

IN THE MATTER OF THE ARBITRATION BETWEEN

**WINONA EDUCATION ASSOCIATION.,
GRIEVANT,**

**DECISION AND AWARD
STAFF DEVELOPMENT GRIEVANCE
BMS CASE NO. 09-PA-0527**

- and -

**INDEPENDENT SCHOOL DISTRICT NO. 861, WINONA,
EMPLOYER.**

ARBITRATOR

William E. Martin

APPEARANCES

For The Union:

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PROCEEDINGS

The hearing in this grievance arbitration was held on July 8, 2009 at the school district's offices in the Winona High School, 903 Gilmore Avenue, Winona, Mn 55987. The hearing began at 9:00 a.m. with testimony of the Union's witnesses Dwayne Voegeli, Teacher; Jeff Hyma, Education Minnesota Field Staff; Janet M. Mosher, Teacher and previously Staff Development Committee Chair; and William Braun Teacher and Site Staff Development

Committee member. Then, the Employer presented the testimony of Dr. Scott M. Hannon, Director of Academic Affairs, of Winona Area Learning Center; and John A. Phelps, Principal Winona High School.

The parties submitted joint Exhibits 1 through 17 at the hearing. These are listed on Attachment 1 to this Decision and Award.

In addition to the testimony and exhibits the Union and the Employer submitted post hearing briefs on August 10, 2009. The arbitrator received the last brief on August 12, 2009 and the record was closed. The parties both agreed to a two week extension of the time for filing this decision, until September 28, 2009.

Based upon the testimony, the exhibits and the oral and written argument submitted herein the Arbitrator makes the following Decision and Award for the reasons stated in this opinion.

DECISION AND AWARD

I. THE GRIEVANCE IN CONTEXT

The basic facts of this case are largely undisputed. The testimony and submissions of the parties primarily reveal a question of interpretation. The grievance arose when the school district received, but did not fully approve, a request by six social studies teachers to attend a national conference for social studies teachers in San Diego. The request was submitted on September 20, 2007 for a conference to take place beginning November 30, 2007. [Exhibits 14, 15] The conference was on Friday, Saturday and Sunday, thus requiring that the Winona teachers be absent from school on Friday of that week. The testimony established (there was no contention to the contrary) that this was one of the highest quality professional development

conferences in the country. The social studies department which had not used professional development funds for several years decided that it would be beneficial to the department for a group to attend this premiere conference together.

The teacher's request was properly submitted, under the District Staff Development Policy as required by statute, Minn. Stat §122A.60-61, to the local high school staff development committee. The committee rejected two of the requests because they were made by probationary teachers not eligible under the district plan. The committee approved the other four requests.

The four committee approved requests were then submitted as required to the High School Principal John Phelps. This request was for approval of budget expenditures and approved of leave days required to attend a conference. For reasons set out in more detail below, Mr. Phelps approved only two of the requests. After some discussion, the local Union, the Winona Education Association filed a "class action" grievance on 22 Oct. 2007. [Exhibit 10]

The grievance states:

"Mr. Phelps has exceeded the district's managerial rights by not allowing the four High School Social Studies teachers to attend the staff development activity as approved by the high school site staff development committee in accordance with site and district staff development goals and funded out of the high school site's staff development funds. This action violates Article XXIX Section I, Article IV Section I, Article VI sections 5 and 6 and any other appropriate provisions of the Master agreement between the district and the Exclusive Representative.

Relief Sought: 1) The four teachers be allowed to attend the staff development activity as approved by the high school site staff development committee. 2) The district recognizes the right of site staff development committees to make decisions regarding the use of their site's staff development funds in accordance with Minnesota law and with the stated district and site staff development policies.

The parties agreed that the grievance is properly before the arbitrator and that the question here is whether the school district had authority to deny a development leave approved by the local site committee. The conference has long since passed so it obviously cannot be a remedy here that the two teachers who were disapproved be allowed to attend. Thus the primary impart of this proceeding is to sort out the rights of the parties for the future. Also, the Union now asks as a monetary remedy for reimbursement of two airline tickets paid for by the teachers but unused.

