

**IN THE MATTER OF ARBITRATION BETWEEN
Education Minnesota, St. Louis County,**

**OPINION AND AWARD
BMS Case No. 12-PA-0040**

And

**Independent School District #2142,
St. Louis County Schools**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Education Minnesota, St. Louis County,
Jess Anna Glover, Esq.
St. Paul, MN

On behalf Independent School District #2142,
St. Louis County Schools
John M. Colosimo, Esq.
Virginia, MN

JURISDICTION

In accordance with the Collective Bargaining Agreement between Independent School District #2142, and Education Minnesota, St. Louis County; and, under the jurisdiction of the state of Minnesota Bureau of Mediation Services, St. Paul, Minnesota, the above grievance arbitration was submitted to Joseph L. Daly, arbitrator, on December 6, 2011, at the School District, Virginia Minnesota. Post hearing briefs were filed by the parties on January 9, 2012 [St. Louis County Schools] and January 10, 2012 [Education of Minnesota]. The award was issued on February 7, 2012 .

ISSUES AT IMPASSE

Education of Minnesota states the issues as:

1. Whether the School District violated the Collective Bargaining Agreement between the parties when it unilaterally reassigned Ms. Pierce from her choices selected on Transfer. Day.

2. If so, what is the remedy?

The school district states issue as:

1. Whether the school district violated the Collective Bargaining Agreement by assigning Ms. Pierce to the Earth Science class (7th and 8th grades) rather than the current enrollment class (Force Field Skills) collaboratively offered with Vermillion Community College.

The potentially relevant contractual provisions and policies are:

ARTICLE V SCHOOL DISTRICT RIGHTS

Section 1. Inherent Managerial Rights: The exclusive bargaining representative 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 functions and programs of the employer, its over-all budget, utilization of technology, and the organizational structure, selection, direction, assignment and number of personnel.

Section 3. Management Responsibilities: The exclusive representative recognizes the right and obligation of the School District to efficiently manage and conduct the operation of the School District within its legal limitations and with its primary obligation to provide educational opportunity for the students of the School District.

ARTICLE XIII TRANSFER PROCEDURE

Section 1 Sequence of Events:

- A. Staffing and program needs will be developed for the next school year by the administration.
- B. Preliminary Schedules, impact lists, and calendars will be available to the Union by March 1st.
- C. The administration and union shall meet and review schedules and impact lists at least 10 days prior to Transfer Day. Voluntary transfers prior to Transfer Day will take place according to Article XIII, sec. 4, subd. 2. Final schedules and the

impact list will be available to all staff. Transfer Day will be held during the first full week in April.

- D. Realignment of teachers is accomplished through a “Transfer Day(s)” in accordance with Section 3 of this Article.
- E. Teachers not finding a position equal in time to their current position will be proposed to be placed on unrequested leave of absence (ULA).
- F. The ULA process is completed by June 15th.
- G. Deadlines for voluntary transfer requests are March 1st and two weeks after Transfer Day.
- H. Deadline for teacher exchange requests is June 15th.
- I. Voluntary transfers accomplished.
- J. Voluntary teacher exchanges accomplished or denied by the Superintendent.
- K. Teachers recalled from ULA as openings occur.

Section 2. Transfers to a different class, building or position may occur in any of the following four (4) ways:

- A. Involuntary Transfer
- B. Voluntary Transfer
- C. Teacher Exchange
- D. Unrequested Transfer

Section 3. Involuntary Transfers:

- Subd. 1. Statement of Purpose. The parties agree that the involuntary Transfer Policy and process listed herein shall control the method and order which determines who is proposed for placement on unrequested leave of absence (ULA).
- Subd. 2. Transfers from a specific building necessitated by staff reductions, by program changes, by school closings, by school consolidation, by being displaced (bumped) by a more senior teacher, by returning from a long term leave, by being on ULA status, or transfers necessitated by

emergency situations shall be made in accordance with Article XXII, Section 5 and such transfer shall become involuntary with the least senior staff member. The District shall notify the affected teacher(s) of their changed status for the next year and their rights in the transfer process. Teachers on leave of absence or ULA will have the notice sent by registered and 1st class mail. Teachers on leave of absence or ULA will be responsible for obtaining all necessary transfer information from the School District while on leave or ULA.

- Subd. 3. Involuntary Transfers shall be accomplished by order of seniority and licensure at a scheduled “Transfer Day.” The order shall begin with the most senior teacher qualifying for involuntary transfer, who may assume the position(s) of any less senior teacher(s) or any open position if a proper Standard Entrance or Continuing License has been presented to the district on or before the “Transfer Day.”
- Subd. 4. Any less senior teacher that is displaced by a more senior teacher shall have his/her name and license(s) added to the involuntary transfer list in the proper place according to seniority. Said less senior teacher shall, in turn, have the right to assume the position(s) of any other less senior teacher(s) or any open position if they present a proper Standard Entrance or Continuing License to the District on or before the “Transfer Day.” Said process will continue until no positions are available to displaced teachers within their licensure.
- Subd. 5. Realignment caused by involuntary transfers shall be accomplished under the following guidelines at a scheduled “Transfer Day” established by the District:
 - 1. All teachers qualifying for involuntary transfer and all teachers that could potentially be affected by involuntary transfer will be invited to a “Transfer Day(s).” Teachers on Leave of Absence will be considered

potentially affected and will be included in the transfer process. If the changes in assignment are within a teacher's site or sites and the FTE does not change, then the teacher is not eligible for the impact list.

2. Building assignments will use the current year's assignments to help determine whether a teacher qualifies for an involuntary transfer.
3. Seniority and licensure are the controlling factors for all transfers. Seniority lists adopted in January of each year shall be used along with all valid teaching licenses or valid verifications from the Department of Education presented to the District up to and including the "Transfer Day."
4. Transfers will begin with the most senior teacher on the seniority list who has contractual rights to transfer. The most senior teacher will select from a position(s) that are open or the position(s) of any less senior teacher(s) for which he/she holds a license. The process will continue by going to the next most senior teacher on the seniority list who has contractual rights to transfer allowing him/her to make his/her selection. The process will end when there are no more positions available. Those teachers who have not selected a position for which they are licensed or have no position to choose will be the teachers proposed to be placed on unrequested leave of absence (ULA),
5. In the area of elementary licensure, class assignments for specific grade levels are managerial rights and are the responsibility of the building principal. No transfer will be allowed if it is shown to negatively impact students.
6. In the area of secondary licensure, scheduling of specific course offerings, programs and individual classes are managerial rights and are the responsibility of the District. Course offerings are determined by student needs and desires and are placed in specific time periods to accommodate maximum participation by students. Before a change in a schedule is allowed, it must be clearly demonstrated that the change will not negatively impact students (restrict a student from

participating in a class he/she signed up for). Any changes in schedules will be the responsibility of the Superintendent.

7. Teachers who wish to challenge a decision must do so through a process other than at the "Transfer Day."
8. No teacher will have the right to increase his/her FTE beyond his/her level of hire entitlement.
9. Once all selections, discussion and transfers have been made on Transfer Day and it has been determined by the Superintendent that the Involuntary Transfer Process has been completed, no other involuntary transfers will be allowed unless mutually agreed upon between the Superintendent, teacher and the Union.

Subd. 6. Transfer Day Procedure:

1. The Superintendent will call the most senior person who qualifies for transfer.
2. The teacher called must pick the position(s) of the less senior teacher(s) he/she wishes to displace.
3. If the teacher wishes to alter a schedule in any way, the principal and the Superintendent must approve the change and the transfer. The principal and the teacher will initial the master schedule once agreement is reached.
4. Any less senior teacher displaced by a more senior teacher will be placed on the list of teachers who qualify for transfer and will have an opportunity to transfer. Seniority will determine the order of transfer.
5. Transfers and displacements will be announced to all the staff present as they occur.
6. Teachers who do not find a position or find only a partial position will be informed that they will be proposed to be placed on ULA.

Section 4. Voluntary Transfers/Voluntary Teacher Exchanges:

Subd. 1. Notification of Vacancies: Whenever a vacancy arises, the Superintendent shall within ten (10) days, give written notification to the President of the exclusive bargaining representative. During the instructional school year, the Superintendent will also mail all openings to each school site for posting on the official bulletin board. Openings that occur after the first day of school shall be considered temporary and open at the end of the school year. Said temporary openings may be filled from outside the district on a temporary basis providing properly licensed individuals on unrequested leave of absence have been recalled to the opening and have refused said opening.

Subd. 2. Request for Voluntary Transfer. Voluntary transfers will be considered at two (2) different times during the school year. Transfer requests to be considered prior to Transfer Day must be submitted prior to March 1st of each year. These transfers will be acted upon prior to Transfer Day and will be valid for the second round of transfers.

The second voluntary transfer request will be acted upon after the ULA process has been completed. In order to be considered for voluntary transfer, after Transfer Day, a teacher must submit a request for transfer whether prior knowledge of a vacancy exists or not. Such requests shall be submitted no later than two (2) weeks after Transfer Day.

Requests by a teacher for a transfer to a different position shall be in writing on forms furnished by the District and sent to the Superintendent and to the President of the exclusive bargaining unit. Such requests must be renewed once each year to assure active consideration by the School District. A teacher shall have no right to any transfer without proper licensure and shall specify the school and position(s) desired.

Subd. 3. Voluntary Transfer Time Lines and Sequences: The following sequence will be followed:

1. Requests for transfers prior to Transfer Day are submitted and acted upon.
2. ULA process completed
3. Voluntary transfers completed
4. Teacher exchanges completed
5. ULA recalls to open positions

Subd. 4. The District agrees that a staff member applying for transfer to a teaching opening shall be assigned to that position of his/her licensure. If more than one teacher applies, assuming proper licensure as called for I the teaching opening, the filling of the vacancy shall be done in the following order:

1. Tenured teachers by seniority having made application as outlined above.
2. Individual teachers recalled from ULA.
3. Non-tenured teachers by seniority having made application as outlined above.
4. Applicants new to the district.

For an opening that occurs after the 1st day of school: If the senior teacher who has requested voluntary transfer accepts the open position, the teacher may:

1. Immediately fill the opening if acceptable to administration.
2. Fill the opening at a natural school break if acceptable to administration, or
3. Request to fill the opening at the beginning of the next school year if position is still in existence.

Subd. 5. The Superintendent may deny the selection of the most senior applicant in not more three (3) of the open positions between July 1 of one year and June 30 of the following year. When the administration exercises an

option under this provision, the teacher and the president of the exclusive bargaining representative shall be so notified.

Subd. 6. Voluntary Exchanges:

1. Criteria for teacher exchanges: When two or more teachers voluntarily agree to switch assignments between buildings, with the following assumptions:
 - a. Licensure must accommodate the assignments involved.
 - b. The switch does not involve a promotion for either party.
 - c. The positions involved shall not be considered an opening.
2. All letters of application for a teacher exchange must be on file no later than June 15th before the affected school year. The District shall notify the president of the exclusive bargaining representative of all proposed teacher exchanges.
3. Procedure: When two or more teachers voluntarily agree to an exchange, the parties shall jointly notify the district in writing of their intentions by June 15th before the affected school year.
4. The Superintendent must approve all teacher exchanges.

