IN THE MATTER OF ARBITRATION BETWEEN

EDUCATION MINNESOTA - LAKEVILLE Union	OPINION AND AWARD
	Travel Stipend Grievance BMS Case No. 12 PA 0996
and	
INDEPENDENT SCHOOL DISTRICT 194 Lakeville, Minnesota District/Employer	Award Dated: October 22, 2012

Date and Place of Hearing:	August 22, 2012 Offices of the District Lakeville, Minnesota
Date of Receipt of Post Hearing Briefs:	September 22, 2012

APPEARANCES

For the Union: David Aron, Esq.
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For the City: Kevin J. Rupp, Esq.
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ISSUE

Did the District violate the Collective Bargaining Agreement when it declined to pay Teachers Samuel Phillips and Rachel Trebil a travel stipend during the 2011-12 school year pursuant to Article VIII, Section 10 of the Agreement? If so, what shall the remedy be?

WITNESSES TESTIFYING

Called by the Union	Called by the Employer
Samuel Phillips, Grievant Teacher Kenwood Trail Middle School And McGuire Middle School	Kate Eisenthal, Principal Kenwood Trail Middle School
Rachel Trebil, Grievant Teacher Kenwood Trail Middle School And McGuire Middle School	Joshua Alexander, Principal McGuire Middle School
Don Sinner, President Education Minnesota – Lakeville	Tony Massaros, Executive Director of Administrative Services ISD 194 – Lakeville Minnesota

OTHERS PRESENT

On Behalf of the Union	On Behalf of the Employer
Robb Nelson Law Clerk	No others were present

JURISDICTION

The issue in grievance was submitted to the Arbitrator for a final and binding resolution under the terms set forth in Article XI – GRIEVANCE PROCEDURE of the Collective Bargaining Agreement between the parties and the Minnesota Public Employee Relations Act. The Arbitrator was mutually selected by the parties from a list of names of arbitrators submitted to them by the Minnesota Bureau of Mediation Services. They stipulated that the Arbitrator had been properly called.

The parties further stipulated that the grievance had been processed through the required steps of the grievance procedure without resolution, and was properly before the Arbitrator for a decision. The Arbitrator inquired if the parties had any objection to the

award in this case being offered for publication. No objection was raised and the representatives of the parties signed an appropriate release form.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. They summarized their positions and arguments by written post hearing briefs which were timely received by the Arbitrator. With the receipt of the parties' briefs by the Arbitrator, the record in this case was closed. The issue is now ready for determination.

STATEMENT OF THE ISSUE

The parties framed the issue to be resolved using somewhat different terminology. The Union framed the issue as follows:

> Did the District violate Article VIII, Section 10 and other applicable provisions of the 2009-11 collective bargaining agreement by failing to pay teachers Samuel Phillips and Rachel Trebil a travel reimbursement during the 2011-12 school year?
>
> If so what is the appropriate remedy?

The School District framed the issue as follows:

> Did the District violate Article VIII, Section 10 of the collective bargaining agreement by declining to pay a $5,250 stipend to teachers Samuel Phillips and Rachel Trebil for traveling 15 minutes per day between school buildings during the 2011-12 school year?

The Parties deferred a final framing of the issue to be decided to the Arbitrator. After hearing all the testimony and carefully reviewing the evidence adduced at the hearing the issue to be decided is described by the Arbitrator as follows:

> Did the District violate the Collective Bargaining Agreement when it declined to pay Teachers Samuel Phillips and Rachel Trebil a travel stipend during the 2011-12 school year pursuant to Article VIII, Section 10 of the Agreement? If so, what shall the remedy be?

Separate grievances were filed by the Union on behalf of Mr. Phillips and Ms. Trebil on November 18, 2011. The grievances cited violation of Article VIII, Section 10, page 13 (Master Agreement) and any other contract provisions, policies, rules laws or practices that may apply. The grievances seek payment of a travel stipend of $5,250 for the 2011-12 school year for each of the Grievants. The grievance was denied at level one by Director of Administrative Services Tony Massaros on November 22, 2011 who stated as follows:

> Under the collective bargaining agreement, teachers who travel between buildings are entitled to reimbursement if they have a loss of prep or an increase in the length of their duty day. (See Article VIII, Section 10.) Both Mr. Phillips and Ms. Trebil receive their prep time and are scheduled to work 8 hours inclusive of lunch time. Both start at Kenwood Trail Middle School at 7:00 a.m. and finish at McGuire Middle School at 3:00 p.m. Principal Joshua Alexander agrees that the duty day for both Mr. Phillips and Ms. Trebil ends at 3:00 and he will allow both of them to leave at that time.
>
> There is no violation of the terms of the collective bargaining agreement and, therefore, these grievances are denied.