II. ISSUES

- A. Whether the school district violated the collective bargaining agreement by refusing to allow two teachers to attend a professional development conference after they had been approved to attend by the Winona High School Staff Development Committee?
- B. If so, whether the teacher who prepaid for their airline tickets before the two requests had been denied should be reimbursed?

III. RELEVANT CONTRACT POLICY PROVISIONS

ARTICLE IV

SCHOOL DISTRICT RIGHTS

Section 1. Inherent Managerial Rights: The exclusive representative recognizes that the school board has the responsibility and authority to manage and direct, in behalf of the public, all operations and activities of the district to the full extent authorized by law, provided that such rights and responsibilities shall be exercised by the school board in conformity with the provisions of this Agreement.

Section 2. Reservation of Managerial Rights: The foregoing statement of rights

and duties shall not be deemed to exclude other inherent management rights and management functions not expressly reserved herein, and all management rights and management functions are reserved to the school board.

ARTICLE VI TEACHER RIGHTS

Section 5. Staff Development Committee: The Staff Development Committee shall consist of eleven (11) elected teachers, at least one of whom shall be a special education teacher, one representative from the non-licensed group, one school board member or her/his designee, a principal from each school level, the district curriculum and instruction director, one parent from the district, and a representative from each college of education in the community. The election of the eleven (11) teacher members is to be conducted by the exclusive representative. The length of term for each committee member will be two years. Teacher members of this committee shall be afforded release time without loss of pay for any meetings under this section that are called during the school day.

Section 6. Staff Development: Teachers shall have equal access to all staff development programs. A “menu” system of programs shall be utilized to ensure choice based on personal development needs. The intent of any staff development program is to improve and/or update teaching methods and/or update content taught. Staff development programs or any component of said programs shall not be used for the purpose of teacher evaluation. Program menus will be generated by the staff development committee as defined in Article VI, Section 5.

Teachers involved in staff development will not receive additional compensation for hours out of their classrooms on a contract day. Staff development involvement during non/contract days will be compensated at the hourly rate established for staff development activities. No additional stipend will be paid.

...

Section 16. Just Cause: No tenured teacher shall be disciplined or denied a scheduled salary increase or deprived of any professional advantage without just cause. Any such denial or discipline shall be subject to the professional grievance procedure set forth in this contract. All information forming the basis for disciplinary action will be made available to the teacher and upon written consent of the teacher involved to the exclusive representative.

...

Section 20. Maintenance of Standards: This contract shall not be interpreted or applied to deprive teachers of professional advantage or to modify the working

conditions heretofore specifically enjoyed unless expressly stated herein. Nor shall it be interpreted or applied to deprive the district of any of the services of the teachers heretofore enjoyed unless expressly stated in this contract.

ARTICLE XIII
LEAVES OF ABSENCE

Section 12. Professional Conferences: The district shall make provisions in the instructional budget of the district for those teachers in the district to attend national and regional professional meetings in accordance with a policy developed by the district and with prior approval of the superintendent of schools. The district shall pay for travel, meals, lodging and registration fees incidental to the attendance at such meetings, and shall provide a substitute teacher to replace the participant. The teacher shall submit a written report to the superintendent regarding the proceedings of such meetings attended when requested to do so. The teacher attending such meetings and conferences may receive clock hours for such attendance upon application to the Continuing Education Committee.

ARTICLE XIX
EFFECTS OF LAWS, RULES AND REGULATIONS

Section 1. Effect: The exclusive representative recognizes that all teachers covered by this agreement shall perform the teaching and non-teaching services prescribed by the district and shall be governed by the laws of the State of Minnesota, and by the district rules, regulations, directives and orders, issued by properly designated officials of the district. The exclusive representative also recognizes the right, obligation and duty of the school district and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the district insofar as such rules, regulations, directives and orders are not inconsistent with the terms of this agreement, and all provisions of this agreement are subject to the laws of the State of Minnesota, Federal Laws, rules and regulations of the State Board of Education and valid rules, regulations and order of State and Federal governmental agencies. Any provision of this agreement found to be in violation of any such laws, regulations, directives or orders shall be null and void and without force and effect.

