



Employment Issues

Grievance Arbitration Summaries 1994-2003

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Contract Administration

Carroll Community School District and Carroll Education Association Arbitrator Thomas A. Cipolla 2001

Issues

Whether the grievance is procedurally and substantively arbitrable?

Whether the district violated the collective bargaining agreement when it assigned Saturday practices for the 1998-99 school year for the middle school program?

Facts

In May 1998, the District’s athletic director notified football coaches that there might be Saturday practices in August 1998. The grievant immediately responded that he disagreed with the proposed changes. However, in June 1998, the Grievant signed an individual contract renewal as middle school football coach. The Saturday practices were scheduled as proposed in May. Finally, on September 1, 1998, the Grievant filed his grievance, which was denied by the District.

There had not been prior Saturday practices for middle school football in recent history. All high school coaches occasionally worked on Saturday for events or practices. These Saturday practices were in compliance with the individual contracts.

Association Position

The grievance is arbitrable and is a grievance alleging a violation of the collective bargaining agreement, not an individual contract. All that is required to be arbitrable is that the grievance reference the provision of the contract alleged to have been violated. It was filed in a timely manner, because Saturday practices were not definitely scheduled until September of 1998. In addition, each

Saturday work requirement constituted a new occurrence, so the theory of continuing violation applies. The collective bargaining agreement was violated when the District assigned Saturday practices because the collective bargaining agreement requires that direct instruction of students before and after normal working hours shall be by mutual agreement. The District was not allowed to schedule more or less than what is usual and customary unless there is mutual agreement. There was no such agreement.

District Position

A dispute concerning an individual contract is not a grievable issue. The grievance was not timely and it failed to cite a specific provision. There is no language in the collective bargaining agreement, which precludes the employer from scheduling Saturday football practice. The district has the exclusive right to assign work and that right was not waived. There is a long-standing past practice to have athletic practices on Saturday.

Award

The grievance is timely. The grievance is substantively arbitrable. There was no violation of the collective bargaining agreement. The grievance is denied.

Analysis

The grievance is timely because the May memo was only a suggestion, and implementation did not occur with certainty until August. The grievance does allege a violation of the collective bargaining agreement, so it is substantively grievable.

There was no violation of the collective bargaining agreement. Grievant was paid the appropriate salary, so the salary article was not violated. There was no evidence to show that the Grievant worked in excess of 187 days, so the work year article was not violated. Concerning the work hours article, the evidence shows that the term “direct instruction” was intended to refer to teaching, not coaching. If any agreement were violated, it would have been the extra-curricular contract and the arbitrator has no authority.

**Cedar Rapids Community School
District and Service Employees
International Union, Local 150 Arbitrator
James B. Dworkin 1996**

Issues

1. Whether the grievance was filed in a timely manner.
2. Whether Cedar Rapids Community School District violated Article I, Section A and B3, or Article XII, Sections A, C and E of the collective bargaining agreement when it assigned student supervision duties to the position of building counselor's secretary.
3. If so, what is an appropriate remedy?

Facts

While holding a counselor's secretary position at Wilson Middle School during the 1994-95 school year, Diane Bush was assigned noon cafeteria supervision duty. On Aug. 10, 1995, after Ms. Bush transferred from this secretarial position, the district posted a job vacancy that listed "supervise students at lunch, recess, hallways, etc." as a job duty for the position. This vacancy notice listed the areas of student supervision more specifically than prior secretarial notices had.

Union Position

The union contended that the Aug. 10, 1995 vacancy notice triggered the grievance. The union did not file a grievance regarding office professionals being assigned student supervision duties until after the Aug. 10, 1995 job vacancy notice listed lunch room supervision duties as required to be performed by the counselor's secretary, on a permanent basis. The union contended that prior to that date, the supervision duties were assigned on a week-to-week basis. They also contended that assignment of the duties as part of the principal duties of the position violated the collective bargaining contract because student supervision duties are not of the same general type or reasonably related to the regular clerical duties of the job. They argued that the grievance was timely in that the action taken by the district constituted an ongoing violation of the collective bargaining agreement.

District Position

The district contended that the grievance was not timely because it was submitted long after the twenty (20) day contractual limit. They also contended that assignment of supervisory duties to district secretaries was a long-standing practice, of which the union was well aware. They argued that Ms. Bush had testified that she brought the issue of assigning supervisory duties to secretaries to the attention of union officials during 1994-95 school year but no grievance was filed then. The district cited a previous award by arbitrator Harvey Nathan who ruled that a grievance was waived when the union had filed a grievance, dropped the matter and then attempted to file the same grievance again. Therefore, the district argued that since the union was aware of the long-standing secretarial supervisory duties situation and chose not to file a grievance, this later attempt to file the same grievance should be ruled untimely.

The district also contended that it did not violate any contractual articles cited by the union. They argued that the recognition clause was silent on whether secretarial/clerical workers could be asked to perform work that is also done by members of other units. They further stated that the contractual provisions cited by the union did not impose any limitations on the district's right to assign work. They argued that the Iowa Public Employment Relations Act specifically stated that public employers have the right to assign work and it does not mandate bargaining over job qualifications or job assignments. They contended that the Iowa Supreme Court had ruled that management rights were only limited by agreements on those issues which are mandatorily negotiable. They stated that none of the eight collective bargaining agreements in their district contain language that specifies the nature of work which can be assigned to employees.

Award

The grievance is denied in its entirety.

Analysis

Arbitrator Dworkin concurred with the union's position that the grievance was filed within the twenty day contractual limit because the Aug. 10, 1995 job posting was the event that triggered. He stated that because secretaries had been assigned some student supervisory duties in the past and had not grieved said assignments did not imply that the union missed its opportunity to file a grievance over

the specific listing of the supervisory responsibilities after the Aug. 10, 1995 job posting.

The arbitrator did not find any applicable precedential value from arbitrator Nathan's previous award because this case did not deal with a similar set of facts. Nathan's dealt with a grievance that had been filed twice, dropped twice and then he was asked to rule on that identical grievance. This case was not a situation of identical earlier grievances being filed and then dropped.

Regarding the issue of whether the district violated the collective bargaining agreement provisions cited by the union when it posted the specific listing of supervisory duties in the Aug. 10, 1995 job vacancy notice the arbitrator:

1. Noted that a Nov. 28, 1992 posting for the counselor's secretary position specifically stated that the job required "supervision of students who are waiting for appointments or who are in a crisis situation in the counselor's reception area." It also mentioned that this position may have "other duties as may be assigned."
2. Determined that it seemed to be a long-standing practice for employees in the educational professionals unit to have some work assignments in the area of student supervision.
3. Concluded that student supervision duties were assigned to secretaries in the district over a period of time and the union was clearly aware of these assignments.
4. Stated there was nothing bizarre, oppressive, unreasonable, arbitrary or discriminatory in the assignment of some student supervision duties to the counselor's secretary.
5. Referenced *Gere v. Council Bluffs Community School District*, 334 N.W.2d 307 (Iowa 1983) where the Iowa Supreme Court ruled that job assignment duties should be in the discretion of school authorities, with intervention by the courts only in instances which transcend the bounds of discretion.

Cedar Rapids Community School District Service Employees International Union, Local 150 Arbitrator Boris Speroff 1996

Issue

Whether the District violated the collective bargaining agreement by denying Grievant's request for vacation the last two weeks in June because another employee had already been granted vacation.

Facts

Grievant, a 19-year employee, requested vacation for the last two weeks in June. The supervisor denied the request because another employee had already been granted vacation for the same time period, and it was determined that the District could not conduct its operations with more than one employee absent. The Grievant was granted vacation time during the first two weeks in July.

Association Position

The collective bargaining agreement mandates that all employees must take vacations between June 15 and August 15, but supervisor approval is only required for vacations outside this time period. Mere inconvenience to the employer is not sufficient basis for the arbitrator to ignore specific contract language.

