

IN THE MATTER OF THE ARBITRATION BETWEEN

WIN-E-MAC TEACHERS UNITED,

**GRIEVANCE OF ROSS RORAGEN
BMS CASE NO. 08-PA-0954**

- and -

**INDEPENDENT SCHOOL DISTRICT, No. 2609
ERSKINE, MINNESOTA.**

ARBITRATOR

William E. Martin

APPEARANCES

On behalf of Win-E-Mac Teachers United: Jess Anna Glover
Education Minnesota
41 Sherburne Avenue
St. Paul, MN 55103

On behalf of ISD 2609: Joseph E. Flynn
1155 Center Pointe Drive, Suite 10
Knutson, Flynn, & Deans P.A.
Mendota Heights, MN 55120

PROCEEDINGS

This grievance arbitration was heard by Arbitrator William E. Martin at 10:00 a.m. on June 19, 2008 at the School District Board office, 23130 345th Street East, Erskine, Minnesota.

The Union presented the testimony of Ross C. Roragen, Teacher and Grievant; Jeremy Morgenroth, Teacher; Eileen Cook, Teacher; Alyssa Hickman, Teacher; Michelle Olson, Teacher; and Jodi Lee, Teacher.

The School District presented the testimony of Daniel Wayne Parent; District

Superintendent; and Kevin McKeever, Principal.

The parties offered the Exhibits listed in Attachment A. All Exhibits were accepted into evidence. At the close of the hearing, the parties agreed upon the submission of written briefs. The Arbitrator received a written brief from the Union, a response from the School District, and a reply brief from the Union.

Based upon the testimony, the exhibits, the oral argument and the written briefs, I hereby make the following Decision and Award.

DECISION AND AWARD

I. THE GRIEVANCE IN FACTUAL CONTEXT

This grievance stems from the School District=s initial hiring of grievant Ross Roragen as an elementary school teacher in May of 2004. Previously Mr. Roragen had taught in the Ada-Borup School District in Minnesota for six years. Mr. Roragen testified that he had requested in his interview at Win-E-Mac that he receive credit for his six years of experience at Ada-Borup if hired by Win-E-Mac. Also, Mr. Roragen said at his interview that he preferred not to coach boy=s basketball. The initial interview was with a hiring committee including Principal Kevin McKeever, two School Board members, and other school personnel.

One week after the interview, Principal McKeever called Mr. Roragen and informed him that the School District was offering him an elementary teacher=s position. McKeever informed him at that time that the offer would require him to coach boy=s basketball. Mr. Roragen testified that he asked whether he would get credit for his years at Ada-Borup, and that Mr. McKeever replied that he would receive credit. This call was on a Sunday, and Mr. Roragen pressed to get a signed contract so he could give early notice to Ada-Borup.

Mr. Roragen drove to Principal McKeever=s home on Tuesday to sign the written document. They went over the contract and, according to Mr. Roragen, Mr. McKeever said the School Board would only credit Mr. Roragen with five years experience. Mr. McKeever testified however, that he did not recall exactly what the conversation had been five years earlier, but that the contract offer of the Board had been conveyed in the form Written Contract for Minnesota Public School Districts that had been prepared by the business office at the request of the School Board. [Union Exhibit No. 3] which Roragen reviewed that Tuesday. This was a standard form contract with Adickered@ terms filled in by the School District. These added terms were the pay for head basketball coach, \$4,289.00 and at paragraph 7 the regular pay for Mr. Roragen of A\$36,805.00 (BA step 5) . . . for basic services.@

The grievance results from the fact that the written contract placed Mr. Roragen at ABA Step 5@ for school year 2004 to 2005. According to the then effective Master Agreement [Union Exhibit 1], Schedule A, this placed Mr. Roragen at Step 5 in a system in which Step 1 was the first year of teaching by a teacher with no previous experience. Step 5 is therefore for a teacher in this system who has had four years prior experience. [Union Exhibit 6].

After going over the written agreement, with no further discussion about the experience issue, or the step system, Mr. Roragen signed the contract. The contract was then approved by the Board at it=s meeting of May 18, 2004 [Union Exhibit 9] and the contract was signed by the Board, Chair and the clerk.

Based on the written agreement Mr. Roragen was paid at Step 5 for all of 2004-2005. In addition to his signed contract, his August 30, 2004 Notice of Assignment repeated his contract salary and ALane/Step:BA/5".