STAFF DEVELOPMENT POLICY 425

- VI. **PROCEDURE FOR USE OF STAFF DEVELOPMENT FUNDS**
- C. **Individual requests for staff development leave to attend staff development activities shall be submitted and reviewed according to school district policy, staff procedures, contractual agreement, and the effect on school district operations. Failure to timely**

submit such requests may be cause for the denial of the request.
(Emphasis supplied).

IV. POSITIONS ARGUED BY THE PARTIES

A. THE UNION'S POSITION

The Union agreed that it has the burden of proof of establishing a school district breach of the Collective Bargaining Agreement (“CBA”) when the District denied two of the professional development requests by social studies teachers which are the subject of the instant grievance. To discharge it’s burden the Union argued that the requests for leave to attend the social studies conference in San Diego were properly and timely submitted to the school site committee (the “committee”) that has authority by statute (and implied under the CBA) to authorize such staff development activities. The Union argued that the requests were appropriate and properly approved by the Committee, and that the Employer had “no right” to “reverse decisions validly made by the School Site Committee.”

To establish the authority of the Committee and the argued lack of authority of the Employer, the Union elaborated the relevant statutory mandates and the relationship of those mandates to the CBA and the rights thereunder of the teachers. First, the Union established that Minn. Stat. §§ 122A. 60 and 122A.61 require that 50% of staff development money be allocated to school sites to be used as the site committee decides. This money, by law, cannot be diverted to general budgetary accounts but rather stays at the site until used by teachers at the site. The Union argues that “this can only be interpreted to mean that site money is controlled by the sites and the site committee decisions cannot simply be set aside because the district wishes to exercise its muscle.” Also, because the same statute gives the district other money for its use in professional development the Union argues that committee control of its allocated funds (to the

exclusion of District control) is very clearly implied by those allocations of development funds.

The Union demonstrated that at every level the teacher applicants followed proper procedures, and that their conference requests were appropriate, and properly approved by the Committee. The Committee followed District policy when it refused two requests by probationary teachers and the San Diego conference was agreed by all to be a very high quality professional development opportunity. Thus, under the circumstances and the controlling statutory scheme, the Union claims that the Employer was required to approve all four requests not just two as it did.

Of course as a grievance arbitration under the parties CBA, my authority is limited to claims under the CBA. Therefore the Union linked its statute based argument to rights under the CBA. Under Article XIX, the parties have required that state laws and regulations be followed. Also, Article VI, Section 16 and 20 prevents the District from denying teachers professional advantage, which the Union argues include professional development opportunities.¹

¹The Union buttresses this claim by referring to a document developed by the Minnesota Department of Education and a group of interested parties to clarify professional development by answering frequently asked questions: Minnesota's Staff Development Statutes. This FAQ document established the sole authority of the Committee to make development allocations . Further, it says nothing about District vetos of Committee grants.

Going beyond the affirmative case presented by the Union that the District has no authority to usurp the Committee's power to grant funds for development and thus deny a teacher a professional opportunity, the Union specifically addressed the reasons given by the Employer for the rejection of two leave requests in this case.²

According to the Employer the reasons were related to scheduling and staffing of classes. The Principal who made the decision explained it in terms of substitute teacher scheduling difficulties in the fall of 2007 based upon a number of factors leading to the conclusion that it would be contrary to the school's best interest to permit four of nine social studies teachers to be gone on the school day (Friday) requested as a leave day here. The Union argued that the school had no authority to deny the leave, but also argued that even if it could veto a development grant for some valid reason, the reason offered here by the District was not appropriate. To support this conclusion, the Union presented testimony and argued that the substitute teacher system would have produced substitutes in this case exactly the same way as it always does (for better or worse). Indeed, the Union argued that by giving 60 day notice, the school should have had an easier time scheduling substitutes that it does in many last minute situations that occur almost daily. Thus, according to the Union, there was no reason to believe the school would not have been able to schedule competent substitutes.