The grievances were appealed by the Union to Superintendent Snyder on December 2, 2011. Dr. Snyder denied the grievances on January 13, 2012 noting that the Grievants both received prep time, travel time, lunch and teaching time within their 8 hour day. Dr. Snyder also noted that the "additional 15 minutes over the school year does not align to the amount of the stipend and results in approximately $100 per hour for the additional minutes." Dr. Snyder further noted that "the principal is willing to allow the employees to finish their workday earlier than others to leave upon completion of their 8 hour day."

The Superintendent went on to state that under Article IV of the labor agreement "the School Board can 'efficiently manage and conduct the operation of the school district' " and that scheduling of employees fell under that provision.

The Union appealed the grievances to the School Board on January 27, 2012. On March 5, 2012 the School Board denied them as follows:

> "The grievance is denied. Neither Mr. Phillips nor Ms. Trebil has lost prep time or had their duty day lengthened as a result of the travel between buildings. Therefore, they are not entitled to the stipend. There has been no violation of the contract. For this reason and the reason stated in the District responses at Levels I and II of the grievance procedure, we do not agree with the grievance."

The grievances were then moved to arbitration where they were heard on August 22, 2012. The Parties stipulated that the grievances were properly before the Arbitrator for a decision.

The Sections of the Collective Bargaining Agreement that bear on the issue are contained in ARTICLE IV – SCHOOL BOARD RIGHTS, Section 2, ARTICLE VIII – EXTRA COMPENSATION, Section 10, ARTICLE XIII HOURS OF SERVICE, Section 1, Section 2 and Section 4. In relevant part they read as follows:

ARTICLE IV – SCHOOL BOARD RIGHTS

> * * * *
>
> Section 2. Management Responsibilities: The exclusive representative recognizes the right and obligation of the School Board 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 VIII – EXTRA COMPENSATION

* * * *

Section 10. Travel Reimbursement: Teachers who regularly travel between school district buildings as part of their regular teaching assignment, and as a result have a loss of prep or an increase in the length of their duty day, shall be compensated at the rate of $5250 for an entire year (traveling every teaching day). Any teacher, who travels less than every teaching day, shall be compensated on a pro-rata basis, number of travel days/175. Any teacher who travels shall also be reimbursed for mileage in accordance with the Internal Revenue Service established rates.

* * * *

ARTICLE XIII - HOURS OF SERVICE

Section 1. Basic Day: The normal work day shall be eight hours including a duty-free lunch period equivalent to the time allowed students, but no longer than 30 minutes. This will not prohibit those compensated noon-hour supervisory duties mutually agreed upon by teacher and Board designee.

Section 2. Building Hours: The specific hours at any individual building may vary according to the needs of the educational program of the school district. The specific hours for each building will be designated by the School Board. On an individual basis, by mutual agreement between the individual and the Building Principal, hours of service may be flexed as needed so long as the integrity/expectation of an eight (8) hour day is maintained.

* * * *

Section 4. Secondary Preparation Time: The preparation time for secondary teachers shall be the length of one (1) class period daily.

* * * *

The controlling Collective Bargaining Agreement became effective July 1, 2009 and continued in full force and effect through June 30, 2011. For all relevant times the employees involved in this grievance were covered by its provisions.

FACTUAL BACKGROUND

The issue involved herein pertains to extra compensation that the Union argues the Grievants are entitled to by reason of their being assigned a daily schedule that required them to work part of their day at Kenwood Trail Middle School and part of their day at McGuire Middle School. The Employer is a Public Employer School District chartered under the laws of the State of Minnesota. The Union is the exclusive bargaining representative of the teachers employed by the District.

