

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ROYALL SCHOOL DISTRICT

and

ROYALL EDUCATIONAL SUPPORT PERSONNEL ASSOCIATION

Case 33
No. 66116
MA-13432

(Improper Layoff of Support Staff)

Appearances:

Mr. Gerald Roethel, Executive Director, Coulee Region United Educators, 2020 Caroline Street, LaCrosse, Wisconsin 54603, appeared on behalf of the Association

Mr. Fred D. Hollenbeck, Attorney at Law, Curran, Hollenbeck & Orton, S.C., Attorneys at Law, 111 Oak Street, P.O. Box 140, Mauston, Wisconsin 53948-0140 appeared on behalf of the School District.

ARBITRATION AWARD

On July 24, 2006, Royall Educational Support Personnel Association and the Royall School District filed a request with the Wisconsin Employment Relations Commission seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a grievance pending between the parties. Following appointment, a hearing was conducted on November 9, 2006 in the District offices, in Elroy, Wisconsin. No formal record of the proceedings was made. Post-hearing briefs and a reply brief were filed and exchanged by February 1, 2007.

This Award addresses the reduction in hours of certain Secretarial and School Aide employees.

BACKGROUND AND FACTS

The Royall School District and Royall Educational Support Personnel Association, an affiliate of the Wisconsin Education Association Council, are signatories to a collective

bargaining agreement, covering the terms and conditions of employment of Instructional Aides, Custodians, Secretaries, and Food Service employees. The relevant portions of that agreement are set forth below.

The facts giving rise to this dispute are not in dispute. The Royall School District is a declining enrollment district. In the 2000-01 school year the Wilton attendance area detached from the Royall system, resulting in a loss of approximately 200 students, a portion of the tax base, and loss of state aid monies. The loss was significant for a district that, at the time of the hearing, had just under 600 students enrolled.

Declining enrollment and the accompanying loss of revenues has led to annual layoffs of District employees. It was the unrebutted testimony of Gerald Roethel, Association UniServ Director, that prior to 2006 the District had always laid off or reduced hours in the inverse order of seniority, with a single exception. According to Roethel, the District on one occasion reduced the hours of 2 Cooks. The Association grieved, and the School Board reinstated the hours of the senior Cook. The District subsequently made, and withdrew the following proposal in the negotiations leading to the 2004 -06 collective bargaining agreement:

C. Selection for Reduction/2004-2006 (March 25, 2004)

Step Two-Selection

The Board shall select the least senior employee(s) for a reduction in the affected Department **providing that the remaining employees are qualified and available to perform the remaining work.** If a position is eliminated in any classification the most senior affected employee(s) have the right to bump into any position in their classification with less seniority **providing that the remaining employees are qualified and available to perform the remaining work.** Seniority will be the determining factor for the bumping process. **If an employee bumps into a new department, the employee will be considered probationary for a 90 day period.** Departments for the purpose of this Article shall be defined as:

- a. Custodial
- b. Maintenance
- c. Secretaries
- d. Food Service
- e. Aides

On March 27, 2006 the School Board determined to make another round of layoffs, including the reduction or elimination of Aides, a Custodian, Food Service, and Secretarial employees. The Association challenges the District's decision to reduce the two senior Secretaries from calendar year to school year status, and the reduction in the work day of all Aides, regardless of seniority, by 15 minutes. The other reductions, made in inverse seniority, are not in dispute.

There are four Secretaries, each assigned to a separate building. The two senior Secretaries, Margaret Anderson and Joanne Wopat were employed on a calendar year basis. The two junior Secretaries were employed on a calendar year basis. The District determined that it would be most efficient to eliminate the secretarial coverage during the summer. The result is that there are now four school year secretaries. With respect to the Aides, it was the view of the District that it was preferable, from a delivery of service perspective, to reduce all the Aides by 15 minutes than to eliminate half a position.

ISSUE

The parties stipulated the following issue:

Did the Royall School District violate the collective bargaining agreement when it reduced the aides 15 minutes per day and when it reduced the two most senior secretaries by eliminating the summer secretarial time?

If so, what shall the remedy be?

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II

MANAGEMENT RIGHTS

The District retains all right of possession, care, control and management that it has by law, and retains the right to exercise these functions under the terms of the collective bargaining agreement except to the precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement. These rights include, but are not limited by enumeration to, the following:

- A. To direct all operations of the school district;
- B. To establish and require observances of reasonable work rules and schedules of work;
- C. To hire, promote, transfer, and schedule and assign employees in positions within the school district;
- D. To suspend, discharge, and take other disciplinary action against employees;
- E. To lay off employees from their duties because of lack of work or any other legitimate reason;

- F. To maintain efficiency of school system operations;
- G. To take whatever action is necessary to comply with state or federal law, or to comply with state or federal agency decisions or orders;
- H. To introduce new or improved methods or facilities;
- I. To select employees, establish quality standards and evaluate employees' performance;
- J. To determine the methods, means and personnel by which school system operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the school system in situations of emergency;
- L. To determine the locations, methods, means and personnel by which operations are to be conducted.

