

IN THE MATTER OF THE ARBITRATION BETWEEN

MINNESOTA STATE)	UNION'S CASE NO. MSW-07-01
COLLEGE FACULTY,)	
)	EMPLOYER'S CASE NO. 1143
)	
)	
Union,)	
)	
and)	
)	
MINNESOTA STATE COLLEGES)	
AND UNIVERSITIES,)	DECISION AND AWARD
)	OF
Employer.)	ARBITRATOR

APPEARANCES

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On May 1, 2008, in Wadena, 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 suspending the grievant,

Susan TenEyck-Stafki, for five days without pay. Post-hearing briefs were received by the Arbitrator on May 29, 2008.

In early April of 2008, prior to the hearing, the Employer made a written objection to arbitration, alleging that the Union had failed to follow procedures that are pre-requisite to arbitration as established by Article 27, Section 6, of the labor agreement. When the Employer moved for a separate hearing on its procedural objection, I granted the motion, and that hearing was held on April 11, 2008, in St. Paul, Minnesota. On April 18, 2008, I issued a letter-decision overruling the Employer's procedural objection to arbitration.

On May 1, 2008, the parties presented evidence relating to the substantive issues raised by the grievance at a hearing held in Wadena. I do not reproduce herewith the letter-decision that ruled on the objection to arbitration.

FACTS

The Minnesota State Colleges and Universities (hereafter, the "Employer" or "MnSCU") is an agency of the government of the State of Minnesota. The Employer operates a system of technical colleges, community colleges and state universities that offer programs in post-secondary education. One of these institutions is the Minnesota State Community and Technical College ("MSCTC"). It offers two-year programs at four campuses in northwestern Minnesota -- at Moorhead, at Fergus Falls, at Detroit Lakes and at Wadena. The Union is the collective bargaining representative of faculty who teach in the Employer's community and technical colleges.

The grievant has been an Instructor at the Wadena campus of MSCTC since 1993, teaching in the Early Childhood Development Program. Also in 1993, she became the Coordinator of that program. The grievant is president of the Union's local affiliate at MSCTC, and she is an officer of the Union's statewide organization.

On February 1, 2007, Ann M. Valentine, President of MSCTC, sent the grievant a notice of suspension without pay. The original notice suspended the grievant for ten days, giving two reasons for the suspension. During grievance processing, the Employer withdrew allegations supporting one of the two reasons for the suspension and reduced the period of suspension from ten days to five. Accordingly, my reproduction of the notice of suspension, in the next paragraph, includes only the allegations that formed the basis for the remaining five-day suspension. The original notice of suspension also alleged a need for improvement in the grievant's work performance that was to be addressed in a future "performance improvement plan." The parties agree that the issues presented by this grievance do not include any that are related to an alleged deficiency in the grievant's work performance, and my reproduction of the notice of suspension does not include allegations relating to work performance.

Relevant parts of the notice of suspension of February 1, 2007, are set out below:

This letter is to inform you of your suspension from your duties [for a period of five working days]. . . This action has been taken for the following reasons:

1. According to the investigation report, you admittedly entered into an agreement with the White Earth Tribal Child Care Program to provide mentoring services to students. This agreement was entered into without your having informed anyone at [MSCTC], and resulted in a payment of money to you from the White Earth Tribal Child Care Program. This action constitutes a violation of Minnesota Statutes 43A.38, subdivision 6.

. . .

Therefore for the reasons outlined above and after reviewing all relevant information, I have concluded that there is just cause for this suspension.

On February 23, 2007, the grievant sent a response to Valentine, relevant parts of which are set out below:

I am stunned that I would be disciplined for an alleged conflict of interest based on my separate agreement with White Earth Tribal Child Care Program. As you know, this occurred more than 2 years ago. I did not view my duties under the agreement to be a conflict with my College assignment. Under the agreement, I was asked to provide mentoring services to White Earth students. These were not my normal job duties but additional work. I did not see a conflict between the mentoring and my instructor position and never thought to share this information with the College. If anyone at the College had told me this was a conflict, I would not have accepted the work offered me.

On March 20, 2007, the Union brought the present grievance, alleging that the Employer did not have just cause to discipline the grievant.

The evidence establishes the following circumstances that led to the grievant's suspension. The White Earth Reservation is about forty-five miles north of the Detroit Lakes campus of MSCTC. Barbara J. Fabre, a member of the White Earth Tribe, has been the Director of the Reservation's Child Care Program for many years. As such, she and her staff have been responsible for licensing child care providers on the Reservation, for managing a Reservation child care center and for monitoring the

safety of children in Reservation child care. Fabre has known the grievant since about 1999. The grievant has attended and has made presentations at an annual conference on brain development sponsored by and given at the Reservation, and, from 2000 through 2005, those attending have received academic credit for their attendance from MSCTC.

It appears from Fabre's testimony that a group of Reservation students were enrolled in an early childhood program on the Detroit Lakes campus during 2003, and that the grievant, who taught only at the Wadena campus, was not involved in that instruction. Fabre referred to these students as a "cohort" -- a group of students who begin and end a course of study at the same time.¹ Fabre testified that in 2003 she told the grievant about a grant, available from a non-profit organization, the Early Childhood Resource Training Center ("ECRTC"), that would pay for books, tuition, supportive services and mentoring of Reservation students in early childhood instruction. At that

1. The evidence does not clearly show where the 2003 cohort received instruction, nor does it clearly show that the 2003 cohort was the first cohort. As I note below, in a letter written by Fabre to Valentine on June 19, 2006, she indicates that the 2004 cohort was the "first early childhood cohort class," but she also states that "the first class started in 2000 with 21 students attending." In her testimony, Fabre stated that there was a first cohort of Reservation students in 2003. She also testified, as I describe hereafter, that it was originally planned to have a second cohort, the 2004 cohort, take on-line classes provided by the Minneapolis Community and Technical College, another of the two-year institutions operated by the Employer. Fabre's testimony did not state where the 2003 cohort received its instruction, but it appears that it was at the Detroit Lakes campus of MSCTC.

time, their discussions were general. Fabre testified that the grievant volunteered to be a mentor under that grant, saying that she could do the work during evenings and weekends when she was not engaged in her MSCTC duties.

In the spring of 2004, planning began for the 2004 program, which was to begin in the fall of that year. At first, Fabre proposed that Reservation students would receive their instruction through on-line classes provided by the Employer's Minneapolis Community and Technical College. During the summer of 2004, Fabre also considered using a mixture of on-line and on-campus courses. Though she did not say which campus was being considered, I assume it was the Detroit Lakes Campus.

On about August 25, 2004, the grievant agreed to do the mentoring under the ECRTC grant and to be paid \$1,300 for her services by ECRTC. In late August or early September of 2004, Fabre decided to abandon the idea of on-line instruction and have all of the instruction for the 2004 cohort done at the Detroit Lakes campus of MSCTC.

During fall semester of 2004, the grievant began to mentor the students in the 2004 cohort. Six of the eight students in the cohort were Reservation students being taught under the ECRTC grant, and two were non-Reservation students not taught under the grant. The grievant testified that no part of her assignment as an Instructor for MSCTC included the provision of any instruction to these students. She did not provide them with any class-room instruction, and she had no responsibility for grading their performance. During fall semester, she taught classes only at the Wadena campus.

The grievant described the mentoring she provided to the six Reservation students as giving them encouragement and advising them about life skills, communication skills, time management and scheduling. She sent them weekly emails, and she responded to questions by individual students. She gave the Reservation students her cell phone number and her home telephone number and email address; she told them to contact her only at night or on weekends. She testified that she did not provide mentoring to the two non-Reservation students and that she told them they could receive such services from counselors provided by MSCTC.

During spring semester of the 2004-2005 academic year, the grievant was assigned by MSCTC to duties at the Detroit Lakes campus. She decided to go to the Detroit Lakes campus early, before the cohort class began in order to provide mentoring to the six Reservation students in the 2004 cohort, and she did so. The grievant's mentoring under the ECRTC grant ended at the end of the 2004-2005 year.

Kathleen D. Curphy, Provost for the Wadena Campus of MSCTC, testified that she received a copy of a June 19, 2006, letter from Fabre to Valentine, in which Fabre described complaints by Reservation students that they were not given academic credit at Minnesota State University at Moorhead ("MSUM") for completion of course work in cohorts at MSCTC, including the 2004 cohort. Fabre's letter referred to the work that the grievant did as mentor of the 2004 cohort, and it stated that the grievant had received \$1,200 for that work -- though the parties agree that the payment was \$1,300, as stated above.

Relevant parts of Fabre's letter of June 19, 2006, are set out below:

My name is Barb Fabre, and I am the Director of the White Earth Reservation Child Care Program. I am writing this letter to convey my concerns and disappointment with the situation regarding our first² early childhood class and what turned out to be a discouraging ordeal for these students.

The White Earth Child Care Program mission is to increase the quality of care for young children on and near the Reservation. As part of that mission, we pursued a partnership with [MSCTC] to develop an early childhood cohort that would meet the needs of child care providers by offering early childhood classes during non-traditional hours which would culminate in an AAS degree.

The White Earth Child Care Program worked closely with MSCTC to recruit students and offer financial support via TEACH/REEMAIN, the White Earth Child Care Program professional development funds and with additional collaborative funds through the [ECRTC] in Minneapolis. The first² class started in the fall of 2000 with 21 students attending.

As part of that cohort partnership, we had an agreement with Wadena Early Childhood Program Coordinator, Sue Stafki, to advise and mentor this group. Sue met with our Program and staff at the Detroit Lakes campus, she assured us that she was working closely with the students and on an articulation with [MSUM] for students to convert their AAS to an AS degree to continue their educational pursuit with a BS degree through MSUM. Our students and Program were led to believe that this articulation was finalized because of the signature of both institutions.

The class graduated in 2003 with their AAS, some of the students began planning for their AS and BS degree based on what they had been advised. It was during this time that our Program received concerns and questions from students regarding the articulation agreement and Sue's responsibility as their advisor.

That group of about 10 students began to follow through with registering at MSUM (and other universities) but were told by MSUM faculty that as far as they knew, there

2. See footnote 1, above.

was not an agreement and that their credits could not be transferred. This was a huge blow to these students.

Students asked for Sue's help and advice on this matter. Sue did not respond to these students request for help, but rather became upset with the students for asking. During one of the classes, Sue warned the students she did not want them to "let Barb Fabre know" of these concerns. She warned the students not to take these concerns outside the class.

At about the same time this warning went out, my Program received additional collaborative funds through ECRC to support these students as well as to pay for a mentor for these students. I assumed that everything was going well with this cohort and contacted Sue to let her know about this additional funding and that I was seeking a mentor. Sue agreed to be that mentor and to receive payment for providing mentoring hours above and beyond what the school already provided. Sue stated that she would do this additional mentoring after hours with the students. Sue was paid \$1,200 for these services.

After Sue was paid for these services, I received a call from one of the students stating their concerns and frustrations. I asked if they received the additional mentoring services from Sue and she said that she did not receive any mentoring and that she has been trying to contact Sue for sometime with no response. I also asked her for a written report of her additional mentoring services (see attached). [That report was not in evidence.] I eventually heard the same thing from two other students.

I strongly believe an injustice and disservice has been done to these students. This experience has had a dramatic effect on their lives and their future plans, as well as threatened the integrity of the White Earth Child Care Program and the reputation of [MSCTC]. . . .

