

IN THE MATTER OF ARBITRATION BETWEEN]	DECISION AND AWARD
]	
]	OF
INDEPENDENT SCHOOL DISTRICT 2859]	
]	ARBITRATOR
GLENCOE-SILVER LAKE]	
]	
(the "School District")]	
]	
and]	BMS CASE: 13-PA-1004
]	
EDUCATION MINNESOTA]	
]	
GLENCOE-SILVER LAKE]	
]	
(the "Union")]	

ARBITRATOR:	Eugene C. Jensen
DATE AND LOCATION OF HEARING:	September 12, 2013 ISD 2859 Glencoe-Silver Lake District Offices 1621 16 th Street East Glencoe, Minnesota 55336-1721
DATE OF FINAL SUBMISSIONS:	October 8, 2013
DATE OF AWARD:	November 6, 2013
ADVOCATES:	<u>For the Union</u> Meg Luger-Nikolai Attorney at Law Education Minnesota 41 Sherburne Avenue Saint Paul, Minnesota 55103 <u>For the Employer</u> Jennifer Earley Attorney at Law Ratwik, Roszak & Maloney, P.A. 300 U.S. Trust Building 730 Second Avenue South Minneapolis, Minnesota 55402
GRIEVANT:	Class Action

WITNESSES:

For the Union:

Jim Waters
Chemistry and Physics Teacher
Chief Union Negotiator

Brook Magnuson
Social Studies Teacher
President of Union

For the School District:

Paul Sparby
Principal

Chris Sonju
District Superintendent

ISSUE

Did the School District violate the 2011-2013 Master Agreement, Article XIII (Hours of Service), Section 6 (Normal Teaching Assignments at Secondary Level), Subdivision 4 (Advisor/Advisee), between the parties when it assigned teachers to facilitate the Olweus Bullying Prevention Program during the Advisee/Advisor period and in place of classroom instruction during fourth period? And, if so, what shall the remedy be?

JURISDICTION

In accordance with the Minnesota Public Employment Labor Relations Act (PELRA), the Minnesota Bureau of Mediation Services (BMS), and the July 1, 2011, through June 30, 2013, Master Agreement between the parties, this matter is properly before the Arbitrator.

BACKGROUND

The Employer is Independent School District 2859, Glencoe-Silver Lake, and the teachers of the District are represented by Education Minnesota. Minnesota State Statute §121A.0695 requires school districts to adopt anti-bullying policies. In response to the educational requirements outlined in their policy,¹ School District 2859 implemented the Olweus program.² The first lesson that their teachers participated in took place on February 13, 2013, for thirty minutes during the fourth period of the school day. The second lesson took place on February 27, 2013, for thirty minutes between the third and fourth period. The third lesson took place on March 14, 2013, for thirty minutes between the third and fourth period. All three of these Olweus lessons involved teachers and their normal advisor/advisee students.

¹ School District Exhibit 1

² Anti-bullying program developed by Hazelden.

On March 19, 2013, the Union filed a grievance³ alleging that the schedule for Olweus training violated Article XIII, Section 6, Subdivision 4 of the labor agreement between the parties.⁴ This section of the Agreement allowed the District to add an advisor/advisee period during the regular school day, not to exceed twenty minutes in length and not to include more than one instructional lesson each month. In addressing the grievance, the District decided to take the Olweus lessons out of the normal advisor/advisee time frame (fifteen minutes between second and third period) and scheduled subsequent sessions for thirty minutes during fourth period.

The Union maintains that the District continues to violate Subdivision 4 of Article XIII, Section 6.

PERTINENT CONTRACT LANGUAGE

ARTICLE IV – SCHOOL DISTRICT RIGHTS

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

³ Joint Exhibit 2.

⁴ Joint Exhibit 1, 2011 – 2013 Labor Agreement between the parties.

Section 2. School Board 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 opportunities for the students of the School District.

Section 3. Effect of Law, Rules and Regulations: The exclusive representative recognizes that all teachers covered by this Agreement shall perform the teaching and nonteaching services prescribed by the School Board, as agreed in this agreement, and shall be governed by the laws of the State of Minnesota, and by School Board rules, regulations, directions and orders, issued by properly designated officials of the School District. In the case of non-teaching services, teachers will be allowed to volunteer for duties. The building principal will decide if volunteers are suitable for the particular assignment. If the volunteers are not suitable, or if there are not enough volunteers, the principal will have the right to assign the duties consistent with the provisions of Section 3, of ARTICLE XII below. The exclusive representative also recognizes the right, obligation and duty of the School Board and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the School Board insofar as such rules, regulations, directives, and orders are not inconsistent with the terms of this Agreement

Section 4. Reservation of Managerial Rights: The foregoing enumeration of District rights and duties shall not be deemed to exclude other inherent management rights and management functions not expressly reserved herein, and all management rights and management functions not expressly delegated in this Agreement are reserved to the School District.

