

VOLUNTARY ARBITRATION PROCEEDINGS

In the Matter of the Arbitration	(Opinion and Award
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Between	(Grievant: Class Action
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North East School District	(Date of Hearing: November 24, 2015
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and	(Record Closed: February 27, 2015
	(
North East Educational Support Professionals Association	(Date of Award: March 27, 2015
	(

Representing the District: Richard W. Perhacs, Esq.
Attorney

Representing Association: Richard S. McEwen, Esq.
Attorney

Michelle Miller-Kotula
Arbitrator

I. THE GRIEVANCE:

A class action grievance was filed on behalf of the bargaining unit employees of the North East School District (hereafter referred to as the "District"). The bargaining unit employees are bus drivers and are represented by the North East Education Support Professionals (hereafter referred to as the "Association"). The grievance was filed on May 5, 2015 in accordance with the collective bargaining agreement between the North East School District and the North East Education Support Professionals/PSEA/NEA, dated July 1, 2014 to June 30, 2017 (hereafter referred to as the "CBA"). The grievance read as follows:

Summer Bus Run Postings are being limited to either Bus Aides or Bus drivers were in the past Drivers and Aides were recognized as one group when applying with seniority being the determining factor.

The relief sought read:

That the awarding of summer runs be done according to Past Practice.

The District denied the grievance and the immediate supervisor provided the following response on May 21, 2015:

These are two classifications at the bus garage drivers and aides. They each get different pay, job titles, and do not do the same job. There should be two seniority lists. An aide cannot do a drivers job properly, and a driver cannot do an aides job properly. The aides we have known these kids problems, needs, medications, and lives. The drivers do not know these things and are not trained for these situations. That's why there are two classifications. A driver cannot do the bus technicians job a driver cannot do the supervisor's job. There are actually four classifications at the bus garage. The supervisor, the secretary, the drivers and the aides. All four have different pays, benefits and responsibilities. I have worked in six different bus garages, and no one does this, because it is wrong. It is unfair to the hard working aides that do this every day. There are only a couple of people disputing this, and they won't even take a summer run. Everybody has a job to do, they need to just do them and not try to cheat their fellow employees.

The grievance moved to Step 2 on May 27, 2015. The District sent the following reply to the Association on June 3, 2015:

Following our conversation on June 2nd, 2015, I discovered that back in October of 2014, a meeting was held with the transportation department and Mr. Polito, the Business Manager at that time. The issue of seniority and the use of two lists or one list was discussed as it related to drivers and aides within this department and seniority. From what I was told, the decision was made by the drivers and the aides that two lists would be kept. One would contain a list of the aides with their seniority and one would contain a list of the drivers and their seniority. In essence seniority would not transfer from one list to the other.

I also wanted to mention that in the contract related to the posting and election of people to fill positions, the issue of seniority is silent as it pertains to new positions and vacancies. The school district must consider applications but seniority is not used solely in the selection process.

I hope that this addresses your questions Lucinda. I will complete the grievance form submitted to me following the time guidelines in the contract and return it to you shortly.

The District also sent the following response to the Association on June 15, 2015:

Please see attached response delivered June 3, 2015. A hearing was held on Monday, June 8th, 2015. The grievance is denied at this level as a violation of the contract did not occur in this instance.

The grievance remained unresolved and was appealed to arbitration. This arbitrator was selected to hear and decide the issue. Accordingly, a hearing was held in North East, Pennsylvania on November 25, 2015. The issue of timeliness was raised with the grievance as well as the merits of the grievance were heard. During the hearing, the parties were able to present evidence, both oral and written, to examine and cross-examine the witnesses who were sworn, and to argue their respective positions. At the conclusion of the hearing, the parties decided to file post-hearing briefs. The briefs were received in the office of the arbitrator and the record was considered closed.

II. BACKGROUND

Darryl Maas testified he was previously employed by the District and was the Transportation Supervisor from January 10, 2003 to July 1, 2014. He began working in the transportation department, March 1, 1982 as one of the mechanics. When he was the bus supervisor he scheduled the bus runs that were in the summer and during the school year. He was familiar with the procedure used before he became supervisor. He continued the procedure in place when he took the supervisor's job. He explained depending on summer runs or fall runs, the routes were developed based on the children, the schools, the busses that needed aides. A list would be generated with the bell schedule. It was determined how many drivers and aides were needed for the positions. The jobs would be posted on the bulletin boards.

A meeting was held in the middle of August. They would go through the department seniority list during the meeting and the drivers would pick the runs they were qualified to work. He noted for the summer runs a formal meeting was not held because school was in session and the runs were posted on the bulletin board. The employees were assigned the job.

He discussed drivers and aides are part of the department. The driver needs an S endorsement, a P endorsement for Pennsylvania licensing. The drivers take classes in bus driver training and take driving tests. The bus aides must have a willingness to work with the driver and take care of the kids. He pointed out many aides are hired and later pursue the driver certification. Once a bus aide obtains a CDL license and the proper qualifications he or she is considered to be able to drive a bus for the District.

Mr. Maas explained there are school vehicles in the District's transportation fleet that do not require a CDL license. There are nine passenger vans plus a driver. He pointed out an aide without a CDL is eligible to drive these vehicles. In emergency cases an aide could be used on a van.

When he was employed at the bus garage he used only a seniority list that included both the drivers and aides in order of their overall department seniority. He noted one aide had the qualifications to be a driver and continued to be an aide until the children graduated then became a driver. He never had a problem with a properly qualified aide driving a bus run. He never had problems with drivers serving as aides. He testified the method of filling bus runs from 1982 to 2014 was how he described. He assumed the administration was aware this was the system being used to fill bus runs. He did not recall any objection from any administrator regarding the practice of using overall department seniority to fill the bus assignments. He pointed out a benefit of using overall department seniority would be if an aide moved up on the seniority list when he or she received his or her license and would transfer into the same position instead of having to drop to the bottom. When he was employed by the District the drivers and aides all worked together. The different job titles never created any tension.