Curphy testified that, after receiving a copy of Fabre's letter of June 19, 2006, she began an investigation to determine whether the grievant's provision of mentoring services for pay from an outside source violated the statutory Code of Ethics for Employees in the Executive Branch, Minnesota Statutes, Section 43A.38, which establishes prohibitions against conflicts of interest. Eventually, Curphy determined that the grievant had violated those prohibitions, and Valentine, who concurred,

issued the notice of suspension dated February 1, 2007, which is set out above.

Parts of of Minnesota Statutes, Section 43A.38 (sometimes hereafter, merely the "statute"), are set out below:

Code of Ethics for Employees in the Executive Branch.

Subdivision 1. Definitions. For the purposes of this section, the following definitions will apply:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages in nonprofit or profit making activities.

(c) "Private interest" means any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public.

Subdivision 4. Use of State Property. (a) An employee shall not use nor allow the use of state time, supplies or state-owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law. . .

Subdivision 5. Conflicts of Interest. The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, Section 43A.39 or disciplinary action as appropriate:

(a) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;

(b) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties;

(c) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf; or

(d) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the

state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

Subdivision 6. Determination of conflicts of interest. When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

(a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform or prestige or influence of state office or employment;

(b) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;

(c) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee.

(d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

Subdivision 7. Resolution of conflict of interest. If the employee, appointing authority, or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

Curphy testified that on November 11, 2003, she sent a copy of Minnesota Statutes, Section 43A.38, to all faculty of the Wadena campus of MSCTC, and that on August 30, 2004, she sent a memorandum to all faculty reminding them about the "appropriate use of state property" with a copy of the statute.

Curphy testified that in February of 2005 she and the grievant developed a position description that established expanded responsibilities for the grievant as Director of MSCTC's Early Childhood Program on all campuses of MSCTC, with an

increase in compensation. Relevant parts of the position description of February, 2005, are set out below:

1. Implements/maintains program articulation approval
2. Coordinate program schedules (both on-campus and cohorts).
3. Coordinate development and revision of courses as necessary
4. Coordinate student progress through the curriculum
 - a. Assure completion of graduation requirements
 - b. Advise students on a semester basis to guide their academic plans
5. Assist the Dean in program fiscal planning
6. Take leadership role in student recruitment
7. Coordinate program faculty meetings
8. Coordinate advisory committee meetings
9. Maintain program records
10. Oversee and participate in student cohort advising/counseling
11. Serve as first or second in line of appeal for student appeals related to the program
12. Pursue ongoing continuing education in professional practice, instructional methodology and management skills
13. Actively involved in professional organizations locally, statewide and nationally
14. Acts as liaison/program representative
15. Maintain program assessment records
16. Coordinate theory, laboratory and lab site activities for the program relative to program standards
17. Make recommendations of adjunct teaching faculty to the campus Provost
18. Report to the advisory committee each year as to the status of the program cohorts and coordinate efforts with them to offer new cohorts as necessary
19. Set up, coordinate and monitor all cohort sites of the program
20. Oversee and approve the lab sites for the cohort programs

Curphy testified that she interpreted the position description to include "making sure that there were faculty to teach classes and seeing that students were successful by either working with the faculty or working with the students and that

"in my mind this included the grievant's counseling directly with the students or arranging such with another faculty member. Curphy testified that she and Valentine concluded that the grievant should not have accepted payment for mentoring from an outside source because that work was included in the kind of work she was being paid to do as Coordinator of the Early Childhood Development Program.

On cross-examination, Curphy conceded that "mentoring" is not a word used in the grievant's position description, but she testified that two of its enumerated items, 4b and 10, use words that are the equivalent of "mentoring" to describe the grievant's duties -- "advise students," and "participate in student cohort advising/counseling," thus:

- 4. Coordinate student progress through the curriculum
 - b. Advise students on a semester basis to guide their academic plans
- 10. Oversee and participate in student cohort advising/counseling

Curphy conceded that MSCTC does not require faculty to tutor students outside of the classroom and that it has a student center where students can arrange for tutoring.

