

IN THE MATTER OF THE ARBITRATION BETWEEN

ANOKA-HENNEPIN)	MINNESOTA BUREAU OF
EDUCATION MINNESOTA,)	MEDIATION SERVICES
)	CASE NO. 07-PA-0931
)	
)	
Union,)	
)	
and)	
)	
INDEPENDENT SCHOOL DISTRICT)	
NO. 11 (ANOKA-HENNEPIN),)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

For the Union:

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For the Employer:

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On February 6, 2008, in Anoka, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Union against the Employer. The grievance alleges that the

Employer violated the labor agreement between the parties by requiring Teachers to attend training meetings scheduled to continue longer than their regular duty day without additional compensation. Post-hearing briefs were received by the arbitrator on March 17, 2008.

FACTS

The Employer (sometimes the "District") operates the public schools in a suburban school district just north of Minneapolis and St. Paul, Minnesota. It is the largest school district in Minnesota, serving approximately 41,000 students. The Union (sometimes "AHEM," as the parties refer to it) is the collective bargaining representative of about 3,000 Teachers and Counselors who are employed in the Employer's schools.

This grievance arose during the term of the parties' 2005-2007 labor agreement, which has a stated duration from July 1, 2005, through June 30, 2007. The following provisions of the labor agreement are relevant:

ARTICLE VII HOURS OF SERVICE

Section 1. Basic Duty Day.

Subd. 1. The duty day shall be 7 hours and 40 minutes in length, including the equivalent of 1/2 hour before and 1/2 hour after school and a minimum of a 25-minute duty free lunch. The remaining 375 minutes shall include a minimum daily average of 50 minutes for preparation to be provided on a weekly basis in middle and high schools and over a 5-day digital schedule in elementary schools. Teachers shall receive a minimum of 5 minutes preparation time for every 25 minutes of instructional time. Every effort will be made to provide preparation time in a continuous block, but at no time shall a block be less than 30 minutes. The remaining time shall be used for passing students, supervision, I.E.P. preparation, team planning, traveling, advisor-advisee meetings, and other

assigned non-instructional duties. Special Education teachers may be released from supervision responsibilities to attend required due process meetings or student assessments.

Teacher requests to fulfill parent-teacher conference duty time obligations outside of regular paid duty days and at times other than scheduled parent-teacher conferences may be approved by the principal.

The Transition Plus Program, Early Childhood Intervention, Student Support Programs, Supplemental Programs, or Alternative Programs 7 hour and 40 minute duty day shall be continuous with classes beginning at 7 AM and ending at 10 PM [sic]. Any variation in the continuous day or normal start time in these buildings/programs shall be by mutual agreement of the teacher and the District; along with mutual notification to AHEM of any variation.

Subd. 2. Attendance at in-service meetings and non-compensated committee meetings scheduled other than the school duty day is voluntary. Accommodations for required meetings with parents will be made on an individual building basis. . .

Section 2. Professional Responsibility: The application of this policy provides an opportunity for the administration and curriculum staff to call meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District.

ARTICLE X

BASIC SCHEDULES AND RATES OF PAY

Section 10. Information and Training Workshops.

Subd. 1. Teachers designated by the District to voluntarily attend information or training workshops on non-duty days shall be compensated at the rate of \$183.00 per day for 2006 and \$187.00 per day for 2007 in addition to any expenses incurred. Attendance at in-service or training workshops on a duty day but beyond the time for a normal duty day will be compensated up to the maximum hourly rate set forth in Section 6 of this Article.

In early 2005, the Employer began a series of staff development training sessions entitled, "Units of Study," for all Teachers teaching in kindergarten, first grade and second grade and for certain special education Teachers teaching at those grade levels -- a total of about 420 Teachers who teach in

the twenty-eight elementary schools operated by the Employer. Because the number of Teachers who would be required to attend the training sessions was large, the Employer decided to conduct the training over a two-year period, the 2005-2006 school year and the 2006-2007 school year. About 210 Teachers were required to attend a series of six training sessions during the 2005-2006 school year, and the remaining 210 were required to attend the same series of six training sessions during the 2006-2007 school year.