He discussed the person who was an aide and was qualified to drive had the option of changing into a driver job at any point during the five year period if there is a bid. He contended it was more common for drivers to choose aide jobs in the summer. He noted only so many jobs are available in the summer. The people who wanted to work in the summer took these positions. Some employees were not interested in working in the summer. He never posted a run with any notion it was only available to

aides or drivers with CDL licenses who were not eligible to bid on the position. It was typical for the most senior employee to select the bus runs that paid the best. The aides tended to be newer employees. He never recalled any dispute of a driver being dissatisfied because an aide selected his or her job. He never had an issue with an aide who was unhappy that a driver selected a position. He noted winter drivers could have been on a summer job.

During cross-examination, Mr. Maas said the driver's regular runs are based on the daily rate for four to five hours of work. Drivers who have middle of the day routes work longer. There is a difference between the pay of an aide and the pay of a driver which motivates the aides to want to be drivers. He pointed out coaches and teachers could drive the vans. He did not recall any driver claiming an aide job other than in the summer if nothing else was available. He never encouraged the situation of a driver being bumped to an aide job. He would not have been too keen on it if it happened. He noted if the situation occurred the driver would take a pay cut. An aide would only become a driver if a vacancy occurred.

Mr. Maas stated summer drivers picked aide runs all the time. He said aides work on the busses on the summer. He testified more employees are interested in both types of assignments than the District had assignments to give out. He said the preference went to the drivers. He explained the driving positions in the summer were filled with drivers. He contended some drivers may have been aides because they would rather work that position in the summer.

Marlene Gilkinson testified she is a bus driver and a cafeteria cooks helper. She worked for the District for 4+ years, 3 ½ years in the bus garage. She has been the

Association President since August 2015. Cynthia Voltz was the prior president. She contended Ms. Voltz was an aide in the first grade core.

She pointed out hill run, flat run and tech run are regular bus runs. The AEP run is for 180 days. On the AEP run a driver and an aide make the same hourly rate. She explained she was a driver on the AEP route and discussed who took the driver role and who took the aide role. She let the senior driver take lead. She noted the senior driver sometimes allowed her drive to get more experience behind the wheel.

Ms. Gilkinson stated when she was hired into the bus garage she came in as a substitute aide then got her CDL. She explained the drivers and aides would meet in the middle of August and choose their route based on seniority. This school year the drivers selected routes first and the aides selected routes when the drivers were done. She contended some aides later obtained a CDL.

She pointed out Mr. Maas' successor came in and noted there were eight pieces of paper. One said "CDL drivers only" and the other said "no CDL drivers." When she questioned the boss, he said "the driving ones all are full" and she could not bid until after the closing time.

She said some aides had less overall seniority than she did in the transportation department. Ms. Gilkinson stated seniority is based on length of time in the transportation department. She explained how the seniority works in the cafeteria. She is aware employees have personal reasons why they might prefer one assignment over another. She noted the seniority lists are posted in the transportation department on the bulletin board where all of the runs are posted. She testified Heather Gilkinson, the most

senior aide has an opportunity to bid before some of the designated drivers. She pointed out two aides had a chance to bid before she bid.

Ms. Gilkinson stated when the new supervisor came in after Ms. Maas, the first bidding session was done exactly the same as the prior one relying on the seniority list. She pointed out the following spring, the format of the seniority list changed. When bidding took place in the spring of 2015 for summer bus runs, the drivers bid first then the aides bid second. Drivers were permitted to bid on open aide positions before the aides had a chance to bid. She contended when the posting said no driver with CDL she was precluded from bidding on one of these positions. She was told she was not allowed to bid until after the closing date. Bidding occurred differently the previous year because she would have been able to select an aide run during her normal spot as they went down the seniority list. She discussed the employees looked for different factors on the bids.

She noted Arlen Sanden replaced Mr. Maas as bus supervisor in 2014-2015. She said once Mr. Sanden became supervisor the bargaining unit members in the transportation department had meetings to discuss the issue of whether the bidding should be done by department wide seniority or not in October/November. She stated the Association took minutes during the meeting. She contended she was present at the October 24th meeting and the seniority issue was discussed. It was the consensus of the group to keep the seniority list, not to segregate it.

Ms. Gilkinson testified a second meeting was held in November 2014. The issue of seniority was discussed. The consensus of the group was to stay with one seniority list. She noted another meeting was held in May 2015. Employees in the bargaining unit and not in the bargaining unit were present. The majority voted to stay with one list.

She pointed out at each of the meetings the overwhelming majority voted to keep the seniority list the way it had been kept. She said her flat run was modified, it became a hill run and changed her rate of pay. She noted when the head cook is out the senior cooks help her become the head cook and she gets the head cook pay when she is substituting. She contended other than substitute roles her normal cook wage does not change during the course of the school year.

Ms. Gilkinson testified during cross-examination she got her CDL on October 18, 2012. She was hired in the transportation department March 2013. She had her CDL before she became a regular employee in the department. Before she became a regular employee as a driver she was subbing as an aide or subbing as a driver.

Ms. Gilkinson discussed a list of dates of the drivers. She explained who had a CDL. She was aware of this grievance before she became Association President.

She explained her status as a flat rate driver could change based on the length of time she is out driving. She contended her run was upgraded because it changed. Ms. Gilkinson stated for the bidding in 2015 when Mr. Sanden was present the drivers bid on the runs then the aides got to pick the drivers they wanted to go with by seniority. If there were not enough aides the District would hire an aide.

She noted she was not at the first meeting with Mr. Maas because she got her CDL in the middle of the year. She was present for the 2013/2014 meeting. She contended the senior driver was allowed to bid on the run. She said the aides were able to bid in line. When she bid in the cafeteria she bid on the building she would work and the timeslot. She explained the CBA says cooks helper and they are all paid the same.

The employees get paid the same no matter what building they work. The employees are allowed to choose by bidding the schedule.

Ms. Gilkinson pointed out a meeting was held because the seniority list changed on the wall. The employees did not want to be segregated, they wanted to stay all one Union. She noted it was not everybody but she did not ask who voted no.

Heather Gilkinson testified she has been employed by the District since October 2007 as an aide in the transportation department. She is number eleven in seniority. When the list was split out she was number one in aide seniority.

In the summer of 2015 and for the fall of 2015/2016 she was not permitted to bid until every driver made their bid. She previously would have been in front of six drivers. When she first started to work as a transportation aide her classification was 1-D. She was a grievant in a grievance about her classification. She works less than five hours a day as a 1-D but began to work more than five hours a day. She pointed out her classification ultimately changed to a 1-C. H. Gilkinson stated she does not have a CDL license by choice. She said most of the aides either come in with a CDL or choose to obtain one after they have been there. She contended she has been asked to drive a vehicle for the District a couple of times in an emergency. She was asked to drive the little vans which did not require a CDL. It is her personal preference to remain an aide. She does not want the responsibility of driving a vehicle.

She participated in the meetings held in the fall of 2014 and in the spring of 2015. She said in the meeting it was unanimous to keep one list. She noted four dissenters were in the meeting. She agreed with keeping one seniority list.

Kelly Barker testified she has been employed by the District since 1996. She started in the kitchen first, went to the bus garage, transported food and in 1998 started to transport children. She is fourth in line in department seniority. The runs were always bid by overall seniority.

She pointed out at the meeting in the fall of 2014 and the spring of 2015 the majority of employees wanted to stay in one group. She noted the bid sheets never contained “aides only” and “no drivers with CDLs” before the present postings. There were no limitations on who could bid in prior years for summer bus runs. A good percentage of drivers began as aides in the department. She explained it could be advantageous for a driver to bid on a summer aide position because of the schedule. She discussed she might consider runs with certain schedules even if the runs are at a lesser pay. She noted all runs with a bus would require a CDL. Under normal circumstances a bus would have required a person to have a CDL. If an emergency situation occurred an aide could take a van. She pointed out drivers are trained how to handle students including special need students who ride the bus. She discussed the Handle with Care Program. She said the drivers are trained to follow the Pennsylvania School Bus Driver Manual. She contended this manual was part of her CDL training. She had to go through the sections thoroughly and know them well. The manual reflected training she received in handling students on the bus. The program she went through gave her the confidence to properly supervise students on the bus including special needs students.

Ms. Barker contended she had been a special needs driver her entire career. She explained she bid on a supplemental alternative education program as a p.m. aide. She opted to be an aide because she could have more interaction with children.

She said the whole group initiated the grievance. If the previous practice is not reinstated they are pulled apart as a group. She stated separate lists caused the group not to be cohesive.

She explained the past practice was different than the procedure now used. The grievance was filed because the group was hoping to get it written to coincide with how the practice had always been because it was not written. She noted the drivers and aides met on three different occasions to discuss this issue, in October, November and May to June. The Association wants to keep past practice running as it always had. She said if an agreement was reached the way it always was they would be very happy. The grievants are not trying to overhaul the CBA, just trying to honor the past practice.

Ms. Barker pointed out her first two or three years with the District she was a driver without a CDL. After she obtained her CDL there was no change to her seniority date. She contended Cheryl Orton continued to work as an aide for several years after she obtained her CDL and was qualified to be a driver. Ms. Orton's transportation hire date was established in 2005 and her driver hire date is October 31, 2009. She said several employees have earlier driver hire dates than Ms. Orton. She testified Ms. Orton bid according to the August 31, 2005 date. Ms. Orton was permitted to bid before Korene and Don. No one complained Ms. Orton jumped Korene and Don in seniority because it was practice the transportation hire date was used.

Ms. Barker contended she was present at the meeting Brian Polito attended when the seniority process was discussed. She said she talked with a group as a whole and they were on board with keeping the seniority list as one. She did not know because of the secret ballot if the negative votes came from non-members invited to attend the meeting.

She discussed the seniority list on the board. Every season the list is hung and the list is new. She said Sara Land is the Business Manager's Secretary. The Association obtained a list from the business office. She noted the secretary eliminates the hire date and puts the people as hired on the list.

During cross-examination, Ms. Barker testified it would be a big deal for the drivers to bid routes by seniority and for the aides to go next. They honor seniority and show respect to the senior employees by allowing them to be entitled to what they bid.

She explained the list the Association always received showed when everyone was hired. She said a list with separate jobs was not what was used for bidding. She noted an official seniority list is posted on the bulletin board. She did not have a copy of the seniority list at this arbitration.

John Revell testified he is the Region Field Director in the Northwestern Region for the PSEA. He works with the North East Education Support Professionals on grievances, negotiations and anything that has to do with the CBA. He wrote the original grievance dealing with this issue and sent it to Ms. Voltz, the President. He did not attend the lower level grievance meetings on this matter. He was aware the administration and the District's attorney said this grievance was not timely filed. The District informed the Association it took a while before the Association referred this to the Board level and had not met the timeline. He had conversations with the local Association leadership and Ms. Voltz. He responded to Dr. Frank McClard's letter. He communicated to Dr. McClard. The Association felt it had an ongoing dispute and wanted to resolve it before the Board level. He consulted the CBA regarding the grievance timelines. He believed the grievance was timely filed because the school year

was over and a lot of the discussion occurred prior to the end of the school year. He noted days to define in the grievance procedure refers to days school is in session, the 180 days. He said this period of delay occurred over the summer. If he did not communicate this information to Dr. McClard he communicated it with Mr. Perhacs. He pointed out the parties agreed to skip the Board level and go immediately to arbitration and any question about timeliness would be decided by the arbitrator.

While being cross-examined, Mr. Revell testified the CBA does not say 180 days but school work days. He has no first hand knowledge of any discussions that may have occurred between Dr. McClard and Ms. Voltz. He did not help Ms. Voltz write the CBA proposal that was given to the District in June 2015. He was involved in drafting the Association's CBA proposals in prior negotiations. He would have been responsible for the final approval of the Association's CBA proposal in 2004 and 2005.

Brian Polito testified he has worked for the Erie School District as the Chief Financial Officer since May 2015. He was the prior Business Administrator at North East School District from the summer of 2005 through April 2015. The transportation department was under his authority. He noted Ms. Voltz was the Association President for the last one or two years he worked for North East. He pointed out he attended a meeting with the members of the transportation department in October 2014. Most of the aides and bus drivers also attended and his payroll secretary Ms. Land was present. He explained he initiated the meeting because there was a lot of discussion among the drivers and transportation aides about seniority. The District thought it was best to let the drivers choose whether or not they wanted an aide that had been an aide in the District for a number of years with the ability to transfer that seniority into a driving position. His

impression of the meeting was that before the employees wanted to combine into one list but once he and Ms. Land explained when that happens there were a lot of aides on the list that if they obtained a CDL, would automatically jump over seniority and be able to outbid drivers. The group did not like that outcome. They would be negatively affected because they could lose a run that went to someone that never had any driving experience. He said other than the provisions in the CBA that allows drivers to claim runs based on seniority, the CBA does not require the District to utilize seniority in assigning people to job classifications. He noted there is a section in the CBA for the cafeteria employees with a similar bidding process and in the transportation section about extra runs. There is no provision about using seniority to change classification. When a classification changed it was done through a Board resolution. The District allows employees to bid on new classifications. The CBA does not require the District to award them to an existing employee and it requires the District to consider the employee. He said the Association, upon several occasions, has tried to grieve how vacancies are filled in transportation, in other departments including the aides in food service. All of these grievances have been abandoned. The District has not conceded these contractual requests. He contended it is the District's position school work days includes the summer because there are people working in the summer in this bargaining unit including clerical, custodial and grounds employees.

