

IN THE MATTER OF THE ARBITRATION BETWEEN

EDUCATION MINNESOTA ANOKA	)	MINNESOTA BUREAU OF
COUNTY JUVENILE CENTER	)	MEDIATION SERVICES
EDUCATORS,	)	CASE NO. 07-PA-1026
	)	
	)	
Union,	)	
	)	
and	)	
	)	
THE COUNTY OF ANOKA,	)	DECISION AND AWARD
	)	OF
Employer.	)	ARBITRATOR

APPEARANCES

For the Union:

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On November 8, 2007, in Anoka, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to post two vacant positions. The last of post-hearing briefs was received by the arbitrator on December 9, 2007.

## FACTS

The County of Anoka (the "Employer") is a populous county just north of Minneapolis and St. Paul, Minnesota. It operates the Anoka County Juvenile Center at Lino Lakes, Minnesota, (the "Pines School," as the parties refer to it), which conducts four programs for the correction of juvenile offenders. In three of the programs, the offenders reside at the Pines School, and in the fourth, they reside elsewhere and come to the School daily. In all four programs, they receive classroom education.

In May of 2004, the Minnesota Bureau of Mediation Services (the "BMS") certified the Union as the collective bargaining representative of the licensed teachers employed by the Employer, and in January of 2006, the BMS amended that certification, adding paraprofessionals to the bargaining unit. Article 22 of the parties' first labor agreement states that it is "in full force and effect" from July 1, 2006, through June 30 2009. Article 2 of the labor agreement, which is entitled, "Recognition of Exclusive Representative," describes the bargaining unit represented by the Union, using the text of the amended certification issued by the BMS, thus:

The Employer recognizes the Local as the exclusive bargaining representative, under Minnesota Statutes, Section 179A.03, Subdivision 14, for all teachers in the bargaining unit described in BMS Case No. 04-PCE-1067 as amended by BMS Case No. 06-PCE-168 and described as:

All employees of Anoka County, Anoka Minnesota in a position at the Anoka County Juvenile Center, Lino Lakes, Minnesota requiring a teaching license or in a position as a paraprofessional, and who are public employees within the meaning of Minn. Stat., Section 179A.03, Subd. 14, excluding supervisory and confidential employees.

The present grievance arose when, in March of 2007, Union representatives learned that the Employer had hired two paraprofessionals without posting those positions for bidding. Though the evidence does not include the date of hire, I infer from it that the hiring occurred in early 2007.

On March 12, 2007, the Union brought this grievance, which alleges that failure to post the two paraprofessional positions violated Article 12, Section 1, of the labor agreement, set out below:

Article 12. Vacancies

Section 1. Posting. Announcements of vacant or new regular bargaining unit positions which the Employer determines to fill shall be posted in the mail room for at least ten (10) calendar days. The announcement shall indicate the date posted and a deadline date for receipt of written applications. Such announcement shall not be removed by the Employer until the deadline date.

The primary issue described by the evidence and the parties' arguments is whether paraprofessional positions are "regular bargaining unit positions" as that phrase is used in Article 12, Section 1, of the labor agreement.

Bradley F. Harper, Principal of the Pines School, testified that at the time of the hearing, the Pines School employed sixteen teachers and three paraprofessionals. The student population of the School can fluctuate quickly. It may increase by as much as 15% in one day, as students are released from the School's programs and new students are required to attend. Harper testified that, because of such variations in the student population, staffing of the school must be flexible.

Much of the evidence presented at the hearing relates to the bargaining that led to adoption of the labor agreement. The following description of the bargaining summarizes the testimony of Harper and Melanie B. Ault, Director of Human Resources, both of whom testified for the Employer, and of Troy D. Ferguson, a teacher at the Pines School and lead negotiator for the Union, and Joann Winter, Field Representative for Education Minnesota, both of whom testified for the Union.

