

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SUPERIOR SCHOOL DISTRICT EMPLOYEES
LOCAL 1397, AFSCME, AFL-CIO, WCCME,
AFL-CIO

and

SUPERIOR SCHOOL DISTRICT

Case 110
No. 52575
MA-9031

Appearances:

Mr. James Mattson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1701 East Seventh Street, Superior, Wisconsin 54880, appearing on behalf of the Union.

Hendricks, Knudson & Gee, S.C., Attorneys at Law, 1507 Tower Avenue, Suite 312, Superior, Wisconsin 54880, by Mr. Kenneth A. Knudson, appearing on behalf of the District.

ARBITRATION AWARD

Superior School District Employees Local 1397, AFSCME, AFL-CIO, WCCME, AFL-CIO, hereafter the Union, and the Superior School District, hereafter the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission to appoint a staff member as a single, impartial arbitrator to resolve the instant grievance. Hearing was held on September 7, 1995, in Superior, Wisconsin. The hearing was not transcribed and the parties did not file written argument.

ISSUE:

The parties were unable to stipulate to a statement of the issue.

The Union frames the issue as follows:

Did the Employer violate past practice when an inexperienced director of transportation and safety reduced the Grievant's bus route and consequently work hours 4 1/2 months after the Grievant bid on the secured route in question?

The Employer frames the issue as follows:

Did the Employer violate Article 7, Section 7, of the 1993-1995 collective bargaining agreement by refusing to allow the successful bidder to return to her job when more than five working days had passed?

The arbitrator frames the issue as follows:

Did the Employer violate the collective bargaining agreement and/or a binding past practice when the Employer reduced the route hours of the Grievant and did not permit the Grievant to return to her former position?

If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

Article 7 - Seniority - Promotions - Layoffs

. . .

Section 7. All bids for vacancies posted must be in writing and must be submitted to the Personnel Office within ten (10) working days after the bulletin is posted and before 4:00 p.m. on the date due. The appointment shall be made within three (3) working days thereafter or as agreed upon by the employee, The Union and the District, but not more than twenty (20) working days. Successful bidders for a vacancy may return to his/her old position if he/she chooses within five (5) working days.

. . .

Section 12. In the event a bus driver's hours on a bid route are reduced by more than one (1) hour, the driver, within five (5) calendar days, shall inform the Assistant Superintendent-Personnel, in writing, of the eligible position he/she will bump to according to his/her seniority rights.

. . .

Article 20 - Management Rights

Section 1. The Board, on its own behalf, and on behalf of the electors of the District, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties, and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and the United States, included, but without limiting the generality of the foregoing, the right:

- A. To the executive management and administrative control of the total school system and its properties and facilities, and the assigned school activities of the employees;
- B. To hire all employees;
- C. To establish job specifications and duties for their employees, the reasonableness of which shall be subject to arbitration.

Section 2. 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 judgement and discretion in connection therewith shall be limited only by the specified and express terms of this Agreement, 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.

. . .

BACKGROUND:

Janet White, hereafter the Grievant, is employed as a Bus Driver. When the Grievant's 1993-94 bus route was reduced in hours, she bid on a route which became vacant due to the retirement of another Bus Driver. At the time that this vacancy was posted, on August 22, 1994, the route hours were estimated at 5.5. The route hours were subsequently revised and accepted by the Grievant at 5.25 hours.

In December of 1994, a parent complained about the length of time that a student was on the bus. On or about January 9, 1995, following an investigation of this complaint, the Employer reassigned several students from the Grievant's bus route to another bus route for the purpose of reducing the amount of time that the students were on the bus. 1/ As a result of this reassignment, the Grievant's route was altered and the Grievant's work hours were reduced.

On January 12, 1995, the Grievant submitted a written request to return to her former position. This written request included the following:

The reason I'm making this request is four months after accepting this position Mr. M LaCore, took the children on Highway 35 and placed them on another bus causing this route to lose 45 minutes per day from the original bid.

On January 16, 1995, Gerald Peck, Assistant Superintendent Personnel and Operations, provided the Grievant with a written response which included the following:

I am sorry to inform you that your request is denied. The working agreement must be adhered to when requesting and/or approving transfer requests. The denial of your request is based upon the working agreement between the Superior Board of Education and AFSCME 1397.

There are two places in the contract that address your request. The first is Article 7, Section 7, "Successful bidders for a vacancy may return to his/her old position if he/she chooses within five (5) working days." Your situation was also reviewed under Article 7, Section 12, "In the event a bus driver's hours on a bid route are reduced by more than one (1) hour, the driver within five (5) calendar days shall inform the Assistant Superintendent-Personnel in writing of the eligible position he/she will bump to according to his/her seniority rights."

On February 24, 1995, a grievance was filed which stated as follows:

1/ The travel time of the students was reduced by as much as two hours per day.

Jan White lost time on her previous route. She then bid on a vacancy. After being on the new run for several months, she lost more time due to a route change instituted by the Director of Transportation. When she asked to return to her previous position, it was denied.

The grievance further stated that there had been a "violation of contract, Article 7, Section 7 and any other applicable articles, violation of past practice, and unfair treatment." The request for settlement was to "Allow Janet White to return to her original route. Make employee whole."

