IN THE MATTER OF THE ARBITRATION BETWEEN HILLSBORO CLASSIFIED UNITED LOCAL 4671, AFT "LOCAL 4671" OR "THE UNION" AND HILLSBORO SCHOOL DISTRICT "THE DISTRICT" OR "THE EMPLOYER"	))))))))))))))	ARBITRATOR'S OPINION AND AWARD REDUCTION IN HOURS GRIEVANCE

HEARING:
August 30, 2011
Hillsboro, Oregon

HEARING CLOSED:
October 24, 2011

ARBITRATOR:
Timothy D.W. Williams
830 NE Cesar Chavez Blvd.
Portland, OR 97232

REPRESENTING THE EMPLOYER:
Brian Hungerford, Attorney

REPRESENTING THE UNION:
Eben Pullman, AFT-Oregon Field Coordinator
Richard Schwarz, AFT-Oregon Executive Director

APPEARING AS WITNESSES FOR THE EMPLOYER:
Debbie Ashley, Executive Director of Human Resources
Cindy Longway, Director of Nutrition Services

APPEARING AS WITNESSES FOR THE UNION:
Eben Pullman, AFT-Oregon Field Coordinator
Betty Anliker, Cook II – Orenco ES
Kammy Smith-Davis, Retired Cook II – Jackson Elementary
Dorice Prince, Cook II – WL Henry Elementary

EXHIBITS

Joint

1. 2008-2011 Collective Bargaining Agreement
2. Letter of 5/6/10 from G. Balderas to Pullman/Smith-Davis
3. Step 2 Grievance Form
4. Letter of 6/16/10 from C. Longway to Smith-Davis
5. Letter of 9/30/10 from L. Biado to Smith-Davis
6. 2010-11 Elementary Kitchen Staffing Chart
7. 2009-10 Elementary Kitchen Staffing Chart
8. Memo from Longway to M. Scott et. al. of 2/23/09

Union

1. Cook 2 Job Description
2. Assistant Cook Job Description
3. Kitchen Helper Job Description
4. 2/12/08 Email to Dorice Prince
5. New Staffing Chart, 4/9/08
6. 2009-10 Purchase and Inventory Form
7. Food Catalog
8. Email from Anliker to Smith-Davis dated 4/17/10
9. Anliker Notes from 4/7/10 Meeting
10. 4/22/08 Bargaining Notes
11. 6/9/08 Bargaining Notes
12. Article 14 Draft Language (2008)
13. 6/16/08 Bargaining Notes
14. 6/23/08 Union Proposal, Article 14
15. 6/23/08 Union Proposal, Article 1
16. 8/26/08 District Proposal, Article 14
17. Article 14 Language from the 2005-08 CBA

Employer

1. Letter of 5/6/10 from G. Balderas to Pullman/Smith-Davis
2. Step 2 Grievance Form
3. Step 3 Grievance Form
4. Letter of 6/16/10 from C. Longway to Smith-Davis
5. Step 3 Grievance Meeting Notes dated 9/17/10
6. Letter of 9/30/10 from L. Biado to Smith-Davis
7. Proposed Elementary Kitchen Changes
8. 2010-11 Elementary Kitchen Staffing Chart
9. Cook 2 Decrease in Hours Chart
10. 2009-10 Notifications of Assignment for Smith-Davis, Chaput, Whalen, Anliker, Prince, Hall

11. 2009-10 List of Classified Hour Reductions
12. 2010-2011 List of Classified Hour Reductions
13. 2011-12 List of Classified Hour Reductions
14. Reclassification Committee Meeting Agenda dated 4/2/09
15. Reclassification Committee Meeting Minutes dated 4/2/09
16. Memo from Longway to D. Ashley of 2/23/09
17. Memo from Longway to M. Scott et. al. of 2/23/09
18. Notification of Assignment for Smith-Davis for 2002-03
19. Memo from B. Hylton to Smith-Davis of 6/10/03
20. Letter from B. Begley to Chaput of 1/7/97
21. Notification of Assignment for Chaput for 1997-98
22. 2008-09 Food Service Pay Schedule
23. 2011-12 Food Service Pay Schedule