Section 5. Unrequested Transfers:

Unrequested transfers due to administrative requests may occur after the completion of the following procedure:

1. Teacher recommended for unrequested transfer must have been appraised in writing of the reasons for the proposed transfer.
2. If the reasons for transfer entail alleged educational deficiencies, repeated in nature, an opportunity for correction of such alleged deficiencies shall have been made available. Due process must be accorded under current administrative procedure. A minimum of 90 days must be given before a re-evaluation of alleged deficiencies is made by the administration.
3. All communication relevant to the proposed transfer shall be in writing.

4. An unrequested transfer shall be subject to the grievance procedure.
5. The District may apply an unrequested transfer to no more than one teacher per year.

Section 6. Job Description: The School District retains the right to establish the job description for each position in this District consistent with statutes and this Agreement.

ARTICLE XXII UNREQUESTED LEAVES OF ABSENCE (LAY-OFFS AND RECALL)

Section 1. Purpose: The purpose of this policy is to implement the provisions of M.S. 122A.40, subd. 10, which policy, when adopted, shall constitute a plan for unrequested leave because of discontinuance of position, lack of pupils, financial limitations or merger of classes caused by consolidation of districts. It is the intent of the parties involved that the transfer language shall prevail in determining the U.L.A. process.

FINDINGS OF FACT

1. Ms. Ellen Pierce, a nineteen (19) year teacher in the St. Louis County School District, licensed in Life Science and Earth Science, filed a grievance on May 11, 2011. The grievance alleged a violation of Article XIII, Section 3, Involuntary Transfer. Ms. Pierce stated in the grievance “[O]n Transfer night I selected the courses according [to] license and seniority I had a right to choose. It was signed off by both Admin and Union. After the fact I was reassigned by Mr. Friedlieb.” [Joint Exhibit Number 3]. The relief sought was “to keep classes originally signed off on at transfer night.” [Id].

2. The parties stipulated that:

- a. During the last go around of the Collective Bargaining Agreement the district proposed changes to Article XIII;
- b. During the tenure of Superintendent Dr. Charles Rick teachers who were “impacted” and went to the table and made choices were not changed assignments unless the teacher agreed;

c. Superintendent Dr. Rick cannot identify any individual teacher who was on the impact list.

3. In the spring of 2011, the school district was going through a reorganization that included school closings, school consolidation, new buildings being constructed, and staff displacements. Then Superintendent, Dr. Charles Rick, engaged in several conversations with the union regarding how to handle the staffing during this process.

4. The Union contends that Dr. Rick ultimately decided it would be best to notify all teachers, without regard to seniority and licensing, that each teacher would have an opportunity to submit a voluntary transfer request. If an individual teacher did not submit a voluntary transfer request or the request was denied by the District, the teacher's name would end up on the "impact list". [Post Hearing Brief of Education Minnesota at 2].

The school district and Dr. Rick contend that Superintendent Rick let the union know that "any continuing contract teacher who desired to do so could put in for a 'transfer' or consider himself/herself to be impacted and come to the table, but for the explicit purpose only of changing buildings." [Id., emphasis added]. Dr. Rick testified he simply wanted to give each teacher an opportunity to come to the table just to select a building because the buildings were so far away. [Testimony of Dr. Rick at Arbitration Hearing]. "Superintendent Rick merely let it be known to the exclusive representative [of the union] that he would allow this to occur so that teachers could change buildings if they so desired based on seniority." [Post Hearing Brief of School District at 2]. Nothing was in writing.

5. The "Transfer Day" language in Article XIII, Section. 3 is unique in the state of Minnesota, because the school district is unique. It is geographically the largest district in the state of Minnesota including more than 4,000 square miles. It has five buildings spread out in a non-contiguous area. It is approximately 100 miles from northern-most school in the district to the southern-most school in the district. Most school districts in the state of Minnesota, including all of those that have adopted the statutory scheme for layoffs, have a virtually unfettered right of assignment within the teacher's area of licensure and based on seniority. See Minn. Stat. §

122A.40, subd. 10. The unique language of the parties in this specific Collective Bargaining Agreement is a result of the uniqueness of the district.