ARTICLE XIII – HOURS OF SERVICE

Section 1. Basic Day: The teacher's day shall be eight (8) hours inclusive of lunch. Each teacher shall have the right to a duty-free lunch period of at least thirty (30) minutes. On Fridays and the days preceding holidays, teachers will be permitted to leave as soon as the buses leave their building. . . .

Section 6. Normal Teaching Assignments at Secondary Level:

Subd. 1. The regular teaching assignment for secondary (grades 7-12) teachers in a seven-hour day is five (5) assigned classes, one (1) study or supervisory and one (1) preparation period. . . .

Subd. 4. Advisor/Advisee. An Advisor/Advisee period may be added to the regular school day, no longer than 20 minutes per

day. No extra compensation will be given. One instructional lesson will be given each month unless agreed upon by the administration and the exclusive representative.

ARTICLE XVII – GRIEVANCE PROCEDURE

Section 1. Grievance Definition: “Grievance” means a dispute or disagreement as to the interpretation or application of any term or terms of this Master Agreement. . . .

Section 9. Arbitration Procedures: In the event that the teacher and the school Board are unable to resolve any grievance, the grievance may be submitted to arbitration as defined in this article.

Subd. 1. Request: A request to submit a grievance to arbitration must be in writing, signed by the aggrieved party(ies), and such request must be filed in the office of the Superintendent within ten (10) days following the decision in Level III of the grievance procedure.

Subd. 2. Prior Procedure Required: No grievance shall be considered by the arbitrator which has not been first duly

processed in accordance with the grievance procedure and appeal provisions. . . .

Subd. 4. Upon appointment of the arbitrator, both the teacher and School Board shall follow arbitrator guidelines which shall include the following:

1. the issues involved
2. statement of facts
3. position of the grievant
4. the written documents relating to ARTICLE XVII, Section 5. of the grievance procedure.

Subd. 5. Hearing: The grievance shall be heard by a single arbitrator and both parties may be represented by such person or persons as they may choose and designate, and the parties shall have the right to a hearing at which time both parties will have the opportunity to submit evidence, offer testimony, and make oral or written arguments relating to the issues before the arbitrator.

Subd. 6. Decision: The decision by the arbitrator shall be rendered within thirty (30) days after the close of the hearing. Decisions by the arbitrator in cases properly before him/her shall be final and binding upon the parties, subject, however, to the limitations of arbitration decisions as provided for in the PELRA. . .

Subd. 8. Jurisdiction: The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure. The jurisdiction of the arbitrator shall not extend to proposed changes in terms and conditions of employment as defined in this Agreement; nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration in compliance with the terms of the grievance and arbitration procedure as outlined in this article, nor shall the jurisdiction of the arbitrator extend to matters of inherent managerial policy, which shall include, but are not limited to such areas of discretion or policy as the functions and programs of the School District, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel. In considering any issue in dispute, in his/her order, the arbitrator

shall give due consideration to the statutory rights and obligations of the School District to efficiently manage and conduct its operation within the legal limitations surrounding the financing of such operations.

JOINT EXHIBITS

1. 2011 – 2013 Master Agreement between Independent School District No. 2859, Glencoe-Silver Lake and Education Minnesota, Glencoe-Silver Lake.
2. March 26, 2013, Grievance filed by Brook Magnuson, Union Representative, on behalf of the Secondary Staff.⁵ In addition, the exhibit contains the Employer's responses from the various levels of the grievance process.

UNION'S EXHIBITS

1. 2009 – 2011 Master Agreement between the parties.⁶

⁵ The grievance at bar in this arbitration.

⁶ This agreement does not contain Article XIII, Section 6, Subd. 4, Advisor/Advisee language.