As I note below, the present grievance does not challenge the requirement that Teachers attend the training sessions scheduled during the 2005-2006 school year. Rather, it relates only to the Teachers scheduled for the training during the 2006-2007 school year. It alleges that the Employer violated the labor agreement by extending the regular duty day for many of those Teachers without compensation.

Although Article VII, Section 1, of the parties' labor agreement establishes a duration of seven hours and forty minutes as the length of the "duty day," the starting time and ending time of the duty day vary from school to school -- primarily to accommodate bus scheduling.

Below I set out the written Step II grievance in this dispute, sent by email on December 20, 2006, from David B. Kundin, then a Field Representative for the Union, to Paul H. Cady, the Employer's General Counsel:

We would like to bring to your attention a situation that has developed at Sand Creek [Elementary School], where a series of bi-monthly meetings have been scheduled to take

place and to last beyond the duty day. The duty day at Sand Creek ends at 3:40 and these meetings have been scheduled to go from 1:00 p.m. until 4:00 p.m. on the following dates:

September 13, 2006
October 25, 2006
November 29, 2006
January 31, 2007
March 14, 2007
May 9, 2007

It is our understanding that these meetings are for training for K, 1st, 2nd, ESL and Title Teachers. We are aware of the provisions contained in Article VII, Section 2, Professional Responsibility, which allow

[A]dministration and curriculum staff to call meetings reasonable in number and length which extend beyond the duty day where such meetings are necessary in order to conduct the educational programs of the School District.

It is the position of AHEM that these meetings violate the spirit and intent of that language in that they are regularly scheduled and periodic in nature, and thus neither "reasonable in number" nor "length" as contemplated in Section 2 above.

We further view this as a continuing grievance, and the fact that we are not timely in grieving all of the meetings that took place in the fall does not preclude us from grieving the upcoming 2007 meetings. Our building representative at Sand Creek brought this matter to the attention of the Sand Creek Principal at Step I challenging the November 29 meeting, but there was no response by the District. Thus, we seek this to start as a Step I grievance of the refusal to pay those who attended the November 29, 2006, meeting, and we are seeking reimbursement for this meeting, as well as compensation for those upcoming. These meetings are not being called at the building level, but the directives are coming from Curriculum & Instruction.

Please accept this as a Step II Association Grievance on behalf of any members who are affected by this practice that we think is impermissible under the Master Agreement. The remedy we seek is pay for those who were required to meet beyond the duty day on November 29, 2006, and any subsequent meetings, at a pro-rata amount that is commensurate with their hourly rate of pay. In addition, we request that the District cease and desist from scheduling such meetings beyond the duty day unless and until arrangements are made for those individuals to be compensated for this extra time as set forth above. . . .

At the hearing, the Union described the grievance as a "class action" grievance brought in behalf of all Teachers in the District's twenty-eight elementary schools whose attendance at the Units of Study training sessions caused them to work beyond the duty day. The Union explained that the evidence it presented would focus on the Teachers from Sand Creek Elementary School ("Sand Creek") because, with a duty day ending at 3:40 p.m., they provided a representative example of Teachers whose required attendance at the training sessions caused an extension of their duty day. The Union pointed out that, because the duty day at some elementary schools ended at 4:00 p.m. or later, a requirement that Teachers from those schools attend the training sessions until 4:00 p.m. would not extend their duty day beyond the seven hours and forty minutes allowed in Article VII, Section 2, of the labor agreement.

Hereafter, most of my description of the evidence relates to the Teachers at Sand Creek, in accord with the manner in which the evidence was presented by the parties.