6. Ms. Pierce and the Union contend that she was one of the teachers who did not submit a voluntary transfer request prior to Transfer Day, also known as “Bump Night”. Ms. Pierce and the Union contend that because she did not submit a voluntary transfer request she was placed on the impact list. [Post Hearing Brief of Education of Minnesota at 3]. The school district contends that since she hadn’t yet made up her mind which building she wanted to request a transfer to, “[s]o she elected to consider herself to be ‘impacted’ and ‘come to the table’ because she was considering a change in building from the Babbitt-Embarrass site (now Northeast Range School) to Cook.” [Post Hearing Brief of School District at 2].

7. On the Transfer Day/Bump Night, Ms. Pierce was one of the first teachers to “come to the table.” She selected select classes, rather than a change of building. She selected “Force Field Skills and Animal Tracking” for semester one and “Introduction to Surveying” for semester two. At that time, Babbitt principle Mr. Friedlieb told Ms. Pierce that she could not take those classes and he had a right to assign the classes. Over his objection, Ms. Pierce was allowed to select those classes. The school district administration, including Dr. Rick, signed off the selections made at Bump Night and the process continued for the other teachers on the impact list. This, the school district contends, was a mistake. The school district contends that Dr. Rick had gratuitously invited all the teachers, if they wished, to change buildings because there had been so many major changes in the district. But since Ms Pierce was not actually “impacted” by a change in FTE and chose not to change buildings, she did not have a right to bump anyone under Article XIII.

8. After Bump Night Mr. Friedlieb, realizing the mistake, reassigned the two classes chosen by Ms. Pierce to Ryan Lindsay. He assigned Ms. Pierce two 7/8th grade STEM classes [Science/Tech/Engineering/Math]. The school district contends that Principle Friedlieb had a right to do so. The school district argues that Ms. Pierce went beyond that which Superintendent Rick had intended to allow her, i.e. to change buildings, not the right to decide which classes she would teach. Since she did not face any change in her FTE she did not have any Article XIII

rights to bump. On “Bump Night” Article XIII was simply not in effect for Ms Pierce says the school district.

Principle Friedlieb testified at the arbitration hearing that the “Force Field Skills” course is a concurrent enrollment course with Vermillion Community College, with funding from the Applied Learning Institute. A concurrent enrollment course is one in which the student receives both credit at the high school level as well as college credit. Principle Friedlieb and retired Superintendent Rick both testified that there was an agreement with Vermillion Community College. The agreement requires the approval of the college of the instructor for the course. The college wanted Mr. Ryan Lindsay to teach the course. Both Principle Friedlieb and Superintendent Rick testified that if the college doesn’t approve the instructor, the college can deny credit to the course as a cooperative course and funding can be denied. A letter from the Provost at the Vermillion Community College confirmed the discussions from the previous spring and stated why the college preferred to have Mr. Lindsay teach the collaborative course. [School District Exhibit Number 1].

9. It is uncontested that Ms. Pierce is and was on “Bump Night” a 1.0 F.T.E. teacher who had not been impacted by staff reduction or U.L.As [Unrequested Leave of Absence]. She was guaranteed a 1.0 F.T.E. position for the 2011-2012 school year at the same building site. In all the years that she has taught for the district, she has remained at the same building in Babbitt with a 1.0 F.T.E.

10. The basic contentions of Education Minnesota and Ms. Pierce are:

a. The transfer procedure language is clear and enforceable. The school district managerial right has been negotiated into the clear transfer of language. While it is true that the school district “is not required to meet and negotiate in matters of inherent managerial policy” [Joint Exhibit Number 1, Article V, sec. 1], the school district has bargained away any sort of unlimited right to the assignment of personnel through the transfer procedure language. [Joint Exhibit Number 1, Article XIII]. While a district typically does not need to negotiate over this right, this district has negotiated over this right for nearly 25 years.