In school year 2005-2006, Mr. Roragen received on August 24, 2005 a new notice of assignment which he signed on August 30, 2005. [Union Exhibit 7,B] This notice stated that he would be on ALane/Step:BA/6. On Lane 6 he received an appropriate salary increase under the Collective Bargaining Agreement. On August 29, 2006, Mr. Roragen signed a new Statement of Salary and Benefits which placed him at Lane/Step: BA 15/7. [Union Exhibit 7,D] At Step 7, he received another increase under which he worked for the new school year.

On 5-28-07, Mr. Roragen signed a new Notice of Assignment placing him at a salary \$42,189.00. [Union Exhibit 7,E]. This salary is equivalent to a Step 8, BA + 30 assignment, up one step from the prior year.

In summary, Mr. Roragen=s 2004-2005 contract placed him on Step 5. His assignment in 2005-2006 moved him to Step 6. In 2006-2007, he was moved to Step 7, and he was notified in the spring of 2007 that he would receive a Step 8 salary.

Going back to his hiring in 2004, Mr. Roragen testified that he believed he was being given credit for five years of his six prior years at Ada-Borup and that he labored under the misapprehension for three plus years during which, of course, he had made no complaint. Indeed during this time he had signed the salary notification documents each year ostensibly acknowledging the steps for salary progress set out in those documents.

The grievant was placed on this Union bargaining committee in 2007 and a colleague explained to him that the step system began with lane 1 for teachers with no experience. Mr. Roragen then realized that he had not been given credit for five years experience when he had been hired four years earlier. Mr. Roragen immediately inquired about his situation with the business office and with Superintendent parent. [Union Exhibit 4A]. His letter of August 8,

2007 explained the issue from his viewpoint. Superintendent Parent replied on September 4, 2007, concluding that past written contracts signed by Mr. Roragen prevented any change in salary status [Union Exhibit 4B]. Following a further exchange of letters between Mr. Roragen and Principal McKeever, [Union Exhibits 4C,D,E,F] the grievance herein was filed [Union Exhibit 4G], denied by the District, and eventually moved through to this arbitration.

II. **ISSUE**

The Union stated that the issue is whether the District must correct Roragen's placement on the salary schedule pursuant to the agreement between the parties when Roragen was hired. The District stated that the issue is whether or not the school district violated the Collective Bargaining Agreement by grievant's initial placement prior to the commencement of his initial employment or the 2004-05 contract year.

While the two phraseologies suggest a difference in the parties' views of the issue, the cases presented and the arguments in the parties' briefs demonstrate that the parties essentially agree on what the questions here are. As the District argued, the Collective Bargaining Agreement Article VI, Section 2, Subd. 4 permits credit for new hires for experience and education on the salary scale and requires that new hires be placed on the salary schedule as agreed between the School District and the teacher. Given the nature of this grievance set out above, the primary question here is whether according to his hiring contract the initial step placement of Mr. Roragen on the District salary schedule should have been on Step 6 of the Collective Bargaining Agreement rather than on Step 5.

III. ARGUMENTS, DISCUSSION AND CONCLUSIONS

A. ARGUMENTS OF THE PARTIES

1. Union Contentions

The Union argues that the Grievant and the District actually agreed in May of 2004 that Roragen would receive credit for five years of teaching at Ada-Borup, but that his written contract mistakenly put him on Step 5 of the salary schedule giving him only four years of credit.

As a result of this alleged mistake, the Union contends that the written contract should be reformed to state the party=s true intent. The Union states the doctrine of reformation well. In summary, there must be clear and convincing evidence that the parties did agree in fact on something different than was put in writing, and that a mutual mistake was made putting that in fact agreement into writing. In rare cases a unilateral mistake may be the basis of reformation if there is fraud or bad faith or inequitable conduct by the other party. While there is no claim by the Union of fraud or bad faith as such, it argues that it was inequitable here for the District to draft the contract in a way that failed to accurately reflect the earlier negotiation of Roragen and Principal McKeever.

To support its claim for reformation based upon either mutual or unilateral mistake the Union contends that the real agreement in fact of the parties was orally entered into by Roragen and McKeever. To support that contention the Union contends that, as a matter of fact, there was such an oral agreement including a term crediting Roragen with five years of experience, and that McKeever had authority or apparent authority to make such a contract on behalf of the District under rules of agency law.

