

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

IOLA-SCANDINAVIA SCHOOL DISTRICT

and

IOLA-SCANDINAVIA AUXILIARY  
ASSOCIATION

Case 30  
No. 51627  
MA-8677

Appearances:

Mr. David W. Hanneman, UniServ Director, Central Wisconsin UniServ Council-South, 2805 Emery Drive, P.O. Box 1606, Wausau, Wisconsin 54402-1606, on behalf of the Association.

Mr. Bruce J. Meagher, Omholt, Meagher, Forsythe & Klessig, S.C., 169 North Main Street, P.O. Box 335, Iola, Wisconsin 54945-0335, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1992-94 collective bargaining agreement between Iola-Scandinavia School District (hereafter the District) and Iola-Scandinavia Auxiliary Association (Association), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them regarding whether the District violated the collective bargaining agreement when it reduced the work hours of Elementary Kitchen Manager Judy Biedermann. The Commission appointed Sharon A. Gallagher to hear and resolve the dispute between the parties. A hearing was held in Iola, Wisconsin on December 22, 1994. No stenographic transcript of the proceedings was made. The parties chose not to submit briefs and to orally argue the case at hearing on December 22nd. The record was thereupon closed.

Issues:

The parties stipulated that the following issues should be determined in this case:

Was there a violation in Article XII or other Articles of the master contract between the Iola-Scandinavia Board of Education and the Iola-Scandinavia Auxiliary Association when Judy Biedermann's position as Elementary Kitchen Manager was subjected to a reduction in hours? If so, what shall be the remedy?

Relevant Contract Provisions:

ARTICLE III - MANAGEMENT RIGHTS

A. The Board on its own behalf and on behalf of the electors of the District hereby retain all powers, rights, duties, authorities, and responsibilities conferred upon it and vested in it by the law and the Constitution of the State of Wisconsin and the United States, unless said powers, rights, duties, authorities, and responsibilities are modified by the terms of this agreement. The rights of the Board unless modified elsewhere in this agreement shall include the following:

1. To direct the operations of the school district.
2. To hire, promote, transfer, schedule, and assign employees in positions within the school district.

...

5. To introduce new or improved methods or facilities.
6. To change existing methods or facilities.
7. To determine the kinds and amounts of services to be performed as pertains to school district operations and the number and kinds of classification of employees who will perform such services.

...

B. The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and the Wisconsin Statutes and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States. It is understood that this provision is not a waiver of the Association's right to

bargain the effects upon wages, hours or conditions of employment of management decisions made during the term of the contract where the effects are not specifically referred to herein.

. . .

#### ARTICLE V - DISCIPLINE PROCEDURE

No employee shall be reprimanded, disciplined, suspended, reduced in rank or compensation, discharged, have a contract terminated or nonrenewed, for disciplinary purposes without being accorded just cause.

. . .

#### ARTICLE XII - SENIORITY AND LAYOFF

. . .

B. Reduction in Hours: Reduction in hours shall be made in each department and school by seniority provided the remaining employees are qualified to do the work. An employee who is reduced may elect to displace a less senior employee whose work he/she is qualified to perform.

. . .

D. Departments: "Departments" are defined as those specified in separate salary classifications of the salary schedule as follows:

1. Educational aides
2. Special Education aides - Certified
3. Secretarial
4. Cooks
5. Janitorial
6. Bus drivers

Background:

On March 31, 1994 the District made its initial proposal to the Association for a 1994-96 contract. That initial proposal included the following items:

- 1) Eliminate category of Special Education Aide, i.e. all aides are Educational Aides.
- 2) Base part-time/full-time employment on 1492 hours, i.e. working 8 hours/day for the year (sic) year is full-time school year employee. Anyone working more than 1492 hours in a year would also be considered full-time.
- 3) Insurance -

	7/1/94-6/30/95	7/1/95-6/30/96
Health single	205.50	220.00
family	493.68	525.00
Dental single	19.88	21.00
family	54.62	58.00
- 4) Salary -  
\$.30/hour 1994-95, \$.35/hour 1995-96.

Ultimately, the District and Association engaged in mediation before Commissioner Torosian on August 10, 1994. That mediation resulted in a voluntary agreement between the parties which included a 30 cent per hour raise for unit employes in 1994-95 and a 35 cent per hour raise for unit employes in 1995-96. None of the other initial proposals made by the Board were agreed upon or made a part of the 1994-96 contract.