Mr. Polito testified during cross-examination in July 2015 the District on a whole was on summer vacation. He pointed out the custodial workers are in a different bargaining unit. He said bus drivers work over the summer. He understood the past practice was that the drivers bid on driving bus runs and aides bid on aide positions when

the bidding list came up. If there was an empty position an aide or substitute would be hired to bump in and fill the empty position. In his ten years with the District there was never any instance when a bus driver bid into an aide position or an aide bid into a bus driver position. He testified one of the biggest issues he dealt with was the belief the bargaining unit members had seniority rights for any type of position. He noted in his experience the bidding crossed over. The CBA speaks of driving positions not aide or transportation positions.

Mr. Polito discussed Article XIV Transportation Department in the CBA. He did not disagree a driver could go into one position and be upgraded. He discussed employees who bid on a run might not be on a hill or flat run until the final accounting is done in October. A flat run is 4 ½ hours or less and a hill run is 4 ½ hours or more. He pointed out the routes do not change very often. When the employees bid they have an understanding of which runs are going to be hill and which ones are going to be flat.

Mr. Polito said seniority is used for two different things in two different parts of the CBA. The departmental seniority list is used in the section of the CBA that refers to reduction in workforce situations. The other section relates to the bid list with separate lists for drivers and for aides. He disputes Mr. Maas' testimony since 1982, the transportation department did the bidding by straight seniority from the department.

Frank McClard testified he has been the Superintendent since February 2015. He was the Superintendent after this grievance was filed and while it was being processed. Neither he nor anyone acting on his behalf of the District agreed to suspend any of the time limits for processing a grievance set forth in the contractual grievance procedure. He never signed any document that would have provided for such an extension and was

never asked to agree to such extension. He did not have any discussions with any officer of the Association including Ms. Voltz about the grievance between June 15, 2015 and July 20, 2015. He received a letter from Ms. Voltz relative to this grievance on July 20, 2015. Ms. Voltz gave him a document in which she requested for the District to agree to amend the CBA relative to this issue. He noted this document would have resolved this case by handling things the way the Association wanted it to be handled. He did not agree to it.

Mr. McClard testified during cross-examination, in late June Ms. Voltz indicated to him she would get back to him about the status of this grievance. He did not have any discussions with her or anyone from the Association after he received this document.

III. ASSOCIATION POSITION

It is the position of the Association the District violated the CBA when it unilaterally changed the bidding procedure traditionally used in the transportation department for assigning bus runs. The Association contends the established procedure was consistent with the CBA. The language includes procedures unique to the transportation department. The bargaining unit employees are grouped into different classifications. The classification of 1-D is used. Other than this designation there is no difference between category 2-A, since each employee works less than 180 days, less than five hours per day schedule.

The Association points out the wage system in the transportation department is unlike that of any other classification. The transportation department employees' wages are not dependent on their job title or group status, but on their specific assignment. The

Association contends the ability to bid on a particular run is determinative of the transportation employees' wages. Thus, maintaining the integrity of the bidding process is essential for transportation department employees. The employees are not guaranteed to have the same assignment from season to season because they are rebid each year.

The Association submits prior to the summer of 2005 the bidding procedure was based on seniority. Bus drivers and transportation aides were both considered part of the department and shared the same I-D classification. Since there is no other basis for determining seniority under the CBA the District's unilateral change violates the language and should be reversed.

The Association submits seniority rights are based on department, not position. When the CBA provisions are read together seniority means over all time since the date of hire in a given department. There is no language in the seniority provision suggesting it is appropriate to further segregate departmental seniority by position title. Wages are set by job assignment not position title. Both the bus drivers and transportation aides initially receive the same I-D bus driver classification unless they qualify for a higher classification based on their hours of work. The opportunity to select bus assignments should be by seniority from among all transportation "drivers." Since any transportation aide can be assigned to serve as a van driver, an assignment that does not require a CDL license, all the positions in the department are potentially "drivers" regardless of whether they are normally scheduled as such. The seniority applies to all bargaining unit members in the transportation department. The traditional bidding procedure complies with the CBA. The District's unilateral change in that procedure violates the CBA.

The Association takes the position the District impaired the seniority rights of bus drivers and transportation aides. The overwhelming majority of the affected department employees prefer the system where jobs are bid by overall department seniority. The Association pursued a settlement of the grievance that would more accurately describe the already existing practice. The majority of the Association believed the use of a single departmental seniority list kept the group united and there was reluctance to see the group divided. The bargaining unit members in the transportation department feel passionately the traditional practice of bidding by seniority using one departmental seniority list promotes fairness, unity and complies with the CBA.

The Association points out the District's position fails to acknowledge the unique nature of the summer bus runs. There is less demand since many drivers wish to be off in the summer or seek a less taxing position. The Association notes because there are fewer bus runs in the summer not all interested drivers may have a run available to them.

The Association states under the new system imposed beginning in the summer of 2005 the transportation aides would be given the first opportunity to bid on vacant summer aide positions. More senior bus drivers would be unfairly deprived of the opportunity to bid on available positions by seniority. Drivers who wanted to work as aides were not given the opportunity to utilize their continuous service with the District to outbid a less senior employee for their preferred bus assignment as guaranteed by the CBA. Bus drivers were denied their full use and benefit of their seniority. These actions constitute a blatant violation of the CBA and compel the grievance to be sustained.