District Position

The collective bargaining agreement does not mandate that the District grant employees specifically requested vacation between June 15 and August 15. Past practice established that the District has consistently applied a policy of requiring employees to seek approval for specific vacation time, with the right to deny a specific request for legitimate reasons.

Award

Grievance denied.

Analysis

The contract language is ambiguous, in that it seems to require that all vacations be taken between June 15 and August 15. Supervisor approval is required for vacations outside this time period, but in fact, supervisor approval is required for all vacation requests. Therefore, past practice is relevant. Management has required approval since the mid-1980s. Management has retained exclusive rights of directing its operations, so unless specifically limited, management has the exclusive right to determine how many employees may be on vacation at a time. There

is no specific limitation here. Grievant was granted vacation time between June 15 and August 15, so there was no contract violation.

Cedar Rapids Community School District and the Hotel Employees & Restaurant Employees International Union AFL/CIO Local 497 (Food Service Workers) Arbitrator Rose Marie Baron 2003

Issue

Did the Cedar Rapids Community School District violate the collective bargaining agreement when it promoted a less senior food service assistant, instead of promoting one of two food service managers, to a kitchen manager position in Viola Gibson Elementary School?

Facts

The collective bargaining agreement defined seniority as the “employee’s continuous length of service since the last date of hire.” The agreement provided for employee requests to other job classifications or locations. Posting of positions, along with job **qualifications deemed necessary**, also was found in the agreement. The agreement provided the district would determine **each employee’s qualifications** for an open position along with physical and educational requirements plus experience. The district determined critical skills for the kitchen manager’s position included “positive leadership traits” and “positive team leader, maintaining a positive attitude.” If two or more employees had relatively equal qualifications then the employee with the greatest seniority would be given priority for the open position.

Two grievants, one with sixteen years experience as a kitchen manager with extensive training and education and another with five years experience, protested the granting of a kitchen manager position to an employee who had been employed by the district less than two months.

Union Position

The thrust of the Union argument was that the district, in designing a position’s qualifications, was compelled to use those qualifications that are reasonably related and critical for the performance of the position’s tasks. The Union also argued the

district did not meet its burden in showing the employee granted the kitchen manager’s position was “head and shoulders” beyond the grievants.

District Position

One of the district’s primary arguments was the Union could not and did not challenge the employer’s exclusive right to determine job qualifications. Further, the district argued both grievants were deficient in the skills of leadership, positive relationships and getting along with others. The district argued seniority only becomes a factor in granting a position when qualifications are relatively equal, per the clear and unambiguous contract language. Lastly, the district argued its actions were not arbitrary or capricious in determining the superior candidate for the kitchen manager position.

Award

The arbitrator sustained the district in granting the kitchen manager position to a less senior employee.

Analysis

Arbitrator Baron first looked to the contract language and noted no assertion had been made by either party as to the ambiguity of the language, and it now was the arbitrator’s duty to apply the precise language to the facts of the instant case. In applying the contract language, the arbitrator noted the transfer language was a “relative ability” category where the senior employee(s) would be given preference only if he/she possessed fitness and ability equal to that of the junior employee.

Arbitrator Baron placed the burden upon the district to show the junior employee had greater ability in this case and to show an absence of arbitrary or discriminatory behavior. The arbitrator concluded the District acted in good faith in designing the job posting qualifications for Viola Gibson’s kitchen manager. The District had determined Viola Gibson would have a community focus that would require all employees to relate and involve the entire community, which would place an emphasis on people skills, not just food preparation.

Arbitrator Baron determined the grievants’ unchallenged, personnel records reflected limitations to perform the position’s duties (e.g., yelling at supervised employees, insensitive to parents, complaints regarding customer service, inability to get along with other employees). Under the relative

ability clause, the contract did not require persons with greater seniority be given priority under those circumstances. The District met its burden in showing the less senior employee was better qualified to fill Viola Gibson's food manager position, per the position's qualifications and the employees' qualifications.

Lastly, Arbitrator Baron noted a past practice of promoting employees with lesser seniority than other applicants based on qualifications had gone unchallenged.

Clear Creek Amana Community School District and Clear Creek Amana Education Association Arbitrator Janice K. Frankman 1997

Issue

Whether the District violated the collective bargaining agreement by denying staff requests to use personal leave on the day preceding or following a contractual holiday?

Facts

The collective bargaining agreement provided for two days of personal leave, but restricted use of personal leave if it was to be used to extend vacations. The Union grieved a statement by the superintendent that personal leave days would not be allowed to extend holidays.

Association Position

The contract language is unambiguous in that it only refers to vacations in the restriction on the use of personal days. The District's concern about having teachers at work is appropriate for interest arbitration, but irrelevant to the contract language used here. Furthermore, there was a change in language removing the holiday language restriction, and past practice has shown the District had previously agreed with the Union's interpretation when granting several personal leave days before and after contractual holidays.

District Position

Black's Law Dictionary defines vacation to include holidays, and that was the intent here as well. Past practice and bargaining history establish that the parties intended the term vacation to also encompass all days when school is not in session, including

contractual holidays. The term "holiday" was removed because everyone understood that the word "vacation" included "holidays."

Award

Grievance sustained. "Vacations" only means "vacations" and not "holidays."

Analysis

The collective bargaining agreement identifies contractual "holidays," distinguishes between "holiday" and "vacations" relative to employee hours and duties and refers only to "vacations" in restricting the taking of personal leave time. There is nothing to suggest or support a conclusion that the words "holidays" and "vacations" were intended to be used interchangeably or that the word "vacation" was intended to include "holidays."

Clinton Community School District and Service Employees International Union, Local 618 Arbitrator Peter G. Davis 1994

Issue

Did the District violate the contract when it refused to allow the Grievant to take portions of his vacation in increments of less than one week (i.e. four days or two days)?

Facts

The collective bargaining agreement contained language as follows:

"...An employee who has two (2) weeks or more vacation time may split the vacation into two (2) parts; an employee who has three (3) weeks or more vacation time may split the vacation into three (3) parts;"

For more than 15 years, employees had taken vacation in one-week increments. The district denied an employee's request to take vacation of less than one week.

Association Position

The contract clearly and unambiguously uses the words "parts" or "portions," and absent evidence to the contrary, since the word "weeks" was not used,

the parties must be presumed to have intended the words “parts” and “portions” to mean something other than weeks. In addition, the bargaining history shows that both parties had used the word “weeks” in proposals, but these proposals were never made a part of the contract.

District Position

When the provision on vacations is reviewed in the context of other provisions which define “work day” as eight hours and “work week” as forty hours and specify that vacation is earned in one-week increments, the contract clearly and unambiguously provides that vacations must be taken in one-week increments. Furthermore, there is more than 15 years of past practice clearly establishing that vacations are only granted in weekly increments.

Award

There was no contract violation; the District could require vacations to be taken in one-week increments.

Analysis

The language is ambiguous because the terms “parts” and “portions” are not defined in terms of time. Past practice clearly establishes that employees have always used or requested vacation in weekly “parts” or “portions.”

Clinton Community School District and Service Employees International Union, Local 150 Arbitrator Claire A. Manning 1996

Issue

Whether the contractual provisions limiting vacations to two custodians at a time for regular vacation and two custodians for floating vacations means a total of two or four custodians at a time.

Facts

Grievant requested a floating vacation day in September of 1995, but his request was denied on the basis that there were already two custodians scheduled for vacation on the same day.

Association Position

The quota provisions are provided for separately, so the provisions must have been intended to apply to regular and floating vacations separately. Applying

the quota provisions separately is more consistent with the intent of both parties to give less senior employees an opportunity to reserve some vacation time of their choice. Canons of contract interpretation require that the quotas are applied separately, otherwise, the second appearance of the quota language in the collective bargaining agreement would be superfluous. The arbitrator should not be swayed by the District’s argument of hardship, because the question is only what the parties agreed to.

