsin Statutes.

2.02 EXERCISE OF RIGHTS: The Employer agrees that it will exercise the rights enumerated above in a fair and reasonable manner, and further agrees that the rights contained herein shall not be used for the purpose of undermining the Union or discriminating against its members.

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Article 5: GRIEVANCE PROCEDURE

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5.03 STEPS IN PROCEDURE:

Step 1: The employee, along, or with one (1) Union representative shall orally contact his immediate supervisor within forty (40) calendar days, exclusive of holidays, after he knew or should have known of the cause of such grievance. In the event of a grievance, the employee shall perform his assigned work task. The employee's immediate supervisor shall, within five (5) calendar days, orally inform the employee of his decision.

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Article 9: SENIORITY

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9.02 DEPARTMENTS: For the purpose of this Agreement, there shall be five departments defined as follows:

A. Maintenance Employees;
B. Custodial Employees;
C. Clerical and Secretarial Employees;
D. Food Service Employees;
E. Assistant Personnel.

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Article 11: LAYOFF AND RECALL

11.01 LAYOFF PROCEDURE: In the event the Board elects to reduce personnel or hours in any job classification, the following procedure will be utilized:

1. The District will identify the position or positions to be eliminated.
2. The individual(s) occupying the position(s) to be eliminated shall be accorded the bumping rights set forth in Section 11.02

3. It is understood that no bargaining unit employee will be laid off if there are temporary, seasonal, student or non-bargaining unit part-time employees working within his/her department that the laid off employee would wish to displace provided the employee is qualified to perform the available work. Any such displacement shall be at the rate of pay and under the same terms and conditions as were applicable to the temporary, seasonal, student or non-bargaining unit part-time position concerned.

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11.05 The layoff procedure set forth above shall be implemented prior to any unilateral across-the-board reduction in hours.

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BACKGROUND

There is relatively little dispute over the facts giving rise to this grievance. The District provides public education services to citizens in Mukwonago, in southeastern Wisconsin. Paul Strobel is the Superintendent of the District, Darron Clark is the Director of Business Services, and Pamela Harris is the Food Service Supervisor. The Union is the exclusive bargaining representative for the District's support personnel who work 20 or more hours per week. This includes the assistants assigned to the health rooms.

In the 2004-2005 school year, the District employed seven health room assistants – five at the elementary schools, one at the middle school, and one at the high school. The elementary health room assistants were assigned to work 32.5 hours per week. Their daily schedules matched those of the students. During the thirty minute lunch breaks for assistants at the elementary schools, the health rooms were covered by clerks, who are also in the bargaining unit. The clerks' job description includes, among its 19 listed performance responsibilities "Responsible to relieve health assistant for lunch breaks."

At the end of the 2004-2005 school year, Superintendent Strobel submitted a budget to the School Board calling for cuts intended to address a looming half million dollar deficit. The cuts under Strobel's proposal included a reduction in hours for some positions, including three elementary school health room assistants and the high school health room assistant. The proposal was presented to the School Board on May 31st, and the Board approved it. Under the Board's vote, the work hours for the affected

assistants were reduced to 5 ¾ hours per day.[1] This had the effect of dropping the assistants below the 30 hour threshold for full-time status under the labor agreement, sharply reducing their insurance benefits, as well as lowering their take home pay.

On June 2, Darron Clark sent Union President John Haddon a list of the budget cuts, and advised Haddon that he would provide a list of the bargaining unit personnel affected by the cuts. Through June, the District continued to review the budget, and by the end of that month, had determined to also reduce the other two health room assistant positions in the elementary schools, leaving only the middle school position unchanged. These were the only bargaining unit positions affected by the round of budget cutting.

On June 28, Clark sent a letter to each of the assistants whose hours were being reduced, advising them of the District's decision: "…This letter should serve as notice that your weekly hours are being reduced to 28 hours per week effective September 1, 2005. To determine the impact on your compensation, please refer to your Local 1101, AFSCME contract agreement."

As the reduction in hours constituted a layoff within the meaning of the contract, employees engaged in bumping in mid-July. The two most senior retired, one bumped into an instructional aide position, one position was open, and the other two either lacked sufficient seniority to bump or otherwise decided to remain in their positions. Clark sent Haddon an e-mail on July 19th, advising him of the outcome of the bumps.

