

BEFORE THE ARBITRATOR

In the Matter of an Arbitration Between:	BMS Case No. 10-PA-0695
EDUCATION MINNESOTA, WARROAD MINNESOTA	Subject: Middle School Coaches
and	Heard: 8/12/2010 Record Closed: 9/9/2010 Award Issued: 10/14/2010
ISD NO. 690, WARROAD MINNESOTA	Sherwood Malamud, Arbitrator

APPEARANCES:

Jess Anna Glover, Attorney for Education Minnesota - Warroad, 41 Sherburne Avenue, St. Paul, Minnesota 55103-2196, appearing on behalf of the Union.

Knutson, Flynn & Deans, P.A., Attorneys at Law, by James E. Knutson, 1155 Centre Pointe Drive, Suite 10, Mendota Heights, Minnesota 55120, appearing on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

Independent School District No. 690, Warroad, Minnesota, hereinafter the District or the Employer, and Education Minnesota-Warroad, hereinafter the Union, are parties to a Collective Bargaining Agreement that provides for the arbitration of grievances. On May 12, 2010, the parties notified this Arbitrator of his selection from a panel submitted to them by the Minnesota Bureau of Mediation Services to determine this grievance concerning the pay of certain coaches. Hearing in the matter was held on August 12, 2010, at the District's facilities in Warroad, Minnesota. The parties presented testimony, documentary evidence, and argument. The hearing was not transcribed. The record in this matter is reflected in the Background section of this Award. By September 9, 2010, the Arbitrator received the original brief of the Union and the original and reply briefs of the District, at which time, the Arbitrator closed the record. Based on the evidence and arguments presented, the Arbitrator issues the following Award.

ISSUES

The parties were unable to stipulate to the formulation of an issue to be determined by the Arbitrator. The Union formulates the substantive issue as follows:

Did the District violate the Collective Bargaining Agreement when it eliminated Assistant Coach positions and rehired the coaches as Middle School coaches and directed them to perform the same duties as they had as Assistant Coaches? If so, what is the appropriate remedy?

The District formulates the substantive issue as follows:

Did the School District violate the 2009-2011 Collective Bargaining Agreement when it eliminated Assistant Coaching positions and rehired/reassigned teachers as Middle School Coaches (MSC) for Spring coaching activities to perform the duties of Middle School Coaches? If so, what is the appropriate remedy?

The District argues that the scope of this grievance is at issue. It maintains that the grievance should be limited to Spring coaching activities. The grievance should not pertain to Fall extracurricular activities such as Cross Country. Inasmuch as the Golf middle school coach did not sign his contract until the Spring of 2010, well after the grievance in this matter was filed and processed, the outcome of this grievance should not apply to Ron Tveit, the middle school boys Golf coach.

To address the scope of the grievance issue, the Arbitrator quotes the statement of the grievance filed by the Union's Member Rights Advocate, Jody Christian on October 27, as follows:

The union believes a contract violation occurred when the athletic director expected the assistant coaches reassigned as middle school coaches to continue to perform "the same duties and responsibilities" as last

year (as assistant) but be paid at the middle school coach rate.

As part of the grievance, the Union asks for the following relief:

Pay coaches who have performed assistant coach duties at the assistant coach rate. Unless expectations change, we ask Mr. Bengtson to request that the school board retract their action to reassign spring assistant coaches as middle school coaches.

The above statement of the grievance was filed by the Union in accordance with Article XV, Grievance Procedure, Section 5510.5130 Definitions subd. 5:

“Grievance” means a dispute or disagreement regarding the application or interpretation of any term of a contract required under Minnesota Statutes, Section 179A.20 subd. 1.

Subd. 7. “Parties” means either the exclusive representative and its authorized agent or the employer and its authorized representative.

The Collective Bargaining Agreement goes on to indicate at Section 5510.5140. Step One:

When an employee or group of employees represented by an exclusive representative has a grievance, the employee or an agent of the exclusive representative shall attempt to resolve the matter . . .