The parties began bargaining in December of 2004, at which time the certified bargaining unit included only teachers, or, as Article 2 now describes them, employees "requiring a teaching license." Bargaining was difficult and protracted, and the parties used the services of a mediator furnished by the BMS. In January of 2006, when paraprofessionals were added to the bargaining unit, the parties had finished negotiating the language of most provisions of the labor agreement. Ferguson testified that, because the language thus negotiated had been drafted to cover teachers only, and not the newly added paraprofessionals, the Union sought to add separate provisions to the agreement that would cover paraprofessionals and to add a section that would give definitions of terms used in the agreement. Ferguson testified that the Employer rejected those efforts, seeking to bring an end to the lengthy bargaining process, and that, instead, language covering paraprofessionals was "shoe-horned" into the language that had been agreed to.

The Employer did seek the addition of a "zipper clause," however, and though the Union resisted that addition, it was

finally included in the agreement as Article 21, which is set out below with my reproduction of provisions of the labor agreement that are relevant to the parties' arguments.

Many provisions of the labor agreement have possible relevance to the primary issue of contract interpretation -- to determine the meaning of "regular bargaining unit positions," as that phrase is used in Article 12, Section 1.

The parties' arguments make necessary an understanding of the labor agreement's references to "long-term substitute" teachers, to "casual" substitute teachers, and to "full-time" teachers as well as "paraprofessionals." Though the agreement does not provide an express definition of these terms, a general understanding of their meaning can be derived from provisions of the agreement that refer to them. Parts of Article 17, entitled, "Compensation," are set out below:

Section 1. Movement onto pay plan and general increases.

A. Effective July 1, 2006, bargaining unit members will move onto the pay plans outlined in the attached Appendix A. Individuals employed as long-term substitutes as of the date of ratification of this agreement who are compensated above the 6 year experience level will continue to be recognized at that level but will not be eligible for further movement in the salary system. . . .

Section 2. Lane changes for full time teachers are scheduled to occur three times during the year. . .

Section 3. Long term substitute teachers will be eligible for step movement on the beginning of the first full pay period following the accrual of 1,380 (184 days X 7.5 hours) teaching hours of service exclusive of overtime hours. . . Long term substitutes may be granted up to 6 year's experience on the salary schedule. Individuals employed as long term substitutes as of the date of ratification of this agreement who are compensated above the 6 years experience level will continue to be recognized at that level but will not be eligible for further movement in the salary system.

Appendix A of the labor agreement sets forth several kinds of salary schedule. First, it shows a schedule typical of most salary schedules used in public schools to describe the compensation of classroom teachers -- with eight educational "lane" increases across its horizontal scale and twenty annual "step" increases down its vertical scale. This schedule is entitled, "Pay Plan for Regular Teachers." Below that schedule, there appears one entitled, "Hourly Rate Schedule: Paraprofessionals," which provides for eight annual increases in hourly rates. Finally, there appears a schedule entitled, "Hourly Rate Schedule: Casual Substitute Teachers," with a single hourly rate for each year of the three-year contract and no step or lane increases.

From this information, I infer the following definitions. A "regular teacher" is one who receives an annual salary and thus, impliedly can also be described as a "full-time" teacher. Sections 1 and 3 of Article 17 both use the phrase, "individuals employed as long term substitutes," implying that that status is determined at the time of hiring. No provision of the contract establishes a process for moving from the status of long term substitute to that of a regular teacher -- though compensation of long term substitutes is established according to the salary schedule for regular teachers -- with limited step advancement, as described in the text of Sections 1 and 3 of Article 17, but presumably with the possibility of lane advancement.

It also appears that paraprofessionals and casual substitute teachers are hired as such, with their compensation

limited to the abbreviated pay schedules set out. Testimony from some witnesses described a substitute teacher who does not work at least sixty-seven days per year as a "casual employee" -- one who is clearly outside the bargaining unit because he or she does not qualify as a "public employee" under the definition given in Minnesota Statutes, Section 179A.01, et seq.

The parties cite the following additional provisions of the labor agreement that may aid in determining the meaning of "regular bargaining unit positions":

ARTICLE 3 LOCAL RIGHTS AND RESPONSIBILITIES

Section 2. Changing Existing Employer Policies and Procedures. The parties recognize that all employees covered by this agreement shall perform the services and duties prescribed by the Employer and shall be governed by Employer rules, policies, regulations, directives and orders, provided that such rules, regulations and orders are not inconsistent with the provisions of this Agreement or state or federal laws. . . .

[This sentence also appears verbatim as the only sentence of Article 9, which is entitled "Work Rules."

ARTICLE 8 HOURS OF WORK

Section 2. Duty Day, Contact Day, and Work Hours are the same for all teachers whether they are benefit eligible full-time teachers, long term substitute teachers or casual substitute teachers. . . .

Duty Day, Contact Day, and Work Hours for paraprofessionals will be established by the Employer.

ARTICLE 10 PROFESSIONAL DEVELOPMENT

Regular teachers and paraprofessionals will have two (2) days as part of their respective work week schedule for professional conferences and an additional two (2) days of County in-service.

ARTICLE 11 PROBATIONARY PERIOD

Section 1. Employees given an original appointment, transfer in a different classification not previously held or movement from a status other than from full time Teacher to a full time Teacher shall be required to serve a probationary period. The probationary period will be six (6) months of continuous observed service in the

bargaining unit. Any unpaid leave of absence in excess of a total of ten (10) working days shall be added to the duration of the probationary period. Time served in temporary or substitute positions shall not be considered as part of the probationary period.

The Employer and the Local may mutually agree to extend the probationary period up to an additional six (6) months. The Employer will notify the employee in writing as to the reason(s) for the extension.

Section 2. Regular Status. Upon written notice submitted by the Employer to the employee that the probationary employee has satisfactorily completed the probationary period, the employee will have regular status.

Section 3. Grievance Procedure. Probationary teachers may be terminated during the probationary period at the discretion of the Employer. Such termination shall not be construed as a discharge pursuant to Article 14 - Discipline and Discharge. Accordingly, probationary teachers who are terminated shall not have access to the arbitration step of the Grievance Procedure set forth in Article 15.

Section 4. The Employer will approve a probationary employee's request to use FTO and extended medical benefit during the probationary period up to the number of hours the employee has earned. If the employee separates from employment voluntarily and in good standing before completing the probationary period, the employee will be eligible to receive severance pay.

#### ARTICLE 13 LAYOFF

Section 1. Employees may be laid off to meet the needs of the Employer. In the event a layoff is necessary the Employer will notify the employee in writing. The work force will be laid off based on classification, funding source, program, educational need, ability and licensure to perform available work, work performance and seniority. An employee's right to recall shall exist for twelve (12) months after his or her last date of layoff.

Failure to return to work within ten (10) days of notice of recall shall terminate all right to recall. Notice of recall shall be in the form of a registered letter sent to the employee's last address on file with the Employer. It shall be the employee's duty to notify the Employer of any address change. It is not deemed to be a failure to return to work in the event that the teacher is contractually required to work elsewhere. In this instance, the teacher will remain on the layoff list. . .

Section 2. Seniority. For purposes of this Article, seniority is defined as the most recent length of

continuous service with Anoka County as a regular full-time employee. Continuous service is defined to include unpaid leaves of absence up to sixty (60) days and unpaid leaves of absence in excess of sixty (60) days will be deemed a break in service except as required by law.

Section 3. Summer School. Teachers will teach during the summer school. Regular full time teachers who are interested in working the summer months must notify the County by May 1st of their intent to work the summer school. . . In the event that sufficient individuals do not bid [for summer work], the County will assign regular teachers based on the layoff criteria of Section 1.

#### ARTICLE 14 DISCIPLINE AND DISCHARGE

Section 1. For purposes of this Article, any regular employee having successfully completed his or her probationary period will have access to this Article as the sole and exclusive means of addressing disciplinary matters including discharge. Probationary employees will not have access to the provisions of this Article.

Section 2. The Employer will discipline nonprobationary employees for just cause only. . . .

#### ARTICLE 16 BENEFITS

Section 1. Regular full time teachers who meet eligibility requirements as outlined in the Anoka County Personnel Rules and Regulations will be covered by the provisions of the following Anoka County Personnel Rules and Regulations through December 31, 2006:

- Section 11A(1) -- Paid Holidays
- Section 11A(2) -- Flexible Time Off
- Section 11A(3) -- Extended Medical Benefit
- Section 11A(4) -- Banked Sick Leave Benefit
- Section 11A(5) -- Short Term Disability
- Section 11A(8a) -- Other Leaves With Pay - Funerals
- Section 11A(8a-e) -- Military Leave, Jury, Elections and Bone Marrow Leaves
- Section 11B(1) -- Personal Leave
- Section 11B(2) -- Parenting and Medical Leave Under the Family and Medical Leave Act
- Section 11B(3) -- Absence Without Leave
- Section 11B(4) -- Medical Leave of Absence
- Section 11B(5) -- Military Leave for Extended Service
- Section 11B(7) -- Special Conditions on Leaves Without Pay
- Section 11K -- Benefits for County Retirees

Payout of FTO upon separation from employment prior to December 31, 2006 will be as permitted by County Personnel Rules and Regulations

Effective January 1, 2007, regular full time teachers will no longer be eligible for benefits as outlined in the Anoka County Personnel Rules and Regulations except as herein after provided. Existing accrued leave banks as of this date will be lost. Effective January 1, 2007, regular full time teachers meeting the eligibility requirements as outlined in the Anoka County Personnel Rules and Regulations will be covered by the following provisions of the Anoka County Personnel Rules and Regulations with the exception that any reference to paid leave will not apply unless required by statute:

- Section 11A(5) -- Short Term Disability
- Section 11A(8a-e) -- Military Leave, Jury, Elections and Bone Marrow Leaves
- Section 11B(1) -- Personal Leave\*
- Section 11B(2) -- Parenting and Medical Leave Under the Family and Medical Leave Act
- Section 11B(3) -- Absence Without Leave
- Section 11B(5) -- Military Leave for Extended Service
- Section 11B(7) -- Special Conditions on Leaves Without Pay
- Section 11K -- Benefits for County Retirees

\* Denial of a Personal Leave Request will not be subject to the grievance procedure.

Section 2. Personal Leave Days. Regular full time benefited teachers will be granted 16 days of Personal Leave Days each school year effective on January 1, 2007 and each January in subsequent years. . . Long term and casual substitute teachers will not be eligible for this benefit.

Section 3. Funeral Leave. Up to but not exceeding five additional (5) days with full pay per year may be taken for a regular full time teacher's absence due to the death of an immediate family member. . . Long term and casual substitute teachers will not be eligible for this benefit.

Section 4. Long term substitute teachers and paraprofessionals. Long term substitute teachers and paraprofessionals will not be eligible for benefits except as outlined in Section 6. Long term substitute teachers who decline two (2) consecutive or three (3) total offerings in a July 1 through June 30 school year will be dropped to the casual substitute pool and pay rate. An offering is defined as a management call for one teacher's full time workload in a program for sixteen (16) working days or more with at least five (5) working days advance notice. A long term substitute teacher may request in advance to be taken off the list for a maximum of six (6) months.

Section 5. Director's Leave. The Director may, in his or her discretion, grant an unpaid leave for up to thirty (30) calendar days. . . Only one full time regular teacher per program can be gone at a time. The School principal will identify the substitute teacher when leaves exceed four school days in those instances where the leave is taken by a full time regular teacher. All regular teaching duties need to be identified and delegated to the substitute or another teacher in the program; grades, special education, etc. Full time regular teachers granted leaves need to attend make-up training that occur during the leave. "Seniority date" will be used to resolve overlapping requests or other conflicts.

Section 6. Leave to Evaluate Fitness for Duty.

A. The Employer may place a teacher, long term substitute teacher, or paraprofessional on a leave when there is a reasonable belief that the individual's medical or psychological condition may adversely affect his/her fitness for duty. . . .

#### ARTICLE 18 INSURANCE

All full time regular, benefit eligible teachers shall be offered participation in the Employer's health, life, dental and long term disability insurance programs. An eligible employee is defined as an individual who would be covered under the health, life, dental and long term disability insurance coverage provisions of the County Personnel Rules and Regulations. Any change in the health insurance program, life insurance program, dental insurance program or long term disability program outlined in the County Personnel Rules and Regulations will also apply to members of this bargaining unit. Employer contributions to insurance premiums shall be in the same amounts and on the same basis as outlined by the County Board applicable to nonunion employees.

#### ARTICLE 21 COMPLETE AGREEMENT AND WAIVER OF BARGAINING

This agreement shall represent the complete agreement between the union and the employer. Any and all prior agreements, resolutions, customs, practices, policies, rules and regulations regarding terms and conditions of employment, to the extent inconsistent with the provisions of this agreement, are hereby superseded and this agreement shall represent the complete agreement between the Local and the Employer.

#### DECISION

The parties disagree about how these provisions of the labor agreement should be construed in finding the meaning of the phrase "regular bargaining unit positions" in Article 12,

Section 1. The Union's primary argument, which I describe more fully below, is that the word "regular" is not used in a consistent manner in its various appearances throughout the agreement and that, therefore, it should be given its common dictionary definition, to mean "ongoing." According to the Union, the jobs done by paraprofessionals are ongoing jobs and their positions, thus, are regular positions.

The Employer's primary argument is that insofar as there is ambiguity in the reading of the phrase "regular bargaining unit positions," the ambiguity should be resolved in accord with the Anoka County Personnel Rules and Regulations (hereafter, simply the "Personnel Rules"), as required by Article 3, Section 2, and by Article 9 of the labor agreement, both of which state the parties' understanding that "all employees covered by this agreement . . . shall be governed by Employer rules, policies, regulations, directives and orders, provided that such rules, regulations and orders are not inconsistent with the provisions of this Agreement or state or federal laws."

The Employer argues that the following provisions of the Personnel Rules are relevant:

Section II. Definitions (Pages 13 and 14.)  
Status (Employment)

1. Regular - These employees work varying numbers of hours per week but are regularly scheduled for a set number of hours per week. The work they perform is of an ongoing nature.
  - a) Regular Full-Time - An employee who has successfully completed the probationary period who is scheduled:
    - (1) to work 80 hours in a two-week pay period; or
    - (2) works in a department which requires 24-hour coverage and has an alternative full-time schedule.

- (3) This term does not imply that an employee has a vested right to continued employment.
- (b) Regular Part-Time - an employee who has successfully completed the probationary period who is scheduled to work less than 80 hours in a two-week pay period. This term does not imply that an employee has a vested right to continued employment.
2. Temporary - an employee who is not regular or limited term and refers to the following classes of employees: temporary, seasonal, substitute, student, and intermittent/casual. A temporary employee is not eligible for County employee benefits except those mandated by state or federal law. A temporary employee works various scheduled hours and the duration of employment is limited to a specific assignment. A temporary employee serves at will. An appointment to a temporary position does not confer regular status. A temporary employee is hired to fill a temporary need of a department and is appointed for a period of up to six months, unless granted an extension of up to an additional six months.
- (a) Temporary Full-Time - an employee who works a 40-hour work week whose employment is limited by duration of a specific project or task.
- (b) Temporary Part-Time - an employee who works less than a 40-hour work week whose employment is limited by duration of a specific project or task. . . .

Section IV. Appointment Process (Recruitment & Selection) (Page 23.)

All recruitment and selection policies and procedures are designed and administered for the purpose of hiring candidates best able to perform the work required.

A. Position Authorization.

The Appointing Authority shall notify the Director when a replacement vacancy exists in a department or when there is a desire to fill a newly created position. . . . A regular or limited-term employee may only be appointed to or be employed in a position authorized by the County Board. Regular positions exist until eliminated by the County Board.

Section XI. Employee Benefits. (Pages 49 through 66.)

[This section of the Personnel Rules lists a variety of benefits, most but not all of which are described as available only to regular or limited-term employee.]

The Employer presented the testimony of Harper and Ault to show that the conditions under which paraprofessionals are hired and are assigned to work do not fit the description of an employee with "regular status" as given in the Personnel Rules.

I summarize that testimony as follows. Under the Personnel Rules, a position with regular employment status must be approved by the County Board, but paraprofessionals are hired without such approval. When they are hired, paraprofessionals are required to sign a form entitled, "Notification of County Policy on Temporary Employment," in which they acknowledge that they are temporary employees, are part-time employees, are hired at will, have an initial assignment of up to six months, are not entitled to "County benefits" and, in the following paragraph, have no entitlement to a regular County position:

Employment as a temporary employee in no way entitles a person to a regular position with Anoka County. All candidates for regular positions must complete an Anoka County application for employment, meet the education and experience requirements of the positions, pass any exams that may be required, and be certified among the candidates on the eligibility list. Division managers and department heads may only hire those candidates to regular positions who apply and become certified on an eligibility list by the Human Resources Department. . . .

In addition, Harper and Ault testified that the Employer does not require paraprofessionals to complete a probationary period, that they have no seniority rights established by the labor agreement and that, as at-will employees, they may be replaced without adherence to the layoff and recall procedures or the discipline and discharge procedures described in the labor agreement. Article 16, Section 4, states expressly that they are not entitled to employee benefits. Paraprofessionals do not have a full-time schedule. Rather, they have flexible schedules that suit the need of the Pines School for their services as that need may vary from day to day. If no work is

available, they are sent home for the day. Harper testified that the Pines School has never posted a position for a paraprofessional -- either before or after the execution of the labor agreement. He also testified that, since the execution of the labor agreement (and before the hiring at issue in this case), the Pines School has hired two paraprofessionals without posting the positions and that that action was not grieved by the Union. Harper testified that because the Pines School is small, with only three paraprofessionals at the time of the hearing (and four just after the grievance was initiated), it must have the ability to hire immediately when the need arises, without hindrance by the delay that would accompany posting and bidding for positions.

Harper also testified that he was on the bargaining team for the Employer, that, in August of 2005, the parties completed their negotiations about the posting language in Article 12, Section 1, and that they did not discuss that language further after paraprofessionals were added to the bargaining unit in January of 2006.

The Union argues that the word "regular" appears in many provisions of the labor agreement, with apparently shifting meanings that derive from shifting uses. Sometimes, the word is used as a modifier of "teachers" or of "employees," and sometimes, those nouns are used with other modifiers -- "full-time" or "benefit eligible," and "regular" is omitted. In the phrase here at issue, "regular" is used as a modifier of "positions." The Union notes that the word is never used as an

immediate modifier of "paraprofessionals," though the phrase "regular teachers and paraprofessionals" appears in Article 10. Article 11, Section 2, provides "regular status" to an employee who completes probation.

The Union argues that the reason the word "regular" does not appear as a modifier of "paraprofessional" is that the Employer refused to engage in more extensive bargaining about paraprofessionals after that classification was added to the bargaining unit in January of 2006. The Union points out that some uses of "regular" are not ambiguous -- such as the word's appearance in Article 16, Section 1, where benefits are described for "regular full time teachers who meet eligibility requirements as outlined in the Anoka County Personnel Rules and Regulations." The Union argues that this reference to the Personnel Rules should not extend beyond the limited purpose of Article 16 -- to describe benefits for regular full time teachers -- and should not be used, as the Employer urges, to find meaning from the Personnel Rules for the word "regular" in its other appearances in the labor agreement.