About half the 210 Teachers who attended the Units of Study training sessions during 2006-2007 were scheduled to attend in the morning, from 8:30 a.m. till 11:30 a.m., and about half were scheduled to attend in the afternoon, from 1:00 p.m. till 4:00 p.m. Scott J. Schaefer, a second grade Teacher at Sand Creek, testified that all second grade Teachers at Sand Creek were required to attend the six training sessions in the afternoon, from 1:00 p.m. till 4:00 p.m. Teachers were given the option of receiving the first training in August during the

"Summer Institute" rather than on September 13, 2006. Those who elected to do so were paid one-half day's pay because the date of the August training was outside the regular school year. Schaefer and the other second grade Teachers from Sand Creek elected to take the first training during August rather than September, but they attended the remaining five training sessions as scheduled -- during the afternoon on October 25, and November 29, 2006, and January 31, March 14, and May 9, 2007.

Schaefer testified that he timed the length of all of the last five training sessions and that the October 25 session ended at 4:20 p.m., the November 29 session, at 4:10 p.m., the January 31 session, at 4:15 p.m, the March 14 session, at 4:12 p.m., and the May 9 session, at 4:00 p.m. Witnesses for the Employer testified that the training sessions ended at 4:00 p.m., that Teachers were free to leave at that time, but stayed to ask questions after the formal part of the training.

Schaefer testified that he has never before been required to attend a staff development training that extended the length of the duty day beyond seven hours and forty minutes and that, although there have been all day trainings that lasted till 4:00 p.m. or later, in every case, an adjustment to a later starting time for those trainings prevented the duty day from exceeding seven hours and forty minutes.

On November 29, 2006, after discussions with Kundin and other affected Teachers, Schaefer and Mary McDonough, another Sand Creek Teacher, met with Paul S. Anderson, the Principal of Sand Creek, to seek compensation for the requirement that they

attend the training sessions that lasted beyond the duty day. Anderson testified that when he met with Schaefer and McDonough on November 29, 2006, he offered them an adjustment in their schedules to offset the twenty-minute extensions of their duty day for each training session. He suggested to Schaefer 1) that, on the day following each training session, he start his duty day at 8:20 a.m., twenty minutes later than the usual starting time, or 2) that Schaefer leave ten minutes early for two days to offset each twenty minute extension. Schaefer rejected these proposals because any offsetting reductions in the length of other duty days would diminish the time he had for class preparation, to the detriment of the quality of his instruction.

Anderson told Schaefer that he would attempt to obtain clarification from District administrators, including those who were responsible for the Units-of-Study staff development course. Schaefer and Anderson exchanged emails from December 1 through December 14, 2006, about Anderson's attempts to obtain such clarification. When Schaefer received no satisfactory answer, he so informed Kundin, and, as described above, Kundin initiated the Step II grievance on December 20, 2006.

Sandra M. Skaar testified that she has been an elementary school Teacher with the District for about thirty years, but that she is now on leave as she serves as president of the Union. She has participated in bargaining for the Union for about ten years. The following is a summary of her testimony. She contrasted meetings that are held to train Teachers or

improve their skills (which the parties sometimes refer to as "staff development meetings," as "in-service training," as "staff training sessions," or as "workshops") with what Skaar referred to as "building staff meetings," during which the Teachers in a particular building meet to discuss matters relating to the administration of their building. Most building staff meetings are held during the regular duty day, either before or after students are in classes. There have been a few occasions, however, when these meetings have extended beyond the duty day by about fifteen minutes, and Teachers do not seek additional compensation for such extensions of the duty day because they fall within the scope of Article VII, Section 2, of the labor agreement, which "provides an opportunity for the administration and curriculum staff to call meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District."

According to Skaar, this language does not cover staff development meetings -- those held for the purpose of improving the skills of Teachers. She testified that she has never been required to attend a staff development meeting that extended beyond the duty day without receiving additional compensation for the extension. She also testified that, in bargaining for the parties' 2000-2001 labor agreement, the Employer proposed to expand the language of Article VII, Section 2, but abandoned the attempt after a strike vote showed that 97% of Union members voted to strike over that proposal, which she did not describe.

Skaar described several kinds of staff development meetings that the District undertakes. Some occur during the summer, and, because they are held outside of the regular school year, Teachers receive additional hourly compensation for attending them. Some occur on several days during the regular school year, when the day is fully reserved for staff development and Teachers have no student contact duties. Because all of the staff development on such days occurs within the regular duty day of seven hours and forty minutes, Teachers do not receive additional compensation for attendance. Sometimes, the District schedules staff development to be completed entirely within the duty day when students are in attendance; on such occasions, the District uses substitute Teachers to teach while the regular teaching staff attends the training. Teachers do not receive or expect additional compensation for such attendance because they have no extension of their duty day. Sometimes, the District schedules training that does not begin during the regular duty day, but starts after its end; Teachers expect and receive additional compensation for such attendance.

Skaar testified that the second sentence of Article X, Section 10, Subd. 1, requires the District to pay additional compensation for required attendance "at in-service or training workshops on a duty day but beyond the time for a normal duty day," including not only trainings that start after the end of the regular duty day, but also those that begin during the duty day and extend beyond its end -- as in the present case.

Skaar noted that in October of 2007, the Employer scheduled an eight-hour staff development day -- one of the several days within the year that are reserved for Teacher training with no student contact duties. Skaar objected to District administrators that the eight hours scheduled would exceed the regular duty day of seven hours and forty minutes. The District reduced the training to seven hours and forty minutes, and the Union did not grieve.

Below I summarize the testimony of Laurie J. Resch, Director of Elementary Curriculum and Assessment, and of Carolyn B. Gwinn, Teaching and Learning Specialist in Elementary Literacy. Resch is Gwinn's supervisor. Gwinn had learned from elementary Teachers that they were concerned about the writing skills of their students. Gwinn and Resch developed a course designed to improve the skills of Teachers in the early grades to teach writing to their students -- a course of six one-half day sessions of three hours each. They decided to conduct the course during two years to accommodate the large number of Teachers in those grades. About half of the Teachers took the course in 2005-2006 and half took it in 2006-2007, and about half of each of those groups took the course in the morning from 8:30 a.m. till 11:30 a.m., and the other half in the afternoon, from 1:00 p.m. till 4:00 p.m. (though Teachers were permitted to attend some morning sessions and some afternoon sessions). The course was given at the District's Staff Development Center. Resch and Gwinn testified that they thought Article VII, Section 2, of the labor agreement allowed the District to schedule training sessions that may require some Teachers to attend

beyond the duty day without additional compensation -- if the sessions were "reasonable in number and length." Resch and Gwinn also testified that they thought the number and hours of the Units of Study sessions fell within that allowance.

In addition, Resch and Gwinn testified that they expected that, for some Teachers, the hours of the training would not cause an extension of their duty day because some buildings have a duty day that begins at 8:20 a.m. or later. Those who had an earlier start to the duty day could seek adjustment in their schedules from their building principals to avoid working beyond the end of the duty day. Resch and Gwinn conceded that they did not advise Teachers or principals that they might seek such an adjustment, and they conceded that they did not consult with Union representatives before establishing the training hours.

Linda L. Fenwick, Director of Labor Relations and Benefits, testified as follows. She assists the District's General Counsel in negotiating and administering the parties' labor agreement. Fenwick disagrees with Skaar's interpretation of Article VII, Section 2, of the labor agreement. As noted above, Skaar testified 1) that she read the section to mean that the "administration" in each school building was permitted to "call meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District" without additional compensation, and 2) that staff development meetings were not included in the meetings permitted by the provision.

Fenwick testified, however, that the parties had no discussion during negotiations that added to the plain meaning of the provision. She testified that the word "administration" includes not only building administrators, but District administrators, and she cited other provisions of the labor agreement that clearly used the word to include District administrators. She also testified that nothing in the language of the provision indicates that the word "meetings" was not meant to include staff development meetings.

