

Before the Arbitrator

In the Matter of Arbitration
Of a Dispute Between

**CHICAGO TEACHERS UNION,
LOCAL 1, AMERICAN FEDERATION
OF TEACHERS, AFL-CIO**

and

**BOARD OF EDUCATION OF
THE CITY OF CHICAGO**

Daniel Nielsen, Arbitrator

Andrzej Nowak
Grievance No. 17-10-112(jvm)
Hearing: February 6, 2019

Award: May 26, 2021

Appearances:

Thaddeus Goodchild, 1901 W. Carroll Avenue, Chicago, Illinois 60612-2401, appearing on behalf of the Chicago Teachers Union.

Peter Brierton, Assistant General Counsel Chicago Board of Education Law Department, One North Dearborn, Suite 900, Chicago, Illinois 60602, appearing on behalf of the Board.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, the Board of Education of the City of Chicago (hereinafter referred to as the Board) and the Chicago Teachers Union, Local 1, AFT (hereinafter referred to as the Union) selected the undersigned to serve as an Arbitrator of a dispute over the layoff of tenured teacher Andrzej Nowak.

A hearing was held on February 6, 2019, at One North Dearborn Street, Chicago, Illinois, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant. A transcript of the proceedings was prepared. Written briefs were submitted to the arbitrator who simultaneously exchanged them on April 26, 2019, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties, and the record as a whole, the undersigned makes the following Award.

I. ISSUE

The parties have agreed on the issues:

Did the Board violate Appendix H of the 2015-2019 collective bargaining agreement when it laid off the grievant, out of seniority order, effective August 28, 2017? If so, what shall be the remedy?

II. RELEVANT CONTRACT LANGUAGE

APPENDIX H - LAYOFF OF TEACHERS

Section 1 – Definitions

- A. *School actions.* BOARD-approved actions to close, consolidate, phase-out or turnaround a school.
- B. *School closing.* A student attendance center is closed, its attendance area boundary redistributed to two or more schools and its students reassigned to one or more schools.
- C. *School consolidation.* A student attendance center is closed, its attendance area boundary merged with one other school and its students reassigned to one other school.
- D. *Phase-out.* A student attendance center is gradually closed through the reassignment of the area attendance boundary to one or more other student attendance centers with no students reassigned; such center may later be closed or consolidated.
- E. *Turnaround or reconstitution.* All employees of the school are removed from the school and reassigned or laid off with no students reassigned to other schools.
- F. *Economic actions.* Economic actions are those for which the cause of the layoff of the employee is the BOARD's, unit's or school's lack of funds to maintain current staffing levels; economic actions may take the form of different transactions, including, but not limited to, class size increases, changes in position definitions (*i.e.*, redefinitions) to meet program needs, elimination of positions or the reduction of positions from full- to part-time.
- G. *Other actions.* Actions that are not school actions or economic actions. They may be based on a school's enrollment or a school's or unit's educational program and may include, but not be limited to, (i) drops in

enrollment whereby a student attendance center receives fewer positions or less resources due to a decline in student enrollment, (ii) changes in the educational or academic focus of the attendance center whereby an entire attendance center or a substantial part of an attendance center becomes focused on or changes its focus to a particular content area or form of pedagogy (e.g., International Baccalaureate, Montessori or STEM) that necessitates specialized credentials for or training of teaching staff and sometimes support staff, (iii) program closures whereby special programs are eliminated (e.g., a grant-funded reading program ends), (iv) redefinitions, (v) elimination of positions or (vi) reduction of positions from full- to part-time.

Section 2 – Scope of Policy

Whenever there is a reduction in or change in the teaching force that results in the lay off of appointed teachers, teachers will be reassigned or laid off in accordance with this policy.

Section 3 – Order of Teacher Layoff

If changes in an attendance center or program require the lay off of some but not all teachers, the order of layoff of teachers within the affected unit and certification shall be by the following performance tiers and/or as follows:

1. Any teachers rated unsatisfactory;
2. Any substitute or temporary teachers;
3. Probationary appointed teachers by performance tier (emerging: 209-250 score; developing: 251-284 score; proficient: 285-339 score; and excellent: 340-400 score).
4. Tenured teachers rated satisfactory or, after the first evaluation in the new evaluation system issues, first tenured teachers rated emerging (210-250 score) and then tenured teachers rated developing (251-284 score).
5. All other tenured teachers.

Within each of the foregoing five tiers, teachers shall be displaced by inverse order of seniority, with the least senior teacher being laid off first.

Section 4 – Notice of Position Closing

When a determination is made that a teacher's services are no longer required at an attendance center, the teacher will be so notified (hereinafter "notice of layoff") twenty-one days in advance of the effective date of layoff, except in the case of 20th day position closing.

Section 5 –Tenured Teachers’ Benefits Upon Layoff

A. Notwithstanding any provision to the contrary in this Agreement, all tenured teachers, except those whose last summative rating was unsatisfactory, upon layoff for any reason on or after June 21, 2016 shall be placed in the Reassigned Teacher Pool at the start of the subsequent school year (or, in the case of teachers laid off during the school year, immediately after the effective date of layoff) for 10 school months. Those tenured teachers shall be placed in a full-time teacher vacancy that exists on the 20th day of the school year and for which they are qualified for the balance of the school year on a temporary basis without loss of salary or benefits. If that vacancy is filled by someone other than the tenured teacher before the expiration of 10 school months, the tenured teacher shall be returned to the reassigned teacher pool for the remainder of 10 school months. If no vacancy exists for which a teacher is qualified on the 20th day, the teacher shall remain in the Reassigned Teacher Pool for 10 school months.

After ratification of this Agreement, tenured teachers eligible for this benefit who were laid off at the end of the 2015-2016 school year shall be placed in the Reassigned Teacher Pool effective the second semester of the 2016-2017 school year for 10 school months.

