

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LOYAL EDUCATION ASSOCIATION

and

LOYAL SCHOOL DISTRICT

Case 23
No. 69200
MA-14521

(Schackleton Grievance)

Appearances:

Ms. Megan E Werner, Director, Central Wisconsin UniServ Council, 370 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin, appearing on behalf of Loyal Education Association.

Mr. James M. Ward, Attorney, Weld, Riley, Prenz & Ricci, S.C., 3624 Oakwood Hills Pkwy., P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of Loyal School District.

ARBITRATION AWARD

Loyal Education Association, hereinafter "Association," and Loyal School District, hereinafter "District," requested that the Wisconsin Employment Relations Commission provide a panel of five arbitrators from which they would select one to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected to arbitrate the dispute. The hearing was held before the undersigned on December 17, 2009, in Loyal, Wisconsin. The hearing was not transcribed. The parties submitted briefs, retained the right to file reply briefs and following expiration of a window for filing, the record was closed on March 8, 2010. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute, but were unable to agree as to the substantive issues.

The Association frames the substantive issues as:

Did the District violate the collective bargaining agreement by partially laying off Steve Schackleton and not giving him the position of School to Work Coordinator? If so, what is the appropriate remedy?

The District frames the substantive issues as:

Did the District violate the collective bargaining agreement by partially laying off Steve Schackleton and not giving him the School to Work assignment? If so, what is the appropriate remedy?

I frame the substantive issues as:

Did the District violate the collective bargaining agreement by partially laying off Steve Schackleton when it assigned the School to Work responsibilities to a less senior staff member? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

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ARTICLE IV – MANAGEMENT RIGHTS

Section 4.01 – Board Rights. Management retains all rights of possession, care, control and management that it has by law, and retains the right to exercise these functions during the term of the collective bargaining agreement except to the extent such functions and rights are restricted by the express terms of this Agreement. These rights include but are not limited by enumeration to, the following rights:

1. To direct all operations of the schools system.
2. To establish and require observance of reasonable work rules.
3. To hire, promote, transfer, schedule and assign employees in positions with the school system.
4. To suspend, discharge and taken other disciplinary action toward employees.
5. To relieve employees from their duties because of lack of work or any other good and sufficient reason.

6. To maintain the efficiency of school system operations.
7. To take whatever action is necessary to comply with state or federal law.
8. To introduce new or improved methods or facilities.
9. To select employees, establish reasonable quality standards and evaluate employee performance.
10. To determine the methods, means and personnel by which school system operations are to be conducted.
11. To take whatever reasonable action is needed to maintain the functions of the school system in unforeseen situation that call for immediate action.

The Board retains all rights of management not restricted by the express terms of this Agreement.

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ARTICLE V – GRIEVANCE PROCEDURE

Section 5.01 – Definition of Grievance. A grievance is a claim that there has been a violation of one or more terms of this agreement.

Section 5.02 – Definition of Grievant. A grievant shall be one or more employees or the Association.

Section 5.03 – Definition of Days. The term “days” as used in this grievance procedure shall be considered calendar days, Monday through Friday, excluding days the District Administration office is closed.

Section 5.04 – Procedure. The steps are as follows:

STEP 1. A grievance shall be filed orally with the immediate supervisor within ten days following the act or occurrence which caused the grievance. The grievant shall preface the discussion by indicating he/she is filing a grievance.

Should the decision of the immediate supervisor be unsatisfactory to the grievant, the grievant shall within the above mentioned ten days file the grievance in writing with the immediate supervisor, including a

statement of the grievance, the circumstances of the alleged violation, the specific terms of the agreement allegedly violated, and the relief requested.

The immediate supervisor shall within five days of the receipt of the grievance respond in writing to the grievant as to granting or denying said grievance including reason(s).

STEP II. Should the grievant be dissatisfied with the answer of the immediate supervisor, the grievant may submit in writing the grievance to the District Administrator within five days of receipt of the answer in STEP I.

The District Administrator shall within five days of receipt of the grievance respond in writing to the grievant as to granting or denying said grievance including the reason(s).

STEP III. Should the grievant be dissatisfied with the answer of the District Administrator, the grievant may submit in writing the grievance to the Board within five days of receipt of the answer in STEP II.

The Board shall consider the grievance no later than the next regularly scheduled Board meeting provided the grievance has been submitted to the Board at least six days prior to the scheduled meeting.