According to Fenwick, Article VII, Section 2, permits the District to call staff development meetings reasonable in number and length without additional compensation if the meetings extend beyond the duty day -- provided such meetings begin during the duty day. Fenwick testified that there have been District-wide technology staff development meetings called in the past without additional compensation to those Teachers who teach in a building with an early start to the duty day (similar to the Sand Creek Teachers in the present case), thus causing, for them, the meeting to extend beyond their duty day. Fenwick testified that the Union has not grieved in the past when a training meeting that begins during the duty day extends beyond the duty day.

Fenwick also testified that the second sentence of Article X, Section 10, Subd. 1, covers only the staff development meetings that begin after the end of the duty day, establishing compensation for attendance at such meetings.

In addition, Fenwick testified about the meaning of Article VII, Section 1, Subd. 2, which provides that attendance

at "in-service meetings and non-compensated committee meetings scheduled other than the school duty day is voluntary." The agreement expressly states that such attendance is voluntary because it falls outside the defined duty year.

Skaar testified on rebuttal that there has never been a common understanding that, as Fenwick testified, the second sentence of Article X, Section 10, Subd 1, refers only to staff development meetings that begin after the end of the duty day, and she testified that the District has never notified the Union that it so interprets the sentence.

DECISION

Timeliness.

The Employer argues that the grievance was not initiated within the time limit established by Step 1 of the grievance procedure, as set forth in Article XIX, Section 2, of the labor agreement:

Step 1. The grievance shall be orally presented to the employee's first level supervisor within ten (10) days after the employee knew or should have known of [the] violation. . . .

The Employer makes the following argument. Its first notification of a claimed violation of the labor agreement relating to the Units of Study meetings occurred on November 29, 2007, when Schaefer met with Anderson, his first level supervisor. The Union knew or should have known that the Units of Study training meetings were occurring during the entire 2005-2006 school year, and Schaefer knew of their occurrence, if not during 2005-2006, at least when he received notification

that he would be required to attend the meetings scheduled for 2006-2007, the first of which was scheduled for September 13, 2006 (even though Schaefer elected to take that first training during August). Thus, notification to Anderson on November 29, 2007, fails to meet the Step 1 requirement that notification occur within ten days "after the employee knew or should have known of [the] violation."

The Union makes the following argument. The grievance does not seek recovery for violations previous to the Units-of-Study meeting of November 29, 2007, which was the day Schaefer informed Anderson, his first level supervisor, of the claimed violation. Thus, the grievance seeks recovery for violations contemporaneous with and after the date of the oral Step 1 grievance, as "continuing violations" of the labor agreement. The alleged violations, therefore, clearly fall within the time limit established by Step 1 of the grievance procedure.

Because the grievance alleges violations of the labor agreement that occur on and after November 29, 2007, the date the oral grievance was first presented to a first level supervisor, I rule that it was presented within the time limit established by Step 1 of the grievance procedure. In so ruling, I accept the Union's argument that each meeting should be treated as a separate event, supporting a possible claim of contract violation. Not to do so would establish the ungrieved past meetings as the equivalent of binding practice, despite the lack of evidence that the Union intended the failure to grieve as establishing such a binding practice.

The Substantive Issue.

The substantive issue raised by the grievance requires interpretation of Article VII, Section 2, and the second sentence of Article X, Section 10, Subd. 1.

The parties' disagreement about the interpretation of these two provisions begins with their different readings of the second sentence of Article X, Section 10, Subd. 1, the text of which I repeat below:

Attendance at in-service or training workshops on a duty day but beyond the time for a normal duty day will be compensated up to the maximum hourly rate set forth in Section 6 of this Article.

The Union argues that this provision is unambiguous -- that its requirement that Teachers be paid for "attendance at in-service or training workshops* on a duty day but beyond the time for a normal duty day" is clear on its face. The Union argues that the phrase, "but beyond the time of the normal duty day," clearly means that a Teacher is to be paid for required attendance at a staff development meeting whenever such attendance extends till a time more than seven hours and forty minutes after the start of the Teacher's duty day. The Union urges that nothing in the language makes a distinction between staff development meetings that begin during the duty day and those that begin after the end of the duty day; in either case, the language requires compensation to the Teacher.

* The parties agree that "in-service or training workshops" are the equivalent of "staff development meetings," a term which, I use hereafter for uniformity.

The Employer disagrees with this interpretation. It reads the sentence as requiring compensation to a Teacher if a staff development meeting begins after the end of the Teacher's duty day, but not requiring compensation if a staff development meeting begins before the end of the Teacher's duty day. This interpretation of the second sentence of Article X, Section 10, Subd. 1, is derived from the Employer's interpretation of Article VII, Section 2, of the labor agreement, the text of which I repeat below:

Professional Responsibility: The application of this policy provides an opportunity for the administration and curriculum staff to call meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District.

The Employer argues that this section provides a broad "opportunity" for the "administration" at the District level to call meetings that extend beyond the defined duty day without additional compensation and that the meetings may be for any purpose, even District-wide staff development, if they are reasonable in number and length and are necessary in order to conduct the educational programs of the School District.

The Employer argues that nothing in the language of this section restricts the meaning of the word "meetings" as Skaar's interpretation would restrict it, i.e., to mean only the usual meetings held among the staff of each school building, usually within the duty day, but occasionally extending beyond. The Employer also argues that nothing in the language restricts the meaning of the word "administration" as Skaar would

restrict it, i.e., to mean only the administration of each school building.

I interpret Article VII, Section 2, as follows. First, the reference made in Article VII, Section 2, to "this policy" has no clearly indicated antecedent. Nothing in the language either of Section 1 or Section 2 of the article refers to a "policy," using that word. Nevertheless, I interpret "this policy" to be a reference to the structure of the school day as established by the four subdivisions of Section 1.

Second, nothing in the language of Article VII, Section 2, expressly states that the Employer need not compensate Teachers for requiring them to attend "meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District." Nevertheless, the statement that the "administration" has the "opportunity" to call such meetings implies an intention that compensation is not required.

Third, I agree with the Employer that nothing in the language of the section restricts the meaning of the word "meetings" so as to exclude staff development meetings. Fourth, I agree with the Employer that nothing in the language of the section restricts the meaning of the word "administration" so as to exclude administration at the District level.

Thus, a reading of Article VII, Section 2, alone, without reference to other parts of the labor agreement, can yield the interpretation urged by the Employer -- that, on its face, it

permits the Employer to call District-wide staff development meetings without additional compensation for extensions beyond the duty day if the meetings are reasonable in number and length and are necessary in order to conduct the educational programs of the School District.

I interpret the second sentence of Article X, Section 10, Subd. 1, as follows. First, it expressly creates an obligation that, in a stated circumstance, the Employer provide Teachers additional compensation. Second, the circumstance in which the Employer has that obligation is narrow. It exists when attendance is required at a staff development meeting "on a duty day but beyond the time for a normal duty day." Nothing in the language of the sentence limits the obligation of the Employer to compensate Teachers only when the staff development meeting begins after the end of the duty day. As the Union argues, the language, on its face, creates the obligation to compensate whether the meeting begins before or after the end of the duty day -- provided that the meeting lasts "beyond the time for a normal duty day."

Thus, a reading of the second sentence of Article X, Section 10, Subd. 1, alone, without reference to other parts of the labor agreement, can yield the interpretation urged by the Union -- that, on its face, it requires the Employer to pay a Teacher additional compensation for required attendance at a staff development meeting whenever such attendance causes the Teacher to attend beyond the end of the duty day -- whether or not the meeting began during the duty day.