BACKGROUND

The Hillsboro School District (hereafter "the District" or "the Employer") and Hillsboro Classified United Local 4671, AFT (hereafter "Local 4671" or "the Union") agreed to submit a dispute to arbitration. A hearing was held before Arbitrator Timothy Williams in Hillsboro, Oregon on August 30, 2011. At the hearing the Parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. The Arbitrator made an audio recording of the hearing in a digital format as a part of his notes. A copy of the recording was sent to each Party as an attachment to an e-mail message.

At the close of the hearing, the Parties were offered an opportunity to give closing oral arguments or to provide arguments in the form of post-hearing briefs. Both parties chose to submit written briefs and the briefs were timely

received by the Arbitrator. Thus the award, in this case, is based on the evidence and arguments presented during the hearing and on the arguments found in the written briefs.

SUMMARY OF THE FACTS

The grievance in this case is between the Hillsboro School District and Hillsboro Classified United Local 4671, AFT. The Parties were bound by a Collective Bargaining Agreement, effective July 1, 2008 through June 30, 2011 under which the present grievance arose. The following is a brief summary of the events that led up to the filing of the grievance. It is based on both documentary and testimonial evidence presented during the hearing.

On April 21, 2010 a meeting was held between Gustavo Baldra, Debbie Ashley, Eben Pullman, Kathy Smith-Davis, Dorice Prince, Betty Anliker, Janet Chaput and Cindy Longway to discuss the restructuring of elementary stand-alone kitchens, including the District’s plan to reduce kitchen managers’ assigned hours from 7.5 hours per day to 7 hours per day for the 2010-11 school year.

By letter dated May 6, 2010 Mr. Balderas notified the Union that the decision was made to move forward with the reduction in hours proposed at the April 21, 2010 meeting.

On May 28, 2010 the Union grieved the reduction of hours for five Cook 2 employees alleging violation of Article 14 and requesting that the hours be restored.

The grievance was denied at Step 2 by Director of Nutrition Services Cindy Longway by letter dated June 16, 2010. The letter states:

> When the number of hours is reduced for an employee or group of employees and the reduction does not impact the employee's benefit levels, the contract requires that the reduction be done in inverse order of seniority within the affected job classification. Since there are no employees within the job classification who are assigned more than 7 hours per day, the District has not violated Article 14 (L) of the contract.

The Union advanced the grievance to Step 3 on June 24, 2010.

A Step 3 meeting was held on September 17, 2010. In attendance were Lu Biado, Debbie Ashley, Lauri Lewis, Cindy Longway, Tammy Heckenliable, Kammy Smith-Davis and Eben Pullman.

By letter dated September 30, 2010 Mr. Biado denied the grievance at Step 3. The letter states:

> The reduction in managerial hours in the elementary stand-alone kitchens is a response to food preparation changes that have occurred over time… Although kitchen manager hours were reduced in two of the same schools where additional hours were added to assistant cooks and kitchen helpers, Cindy Longway made a compelling argument for the differences in types and levels of staffing and the formula she uses to inform these decisions, including meals-per-labor-hours… the decision to restructure the elementary stand-alone kitchens was not made arbitrarily. It was a well-

thought-out systems change that began three years ago in response to changes that have occurred over time in the nature of the work being performed in all of the elementary kitchens. Adjusting hours when restructuring programs and services is a very sound business practice.

The Parties were subsequently unable to settle the dispute and the grievance came to be heard by Arbitrator Timothy Williams to be decided on its merits.

STATEMENT OF THE ISSUE

At the hearing the Parties stipulated to the following issue statement:

1. Did the District violate Article 14 of the collective bargaining agreement by reducing the hours of certain Cook 2 employees effective the start of the 2010-11 school year?

2. If so what shall the remedy be?

The Parties further stipulated that the grievance was timely and properly before the Arbitrator, and that the Arbitrator may retain jurisdiction for sixty (60) days following issuance of his Award to resolve any issues over remedy, if one is provided.

