

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**ARGYLE SCHOOL DISTRICT**

and

**ARGYLE EDUCATION ASSOCIATION**

Case 16  
No. 67015  
MA-13710

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**Appearances:**

**Ellen La Luzerne**, Capital Area UniServ South, 4800 Ivywood Trail, McFarland, Wisconsin, appeared on behalf of the Association.

**Eileen A. Brownlee**, Kramer & Brownlee, LLC, Attorneys at Law, 1038 Lincoln Avenue, Fennimore, Wisconsin, appeared on behalf of the Employer.

**ARBITRATION AWARD**

Argyle Education Association, herein referred to as the “Association,” and Argyle School District, herein referred to as the “District,” agreed to have a member of the staff of the Wisconsin Employment Relations Commission (“WERC”) serve as the impartial arbitrator to hear and decide the dispute specified below. The WERC assigned Paul P. Gordon, a WERC Commissioner, to act as the Arbitrator. I held a hearing on September 11, 2007, in Argyle, Wisconsin. Each party filed a post-hearing brief and reply brief; the last of which was received October 26, 2007.

**ISSUES**

The parties stipulated to the statement of the issues as follows:

1. Did the District act in bad faith when it partially laid off the grievants allegedly in violation of the collective bargaining agreement? <sup>1</sup>

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<sup>1</sup> I have added the word “allegedly” to the stipulated statement of the issue. I did so in conformance to the evidence and position of the parties and to avoid misunderstanding. The issue in dispute is whether the Employer acted in bad faith in violation of the agreement and did not agree that the second layoff otherwise violated the agreement.

2. If so, what is the appropriate remedy?

### FACTS

The District is a Wisconsin school district. The Association is a labor organization which represents certain professional employees of the District including teachers. Teachers Marilyn Dralle, Joanne Peterson and Jon Rufenacht are teachers employed by the District and are members of the bargaining unit represented by the Association. The grievance herein was filed on behalf of Dralle, Peterson and Rufenacht. Dralle, Peterson and Rufenacht had been grievants in the first grievance which was resolved by action of the Board. Other teachers who are in the unit represented by the Association and who were involved included in the layoffs which underlie the first grievance and/or this dispute are Jacycki Reilly, Ronda St Clair, and Klye Bille. Rufenacht is the technical education teacher. Dralle is the family and consumer education teachers. Peterson is the agriculture teacher. Kyle Bille was the charter school teacher and taught one class in the regular school. Ronda St. Clair was the full time elementary special education teacher

Under Section 13.02 of the Agreement, notice of layoff or reduction in individual teaching contracts is required by April 15 of each year. At the March 12, 2007, School Board meeting, District administrators presented the Board with financial projections made by outside consultants indicating that there would be a budget deficit of \$43,511 for the 2007-08 school year as a result of an expected enrollment decline of three students in the elementary grades and also as a result of revenue limits. The projections also indicated that the District expected further decline in enrollment in future school years and indicated that deficits would increase if the Board did not act to reduce costs. The administrative staff identified a limited number of staff reductions which the administrative staff concluded were feasible

The Board decided at its March 12, 2007 meeting, to layoff teachers or reduce the contract of a number of teachers in order to reduce the budget shortfall. It did this rather than using its financial reserves to deal with the shortfall. The Board reduced the contracts for a number of staff members as follows:

<i>Teacher</i>	<i>class removed</i>	<i>contract reduction</i>	<i>Board stated reason</i>
Rufenacht	2 academic classes	100% to 75%	
Dralle	1 study hall	100% to 87.5%	
Peterson	1 study hall	100% to 87.5%	
Bille	Charter & 1 class	100% to 0%	eliminate charter school
St. Clair <sup>2</sup>	spec. ed. consol.	100% to 50%	

The choices made by the Board were consistent with the recommendations of administrators.

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<sup>2</sup> Ms. St. Claire ultimately resigned and her remaining work (50% of full-time) was absorbed by the high school special education teacher taking over the remaining grade school special education work.

The Union grieved the reductions for Peterson and Dralle. These were the employees who sought grievances on their behalf and who the Association felt had justification for a grievance under the Agreement. The Board heard the grievance at a special session on April 3, 2007, and agreed that they were well founded. The basis for granting the grievances was that the District eliminated study halls for these teachers and that if study halls were reduced less senior teachers with study halls should have had their contracts reduced. It rescinded its actions with respect to those two teachers. The Board issued a written confirming decision on April 12, 2007.

