

**IN THE MATTER OF ARBITRATION BETWEEN**

MINNESOTA STATE COLLEGE FACULTY,	)	
	)	
Union,	)	<b>ARBITRATION</b>
	)	<b>AWARD</b>
<b>and</b>	)	
	)	<b>AWARDS FOR EXCELLENCE</b>
	)	<b>GRIEVANCE</b>
	)	
MINNESOTA STATE COLLEGES AND UNIVERSITIES,	)	
	)	
Employer.	)	
	)	

Arbitrator: Stephen F. Befort

Hearing Date: August 27, 2008

Post-hearing briefs received: October 27, 2008

Date of decision: November 25, 2008

**APPEARANCES**

For the Union: Anne F. Krisnik

For the Employer: George E. Warner

**INTRODUCTION**

The Minnesota State College Faculty (MSCF or Union) is the exclusive representative of a unit of professional faculty instructors employed by Minnesota State Colleges and Universities at its technical and community colleges (MnSCU or Employer). The Union brings this grievance claiming that the Employer violated the parties' collective bargaining agreement by declining to pay grievant Sue Stafki for an

Award for Excellence project under the terms of the parties' collective bargaining agreement. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

### **ISSUES**

- 1) Has the Employer violated the parties' collective bargaining agreement by refusing to pay the grievant for an Award for Excellence project?
- 2) If so, what is the appropriate remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **ARTICLE 13 WAGES**

**Section 5. Awards for Excellence.** At the discretion of the College President or designee, a faculty member may be granted an award for excellence of up to five thousand dollars (\$5,000), subject to the following limitations:

- A. A faculty member or group of faculty members seeking consideration for an award for excellence will submit a written proposal that has been approved by the individual's or individuals' supervising administrator(s) to a College Award for Excellence Committee. The proposal must specifically delineate either: a) performance objectives to be achieved during an identified period of time that are above and beyond the normal requirements of the individual's position(s), and a method of assessing the outcome; or b) special project goals during an identified period of time, and a method of assessing the outcome. The committee will be composed of an equal number of college administrators appointed by the College President or designee and MSCF faculty members appointed by the MSCF Chapter President. The committee may accept, reject or make suggestions on how to improve the proposal to make it acceptable. Rejected proposals and proposals with improvement suggestions shall be returned to the proposer(s). In the event the committee is deadlocked the proposal shall be forwarded, with supporting documentation, to the College President or designee for a decision.
- B. Proposals deemed acceptable by the committee will be forwarded to the College President or designee, who may approve the

- C. Each college may propose additional reasonable and necessary written guidelines, for this committee's use after review by the Faculty Shared Governance Council.
- D. Failure to complete the objectives and/or goals of the project shall result in no award for excellence being given but shall not be cause for any discipline or loss of professional advantage.
- E. Upon completion of the objectives and/or goals of the proposal, the faculty member(s) will provide written notice to the committee and describe how the objectives and/or goals have been achieved. The committee will meet and prepare a written recommendation for the College President or designee whether or not to issue an award for excellence. The committee shall keep minutes of its meetings and post them.

The College President or designee may accept or reject the committee's recommendation if the recommendation is neutral or negative. If the recommendation is positive, the College President or designee shall authorize payment.

- F. This payment will be in the form of a one-time lump sum payment, and it will not be added to the faculty member's base salary. This lump sum payment shall be exempt from the forty percent (40%) overload salary maximum.

### **FACTUAL BACKGROUND**

The MnSCU system consists of 32 public institutions of higher education within the State of Minnesota, including state universities, community colleges, technical colleges, and consolidated colleges. The MSCF represents approximately 5,400 faculty members employed at the 25 community and technical colleges operated by MnSCU.

The parties have long maintained a collective bargaining relationship governing the terms and conditions of employment for faculty members represented by MSCF. The Minnesota Legislature appropriated twelve million dollars to MnSCU for the 2005-07

budget cycle to be used “to pay competitive compensation to faculty or staff for initiatives that promote excellence in student learning.” The parties responded to this legislation by negotiating the Awards for Excellence program set out in Article 13 of the 2005-07 collective bargaining agreement. Pursuant to this provision, a faculty member may earn up to \$5,000 for proposing and completing an approved award for excellence initiative. The contract provides for the establishment of a college committee composed of an equal number of administrative and union representatives with authority to review award proposals and to make recommendations for payment.

Sue Stafki is a faculty member who teaches at MnSCU’s Wadena Technical College campus. In December 2005, Ms. Stafki submitted a proposal for an Award for Excellence grant. She proposed the development of an articulation agreement that would expand the Early Childhood Paraprofessional Education Program available to technical college students and develop enhanced course delivery mechanisms for students from the White Earth Indian Reservation. As required by the contract, Ms. Stafki’s proposal identified the following benchmarks for assessing proposal outcomes: 1) the number of students enrolled; 2) feedback from student satisfaction surveys; 3) feedback from oral student communications; 4) White Earth involvement and activity; and 5) partnering college feedback.