District Position

Where the collective bargaining agreement is ambiguous, as here, the facts and circumstances surrounding the negotiations of the contractual provisions must be considered. Here, past practice supports applying the quotas collectively rather than separately. None of the witnesses heard anything at the bargaining table suggesting that the quotas would apply separately, nor was it reasonable for the Union to believe such. Management witnesses all testified credibly and consistently, in contrast to the Union witnesses. A negative inference can be drawn from the fact that the Union’s Chief Negotiator did not testify at the arbitration. The limitations were put into the collective bargaining agreement twice to avoid a result that the limitations only applied to regular vacation, or that there were no quotas on floating vacations.

Award

Grievance denied. The quota applies collectively

Analysis

Arbitrator Manning determined that:

1. The language is ambiguous.
2. Hardship to the employer is irrelevant, as is the Union’s stated goals.
3. There is no past practice, because the concept of “floating” vacation days is brand new. However, it is clear from the collective bargaining agreement that the concept of “floating” vacation days is intended to merge within the broader concept of vacations, that is, be a subset of regular vacations.
4. The tentative agreement clearly shows what the parties truly intended by the language ultimately adopted “*The criteria for vacation approvals shall be a limit of; 2 custodians each week or day, 1 person from grounds or general maintenance each week or day and 1*

trades person each week or day." This was the memorialization of the intended agreement on vacations as a whole and clearly shows that the quota was intended to be applied collectively. The Union failed to provide any other explanation.

Corning Community School District and Corning Community Education Association Arbitrator Amedeo Greco 1997

Issue

Whether the District violated the collective bargaining agreement in the way a performance evaluation was issued. If so, what is the appropriate remedy?

Facts

Grievant was a teacher who had transferred to a new class in the 1995-96 school year. In May 1996, she received a satisfactory performance evaluation, with above average ratings in 3 of the 19 categories. In November 1996, Grievant received a formal evaluation which was generally favorable. The principal later received letters from parents and notes from an aide to a handicapped student in the class that were extremely critical of Grievant's performance. The principal did not put these letters and notes in the Grievant's personnel file. Subsequently, in January 1997, the principal conducted an informal evaluation of Grievant's classroom work and told her in February that her performance was so deficient that she should resign, because whether she improved or not, the principal would recommend that her teaching contract be terminated. Grievant's contract was later terminated as a result of the poor evaluation.

Association Position

The poor performance evaluation was a pretext designed to circumvent the contractual staff reduction procedures. Even if it was not a pretext, the contractual evaluation procedures were not followed.

District Position

Grievant's termination was unrelated to staff reductions because none were necessary. The evaluation procedures were followed. The arbitrator may not substitute his judgment for the District's judgment in determining teacher performance. Also, some of the Association's arguments must be

disregarded because they were not contained in the original grievance.

Award

The grievance is sustained, the performance evaluation procedures were not followed. There was no violation of the staff reduction procedures.

Analysis

The Association failed to prove that there was any reduction of staff, so the argument of pretext fails. There was a violation of the performance evaluation procedures, however, and it so tainted the evaluation process and purpose that the Grievant must be reinstated.

1. The District failed to make all written documentation available to Grievant before her non-renewal to allow her to respond to the allegations of parents and the special aide. Clearly, the principal did rely on these documents, despite her denial, as until these documents were given to the principal, she had received favorable evaluations. The principal was not credible on this point.
2. The District failed to conduct fair and just evaluations before the principal decided Grievant had to be fired. By the principal's own testimony, she had made up her mind in February that Grievant's contract would not be renewed, irrespective of whether her classroom performance improved. Up until that date, however, Grievant had only received fairly positive evaluations.
3. It is a well-understood principle of arbitration that grievances are not necessarily confined to their narrow working, but instead encompass all issues reasonably related to the gist of that complaint. The correct Article of the collective bargaining agreement was referenced in the grievance.

Dubuque Community School District and Dubuque Education Association Arbitrator Sterling L. Benz 1994

Issue

Was the determination of the district that a teacher with less seniority was essential to the continuation of the "School Within a School" program reasonable, justifying retaining her and reducing a more senior employee?

Facts

Grievant taught English at the high school. In April of 1994, she was notified that she was being transferred to an English position at a different high school. A teacher with less seniority was being retained for “the continuity of current Senior High School programs, such as the "School Within a School" program.”

Association Position

The District has not proven that the less senior employee was essential to the continuation of "School Within a School". Grievant was also previously involved in a similar program and she had a good working relationship with other members of the staff involved with the program. Grievant was willing to work in the program, so seniority should have been followed.

District Position

There was good cause to override the Grievant’s seniority because the teacher with less seniority was essential to the "School Within a School" program. That teacher was involved in its implementation, had taught in it, had received specific training for it, and had developed a cohesive team atmosphere, none of which apply to Grievant.

Award

Grievance denied.

Analysis

The evidence supports the District’s position that the teacher with less seniority was essential to the success of the "School Within a School" program. Here, the Grievant did have the choice at the program’s inception to participate in it, but she declined. As long as the District does not discriminate in the eligibility to become involved in such programs, the consideration of factors other than seniority under these circumstances is not unfair.

**Fairfield Community School District
and Fairfield Education Association
Arbitrator Herman Torosian 1997**

Issue

Whether the District violated the collective bargaining agreement by scheduling child abuse reporter training for voluntary attendance outside the

192-day school year and outside the eight-hour teacher day?

Facts

Iowa law requires school districts to make training available for teachers on child abuse reporting, but it does not require the districts to pay for it. Fairfield provided the training in different ways over the years, essentially leaving it up to each building principal to determine how and when to conduct the training. After AEA changed the requirements so that a certified trainer conducted the training, the District decided to offer returning teachers the opportunity to attend training one day before the first day of the contract year, the same day newly hired teachers started. Additional training classes were scheduled in September from 3 p.m. to 5:30 p.m. All of the training continued to be voluntary, as in the past. There were other sources in the area for the training.

Association Position

The contract prohibits the District from requiring teachers to work beyond the 192-day contract year or 8-hour work day without additional pay. Child abuse training has been held in the past during in-service days, which fall within the contract. Unilaterally scheduling the training for outside the contract day or year violates the agreement.

District Position

First, there is a procedural issue concerning the Association’s argument of the 8-hour day. The original grievance did not cite this issue, so it is not arbitrable. There has been no consistent practice of providing training during the contract day or year, on the contrary, the past practice has been for each building principal to determine when to conduct training. Some have even provided videos for teachers to watch on their own time at home. Although state law requires the District to provide the training opportunity, it does not require the District to pay for the training, unlike training concerning blood borne pathogens. This training is more like the training requirements for license retention, which is accomplished on the teachers’ own time. The training provided on new teachers’ first day clearly was not violative of the agreement, and the District should not be punished for the simple courtesy of allowing returning teachers to attend the training as well, at their own convenience.

Award

The grievance is arbitrable, but there was no violation.

Analysis

The Association included the 8-hour day issue in its written statement of the issue, so I will decide it. The agreement does not, by itself, prevent the District from scheduling the training when it did. This is so because attendance was not mandatory, but entirely voluntary. There is no law compelling the District to conduct the training in paid time, unlike the training for blood borne pathogens. In order for a practice to become binding and an implied term of agreement, the practice must be:

1. Unequivocal
2. Clearly enunciated and acted upon
3. Readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.

The facts of this case fail to satisfy these requirements.

**Heartland Area Education Agency 11
and Heartland Education Association
Arbitrator William O. Eisler 1997**

Issue

Whether the AEA violated the agreement when it used seniority as the determinative factor in its staff reduction, resulting in the layoff of the Grievant, instead of also considering factors such as an advance degree.