APPLICABLE CONTRACT LANGUAGE

COLLECTIVE BARGAINING AGREEMENT, 2008 – 2011

ARTICLE 2 – MANAGEMENT RIGHTS

The District retains and reserves unto itself all powers, rights and authorities, duties and responsibilities conferred upon and invested in by laws and the Constitution of the State of Oregon.

Such powers, rights, authority, duties and responsibilities shall include but are not limited to:

1. The executive management and administrative control of the school system and its properties and facilities

2. Determining qualifications and conditions of employment, dismissal, demotion and promotion of all employees subject only to the provision of law and the specific provisions of this Agreement

The exercise of the foregoing powers, rights, authority, duties and responsibilities and the adoption of policies, rules, regulations and practices shall be limited by the specific terms of this Agreement.

ARTICLE 10: GRIEVANCE AND ARBITRATION

C. Arbitration

2. Selection of Arbitrator

…The decision of the arbitrator shall be binding on all parties. The arbitrator shall not be empowered to rule contrary to, to amend, to add or to eliminate any of the provisions of this Agreement.

…Charges by the arbitrator shall be shared equally by the District and the Union.

ARTICLE 14 – LAYOFF/RECALL

L. In the event the number of hours of work are reduced for any employee or group of employees and that reduction does not impact the benefit levels of the employee(s), such reduction will be done in inverse order of seniority within the affected job classification within a department or school unless:

1. The hours eliminated from an employee are temporary hours as defined by Article 1

2. There are no assignments within that classification that are compatible with the employee’s regular work schedule

3. A less senior employee has unique skills or job responsibilities which are required for the position and which cannot be learned by a more senior employee in the classification group within a reasonable amount of time (generally ten (10) days)

If hours are subsequently restored to that department or school within the following twelve (12) months, the District will attempt to reinstate the hours to the affected employee(s) before hiring additional staff in the job classification within the department of school.

POSITION OF THE UNION

The Union’s position is that the governing contractual provision in this case is clear and unambiguous and does not permit the Employer to reassign work from the Grievants’ classification to a lesser paid classification. Should the Arbitrator find that the language is not clear and unambiguous, he should adopt the Union’s interpretation as the one supported by bargaining history and reject the Employer’s interpretation as creating a harsh, absurd and nonsensical result.

The Union opens its arguments with the position that the language of Article 14, L of the Parties’ Agreement is clear and unambiguous in requiring that seniority govern the reduction in work hours except under specified conditions, not applicable here. The Employer violated this clear mandate when it shifted the Grievants’ hours to other employees and ordered them to reassign work duties accordingly. There is no evidence that there was a lack of work for the Grievants, the work was simply

moved to employees in a lower paid job classification. While the Cook 2s suffered a reduction in hours, the total number of work hours assigned to kitchen employees increased for the 2010-2011 school year.

The individual responsible for this shift in hours, Director of Nutrition Services Cindy Longway, testified that the action was based on the desire to standardize the number of hours assigned to Cook 2s in stand-alone kitchens. This motive does not relieve the Employer of its obligations under Article 14, L. There is no justification in the contract for reassigning hours to employees in another classification in order to avoid the mandate that seniority be respected. Furthermore, there is no evidence that standardization would promote efficiency in this case. The Union submits that the motive is apparent from the result of the action – higher paid employee hours replaced with lower paid employee hours.

The Union cites Arbitrator Prasow's argument that it is improper for an employer to change job content if the motive is "to evade obligations under the Agreement, or to gain advantage in wage rates… even if the contract… specifically provides for Management changes in existing job classifications". The Parties specifically bargained over the procedure for reducing hours, both regarding large reductions which impact benefit levels and regarding lesser reductions, as is the case here.

The Union requests that the bargained procedure be enforced by the Arbitrator.