B. Teacher Eligibility List.

1. The BOARD with input from the UNION shall create a system by which candidates for hire as teachers are prequalified through hiring screening methods. Prequalified teachers shall include: (a) tenured teachers laid off for any reason on or after June 15, 2010 whose most recent performance rating was in the top two rating categories (i.e., excellent or superior and excellent or proficient); and (b) new applicants and other teachers who pass uniform pre-screening hiring criteria, including the consideration of employment history.

Tenured Teachers laid off between June 15, 2010 and June 30, 2012 will not be placed on the teacher eligibility list if they are currently employed by the BOARD in a full-time teacher position or have previously resigned or retired.

2. Eligible tenured teachers will be invited to be on the teacher eligibility list and to confirm their desire to be on the list (such as completing an on-line application). The UNION will be copied on all communications.
3. Prequalified teachers will be admitted to the eligibility list as they are laid off and shall remain on the teacher eligibility list for two years or until they receive a permanent appointment, whichever first occurs. However, teachers placed on the eligibility list during 2012 will remain on the list until June 30, 2015

4. Inter-unit transfers are exempt from the process described in this Section.
5. Principals shall hire only prequalified applicants to permanent teaching positions and shall have the discretion to hire any prequalified teacher. However, principals who receive three or more applications from prequalified displaced tenured teachers for a posted vacancy must interview at least three prequalified displaced tenured teachers for the position. If the principal does not select a prequalified displaced tenured teacher, the principal shall provide the reason(s) for the non-selection to the Talent Office, which shall communicate the reason(s) to the prequalified displaced tenured teacher. Such reasons may not be arbitrary.
6. Every July 1, the BOARD shall provide the UNION with a list of permanent vacancies filled by teachers on the eligibility list between the immediately preceding July 1 to June 30 period. If fifty percent of those vacancies have not been filled by prequalified displaced tenured teachers, the BOARD will assign a number of prequalified displaced tenured teachers who were on the eligibility list on the immediately preceding June 30 to the reassigned teacher pool for a period of five school months, but excluding:

(a) displaced teachers then currently in the reassigned teacher pool under another provision of this Agreement; and

(b) tenured teachers displaced between June 15, 2010 and June 30, 2012 who were placed into the Reassigned Teacher Pool upon layoff.

Assignments to the reassigned teacher pool shall be based on seniority. The number of prequalified displaced tenured teachers assigned shall equal the difference between the numerical value of fifty percent of the permanent vacancies filled during the immediately preceding July 1 to June 30 period and the actual number of vacancies filled by prequalified displaced tenured teachers. Prequalified displaced tenured teachers who are placed in the reassigned teacher pool and who do not find a permanent appointment by the end of their five-month assignment shall be assigned to the Cadre for five school months. If the prequalified displaced tenured teacher is not appointed to a position by the end of his or her assignment in the Cadre, he or she shall be laid off and separated from BOARD employment, but will remain on the teacher eligibility list for the remainder of his or her two years of eligibility.

C. Tenured Teachers Laid Off Due to School Actions.

Tenured teachers laid off due to school actions shall receive the following benefits:

1. *Transfer to receiving schools in school closings and consolidations.*
Tenured teachers whose most recent rating is in the top two rating

categories (i.e., excellent or superior and excellent or proficient) shall be appointed to a vacancy at a school to which students from their school have been assigned to the extent that a vacancy within the teacher's certification has been created as a result of or in connection with the transfer of students. If more than one teacher is eligible for appointment to the same vacancy, selection for the vacancy shall be based on seniority.

2. *Alternative severance benefit.* A tenured teacher who has been laid off due to school actions shall be offered the opportunity to resign and receive three months of pay.

D. Tenured Teachers Laid Off for Reasons Other Than Economic Actions and School Actions.

Recall to unit. A tenured teacher who has been laid off from a school or unit shall be entitled to recall to the same school or unit from which he or she had been laid off for a period of ten school months from the date of layoff, provided that a vacancy within his or her certification is created at the school or unit and that the teacher has been rated proficient or better. Tenured teachers shall be recalled in inverse order of layoff.

Section 6 – Probationary Teachers' Benefits Upon Layoff

Probationary teachers who are laid off and who have been rated in the top two rating categories shall be offered placement in the day-to-day substitute pool.

Section 7 – Eligibility to Apply to Other Positions

The terms of this policy do not preclude any teacher from applying for vacant positions or employment as a Cadre or day-to-day substitute at any time.

Section 8 – Reappointment with Tenure

Within two years after layoff from BOARD employment, if the tenured teacher is appointed by a principal to a permanent position, tenure and prior seniority will be restored to the tenured teacher as of the date of appointment.

III. BACKGROUND

The Board provides K-12 public educational services to residents of the City of Chicago through the Chicago Public Schools system (hereinafter referred to as CPS). The Union is the exclusive bargaining representative of teachers, paraprofessionals and school related personnel employed by CPS. The Board and the Union were parties to a collective bargaining agreement effective from July 1, 2015 to June 30, 2019 (hereafter referred to as the contract or CBA). Appendix H to that contract includes provisions relating to the layoff of teachers.

Andrzej Nowak was a tenured teacher employed by the CPS for 24 years and is represented by the Union. He holds a professional educator license issued by the Illinois State Board of Education (ISBE) with an endorsement to teach high school physics as well as English as a second language. From 2001 to 2017 he taught science courses at Foreman College and Career Academy High School (hereinafter referred to as Foreman).

Wayne Issa became principal of Foreman at the beginning of the 2016-2017 school year. During the summer of 2017, he decided to eliminate the school's Physics program and replace it with an Environmental Sciences program, reasoning that either would fulfill graduation requirements and students performed better with the latter. Following that decision, on August 7, 2017, the Board's Director of HR Operations, Lauren Clair-McClellan, issued a letter to Mr. Nowak advising him that his position would no longer be available for the start of the 2017-2018 school year and that, as a tenured teacher, he would become a reassigned teacher in accordance with Appendix H. The letter provided instructions on how to be staffed as a reassigned teacher and advised:

As a reassigned teacher, you will continue to receive your appointed teacher salary and benefits. A displaced tenured teacher continues to be a reassigned teacher for up to ten (10) school months or until a new appointed position is offered and accepted. At the end of the ten (10) month period, tenured teachers not appointed to [a] new position are honorably discharged.

On October 20, 2017, the Union filed a grievance on behalf of Mr. Nowak, asserting that he had seniority over three other teachers including Ms. Amber Lunt. The Union asserted that the definitions of these three teachers' positions were inconsistent with their actual duties. With respect to Ms. Lunt, it stated "she is in a reading teacher position. She teaches nothing but One

Goal for four periods per day. A reading endorsement is not required to teach this entire course program.” The Union contended Ms. Lunt’s position should be defined as “high school teacher’ because any high school teacher is qualified to teach those courses.” The Union contended that, if the three positions were defined as it suggested, Mr. Nowak would have bumped the three teachers, including Ms. Lunt, because he had greater seniority. Ms. Lunt holds an ISBE professional educator license with endorsements to teach social science and history and as a reading specialist. The Union subsequently abandoned its claims with respect to the positions held by two of these teachers, but continued to press its claims with respect to the position held by Ms. Lunt.

Mary Ernesti, of the Board’s Office of Employee Engagement, denied the grievance on November 30, 2017. With respect to the position held by Ms. Lunt, Ernesti stated:

[T]he Talent Office said she was staffed in a Reading position at the time of the grievant’s layoff. The grievant did not have the credentials necessary to be staffed in the position. According to the 2017-18 master schedule, Lunt is currently teaching all One Goal classes. According to information the Office of Counseling and Post-Secondary Advising provided to the [Office of Employee Engagement] in a separate matter, One Goal is a non-profit organization that provides support to students for access to post-secondary education. Teachers are nominated to participate in the One Goal program and are expected to make a three-year commitment to the program. After being nominated, teachers attend an information session, teachers are interviewed and observed, and final selections are made. Based on a December 7, 2016 e-mail Principal Issa sent to staff at the school, the grievant was informed of the program and asked whether she [sic] was interested in nominating a teacher or herself to participate in the program. Principal Issa said the grievant showed no interest in the program. The Union did not provide any evidence showing the grievant participated in the nomination or selection process during the 2016-17 school year, and therefore, cannot teach the One Goal courses during the 2017-18 school year.

The Union appealed the grievance denial, maintaining that Mr. Nowak could teach the course program of Ms. Lunt. The appeal was denied, and on March 8, 2018, the Union filed a demand for arbitration, seeking a return to a teaching position at Foreman and whatever else would be necessary to make Mr. Nowak whole. The undersigned was subsequently selected to arbitrate the matter, and a hearing was held on February 6, 2019.

Prior to the hearing, the parties entered the following factual stipulations:

1. The Illinois State Board of Education is responsible for licensing teachers in Illinois.

2. In the summer of 2013, ISBE transitioned from a certificate system to a licensure system, moving from 60 types of educator certificates and endorsements to just three licenses. Since then, ISBE has been using the term “professional educator license” for what used to be called teacher certification. ISBE converted what used to be separate academic subject matter certificates to endorsements on professional educator licenses in the summer of 2013.

3. In order to obtain an ISBE professional educator license, a candidate must take a number of college courses, and pass a series of basic skills tests and content area tests administered by ISBE.

4. ISBE also issues endorsements for specific academic subject areas and grade levels. Eligibility for some endorsements requires passing a course or several courses and/or passing a content area test. A candidate must apply to ISBE in order to receive a license or endorsement. A candidate does not need permission from CPS before applying to ISBE for a license or endorsement.

5. CPS does not require a teacher who has obtained multiple endorsements on his license to use all endorsements he has in the teaching position in which he is staffed.

6. ISBE maintains a searchable public online database of licensed teachers and their endorsements.

7. ISBE issues no endorsements, licenses, or certifications related to the One Goal Program, and administers no training or test for the One Goal Program.

8. There is no publicly available database of teachers who have completed training with the One Goal Program.

9. A teacher does not need any particular academic subject matter area ISBE certification or endorsement in order to teach One Goal courses.

10. The Grievant’s most recent performance evaluation prior to this layoff was “excellent” and he has never received a performance evaluation rating lower than “proficient” in his career with CPS.

11. Under the CBA, when there are layoffs at a school, a senior teacher with greater rights under Appendix H can bump junior teachers with lesser rights under Appendix H who are outside of their department within the same school, as long as the bumping senior teacher holds the certification required for the position

he is bumping into. Principal discretion and interviewing play no role in the operation of bumping rights. Bumping occurs automatically under the CBA in accordance with the layoff selection order in Appendix H. Bumping operates such that no teacher may be laid off while a teacher with lesser rights under Appendix H is retained in a position that is within the area of certification of the teacher with greater Appendix H rights.

12. The Grievant was more senior than Amber Lunt.

13. During the 2017-2018 school year, Amber Lunt was programmed in a Reading position, but taught exclusively One Goal courses.

14. All teachers can nominate themselves to participate in the One Goal Program. Once a teacher nominates himself to make a three-year commitment to teach One Goal, he can attend information sessions about the One Goal Program, participate in informal interviews with personnel from the One Goal organization, invite One Goal personnel to observe his classroom, and be presented to the school's principal as a qualified One Goal teacher candidate. The principal then selects a candidate to become a One Goal teacher.

15. The reason that the Grievant was laid off instead of Amber Lunt is because Ms. Lunt had been nominated and selected to participate in the One Goal Program and the Grievant had not.

16. The Board never notified the Grievant prior to his layoff that failure to nominate himself to participate in the One Goal Program could result in him being selected for layoff.

