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In Re the Arbitration between:

BMS No. 08-PA-1070

Independent School District No. 115,  
Cass Lake, Minnesota,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Minnesota School Employees Association,

Union.

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Pursuant to **Article XV** of the Collective Bargaining Agreement effective July 1, 2005 through June 30, 2007, the parties have submitted the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral Arbitrator from a list of Arbitrators provided by the Minnesota Bureau of Mediation Services.

The grievance is properly before the Arbitrator for a final and binding determination.

The grievance was submitted October 19, 2007.

The hearing was conducted on October 9, 2008.

The parties made oral final arguments and the record was closed on October 9, 2008.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE:**

*Is District #115 violating the 2005-2007 Master Agreement by reducing the Elementary School paraprofessional daily hours of the employees who also work as bus monitors?*

*If so, what is the remedy?*

**BACKGROUND:**

During contract negotiations over the 1999-2001 collective bargaining agreement between Cass Lake Independent School District #115 and Minnesota School Employees Association, the parties adopted the “Bus Monitor Premium” language that appears at **Article VI, Section 10** of the current agreement. The parties agree that the purpose of **Article VI, Section 10** is to create an incentive for employees to perform the duties of Bus Monitor.<sup>1</sup> **Article VI, Section 10** does not specifically identify the hours to be worked by paraprofessionals. However, the section does say that “All hours worked as Bus Monitor shall be added to an employees regular work day for the purpose of calculating benefits.”

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<sup>1</sup> The task of riding on the bus with students for periods of between thirty minutes to one and one half hours is often a difficult one. Students do engage in a variety of forms of misconduct some of which are dangerous and others being simply annoying. However, maintaining order on school buses is imperative to the operation of the school system.

Union witnesses testified that in the year 2006 paraprofessionals were told that they would all be assigned to seven (7) hours of work per day in order to simplify the payroll process. The School District Superintendent confirmed that the message was delivered to employees and that the purpose of scheduling all paraprofessionals for seven (7) hours per day was to simplify payroll.

A disagreement arose over what the School District meant when it said all paraprofessionals would be assigned seven (7) hours. Were paraprofessionals to be scheduled to work seven (7) hours per day plus Bus Monitor duties or seven (7) hours per day inclusive of Bus Monitor duties?

The School District assigned all paraprofessionals to work as paraprofessionals at least seven (7) hours per day, except the paraprofessionals who worked in the elementary school and were also working as Bus Monitors. The elementary school paraprofessionals who worked as Bus Monitors were assigned six and one half (6.5) hours per day plus one half hour as Bus Monitor.

The Union grieved the assignments made by the School District. The claim made by the Union was that elementary paraprofessionals who performed Bus Monitor duties should have been assigned seven (7) hours per day as paraprofessionals plus Bus Monitor duties.

The parties took the grievance to “grievance mediation”. **Union Exhibit #9** is the only written evidence of the settlement agreement. The parties executed the document which adds back one half hour of pay for elementary school paraprofessionals who worked as Bus Monitors of the 2006 – 2007 school year. The document memorializes the

agreement for the School District to pay seventy five per cent (75%) of the Union's claim.

At the beginning of the 2007-2008 school year the School District modified the notice of assignment for elementary school paraprofessionals to say "paraprofessional/bus monitor." The Superintendent testified that the modification of the notice of assignment was made to clarify the fact that the elementary paraprofessionals who worked as Bus Monitors were being assigned one job that included bus monitoring and the one job was a seven (7) hour assignment.

The parties did not negotiate any changes in the collective agreement after the grievance mediation.

The Union approached the business manager for the School District immediately upon receipt of the notice of assignments. The Union believed that they had just resolved the issue in grievance mediation and the School District was once again violating the meaning and intent of the collective bargaining agreement. On October 19, 2007 Union grieved the Employer's action.

**SUMMARY OF UNION'S POSITION:**

The notice of assignments given to elementary paraprofessionals who performed Bus Monitor duties violated the meaning and intention of the collective bargaining agreement. The Bus Monitor provision of the collective bargaining agreement was adopted so that the School District would be able to assign employees to Bus Monitor duties. The Bus Monitor provision was never intended to reduce the classroom duties of paraprofessionals.