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ARTICLE V

DEFINITION OF EMPLOYEES

A. WORK YEAR

Full-time, Twelve-Month Employees -- shall include those employees assigned to a position for forty (40) hours a week for more than forty-two (42) weeks per year.

Part-time, Twelve-Month Employees -- shall include those employees assigned to a position for less than forty (40) hours a week for more than forty-two (42) weeks per year.

Full-time School Year Employees -- shall include those employees assigned to a position of at least thirty-two and one-half (32½) hours a week for at least 36 weeks, but no more than 42 weeks per year.

Part-time School Year Employees -- shall include those employees assigned to a position of less than thirty-two and one-half (32½) hours a week for at least 36 weeks, but no more than 42 weeks per year.

The School Year -- shall be defined to include the days the school district is scheduled to be in session, inservice/workdays, and a period not to exceed two (2) weeks prior to and following the school year, to be determined at the discretion of the employer.

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B. CLASSIFICATION

The following members who are in this Unit are classified as follows:

- Classification I Custodian
- Classification II Maintenance
- Classification III Food Service
- Classification IV Instructional Aides
- Classification V Secretaries

Any classification may or may not have employee(s) in it at a given time.

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ARTICLE VII

VACANCIES AND TRANSFERS

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B. A vacancy shall be defined as a newly-created position or a present position that is not filled.

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E. A new/vacant position shall be filled with a qualified bargaining unit applicant before consideration of outside candidates.

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1. Transfer of a bargaining unit applicant within the classification shall be automatic and awarded on the basis of seniority.

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ARTICLE VIII

LAYOFF AND RECALL

- A. In the event the Board determines to reduce the number of positions (full layoff) or the number of hours in any position (partial layoff), the provisions set forth in this Article shall apply. Layoffs shall be made only for the reasons asserted by the Board, (Article III, Sec. E) and shall not be used to discipline an employee for his or her performance or conduct.

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- C. **SELECTION FOR REDUCTION**

In the implementation of staff reductions under this Article, individual employees shall be selected for full or partial layoff in accordance with the following steps.

Step One – Attrition.

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Step Two – Selection.

The Board shall select the least senior employee(s) for a reduction in the affected Department. If a position is eliminated in any classification the most senior affected employee(s) shall have the right to bump into any position in their classification with less seniority. Seniority will be the determining factor for a bumping process. Departments for the purpose of this Article shall be defined as:

- a. Custodian
- b. Maintenance
- c. Secretaries
- d. Food Service
- e. Aides

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ARTICLE XV

HOURS AND WAGES

This Article shall not be construed as a guarantee or limitation on the number of hours per day or hours in a work week which may be scheduled or required by the School District.

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B. WORK WEEK

1. Full-Time Employees

The normal work week for full-time, twelve (12) month employees shall consist of forty (40) hours or less per week. The normal work week for full-time, school year employees shall consist of forty (40) hours or less per week. The School District has the right to set work schedules.

2. Part-Time Employees

A regular schedule of hours shall be prepared for part-time employees. Such schedules will be developed by the School District and will be made known to the employees.

POSITIONS OF THE PARTIES

The Association believes the District violated Article VIII, C, Step 2. The Contract requires that "The Board shall select the least senior employee(s) for a reduction in the affected departments". The reduction in the Secretarial area was from the two most senior. The Aides reduction was spread among all employees. It is the view of the Association that the clear language of Article VIII allows for no administrative discretion in determining who is to be reduced or laid off. The least senior must be reduced.

The Association further contends that the practice of the parties supports its claim in this matter. Historically, the District has reduced staff in inverse order of seniority. In the one instance where the District reduced the hours of two Cooks, the Association grieved, and the hours of the senior Cook were restored. During the negotiations leading to a 2004-06 agreement the District was unsuccessful in its attempt to modify the layoff provision.

The Association argues that the language of Article VIII is specific, and so controls over the more general Article II. It is also the contention of the Association that Article II specifically acknowledges that it is subject to other provisions of the Agreement. It is the view of the Association that the District acted out of convenience, rather than pursuant to the terms of the collective bargaining agreement.

With respect to the Aides, the Association asks, if the District is free to reduce each position by 15 minutes, is it free to reduce each by an hour or any other measure of time? Such a conclusion would alter the character of the unit, and the Aides jobs, and render Article VIII without meaning.

It is the view of the District that the Management Rights clause authorizes the employer to operate the district as it sees fit unless the contract specifically restricts the employer's rights. It is the view of the employer that the Agreement contains no restrictions on the employer's right to set the hours of work. It is the view of the District that the contract specifically authorizes the employer to modify the hours of work for its employees and does not provide authority to the union to veto the employer's decision. It is the view of the employer that the decision to modify hours of work is addressed by various provisions of the Management Rights clause.