Valentine testified that she made the final decision to suspend the grievant after conferring with Curphy and with staff at the administrative offices of MnSCU. The decision was based on the conclusion that the grievant had violated Minnesota Statutes, Section 43A.38 by accepting extra payment from an outside source for doing the same kind of work that she was being paid to do by the Employer. Valentine testified that she rejected the defense proposed by the Union that the grievant was

not aware that she had a conflict of interest and that she did so because employees are responsible for understanding when there is a conflict of interest. Valentine testified that the statute implies that if an employee perceives even a possibility of a conflict of interest, the employee should contact the Employer for guidance. Without such a duty placed on the employee, the Employer would have no knowledge of many conflicts and could not act to prevent them.

The grievant testified that she did not believe that the mentoring work she did for the Reservation students in the 2004 cohort was work she would otherwise be expected to do. Because the mentoring work was different from any work she had performed as an Instructor for MSCTC and because all of the mentoring work that she did was performed at times when she was not being paid by MSCTC -- at night and on weekends during fall and spring semesters and in addition, in the spring semester at the Detroit Lakes campus, during the two hours before the cohort class began. She also testified that she knows of no other faculty member who has been paid to do the kind of mentoring work at issue. The grievant conceded on cross-examination that if a supervisor directed her to mentor her students she would do so as directed. The Union argues she would be entitled to include that work in her teaching load, which would result in a reduction of other work or overload compensation.

Gregory J. Mulcahy, the Union's President, testified that he has been the chief negotiator for the Union in bargaining with the Employer about the provisions of the labor agreement.

I summarize his testimony as follows. The labor agreement has no definitions of "advising." It is not typical for a faculty member to do the kind of work the grievant described as her mentoring of the Reservation students in the 2004 cohort. Usually, a student who might ask a faculty member for such services would be referred to a counselor. A student also can be directed to the tutoring center. A faculty member assigned to do tutoring would receive overload compensation for that work or would have his or her teaching load reduced.

Mulcahy testified that faculty members often advertise their services as an off-campus tutor, are paid for such work by the student, do the work in off-hours, and do so without creating a conflict of interest, even when the student is enrolled at the college where the faculty member teaches.

DECISION

The Employer argues that the grievant's acceptance of compensation for mentoring the Reservation students in the 2004 cohort created a conflict of interest and that, under Minnesota Statutes, Section 43A.38, Subdivision 6, which I repeat below, she had a duty to avoid that conflict:

Determination of conflicts of interest. When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

(a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform or prestige or influence of state office or employment;

(b) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee; . . .

The Employer makes the following primary arguments. The mentoring work that the grievant performed was work "which the employee would be required or expected to perform in the regular course or hours of state employment or as part of [her] duties as an employee." In addition, the grievant used the "prestige or influence of state office or employment" for her private gain when she accepted payment from ECRTC for the mentoring work. The grievant knew or should have known of her duty to avoid a conflict of interest, having been so informed when Curphy provided her and all employees at the Wadena campus with a copy of the statute.

Curphy, who, in February, 2005, developed the grievant's position description in collaboration with her, testified that she viewed the mentoring work at issue as an activity that was one of the tasks described in that position description -- the counseling or advising of students.

The Union makes the following primary arguments. The mentoring that the grievant did for the Reservation students in the 2004 cohort was not work "which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee." The kind of communication with students that she did as "mentoring" was different in its nature from the kind of communication that a faculty member would be expected to provide to students. All of the mentoring work was done at night, on

weekends or, from the start of spring semester, before the cohort class began.

In addition, the Union argues that, even assuming, arguendo, that the mentoring work at issue was work that fell within the grievant's regular duties, she, nevertheless, was free of the duty described in the statute because, in the words of the statute, the duty to avoid a conflict arises when "an employee believes the potential for a conflict of interest exists" and the grievant did not believe that her mentoring created a potential conflict of interest.