17. The Grievant received the December 7, 2016 email from Foreman Assistant Principal Emilia Herrera concerning the One Goal program that is Union Exhibit 4. The Grievant was not nominated to participate in the One Goal program nor did he nominate himself.

Additional facts were adduced at the hearing as follows.

Andrez Nowak testified that he had worked for the Board for 24 years, teaching at Prosser High School from 1995 through 2001 and at Foreman from 2001 to 2017. At Foreman he taught science courses: biology, earth science, chemistry and then physics. During the 2016-2017 school year he taught mathematics, ethnic studies and earth science. In his career, he never received a performance evaluation lower than proficient.

On December 7, 2016, the Assistant Principal at Foreman, Emilla Herrera-Padilla, sent an email to Foreman staff, asking: "If you are interested in nominating a teacher or yourself to be a

OneGoal mentor please send me those names and they will be added to the consideration pool.” Her email included the following excerpt from an email she had received the prior month from Jacob Caplan, Director of Partnerships, Program Innovation, “OneGoal. College Graduation. Period.”:

Frequently asked questions:

- Is the position paid for?
 - Yes, the grant from Chicago Beyond covers two iterations of this pilot. Ms. Lunt’s position will continue being covered along with the net teacher we select for the entirety of their 3 year commitments to this role.
- How will a teacher be selected?
 - Similar to our traditional model, we will conduct interviews and classroom observations. We will rely heavily on your recommendations as we determine the best possible candidate for this position.
- How can you and your teachers learn more?
 - We are able to host information sessions at Foreman or at the OneGoal office. I am also more than willing to have one-on-one conversations with potential candidates to offer more detail.
- Why the earlier timeline compared to last year?
 - This is a similar timeline to our traditional model. The news of this pilot came out later in the year last year and that caused us to move back our selection timeline.

Timeline and Next Steps:

- You and your team provide 2-4 candidate names and contact info by Dec. 14th.
- We will reach out to with info session details to candidates by Dec. 16th.
- Interviews and class observations will take place in January and February.
- Final selection of a teacher by the end of February.

Mr. Nowak acknowledged receiving Ms. Herrera-Padilla’s email, but simply deleted it thinking it had no relevance to him. He could not imagine his school was going to eliminate physics and assumed he would be teaching it until retirement. He could not recall receiving any prior emails about the One Goal program. With respect to One Goal, he merely knew that Ms. Lunt had been teaching it for a year or two and that it was for kids to prepare for college. He acknowledged that he has not received any training or professional development with the One Goal program. He said he would have nominated himself for One Goal had he been told he might be laid off if he did not.

Union field representative Joseph McDermott testified that a need to grieve multiple layoffs caused the Union to focus on Ms. Lunt's position with respect to Mr. Nowak's bumping rights rather than the other two positions referenced in the initial grievance. Mr. McDermott said he had never heard of the One Goal program until he began to investigate the layoff of Mr. Nowak, but noted that it did not require teachers to have any specific academic subject matter endorsement on their license. In that regard, he considered it similar to a senior seminar program, although without outside participation and no multi-year commitment. Since administration had told him anyone with a 9 through 12 teaching license could teach senior seminar, even a physical education teacher, he thought the same should apply to One Goal. The One Goal web site refers to teachers in the program as "program directors." He understood that any teacher at a school could nominate themselves to be a part of the program, but the gateway is controlled by the school principal in collaboration with the One Goal interview process. It is the principal, in consultation with the One Goal program staff who determines which teacher will be selected. In contrast, principals play no role in whether a teacher obtains a certification from the ISBE according to Mr. McDermott.

Principal Wayne Issa described One Goal as "a program that helps students, primarily first-generation college-goers, get into college and to stay in college." Foreman had just begun the One Goal program before Principal Issa arrived at Foreman three years ago. It currently has three One Goal teachers, including Ms. Lunt. During the 2017-2018 school year, Ms. Lunt was teaching five sections of One Goal, a full load of exclusively One Goal classes. The program requires a three-year commitment, as much as possible with the same students. By the third year, the students should be in college. In fact, according to Principal Issa, the purpose of the One Goal program directors (as its teachers are called) is to support students in the first year of college. In year one of the program, the students are high school juniors; in year two they are seniors; and in year three they are freshmen in college. Principal Issa testified that he had never had a conversation with Mr. Nowak about the One Goal program.

Foreman's budget was already set for the 2016-2017 school year before Principal Issa arrived, but in the summer of 2017, while he was on vacation, he participated in making the budget for the following school year. At that time, it was decided not to offer physics, although Principal Issa also testified that it was Foreman's science department that decided that environmental science would be a better subject to teach Foreman's students than physics. After the decision was made to drop physics, the Board's Talent Office advised him that Mr. Nowak could not teach

anything else because he only had a physics certification. Principal Issa was unaware of that and had no idea Mr. Nowak's position was in jeopardy. Based on the fact that Mr. Nowak had previously taught all sciences, he had assumed Mr. Nowak would continue to be able to teach other science courses. Principal Issa testified that, ultimately, the Talent Office makes layoff decisions with respect to displaced teachers. He testified that he did not know whether the Talent Office knew if a teacher was participating in the One Goal program, but he acknowledged that, through the 2017-2018 school year, Amber Lunt was programmed into a reading position.

Principal Issa acknowledged that Assistant Principal Herrera-Padilla's email about One Goal contained no warning that teachers might be subject to layoff if they failed to participate. When asked if it were the principals who determine who can participate in One Goal, he testified:

I leave it up to the One Goal director. She shares with me the people that were nominated and the people that they would like to move forward. I share with her the people that if they move forward with, I wouldn't – I need them for my regular program. For instance, if my physics teacher nominated themselves and I said, well, I'm not going to be able to get another physics teacher. Those other two teachers, you can choose out of them. And I let them choose from there. Now, I don't know if that's how other principals do it or not, but that's how I do it.

