

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

UNITED LAKEWOOD EDUCATORS

and

HAMILTON-SUSSEX SCHOOL DISTRICT

Case 49
No. 70149
MA-14880

(Layoff of Stephanie Shoemaker)

Appearances:

Mr. Gary M. Ruesch, Buelow, Vetter, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, appeared on behalf of the District.

Mr. Miguel E. Salas, 13805 West Burleigh Road, Brookfield, Wisconsin 53005, appeared on behalf of the Association.

ARBITRATION AWARD

On August 31, 2010 the United Lakewood Educators and the Hamilton-Sussex School District filed a request with the Wisconsin Employment Relations Commission requesting the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a matter pending between the parties. Following appointment, a hearing was scheduled and conducted on November 30, 2010 in Sussex, Wisconsin. A transcript of the proceedings was taken and distributed on December 8, 2010. Post-hearing briefs and reply briefs were filed and exchanged by April 1, 2010.

ISSUE

The parties stipulated the following to be the issue:

Did the District violate the Master Agreement when it partially laid off the grievant?

If so, what is the remedy?

BACKGROUND AND FACTS

Stephanie Shoemaker, the grievant, has been employed by the Hamilton School District as a High School Science teacher for a period of four years. Ms. Shoemaker is certified to teach grades 6-12 broad field science. She is not certified to teach reading.

Ms. Shoemaker was given a notice of partial layoff on May 18, 2010. The number of teaching positions in the High School was reduced and Ms. Shoemaker was reduced by 50%. She filed a grievance protesting her partial layoff on June 14, 2010, pointing out that there were junior Science teachers left with full time assignments. Specifically, there were two such teachers in the Middle School. The grievance was denied by Kathleen Cooke, District Administrator, in a letter dated July 12, 2010. Ms. Cooke's letter outlines the dispute between the parties:

I have reviewed the master agreement between the Hamilton School Board and the United Lakewood Educators and your position regarding this issue. I have also reviewed the middle school schedule since you have proposed that Ms. Shoemaker be assigned to the middle school replacing another teacher of less senior status. My review of the situation reveals the following:

- 1) Stephanie Shoemaker holds a license to teach broad field science 6-12.
- 2) The positions at the middle school require teachers to be certified in both science and reading. Ms. Shoemaker is not properly certified to teach a science reading position at the middle school.
- 3) You proposed that a position at the middle school would be split and that Ms. Shoemaker would teach the first two hours of science and then return to her high school responsibilities. The middle school is founded on an educational philosophy of meeting the instructional, physical and emotional needs of early adolescent students. The middle school house schedule is designed to meet student needs with a flexible time schedule. The middle school program is not a "mini" high school or junior high program. Teachers regularly adjust schedules within their house block to accommodate student needs through flexible groups and flexible allocation of time. If Ms. Shoemaker is assigned to a middle school house the team will be restricted from flexibly allocating house time to meet student needs. The district is operating within management rights to determine the educational philosophy of a program, how a building will be structured and how the instructional program will be delivered. I conclude that the science reading position at the middle school cannot be split

without causing a fundamental change in its house educational program and structure. The district is not required to change the educational program or restrict how instruction will be delivered to accommodate teacher seniority.

I have concluded that the master agreement between the Hamilton School District Board of Education and the United Lakewood Educators has not been violated therefore the June 14, 2010 grievance is denied.

Sincerely,

Kathleen M. Cooke /s/
Kathleen M. Cooke, Ph.D.
District Administrator

The Hamilton High School operates on a block schedule. In the 2010-2011 school year, the grievant had the following schedule (50%):

Monday/Wednesday/Friday

Block 1	7:20 A.M. – 8:50 A.M.	No assignment
Block 2	9:10 A.M. – 10:30 A.M.	Prep period
Block 3	10:40 A.M. – 12:45 P.M.	Biology 10:40 – 12:10
Lunch	12:20 P.M. – 12:45 P.M.	
Block 4	12:45 P.M. – 2:25 P.M.	Semester 1: Physical Science Semester 2: Honors Biology

Tuesday/Thursday

Block 1	7:20 A.M. – 8:35 A.M.	No assignment
Block 2	8:45 A.M. – 11:05 A.M.	8:45 – 9:40 study hall (advisement) 9:50 – 11:05 prep period
Block 3	11:10 A.M. – 1:00 P.M.	11:15 – 12:30 Biology 12:35 – 1:00 lunch
Block 4	1:10 P.M. – 2:25 P.M.	Semester 1: Physical Science Semester 2: Honors Biology

The grievance claim is that Ms. Shoemaker should have been allowed to bump 50% of a middle school teacher's Science assignment. This would have made Ms. Shoemaker a traveling teacher and as such she would not be assigned an advisement. The advisement is essentially her Tuesday - Thursday study hall where students are free to seek help.