Facts

Grievant was the least senior Adaptive Physical Educator with the AEA. When she was hired, both she and her husband stressed to the Chief Administrator and others that she could not take the position unless she was assured it would be a long-term position, because Grievant's husband would be giving up a job and moving the family to Iowa. It later became necessary to reduce staff by 5.5 FTE, of which 2.5 were APE consultant positions. Grievant was notified that she was to be terminated because, although her performance was comparable to the other APEs, she had the least seniority. The other full-time employee who was terminated received a notice citing both performance and seniority as factors.

Association Position

The Agreement requires the employer to consider "other job related factors" in selecting employees for layoff. Qualifications and competency should be considered. Grievant was more qualified than some of the APEs who were retained, because she held a Master's degree and qualified for a special education consultant license. The employer would not reveal the specific information showing what factors it considered. Also, Grievant was promised long-term employment.

District Position

Alleged promise of long-term employment, even if proved, is not a proper consideration under the Agreement. There is no evidence that the employer was arbitrary or capricious in selecting Grievant for reduction; in fact, if Grievant had been retained instead of an equally capable employee with more seniority, that employee would have had a valid grievance. The Agreement allows the employer to consider performance and seniority, and this is what it did.

Award

There was no violation.

Analysis

First, the arbitrator has no authority to address the allegations of personal assurances during the interview process because those are beyond the scope of the union contract. The Grievant's alleged assurances would constitute a private agreement between the Grievant, her husband and the employer. What the Agreement requires is consideration of performance, seniority and other factors. It does not require management to retain the most qualified person in all instances. It does not require management to consider the level of educational attainment. It does not require the employer to consider all job-related factors in every instance. The Agreement leaves great latitude to management. The manner in which this decision was made was reasonable. If management had acted as urged by the union, I would probably have found a violation of the Agreement.

**Keota Community School District and
Keota Education Association Arbitrator
Sharon K. Imes 1997**

Issue

Is the grievance arbitrable? If so, did the District violate the collective bargaining agreement and past practice when it reduced preparation time for full-time employees?

Facts

During the 1996-97 school year, the District reduced the number of preparation periods for many of the full-time teachers. Each still had at least one preparation period per day.

Association Position

1. *Motion to Dismiss/arbitrability.* Even if the issue is a permissive subject of bargaining, a contract is not prohibited from covering permissive subjects which the parties mutually agree to include. The collective bargaining agreement has language on contract interpretation.
2. *Merits.* It has been the district's practice to assign an average of seven preparation periods per week to full-time teachers since at least 1970-71. It is not reasonable to believe that the parties would have specifically negotiated guaranteed preparation time for part-time employees but not for full-time employees.

District Position

Motion to Dismiss/arbitrability. The grievance is not addressed by the collective bargaining agreement because nothing addresses preparation time for full-time teachers. Management has the exclusive statutory right to determine work assignments and the unilateral change to preparation was legitimate and within the powers granted by law.

Merits. Even if the collective bargaining agreement is considered ambiguous, the past practice shows that full-time teachers were not guaranteed any minimum amount of preparation time. On the contrary, the past practice shows that full-time teachers received a range of from 2 to 12 periods of preparation time per week. The alleged past practice of seven prep periods per week is not equivocal, clearly enunciated and acted upon, nor readily ascertainable over a period of time as a fixed and established practice accepted by both parties. Finally, bargaining history shows that the Association attempted to obtain a guaranteed number of preparation periods and failed.

Award

Motion to Dismiss/arbitrability denied.

Merits denied.

Analysis

1. *Motion to Dismiss/arbitrability.* While there is no specific clause determining the amount of preparation time for full-time teachers, the existing language concerning preparation time for part-time teachers implies an understanding exists between the parties on this issue. The existing language is sufficient to support a grievance, because it cannot be positively affirmed under these facts that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute or the issue grieved is specifically excluded from the grievance procedure.
2. *Merits.* The evidence does not support the Association's argument that it has been the District's practice to assign seven preparation periods per week to full-time teachers. On the contrary, the evidence shows the District's general practice has been to assign preparation time of between five and eight periods per weeks, with fewer or more preparation periods provided when teaching schedules demanded otherwise. In addition, the District has consistently rejected Association efforts to bargain a minimum number of preparation periods per week since 1983.

Mediapolis Community School District and State Unit Nine/ISEA Arbitrator Cyrus A. Alexander 1997

Issue

Whether the District violated the collective bargaining agreement by denying Grievant's request for personal leave on the Friday before Memorial Day weekend.

Facts

Grievant requested a personal leave on the Friday before Memorial Day weekend to allow her time to prepare for her son's graduation party following graduation on Saturday. The request was denied, but Grievant was offered the choice of taking an unpaid leave day or a personal leave day on Thursday.

Association Position

The collective bargaining agreement provides that denial of personal leave shall not be made arbitrarily.

Grievant's request was not for the purpose of extending the Memorial Holiday weekend, and it should have been granted. Past practice would require the request to be granted.

District Position

The personal leave was not related to an event that occurred on the date which is the basis for the employee to be absent from work, nor does it satisfy any of the other exceptions to the rule that personal leave is not allowed to extend holiday weekends, therefore, the request must be deemed to be to extend a holiday weekend and the denial was not improper.

Award

Grievance denied. The request did not fit any of the exceptions, so denial was not improper.

Analysis

The collective bargaining agreement is unambiguous. It states clearly that *"...personal leave requested may be contiguous to a vacation or holiday of, in the judgment of the principal, such leave is not for the purpose of extending a vacation or holiday, such judgment shall not be arbitrary, such reasons shall relate to an event that occurs on a calendar date that is the basis for the employee to be absent from work, and events can include but are not limited to weddings, travel complications and school events."*

Here, it is a school event that occurs on Saturday, but it does not occur on Friday, the date of the requested leave. In the examples cited by the Union, the events actually occurred on the Friday date of the requested leave. There is no past practice or case directly on point. Requests granted to non-teachers working in a different bargaining unit represented by a different employee organization with a different collective bargaining agreement cannot form the basis for finding an exception to the employer's practice under this collective bargaining agreement.

North Mahaska Community School District and North Mahaska Education Association Arbitrator Clifford Smith 1994

Issue

Whether the District violated the collective bargaining agreement by issuing a letter to the Grievant with "expectations for performance and

responsibilities now and during next season for the position of head volleyball coach?"

Facts

Grievant had been the head volleyball coach for several years. After a poor season in 1993, Grievant received an unsatisfactory rating on his performance evaluation in December 1993. He did not grieve the evaluation, but he did provide a written response. Despite his evaluation, he was offered and accepted the coaching contract for the 1994 season. In March 1994, Grievant was given a 3-page letter setting forth expectations for his performance and expectations as volleyball coach. This grievance was filed claiming that the letter violated the contract and amounted to an unjust, unfair evaluation requirement for the following coaching year.

Association Position

The letter of expectations constituted a performance evaluation as defined by the dictionary, and it was unfair, unjust and/or inaccurate. The requirements failed to indicate how some of the subjective requirements would be met.

District Position

The letter of expectations did not constitute an "evaluation" under the provisions of the collective bargaining agreement. His formal evaluation four months earlier was not grieved. The expectations were simply an attempt to assist Grievant to improve his performance in the future. Even if the expectations were a formal evaluation subject to the collective bargaining agreement, it was clearly written, appropriate and fully clarified, and therefore not unfair or unjust.

Award

Grievance denied. There was no violation of the collective bargaining agreement, because the letter of expectations was not a formal evaluation.

Analysis

The parties have negotiated the evaluation instrument for use by coaches, and this formal evaluation instrument was used by the District. Only this formal evaluation may be grieved under the terms and conditions of the Agreement because the language of the collective bargaining agreement refers to "formal evaluation."

