BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

NORTHERN EDUCATION SUPPORT TEAM

and

PARK FALLS SCHOOL DISTRICT

Case 34
No. 66378
MA-13508

(Scott Walker Grievance)

Appearances:

Mr. Gene Degner, Director, Northern Tier UniServ - Central, P.O. Box 1400, Rhinelander, Wisconsin, 54501-1400, appearing on behalf of the Northern Education Support Team.

Attorney Barry Forbes, Wisconsin Association of School Boards, 122 West Washington Avenue, Suite 400, Madison, Wisconsin 53703, and Mr. Dennis Dervetski, Superintendent, Park Falls School District, 420 Ninth Street North, Park Falls, Wisconsin 54552, appearing on behalf of the Park Falls School District.

ARBITRATION AWARD

The Northern Education Support Team, hereinafter referred to as the Union or NEST, and the Park Falls School District, hereinafter referred to as the District, are parties to a collective bargaining agreement (Agreement or contract) which provides for final and binding arbitration of certain disputes, which Agreement was in full force and effect at all times mentioned herein. The parties asked the Wisconsin Employment Relations Commission to assign an arbitrator to hear and resolve the Union's grievance regarding the layoff of Scott Walker, hereinafter Walker. The undersigned was appointed as the arbitrator and held a hearing into the matter in Park Falls, Wisconsin, on December 11, 2006, at which time the parties were given the opportunity to present evidence and arguments. The hearing was transcribed and is the official transcript of the hearing. The parties filed post-hearing briefs by February 6, 2007 at which time the record was closed. Based upon the evidence and the arguments of the parties, I issue the following Decision and Award.

ISSUES

The parties were able to stipulate to a statement of the issue to be decided by the Arbitrator as follows:

Did the District violate the collective bargaining agreement between NEST and the Park Falls School District when it laid off employee Scott Walker for the 2006-2007 school year?

If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISION

ARTICLE XIV - REDUCTION IN FORCE

A. If the Board should determine a need for a reduction in work, the Board may consider layoff or reduction in hours of the necessary employee(s). The reduction shall be accomplished as follows:

1. attrition;

2. provided 1 is not sufficient, the Board shall then layoff or reduce hours starting with the least senior employee in the respective classification designed for reduction.

B. 1. Seniority shall be defined by continuous service to the district.

2. Employees working in the custodian-maintenance, bus mechanic, and clerical classifications shall have seniority based on a scheduled 12-month year of at least twenty (20) hours per week. Less months or hours worked per year shall be prorated off 12 months or 1950 hours, respectively.

3. Employees working in the matron-laundry, food service personnel, and aide classifications shall have seniority based on a scheduled 9-month year of at least 20 hours per week. Less months or hours worked per year shall be prorated off 9 months or 1080 hours, respectively.

4. Seniority shall be districtwide (sic) and shall be computed for the classification of application at the time of reduction.

C. . . .

D. Employees shall be recalled in the inverse order of layoff for positions in the classification from which they were laid off.

E. Bargaining unit employees on layoff shall be notified of all bargaining unit openings and vacancies while on layoff. The District will notify the employee at the address or telephone number last known to the District. Bargaining unit employees shall retain rights for two (2) years. While on layoff, bargaining unit employees shall be called for available substitution work in their classification.

The laid off employee(s) may request to be placed on the substitute list for other positions for which they are qualified. If called to substitute, they shall receive the pay for that category of work based on their District experience.

BACKGROUND

Scott Walker was initially employed by the District in December of 2001 as a custodian. In September, 2006, he was notified by the District that he was to be laid off effective at the end of the following month, October, 2006. Walker was the least senior custodian in the custodian classification. Upon receipt of the notice of layoff, Walker asked the District Administrator, Dennis Dervetski, if he (Walker) would be allowed to "bump" into the position of bus mechanic, a position held by Jim Bredl, a less senior employee than Walker. Dervetski told Walker that this would not be possible because the bus mechanic position was a different classification than the custodian position and the agreement, specifically Article XIV - Reduction In Force, did not give Walker the right to bump outside of his classification. This grievance followed in a timely manner.

THE PARTIES' POSITIONS

The Union

The least senior person to be considered in the layoff should have been the bus mechanic, not the custodian and, because the custodian was erroneously laid off, he should have been able to bump the less senior bus mechanic. The question involved in this grievance is the meaning of the language contained in Article XIV - Reduction in Force which provides, among other things, that "the Board shall then layoff or reduce hours starting with the least senior employee in the respective classification designated for reduction." The essential question is whether the custodians and the bus mechanics are members of the same classification for purposes of layoff or reduction in force. The Union believes this to be the true meaning of the language contained in Article XIV and, if so, then the least senior member in the 'classification' would have been the bus mechanic, not the custodian, and Walker should not have been laid off.