²The District's case here and the reasons for its decision are set forth in more detail below. It is note worthy that the Union argued on this issue of authority that the District has not denied any similar requests. The Union argues that this is evidence of the jurisdictional division it argues in support of the committee's authority to decide the teacher's request here.

Finally, in response to the District's argument that it's decision here was not a veto of the Committee decision, but merely an exercise of its own authority to grant or deny leave requests; the Union argued that Article XIII on leaves of absence has no language referring to leaves necessary for a Committee granted professional development opportunity. Referencing Article XIII, Section 12 on Professional Development Leaves, the Union argues that section refers only to conferences funded under the instructional budge, but does not refer to the separate staff development budget. Again the Union's inference is that the School District has no jurisdiction over the site committee decisions, including no jurisdiction to deny committee approved grants for school scheduling reasons.³

B. THE EMPLOYER'S POSITION

The Employer's contentions begin with its reference to the procedures in Staff Development Policy 425 adopted in the District to comply with the statutory requirements set out above. The procedure requires that leave requests be reviewed by the employer under a number of criteria including "the effect on school district operations." The argument is that when a teacher takes a leave day, although for a professional development use approved by the committee, the District must still approve the leave, and has the inherent managerial right to do so. The District argues that this has always been so, as evidenced by the form used here which has a place for the signature of the supervising administrator and for the Superintendent. The teachers knew of this policy as they followed the appropriate procedure and submitted the proper

³The Union provided a Decision by Arbitrator Herman Torosian in Education Minnesota -LaPorte Teachers and ISD 306, LaPorte, MN. BMS Case No. 00-PA-927 which ruled on a similar question. This opinion is discussed below.

form for approval. [Exhibit 4]⁴

When the form was received, the evidence submitted by the District is alleged to show that the District was experiencing an unusually high number of teacher absences, especially on Fridays. [Exhibits 5 and 6] At about that time, there had been a serious flood in the area that had disrupted the school and many persons, including teachers, in the area. [Exhibit 2] The school district had preauthorized three extra days of leave for all employees who needed it because of the flood. Thus the potential existed for teachers taking more leave than usual in the fall of 2007.

The request for the development leave was submitted to Principal John Phelps on September 24, 2007. At that time, in addition to flood related issues, the District was experiencing large numbers of teacher absences, especially on Fridays. [Exhibit 5 and 6]

Both Dr. Hannon, the Director of Academic Affairs, and Principal Phelps testified that they were concerned about excessive Friday absences because of the negative effects of these absences on education and safety as the percentage of substitutes increased. Also, there had been a shortage of substitutes on Fridays increasing the Principal's concerns. After considering staffing issues and Fall 2007 circumstances, Principal Phelps notified the social studies department that he only would approve two leaves for the San Diego conference.

Following protests and meetings at which the Union argued its jurisdictional point, Principal Phelps again checked teacher absences and substitute availability. Absences were high

⁴Of course the form is not conclusive on the authority issue, but as part of a practice and policy under the law and the CBA it is relevant.

and the employee who called substitutes reported difficulty getting suitable substitutes on Fridays. Given these facts, Principal Phelps confirmed his decision to limit leaves for the San Diego conference to two teachers.

Essentially, then, the Employer argues that it has authority to deny leaves for professional development based upon operational needs of the school. While not denying the Committee's statutory authority to allocate funds for specific conferences or other professional development, the District maintains its own authority to schedule work, and to authorize leave time, or disapprove it, in a case such as this. The right to allocate funds, and the right to grant staff leave time from work according to the District are very different rights arising from different sources. The authority to grant or refuse leave is argued to be a normal management right, inherent and expressly granted in the CBA as part of the authority to manage and direct all operations and activities of the school.