However, although the District acted in good faith in issuing the letter of expectations, the Grievant should

have been given a chance to provide input into the expectations and not have had them imposed unilaterally. In addition, some of the requirements were subjective and unclear, such as, how would the District measure Grievant's "enthusiasm."

**Ottumwa Community School District
and Ottumwa Education Association
Arbitrator Rose Marie Baron 1994**

Issue

Was there a violation of the collective bargaining agreement when the principal mentioned previous year's incidents in discussing the Grievant's evaluation? Did the District violate collective bargaining agreement by its failure to conduct additional observations of the Grievant between March and the end of the school year while Grievant was on an improvement plan?

Facts

Grievant received an unsatisfactory formal evaluation in February 1994, and was placed on an improvement plan as a result. The principal also stated that she would make two to three classroom observations between January and March, but she only made one such observation prior to the June evaluation and unsatisfactory rating. During the June evaluation conference, reference was made to an incident the previous school year as an example of the teacher's lack of control of her class.

Association Position

Although the collective bargaining agreement does not specifically mandate procedures for evaluating teachers who are under improvement plans, it has been an assumption that there would be greater oversight under those circumstances. Here, the principal did not treat Grievant fairly by making only one observation in March and giving an evaluation so late in the school year that there was insufficient time to improve. There has been disparate treatment of Grievant, as other teachers in similar situations have received more observations. Finally, citing examples from prior school years to explain deficiencies violates fundamental principles of fairness based upon other arbitration decisions.

District Position

The collective bargaining agreement is clear and includes no prohibition on references to past

evaluations, nor does it require any particular procedures for summative evaluations. The prior year's incident was brought up in response to Grievant's request for examples. In addition, formal evaluations are to be done at least once every three years, and there is no requirement that an evaluation may only consider information gathered in the current school year. Finally, the District has conducted evaluations in this manner for the last ten years, and the Association must be deemed to have acquiesced in these procedures.

Award

The grievance is denied.

Analysis

There is no restriction in the collective bargaining agreement regarding referencing past occurrences when conducting evaluations. Because the evaluations are only required every three years, and evaluations are used for the purpose of helping teachers improve, not to discipline, it is not inappropriate to cite examples of weaknesses occurring within the three-year timeframe, particularly here, where the Grievant had denied a problem in this area. The District's argument concerning waiver is not persuasive. In addition, the collective bargaining agreement is permissive on the topic of informal observations, but mandatory that informal observations shall be discussed with the employee, thus there is no support for the Association's position that the failure to observe Grievant after March violated the collective bargaining agreement.

Furthermore, Grievant had the opportunity to show the principal a videotape which she had made of the class, but she chose not to do so, showing that the lack of management involvement was based, in part, on her own inaction in seeking input. Fairness does not require the District to conduct the same number of observations of each teacher.

**Ottumwa Community School District
and Ottumwa Education Association
Arbitrator Sterling L. Benz 1994**

Issue

Whether the informal observation of the Grievant was unfair? Whether the formal evaluation, which

relied upon the informal observation, was unfair? If so, what is the appropriate remedy?

Facts

Having received an unsatisfactory performance evaluation rating the previous year, Grievant was warned that failure to improve would result in her termination. Grievant's supervisor was the director of fine arts for the school. For the first five minutes of one informal evaluation, the supervisor stood outside the classroom door where Grievant could not see him and observed the class. Three of four principals who also conducted informal evaluations did discuss them with the Grievant. Grievant's second formal evaluation was unsatisfactory and she was informed that she would be discharged. The superintendent reconsidered but following a grievance, procedures were put in place for the following year's evaluations.

Association Position

The informal observation was done covertly and constituted "snoopervision." The following formal evaluation was based in part upon the surreptitious informal evaluation and was therefore unfair. In addition, the formal evaluation included unspecified complaints of principals and did not provide Grievant with a means to confront her accuser.

District Position

Assuming that the informal observation was conducted without the Grievant's knowledge, the collective bargaining agreement contains no language that requires the Grievant's knowledge that an informal observation was taking place. The formal evaluation was strictly based upon Grievant's supervisor observations.

Award

The grievance is denied in part and sustained in part.

Analysis

The informal observation did not violated the collective bargaining agreement because:

1. There is no explicit language in the contract that requires that a teacher have notice or knowledge that an informal observation is taking place
2. Bargaining history does not support the claim that notice or knowledge before an informal evaluation is required.

On the contrary, Association witnesses testified that it was contemplated by the bargaining representatives that informal observations would be done without the knowledge of the teachers, so long as the motive was not to gather negative information about a teacher. There is no evidence here that the supervisor's motivation was a desire to gather negative information.

The formal evaluation did violate the collective bargaining agreement. The formal evaluation did include inclusion of complaints of principals, so there is no meaningful distinction between reliance upon them or including them. If there were complaints, the collective bargaining agreement required that Grievant be notified of them. Employee should not have to divine the basis of an evaluation.

As to remedy, the termination decision has already been rescinded and adequate measures to ensure objectivity and fairness have been implemented. It is not appropriate to remove the formal evaluation from the Grievant's personnel file. Fairness requires that a record be made whenever an informal observation by any person is made of the Grievant, or a formal evaluation of her is done, during the next school year. The evaluator must be specifically identified.

Ottumwa Community School District and Uniserv Unit Nine Arbitrator Stephen W. Boyda 1994

Issue

Whether the District met the due process rights of the performance evaluation procedure?

Facts

Grievant had been the subject of several informal evaluations and a formal evaluation that rated her unsatisfactory in three categories. There was also a reference to complaints from parents, but the principal would not identify the parents because they feared retaliation.

Association Position

The Grievant should have been informed of the specific complaints made by parents for the sake of fairness. The formal evaluation is not totally supported by existing documentation. The arbitrator has the authority to require the District to remove the evaluation from Grievant's personnel file. The

evaluation failed to recognize positive aspects of Grievant's performance. Some of the required action is not appropriate because there are special education students in the class.

District Position

Sufficient evidence for the evaluation has been presented to the arbitrator. Grievant may have disputed the merits of the principal's notations, but that is irrelevant. Contrary to the Grievant's assertion, routine and traditional techniques are even more important for special education students because they have a great need for structure. The principal observed firsthand all of the actions and activities described in the observation document. These documents include no mention of parental complaints, so Grievant's complaint on this issue is irrelevant.

Award

Grievance is denied.

Analysis

The collective bargaining agreement allows incorporation of informal observation deficiencies if the observations were discussed in an informal conference and not corrected. That is the case here. These deficiencies were noted at informal observations and it is apparent from the formal observation that improvement did not occur. Grievant admitted that she had the opportunity to discuss the matter noted with the principal. The principal observed the deficiencies firsthand. If the parental complaints had been a significant part of the evidence presented by the District then there would have been a different finding.

**Pleasant Valley Community School
District and Pleasant Valley Education
Association Arbitrator John M. Gradwohl
1994**

Issue

Whether the collective bargaining agreement required that the Grievant be accepted into a graduate degree program by September 10, 1993 in order to receive credit for courses taken during the summer of 1993 for movement on the salary schedule?

Facts

Grievant submitted an Application for Approval of Additional Academic Credits for 6 hours of summer courses in guidance counseling to the District for approval on April 16, 1993. It was promptly approved. At the time of the application and her completion of the courses, she had not yet been accepted into the Masters in Counseling program. The District denied her request for advancement on the payscale because the collective bargaining agreement provided that "credit must apply toward a graduate program" and Grievant had not been admitted to a graduate program at the time of determination of placement on the salary schedule. She was subsequently admitted into the Masters Program and all the hours she took were counted toward her degree. The contract language provided, in part

"Credit must apply toward a graduate program or be related to the employee's assignment or field,..."