The basic (default) schedule for Templeton Middle School consists of a 7 period day (6 periods in the 6th grade) scheduled as follows:

<u>Period</u>	<u>Time</u>
1	7:25 – 8:19
2	8:23 – 9:16
3	9:20 – 10:13
4	10:17 – 11:10
5	11:14 – 12:07
Lunch	12:11 – 12:41
6	12:45 – 1:38
7	1:42 – 2:35

In 2010 – 2011 Ms. Shoemaker began work at the High School no earlier than 10:40, other than her advisement. She believed she could be assigned Science classes scheduled during the first three periods of the Middle School schedule. It is possible to schedule Ms. Shoemaker to such a schedule, displacing a less senior middle school Science teacher. This is the case so long as the High School schedule is matched against the basic, or default, Middle School schedule.

The Middle School is divided into a number of color designated houses. There are 6 such houses in the 6th grade, 4 in the 7th grade and 3 in the 8th grade. Each house is assigned a core group of teachers in the areas of Math, Science, Communication Arts, and Social Studies. The four core teachers have a group of students who receive their instruction and attend classes given by those teachers. What is then created is a smaller school within the larger school. Each student and core teacher is assigned to a reading period, deemed by the middle school model to be a critical component to the educational structure of the middle school organization. Core teachers are required to teach a section of reading. Reading topics are integrated into the core curriculum.

There are two Middle School teachers who are not certified to teach reading. Both teachers were a part of the Middle School faculty at the time the Middle School came into being. Both teachers were grandfathered by the DPI at the time. Both teach reading.

The scheduled periods for 7th and 8th grades are identical. Since there are 6, rather than 7 class periods in the day for 6th grade, many of the class periods do not line up. However, 1st, 2nd and 7th (6th in grade 6) do line up. For that reason the allied arts are scheduled in those periods. Efforts are made to keep those periods fixed. Middle School core teachers are provided with two prep periods. One is an individual prep, where duties may be assigned. The second is a common prep period, where the core teachers have the same period set aside to plan and prepare collaboratively. No duties are assigned during the common prep period. Approximately seven times per year the core teachers of each house are scheduled to meet with

administration to review the use of team planning so as to assure that it is directed at student learning.

One aspect of the flexibility built into the Middle School schedule is that the core teachers have the ability to modify the basic schedule to incorporate variety into teaching. Core teachers have varied the hours of periods, combined periods, flipped periods, and team taught. Schedule changes are made for a variety of reasons, including curriculum, house presentations, testing, field trips. Examples of schedule changes that were made in 2009 – 2010 were made a part of the record. One of those changes, made in section 7 gold involved students creating a research paper. The Communication Arts teacher and the Social Studies teacher worked as a team. The students were divided into two groups to work. Period 1 and 2 were combined to permit one of the groups to work with the two teachers with the walls open to permit the two teachers to teach together. The second group worked on the traditional curriculum. The process then flipped with the students reversing tasks. To allow for the process to re-run, the teachers flipped 7th period and 3rd period, placing reading, originally scheduled for 3rd period, in the 7th period slot. This schedule was maintained for 4-5 days.

A second example involved the same group. First period was shortened. The remainder of first period was joined with 2nd, 3rd and 4th periods. The student house was divided into groups of 8-10 students, the walls were opened and all core teachers participated in a murder mystery/CSI investigation. Seventh period was used for student group work and presentations.

A third example, involving 7 blue, involved having a World War II speaker address all students during the time period that would normally be periods 1 and 2. Periods 1 and 2 were then shortened and conducted in the time frame that would normally be period 3. Period 4 was used for reading, as regularly scheduled. The core subjects that would have normally been taught in period 3, including a science class, were moved to the time slot that would have been the first half of period 7.

The schedule changes described above were initiated by the core teachers in the course of their common planning. In 2009 – 2010 the 7 gold house had 44 schedule changes that did not align with the default schedule. The 7 blue house had 54 such changes. The 7 red house had 38. The 8 blue house had 43. The 8 gold house had 45. The 8 white house had 41. It is common to change the basic or default student schedule.

**RELEVANT PROVISIONS OF THE
COLLECTIVE BARGAINING AGREEMENT**

ARTICLE II

• • •

B. TEACHER RIGHTS

...

6. Lay-off

If the Board decides to reduce or eliminate a teaching position(s), the Board shall have the sole right to determine the position(s) to be reduced or eliminated. A reduction in the number of hours in a particular position shall constitute a partial layoff. The elimination of a position shall constitute a full layoff. In all events, the following procedure shall be followed:

- (a) Notice of layoff shall be transmitted to an affected teacher by (1) certified mail, return receipt requested, or (2) personal delivery, in each case no later than the last teacher calendar day of the school year preceding the school year in which the layoff is to occur. If such notice is transmitted by personal delivery, the affected teacher shall acknowledge receipt of the notice in writing on a duplicate copy of it.
- (b) The factors to determine order of layoff shall be as follows:
 - (1) When possible, reduction of personnel shall be accomplished through normal attrition.
 - (2) Volunteers shall be considered first. Teachers who have volunteered for layoff for the next contract year pursuant to this article shall not be recalled for such layoff contract year, and shall be recalled in subsequent years in accordance with the provisions of this Section.
 - (3) The Board shall first retain those teachers with the greatest amount of seniority in the District who are qualified to teach in those areas being preserved. Qualification shall be by virtue of certification as of June 1 of the school year in which the layoff notice is given.
- (c) Except as provided in Article II, B(1), seniority shall be based on number of years worked within the District.

...

- (f) Teachers laid off will be recalled with the most senior teacher being called back first for any position for which he/she is qualified, including new positions or long-term substitute positions.

...

- (i) Nothing contained in this section is deemed nor does grant to any teacher a right to employment in a position for which he/she is not certified under applicable law.

POSITIONS OF THE PARTIES

It is the view of the District that it did not violate the contract when it refused to allow the grievant to teach a portion of the core science position at the middle school. The District argues that the grievant did not possess the certification to teach reading at the middle school, and that reading is a requirement of the position. The District acknowledges that there are two teachers who lack reading certification, but notes that both were grandfathered, and actually teach reading. The District made inquiry on behalf of the grievant and was denied any form of grandfathering or emergency license status for the grievant.

It is the view of the District that nothing requires it to create a part-time core position at the Middle School. It is the view of the District that there is no difference between the contractual use of the terms area and position. The District argues that nothing in the contract suggests that the use of the term area was intended to allow existing positions to be divided. It is the view of the District that whether the grievant is seeking to bump into an area or a position Article II(B)(6)(i) requires that she be certified for the whole position.

It is the view of the District that if the grievant were allowed to bump into a partial position in the Middle School, the Middle School model would itself be undermined. Scheduling and collaborative planning would be seriously diminished. The grievant would have a fixed schedule at the High School, limiting her Middle School availability. The District argues that she would not be available for team planning.

The Association contends that the clear and unambiguous language of the contract requires the District to retain Shoemaker given that she has more seniority than the other employees in the area of Science which was preserved. The Association draws a distinction between area and position. Middle School science continues to be offered. The grievant is certified to teach Middle School science. The contract is alleged to draw a distinction between area and position. Article II, Sec. 6 sets the layoff language in motion "If the Board decides to reduce or eliminate a teaching position(s), ...". The provision goes on to provide, in Article II, Sec. 6 (b)(3) "...the Board shall first retain those teachers with the greatest amount of seniority in the District who are qualified to teach in those areas being preserved. ..."

The Association argues that the ordinary meaning of the term area is field of study or a branch of a field of study. The Association points to the requirements found in the last job posting for the Middle School science position and notes the absence of a reading requirement. The Association points out that there are two Middle School science teachers remaining on the job who have less seniority than does the grievant.

The Association contends that it is feasible for the District to assign the grievant 50% to the High School and 50% to the Middle School.

DISCUSSION

The School District determined to eliminate a portion of Ms. Shoemaker's High School position. Under Article II. B. 6 the reduction in Shoemaker's position is a partial layoff, triggering application of the balance of the layoff clause. Article II. B. 6 (b) (3) directs the Board to "...retain those teachers with the greatest amount of seniority in the District who are qualified to teach in the areas being preserved. Qualification shall be by virtue of certification as of June 1 of the school year in which the layoff notice is given."

