

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**SCHOOL DISTRICT OF SUPERIOR**

and

**LOCAL 1397, AFSCME**

Case 132

No. 69508

MA-14632

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**Appearances:**

**Ken Knudson**, Attorney, for the School District of Superior.

**James Mattson**, Staff Representative, AFSCME Council 40, for the Union.

**ARBITRATION AWARD**

The School District of Superior (the District) and AFSCME Local 1397 (the Union) selected me to serve as arbitrator for a grievance alleging the improper denial of a custodial employee's request to substitute for another employee's temporarily vacated shift. Hearing was held in Superior, Wisconsin on April 22, 2010. There is no stenographic or other transcript of the proceedings. The parties filed post-hearing briefs, the last of which was received on June 21, 2010.

**ISSUE**

The parties were unable to agree on a statement of the issue; however, they did submit their proposed statements in writing and expressly authorized me to state the issue after considering their proposals.

The Union proposes the following statement of the issues:

**Statement of the Issue:** Did the Employer violate the terms of the Collective Bargaining Agreement (Article 6, Section 1-D-2) and the long standing past practice by not allowing the Grievant (whose regular shift is an evening shift)

the opportunity to work a day shift and substitute for another employee who was on leave of absence? The Employer allowed a less senior employee to work said position.

And if so; the appropriate remedy is for the District to allow the Grievant (the most senior employee applying) the opportunity to work the substitute day shift while the other employee is on a leave of absence.

...

The District proposes the following statement of the issues:

Did administration violate Art. 6 §1.D.2. (arbitrary and capricious language) of the contract when it selected an employee other than grievant to fill a temporarily vacated position?

Was the decision to place an employee into a temporarily vacated position pursuant to Art. 6 §1.D.2. protected by Art. 20 §1.A. of the contract?

...

Both parties correctly reference Art. 6, Sec. 1.D.2. of the collective bargaining agreement (“the contract”)<sup>1</sup> as applicable, and I find the interpretation of that provision to be dispositive of the grievance. Accordingly, the issues I must decide are:

- 1.) Did the District violate Art. 6, Sec. 1.D.2. of the contract when it selected the Northern Lights Custodian rather than the Grievant to fill a temporarily vacated position at Northern Lights Elementary School?
- 2.) If so, what is the appropriate remedy?

### **BACKGROUND**

The Grievant has been employed as a Custodian by the School District of Superior since February 16, 1994. She has worked at the Superior Middle School since it opened in 2003-2004. Her shift is during the afternoon/evening, from 1:30 p.m. to 10:00 p.m. During her tenure at Superior Middle School, she also has substituted at other schools on multiple occasions for Custodians on medical leave. Prior to her tenure at Superior Middle School, moreover, she worked as a substitute Custodian for over five years. In that capacity, she worked in every school in the District, with the exception of Northern Lights Elementary. The

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<sup>1</sup> The contract at issue in this dispute is entitled, “2009-2011 Working Agreement Between Board of Education – School District of Superior and Superior School District Employees Local #1397 AFSCME, AFL-CIO WCCME, AFL-CIO”.

Grievant's experience and the witnesses' testimony collectively demonstrate that she was qualified to perform the vacated shift at Northern Lights.

That shift became vacated on June 2, 2009, when a Northern Lights Custodian was injured and began an extended and indefinite medical leave of absence. His daytime shift was from 7:00 a.m. to 3:30 p.m. The District was aware that his medical leave would be lengthy, and as of the date of the arbitration hearing, the employee was still on leave.

The District did not receive any requests to substitute for the temporarily vacated position until the Grievant made such a request in writing to the Director of Human Resources for the School District of Superior (the HR Director), on August 19, 2009. The Grievant had worked daytime hours at Superior Middle School during the summer and preferred that schedule over her afternoon/evening shift, which was to begin again in the fall. The daytime shift at Northern Lights Elementary appealed to her, because, among other things, it would allow her to spend evenings with her family.

On August 20, 2009, the day after the Grievant had expressed interest in the temporarily vacated, Northern Lights position, the District received another written request to substitute for the position from a Custodian who had worked at Northern Lights since the school's opening in 2002 and for the District since December 21, 1995. Like the Grievant, this Custodian had worked the afternoon/evening shift during the school year and daytime hours during the summer. He submitted a letter of interest in the position to the HR Director, stating, among other things, that he had worked with the employee on medical leave and could help the substitute taking his shift "keep the school up to our standards." The Union has conceded that this employee, like the Grievant, was qualified to work the requested shift.