Association Position

The language is clear and unambiguous. The courses Grievant took did count toward her Masters in Counseling degree. It was not her fault that she was not yet admitted to the program when she completed the courses and applied for advancement on the pay scale. Even if she did need to be admitted to the Masters program, credit is also given for courses related to Grievant's assignment or field, and although she was not yet a counselor, counseling is certainly helpful in her work with students with learning disabilities.

District Position

The Grievant had not met all the requirements of the contract in a timely manner in order to advance on the salary schedule for 1993-94. There is a past practice that the employee must be accepted into the graduate program in order for the course credit to count toward advancement in the salary schedule and Grievant is being treated the same as other bargaining unit members. Acceptance into the graduate program is the most reasonable interpretation of the collective bargaining agreement, and if the grievance were sustained, the arbitrator would be rewriting or changing the contract language and changing past practice.

Award

Grievance denied, there was no violation of the collective bargaining agreement by denying Grievant's request for advancement on the pay scale.

Analysis

Although both parties argue that the language is clear and unambiguous, I must read something into the language in order to agree with either party's position. Therefore, I hold it is ambiguous. The most reasonable and plausible meaning of "credit must apply to a graduate program" is that it must "apply" to the program on September 10, when the determination of placement on that year's salary schedule is made. Grievant's argument that these particular courses were related to her assignment or her field was not supported by the facts.

**Pomeroy-Palmer Community School
District and Pomeroy-Palmer Education
Association Arbitrator Ronald Hoh1998**

Issue

Whether the District violated the collective bargaining agreement by consolidating guidance and coaching job duties resulting in the layoff of a more senior teacher who was not qualified to perform all the duties of the newly consolidated position?
Whether the subsequent failure to recall a laid-off teacher was not arbitrable because of the failure to file a grievance?

Facts

Because of an unanticipated serious budget shortage, the District had to layoff some teachers. Grievant Williams, who had guidance certification, was not laid off. Grievant Goodwin (who was Association president and chief negotiator) was the most senior laid-off employee and had technology coordinator and music certifications. Grievant Anliker was the least senior employee with PE, coaching and history certifications. Anliker and Goodwin were laid off in April 1997, and Williams was notified that she would not be transferred into the full-time guidance position for which she had been encouraged to become certified. In May, 1997 the District posted a vacancy for a high school guidance/K-12 P.E. teacher with additional duties as athletic director and weight room supervisor. Anliker was the only applicant. This grievance was filed.

In July 1997, after retirement and resignations, vacancies were posted for a technology coordinator/K-12 P.E. and K-12 art/desktop publishing positions. A new employee, Linde, with no certifications was hired for the technology/P.E. position. Linde later took on Anliker's P.E. duties. Bruns was a first and second grade hourly music teacher whose duties were expanded to include third and fourth grade.

Association Position

The District did not attempt to accomplish staff reduction through normal turnover and transfer, but instead manipulated positions to disqualify more senior employees for assignments. Williams should have been given the FT guidance position, which would have opened up the TAG position for recall of Goodwin. Alternatively, Goodwin should have been recalled to the music assignment instead of Bruns, a non-bargaining unit employee, or the TAG duties or the technology coordinator duties opened up by the resignation of another employee.

District Position

The collective bargaining agreement does not prevent the District from creating positions based upon District needs. There is no requirement to save existing positions or create new positions specifically for existing employees. The *Iowa Code* preserves for the District the exclusive right to determine assignments. The District never committed itself to creating the FTE K-12 position necessary for all the other demands of the Association to take place. The arbitrator should dismiss any allegations not covered in the original grievance nor addressed before this hearing because of lack of jurisdiction.

Award

Grievance denied. The assignments did not violate the collective bargaining agreement, and the arbitrator has no authority to address the failure to post vacancies after this grievance was filed.

Analysis

Exceptions to management's right to determine the jobs to be performed and to make decisions on workforce reductions must be based upon express contract language and not lightly inferred. Although the transfer of Williams to a FTE guidance position was considered, it was later determined that guidance program needs would not be met. Two of the

teachers with lowest seniority were PE teachers, and their absence left a serious shortage of coverage in that area. It was not arbitrary, capricious or unreasonable for the District to make these decisions.

The alternative arguments concerning Goodwin's recall rights are not within the scope of my authority, as they were not addressed at the lower grievance steps because those alleged rights arose from subsequent events. A separate grievance should have been filed, as I have no jurisdiction to adjudicate a grievance that has not been addressed at the previous grievance steps.

**Sigourney Community School District
and Sigourney Education Association
Arbitrator Rose Marie Baron 1997**

Issue

Whether the district violated the contract when it denied the teacher use of emergency leave for a family vacation.

Facts

The teacher submitted a request for "good cause" leave to the superintendent so she could go on a family vacation in Florida during the week in February 13-20. The superintendent denied the request because she believed it would disrupt the classroom schedule. The superintendent did not allow the teacher to appeal her decision to the board. The teacher grieved the matter.

Association Position

The contract language has been applied differently in the past. Other superintendents have allowed the use of emergency leave for personal vacations. Additionally, past administration had allowed an employee denied leave, the opportunity to appeal to the board. The superintendent abused her discretion by denying the request for leave.

District Position

The language is clear and unambiguous and clearly gives the superintendent discretion to deny a request for emergency leave.

Award

Grievance is denied.

Analysis

The arbitrator concluded that the language in the agreement was clear and unambiguous. The arbitrator considered whether a past practice had been established because of how the previous administrators handled the issue. She concluded that one instance in which the superintendent allowed the employee to appeal to the board, did not create a past practice. The superintendent was not obligated to allow this employee to appeal to the board and was not required to grant the leave.

The arbitrator noted that the agreement should be read in its entirety and that while other situations, such as illness, clearly gave employees a "right" to leave, this situation did not. The superintendent had discretion to determine whether the leave should be granted. She exercised her discretion and denied the leave. The arbitrator concluded that this was consistent with the collective bargaining language.

**Sigourney Community School District
and Sigourney Education Association
Arbitrator Michael D. Gordon 2002**

Issue

Did the Sigourney Board violate the collective bargaining agreement by changing the Grievant's seniority date?

Facts

The collective bargaining agreement defined seniority as the "*number of years in this system.*" The Grievant had a teacher's license, but began District employment as a teacher's aide on August 21, 1998 and signed a contract to that effect. The Grievant continued the same employment until July 4, 2000 when the Grievant signed a contract as a certified teacher. The Grievant was given salary schedule credit for the two years of employment as an aide and was placed on the seniority list reflecting August 21, 1998 as the date of hire.

In 2002, the District reduced a number of employees. The District and Association met to review employees' seniority and agreed the Grievant's seniority date was correct. Another teacher who was reduced in force requested a Chapter 279 hearing before the board, claiming an improper selection was made due to a miscalculation of seniority. As a result of the hearing, the board changed the Grievant's

seniority to July 4, 2000. Due to this seniority date change, a grievance followed.

Association Position

The Association's primary argument was absent contrary bargaining history, the seniority definition of "*number of years in this system*" should be read on its face and should be interpreted more broadly than just seniority in the bargaining unit.

District Position

The District's primary argument was seniority accrued only for work "*while in the bargaining unit*" and no bargaining history existed showing the intent to grant seniority for work in another bargaining unit.

Award

The Grievant's seniority was restored to August 21, 1998.

Analysis

Agreeing with the Association, Arbitrator Gordon indicated the absence of unequivocal contract language, bargaining history, practice...and other contract standards, the essence of the seniority dispute in question turned to the meaning of "*this system*." He turned to the *Black's Law Dictionary* and the *American Heritage Dictionary* definitions to give seniority in "*this system*" a broader connotation than seniority in the "*bargaining unit*."

