BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

RIVERDALE COUNCIL OF AUXILARY PERSONNEL, SOUTHWEST EDUCATION ASSOCIATION

and

RIVERDALE SCHOOL DISTRICT

Case 35
No. 69254
MA-14540

(Layoff Grievance)

Appearances:

Ms. Mary E. Pitassi, Legal Council, Wisconsin Education Association Council, 33 Nob Hill Drive, P.O. Box 8003, Madison, Wisconsin, appearing on behalf of Riverdale Council of Auxiliary Personnel, Southwest Education Association.

Ms. Shana R. Lewis and **Ms. Nicole J. Thibodeau,** Attorneys, Lathrop & Clark, LLP, 740 Regent Street, Suite 400, P.O. Box 1507, Madison, Wisconsin, appearing on behalf of Riverdale School District.

ARBITRATION AWARD

Riverdale Council of Auxiliary Personnel, Southwest Education Association, hereinafter "Association," and Riverdale School District, hereinafter "District," requested that the Wisconsin Employment Relations Commission provide a panel of staff arbitrators from which to select an arbitrator 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. The hearing was held before the undersigned on July 15, 2010, in Muscoda, Wisconsin. The hearing was transcribed. The parties submitted briefs and reply briefs, the last of which was received by November 7, 2010 whereupon the record was closed. The arbitrator received a copy of the transcript and exhibits on February 1, 2011. 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 when it issued assignments in June 2009 for the 2009-2010 school-year where more senior employees were reduced in hours more than less senior employees, and positions were substantially changed without posting the new positions? If so, what is the appropriate remedy?

The District frames the substantive issues as:

> Did the District violate the Collective Bargaining Agreement when it issued aide assignments for the 2009-2010 school-year? If so, what is the appropriate remedy?

Having considered the evidence and arguments of the parties, I am unable to accept the Association's framing of the issue because it encompasses issues beyond the scope of the original grievance. I accept the District's framing of the substantive issues.

RELEVANT CONTRACT PROVISIONS

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ARTICLE III – BOARD RIGHTS

. . .

A. Management retains all rights of possession, care, control and management and retains the right to exercise these functions during the term of the collective bargaining agreement except to the extent that such functions are explicitly, clearly, and unequivocally restricted by the express terms of this agreement. These rights include, but are not limited by enumeration to the following rights:

1. To direct all operations of the school system.

3. To hire, promote, transfer, schedule and assign employees in positions with the school system.

5. To relive (sic) employees from their duties because of lack of work or any other reason consistent with the other provisions of this agreement.

. . .

11. To determine the methods, means and personnel by which school system operations are to be conducted.

. . .

ARTICLE VII – SENIORITY

A. Definitions

1. Seniority is defined as the measure of an employee's right to a particular job or to employment, in relation to other employees in each classification.

2. Seniority is accumulated through continuous employment with the district, which, upon completion of the probationary period, shall be retroactive to date of initial employment.

a. Job classifications for the purpose of this article are:

1. Technology Assistant
2. Secretary
3. Bus Drivers
4. Certified Aide, Special Aide, Crossing Guard
5. Custodian (includes grounds and maintenance)
6. Head Cooks, Cooks, Food Servers

3. Seniority rights will terminate in the event of:

a. Voluntary quit;
b. Discharge for good and sufficient cause;
c. Failure to return from layoff when called;
d. Being on layoff status longer than two (2) calendar years from date of layoff.

. . .

C. Layoff

1. In the event the Board decides a layoff shall occur, it shall decide within which classification(s) the layoff will be accomplished. Personnel to be laid off will be given at least three (3) weeks prior notice.

2. The employee(s) with the least amount of seniority presently working within the classification shall be the first laid off provided the remaining employees are capable of doing the remaining work. Employees who bump into a position of less seniority shall serve a trial period of thirty (30) working days in the new position. In the event the Board determines an employee is not qualified to fill the new position before the end of the thirty (30) working days, the process of bumping will continue until there is no remaining work the employee can perform. Persons working in more than one classification shall maintain separate seniority in each classification.

3. Recall

a. Laid-off employees shall retain seniority rights for a period of two (2) calendar years from the date of layoff.

b. District seniority shall be used for recall rights and reemployment shall be offered first to any qualified employees with the most seniority. Upon reemployment, employees shall retain all seniority.

D. Vacancies

1. When vacancies occur the Board will cause to be posted a notice of such on each of the Union bulletin boards for a period of five (5) days. Qualified employees will be used to fill the vacancies if application is made. The qualified employee with the most seniority will be selected to fill each vacancy.

a. When an employee moves from one job classification to another they must serve the probationary period. However, they will be paid during the probationary period at their current rate of pay if the pay rate for the new classification is greater than that of their current classification, or at the pay rate of the new classification if this is lower than the employee's current pay rate. The term pay rate is used in this paragraph refers to anniversary lane. Upon completion of the probationary period, the employee will receive the pay rate appropriate for their anniversary.

b. When an employee moves to a different classification, and proves unsuccessful during the probationary period, they will be returned to their old position without serving a probationary period.

2. Posting notice of vacancies will require the District to post only for a vacancy in a job classification. No employee will be transferred involuntarily without good reasons and without a conference on the matter. The employee will be given written notice stating the reason(s) for the transfer. Where the District for good reasons determines to fill a position by involuntary transfer and two or more bargaining unit employees are qualified for the position, the employees with the least seniority will be selected for the involuntary transfer. Employees transferred involuntarily to temporarily fill a new or vacant job shall have the right to return to their own position when the new or vacant position is permanently filled. An employee involuntarily transferred shall suffer no loss of wages, hours or other benefit or advantage as a result of such transfer. An employee transferred into a different classification shall retain seniority in the classification from which they are transferred.

3. In the event no current employees of the District fill the vacancy(s), the vacancy will be filled by the most senior qualified employee on layoff, if available.

4. In the event no employees on layoff status fill the vacancy(s) the board may recruit from outside the bargaining unit.

5. The postings of vacancy(s) shall contain job classification, general job description, pay progression, dates of posting and expiration.

. . .

BACKGROUND AND FACTS

This is a group grievance filed on behalf of the special and certified aides employed by the District. The Association initially identified four aides as bargaining unit members harmed by the District's alleged violation of the collective bargaining agreement. Those four aides included Bobbi Ann Coplin, Jane Kinney, Jessica Pechan and Diane Hinkle. At hearing the Association sought to add another aide, Julie Miess, to the proceeding as a Grievant. [1]

At all times relevant herein, Bryce Bird held the position of District Administrator, Shari Hougan held the position of K-8 Principal, and John Willey held the position of High School Principal. When the aide assignments were discussed and decided, Jennifer Tarrell was employed by the District as the School Psychologist/Director of Special Education. Tarrell resigned her position in May of 2009 to accept the Director of Special Education position with CESA 3. Through CESA 3, Tarrell provides special education guidance to five school districts including Riverdale.

In preparing the 2009-2010 budget, the District needed to reduce costs. This was the result of declining enrollment, borrowing from the District's fund balance in 2008-2009 and two failed referendum.

On June 3, 2009, Administrator Bird sent the following e-mail to all special and certified aides:

> RE: 09-10 job assignments
>
> Enclosed you will find the job assignments for paraprofessional aides and special aides for 09-10 school year. These will be presented to the board on Monday, June 8 at the board meeting for their approval. You will note there are some additional full lay-offs and some reduction in hours for some of the staff listed. These were done through seniority. If you have any questions about this please let me know.

[1] The five aides, Ruby Hall, Angie Reyzek, Sue Bailey, Vicki Ernst, and Angie Mueller were recalled in August and September 2009 to four hour per day positions.

Attached to the memorandum was a preliminary aide schedule. Following the release of the preliminary schedule, certain aides approached the District and requested modifications to their schedule to accommodate second jobs and/or family obligations. Bird presented a modified preliminary aide assignments to the District Board of Education on June 8, 2009. The Board approved the following aide assignment listing:

Preliminary Aide Assignments 2009-10

Assignment/Need	Aide	Hours
HS Library/Study Halls/Crossing Guard AM for December/January/February	Vicky Bomkamp	7:30 – 4:00 (8)
Aide to Jen Goplin/HS Lunch #s (1 hr)	Karen Mueller	7:30 – 3:30 (7.5)
Bus/Aide to Mrs. Barnes/ 2-4 milk break & recess/MS lunch & recess	Alice Watson	6:00 – 2:00 (7.5)
7:30 – 10:00 Library/2-4 milk break & recess/lunch #s/Study Halls hrs 6, 7 & 8	Lynn Biba	7:30 – 3:30 (7.5)
Aide to M & S/2-4 milk break & recess/2-4 lunch & recess/bus	Cindy Bremmer	8:30 – 4:30 (7.5)
4K/4K-1 milk break & recess/4K-1 lunch & recess (M, T, H, F)	Karen Bindl	8:00 – 3:30 (7) *(28 hours per week)
REMS Library/Library Study Halls/Crossing Guard PM	Bobbi Ann Goplin	9:30 – 4:15 (6.25)
Aide to Mr. McKenney/4K-1 milk break & recess/4K-1 lunch & recess	Jane Kinney	8:30 – 3:15 (6.25)
Title 1/Rtl/4K-1 milk break & recess/4K-1 lunch & recess	Joyce Kohlmeyer	8:30 – 3:00 (6)
Aide to A.C. @ HS	Julie Miess	10:00 – 3:00 (5)
HS Special Ed (Paula/?)	Peggy Post	8:00 – 12:30 (4.5)
Breakfast #s/REMS Study Halls AM (hours 1-4)	Patty Bahr	7:35 – 11:35 (4)
Aide to C.S./2-4 lunch & recess	Diane Hinkle	11:30 – 3:30 (4)
Aide to K.C./2-4 lunch & recess	Stacie Roen	11:30 – 3:30 (4)

Early Childhood (PM) M, T, H, F (part of 4K-l lunch & recess)	Jessica Pechan	11:30 – 3:30 (4) (16 hours per week)
4K AM with J/C opposite days M, T, H, F/4K-1 milk break & recess/4K-1 lunch & recess	Pam Schieldt	7:45 – 11:45 (4) (16 hours per week)
Early Childhood (AM) M, T, H, F (part of 4K-1 lunch & recess)	Lisa Johnson	7:45 – 11:45 (4) (16 hrs per week)

* EC aides (AM & PM) can split part of the 4K-1 lunch & recess so there is coverage on days Mr. McKenney and his aide are gone.

Following the distribution of the preliminary schedule, it was modified by the District to accommodate the second job of a senior aide by reducing her from 6 to 5 hours per day.

The District distributed a second schedule which reflected change. The Grievants' schedules were not changed as a result of the modifications.

The Association filed a grievance on June 4, 2009. The grievance described their complaint as:

> On June 4,2009, the District distributed a notice of job assignments for special and certified aides the 2009-2010 school year. The assignments reflect assignment changes and partial layoffs contrary to the terms of the collective bargaining agreement.

The specific provisions that the Association challenged were Article VII, paragraphs A, C and D and "any other provision which may apply." The District denied the grievance at all steps including at the Board of Education level as evidenced by Board President H. Clay Dean's letter to the Association President which read as follows:

> RE: Level Four Grievance – Assignment & Partial Layoffs
>
> Dear Mr. Kratcha:
>
> On Monday, September 14, 2009, the Board of Education for the Riverdale School District met to discuss the grievance filed by the Riverdale Council of Auxiliary Personnel Association alleging that the District's assignment sheet for special and certified aids for the 2009-2010 school year reflected changes and partial layoffs contrary to the terms of the collective bargaining agreement.

After considering the information presented, the Board took action to deny your grievance. It is the Board's position that no contract violation occurred on or after June 4, 2009, relating to the assignments of aides. As we have discussed previously, the District continues to have the right under the Negotiated Agreement to assign aides their duties and set hours needed for these positions. Layoffs were done by seniority. The remaining positions were distributed with the most hours going to the most senior employees.

Sincerely,

/s/
H. Clay Dean
Riverdale School District
Board of Education President

Additional facts, as relevant, are contained in the **DISCUSSION** section below.

ARGUMENTS OF THE PARTIES

Association Initial Brief

The District violated Article VII, paragraph C of the parties; collective bargaining agreement when it reduced the hours of seven more senior aides by a greater number of hours than less senior aides.

The District's actions in June of 2009 constituted partial layoffs. Bargaining unit members Goplin, Kinney, Miess, Post, Roen, Hinkle, and Johnson all performed bargaining unit work in 2008-2009. On or about June 3, 2009, they were informed that their hours would be reduced for 2009-2010. These employees were partially laid off.

The parties' labor agreement does not specifically define "layoff" nor does it distinguish between a full and partial layoff. The Association acknowledges that some arbitrators have found that a reduction in hours does not constitute a layoff, but others have reached the opposite conclusion. From the beginning the District treated the reduction in hours as a layoff and therefore, the layoff provisions are applicable. Not only did the District assign hours by seniority, but it also sent aides a letter informing them of their potential recall rights.

The District's financial difficulties do not give it cart blanche to violate the collective bargaining agreement. The District laid off senior staff and recalled less senior aides that worked four hours or less. This is because four hour employees are not entitled to carry insurance. The District's recall of the less senior aides violated the recall provision of the labor agreement.

The District could have implemented the layoffs in a way that respected the collective bargaining agreement, but it failed to do so. The District had multiple options at its disposal when it scheduled the aides for the 2009-2010 school-year; it could have switched personnel and duties in buildings, move personnel to new buildings, and/or assign discrete parts of a position to another position. The District should have utilized these options and created positions to respect the seniority of the bargaining unit aides.

The District should have recalled partially laid off more senior aides before recalling less senior aides and hiring from the outside. When additional hours became available during the summer of 2009, the District should have offered the hours to the more senior aides. Even if they could not have worked all of the hours of the positions held by Angie Reyzek, Sue Bailey or Angie Mueller, they could have worked a portion of at least one of those positions.

When the District reconfigured the aide positions for 2009-2010, they were so dramatically changed that they no longer resembled the 2008-2009 positions and should have been posted as new positions. While the Association acknowledges that the District and the Association have worked together and were flexible with assignments in the past, the positions changes during the summer of 2009 should have been posted.

District Initial Brief

The District did not violate the Agreement when it issued aide assignments for the 2009-2010 school-year. Management's decision to reduce aide hours was based on legitimate financial reasons and was not arbitrary, capricious or discriminatory. The District retains broad management rights and there is no provision of the Agreement that limits the District's ability to assign aides.

Article VII, section C does not apply to this fact situation. The aides' work hours were reduced. A reduction in work hours does not trigger application of the layoff provision. "Layoff provisions usually contemplate a separation, suspension or break from employment before its provisions apply. A reduction of hours is not a separation from employment. It is not an elimination of a position." MARATHON COUNTY, Case 315, No. 64644, MA-12962 (Gordon, 11/05).

Nowhere else in the parties agreement is there any language which supports the conclusion that the parties intended a reduction in force to trigger the layoff language. The surrounding sections of the layoff language provide that those "remaining employees…capable of doing the remaining work" suggests that the laid off employee is no longer employed. In the recall section, it provides that seniority will be used for recall and reemployment. Reemployment clearly contemplates that a layoff is a separation from employment. Employees with reduced work hours cannot be reemployed because they have never separated from employment.

Layoff, since it has not been defined by the parties, is to be given its ordinary meaning. Layoff according to *Roberts' Dictionary of Industrial Relations* (4th Ed. 1994), is "a temporary or indefinite separation from employment..." and is "the act of laying off; esp., temporary unemployment, or the period of this," according to *Webster's New World College Dictionary* (4th Ed. 2002).

The parties' Agreement does not require that the District follow a specific procedure concerning the application of seniority in the context of layoffs, let alone reductions in force. The Agreement does not prevent the District from reducing the hours of the most senior employees. The District acted in good faith when it considered seniority when making reductions in hours due to the budgetary and operational concerns of the District.