The grievance was denied at all steps and, thereafter, submitted to arbitration.

POSITIONS OF THE PARTIES:

Union

Prior to the 1994-1995 school year, at the beginning of the school year, the Transportation Director would ride each bus route to determine if the bus route were appropriate. If the Transportation Director found a bus route to be inappropriate, he would immediately implement any necessary changes. To change a route in the middle of the school year is not only unfair to the Grievant, but it is also a violation of past practice and the Grievant's seniority rights.

Posting a route which does not reflect the appropriate route is similar to a "bait and switch" tactic. The Grievant should have the benefit of the job on which she bid.

The Employer has violated the contract and past practice. In remedy of this violation, the Grievant should be made whole for all lost wages and benefits due to the Employer's refusal to allow the Grievant to return to her original route and total original hours.

Employer

The contractual posting provision governs this dispute. Under this posting provision, a bus driver who posts for a new position has five days in which to return to his/her former position. Once the five-day period has passed, and the bid has been accepted, Article 7, Section 12, governs any reduction in route hours.

Article 7, Section 12, states that, if a route is reduced by more than one hour, then the driver is entitled to exercise bumping rights. As stipulated by the parties, the Grievant's route was not reduced by more than one hour.

In posting the bus route in question, the Employer relied upon the previous year's

experience. The new Transportation Director did not become aware of a need to make adjustments in this bus route until some four months after the posting.

The past practice relied upon by the Union is not a binding past practice. Rather, it involves the exercise of management discretion. The Employer exercised its management discretion in a reasonable manner when it adjusted the Grievant's bus route to accommodate the needs of students.

DISCUSSION:

Prior to the start of each school year, the former Transportation Director traveled each bus route to determine whether the bus route was appropriate. Once the appropriate bus route was established, the former Transportation Director did not change the route unless there were a change in circumstances beyond the control of the Employer, such as students moving in and out of the bus route. The Union, contrary to the Employer, argues that this procedure is a practice which is binding upon the Employer.

Under Article 20, Management Rights, the Employer has the contractual right to manage and control the school system. Inherent in the right to manage and control the school system is the right to determine appropriate bus routes.

As set forth in Article 20, the Employer's management rights are limited only by the "specified and express terms of this Agreement." The Agreement does not "specify" and "express" any limitation upon the Employer's right to determine appropriate bus routes.

The decision of the former Transportation Director to establish bus routes in accordance with the procedure relied upon by the Union involved the exercise of discretion reserved to management by the terms of the parties' collective bargaining agreement. As the Employer argues, the exercise of such management discretion does not give rise to any binding past practice.

At the beginning of the 1994-95 school year, the current Transportation Director, who had approximately six month's experience on the job, continued the bus routes established by his predecessor and posted the August, 1994 vacancy accordingly. At the time that the Grievant accepted the posted position at 5.25 hours, neither the current Transportation Director, nor any other Employer representative, anticipated any change in the route of the posted position. Indeed, it is not evident that Employer representatives contemplated any change in the posted position until December, 1994, when, following an investigation of a parental complaint, the Employer determined that it was possible to reduce student travel time by reassigning students from the Grievant's bus route to another bus route.

The Employer's decision to post the vacancy with the route established by the former Transportation Director, as well as the Employer's decision to alter this route in January of 1995, was a reasonable exercise of management's discretion to determine appropriate bus routes. There is no merit to the Union's argument that the Employer engaged in a "bait and switch" tactic when

it changed the Grievant's bus route approximately four and one-half months after the Grievant bid into the bus route.

As the successful bidder, the Grievant had an Article 7, Section 7, right to return to her former position "within five working days." The January 12, 1995 request to return to her former position was made several months after the Grievant bid into her position. Having completed the five day period set forth in Article 7, Section 7, the Grievant does not have a contractual right to return to her former position.

By adopting the language of Article 7, Section 12, the parties have recognized that the Employer may reduce the hours of a bid route. It follows, therefore, that the Grievant does not have a seniority right to continue to work the hours of her bid route.

Neither Article 7, Section 12, nor any other provision relied upon by the parties, "specifies or expresses" any limitation upon the Employer's right to reduce the hours of a bid route. Absent such a limitation, Article 20 provides the Employer with the right to determine whether or not it will reduce the hours of a bid route.

The Grievant occupies a bid route. Article 7, Section 12, expressly addresses the seniority rights of an employe who suffers a reduction in the hours of a bid route. Under this provision, an employe does not have a seniority right to "bump" into another position unless the employe's hours on a bid route are reduced by more than one hour.

As stipulated by the parties, the Grievant's bid route was reduced by less than one hour. The reduction in the Grievant's hours is not sufficient to provide the Grievant with a seniority right to "bump" into another position.

In summary, the Employer did not violate any binding past practice or contract provision when it altered the Grievant's bus route and reduced the Grievant's hours in January of 1995. The Grievant does not have a contractual right to return to her former position.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following

AWARD

1. The Employer did not violate the collective bargaining agreement and/or a binding past practice when the Employer reduced the route hours of the Grievant and did not permit the Grievant to return to her former position.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 30th day of November, 1995.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator