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February 11, 2010

Ms. Paula Johnston
Minnesota Teamsters Local 320
3001 University Ave. SE
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Mr. James Knutson
Knutson Flynn and Deans
1155 Centre Point Dr.
Suite 10
Mendota Heights, MN 55120

**RE: MN Teamsters #320 and ISD No. 2149, Minnewaska Schools
BMS 09-PN-0221**

Request for Modification/Correction of Award dated January 13, 2010

Dear Ms. Johnston and Mr. Knutson:

I am in receipt of your respective letters regarding the Union's request for modification and/or correction of the above referenced Award. The Union's letter was dated January 25, 2010 and the District's Response was dated February 2, 2010. I reviewed the record and the relevant exhibits again in response to the request for modification and the response herein.

The Union has raised the same issue it raised at the hearing regarding whether the Decision violated M.S. 179A.16 subd 5. The basis of this assertion was that the Commissioner certified certain issues for decision in interest arbitration for "salary schedules and rates of pay for three years, 2007-08; 2008-09 and 2009-10. The Union further asserted that the contract was to end on June 30, 2010. Accordingly, any benefits or provisions pertaining to a period outside of that time frame was outside of the matters certified by BMS and was outside of the arbitrator's jurisdiction to award.

The Union noted that the District submitted in its final position a sub issue in that final position as follows: "effective July 1, 2010, employees shall advance one step/increment on the first day of the school year." Based on this the Union's argument is that there was no jurisdiction to render an award on this item since it was outside of the issues certified by the BMS pursuant to M.S. 179A.16 since it fell outside of the three-year period agreed by the parties for the contract and since wages for 2010-11 were not certified by BMS as a dispute to be determined by this arbitration.

The essence of the Union's argument thus is that the District's position on this item renders their entire position invalid because this was a total package, final offer arbitration. Since this portion of the District's position was outside of the issues certified by BMS, so their argument goes, the District's entire position must fail and the arbitrator should therefore have awarded the Union's position.

The District countered this argument in several ways. The District noted that the lump sum referenced in this matter was to be paid on July 1, 2009, not July 1, 2010. (Whether this was a typographical error or the like was not clear but the arbitrator in interest cases does have some power to conform the parties' positions to render them consistent with the certification from BMS where there is some lack of clarity).

Further the District noted that the law in Minnesota is to continue the prior contract until a successor agreement is negotiated by the parties. Accordingly, any lump sum payment would by definition be part of the negotiation for the "new" contract. The District pointed out that the wages and benefits from an expired contract are thus "frozen" until a new agreement is executed. The District stated flatly that no salary increases after June 30, 2010 can be awarded and that they were not. It noted that this was its final position and the arbitrator's award.

The arbitrator had only the power to render a total package final offer award in this case and did not have the power to alter or amend either party's position or to award anything other than the total package. This of course makes it more difficult in some cases, as it did here.

As noted in the original opinion and award, BMS certified this issue along with the rest of the issues in its letter of July 13, 2009 and the District's position was contained in its final position submitted to the Bureau. There was no evidence that the Union attempted to request a clarification of the certification rendered by BMS or that it attempted to take the matter to the Courts prior to the arbitration in this matter to gain some clarity on this issue. For the reasons stated in the original Award, it is determined that the award was not based on an error of law and that the Union's assertions are without merit on this question.

The second argument made by the Union is that the Award was also defective because it violated M.S. 179A.20, subd 6. That section provides as follows:

"Contract in effect. During the period after contract expiration and prior to the date when the right to strike matures, and for additional time if the parties agree, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties."

This too was an argument raised at the hearing and which was dealt with in the original Award in this case. The Union argued that the District's position is in conflict with the provisions cited above since it would continue the wages and benefits in place until a successor agreement is negotiated. That, of course is presumably why M.S. 179A.20, subd 6 was drafted into law – so that the parties' "old" obligations would be left in place and employers could not change or reduce them during the pendency of the new negotiations. Neither however would they have to increase during the pendency of negotiations for a new agreement since those very benefits could well be the subject of those negotiations. This was quite clearly the implication of the District's position in this case and there was nothing inconsistent with the statute in that position.

The Union's other argument is that there is no obligation for the District to pay benefits retroactively once a new agreement is negotiated. This is true but is certainly something the parties can negotiate when the time comes. Parties frequently negotiate the retroactive payment of benefits where contracts are finalized after the expiration of the predecessor contract. This process can take months and it is not uncommon at all for contracts to be signed and finalized months after the expiration of the contract it replaced and there can be arguments over the retroactivity of the payments made pursuant to the new contract

The District's position is frankly exactly what the statute requires – that the existing terms and conditions be left in place pending the negotiation of a new agreement. Further, as the District correctly pointed out, there was no existing contract in place at the time of this award – it is a “first contract” between these parties. Also, as noted above, this is a fairly standard provision found in many public sector contracts, including those between school districts and various labor unions that represent those employees.

The Union's arguments are again without merit on this question as well. As the District noted, there was no existing contract in effect so the strict terms of Subd 6 do not apply. Even if there had been one though the District's further argument was meritorious in that the statute clearly applies to keep in place the existing terms of an agreement subject to negotiations for a successor agreement between the parties. The question raised by the Union about what the District might do or how those negotiations might go or how the “balance of power” might shift or be affected in the future is left for future negotiation between the parties and cannot be used to alter the decision here.

Accordingly, for the reasons set forth above, the Union's request for modification/correction of the Award herein is denied.

Let me know if the parties have any additional questions or concerns.

Very truly yours,

Jeffrey W. Jacobs

JWJ:fsj

cc: BMS