The District laid off the least senior aides first. When that action did not result in a sufficient amount of savings, the District assigned the more senior aides the positions with the greatest number of hours. The Association is asking that the District break up positions and assign aides in a manner that would allow the most senior aides to maintain their hours. This would limit the District's options when covering absences, would limit the District's flexibility in addressing student consistency, and could increase staff burnout.

Article VII, section D does not apply to this dispute. The District's method of assigning aides did not create any vacancies that needed to be posted. If the District had vacant positions to fill, it would not be reducing hours.

Association Reply Brief

The Association addresses specific points contained in the District's brief.

The District claims to have taken into account seniority when making its decision to partially lay off several aides. It also stated that the less senior aides were completely separated from employment. This may be true, but the fact remains that many aides with greater seniority were reduced by a greater number of hours than the less senior employees. Goplin and Miess were reduced a greater number of hours than six less senior bargaining unit employees. Kinney and Roen were reduced by a greater number of hours than three less senior employees. Post was reduced by a greater number of hours than five less senior bargaining unit employees. And, Hinkle was reduced by a greater number of hours than two less senior bargaining unit employees. Two members, Pechan and Schieldt, were not impacted while five other aides were fully laid off.

The District claimed it applied a three prong test to determine aide assignments. The District's process and refusal to consider seniority denied several senior aides their previous full time equivalencies and insurance benefits in violation of the agreement.

The Association did not expect the District to break up positions in order to assign aides. Rather, the Association has strenuously supported its more senior members' contractual right to maintain their full time equivalencies by assuming work previously performed by less senior employees.

The District speculated as to the "potential negative consequences" that would have occurred had it not assigned aides in the manner it had. The District must rely on more than speculation when the seniority, wages and benefits of hard-working aids are at issue. The District could have met its competing interests – student consistency, one-on-one, and avoidance of staff burnout – and still comply with the labor agreement.

The Association agrees with the District's desire for the labor agreement to be read as a whole. The Association points out that when the lay off and seniority language are read together and only completely laid off employees fall under the purview of the layoff language, then seniority is meaningless.

The District's real reason for focusing on hiring and retaining four hour positions is because those employees are not eligible for insurance benefits. While some arbitrators have recognized insurance related consequences when there is a financial crisis, the District hasn't the financial situation in those situations since it not only retained the four hour staff, but it hired a new employee. Moreover, the District's financial dilemma was not the reason for given to staff in June 2009 when they received their partial layoff notice.

With regard to remedy, the District seeks to limit the Association's remedy to the aides identified in the April 19, 2010 letter. This would harm aide Julie Miess, who became ineligible for District insurance due to the District's actions. To deny Miess a remedy would be unduly harsh.

The Association requests that all aides affected by the improper layoffs, recalls and hire be made whole for the wages and benefits lost, and that their hours be restored to reflect their seniority status.

District Reply Brief

The District will respond to the arguments raised in the Association's brief.

The Association's suggestion that there were other ways for the District to reduce staff does not mean that the District violated the collective bargaining agreement. The District exercised its management right when it issued aide assignments. The District agrees that there were other methods available to it when it reconfigure staff, but it was not obligated to pursue these and the Association has not presented any evidence to demonstrated that the District's action violated the Agreement.

The Association argued that since the District considered seniority as a factor in its process to determine aide assignments, it must have been laying off employees. The District was under no obligation to consider seniority, but it did so in good faith. This does not constitute an admission. Any reliance on Administrator Bird's letter that was sent to two aides is misplaced because it was riddled with errors.

Pursuant to Article III of the Agreement, the District reserved the right to "assign employees in positions with the school system... [and to]determine the methods, means and personnel by which school systems operations are to be conducted." Article VII, section D.1 provides the only limitation on the District's rights – the District will post a notice if a vacancy occurs. The District did not determine that a vacancy occurred with the aide positions for the 2009-2010 school-year. Rather, the District followed the same process it had followed in prior years when it configured aide assignments.

The Association's claim that the District should have posted some or all of the aide positions is not an issue before the Arbitrator. The Association failed to identify which aide positions were *so dramatically tinkered with* that they should have been posted. (Italic in District Reply Brief) Even if a vacancy was created and posting was necessary, the Association did not present any evidence to demonstrate that the District violated the Agreement.