The Union also cites *Elkouri and Elkouri* and Arbitrator Klamon to the effect that management's transfer of substantial work from one classification to another, when not justified by emergency reasons could be deemed a violation of seniority rights. The work lost by the Grievants was substantial, amounting to a 6.5% pay cut annually for the remainder of their careers. The fact is that Ms. Longway ordered the Grievants to reassign work to other employees as a result of her decision to reduce their hours. The Union states in its brief "Her order to reassign work to other employees is *evidence* in this case that workload of the Grievants had not decreased prior to her decision" (pg. 13). The clear and unambiguous language of Article 14, L prohibits the Employer from taking such action.

Should the Arbitrator agree with the Employer that its initial decision to reduce the Grievants' hours was appropriate, Article 14,L also mandates that seniority govern the process by which work hours are restored. Rather than increasing the number of hours assigned to other kitchen employees, the District was obligated to increase the Grievants' hours. It did not even attempt to do so, and presented no evidence that it was exempted from the mandate in accordance with paragraphs 1, 2, or

3 of the provision. The Districts actions constitute violation of clear and unambiguous contract language.

The Employer may argue that its decision to reassign hours from Cook 2s to other kitchen employees is protected by the management rights clause, Article 2. This argument is without merit as Article 2 contains language which clearly makes management's right to determine conditions of employment subject to and the specific provisions of the agreement. In this case, the specific provision controlling the right to move work between classifications is Article 14, L and it prevails over the very general language of Article 2.

Should the Arbitrator find that the language of Article 14, L is not clear and unambiguous in prohibiting the Employer's action in this case, he should consider bargaining history as the most reliable evidence of the Parties' intent. In 2008 the Parties had extensive discussions regarding the language of Article 14, L and the final product addresses all of the concerns raised by the District at the bargaining table by providing three exceptions to the seniority principle as it governs reductions in hours. It should not be allowed to create additional exceptions at this time.

The District makes the argument that the Union's failure to grieve hour reductions for other employees in the past constitutes a binding past practice. The Union's position is

that this argument is without merit for three reasons. First, because, as stated in *Elkouri and Elkouri*, the absence of grievances is not evidence of mutual agreement to a particular interpretation. Second, because while the District has reduced hours for other bargaining unit members in the past, there is no evidence that it has ever shifted hours from the Grievants to others. And third, because the prior reductions in hours cited by the District took place prior to the adoption of the current Article 14, L in 2008. Previous contract language is not indicative of whether the District violated the current Agreement and the specific changes included in Article 14, L.

> The Districts' interpretation allows it to disregard the principle of seniority embodied in Article 14, L, rendering that provision meaningless. Adopting the District's interpretation would create the harsh and nonsensical result in permitting it unchecked latitude to reassign duties and assignments from employees in one job classification to employees in another job classification for the sole purpose of reducing its payroll costs while degrading the level of employment of higher compensated employees (U brief, pg. 16).

Accordingly, the Arbitrator should reject the District's interpretation and uphold the Union's as the more plausible interpretation which retains the meaning of the language.

For all of the reasons presented above, the Union requests that the Arbitrator find that the District's actions constituted a violation of the contract and order the District to cease and

desist from reducing the Grievants' hours and to make them whole.

POSITION OF THE EMPLOYER

The Employer's position is that the language of Article 14, L is clear and unambiguous in permitting the Employer to reduce the work hours of employees or groups of employees and provides for no avenue by which decisions may be challenged by the Union. Past practice supports this position, and bargaining history contains no evidence to weaken it. The Employer's decision to reduce the hours worked by the Grievants does not violate the seniority language of Article 14L because all Cook 2s experienced the same reductions in hours across the board, thus there was no one less senior within the classification who should have had his/her hours reduced before the Grievants. Neither does the District's decision to increase hours worked by employees in other classifications constitute a violation because the relevant language only contemplates how hours are to be reduced within a single job classification in a department or school and Cook 2 is a separate classification onto itself.

The Employer opens its arguments by reminding the Arbitrator that, as this is a contract interpretation dispute, the burden of proof lies with the Union. The Employer also reminds the Arbitrator that he is bound by the four corners of

the Collective Bargaining Agreement and it is outside of his authority to insert any requirement that has not been bargained by the Parties. Specifically, the Union contends that the District ought not to reduce hours except by attrition and that it lacks sufficient reason to make the reduction in hours at issue in this case. Because no attrition requirement or specification of acceptable reasons for a reduction of hours is found in the CBA, the insertion of such would violate the contractual limitations on the Arbitrator's authority.

From the Employer's perspective, the reduction of the Grievants' hours was reasonable, given such factors as the changes in food preparation that have taken place over time, the restructuring of school kitchens, changes in enrollment and school closures. When Director of Food Services Cindy Longway performed a redesign of the system, all these factors were taken into account resulting in a changes in kitchen status as "stand-alone" or "satellite", reclassification of two positions and standardization in staffing across the stand alone kitchens, with the exception of only six Cook 2s. The District was entitled to take the final step in the redesign by standardizing all stand alone kitchen Cook 2 hours at seven, in accordance with needs and budget.

The core of the District's position is that the clear and unambiguous language of Article 14, L allows the district to

reduce the hours of employees. The provision contemplates "the event that the number of hours of work are reduced for any employee or group of employees and that reduction does not impact the benefit levels" and provides that "such reduction will be done in inverse order of seniority within the affected job classification within a department or school". There is no standard set forth which the District must meet and no limitation placed upon the District's discretion as to when it may reduce work hours. Thus, the Union's arguments regarding whether the reduction in hours experienced by the Grievants is warranted and whether it should only have been allowed to happen to Cook 2s through attrition are not relevant and should not be considered by the Arbitrator. While the Employer believes that its decision to reduce hours was entirely justified in this case because changes in the provision of food services to students has changed from involved preparation of food to a heat-and-serve model has resulted in less Cook 2 time being needed, its staffing decision requires no justification. The grievance is an attempt by the Union to gain the right to challenge the District's staffing decisions which is not granted by the Contract and should accordingly be denied.

Should the Arbitrator disagree with the Employer's position that Article 14, L is clear and unambiguous in giving the Employer full discretion to reduce employee work hours, the

District argues that past practice supports its position. Unfortunately, the District has been facing economic difficulties for an extended period of time and has an extensive past practice of reducing the work hours of classified employees, including the same individuals involved in the instant grievance, without any objection or grievance by the Union. While those examples which involve the instant Grievants took place prior to 2008 when the language of Article 14, L was adopted, there have also been numerous reductions in hours for other bargaining unit employees which have occurred since 2008. The fact that these changes have never been contested and that the Union has never challenged the District's rationale for making the changes indicates that the Union has, in the past, accepted the District's position that it has full discretion to make reductions in the hours of classified employees. The Arbitrator should reject the Union's call to take it upon himself to make a decision which is contractually reserved solely to the discretion of the District.

Evidence of bargaining history presented by the Union does nothing to weaken the District's position that it has the sole discretion to reduce work hours. Rather, the evidence shows that there was an absence of any discussion regarding whether the District would be allowed to eliminate hours in any given classification or whether it would be prohibited from increasing

hours in another classification at the same time. The District would not have agreed to any interpretation that took away its right to reduce hours whenever it deemed a reduction necessary. Bargaining history does not conclusively indicate that any agreement on such an interpretation was ever even contemplated. Thus, the language of Article 14, L must be taken on its face and the right of the Employer to made decisions regarding reductions in hours must be upheld.

While Article 14L places not restrictions on the District's authority to decide when to reduce employee hours, the Employer does recognize that there are procedural restrictions on how this is to be done. However, the Union's arguments that these were violated because the Employer did, in some cases, concurrently increase hours of other positions is without merit.