Facts:

Judy Biedermann has been employed by the Iola-Scandinavia School District since approximately 1980. Ms. Biedermann is the Kitchen Manager at the Elementary School and has been in this position for the last eight years. Ms. Biedermann has always received satisfactory or better evaluations during the entire period of her employment.

Prior to the 1994-95 school year, Ms. Biedermann was scheduled to work seven hours per day. Her normal workday prior to the 1994-95 school year was as follows. Ms. Biedermann regularly arrived at the High School building at 7:00 a.m. to assist the food service staff at the High School in preparing the main dish, bread and other food to be served at both the High School and the Elementary School. Ms. Biedermann would finish preparing the food for the Elementary School and/or High School before 9:30 a.m. each morning. Ms. Biedermann would then travel to

the Elementary School and begin preparing the food necessary to be served at the Elementary School that day. From 9:30 a.m. until approximately 1:00 p.m., Ms. Biedermann would prepare and serve the food at the Elementary School. At 11:00 a.m. each day, Karen Gullixon (Server) and Linda Goli (Dishwasher) would begin work at the Elementary School where they would assist Biedermann until their quitting time at 1:00 p.m. Between 1:00 and 1:30 p.m. Ms. Biedermann would have her unpaid 30 minute lunch period. Between 1:30 and 2:00 Ms. Biedermann would finish cleaning up at the Elementary School and travel back to the High School building. From 2:00 p.m. to 2:30 p.m. Ms. Biedermann would assist the High School food service staff in cleaning up the High School kitchen and preparing for the next day.

On July 11, 1994, the School District, upon a motion of Board Member Peterson, voted unanimously to reduce the food service Elementary Kitchen Manager position by one hour per day beginning in the 1994-95 school year. The minutes for the School Board meeting of July 11, 1994 also indicated that a deficit of \$2,204.45 in the food service budget would be covered by transferring funds from the District's general fund (Fund 10) to the food service account (Fund 50) in order to balance the food service account.

By letter dated July 12, 1994 District Administrator Chester Fraley notified Ms. Biedermann of the reduction in her hours. That letter read in relevant part as follows:

. . .

The Iola-Scandinavia School Board voted last night to reduce your position as elementary kitchen manager by one hour per day. This means your normal workday will be from 7:00 a.m. until 1:30 p.m. including one-half hour for lunch. Your work will end at the elementary school.

The Board found it necessary to reduce your contract because the food service program continues to operate at a deficit even after raising prices and the fact that the sixth grade will be moving to the high school this year, thus reducing the elementary load and possibly increasing the serving load at the high school.

Your contract will be issued after the mediation session on August 10. It will be for the 182 workdays and 6.5 holidays at six hours per day. Work for food service personnel will start on August 26 with the first student day being August 29. 1/

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1/ After the start of the 1994-95 school year, District Administrator Fraley changed Biedermann's hours of work to 7:30 a.m. to 2:00 p.m. (including a 30 minute unpaid lunch) because he found she was having trouble completing her duties at the Elementary

On July 21, 1994, Ms. Biedermann filed the instant grievance. Ms. Biedermann, whose seniority date is October 1, 1980, is third in seniority among the employees in the "Cooks' Department". Linda Johnson, Head Cook for the District, has a seniority date of August 25, 1975 and Jean Loken, Assistant Cook, has a seniority date of August 25, 1977. Both Ms. Johnson and Ms. Loken work at the High School from 7:00 in the morning until 2:30 p.m. each day. There are three Cook Department employees who are less senior than Ms. Biedermann. Diana Bonikowske (Dishwasher) has a seniority date of August 27, 1984. Ms. Bonikowske works from 11:00 a.m. to 2:30 p.m. at the High School, 3.5 hours per day. Karen Gullixon (Server) has a seniority date of August 24, 1987. Ms. Gullixon works at the Elementary School two hours per day, from 11:00 a.m. to 1:00 p.m. Linda Goli (Dishwasher) has a seniority date of February 7, 1994. Ms. Goli works two hours per day at the Elementary School, from 11:00 a.m. to 1:00 p.m. Biedermann's duties did not change significantly from 1993-94 to 1994-95 except that she can no longer assist in preparing bread and the main dish at the High School because her work time there is of too short duration for her to complete those duties.