Helene Hedlund, Interim Dean at Detroit Lakes Technical College and a member of the College Awards for Excellence Committee (Committee), testified that the Committee initially suggested that Ms. Stafki expand the scope of her proposal. Hedlund testified that the initial proposal focused on a working arrangement with Southwest Minnesota State University (SMSU), a program initiative already encompassed within

Ms. Stafki's regular duties. The Committee advised Ms. Stafki that she should expand on that program by attempting to establish working relationships with other colleges beyond SMSU. With this modification, the Committee approved Ms. Stafki's proposal.

Article 13, Section 5E of the parties' contract sets out the following reporting and approval procedures with respect to an Award for Excellence project:

Upon completion of the objectives and/or goals of the proposal, the faculty member(s) will provide written notice to the committee and describe how the objectives and/or goals have been achieved. The committee will meet and prepare a written recommendation for the College President or designee whether or not to issue an award for excellence. The committee shall keep minutes of its meetings and post them.

The College President or designee may accept or reject the committee's recommendation if the recommendation is neutral or negative. If the recommendation is positive, the College President or designee shall authorize payment.

Ms. Stafki submitted a document outlining the outcomes of her project in the fall of 2006.

The report lists the desired outcomes identified in the proposal and includes a short paragraph explaining how each desired outcome was met.

The Committee reviewed Ms. Stafki's proposal at its October 18, 2006 meeting. Two significant developments occurred at this meeting. First, Ms. Hedlund, acting as de facto chair of the Committee, proposed that the Committee adopt an operating principle that a positive recommendation for purposes of the contract procedure must receive a unanimous vote of the Committee. Ms. Hedlund testified that the Committee discussed this recommendation and that no member expressed disagreement with her suggestion. Ann Nelson, another administrative Committee member, testified similarly. On the other hand, four other Committee members - three faculty members and one administrator - testified that the Committee never voted to adopt the unanimity principle. Second, the

Committee requested that Ms. Stafki provide some additional information concerning her project outcomes. In particular, minutes of the October 18 meeting indicate that the Committee asked Ms. Stafki to “provide information on contact with other 4-year institutions as detailed in application as project activity goal. Who was contacted, when was contact made and outcome of contact.” The minutes further state that “once this information is received [the Committee] will review by email and provide notification.”

On October 25, 2006, Ms. Stafki submitted a document to the Committee responding to the request for additional information. The document stated as follows:

- Several colleges were contacted at the same time that I contacted Southwest State. The following is a list along with the responses:

Mayville College	No response
Concordia College	No response
College of St. Catherine	No response
UND	No response
Metro State	Indicated an interest, but not at this exact time.

I did try to reconnect with Metro State. They were more interested in working on an agreement, but did not show interest in delivering the course work to any of our campus locations. I thought it was best to continue putting my efforts into getting the agreement with SMSU in place and having at least one year of the cohort “under our belts” so to speak before trying it with anyone else. I have direct experience in working with an articulation for at least one year before jumping into another one too quickly. You learn from the experiences and errors made.

The Committee reviewed the proposal by email, with five members voting to approve Ms. Stafki’s report, two voting in the negative, and one member abstaining. The Committee then forwarded Ms. Stafki’s report to College President Ann Valentine.

President Valentine also requested additional information from Ms. Stafki. In an email message to Ms. Stafki dated December 15, 2006, President Valentine wrote as follows:

I appreciate the additional information [provided on October 25], but have some questions. Please remember that we need documentation for \$5,000 worth of work, so additional clarification is important. There are successful reports that have been filed with our college; if you would like to see one of those, please let me know and we'll get one for you to use as an example.

Regarding the student survey, I understand that you chose to do qualitative research rather than quantitative. That's a reasonable approach, but then you need to write up the qualitative comments in aggregate or anonymous formats using appropriate qualitative techniques. For example, you can certainly write a narrative about what you found out at Alexandria and how that moves your program forward. Otherwise, if you do have a survey that was done as your project proposal indicated, then please aggregate the data.

I also have questions about the work you did to try to secure a new articulation. Surely you didn't just call switchboards without any research beforehand, nor did you just leave messages and then not follow up – so please document the persons you tried to contact. Then did you follow up with e-mails or letters? Do you have copies of those? Did you look at internet sites to find your colleagues at other institutions? Please document that. Mayville State, for example, called one of our academic deans this fall regarding several possible articulations, and particularly asked about early childhood education and whether or not we have such a program at our college. It would be helpful for all concerned to know how the process got derailed this summer since you put effort into Mayville State.

We all want this to be successful and to have an amicable resolution. Your attention to these details will be helpful.

Ms. Stafki did not respond to President Valentine's email.

The Union presented evidence at the hearing to the effect that the information requested by the Employer of Ms. Stafki in this case went beyond that required of other faculty members who received payment for Awards for Excellence projects. The Employer disputed this contention and submitted evidence to the contrary.