The Board shall within five days of the Board meeting during which the grievance was considered, respond in writing to the grievant as to granting or denying said grievance including the reason(s).

Should the employer representative fail to respond within the prescribed time limits, the grievance may be processed to the next step.

STEP IV. If the Association determines to arbitrate the grievance, the Association shall within ten work days of the receipt of the Board response, send written notice of intent to arbitrate to the Board president. In the event the Association does not proceed to arbitrate the grievance, the individual grievant is precluded from invoking the arbitration process.

ARBITRATION. When a timely request for arbitration has been made and received, the parties or their designated representatives shall attempt to select an impartial arbitrator. Failing to do so, either party may within ten work days of the notice of intent to arbitrate request the Wisconsin Employment Relations Commission to submit a panel of five

arbitrators. Within ten work days of receipt of the list of names, the parties or their designated representatives shall determine the arbitrator.

The arbitrator shall schedule a hearing and after hearing such evidence as the parties desire to present, render a written decision. The arbitrator's decision will be in writing and will set forth his/her findings of fact, reasoning and conclusions on the issues submitted. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this agreement. The decision will be final and binding upon the parties. The Board and the Association will share equally the costs of the hearing room, and the cost of the transcript (if such transcript is requested by the arbitrator or mutually agreed to by the parties.)

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ARTICLE X – WORK SCHEDULE

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Section 10.02 – Supervisory and Extra Duty Assignments. It is recognized that teachers are responsible for supervision of extra curricular assignments and extra duties. Extra duty and supervisory assignments will be filled on a voluntary basis with approval of appropriate principal. In the event such an assignment can not be filled voluntarily, the principal will make the assignment. Such assignments will be done on a rotation basis, first those who have volunteered for no assignments, then (if necessary) those who have volunteered for one assignment, two assignments, etc. Such assignments shall utilize teachers from the level involved (elementary, junior high, senior high). Teachers may exchange assignments with the permission of the principal.

Section 10.03 – Normal Teaching Load. Whenever possible, the normal teaching load will not exceed State Department of Public Instructions recommendations with at least one preparation period. The normal daily teaching load for grades 7 through 12 shall consist of up to six periods of instructional work, one period of study hall, hall duty or time out and one period preparation time. Four class preparations shall be considered maximum for a six period instruction work load for an eight period school day. Five or six class preparations shall be allowed two preparation time periods in an eight period school day. If such planning periods are not allowed, the teacher shall receive \$950.00 per semester. Any 7 through 12 teacher teaching more than six teaching hours shall receive \$950.00 per semester. Areas of instruction that will not be included in these situations will be as follows: Media, Title I, music, special education and physical education.

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ARTICLE XI – INDIVIDUAL RIGHTS

Section 11.01 – Layoffs. In the event that a reduction of personnel shall become necessary as determined by the Board, the Board shall retain those teachers with the greatest amount of seniority in the district who are qualified by virtue of their certifiability to teach in those areas of discipline to be retained. This shall apply to reduction in the number of teacher positions (full layoff) or the number of hours in any position (partial layoff). Written notice of layoffs shall be issued to the affected teacher(s) on or before May 5.

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BACKGROUND AND FACTS

The District provides educational services to the public and children of the Loyal School District. At all times relevant herein, Graeme William was the District Administrator and Christopher Thomalla was the K-12 Principal.

The Grievant, Steve Schackleton, teaches high school and middle school technology education. The Grievant was hired in 1997 and therefore has 13 years teaching seniority. The Grievant holds a valid Department of Public Instruction license with certification in (220) 6-12 technical education, (293) technical occupation/communication, (299) technical occupation/construction and (859) 6-12 adaptive education. The Grievant has a professional collaborative relationship with Northcentral Technical College in area of welding.

During the 1999-2000 school-year, the District vocational education teachers began investigating and eventually developed the School to Work program.¹ School to Work was implemented in the 2000-2001 school year and the program description provided as follows:

Program Definition

The Loyal School to Work Program is a set of planned educational experiences designed to enable learners to acquire attitudes, skills and knowledge for work and other life roles by participating in the actual work settings related to selected school instructional programs. Education for employment mandates require that all students shall have access to the program, which provides the school to work experience.

¹ The record is silent as to whether the Grievant was one of the vocational education teachers involved in the investigation and subsequent recommendation to institute School to Work in the District.

This program is designed to complement and supplement courses offered in the Career and Technical Education areas of Agriculture, Business Education, Family and Consumer Economics, and Technology Education.