Principal Issa testified that if a teacher resigned from the One Goal program before the end of their three-year commitment, they would have to find another. In fact, one teacher, Ms. Lopez, became ill and took a leave of absence a few months after becoming a One Goal teacher. In that instance, they went through the process again and selected somebody to take over.

Field Representative McDermott testified that obtaining a certification from the National Board for Professional Teaching Standards is quite an honor. It involves an extensive portfolio process with criteria and approvals required at each step. It requires a lot of studying, course work, and presentations and takes at least two years to complete. According to the ISBE web site, more than a decade of research across the country confirms that students taught by National Board Certified teachers outperform their peers taught by those without such certifications. Principal Issa acknowledged that obtaining a National Board Certification from the National Board for Professional Teaching Standards involves a rigorous process, but he has never heard of the Talent Office considering a teacher's certification from that entity as playing a role in layoff selection. On the other hand, he was unaware of any courses or programs that would require a

National Board Certification. Neither was Field Representative McDermott aware of any course requiring such a certification or such a certification playing a role in layoff selection.

Lina Fritz, the Managing Director of Program Innovation at One Goal, testified that there are 119 One Goal teachers employed by the Board. She said Foreman has participated in the One Goal program for over three years and is currently part of One Goal's full-release pilot program. She described that pilot as "an experimental model that is testing whether or not it is sustainable for a teacher to teach One Goal, which is an in-school course for five classes a day, instead of our traditional model, which is a content-area teacher who teaches One Goal for one section a day." The pilot program began with the selection of teachers in the spring of the 2015-2016 school year to begin teaching in the 2016-2017 school year.

Ms. Fritz described the process for selection of One Goal teachers or, as the program titles them, "program directors." The nomination stage begins in January or February with One Goal reaching out to school staff, program directors, administrators and current teachers to have them nominate teachers that they believe can change student's lives. Prerequisites for nomination are that they be CPS teachers working at that particular school. A teacher can nominate himself.

At the second stage all nominees are invited to attend an information session to learn about the program and its expectations at which they are advised of the need for a three-year commitment. Those invitees who apply then participate in interviews with One Goal staff. The program has an interview guide containing probing questions and role-playing situations. Following interviews, One Goal staff conduct classroom observations of the applicants' teaching skills.

The next stage is final selection, where program staff run a selection process and bring their recommendations to the school principal, ideally by spring break. The principal has final say "on whether or not that teacher can and will teach One Goal the following year." Emails informing the applicants of their selection are typically sent near the end of April.

Following final selections, there is a welcome celebration at which new program directors (One Goal teachers) connect with other program directors and One Goal staff and establish a network. Following that event is cohort development which includes three, three-hour trainings to prepare the teacher in the selection of "fellows," i.e., students. The program directors also

receive individualized coaching in this process, a process that entails canvassing and getting the word out about the program to students in the sophomore class. Students are then invited to apply by writing a small application and participating in a 15-minute interview with the program director.

In addition to the above, program directors receive training from One Goal staff every six to eight weeks throughout their three-year commitment, each lasting from three hours to a full day. The content of such trainings varies depending how far into their three-year commitment the program directors have progressed. Ms. Fritz opined that it is very important that a program director participating in the second year of the program already have had the first year training sessions.

Ms. Fritz testified that Amber Lunt has been a One Goal teacher since the 2015-2016 school year, having been selected the prior spring during the 2014-2015 school year. In that initial year, before the pilot program began, she was not teaching exclusively One Goal classes, but rather teaching a single One Goal course and four other regular courses as designated by her principal. The following year she began in the pilot program, retaining the one course with what were now second year students from the prior year, and also teaching four courses with first year high school juniors with whom she again made a three-year commitment. During the students' third year, they will be on college campuses and the role of a program director is to provide ongoing coaching and support, checking in on their academic, social and financial health. As described by Ms. Fritz:

Our model is built on a three-year looping cycle because that third year and the teacher's success and ability to coach students who are outside of the classroom and no longer held captive in those four walls of the high school, the success of that third year is dependent on the relationship that they build and cultivate in the junior and senior year while the students are still in the high school. So ... kids won't pick up the phone, right, in the third year if that relationship hasn't been built.

Ms. Fritz opined that One Goal's teachers are not interchangeable, and that it would definitely be detrimental to students if a One Goal teacher is replaced midstream. She explained:

The premise behind the success of our model is that it's built on a relational connection, and that relational connection gives the teacher access to speak truth into a student's life with accountability and to be a warm demander with that student. That is hinged on a trust relationship that has been built over time. If

that program director were switched out, all of the cumulative relational trust that has been built prior would be lost, and that would threaten our fellow's success.

Ms. Fritz asserted that One Goal does not have a framework in place to provide a second-year replacement teacher with the entirety of the training the teacher would have received had he participated during the first year. Her team has never had to administer training in that fashion.

IV. POSITIONS OF THE PARTIES

A. Position of the Union

It is the position of the Union that Mr. Nowak should have been allowed to bump the less senior Ms. Lunt and that by instead laying him off the Board violated the contract. According to the Union, Ms. Lunt's training in the One Goal program is not the equivalent of a "certification" within the meaning of Appendix H and therefore cannot serve as a basis to supersede Mr. Novak's seniority rights. If it could, the fact that school administration and a third-party organization handpick those who receive One Goal training would render designation as a One Goal program director an arbitrary and capricious means of circumventing contractual seniority rights, an alternative basis for finding a contractual violation.

The Union notes that Appendix H allows certification to supersede seniority in layoffs to avoid the obvious inappropriateness of a teacher teaching a subject he is not qualified to teach. However, qualifications to teach academic subjects is granted by the Illinois State Board of Education (ISBE) by means of a license or endorsement obtained only after a months or years long process involving college coursework and passing examinations. In contrast, selection to the One Goal program is based merely on subjective determinations by the One Goal program and the school principal after an interview and classroom observation by One Goal organization staff, followed by only nine to ten hours of training. That is not the sort of qualification Appendix H intended by its use of the term "certification." Furthermore, while Appendix H allows for consideration of performance evaluation, it does so in a very specific way using language that resulted from protracted negotiations and which incorporates the teachers' performance evaluation ratings issued through the teacher evaluation procedure under Article 39 of the contract. Had the parties intended to allow seniority to be superseded by other evaluative processes involving principals and third parties, they would have specified that in the contract.