There is no dispute that there are two Science teachers, both junior to the grievant, who teach at the Middle School. Ms. Shoemaker is certified, and thus qualified, to teach Middle School Science. Ms. Shoemaker is not certified, and thus not qualified, to teach Middle School reading. These facts frame the dispute between these parties as to whether Ms. Shoemaker is qualified to teach in the areas being preserved.

Ms. Shoemaker does not claim the right to bump into a full time Middle School Science position. There are two junior Science teachers in the Middle School, and this would be an obvious bumping route. I believe the reason no such claim is made is that the grievant is not certified to teach reading, and implicitly recognizes the fact that Middle School core teachers are required to teach reading. There is evidence in the record relating to two Middle School teachers who lack reading certification, and who were previously grandfathered. I do not regard the status of the two grandfathered teachers as relevant to this proceeding. The circumstances surrounding the previously grandfathered teachers are distinguishable from the circumstance facing the grievant. The grievant cannot be grandfathered, nor is she eligible for an emergency or provisional license. The practical consequence of that fact is that the other teachers can teach reading, and the grievant cannot.

There was evidence that the posted Middle School Science job description did not require reading. There was also testimony that the absence of a reading requirement for the posted Middle School Science position was an oversight. As a practical matter, the District does require Middle School core teachers to teach reading. All Middle School core teachers do teach reading. The fact that the grievant does not challenge for a full time Middle School position acknowledges that fact.

What the grievant seeks is to teach a half load in the High School and a half load in the Middle School. There is a schedule which allows her to teach Science classes in the morning in the Middle School and then to teach High School classes in the afternoon. There does not appear to be a schedule which will allow her to fully participate in the team planning period. There was testimony that the grievant could participate by phone or send ideas in. She indicated that she could participate informally. Certainly, if she were to share a position, there would be another part-time Science teacher in the core group. I think this is at odds with the structure of the Middle School. Middle School core teachers are given two prep periods. One is individual, and is not protected from the assignment of added duties. The second prep is scheduled as a common prep period. That period is protected from the assignment of added duties.

Core teachers meet virtually daily in the common planning periods. They plan out the delivery of education and focus on groups and sub groups of students. They commit resources, integrate disciplines and re-arrange the school day, if necessary. All of this impacts on the teaching of the Science courses into which the grievant seeks to bump. The administration schedules a series of administrative review meetings with the core teachers during the common prep period. The purpose of the reviews is to monitor what is being planned, and to assure that planned instruction leads to student achievement. This reflects a substantial commitment of resources. There is a good deal invested in the system. I think the common planning is itself a very substantial component of the work area that has been preserved. The District is entitled to the professional input and investment of the core teachers. The core teachers are entitled to the full participation of each member of the team. The individual teacher is entitled to participate in the formulation of the educational plan of which she is a part. The District treats the common planning period as a very significant part of the work process. I am reluctant to dismiss that casually.

I do not believe that Science instruction in the Middle School context can be realistically divorced from the common planning that takes place in this environment. Both the approach to instruction and the timing and method of delivery of that instruction is addressed and defined in the common planning sessions. The grievant is qualified to participate in the common planning sessions. However, I do not believe she is meaningfully available to participate in those sessions.

Core teachers regularly re-arrange the work day. The default schedule is routinely modified. Some of those modifications would tolerate the grievant in two buildings. Some would not. One of the examples noted shifted morning Science to the afternoon. That would create a conflict with the grievant's scheduled High School assignment. This forces the District to either forego the flexibility that produced the change, or have one of the grievant's classes taught by someone else. Neither result is consistent with placing the grievant in the Middle School for the purpose of teaching in the area of work being preserved.

The record indicates that the District has not allowed part-time or job share employees in the Middle School. That policy is consistent with the District philosophy which regards the entire Middle School work day and process as an integrated whole with respect to the core teachers. Ms. Shoemakers proposed work schedule would make her less available for planning and a flexed work day than would be a part-time or job share teacher. Her High School schedule is a built in barrier to her flexibility. Such an impediment may or may not exist for a part-time teacher.

In conclusion, I believe availability to teach in the area of Science being preserved includes participation in the common planning and the ability to be flexible through the work day. I do not regard the grievant as available to perform the work required in the area being preserved.

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 29th day of July, 2011.

William C. Houlihan /s/

William C. Houlihan, Arbitrator