Further, the District argues that in addition to the positive sources of its authority to grant or deny leaves, its authority here has not been limited explicitly by the statutory jurisdiction of the Committee. Nothing in the statutes for professional development limit the District's authority in operational areas except the reservation of funds for teacher development. While the school cannot decide how the money will be allocated, that does not require any inference that the Committee by allocating funds can somehow acquire the authority to grant leaves. Further, the District argues that nothing in the state law or the CBA explicitly grants the Committee authority to give a teacher a leave on an assigned work day.

The District also argues that the denial of leave here was consistent with school board policy. The policy requires a leave request be reviewed to determine the effect on school district

operations. [Exhibit 1] and here Phelps' review properly found that four absences requested to attend the San Diego conference could have had a negative effect on the District operations.

Finally, the Employer argued that the structure of the Committee and the needs of the educational process imply there should be no limit upon the Employer's management rights in the absence of an explicit grant of authority of the committee to grant leaves, and in the absence of explicit limit on the Employer to rule on leave requests. Since the Committee focuses on professional development issues but does not consider operational needs, while the school administration, presumably accepting the Committee's judgment on the professional development issues, does focus on the school's needs, the Union's argument would leave a vacuum with no one looking out for operational needs. It would not make sense to create a division of authority in which no one is responsible for the overall effects on the school of a teachers leave of absence.

While the Employer was not overly generous in acknowledging what the Committee authority is, it did suggest that the division of authority was at the juncture of the fund allocation (for the committee) and the leave on a school day (the school). Also, the school agreed that there must be some limit on its review of the Committee's decision. In this regard, it argued that the decision here did not offend the decisional of authority of the Committee because its decision of the District was not arbitrary. Rather, the District argued, the decision was reasonable, in good faith, and based upon the schools operational needs .

V. ANALYSIS AND CONCLUSION

The Union argues that the jurisdiction of the Committee and the School Administration in this case must be mutually exclusive. It's essential point is that to permit an Employer "veto" as

in this case would necessarily divest the committee of its statutory authority which has been incorporated in the CBA. However, the Employer contends that there is no express power in the statute requiring that the Committee decide leave requests and that an implied exclusive power to decide these issues would not be sensible given the division of functions of the Committee and the school administration. In the absence of express limits on the District in the law, or in the CBA, and given express powers of the school to grant leaves in the CBA, I cannot imply a limit on the School District that would support a conclusion that the District has violated the CBA in this case.

Both parties have cited Education Minnesota - LaPorte Teachers and ISD 306, LaPorte, Minnesota, BMS Case No. 00-PA-927 (Dec. 6, 2000) (Arbitrator Torosian) In that case, the School District overruled a Site Committee recommendation for budgetary reasons. The District sought to use development funds to reduce a general fund deficit. The arbitrator ruled that, as the statute provides, the District had no power to substitute its judgment for the Committees on the budget issue. Of course, the statute is clear that the budget question, the fund allocation, is precisely the power given to the Committee. Hence arbitrator Torosian was clearly correct in holding that this issue was not for the school district. In so deciding, however, the arbitrator said:

However, in the opinion of the arbitrator, said authority cannot reasonably be determined to be absolute. It must be exercised within the operational needs of the District. This does not mean the District, or its representatives, can simply substitute its judgment for that of the site committee (if it is acting within it's authority) but it does mean that under appropriate circumstances it can decide not to approve a site committee decision.

I agree with Arbitrator Torosian's reading of the statute. As applied here to these facts, under this collective bargaining agreement, that reading requires that the instant grievance be

dismissed.

To elaborate the rationale here, the statute in question requires that the site committee decide on the expenditure of designated development funds, but nothing in the statute explicitly requires that it decide the issues regarding the effects of work day leaves on the school's operations. Second, the CBA expressly grants the District the power to decide issues regarding scheduling and staffing. Third, to imply an exclusive power of the committee here would leave a vacuum regarding the operational issues. Therefore, it must be within the District's authority to rule on the propriety of leaves in these cases. And the District has a reasonable policy and procedure by which it does just that.

Of course, that does not end the matter, because as Arbitrator Torosian stated, the power of the District is not unlimited. For example, it cannot substitute its judgment for the Committee's. Rather it may only overrule the Committee when it has a basis within its authority to do so. It can't do so arbitrarily (without reason) or for reasons within the Committee's jurisdiction. In the LaPorte case, the District had acted for reasons exclusively for the Committee, i.e., fund allocation reasons. There was no doubt about that because the superintendent had announced the reason. In our case however, the announced reason for denial of the two leaves was the effect on the operation of four people being gone on the same day. This is within the District's operational control and therefore, it's authority.

The Union argued that the problems with teacher absences and substitutes were not sufficient to justify the District's decision. It argued that the District could have arranged substitutes and failed to prove that it could not. But this argument misapprehends the District's burden. The District is authorized to make the decision in good faith for real reasons. When the

Employer shows it acted in a good faith with a reasonable basis, the Union would have to demonstrate that the reason was a pretext for invading the Committee's authority. There was no basis here to believe the District's asserted reasons were pretextual. And there is no basis to conclude that the District's decision was unreasonable, even if one were to regard the rationale as debatable.⁵ It is my conclusion therefore that the District did not violate the CBA when it refused the two requested leaves in this case.⁶

VI. AWARD

Based upon the above analysis and conclusions the grievance herein is denied.

Dated: September 28, 2009

William E. Martin
Arbitrator

⁵Again, I note that the District has never overruled the Committee before. While this fact can be argued both ways, I am inclined to believe that the primary inference to be taken is that the District has a history of appropriate deference to the Committee.

⁶Since there is no violation of the CBA, of course, there can be no remedy and no reason to address the second issue.

ATTACHMENT I

- Exhibit 1 School District Policy 425, Staff Development
- Exhibit 2 Articles from the Winona Daily News relating to the devastating flood in August 2007 in Southeastern Minnesota
- Exhibit 3 School Board Resolution adopted 8/22/07 authorizing 3 days of additional paid leave for all employees who need time off due to the flood
- Exhibit 4 Convention/Meeting Attendance Request for NCSS Annual Conference in San Diego dated 9/24/07
- Exhibit 5 Charts of the Number of Teachers Absent All or Part of a Day on September and October, 2007
- Exhibit 6 Lists of Employees Absent from the High School on the following Fridays: 10/5/07, 10/12/07, and 10/26/07
- Exhibit 7 Memo from Rita to Principal Phelps regarding shortage of substitute teachers on 10/5/07 and 10/12/07
- Exhibit 8 Memo from Principal Phelps to Bruce regarding limitations on number of High School teachers attending the NCSS Annual Conference in San Diego
- Exhibit 9 Master Contract between The School Board of Independent School District 861 and the Winona Education Association MEA-NEA, 2005-2007
- Exhibit 10 Grievance Packet including Level 1 Grievance Report Form, District 861, Winona, 22 Oct. 2007 Level II Grievance Report Form, District 861 Winona, 14 Nov. 2007, and Level III Grievance Report Form, District 861 Winona, 3 Jan. 2008
- Exhibit 11 Level III Grievance Report Form, District 861, Winona, 3 Jan. 2008, with School Board Disposition
- Exhibit 12 Copies of Article XIX of the parties collective bargaining agreement and 122A.60 of the Minnesota Statutes on Staff Development Programs
- Exhibit 13 Frequently asked questions: Minnesota Staff Development Statutes, Minn. Stat. § 122.A.60 and § 122A.61, dated March 2006
- Exhibit 14 Flyer for National Conference for Social Studies (NCSS) Annual Conference November 29-December 2, 2007.

- Exhibit 15 High School Staff Development Committee Request, September 20, 2007
- Exhibit 16 NCSS Conference Report
- Exhibit 17 Hand written record of approved professional development requests by multiple teachers