It is undisputed that for at least the last five school years the Iola-Scandinavia School Lunch Program has operated at a loss. It is also undisputed that during this period of time, the District has made no new equipment purchases and has purchased no services. In addition, the District spends one cent more per meal than the State average on food for its School Lunch Program and it spends three cents per meal less than the State average for supplies. The 1992-93 school year average per meal expenditures for Iola-Scandinavia was \$1.50, while the State average of such expenditures was \$1.55 per meal. The participation rate for the Iola-Scandinavia School District in the School Lunch Program was 68 percent, while the State average participation rate for public school agencies was 55 percent for the year 1992-93. Also during the year 1992-93, Iola-Scandinavia School District had a per meal labor cost of 88 cents, while the State average per meal labor cost was 82 cents. The cost of an Elementary School lunch at Iola-Scandinavia Schools was \$1.00 from 1990 through 1993. The District increased school lunches at the Elementary School by ten cents for the 1993-94 school year, to \$1.10. The cost of a High School school lunch in Iola-Scandinavia was \$1.25 for 1990 through 1993 for students who ordered on a regular basis. The District increased the regular school lunch price at the High School for the 1993-94 school year, to \$1.50. School lunch participation levels decreased in 1993-94 to 65 percent in Iola-Scandinavia School District from 68 percent in 1992-93.

It is undisputed that the District has had a practice of paying the full amount of health insurance premiums for all bargaining unit employees who work at least seven hours per day. As a result of Ms. Biedermann's hours being cut for 1994-95, she fell below the seven hour per day minimum for fully paid health insurance, and was required to pay \$123.42 per month for health insurance.

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School by 1:30 p.m.

When construction is completed at the High School building, the sixth grade class will be moved to the High School building. Approximately 25 sixth grade students currently eat lunch at the Elementary School where their classes are now being held. For the 1994-95 school year approximately 480 students (including 270 Elementary School students) receive school lunch each day. At both the Elementary School and the High School, there are not enough bowls and silverware to serve all of the students without re-washing these during the lunch period. Head Cook Linda Johnson stated that she, Jean Loken and Diana Bonikowske have put in a total of four hours of overtime per week on an average during the 1994-95 school year, while in 1993-94 the three of them put in only approximately one hour of overtime per week.

District Administrator Fraley stated that following an audit of the food service program at the District in the Spring of 1994, the State Department of Public Instruction recommended certain changes be made in the District's school lunch program. Among these were a recommendation to use fewer work hours to prepare the number of meals required each day. On this point, the State recommendation was that at the High School, 15.5 labor hours should be expended per day and at the Elementary School, 5.4 hours should be expended. As of the 1994-95 school year, Fraley stated that the number of labor hours expended at the High School was 19.5 hours per day to prepare the School Lunch Program and at the Elementary School the number of work hours necessary to prepare the School Lunch Program was 8.0 hours.

Mr. Fraley stated that the Board decided to cut labor costs in the food service area by cutting the number of hours worked by the Elementary Kitchen Manager from seven hours to six hours for the 1994-95 school year. Mr. Fraley noted that the District intended to move the sixth graders to the High School building in 1994-95 which would impact school lunch at the Elementary School. Fraley stated that the District had been unable to buy any new equipment or services for several years and that it had raised its school lunch costs at the High School significantly. Mr. Fraley stated that the Board decided that it would be inadvisable to raise school lunch costs to students for the 1994-95 school year to help make up the food service operating losses.

Mr. Fraley stated that the Board did not have any discriminatory motive in cutting Ms. Biedermann's hours, but that she just happened to be the incumbent of the position the Board decided to cut. Fraley stated that Ms. Biedermann's evaluations had always been satisfactory. Mr. Fraley emphasized that the labor costs for the District School Lunch Program were on average six cents higher than the State average labor costs for food service departments. Fraley stated that the Board felt that for Biedermann to travel between the Elementary School and High School each afternoon to perform clean-up duties at the High School was not an efficient way of operating.

Positions of the Parties:

Association:

The Association admitted that the District has the right to reduce work hours if it follows the labor contract provisions which apply to reduction in hours. The Association noted that Article XII requires that the District must reduce hours by seniority in each department. The Association pointed out that Biedermann is in the Cooks Department and has the third highest seniority in the Department; that two employees at the Elementary School have less seniority than Biedermann and one employee at the High School has less seniority than Biedermann; that Biedermann is qualified to perform the work done by the three Cooks Department employees who have less seniority than she; and that Biedermann's work has been completely satisfactory. Therefore, in the Association's view, the District lacked just cause to reduce Judy Biedermann's hours in 1994-95.

The Association urged that the District's exercise of its reserved management rights is limited by the terms of Article III to the exercise of such rights which are not specifically and expressly limited by the remaining terms of the labor agreement or by law. Because Article XII requires that reductions in hours must be done by seniority and because Biedermann is more senior than three other Cooks Department employees, in the Association's view, Article III - Management Rights may not protect the District from liability in this case.

In addition, the Association argued that the District is attempting by this case, to unilaterally make effective a proration of health insurance premiums for all employees working less than eight hours per day. The Association asserted that the District was unable to gain such a proration in negotiations for the 1994-96 labor contract.

The Association observed that the cost of a student lunch in Iola-Scandinavia is less than the State average price for such a lunch and that the price charged by the District is reasonable, the same price that the District charged in 1993-94 is being charged in 1994-95. Thus, the Association asserted that even if the District had to reduce work hours in order to save money in the food service program, it should not have reduced the work hours of Judy Biedermann. Rather, the less senior Dishwasher at the High School (Bonikowske) should have had her hours reduced so that Biedermann could have performed at least a part of her job. In the alternative, the Association urged that the District should have analyzed all of the less senior employees' job functions so that Biedermann could have taken over some of those job functions without losing any work hours and the other less senior employees would have suffered the loss of work hours.

As a result of the Board's decision in this case, the Association noted, Biedermann has lost \$9.15 for one hour of work for each day of her contract year (as well as retirement benefits thereon) and she has had to pay \$123.42 per month toward her health insurance premiums which had previously been fully paid by the District. The Association therefore urged that the grievance should be sustained and that Ms. Biedermann be made whole.

District:

The District urged that Article XII B, requires the use of seniority in reducing hours so long as "the remaining employees are qualified to do the work". The District observed that neither Biedermann nor anyone else can perform two job functions at the same time. Thus, the District implied that Biedermann may not partially replace or bump employe Bonikowske at the High School. However, the District urged, Biedermann could replace any less senior employe by taking or selecting their entire position instead of her own but that Biedermann could not keep her own position and take a part of another position.

The District argued that the reason that its School Lunch Program has a lower cost than the State average for such meals is because the District has not spent any money on equipment and services and it has spent less on supplies than the State average. The District urged that the Board's decision to reduce the Elementary Kitchen Manager's work hours in 1994-95 was reasonable and was allowable under Article III A, Sections 1, 2, 5, 6 and 7. The District further noted that it is not required to redefine positions and hours so that Biedermann would receive no reduction in hours and less senior employes would receive 100 percent of the hours reduction.

In sum, the District contended that Article XII does not allow the most senior employe to pick and choose the hours they wish to work. Rather, the District observed, it has the right under Article III, to set the position descriptions and the hours required to perform the functions therein and that only thereafter does seniority become a factor in determining reduction in hours. The District urged that it had proved that there was a necessity to reduce the hours worked by food service employes so that the food service program would become a break-even proposition. The District noted that District Administrator Fraley testified that the food service program had been suffering losses in each of the last four years which had to be made up out of the District's general fund, and that the participation of students had decreased overall, over the past four years. An audit by the Department of Public Instruction indicated that the District's labor costs for producing the School Lunch Program were excessive when compared to the State average.

In all of the circumstances, the District urged that the grievance should be denied and dismissed in its entirety.

Discussion:

It is undisputed that Judy Biedermann has more seniority in the Cooks Department than one Dishwasher at the Elementary School, one Server at the Elementary School and one Dishwasher at the High School. It is also undisputed that Biedermann has less seniority than the Head Cook and the Assistant Cook who work at the High School and who continue to work seven hours per day and receive fully paid health insurance. Thus, the only employe that Biedermann could bump who has less seniority than she is Diana Bonikowske, the Dishwasher at the High School who works from 11:00 a.m. to 2:30 p.m. It is undisputed that Biedermann could not complete her job as Elementary Kitchen Manager by 11:00 a.m. each day so that she could take the place of Bonikowske at the High School. Rather, Biedermann has been assigned to work in

1994-95 from 7:30 a.m. to 9:30 a.m. at the High School. During this period, the only other employes assigned to work at the High School -- Johnson and Loken -- have more seniority than Biedermann. Biedermann is assigned to work from 9:30 a.m. to 2:00 p.m. at the Elementary School. Hence, the only time which Biedermann would be available to perform food service duties for the District would be after 2:00 p.m. (after she has traveled between the Elementary School and the High School) until 2:30 p.m. The District's point that to assign Biedermann to travel each afternoon to the High School to clean up for 15 to 20 minutes would be inefficient is well-taken. The fact that Biedermann would have to travel between schools and then assume Bonikowske's dishwashing and clean up duties would clearly be less efficient than Bonikowske working straight through from 11:00 a.m. to 2:30 p.m.