The Union cites this arbitrator's prior decision in *Chicago Teachers Union and Chicago Board of Education (DeTineo)*, Gr. No. 13-08-059(ljj) (Nielsen, 2016), that a principal could not bypass seniority in layoff selection because of his subjective judgment that a less senior teacher was better suited to an International Baccalaureate teaching position and states the same principal applies here: the Board should not be allowed to bypass contractual seniority rights based on selection to participate in the One Goal program when a teacher need not obtain an ISBE certification, license or endorsement to be a One Goal teacher and when her selection for the program is determined by the subjective judgment of the principal and a third-party organization.

Anticipating that the Board will argue that application of seniority rights would disrupt the One Goal program, the Union first notes that the Board is not required to participate in the One Goal program, but it has agreed with the Union to conduct layoffs by seniority. While the goals of One Goal may be admirable and the Board is free to collaborate with that organization to provide services to students and teachers, it is not free to use its relationship with the One Goal program as an excuse to circumvent the terms of the collective bargaining agreement. And while laying off a One Goal teacher may be disruptive to that program, layoffs are always disruptive and often force a teacher to get up to speed with a new position's subject matter and students. It is the layoff selection process in Appendix H to which the parties agreed, and the Board cannot create exceptions merely by contracting with a third party. The Union notes that Foreman already has had a One Goal teacher leave the program early requiring it to select and train another to take her place and such disruption did not cause the collapse of the program. It speculates that the Board will rely on a disruption argument because it realizes it cannot fairly compare One Goal training to ISBE certification and that it would not have been difficult for Mr. Nowak to receive One Goal training prior to bumping into Ms. Lunt's position at the start of the 2017-2018 school year.

The Union notes that the Board does not consider National Board Certification to be "certification" within the meaning of Section H even though it involves a substantially more rigorous, selective, time-consuming and difficult process than One Goal selection and training. It argues it would be arbitrary and capricious for the Board to treat One Goal selection as preemptive of seniority rights while denying the same treatment of National Board Certification, particularly where the ISBE has recognized that "more than a decade of research from across the country confirms that students taught by the National Board Certified Teachers (NBCTs) outperform their peers taught by non-NBCTs." The fact that National Board Certification is widely recognized as the highest distinction a teacher can attain, that it is called a "certification", and yet that is not

recognized as a certification within the meaning of Appendix H shows the parties intended the term, as used in Appendix H, to be applied narrowly and that participation in the One Goal program does not constitute certification within the meaning of Appendix H.

Although recognizing that the precise issue was not squarely raised in the *DeTineo* case because the less senior teachers there had not yet received International Baccalaureate certification, the Union relies on this Arbitrator's statement in that decision that "there is nothing in Appendix H that suggests any agreement by the parties to exempt a junior teacher from layoff based on potential [International Baccalaureate] training and certification." The Union argues the same applies with respect to the One Goal training and participation. The Union anticipates that the Board will attempt to distinguish that case on the basis that the more senior teacher in *DeTineo* had herself tried, and failed to obtain International Baccalaureate training whereas here Mr. Nowak did not nominate himself for One Goal training. It states that such a distinction is irrelevant because there is no guarantee Mr. Nowak would have been selected for One Goal training even if he had nominated himself.

In addition to the above line of arguments that the Board cannot use the One Goal program as a basis to avoid seniority rights, the Union argues that the Board cannot use the program in this instance because it failed to provide reasonable notice that such a new "certification" could be the basis for layoff selection. It relies on Elkouri & Elkouri, *HOW ARBITRATION WORKS*, 13-8 (7th ed. 2012) for the general principle that managerial discretion cannot be exercised in bad faith or in an arbitrary or capricious manner, and relies more specifically on *Chicago Teachers Union and Chicago Board of Educ. (Ames Middle School)*, Gr. Nos. 4106/10-10-013 etc. (Meyers, 2014). It describes the holding of that case as a finding that a school principal could implement a new Board policy and even go above and beyond such policy, but could not implement the policy early in such a way that denied teachers a chance to meet those requirements. The Union states the logic of the *Ames Middle School* case applies here because Mr. Nowak was never told his failure to nominate himself to participate in the One Goal program could cause him to be selected for layoff.

B. Position of the Board

The Board contends that Mr. Nowak was not entitled to bump into Ms. Lunt's One Goal position because he undisputedly is not qualified to teach One Goal courses. It states his layoff

was proper because the language of Appendix H is not limited to ISBE certifications, and it notes the Union’s acknowledgement at hearing that the purpose of Appendix H is “to avoid the obvious inappropriateness of a teacher taking a position[] covering an academic subject he is not qualified to teach.”

As to Mr. Nowak’s lack of qualification, the Board notes that he admits he never nominated himself for a One Goal position and did not even read the informational email on the program assuming it did not apply to him. He did not receive any of its training of continuing professional development and there is no evidence he is familiar with the program, the nature of its instruction, or what a typical day in a One Goal classroom looks like. Given the cumulative nature of the training for the program, Mr. Nowak would be well behind the curve and, the program lacking a framework for getting him up to speed, attempting to do so would be a practical impossibility. Even if he were able to retroactively receive all the training, he has not been participating in the program and has none of the requisite foundational relationships with One Goal students. Trust is important to the program, and where Mr. Nowak has not developed trust with students during the first two years of the program while they are in high school, they will not pick up the phone when he calls them during the third year of the program while they are in college, according to the Board. An award placing Mr. Nowak into Ms. Lunt’s position would completely undermine the integrity of the program and be detrimental to the students.

