

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

INDEPENDENT SCHOOL DISTRICT NO. 745
Albany, Minnesota

and

ALBANY FEDERATION OF TEACHERS

BMS Case No. 09-PA-0942

Grievants: T. Brekke, L. Habben, K. Gilk

Arbitrator: Sharon K. Imes

APPEARANCES:

Ratwik, Roszak & Maloney, PA, by **Kevin J. Rupp**, appearing on behalf of Independent School District No. 745, Albany, Minnesota.

Daniel J. S. Becker, Attorney, Education Minnesota, appearing on behalf of the Albany Federation of Teachers and the Grievants.

JURISDICTION:

Independent School District No. 745, Albany, Minnesota, referred to herein as the Employer or the District, and the Albany Federation of Teachers, referred to herein as the Union, are parties to a collective bargaining agreement effective July 1, 2007 thru June 30, 2009 and thereafter until modifications are made pursuant to the P.E.L.R.A following written notice of intent to amend the Agreement as is provided for in the collective bargaining agreement. Under this agreement, the undersigned was selected to decide a dispute that has occurred between them. Hearing was held on October 13, 2009 in Albany, Minnesota. The parties, both present, were afforded full opportunity to be heard. Briefs in this matter were submitted by both parties and forwarded to the Arbitrator on November 12, 2009. The matter is now ready for determination.

STATEMENT OF THE ISSUE:

The issue as framed by the parties differed. Consequently, following is the issue as framed by the Arbitrator who was given the authority to do so.

Did the Employer violate the collective bargaining agreement when it failed to pay the Grievants full coaching pay for their extra-curricular coaching assignments during the fall of 2008 and the spring of 2009? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE:

ARTICLE III

DEFINITIONS

...

Section 3. Full-Time Teacher: shall mean any teacher employed for both the number of hours and the number of days specified in Articles X and XI respectively.

...

ARTICLE VI

BASIC SCHEDULES AND RATES OF PAY

Section 1. 2007-2008 Salary Schedule: The wages and salaries reflected in Schedules A1, A2 and A3, attached hereto, shall be a part of the Agreement for the 2007-2008 school year.

Section 2. 2008-2009 Salary Schedule: The wages and salaries reflected in Schedules B1 and A2, attached hereto, shall be a part of the Agreement for the 2008-2009 school year.

...

ARTICLE VII

EXTRA COMPENSATION

Section 1. Extra-Curricular Schedule: The wages and salaries reflected in the Schedules C1, C2, C2 (a), C3 (a) and C3 (b) shall be a part of this Agreement.

ARTICLE X

REQUESTED LEAVES OF ABSENCE

Section 1. Sick Leave:

Subd. 1. A full-time teacher shall earn sick leave at the rate of 12 days for each year of service in the employ of the school district. Annual sick leave shall accrue monthly as it is earned on a proportionate basis to the full-time teacher's work year. Unused sick leave days may accumulate to a maximum credit of 120 days of sick leave per full-time teacher.

...

Subd. 3. Sick leave with pay shall be allowed by the School Board whenever a teacher's and/or their dependent child(ren) absence is found to have been due to illness, injury or doctors (sic) appointment which prevented his/her attendance at school and performance of duties on that day or days.

...

Subd. 6. Sick leave allowed shall be deducted from the accrued sick leave days earned by the teacher.

...

ARTICLE XI

HOURS OF SERVICE

Section 1. Basic Day: The full-time teacher's basic day shall be seven hours and forty-five minutes including the lunch period. Teachers shall secure approval from the principal if extenuating circumstances require the teacher to leave the building before the specified time.

...

Section 3. Additional Activities: In addition to the basic school day, teachers shall be required to reasonably participate in school activities beyond the basic teacher's day as is required by the School Board. The normal duties for teachers include a reasonable share of extra-curricular, co-curricular and supervisory activities at the remuneration level provided in Article VII and as determined by the School Board.

...

Article XIV

GRIEVANCE PROCEDURE

Definition: A grievance shall mean a dispute or disagreement as to interpretation or application of any term or terms of this contract.

...

Step IV. – Arbitration:

... The arbitrator shall not have the power to add, to subtract from, or to modify in any way the terms of the existing contract

The decision of the arbitrator shall be final and binding upon the parties. The decision shall be issued to the parties by the arbitrator and a copy shall be filed with the Bureau of Mediation Services, State of Minnesota.

...

SCHEDULE C-1 **COACHING STAFF PERCENTAGES FOR 2007-2009**

...

Effective upon ratification of the 1995-97 Master Agreement, all coaches hired new to a sport will be paid one-half at midseason and one-half at the end of their regular season. Those already coaching in a sport have the option of continuing the annual payment disbursement or may elect to receive payment at the end of their regular season.

OTHER RELEVANT DOCUMENTS:

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008

Revised: September 17, 2008

...

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

1. Your basic assignment for the 2008-2009 school year is Secondary Science.
2. Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic servicers is
3. In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
Football, Junior High (partial season)	\$1218.50 6% Step 5 (Two Pay) (revised 9-17-08)
Student Council, Senior High	\$3067.00 8% Step 3 (24 pyr/s)
Track, Junior High	\$2208.00 5% Step 8 (Two Pay)
Longevity Increment	\$1000.00
Basketball, Boys 7 th Grade	\$2368.00 6% Step 4 (Two Pay)

4. Your total salary, exclusive of fringe benefits, for basic services and extra assignments is*
5. The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

....

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008

...

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

1. Your basic assignment for the 2008-2009 school year is Secondary Science.
2. Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic servires is
3. In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
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Football, Junior High	\$2437.00 6% Step 5 (Two Pay)
Student Council, Senior High	\$3067.00 8% Step 3 (24 pyrls)
Track, Junior High	\$2208.00 5% Step 8 (Two Pay)
Longevity Increment	\$1000.00
Basketball, Boys 7 th Grade	\$2368.00 6% Step 4 (Two Pay)

- Your total salary, exclusive of fringe benefits, for basic services and extra assignments is . . . *
- The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

....

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008

Revised: September 17, 2008

...

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

- Your basic assignment for the 2008-2009 school year is Secondary Science.
- Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic services is
- In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
Basketball, Girls', 7th Grade	\$2300.00 6% Step 3 (Two Pay) when suitable replacement is found
Volleyball, 9 th Grade (partial season)	\$1715.74 9% Step 2 (Two Pay) (revised 9-17-08)

- Your total salary, exclusive of fringe benefits, for basic services and extra assignments is . . . *
- The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

....

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008

...

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

- Your basic assignment for the 2009-2010 school year is Secondary Science.
- Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic services is

3. In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
Basketball, Girls', 7 th Grade	\$2300.00 6% Step 3 (Two Pay) when suitable replacement is found
Volleyball, 9 th Grade	\$3360.00 9% Step 2 (Two Pay)

4. Your total salary, exclusive of fringe benefits, for basic services and extra assignments is*
5. The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

. . . .

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008
Revised: March 4, 2009

. . .

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

1. Your basic assignment for the 2008-2009 school year is Secondary Science.
2. Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic services is
3. In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
Basketball, Girls', 9 th Grade (partial season)	\$2846.25 9% Step 3 (Two Pay) (revised 3-4-09)

4. Your total salary, exclusive of fringe benefits, for basic services and extra assignments is*
5. The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

. . . .

NOTICE OF ASSIGNMENT

TO: . . . (Grievant)

DATE: May 7, 2008

. . .

SUBJECT: Notice of salary and Assignments for 2008-2009 School Year

1. Your basic assignment for the 2008-2009 school year is Secondary Science.

2. Pursuant to the provisions of the Teachers' MASTER CONTRACT, your salary for the 2008-2009 year for basic services is
3. In addition, you have been assigned the following extra assignment(s) at the specified additional compensation, for the 2008-2009 school year.

<u>Assignment</u>	<u>Additional Compensation*</u>
Basketball, Girls', 9 th Grade	\$3450.00 9% Step 3 (Two Pay)

4. Your total salary, exclusive of fringe benefits, for basic services and extra assignments is*
5. The School District reserves the right to make any modifications or adjustments in these assignments during the school year.

. . . .

BACKGROUND AND FACTS:

The Grievants are all teachers within Independent School District No. 745 and were assigned extra-curricular coaching assignments during the 2008-2009 school year which began September 2, 2008. Each of them took an approved medical leave of absence during the 2008-09 academic year and was unable to perform all of his or her extra-curricular duty assignments which caused the District to hire replacements to complete their assignments. In addition, the District reduced each teacher's extra-curricular duty assignment compensation proportionate to the number of days they had been able to work. Each teacher grieved this loss of compensation alleging that their medical leaves of absence included their extra-curricular duty assignments and their compensation should not have been reduced.

One of the Grievants, a secondary science teacher, was assigned to coach junior high football and track; 7th grade boys' basketball and to serve as the senior high student council advisor during the 2008-09 school year. His medical leave of absence began September 29, 2008 and he was unable to perform his football coaching duties during the last half of the football season. The Grievant was also unable to perform his student council advisory duties during his absence. The District hired a replacement to perform the Grievant's coaching duties during the remainder of the football season but did not hire a replacement to perform his student council advisory duties while he was absent from work.

On September 17, 2008, the District revised the Grievant's Notice of Assignment and reduced the amount it would compensate the Grievant for his junior high football coaching duty to 50% of the amount designated in his May 2008 Notice of Assignment. The Grievant was not

advised of this change in his Notice of Assignment nor the reduction in compensation until mid-October 2008 when a colleague brought it to the Grievant's home.

Another Grievant, an elementary teacher, had been assigned to coach 7th grade girls' basketball and 9th grade volleyball during the 2008-09 school year. She was also assigned as the High Potential/Gifted & Talented Facilitator for the 2008-09 school year. Prior to receiving her Notice of Assignment in May 2008, the Grievant, anticipating that she would be absent from work and unable to perform her basketball coaching duties as a result of being pregnant advised the District that she was resigning as coach of the 7th grade girls' basketball team. On May 7, 2008, the District issued the Grievant a Notice of Assignment deleting her responsibility to coach 7th grade girls' basketball subject to finding a suitable replacement and continued the Grievant's assignment as the 9th grade volleyball coach since she had not indicated she was resigning from that position. The District was ultimately able to find a replacement to perform the Grievant's 7th grade girls' basketball coaching duties and accepted her resignation as coach for this extra-curricular activity.

Although the volleyball season normally ends in mid-August, the 2008-09 volleyball season was extended from August 11, 2008 through October 15, 2008 with an additional playoff game. In early September, the Grievant was put on bed rest due to early contractions relating to her pregnancy and as a result, she sought and received an approved medical leave of absence that began on September 15, 2008 and lasted well beyond the end of the volleyball season. Since the Grievant was unable to complete her coaching duties during the extended part of the volleyball season, the District hired a replacement and on September 17, 2008 revised the Grievant's Notice of Assignment. Concluding that the Grievant had missed 23 of the 47 days the season lasted, or approximately 49% of the season, the District reduced the amount the Grievant was to have been compensated for her duties as the volleyball coach by 49%. The District did not hire a replacement for the Grievant's assignment as the high school potential/gifted and talented student facilitator and, as with the first grievant, she received full pay for her assignment as the facilitator even though she was unable to perform her assigned duties in this capacity while on her leave of absence.

It is unclear as to when the Grievant received the modified Notice of Assignment regarding her coaching duties. From her unchallenged testimony, however, it is accepted that she received the modified notice while on her leave of absence and within the contractual time limits for filing a grievance.

The third Grievant, a secondary English teacher, had been assigned to coach the 9th grade girls' basketball team during the 2008-09 school year season whose season ran from mid-November to mid-March. She, like the other two grievants, applied for and received approved medical leave and was unable to perform her coaching duties while on medical leave. Her leave of absence was from February 16 through April 12, 2009 and the District hired her husband as a replacement for the period of time she was unable to perform her coaching duties. On March 4, 2009, six days before the basketball season ended, the District revised the Grievant's Notice of Assignment and paid her 82.5% of the coaching salary that had been designated in her May 2008 Notice of Assignment.

When each teacher received only partial pay for their coaching assignments, they grieved the District's action. This grievance was filed on October 22, 2008 and it is this issue that is before the Arbitrator.

ARGUMENTS OF THE PARTIES:

The District argues that the plain language of the collective bargaining agreement does not support the Union's position. In support of its argument it states that the contract is silent not only with respect to whether the use of sick leave applies to extra-curricular assignments but as to what happens when a coach misses a significant part of an extra-curricular assignment. Further it asserts that when the contract is silent, as it is here, management has reserved the right to determine those matters under its management rights provision contained in Article IV, Section 4 of the collective bargaining agreement; that it properly exercised its right when it decided to reduce the Grievants' coaching pay consistent with the amount of time they coached, and that it acted neither arbitrary nor capricious in the decision it made.

As proof that its decision was reasonable, the District states that the factors it used to decide whether an absence would result in the extra-curricular duty assignment pay being reduced included whether the teacher was absent through the end of the assigned sports season; whether a replacement was hired to perform the assigned coaching duties, and how many days the teacher was absent from the season. It adds that when it considered these factors in the instances where it reduced the extra-curricular assignment pay, it found that all three employees were absent for a considerable amount of time; that each of their absences from coaching extended through the end

of the season and that it had been forced to hire a replacement to take over each of their coaching duties.

As explanation for why it did not reduce the extra-curricular pay related to the student council advisory duties performed by one of the Grievants due to his absence from those duties, the District declares that the Grievant's absence from those duties was minimal and that it did not have to hire or pay for a replacement student council advisor. It adds that significant supervision for this group was not required since these students are taking on a leadership role within the District and are encouraged to act with a degree of independence in contrast to the supervision that is required of students engaged in athletic activities.

Further, addressing the Union's argument that a teacher's approved medical leave of absence should include the teacher's absence from his or her extra-curricular assignments, the District declares that a teacher's extra-curricular assignment has never been factored into the accumulation or deduction of sick leave. Further, stating that Article X, Section 1, Subdivision 1 of the collective bargaining agreement defines how sick leave is accumulated and Subdivision 6 defines how sick leave shall be deducted, it declares this dispute is decided by what is meant by the term "day" as it applies to these provisions and asserts that under Article XI, Section 1 a "day" is defined as "seven hours and forty-five minutes including the lunch period" and does not include the performance of extra-curricular duties in that definition. It also asserts that based upon this definition, sick leave is both accumulated and deducted based upon the number of hours earned and the number of hours used a teacher during his or her basic day and there is no additional accumulation or deduction of sick leave for performing extra-curricular duties.

As additional support for its argument that coaching assignments are not covered by the sick leave provisions of the contract, the District asserts that coaching assignments are "separate and distinct from a teacher's basic duties" and that they are not part of a teacher's continuing contract rights. As proof of its assertion it cites *Stang v. Indep. Sch. Dist. No. 191*, 256 N.W.2d 82 (Minn. 1977); *Chiodo v. Bd. of Educ. Of Special Sch. Dist. No. 1*, 298 Minn. 380 (Minn. 1974) and Minn. Stat. §§ 122A.33 and 122A.58. The District also notes that the teachers' individual contracts expressly state that "extra-curricular, cocurricular, or other assignments and compensation" are not a part of a teacher's continuing contract rights unless the words "continuing contract" immediately follow the assignment.

The third argument advanced by the District is that the Union's position, if adopted, would allow sick leave to be used in a manner never before contemplated by the parties and would result in a "multitude of situations" where sick leave could be used in illogical ways. As evidence of its assertion, the District cites two examples where it believes the language would allow absurd results and declares that if this type of change is to occur it should be bargained by the parties and not granted in arbitration. Continuing, it refers to an arbitration decision involving Independent School District No. 413; charges that it was a "poorly decided case and creates more problems than it solves", and urges this Arbitrator to not accept the reasoning advanced by the arbitrator in that case.

And, finally, the District argues that its deductions from the coaching pay were consistent with its past practice. As proof, it cites the only other time a teacher missed a significant portion of a coaching season for medical reason; notes that the teacher's compensation for coaching was reduced to reflect the time he missed; states that there is no evidence that any other teacher than the three grievants and the one it has cited have been absent for an extended period of time and declares this is evidence that it has consistently reduced a teacher's extra-curricular compensation when the teacher has been unable to complete his or her coaching duties and the District has been required to hire a replacement to perform those duties. Further, the District rejects the Union's argument that it was possible that the other teacher's extra-curricular salary which had been reduced was reduced due to the fact this teacher had resigned his coaching position since the District could provide no evidence to the contrary. It also rejects the documents the Union provided which showed that the District had not deducted pay from other teachers' co-curricular salaries whose had been unable to perform their coaching duties asserting that there was no evidence as to when they had been absent or how much of their coaching duties they missed.

The Union argues, however, that this dispute is a "straightforward case of contract interpretation" and that the District violated the "clear and unambiguous terms of the collective bargaining agreement" when it approved the Grievants' use of sick leave for their absences from classroom duties but did not include their absences from coaching duties on the same approved days and reduced their co-curricular salary by the number of days they were absent from their coaching duties. It also argues that, even if it were concluded that the contract terms are ambiguous, a thirty-year past practice binds the District to fully compensate teachers for their coaching assignments if they are absent due to illness or injury and have available sick leave.

Asserting that the contract language is clear and unambiguous, the Union cites Articles VII, X and XI in the collective bargaining agreement and asserts that when these provisions are read individually and as a whole, it is clear that coaching duties are part of a teacher's normal duties and that sick leave is available to cover a teacher's absence due to illness or injury which prevents a teacher from performing normal duties on a given day or days. As support for its position, the Union notes that while Article XI, Section 1 defines a teacher's "basic day" it does not refer to a teacher's "duties" but refers to "duties in Section 3 as including a reasonable share of extra-curricular, co-curricular and supervisory activities and asserts that this provision clearly indicates that the parties contemplate that the performance of extra-curricular duties is part of a teacher's duty day.

Continuing, the Union declares that Article X, Section 1 clearly makes sick leave available to a teacher who is prevented from attending school and performing normal duties due to illness or injury and argues that since it does not restrict the use of sick leave solely to classroom teaching duties or to duties performed during the teacher's "basic day", there is no reason to conclude that "duties" do not include those identified in Article XI, Section 3. It adds that if the parties had intended to exclude extra-curricular activities from the sick leave provisions they would have done so and they did not.

The Union also asserts that Articles VII and XV specifically contemplate teachers being engaged in duties beyond the "basic day" since they specify compensation for extra duties and are consistent with Articles X and XI. It adds that since there is no per diem, per practice or per game rate but a flat rate for days and a season which may vary in length, it is apparent that once an extra-curricular assignment is made the District is required to pay the teacher the designated Schedule C amount if the teacher agrees to perform those duties and is prevented from doing so due to illness or injury which is covered by sick leave.

Further, the Union urges that the Arbitrator reject the District's arguments declaring first, that the contract is not silent and, therefore, the District is not free its management rights provision to do what it wants concerning coaching absences; secondly, that since sick leave is defined in days, not hours, it covers extra-curricular duties, and that providing sick leave pay for coaches has not and will not be a problem. As support for its first challenge, the Union asserts that since the agreement's broad sick leave language contains no express or implied limitations and its definition of a teacher's "normal duties" includes coaching duties, any finding that the contract is

silent and that the District has had the power to dock teacher coaching pay for any absence for over thirty years but chose not to do so until this past year is “patently absurd” and “must be rejected”. And, it adds that in negotiations the parties would have “recognized that there needs to be a consistent response to a recurring situation” and it makes “no sense that the parties would have chosen to ignore a recurring situation” such as the one in this dispute. The Union also rejects the District’s assertion that it did not dock coaching pay when they occasionally absent from performing their duties because it was “not out to get anyone” charging its assertion is “simply . . . not credible”.

The Union also rejects the District’s argument that the contract is silent with respect to whether sick leave includes performance of extra-curricular duties by relying on the fact that it administers and tracks sick leave in hours and that no hours are allocated for coaching duties. In addition, it charges that this argument fails in three ways – first, Article X, Section 1 specifies that sick leave is accumulated by “days”, not hours; secondly, Article VII and Schedule C duties are not reduced to “hours”, and, third, it is nearly impossible to determine the number of hours needed to perform extra-curricular assignments for the purpose of applying sick leave since the hours and days vary from season to season. And, lastly, the Union rejects the District’s argument that providing sick leave pay for coaches would create problems and the examples cited by the District as proof its assertion and counters that there would be ways to resolve the hypotheticals advanced by the District.

Finally, the Union asserts that Minnesota law supports its position that the contract language is clear and that even if the agreement is ambiguous, the District’s established past practice of allowing sick leave use for absences from coaching duties should be enforced. With respect to Minnesota law, the Union refers to a recent arbitration decision involving Independent School District No. 413 and declares the arbitrator concluded that the grievant was entitled to pay during his absence pursuant to clear contract language concerning sick leave pay for absences granted to full-time teachers. Adding that the decision is “strikingly similar” and that the contract language in that agreement was similarly board, the Union urges that this Arbitrator reach the same conclusion as the arbitration in that dispute did.

Continuing, the Union argues, however, that if this Arbitrator “somehow concludes there is some ambiguity in the contract language” there is an established past practice which must be enforced. As proof, it submits that the evidence shows that many teachers have missed coaching

days and been compensated the full amount for their coaching duties for over thirty years and charges that this has been a “long-standing, repeated” and “consistent” District practice. In addition, it declares that while the District cited one example asserting otherwise, it provided no evidence to show that it denied the teacher’s coaching pay for that part of the extra-curricular assignment that would have been covered by sick leave and that one instance of a past denial does not create an established past practice.

DISCUSSION:

In this dispute, the parties differ over whether their collective bargaining agreement contains language that requires the District to compensate teachers who have sought and received approved medical leave for assigned extra-curricular activities they are unable to perform while on medical leave. The District argues that there is no contract language which provides this benefit while the Union argues that when the contract is read as a whole, Articles VII, X and XI clearly do provide this benefit. After considering the contract language cited and reviewing the record it is concluded that the Union failed to meet its burden to prove that the contract clearly and unambiguously provides the benefit it seeks. Consequently, the question before the Arbitrator is whether the District acted arbitrarily or capriciously when it decided to pro-rate the grievants’ extra-curricular pay based upon the total number of days they performed their duties.

The Union correctly asserts that Article XI defines a teacher’s basic day as seven hours and forty-five minutes including the lunch period and that Section 3 of that Article establishes that a teacher’s normal duties will include a reasonable share of extra-curricular, co-curricular and supervisory activities for which they will be paid. Further, the Union correctly asserts that Article X, Section 1, Subd. 3 states that the School Board shall allow sick leave with pay when the illness, injury or doctor’s appointment of a teacher and/or their dependent children prevents the teacher from performing their duties on any given day or days. Neither of these provisions, however, clearly states that the parties have agreed to compensate teachers for both the duties they are unable to perform as part of their “basic day” and for any assigned extra-curricular activities they are unable to perform when they have been granted sick leave. Nor can such a conclusion be reached by reading the provisions together since there are provisions in the agreement which further cloud the issue. Among them is Article XII, Section 1 which establishes the number of “duty days” that constitute a school year and Article VII which provides that teachers who perform extra-

curricular duties shall be paid an amount for performing those duties in addition to the salary they will be paid for performing their regular teaching duties. By negotiating a Schedule C, the parties have agreed that they consider the performance of extra-curricular duties as work beyond that required by a teacher's basic day and separate from the duties assigned a teacher as part of their basic day. Due to this lack of clarity regarding sick leave pay, the parties have interpreted the provisions differently and it is their difference over the interpretation of this provision that causes the issue to be before this Arbitrator.

When a union challenges a contract interpretation, it must prove that its meaning was the parties' intent in order to prevail. In doing so, it must show that its interpretation is supported by at least one of the many recognized standards of contract interpretation.¹ In this dispute, the Union was unable to provide that evidence. Instead, the Union relied upon testimony that the three Grievant's sought and received an approved medical leave of absence for an extended period of time during the 2008-09 academic year; that they were obligated to perform coaching duties during that period of time, and that they were unable to perform those coaching duties as well as their "basic day" teaching duties during that time and argued that its survey of teachers shows that teachers have been fully compensated for their extra-curricular duties even when they have been unable to perform them while on sick leave. As additional proof, it cites an arbitration decision issued in another District which it alleges is similar to the dispute in this District. While the survey does indeed establish that teachers who have missed an occasional duty day and taken sick leave for it have been fully compensated for their extra-curricular coaching duties even though they were unable to perform them when on sick leave and the District does not dispute that fact, the evidence does not establish that teachers have been fully compensated under circumstances similar to the ones at issue here. There was no evidence that the teachers were absent more than an occasional day or two and there is no evidence that their inability to perform their extra-curricular duties made the hiring a replacement to perform the duties necessary.

Further, while the Union relied upon an arbitration decision involving Independent School District No. 413 as evidence that its interpretation had been supported in another arbitration, a review of that decision indicates not only that the contract language was substantially different

¹ The standards arbitrators generally apply include giving words their normal or technical meaning; precontract negotiations and bargaining history; prior settlements; past practice; interpretation consistent with the purpose of the provision; the contract as a whole, and giving effect to all clauses and words among others.

from the language contained in this contract but that the Arbitrator concluded that the contract language clearly and unambiguously provided for full-time teachers to be paid for accumulated sick leave; that performing extra-curricular activities was included in that definition of full-time, although no reasoning for that conclusion was given, and that the District's practice since 1985 supported a finding that coaches should be paid for the entire season if that season is covered by the approval of sick leave. That is not the finding in this case.

Consequently, since there is no evidence to support the Union's interpretation of the unclear language and since there is no provision in the agreement which specifically states that sick leave with pay applies to a teacher's absences from both his or her teaching duties on a given day and any extra-curricular duties that occur on that day, the only issue before this Arbitrator is whether the District acted arbitrarily or capriciously when it decided to pro-rate the grievants' extra-curricular pay based upon the total number of days they performed their duties.² While the Union has argued that the contract, specifically Schedule C, prevents the District from asserting it may pro-rate a teacher's extra-curricular pay under its management rights provision, there is nothing in Schedule C that obligates the District to fully compensate a teacher when that teacher is unable to perform the extra-curricular assignment duties. Instead, it simply sets forth the amount a teacher who is assigned an extra-curricular duty will be compensated for performing that duty over the period of time the duty must be performed.

Further, the record establishes that the parties agree that if a teacher is unable to reasonably perform any extra-curricular duties assigned for a season, the teacher may resign and the District may hire a suitable replacement. This action is obviously premised upon the expectation that a teacher who is assigned an extra-curricular activity will be able to perform the duties for an entire season. This fact mitigates against a finding that once a teacher is assigned an extra-curricular duty, the District is obligated to fully compensate the teacher for that assignment even if the teacher is unable to perform the duties of the assignment for the entire season and the District is required to hire a replacement to perform those duties. The Schedule C pay was negotiated to compensate teachers for performing extra-curricular duties, not for being assigned those duties. Based upon these findings, it is concluded that the District acted reasonably when it

² While the District argued that its action was consistent with past practice, the only incident it was able to cite occurred several years earlier. In addition to the fact that a single occasion does not establish a past practice, the evidence did not clearly establish that it took the same action that it took in this dispute.

decided to pro-rate the grievants' extra-curricular pay when they were unable to complete the duties of their coaching seasons and the District was required to hire a replacement to perform those duties.

It is also concluded that the District did not act arbitrarily or capriciously when it pro-rated the extra-curricular pay negotiated in Schedule C based upon the number of days each teacher performed his or her duties during the entire season. While the Union argues that a flat rate was negotiated since the days and season may vary in length and it is unreasonable for the District to consider "days" when it calculated the amount due each teacher, its argument is rejected. Since the parties agree that the flat rate applies to the season and since the length of a season (translated number of days) varies dependent upon whether there are playoffs, it is logical and reasonable to pro-rate the extra-curricular pay by considering the total number of days the season lasts and the number of days the teacher assigned the coaching duties was able to perform those duties.

In conclusion, based upon the record, the arguments and the discussion above, it is determined that the District did not violate the collective bargaining agreement when it decided to reduce the Grievants' total extra-curricular duty compensation since they were unable to perform their duty assignments for the entire season and the District was required to hire a replacement to perform the duties. Accordingly, the following award is issued.

AWARD

The grievance is denied.



By: _____
Sharon K. Imes, Arbitrator

January 12, 2010
SKI