Member Rights Advocate Christian filed this grievance on behalf of Assistant Coaches whose pay was reduced to that of Middle School Coaches, when they were asked to continue to fulfill the responsibilities and duties of Assistant Coaches. The Arbitrator rejects the District argument that Cross Country season, then in full swing in the Fall of 2009 when this grievance was filed and Golf for the Spring of 2010, should be excluded from this grievance. The grievance is written in a form that indicates that it applies to a group of individuals who have been subjected to a particular factual pattern of conduct by the District. The grievance, as written, indicates that it applies to coaches for the Fall semester of 2009 and

any coaches who are subject to the same conduct by the Employer that continues into the Spring 2010. In the Award below, the Arbitrator determines whether the Union has established that particular coaches performed the duties of Assistant Coaches, but were paid at the Middle School Coach rate.

BACKGROUND

In December 2008, the Board of Education of the District learned that it would deficit spend for the 2008-2009 school year by \$269,000 and that its unreserved general fund balance would drop to a projected \$374,000. The auditor stressed that the unreserved general fund balance be maintained at \$1,500,000. The Board directed administration to make cuts in the budget. Administration proposed budget cuts for the 2009-2010 school year budget of approximately \$900,000 which would increase the unreserved general fund balance by \$352,000 to \$726,000 (District Exhibit 3).

As part of these reductions in the proposed budget for school year 2009-2010, the Superintendent asked Activities Director Bengtson to cut the extracurricular budget by between twenty and twenty-five thousand dollars. Bengtson prepared a proposal to reduce the athletic and co-curricular budget by approximately \$23,000. At a coaches meeting on March 25, 2009, Bengtson submitted a proposal for their review (Joint Exhibit 5). The cuts Bengtson proposed pertinent to this case are as follows:

- * Eliminate Positions (become a booster expense)
 - * Assistant Girls Golf position \$2266
 - * Assistant Track position \$2123
 - * Jr. High Baseball position \$2123
 - * Jr. High Football position \$2629
 - * Jr. High Volleyball position \$2629
 - Total \$11,770.00

- * Reduce Salaries - Reduce assistant coaches salary in 2 coach activity to a Jr. High salary vs. varsity assistant
 - * Cross Country \$2311 to \$1618 = \$693

* Swimming	\$3755 to \$2629 = \$1126
* Boys Golf	\$2679 to \$1875 = \$804
* Boys Track	\$3842 to \$2690 = \$1152
* Girls Track	\$3218 to \$2253 = \$965
	Total \$4,740.00

The document makes no reference to any change in duties and responsibilities of the Assistant Coaches whose salaries were reduced to Middle School Coach pay.

The Board acted to reduce the Activities budget by eliminating the Varsity Assistant Coaches as proposed in Exhibit No. 5 at its meeting on July 13. On September 14, the Board approved establishing Middle School coaching positions at Middle School pay rates.¹ However, administration made no reference to any change in the duties and responsibilities of these coaches in its written proposal or oral presentation of this proposal to the Board of the District.

The Fall season sport of Cross Country began on August 16, 2009, well before final Board approval of Activities cuts. The District issued a Middle School Coach contract to Mary Mohrbacher as a Middle School Coach for Cross Country. She did not sign the contract presented to her by the District. The District paid her for Cross Country at the Middle School Coach rate.

There is no middle school cross country team. Middle School students and high school varsity Cross Country students practice together and their meets occur at the same place and time. Mohrbacher works with middle school and high school students as she did the year prior to these cuts. There was no difference in her responsibilities and duties between the work she performed as the Assistant

¹Union witness Christian testified that Activities Director Steve Bengtson informed the Board that duties would not change. Superintendent Oftedahl testified that no mention of change in duties was made in the presentation concerning Activities budget cuts. Activities Director Bengtson testified that he made no representation with regard to change in duties or responsibilities. He asserted that that issue would be resolved by the coaches themselves.

Coach for Cross Country in the fall of 2008 and as the Middle School Coach in the fall of 2009.