2. Jim Waters' notes from bargaining leading up to the 2011 – 2013 Agreement. These notes indicate that the School Board made its initial proposal regarding a RAP/SSR Schedule.⁷
3. January 8, 2013, memo from Paul Sparby to GDG High School Staff regarding the Olweus training schedule.
4. April 9, 2013, memo from Paul Sparby to GDG High School and Junior High Staffs regarding the Olweus schedule for the following day.
5. "Summary of the Olweus Anti-Bullying Program for grades (9-12)."
6. March 4, 2013, memo from Suzanne Magnuson to the "GDG-High School Staff Mailing List." The memo states: "Here is a copy of the 'Getting to Know You' questions to build cohesiveness and encourage students to share."
7. This exhibit contains the questions identified by Suzanne Magnuson in Union Exhibit 6 above.
8. March 4, 2013, memo from Suzanne Magnuson to "GDG-High School Staff Mailing List." The memo states: "Have different students in your class meeting group identify the hot

⁷ RAP (Reaching All Panthers). SSR (Silent Sustained Reading).

spots in our school. Have them fill out the worksheet and discuss. They can work in pairs and discuss as a larger group.”

9. The “Hot Spots Activity Sheet 1” that was introduced in Union Exhibit 8 above.
10. An excerpt from the “Class Meetings that Matter” text (Meeting 1 – Confronting Bullying).
11. An excerpt from the “Class Meetings that Matter” text (Meeting 2 – Confronting Bullying).
12. Olweus Class Meeting Schedule for 2014 – 2015, 2015 – 2016, and 2016 – 2017.

SCHOOL DISTRICT’S EXHIBITS

1. Bullying Prohibition Policy (514 – Adopted July 10, 2006, and revised March 8, 2010, and July 11, 2011).
2. Cover sheet and introduction for grades 6 through 8 of the Olweus training book: Class Meetings That Matter.
3. Same as School District Exhibit 2 above, but for grades 9 through 12.

4. November 6, 2012, through January 13, 2013, Olweus training schedule for staff.
5. 2013 – 2014 Olweus Class Meeting Schedule for Lincoln Junior High School.
6. 2013 – 2014 Olweus Class Meeting Schedule for Glencoe-Silver Lake High School.
7. Glencoe-Silver Lake High School Daily Time Schedule 2012 – 2013. RAP one day per month for 15 minutes. That same time slot is for reading during all the other school days of the month.
8. Glencoe-Silver Lake High School Daily Time Schedule 2012 – 2013. This revised schedule shows a “Class Meeting” from 10:35 – 11:05 (30 minutes) for Olweus.
9. GSL High/Junior High School “2 Hour Late Start Schedule” for 2012 – 2013.
10. 2012 – 2013 GSL School Calendar.
11. Glencoe-Silver Lake Lincoln Junior High School Daily Time Schedule 2012 – 2013. This schedule has “Olweus Class Meeting” scheduled for 30 minutes during period 4 (10:55 – 11:25).

12. Glencoe-Silver Lake High School Daily Time Schedule 2012 – 2013. This schedule has “Olweus Class Meeting” scheduled for 30 minutes during period 4 (11:55 – 12:25).

13. Seven Olweus lesson plans for the Junior High School (2/13/2013 – 5/8/2013).

14. Seven Olweus lesson plans for the High School (2/13/2013 – 5/8/2013).

UNION’S ARGUMENTS

The Union, in its post-hearing brief (UPHB), made several arguments supporting its position in this matter:

- [T]he parties agreed to very specific language limiting the Employer’s prerogative to schedule Advisor/Advisee time in an ascertainable way. To the extent that the Employer ever had the unilateral prerogative to schedule teachers Advisor/Advisee periods, those days are past. . . . Therefore, a dispute about the application of Article XIII, Section 6 is arbitrable, and is not precluded by the existence of generic language regarding the District’s managerial authority.⁸

⁸ UPHB, pp. 12-13

- Where the language of a contract provision is clear and unambiguous, the arbitrator need not resort to interpretive aide or extrinsic evidence in determining whether the provision has been violated.⁹
- The plain language of the CBA limits the implementation of “Advisor/Advisee” periods. . . .

There can be no doubt that these [additional] periods constituted “Advisor/Advisee periods” – both the District and the Union agreed that teachers taught this programming [Olweus] to their advisees. Indeed, students left their assigned four[th] hour periods to go to the classrooms of their respective advisors. In order to implement the Olweus class curriculum, the District scheduled two more Advisor/Advisee instructional periods each month during the spring of 2013. This was in violation of plain contract language that limited such programming to one instruction period per month, no more than twenty minutes in length (14).