In addition, the Union rejects the Employer's argument that this dispute should be resolved by finding the meaning of "regular" in the Personnel Rules -- a resolution proposed because Article 3, Section 2, states that "all employees covered by this agreement . . . shall be governed by Employer rules . . . provided that such rules . . . are not inconsistent with the provisions of this Agreement . . . ." The Union argues that where the labor agreement lacks any language on a subject, the

Employer may "fill in the blanks" by reference to the Personnel Rules, but that, because the parties did express their bargain about posting vacancies in Article 12, Section 1, the use of the Personnel Rules to determine posting requirements is not indicated by Article 3, Section 2.

Thus, the Union argues that, because the Personnel Rules should not be applied and because the agreement has no definition of "regular" as applied to paraprofessionals, the word "regular" should be given its dictionary definition -- "ongoing" in contrast to "casual," "irregular" or "intermittent."

The Union also notes that it is not attempting by this grievance to make posting requirements unworkable. It argues that the Employer should not have to post vacancies for casual substitute paraprofessionals. The Union urges, however, that paraprofessionals already on staff should have the opportunity to apply for new or vacant "regular bargaining unit positions" in the paraprofessional's classification.

For the following reasons, I rule that the phrase at issue -- "regular bargaining unit positions" as used in Article 12, Section 1, of the labor agreement -- does not include paraprofessionals. The evidence shows that before the adoption of the labor agreement, the positions of paraprofessionals had the following relevant characteristics. They had no fixed hours. The Employer could and did change their work schedules from day to day to suit the changing need of the Pines School for their services. They were sent home for the day if no work was available. If the total need of the School for the services

of paraprofessionals declined or increased, the School adjusted, not only the hours, but the total number of paraprofessionals employed, without formal layoff or recall. Paraprofessionals executed a form entitled, "Notification of County Policy on Temporary Employment," in which they acknowledged that they were temporary employees, part-time employees and employees hired at will with an initial assignment of up to six months and with no entitlement to a "regular position."

Dictionary.com lists a broad range of definitions for the word "regular," including the following:

1. Usual, normal or customary.
2. Evenly or uniformly arranged.
3. Characterized by fixed principle, uniform procedure.
4. Recurring at fixed times, periodic.
5. Rhythmical.
6. Occurring with normal frequency.
7. Adhering to fixed times or habits.

This reference lists many other definitions. Though it does not include "ongoing" in the list, as does Black's Law Dictionary, which the Union cites, and as do the Employer's Personnel Rules, certainly "ongoing," as "continuing," is within the sense of the definitions of "regular" listed above, provided that the ongoing or continuing nature described has the primary sense of these definitions -- ongoing recurrence at times "evenly arranged" or "adhering to fixed times," or "characterized by fixed principle" and "uniform procedure" -- and not merely repetition at sporadic, unfixed intervals.

I find that before the adoption of the labor agreement, a paraprofessional's position was not a position that fit the definition of "regular." When the parties adopted their first

labor agreement, they did not include a provision that expressed an intention to change the paraprofessional's position from the status it had previously. Indeed, the evidence shows that since the adoption of the labor agreement the Employer has continued to require paraprofessionals to sign the "Notification of County Policy on Temporary Employment," acknowledging their status as temporary employees with no entitlement to a "regular position" and that, in practice, the Employer has scheduled paraprofessionals in a manner consistent with that status.

I note that this interpretation is generally consistent with the labor agreement's use of the word "regular," which does appear as a modifier of "teachers," but not as a modifier of "paraprofessionals."

I conclude that Article 12, Section 1, does not require the Employer to post a vacancy in a paraprofessional's position because such a position is not a "regular bargaining unit position."

AWARD

The grievance is denied.

February 11, 2008

  
Thomas P. Gallagher, Arbitrator