The 2005-2006 school year opened on September 1st, which the elementary health room assistants working 45 fewer minutes each day. The time was taken off the end of the work day, and the District covered by having the clerks cover the health room between 2:45 and 3:30, in addition to continuing to provide coverage over the lunch hours. In the 2004-2005 school year, elementary clerks had also been used to scan lunch cards in the cafeteria for an hour and a half or so each day during the students' lunch hours. As of September 1, the District hired food service assistants at two hours per day to perform this duty, as well as helping with set-up and cleaning, and the clerks were no longer required to work in the cafeteria.

On October 11, a grievance was filed over the reduction in hours. The grievance was described as: "Due to the reduction in health assistant hours, the tasks required can no longer be completed in the time allowed. This has caused the hiring of part-time food service employees to compensate for duties previously done by classified staff in existing positions. Temporary workers have been hired to work at the same time as health assistants to complete required work." The violation was alleged to be "Elementary clerks – part of their job (scanning) to part-time hired workers two hours per day" and "Health Room Assistants – Additional subs hired to help get work done.

[1] Prior to the reduction in hours, the elementary school HRAs worked 6 ½ hours per day, and the middle school and high school HRAs worked 7 hours per day.

Parent volunteers helping to do work – some of that work is confidential information." The grievance cited Sections 2.01(E), 2.01 (F), 2.01(K) and "all other articles that apply" and requested restoration of the hours for the health room assistants. The District denied the grievance, and asserted that it was not timely filed. It was not resolved in the lower steps of the grievance procedure and was referred to arbitration.

At the arbitration hearing, in addition to the facts recited above, Darron Clark testified that the addition of two hour per day positions in food service was not a factor in the decision to reduce the hours of the health room assistants, and was not raised until early August, when Pam Harris brought the idea to him. Clark also stated that the District used approximately 10 to 12 days of temporary help in the health rooms in 2005-2006, to assist while new health room assistants who had replaced those who retired and/or bumped were trained. The District and the Union negotiated a memorandum of agreement to allow one of the retired health room assistants to return as a long term substitute in one of the health rooms during that school year.

Food Service Supervisor Pam Harris testified that the hiring of the additional part-time employees for set-up, scanning and clean-up was prompted by increasing numbers of students using the cafeterias. Harris stated that the use of clerks to scan debit cards started in 2002-2003 when the scanning system was introduced, and had been the source of complaints by principals and office staff who objected to the clerks being gone from the office during the busy lunch period. Prior to that time, office personnel were only involved in handling and accounting for money paid for lunch tickets, and not the collection of the tickets themselves. That duty was performed by food service personnel. Harris expressed the opinion that hiring the scanners increased the efficiency of the food service operation, and returned the ticket collecting function – albeit in the form of electronic scanning – to the food service personnel who had traditionally performed the work. Harris estimated that scanners spent just over half of their time scanning, and the remainder of the time replenishing condiments and helping with set-up and clean-up in the kitchen.

Additional facts, as necessary, will be set forth below.

POSITIONS OF THE PARTIES - ARBITRABILITY

The Position of the District

The District takes the position that the grievance was not timely filed, and is therefore barred in arbitration. The contract allows 40 for filing grievances from the point at which the employee should have known of the grievance. The School Board took action to reduce hours for the health room assistants at its May 31, 2005 meeting.

That decision was communicated to the Union President in June. Each affected employee received a letter advising them of the decision, and a personal phone call from the District's Director of Business Services. The employees engaged in bumping in mid-July. Contrary to the Union's attempt to claim some sort of ambiguity or uncertainty, there is simply no plausible claim to be made that these workers and their Union did not know of the reduction well before the start of the school year.

The arbitrator should dismiss the Union's effort to bootstrap a timely grievance over the reduction in hours to the hiring of food service workers after school began. Those employees are not in the bargaining unit, and do not perform work which has ever been performed by the health room assistants, other than as a brief, temporary expedient. Their hiring simply has nothing at all to do with this case.

The District also objects to the Union's effort to raise an argument over the reduction in hours of the high school health room assistants. The grievance speaks to the elementary school health room assistants. The high school positions were never mentioned in any grievance, in any grievance meeting, in any way, until the middle of the arbitration hearing. Indeed, the whole theory of the Union – that the hiring of the scanners in the cafeteria somehow led to the reduction of hours – applies only to elementary schools. No scanners were hired at the high school. The District cannot be forced to defend against a grievance it has never heard of before.