Though each of the two provisions -- Article VII, Section 2, and the second sentence of Article X, Section 10, Subd. 1 -- appears to be unambiguous if read alone and without reference to the other, it is apparent that those unambiguous readings are in conflict with each other. The Employer cannot, under Article VII, Section 2, be free of the obligation to pay additional compensation for attendance at staff development meetings "reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District," if the Employer, under the second sentence of Article X, Section 10, Subd. 1, is also obligated to pay compensation for required attendance at staff development meetings beyond the duty day whether the meeting begins before or after the end of the duty day.

It appears, therefore, that the conflict between these two provisions of the contract creates an ambiguity that is not present when each provision is read alone, independent of the other.

In an effort to resolve ambiguity, both parties presented evidence relating to bargaining and to practice. The evidence about bargaining, however, does not establish that the parties exchanged information indicating an agreement to the primacy of the interpretation of one party over that of the other. Rather, as noted above, witnesses for each party testified to the way in which each understood the language without establishing that that understanding had been communicated to the other party.

Similarly, the evidence about practice is not sufficient to resolve the ambiguity created by the conflict between the two provisions. It shows isolated cases of past staff development meetings that, as here, began during the duty day and ended after the duty day, but the evidence does not show that the parties' handling of those cases has been consistent enough to indicate an implied resolution of the ambiguity. Thus, Skaar testified that during the thirty years of her employment in the District, she knew of no "situation where an in-service training has exceeded the work day where there has not been compensation," and Fenwick testified that there have been numerous such cases in which no compensation was paid and no grievance was initiated.

In the absence of evidence about bargaining and practice that is sufficient to resolve the conflict between the two contract provisions, I apply an appropriate rule of contract construction -- that when two provisions of a contract are in apparent conflict, the more specific provision should prevail over the more general. As discussed above, Article VII, Section 2, can be read to relieve the Employer from the obligation to pay extra compensation to Teachers for attendance at "meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District," and the language is general enough to include staff development meetings. The second sentence of Article X, Section 10, Subd. 1, however, is a particular statement by the parties about staff

development meetings. As discussed above, by its plain meaning it establishes the obligation of the Employer to pay a Teacher additional compensation for required attendance at a staff development meeting when such attendance causes the Teacher to attend beyond the end of the duty day -- whether or not the meeting began during the duty day.

I conclude that the specific language of the second sentence of Article X, Section 10, Subd. 1, controls the general language in Article VII, Section 2, of the labor agreement. Accordingly, Teachers whose duty days started more than seven hours and forty minutes before 4:00 p.m., the scheduled end of the Units of Study meetings on November 29, 2006, October 25, 2006, January 31, 2007, March 14, 2007, and May 9, 2007, and who were required to attend those meetings are entitled to compensation for their attendance from the end of their duty day on those dates until 4:00 p.m., at the hourly rate set forth in Article X, Section 6, of the labor agreement. Because Teachers were not required to stay in attendance after 4:00 p.m., they are not entitled to compensation for remaining in attendance after that time.

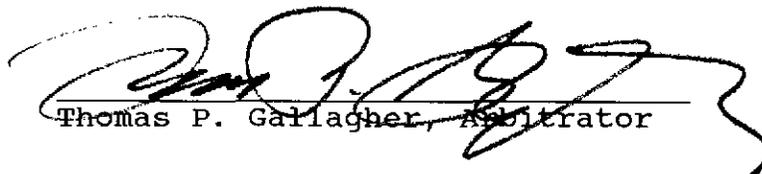
I note that this decision should not be interpreted as one that either allows building principals to require, or prevents them from requiring, Teachers to alter ("flex") the hours of their duty day in such a way that their attendance at staff development meetings will not extend their duty day beyond seven hours and forty minutes. Resch and Gwinn testified that they expected such flexing when they established the hours of

the Units of Study meetings. Nevertheless, that matter was not directly before me, though the Employer suggested that Anderson could have imposed such a requirement on Schaefer, but conceded that he did not do so.

AWARD

The grievance is sustained. The Employer shall provide affected Teachers with the compensation described above in the Decision. I retain jurisdiction to decide any questions that may arise about remedy.

May 21, 2008


Thomas P. Gallagher, Arbitrator