The Board met in regular session April 9, 2007, and passed resolutions to make other reductions in anticipation of granting the foregoing grievance, to meet its April 15 deadline. At the commencement of that meeting then Board President Raynold Saalsaa read the following statement:

I would like to welcome everyone to this meeting. It is clear that everyone here tonight cares about our school district, which I commend you for. It is this Board's and Administration's job to ensure that we provide the best learning environment for our children while keeping our school financially sound.

As you are aware, we have had some difficult decisions to make. These decisions are not only for the next year, but for years to come. With the projected declining enrollment, we are looking at losing 48 students within the next four years. This amounts to approximately \$432,000. We need to start preparing for this now. We are one of the few districts in the area that has not had to go to referendum or short term borrow YET, but that appears to be just around the corner. By being somewhat conservative now, hopefully we can lengthen the time before we reach that critical point.

Our salaries are 39% of our budget and our benefits, mostly health insurance, is 19%. Another 6% transfers into salaries and benefits. As for the rest of our budget, 18% is purchased services, the biggest share being busing. Another large part, 10%, is debt repayment. The remaining 8% is for capital and non-capital objects. As you can see, over 60% of our budgets is salaries and benefits.

One-fifth of our overall budget is mostly health insurance. This is an area where we could save the district a substantial amount of money, but we have to have teacher cooperation to realize this. If this change would occur, we probably would not be discussing cutting classes tonight. Cutting classes means cutting teaching positions, but our options are limited. We tried cutting study hall supervision, which we were unable to do because of our teaching contract. We need to look at other areas in which to save money, which brings us to this evening's agenda. This is not a happy situation for any of us in this room. Everyone in the Argyle School District, from the School Board, to the

Administration, to the staff, needs to focus on what is best for the kids. We all want our students to have every educational opportunity available, but at this time we feel we are unable to provide this.

Tonight, we want to hear your comments and concerns. In order to give everyone who has registered the opportunity to speak, you will be given 5 minutes to express your concerns. After 5 minutes, I will stop you. You will be allowed to speak only once.

I did this on my own.

The Board passed resolutions at that meeting by which it reaffirmed the other reductions which had not been rescinded as specified above and made the following other reductions:

<i>Teacher</i>	<i>class removed</i>	<i>contract reduction</i>	<i>Board stated reason</i>
Rufenacht	2 classes removed	100% to 62.5%	
Dralle	class removed	100% to 87.5%	
Peterson	class removed	100% to 75%	
Reilly	study hall		least senior teacher

The resolution as to Dralle stated, in essence, that financial and budgetary limitations and low course enrollment necessitate the reduction of the FACE program by reducing a FACE program teaching position from full time to 87.5% of full time and concluded under Article 13 that Dralle was the teacher who was properly selected for the reduction from 100% of full-time to 87.5% of full time. Similarly, the resolution as to Peterson stated that financial and budgetary limitations and low course enrollment necessitate the reduction of the agriculture program and resolved to reduce the agriculture program by reducing a full time agriculture program position from full time to 75% of full time. The Board determined that under Article 13 the person who should be reduced should be Peterson. The third resolution of the Board concluded that financial and budgetary limitations and low course enrollment necessitated the reduction of the technology education program by reducing one technology education teaching position from full time to 62.5% of full time. It concluded that Rufenacht was the appropriate teacher under Article 13 to be reduced from full time to 62.5% of full-time.

The Association filed a grievance on April 20, 2007, concerning the reductions for Dralle, Peterson and Rufenacht. The grievance was properly processed to arbitration without resolution. It is this grievance which is the subject of this arbitration.

In June, the Board determined that not all of the layoffs were necessary. It took the following actions:

Bille	0% to 50%	charter program retained
Reilly	87.5% to 100%	study hall restored
Rufenacht	62.5% to 75%	study hall restored
Peterson	75% to 100%	agriculture class restored

**RELEVANT AGREEMENT PROVISIONS**

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**ARTICLE 4 – MANAGEMENT RIGHTS**