The grievance over the elementary school reductions is untimely, since the employees were given clear, unequivocal notice in June that their hours were being reduced, and availed themselves of the contractual bumping procedure in July. The latest possible time for filing the grievance was late August. It was not filed until mid-October. It is clearly untimely. The Union's claim with regard to the reduction in hours at the high school is not only untimely, it is non-existent. This was never filed as a grievance, nor even mentioned, until the arbitration hearing. No aspect of the Union's arguments can survive the forty day time limit, and the arbitrator must acknowledge that he lacks jurisdiction over this case.

The Position of the Union

The Union asserts that the grievance is properly before the arbitrator. The collective bargaining agreement allows forty calendar days for filing, from the time the affected employee "knew or should have known of the cause of such grievance." The instant grievance was filed on October 11, 2005. While the District gave preliminary indications in June that the hours for three elementary health room assistant positions might be reduced, in fact that was not the final actions on this issue. All five elementary health room assistant positions were reduced. As these jobs are school year positions, the incumbents could not have known with any certainty what the fate of

their positions was until they returned to work. Superintendent Paul Strobel admitted as much in his testimony. The Union notes that these assistants continued to receive full-time benefits throughout the summer months, further bolstering the employees' reasonable belief that no final decision had been made prior to September.

It is well established that, in situations where the employer announces a future action, the time for filing is measured from the later date – when the action is actually taken, or when the adverse impact is actually realized by the employee. Moreover, certain aspects of this grievance – specifically the use of non-unit employees to facilitate the hours reductions – were not announced in advance, and could not have been known before September. Given the uncertainty of the District's plans and the absence of the affected employees over the summer months, as well as the general presumption in favor of arbitrability, the arbitrator should conclude that the grievance is timely, and should proceed to the merits.

DISCUSSION - ARBITRABILITY

The contract allows 40 calendar days for filing a grievance from the point at which the employee knew or should have known of the grievance. The dispute concerning arbitrability goes to the point at which the grievable event took place. The District argues that there was no doubt of its intentions past late June, and that by exercising their bumping rights in mid-July the employees gave indisputable evidence that they knew of the reduction in hours. Thus, it argues, the latest possible date for filing a grievance over the reduction was in late August. I cannot agree.

While I have no doubt that the affected employees each knew perfectly well, as of June 28, what was going to happen to their hours when school began on September 1st, the fact is that the harm to them and the change in their wages, hours and working conditions did not actually occur until that later date. Indeed, the letters sent to each employee in late June specified that the reduction in hours would be "effective September 1, 2005." A reasonable person receiving such a notice could conclude that September 1st was the date on which the tangible adverse event would occur. Employees are entitled to the benefit of any reasonable doubts before forfeiting their right to challenge a management decision that personally affects them, and the record here persuades me that the health room assistants could reasonably have viewed September 1 as the date on which their 40 day period fro grieving would begin.

Beyond the question of when the reduction was effective, the Union is correct that, to the extent that the use of temporary employees and the substitution of the new two hour per day food service employees for clerks form an important part of the basis for the grievance, those developments were not known to the Union until after September 1st. Whether those events actually constitute a contract violation is not the

question. The conclusion on the merits of a claim is not a factor in determining whether the claim itself is made in a timely way. On the face of the grievance, the employment of the scanners and the temporary employees are cited as events underlying the claim. Those events occurred within the 40 calendar days prior to the grievance filing. Thus I conclude that the grievance with respect to the elementary school positions was timely filed.

At the arbitration hearing, the Union also raised the issue of the reduction in hours for the high school health room assistant. The District immediately protested that that position had never been mentioned before in the wording of the grievance or in the course of the grievance procedure. In reviewing the grievance documents and the history of this dispute, I must agree with the District that reduction in hours for the high school position is not fairly within the scope of the grievance. The grievance procedure is informal and flexible, but as to the processing of cases to arbitration, it is jurisdictional. No challenge was lodged to the reduction in hours at the high school until the arbitration hearing was in progress, well past any plausible 40 day period for filing. While new theories are frequently entertained once a case moves to arbitration, entirely new grievances are not. I therefore conclude that the Union's arguments concerning the high school health room assistant are not properly before the arbitrator.

POSITIONS OF THE PARTIES - MERITS

The Position of the Union

The Union takes the position that the District is seeking to have its cake and eat it too. The work of the health room assistants was not reduced when their hours were. The health rooms are still open until 3:30 every day, even though the assistants now leave at 2:45. The work of the assistants has now been transferred to the clerks. The clerks have been made available for this work through the employment of the new food service workers who took over the scanning duties. These food service workers are not members of the bargaining unit, as they do not meet the 20 hour per week threshold for inclusion.