For the reasons cited, the District respectfully requests that the Arbitrator deny the grievance.

DISCUSSION

This grievance relates the meaning of Article VII- Seniority, sections A, C and D.

I start with the language of Article III, Management Rights, wherein the parties granted the District the management right to schedule and assign staff. Thus, unless the parties have limited these rights by some specific provision of the labor agreement, the District's actions were consistent with the labor agreement.

The District eliminated special and classified aide hours in preparation for the 2009-2010 school-year. This occurred for legitimate financial reasons. The Association argues that the aides whose hours were reduced were partially laid off and further, that when the District did so, it failed to comply with the terms of Article VII, Section C – Layoff.

Article VII, Section C provides that:

Layoff

1. In the event the Board decides a layoff shall occur, it shall decide within which classification(s) the layoff will be accomplished. Personnel to be laid off will be given at least three (3) weeks prior notice.

2. The employee(s) with the least amount of seniority presently working within the classification shall be the first laid off provided the remaining employees are capable of doing the remaining work. Employees who bump into a position of less seniority shall serve a trial period of thirty (30) working days in the new position. In the event the Board determines an employee is not qualified to fill the new position before the end of the thirty (30) working days, the process of bumping will continue until there is no remaining work the employee can perform. Persons working in more than one classification shall maintain separate seniority in each classification.

The aides affected by the District's decision can be categorized into two groups, those that were completely laid off and those whose hours were reduced. In the completely laid off category, there were five and they were the five least senior aides on the seniority list. Each of the five had been employed the prior year in four hour per day positions. The Association has not argued that the District violated the rights of these five employees, therefore I must conclude that the District properly comported with the layoff language of the parties' labor agreement as it related to these five aides.

Moving to aides whose hours were reduced, the only way that Section C applies to them is if they were laid off. Thus, the threshold question is whether a reduction in hours constitutes a layoff. If it does, then the District was obligated to follow the procedure contained in the Section C. If it does not, then the District's action was consistent with its management rights.

This is a contract interpretation case. The parties' dispute arises out of the meaning of their labor agreement. Contract interpretation is the ascertainment of meaning. Elkouri & Elkouri, *How Arbitration Works*, 6th Ed. p. 430 (2006). Language is clear when it is susceptible to one convincing interpretation, but may be deemed ambiguous if there is more than one plausible interpretation. Id. at 434. If the plain meaning of the language is clear, it is unnecessary to resort to extrinsic evidence. Id. Extrinsic evidence and rules of contract interpretation in ascertaining meaning and those relevant to this discussion include: 1) giving words their normal meaning, 2) custom and practice of the parties, and 3) looking to the contract as a whole to determine meaning.

Layoff is not defined in the parties' agreement. The Association argues that a reduction in hours is a partial layoff and that all references to the term "layoff" in Article VII, and all other articles of the agreement, includes partial layoffs. The District concludes that only

complete layoffs were envisioned when the language was drafted. Both interpretations are plausible, thus the language is ambiguous and it is necessary to look to extrinsic evidence for guidance.

The District offered two dictionary definitions of layoff which support the conclusion that there must be a complete separation from employment before an employee is considered laid off. See District Initial Brief above. In MID-STATE TECHNICAL COLLEGE, Case 74, No. 56695, MA-10383 (Jones, 9/99), Arbitrator Raleigh Jones reviewed three different dictionary definitions and concluded:

> *Roberts' Dictionary of Industrial Relations* (3d ed. 1986) defines a layoff as "a temporary or indefinite separation from employment." *The American Heritage Dictionary* defines it as "to separate from employment, as during a slack period." *Webster's Third New International Dictionary* (1986) defines it as "a period of being away from or out of work."

I concur with the District and Arbitrator Jones that the term "layoff" involves the severing of the employment relationship. The plain meaning of the term layoff supports the District's interpretation of the language.

