

IN RE ARBITRATION BETWEEN:

ISD #77, MANKATO PUBLIC SCHOOLS

and

MINNESOTA SCHOOL EMPLOYEES ASSOCIATION, MSEA

DECISION AND AWARD OF ARBITRATOR

BMS No. 08-PA-0423

JEFFREY W. JACOBS

ARBITRATOR

7300 Metro Blvd. #300

Edina, MN 55439

Telephone 952-897-1707

E-mail: jjacobs@wilkersonhegna.com

March 17, 2008

IN RE ARBITRATION BETWEEN:

ISD #77, Mankato Public Schools

and

DECISION AND AWARD OF ARBITRATOR
BMS # 08-PA-0423
Joan Stalberger grievance matter

MSEA.

APPEARANCES:

FOR THE ASSOCIATION:

Lori Carlson, Business Agent
Cheryl Rosheim, Business Agent
Joan Stalberger, grievant
Sharon Irwin, Paraprofessional, Negotiator
Rita Kump, Paraprofessional, Negotiator
Mary C. Warren, Paraprofessional, Negotiator
Pat Griffiths, Vice Steward
Mark Spangler, Chief Steward

FOR THE EMPLOYER:

Gloria Olsen, Kennedy & Graven
JoAnne May, Director of Human Resources
Sue Campbell, School Nurse
John Klaber, Director of Special Education
Gordon Gibbs, Former Director of Human Resources

PRELIMINARY STATEMENT

The hearing in the matter was held on February 13, 2008 at 10:00 a.m. at the District Offices, at the Intergovernmental Center, 10 Civic Center Plaza, Mankato, Minnesota. The parties presented oral and documentary evidence at that time and submitted post-hearing Briefs on February 29, 2008 at which point the record was closed.

CONTRACTUAL JURISDICTION

The parties are signatories to a collective bargaining agreement for July 1, 2006 to June 30, 2008. The grievance procedure is contained at Article XIV. The arbitrator was selected from a list provided by the State of Minnesota Bureau of Mediation Services.

ISSUES

The issues as determined by the arbitrator were as follows:

1. Is the matter timely?
2. Did the District violate the collective bargaining agreement when it paid the grievant the LPN rate of pay for a portion of her working shift? If so what shall the remedy be?

ASSOCIATION'S POSITION

The Union took the position that the grievant should be paid for all her time working at the LPN rate due to the requirement that a LPN be with a particular student as a part of that student's individual health plan, IHP. In support of this the Association made the following contentions:

1. The Association argued that the District has been underpaying the grievant from the 2004-2005 school year until the present and continuing since she is required and has been required at all times material in this matter to use her LPN license in her job.

2. The Association first argued that the matter is timely. The grievant was told that her rate of pay was a function of funding and was not a grievable matter and she believed them. She justifiably relied in good faith on the statements made about why her pay was what it was over time even though she asked for increases several times.

3. The Association argued that the grievance was filed as soon as it found out that the grievant was being paid incorrectly under the contract. The Association, not the grievant, is the party to the collective bargaining agreement.

4. The Association argued that Article XIV defines a grievance as "an allegation by an employee, or the exclusive representative as to the interpretation or application of any term or terms of this Agreement." It further provides that a grievance "must be filed within 20 days of knowledge of the event giving rise to the grievance." The Association noted that it took all appropriate actions to file this grievance the moment it became aware of the facts. The Association argued that it was only made aware of the overall costing for the contract during negotiations. There was simply no way to determine whether a person is getting an inappropriate rate of pay from that type of data. The Association assumed that the grievant was working two different positions within the District; not doing the same job but getting two different rates of pay for it. They further had no knowledge of the underlying facts, i.e. the terms of the IHP, in this particular case and no way of knowing that until August 6, 2007, the date the grievance was formally filed.

5. The Association pointed to a letter sent to the District regarding the grievant's rate of pay as early as May 13, 2007 that requested that the grievant be paid her LPN rate of pay. In addition, the parties agreed to waive timelines by e-mail dated May 30, 2007 on the grievances over LPN pay. See also, letter dated July 5, 2007 where the District acknowledged the grievance filed by the Association regarding the LPN rate of pay for this grievant. See also, August 6, 2007 letter.

6. On the merits, the Association argued simply that the grievant must work with a developmentally disabled student who is prone to seizures. The student's IHP specifically calls for the grievant, who is referenced by name in the student's IHP, to administer a drug known as Diastat in the event the student experiences a seizure. The language in the IHP provides as follows: Administration of rectal Diastat: A. Joan Stalberger/backup LPN or RN will: 1. observe seizure activity and determine when medication is needed. 2. Administer Diastat rectally if tonic seizure progresses beyond 3 minutes or 4 or more seizures within 1 hour. See attached "How to Administer Diastat" instructions. 3. Call 911 a) if seizure continues beyond 10 minutes after Diastat, b) respiratory compromise occurs c) injury occurs with seizure.

7. The Association noted that currently only a licensed nurse may administer this medication. The Association further argued that at least in the special case of Ms. Stalberger and this particular student, referred to only as "student P" or "P" at the hearing, she must be there as a condition of the IHP to observe the student and make judgments about whether to administer the medication.

8. The Association also pointed out the Memorandum of Understanding, MOU, between the District and the Association dated November 15, 2001 in which the parties agreed that "a paraprofessional who is an LPN, and who performs services under that license as a part of his or her assignment as a paraprofessional in the District, shall be compensated at a rate not less than one and one half times his or her rate for the time during which such services as an LPN are performed." The Association argued that this language was essentially merged into the labor agreement at Article VI section 6 and is no longer necessary since the hourly rate is now in that provision.

9. The Association also asserted that even if the MOU is still in effect the clause that provides “for the time during which such services as an LPN are performed” in this case applies to all hours Ms. Stalberger works. She must be with this child, or a backup LPN or RN. Due to the terms of the IHP, the grievant must be there to both observe if there is a need to administer the Diastat and to then administer it. In other words, the grievant or another nurse must be there always in case the student needs the Diastat.

10. The Association countered the District’s argument that this happens rarely by pointing out that one never knows when these seizures will occur and that it is irrelevant since the terms of the IHP require the grievant by name or a backup nurse to be there as a condition of the IHP and therefore of Ms. Stalberger’s employment. The Association pointed out that under the terms of the IHP the District’s own witnesses acknowledged that a nurse must be there all day. Thus, the only reason Ms. Stalberger is there is because she is an LPN

11. The Association also strongly asserted that the side deal between the grievant and the District whereby she receives 2 hours per day is arguably an unfair labor practice since it excluded the exclusive bargaining representative from the discussion. The Association argued that the District may not commit an unfair labor practice and rely upon that as a basis for contract interpretation. The District never negotiated the rate of pay for Ms. Stalberger with the Association but simply arbitrarily imposed it when she requested more pay due to her functions as an LPN.

12. Moreover, the District cannot articulate which 2 hours per day the grievant was to work as an LPN. The Association argued that this is due to the fact that the District needs her to be there all day to assess and observe the student, which is a nursing function granted only to individuals with an LPN nursing license. She is therefore using “her nursing license” at all times she is in contact with the student and she is required to be with her all day. The fact that she performs paraprofessional services for other students in the room is immaterial to the question of why Ms. Stalberger, is there. She is there because she is an LPN.

13. The essence of the Association's argument is that the grievant has been underpaid for several years and should have been paid for all her hours at the LPN rate all along. This was due to the requirement that she be with this student all the time the student is in class to administer Diastat in the event she has a seizure. Since that can happen without warning at any time, the entire time she is with the student due to the IHP requires her to utilize her LPN license for the full time she is there.

The Association seeks an award requiring the District to pay the grievant the LPN pay called for in Article VI and for back pay at the LPN rate from 2004 to the present and continuing.

DISTRICT'S POSITION:

The District took the position that no contract violation occurred here and that the grievant has been more than adequately compensated for her actual duties. In support of this the District made the following contentions:

1. The District asserted that the matter is untimely and should be dismissed on that basis. The District noted that the grievance was formally filed on August 6, 2007. However Ms. Stalberger had been receiving the additional 2 hours per day of LPN pay for several years prior to that.

2. The District pointed to the provisions of the grievance procedure at Article XIV that requires the grievance to be filed within 20 days of the event giving rise to the grievance. If there was an "event" it would clearly have been the pay that Ms. Stalberger had been receiving for several years. The District pointed out that the Association's claim was for back pay from the 2004-05 school year, yet they filed the grievance in August of 2007. Moreover, the District asserted the untimeliness of this grievance from the very first time they heard of the assertion by the Association that Ms. Stalberger was underpaid. The District has never wavered from nor waived that claim. Based in the clear language of the agreement, the District argued that the grievance must be dismissed in its entirety.

3. On the merits, the District pointed out that the Grievant was hired as a paraprofessional effective September 8, 1998. At that time she had an LPN license, but she was not hired as a LPN and initially did not perform any LPN duties. In 2000, the grievant asked and was given the responsibility of administering Diastat to student P who occasionally had seizures. The District argued that she does not perform “LPN duties” except in those very rare instances when the student actually has a seizure and the grievant's LPN license comes into play.

4. The District asserted that the grievant works with the students in this classroom, including Student P, as a special education paraprofessional. The District asserted that other than administering Diastat, the grievant does the same job duties as the other paraprofessionals in this classroom just as any other paraprofessional would.

5. The District acknowledged that student P’s IHP is somewhat different from other health plans in that it mentions the grievant by name but asserted that many students are prescribed Diastat or other medications to control a wide variety of health conditions. In all cases but Student P, the decision to administer Diastat, the actual administration of Diastat and the monitoring and assessment of the student after Diastat is given is done by a non-School District employee.

6. The District further asserted that a nursing license, either RN or LPN, is not strictly necessary to administer Diastat and that nurses can delegate to trained appropriate personnel the duty of administering this medication if necessary. It is only and solely due to the IHP that the grievant is to administer the medication for this specific student.

7. The District asserted most strenuously that simply being familiar with student health plans, giving first aid and taking the initial step to implement the health plan does not require a nursing license and is not a “service under an LPN license.” All staff whether they are teachers, health aides, paraprofessionals, principals, have a responsibility to do these things when they observe a student having a seizure.

8. The District argued that the grievant acknowledged that when she is gone there is no nurse in the room and that someone merely needs to be available if the child has a seizure. The backup nurse would then administer the medication. The District noted that there was no dispute that the grievant performs paraprofessional services for student P except in those rare instances of a seizure and that she performs only paraprofessional services for the other students in the room.

9. The District summed up what it asserted were the uncontroverted facts of the case as follows: 1) Observing students who may have a seizure is done by all staff in regular contact with the student and is not a “service under a LPN license.” 2) Administering first aid is not a “service under a LPN license” since any qualified school employee, including paraprofessionals, can do this, and frequently do. 3) Taking action in accordance with the IHP to notify the appropriate personnel that a student is having a seizure is not a “service under a LPN license.” 4) Deciding if Diastat should be administered and actually administering it can be done by an employee without a nursing license, if a school RN delegates the responsibility to such non-licensed employees and properly trains them. The District noted that while this is currently not done now, it could be in the future. Thus, even the actual administration of Diastat is not technically a “service under a LPN license.”

10. The District also pointed to the time sheets filled out by the grievant that show her listed as a paraprofessional. The District countered the Association’s claim that the time sheets show the grievant as a LPN and argued that these were simply filled out by the school RN to show who needed nursing services and where those students were. They were never intended to establish pay rates.

11. The District asserted that it has been more than generous to the grievant by paying her for 2 hours per day over time since no one, certainly not the grievant, can articulate the exact hours spent utilizing her LPN license. The District asserted that only the hours spent actually administering Diastat could even arguably be considered in those hours and the evidence was that the student has seizures rarely. The student has not had a seizure yet this school year and on average perhaps 2 or 3 times per year over the past several.

12. The District pointed to the MOU of November 15, 2001 and noted that a licensed LPN is to receive LPN pay only when they are performing “services under the LPN license.” As noted above, the District’s main argument is that the grievant is not except in the very limited situation where she is actually administering Diastat, performing nursing services. Further, the District further asserted, contrary to the Association’s claim, that this MOU is still very much in effect. It had no expiration date and its language survived the negotiation of the collective bargaining agreements in the interim. The District pointed to other MOU’s that do in fact contain specific expiration dates and noted that this one did not.

13. The District further noted that the MOU is a specific description of the agreements reached between the parties and that specific language takes precedence over more general contract language, especially in dealing with unforeseen circumstances that arise during the life of the contract.

14. The District further argued that there was no violation of the Agreement since the grievant’s unique position is a “position within a special program,” within the meaning of Article VI, section 6. The District further asserted that this unique situation results in the grievant being in a “position within a special program,” and that administration of Diastat is the “service under a LPN license.” The District argued that it thus follows that the labor agreement authorizes it to pay Grievant a designated 2 hours of LPN pay a day for the “special program.”

15. The District acknowledged that the IHP in this particular case requires the grievant or another nurse to administer Diastat but argued that it does not require her to be with P all day. The District noted that there are many times when she is not and the grievant acknowledged she spends virtually all her time doing paraprofessional work with P and with other students in the room.

16. The District argued that Section 6 specifically contemplates this very situation, i.e. where a person performs paraprofessional work during some of the day and LPN work during other parts. It asserted that this situation fits neatly within that language despite the unique language of the IHP involved here.

17. Finally, the District argued that awarding the pay to this grievant would be an unfair and even harsh result. The District argued that it has been more than fair with the grievant, increasing her LPN pay over time per her requests to do so. The District asserted that even paying the grievant for 2 hours per day is more than adequate to cover the time she spends administering Diastat since this is rarely done. Had the District chosen to draft this student's IHP in the same fashion as it did for other students, which contain no same or similar language requiring a particular person or the LPN/RN equivalent to administer medication, there would be no case here at all.

The District seeks an award denying the grievance in its entirety.

MEMORANDUM AND DISCUSSION

TIMELINESS – There is no question that this grievance was filed on August 6, 2007, See Joint Exhibit 2. There is further no question that the disputed rates of pay have been paid for years prior to the filing of the grievance. Finally, the contract is clear and unambiguous. Article XIV defines a grievance as “an allegation by an employee, or the exclusive representative as to the interpretation or application of any term or terms of this Agreement.” It further provides that a grievance “must be filed within 20 days of knowledge of the event giving rise to the grievance.”

The Union claimed back pay retroactively to the 2004-2005 school year. The essence of this is that the District never notified the Association of the pay rates being paid to the grievant and that it intentionally misled the grievant by telling her that her pay was “a funding issue.” The Association asserted that since the Association, not the individual grievant, is the party to the contract, failure to notify the Association of this somehow tolled the limitation period found in the contract. This argument was unpersuasive.

The event giving rise to this grievance was the allegedly improper rate of pay being paid to the grievant. It is up to the grievant to bring any question or dispute to the exclusive bargaining representative for possible action including filing of a grievance. The grievant certainly knew what she was being paid and in fact was directly involved in that decision. The Agreement does not require knowledge by the Association but rather knowledge by the person aggrieved.

Further, the evidence here made it abundantly clear that the grievant was well aware of what she was being paid all along and at all times relevant to this matter. In fact she made several requests to increase the number of hours she was paid as an LPN, several of which were granted. While it was a bit troubling that these discussions about wages and other terms of employment went on without involving the Association, there was no evidence of any intentional misrepresentation by the District to the grievant or the Association at all here.

The evidence showed that the Association raised this virtually independently of the grievant when their representatives discovered how the grievant was actually being paid. The evidence showed that while costing information was given to the Association by the District for purposes of negotiating the contract this was insufficient to show what the picture was here.

This is an almost classic continuing grievance as defined in arbitral literature. Elkouri notes as follows: “Many arbitrators have held that ‘continuing’ violations of the agreement (as opposed to a single isolated and completed transaction) give rise to ‘continuing’ grievances in the sense that the act complained of may be said to be repeated from day to day – each day there is a new ‘occurrence;’ these arbitrators have permitted the filing of such grievances at any time, this not being deemed a violation of the specific time limits stated in the agreement (although any back pay ordinarily runs from the date of filing.) For example, where the agreement provided for filing ‘within ten working days of the occurrence,’ it was held that where employees were erroneously denied work, each lost day was to be considered a new ‘occurrence’ and that a grievance presented within 10 working days of any such day would be timely.” Elkouri and Elkouri, *How Arbitration Works*, 5th Ed at Page 282.

Here this analysis applies almost on all fours with these facts. Clearly, the dispute is about ongoing pay and each time there is a payment made, such payment would constitute the “event giving rise to the grievance” within the meaning of Article XIV, section 3. Accordingly, the grievance is considered timely and procedurally proper as a continuing grievance for the reasons set forth above.

The question now is what date was the grievance “filed” for purposes of back pay or any remedy to be awarded? The Union sent a letter dated August 6, 2007 requesting an adjustment of the grievant’s pay. See Joint Exhibit 2. The District asserted that this was the date of the formal grievance and the date on which any back pay should be limited.

However, it was equally clear that there were ongoing discussions between the Association and the District wherein the Association asked for a reconsideration of the grievant’s pay as early as March 7, 2007. It appears from the record that this was the first the Association was aware of the issue with Ms. Stalberger’s pay. See e-mail dated March 7, 2007 from Ms. Carlson to Joanne May. There were several e-mails after this in which Ms. Stalberger’s specific situation was discussed and a follow up letter dated May 13, 2007 on this specific issue as well.

There was even an e-mail dated May 30, 2007 in which there was acknowledgement of an agreement between the parties that “the timelines for the LPN issue are stayed until further notice when the District and the MSEA can complete the data search and investigation needed for this matter. The District and the MSEA will mutually agree to a time when, if needed, the grievance timetable starts.” See Union Exhibit 4, e-mail dated May 30, 2007 from Ms. Carlson to Ms. May., entitled “timeline stay.” The District acknowledged receipt of the Association’s concerns about Ms. Stalberger’s pay issues in a letter dated July 5, 2007. See Association Exhibit 5. Thus it was clear that the parties were discussing this specific grievance well prior to August 6, 2007.

Article XIV, Section 4 allows for informal discussion of grievances between the parties. This appears to allow for a tolling of the limitations period in the event these informal discussions occur. On these facts it would be contrary to the intent of that provision to limit any back pay to August 6, 2007 since it was quite clear that the parties considered this as a dispute subject to the grievance procedure at least as early as March 7, 2007. That was also the date on which the evidence showed that “knowledge” of the event giving rise to the grievance occurred. Moreover, there was specific discussion and an apparent agreement to waive the timelines for the processing of this grievance as early as May 30, 2007. On this record, the “grievance” at least informally, but in writing was raised on March 7, 2008. The grievance is allowed as timely on the continuing grievance theory set forth above. Any back pay will run however from March, 7, 2007.

MERITS – This presented an even thornier question. The evidence showed that the IHP for student P is unique in that it calls for Ms. Stalberger or a backup nurse to administer Diastat in the event it becomes necessary. The evidence also showed that this is done. The District argued most strenuously that the actual facts were that Ms. Stalberger hardly ever uses her nursing license and that she is performing paraprofessional services virtually all the time.

The record showed that the paraprofessional staff can and do observe the student and that they are trained to call for appropriate assistance in the event she has a seizure. It would only be in rare circumstance that Diastat is administered and then it must, by the terms of her IHP, be administered by Ms. Stalberger or another nurse if she is gone for some reason.

The essential feature of the IHP is thus not that Ms. Stalberger must be there all the time but that she is there *as an LPN* in case Diastat has to be administered. The evidence showed that the grievant is assigned to the student’s room for basically one reason – the IHP that requires that she or a licensed nurse administer Diastat in the event P has a seizure. There is thus some merit to the Association’s claim that even though the grievant does not administer the Diastat often, if at all, the only reason she is assigned to that room is because of her nursing license.

The District made the point that they could delegate the authority and the duty of administering the Diastat to another individual in the District with appropriate training. The District further asserted that this person would not need to hold a nursing license as long as the authority were properly delegated by a nurse and that person had appropriate training to administer the medication. There appears to be nothing in the contract that would prevent that and the evidence adduced at the hearing shows that such delegation could well be properly exercised in appropriate cases. There was also nothing on this record to suggest that such a delegation would be contrary to the nursing license or that Diastat must be administered only by a person holding a nursing license. That question is not strictly at issue here and no decision is made with respect to it.

What is clear though is that the authority to administer Diastat to this student *has not* been delegated to anyone. Rather the record was abundantly clear that due to the requirements of P's IHP, it must be administered by a nurse. Thus, the District's argument that the administration of Diastat is not technically a "service under a LPN license" does not decide the case here because of the requirement in the IHP that the Diastat *must* be administered by a nurse.

Neither does the fact that Ms. Stalberger's main duties are those of a paraprofessional for most if not all of the day. The evidence in fact did show that the vast bulk of her duties during the day are those of a paraprofessional and not of a nurse. However, there is the thorny requirement that she, or another nurse, be present at all times as a practical matter to administer Diastat if the student needs it. The fact that she has not had a seizure lately is of no consequence. This conclusion is further strengthened by the fact that Ms. Stalberger is paid as an LPN for all of her hours in the summer. The District argued that the summer is different since there is no other back up nurse so the chances of her administering Diastat are greater. Logically that may not even be true. Statistically it is somewhat less likely that she would administer Diastat during the summer since the student is only in class for 3 hours a day. However, this case is not governed by percentages or chances of a seizure but rather the requirement of the IHP that Ms. Stalberger or a back up nurse administer the drug if necessary.

