

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

Minnesota School Employees Association,
Union

and

BMS Case No. 08 PA 1150

ISD 2534 Bird Island, Olivia, Lake Lillian,
Employer

NAME OF ARBITRATOR: Bernardine Bryant
Assistant Faith Latimer

DATE AND PLACE OF HEARING: June 23, 2008
Olivia, Minnesota

BRIEFS RECEIVED:

DATE OF AWARD: July 7, 2008

APPEARANCES

FOR THE UNION: Greg Gardner, Field Representative
Don Gilbertson, Field Representative

FOR THE EMPLOYER: Kevin Rupp, Attorney
Ratwik, Roszak & Maloney, P.A.
Summer O'Neill, Business Manager

INTRODUCTION

This is a grievance arbitration between Minnesota School Employees Association (MSEA or Union) and Independent School District #2534 Bird Island, Olivia, Lake Lillian (Employer or District). MSEA became the exclusive representative for Paraprofessionals and Food Service employees in 2006. In late 2007 the parties completed negotiations on their first collective bargaining agreement, effective July 1 2007-June 30 2009. On February 15, 2008 the Union filed a grievance concerning the interpretation of the salary schedule as it pertains to longevity increases. The grievance was processed through the contractual grievance procedure and appealed to arbitration. The arbitration hearing was held in Olivia Minnesota on June 23, 2008. Both parties had full opportunity to present evidence and examine witnesses. The parties chose to present oral closing arguments and the record was closed on June 23.

APPLICABLE CONTRACT LANGUAGE

Article VI Rates of Pay

Section 1. Rates of Pay:

Subd. 1. 2007-2009 Rates of Pay: The wages and salaries reflected in Schedule, attached hereto, shall be a part of the Agreement for the period commencing July 1, 2007, to June 30, 2009.

Appended salary schedule:

Employees who have completed one year on step 14 will receive a 3% increase each year.

Article XVII Duration

Section 2 Effect

This Agreement constitutes the full and complete Agreement between the School District and the exclusive representative representing the employees. The provisions herein relating to terms and conditions of employment supersede any and all prior Agreements, resolutions, practices, and School District policies, rules, or regulations concerning terms and conditions of

employment inconsistent with these provisions. Nothing in this Agreement shall be construed to obligate the School District to continue or discontinue existing or past practices or prohibit the School District from exercising all management rights and prerogatives, except insofar as this exercise would be in express violation of any term or terms of this Agreement.

STATEMENT OF THE ISSUE

The parties stipulated to the following statement of the issue:

Did the District violate the collective bargaining agreement by paying longevity according to the longevity provision of the contract, rather than according to the amounts stated on the settlement cost out sheet?

UNION POSITION

The salary schedule is set up on a grid with 3 grades of employees: Food Service, Paraprofessional, and Special Education Paraprofessional, and twelve steps, numbered 3 to 14. The issue in this grievance concerns the sentence addressing ‘career increment’ or longevity pay: “Employees who have completed one year on step 14 will receive a 3% increase each year.” The Union interprets this language to mean that for 2008, an employee who has completed a year on step 14 will receive the contractual across the board increase of 17 cents per hour, and a 3% increase. In 2009, that total wage rate would increase by the contractual across the board increase of 17 cents per hour. The resulting figure would then be increased by 3%, to reach the 2009 wage rate.

The Union argued that costing sheets produced by the Employer and consistently used in bargaining, indicate that employees eligible for the longevity pay would receive “3% in addition to the 3% increase received the previous year.” (Grievance Report Form, Union Exhibit 1)

Union Field Representative Greg Gardner represented the Union in bargaining this first contract. At the hearing, he testified that some economic agreements reached by the parties were not reflected in the Employer's costing sheets. These included an agreement to eliminate the first two steps of the 14 step pay grid, and the addition of a wage differential for certain food service employees. However, District spokespeople communicated to the Union the fact that these items were not included in the costing sheets. No such communication was given regarding the calculation of longevity pay.

In response to Employer arguments that its method of implementing the longevity pay was the same as what it used previously under its 'Work Agreement' for these employees, Mr. Gardner testified he did not have or use that document in drafting the longevity pay language. He drafted this language based largely on conversations with District Business Manager Summer O'Neill. Further, the Union argues that regardless of the method used in the past, the collective bargaining agreement is now the controlling document. The Union believes the language at issue supports its interpretation. When the 2009 increase is calculated, employees should not lose their 2008 3% increase as part of the computation for the longevity pay.

EMPLOYER POSITION

Prior to the bargaining relationship with MSEA, longevity pay was included in the District's 'Work Agreements'. These policies had applied to employees now in this bargaining unit. During bargaining, the District never sought to remove or reduce the longevity benefit. Its aim in bargaining was to adhere as much as possible to the status quo. The method for calculating longevity pay was as follows: In the first year, an eligible employee would

receive an across the board wage increase received by other employees in the bargaining unit, and would then receive a percentage increase on that amount. The second year, the eligible employee would again receive an across the board increase. S/he would then receive a percentage increase based on his/her wage, excluding the previous year's longevity pay. This had been the District's calculation method prior to this collective bargaining agreement. Neither party raised any discussion in bargaining of changing the method of calculation. (Employer argument, testimony of Ms. O'Neill, District Exhibits 2 & 3)

With respect to costing sheets used in bargaining, the District points out such documents are always meant to be estimates and snapshots in time. There were many pieces of the costing sheets which were not completely accurate, but they were used to give the District and school board members a close idea of expected costs of an agreement. The Employer also argued that the figures used in the costing sheets do not appear to reflect the Union's method of calculating longevity pay. The District believes the language is straight forward, and makes no mention of compounding the percentage increases. In any event, the collective bargaining agreement supersedes costing documents used during bargaining

Finally, the Employer argues the Union drafted the language at issue. To the extent the language is ambiguous, any ambiguity should be construed against the drafting party. If the Union had intended to propose the calculation method it now argues for, it had the obligation to make that proposal clear during negotiations.

ARBITRATOR DISCUSSION

This case is an issue of interpretation of ambiguous contract language. The wages article and appendix do not specify the method of implementing longevity pay. The language “Employees who have completed one year on step 14 will receive a 3% increase each year” is ambiguous.

It is clear from the testimony of both Business Manager O’Neill and Field Representative Gardner that both parties acted in good faith during negotiations. There was a sincere misunderstanding between the representatives about how the longevity pay provision would be implemented. This is a first agreement between the parties, and therefore no shared understanding existed concerning the details of the longevity pay calculation. Both Ms. O'Neill and Mr. Gardner testified there was no discussion about this provision at the bargaining table. They also testified that no final costing sheet was prepared when the parties reached tentative agreement, which may have contributed to the misunderstanding regarding the longevity pay calculation.

With respect to the costing sheets (Employer Exhibits 6, 8, 11, 23, Union Exhibits 4-7), a review of these documents does not clearly support either party’s understanding of the calculation method. In any event, both parties acknowledge costing documents were not exactly accurate and were used as estimates during negotiations. Both parties make legitimate arguments concerning the zipper clause of the contract. The language in the contract clearly supersedes the costing documents, and also supersedes the District’s pre-existing practice concerning longevity pay calculation.

However, since the language at issue is ambiguous, it falls to the Arbitrator to discern as closely as possible what the parties intended in bargaining. The Employer’s intent to include longevity in its initial costing

model was to continue the longevity benefit as it had existed previously. Ms. O'Neill testified the District had no intent to eliminate or change the benefit. This is reflected in the absence of any conversations during bargaining by either side about this benefit. Although the Union proposed the longevity language, it did so after noticing the District included longevity in its initial costing document. Mr. Gardner testified that after he noticed the longevity pay was included in one of the District's early costing sheets, he spoke with Ms. O'Neill about it. He then included the Union's language in its next negotiations proposal. Although the Union made proposals for other economic enhancements (for example the wage differential for certain food service employees), it did not make any proposals to improve the longevity pay benefit from what eligible employees currently received. Mr. Gardner testified there was no 'table talk' about the calculation method. He testified that he assumed the calculation would be done as in some other agreements the Union is party to, and did not verify whether the arithmetic was consistent with his assumption. Both parties testified that neither party intended to enhance or eliminate the longevity pay benefit.

After tentative agreement was reached, there were a series of e-mails between Ms. O'Neill and Mr. Gardner clarifying the details of the contract. During this time Mr. Gardner asked Ms. O'Neill how the longevity pay would be paid, whether in a lump sum or spread over the pay periods. (District Exhibits 13-22) This e-mail correspondence serves to confirm that the Union had not sought in bargaining to change, clarify or enhance the existing longevity benefit. Rather, it had intended to maintain the benefit as it had existed prior to this first contract.

The fact that the parties had two different interpretations of the 3% calculation is quite understandable given the fact that there was no conversation about the issue during negotiations. However, the following facts are pertinent in the search for intent: the evidence and testimony reveals this piece of language was based on an existing policy, with no specific proposals made concerning the language; there was no discussion of it at the bargaining table; and the Union representative did not have a clear idea of how it was to be implemented following tentative agreement. Testimony on all these points is persuasive, that the intent of the parties in bargaining was continuation of an existing benefit, not a new method of calculation or improvement of that benefit.

Therefore, the Arbitrator concludes the District's method of calculation of the longevity pay benefit better reflects the intent of both parties when they negotiated this first collective bargaining agreement.

AWARD

The grievance is denied.

Bernardine Bryant, Arbitrator

Date _____