The elaborate shell game the District engaged in to supplant the assistants violates the spirit of Article 11. By leaving the middle school assistant full-time, and reducing all six of the others, the District attempts to skirt the prohibition on "across-the-board" hours reductions. By shifting work between departments, the District seeks to evade Section 11.01(3)'s prohibition on the use of temporary, seasonal, student or non-bargaining unit employees within a department when employees are on layoff. Technically the food service employees are not in the same department as the assistants, but their employment is what allows bargaining unit clerks to cover the health rooms at the end of the day. The arbitrator must focus on the picture of what actually happened

here, rather than how the District has tried to make the picture look. Taking Article 11 as a whole, the parties clearly did not agree to allow this type of transaction, and the arbitrator should hold the District to the essence of its agreement.

The Position of the District

The District takes the position that the Union is litigating facts it wishes it had, and language it wishes it had, rather than the events that actually occurred and the contract that has actually been negotiated. The Union is unable to point to any provision of the contract that precludes the decisions made by the District for the simple reason that there is no such provision. The District has the right to reduce hours, and it exercised that right in response to a genuine fiscal emergency. Had it sought to reduce the hours of every health room assistant, it would have been required to engage in a full layoff first, but that is not what happened. The District has the right to employ temporary employees for up to 60 days, and it did so in order to train some new assistants. Had the District used these temporary employees for more than 60 days, the contract would have been violated, but that is not what happened. The District has the right to employ non-unit personnel if employees in that department are not on layoff, or if the laid off employees do not seek to claim that work. Had the District employed such workers in the same department as the assistants, and had the reduced assistants sought that work, the District would have violated the contract by ignoring their requests, but neither of those things happened.

As there is no violation of the contract, the Union is reduced to creating a complex conspiracy in which food service employees are assigned food service work, clerks are assigned health room coverage which is expressly part of their duties, and the end result is that the "spirit" of the contract is violated. What actually happened is that the District reduced hours for some health room assistants, as they were entitled to do, as one small part of a budget strategy to address a large and unsustainable deficit. They did so after careful review of the collective bargaining agreement, and while fully informing the Union of their plans. At the same time, the District decided to staff the health rooms with clerks when the assistants were not available, just as it had in the past. After the reductions were in place, the District agreed to a proposal by the food service department to take back the scanning duties from clerks and assign them to new part-time employees. Those scanning duties had been assigned to clerks for all of two years, and were not the customary work of the classification. The hiring of the new food service workers had everything to do with the increased use of the cafeterias, and nothing to do with the reduced hours of the health room assistants. Had the new food service workers not been hired, the clerks would still have been assigned to the health rooms at the end of the day. They simply would have done that in addition to scanning during the lunch-time rush in the cafeteria.

The arbitrator cannot indulge in the same leaps of faith and logic that the Union depends upon for its theory of the case. He must confine himself to the record, and the record of this case will not support a finding that the District in any way violated the collective bargaining agreement. Thus he must deny the grievance in its entirety.

DISCUSSION

The Union concedes that each action taken by the District, viewed in isolation, has some support in the contract, but argues that the totality of this transaction is at odds with the contact's evident purpose of protecting the hours of bargaining unit positions against erosion by non-unit jobs. I find that the District's actions, whether viewed in isolation or viewed as a whole, did not violate the contract, and I therefore deny the grievance.

The District took three specific actions that the Union identifies as cumulatively violating the contract:

1. Reducing the hours of all but the middle school health room assistant, thus avoiding the restrictions on "across-the-board" reductions in the hours;
2. Assigning the clerks to cover the health room hours left open by the reduction of the assistants;
3. Hiring food service workers to perform the scanner work done by clerks in the 2004-2005 school year.

The contract clearly allows for reductions in hours. The layoff language establishes a procedure to be used whenever "the Board elects to reduce personnel or hours in any job classification..." Section 11.05 requires the use of the layoff procedure before any "across-the–board reduction in hours." Assuming for the sake of argument that this latter provision requires a layoff of a full position before all positions in a classification may be reduced, the obvious effect is to allow reductions in hours without a preceding full layoff if the reductions are less than "across-the-board." The fact that the District came to the brink of an across the board reduction does not change the clear language of the contract. The reductions here were not across the board.