The Head Coach for Cross Country is Rick McBride. He has been the Cross Country coach for 21 of his 25 years with the District. In the fall of 2009, McBride and Mohrbacher served as the coaches for all student participants, boys and girls grades 7-12. Two female students made State. McBride asked Mohrbacher to attend the State competition. Bengtson approved her attendance. Since payment for her attendance at State with the student athletes is based on a percentage of co-curricular salary, she was not paid for her trip to State pending the outcome of this grievance.

For Spring 2010, Alan Rybort and McBride served as the track coaches for boys and girls track. De Nault and Mohrbacher served as the Middle School Coaches. Approximately 80-100 students participate and practice for track. There are 18 events in Track for which students practice and compete. Middle school meets are held separately in both date and location from varsity events. In the Spring of 2009 prior to the implementation of the reduction in salaries at issue herein, both De Nault and Mohrbacher were Assistant Coaches. In addition in 2009, the District assigned a Middle School Coach to track.

The cuts described above resulted in the elimination of a Middle School Coach position. The two Assistant coaching positions for track were eliminated. The District assigned both De Nault and Mohrbacher to newly created Middle School Coach positions.

The District issued a Middle School Coach contract to De Nault to serve as a Middle School Coach for track. He noted on his contract that he would only work with middle school students. Nonetheless, Head Coach McBride requested that De Nault attend all varsity meets. However, Mohrbacher only attended all middle school track meets. During Track practices, the coaches covered and coached particular events. For example, De Nault worked with middle school and varsity students on hurdles and pole vault.

There is no middle school swim team. Students in grades 7-12 practice together.

With regard to boys golf, Ron Tveit signed a Middle School Coach contract on April 7, 2010, to coach in the Spring of 2010. There is no evidence in this record to suggest that Tveit's duties and responsibilities changed from one year to the other. The District did not intend to make such changes. The Arbitrator infers, therefore, that Tveit only coached middle school students.

When Bengtson proposed the elimination of the Assistant Coaches in two coach sports and the creation and filling of Middle School Coach positions by those teachers who formerly were Assistant Coaches, he suggested that booster funds be used to supplement the salaries paid by the District to the point that it made up the difference between the pay for Middle School Coaches and Assistant Coaches. The District delegated control of booster funds to the Head Coaches.

McBride testified that he informed Bengtson there were insufficient booster funds to supplement the Middle School Coaches pay in Cross Country and Track. Although the Board of Education of the District controls booster funds, it took no action to override the decision of the Head Coaches to use booster funds to purchase equipment and to enable overnight stays on road trips, but eschewed the use of these funds to supplement Middle School Coach pay.

Both De Nault and Mohrbacher complained to Activities Director Bengtson about the lack of change in responsibility between the 2008-2009 and 2009-2010 school years. Bengtson told the Assistant Coaches that the Head Coach was their supervisor. Any concerns about job responsibilities should be worked out among the coaches. He did not take any action to limit assignments of the Middle School Coaches to middle school students.

The Union filed the grievance quoted above. The parties processed the grievance to arbitration.

**PERTINENT CONTRACT LANGUAGE FROM
THE 2009-2011 AGREEMENT**

ARTICLE IV
SCHOOL BOARD RIGHTS

Section 1. Inherent Managerial Rights: The exclusive representative recognizes that the School District is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel, and that all management rights and management functions not expressly delegated in this Agreement are reserved to the School District in conformity with M.S. 179A.07.

Section 2. Management Responsibilities: Education Minnesota Warroad recognizes the right and obligation of the School Board to efficiently manage and conduct the operation of the School District within its legal limitations and with its primary obligation to provide educational opportunity for the students of the School District.

Section 3. Effect of Laws, Rules and Regulations: The exclusive representative recognizes that all employees covered by this Agreement shall perform the teaching and non-teaching services prescribed by the School District and shall be covered by the laws of the State of Minnesota and by the School District rules, regulations, directives and orders, issued by properly designated officials of the School 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, orders, and policies from time to time as deemed necessary by the School District, insofar as such rules, regulations, directives, orders or policies are not inconsistent with the terms of this Agreement and

recognizes that the School District, all employees covered by this Agreement, and all provisions of the Agreement are subject to the laws of the State of Minnesota, Federal laws, rules and regulations and orders of the State Board of Education, and valid rules, regulations and orders of the State and Federal governmental agencies. Any provisions of this Agreement found to be in violation of such laws, rules, and regulations, directives, or orders shall be null and void and without force and effect.

Section 4. Reservation of Managerial Rights: The foregoing enumeration 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 not expressly delegated in this Agreement are reserved to the school district.

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ARTICLE VIII

EXTRA COMPENSATION

Section 1. Extra-Curricular Schedule: Wages and salaries reflected in the Schedule C attached hereto, shall be a part of this Agreement.

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ARTICLE X

ADDITIONAL ACTIVITIES

Section 1. Additional Activities: The normal duties for teachers include a share of extracurricular, co-curricular, and supervisory activities, as determined by the principal, superintendent and School District.

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ARTICLE XV

GRIEVANCE PROCEDURE

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Subd. 3. Arbitrator's Authority: The arbitrator shall have no authority to amend, modify, add to, or subtract from the terms of an existing contract. The decision and award of the arbitrator shall be final and binding upon both parties.

DISCUSSION

Introduction

Under the heading Issues, the Arbitrator addressed the scope of the grievance issue raised by the District. The Arbitrator determined that the grievance applies to all coaches who in the 2008-2009 school year worked under an Assistant Coach contract and were reduced to a Middle School Coach contract for the 2009-2010 school year. The grievance applies to both Fall and Spring sports, namely cross country, swimming, track, and golf.

The Union bears the burden of proof. It must establish by a preponderance of the evidence that Middle School Coaches performed work of an Assistant Coach, but were paid at the Middle School Coach rate. The District defends that it has the contractual right to eliminate coaching positions, and to assign teachers to work extracurricular activities. Such assignments are part and parcel of a teacher's assignments.

The Arbitrator concludes both from the language of the Agreement and from Minnesota Statutes that the District has an inherent right to assign extracurricular activities to teaching personnel. The District assigns teachers from year to year to particular assignments. They gain experience in those assignments and a depth of understanding as to how to accomplish their teaching responsibilities, both with regard to teaching formal subject matter such as Math and extracurricular activities. It is in this context that the Employer has exercised its right recognized by the Agreement and established by statute. For over 25 years it assigned McBride to teach Math and to serve as the Head Coach for both Cross Country and Track. Similarly, the Employer assigned as Assistant Coaches De Nault to Track and Mohrbacher to Cross Country for at least three years.

The Employer argues that it had every right to eliminate the Assistant Coach positions pursuant to the proposal contained in Joint Exhibit 5, the Bengtson proposal of March 25, 2009 quoted above. The Arbitrator agrees. Furthermore, the Union does not dispute the authority of the Employer to eliminate coaching positions.

The core of the District argument is based on its comparison of the job descriptions of Assistant and Middle School Coach for some of the extra curricular activities. It asserts that the job duties and responsibilities of the Assistant and Middle School Coach overlap to a great extent. Any divergence between the responsibilities of each does not serve as a basis for paying a coach at the higher pay or the lower pay.

The Union maintains that the parties agree to pay the Assistant Coach who works with varsity high school students a higher rate of pay than the Middle School Coaches who work with middle school students. The parties had in mind some difference in responsibilities between the Assistant and Middle School Coach to the point of paying one a higher rate than the other.

The Arbitrator notes that the listing in Schedule C references Assistant Coaches for varsity sports and Middle School Coaches. The record evidence supports a finding that Assistant Coaches, in the main, work with high school students. Middle School Coaches work with middle school students.

The Arbitrator did not list in the Background section of the Award the detailed duties and responsibilities of the middle school and Assistant coach responsibilities of the two coaching categories. The District correctly observes that the duties and responsibilities of the Assistant Coach and Middle School Coach are quite similar. The students with whom they have to perform their educational duties and responsibilities are the source of the difference between their coaching responsibilities. This observation is obvious. Often, what is most obvious serves as the basis for the action of the parties.

The duties and responsibilities as reflected in job descriptions may be similar, but they do not serve as the basis for the difference in pay. This is clear from the testimony of both the Union and District witnesses. The difference stems from the fact that Middle School Coaches coach middle school students. Assistant Coaches coach, in the main, varsity students, high school students.

The question to be resolved now turns on whether the teachers impacted by this grievance were assigned to perform duties that should have been reimbursed at Assistant Coach rates of pay rather than Middle School Coach rates of pay. In this regard, the Employer defends and notes that the individual contract to coach a particular sport, be it as Head Coach, Assistant Coach or Middle School Coach, is for a period of one year. So, for example, the District issued to De Nault a Middle School Coach contract for the 2009-2010 school year which he signed.

De Nault noted on the contract that he would only perform middle school duties. However, early on in the Track season, the Head Coach assigned De Nault to attend varsity meets. De Nault complained to Activities Director Bengtson. The Director informed De Nault that McBride, the Head Coach, served as De Nault's supervisor. De Nault should comply with the requests and direction of his Head Coach. Through this exchange, Bengtson delegated supervisory responsibilities for the assignment of work to Middle School/Assistant Coaches to Head Coach McBride. Although the District learned of the assignment of Assistant Coach responsibilities to attend the meets and coach high school students, the job duties of the Assistant Coach, the District validated and approved the assignment of those responsibilities to an employee paid at the lower rate, the Middle School Coach wage level.

In fact, the record evidence establishes that the proposal to reduce the pay of Assistant Coaches to that of Middle School Coaches was implemented solely to reduce costs. The District had no intention of changing the workload, duties and responsibilities of Assistant Coaches, when they became Middle School Coaches. The intent of the March 25, 2009 proposal was to save money, nothing else. Union witnesses Christian and Mohrbacher attended the school board meeting at which the changes in cuts were approved. They noted that Activities Director

Bengtson did not indicate any change in responsibilities or duties with his proposal to reduce the pay of individuals who formerly worked as Assistant Coaches after the District abolished their positions and assigned them to receive Middle School positions to receive middle school Coach pay. Bengtson testified that the matter of duties and responsibilities did not come up in the discussion before the Board. Superintendent Oftedahl confirmed that testimony. Certainly, the proposal itself makes no reference to changes in duties and responsibilities of any of the incumbent teachers impacted by the proposed change in salary levels.

Furthermore, there is no dispute that the Employer did not attempt to bargain over these changes. When requested to do so, the Employer asserted that it had the right to implement the changes it did under the terms of the Collective Bargaining Agreement.

Coaching Duties Performed

The pay changed. What did the Union establish with regard to the work performed by the coaches impacted by the changes implemented by the District for the 2009-2010 school year?

Two of the sports covered by this grievance, Cross Country and Swimming, have no middle school team. Any coach assigned to coach these sports as either a Middle School Coach or as an Assistant Coach would coach middle school and high school/varsity students. The record evidence certainly supports a finding that Mohrbacher performed the same duties and responsibilities she did with regard to Cross Country in the 2009 Fall season as she did during the 2008 Fall season. Her testimony, in this regard, was supported by the testimony of Head Coach McBride. The District witnesses did not contradict this testimony in any respect. They simply said that they left it to the coaches to “work it out.” However, in the absence of a middle school team, it is unclear what they were to work out. Middle school Cross Country meets occurred at the same time and location as varsity meets.

There is no evidence in this record to suggest that Swimming, which has no separate middle school team functioned any differently than Cross Country. The Arbitrator concludes, therefore, that the Union has established by a preponderance of the evidence that the District knew and approved of, and consented to the assignment of Assistant Coach responsibilities to individuals nominally signatories to Middle School Coach contracts. In reality, the issuance of these contracts was unrelated to the duties and responsibilities expected of these individuals. They performed the work of an Assistant Coach during the 2009 Fall season.

Track

Mohrbacher did not sign the contract issued by the District to her for Cross Country and Track for the 2009-10 school year. De Nault did. He went further and wrote on the contract that he would not perform any duties other than working with middle school students. However, early in the season, Head Coach McBride, assigned him to attend varsity meets. He did so.

The evidence establishes that practices were organized around events. De Nault coached hurdles and pole vault. In Track, middle school and varsity boys and girls all practiced together. As a result, approximately 80-100 students were involved in such practices.

In Track, unlike Cross Country, middle school students attended their own meets at times and locations that differed from varsity meets. In the Spring 2010 Track season, Mohrbacher attended the middle school meets and De Nault the varsity meets. This evidence certainly supports the finding that De Nault performed any and all of the duties of the Assistant Coach in the Spring 2010 season. However, there is no evidence to suggest that Mohrbacher's duties and responsibilities other than attendance at meets, the number of which is not specified in the record, as contrasted to the number of varsity meets held during that season, differentiated her responsibilities to the point that she was appropriately paid as a Middle School Coach. There is no evidence that Mohrbacher only worked with middle school students in practice. The evidence

suggests otherwise, that each of the coaches coached a particular event. Accordingly, the Arbitrator concludes that the preponderance of the evidence supports a finding that both De Nault and Mohrbacher performed the duties of an Assistant Coach during the Spring 2010 season, but were paid at the Middle School Coach rate.

The Employer argues that the Middle School Golf Coach signed his contract in April 2010 after the grievance in this matter was processed. In the discussion concerning the scope of this grievance, the Arbitrator dismissed this defense. The District does not argue that Tveit only coached middle school students and therefore was properly paid at the Middle School Coach rate. There is no basis in this record to treat Golf any differently than the other Spring sport subject to this Award, Track.

Conclusion

In the above Discussion, the Arbitrator finds that the Employer unilaterally changed contractual rates to save money. It assigned the work associated with and on which the wage rates contained in the Collective Bargaining Agreement are predicated to the Assistant Cross Country and Track Coaches, as well as, the Swim Coach, but in order to save money it paid them at the Middle School Coach rate. The Employer took no action to limit the duties and responsibilities of these coaches to coach middle school students. It did not direct the Head Coach to limit work assignments to coaches who were no longer paid at Assistant Coach rates, but at Middle School Coach rates to assignments and coaching duties and responsibilities with only middle school students.

If the Arbitrator were to rule in favor of the District under these circumstances, then contractual rates would have no meaning. The Employer could assign work as it will, which it has every authority to do. However, it cannot pay whatever rate it wants, because it is convenient to do so or economical to do so. In free collective bargaining, the Employer elected to pay Assistant Coaches performing Assistant Coach work at a certain rate of pay. It cannot then assign

work, as it did when it approved with full knowledge that Head Coaches were assigning Assistant Coach work to individuals receiving Middle School Coach pay.

There remains one issue. Mohrbacher attended State competition in Cross Country with two female student athletes. She attended State at the request of her Head Coach with the full approval of Activities Director Bengtson. Consistent with the findings set out above, the District shall pay for her attendance at the State level meet in accordance with the rates established by the Agreement for an Assistant Coach attending such a meet.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

The District violated the Collective Bargaining Agreement, specifically Schedule C of that Agreement, when it eliminated Assistant Coach positions and rehired the coaches as Middle School Coaches and directed them to perform the same duties as they had as Assistant Coaches. The Employer shall pay the difference between the Middle School Coach rates paid to the Cross Country, Track, Golf and Swimming coaches whose Assistant Coaching positions were eliminated, but the work they performed was that of an Assistant Coach rather than a Middle School Coach.

The Arbitrator retains jurisdiction for the limited purpose of assisting the parties to implement the remedy directed in this Award.

Dated at Madison, Wisconsin, this 14th day of October, 2010.

A handwritten signature in black ink, appearing to read "Sherwood Malamud". The signature is fluid and cursive, with the first name being more prominent.

Sherwood Malamud
Arbitrator