- Advisors are delivering instruction during the Olweus class periods. . . . Although students are not given a specific grade for the Olweus classes, the Olweus materials themselves note that there are learning objectives for students during each Olweus lesson. . . .

⁹ Ibid, p. 13

The Olweus materials themselves plainly require teachers to engage in the core functions of teaching. . . . [E]very lesson within the larger Olweus “categories” has identifiable learning objectives. There can be no question that the District’s secondary teachers are responsible for ensuring that students absorb the Olweus materials (15-16).

- One of the Union’s chief concerns in filing the grievance was that the District’s violation of Article XII, Section 6 also necessitated additional preparation for a class that the teachers had not previously planned to teach. Therefore, even though the District suggested that this programming merely supplanted some class time during fourth hour, its impact on the teacher work load was significant (16-17).
- The parties arrived at the language in question following protracted negotiations and contractual dispute that nearly went to arbitration. After first presenting language that addressed only the inclusion of RAP/SSR time, the District ultimately proposed to a broader limitation on the instructional periods that it could require of teachers. The Union agreed to this language, believing that it helped to resolve a thorny negotiation process as well as a live grievance. The District’s implementation of the additional Advisor/Advisee periods in which

teachers are to be presenting Olweus classes plainly deprives the Union of the benefit of the bargain that it struck during negotiations (20).

EMPLOYER'S ARGUMENTS

The Employer, in its Post Hearing Brief (EPHB), offered several arguments to support its position in this matter:

- The Union filed the grievance in this matter on March 19, 2013. (Jt. Ex. 2). To the extent the Union is claiming that the School District violated the terms of the CBA with regard to the class meetings held on February 13, 2013, this claim would be untimely pursuant to the terms of grievance process. Accordingly, any claims or remedies sought relative to this event are outside [the] scope of the grievance procedure and the jurisdiction of the arbitrator.¹⁰

¹⁰ EPHB, pp. 12-13.

- [T]he School District responded to the Union's grievance on March 26, 2013. (Jt. Ex. 2). The School District's response provided the remedy sought by the Union, namely the reissuance of a schedule that follows the CBA. The new schedule did not require teachers to provide Olweus Program class meetings during the advisor/advisee period governed by Article XIII, Section 6, Subdivision 4, which was cited by the Union as being violated in the original grievance. Similarly, the events giving rise to an alleged violation of the CBA from March 27, 2013 and thereafter had not yet occurred when the original grievance was filed on March 19, 2013. . . .

The March 19, 2013 grievance does not comply with the grievance procedures as the Union did not specify at Level I or any other grievance level how the new schedule issued by Mr. Sparby violates Article XIII, Section 6, Subdivision 4 of the CBA, let alone any other provision of the CBA. As such, any allegations related to events that had not yet arisen when the grievance was filed cannot be addressed in this matter as the grievance procedure was not properly followed.

The School District properly objected to the continuation of the grievance throughout these proceedings on the basis that the grievance was resolved at Level I. . . . As discussed above, if the grievance process is not properly followed,

the Arbitrator does not have jurisdiction over such matters and such claims should be dismissed.¹¹

- The grievance over the issues raised by the Union in this matter also should be dismissed based upon a lack of subject matter jurisdiction. It appears that the Union is arguing not only that meetings held during the advisor/advisee period violated the terms of the CBA with regard to the number and length of lessons but also that any Olweus Program class meetings held during period 4 also violated the CBA. In this regard, the Union raised the issue that the School District does not have authority to require teachers to present these class meetings during instructional periods as these meetings may only be presented as advisor/advisee “instruction.” Such an argument does not recognize the inherent managerial right of the School District to determine its curriculum and direct the functions duties of its employees. . . .

The terms of the Agreement to which the Union cites as the basis for this dispute are contained in Article XIII, Section 6, Subdivision 4. This subdivision provides that the School District may add an advisor/advisee period to the regular school day and that only one instructional lesson per month may be given unless agreed upon between the administration and the exclusive representative. This subdivision addresses only the issue of the number of instructional lessons that

¹¹ Ibid, pp. 14-16.

may be directed during the advisor/advisee period and the length of the advisor/advisee period. This subdivision does not place restrictions upon the School District's ability to direct teachers' duties during any other portion of the student contact day (16-17).