b. Involuntary transfers after Transfer Day are prohibited unless mutually agreed upon. Article XIII, Section. 3, subd. 5-9.

c. The transfer procedure rights of the Collective Bargaining Agreement are applicable, without regard to how the teacher is placed on the impact list. Whether Ms. Pierce was placed on the list by a “magnanimous decision” of then Superintendent Rick to place everyone on the impact list is irrelevant. The fact is Ms. Pierce was placed on the impact list. Why the teacher was placed on the list is irrelevant and is not supported by the facts of this case. Simply, she was placed on the impact list. Further, Vermillion Community College has no authority to make personnel decisions within the school district. In fact, Ms. Pierce had been approved by the College to teach the course. She taught the class with college approval, and she remained assigned to another college level course even after the reassignment by Mr. Friedlieb.

d. The Teachers were never notified of any modification to their rights under the Collective Bargaining Agreement.

e. The teachers were properly placed on the impact list. Ms. Pierce was placed on the impact list because of the school district reorganization. Involuntary transfers include transfers necessitated by several things, including “program changes,” “school closings,” and “school consolidation.” Article XIII, Section 3, subd. 1. The administration determined that it was the cleanest way to notify all teachers that they would be on the impact list last spring and give them the opportunity to request voluntary transfers; rather than placing them on the transfer list over a couple years as the different phases of the district reorganization took place. The fact that Ms. Pierce selected classes in Babbitt which kept her at the same building did not eliminate her right to placement on the impact list in April 2011.

f. Ms. Pierce’s rights are not extinguished because she selected classes at the same building.

g. If the language of the Collective Bargaining Agreement is ambiguous, the association's grievance still can be sustained. Past practice supports the association's position. There was testimony provided by multiple teachers at the arbitration hearing regarding the practice of selection on classes on Bump Night and the district's inability to reassign after the Bump Night selection, except with the mutual consent of the teacher. The district did not present any evidence that a practice exists allowing the district to unilaterally reassign teachers to classes after the selections have been made at Bump Night. Further, the bargaining issue supports the association position that Transfer Day language came into the Collective Bargaining Agreement between the parties in the 1987-1989 Collective Bargaining Agreement. That language has changed very little since it initially appeared in the Collective Bargaining Agreement. The district has sought to have this teacher contractual right eliminated from the contract in the most recent round of bargaining, but was unsuccessful.

11. Based on the above arguments the association requests that the grievance be sustained with damages to Ms. Pierce. The damages consist of the increased compensation Ms. Pierce would have been eligible for as a result of having two (2) year-long assignments to concurrent enrollment classes. [Article XX Section 4]. The district's unilateral reassignment denied her that additional compensation.

12. The basic contentions of the St. Louis County Schools are:

a. Ms. Pierce exceeded the gratuitous allowance of the Superintendent to allow her to participate in Bump Night in order to change buildings. Since she did not change buildings she had no contractual right to participate in the involuntary transfer process.

b. Ms. Pierce did not transfer buildings from Babbitt to Cook. Because she did not do so she was not eligible to participate in the Bump Night because she was not impacted. Article XIII, Section 3, subd. 5 paragraph 1 says in relevant part "if the changes of assignment are within a teacher's site or sites and the FTE does not change, then the teacher is not eligible for the impact list." Because Ms. Pierce's assignment was at the

same building site she had been at since 1993 and her FTE was not going to change then she was ineligible to participate in the Transfer night for any other reason than to change buildings. Since she did not have the right to be at the table for Transfer Night then Article V Section. 1, 2 and 3 gives the administration the right to assign and direct personnel and to make the determination of what would be in the best interests from the stand point of education opportunity. Further, Article XIII, Section 5, subd, 6 reinforces the right of the administration to schedule and determine course offerings based on student needs and to encourage the greatest participation. The school district has the inherent right of assignment of Ms. Pierce in this case.