The arbitrator turned to the collective bargaining agreement as a whole when he contrasted the use of "*system*" in the reduction in force section to the use of "*bargaining unit position*" in the recall section. He concluded if the parties had meant to limit seniority to only the bargaining unit, the parties would have used the same terms. Arbitrator Gordon turned to the District's actions where the Grievant was granted salary schedule placement credit for work as an aide and seniority credit from the original date of hire as an aide.

He indicated the matter of good or bad policy for granting seniority credit for work as an aide was subject to debate, but his duty was to enforce the parties' contractual promises, not impose policy.

The arbitrator footnoted that the arbitration decision did not speak to the board's changing of an employee's seniority date in a Chapter 279 decision, since neither party raised the issue at hearing. He

indicated the parties' cited cases, offered discussion only on mandatory and permissive topics of bargaining, and the cases provided no guidance as to defining seniority as both parties argued.

Washington Community School District and Washington Education Association Arbitrator John J. Flagler 1998

Issue

Whether the District violated the Agreement when it filled the vacant position of Jr. High PE/Assistant Varsity Wrestling Coach with an outside applicant rather than granting Grievant's transfer request?

Facts

Grievant had been the Head Wrestling Coach until he resigned in spring of 1997 following deterioration in the program and parent and principal criticism. The District advertised three openings, part-time PE, Head Varsity Wrestling, and Assistant Wrestling. Another teacher was hired for the Head Coach position, and he participated in the interview process for the Assistant position. The District decided to hire a new teacher instead of transferring Grievant. The Grievant was hand-delivered notice of the decision on May 16, but the letter was dated May 19.

Association Position

The collective bargaining agreement clearly provides preference to bargaining unit members, and the District has no right to hire outside the bargaining unit until the transfer applicant has been given a letter of denial. Here, the letter informing Grievant of the denial was dated after the new applicant was offered the position. Past practice establishes that bargaining unit members have always been granted transfers when they have been qualified. Grievant was qualified for the position and should have been granted the transfer. The District's undisclosed "factors" in considering applicants should have been provided in advance.

District Position

The District had the discretion under the collective bargaining agreement to review the qualifications and certifications of transfer applicants, as well as the discretion to select the most qualified candidate for the position. Grievant was duly considered but was not the most qualified. Past practice is irrelevant, and in any event, the evidence introduced by the

Association does not establish a valid practice in support of its position. The evidence does not support the assertion of the technical violation.

Award

The grievance is denied. The District gave the Grievant fair consideration and acted within its discretionary authority.

Analysis

First, on the technical issue concerning date of notice to Grievant that he was not to be selected for transfer. The District's explanation and witnesses were more credible than the Grievant, and I find that he was personally handed the letter on May 16. Even if the Grievant had not been notified until May 19, it would not justify undoing the transfer because it would be harmless error.

With regard to the question of whether the District afforded Grievant fair consideration of his transfer request based on his qualifications and certifications as required by the collective bargaining agreement, I find that he was given fair consideration. The collective bargaining agreement did not specifically state or provide an automatic and absolute claim on the posted vacancy. In addition, the District has reserved discretionary authority to determine qualifications of transfer applicants. The Association has cited no legal or contractual restrictions on that discretionary authority. The collective bargaining agreement does not require the District to post its criteria of qualifications. Grievant was given interviews and his record was considered, and the new hire was interviewed, and his references were personally verified.

Waverly-Shell Rock Community School District and Waverly-Shell Rock Education Association Arbitrator Hugh J. Perry 1997

Issue

Whether the District should determine a teacher's FTE status based upon percentage of student contact hours or based upon time the teacher is to work compared with work time available during the week (40 hours).

Facts

Grievant was a .5 FTE teacher. Her weekly student contact time amounted to 70% of her contract hours. In addition to teaching regular classes, she also volunteered to teach a competitive music program, a program for testing pre-school special education students and honor choir, as well as preparation for spring and winter concerts. The extra activities diminish time available to Grievant for consultation and class preparation. Some of the other part-time teachers had greater student contact hours than Grievant and some had less, although Grievant's student contact time was above average. The collective bargaining agreement contained no language by which to calculate FTE status, and no proposal had ever been introduced in bargaining.

Association Position

Fairness dictates that Grievant's FTE status be raised to 5/8ths. She has relatively small blocks of preparation time during work hours. She has contributed extra time and effort to her position at considerable sacrifice to herself without adequate compensation, and she simply seeks equitable compensation.

District Position

The arbitrator has no authority to decide this grievance, since the collective bargaining agreement has no language spelling out how full-time equivalency is to be determined. The Association can point to no specific language that has been violated. The District has consistently considered the time required of teacher versus full-time teacher status in determining FTE status.

Award

Grievance denied.

Analysis

There is nothing in the collective bargaining agreement to indicate how FTE status is to be determined, but the arbitrator is limited to determining whether there has been a violation, misinterpretation or misapplication of any of the provisions of the agreement. I do not agree with the Association's equity argument. Some part-time teachers have greater proportional contact hours than Grievant and others have less. There is no established practice requiring the District to compensate Grievant based on student contact hours. Grievant volunteered for the extracurricular activities

and while admirable, remuneration for these activities is clearly not required by the contract.

**West Branch Community School
District and West Branch Education
Association Arbitrator Habbo G. Fokkena
1995**

Issue

Whether the grievance was filed in a timely manner.

Facts

Grievant was a highly intelligent teacher of science. He also had difficulties in his interpersonal relationships with other teachers, administration and some students. These issues were raised following observations made by the principal for the purpose of performance evaluations. Although this conversation occurred on May 31, 1994, the written evaluation was not made available until the last day of school. Grievant, however, refused to meet to receive his evaluation. Delivery was attempted again during a meeting between the Grievant and the superintendent on June 20, 1994, but the Grievant would not accept the evaluation. After a certified letter was also refused, the District sent a letter by first class mail, which also stated that the contractual timelines would be applied. Grievant did not actually read the evaluation until October and this grievance was filed on October 21, 1994.

Association Position

The grievance is timely. The collective bargaining agreement refers to “working days” in the time limits. The Grievant received notice during summer vacation, not an official “workday,” so the time limits did not start until school started after Grievant actually received a copy of his evaluation.

District Position

Grievant prevented delivery of his written evaluation. All meetings were refused. He refused to pick up a certified letter. He was notified by first class mail that timelines would be enforced. The Grievant has a duty to act in good faith, and his failure to do so precludes his claim of timeliness.

Award

The grievance is untimely, so there is no authority to hear the grievance

Analysis

The District attempted in good faith to deliver Grievant’s evaluation, but Grievant refused to accept it. He is intelligent, and he knew it was negative and that he might have to grieve it. The District did deliver the evaluation. I do not have to decide how “working days” is to be defined, because even if they did not start until school resumed in the fall, the timelines expired between the start of school and the filing of the grievance. The performance evaluation will remain in the file, but I urge the District to allow the Grievant to file a response to be filed with the evaluation, no more than eighteen typewritten pages. I suggest allowing 30 days following the date of this award.

Discipline/ Discharge

**Cedar Falls Community School District
and AFSCME/Iowa Council 61, Local
2749 Arbitrator Neil Bernstein 1995**

Issue

Whether there was just cause to suspend the Grievant for one day without pay.

Facts

Grievant was a food service worker, whose primary responsibility was selling meal tickets to students and accounting for and depositing the money she received. Grievant had previously grieved a change of duties, which resulted in a settlement requiring Grievant to perform some kitchen cleanup work. Grievant claimed, however, that she did not have enough time before cleanup to finish her paperwork, and animosity arose between Grievant and her supervisor. The problems culminated in the Grievant engaging in a lengthy verbal attack on her supervisor (which included light threats) and the supervisor ordering Grievant to punch out and go home. Grievant was then suspended with pay pending an investigation, and eventually Grievant received a one-day suspension without pay.