The Association argues changing the established bidding system is inherently unfair. The District blatantly ignores its contractual obligations and the rights

transportation employees enjoyed for years prior to the summer of 2015. The District has devalued the benefit of the departmental seniority and the traditional bidding process and harmed the bargaining unit. The Association further argues to the extent the CBA is ambiguous the District violated the well established past practice of the parties. Although the Association believes the contractual language is clear, there is overruling evidence of an established past practice that requires the bidding process for bus assignments to be implemented by overall department seniority. There is clear evidence of a long, well-established past practice going back decades. The CBA sets out a general rule that regular bus runs will be filled each season by seniority. The Association points out the evidence overwhelmingly demonstrates there was a long time consistent past practice whereby the bidding process for bus assignments was conducted using one seniority list of overall transportation department seniority. The three Association witnesses confirmed this has been the practice prior to the summer of 2005. Ms. Barker credibly testified for a 20 year period summer bus runs were always bid by overall department seniority. Mr. Maas, who worked in the District's transportation department in 1982 before moving to the supervisor position in January 2003 testified he continued such bidding procedure that had been in place prior to his tenure. His testimony confirms what both the supervisor and the Association bargaining unit accepted as a normal and proper course of conduct for selection of bus assignments in the transportation department. Employees had the opportunity to select the preferred position they were qualified for by their overall department seniority. The Association notes Mr. Polito's testimony when read as a whole does not contradict the credible testimony of Mr. Maas that the overall

seniority for bidding was a practice consistently utilized since his initial employment with the District in 1982.

The Association states Mr. Maas and his predecessors clearly allowed the transportation department employees to select their bus assignment whether it be a bus driver or transportation aide by assignment, by overall department seniority. The practice predated Mr. Polito's tenure with the District by decades. The demonstrated past practice shows how this rule was implemented. Both bus drivers and transportation aides were included in the bidding process and permitted to use their overall department seniority to select a preferred job assignment.

The District's unilateral change to the transportation department's bidding process violates the CBA. The Association states the record is clear the District under a new supervisor changed a procedure representing a practice that had been in effect for over 30 years. The general contours of the procedure were commemorated in the CBA. There is no evidence in the record the District met its obligations before implementing such a unilateral change to the established conditions of employment. The Association points out the CBA contains a mutual waiver clause. The only circumstances under which a party makes a change to the status quo is after the parties agree to negotiate, and the parties reach a mutual understanding and agreement regarding the changes. The District was required to first notify and negotiate with the Association with respect to this change and it did not.

The Association takes the position the grievance was processed in a timely manner that did not prejudice the District. The Association did not fail to promptly move the grievance to arbitration after it was denied at Board level. The Association

recognizes there was a delay while the local bargaining unit sought to reach a settlement, but matter was moved within the contractual timelines and the District's challenge should be rejected. The grievance procedure specifies timelines for moving grievances from one step to another. The timelines vary as to the number of days following each step. The Association points out the term days when used in this procedure shall except where otherwise indicated relate to working school days. Thus, weekend or vacation days are excluded. The President of the Association notified the Superintendent on July 20, 2015 the bargaining unit wished to move the grievance to the Board level. The Superintendent's response was dated June 15, 2015. During the time between the Superintendent's response and the Association's request to move the grievance, multiple conversations were held about resolving the matter short of going to the Board.

The Association leadership met with the transportation employees to craft the settlement proposal to clarify and codify the past practice and resolve the grievance. The Association President told the Superintendent on or about June 23, 2015 a response would be forthcoming. After the settlement agreement was requested, the Association immediately communicated its desire to move the grievance forward.

The Association contends the Superintendent's response was dated after school had been dismissed for the summer. The Association points out under the CBA's definition of working school days, no working school days elapsed between June 15 and July 20. Vacation days are excluded from the timeline calculation. The Association cannot be viewed as exceeding the contractual timelines in the processing of the grievance. There is no procedural defect in the processing of the grievance. It is arbitrable and appropriate for the arbitrator to decide the merits of this case.

The Association submits the grievance is timely as a continuing violation. According to the seniority list that was in place in October 2014, all transportation employees, both bus drivers and transportation aides, were listed in order of department hire date. The Association points out in violation of the contractual procedure for filling transportation department bus assignment, senior bus drivers were inappropriately deprived of the opportunity to bid on aide positions by the new supervisor. Each day these positions were not properly filled by seniority constitutes a repeated violation of the CBA. The contractual violation in this grievance is a continuing violation and remained timely on July 20 when the former President notified the Superintendent the Association wished to proceed to the Board level with a grievance.

The District misunderstands and misrepresents the nature of the grievance. At the hearing, evidence of old bargaining proposals was submitted by the District and implied the denial of the grievance was based on its belief, the Association was seeking to change the CBA to ensure vacant positions are filled by strict seniority. The Association is attempting to enforce the seniority rights of those bus drivers and transportation aides that have already been selected and hired by the District and have become part of the bargaining unit. The sole purpose of the grievance is to enforce this provision in the manner in which it has traditionally been implemented. The Association points out the District's witnesses exhibited a fundamental misunderstanding of the day to day operations of the transportation department. Mr. Maas' testimony, along with that of the Associations' witnesses was the most credible. He confirmed there could be significant interchange between the titles of bus driver and transportation aide. It was not uncommon for bus drivers to bid into an aide assignment when the bidding procedure

occurred. The Association points out the use of department seniority provides flexibility to the transportation department employees. The mere use of department seniority for choosing an assignment is completely unrelated to the employee's position or status. Employees who enter the department as transportation aides often went on to obtain a CDL. In the traditional bidding process, the employees' seniority came into play. The District is confusing the selection of seniority with selection by pay rate. The aides may lack the proper qualifications such as a CDL license that would make them ineligible to select assignments requiring driver qualifications. Even if a bus driver selects a run based on its wage rate, it remains subject to change and the wages are not guaranteed.

The Association is seeking reinstatement of the contractual bidding selection process in the manner in which it was conducted for decades. The Association wants to continue a selection of job assignments by department seniority. The traditional bidding procedure does not improperly intrude upon the District's managerial discretion. The Association respectfully requests that the grievance be sustained and the District be ordered to return to the traditional process of bidding for job assignments by overall transportation department seniority. The Association concludes the CBA contains the clear language defining the employees' seniority rights and granting transportation employees the right to use their overall department seniority to select their bus assignment. The CBA does not make it contingent on any other condition such as title. The Association argues the District reduced the employees' seniority rights when it unilaterally changed the procedure for bidding on assignments in the transportation department and violated the CBA. The District's action is contrary to the decade old past practice whereby both bus driver and transportation aides were considered drivers for

purposes of bidding. The District violated a consistent and well established past practice when it imposed a new procedure in the summer of 2015. The Association is seeking to enforce the bidding procedure for transportation department employees in the same manner the parties traditionally understood and implemented it. The Association requests for the grievance to be sustained and the District ordered to return to the previous procedure of one seniority list being utilized and for qualified bargaining unit employees regardless of title receive the opportunity to select assignments they desire in order of transportation department seniority.

IV. DISTRICT POSITION

It is the position of the District the grievance was untimely filed. The grievance must be denied. The District also contends where the CBA establishes separate classifications for drivers and aides with separate rates of pay and does not afford any employees to claim vacancies by seniority, the drivers and aides may not freely claim positions in either classification by seniority.

The District at the outset contends the grievance is untimely. The CBA requires the grievance to be moved to the Board level within five days of the Superintendent's denial. An extension requires written agreement of the parties. In this instance, the Association's attempt to move the grievance to the Board level occurred on July 23, 2015 almost five weeks after the Superintendent's June 15 denial. The parties never discussed a time extension and there was no written agreement to provide one. The District contends the Association's position the grievance procedure definition of days as

working is inconsistent with the expressly declared purpose of the time limits. It also ignores the fact the members of this bargaining unit work during the summer hours.

The District submits driver and aide are discrete classifications. The CBA does not contain any provision granting to any category of employees the right to claim entitlement to an available job by seniority. Jobs are posted and employees can apply. Often but not always incumbent employees are given the opening but they have no right to the position. The District has guarded its discretion to award positions to either incumbent who applied or new hires as it deems best for the given case. The Association has tried to limit the District's discretion through proposals in negotiations that would have installed a seniority bidding system to control movement between classifications. The District has resisted including language in the CBA.

The District states the grievance is a transparent attempt with respect to the transportation department and its two classifications to install a seniority based bidding system. The District points out the relevant CBA language only includes the term drivers and only drivers are subject to the seniority system. The District points out what is being bid through this language are job assignments.

The District states the Association's entire position depends on the arbitrator viewing drivers and aides as having a single unitary job classification. The qualifications for the two classifications are totally different with drivers requiring a CDL and aides only requiring minimal training related to handling children. The job duties are equally disparate and there is a vast pay disparity. These are separate distinct jobs in the CBA which provides no right for employees to claim any position based on seniority. The Association understands the CBA does not treat aides and drivers interchangeably

because the Association attempted to interest the District to amend the CBA during the summer of 2015. In June 2015 the Association President went to the Superintendent and announced "the Union would like to add an addendum to our contract."

The District contends the error of the Association makes is failing to recognize what happens two times each year in the transportation department is a selection of work assignments and not assignment to a position. No one is entitled under the CBA to a position, but drivers are entitled to select their runs on the basis of seniority. In the summer of 2015 the groups of employees were separated by classification. The District has never permitted an aide to claim a driver's rate over an employee already working as a driver and the Association could offer not a single explanation otherwise. The District has allowed aides who had a CDL and wanted to become drivers to be placed in vacant driver positions. An aide has no contractual right to a driver's slot. The District points out Association witness Maas testified the only time aides got driver's spots was when there was a vacancy and the District had to add a driver. The same situation prevailed with the route selection process for the limited amount of available summer work. No one disputes the drivers' runs were bid among the existing drivers by department seniority. The only time an aide has become a driver was when the District needed to add a driver and chose to promote an interested and qualified aide.

The District concludes through this grievance the Association attempts to obtain what it failed to obtain in negotiations – the right for employees to claim jobs through seniority. The CBA clearly sets up a system in which the jobs of driver and aide are separate classifications carrying significantly different rates of pay and includes fundamentally different qualifications and responsibilities. The District argues the

language in Article XIV Section 8 clearly describes the very limited seniority right drivers have to select not positions but routes or work assignments with corresponding pay slots.

V. RELEVANT CONTRACTUAL PROVISIONS

**Article II
Term of Agreement**

- A. The term of this Agreement shall begin on July 1, 2014 and shall continue in full force and effect until June 30, 2017, or until such date as the two parties may hereinafter agree is to be the extended ending date. Any such extended date shall be evidenced by an amendment to this agreement, to which amendment both parties shall signify their approval by affirming their signature hereto.

**Article VII
Wages, Hours & Benefits**

I. CLASSIFICATION OF EMPLOYEES

- 1-A At least 186 days - full summer employment, 5 hours per day or more
- 1-B At least 186 days - 34 days of summer employment, 5 hours per day or more
- 1-C At least 180 days, 5 hours per day or more
- 1-D Bus Drivers - 180 day drivers, less than 5 hours per day
- 2-A At least 180 days but less than 5 hours per day
- 2-B At least 180 days but less than 2 3/4 hours per day
- 2-C Probation

J. WAGES

The following wages and conditions will be effective during the term of this contract for hours worked:

Transportation Department

	2014-15	2015-16	2016-17
Bus Drivers: Hill Runs	\$78.98/day	\$78.98/day	\$78.98/day

Bus Drivers: Flat Runs	\$73.53/day	\$73.53/day	\$73.53/day
Bus Drivers: Tech Run (4 per day)	\$39.50/run	\$39.50/run	\$39.50/run
AEP Driver and Aide	\$13.66/hr	\$13.66/hr	\$13.66/hr
Van Drivers without CDL License	\$11.96/hr	\$11.96/hr	\$11.96/hr
Transportation Aides	\$11.60/hr	\$11.60/hr	\$11.60/hr

Transportation Supplementals

	2014-15	2015-16	2016-17
Activity Runs	\$13.11/hr	\$13.11/hr	\$13.11/hr
Driver Training Course	\$13.11/hr	\$13.11/hr	\$13.11/hr
Learn Route	\$10.92/hr	\$10.92/hr	\$10.92/hr
Washing bus (1 hr/week)	\$10.92/hr	\$10.92/hr	\$10.92/hr
Fueling Bus off premises	\$.0642/gal	\$.0642/gal	\$.0642/hr
Detention	\$13.11/hr	\$13.11/hr	\$13.11/hr
Mail Run (1-hr minimum)	\$13.11/hr	\$13.11/hr	\$13.11/hr
CBI (1-hr minimum)	\$13.11/hr	\$13.11/hr	\$13.11/hr

Article XI
Seniority

A. Seniority

1. The term seniority means a preferred position for specific purposes which one employee within the school district may have over another employee within this bargaining unit because of a greater length of continuous service within the school district.

Seniority cannot be transferred from department to department within the bargaining unit.

2. A new employee of the North East School District shall service a satisfactory probationary period of sixty (60) scheduled working days prior to being considered for appointment.

B. Transfers

1. Employees desiring to transfer to a posted position shall submit a written request to their immediate supervisor stating the reason for the requested transfer. If the Board or its agent in its discretion agrees to such transfer, the employee shall be entitled to maintain his seniority rights.
 2. No vacancy or new position in the bargaining units will be filled by hire, transfer, or promotion until such vacancy has been posted for a period of five (5) working days with all department heads, and present employees have had the opportunity to apply for such positions and to have their applications considered. All transfers will be made on a probationary basis of forty-five (45) scheduled workdays.
 3. All transfers within the same job title as outlined in Article XI shall have no reduction in pay. Those transferring shall serve a forty-five (45) day probationary period.
 4. An employee transferred to the same or higher classification will, at his/her discretion, have five (5) working days from the time he/she starts the new job to return to his/her previous position.
- E. All drivers shall attend a meeting during the summer vacation for the purpose of formation of routes and the annual bidding of full-time routes.

Article XIII
Grievance Procedure

It is the interest of the general public, and in the interest of the school children that both employer and employees service, that grievance be reconciled and disposed of as expeditiously as is possible.

The parties agree that grievances which arise out of the interpretation of this agreement shall be resolved in accordance with the grievance procedure as follows:

A. Definitions

1. Grievance - A "grievance" shall mean a complaint by a member of the unit or a group of the same, that there has been an alleged violation, misinterpretation, or misapplication of a term or terms of this agreement.
1. Grieving Employee - A "grieving employee" is a person or persons making the claims.
2. Days - The term "days" when used in this procedure shall, except where otherwise indicated, mean working school days; thus, weekend or vacation days are excluded.

B. Procedure

1. Time Limits

Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process.

- a. The time limits specified may be extended by mutual agreement in writing.
- b. Presentation of the grievance shall be within fifteen (15) days of the time when the member of the unit has knowledge of the grievance.
- c. Failure of the grieving member of the unit to proceed to the next step of the grievance procedure within the time limits shall be deemed to be acceptance of the decision previously rendered and shall constitute a waiver of any further appeal concerning the particular grievance.

2. Level One - Immediate Supervisor

- a. Any member or members of the unit may present his/her/their grievance to his/her their immediate supervisor. Such grievance shall be in writing and must state specifically (1) That the grievance procedure is being invoked; (2) The nature of the grievance; (3) The specific terms of the contract on which the grievance is based. The grieving employee(s) may appear alone or with a representative of the Association.
- b. Within five (5) days of the receipt of the grievance, the immediate supervisor shall inform the grieving employee(s) and the Association of his/her decision and shall provide same with a brief statement in writing of the reason.

3. Level Two - Superintendent

- a. If the grieving employee(s) is/are not satisfied with the disposition of his/her their grievance at Level One, or if no decision has been rendered, he/she/they shall file the grievance, in writing concurrently with the superintendent and the bargaining agent within five (5) days after the decision at Level One or ten (10) days after the grievance was presented. If a representative is to appear, this shall be designated in the written appeal or in the initial conference.
- b. Within ten (10) days of receipt of said appeal, the superintendent or his designated representative shall conduct a hearing. The grieving designated representative shall conduct the hearing.
- c. The immediate supervisor of the grieving employee(s) who rendered a decision on Level One shall be given notice and the opportunity to be present and participate in the hearing.

d. Within ten (10) days of the hearing, the superintendent shall inform the grieving employee(s) and the Association of his/her decision and shall provide the same with a brief statement in writing of the reasons for the decision.

4. Level Three - School Board

a. If the grieving employee(s) is not satisfied with the disposition of his/her their grievance at Level Two, or if no decision has been rendered within ten (10) days after the grievance was delivered to the superintendent, he/she/they shall, within five (5) days after a decision by the superintendent or fifteen (15) days after the grievance was delivered to the superintendent, request in writing, a hearing by the Board at the next regular meeting. Providing a minimum of ten (10) days elapses before the next regular meeting, a hearing will be held by the Board of a committee of the Board at the meeting.

b. Within ten (10) days of the hearing, the Board shall inform the grieving employee(s) and the Association of its decision and shall provide same with a written statement of the reason for the decision.

5. Level Four - Arbitration

The Association shall, within twenty (20) days of receipt of notification of the disposition of the grievance or within thirty (30) days of the hearing under Level Three notify the Board of the Association's desire for binding arbitration of the grievance. The Board and the Association will within ten (10) days of such notification begin selection of an arbitrator. Further provisions for the binding arbitration procedure shall be stated in Section 903, Act 195.

Article XIV **Transportation Department**

A. Bidding of Regular Bus Runs

All drivers shall attend a meeting during the summer vacation for the purpose of reviewing available routes and the annual bidding of regular bus routes.

C. The parties agree that no additional negotiations on this agreement will be conducted on any items, whether contained herein or not during the life of the agreement.

VI. OPINION

There are two issues to be determined. The first issue relates to the timeliness of this grievance. The second issue to be decided if the grievance is found to be arbitrable is whether or not the District violated the CBA with the bidding procedure used in the summer of 2015 to fill the bus runs. A review of the relevant record establishes the following material facts. The CBA contains the classifications of drivers and aides. The language provides for drivers to bid available bus routes and annual regular routes. This type of selection process occurs once in the spring for available summer runs and in the summer for the available school year routes. In the spring of 2015 the transportation supervisor posted the list of available routes. The bus routes were posted indicating they were for drivers only and the transportation aide jobs were posted for aides only. The bus drivers and aides bid on their selected routes separately and the work was determined. The Association filed a grievance indicating the District failed to follow the existing bidding procedure which permitted all drivers and aides to bid on the available routes by seniority. When the matter was unable to be resolved through the grievance process arbitration resulted. An arbitration hearing was held and the District raised the issue of arbitrability pertaining to this grievance, contending it was not filed in a timely manner. The parties requested for the arbitrator to determine whether or not the grievance is arbitrable as well as the merits of this grievance if it is determined to be arbitrable.