Turning to the assignment of the clerks to cover the health room for 45 minutes at the end of the day, health room coverage is something that clerks have provided for quite some time, albeit at the lunch hour. The Union does not directly argue that using the clerks in this manner is itself a violation. It argues that the use of the clerks proves that there is no lack of work in the health room assistant position, and thus the reduction in hours was not justified under Section 2.01(E) of the Management Rights clause which refers to relieving employees of their duties "because of lack of work..."

That argument ignores the rest of the provision, which adds "or any other legitimate reason." Given that the District is running a continuing deficit, and that 80% of the District's costs are wages and benefits, as a practical matter, there is no way to address that deficit without eliminating some work, and with it, some hours. The need for budget reductions is a "legitimate reason" for reliving employees of work.

The Union also argues that the use of the clerks, while not itself a violation, is made possible only by employing two hour per day food service workers to take over the scanning work in the cafeteria, thus freeing the clerks to work additional hours in the health room. It asserts that the contract evinces a clear intent to bar the use of non-unit employees while unit employees in a department are on layoff, and that the District's actions are a bad faith effort to circumvent that language. I find that this argument misconstrues the facts and misreads the contract language.

The new food service workers spend up to 60% of their time scanning the students' debit cards during the lunch period, and the remainder of their time helping with set-up and clean-up. The use of scanners was begun in the 2002-2003 school year. Prior to that time, lunch tickets were collected by food service workers. When the scanners came in, the clerks were assigned to that work for just over an hour each day. This was in addition to covering the health room assistant's duties at lunch. The scanning work is rather plainly the work of the food service department, and is not transformed into clerks' work by having had them perform it on a temporary basis for three school years. The act of returning the work to the food service department is, on its face, perfectly consistent with the collective bargaining agreement.

More to the point, the Union has been unable to point to exactly how it is that the employment of the food service workers facilitates the reduction in health room assistant hours. Prior to the reduction, the clerks performed both scanning and health room coverage duties at lunch time. The additional time they are covering in the health rooms is at the end of the day, when the food service workers are not working. The presence of the food service workers does not, therefore, have any impact on the availability of the clerks to cover the health room during the hours that were taken from the assistants. The only effect of hiring the food service workers is to allow more time for the clerks to perform their clerk responsibilities during the course of the day, prior to covering the health room at the end of the day. If the District was willing to forego that time spent on clerk duties, it could still have reduced the health room assistants without hiring the food service workers.

Even if the Union had established some direct linkage between the hiring of the food service workers and the availability of the clerks to cover the health room at the end of the day, the contract does not appear to forbid such facilitation. The Union asserts that the parties agreed not to use non-unit employees when unit employees were on layoff. That is not what the contract actually says. Article 11.01 states, in part:

> 3. It is understood that no bargaining unit employee will be laid off if there are temporary, seasonal, student or non-bargaining unit part-time employees working within his/her department that the laid off employee would wish to displace provided the employee is qualified to perform the available work. Any such displacement shall be at the rate of pay and under the same terms and conditions as were applicable to the temporary, seasonal, student or non-bargaining unit part-time position concerned.

This language does not prohibit the use of non-unit employees when unit employees are laid off. Instead, it requires that the unit employees be offered the work being performed by the non-unit employees, at the same level of compensation as the non-unit employees received for the work. It also conditions this on the non-unit employees being employed in the same department as the laid off employees. Scanning work has never been in the assistants' department, and even if it was, there is no evidence that any of the health room assistants sought to perform the scanning work.

In summary, the record evidence does not support the Union's claim of a linkage between the employment of the food service workers and the reduction in hours for the health room assistants. Even if that linkage was established, the contract does not prohibit it. It follows that there is no violation of the collective bargaining agreement, and the grievance must therefore be denied.

On the basis of the foregoing, and the record as a whole, I have made the following

AWARD

The grievance concerning the reduction in hours of elementary health room assistants was timely filed and is arbitrable. To the extent that the Union sought to include the reduction in hours for the high school health room assistant within the scope of the grievance, that claim was not presented in a timely fashion, and is not arbitrable.

The District did not violate the collective bargaining agreement when it reduced the hours of the elementary health room assistants effective September 1, 2005. The grievance is denied.

Dated at Racine, Wisconsin, this 25th day of January, 2007.

Daniel J. Nielsen /s/

Daniel J. Nielsen, Arbitrator

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