Both parties pointed to the same language in the MOU from November 15, 2001 in support of their respective positions. That language calls for “a paraprofessional who is an LPN, and who performs services under that license as a part of his or her assignment as a paraprofessional in the District, shall be compensated at a rate not less than one and one half times his or her rate for the time during which such services as an LPN are performed.”

The question is what constitutes “nursing service” within the meaning of the MOU and the contract. Is it as the Association contends the act of observing, monitoring and assessing the student, along with the actual administration of the medication when that happens or is it as the District contends only for the actual administration of the medication, which at least for now is something only an LPN does. The evidence showed that the sole reason Ms. Stalberger is in the room all the time with student P is because of her nursing license. If the requirement in the IHP was not there this case would be decided differently.

Further there was the question of whether the November 15, 2001 MOU is still in effect. The evidence showed that the MOU is still in effect and very much part of the labor agreement and the bargaining relationship between these parties. It was clear that the MOU has not by its terms nor by operation of the various negotiations between the parties, expired. The fact that Article VI provides for a certain rate of pay under certain circumstances did not appear to replace or supplant the MOU. This case is thus based on the unique facts here, i.e. the IHP involved for this particular student. It is thus that under these very unique set of facts, Ms. Stalberger is performing services under her nursing license because of the requirements of P’s IHP.

While the evidence did clearly show that not all students have a similar requirement to the IHP found in P's IHP, (in fact it was apparent that *only* Student P has this requirement) it was clear that hers did and that Ms. Stalberger must be there in the event the child suffers a seizure. Under these unique circumstances, due to the language in student P's IHP, Ms. Stalberger is thus performing "nursing services" at all time she is in the room because a nurse is required to be there. That of course translates to her entire day. This may seem an incongruous and somewhat tortured result given what the grievant actually does during the day but it is compelled by the language of the contract and the MOU, which require the higher rate of pay where LPN's are performing "nursing services" and the requirements of this particular student's IHP.

There is some merit to the District's argument that if the District had chosen to draft this student's IHP in the same fashion as it did for other students, which contain no same or similar language requiring a particular person or the LPN/RN equivalent to administer medication, there would be no case here at all. Without both of those requirements the result would frankly be different. However, while the District argued that it could require other non-LPN licensed staff to administer Diastat for this student, currently that is not the case. The result here must therefore be governed by the facts presented here and not by hypothetical facts that have not yet occurred.

There was finally the issue raised by the District on fairness. The District asserts that no one including the grievant can articulate the exact hours she spends "performing nursing services" versus the time she spends performing services as a paraprofessional. As noted above, under these facts, because of the IHP Ms. Stalberger is spending all her hours performing services as a nurse because of the requirement that she be there to administer Diastat and the fact that as it stands now, only a nurse is allowed to do that in this District. Strictly speaking a case such as this must draw its essence from the labor agreement. As puzzling as it sounds, general notions of equity and fairness do not enter the equation. Having said that though, the District's actions were certainly understandable and were clearly motivated by a desire to "do right" by the grievant.

Consider this however, if the case were slightly different and the grievant were getting no pay at all as an LPN and this case were about getting that pay under these identical facts, the arbitrator would have no contractual power to pluck a figure of 2 hours out of the air and order that amount be paid at LPN rates. Frankly, because no one could articulate the exact hours spent performing nursing services, under these facts, the case becomes an all or nothing proposition, since there is no contractual basis for the 2 hours per day that is being paid. The evidence showed that this was a well intentioned but somewhat arbitrary number. The grievant is either performing nursing services all day or not at all. As noted above, the facts supported the former conclusion.

Thus, based on that language the grievance is sustained as limited by the discussion on the timelines here. Accordingly, the District is ordered to pay the grievant at the LPN rate for all hours from March 7, 2007 through the date of this award.

AWARD

The grievance is SUSTAINED IN PART AND DENIED IN PART. The District is ordered to pay the grievant for accrued back pay at the contract LPN wage rates from March 7, 2007 through the date of this award..

Dated: March 17, 2008

Jeffrey W. Jacobs, arbitrator

Mankato Schools` and MSEA