The Union grieved identical conduct on the part of the Employer in the year 2006 and resolved the issue through grievance mediation in July of 2007. Immediately after resolving the issue through mediated negotiations, the Employer unilaterally attempted to change the meaning of the collective bargaining agreement in derogation of PELRA.

The bargaining history of the parties, which is highlighted by the mediated settlement entered into in July of 2007, supports the Union's position that Bus Monitor duties are intended to be in addition to paraprofessional duties not part of the regular paraprofessional assignment.

The Employer should have negotiated any change in the terms and conditions of employment any reduction in force should have been done according to the negotiated terms of the contract. The Union bases its argument on the provisions of PELRA and the reduction in force section of the collective bargaining agreement.

The Union asks the arbitrator to award lost pay and benefit accruals from the beginning of the 2007-2008 school year.

**SUMMARY OF EMPLOYER'S POSITION:**

The Employer argues that the elementary paraprofessionals who worked as Bus Monitors were assigned work in accordance with the notice of assignment section of the collective bargaining agreement. Management acted within its contractual rights. No language in the collective bargaining agreement requires management to assign paraprofessionals seven (7) hours of work per day. No language in the contract prohibits management from assigning six and one half (6.5) hours of work to paraprofessionals for paraprofessional work and one half (.5) hours Bus Monitor duty. The Employer acted within the rights established in the collective bargaining agreement.

Bus Monitor duty is simply another task that can be performed by paraprofessionals. By assigning elementary paraprofessionals to work six and one half (6.5) hours plus Bus Monitor duty, the Employer honored its commitment to assign at least seven (7) hours of paraprofessional work to the group of paraprofessionals for whose benefit this grievance was raised. The elementary paraprofessionals who perform Bus Monitor duties receive a paraprofessional daily schedule comparable to every other paraprofessional's daily schedule.

The paraprofessionals who worked in the elementary school and also worked as Bus Monitors were not harmed by the schedule. In fact, the fifty cent (\$.50) per hour premium paid to Bus Monitors is a significant benefit. Elementary paraprofessionals who perform Bus Monitor duties earn between one thousand two hundred dollars (\$1,200.00) and two thousand four hundred dollars (\$2,400.00) per year more than they would without the premium pay.

The grievance should be denied because the Employer did not violate the collective bargaining agreement and the elementary paraprofessionals who work as Bus Monitors were not harmed.

**OPINION:**

The text of the collective bargaining agreement does not specifically address whether elementary school paraprofessional employees who work as Bus Monitors should be scheduled for seven (7) hours per day. However, the Employer promised all paraprofessionals at least seven (7) hours per day in order to manage a payroll problem and there is a clear course of conduct adopted by the parties over the past two years.

The parties agree that the subject of this grievance is identical to the subject of a grievance brought by the Union in 2006. In this grievance the same article of the collective bargaining agreement was challenged by the same group of employees as a result of the same managerial decision made in 2006. The parties entered into a mediated settlement agreement of the 2006 grievance on July 24, 2007.

In August of 2007 the Employer pursued the same course of conduct that led to the July 24, 2007 settlement agreement.

There exists no substantive difference between the facts and circumstances of the grievance resolved by agreement of the parties on July 24, 2007 and the grievance that is the subject of this arbitration. The parties did not incorporate language in the settlement agreement denying the agreement any future value as precedent. In fact, the settlement agreement consisted of a financial statement signed by the parties.

The manner in which the parties settled the prior grievance should be taken into consideration and given considerable weight by the arbitrator. Given the fact that the July 24, 2007 settlement agreement involved all of the same issues and the same employees and the same policy as the current grievance, the decision in this arbitration should be consistent with the voluntary settlement agreement entered into by the parties. Hence, the grievance should be upheld.

If the School District intends to change the previously agreed upon interpretation of the collective bargaining agreement, it needs to enter into negotiations with the Union over the terms and conditions of employment it intends to modify.

**AWARD:**

1. *The grievance is upheld.*
2. *The Employer shall assign elementary paraprofessionals seven (7) hours per day plus Bus Monitor duties.*
3. *Any reduction in hours must be accomplished in accordance with the terms and conditions of the collective bargaining agreement.*
4. *If a party wishes to change the terms and conditions of employment, they shall enter into negotiations to accomplish that goal.*
5. *The damages in this case shall be computed in the same manner as the settlement agreement entered into on July 24, 2007.*

**Dated: October 15, 2008.**

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**James A. Lundberg, Arbitrator**