At the outset, the District contends this grievance must be dismissed because it was untimely. The District submits the Association failed to process the grievance within the time frames designated in the grievance procedure. Specifically, the Association failed to move the grievance to the Board level following the Superintendent level in a

timely manner. The Association's arguments related to there being no school days during the summer months must be rejected because members of this bargaining unit work during the summer. The District states no written agreement was promulgated between the parties to extend the time limits of this grievance.

It is the position of the Association this grievance must proceed to arbitration. The Association recognizes a delay occurred after the Superintendent's response was received. However, because the response was provided to the Association during the summer break it should not be counted as work days. Thus, the clock on the grievance was not valid. The Association also points out the timeliness issue raised by the District must be rejected because after the Superintendent's response was received, the parties attempted to settle this grievance which required extending the time before the grievance ultimately proceeded to arbitration. While no settlement was reached, the Association contends a continuous violation occurs each day the District places the improper person in a route and the arbitrator must consider this grievance as timely filed.

I have carefully considered the arguments of the parties related to the issue of whether or not this grievance should proceed or be rejected due to the timeliness issue raised by the District. The language of the CBA requires grievances to be moved within five days after the Superintendent responds on the grievance to the next level if the Association wants to pursue it to the Board level. In this instance the Superintendent denied the grievance in June 2015. The Association President verbally told the Superintendent a response was forthcoming. The written response was not submitted by the Association until approximately five weeks after the date the District denied the grievance. The Association contends it was not required to submit the grievance within

five days due to the fact the employees in the transportation department were on summer break and the “calendar was not in effect.” The Association also cited a violation of the CBA continues to occur each day the incorrect person is in a position.

In my opinion, the facts show the delay in the Association moving the grievance to the Board level occurred based for several reasons. The Association pointed out it attempted to settle the matter with the District, but such settlement attempt failed. The Association also took the position because it was summer break the days required for the grievance to be processed was “suspended” because school was not in session. Every day the District had the incorrect person in the position a violation continued to occur.

The evidence establishes the Association was under the impression a settlement could be reached by the parties. The grievance was not immediately moved to the next level and time passed for a settlement to occur. After a settlement was not reached, as this grievance progressed through the grievance procedure, school was not in session which clouded whether or not this grievance was moving according to the timelines established in the CBA. The Association attempted to resolve the grievance with the District, but it could not be moved until after the time the settlement discussion broke down. The grievance was originally processed at the end of the school year and continued to move through the steps of the grievance procedure after the school year ended. In this instance, the grievance should be considered to be timely filed due to there being question about a potential settlement as well as moving between the steps of the grievance process between the school year ending and summer break which essentially stopped the “clock.”

It is the position of the Association based on the merits of this grievance, the District unilaterally changed the bidding procedure used in the transportation department in the summer of 2015 to assign bus runs. The Association takes the position the bargaining unit employees bid on routes each year based on department seniority and not seniority related to their positions. The Association submits no language is contained in the CBA to further segregate employees. The District has violated the well-established past practice that has been in place for decades. Bus runs have been filled by using overall transportation seniority. The District was required to regulate how routes were filled in 2015 by using the established procedure and cannot unilaterally change the process by now requiring the employees to bid by job classification. Thus, the grievance must be granted and the former bidding practice be restored.

The District contends no CBA violation occurred. Classifications of drivers and aides are separate and rates of pay are established in the CBA for each classification. There is no provision to grant the categories of employees entitlement to the available job by seniority. The Association has attempted to install seniority into the bidding process and such proposal has been rejected. The District contends the CBA does not treat aides and drivers interchangeably. The drivers are the only position according to the CBA who bid their job assignments. Thus, the Association's arguments must be rejected.

I have carefully considered the arguments of the parties in conjunction with the CBA. The language related to selecting bus runs establishes the employees meet in the summer to select routes. The language requires drivers to attend the meeting to review the available routes and the annual bidding of the regular routes. In the past the employees were given the opportunity to bid on a route whether they were an aide or a

driver by the seniority list established in the department. In 2015 the District separated the list of employees by drivers and aides by seniority and indicated on each list only drivers could bid on driver positions and aides could bid on aide positions.

The evidence establishes the procedure used by the parties to select routes has been done in the past on a consistent basis by using one combined seniority list of the drivers and aides. This procedure permitted the employees in the order of department seniority, regardless of job classification to bid on their desired route. For example, if a bus driver was first and an aide was next, the bus driver would select his desired route first, the aide would select his desired route next, and the routes would continue to be selected by department seniority order. The testimony of the former transportation supervisor Mr. Maas has shown this procedure to select desired routes had been in place during the time he worked in the transportation department. He followed this same process to fill the bus routes when he supervised the employees. Other Association witnesses testified this is the same procedure that has been in place for years prior to the District changing the procedure in 2015 under a new supervisor, when route selections were done separately by the classifications of drivers and aides.

In my opinion, the evidence establishes a past practice has developed over at least over thirty years of the employees in the transportation department making selections of routes by one seniority list. The practice permitted the employees, regardless of classification of driver or aide to select routes in order of seniority. The elements of a past practice are present in the method of routes were selected. The system used to select routes has been consistently followed for approximately thirty or more years. The facts

and testimony of the witnesses show this was the mutually accepted procedure the parties continued to follow for approximately 30 years when it was time to bid the routes.

It is my determination when the District separated the route selection procedure in 2015 for the drivers to select routes in seniority order for drivers only and for the aides to select routes for aides only by seniority, the past practice of selecting routes by using one seniority list was altered. The District was not able to change the manner in which routes were selected without first negotiating a change to the route selection process with the Association. The District is required to continue to follow the parties' previous practice of using one department seniority list containing both the drivers and aides and permitting the drivers and aides to select their desired route from one list in the order of department seniority.

AWARD

The grievance is arbitrable. The District violated the CBA by altering the route selection process. The grievance is sustained and the District is return to the previous procedure to select routes for drivers and aides using one department seniority list.



Michelle Miller-Kotula

Arbitrator

March 27, 2016