

State of Minnesota  
Rice County

District Court  
Third District

Court File Number: **66-CV-09-3822**

Case Type: Civil Other/Misc.

### Notice of Filing of Order

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#### Independent School District No 656, Faribault, Minnesota vs International Union of Operating Engineers, Local Union No 70

You are notified that on March 08, 2010, the following was filed:

Order-Other  
Granting Petition to Vacate Arbitration Award

Dated: March 8, 2010

Robert L. Langer  
Court Administrator  
Rice County District Court  
218 NW 3rd Street  
Faribault MN 55021  
507-332-6107

cc: M William O'Brien

A true and correct copy of this notice has been served by mail upon the parties herein at the last known address of each, pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

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STATE OF MINNESOTA

COUNTY OF RICE

**COPY**

DISTRICT COURT

THIRD JUDICIAL DISTRICT

Independent School District No. 656,  
Faribault, Minnesota,

Petitioner,

v.

International Union of Operating Engineers,  
Local Union No. 70,

Respondent.

File No. 66-CV-09-3822

**ORDER GRANTING  
PETITION TO VACATE  
ARBITRATION AWARD**

The above-entitled matter came before the undersigned on January 19, 2010, at the Rice County Courthouse in Faribault, Minnesota. Appearing at the hearing were attorney Joseph E. Flynn for Petitioner and attorney M. William O'Brien for Respondent.

Petitioner-School District seeks an order vacating an August 14, 2009, arbitration award arising from a dispute with the Respondent- union, which is the exclusive agent for its secretaries and clerks.

Based on all the files, records, and proceedings herein, IT IS HEREBY ORDERED:

1. Petitioner's motion is GRANTED.
2. The attached memorandum is incorporated herein.

Dated: March 5<sup>th</sup>, 2010

BY THE COURT:



Thomas M. Neuville  
Judge of District Court

RICE COUNTY, MN  
FILED

*mm* MAR 08 2010  
COURT ADMINISTRATOR

## MEMORANDUM

This case involves a petition of the Faribault School District (District No. 656) to vacate an arbitration award in a dispute between the School District and the Respondent/Union, which represents secretaries and clerks. The School District argues that the arbitrator exceeded his power and authority in deciding matters over which the applicable bargaining agreement (“CBA”) give him no authority. Because the Court finds that the arbitrator did exceed his authority and jurisdiction, the Petitioner’s request for relief is granted and the Arbitrator’s Award is vacated.

### Factual History

In early 2008, the Faribault School District, like many government units and agencies, was facing financial shortfalls and needed to cut its budget. This dispute concerns its attempt to do so by combining the duties of two clerical positions, one which was within the union bargaining unit, and the other which was excluded from it. The administrative assistant to the curriculum director (“curriculum secretary”) was Kathy Matejcek. The curriculum secretary position was within the bargaining unit of the union (Respondent). When the administrative assistant to the superintendent (“superintendent assistant”), Marie Hoffman, retired, the School District hired Ms. Matejcek to fill that position. The superintendent assistant position, which Ms. Matejcek accepted, is considered “confidential” pursuant to Minn. Stat. § 179A.03, subd. 4, and is not part of the bargaining unit.<sup>1</sup>

After Ms. Matejcek accepted the superintendent assistant position, her former curriculum secretary position was eliminated in order to save money for the School District. Many of the duties performed by Ms. Matejcek in her confidential position were the same duties that she previously performed as the curriculum secretary.

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<sup>1</sup> Article 3, Section 2 of the CBA provides a description of the appropriate unit as including secretaries and clerks, excluding confidential employees, supervisory employees, and others. Therefore, under both the CBA and the Public Employee Labor Relation Act (Minn. Stat. § 179A.03, subd. 4), the position which Ms. Matejcek accepted was not part of the bargaining unit.

On June 2, 2008, Union Representative Cynthia Evans filed a grievance with the School District pursuant to Article VI of the CBA (the CBA was ratified on August 11, 2008 and was effective from July 1, 2008 through June 30, 2010).<sup>2</sup>

The Respondent-Union disputed the School District's right under the CBA to transfer work duties which were previously performed by a union member to a confidential employee who is excluded from the bargaining unit. Prior to a hearing on the grievance report the School District sought a "unit clarification order" from the State Bureau of Mediation Services ("BMS") pursuant to Minn. Stat. § 179A.04, subd. 1, regarding the appropriate classification status of the superintendent assistant. BMS responded by order dated October 15, 2008, that the superintendent assistant was a confidential employee under Minn. Stat. § 179A.03, subd. 4. The Respondent/Union did not object to this classification. The classification was based upon the nature of the duties assigned to the position for Ms. Matejcek, including the transferred duties which she had previously performed as the Curriculum secretary.

The Union's grievance proceeded to arbitration under the CBA, Article 6, Section 3, subd. 2. The School District objected to the jurisdiction of the arbitrator on the same grounds asserted in this action. However, Arbitrator David S. Paull, by order dated August 14, 2009, sustained the grievance and ordered the duties of the curriculum secretary returned to the bargaining unit.

The Petitioner/School District raises four arguments regarding the arbitrator's award:

1. The dispute was not a "grievance" because there is no "aggrieved party" as defined by the CBA;
2. The arbitrator had no jurisdiction or authority to review questions regarding the duties of a confidential employee, since the issue is one of inherent managerial authority;
3. The BMS has exclusive jurisdiction to determine whether a position is part of the bargaining unit and its decision is final and not subject to review by the arbitrator (under a res judicata or estoppel theory); and

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<sup>2</sup> The Collective Bargaining Agreement (CBA) submitted by the parties is presumed to be controlling in this case, even though it was not effective until July 1, 2008, which was after the date that the grievance was filed. Neither party argued that the prior CBA was different, or that the CBA which was ratified on August 11, 2008, and effective on July 1, 2008, does not control in this case.

4. The arbitrator's remedy was beyond his authority because it affected a confidential position outside of the bargaining unit.

This Court finds that the Petitioner's first two arguments are dispositive and will focus on Those two issues in this memorandum.

### Standard of Review

Generally, alternative dispute resolution, including arbitration, is favored. *Lucas v. American Family Mutual Insurance Company*, 403 NW 2d 646, 647 (Minn. 1987). There is a process established by statute for arbitration proceedings and enforcement of awards under Minn. Stat. § 572.08-.30 (2008).

An arbitration award "will be vacated only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19." *AFSCME Council 96 v. Arrowhead Regional Corrections Board*, 356 NW 2d 295, 299-300 (Minn. 1984); and also *Hunter, Keith Industry v. Piper Capital Management Inc.*, 575 NW 2d 850, 854 (Minn. App. 1998). If the arbitrator has authority to decide the grievance, then every reasonable presumption must be exercised in favor of the finality and validity of the arbitration award. Courts will not overturn an award merely because they disagree with the arbitrator's decision on the merits. *Office of State Auditor v. Minnesota Association of Professional Employees*, 504 NW 2d 751, 754-55 (Minn. 1993).

However, in reviewing an arbitrator's decision, a Court reviews the determination of arbitrability *de novo*. *State v. Berthiaume*, 259 NW 2d 904, 909-10 (Minn. 1977). The court gives no deference to the arbitrator's analysis of whether the dispute is arbitrable.

Here, the School District argues for vacating the arbitration award pursuant to Minn. Stat. § 572.19, subd. 1(3), which states:

"572.19 Vacating an award.

Subd. 1. Upon application of a party, the Court shall vacate an award where:

(3) The arbitrators exceeded their powers" (underlining added)

### The Dispute in this case is not a "Grievance" under the CBA

The School District argues that no employee covered by the CBA was injured by the School District's actions, and therefore no grievance existed for presentation to the arbitrator. In

deciding whether the CBA allowed for arbitration of this dispute, the Court must look to the specific contract language. See *Independent School District No. 88 v. School Service Employees Union No. 284*, 503 NW 2d 104, 106 (Minn. 1993). Here, the CBA does not define a grievance according to injury. Rather, a “grievance” is defined, in Article 6, Sec 2, Subd 1 of the CBA, to be:

*“an allegation by an employee resulting in a dispute or disagreement between the employee and the school district as to the interpretation or application of terms and conditions contained in this agreement.”* (underlining added)

Grievances are limited to disputes or disagreements concerning the *interpretation or application of the terms and conditions of the CBA*. Article 3, Section 1 of the CBA defines the “terms and conditions of employment” as:

*“The hours of employment, the compensation therefore including fringe benefits, and the employer personnel policies affecting the working conditions of the employees.”*

An “aggrieved person” is:

*“ the person or persons making the grievance. If in the judgment of the union, the grievance affects a group of more than one employee, it may be presented to the union at the superintendent’s level”*. See, Art.6,Sec 2, subd 2 of the CBA.

In this case, Ms. Matejcek is not an “aggrieved person.” She did not file the grievance. She voluntarily accepted the new confidential position, which was outside of the bargaining unit. The elimination of Ms. Matejcek’s former curriculum secretary position did not affect the job duties, hours of employment, rate of pay, benefits, working conditions, or any other aspect of employment, of other members of the bargaining unit. Therefore, no other member of the bargaining unit can be an “aggrieved person” under the CBA either. Since there is no aggrieved person, there can be no “grievance”, and the union itself cannot present the grievance on behalf of other bargaining unit members.

**The School District's Decision to Eliminate the Curriculum Secretary Position and Transfer those Duties to the Superintendent Assistant's Position is Not Arbitrable**

The Court reviews the determination of arbitrability *de novo*. *U.S. Fidelity Guarantee v. Fruchtman*, 263 NW 2d 66, 71 (Minn. 1978); *Independent School District No. 88 v. School Service Employees Union, Local 284*, 503 NW 2d 104, 106 (Minn. 1993).

An issue is not arbitrable, if the disputed issue is one of inherent managerial authority. Article 4, Section 1 of the CBA describes the district's retention of inherent managerial rights and states:

*"The union 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 function and programs of the employer, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel."* (underlining added)

Article 4, Section 4 of the CBA provides a more comprehensive reservation of managerial rights, and states:

*"The foregoing enumeration of school district 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."* (underlining added)

The Minnesota Public Employee's Labor Relations Act (P.E.L.R.A.) is nearly identical in defining inherent managerial policy. Minn. Stat. § 179A.07, subd. 1 provides:

"A public employer is not required to meet and negotiate on matters of inherent managerial policy. Matters of inherent managerial policy include, but are not limited to...

- Functions and programs of the employer
- Its overall budget
- The organizational structure
- Selection of personnel

- Direction of personnel
- Number of personnel

A public employer may voluntarily agree to relinquish inherent managerial authority, but must do so in “clear and unmistakable language.” *Arrowhead Public Service Union v. City of Duluth*, 336 NW 2d 68, 72 (Minn.1983); see also, *Minnesota Arrowhead District Council 96 of AFSCME v. St. Louis County*, 290 NW 2d 608, 611 (Minn. 1980).

The Minnesota Supreme Court has consistently held that arbitrability is to be determined by ascertaining the intention of the parties from the language in the collective bargaining agreement itself. *Arrowhead Public Service Union* (*supra* at p. 70); see also, *Minnesota Federation of Teachers, Local 331 v. Independent School District No. 361*, 310 NW 2d 482 (Minn. 1981).

Without question, decisions concerning a school district’s budget, its programs, its organizational structure and the number of personnel it employs to conduct its operations are matters of managerial policy. So are the job duties that it assigns to each position.

In *Independent School District No. 88* (*supra* at 107), the Court analyzed the intersection between the right of management to make decisions and the right of the union to protect members. The Court stated:

*“Although the decision to contract out may be an inherent managerial right, the effects of that decision may still be subject to negotiation and arbitration. An order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.”*

It is clear that the School District’s decision to eliminate the curriculum secretary position was an inherent managerial right. If that decision had the effect of changing the terms or conditions of employment of more than one member of the bargaining unit, then the decision might still be subject to negotiation and arbitration. However, in this case the union has not established that there was any effect upon another member of the bargaining unit. It is

noteworthy that Ms. Matejcek herself, who moved into the new confidential position, did not file the grievance, since it was her former clerical position that was eliminated.

The Faribault School District has clearly retained all aspects of inherent managerial authority under the CBA. The CBA says nothing, in clear and unmistakable language, which prevents the School District from eliminating positions in the bargaining unit. There is nothing in the CBA which limits the authority of the School District to define the duties of its confidential employees.

Under Article 6, Section 3, subd. 2 (level 4), the CBA provides,

*“The arbitrator shall have no power to alter, add to, or subtract from the terms of the working agreement.”*

The court finds that the arbitrator did alter the CBA by requiring the Faribault School District to negotiate matters of inherent managerial authority. The arbitrator had no authority to compel the School District to negotiate matters involving inherent managerial policy, which was specifically retained by the District.

If the School District’s managerial decision affected other members of the bargaining unit, then the decision would be arbitrable. However, as previously stated, there is no evidence that any other employee in the bargaining unit was affected with respect to the terms and conditions of their employment.

In *Quiring v. Board of Education*, 623 NW 2d 634, 639 (Minn. App. 2001), the Minnesota Court of Appeals found that decisions relating to the organization, structure, and assignment of duties are inherent managerial policy decisions which are not subject to bargaining. The Court ruled that a School District had authority to assign duties of a union member (the school principal) to the superintendent (a confidential employee). In addition, since the principal position was eliminated (as the Curriculum Secretary position was in this case); there was no reassignment of bargaining unit duties to other employees. This Court finds the facts in *Quiring* similar to the facts in this case.

Since the Faribault School District was exercising its inherent managerial authority when it eliminated the Curriculum Secretary position and transferred those job duties to a confidential employee, the arbitrator exceeded his power when he determined that the School District had a duty to arbitrate. Under Minn. Stat. § 572.19, subd. 1(3), the Court is required to vacate the

arbitrator's decision. It is unnecessary for the Court to address the other grounds for vacating the arbitrator's award, which were argued by the Petitioner.