

**IN THE MATTER OF ARBITRATION**

**OPINION & AWARD**

**-between-**

**Grievance Arbitration**

**WEST ST. PAUL FEDERATION of  
TEACHERS, LOCAL NO. 1148**

**Re: Mandatory Teacher  
Reporting Times**

**-and-**

**B.M.S. No. 10-PA-0286**

**INDEPENDENT SCHOOL DIST. 197  
WEST ST. PAUL, MINNESOTA**

**Before: Jay C. Fogelberg  
Neutral Arbitrator**

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**Representation-**

For the Union: Daniel S. Becker, Attorney

For the District: Gloria Blaine Olsen, Attorney

**Statement of Jurisdiction-**

Collective Bargaining Agreement duly executed by the parties provides, in Article XVII, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial three steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievants on January 29, 2009, and eventually appealed to binding arbitration when the parties were unable to resolve the matter to their mutual satisfaction during discussions at the intermittent steps. The undersigned was then selected as the Neutral

Arbitrator to hear evidence and render a decision from a panel provided to the parties by the Minnesota Bureau of Mediation Services, and a hearing convened in Mendota Heights on January 28, 2010. There, the parties were afforded the opportunity to present position statements, testimony and supportive documentation. At the conclusion of the proceedings, each side indicated a preference for submitting written summary statements. They were received on March 15, 2010, at which time the hearing was deemed officially closed. Both sides have agreed that following constitutes a fair description of the matter to be resolved.

**The Issue-**

Did the District violate the terms and conditions of the parties' Labor Agreement, specifically Article XII, Section 1, when it set mandatory teacher reporting times for the 2009-2010 school year? If so, what shall the appropriate remedy be?

**Preliminary Statement of the Facts-**

The adduced evidence indicates that the Grievants are all members of the educational staff employed by Independent School

District No. 197 (hereafter "District", "Employer" or "Administration") in West St. Paul. In that capacity, they are represented by the West St. Paul Federation of Teachers, Local 1148 ("Federation," "Union" or "Local") who, together with the Administration, has negotiated and executed a labor agreement (Joint Ex. 1) covering terms and conditions of employment for members.

On July 24, 2009, School Superintendent Jay Haugen issued a memorandum to all teachers in the bargaining unit announcing that effective with the start of the current school year there would be a uniform starting time for the instructional staff at each of the three student divisions within the District: elementary, middle and high school. Teachers employed in the Elementary schools would be expected to report for work at 7:15 in the morning and end their normal work day at 3:15 in the afternoon. The Middle School staff was to report at 7:40 a.m. and remain at their respective "duty location" until 3:40 p.m., and the High School instructors to start at 7:35 in the morning, completing their eight hour day at 3:35 p.m. (Joint Ex. 3).

Believing that a mandate for uniform starting times violated the applicable terms of the Collective Bargaining Agreement – specifically

Article XII, Section 1- the Union filed a formal complaint with the District on January 29<sup>th</sup> of last year. Eventually, the issue was appealed to binding arbitration for resolution.

**Relevant Contractual Provisions-**

Article IV  
School Board & Public Rights

Section 1. Inherent Managerial Rights: 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 School District, its overall budget, its use of technology, its organizational structure and the selection and direction and number of its personnel.

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Section 4. Managerial Rights Not Covered by This Agreement: The foregoing enumeration of School District responsibilities shall not be deemed to exclude other inherent management rights, and management functions not expressly modified by this Agreement are reserved to the School District.

\* \* \*

Article XII  
Composition of Teacher's Day

Section 1. Definition: The normal work day for teachers will be eight (8) hours including a ½ hour duty free lunch period. Teachers will arrive at their duty location, as assigned by the building principal, not less than 15 minutes before the first

session of the school day and remain at their assigned duty location no fewer than 30 minutes after the last session of the school day. Because of the variations in operating schedules at the various buildings, the work day will be translated into clock hours at each building. The administration retains the right to schedule meetings and necessary conferences during this period.

### **Position of the Parties-**

The **FEDERATION** takes the position in this matter that the Administration violated the terms of Article XII, Section 1 when it unilaterally imposed mandatory start/end times for teachers in the bargaining unit. In support of this claim, the Union contends that while reporting time for the educational staff might otherwise fall within management's prerogative, in this instance the District lost that right through the bargaining process when it agreed to the language in Section 12.1. More particularly, the Local maintains that the second sentence of that section is controlling here as it only requires teachers to be in their "assigned duty area" fifteen minutes before the first student session each school day, and remain there for no fewer than thirty minutes, "after the last session." This language is clear on its face, according to the Union, demonstrating that other than the 15/30

requirement expressed in 12.1, teachers have the flexibility to determine their own starting and quitting time each school day so long as they meet the eight hour obligation expressed in the opening sentence of the same section. The student day is set by the Employer at 6½ hours. When this is coupled with the 15/30 before and after mandate, there remains approximately 45 minutes within the normal work day which the Grievants are required to be in attendance. However, according to the Federation, how that time is allocated is up to the discretion of each individual instructor, not the Administration. Moreover, the argument is made that this has been the long standing practice in the District and cannot now be unilaterally discontinued or altered without negotiating with the Union. Accordingly, for all these reasons they urge that the grievance be sustained and the Administration directed to cease and desist from imposing a uniform start/stop time for each normal work day.

Conversely, the **DISTRICT** takes the position that their decision to establish a specific start and end time to the work day for teachers this school year did not violate the terms of the parties' Labor Agreement. In support of their claim, the Administration argues that the reference to 15/30 in Section 12.1 establishes minimums and nothing more. There is no

language in Article XII, or anywhere else in the Contract, preventing the District from mandating uniform starting times that exceeds either the 15 minute minimum at the start of the school day, or the thirty minute requirement at the end of the student's day. According to the Employer, the Federation's position is turning the applicable language on its head by insisting that "not less than 15 minutes" really means not *more* than fifteen minutes. Similarly, the Local wants the arbitrator to find that "no fewer than 30 minutes after the last session of the school day," really means more than that time. In each instance their argument is contrary to the clear language as written. Further, the Administration maintains that since this language was placed into the Agreement decades ago, the practice has been consistent. The principal at each of the eight schools in the District has indeed instituted mandatory start/end times for all of the teachers in a particular building. For all these reasons then, they ask that the grievance be denied.

### **Analysis of the Evidence-**

As the issue posed here involves one of contract interpretation, the initial burden of proof lies with the Federation to demonstrate via a

preponderance of the evidence, that their position is the most logical of the two advanced. Following a careful review of the testimony, supportive documentation and summary arguments, I conclude that this obligation has been adequately met.

At the outset, a number of salient facts have been established on the record and are not in dispute here. The parties agree that the normal teacher work day has been set at eight hours, as provided in the first sentence of Section 12.1 of their Contract. This has remained unchanged since the parties' first collective bargaining agreement was executed in 1972. Similarly, there is no question but that the Administration retains the right to institute the student contact day within these eight hours so long as it does not conflict with any applicable provisions in the Master Agreement. Historically, this has been approximately 6½ or 6¾ hours Monday through Friday (District's Ex. 1; Joint Ex. 2).

It was further demonstrated that the only changes to Section 1 of Article 12 since its inception, were made in the 1977-79 Contract when the phrase "duty location" replaced "their classroom" in connection with the 15/30 rule. The rest of the paragraph that comprises the section has otherwise remained unaltered.

Finally, there is no question but that the District's instructional staff is required to attend meetings called by the Administration (which includes building principals and department chairs) that may necessitate a longer than normal work day. Indeed, this obligation is set forth in clear and unambiguous language in Section 12.2.

The foregoing then, serves as a backdrop against which the evidence in this case must be viewed.

It is widely held that an agreement is ambiguous if "plausible contentions may be made for conflicting interpretations" thereof. *Armstrong Rubber Co.* 17 LA 741. Additionally, as authors Elkouri & Elkouri have noted in their widely read treatise on labor arbitration, *How Arbitration Works* (BNA 6<sup>th</sup> Ed.), whether or not a document is ambiguous is more a matter of impression rather than of definition (at p.434). If plausible contentions can be made for conflicting interpretations then ambiguity may well exist (*id.*). Analytically this axiom would appear to fall on all fours with the instant case.

Both the Union and the District maintain that the language in issue is clear and unambiguous on its face. Concomitantly, both argue that the critical provision found in Section 12.1 favors their respective position.

Paired to its essence, the Union contends that what is otherwise a managerial right to establish starting and ending times for the teachers' eight hour work day, has been bargained away when it agreed long ago to include the language in Section 12.1 which has remained essentially unaltered since 1972 (citing Joint Exhibits 1, 5, 6, 7 & 8). That provision, according to the Local, gives the bargaining unit members the discretion to set their own reporting times, so long as they fulfill their eight hour work day requirement and adhere to the 15/30 rule. The Employer counters that this same language permits the Administration to institute reporting times for the commencement of the normal work day for the instructional staff at each of the eight schools in the District, and further that there is no limitation expressed in the parties' Labor Agreement relative to this authority.

As previously noted, no one argues that the normal work day is anything other than eight hours in length. The parties have agreed to as much and make specific reference to it in the first sentence of 12.1, where it has remained essentially unaltered for well over thirty years. It is the second sentence rather, that lies at the center of this dispute. According to the District, an adoption of the Local's interpretation of the

15/30 provision would require a result that would stand the provision on its head. That is, it would effectively change the clause "not less than 15 minutes," to mean "not *more* than 15 minutes." Similarly, "no fewer than 30 minutes" would effectively become "no *more* than 30 minutes."

I must, however, respectfully disagree with management's rationale.

The Employer's observation that the 15/30 language as written is, on its face unambiguous is most accurate. Clearly, it sets forth some minimums that the parties have agreed to on either side of the student contact school day. And the Union agrees that the sentence mandates each of the Grievants' obligations in this regard. This does not resolve the dispute however, as the question remains concerning the remaining approximate 45 minutes of the "normal work day" and who possesses the discretion to determine when it is to be satisfied. This is where the ambiguity exists, requiring the application of certain interpretative aids in order to ascertain the most reasonable result.

The District contends that the portion of the second sentence in 12.1 referencing duty location for all teachers, is proof positive that they never relinquished their right to determine mandatory teacher reporting

times. That is, the phrase "...as assigned by the building principal..." demonstrates that discretion remains with the Administrators to require the Grievants to be at their "duty location" for a certain time period but not less than 15 minutes before the first session, or fewer than 30 at the end of the student contact day.

In my judgment however, the Employer's interpretation of "...as assigned by the building principal..." saddles the phrase with more weight than it can reasonably bear. Grammatically, it is a parenthetical remark that is connected to the clause that immediately precedes it, as opposed to the one that follows concerning the 15/30 rule. It makes direct reference to the "duty location" where the teachers are to "arrive" each school day, noting that the particular setting will be "assigned by the building principal." The evidence demonstrates that in 1977, the language was amended requiring teachers to arrive "at their duty location" rather than "at their room." Retaining the expressed right to assign the duty location for teachers in the bargaining unit does not, in my view, firmly support the Employer's interpretation of the critical language. Designating the location of the instructional staff members in any given building, does not begin to address their prerogative to set

common start and finish times within the established eight hour work day.

Neither does the District's reliance on the third sentence in Section 12.1 enhance their position in this matter. The Administration contends that the provision translating the work day into clock hours buttresses their interpretation of the section. They maintain that what constitutes a teacher's start and finish time within the work day is a decision made by management due to the variance in hours of operation among the various buildings in the District. Further, the Employer urges that an adoption of the Union's position here would ignore and give no effect to this sentence.

I find the more forceful evidence however, supportive of the Federation's interpretation that the language in the third sentence was more an acknowledgement of the necessity to vary student days within the District among the eight different buildings, than anything else (testimony of past Local President, Lee Huenecke, and current Human Resources Director, MaryAnn Thomas). A recognition of the need to translate the work day into clock hours therefore, does little to resolve this dispute.

Both sides have made reference to the often-used interpretive

canon that a review of ambiguous language in an agreement must take into consideration the contract as a whole, and to adopt an interpretation that does not nullify any given part. It is widely held that an interpretation of a collective bargaining agreement by a reviewing third party should strive to give effect to all of its terms as it is generally believed that the authors would not bargain into a contract a provision that is meaningless. *Maritime Service Committee, Inc.*, 49 LA 557 (1967).

“Because it can be assumed the parties did not intend one provision of the contract to cancel out another provision, if the language is susceptible to two constructions, one that will carry out the objectives of the contract and the other that will not, the first construction should prevail. All language should be given meaning and should not be ignored. Effect should be given, if possible, to every word, sentence, and clause in the contract. No words should be rejected as unnecessary if they can be given a reasonable interpretation. An interpretation that gives meaning to every part of the contract is preferred to one that gives no effect to one or more parts.”

From: *Labor & Employment Arbitration*, Bornstein and Gosline, (Matthew Bender, 1993 et seq.) §14.02 [1][d], at p. 14.

This is perhaps the most significant approach that bears directly on the outcome of this matter.

It is logical to conclude from a reading of 12.1 that by crafting language that provided for a 15/30 rule, both sides were acknowledging

that certain minimums were being established that required adherence on the part of the instructional staff. I am particularly persuaded by the Union's argument that there would be no need for this language if, as the Employer maintains, they retained the prerogative to set specific start and stopping times for teachers within the normal work day. Conversely, if a more limited right was intended, the 15/30 clause coupled with the last sentence in Section 12.1, addressing the Administration's entitlement to "schedule meetings and necessary conferences," makes more sense.<sup>1</sup> Viewed another way, were the Employer's interpretation adopted allowing them the unfettered right to mandate start and end times for all teachers in the District, then there would be no reason to include the second or the last sentence in the paragraph. Within the negotiated eight hour work day, under such an approach, there would be no need to incorporate language regarding the scheduling of meetings, etc. Nor would there be a logical reason to add in the 15/30 clause, as the Administration would retain this ability, under their interpretation, in any event. In essence, an adoption of the Employer's argument would result in the evisceration of the second and last sentence of Section 12.1. I find

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<sup>1</sup> At the hearing, Superintendent Haugen testified that the primary motivation behind his July 24<sup>th</sup> memo was to address the need to schedule meetings.

the more compelling approach to be the one advanced by the Local. That is, the parties negotiated this language into their collectively bargained agreement with a purpose; i.e. to expressly establish limitations on when and where teachers were required to be, beginning no less than fifteen minutes before the start of the students' day and to remain no less than thirty minutes after the last session, as well as to schedule meetings and conferences as the Administration deems necessary. Moreover, by indicating that the Employer "retains the right" to schedule meetings, etc., tells the reader that they have otherwise ceded a prerogative normally reserved to the District. In this instance, when the section is read as a whole, the otherwise inherent managerial right that has been relinquished, amounts to the forty-five or so minutes of teacher discretion time that remains within the normal work day.

Favoring the Local's interpretation does not, in my view, significantly hamper the District's ability to manage. The evidence shows that in the past that while teachers were afforded some leeway in terms of starting or concluding the work day, they were nevertheless consistently aware of their obligation to be in attendance at meetings or conferences scheduled by the Administration, and honored that

commitment. An examination of the parties' historical experience indicates that there was no particular difficulty with such scheduling matters even when, in some instances, it was necessary to go beyond the normal work day to accomplish what was needed.

In addition I find that an award favoring the Union's grievance does not conflict with the language in Article IV, Section 4, *supra*, concerning the Employer's retention of their rights and responsibilities. That division of the Master Contract contains a clear proviso that such functions, "...not expressly modified by this Agreement," remain with the Administration. The most rationale interpretation of Section 12.1, however, demonstrates that the District's inherent right with regard to scheduling has been somewhat altered.

The past practice was another aspect of this dispute addressed at the hearing by both sides. The Employer asserts that the Grievants have not demonstrated any development of a long-standing consistent past practice over a significant period of time in the District. The evidence appears to support their claim.

Former Superintendent John Longtin was called by the Union to testify regarding his eleven year experience when he served first as a

building principal and later as the chief administrator in the District. This witness recalled teachers being afforded the discretion to set their own eight hour work day, so long as they complied with the 15/30 requirement. He further stated that there had always been a clear understanding between the teachers and the Administration in this regard, and that as the District Superintendent he never imposed a uniform day for the instructional staff, nor did he remember any principal attempting to do it. To do so, he suggested, would have resulted in an adverse relationship with the teachers, as it would demonstrate a lack of respect for their professionalism. Under cross-examination however, Longtin allowed that building principals may have mandated a uniform starting time for their teachers, but that he could not be certain of this.

Other Union witnesses – all current or former teachers in the District – testified that their experience has been one of flexibility in determining their own starting times. The referred to the professional discretion of the teachers being honored by the Administration prior to the current Superintendent's employment. Similarly, Federation witness Huenecke stated that he could not recall a time during his thirty-five years of employment in the District where the Administration imposed any

mandatory starting time that exceeded the fifteen minimum threshold.

On the other hand, the Employer presented testimony from a number of principals who recalled their own experiences in the various buildings, while serving as a teacher or an administrator, when uniform start and finishing times were mandated. However, this evidence does not demonstrate a clear past practice either. Many of the principals could only testify to the past ten years or less as their length of service in the District was somewhat limited. Further, it was less than consistent. For example, Chris Hiti, prior to becoming the principal at Heritage Middle School in 2005, stated that he remembered being told by the Administration at Friendly Hills Middle School when he was first hired there as an instructor, that his work day would began at 7:00 a.m. and end at 3:30 p.m. At the same time however, he acknowledged under cross examination, that it was only his assumption that all other instructors at Friendly Hills had the same mandated schedule.

In sum this aspect of the case does not adequately begin to demonstrate a uniform District-wide, long-standing practice that is particularly supportive of either party's position.

Finally, the Employer has expressed concern that should the Union

prevail in this matter, since every school in the District has a number of teachers on staff, it would be virtually impossible to determine whether one particular instructor was meeting his/her eight hour work day requirement if left with their discretion how to utilize the approximate forty-five remaining minutes. There was however, no evidence presented of any abuse by a teacher in the District, prior to the attempted uniform mandate by the current Administration. The absence of discipline in this regard is further evidence, in my view, that the faculty members have not misused their negotiated prerogative. There is nothing in the record to indicate that they have not been mindful of the requirements of their duty day, and moreover have willingly participated in the various meetings and conferences as scheduled by the Administration – some of which have necessitated remaining well beyond the eight hour period specified.

**Award-**

Based upon the foregoing analysis of the controlling language in the Master Contract, I find the Grievance of the Local to have merit and is therefore sustained. Accordingly, the District violated the terms of the

parties' Master Agreement when it unilaterally adopted uniform starting and ending times for the current school year. As there are only a few weeks left in the 2009-2010 academic year however, no specific remedy is being ordered here immediately. Rather, the intent is for the ruling to take effect prospectively with the commencement of 2010-2011 school year. Any proposed changes to the Grievants' reporting time going forward, are to be made through the negotiation process.

I will retain jurisdiction in this matter for the sole purpose of resolving any issue that may arise in connection with the implementation of the remedy ordered.

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Respectfully submitted this 24<sup>th</sup> day of April, 2010.

/s/  
Jay C. Fogelberg, Neutral Arbitrator