- 4.01 The Board, on its own behalf and on behalf of the electors of the District, hereby retains and reserves unto itself, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generalities of the foregoing, the rights which follow:
- A. The Board shall have the authority for the executive management administrative control of the school system, its properties, facilities, and the work-related activities of its employees.
  - B. The Board with the District Administration shall have the authority to hire all employees, subject to the provisions of the law, and to determine their qualifications and the conditions for their continued employment, or their dismissal or demotion with just cause, and to promote and transfer all such employees through the use of an evaluation procedure acceptable to those involved.
  - C. The Board shall have the authority to establish grades and courses of instruction, including special programs, and to provide the athletic, recreational, and social events for students, all as deemed necessary or advisable by the Board with the advice of the professional staff.
  - D. To decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aids of every kind and nature with the advice of curriculum committees representing the professional staff.
  - E. Staff input and seniority should be considered in assignment change to determine class schedules, and the duties, responsibilities, and assignment of teachers and other employees with respect thereto.
- 4.02 The Board’s right to operate and manage the school system is recognized, including the determination and direction of the teaching force, the right to plan direct and control school activities; to schedule

classes and assign workloads; to determine teaching methods and subjects to be taught; to maintain effectiveness of the school system; to determine teacher complement; to create, rise and eliminate positions; to establish and require observance of reasonable rules and regulations; to select and terminate teachers; and to discipline and discharge teachers for cause. The foregoing enumeration of the functions of the Board not specifically set forth, the Board retaining all functions not otherwise specifically nullified by this Agreement.

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#### ARTICLE 10- WORKING CONDITIONS

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##### 10.08 Teaching Load:

- A. The basic full-time teaching load for grades 6-12 (based on an 8 hour day) will include the following:
- ✓ 6 classes
  - ✓ 1 study hall or supervisory period
  - ✓ 1 prep
- B. Any teacher assigned six classes with a total of 90 students or less may be assigned a seventh class in lieu of study hall. A teacher who teaches more than 90 pupils in six periods may be assigned a seventh period with a compensation adjustment of 7 ½% of the base salary per year of assignment or a 3 ¾% of base salary per semester assignment. The seventh class must have ten (10) or fewer pupils. A teacher teaching Advanced Placement (AP) courses will receive a compensation adjustment of 5% of the base salary per year of assignment or a 2.5% of base salary per semester assignment.
- C. Specials Teachers: Teachers instructing courses in Music, Art, Physical Education and Library. A full load for teachers in these subjects are class periods with students and no less than one prep period. Administration will make every effort to provide these teachers with more than one prep period, but depending on student load and student sign-up, this will not be guaranteed.

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### **ARTICLE 13 – LAYOFF/REDUCTION IN TIME**

13.01 The Board will first determine the number of teachers to be laid off/reduced in time for reasons other than performance or conduct in the Professional Certification Categories listed below. (See Step II, a-g) Then, in consultation with the District Administrator and such other administrators as may be appropriate, will determine the individual teachers to be laid off/reduced in time in accordance with the following steps:

Step I: Normal attrition resulting from teachers retiring or resigning will be relied upon to the extent it is administratively feasible.

Step II: The least senior teacher currently employed in the Professional Certification Category affected by the lay off/reduction in time. Professional Certification categories will be defined as follows:

- a. Elementary Certified Teachers, Grades 4K-4
- b. Elementary Certified Teachers, Grades 5-8
- c. Subject Certified Teachers, e.g.: Language Arts, Social Studies, Math, Art, Physical Education, etc.
- d. EEN Certified Teachers
- e. Special Needs Teachers, e.g.: Chapter I and II – Side Bar Agreement, Page 24
- f. School Counselors
- g. School Librarians

Step III: The teachers not laid off/reduced in time are certified or capable of certification in the affected subject/grade areas.

13.02 After the number and names of the teachers to be laid off/reduced in time has been determined by the Board, it will provide the Association and each such teacher with a written explanation as to the basis upon which that teacher was selected to be laid off/reduced in time. Such explanation and notice will be given prior to April 15 for all lay off/reductions in time, which shall commence at the end of the school year.

13.03 The lay off/reduction in time of each teacher shall commence on the date specified therefore by the Board and such teacher shall be paid pro rata for services performed under his/her individual teacher contract to the date of such lay off/reduction in time. The teacher shall not be

precluded from securing other employment during such teacher's reemployment rights period.