The Board argues that nothing in Appendix H limits the term “certification” to certifications issued by the ISBE and, noting that both parties are sophisticated, that they would have included such a limitation if that had been their intent. It notes that the Union acknowledges that the purpose of Appendix H is to ensure that a teacher is not bumped into a position for which he or she is not qualified to teach, and states that that is the exact reason Mr. Nowak was not allowed to bump into Ms. Lunt’s One Goal position.

Anticipating that the Union will argue that there are other non-ISBE certifications that are not considered for bumping purposes, specifically those issued by the National Board for Professional Teaching Standards, the Board argues National Board Certifications are not considered because there are no specific teaching assignments requiring National Board Certification nor coursework that is taught only by NBCTs. In contrast, in order to serve as a One Goal teacher, one must complete initial training, make a three-year commitment, and continue specialized and cumulative professional development throughout those three years. It is

undisputed that this training and professional development is directly tied to a teacher's ability to effectively serve as a One Goal teacher.

The Board cites *Chicago Teachers Union and Bd. of Educ. (Marchman-Davis)*, Gr. No. 8325/15-11-322 (Kenis, Jan. 8, 2018) and *THE COMMON LAW OF THE WORKPLACE: THE VIEWS OF ARBITRATORS*, Sec. 2.21 at 85-86 (St. Antoine, ed., BNA Books 2d ed. 2005), for the proposition that “an interpretation that would have an unreasonable or inequitable result is justified only where the evidence is overwhelming that the parties intended such a result.” It claims allowing Mr. Nowak, who has no experience, familiarity or training related to One Goal or relationships with students in the program, to bump into a One Goal position would lead to such an unreasonable and inequitable result when relationships are foundational to the success of the program. Such a result would also fail to comport with the overarching purpose of Appendix H. There is no evidence, let alone overwhelming evidence, that the parties intended such an unreasonable result. Rather, the parties acknowledge the purpose of Appendix H is to allow teachers to only bump into positions they are qualified to teach.

Finally, the Board argues that the present situation is distinguishable from both the *DeTimeo* and *Ames Middle School* awards. In *DeTimeo*, although the grievant had not been selected to participate in the International Baccalaureate training, the two less senior teachers who had been selected had not begun to receive training at the time of the layoff and it was for that reason that the Board was obligated to follow the layoff order prescribed in Appendix H. The Board argues that the undersigned arbitrator never reached the question of whether the more senior teacher would have been permitted to bump the others had they completed training as is the case with Ms. Lunt. At the time of the layoff at issue in this case, Ms. Lunt possessed the required qualification that Mr. Nowak lacked.

The *Ames Middle School* case is also distinguishable from the present matter because there the school principal modified the licensure requirements for teachers in their current positions causing the layoff of employees from their current positions with little to no notice. In contrast, the Board states that here Mr. Nowak had full opportunity to avail himself of the One Goal program and chose not to participate. In addition, the Board notes that, at the time he decided to drop the Physics program, Principal Issa did not know it would result in Mr. Nowak's layoff, so there was no arbitrary or capricious action by the Foreman administration. Principal Issa could not have known to give Mr. Nowak specific warning that failure to participate in One

Goal could impact his retention at Foreman. This is in contrast to the principal in the *Ames Middle School* case who knew when he accelerated and enhanced new Board requirements that they would likely cause some teachers to be displaced. While the *Ames Middle School* case obligates the Board to provide notice to teachers of changes it was aware could result in a layoff, it does not hold that Board provide notice of potential consequences of which it is unaware.

V. DISCUSSION

The parties agree that the primary issue is whether the Board violated Appendix H of the 2015-2019 collective bargaining agreement when it laid off the grievant, out of seniority order. The Union bears the burden of proving the contractual violation it alleges. For the reasons that follow, I find it has met its burden here.

The facts are undisputed. Andrzej Nowak was laid off instead of less senior Amber Lunt solely because Ms. Lunt had been trained in, and was participating in the One Goal program as a One Goal teacher/program director. That the parties have agreed to consider seniority in layoff decisions is equally clear. Appendix H of the CBA contains the parties' agreement with respect to the layoff of teachers and in Section 3 provides that, within the set of tenured teachers like Mr. Nowak and Ms. Lunt, "teachers shall be displaced by inverse order of seniority, with the least senior teacher being laid off first." This provision applies, however, only when the teachers being considered for layoff are "within the affected unit and certification." Because both Mr. Nowak and Ms. Lunt are employed at Foreman, they are within the same "affected unit", and the only uncertainty is whether Ms. Lunt is in the same "certification" as Mr. Nowak as that term is used in Section 3. Since One Goal courses are neither Reading courses, for which Ms. Lunt has an endorsement, or Physics courses, for which Mr. Nowak has an endorsement, the more precise question is whether Ms. Lunt's selection as a One Goal program director constitutes a "certification" within the meaning of Appendix H, Section 3. Based on the record as a whole, I conclude that it does not.

It is clear that licenses and endorsements obtained by the Illinois State Board of Education constitute certifications within the meaning of the contract. Until 2013 the ISBE's licenses and endorsements were called "certifications" and it may be that the use of that term by the ISBE precipitated the parties' use of it in their contract. In any event, no one disputes that the parties

contemplated inclusion of ISBE certifications at the time they used that same term in their predecessor contract.

It is also clear that not all certifications related to the teaching profession fall within the meaning of that term as used in the contract. The record shows National Teacher Certifications issued by the National Board for Professional Teaching Standards do not count for purposes of Section 3. The Board posits that this is true because no courses taught by CPS require National Teacher Certification, but regardless of whether that is the true reason, it is evident that not all certifications are “certifications” within the intent of the parties. The converse must also be true: that qualifications not labeled certifications might nevertheless be considered certifications within the meaning of Section 3. As previously noted, the parties consider licenses and endorsements currently issued by ISBE to be certifications within the meaning of Section 3. I find that the same is not true with respect to selection to participate in the One Goal program.