The contract language related to "travel reimbursement" at issue in this case was changed in the 2009-2011 labor agreement from what was in place in the preceding 2007-2009 agreement. The language found in the 2007-2009 agreement reads as follows:

ARTICLE VIII – EXTRA COMPENSATION

> Section 10. Travel Reimbursement: Teachers who regularly travel between school district buildings as part of their regular teaching assignment shall be furnished transportation or provided a stipend as determined by the school district.

The corresponding relevant language in the succeeding 2009-2011 agreement reads as follows:

> Section 10. Travel Reimbursement: Teachers who regularly travel between school district buildings as part of their regular teaching assignment, and as a result have a loss of prep or an increase in the length of their duty day, shall be compensated at the rate of $5250 for an entire year (traveling every teaching day). Any teacher, who travels less than every teaching day, shall be compensated on a pro-rata basis, number of travel days/175. Any teacher who travels shall also be reimbursed for mileage in accordance with the Internal Revenue Service established rates.

The obvious and most significant change in the contract language was to address loss of prep time or increase in the length of the duty day of the teacher. The previous contract

language was silent on those matters. The task of this Arbitrator is to discern what the intent of the parties was when they agreed to this change in contract language.

It is not disputed and clearly stated in Article XIII, Section 1 of the Collective Bargaining Agreement that the work day for teachers in the District shall be eight (8) hours, including a duty free lunch period. The work day at Kenwood Trail Middle School starts at 7:00 AM and ends at 3:00 PM. The work day at McGuire Middle School, on the other hand, starts at 7:15 AM and ends at 3:15 PM. The Grievants in this case began their work days at Kenwood Trail Middle School, starting at 7:00 AM. During the day, however, they drove to McGuire Middle School where they continued to teach classes, and where they ended their work day.

McGuire Middle School Principal Alexander testified at the arbitration hearing that he told Mr. Phillips and Ms. Trebil at the beginning of the 2011-12 school year that they could leave at 3:00 PM, notwithstanding the normal end of the work day at 3:15 PM at McGuire. Mr. Phillips testified that such a conversation never took place; Ms. Trebil testified that she could not recall such a conversation. In the District's response to the grievances at the first step on November 22, 2011, however, Mr. Massaros clearly stated that the duty day for Mr. Phillips and Ms. Trebil ended at 3:00 PM.

The evidence adduced at the hearing shows that teachers at both Kenwood Trail and McGuire Middle Schools start their day with pre-class time and end their day with post-class time. No fixed amount of time is allotted to teachers in these pre and post class

time periods, and such time is not referenced in the Collective Bargaining Agreement. Union Exhibit Three shows that the normal full time teacher at Kenwood Trail Middle School starts the work day with a 24 minute pre-class period and ends the day with a 60 minute post-class period. At McGuire Middle School a normal full time teacher would start the day with a 53 minute pre-class period and end the day with a 30 minute post-class period. The pre-class period for the Grievants as they started their work day at Kenwood Trail Middle School was consistent with that of other full-time teachers there [i.e. a 24 minute pre-class period]. If the Grievants were to adhere to a 3:00 PM end of work day at McGuire Middle School their post-class period would be only 15 minutes compared to the 30 minutes available to the teachers who worked only at McGuire.

Undisputed record testimony shows that it was often necessary for the Grievants to meet with students outside of regular classroom hours in order to assist them with learning, or to administer tests that they had missed due to absence or had to retake. Ms. Trebil testified without challenge that the time necessary for a student to take a make-up math test was 50 minutes. Additionally, the record testimony shows that teachers were required to meet with colleagues in what was referred to as Professional Learning Communities [PLC]. It is not disputed that the meetings with students and with colleagues in the PLC were normally done during the pre or post-class periods.

The record shows that during his work day Mr. Phillips took on responsibility for monitoring the lunchroom at Kenwood Trail Middle School for 53 minutes between 10:00 AM and 11:00 AM daily. He received additional compensation for that duty. Had

he not taken on that duty, it is not disputed that he would have had an additional 53 minute period of time to use as he chose. The record also shows that Ms. Trebil took on additional responsibility for a 28 minute home room period at McGuire Middle School between 11:00 AM and 12:00 Noon daily. Ms. Trebil also took on additional responsibilities in a Targeted Services program designed to help students with math problems and a Math Masters Competition. Those activities began after 3:00 PM and Ms. Trebil received additional compensation for her work in those areas.

POSITION OF THE PARTIES

Position of the Union

It is the position of the Union that the grievance should be sustained and the Grievants should be paid the $5250 stipend. In support of this position the Union argues: 1) the duty day of the Grievants was extended by 15 minutes, until 3:15 PM daily due to the requirement that they travel between schools, 2) that the Grievants have lost prep time, and 3) that it is not possible for the Grievants to perform all of their required duties including working with students and collaborating with colleagues in the eight hour day as it is configured when they have to travel between buildings.

Position of the District

It is the position of the District that the grievance should be denied. In support of this position the District argues 1) the clear language of the Collective Bargaining Agreement was not violated, 2) the Grievants did not lose their prep time, 3) the Grievants' travel time did not result in an increase in the length of their duty day, 4) the negotiations

history clearly refutes the grievance, and 5) the communications with the Human Resources Assistant do not change the outcome produced by the contract language.

ANALYSIS OF THE EVIDENCE

All of the testimony and evidence received into the record of this case along with the arguments of the Parties was very carefully considered. It became apparent to this Arbitrator during the hearing that the Grievants are hard working teachers who are truly dedicated to educational excellence in the District. They are to be applauded for their efforts. The job of Arbitrator, however, is to interpret and apply the controlling contract language to the facts of the case. An arbitrator cannot introduce his or her own sense of fairness or "industrial justice". To the contrary he/she must be guided by what the contract states and the facts in the case.

Here the controlling contract language is found in Article VIII, Section 10 of the labor agreement. That language provides that the travel stipend shall be paid when as a result of travel between buildings a teacher suffers a loss in prep time or an increase in the length of their duty day. In order to prevail in this case the Union must show with a preponderance of the evidence that a loss in prep time occurred or there was an increase in the length of Grievant's duty day. The burden is on the Union to make that showing.

It is not disputed that the School Board has the contractual right to set the work hours at the schools in the District. It is also not disputed that the normal work hours at Kenwood Trail Middle School were eight hours from 7:00 AM to 3:00 PM and at McGuire Middle

School were eight hours from 7:15 AM to 3:15 PM. It is also clear from the contract at Article XIII, Section 4 that the preparation time for secondary teachers, such as the Grievants, is the length of one (1) class period daily. It is not disputed that the length of one class period at either Kenwood Trail Middle School or McGuire Middle School is 53 minutes. Accordingly, the contract provides that the Grievants are to have 53 minutes of preparation time each day. The contract does not provide when during the day that prep time is to be taken. The record [Union Exhibit 3] shows that the Grievants each had the required 53 minutes of preparation time. Mr. Phillips actually had 65 minutes and Ms. Trebil had 81 minutes. Clearly, they have been provided with the contractually required prep time even though they travelled between District Buildings.

The labor agreement at Article XIII, Section 1 provides that the length of the normal work day shall be eight hours including a duty-free lunch period. The record shows that both Grievants were scheduled for 28 minute lunch periods. Mr. Phillips also had responsibility for Lunchroom monitoring for an additional 53 minutes each day for which he received additional compensation. The time for those monitoring duties and the fact that he received additional compensation for performing them is largely irrelevant to the issue here. Even with the time for those duties he was able to teach the five class periods he was assigned, had 65 minutes of preparation time, 15 minutes of travel time, and a total of 39 minutes of pre and post class time before the end of his 8 hour day at 3:00 PM. It is noted that the 39 minutes of pre and post class time Mr. Phillips had was less than the 84 minutes of such time at Kenwood Trail for a normal full time teacher, and the 83 minutes at McGuire for a normal full time teacher. There can be little doubt that having

less than half of the pre and post class time made it difficult for Mr. Phillips to properly assist students who needed extra help or to fully participate in Professional Learning Communities. That said, however, it must be noted that the contract is silent on the matter of pre and post class time. Such time is simply not afforded contractual protection. Had the parties desired to reserve a specified part of the day for such activities, it would be reasonable to expect they would have done so as they did for the teachers lunch periods and preparation time. Since the Parties did not place language in their Collective Bargaining Agreement with respect to pre and post class time, the Arbitrator is without power to write such language into the contract now through this award. Clearly, if contractual protection of pre and post class time is desired, the place to obtain such protection is at the bargaining table, not through arbitration.