Students enrolled in this program are scheduled by the school to gain work experience at a school approved and supervised site. Students will receive $\frac{1}{4}$ credit for completing their employability skills program or receive $\frac{1}{2}$ credit for completing their Youth Apprenticeship and/or Co-op Program.

Program Goals

1. Increase student understanding of self and career opportunities through community field experience.
2. Increase the opportunity for students to acquire employability skills needed to enter and maintain themselves in the world of work.
3. Afford the opportunity for students to make career decisions relative to post-secondary education and the world of work.

Duties of the School to Work Coordinator

1. Make visits to the place of employment to evaluate the student in his or her school to work program.
2. Provide direction that is relevant to the student in his or her work area and create a checklist of certain competencies to be acquired by the student.
3. Students are to keep a weekly journal of their work. The coordinator checks the journals and grades them on a weekly basis.
4. Attend monthly meetings to the Northcentral Technical College Partnership Group. The purpose of the partnership meetings is to obtain all updates of the Youth Apprenticeship Programs and employability opportunities.
5. Enroll students into either a Youth Apprenticeship Program through NTC or Employability Skills Certificate Program and fill out necessary paperwork upon completion of either program.
6. To assist students in placement of work sites for their school to work experience.

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The District's first School to Work Coordinator was Rebecca Scherer. Scherer is a certified business educator and guidance counselor. In addition to School to Work, Scherer was responsible for the Carl Perkins Grant. Scherer developed the School to Work program including its local policies, procedures and opportunities. Under Scherer's direction, School to Work was a graded course.

School to Work lost the support of the high school principal in 2004-2005 and was discontinued as of the second semester. There was no formal School to Work program in the District from 2004-2005 to 2008-2009.

During the 2007-2008 school-year, then Principal Wallie Leiphardt decided to reintroduce School to Work at the high school. Leiphardt sought volunteers to lead the program and Matthew Reinders indicated an interest. At that time, Reinders was in his second year of full time employment with the District as an Agriculture teacher. Reinders attended a meeting with Leiphardt in the spring of 2008 where School to Work was a topic. Leiphardt appointed Reinders as School to Work Coordinator for the 2008-2009 school-year.

In addition to School to Work, Reinders' first semester schedule for 2008-2009 was a study hall, a preparation and five instructional classes including plants and soils, diversified occupations, animal science, natural resources and exploring grade 8. During second semester, Reinders was assigned two preparations, small animal pets, horticulture, hydroponics, plants and landscapes, and exploring grade 8.

The Grievant was a full time teacher in the 2008-2009 school year. First semester the Grievant taught auto cad I, drafting (two classes), welding (two classes), and cabinet making with two preparations. Second semester the Grievant taught drafting II, auto cad II, woods II, advanced welding (two classes) and cabinet making II with two preparations.

For the 2009-2010 school-year, the District reduced its course offerings and teaching staff. The District eliminated SAGE teachers, reduced the full time equivalency of the band director and reduced technology education. As a result of the decrease in technology education, the Grievant was issued a partial layoff. The Grievant's full time equivalency was reduced from full time to a seven-eighths position.

The Association grieved the partial layoff asserting that the Grievant should have been retained as a full time employee based on his seniority and certifiability. The District denied the grievance at all steps placing it properly before the Arbitrator.

POSITIONS OF THE PARTIES

Association

The District's decision to assign the School to Work Coordinator position to Matthew Reinders, a less senior teacher, instead of the more senior Grievant violated the collective bargaining agreement.

School to Work is a class that is a part of the vocational education curriculum and not an assigned duty. The District defines the School to Work program as "a set of planned educational experiences designed to enable learners to acquire attitudes, skills and knowledge for work and other life roles by participating in the actual work settings related to selected school instruction programs." This program complements the career and technical education programs. Semester credit is given and the credits are counted toward graduation. Witnesses Scherer and Williams both testified that School to Work is like other academic classes in that it required preparation time, reading and/or grading of papers and additional tasks that must be completed outside of the master schedule.

School to Work is not analogous to a duty such as study hall, hall monitoring or time out supervision. These duties do not require preparation from the teacher and are completed once the class period is over. This case is distinguishable from LOYAL SCHOOL DISTRICT, Case M-83-8 (Vernon, 7/85). In this case, the Association is not asking the District to "round out" the Grievant's schedule with study halls or monitor duties.

The language of the collective bargaining agreement is clear and unambiguous; seniority and certifiability are the only criteria the District may use when a reduction in personnel is necessary. The only question that should have been asked was whether the Grievant had the appropriate seniority and qualifications to take the School to Work Coordinator responsibility and remain full time. The Grievant's seniority date is 1997 while Reinders has only been with the District since 2005. No specific certification is required for the School to Work Coordinator and the Grievant's certification is similar to that which prior School to Work Coordinator held.

The District may assert that Reinders had a claim to the School to Work Coordinator position because he held it during the 2008-2009 school-year. This argument fails to recognize the purpose of the seniority and layoff language in the contract.

Even if School to Work is an assignment that falls outside the labor agreement's layoff language, the Grievant should have been offered it over Reinders. The District was obligated to exercise its management rights in a manner that was not arbitrary or capricious and based on legitimate business reasons. In 2009-2010, the Grievant was assigned five classes and two preparation periods. Reinders was assigned five classes, two preparations and School to Work. Superintendent Williams justified the decision to assign School to Work to Reinders because he had done a good job. This is not a legitimate business reason since the Grievant

has vocational training, has a positive relationship with North Central Technical College and has worked with nearly all of the students in the School to Work program.

The Association asks that the Arbitrator find that the District has violated the collective bargaining agreement and make the Grievant whole for loss of wages, fringe benefits and pension contributions with interest at the prevailing rate.

District

The collective bargaining agreement has not been violated because School to Work is an assignment and is not an instructional course.

The language of section 11.01 of the collective bargaining agreement does not apply to the School to Work assignment. The District concedes that academic credit is granted to students involved in School to Work, but all other relevant factors support a finding that this is not a teaching assignment. While academic grades are awarded, this is to assist the often times struggling student meet their graduation requirements. School to Work is not a course listed in Course Description Handbook.

The School to Work assignment has been viewed as a non-academic course by District Administrator Williams since the 2007-2008 school-year. Williams' color coding scheme, developed well before the pending litigation, has identified School to Work as a supervision/duty assignment.

As to the "overload" argument, the labor agreement provides for additional compensation for staff who's schedules exceed contractual limits in the number of "class preparations" and/or teaching hours. A typical teaching load consists of six teaching hours and four class preparations. A teacher with five or more class preparations must be allotted two hours of preparation time in order to avoid an overload situation. Williams granted the overload to Scherer because of not only School to Work, but also her responsibilities as the Carl Perkins grant coordinator. Moreover, the fact that the District only paid Scherer overload compensation in the first semester of 2002-2003 supports its position that the School to Work assignment was not a teaching assignment because if it was, then she was entitled to and would have been paid overload compensation for the second semester of the following year. That did not occur.

The decision in SCHOOL DISTRICT OF GREEN LAKE, DEC. NO. 31805 (McLaughlin, 5/17/07) is distinguishable. Although the facts mirror those in this case, the parties stipulated that the work study assignment was a teaching assignment. That is significantly different than the present case.

LOYAL SCHOOL DISTRICT, Id. interpreted section 11.01. While the District lost that case, Arbitrator Vernon addressed whether seniority was a required consideration in assignments stating, "[t]hus, it does not appear to specifically address the seniority rights of

employees to be retained for non-teaching duties. There simply is no strict requirement to assign such duties (study halls or preparation periods) based solely on seniority.” Id. at 22-23. School to Work is a non-teaching assignment similar to study halls or preparation periods and therefore the District was well within its rights to assign the duty to Reinders.

The District asks the Arbitrator to dismiss the grievance.

DISCUSSION

The parties disagree as to whether the School to Work responsibilities may be defined in the context of a position or an assignment. If it is an academic position, as the Association maintains, then the School to Work Coordinator is subject to the seniority-based layoff provisions. In contrast, the District downplays the duties, refers to School to Work as an assignment similar to study hall, and concludes that the seniority provisions do not apply.

I start with the District’s management rights that provide that it may “hire, promote, transfer, schedule and assign employees in positions with the school system” and that it may “determine the methods, means and personnel by which school system operations are to be conducted.” As such, unless there is another section(s) of the parties’ collective bargaining agreement that limits the District’s rights its’ actions were contractually sound.

The District partially laid off the Grievant. That layoff was precipitated by a reduction of professional teaching staff. There is no challenge to the District’s decision to reduce its workforce, but the Association maintains the District partially laid off the wrong teacher.