Had the District granted the Grievant's request to substitute temporarily into the vacated daytime shift (7:00 a.m to 3:30 p.m.) at Northern Lights, rotating substitutes would have worked the Grievant's evening shift (1:30 p.m. to 10:00 p.m.) at Superior Middle School during two-week intervals. However, because the District granted the Northern Lights Custodian's request to substitute into the vacated daytime shift at Northern Lights, the rotating substitutes were to cover his afternoon/evening shift. Under this arrangement, the vacated daytime shift filled by the Custodian from Northern Lights partially overlapped with the afternoon/evening shift covered by the rotating substitutes.

The Grievant and the Northern Lights Custodian were the only District employees who had expressed interest in working the temporarily vacated day shift at Northern Lights. Prior to making her selection on August 21, 2009, the HR Director consulted with the Principal at Northern Lights, the Principal at Superior Middle School, the Director of Buildings and Grounds, and the Custodial Supervisor for the District regarding whom they thought should fill the position. These administrators and supervisors unanimously concurred that the Northern Lights Custodian, rather than the Grievant, should be allowed to work the temporarily vacated shift at Northern Lights. Although they believed that the Grievant was qualified to work the vacated shift, and although her seniority is undisputed, they deemed the Northern Lights

Custodian a preferable choice for various reasons. He was already familiar with the Northern Lights staff, students, and building.<sup>2</sup> In addition, he had worked the day shift at Northern Lights during the summer. Moreover, the vacated day shift he was to fill partially overlapped with his former shift to be filled by substitutes who rotated every two weeks. The overlap would enable him to provide any needed assistance to the rotating staff.

In a letter to the Grievant dated August 21, 2009, the HR Director informed her of the Administration's decision to approve the Northern Lights Custodian's request and the reasons for that selection:

You made a request to substitute at Northern Lights Elementary in the absence of another custodian. You work at Superior Middle School. A custodian at Northern Lights has made the same request. In reviewing both requests, Administration will approve the request from the custodian at Northern Lights instead of your request.

The Northern Lights custodian will move from afternoon hours to day hours. Since the custodian already works at Northern Lights, he is familiar with all the teachers, students, building cleaning procedures and other custodial staff. He will also be available to oversee the work of the substitute who replaces him to retain the cleaning standards of his afternoon position. The substitute assignment may last for several weeks or more. It is in the best interest of the school to retain current building staff who can easily support the rotating substitute.

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Other facts relevant to this grievance are included where appropriate in the analysis that follows.

### ANALYSIS

#### **I. Contract Provision at Issue**

Article 6, Sec. 1.D.2. states as follows, in relevant part:

- D. All . . . custodians . . . will request in writing, to their immediate supervisor, an interest to move to a temporarily vacated position. If approved, the employee will begin to receive pay for the position the day they begin, or no later than two (2) working days following the date the request was received.

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<sup>2</sup> The school buildings at Superior Middle and Northern Lights are both large compared to other school buildings in the District.

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2. The district agrees that any decision regarding a regular employee moving to a position made available as a result of the absence of another regular employee, would not be made in an arbitrary or capricious manner.

Thus, to determine if the District violated Article 6, Sec. 1.D.2., I must decide whether the District's selection of the Northern Lights Custodian rather than the Grievant to fill the temporarily vacated position at Northern Lights was "made in an arbitrary or capricious manner."<sup>3</sup>

## II. Whether the District's Decision Was Arbitrary or Capricious

"Arbitrators have the authority to use principles of contract law in resolving disputes under collective bargaining agreements." *MADISON TEACHERS INC. v. MADISON METROPOLITAN SCHOOL DIST.*, 2004 WI APP 54, ¶ 17, 271 WIS. 2D 697, 711, 678 N.W.2D 311, 318. Indeed, "in the context of construing terms of a collective bargaining agreement, arbitrators have utilized rules, standards, and principles borrowed from the jurisprudence developed by courts to resolve disputes over the meaning of terms in contracts." *Id.*, 2004 WI APP 54, ¶ 15, 271 WIS. 2D AT 710, 678 N.W.2D AT 317, *citing* Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works* 431 (Alan Miles Ruben ed., 6th ed. 2003). *SEE ALSO* WISCONSIN LAW ENFORCEMENT ASS'N, LOCAL 1 v. STATE, DEPT. OF TRANSP., 2010 WI APP 27, ¶ 16, 323 WIS. 2D 444, 455-456, 780 N.W.2D 170, 176 (same). Accordingly, principles of Wisconsin contract law can be used 1) to interpret the meaning of the terms, "arbitrary or capricious", as used in Art. 6, Sec. 1.D.2. of the contract, and 2) to apply the meaning of those terms to determine whether the District filled the vacated position at issue "in an arbitrary or capricious manner."