Based on the above reasoning the arbitrator need not go further than this in answering the narrow issue before him. Since Ms. Pierce was allowed only to participate in transfer night for purpose of changing buildings and, she did not, she was therefore ineligible to participate for any other reason. The school district did not violate the Collective Bargaining Agreement by assigning her as it did instead of assigning her the cooperative course with Vermillion Community College.

DECISION AND RATIONALE

The “Transfer Day” language of Article XIII, Section 3, is unique in the state of Minnesota because the school district is unique. Geographically the district is the largest school district in the state of Minnesota. It is more than 4,000 square miles; it has five (5) buildings spread out in the area; and it is approximately 100 miles long from north to south. Typically, school districts have an unfettered right of assignment within the teacher’s area of licensure and seniority. The unique language in Article XIII is a result of the size of this school district.

When a teacher faces an unrequested leave of absence (U.L.A.) i.e. loss of F.T.E., the Collective Bargaining Agreement allows such an impacted teacher the right to bump into another position that the teacher is qualified to teach based on seniority in order to maintain F.T.E. That right allows the more senior, qualified teacher who is facing a loss of some F.T.E. to “come to the table” on Transfer Day/Bump Night to look for a position within any building that the teacher is qualified to teach and bump a less senior teacher.

In April 2011 the school district was in the process of going through school reorganization with a reduced number of schools from seven (7) to four and one-half (4½). Many teachers faced potential changes including loss of F.T.E. The impacted teachers would face a U.L.A.

Under Article XIII teachers who face a U.L.A. and are therefore “impacted” have the right on “Transfer Day/Bump Night”, based on seniority and licensure, to bump less senior teachers in the school district in order to try and maintain F.T.E. or as close to F.T.E. as possible. Once a qualified, senior teacher chooses, if the choice then impacts a less senior teacher, that less senior teacher has a right to “come to the table” and, based on seniority and licensure, bump another less senior teacher.

Because of the major reorganization of the school district, then Superintendent Rick let the union know that this Transfer Day/Bump Night would be different. He told the Association President David Fazio a few days before Transfer Day/Bump Night that any continuing contract teacher who desired to do so could put in for a “transfer” or consider himself/herself “to be impacted” and therefore come to the table; but for the explicit purpose only of changing buildings. [Testimony of Dr. Rick; See also, Post Hearing Brief of School District at 2]. Both Superintendent Rick and the Association President David Fazio testified at the arbitration hearing that there was no formal written agreement to modify the provisions of the Collective Bargaining Agreement; nor was there any action taken by the Board of Education to do so. Superintendent Rick testified that he was simply letting the association President know that he would gratuitously allow this to occur so the teachers could change buildings, if they so desired, based on seniority. Dr. Rick testified that there was no intention on his part to allow bumping if the teacher was not being “impacted” under Article XIII. Dr. Rick testified that if the teacher did not chose to change buildings on the Transfer Day/Bump Night and the teacher’s F.T.E. was not being impacted then that teacher had no right to bump anyone.

Education Minnesota and Ms. Pierce contend that if an individual teacher did not submit a voluntary transfer request or the request was denied by the District, then the teacher’s name would end up on the “impact list”. The association leadership communicated this, along with the deadlines for making the request, to its membership. Many teachers submitted voluntary transfer requests; some did not. The association contends that in the spring of 2011 every teacher was being “impacted” because of school closings, school consolidation, new buildings being

constructed, and staff displacements. As a consequence, says the association, every teacher was invited to “come to the table” during Transfer Day/Bump Night. Consequently, when Ellen Pierce “came to the table” she selected “Force Field Skills and Manual Tracking” for semester one, and “Introduction to Survey” for semester two. Babbitt Principle Mr. Friedlieb told Ms. Pierce she could not assign those classes to herself and that he had a right to assign classes. But mistakenly the school district administration, including Dr. Rick, signed off on the selections on Bump Night.