Article 14, L requires that hours be reduced in inverse order of seniority within the affected job classification. The District did not violate this requirement because it reduced the hours of all employees within the affected job classification. The term "job classification" has a specific meaning in the contract. From the manner in which it is used in Article 14, C and the Job Classification Bumping Chart it is clear that Cook 2 is a distinct job classification onto itself. Thus, in reducing hours the District is required to compare the seniorities of Cook 2s only, and is not required to consider the seniorities of

other employees such as Kitchen Assistants. The only situation in which the seniority requirement of Article 14, L could be violated is if there was a senior Cook 2 who saw her hours reduced while a less senior Cook 2 retained the 7.5 hours schedule. This scenario did not take place.

Furthermore, Article 14, L contemplates seniority only within a given department or school. Because Ms. Smith-Davis, Ms. Prince, Ms. Anliker and Ms. Hall work in schools which employ only a single Cook 2, reducing their hours could not have violated 14, L. The fact is that all Cook 2s district-wide were assigned no more than seven hours per day – there is no one less senior whose hours the District could have reduced.

Article 14, L likewise places procedural restrictions on the District's ability to hire additional staff in the job classification within the department or school, mandating that it attempt to reinstate hours prior to doing so. The Employer's action in increasing the number of hours assigned to assistant cooks and kitchen helpers did not violate this mandate because, as discussed above, Cook 2 is a distinct job classification. The only situation in which the Employer could have violated the provision is if it had hired additional Cook 2s without attempting to restore hours to the Grievants. This did not occur.

While the Employer believes it is not required to present a justification for its decision to increase the hours of assistant cooks and kitchen helpers, it nevertheless established that the increase was not the result of cuts in Cook 2 hours. Additional Cook 2 hours were not needed. Rather, the decision to increase the hours of these employees was based on a meals-per-labor-hour calculation used across all District kitchens by Ms. Longway in her staffing analysis. By contrast, the need for Cook 2 hours does not vary in accordance with meals-per-labor-hour projections. The District was not required under Article 14, L to attempt to reinstate hours to Cook 2 employees based on the need to increase the work hours of employees in other classifications.

From the District's perspective, it was inevitable that the Grievants, like all other Cook 2s, would see their hours reduced to seven per day. The District did all it could to soften the financial blow of such a change by delaying it for one year. Ultimately, changes in the industry over time has resulted in less need for Cook 2 time. According to the Employer's brief "The District simply changed along with the changes in the industry, and would have been irresponsible had it done otherwise" (pg. 36).

For all of the reasons presented above, the Employer requests that the grievance be denied in full.

ANALYSIS

The Arbitrator's authority to resolve a grievance is derived from the Parties' collective bargaining agreement (CBA) and the issue that is presented to him. The issue before the Arbitrator is "whether the District violated Article 14 of the collective bargaining agreement by reducing the hours of certain Cook 2 employees effective the start of the 2010-11 school year." The pertinent language is found in Article 14 of the Parties' collective bargaining agreement and it states:

> In the event the number of hours of work are reduced for any employee or group of employees and that reduction does not impact the benefit levels of the employee(s), such reduction will be done in inverse order of seniority within the affected job classification within a department or school.

The Arbitrator begins his analysis by noting that in a grievance arbitration proceeding, the employer is generally assigned the burden of proof in any matter involving the discipline or discharge of an employee. In all other matters, the union is assigned the burden of proof. The instant grievance does not involve a disciplinary issue and the burden of proof, therefore, lies with the Union. Since this is a contract language interpretation case, the Arbitrator determines that a simple preponderance of evidence is sufficient for the Union to meet the burden of proof.

The grievance is based on the allegation that when the Employer standardized the hours of work for Cook 2s at elementary school standalone kitchens at 7 hours, it violated Article 14, L of the CBA. From the Union's perspective, the District was able to reduce the hours of work of the Grievants, who are Cook 2s, from 7.5 to 7 by assigning Cook 2 duties to employees in a lesser classification. This reduction of hours by reassignment of duties violated Article 14, L, contends the Union.

The Employer sees the matter quite differently and sets forth that it has restructured the work assignments related to food service in the elementary school as a result of changes in work activities. Most importantly, the Employer argues that it has the management right to determine the hours of work necessary to perform the duties of a Cook 2 in the standalone kitchens. Adjusting down the hours of work needed for a particular job is often an unfortunate necessity in these difficult economic times, contends the Employer, and the reduction of hours from 7.5 to 7 for Cook 2s did not violate any provision in the CBA.