2. School District Contentions

The School District argued that in fact, and by law under Minn. Stat. § 122A.40, Subd. 3, the contract between Roragen and the District was, and could only be, the written contract between them. Under the written contract Roragen was placed on Step 5 of the salary schedule of the Collective Bargaining Agreement. Further, the District argued that the written contract was, as required by law, signed by Roragen, by the School Board Chair, and by the School Board Clerk. The District contends that no one else, including Principal McKeever, was authorized to enter into a contract with a teacher. Finally, the District argues that there was no mistake, except by possibly Roragen. It argues also that a unilateral mistake would provide no basis for changing the written agreement signed by the parties four years earlier.

As separate arguments, the District contends that even if a mutual mistake had been made justifying reformation four years earlier, that too much time has passed to bring such a claim now. This untimeliness contention is based upon two separate arguments: (1) that the grievance is barred under the 21 day limit of the Collective Bargaining Agreement, and (2) that the claim ought now be barred by the equitable laches doctrine.

B. DISCUSSION AND CONCLUSIONS

1. Mistake Analysis

When the District negotiated with Mr. Roragen it was by committee including School Board members, School District Business office personnel, and Principal McKeever. Testimony did not detail all the committee discussions, but rather focused upon the primary areas of concern including extra coaching duties and salary including placement on the salary schedule. After the committee recommendation and the authorization of an offer to Mr. Roragen, the

communications were handled by Principal McKeever. It was clear, however, under the law and from the conduct of the parties that only the School Board had authority to reach a contract. Minn. Stat. 122A. 40, Subd 3 requires that a written contract signed by the School Board Chair and Secretary be used to hire a teacher. The statute also states: ASchool Boards must hire . . . teachers at duly called meetings.@ Thus, as required by law, it is clear in all teacher hiring contract situations that whoever is involved in discussions is relaying information from the Board and that in the end there is no contract until the Board approves the eventual written contract and signs it.

Testimony herein made clear that while information was relayed to Mr. Roragen by Principal McKeever, that Mr. McKeever did not have any authority to make an agreement. Indeed, several times Mr. McKeever responded to Mr. Roragen in ways that made it clear he was relaying decisions made by others. For example, Mr. McKeever said the Board made Mr. Roragen=s offer contingent on his accepting the extra duty of boys basketball coach. Also, Mr. McKeever stated that the School Board would not agree to Mr. Roragen receiving full credit for his six years of teaching at Ada-Borup.

While there is some dispute about what Mr. McKeever actually said on the topic of five years credit it is clear that he responded in a manner that made clear that his responses were coming from elsewhere. It was also clear from his responses that a written contract was contemplated and that it would ultimately be determined how much credit was given on the School District side by some one other than Mr. McKeever.

Moving from the issue of authorization to the issue of mistake, it is clear that Mr. Roragen was mistaken in the end because Ada-Borup and District 2607 had different salary

schedule structures. However, the mistake was about the meaning of the contract, it cannot be said that he was mistaken about what his contract actually provided. This is because his contract was the written document required by law, and this document clearly stated his salary and its basis. First, he was on Step 5 of the salary schedule. Second, he would be the basketball coach. While he was mistaken about how many years of experience he would receive, he went over the written document and was aware he would be on Step 5 of his new Collective Bargaining Agreement when he signed.

At this point, Mr. Roragen's mistake was a misunderstanding about the meaning of the written salary terms. But it cannot be said that the school district shared the mistake. Indeed, the written contract was prepared by the business office which knew exactly what Step 5 meant. And, as was testified by several bargaining unit members, the School District designated these other teachers when they were new hires for placement on Step 5 even though they had more than four years of prior experience. The practice of the District for several years seemed to be to limit experienced new hires to Step 5.

The Union's arguments to the contrary primarily rest on the idea that Principal McKeever was authorized to make an agreement here for five years of credit, and that he did so in fact. Thus the in fact agreement according to the Union was mistakenly stated in the writing. However, Mr. McKeever had no such authority or apparent authority and the written contract, authorized by the School Board, is the agreement in fact. There is no basis for reformation when the written contract and the agreement in fact are one.

Assuming arguendo, that Mr. Roragen made a unilateral mistake about the meaning of the contract as argued above, this is not the sort of mistake that would permit reformation,

because the School District made no mistake. Confusion may have resulted from discussions but the District had a clear policy, knew what Step 5 meant, and the Board knowingly adopted the Step 5 written contract under law. The Union has argued that this was inequitable if Principal McKeever contributed to Mr. Roragen=s misunderstanding. However, the rule regarding unilateral mistake would only apply if the School Board behaved inequitably by taking some kind of advantage of a known mistake by Mr. Roragen. There is no indication that the Board was aware of Mr. Roragen=s mistake. Indeed, even if Principal McKeever=s communication contributed to Mr. Roragen=s misunderstanding, there is no indication that Principal McKeever was aware of this problem until he was informed of it four years later and certainly no proof that he sought to take unfair advantage of a known mistake.