Education Minnesota and Ms. Pierce contend that Mr. Friedlieb reassigned the two classes to Ryan Lindsay and assigned Ms. Pierce 7th/8th grade STEM classes in violation of Article XIII Section 3, Subd. 5.9. which states “Once all selections, discussions, and transfers have been made on Transfer Day and it has been determined by the Superintendent that the Involuntary Transfer Process (I. T. P) has been completed, no other involuntary transfers will be allowed unless mutually agreed upon between the Superintendent, Teacher and the Union.” The association argues the issue is whether the school district violated the Collective Bargaining Agreement between the parties when it unilaterally reassigned Ms. Pierce from her choices selected on Transfer Day. [Post Hearing Brief of Association at 4].

In contrast, the school district sees the issue narrowly. The School District frames the issue as whether the school district violated the Collective Bargaining Agreement by assigning Ms. Pierce to Earth Science class (7th and 8th grades) rather than the current enrollment class (Forest Field Skills course) collaboratively offered with Vermillion Community College. [Post Hearing Brief of School District at 1]. The school district contends that once Ms. Pierce decided to continue teaching at the Babbitt –Embarrass site (now North East Range School), she had no right to “come to the table” under Article XIII. She continued to have the same FTE and as a consequence was not “impacted”. She was not facing any loss of FTE. The fact that the school administration mistakenly signed off on the choices made at Bump Night does not alter the Collective Bargaining Agreement. The mistake was corrected.

The association contends that the plain language in the Collective Bargaining Agreement shows that Ms. Pierce did, in fact, “come to the table” on Transfer Day/Bump Night and properly bumped into the classes she chose. Once she did so, Article XIII Section 3 subd. 9 does not allow Principle Mr. Friedlieb or Superintendent Rick to make other involuntary transfers unless

Ms. Pierce agrees. Since she did not agree, the association contends, she had a right to teach the classes she transferred into.

Narrowing the issue to its most basic form, the school district contends Ms. Pierce “was allowed only to participate in Transfer Night for the purpose of changing buildings.” [Post Hearing Brief of School District at 4, emphasis added]; while Education of Minnesota and Ms. Pierce argue that after Bump Night her unilateral reassignment violated the Collective Bargaining Agreement.

Education of Minnesota is arguing that the language in Article XIII Section 3, Involuntary Transfers, gives teachers on “Bump Night” the right to not only try to maintain FTE, but also to select the classes they want to teach and the course assignments they prefer. But Article XIII, Section 3, Involuntary Transfers, is designed to establish a process for realignment for teachers facing a U.L.A. The purpose of Article XIII, Section 1 E is that a teacher who is facing a loss of F.T.E. might be able to find “a position equal in time to their current position.” It is about an attempt to allow a teacher who faces loss of F.T.E. to bump into a position which she/he is licensed to teach based on seniority to maintain F.T.E. Its purpose is not to allow a teacher to assign himself/herself to a specific course he/she prefers to teach. The administration assigns teachers to classes and courses based on licensure and student need. See Article V, School District Rights.

Basically this is a narrow issue. Dr. Rick gratuitously permitted Ms. Pierce and any other teacher who wished the opportunity to participate in “Transfer Day/Bump Night” to “come to the table” only for the purpose of changing buildings. Once Ms Pierce did not change her building, she was no longer “impacted” since she continued to have a 1.0 Full Time Equivalency and was not facing a U.L.A. Consequently, she had no further right “to come to the table.” The fact that the Administration incorrectly signed off does not change the language of the Collective Bargaining Agreement. Under this Collective Bargaining Agreement the administration has the right to set course offerings and make course assignments. Article XIII is about the attempt to maintain F.T.E. Under this Collective Bargaining Agreement the administration has the right of course offerings and class assignments within areas of licensure, including those teachers affected by involuntary transfers.

Based on the above analysis, the grievance of Education of Minnesota and Ms. Ellen Pierce is denied.

February 7, 2012

Joseph L. Daly, Arbitrator