I move next to the custom and practices of the parties. Association President Ed Kratcha testified that in staffing for the 1996-97 school-year, then District Administrator Yeager brought all support staff employees to one location at which time by classification he, "… went by seniority and started at the top of the list and went right down the lines asking what jobs they wanted and went right down the line. And when there was nothing left, those were the ones that were laid off at that time." Tr. p. 35. Kratcha testified that Yeager followed the same process two or three years later when lay offs were necessary. Kratcha's testimony establishes how the aide positions were distributed to staff on two previous instances, but it also establishes that the District followed the same aide creation process in 2009-2010 that it did in 1996-1997. In both instances, before the aide positions were selected in 1996-97 or assigned in 2009-2010, the District determined what aide positions would exist and for how long each day, thus testimony establishes that the District did exactly this time what it did in the past.

Two other instances were identified. One witness, Julie Miess, testified that she was completely laid off during the 2003-2004 school year, although she worked periodically as a substitute employee. [2] The parties also offered evidence that provided a five year history of aide hours worked. In reviewing this data, in all but one instance, the District either increased or did not changed the number of hours that individual aides were scheduled to work from one year to the next with one exception. In 2006-2007, Patty Bahr's hours decreased from 4.5 in 2005-2006 to 2.5 hours per day. Hougan testified that the Association did not file a grievance

[2] The District objected at hearing to the inclusion of Julie Miess as a party to the grievance on the basis that the Association failed to identify her in response to the District's information requests of March 15, 2010 and March 16, 2010.

on behalf of Bahr when her hours were reduced and there is no evidence in the record to dispute this assertion. These two instances, although certainly not sufficient to establish a pattern of behavior, are consistent with the conclusion that a lay off is a complete separation in the employment relationship and further, that the parties did not view a reduction in hours as an improper layoff.

This conclusion is consistent with other clauses of the parties' collective bargaining agreement. The District pointed to Article VII, section C, subsections 1 and 2 and section 3, subsection 3. I find Article VII-Seniority, section A, sub-section 3d more telling. This subsection provides that an employee's seniority is terminated if he/she has been "on layoff status longer than two (2) calendar years from date of layoff." If I apply the Association's view to an employee whose hours are reduced two years in a row, then that employee is terminated. I cannot believe that this is what the parties intended. Rather, it is more reasonable to conclude that the parties intended only those employees whose hours are completely eliminated to having been "laid off" for purposes of the seniority article.

Even if I had reached the conclusion that partial layoffs are envisioned under Article VII, the contract language would not provide the Grievants the remedy which they seek. Assuming *arguendo* that a partial layoff would be considered a layoff pursuant to Article VII, then the process as per section C would be for the District to have allowed more senior employees to bump less senior employees. Applied to the most senior employee whose hours were reduced, Goplin would have had the opportunity to bump a less senior employee, but there were not any less senior employees that had greater hours per day than Goplin. This is true for all of the aides that have asserted their hours were reduced in violation of the labor agreement.

The Association is asking for an arbitral ruling which would require the District, when there are less aide hours available, to assign those hours to the most senior aides before less senior aides. It would apply this process to preliminary staffing decisions and when aide hours are increased. In its brief, it provided the following example:

> Goplin could have worked one of the position (sic) slated as of June 3, 2009 to be occupied by Schieldt and Johnson until 9:30, recouping 1.75 hours per day or the entirety of the time she lost; Miess could have done so until 9:00, getting back one hour and twenty-five minutes of her 2.25 hour/day lost.
>
> Association brief p. 13.

The labor agreement does not limit the manner in which the District makes decisions as to how to create positions or assign work. The District declined to splice off portions of the four hour positions supplement the more senior aides' hours it wanted to limit the number of aides assisting special needs students for the benefit of the students. It also chose to not create positions of less than four hours because it believed that it would have difficulty finding qualified applicants. These are rationale reasons that are neither arbitrary nor capricious.

Ultimately, the District exercised its management right in determining staffing. That determination resulted in a reduction in hours for the more senior aides. The District's actions were consistent with the terms of the parties' labor agreement.

AWARD

1. No. the District did NOT violate the Collective Bargaining Agreement when it issued aide assignments for the 2009-2010 school-year.

2. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 9th day of March, 2011.

Lauri A. Millot /s/
Lauri A. Millot, Arbitrator

LAM/gjc
7702