The contract identifies positions but does not name the job categories and how their seniority is counted nor does it group those employees in a classification for layoff. The Union argues that the "category for layoff" is "custodian-maintenance/bus mechanic" and that they are in the same category. The District's decision to layoff was wrongly based upon the idea that the two were in separate categories, i.e. that the "custodians" were in one classification and the "bus mechanics" were in another classification.

The District's decision to lay off Walker was not based upon Walker's qualifications to fill the bus mechanic's position but only upon the classifications according to the contract. Therefore, says the Union, "the only issue involved in this particular arbitration is, are those positions within the same classification or are they not." Although the Union maintains that Walker is qualified to fill the bus mechanic position, any mention of qualifications "is unfair at this particular time since it is clear from the record that the District did not consider qualifications when it made the judgment that Scott Walker was not entitled to the bus mechanic position."

The past practice of the parties supports the Union's position. The testimony of the superintendent indicated a willingness to grant bumping rights to the bus mechanic into the custodian position in the past but is now unwilling to do so.

In summary, the Union believes the issue must turn on whether the bus mechanic and the custodian are considered to be in the same classification for layoff or reduction in force. If so, the grievance must be sustained.

The District

The focal point of this dispute is how the District and the Union define the term "classification" in Article XIV, Section A.2. The parties disagree as to whether the bus mechanic classification is separate from the custodian and maintenance classifications. The District says it is, just as other positions such as matrons, laundry workers, food service personnel, secretaries and aides are separate classifications. The clear language of the contract makes it evident that the bus mechanics and the custodial and maintenance classifications are separate for purposes of layoff or reduction in force. The record testimony, past practice and an analysis of the duties of each position support this conclusion.

The appropriate legal standard requires the analysis to begin with a determination as to whether the relevant contract language is clear and unambiguous, or ambiguous. (Citing KENOSHA SCHOOL DISTRICT, MA-11782 at 10 (4/18/2003). Unambiguous language should be applied to the facts according to its plain meaning. If the language is capable of being reasonably understood in two or more senses it is ambiguous and the Arbitrator should then look beyond the four corners of the contract, such as to past practice, to determine the parties' intent. Id.

The Union has the burden of proving that the custodian-maintenance classification and the bus mechanic classification are actually one in the same classification. If it fails to carry its burden, the grievance must fail. The Union has not met that burden. The Union claims that the District cannot lay Walker off because there is another, less senior, employee in the same classification: the bus mechanic. The Arbitrator must define the structure of the custodian-maintenance classification and the bus mechanic classification and determine whether they are the same (classification) as the Union contends. In order for the Union to meet its burden it must show that the that the contract is drafted to clearly and unambiguously treat the two positions as being in the same classification. It cannot do so because the language found in Article XIV - Reduction in Force is clear and indicates that the two positions are two separate classifications for the purposes of layoff and reduction in force and are not to be treated the same. In Article XIV, B.2. the contract states:

> "Employees working in the custodian-maintenance, bus mechanic, and clerical classifications (emphasis added) shall have seniority based on a scheduled 12-month year of at least twenty (20) hours per week…"

The use of the plural tense of the word "classification" adds definition and makes it clear that there is a custodian-maintenance classification, a bus mechanic classification and a clerical classification. The same use of the plural tense of the word "classification" appears in subparagraph B.3. and segregates matron-laundry, food service personnel and aides into separate classifications. The Union's argument would result in making the use of the term "classifications" nonsensical and would eliminate the fact that the drafters intended to create six different classifications for purposes of layoffs and reductions in force.

No remaining provisions of the contract support the Union's position. For instance, the Recognition clause (Article I) clearly establishes that the mechanic position and the custodian position are separate and the contract's Vacancy and Reassignment language (Article XV) provides a separate preference for custodial staff assignments. Article XVII (Assignment, Workload, and Hours) shows the drafter's intent to treat different classifications of employees in an identical manner. If the intent had been to lump custodians and bus mechanics together in Article XIV - Reduction in Force, the drafters would have created language as they did in Article XVII. The fact that they did not do so clearly reflects their intent to separate the two under the Reduction in Force article. The fact that custodians and bus mechanics share the same wage levels (Appendix A) does not give rise to the conclusion that the drafters intended the two classifications to become one for the purposes of layoffs or reductions in force under Article XIV. They simply share the same wage levels.

Extrinsic evidence such as the past practice of the parties, the bus mechanic job description and the special skills required for a bus mechanic make it clear that the parties do not contemplate that the two positions are to be treated the same for purposes of lay off or reduction in force. The grievance must be denied in its entirety.

DISCUSSION

This is a contract interpretation case, the outcome of which hinges upon the meaning of a relatively narrow question. The dispute is whether Article XIV means that the custodian-maintenance position and the bus mechanic position are in the same classification, or in separate classifications, for the purposes of layoffs or reductions in force.

The District asserts that the language of Article XIV is clear and unequivocal and that it provides that the custodian-maintenance position and the bus mechanic position are in two separate classifications. The Union, on the other hand, says the language, when viewed together with the past practice of the parties, means that the custodian-maintenance position and the bus mechanic position are in the same classification for purposes of lay off or reduction in force.

The fact that the parties draw differing conclusions from the present language does not, in itself, make the language unclear. The job of determining language clarity, or lack thereof, is left to the Arbitrator.

Language is normally considered to be clear and unambiguous if it is susceptible to but one plausible interpretation or meaning. If it is capable of being understood in two or more different senses or if plausible arguments may be made for a competing interpretation then the language is considered to be ambiguous. If the Arbitrator finds the language to be clear and unambiguous he or she must apply the plain meaning to the facts. If found to be ambiguous, the language must be interpreted by the Arbitrator to discover the true intent of the parties and then applied to the facts of the case. If the language is clear, no extrinsic evidence is required or proper. If the language is ambiguous, extrinsic evidence is necessary.

The language at issue in the controversy here is found in Article XIV - Reduction in Force, and reads in pertinent part as follows:

ARTICLE XIV - REDUCTION IN FORCE

A. If the Board should determine a need for a reduction in work, the Board may consider layoff or reduction in hours of the necessary employee(s). The reduction shall be accomplished as follows:

1. attrition;

2. provided 1 is not sufficient, the Board shall then layoff or reduce hours starting with the least senior employee in the respective classification designated for reduction.

B. 1. Seniority shall be defined by continuous service to the district.

2. Employees working in the custodian-maintenance, bus mechanic, and clerical classifications shall have seniority . . .

3. Employees working in the matron-laundry, food service personnel, and aide classifications shall have seniority . . .

4. Seniority shall be districtwide (sic) and shall be computed for the classification of application at the time of reduction.

. . . (My emphasis)

The Union introduced evidence of past practice in its attempt to support the argument that the parties mutually intended the language to mean what the Union argues it means, i.e. that the two positions are one and the same for purposes of layoff and reductions in force. Because I find that the plain language found in Article XIV is not ambiguous and is not capable of being understood in two or more different senses, nor may a reasonable argument be made for any competing interpretation, consideration of evidence of past practice is unnecessary.

Article XIV, A. 2. provides for layoff or reduction in force by seniority in each respective classification. Article XIV. B. 2. and 3. define those respective classifications. The intent of the language in B. 2. and 3. is obvious and means that the parties have set forth six separate classifications, three under paragraph B.2. (a custodian-maintenance classification, a bus mechanic classification and a clerical classification) and three under paragraph B.3. (a matron-laundry classification, a food service personnel classification and an aide classification). The interpretation urged by the Union would require the undersigned to disregard the plural use of the word 'classification' in B. 2. and 3. and substitute them for the singular, thus resulting in a significant modification in the meaning of the language, a step the Arbitrator is not authorized to take. If the drafters had intended to convey the idea that the categories of employees referenced in Article XIV, B. 2. and 3. were members of the same classification they could easily have done so by using the singular of the word. The language would then have read:

"Employees working in the custodian-maintenance, bus mechanic, and clerical classification shall have seniority . . ."

The use of the singular 'classification' would also have been clear, and would have meant that the categories of employees referenced therein were members of the same classification. In that event, the Union's interpretation would be correct. But the drafters used the plural of the word thus making it quite clear that custodian-maintenance employees, bus mechanics and clerical employees are separate classifications and, hence, are to be treated as such for the purposes of layoffs or reductions in force. Although the Union did not specifically argue the point, the fact that the two positions happen to be compensated at the same wage rate does not alter the clarity expressed in Article XIV. The Agreement contains no other language which would modify this interpretation.

In light of the fact that the language is unambiguous and not plausibly or reasonably susceptible to competing interpretations, there is no reason for me to address any extrinsic evidence produced by the parties.

In light of the above, it is my

AWARD

The District did not violate the collective bargaining agreement between NEST and the Park Falls School District when it laid off employee Scott Walker for the 2006-2007 school year.

The grievance is dismissed in its entirety.

Dated at Wausau, Wisconsin, this 19th day of February, 2007.

Steve Morrison /s/
Steve Morrison, Arbitator

SM/gjc
7103