2. Timelines

Even if there had been some ground for reformation here, such a claim cannot survive four years and numerous personnel actions and payroll checks, which relied on the written contract being challenged here. While there may be some semantic basis to consider this a continuing violation. The continuing violation doctrine cannot be applied to avoid the 21 day limit for grievances, where the violation was not grieved until almost four years later. Additionally, even if not barred by the 21 day limit of the Bargaining Agreement, reformation is an equitable doctrine subject to the equitable doctrine of laches. Again, after four years and four or five separate documents agreeing each year to the grievant=s step placement, too much time and reliance have passed to reform the four year old hiring contract even if such reformation would have been appropriate in 2004/05.

3. Conclusions

Based upon the above discussion, I conclude that the original written contract of the parties was both their legal written contract and their agreement in fact. As such, even if there was a misunderstanding by the grievant, there was no basis for the doctrine of reformation to be applied here to change the written contract. Finally, even if appropriate earlier, I conclude that both the grievance time limit of the Collective Bargaining Agreement and the doctrine of laches bar the grievance in any event.

IV AWARD

Based upon the Discussion and Conclusions state above, the grievance herein is denied.

Dated March 4, 2009

William E. Martin
Arbitrator

ATTACHMENT A

SCHOOL DISTRICT EXHIBITS

School District Exhibit No. 1	Master Agreement Between Win-E-Mac Teachers United and Independent School District No. 2609 Win-E-Mac 2007-2008/2008-2009
-------------------------------	---

UNION EXHIBITS

Union Exhibit No. 1	Master Agreement, Win-E-Mac Teachers United and Win-E-Mac Independent School District No. 2609 2003-2004/2004/2005
---------------------	--

Union Exhibit No. 2	Master Agreement, Win-E-Mac Teachers United and Independent School District No. 2609, Win-E-Mac 2005/2006 to 2006/2007
---------------------	--

Union Exhibit No. 3	Teacher Contract for Minnesota Public School Districts for Ross Roragen Oct 18 Mar 04
---------------------	---

Union Exhibit 4A	Letter from Ross C. Roragen to Superintendent Dan Parent dated 8-29-07
------------------	--

Union Exhibit 4B	Letter from Superintendent Daniel W. Parent to Ross Roragen dated September 4, 2007
------------------	---

Union Exhibit 4C	Memo from Ross Roragen to Keven McKeever, dated September 11, 2007
------------------	--

Union Exhibit 4D	Letter from Principal McKeever to Ross Roragen, dated September 20, 2007
------------------	--

Union Exhibit 4E	Letter from Ross Roragen to Principal McKeever, dated 9-25-07
------------------	---

Union Exhibit 4F	Letter from Principal McKeever to Ross Roragen, dated September 28, 2007
------------------	--

Union Exhibit 4G	Grievance Report Form, grievance IU02 of Ross Roragen
------------------	---

Union Exhibit 4H	Time Extension dated October 17, 2007
Union Exhibit 4I	Time Extension, dated October 29, 2007
Union Exhibit 4J	Letter of Daniel W. Parent, Superintendent to Ross Roragen, dated October 24, 2007 (Denying Grievance)
Union Exhibit 4K	Letter from Superintendent Parent to Ross Roragen, dated December 4, 2007 (Reporting School Board Denial of Grievance)
Union Exhibit 4L	Letter from Mark Richardson to Superintendent Parent, dated December 14, 2007 (requesting arbitration)
Union Exhibit 5	Letter of Ross Roragen, To Whom It May Concern, dated February 4, 2008
Union Exhibit 6	Ada-Borup Independent School District # 2854 Master Agreement 2001-02 and 2002-03
Union Exhibit 7A	Notice of Assignment of Ross Roragen, dated August 30, 2004
Union Exhibit 7B	Notice of Assignment of Ross Roragen, dated August 24, 2005
Union Exhibit 7C	Notice of Assignment of Ross Roragen, dated 5/19/2006
Union Exhibit 7D	Statement of Salary and Benefits for Ross Roragen, dated 8-29-06
Union Exhibit 7E	Notice of Assignment of Ross Roragen, dated 5-28-07
Union Exhibit 9	Minutes of Regular Board Meeting, dated May 18, 2004