The Union also argues that the grievant was insufficiently informed of the duty to avoid a conflict of interest because what she received from Curphy was merely a copy of the statute without any training or other instruction about its meaning.

The Union argues that Subdivision 7 of the statute gives the proper way to resolve a conflict of interest, "if the employee, appointing authority, or commissioner determine that a conflict of interest exists." After such a determination, "the matter shall be assigned to another employee who does not have a conflict of interest," and, "if it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment."

The Union urges that, if the Employer prevails in this case, there will be a chilling effect on the ability of faculty to receive outside compensation for work beyond the scope of their regular duties, such as tutoring.

For the following reasons, I rule that the Employer had just cause to discipline the grievant. First, the grievant either knew or should have known that, as Curphy testified, her position description of February 2005 described responsibilities to counsel and advise students that can be interpreted as broad enough to include the kind of communication she did with the Reservation students in the 2004 cohort, i.e., their "mentoring." Indeed, the grievant testified that when the two non-reservation students wanted similar mentoring from her, she sent them to MSCTC counselors, who, presumably, provided that mentoring as a counseling service not requiring additional compensation. Even if the grievant may not have been aware of the potential conflict at the start of the fall semester, the express inclusion of student counseling duties in her February, 2005, position description should have caused her to bring the ECRTC arrangement to Curphy's attention at that time.

Second. As I interpret Subdivision 6 of the statute, it does not mean that an employee can escape the duty to avoid a conflict of interest merely because the employee expresses a belief that no potential for a conflict of interest exists. If the statute were so interpreted it would have almost no deterrent effect. As I interpret the statute, the belief that no potential conflict of interest exists must be a belief reasonably held. As I have ruled above, the grievant either knew or should have known that her arrangement to be paid by ECRTC for mentoring created a potential conflict of interest -- especially after February of 2005, when she and Curphy expressly

included her student counseling responsibilities in her position description.

Third. The grievant was sufficiently informed of her statutory duty to avoid a conflict of interest when Curphy twice distributed a copy of the statute to her and to other faculty members. As the Employer argues, the grievant was obliged, as a professional employee, to read materials distributed by the provost of her campus.

Fourth. The Union argues that the Employer is limited in its disposition of this case by Subdivision 7 of the statute, which provides that, "if the employee, appointing authority, or commissioner determine that a conflict of interest exists," "the matter shall be assigned to another employee who does not have a conflict of interest," and, "if it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment." It is clear that this provision is meant to deal with potential conflicts of interest that are recognized before the occurrence of, or at the time of, the activity in potential conflict. It has no application in this case, in which the Employer had no knowledge of the grievant's mentoring arrangement until more than a year after it was completed.

Fifth. The Union argues that if it does not prevail in this dispute there will be a chilling effect on the ability of faculty members to receive outside compensation for work beyond the scope of their regular duties, such as tutoring. The primary

effect of this decision should be to put faculty members on notice that, when an activity they are about to undertake may create a potential conflict of interest, they should bring the matter to the attention of college administrators for resolution. Because such a requirement is nothing more than what the statute requires, it should not place an undue burden on faculty members that limits their ability to participate in activities outside their regular duties, such as tutoring. In this regard, I note that the following quotation, cited by the Employer in its post-hearing brief, from a decision by Arbitrator Nancy D. Powers, is apt:

The avoidance of a conflict of interest is a subject fundamental to the nature of employment for a governmental entity and the retention of public trust. An employee should, as a matter of common sense, understand the importance of avoiding a conflict. Secondly, where questions exist, the burden is on the employee to seek advice or approval from the employer before entering into any outside employment contracts. Minnesota Government Engineers Council and The State of Minnesota, Bureau of Mediation Services Case No. 90-PA-1161 (Powers, 1990).

AWARD

The grievance is denied.

August 14, 2008


Thomas P. Gallagher, Arbitrator