The contractual language being contested is contained in Article 11 – Individual Rights. Section 11.01 provides that:

In the event that a reduction of personnel shall become necessary as determined by the Board, the Board shall retain those teachers with the greatest amount of seniority in the district who are qualified by virtue of their certifiability to teach in those areas of discipline to be retained. This shall apply to reduction in the number of teacher positions (full layoff) or the number of hours in any position (partial layoff). Written notice of layoffs shall be issued to the affected teacher(s) on or before May 5.

The key components to this language are “qualifications” and “certifiability in those areas of discipline to be retained.” This language does not afford the District any subjective latitude in accessing qualifications, but instead relies on certifiability. Thus, the question is whether “certifiability” in a discipline encompasses School to Work.

The parties were involved in another grievance in 2006 that resulted in a settlement agreement which is relevant to this case. That settlement agreement not only created bumping

rights for teachers affected by lay offs, but also “further clarified” the term certifiability as follows:

Further clarification.

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2. **Certifiability.** Section 11.01 provides for the retention of those senior teachers “...who are qualified by virtue of their certifiability to teach in those areas of discipline to be retained.” In a layoff context, the parties have agreed that “certifiability” means that a teacher otherwise facing the prospect of layoff is eligible for retention if it can be demonstrated that by the start of the upcoming school year, he/she will become fully certified in another discipline where his/her service could be utilized. It was also agreed that this would not apply in any involuntary reassignment context. The District would not be expected (nor authorized) to involuntarily reassign anyone not presently certified in a given discipline merely because that teacher might be “certifiable” in that discipline.

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“Certifiability” relates to a teacher’s licensure. Teacher licenses are issued for specific academic teaching areas. The parties have a listing of teacher certification. (Exhibits 3, 4). Nowhere on the listing is there an entry for a School to Work licensure nor does the Department of Public Instruction recognize School to Work as a separate area of certification. The absence of a specific certification for School to Work supports the District’s position.

I next move to whether School to Work is an “area of discipline to be retained.” Areas of discipline are instructional classes. The Association argues that the District’s manner of dealing with the School to Work program supports a finding that it is more akin to a class than a study hall assignment. The Association points to the structural components of the School to Work program and the paperwork, including grading, required.

School to Work is not identified by name as a course in the 2009-2010 Course Description Handbook. Rather, it falls within the “Work Release and Work-Based Learning Program” heading and the only reference to the School to Work phrase is contained in program rule three which states, “[a]ny student who is no longer employed, or who changes jobs must report this change to the School to Work Coordinator immediately.” The Work Release and Work-Based Learning Program encompasses one and two year apprenticeships and an employability skills certificate program. Per the course description, they “will be tied into the student’s coursework and career plans.” Students in the apprenticeships and certificate program are not taught by the School to Work Coordinator, but rather, the School to Work Coordinator enrolls the student in the apprenticeship/certificate program and assists the student in ensuring the paperwork is complete.

Looking to the duties of the School to Work Coordinator, items one through three involve the Coordinator making contact with the student and the employer providing the student direction and monitoring the required journal. These duties are further developed in the program document. The policies and guidelines state that the School to Work Coordinator will assist if a problem occurs in the workplace, will receive the students' record of their work experience, and "must visit the student at least once during the school year." The School to Work training agreement describes the School to Work Coordinator's obligations as:

1. Make visits to the place of employment to evaluate the student in the school-to-work program.
2. Attempt to resolve any conflict that may arise at the workplace between the employer and student.
3. Provide direction that is relevant to the student and his or her area of work.
4. Check weekly/monthly reports for accuracy. Check grades on a periodic basis to ensure all students are reaching their full potential.

The first School to Work Coordinator, Rebecca Scherer, testified at hearing. She described her primary responsibilities as "to make sure students are at the job sites...made contact with employers by phone... go to job site and do evaluation with mentor..." Scherer indicated that the workload increased as the program progressed. With regard to the student journals, she read the journals and that she checked the hours that the students reported. Scherer indicated that she made telephone calls during the hour that School to Work was assigned to her scheduled, but that visits were made when the student was at the job site.

Reinders did not testify at hearing. I point this out because he would have been the able to testify as to what he actually does to fulfill his obligation as School to Work Coordinator. His voluntary absence is understandable, if indeed he was given the option.