- 13.04 If, within a teacher's reemployment rights period, the district has a vacant teaching position available for which that teacher is deemed qualified by the Board, the teacher shall be notified of such position and offered employment in that position, commencing as of the date specified in such notice. Under this paragraph, teachers on lay off/reduction in time will be contracted in reverse order of their lay off/reduction in time with respect to a position for which they are so qualified. In the event two (2) or more teachers who are so qualified were laid off/reduced in time on the same date, the board shall select which such teacher shall be first contacted taking into account the factors set forth in Step 2 of Paragraph 1 above.
- 13.05 Within ten (10) days after a teacher receives a notice pursuant to Paragraph D, he/she must advise the district in writing that he/she accepts the position offered by such notice and will be able to commence employment on the date specified therein. Any notice pursuant to paragraph D shall be mailed, registered- return receipt requested, to the last known address of the teacher in question as shown on the district's records. It shall be the responsibility of each teacher on lay off/reduction in time to keep the district advised of his/her current whereabouts.
- 13.06 Any and all reemployment rights granted to a teacher on lay off/reduction in time pursuant to this Article shall terminate upon (1) the expiration of such teacher's reemployment rights period or (2) such teacher's failure to accept within ten (10) days any position offered to him or her as provided in paragraphs D and E, whichever occurs earlier. For purposes of this Article, the term "teacher reemployment rights period" means the period of time that is equal to the shorter of (1) the three (3) years following the date on which the teacher is laid off/reduced in time pursuant to this Article, or (2) the number of years following such lay off/reduction in time date which is equivalent to the number of full consecutive school years that the teacher taught in the district between the date such teacher was last employed by the district and such lay off/reduction in time date, provided, however, that a leave of absence pursuant to Article 12 – Leave Policies shall not be deemed a break in a teacher's continuity of employment and the period thereof shall be included in determining the number of full consecutive school years that he/she taught in the district.

- 13.07 If a teacher who has been laid off/reduced in time wishes to contest such action, he/she may do so by appealing to the Association which may, if it so desired, process a grievance beginning at Step 3 of the grievance procedure by referring the matter in writing to the District Administrator within ten (10) days after receipt by the teacher of the written explanation provided in Section 13.02 above; provided, however, that in the event such grievance is submitted to arbitration, the board's determination to lay off/reduce in time of such teacher shall stand unless the arbitrator shall find that, in making such determination, the Board acted in bad faith in utilizing and/or applying the procedure provided in this Article.
- 13.08 The provisions of this Article are only applicable to a reduction in teachers because of lay off/reduction in time and shall have no effect or force with regard to a reduction in teachers which results from non-renewal of individual teacher contracts or teacher retirement or resignation. Nor do such provisions affect or limit, in any way, the rights of the district with respect to the renewal or non-renewal of any individual teacher contract.
- 13.09 By making necessary payments in advance, a teacher on lay off/reduction in time may continue to be covered by the group insurance plan provided by the district for a period of up to two (2) years.

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### POSITIONS OF THE PARTIES

#### Association

The Association is not arguing that the District cannot layoff or reduce staff, but that the District must act in good faith when those decisions are made. The District acted in "bad faith" in violation of Article XIII when it reissued layoff notices of the three grievants for the purpose of avoiding the use of seniority. The District retaliated against the grievants by reducing course offerings rather than maintaining course offerings. The timing of the layoff notices appears to be in retaliation for the Association's grievance win regarding seniority order for layoffs based on certification: it reissued the partial layoff notices just three days prior to acknowledging that the initial grievance is correct. The primary purpose of the seniority language is to promote maximum security for workers with the longest continuous service. The District clearly attempted to avoid this purpose by laying off staff members with greater seniority via cuts in course offerings when it could not lay those teachers off based on the seniority provisions of the agreement. The District made no effort to apply the seniority system to reduce teachers with less seniority by reducing the junior teachers' study halls. Irrespective of whether the reduction of study halls actually reduces a teacher's workload, the

District did not appear to make any effort to look at study hall assignments of less senior teachers even though there were clearly junior teachers who had study hall assignments which might have been eliminated. The then Board president publicly stated the District must cut classes and tied cuts to insurance costs and the grievance win. In this statement, the District blamed the Association for forcing them to make the cuts, but also appears to attempt to negotiate the collective bargaining agreement outside the negotiation process and to make threats regarding the Association's effort to enforce the terms of the Agreement.<sup>3</sup> The District's stated reason for the layoff is not born out by the facts. The partial layoff notices cite enrollment numbers as justification for the reduction. However, the documentary evidence indicates that the District will only see limited savings.

### District

The District did not act in "bad faith" when it partially laid off or reduced the teaching time of the grievants. Under Article XIII, the Association bears the burden to prove that the Employer acted in bad faith. "Bad faith" is an act designed to fraudulently deprive a person of legal or contractual rights to which the person is entitled. Stated a different way the Association must show; 1) the absence of a reasonable basis for these actions and 2) the District knew or recklessly disregarded the fact that it did not have a reasonable basis for these actions. The Association does not appear to dispute the fact that the District was faced with a budget deficit for the 2007-8 school year due to reduced enrollment and declining revenue. The reason basis for the Association's argument appears to be that the District retaliated against the three grievants because two successfully demonstrated that the District had violated the agreement when it unsuccessfully reduce the contracts of two of the three the month before. The Association's argument on the later point is without merit. The Employer concedes that the original decision to reduce the contracts of the two disputed teachers in the first layoff decision was made in error. However, the fact that it made one error does not mean that its second decision is retaliatory. The decision in this case was made for two undisputed legitimate reasons. First, there was a projected budget shortfall. Second, the District eliminated class sections which had fewer than five students enrolled. The Association cannot explain how or why these decisions were irrational. The District notes that there were some recalls when the District determined there was a need for one more study hall and another section of English. It urges that the grievance be denied.

### DISCUSSION

The Association has not argued that the District violated Article 13's procedures in making the selections for reduction/layoff which are the subject of this case, but rather, that its actions were in "bad faith" in violation of Section 13.02. The essential arguments of the Association are: 1. The District reduced the schedule of Grievants Dralle, Peteron and Rufenacht in retaliation for Grievants Dralle and Peterson having filed a grievance with respect to the rescinded layoff/reduction decision. 2. It is bad faith for the District to use targeted

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<sup>3</sup> The Association agrees that allegations of bad faith bargaining are not within the scope of this arbitration.

subject matter reductions otherwise allowed under Article 13 of senior teachers when it was possible for it to make reductions among less senior teachers.

***1. Contract Interpretation: Bad Faith***

Section 13.02 provides for a narrow scope of arbitral review of the Board's decision to reduce the contract of employees or lay them off in a manner otherwise consistent with Article 13. It provides:

. . . the board's determination to lay off/reduce in time of such teacher shall stand unless the arbitrator shall find that, in making such determination, the Board acted in bad faith in utilizing and/or applying the procedure provided in this Article.

Under this provision, the Association bears the burden of proof to persuade the arbitrator by at least a preponderance of the evidence that the Board's actions were in "bad faith." The standard of review ("bad faith") is not further defined by the Agreement. The parties both have defined "bad faith" based upon Arbitrator Gunderman's decision in HORTONVILLE SCHOOL DISTRICT A/P M02-209 as

In general terms, "bad faith" has been interpreted to mean an act designated to fraudulently deprive a person of legal or contractual rights to which the person is entitled.

This interpretation is only partially helpful. It does indicate that "bad faith" is determined on a case-by-case basis, but does not provide very specific guidance. Arbitrators interpret ambiguous language by looking at the context of its use. This is appropriate under these circumstances. Thus, the interpretation of "bad faith" is helped by reference to the scheme of regulation of Article 13 and other specific provisions of Article 13 and the Agreement. Reference will be made to those provisions below.

***2. Board's Decision to Effect Savings in this Unit***

As noted above, the Association does not appear to seriously challenge the right of the Employer to adjust its overall expenditures by reducing staff, even though it did appear to argue that the Board might have simply used its financial reserves instead of making reductions. The decision to reduce expenditures is reserved solely to the Employer by Article 4, the management rights provision, and by statute.<sup>4</sup>

The Association has also argued that the Employer's real reason for giving the notices of reduction which in dispute was not to effect a reduction in expenditures, but to merely intimidate teachers. I conclude that the Employer's motivation in giving the notices of

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<sup>4</sup> Sec. 111.70(1)(a)1, Stats.

reduction/layoff which are the subject of this dispute was, in fact, to achieve the cost reductions as stated by the Board and not merely to threaten or harass.

The Association has heavily relied upon the intemperate and unfortunate statements of the former Board president to essentially support the argument that the Board's decision herein was motivated to harass or intimidate. The mutually agreed upon structure of Article 13, specifically Section 13.02 is that the Employer must plan its finances in advance in order to give teachers notice by April 15 in compliance with Sec. 118.22(2), Stats. Thus, Article 13 contemplates making prospective decisions based upon best-estimate financial considerations. The evidence indicates that the Employer was presented with projections demonstrating that its revenues would exceed its allowable income for the coming year. The believable evidence indicates those figures were done in good faith by independent sources. The Board's actions were taken in response to those figures. The Board's resolutions stated they were in response to those figures. The Board's actions were reasonably related to those figures.