Association Position

The Grievant’s behavior resulted from extreme frustration caused by management. If the District had meaningfully responded to Grievant’s many requests, the incident would not have happened.

District Position

The suspension issued was careful and measured discipline. Grievant was given clear expectations, but she continued to be defiant. The suspension followed a lengthy period of intolerable misbehavior and finally, outright confrontation.

Award

Grievance denied. There was just cause.

Analysis

Grievant's frustration does not justify her misbehavior. Management has the right to refuse to tailor the job to an employee's preferences, if it believes another way is better. Even if the Grievant was correct and the District was unreasonable in refusing to make job changes, that refusal would not justify or excuse Grievant's verbal confrontation and attack upon her supervisor. "Two wrongs do not make a right." The penalty was reasonable, as Grievant was given clear expectations and she knew or should have known she was violating them by her outburst. She had been given previous warnings, so the District was entitled to impose a penalty more severe than another warning.

**Cedar Falls Community School District
and Cedar Falls Education Association
Arbitrator James A. O'Brien 1995**

Issue

Whether competent evidence establishes good cause for the termination of the grievant.

Facts

The Grievant had been teaching at Cedar Falls High School since 1967. As a result of teaching evaluations done during the 1985-86 school year, he was put on probation for the 1986-87 school year. The teacher appealed the probation but it was upheld by the board, and the new principal gave the teacher specific, written instructions regarding what was expected of him during the 1986-87 school year. The teacher performed satisfactorily throughout the probationary period, and maintained a higher level of effort and attitude for several years.

A similar problem with the teacher's performance developed again in the 1991-92 school year and continued into the 1992-93 school year. In the 1993-

94 school year, he was scheduled for a comprehensive review under the terms of the collective bargaining agreement. As a result of that evaluation process, it was recommended that the teacher be placed on probation for the 1994-95 school year. Due to a district procedural error, he was not placed on probation, but was given specific instructions and expectations regarding his teaching performance. The district believed that the teacher did not conform to those directives and showed no improvement in his teaching methods, so it was recommended that his teaching contract not be renewed. The school board confirmed the decision, and the teacher filed a grievance over the results of his evaluation reports, which were being used against him in the recommendation of termination.

Association Position

The association contended that the evaluation process applied to the teacher was flawed in its implementation and was not a proper method for determining teacher performance. It stated that the evaluation process was subjective and the only fair and accurate method of evaluation would be an objective standard utilizing student test scores before and after the teaching process. It also contended that the use of the comprehensive evaluation process on the teacher two years in a row when he was not on probation violated the collective bargaining agreement. In addition, it maintained that no proper performance evaluation was conducted on the teacher and the termination was a result of a personality conflict between the teacher and the principal.

District Position

The district contended that in the state of Iowa, districts do not have to tolerate mediocre performance or a failure to improve performance. It was cited that the district and the association have negotiated and established an evaluation procedure for teachers and it was used to evaluate the teacher. It contended that the result of that evaluation was a preponderance of evidence leading to and supporting the recommendation and decision that the teacher was not providing high quality education and was not showing any effort toward improvement.

Award

Grievance is denied.

Analysis

Arbitrator O'Brien determined that:

A committee of district and association representatives had formulated and adopted a method of evaluation. The teacher was scheduled for a comprehensive review during the 1993-94 school year and he was told what the review would consist of before the year started.

The teacher was evaluated, given specific improvement areas (including written daily instructional objectives to be shared with the principal and department chairperson prior to start of the 1994-95 school year) which was not done. The teacher did not contest the allocation that he did not submit weekly lesson plans to the district until March of 1995.

Documentation from the members of the Intensive Assistance Team that was formed to directly assist the teacher in improving performance indicated that the teacher took the committee's observations badly and reflected an attitude that was not positive toward expected improvements. The committee's final evaluation rating, based on 17 classroom observations, was "not effective."

Evidence showed that the principal was pleased with the teacher's improvements after the mid-eighties probation and it was only when problems and regression redeveloped years later that this difficulty developed.

**Iowa City Community School District
and Service Employees International
Union Local 150 Arbitrator James O'Brien
1997**

Issue

Whether the suspension of Grievant's employment, without pay, for the alleged smell of alcohol on his breath was for proper cause.

Facts

On August 27, 1996 the Grievant, a night custodian at the high school, was at work when it was alleged he had the odor of alcohol on his breath. He had been warned in the past, and referred to the Employee Assistance Program. He had not been given anything referred to as a "written reprimand." The suspension did not give a reason. He was reinstated at the end of the suspension, but before the

substance abuse program he was required to attend had been completed.

Association Position

The suspension in this case is unorthodox and not justified by the contract. The alcohol policy is contradictory and, under the facts of this case, unenforceable. Grievant should not be held to the treatment requirement, because it was unclear how it would be paid. The Grievant is being retaliated against because he successfully protested a schedule change.

District Position

There is a well-understood policy of "zero tolerance." The Grievant had problems in the past of being at work smelling of alcohol, which led to the Grievant agreeing to submit to substance abuse evaluation and treatment, but he avoided completing treatment by changing programs in the middle on several occasions.

Award

There was no just cause for the suspension.

Analysis

The District admits that the substance abuse policy would allow an employee to have a beer at lunch and return to work, which possibly would lead to the odor of alcohol on the breath. Here, there was conflicting testimony as to whether the Grievant did, in fact, smell of alcohol. No objective test was performed to indicate an alcohol level from which impairment could be presumed.

The Agreement requires progressive discipline, but prior to the suspension, there has not even been a written reprimand. Because the Grievant did eventually complete the treatment program, the issue of his failure to complete the program is moot. The Grievant will be repaid wages, vacation and other benefits to be reinstated, all references to the suspension expunged. Because the evaluation and treatment was agreed upon by the Grievant as the result of a prior incident which was not grieved, the District is not required to repay to the Grievant any sums for the treatment.

Linn-Mar Community School District and Administrative Law Judge Hugh J. Perry 1996

Issue

Whether the termination of the elementary school principal was unreasonable, arbitrary, capricious or characterized by an abuse of discretion.

Facts

Grievant was an elementary school principal within the Linn-Mar Community School District. Because of an undisputed budget deficit, the District selected her for a reduction from full-time to 10/12 time. Grievant's school had experienced a significant decline in enrollment for the previous school year, but no decision was made at that time to reduce her position. There were other principals within the district. Staffing requirements of the accreditation agency for the Linn-Mar District call for one full-time principal in an elementary building with the number of students in the Grievant's building, but the superintendent did not take this into account in his recommendation.

Principal's Position

Iowa law requires the adoption of a policy or set of criteria by the Board to insure a recommendation to terminate is not motivated by an improper reason. It is significant that the superintendent had tried to demote the Grievant in the past. The District knew there would be a reduction in enrollment the previous year, but no action was taken at that time. District enrollment is actually growing. There has been no showing as to what factors justified this termination over the termination of other K-4 principals. The District's reduction plan actually would require the Grievant to do summer work without pay. The decision was arbitrary and capricious.

District Position

Just cause for termination includes legitimate budgetary requirements, which clearly exist here. An objective basis for selecting the Grievant has been articulated. The ALJ should not substitute his discretion for the District's.

Award

The termination is reversed.

Analysis

I agree that the District is entitled to accomplish savings, and there is little question that it is necessary here. The relatively minuscule amount of savings sought here by the termination of this principal bears scrutiny. Enrollment at the school is not on the increase. Past action by the superintendent, while not directly relevant, does raise the question of objectivity.

If the District had truly deemed it necessary to terminate the Grievant's contract, it would have done so the previous year. I am not persuaded as to why the Grievant should bear a disproportionate financial burden because of the District's budget problems. Termination under these facts is not reasonable.