- [T]he CBA does not limit the length of the five classes, when the periods can be scheduled, whether or how the periods can be shortened or lengthened, or the content of the classes. . . . The CBA also does not provide that "A teacher's assigned student contact time during the five assigned classes shall not exceed X minutes/day or Y minutes/week." . . . [T]he School District had and continues to have the absolute authority to adjust the five periods to lengthen them, shorten them or direct the content of the classes (24).
- To address this issue [busing schedule], the School District sought to add fifteen minutes of student contact time to the duty day for secondary teachers. While this change did not lengthen the duty day for teachers, it did increase student contact time and the number of instructional periods designated in the CBA. Accordingly, during negotiations, the parties agreed to add Article XIII, Section 6, Subdivision 4 to define the parties' obligations with regard how the addition of the fifteen minutes to the student contact day would be addressed.

As a compromise for not increasing wages for this added student contact time, the parties agreed that “instruction” during the advisor/advisee period would be limited to one instructional lesson per month There simply was no testimony or other evidence that supports the contention that the addition of this subdivision was meant to restrict the School District’s rights with regard to assigning duties to teachers during other class periods and, in particular, the curriculum to be taught (26-27).

- [E]ven assuming the School District revised the schedule to incorporate the advisor/advisee period into 4th period, the Olweus Program class meetings are not “instructional lessons” subject to the one per month restriction. . . . The typical “class” containing instructional lessons consists of the following critical components: homework, quizzes, tests, the assignment of grades, and the earning of credits by students. . . .

None of those factors are present here for the Olweus Program class meetings (27).

- Incorporation Of The Olweus Program Into 4th Period Is Not A Separate Class Or Extension Of The Advisory Period (28).

- [T]here is no authority for the Arbitrator to grant teachers “overload pay” under these circumstances. . . .

When teachers were assigned to lead Olweus class meetings during their 4th period, the students regularly scheduled for their classes were assigned to other teachers. Thus, there was no doubling of their assignments or increase in the number of students under their supervision. Similarly, the Olweus class meetings were not held outside the teacher’s regular duty day. At all times, teachers have been paid for their duty time when either leading Olweus class meetings or attending Program training sessions. Clearly, no other circumstances set forth in Schedule D [Special Assignment Schedule in Joint Exhibit 1] even remotely apply (31-32).

DISCUSSION

The District brought forth three arbitrability issues during the hearing and later in its post-hearing brief:

- I. “Any claims regarding class meetings held on February 13, 2013 are not subject to arbitration as the claim was not timely filed.”¹²

¹² EPHB, p.12.

Brook Magnuson testified that the Union held off on filing the grievance immediately after the February 13, 2013, Olweus lesson. He thought that it was possible to resolve the matter informally, outside the grievance process. The grievance was filed after the District released schedules showing multiple Olweus meetings in March, April, and beyond.¹³

The District's concern about claims for February 13, 2013, is duly noted and will be addressed further should any remedy be appropriate.

- II. "Claims related to class meetings held after the resolution of the level I grievance are not subject to arbitration as the Union did not follow the required grievance procedure."¹⁴

Here, the District argues that the grievance filed on March 19, 2013, was resolved, and that any further claim from the Union would have to take the form of a new grievance.

In this instance, resolution is in the eyes of the beholder. The District claims that the grievance was sated because the remedy requested was given. The Union, however, claims that the District's remedy did not completely fulfill the

¹³ Union Exhibit 12 & District Exhibit 6.

¹⁴ EPHB, p. 14.

requested relief. This is one of the issues at bar, and to throw out the grievance because there is a dispute in interpretation would be inappropriate.

- III. “The management of educational programs and direction of personnel is within the inherent managerial authority of the School District.”¹⁵

The District asks the Arbitrator to dismiss the grievance due to a lack of “subject matter jurisdiction.” In essence, the District asks the Arbitrator to once again dismiss the grievance because the District’s actions fell within the scope of “inherent managerial rights.” In deciding this matter, the Arbitrator first looked at the grievance itself. The grievance alleges a violation of Article XIII, Section 6, Subdivision 4, which deals with the Advisor/Advisee period. This language does set some restrictions on the District’s rights to assign work:

An Advisor/Advisee period may be added to the regular school day, no longer than 20 minutes per day. No extra compensation will be given. One instructional lesson will be given each month unless agreed upon by the administration and the exclusive representative.

¹⁵ EPHB, p. 16.

