

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

NORTHERN EDUCATIONAL SUPPORT TEAM

and

TOMAHAWK SCHOOL DISTRICT

Case 41
No. 51202
MA-8528

Appearances:

Mr. Gene Degner, Director, WEAC UniServ Council No. 18, on behalf of the Association.

Drager, O'Brien, Anderson, Burgy & Garbowicz, by Mr. Steven C. Garbowicz, on behalf of the District.

ARBITRATION AWARD

The above-entitled parties, herein "Association" and "District", are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Tomahawk, Wisconsin, on August 29, 1994. The hearing was transcribed and both parties filed briefs which were received by November 21, 1994.

Based upon the entire record, and the arguments of the parties, I issue the following Award.

ISSUE

Since the parties were unable to jointly agree on the issue, I have framed it as follows:

Did the District violate Article 16 of the contract when it involuntarily assigned grievant Margaret Luce from one food service position to another food service position and, if so, what is the appropriate remedy?

DISCUSSION

Luce - a Food Service Worker III in pay range IV who has been employed by the District for about 20 years - worked a 4 1/2 hour shift before May, 1994, at the Elementary school where she mainly worked as a cook-server on general food preparation and dispensing food items.

Because another Food Service Worker III was vacating that position in the same

Elementary school, the District on May 16, 1994, involuntarily assigned Luce to work a 5 1/2 hour shift where she now prepares and sells ala carte items. Luce receives the same hourly rate that she did previously and she is in the same pay range as before. Luce grieved that assignment, hence leading to the instant arbitration.

In support of the grievance, the Association mainly argues that Luce's new duties violated Article 16 of the contract because they constitute an involuntary transfer and/or reassignment and because she was not the least senior employe at the time of the change. As a remedy, the Association requests that Luce be reassigned to her prior 4 1/2 hour position.

The District maintains that it has the inherent right under Article 4(A) of the contract to assign the different duties and hours to Luce because she is being paid at her same wage rate as before, without any changes in her working conditions.

The resolution of this issue partly turns on Article 16 of the contract, entitled, "Vacancies, Reassignments and Transfers", which provides:

. . .

- A. All vacant or new positions shall be posted in each of the three (3) buildings, in a conspicuous place for at least five (5) days. Currently employed Unit Employees shall be given first consideration, provided they qualify.
- B. All reassignments and transfers shall be on a voluntary basis, where possible.
- C. If it is necessary to have involuntary reassignments and transfers, it shall be done with least senior Employees first, provided skills and abilities are equal.

This case also turns on Article 4 of the contract, entitled "Management Rights", which states:

. . .

- A. The Union recognizes that the management of the School District of Tomahawk and the direction of the working forces are vested exclusively with the Employer. The Employer retains the sole right to hire, discipline, discharge, layoff, assign, promote, demote or transfer Employees, to determine the amount of work needed and the methods for performing that work, to determine the

starting and quitting time and the number of hours to be worked, including overtime, to assign work in all situations, to determine the methods of work, to determine the sequence of work processes, to establish reasonable work rules and regulations, to introduce new or improved methods or facilities or change existing methods or facilities, to maintain the efficiency of District operations and to take whatever action is necessary to carry out the functions of the District in times of emergency as long as the aforementioned items are not inconsistent with this Agreement.

If one assumes, as does the Association, that Luce was transferred or reassigned as those terms are used in the contract, it is clear that the District violated Article 16 since she was not the least senior employe when that was done. Conversely, if one assumes, as does the District, that Luce was merely assigned different duties as that term is used in Article 4, it then follows that the grievance must be denied.

The nub of this case thus turns on whether Luce's present work assignment constituted a "transfer," "reassignment", or "assignment" as these terms are used in the contract.

That is best determined by how the parties have used the words "position" or "job"; i.e., does it refer only to the exact duties and hours that one is performing at a given point in time or does it, instead, refer to the kind of duties that one is performing? In other words, are employes assigned to specific, as opposed to generic, "positions" or "jobs"?

The District's job descriptions help clarify this question since there is a generic job description for all the Food Service Worker IIIs (Joint Exhibit 9), without specifying each particular set of duties performed by each Food Service Worker III or the hours that each is expected to work.

This, then, is the position which Luce held before the District assigned her slightly different job duties at the same work location and on the same shift. It by the same token is the same position which she now holds albeit with slightly different duties and hours. Hence, there has been no transfer to a different job, just as there has been no "reassignment" to a different job under the terms of the job description. 1/ For the District is permitted to make such changes

1/ The decision herein is based only on the unique facts of this case. Accordingly, it is unnecessary to decide whether the movement of an employe to a different school under the same set of facts constitutes a "transfer" or "reassignment".

under Article 4, ante, which expressly provides that the District retains the right to "assign" and to "determine the starting and quitting time and the number of hours to be worked." That is all that it has done here. Hence, the District has not violated the contract.

In light of the above, it is my

AWARD

That the District did not violate Article 16 of the contract when it involuntarily assigned grievant Margaret Luce from one food service position to another food service position; the grievance is therefore denied.

Dated at Madison, Wisconsin this 14th day of March, 1995.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator