

IN THE MATTER OF THE ARBITRATION BETWEEN

**MINNESOTA SCHOOL EMPLOYEES ASSOCIATION(MSEA),
UNION,**

**DECISION AND AWARD
BMS CASE NO. 10-PA-0794**

- and -

**INDEPENDENT SCHOOL DISTRICT NO. 482,
LITTLE FALLS, MINNESOTA,
EMPLOYER.**

ARBITRATOR

William E. Martin
Hamline University School of Law
1536 Hewitt Avenue
St. Paul, MN 55104

APPEARANCES

For The Association:

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For The District:

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PROCEEDINGS

The hearing in this case was held on June 30, 2010 at the Little Falls, Minnesota High School. The parties agreed that the grievance was properly before the Arbitrator under the Collective Bargaining Agreement ("CBA"). The parties submitted post-hearing briefs on July 30, 2010. The last brief was received August 10, 2010 and the record was closed. Following an extension agreed to by both parties, the due date for this Award was set at September 27, 2010.

At the hearing, the Union presented the testimony of Janet Peterson, Cook Manager and grievant; Lordeen Sowades, Cook Manager and grievant; Victoria Wendland, Second Cook and

grievant and Donald Gilbertson, MSEA Business Agent. At the hearing the School District presented the testimony of Nancy Henderson, School District Business Manager.

In addition to the testimony, the parties submitted Joint Exhibits 1-6, Union Exhibits 1-9 and Employer Exhibits 1-2 which are listed in the Appendix to this Award.

In addition to the testimony and exhibits, the Union and Employer both presented oral argument at the Hearing and submitted Post Hearing Briefs.

Based upon the testimony, exhibits and the oral and written arguments herein, the Arbitrator makes the following Decision and Award for the reasons stated in this opinion.

DECISION AND AWARD

I. THE GRIEVANCE IN CONTEXT

The grievance herein arose in the school district's unit of food service employees. These employees are required to maintain professional certificates and to maintain the certificates they must satisfy continuing education or professional development requirements. There are a variety of programs they can attend to maintain their certificates, but one of the most convenient for both the unit employees and for the District is a summer conference put on each year by the Minnesota School Nutrition Association (the "MSNA"). This conference is convenient because employees can attend in the summer when school is not in session. Employees who attend get 18 hours of credit towards the maintenance of their Certifications in School Nutrition. Over the years, the MSNA Conference has been the main source of continuing education for employees in the unit and the parties have addressed the conference, and employee reimbursement for costs of attending, in the CBA. The grievance invokes this contract provision which is found at Article VII, Section 11, "Professional Activities", of the current agreement. [Jt Exh. 1]. This provision states:

Subd. 1. Leave of absence to attend meetings, conventions, workshops, etc. will be granted without loss of pay provided that such attendance is approved by the District.

Subd. 2. All such leave shall have prior, written approval from the Superintendent's designee.

Subd. 3. (1) Employees who attend professional activities under the provisions of Subds. 1. and 2., or who shall attend such events on their own time with prior approval or a the request from the Superintendent's designee shall be reimbursed for the mileage at the rate established by the District and also for all approved costs for board and lodging as established by District Policy/Procedure #412 Expense Reimbursement. The District will provide tuition, pay, and books for the first two classes of "Level 1", (i.e. "Fundamentals" or "Healthy Edge" and "Save Serve" or "Food Safety and Sanitation") (these classes must be taken within the first year of employment.). The district will provide the tuition and books for classes that teach new skills or are for promotion in the district. Cook managers and food service coordinators/assistants will continue to have meals, tuition, books, lodging, and travel paid for the summer food service convention.

(2) The District will reimburse up to four hundred fifty dollars (\$450.00) per year per employee to be used toward the cost of professional activities, and/or School Nutrition Association food service certification fees and classes. Employees must submit their reimbursement claims during the fiscal year when the training occurred to the District Business Office.

The grievance alleges that the District breached the above quoted provision by denying leave to food service employees to attend the MSNA Conference in August of 2009 and informing the Unit in May of 2009 that the District would not reimburse expenses if employees attended without prior approval. The District informed unit employees of its "decision" in a May 8, 2009 notice to all food service employees stating: "Attention all Food Service Staff: Due to budget constraints there will be no approval for conference expenses (registration, hotel, mileage, needed for the conferences scheduled August 2-5, 2009." This email was sent in advance before any request was submitted. The Union upon being advised of the email protested the announcement, but the District rejected the protest. None of the unit employees attended the conference except for Victoria Wendland. She requested reimbursement of the conference fee, after she paid it in May but the District refused to reimburse her. In late May she requested reimbursement for her fee, mileage, parking and hotel but the District did not respond.

The Union then submitted its grievance herein on May 21, 2009 protesting the advance denial of reimbursement to the unit for the August 2009 MSNA Conference as a violation of the CBA Article VII, Section 11. The parties agreed at the hearing that this grievance alleging a contract breach was properly before the Arbitrator.

II. STATEMENT OF ISSUES

1. Did the School District violate Article VII, Section 11 of the CBA by refusing in advance to reimburse employees in the unit for expenses at the MSNA summer conference of August 2009?
2. If the District did breach the CBA what is the appropriate remedy, especially for employees who as a result of the District's ruling did not attend the conference and therefore had no expenses?

III. CONTENTIONS OF THE PARTIES

A. Union Breach Arguments

According to the Union, there are two groups of employees in the unit who are affected by the grievance but may be subject to different contract analysis. The first group includes four cook managers and a food service coordinator. Group two includes the remaining food service employees. All of the employees in these two groups are in the unit and have been covered by a series of CBA's since 1988. Before the 2009 grievance the cook managers attended the summer conference every year. The coordinator attended most years. In the second group some have attended each year but these employees did not attend every year.

In prior years, the District encouraged employees to attend if they were able, and each year the District sent notice reminding employees. The District each spring requested notice of planned attendance prior to the conference to get early bird registration prices. The District notice was by email to the cook managers who circulated it to the other employees. This notice never required prior approval to attend, and never required completion of a form requesting permission to attend. And never did the District deny reimbursement or in any way disallow an employee from attending or from being reimbursed expenses.

As to the managers and the coordinator, the conference reimbursement was handled under language that was added to the CBA in 1999. Article VII, Section 11, Subd. 3(1) states "cook

managers and food service coordinators/assistants will continue to have meals, tuition, books, lodging, and travel paid for the summer food service convention.” Under this language the District, prior to 2009, had paid or reimbursed convention expenses of the managers and of the coordinator. The District paid the fees directly, had the hotel billed to the District, and reimbursed other specified costs paid by the employees.

The Union notes that the “other employees” are subject to other contract language that limits the amount of reimbursement to \$450.00 per year, Article VII, Section 11, Subd. 3(2) of the current contract. The limit has been in the contract since 1999, but the amount of reimbursement has increased over time.

The \$450 per year employee language was new to the 2008-2011 contract. In the prior contract, the language provided that the district would only reimburse up to \$150 per year per employee, but the employees could accumulate up to an annual amount up to \$450. Under that earlier language, food service employees who were not cook managers or food service coordinators/assistants typically chose to attend the MSNA conference every third or fourth year, when they had accumulated the maximum amount in their professional activity account, which would cover the conference expenses.

In negotiations for the current contract, the District informed the Union that accounting guidelines required the elimination of the accumulation language. The District therefore proposed eliminating the accumulation language and increasing the annual reimbursement amount for each employee from \$150 to the previous accumulation amount of \$450. The Union accepted the District’s proposal.

Acknowledging its burden of proof in this contract violation grievance, the Union contends that the plain language of the contract and a uniform past practice from at least 1999 until 2009 demonstrates that the District violated the contract by denying in advance any reimbursement of expenses for the summer conference. As to the managers and coordinators, of course, the Union relies upon the specific language of Section 11, Subd. 3 that states they “will

continue to have meals, tuition, books, lodging and travel paid for the summer food service convention.” As to the language of Subdivisions 1 and 2 regarding leave approval and Subdivision 3 language on professional activities under Subdivision 1 and 2, the Union argued “although prior approval is required for a variety of other professional activities, no prior approval language applies to cook managers who chose to attend the annual conference.” The Union expands this argument by contending that leave approval provisions relate to paid leave during the school year while there is no such issue for the summer convention when employees attend on their own unpaid time during summer break. As to the Subdivision 3 reference to reimbursement approval, the union argues that the general approval language doesn’t apply to the summer convention which has a different policy under the last sentence applying specifically to the summer convention. The first part of Subd. 3 is general applying to all other leaves for professional activities during the school year. The last sentence is specific and trumps the general language in the special case of the summer convention which does not require a leave of absence.

Finally, the Union argues that the bargaining notes prepared by the District’s own witness are collateral evidence that the head cooks and the coordinator did not need prior approval to attend the summer conference at District expense. The notes show that the District proposed deleting the language that says cook managers and food service coordinators/assistants will continue to have convention costs paid for because the sentence “goes against” subdivision 2 requiring approval for attendance. The Union argues this shows that the District understood that the “will continue to have convention costs paid” language excludes the cook managers and coordinator from the prior approval requirement.

The Union next argued that past practice would support their case even if the language of Section 11 requires District prior leave approval. The Union argument is that since the CBA was first negotiated the evidence is overwhelming and un rebutted that the District has never required head cooks or the food service coordinator/assistant to get prior approval to attend the annual

conference at District expense. To the contrary, the evidence is overwhelming and unrebutted that the District's overt, uniform, and consistent practice was to *expect* cook managers and the food service coordinator/assistant to attend the conference at District expense. Each year, the District asked the staff who was planning to attend and to inform the District by a certain date, so the District could get the early bird registration rate. The District did all the paperwork, including completing and submitting the registration forms and fees, making the hotel reservations, and arranging for the hotel costs to be directly billed to the District. The District had no request form or any other method by which an employee would request approval to attend the conference at District expense.

According to the Union, this practice and expectation was in place and uniformly, openly, and notoriously followed by the parties as long as anyone could remember. Thus, the practice meets all the tests for a binding past practice and should be enforced as a term and condition of employment.

The Union's arguments thus far relate to the managers and the coordinator. The second group of remaining workers, of course, are not subject to the specific language of the last sentence of Subdivision 3. As to this group, the union repeats its past practice argument stating:

Unlike the cook managers and the food service coordinator/assistant, the other food service employees were initially subject to the prior approval language found in subdivision 3 of Section 11. Regardless, as outline above, the evidence showed that over the years, the parties had established a binding past practice of not requiring prior approval for *any* food service employee to attend the annual food service conference. Union Brief p. 11

Essentially the argument is that the practice for the summer conference was that no approval of leave was ever required or requested and that the non managers (or "other employees") were merely subject to a reimbursement limit that could require them to pay for some of their own expense.

B. Union Remedies Argument

Because the District refused reimbursement, or notified employees that they would, only

one employee attended the summer conference. Consequently, there were no expenses to reimburse except for the employee who did attend. This calls into question the availability of a monetary remedy for those who had no expenses. The Union first asks for declaratory relief if the arbitrator agrees with the Union's claims on the merits. The Union also argues that monetary relief for each employee in an amount equal to the cost of the conference would be one possible remedy, an equitable amount to give meaning to the Arbitrator's finding for grievants. The Union argues that \$450 would be a reasonable amount and that concerns about creating a monetary windfall could be met by conditioning the award by limiting it to future expenditures for professional development.

C. Employer Arguments

The District agrees that it announced prior to any requests that there would be no reimbursement for employee attendance at the summer MSNA Conference in 2009. It argues that it did so for budgetary reasons and contends that it had the authority to do so under Article VII, Section 11 of the CBA set forth above. In particular, the District relies upon Subdivision's 1 and 2 especially Subdivision 2 which says, "all such leaves will have prior, written approval from the superintendent's designee."

As to the reasons for the District's prior rejection, even before requests were made, of summer conference reimbursement, the District presented convincing evidence of a budget deficit of three years running in the food service operations. By statute this deficit had to be replaced out of the general fund, and a balanced budget in food services has to be submitted after three years of deficit's covered by general fund transfers. The District argued that:

In order to insure that the food service fund would be self sufficient in the future, the School Board directed the administration to increase revenue by raising food prices for children and decrease expenditures by, among other things, not authorizing staff to attend any conferences, including the 2009 summer food service convention. [Employer Brief, p. 3]

The Union did not contest the budgetary evidence, or the District's contention that budget was the reason for the Employee's actions.

In addition to the argument of the District regarding its reasons for denying reimbursements here, the District's central argument on the interpretation of the CBA traces the evolution of the relevant provision in some detail to support the contention that the District retained authority to disapprove professional development requests, including those for the summer convention, both for managers and coordinators, and for the other unit employees. This argument begins with an acknowledgment that the school district has always recognized the need for training to maintain certifications and that it had always understood the value of the summer conference in satisfying this need.

Beyond this acknowledgment, however, the District argues that the first contract language had no provision referencing the summer conference but said in 1988:

SECTION 11. Professional Activities:

Subd. 1. Leave of absence to attend meetings, conventions, workshops, etc. will be granted without loss of pay provided that such attendance is in the general interest of the school district.

Subd. 2. All such leave shall have prior, written approval of the Director of Human Resources and respective principal or supervisor.

Subd. 3. Employees who attend meetings, conventions, workshops, etc. under the provisions of Subds. 1 and 2, or who shall attend such events on their own time with prior approval or at the request of the Director of Human Resources, shall be reimbursed for the mileage at the rate established by the District and also for all reasonable costs for board and lodging provided. [Emphasis supplied].

The contract language covered two situations. Subdivision 1 and 2 dealt with professional activities that would occur during the food service employee's duty day and would require a leave of absence to attend. Subdivision 3 dealt with professional activities that occurred outside of the employee's duty day but entailed expenses such as tuition, mileage, food and lodging. Both situations required prior approval from the Director of Human Resources for the food service employee to attend and be reimbursed for any expenses.

The contract language remained basically the same, except for the title of the administrator who was responsible for approving professional activities, through the 97-99

Master Agreement. The 99-01 Master Agreement added the following language to Subdivision 3:

The District will provide tuition, pay, and books for the first two classes of Level 1, i.e. Fundamentals and Save Serve. The District will provide the tuition and books for classes that give new skills or are for promotion in the district, opportunities will be provided for advancement and skill enhancement at Levels 1 and 2. Head cooks will continue to have meals, tuition, books, lodging, and travel paid for the summer AFSSA convention. The District will reimburse up to one hundred (\$100.00) dollars per year for each employee accumulative to \$300 to be used toward the cost of fees for the American School Food Service Association and/or food service certification classes. Employees must submit their reimbursement claims during the fiscal year when the training occurred. [Emphasis supplied].

By agreeing to the new language allowing each employee up to \$100 per year for professional activities that could accumulate to \$300, the parties were providing a mechanism for other food service employees to attend the summer convention once every three years. However this \$100 annual allowance for professional activities for each employee would be insufficient for head cooks to attend the summer convention every year, as they had been permitted to do so in the past. Adding the sentence which provided that head cooks would continue to have the listed expenses for the summer convention paid by the District merely clarified that the \$100 cap on annual District reimbursement for professional expenses did not apply to head cooks' expenses for attending the summer convention.

In the following contract (2001-03), the language about having expenses paid to attend the summer convention was expanded to cover the Food Service Coordinators/Assistants as well as the head cooks, who were then called Cook Managers.

In the 2003-05 Master Agreement, Subdivision 3, increased the amount an employee could accumulate to attend the summer convention from \$300 to \$450, based on the increased cost of attending the summer convention.

In the 2005-08 Master Agreement, the annual maximum amount that the District would reimburse for each employee for professional activities was increased to \$150. This increased

allowance was sufficient to permit "other food service employees" to attend the summer convention every three years.

After the 2005-08 Master Agreement was ratified, the School District was informed by its auditors that it could not legally carry over professional activities allowances from year to year. As a result, the School District proposed increasing the annual amount for professional activities specified in the contract from \$150 to \$450 to facilitate this accounting transition with the understanding that the District was going to continue its prior practice of only approving requests by food service employees other than Cook Managers and Coordinators/Assistants to attend the summer convention once every three years. Since the intent of the District's proposal was to comply with the accounting rule and not to increase benefits for unit members, the tripling of the maximum amount a food service employee could receive for professional expenses in one school year was not listed as a cost of the contract settlement.

During negotiations for the 2008-11 Master Agreement, the School District unsuccessfully proposed to delete the sentence in the contract that said the cook managers and food service coordinators/assistants will continue to have meals, tuition, books, lodging, and travel paid for the summer food service convention. There were two reasons according to the District why the School District wanted to delete the sentence. One reason was that the sentence appeared to be inconsistent with the requirement of prior approval for reimbursement for the cost of professional activities that occur on non-duty time contained in Subdivision 3 (1). Thus, deleting the sentence would merely clarify the contract. The second reason was that the increase in the maximum annual allowance for professional expenses for food service employees was enough to cover all the expenses of attending the summer convention for cook managers and coordinators/assistants so they no longer needed special language authorizing the payment of all the enumerated expenses without any dollar limit. Thus, the District argues that it's CBA interpretation is not undercut by the District's attempt to remove the special language regarding Cook Managers during recent negotiation. The District contends that it was simply attempting to

clarify that it was always true that prior approval was required for head cooks to be reimbursed for the summer convention.

The District's review of the developing contract language is offered to support the claim that prior approval of the summer conference expenses was always anticipated and that changes never were intended to waive the requirement for any particular professional training, including the cook manager attendance at the summer convention. The District points out that the prior approval requirement has always been part of the professional activities contract language. Prior approval is required for professional activities that occur both on and off duty time. The plain meaning of the contract language is that prior approval is required for any professional activity for which an employee seeks a leave of absence and/or reimbursement. The District contends that this language is consistent with industry practice that the school district has to approve employee's professional development activities and related expenses. If the parties had intended that prior approval was not required for head cooks to be eligible for reimbursement for expenses incurred attending the summer convention they should have expressly excluded head cooks from the prior approval requirement for the summer convention. Thus the District claims the grievance really seeks to amend the agreement to add such waiver language which the Arbitrator has no authority to do under Article IX of the CBA.

Shifting to the "other food service employees", the District points out that these employees have under the language of the CBA always been subject to prior approval language for leaves and for reimbursement for all professional training. Indeed, until the most recent CBA the "other employees" were subject to a reimbursement cap that permitted full reimbursement for the summer convention only about once every three years when the cap accumulated sufficiently. Thus, approval in those cases was essential and was required under the plain meaning of the provision. The District went on to argue that the most recent enhanced cap of \$450.00 had no effect on the approval language and was only proposed to address accounting problems that prohibited accumulation of funds from year to year. Thus, the \$450.00 cap was not to increase

the “fund” to permit “other employees” to reimburse for the summer convention more than once every three years. Consequently, prior approval each year was still necessary and the changed cap would not be used to imply any waiver of the approved provision for “other employees”.

In addition, the District argued that the plain meaning of the prior approved language could not be overcome by MSEA reliance on past practice. Relying on the principle that past practices could only be used to resolve an ambiguity, the District argued that no such ambiguity exists in the CBA’s language especially as to “other employees” who had no occasion to rely on the special provision for cook managers.

Also the School District contends that MSEA failed to carry its burden of proof to establish that a binding past practice of the School District reimbursing mileage, board, lodging, and fees for the annual convention for all other food service employees who attend the convention exists. Rather, according to the District, the evidence only showed that the School District paid such expenses for ‘other food service employees’ who had accumulated enough money in their professional activities accounts and had received prior approval.

Thus, the District argues that Article VII, Section 11, Subd. 3, clearly requires prior approval of the professional activity for a food service employee to be eligible for reimbursement of expenses incurred while participating in that professional activity, because the Union cannot point to any provision of the contract arguably making the ‘prior approval’ requirement ambiguous. Since the contract language is not ambiguous, the past practice cannot be allowed to supersede plain meaning, and “other employees” have no right to be reimbursed for summer convention expenses without prior approval.

In addition to its contentions on the merits of the Union past practice arguments as to “other employees”, the District objects to these claims on the ground that the arguments at the first three steps of the grievance were limited to the cook managers and the coordinator. Thus the District contends that the Union is attempting to expand claims at arbitration and the Arbitrator is urged to limit his decision to the narrower issue relating to the cook managers.

The final arguments of the District are related to the remedies available herein if the Arbitrator were to agree with the Union on the merits of the Union's contract claim. In that case, the District claims, the only remedy permissible would be reimbursement for actual expenses at the summer convention. But since no employee, either manager, coordinator or "other employee" attended except for Ms. Wendland. Only she had expenses to reimburse. Of course it has been argued that Ms. Wendland's claim should be barred because it was not presented at the first three grievance steps. But the District acknowledges that if her claim is addressed and found in her favor that she would be entitled to reimbursement of her actual expenses at the summer convention.

Indeed, if all Union claims were to succeed on the merits, the District contends that only Ms. Wendland may receive a monetary award because she was the only one with expenses. According to the District, awarding otherwise would be speculative and beyond the normal remedial or compensatory goals of remedies in arbitration. According to the District if it violated unit members' rights here the appropriate make whole remedy would be to order the District to reimburse past conference attendees for their expenses in accordance with the Master Agreement and to direct future compliance with the Arbitrator's interpretation. But the Arbitrator should not grant any other relief that is not expressly provided for in the contract language. The District argues that the Arbitrator may not award any relief to unit members who did not attend the 2009 summer convention.

V. ANALYSIS AND CONCLUSIONS

A. Article VII and Cook Managers/Coordinators

The bulk of the argument focused upon the CBA language as it relates to reimbursement for expenses at the summer convention by managers and coordinators. As to cook managers and coordinators the language of each part of the relevant section seems clear but there is a potential inconsistency. Without the last sentence of Subdivision 3, the language seems to support the District's claim that it has authority to approve (or disapprove) leave and professional training

reimbursement requests. However, the final sentence of Subd. 3 is equally clear and inconsistent on the Districts approval power. This sentence narrowly limited to managers and the coordinator, and further limited to the summer convention, seems to confer a clear right or benefit upon the employees. Typically, as argued by the Union, such a flatly inconsistent provision is viewed as a narrow exception to a broader general rule rather than as an ambiguity. Also, the parties have argued about the existence and use of a past practice in a case such as this. The practice here is, as the Union argues, quite clear, especially since 1999 when the final sentence was added to Subd. 3. Every year until 2009 the District without requiring application or notice of an approval, assumed that any manager or the coordinator who wished would attend the summer convention and be reimbursed. Indeed fees were prepaid after the District inquired as to who would attend. At this level of analysis, the practice seems consistent with the Union's interpretation of the language. Even if the language was ambiguous, the practice confirms the Union's interpretation. Without considering whether practice could trump language, the plain language and practice together support the Union's claim regarding the managers and the coordinator.

B. The "Other Employees"

I am reluctant to avoid the issue regarding the "other employees" on the procedural basis that the Union focused upon the managers in steps 1, 2, and 3 of the grievance procedure. Especially because Ms. Wendland sought reimbursement this part of the case was foreshadowed. I would not hesitate to rule on this question if the employer had seemed in any way prejudiced on this part of the case, but the District was not prejudiced. Indeed, they put on a strong case on what is a related rather than a separate or different issue.

On the merits of the employer's approval power, this part of the case is less clear than the managers' case because the "other employees" cannot claim direct benefit of the clear language of the last sentence of Subdivision 3. However, there remains a strong argument that subject to the limits of Subd. 3 (2), the "other employees" do have a right to approval of reimbursement for

training at the summer convention for up to \$450.00 in one out of three years. This is so because leave in the summer is not needed and because no approval of the quality of training at the summer session seems necessary. While the last sentence of Subd. 3(1) does not apply as a right for the "other employees" it does give general approval to the summer session. Likewise the practice of the District over the years of steering employees toward the summer session preapproves the training sessions. Disapproval here was based upon budget issues not objections to the programs. Finally, to the extent that the absence of the specific exception for managers makes the case as to "other employees" less clear, it merely makes this situation ambiguous and an ambiguity may be clarified by past practice. As to the "other employees" the evidence showed they were treated in the same way as managers with regard to the summer convention: that is, they were not forced to apply for approval. Subject to the cap of Subd. 3(2), they were never refused permission for reimbursement until 2009. I conclude then that the District had effectively agreed, and acted upon that agreement, to reimburse "other employees" for expenses at the summer conference subject to the "cap" existing from contract to contract.

B Remedies

Having determined that the Union claim is correct on the merits, that the District violated the CBA by its disapproval of reimbursement for any unit employee for attendance at the 2009 summer convention of the MSNA it remains to decide remedies issues. Both parties agree that the remedies here should begin with an order directing the School District to follow the Arbitrator's interpretation of the contract in the future. Additionally, both parties agree that any employees injured by the District's action (and not otherwise debarred from a remedy) should be made whole. The District argues however that only one unit employee was injured, Ms. Wendland, because only she attended the 2009 conference and had expenses.