The District contends that the assignment of duties during fourth period is totally separate from the Advisor/Advisee period. The Union, on the other hand, believes that the fourth period assignment is part and parcel of the Advisor/Advisee period and subject to the limitations of Subdivision 4. Once again, it is up to the Arbitrator to make a decision as to the interpretation of the language: should it or should it not apply to the District's fourth period assignment?

Therefore, the Arbitrator finds the grievance to be properly before him in this arbitration.

There were no disputes regarding the facts in this matter. Both parties outlined the chronology of events in a consistent manner: the Olweus Program was implemented by the District; teachers and students who were assigned to be advisors and advisees respectively participated in the lessons; initially, these lessons occurred during the normal advisor-advisee period; later, following the filing of the grievance, they were held during part of fourth period; and lessons took place during a thirty minute time-frame.

Two questions need to be considered before the Arbitrator renders his award:

1. Is the fourth period Olweus program an advisor/advisee period, as per Article XIII, Section 6, Subdivision 4?

2. And, does the Olweus program require teachers to provide instructional lessons, as per the same contractual provision?

Advisor/Advisee Period or Not?

Although some bargaining history was offered to explain the reasons for the language, the language itself is quite clear on its face. It allows the District to add one advisor/advisee period each regular school day, not to exceed twenty minutes in length. In addition, only one instructional lesson per month may occur during these periods, unless an agreement is reached by the parties to increase their frequency. It does not spell out the reasons for such a period, nor does it require the period to occur at any specific time during the school day.

Both parties agreed that the same teachers/advisors and the same students/advisees participated in the original "RAP/SSR"¹⁶ period and in the more recent fourth period Olweus sessions. These advisor/advisee groups include students from all four grades in the high school, and, except for the graduation of seniors and the matriculation of freshmen, the groups continue intact through the high school years. Likewise, the teachers assigned to these groups stay with the same students from year to year. The advisor/advisee lessons are dependent on the ongoing consistent relationships between all of the participants. This provides for more inclusive and yet more heterogeneous groups to discuss sensitive issues like character or

¹⁶ SSR, Silent Sustained Reading, was added to the school day following a fifteen minute schedule extension related to a busing schedule change. RAP, Reaching All Panthers, is a "character" related program that was assigned in the SSR time-slot once per month.

bullying. In essence, the Arbitrator believes that the advisor/advisee groups are defined by their participants; not by the time of day nor by the specific topics of discussion.

The Arbitrator must answer the first question in the affirmative: the fourth period Olweus program sessions are advisor/advisee in nature, and since they occur more frequently than once per month and are scheduled for more than twenty minutes, they are in violation of Article XIII, Section 6, Subdivision 4.

Instructional Lessons or Not?

The Employer argues that the Olweus program sessions are not instructional, and therefore not subject to the once per month restriction. The Arbitrator disagrees with that interpretation. First, there is no provision in the Agreement that defines an instructional lesson. And secondly, the original program (RAP) that prompted the negotiators to settle on the language of the subdivision in question, was also presented in a similar fashion. The RAP curriculum was focused on a non-traditional subject: character; and the teacher/advisors would give a brief lesson plan and the students/advisees were required to participate in discussions of the pre-selected topics. The teaching methodology was quite similar to the subsequent Olweus lessons.

The Arbitrator, once again, answers question two in the affirmative. The Olweus program utilizes instructional lessons.

AWARD

Following a careful review of the exhibits, testimony of the witnesses, and arguments proffered by the advocates, the Arbitrator awards in favor of the Union: the grievance is sustained. The District shall discontinue assigning instructional lessons during advisor/advisee periods in excess of the limits established in Article XIII, Section 6, Subdivision 4.

As to additional relief in the form of compensation or other possible benefits, the Arbitrator finds no contractual language to support any such claim. The District, in its post-hearing brief, pointed out the circumstances under which teachers could expect “overload pay.” The Olweus program and its lessons neither extend the school day, nor increase the teacher-student contact time.

ADDENDUM

It is the Arbitrator’s belief that the parties would be best served by negotiating a resolution to any disturbance in equilibrium caused by this decision. It is easy to understand the District’s motivation in having the sensitive anti-bullying lessons taught in the trusting environment of the advisor/advisee forums, and yet the language of Article XIII, Section 6, subdivision 4, applies. I sincerely hope, that given the clarification that this award provides, the parties are able to reach a satisfactory resolution.

Eugene C. Jensen, Neutral Arbitrator

Respectfully submitted this 6th day of November, 2013.