The employer contends that what occurred was a reduction of hours and not a layoff within the meaning of the contract. Thus, the seniority clause is not applicable. This represents an assignment of work case. Article XV is specific in noting "This Article shall not be construed as a guaranty or limitation on the number of hours per day or hours in a work week which may be scheduled or required by the school district". The Article further indicates that the hours of work for part timers "...will be developed by the School District and will be made known to the employees".

It is the view of the employer that its reductions in hours was a response to the declining enrollment it faced and was the only practical way to respond without sacrificing educational quality.

DISCUSSION

In addressing its budget concerns the District reduced and eliminated positions within the bargaining unit. Most of the actions taken have not been challenged. Two have. With respect to the Secretaries, the two senior Secretaries had their hours of work reduced from calendar year to essentially school year basis. The effect was a reduction in the number of hours each was scheduled to work. The employer points to Article II and to its broadly articulated rights and indicates that it should not be subject to second guessing, absent "...precise extent such functions and rights are explicitly, clearly and unequivocally restricted by the express terms of this Agreement...". The Association points to Article VIII as that restriction. The parties dispute whether or not this action is a layoff.

Article VIII defines layoff, for purposes of the Agreement. Par. A specifies that a reduction in the number of hours in any position (partial layoff), is governed by "...the provisions set forth in this Article..." I believe it is clear and unequivocal that the hours of work of the Secretaries and Aides were reduced. That would invoke the provisions of Article VII. Applying the Article as asserted by the Association leads to a somewhat anomalous result. Secretaries would work in the summer, a time when there are few, if any students or teachers. If the District continued to seek savings from its Secretarial staff it would be forced to turn to the least senior employee, and reduce her by a corresponding number of hours, which would leave a building unstaffed during a significant portion of the school year. Such a result appears suspect.

The presumption which underlies this contention is that once a position is established as a Full Time, 12 Month position it cannot thereafter be modified. Such a premise is difficult to sustain in the face of the School District's right to create positions. Article V defines employees' work years. It recognizes Full Time, Twelve Month Employees and also Full Time, School Year Employees. Such a distinction reflects a traditional school setting, reflecting the reality of the school district calendar.

However its actions relative to the Secretaries is characterized, I believe what the District did was to eliminate the 2 Full Time, Twelve Month Secretarial positions and create 2 Full Time, School Year Secretarial positions. Such a right is inherent in the Management Rights clause, and is acknowledged in the Layoff clause (Article VIII, Sec. C, Step 2). I do not regard this as a subterfuge of the Layoff provision because the Board created the Twelve Month and School Year positions. The parties did not bargain specific jobs into the contract, nor did the parties bargain guaranteed work hours or work weeks. The parties did bargain the existence of both Twelve Month and School Year positions. It is a reasonable application of the Management's Rights to conclude that the employer is to determine which positions are to be filled.

The alternative to this would be to sustain the Association's conclusion, which I regard as harsh and impractical in the School setting. Having said this, Article VIII does guarantee the senior employees the right to bump. If, based on this decision, either senior employee desires to bump to another position, that is their right.

I regard the analysis relative to the Aides as somewhat different. For the reasons set forth above, I believe the reduction in their hours is governed by Article VIII. Unlike the Secretarial reductions the reductions here do not alter positions from one contractually recognized class to another. Rather, it spreads the budget reduction among all employees. The parties submitted an exhibit (Joint #6) which lists the Aides and their hours of work following the 15 minute/day reduction. Of the 14 positions listed, 8 were 40 hours per week prior to the reductions. I believe that reducing all employees a set number of hours is at odds with Article VIII, C., Step Two. That provision requires the Board to "select the least senior employee(s) for a reduction..." I think it is a fair reading of that provision that the Board is to select the junior employee for reduction. Selecting all employees for reductions is the antithesis of this requirement.

I read this as a layoff by seniority provision which elevates the security rights of senior employees over those of junior employees. The Association is right when it asks what the limits of the Boards right to reduce hours across the board would be. If the District has the right to reduce all employees 15 minutes, it has the right to reduce hours by a larger number, unilaterally changing the nature of contractual positions, including benefit status. Article VIII would be rendered a nullity. I do not think the Article, or the contract as a whole, is intended to be read in such a fashion.

AWARD

The grievance is sustained relative to the Aides, and denied as to the Secretaries.

REMEDY

The District is directed to reinstate the 15 minutes it reduced the hours of the Aides, and to make them whole for lost earnings retroactive to the date of the reduction.

Dated at Madison, Wisconsin, this 12th day of June, 2007.

William C. Houlihan /s/

William C. Houlihan, Arbitrator