The parties have agreed to seniority protections, and limitations they have placed on such rights should not be interpreted so broadly as to render the protection hollow. That is the concern of the Union. It notes, for example, that the parties have agreed to limit seniority rights to the extent they allow consideration of performance evaluations, but in doing so they incorporate the performance evaluation procedures that were themselves the result of negotiations culminating in Article 39 of the contract. Having taken such care in that regard, they would not likely have been careless with their use of the term “certification,” according to the Union, and I agree with this proposition. The record shows that participation by teachers in the One Goal program is very limited – there are only three One Goal teachers at Foreman – and that selection to participate in the program is controlled by an outside entity – the One Goal program – together with the school principal who in this instance states he defers to that outside entity (except where its selection would deprive the school of a teacher with endorsements needed to teach a necessary subject). Under this arrangement, nothing that a senior teacher such as Mr. Nowak could do, or ability he possessed, would enable him to guarantee selection into the One Goal program and, consequently, preclude his seniority from being rendered inconsequential. This is qualitatively different from an ISBE endorsement which a teacher might obtain solely by successfully completing a specified course of study and without any subjective selection by administration. The Union argues that the courses and training required for an ISBE endorsement are significantly more onerous than that required for One Goal selection, and that appears to be true, but it is the subjective selection

process that renders One Goal participation contrary to the fundamental purpose of seniority rights and distinct from the ISBE “certifications” contemplated by Appendix H Section 3.

The Board argues that Mr. Nowak had every opportunity to nominate himself for the One Goal program. The Union responds that he was given insufficient notice in that the opportunity was not accompanied with a warning that a failure to nominate might cause exposure to layoff. Regardless of the quality of notice, nomination alone does not guarantee selection, and, coupled with the lack of foreseeability that a layoff might result from a failure to take a chance on selection, I cannot find that Mr. Nowak in some way waived his seniority rights or that his failure to nominate himself somehow disqualifies his grievance.

The Union’s counsel acknowledged that the purpose of the certification language in Section 3 was intended “to avoid the obvious inappropriateness of a teacher taking a position[] covering an academic subject he is not qualified to teach.” The Board argues that I must interpret the contractual language in a manner that meets this goal, and that, lacking One Goal training and an existing relationship with the students in the One Goal program, Mr. Nowak is not qualified to teach One Goal courses. It convincingly argues that the program has a worthy goal and that allowing a more senior teacher to bump a teacher who has already established relationships with students in the program will be detrimental to the effectiveness of the program and to the students it seeks to help. The Union counters that layoffs frequently force teachers into new positions requiring them to take steps necessary to competently teach a new subject. Both lines of argument are correct. It is the unfortunate case that layoffs can harm students and educational programs. However the parties have agreed to seniority provisions which presumably provide other benefits to the educational system, and the only limitation on seniority I may consider in this matter is the certification language. I find that in using the term “certification,” the parties did not contemplate so broad a concept as to include the subjective selection of very few teachers in the One Goal program by an outside entity and the school principal.

In reaching my conclusion, I do not rely on my prior decision in *Chicago Teachers Union and Chicago Board of Education (DeTineo)*, Gr. No. 13-08-059(ljj) (Nielsen, 2016), or on Arbitrator Meyers’ decision in *Chicago Teachers Union and Chicago Board of Educ. (Ames Middle School)*, Gr. Nos. 4106/10-10-013 etc. (Meyers, 2014). In *DeTineo* I made very clear that I was not reaching the issue of whether certification in the International Baccalaureate program constitutes “certification” within the meaning of Appendix H, Section 3. As to the *Ames Middle*

School case, I do not base my decision on a failure to provide sufficient notice to enable Mr. Nowak to obtain acceptance into the One Goal program prior to layoff, but on the qualitative fact that, unlike efforts toward ISBE endorsements, nothing he could do would ensure acceptance into the program.

As noted, I recognize that allowing Mr. Nowak to bump Ms. Lunt may be detrimental to the purposes of the One Goal program in that, as in many bumping situations, he will need to exert considerable effort to come up to speed in training and professional development. I am unpersuaded by the Board's assertion that One Goal lacks a framework for providing such training. Managing Director Fritz stated the program includes 119 teachers. It cannot reasonably expect all 119 to fully complete their three-year commitment, as indeed it already has had to replace one teacher at Foreman after only a few months into her commitment. If it lacks a framework for training new teachers mid-commitment, it presumably has determined the decrease in the quality of the program does not outweigh the costs of administering a program of mid-commitment training.

In any event, my purpose is to determine the intent of the Board and the Union in their promulgation of Appendix H, Section 3, and I find they did not intend participation in the One Goal program to constitute a "certification." For that reason, Mr. Nowak and Ms. Lunt were in the same certification, and the Board violated the contract by failing to allow Mr. Nowak to bump the less senior Ms. Lunt.

I find that in laying off Andrzej Nowak rather than the less senior Amber Lunt, the Board violated Appendix H of the parties' collective bargaining agreement.

A W A R D

The Board violated Appendix H of the parties' collective bargaining agreement by laying off Andrzej Nowak rather than a less senior teacher effective August 28, 2017. As a remedy, the Board is ordered to offer to reinstate Andrzej Nowak to his prior position and to otherwise make him whole for all losses sustained as a result of his layoff, including lost wages, seniority, and any other lost benefits and privileges provided under the contract. I will retain jurisdiction for a period of 60 days following the date of this Award for the sole purpose of resolving disputes over

the remedy. Should either party invoke the arbitrator's retained jurisdiction during the 60-day period, jurisdiction will be extended for a period of time necessary to resolve the dispute. Should neither party invoke the arbitrator's retained jurisdiction during the 60-day period, jurisdiction will lapse.

Signed and issued this 26th day of May, 2021:

Daniel Nielsen, Arbitrator