## **POSITIONS OF THE PARTIES**

### **Union:**

The Union contends that the Employer violated the parties' collective bargaining agreement by refusing to pay Ms. Stafki for her Award for Excellence project. Pursuant to the parties' agreement, a faculty member with an approved Award for Excellence project is to "provide written notice to the committee and describe how the objectives and/or goals [of the project] have been achieved." The agreement further provides that if the Committee's "recommendation is positive, the College President or designee shall authorize payment." In this instance, Ms. Stafki submitted a report describing project outcomes, and the Committee approved Ms. Stafki's report by a 5-2 vote. The Union argues that Ms. Hedlund's imposition of a unanimous vote requirement for a "positive" Committee recommendation was neither required by the agreement nor sanctioned by a vote of the Committee membership. In the end, the Union maintains, the President's denial of payment resulted from a disparate and more stringent application of standards to Ms. Stafki as compared to other award grantees.

### **Employer:**

The Employer asserts that its decision not to grant Award for Excellence pay to Ms. Stafki is proper under the terms of the parties' agreement. The agreement states that "the College President or designee may accept or reject the committee's recommendation if the recommendation is neutral or negative." The Employer argues that the Committee's recommendation in this instance was neutral rather than positive, because it was not supported by a unanimous vote as required by the Committee-approved protocol. Under these circumstances, President Valentine possessed full authority to approve or deny

payment. Moreover, the Employer contends, the President's denial of payment was appropriate on the merits given the lack of detail provided in Ms. Stafki's report and the grievant's refusal to comply with the President's reasonable request for additional supporting documentation.

### **DISCUSSION AND OPINION**

This is a case dominated by uncertain ground rules. The uncertain ground rules in this matter concern the criteria for employee entitlement to Award for Excellence pay. Some of the difficulty here lies at the doorstep of the state legislature. The legislature adopted a new program with a lofty slogan, but provided few guidelines for implementation.

The parties attempted to fill this gap by providing a basic procedure for proposing and approving Award for Excellence grants in their 2005-07 collective bargaining agreement. Article 13 of the contract establishes an Award for Excellence Committee composed of an equal number of college administrators and MSCF faculty members. The Committee has authority to approve initial grant proposals and to review completed projects. In the latter capacity, the grantee is obligated to submit a written report describing how the objectives of the project have been achieved, and the Committee is charged with reviewing the report and making a pay recommendation to the College President. Section 5.E. of Article 13 states:

The College President or designee may accept or reject the committee's recommendation if the recommendation is neutral or negative. If the recommendation is positive, the College President or designee shall authorize payment.

The instant dispute concerns the meaning of the terms "neutral" and "positive" in Section 5.E. The Union urges a common usage sense of these terms such that a tie vote

should be interpreted as a “neutral” recommendation and a majority vote in favor of payment interpreted as a “positive” recommendation. Since the Committee voted 5-2 to recommend payment, the Union contends that this is a positive recommendation, and the President is obligated to authorize payment to Ms. Stafki.

The Employer counters that these terms must be interpreted in light of the principles adopted by the Committee. The Employer maintains that the Committee discussed and gave de facto approval to the principle that a “positive” recommendation requires a unanimous vote of the Committee. Since the Committee’s vote was not unanimous, the Employer contends that President Valentine acted within her authority in deciding not to approve payment for Ms. Stafki.

The Union, in turn, objects to the purported unanimity principle on two additional grounds. First, four members testified that, while Ms. Hedlund urged a unanimity requirement, the Committee never voted to accept that principle. Second, the Union points out that Section 5.C. of Article 13 authorizes the adoption of “additional reasonable and necessary written guidelines” for the Committee’s use after review by the Faculty Shared Governance Council. In this instance, the Council did not review or approve the proposed guidelines desired by Ms. Hedlund.

The effect of these uncertain rules is compounded by the fact that the key players in question appear to have clashing personalities. At the hearing, neither President Valentine nor Ms. Hedlund seemed to be fond of Ms. Stafki. The grievant, for her part, did not testify.

This conflict may explain some of the tension in the parties’ application of the existing guidelines. The evidence suggests that the Employer required more information

of Ms. Safki than it did of others who submitted project completion reports. On the other hand, the information requested by President Valentine does not appear to be unreasonable, and the grievant's reasons for disregarding those requests are unknown.

Because both of the parties bear some responsibility for the events resulting in this grievance, I find that the appropriate remedy on the merits of the grievant's pay request is a split decision. More importantly, this is a context in which the parties should return to the bargaining table and finish the task of determining the criteria for award grant payments. It is clear that no serious bargaining was undertaken to identify the contours of "positive" and "neutral" recommendations. Since the parties never got close to having a meeting of the minds on this issue, it is preferable that the parties attempt to work out their own rules than it is for the arbitrator to impose his own notions of workplace justice.

### **AWARD**

The grievance is sustained in part and denied in part. The Employer is directed to pay the grievant the amount of \$2,500 for her Award for Excellence project. The parties are further directed to bargain in good faith to establish criteria for determining when a Committee recommendation may be deemed to be positive, negative, or neutral.

November 25, 2008

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Stephen F. Befort  
Arbitrator