I note that part of the Association's argument is based upon its position that the reductions in services were not necessary: the Employer allegedly had sufficient reserves to continue to operate at its past level of expenditure even though its projected income was less than the projected expenditures. The decisions made by the Employer in the first and second layoff dealt with the elimination of services which the Employer concluded were of lower priority than having a balanced budget. Even though the first attempt at reductions violated the Agreement on other grounds, it did include the elimination of study halls thought to be unnecessary and the retention of academic program. The second layoff involved the elimination of programs which the Board thought it no longer needed (virtual school), elementary special education, and classes with low enrollment. All of these choices reasonably relate to cost savings. This choice is reserved to the Employer and is not subject to review under the "bad faith" provision.<sup>5</sup>

There is no other evidence indicating that the Employer intended to harass. There is no evidence of a history of the Employer, Board or anyone on its behalf of making threats or acting to reduce staff for other than financial reasons. As noted below, the individual decisions are consistent with the Board's reasons for its actions and do not support an inference of an intent to threaten or harass.

### ***3. Choice of Grievants for Reduction***

The Association's argument that the Employer's choice of the Grievants Dralle, Peterson and Rufenacht for reduction was in "bad faith" is somewhat stronger, but still falls far short of a showing of bad faith. Section 13.02 requires the Employer to provide reasons for each employee's selection for reduction or layoff in the notice provided to the employee. The implication of this provision is that the Employer's decision must be rational and not

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<sup>5</sup> I note that an arbitrary or unreasonable decision might be some evidence of bad faith. The evidence in this context does not support any inference of bad faith.

arbitrary (without any reason at all). Section 13.01 prohibits a decision to reduce a teacher or lay a teacher off for reasons of “performance” or “conduct.” This list is not all inclusive. The term “bad faith” must be interpreted in the light of this express provision and the “cause” provision of Article 4.01 to prohibit the invidious use of the layoff or reduction provision.

The evidence is insufficient to conclude that the Employer selected these three employees for layoff/reduction in “bad faith.” The Association is correct that the fact that the Employer chose to eliminate study halls in the first (rescinded) layoff and chose to eliminate academic classes in the second layoff raises questions about its motivation for the selection. However, the undisputed evidence indicates that the enrollment in the classes reduced for each grievant was expected to be exceedingly low. In Dralle’s case, the expected enrollment for her Family and Food and Foods and Hospitality section was for 4 students the first semester and 8 the second semester. The expected enrollment for Dralle’s Parent and Child course was 8 students. In Peterson’s case, the expected enrollment in Exploring Agriculture and Advanced Agriculture was 5 students and 4 students respectively and in Basic Welding /Conservation 3 and 10 students respectively. Of all of the classes, the expected enrollment in only the following sections was expected to be under 10 students.

<i>Class</i>	<i>No.</i>	<i>Teacher</i>
English 4	6	Buss
English Communic.	5	Buss
El. And HS Spec Ed 8	2	teachers
Jr. High AP Art	6	Rolf

The Employer’s scheme of reductions is consistent among the various decisions in the disputed reduction. It is logical choice between core subjects and non-core subjects. There is no evidence that the Employer had any particular invidious motivation to reduce Dralle, Peterson or Refenacht.

By contrast, the Association’s circumstantial arguments are easily explained on other grounds. Thus, the fact that the disputed reductions were announced within days of the decision to grant the grievance with respect to the first layoff, is reasonably explained by the fact that the layoff notice deadline was fast approaching. There is no evidence of any other consistent pattern of selecting the individuals for reduction, for example, age, health insurance usage, or activities on behalf of the Association.

Essentially, the Association’s main argument is that the Employer should have made choices for reducing academic subjects which would have resulted in the least senior teachers being reduced or laid off. Section 13.02, Step II expressly provides for reductions of the nature which the Employer implemented. Because the express terms of the Agreement empower the Employer to take the actions it did, I decline to interpret the “bad faith” provision in a manner which negates the express terms of the agreement. Accordingly, since the Association has failed to show that the Employer acted in bad faith in making the disputed

layoff, I conclude that the Employer did not violate the Agreement in making the decisions disputed herein.

**AWARD**

That since the Employer did not violate the Agreement when it chose Grievants Dralle, Peterson and Rufenacht for layoff/reduction, the grievance filed herein is denied.

Dated at Madison, Wisconsin, this 8th day of January, 2008.

Paul Gordon /s/

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Paul Gordon, Arbitrator