Ms. Trebil also had the required one class period of preparation time in her daily schedule. In fact, she had a total of 81 minutes of such time. Accordingly, the contractually required prep time is found in her daily schedule and no contract violation can be found on that basis. Ms. Trebil also had a daily homeroom assignment, but like Mr. Phillips Lunchroom monitoring assignment that assignment is largely irrelevant. In regard to pre and post class time Ms. Trebil's schedule shows her receiving a total of 39 minutes of such time each day. Like Mr. Phillips that is less that the 83 minutes her colleagues have in their schedules. Also like, Mr. Phillips, however, pre and post class time is not protected by any language in the labor agreement, and the Arbitrator is without power to write such protection into the contract through this award.

There was testimony at the hearing from McGuire Middle School Principal Alexander that he authorized both Mr. Phillips and Ms. Trebil to leave at 3:00 PM. Leaving at that time would have resulted in an eight hour work day for each of them. Mr. Phillips denies that Dr. Alexander ever so authorized him, and Ms. Trebil states that she does not recall any such conversation. Whether they were to leave at 3:00 PM or 3:15 PM is a point of reasonable confusion. They started their day at 7:00 AM at Kenwood Trail Middle School, but their colleagues around them at McGuire Middle School were not leaving until 3:15 PM. Whether or not Dr. Alexander directed the Grievants to leave at 3:00 PM does not, however, matter a whole lot in any event. The contract spells out an eight hour day, and since they started at 7:00 AM they were done at 3:00 PM. That is true regardless of what school they were at when they finished their work day.

It is noted that teachers regularly carry out duties after regular school hours. Some of those duties are related to classroom work that spilled over from the regular work day such as grading papers, or doing some independent work on a teaching topic. For these activities teachers must be applauded as dedicated to their calling. Other school related activities occur after the regular school day for which the teacher earns extra compensation. These activities round out the educational experience for the students and are a valuable part of their development. Here it is noted that Ms. Trebil engaged in some of those valuable post class time activities for students in the Targeted Services Program and the Math Masters Competition. It is important to note that those activities began at 3:00 PM which at least partially discounts the argument that the Grievants had to work to at least 3:15 PM on a daily basis to counsel students or work with colleagues.

The Union points to the language of the last sentence of Article XIII, Section 2 as requiring a mutual agreement between an individual teacher and the building principal in order to "flex" the specific hours of work for that teacher. It argues that there was no such mutual agreement, and therefore the directive by Principal Alexander to leave at 3:00 PM is not valid. The Union's argument is misplaced. Mr. Phillips and Ms. Trebil completed eight hours at 3:00 PM and pursuant to the labor agreement had completed their work day. Indeed, the sentence the Union points to concludes with the statement "… so long as the integrity/expectation of an **eight (8) hour day** is maintained [Emphasis supplied]. Moreover, and importantly, the District testified without challenge, that the sentence the Union relied on was intended to give flexibility to teachers who needed a slight variance in their work schedule to accommodate their family circumstances.

In contract interpretation cases such as this, the Union in burdened to show with at least a preponderance of the evidence that the Employer violated a provision of the Collective Bargaining Agreement. Here the Union alleges a violation of Article VIII, Section 10 of the agreement. The record shows, however, that it has not shouldered its burden of persuasion.

The authority of an arbitrator is limited. He cannot modify any terms contained in the agreement. To grant the grievance in this case would require the Arbitrator to afford contractual protection to pre and post class time that is not found in the labor agreement. The Arbitrator lacks that authority, and, accordingly, is without power to grant the

grievance and the remedy requested by the Union. For all the above cited reasons, the grievance must be denied.

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and	
INDEPENDENT SCHOOL DISTRICT 194 Lakeville, Minnesota District/Employer	

Based on the evidence and testimony adduced at the hearing in this case, the grievance and all remedies requested are denied.

Dated: October 22, 2012

James L. Reynolds

James L Reynolds
Arbitrator

Awd13.12