### A. Meaning of "Arbitrary and Capricious", as Used in Art. 6, Sec. 1.D.2.

"Terms used in contracts are to be given their plain or ordinary meaning, and it is appropriate to use the meaning set forth in a recognized dictionary." *WATERS v. WATERS*, 2007 WI APP 40, 300 WIS. 2D 224, 229, 730 N.W.2D 655, 658, *CITING* *JUST v. LAND RECLAMATION, LTD.*, 155 WIS. 2D 737, 745, 456 N.W.2D 570 (1990). *See also* *WILDIN v. AMERICAN FAMILY MUT. INS. CO.*, 2001 WI APP 293, ¶ 9, 249 WIS. 2D 477, 484, 638 N.W.2D 87, 90 (noting that "ordinary meaning may be established by reference to a recognized dictionary", and referencing *Webster's Third New International Dictionary* (1993) as one such dictionary).

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<sup>3</sup> The District also relies on Article 20 – Management Rights. These rights at best vested the District with authority to select who would fill the vacated custodial shift at Northern Lights. I do not interpret the Union's position as challenging that authority. However, the District's authority to make the selection begs the ultimate question of whether the District's selection was "made in an arbitrary or capricious manner" in violation of Art. 6, Sec. 1.D.2.

The word, “arbitrary” has been defined in relevant part as “based on random or convenient selection or choice rather than on reason . . . .” *Webster’s Third New International Dictionary* 110 (unabr. 1993). Similarly, the word, “capricious” has been defined in pertinent part as “marked or guided by caprice: given to changes of interest or attitude according to whims or passing fancies: not guided by steady judgment, intent, or purpose . . . .” *ID.* AT 333.

In essence, then, to determine whether the District selected the employee to fill the vacated position at Northern Lights “in an arbitrary or capricious manner”, I must determine whether the District’s selection was reasonable and whether it was made with “steady judgment,” rather than with “whims or passing fancies.”<sup>4</sup>

### **B. Whether the District’s Selection Was Reasonable and Made with Steady Judgment**

As noted, the Grievant submitted to the HR Director her written request to fill the vacated position at Northern Lights on August 19, 2009. The following day, the District received another written request to substitute into the position from the Northern Lights Custodian who worked the afternoon/evening shift.

The HR Director interpreted Art. 6, Sec. 1.D. of the contract to afford her only two days from the date of receipt of the request from the Custodian ultimately approved to fill the position, to select that Custodian. She thus made her selection on August 21, 2009. Prior to her decision, the HR Director consulted with the Principal at Northern Lights, the Principal at Superior Middle School, the Director of Buildings and Grounds, and the Custodial Supervisor for the District, all of whom believed that the Northern Lights Custodian, rather than the Grievant, should be allowed to work the temporarily vacated shift at Northern Lights. Although they believed that both Custodians requesting to work the vacated shift were qualified, they noted that the Northern Lights Custodian was already familiar with the Northern Lights staff, students, and building and had worked the day shift at Northern Lights during the summer. Moreover, the vacated day shift he was to work partially overlapped with his regular shift to be filled by substitutes rotating every two weeks. The overlap would enable him to provide any needed assistance to the rotating staff and to ensure his regular shift was performed to his expectations.

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<sup>4</sup> The terms, “arbitrary and capricious” have been similarly defined in other contexts. For example, “[a]n agency decision is arbitrary and capricious if it lacks a rational basis.” NATIONAL MOTORISTS ASS’N V. OFFICE OF COM’R OF INS., 2002 WI APP 308, ¶ 25, 259 Wis. 2d 240, 258, 655 N.W.2d 179, 187, *CITING* WISCONSIN PROF’L POLICE ASS’N V. PSC, 205 Wis. 2d 60, 73-74, 555 N.W.2d 179 (CT. APP.1996).

Despite the limited time period that the HR Director believed the contract afforded her to make her selection,<sup>5</sup> she did consult with the Principals of both Northern Lights and Superior Middle Schools, the Director of Buildings and Grounds, and the Custodial Supervisor. Each individual offered an opinion regarding who should be selected and the reasons for that preference. In a compressed period of time, the selection decision was reviewed, discussed by administrators and supervisors, and made based on unanimous concurrence. Thus, the selection was made with “steady judgment”, not “according to whims or passing fancies”.

In addition, the District’s selection cannot be accurately described as irrational. While both candidates were qualified, choosing the Custodian from Northern Lights obviated the selected Custodian’s need to adjust to an unfamiliar school and allowed him to provide informed assistance to the rotating substitutes working his regular shift. By contrast, selecting the Grievant would have necessitated her adaptation to a new school and precluded her from assisting the rotating substitutes working her afternoon/evening shift at Superior Middle School. These reasons communicated to the HR Director, upon which she relied in making the selection, cannot be said to lack a rational basis.

I am mindful of the Grievant’s substantial custodial experience, including her substitutions for Custodians at other schools taking extended medical leave; her testimony that after one day working at another school, substitute Custodians can do their jobs; and her unawareness of any problems experienced by the rotating substitutes working her shift at Superior Middle School when she has substituted elsewhere. Such evidence suggests to me that the Grievant could have performed the vacated Northern Lights shift well after a very brief period of acclimation, and that rotating substitutes may have worked her regular shift at Superior Middle School with minimal adaptation. However, she, unlike the selected candidate, still would have had an initial period of adaptation to a new school, albeit a presumably brief one. And it is at least not irrational to deem the Custodian best able to address any difficulties that the rotating substitutes might encounter to be the Custodian who regularly works that very shift.

Lastly, even if I were to conclude that selecting the Grievant would have been an equally good or better choice, an issue I need not decide, the District’s selection would have to be upheld and the grievance denied, so long as the District’s decision were not “made in an arbitrary or capricious manner.” For the reasons detailed above, I conclude it was not.

### **C. Union’s Arguments**

The Union raises various arguments that merit consideration but do not disturb my ultimate conclusion. Chief among these is the Union’s contention that seniority should have dictated the District’s selection to fill the vacated position. The Union does not dispute that

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<sup>5</sup> The Union has not contested the HR Director’s interpretation of the amount of time Art. 6, Sec. 1.D. afforded the District to select the employee to fill the vacated position.

Art. 6, Sec. 1.D.2. of the contract and the “arbitrary or capricious” standard set forth therein apply. Although that section does not even mention seniority, the Union argues that seniority must be recognized and followed because 1) “[o]ne of the fundamental issues for the Union in this arbitration case is the preservation of represented employee’s seniority rights” (Union Br. 4), and 2) the District has a long-standing, past-practice of filling positions temporarily vacated for over two weeks based on seniority.

### 1. Preservation of Seniority Rights

Quoting Elkouri, the Union argues that seniority rights must be preserved to limit managerial discretion:

One of the most significant limitations on the exercise of managerial discretion is the requirement that employee seniority be recognized in job assignment, promotions, layoffs, and other personnel actions. Indeed the effect of seniority recognition is dramatic from the standpoint of employer, union, and employee alike, because “every seniority provision reduces, to a greater or lesser degree, the employer’s control over the work force and compels the union to participate to a corresponding degree in the administration of the system of employment preferences which pits the interests of each worker against those of all the others.”

Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works* 836 (Alan Miles Ruben ed., 6th ed. 2003), *quoting* Aaron, “Reflections on the Legal Nature and Enforceability of Seniority Rights”, 75 *Harv. L. Rev.* 1532, 1534-35 (1962).

While the above-quoted passage on which the Union relies aptly stresses the *significance* of seniority recognition as a limitation on the exercise of managerial discretion, it does not address *when* seniority must be recognized – *i.e.* the source of the right. Elkouri does address this question elsewhere in the same treatise:

Even prior to the advent of collective bargaining agreements, employers generally gave job preference to their older employees, not as any binding obligation but as a matter of equity, so long as they could do the required work. *However, seniority benefits exist as “rights” only to the extent made so by contract.* As stated by an arbitrator:

[W]hatever seniority rights employees have exist only by virtue of the collective bargaining agreement that is in existence between the union and the employer. Such seniority rights depend wholly upon the contract. They arise out of the contract. Before a collective bargaining contract is in existence, there are no seniority rights. . . .



*Id.* 839-840 (emphasis added), *quoting* ALAN WOOD STEEL CO., 4 LA 52, 54 (Brandschain, Zwissler, & Irwin, 1946).

The absence of any mention of seniority in Art. 6, Sec. 1.D.2. markedly contrasts with the extensive treatment of seniority in “Article 7 – Seniority – Promotions – Assignments – Layoffs”. Article 7, as the title suggests, addresses how seniority is measured and the circumstances and manner in which seniority is to be applied when various types of vacancies, not present here, occur. Article 7 compellingly suggests that had the parties to the contract intended seniority to be applied in situations described in Art. 6, Sec. 1.D.2. (temporarily vacated positions), the parties would have included language in that provision expressly recognizing and applying seniority rights. The absence of such inclusion evinces the parties’ intention *not* to require recognition of seniority rights in situations falling under Art. 6, Sec. 1.D.2.

## **2. Past Practice of Applying Seniority Rights**

To avoid this conclusion, the Union maintains that the District has a long-standing, past-practice of filling positions temporarily vacated for over two weeks based on seniority, and that the District was obligated to apply that past practice here.

The insurmountable problem with this argument is that I cannot even consider evidence of past practice unless the contract provision in question, Art. 6, Sec. 1.D.2., is ambiguous. *SEE SAUK COUNTY V. WISCONSIN EMPLOYMENT RELATIONS COM’N*, 158 WIS. 2D 35, 42, 461 N.W.2D 788, 790 (Ct. App. 1990) (finding parties’ past practices immaterial, where collective bargaining agreement provisions were “plain and unambiguous”). I do not find any such ambiguity in the language of Art. 6, Sec. 1.D.2. While the contract does not expressly define the terms, “arbitrary or capricious”, “a word is not ambiguous merely because it is undefined [in a contract] . . . or because the parties may disagree about its meaning . . . .” *U.S. FIRE INS. CO. V. ACE BAKING CO.*, 164 WIS. 2D 499, 503-504, 476 N.W.2D 280, 282 (CT. APP. 1991) (citations omitted). And here, the Union has not argued that the meaning of the applicable contract language (“arbitrary or capricious”) is ambiguous. The absence of any such ambiguity forecloses my consideration of past practice in determining whether the District’s selection was “made in an arbitrary or capricious manner.”<sup>6</sup>

## **3. Evidence of Arbitrary and Capricious Decision Making**

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<sup>6</sup> It is inappropriate for me even to consider evidence of past practice in the absence of contractual ambiguity; however, even if I were to undertake such an analysis here, I am skeptical about finding the requisite past practice based on the evidence presented. To be sure, Union witnesses testified that they believed the District had a long-standing past practice of filling temporary vacancies of over two weeks based on seniority. However, scant, if any, credible evidence was offered to show that temporarily vacant shifts *in which at least two Custodians expressed interest* have been filled based on seniority.

In addition to the arguments noted above, the Union argues that the District's selection was made in an arbitrary or capricious manner for various reasons. First, the Union points out that it never agreed to any manner of filling temporarily vacated positions other than by seniority, and that in this case, the District never even discussed its selection with the Union prior to making it. The Union has not contested the District's management right to select the Custodian to fill the temporarily vacated position. That being said, the only restriction on the District's selection under Art. 6, Sec. 1.D.2. is that it may "not be made in an arbitrary or capricious manner." For the reasons set forth above in Part II.B. of my analysis, the District's selection cannot be said to lack a rational basis or to have been made "according to whims or passing fancies." That the Union disagrees with the selection and the District's reasons for it does not render the District's choice irrational.

Moreover, the District's decision not to discuss the selection with the Union does not equate to impulsivity or whim. In the two days she believed the contract afforded her to make the selection, the HR Director consulted with four administrators and supervisors who unanimously concurred in the selection. It is reasonable to assume that the advice of those whose opinions she sought (two Principals, the Director of Buildings and Grounds, and the Custodial Supervisor) held positions that would inform their judgment on the decision the District was charged to make. Furthermore, there is no language in Art. 6, Sec. 1.D.2. that expressly or implicitly requires the consent of, or even consultation with, the Union regarding who was to fill the temporarily vacated shift. Reading the "arbitrary or capricious" language to require such Union consultation effectively would curtail management's right to select the Custodian it prefers in a manner not intended by the plain meaning of that language. And reading the "arbitrary or capricious" language to require Union consent regarding selection of Custodians filling temporarily vacated shifts would all but usurp management's right to select the Custodian it prefers.

The Union also asserts that the "glowing" description by one of the District's witnesses of the selected Custodian's credentials reflects a "favoritism" that apparently "clouded her judgment" and motivated her to advocate for the denial of the Grievant's purported seniority rights. (Union Br. 13) The Union, however, concedes that the selected candidate was qualified to substitute into the vacated shift, and I do not interpret the positive descriptions of his credentials to be tantamount to mere favoritism.

The Union further argues that the Grievant can perform quite well in any custodial position and any school, and that the District "failed to show any harm" from selecting her. However, the District conceded that the Grievant could have performed the job at Northern Lights, and it was not the District's burden to show that harm would have resulted from selecting the Grievant. Confronted with a choice between two experienced and qualified Custodians, the District did not, as the Union suggests, completely ignore the Grievant's request and make its decision prior to having considered her qualifications. Rather, the District made what it felt was the most operationally efficient choice after consideration and consultation with four administrators and supervisors. Having done so, the District's selection was not "made in an arbitrary or capricious manner."

The District's concerns about possible "disruption" if the Grievant were selected, according to the Union, amount to a hyperbolic mischaracterization akin to chaos or the proverbial falling sky. (Union Reply Br. 6.) I disagree. Some of the District's witnesses did testify as to possible disruption caused by the Grievant's unfamiliarity with Northern Lights, and, conversely, the minimization of disruption afforded by the Northern Lights Custodian's opportunity to assist rotating substitutes working his regular shift. However, I do not interpret the potential disruption from the Grievant's selection to which the District's witnesses alluded in the cataclysmic sense the Union suggests. While "disrupt" can mean "to throw into disorder", it can also mean "to interrupt the normal course or unity".<sup>7</sup> I believe the latter definition more closely approximates the meaning the District's witnesses' intended to convey and do not find their suggestion to be irrational or hyperbolic.

Also argued by the Union are the benefits it believes inhere in allowing employees to work substitute shifts at different schools: cross-training, exploring possible alternative places of employment, and actually bidding on positions in other schools found to be preferable while substituting. I don't contest these potential benefits, and I doubt the District would. Nevertheless, the "arbitrary or capricious" language in Art. 6, Sec. 1.D.2. does not require the District to exercise its management right of selection in a manner that furthers any individual Custodian's career or promotes the Union's policy preferences.

Lastly, the Union maintains that "[s]eniority is the fairest method to fill temporary vacancies." (Union Br. 14.) Assuming without deciding that this contention is true, the principle of fairness cannot supplant application of the plain meaning of the contractual provision at issue, Art. 6, Sec. 1.D.2., to fulfill the intent of the parties to the agreement.<sup>8</sup> More simply put, the grievance here is contractual, not equitable. As such, its resolution in the District's favor should not be taken as slighting the credentials of the Grievant, whom all agree is a qualified employee and asset to the School District of Superior. Rather, the District's decision was based on what it perceived to be optimal efficiency and falls within the broad ambit of discretion afforded by an "arbitrary or capricious" standard.

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<sup>7</sup> See Merriam-Webster Online Dictionary (visited September 19, 2010) <<http://www.merriam-webster.com/dictionary/day>>.

<sup>8</sup> I do note the Wisconsin Supreme Court's observation that "[w]hen interpreting an *ambiguous* contract provision, we must reject a construction that renders an unfair or unreasonable result." *GOTTSACKER V. MONNIER*, 2005 WI 69, ¶ 24, 281 Wis. 2d 361, 375, 697 N.W.2d 436, 442 (emphasis added) (citations omitted). As discussed above, however, Art. 6, Sec. 1.D.2. is not an ambiguous provision.

CONCLUSION

For all of the foregoing reasons, I conclude that the District did not violate Art. 6, Sec. 1.D.2. of the contract when it selected the Northern Lights Custodian rather than the Grievant to fill a temporarily vacated position at Northern Lights Elementary School. Accordingly, the issue of remedy is moot and the grievance is denied.

Dated at Madison, Wisconsin, this 20th day of September, 2010.

John C. Carlson, Jr. /s/

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John C. Carlson, Jr., Arbitrator