

IN THE MATTER OF ARBITRATION BETWEEN

Anoka-Hennepin Education Minnesota,
Union or AHEM,

and

Anoka-Hennepin Independent School District No. 11,
Employer.

OPINION AND AWARD

Jackson Middle School
Staff Meeting Grievance

BMS Case No. 11-PA-0836

ARBITRATOR:

Gerald E. Wallin, Esq.

DATE OF AWARD:

February 12, 2012

HEARING SITE:

Anoka, Minnesota

HEARING DATES:

November 15, 2011

RECORD CLOSED:

December 21, 2011

REPRESENTING THE UNION:

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REPRESENTING THE EMPLOYER:

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JURISDICTION

The hearing in this matter was held on November 15, 2011. The undersigned was selected to serve as arbitrator pursuant to the parties' collective bargaining agreement ("Agreement") and the procedures of the Minnesota Bureau of Mediation Services. The parties submitted a contract application dispute to arbitration. No procedural issues were raised. Both parties were afforded a full opportunity to present their cases. Witnesses were sworn and their testimony was subject to cross-examination. The parties submitted post-hearing briefs, duly received on December 21, 2011, which closed the record, and the matter was taken under advisement.

ISSUES

The parties proposed different statements of the issues as follows:

The Union's proposal

- 1) Did the Anoka-Hennepin School District violate the collective bargaining agreement when it instituted regular monthly staff meetings at Jackson Middle School that extended 20 minutes outside the teacher duty day as defined in Article VII, Section 1, Subd. 1 without compensation?

- 2) What should the teachers be paid for time spent attending the regularly scheduled staff meetings beyond the established duty day either because the meetings are unreasonable or pursuant to Article X, Section 10, Subd. 1?

The Employer's proposal

Whether Jackson Middle School staff meetings scheduled once per month (total of 7) commencing 20 minutes prior to the start of the duty day violated Article VII, Section 2 of the collective bargaining agreement? And, if so, what remedy, if any, is appropriate?

Because the instant dispute involves both scheduling as well as compensation issues, the undersigned adopts the Union's proposal as the more appropriate statement.

RELEVANT CONTRACT PROVISIONS

ARTICLE VII HOURS OF SERVICE

Section 1. Basic Duty Day

Subd. 1. The duty day shall be 7 hours and 40 minutes in length,

including the equivalent of ½ hour before and ½ hour after school and a minimum of a 25-minute duty free lunch. The remaining 375 minutes shall include a minimum daily average of 50 minutes for preparation to be provided on a weekly basis in middle and high schools and over a 5-day digital schedule in elementary schools. Teachers shall receive a minimum of 5 minutes preparation time for every 25 minutes of instructional time. Every effort will be made to provide preparation time in a continuous block, but at no time shall a block be less than 30 minutes. The remaining time shall be used for passing students, supervision, I.E.P. preparation, team planning, traveling, advisor-advisee meetings and other assigned non-instructional duties. Special Education teachers may be released from supervision responsibilities to attend required due process meetings or student assessments.

Teacher requests to fulfill parent-teacher conference duty time obligations outside of regular paid duty days and at times other than scheduled parent-teacher conferences may be approved by the principal.

The Transition Plus Program, Early Childhood Intervention, Student Support Programs, Supplemental Programs, or Alternative Programs 7 hour and 40 minute duty day shall be continuous with classes beginning at 7 AM and ending at 10 PM. *{sic}* Any variation in the continuous day or normal start time in these buildings/programs shall be by mutual agreement of the teacher and the District; along with mutual notification to AHEM of any variation.

Subd. 2. Attendance at in-service meetings and non-compensated committee meetings scheduled other than the school duty day is voluntary. Accommodations for required meetings with parents will be made on an individual building basis.

* * *

Section 2. Professional Responsibility: The application of this policy provides an opportunity for the administration and curriculum staff to call meetings reasonable in number and length which extend beyond the defined duty day where such meetings are necessary in order to conduct the educational programs of the School District.

* * *

ARTICLE X
BASIC SCHEDULES AND RATES OF PAY

* * *

Section 6. Summer School Teachers, Miscellaneous Hourly Rates of Compensation:

* * *

The maximum hourly wage determined by this method shall be \$33.00 for 2009 and 2010.

* * *

Section 10. Information and Training Workshops

Subd. 1. Teachers designated by the District to voluntarily attend information or training workshops on non-duty days shall be compensated at the rate of \$195.00 per day for 2009 and 2010 in addition to any expenses incurred. Attendance at in-service or training workshops on a duty day but beyond the time for a normal duty day will be compensated up to the maximum hourly rate set forth in Section 6 of this Article.

* * *

BACKGROUND AND SUMMARY OF THE EVIDENCE

The instant grievance was filed with the Principal of Jackson Middle School at Step 1 of the grievance procedure on September 8, 2010. It challenged the propriety of staff meetings scheduled for the remainder of the 2010-2011 school year as well as any thereafter that continued the same format. The grievance arose under the parties' Agreement that has stated effectiveness from July 1, 2009 through June 30, 2011. The substantive text of the grievance is as follows:

It has come to our attention that the Principal at Jackson Middle School has monthly staff meetings scheduled to begin in October that will start before the teacher duty day. This is a violation of the contract language contained in Article VII, as it extends the duty day beyond 7 hours and 10 minutes (plus lunch). AHEM rejects the argument that these fall within the parameters of Section 2, as they are neither reasonable in length or number when they are regularly scheduled on a monthly basis for 20 minutes before the duty day begins.

It seems there could be several solutions and we would be glad to have a conversation about them, but the District should consider this as Step 1 of the grievance procedure as an association grievance on behalf of all bargaining unit members who have mandatory duties such as staff meetings assigned to them that extend beyond the contractual duty day. The remedy we would seek is to compensate all those who are required to work beyond the duty day at Jackson MS, and at any other school that has staff meetings scheduled beyond the duty day.

It is our understanding that this is being done pursuant to a district policy, hence, we think the grievance should begin at the District level. Please schedule this for a Step 1 meeting, unless you prefer we start with Tom Hagerty, the JMS principal. I have attached the schedule¹ he sent out that includes the start time for staff meetings that is the subject of this grievance.

The Employer school district employs some 2,700 teachers covered by the Agreement. The Employer operates five regular high schools, one alternative high school, six middle schools, and twenty-four elementary schools that serve over 38,000 students.

Prior to the 2010-2011 school year, the Jackson Middle School (“JMS”) was one of two middle schools that did not have staff meetings held outside of the limits of the 7 hour and 40 minute duty day defined by Article VII, Section 1 of the Agreement. It had meeting space available to it that permitted staff meetings to be held within the duty day without conflicting with operational requirements.

At the end of the 2009-2010 school year, the Employer closed several schools and consolidated others in response to declining enrollments and resulting financial considerations. Some of the space previously available to JMS was repurposed to be used by a physically adjacent elementary school to accommodate additional students from two closed elementary schools. The space repurposed to elementary school use included the area where the JMS staff meetings had previously been held. The space was no longer available to JMS.

According to the testimony of Principal Hagerty, the only remaining meeting space large enough to accommodate the entire teaching staff without conflicting with operational demands was

¹ The schedule attached to the grievance was distributed on September 2, 2010 and showed “All Staff Meetings” to be held on the 3rd Wednesday of each month from 7:25 to 8:10 a.m. The duty day began at 7:45 a.m.

the cafeteria. However, he explained how students arrived at 8:10 a.m. for breakfast. Thus, any staff meeting had to vacate the cafeteria by that time. Given the anticipated length of the staff meetings he contemplated, he proposed to start them at 7:15 a.m., which would have been 30 minutes prior to the start of the defined duty day of for JMS. Hagerty discussed his proposal with the Union's JMS representative. Certain suggestions were discussed that would not have extended the duty day with an early start. Disseminating information and announcements by email, scheduling two shorter meetings per month instead of one longer meeting, and allowing teachers to leave 20 minutes early on staff meeting days were considered.

In response to the suggestion of splitting the staff meeting into two shorter meetings, Hagerty asked the Union representative if the staff really wanted two shorter meetings instead of one longer meeting. He said that was the last he heard of the two-meeting suggestion. He was willing to consider that format if the staff really wanted it. As a result of the concerns raised, Hagerty changed the originally proposed start time to 7:25 a.m.

As noted, Hagerty also considered letting the staff leave 20 minutes early on meeting days to comply with the duty day definition. The Union did not believe such a remedy was feasible. It was thought that teachers would not be able to exit the parking lot at the same time students left the building because of the congestion caused by numerous parents picking up their children.

Before becoming Principal at JMS, Hagerty had previous administrative experience at other schools in the district. He was aware of staff meetings starting before the duty day or ending after the end of the duty day at most secondary locations. He understood that Article VII, Section 2 permitted an exception to the Agreement's duty day limitations whereby staff meetings were permitted beyond the limits of the duty day without compensation to the teachers in attendance.

Hagerty also wanted to give staff sufficient advance notice of the meeting schedule so they could make necessary arrangements to attend. Accordingly, the meetings for September and October of 2010 did not begin before the start of the defined duty day. The first meeting that began 20 minutes before the start of the duty day was conducted on November 17, 2010. Coincidentally, all of the discussions associated with the three steps of the grievance procedure had been held by then. The 3rd step meeting was conducted on November 8, 2010 although the General Counsel did not issue his denial at that step until February 10, 2011. As a result of this timing, the agendas showing

the planned content of the November 17th and later meetings had not been established and were not discussed in the grievance process.

The Union recognized that Article VII, Section 2 does provide a limited exception to the general rule that teacher time spent in meetings outside of the defined duty day must be compensated. In its view, however, the exception is limited to unusual situations that call for immediate action. Examples of such situations that were discussed in testimony were the death of a teacher on the first day of school and to alert the staff that the school would be the subject of a television news program that evening. The Employer's position is that Article VII, Section 2 is not so limited.

Although the Union was initially concerned with the number, duration, and necessity of the proposed staff meetings, it also raised concerns about the content of the staff meetings at arbitration. The Union contended that each meeting included a staff development component. As a result, such training time warranted compensation in its own right per Article X, Section 10, Subd. 1.

The Union's lead representative for JMS, Ms. Clauer, described the alleged staff development component of each meeting. Clauer also provided testimony about the duration of each of the training components. They were always placed last on the agenda and only the meeting held on February 16, 2011 included a staff development component that exceeded 25 minutes in length.

The Employer disputed whether the alleged training components really constituted training within the meaning of the Agreement. In its view, in-service training and staff development workshops were more formal and of longer duration. Even if the disputed components constituted training, the Employer noted that all but the February meeting component occurred after 7:45 a.m., which put them within the definition of the duty day. The one exception, according to Clauer's testimony, was at least 30 minutes in length. That estimate would put at least 5 minutes of the component outside the definition of the duty day.

Overall, the Union's objection to the meeting schedule is that it did not comply with the limitations of Article VII, Section 2. To qualify, meetings that extend the duty day must be reasonable in number and length as well as necessary. In the Union's view, a schedule of meetings prepared in advance with an agenda to be determined later does not satisfy these requirements. The Union also contended that any training at staff meetings within the duty day that forces other portions

of the meeting outside the duty day should warrant compensation for all of the outside time. The inclusion of the training component was the only reason the meeting extended beyond the duty day.

As previously noted, the Employer maintained that the JMS staff meetings fell within the scope of the duty day exception permitted by Article VII, Section 2 and that its interpretation of the exception was supported by a long-standing past practice of holding monthly staff meetings outside the duty day at its secondary schools. Four of its six middle schools and all five of its traditional high schools held such staff meetings. None of those prior meeting practices were ever challenged via the grievance process.

Employer's Exhibit No. 1 illustrated the extent of the meeting practices at the eleven secondary schools. The exhibit showed that nine schools had either monthly or semi-monthly meetings that extended beyond the defined duty day by at least 10 minutes to as much as 40 minutes. The duration of the practices ranged from as little as 12 years to over 20 years. At one high school, the practice had been in place for as long as anyone could remember.

It was also undisputed that the Union had advanced, without success, a proposal in the most recent round of collective bargaining to have meeting time outside of the duty day compensated.

Although the character of the concluding segment of each of the JMS staff meetings was in dispute, training versus not-training, the Union's witnesses agreed that all of the content of each meeting served an educational purpose. Regarding the character of the disputed component, the Union's testimony asserted, without rebuttal by the Employer, that teachers who claimed Continuing Education Unit credit for such components were awarded the credit. In addition, the Union introduced its Exhibit No. 1, which included the applicable guidelines for awarding CEU credit.

OPINION AND FINDINGS

At issue in the instant grievance is the propriety of the staff meetings in question that require attendance by teachers without compensation. Resolution of the grievance requires a determination of the proper interpretation and application of three Agreement provisions: Article VII, Sections 1 and 2, as well as Article X, Section 10, Subd. 1.

Although the provisions, as written, can be read as being in significant conflict with one another, the reconciliation of the issues presented by the instant grievance are not matters of first

impression between these parties. A prior arbitration award² dealt with these same three provisions. The grievance there arose under the parties' 2005-2007 collective bargaining agreement. The three provisions in question were substantively identical to their text in the present Agreement.

While the prior dispute involved some factual differences from the present grievance, there are also strong relevant similarities.

The previous arbitration involved K-2 teachers throughout the district that were required to attend a series of six scheduled training sessions to improve the writing skills of students in those grades. Because of the number of teachers involved, they were split into two groups. Half received the training during the 2005-2006 school year with other half during the 2006-2007 school year. The bulk of the evidence pertained to teachers from one elementary school as being representative of the entire group. Each session extended 40 minutes beyond the end of the defined duty day of the representative group. Although spread over two school years, only the sessions in the second year were challenged via the grievance process.

The substantive positions of the Employer and Union in the prior arbitration closely parallel their respective positions in the present grievance. Indeed, both parties included the award with their post-hearing briefs for the instant dispute.

Distilled to its essence, the award determined that Article VII, Section 2 does permit the Employer to require non-compensated attendance at meetings that extend outside of the defined duty day if the meetings satisfy the three conditions specified in the exception. They must be reasonable in number and length as well as necessary in order to conduct the educational programs of the school district. If the time spent outside of the duty day involves training, however, then Article X, Section 10, Subd. 1 mandates that compensation be paid. The prior award granted pay for the training time outside of the duty day limits.

Significantly, the parties have completed two rounds of collective bargaining negotiations for successor contracts since the issuance of the prior award. Despite those two opportunities to overcome or modify the findings of that award, the parties have not done so. As previously noted, the three provisions in question have remained substantively identical. Accordingly, the findings

² The award by Arbitrator Gallagher in BMS Case No. 07-PA-0931 was issued May 21, 2008.

of the prior award have effectively been ratified by the parties. It follows that the findings of the award constitute a binding interpretation and application of the provisions for the instant dispute.

Given the foregoing ratified precedent, three facets of the grievance remain for analysis and determination. First, does the evidence show the Employer satisfied the three conditions of Article VII, Section 2? Second, did the staff meeting attendees undergo any training during the meetings within the scope of Article X, Section 10, Subd. 1 that warrants compensation? Finally, if attendees did undergo training, does that require compensation for any non-training time spent outside of the limits of the defined duty day?

Turning to the first of these issues, the evidence of the prior meeting practices at other schools is significant in several respects. Nine of the eleven schools have had monthly meetings that extend beyond the limits of the defined duty day. Except for make-up meetings the following day, all nine schools have meetings that extend at least 20 minutes beyond the limit. Except for one school that opened in 2002-2003, the various meeting practices have been in place for at least 12 years. None of the prior practices has ever been challenged via the grievance process.

The acceptance of the prior meeting practices without challenge stands for several considerations. First, the reasonableness of the number and frequency of the meetings has not been in dispute. Second, the reasonableness of the duration of the meeting time outside of the duty day has not been disputed. Finally, the necessity of holding such periodic staff meetings outside of the duty day has not been questioned; it appears to be self-evident that face-to-face meetings provide for the kind of immediate give-and-take necessary to facilitate the orderly operation of secondary schools.

Against the backdrop of the prior meeting practices within the school district, the staff meetings at JMS fall well within the parameters of reasonableness and necessity that have been accepted. That all of the meeting content served the educational purpose is not in dispute.

Moreover, it is undisputed that JMS lost the previous meeting space available to it for holding staff meetings. This is further evidentiary support for the conclusion that the necessity condition has been satisfied. If, however, the JMS teaching staff indeed wishes to have two shorter meetings per month, which could be conducted wholly within the limits of the defined duty day, then the compliance with the necessity condition would require re-examination. In the meantime, the

weight of the evidence of record drives the conclusion that the format of two meetings per month was not genuinely desired by the Union. This left Principal Hagerty with no viable alternative but to schedule staff meetings as he did. The finding, therefore, is that the disputed JMS staff meeting schedule, *per se*, did not violate the Agreement.

The second remaining facet requires drawing a line of distinction to determine whether some of the staff meeting time was devoted to training, or staff development, or was purely administrative and/or logistical in nature. Because of the conflicting testimony and opinion, this distinction is not easily drawn. After careful consideration of the evidence on the issue, the undersigned finds that time spent engaged in activities designed to maintain, refine, or improve teaching philosophy or teaching methods and techniques constitutes training within the meaning of Article X, Section 10, Subd. 1. Such training is synonymous with “staff development.” It qualifies whenever it takes place, even if it lasts only a few minutes, and it does not require a more formal, structured format. A definition providing greater precision will have to await a future evidentiary record.

Given the description provided, however, the finding is that Clauer’s opinion is supported by the weight of the evidence. It is determined, therefore, that the concluding component of the JMS staff meetings in controversy did constitute training within the scope of Article X, Section 10, Subd. 1. That said, it is also clear that only a 5-minute portion of one of the meetings fell outside of the defined duty day.

It remains for resolution whether the training time occurring within the limits of the duty day requires the Employer to pay compensation for the non-training time that preceded it outside of the duty day. As written, Article X, Section 10, Subd. 1 speaks only to in-service training or workshops that extend beyond the time for a normal duty day. Accordingly, the text does not provide the requisite support for the Union’s contention. The finding, therefore, is that the Employer need only provide compensation to affected teachers for the 5 minutes of training conducted outside of the duty day limit on February 16, 2011 in accordance with the pro-rata rate specified in Article X, Section 6.

AWARD

In accordance with the Opinion and Findings, the grievance is sustained in part and denied in part.

1) The Anoka-Hennepin School District did not violate the collective bargaining agreement when it instituted regular monthly staff meetings at Jackson Middle School that extended 20 minutes outside the teacher duty day as defined in Article VII, Section 1, Subd. 1 without compensation.

2) The affected teachers must be paid additional compensation equal to 5 minutes pursuant to Article X, Section 10, Subd. 1 as provided in the Opinion and Findings.



Gerald E. Wallin, Esq.
Arbitrator

February 12, 2012