Although the Association has argued that the District should have re-evaluated and considered cutting the hours of Cooks Department employes with less seniority than Ms. Biedermann, I note that the contract does not expressly require the District to do this. Article XII, Section B states that any reductions in hours must be made in each department and school by seniority provided the remaining employes are qualified to do the work (emphasis supplied). I note that both the Layoff and Reduction in Hours sections of Article XII, use the phrase ". . . may elect to displace a less senior employee whose work he/she is qualified to perform" when describing the bumping possibilities available to laid off and reduced employes. The word "displace" in this context would ordinarily mean that the reduced person may "take the place of" another less senior employe whose work the reduced person is qualified to perform. However, under Article XII B, which deals on its face with any and all reductions in hours without limitation, the word "displace" may not reasonably be read narrowly to mean that the person whose position is reduced must take the entire position of the less senior employe being displaced. Yet, the strong implication of Article XII B, and a reasonable application of the language as a whole would require that the person whose position is reduced must be available as well as qualified to perform the duties of the position he/she wishes to bump into. Thus, it may not be reasonable or efficient for the reduced person to be allowed to displace another less senior employe for only a portion of the less senior employe's shift/work, giving the proper weight to the District's legitimate non-discriminatory considerations regarding efficiency, economy and operational needs.

In all of the circumstances of this case and given the language of Articles III and XII B, I do not find that the District has violated the labor agreement by assigning Ms. Biedermann to work beginning at 7:30 a.m. at the High School for the 1994-95 school year, rather than assigning her to work at the High School beginning at 7:00 a.m. each day. In this regard, I note that Biedermann was the least senior employe who worked at the High School from 7:00 a.m. to 9:30 a.m. In addition, the work that Ms. Biedermann performed between 7:00 a.m. and 7:30 a.m. during years prior to the 1994-95 school year was work which the remaining employes, the Head Cook or the Assistant Head Cook, are qualified to perform.

In regard to the one-half hour of work time which Ms. Biedermann has been reduced each afternoon during the 1994-95 school year, I find that there is no job duty or function which she can perform between 2:00 p.m. and 2:30 p.m. at the Elementary School. Because of her duties at the Elementary School as Elementary Kitchen Manager, Ms. Biedermann's presence is required at

the Elementary School between 9:30 a.m. and 2:00 p.m. each day. Thus, Ms. Biedermann is not available to "displace" Dishwasher Bonikowske and could not efficiently perform the necessary functions continuously performed by Bonikowske at the High School between 2:00 p.m. and 2:30 p.m. 2/

I find the Association's argument unpersuasive that the District is attempting to gain here what it was unable to gain in contract negotiations for the 1994-96 agreement relating to the proration of health insurance premiums for all employees working less than eight hours per day. The Association proffered insufficient evidence to prove this claim. Similarly, the Association's arguments that the District should have reduced other less senior employees' work hours at the High School, that the District should have studied and analyzed all less senior employees' job functions, or that the District should have simply raised school lunch fees to students are all arguments better raised in collective bargaining negotiations with the District in the future.

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2/ The Union submitted a grievance arbitration decision regarding the Clinton Community School District, issued by WERC staff member William C. Houlihan. I find that the Clinton Community School District award is distinguishable on its facts from this case.

Thus, in all of the circumstances of this case, 3/ I find that the District was privileged to reduce Judy Biedermann's work hours for the 1994-95 school year and I issue the following

AWARD

There was no violation of Article XII or other articles of the master contract between the Iola-Scandinavia Board of Education and the Iola-Scandinavia Auxiliary Association when Judy Biedermann's position as Elementary Kitchen Manager was subjected to a reduction in hours. Therefore the grievance is denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 18th day of January, 1995.

By Sharon A. Gallagher /s/  
Sharon A. Gallagher, Arbitrator

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3/ The evidence proffered by the District regarding efficient use of time at the High School in the afternoons, budgetary losses, the recommendations of D.P.I. and its decision to move sixth graders to the High School building in 1994-95 all support a conclusion that its decision to cut Biedermann's afternoon hours was reasonable and efficient.