The Arbitrator relistened to the audio recordings of the hearing, carefully reviewed the documentary evidence and studied the Parties arguments. After careful deliberation he concludes that by a narrow margin the Union has failed to meet its burden

of proof. The reasoning for this conclusion is found in the following multi-point analysis.

First, over the last several years the evidence clearly establishes that the District and members of this bargaining unit have had numerous conversations regarding the question of reducing the hours of work for Cook 2s. In a number of different places, the Union's brief sets forth portions of this interaction which it feels supports its position. Ultimately, however, the Arbitrator finds little relevance in these discussions as he concludes that, as in most labor arbitration decisions, it is the language of the agreement that is dispositive.

Second, the language of the CBA protects employees from a reduction in hours of work by seniority in a classification and in a school. Specifically the pertinent language reads, "such reduction will be done in inverse order of seniority within the affected job classification within a department or school." There is no dispute that Cook 2 is a specific job classification and that there is only one Cook 2 per elementary school standalone kitchen. The evidence also clearly establishes that there are no junior Cook 2s with more hours of work then the senior Cook 2s. Thus, on its face there appears to be no violation of the language of Article 14, L.

Third, while labor agreements often contain language setting forth a standard work day and/or work week, the instant CBA contains no such provision. Specifically there is no language in the agreement setting forth a 7.5 hour work day or 37.5 hour work week for Cook 2s. The absence of such language gives weight to the Employer's arguments relying on Article 2 – Management Rights. The Arbitrator notes that Article 2 concludes with the following:

> The exercise of the foregoing powers, rights, authority, duties and responsibilities and the adoption of policies, rules, regulations and practices shall be limited by the specific terms of this Agreement.

In the Arbitrator's view, a reasonable interpretation of this language, as it applies to the facts of this case, is that since there is no specific language protecting a defined work day or work week, discretion over determining the hours to be worked in a position such as Cook 2 reverts to the District.

Fourth, up to this point in the analysis, it would seem that a clear-cut decision favoring the Employer is a logical outcome. However, in the Arbitrator's view the Union raises a compelling argument related to the reduction of work hours for Cook 2s while increasing the hours for other food preparation staff.

The Arbitrator concludes that the Union has not met its burden of proof. The evidence on the record was not sufficient to establish that the Employer violated Article 14, L when it standardized all Cook 2s at standalone kitchens at 7 hours. The grievance is denied.

Conclusion

The issue before the Arbitrator is whether the District violated Article 14 of the collective bargaining agreement by reducing the hours of certain Cook 2.

The Arbitrator has reviewed the documentary and testimonial evidence on the record and arrived at the conclusion that

Accordingly, the Arbitrator finds that the Union has not met the burden of proof in this case.

An award is entered consistent with these findings and conclusions.

IN THE MATTER OF THE ARBITRATION	)	ARBITRATOR'S
	)	
BETWEEN	)	AWARD
	)	
HILLSBORO CLASSIFIED UNITED LOCAL 4671, AFT	)	
	)	
"LOCAL 4671" OR "THE UNION"	)	
	)	
AND	)	
	)	
HILLSBORO SCHOOL DISTRICT	)	
	)	REDUCTION IN HOURS
"THE DISTRICT" OR "THE EMPLOYER"	)	GRIEVANCE

After careful consideration of all arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. The District did not violate Article 14 of the collective bargaining agreement by reducing the hours of certain Cook 2 employees effective the start of the 2010-11 school year.

2. The grievance is denied.

3. Article 10 Section C Subsection 2 of the CBA provides that "Charges by the arbitrator shall be shared equally by the District and the Union". Thus, the Arbitrator assigns his fees 50% to the Employer and 50% to the Union.

Respectfully submitted on this, the 7th day of December, 2011 by

Timothy D.W. Williams
Arbitrator