The Coordinator serves as a conduit between the school, employer and student. He/She provides support and direction to the student as to what it means to be employed and how to establish a positive work environment. The fact that only one visit is required per year establishes that it is not the role of the Coordinator to evaluate the student's performance completing their work duties, but rather to evaluate the work setting. The Coordinator completes paperwork to enroll the student in external apprenticeship or employability programs. The Coordinator is expected to ensure that the student completes and submits a record of his/her experience on either a weekly or monthly basis. Once completed, the student has fulfilled his/her obligation. The Coordinator then awards the student either a passing or failing grade not based on the quality or content of the report or his/her observation, but rather based on whether the report is complete. These are not teaching duties, but instead are supervisory and/or administrative duties.

Both sides refer to a decision issued by Arbitrator Gil Vernon in 1985.² In that case, the District had partially laid off a vocal music teacher who also taught humanities. The music teacher had more seniority, but was not offered a preparation or study hall which the District could not rationally explain. While the District lost the case, Arbitrator Vernon focused on the language of 11.01 and found “certifiability to teach in those areas of discipline to be retained” to relate to “actual classroom subjects” and the parties intended to “retain the most senior teachers who are certified to teach the curriculum that the District decides to offer.” Id at 22-23. He went on to conclude that the District was not contractually obligated to distribute preparation periods and study halls by seniority. Id at 23. I am not constrained by Arbitrator Vernon’s decision, but it is valuable to the extent that it provides insight into what the parameters of 11.01 have been understood to be from 1985 to this date.

The Association specifically distinguishes School to Work from assignments such as study hall and home room. I agree in part and disagree in part. I concur that School to Work is not similar to study hall or home room in that these two assignments can be completed by any competent teaching or non-teaching staff member and specific knowledge or interest is irrelevant to the satisfactory completion of the responsibility. In contrast, the District has some “assignments” which require special training, skills or interest. Spanish teachers Woods and Dogs were/are assigned a “Resource” period during which time they prepared and distributed written communications and initiated verbal contact with Hispanic parents of high school students. These duties specifically relate and arise out of the professional foreign language which they teach with the District. Similarly, teacher McBride, who dually holds secondary mathematics and principal licensure, has periodically fulfilled an attendance assignment and a detention assignment which are quasi-administrative responsibilities. The District therefore has engaged in a process of identifying the unique skills and abilities of its staff members and making assignments based on their inimitable qualifications.

The language of 11.01 specifically refers to “certifiability.” Certifiability is commonly understood to relate to teacher licensure in an instructional class. School to Work is not identified as an instructional discipline by DPI nor are the duties and responsibilities of the School to Work Coordinator in the District sufficiently similar to the duties and responsibilities of a teacher of an academic discipline.

Having concluded that School to Work is an assignment rather than an academic class, I move to the District’s decision to assign it to a less senior staff member rather than the Grievant. The District’s reason for assigning School to Work to Reinders over the Grievant

² The language of Section 11.01 that was addressed in LOYAL SCHOOL DISTRICT, Id. read as follows:

In the event that a reduction of personnel shall become necessary as determined by the Board, the Board shall retain those teachers with the greatest amount of seniority in the District who are qualified by virtue of their certifiability to teach in those areas of discipline to be retained. This shall apply to reduction in the number of teacher positions (full layoff) or the number of hours in any position (partial layoff).

was, “he [Reinders] had done the work... he volunteered...he was starting to build the program back up” and further, that it was assigned to him “in place of a study hall or other duty.” If these are legitimate business reasons, free of arbitrariness or capriciousness, then the District’s decision must stand.

The Grievant is a trained vocational education teacher. He has a long standing relationship with the local technical college and currently works with students involved in the School to Work program. The Grievant did not volunteer to work with the School to Work program.

Reinders is a fifth year agriculture teacher who volunteered for the School to Work assignment in 2008. Reinders’ decision to volunteer at that time was either based on a sincere interest in the School to Work program or, more likely, to avoid becoming a part time teacher. Regardless, Reinders has performed admirably in his role, generating interest and reinvigorating relationships with local employers and students. The District’s decision to continue Reinders assignment of School to Work responsibilities was for a legitimate business reason and there is insufficient evidence to reach a finding that the decision was arbitrary or capricious.

This case pits seniority in direct competition with unique interest and training. I am limited in my authority in as much as I am “without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this agreement”. Moreover, it is not my role to substitute my judgment for that of the District. The Association has not bargained seniority rights as expansive as it seeks in this case, therefore it is inappropriate to find in its favor.

AWARD

1. No, the District did not violate the collective bargaining agreement by partially laying off Steve Schackleton when it assigned the School to Work responsibilities to a less senior staff member.

2. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 9th day of June, 2010.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator