IN THE MATTER OF ARBITRATION	)	
	)	
Between	)	
	)	
CAMBRIDGE CITY SCHOOL DISTRICT	)	
	)	OPINION AND AWARD
	)	
The Employer	)	Hanes Bus Driver Grievance
	)	
-and-	)	AAA #01-17-0006-2686
	)	
OAPSE/AFSCME Local 4/AFL-CIO And its LOCAL #132	)	
	)	
The Union	)	

APPEARANCES

For the Employer:
Pat Schmitz, Esq.
Scott, Scriven

Dan Coffman, Superintendent
Dave Caldwell, Treasurer

For the Union:
Liz Klintworth,
Field Representative

Annie Price, President
Rebecca Hanes, Grievant
Melissa Wheeler, Van Driver/Cook
Tamara Ball, Bus Driver/Mail Route

Jerry A. Fullmer
Attorney-Arbitrator

Cleveland, Ohio

This case[1] concerns a reduction in hours of the Grievant and nine other bus drivers in the 2017-2018 school year from the hours they worked in the prior school year.

I. FACTS

A. Background Facts

The Employer operates the public school system in the Cambridge, Ohio area. The Union represents a unit of non teaching employees, including bus drivers. A wage schedule is set out in the last page of the contract. It specifies the wage rates applicable to the various classifications, including bus drivers, together

[1] Cambridge City School District Board of Education (hereafter referred to as "the Employer") and OAPSE/AFSCME Local 4/AFL/CIO and its LOCAL #132 (hereafter referred to as "the Union"), are parties to a collective bargaining agreement dated July 1, 2015 (Joint Ex. 1). The agreement provides in Article Fifteen for settlement of disputes through a grievance and arbitration procedure. A dispute has arisen between the parties concerning a reduction in hours of the Grievant and nine other bus drivers in the 2017-2018 school year from the hours they worked in the prior school year.

The Union's grievance (Joint Ex. 2) concerning this matter was dated August 15, 2017. It was submitted to arbitration before the arbitrator under the administration of the American Arbitration Association. A hearing was held on March 7, 2018 at the Employer's headquarters in Cambridge, Ohio. Both advocates made opening statements and presented and cross-examined witnesses. No transcript was taken. Post hearing briefs were filed by both parties and were received by the arbitrator on April 9, 2018. It was stipulated by the parties that the grievance was both procedurally and substantively arbitrable; that the time limits in the grievance procedure had either been met or waived and that the arbitrator has been properly chosen and has jurisdiction to hear the case.

with step increases. The Step 1 wage rate for bus drivers in the first year of the agreement, i.e. that effective July 1, 2015 was $11.20 an hour.

As of the start of the 2016-17 school year there were 10 bus drivers. One was the "name" grievant, i.e. Rebecca Hanes. All but two of the bus drivers worked a 5.5 hour schedule. One, Ms. Hanes worked a 6.5 hour schedule. Another, Melissa Wheeler, worked a 3.5 hour schedule. Under Section 14.06 of the parties' agreement only employees working at least 25 hours a week are entitled to group "major medical and hospitalization coverage".[2] Thus during the 2016-17 school year nine of the ten bus drivers were eligible for the coverage.

B. Facts Leading to the Grievance

Toward the close of the 2016-17 school year, the Employer studied its operations and decided that it needed to reduce spending in some areas. The system was faced with declining enrollments and had closed one of its three elementary schools. The declining enrollments brought with them declines in both federal and state aid since both are tied to enrollments.

The eye of Superintendent Coffman fell upon the schedules of the bus drivers. He was of the opinion that expenses in the district needed to be reduced and that the reductions could be achieved by reducing the hours of the bus drivers. The reductions were to be of a magnitude that none of the nine drivers who

[2] Sometimes hereafter referred to simply as "the insurance"

previously enjoyed "major medical and hospitalization" coverage would be deprived of that coverage. This was because they would all still be scheduled in excess of the minimum, i.e. 25 hours a week.[3] After considering various alternatives, he came up with the following schedule:

"Driver	2016-17	2017-2018
Tammy Ball	5.5	5.0
Dan Rado	5.5	5.0
Melissa Wheeler	3.5	3.0
Tammy LePage	5.5	5.0
Ken Collins	5.5	5.0
Mary Price	5.5	5.0
Rebecca Hanes	6.5	5.0
Cherie McComb	5.5	5.0
Cindy Edmiston	5.5	5.0
Jay Hobson	5.5	5.0

(Jt. Ex. 3)

On August 9, 2017 the Union filed the grievance in this case. It provided that:

> "10.01. States "reduce the number of classified positions". It does not permit reduction of hours, only positions. Any and all Articles that may apply.
>
> **Remedy Requested** To follow the contract – no hours to be reduced a position to be reduced if necessary."
>
> (Jt. Ex. 2

The grievance was thence processed through the steps of the grievance procedure to arbitration.

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[3] The outlier, i.e. Melissa Wheeler, did not qualify for the insurance either before or after the changes.

II. POTENTIALLY APPLICABLE CONTRACT PROVISIONS

ARTICLE FOUR – NEGOTIATIONS PROCEDURE

4.01 Either party may request negotiations for a new contract by serving on the Board President or Superintendent or the Union President or Union Representative as the case may be, a written request between March 1st and April 30th of the year in which the contract expires. The parties shall meet at a mutually agreed time, date and place following receipt of the written request. The Board agrees to bargain collectively with the Union. Accordingly, the Board and the Union are obligated to meet at reasonable times and to confer in good faith with respect to wages, fringe benefits, hours, and other terms and conditions of employment. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

…..

3. Maintain and improve the efficiency and effectiveness of Board operation;

4. Determine the overall methods, process, means or personnel by which School District operations are to be conducted; …

6. Determine the adequacy of the work force. …

8. Effectively manage the work force;

5.02 The exercise of these powers, rights, authority, duties, and responsibilities by the Board and the adoption of policies, regulations and rules as it may deem necessary shall be limited only by the specific and express terms of this Agreement. The exercise of the foregoing management rights requires neither prior negotiation with, nor agreement, of the Union.

ARTICLE FIVE – BOARD RIGHTS

5.01 – BOARD RIGHTS

The Board hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Ohio and of the United States, including, but without limiting the generality of the foregoing, , all of the rights identified in Section 4117.08 of the Ohio Revised Code. These include.

…..

3. Maintain and improve the efficiency and effectiveness of Board operation;

4. Determine the overall methods, process, means or personnel by which School District operations are to be conducted; …

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8. Effectively manage the work force;

5.02 The exercise of these powers, rights, authority, duties, and responsibilities by the Board and the adoption of policies, regulations and rules as it may deem necessary shall be limited only by the specific and express terms of this Agreement. The exercise of the foregoing management rights requires neither prior negotiation with, nor agreement, of the Union.

ARTICLE TEN – LAYOFF AND RECALL

10.01 The Following procedure shall govern layoff of employees if the Board determines to reduce the number of classified positions. The number of employees affected by reductions will be kept to a minimum by not employing replacements for employees who resign or otherwise vacate a position.

10.02. In implementing layoffs, the concept of seniority, as defined in Section 9.01 of Seniority and Bidding, shall prevail. 10.01

ARTICLE THIRTEEN – SALARIES

13.01 PAYDAYS

A. The annual salary to be paid to an employee in a school year shall be computed by multiplying the hourly rate by the hours the employee is scheduled per day, by the number of work days and paid holidays in the year. References in this Agreement to such hours and days is not a guarantee of a specific number of hours or days.

ARTICLE FOURTEEN – FRINGE BENEFITS

14.06 HEALTH INSURANCE

……b.

C. Regular employees (not substitutes) working less than twenty-five (25) hours per week, may participate in the group major medical and hospitalization coverage, the employee to bear the full cost.

ARTICLE SIXTEEN – GENERAL PROVISIONS

…..

16.07ASSIGNMENT OF WORK

No supervisory or managerial employees, substitute, temporary, casual or seasonal employees, or others outside the bargaining unit may used to eliminate an employee's job, or to reduce the regular work hours of an employee. Subject to the preceding sentence, the Board may use managerial or supervisory employees, substitute, temporary, casual, or seasonal employees or others outside of the bargaining unit, to perform bargaining unit work as they have done in the past, for temporary or seasonal work, for the purposes of training, experimentation, inspection, or quality control, to perform work on a more cost-efficient basis, or in situations in which a qualified bargaining unit employee is not readily available.

III. ISSUE

Did the Employer violate the parties' agreement when it reduced the hours of the bus drivers for the 2017-2018 school year? If so, what shall be the remedy?

IV. POSITIONS OF THE PARTIES

The Union Position

The Union's post-hearing brief effectively summarizes its position. It is well documented that the harm suffered by the senior bus drivers was serious. The letter from Superintendent Coffman advised the drivers that their hours were going to be reduced to 5 per day. A timely grievance was filed on August 15, 2017 which protested the action and was processed through the grievance procedure. There was no negotiation despite the terms of Article 4 which requires that the parties are obligated to negotiate in good faith as to wages, fringe benefits, hours and other terms and conditions of employment.

The record is clear that during the parties' negotiations in 2015 there was no statement that the hours of the bus drivers would be reduced and the hours were not negotiated. Article 10 concerns Layoff and Recall and specifies a procedure. Seniority is to be used. There is no indication in the evidence that this procedure was actually used.

The grievance from May 26, 2017 upon which the Employer relies is not a precedent. It was withdrawn, but only because the two aides instead bid into new positions rather than stick with their complaints as to the reduction of their hours. A more solid precedent is offered by the decision of Arbitrator Smith in the Parma City School Case. AAA 53 390 00189 (2010). There it was held that the reduction of an educational assistant's hours from 7 to 6.5 was a violation of the parties' agreement.

The Union urges that the bus drivers be treated with respect and the contract needs to be followed. The precedent of the Parma City School case is clear an should prevail. The grievance should be sustained and the contract followed. The bus drivers' hours should be reinstated.

The Employer Position

The Union asks the arbitrator to focus exclusively on Article 4. This totally disregards the provisions of Article 5, Section 13.01 A. and Section 16.07. The contract must be read as a whole.

Certainly nothing in Section 4.01 or Section 10.1 prohibits the Employer from decreasing the work hours of bargaining unit members during the term of the contract. The Union failed to bargain any limits in the contract upon the Employer's authority to set hours.

The arbitrator is reminded that the parties' agreement in Section 15.04 D. states that the arbitrator shall not have "the authority to add to, subtract from, modify change or alter any of the provisions of this Collective bargaining agreement." The Union displays breathtaking ignorance of the terms of its agreement by citing Section 10.01. That only applies to the negotiation of successor agreements, not mid-term events. Section 10.01 is inapplicable, because it only applies to the reduction in the number of positions, not to reductions of hours.

The Union here does not have clean hands. Two of its luminaries sat in on the negotiations for the applicable contract. But, despite prior knowledge of the Superintendent's planned reductions it failed to introduce any provision in the negotiations to limit any such reductions.

The matter *sub arbitrice* is relatively simple. The Employer's actions are an exercise of management rights protected by Article 5. Many of the specific listings of those rights pertain to the reduction of hours. Article 5 permits the Employer to decrease work hours and does not deem it an abuse of discretion. The Union's

witnesses were upset about losing pay. But their pursuit of naked self interest cannot detract from the Employer's undoubted power to exercise its management rights. The Superintendent had an extremely rational basis for doing what he did.

The only restriction on the reduction of hours in the parties' agreement is that contained in Section 16.07. But, that pertains only to the assignment of work to non-bargaining unit members. That was not involved here and the implication is that other reductions in hours are not a violation.

The Union has been involved in an abuse of the grievance process to get guaranteed work hours when none such is contained in the contract. The arbitrator's award must draw its essence from the collective bargaining agreement.

The Union has not met its burden. The grievance should be dismissed.

V. DISCUSSION

A. Introduction

This is a contract interpretation case involving a reduction in hours of the Grievant and nine other bus drivers in the 2017-2018 school year from the hours they worked in the prior school year. Many aspects of the matter are not in dispute. One is that in such a case the Union has the burden of proof of establishing the facts that prove a violation of the agreement. Another is that the facts of the reduction in hours are not in dispute. Indeed they are quoted above from the

stipulation of facts. Still a third is that the reduction of hours was not the result of a negotiated agreement with the Union. The Union argues that these stipulated facts show a violation of the parties' agreement by the Employer.

We turn to an analysis of this claim and of the cited arbitration authority.

B. The "Management's Rights" Clause.

Article Five gives the Employer several enumerated rights. These include the right to:

> "3. Maintain and improve the efficiency and effectiveness of Board operation;
> 4. Determine the overall methods, process, means or personnel by which School District operations are to be conducted; …
> 6. Determine the adequacy of the work force. …
> 8. Effectively manage the work force"

All of these can be read as including the right to reduce hours in the classifications covered by the agreement.

The clause is stronger for the Employer than most in that it does not include the language often found in such provisions to the effect "except as otherwise provided otherwise in the agreement".[4] In addition, it specifically provides that:

> The exercise of the foregoing management rights requires neither prior negotiation with, nor agreement, of the Union."

[4] The quote is based on the arbitrator's experience, not from any particular agreement.

Despite the lack of an "except as otherwise provided" clause, it will be assumed that if there is specific language elsewhere in the agreement prohibiting the reduction of hours, such a specific provision would prevail over the general language of the "Management's Rights"[5] clause.

C. The Language of Article Ten Concerning Layoff and Recall.

The language of Section 10.01 provides that:

> "10.01 The Following procedure shall govern layoff of employees if the Board determines to reduce the number of classified positions. The number of employees affected by reductions will be kept to a minimum by not employing replacements for employees who resign or otherwise vacate a position.
> 10.02. In implementing layoffs, the concept of seniority, as defined in Section 9.01 of Seniority and Bidding, shall prevail. 10.01"

If the Employer had decided to reduce the hours total number of hours by a layoff, it obviously would have been required to proceed on the basis of seniority. Presumably that would have meant the layoff of Bus Driver Tony Cunningham. (Union Ex. 2)

But, it did not. It proceed by the reduction of hours specified in the Stipulation. The term "layoff" is not defined in Section 10.01. But, it has been defined in some of the arbitration case law as being an "actual severance from the Company's payroll, and a break in continuous service." Bethlehem Steel, 16 LA

[5] Quotation marks used because the provision is not so expressly identified. It is called the "Board Rights" clause.

71, 72 (Feinberg, Arb. 1950) Thus it would seem that Section 10.01 is not applicable to what happened here.

D. The Provisions of Section 16.07.

The "specific provision" avenue is of course a two way street. The Employer deserves to have considered specific provisions beyond the more general "Board Rights" clause. Noteworthy in this respect is the provision of Section 16.07 which states:

> "16.07ASSIGNMENT OF WORK
> No supervisory or managerial employees, substitute, temporary, casual or seasonal employees, or others outside the bargaining unit **may be used to eliminate an employee's job, or to reduce the regular hours of an employee.**. Subject to the preceding sentence, the Board may use managerial or supervisory employees, substitute, temporary, casual, or seasonal employees or others outside of the bargaining unit, to perform bargaining unit work as they have done in the past, for temporary or seasonal work, for the purposes of training, experimentation, inspection, or quality control, to perform work on a more cost-efficient basis, or in situations in which a qualified bargaining unit employee is not readily available."
> (bold added by arbitrator)

The emboldened language is important in two respects. One is that it shows that the parties have proceeded on the basis that there is a difference between "eliminating an employee's job" and "reducing his hours". The other is that the use of one prohibition of a reduction of hours to some extent infers that other

reductions in hours are permissible.[6] Neither of these inferences is overwhelming, but they do have at least some impact.

We turn to the arbitration cases.

E. The Arbitration Cases Cited by the Parties.

The Union relies upon the case of Ohio Association of Public School Employees and Parma City School District Board of Education, AAA # 53 390 00189 (Smith, Arb., 2010). But, that case relied heavily upon that employer's discrimination between various groups of employees as far as the reduction in hours. That is an element which is not contained in the present case.. The Employer cites the case of Union Local School District and Union Local Association of Classroom Teachers, 2005 WL 7991951 (Fullmer, Arb,, 2005). But, this case is only cited for the proposition that "the arbitrator's award is to draw its essence from the parties' agreement". (Employer Post Hearing Brief, p. 11). None would quarrel with this proposition since it bears the imprimatur of the United States Supreme Court. United Steelworkers of America v. American Mfg. Co. 363 U.S. 564, 46 LRRM 2414 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 564, 46 LRRM 2416 (1960); United Steelworkers of America v. Enterprise Wheel & Car Co., 363 U.S. 593, 46 LRRM 2423 (1960)

The conclusion is that neither of these arbitration decisions is decisive.

[6] *Expressio unius est exclusio alterius* is the more complicated method of expressing the concept.

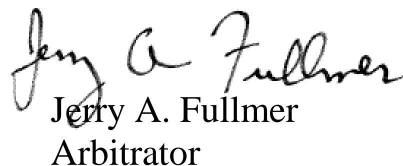
VI. CONCLUSION

As set out above, this case concerns a reduction in hours of the Grievant and nine other bus drivers in the 2017-2018 school year from the hours they worked in the prior school year.. Based on the above analysis, the "Board Rights" enumerated in Section 5.01 appear to be broad enough to permit the specified reduction of hours.. There are no specific limitations in the parties' agreement and the Employer has at least an implication of authority based on the provisions of Section 16.07. The arbitration decisions cited by the parties are not decisive.

To the extent that it may not be otherwise clear, the issue concerning the merits is answered in the negative, i.e. the Employer did not violate the parties' agreement when it reduced the hours of the bus drivers for the 2017-2018 school year. The award draws its essence from the arbitrator's interpretation of Articles Five, Ten, and Sixteen of the parties' agreement.

VII. AWARD

Grievance denied.



Jerry A. Fullmer
Arbitrator

Made and entered this
24th day of April, 2018
at Cleveland, Ohio

AMERICAN ARBITRATION ASSOCIATION

ARBITRATION TRIBUNAL

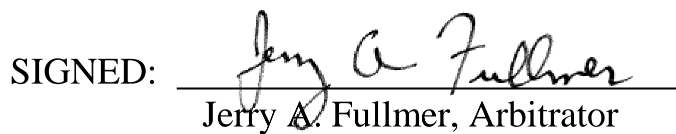
In the Matter of the arbitration between
CAMBRIDGE CITY SCHYOOL DISTRICT
-and-
OAPSE/AFSCME Local4/AFL-CIO
And its LOCAL #132

CASE NUMBER: AAA # 01-17-0006-2686

AWARD OF ARBITRATOR(S)

I (WE), THE UNDERSIGNED ARBITRATOR(S), having been designated in accordance with the arbitration agreement entered into the above named parties, and dated July 1, 2015, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARD as follows:

Grievance denied.

SIGNED: 
Jerry A. Fullmer, Arbitrator

Date: April 24, 2018

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

On this day of , 2018 before me personally came and appeared Jerry A. Fullmer, to me known and to me known to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.