The Union, on the other hand, argues that an equitable remedy, some form of affirmative relief, be fashioned to make the employees rights meaningful. Among several suggestions is the grant of a monetary award equal to the value of the missed training.

While the theoretical remedial question here could be quite complicated, it seems to me that the principles involved are straight forward. It is the general rule in labor relations that employees must act according to their own judgment even at risk they later may be judged wrong (Ms. Wendland) or refrain from acting at risk of later being correct, (the others). It is the norm that only those harmed monetarily will be made whole.

In this case, Victoria Wendland went to the MSNA conference at her own expense and should be reimbursed. The other unit employee may have been chilled by the District's announcement, and did not attend the conference. Consequently, they had no out of pocket monetary expenses. Any attempt at a make whole remedy as to the individuals who had no expenses would be speculative as to amount and would fail to provide what the contract calls for, training. In this regard any such remedy would look more like a fine than a compensatory award.

While there may be some force to the Union's contention that the employer has been rewarded at the employees expense without some monetary reward, I would caution that the normal compensatory award principle should only be ignored if a case is particularly compelling. There are two factors here that suggest equity does not support the construction of an unusual remedy here. First, although the evidence of budget problems is not controlling on the contract issue here, the serious reasons for the employer's action show that its actions were not casually undertaken in callous disregard of the contract. Second, the loss of training for certification, the true employee loss here, was to some extent compensated when the District set up its own training session free of charge to employees. Under these circumstances, I believe that giving a monetary whole remedy to employees who had no reimbursable expenses is not called for.

V. AWARD

Based upon the above opinion and analysis the grievance herein is upheld. I find that the District violated the CBA when it announced in advance that it would not reimburse anyone for expenses at the 2009 MSNA summer conference. The District is therefore ordered in the future to reimburse unit employees for properly reimbursable expenses each summer at this convention

to reimburse unit employees for properly reimbursable expenses each summer at this convention as required by Article VII, Section 11 of the Master Agreement as interpreted herein.

A make whole remedy shall be paid to Victoria Wendland to fully reimburse her under District policy for her expenses for fees, lodging, parking, mileage, and other authentic expenses at the 2009 MSNA summer conference. These expenses can be calculated from the receipts included in Union Exhibit 7. No other monetary requests are granted.

Dated: September 27, 2010

William E. Martin
William E. Martin
Arbitrator

APPENDIX

- Joint Exhibit 1: Master Agreement between Independent School District #482, Little Falls, Minnesota and the Minnesota School Employees Association, Little Falls Service Employees; July 1, 2008 through June 30, 2011.
- Joint Exhibit 2: ISD #482 Administrative Procedure #412, Revised October 17, 2005.
- Joint Exhibit 3: CBA, Article VII, Section II, Professional Activities for successive Agreements from 1988 through 2011.
- Joint Exhibit 4: MSNA Annual Conference Registration form for August 2-5, 2009 conference
- Joint Exhibit 5: List of "Food Service Employees affected by 2009 Decision Regarding Food Service Convention
- Joint Exhibit 6: Fourteen Page Grievance Packet for grievance of May 21, 2009

- Union Exhibit 1: MSNA Certificate Requirements and related forms
- Union Exhibit 2: MSNA Thymes of October 2009
- Union Exhibit 3: Email from Marie Heuhring to Janet Peterson
- Union Exhibit 4: Email from Nancy Henderson to Janet Peterson
- Union Exhibit 5: Email from Tina Wheeler denying reimbursement for conference expenses
- Union Exhibit 6: Victoria L. Wendland request for reimbursement
- Union Exhibit 7: Packet of Expenses Receipts for Victoria L. Wendland
- Union Exhibit 8: March 16, 2009 letter from Nancy Henderson to Don Gilbertson
- Union Exhibit 9: Ten Page Packet of Bargaining Notes Dtd, 10/27/08

School District Exhibit #1:

Eleven Page Packet of USARF Budget Data

School District Exhibit #2:

One Page Bargaining Proposal Costing Document