THE MATTER OF ARBITRATION BETWEEN

MINNESOTA SCHOOL EMPLOYEES ASSOCIATION,	)	
Union,	)	
and	)	**REORGANIZATION GRIEVANCES**
INDEPENDENT SCHOOL DISTRICT NO. 12, CENTENNIAL,	)	
Employer.	)	**BMS Case No. 14-PA-0099**

Arbitrator:	Stephen F. Befort
Hearing Date:	November 21, 2013
Post-hearing briefs received:	December 20, 2013
Date of Decision:	January 17, 2014

APPEARANCES

For the Union:	Robert D. Schrank
For the Employer:	Kevin J. Rupp Abby M. Novak

INTRODUCTION

Minnesota School Employees Association (Union), as exclusive representative, brings these consolidated grievances claiming that Independent School District 12, Centennial (School District) violated the parties' collective bargaining agreement by restructuring positions for the 2013-14 school year in a manner that assigns unit work to non-unit employees without first negotiating with the Union. The School District denied the grievances, maintaining that it has

the inherent managerial right to make the organizational decisions in question. The grievances proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

1. Did the School District violate the 2011-13 Secretarial/Clerical collective bargaining agreement by restructuring positions for the 2013-14 school year?
2. Did the School District violate the 2011-13 Paraprofessional collective bargaining agreement by restructuring positions for the 2013-14 school year?

RELEVANT CONTRACT LANGUAGE

Secretarial/Clerical Collective Bargaining Agreement

ARTICLE IV

SCHOOL BOARD RIGHTS

Section 1. Inherent Managerial Rights: The Exclusive Representative recognizes that the School Board 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 overall budget, utilization of technology, the organizational structure and selection and direction of the number of personnel and all management rights and management functions not expressly delegated in this Agreement are reserved to the School Board.

Paraprofessional Collective Bargaining Agreement

ARTICLE III

SCHOOL BOARD RIGHTS

Section 1. Inherent Managerial Rights: The Exclusive Representative recognizes that the School Board 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 overall budget, utilization of technology, the organizational structure and selection and direction of the number of personnel.

FACTUAL BACKGROUND

The Centennial School District is a K-12 public school system situated in the northern suburbs of the Twin Cities, Minnesota metropolitan area. The Union represents two separate bargaining units of non-teachers employed by the School District. The Secretarial/Clerical unit primarily is composed of employees who perform clerical functions and includes the following positions: clerk, office secretary, and head/department secretary. The Paraprofessional unit primarily is composed of employees who perform instructional assistance duties and includes the following positions: clinician, non-instructional paraprofessional, instructional paraprofessional, and special program paraprofessional. The parties acknowledge that there is some overlap in the types of functions performed by the employees in these two units.

Due to budgetary difficulties, the School District sought to implement $160,000 in support staff reductions for the 2013-14 school year. On May 6, 2013, the School District invited Union officials to a meeting for the purpose of discussing a proposed staff restructuring plan. The restructuring plan called for the elimination of some positions in both units as well as a reshuffling of duties with respect to surviving positions. At this meeting, the Union requested a more detailed description of the proposed restructuring plan as well as detailed job descriptions for all positions impacted by the restructuring plan.

On May 15, the School District provided the Union with a reconfiguration plan for the High School and Middle School office and media centers as well as job descriptions used by the School District for pay equity purposes. The Union objected that these job descriptions were too generic in nature and again requested a detailed list of all job duties for each of the current and proposed positions impacted by the restructuring plan. The Union also requested that the School District negotiate with the Union with respect to any restructuring plan that would involve the

movement of any work outside of either bargaining unit. The School District responded that the requested detailed job descriptions did not exist and declined the request to bargain on the grounds that the School District had the inherent managerial right to determine its organizational structure.

The School District ultimately implemented three principal restructuring changes as described below:

Media Centers

Prior to the restructuring, the School District operated media centers at both the west and east high school campuses. The reorganization implemented by the School District consolidated the two media centers into a single center on the east campus and closed the media center on the west campus. These moves resulted in the elimination of a media clerk position and a media paraprofessional position previously staffed on the west campus, but led to the creation of a new paraprofessional position on the east campus. At the middle school level, the School District eliminated a media clerk position and reassigned media support duties to a licensed teacher holding the position of media generalist.

Attendance

The School District restructured the attendance functions at the high school level by eliminating one of two attendance clerk positions and creating a new attendance paraprofessional position. The School District hired Colleen Trowbridge, the laid off attendance clerk, to fill the new attendance paraprofessional position. In the new position, Ms. Trowbridge works fewer hours and earns a lesser hourly pay rate. While Ms. Trowbridge testified that she continues to perform most of the same duties in her new position, the job description for the paraprofessional position excludes many of the tasks previously assigned to the clerk positions, such as attending

CAN meetings, supervising student office aides, writing passes for early release, and retrieving calls from the attendance line.

Office/Financial

At the middle school level, the School District eliminated a bookkeeper/cashier position and two paraprofessional positions in the main office, while creating three new office secretary positions. Lynette Anderson, who previously occupied the bookkeeper/cashier position at the middle school was bumped into a lower paying secretary position that does not entail money-handling responsibilities. Linda Haskins, the District bookkeeper/cashier located at the high school, assumed Ms. Anderson's financial responsibilities.

As a result of the various restructuring changes, the secretarial/clerical unit lost four clerk positions, but gained three secretarial positions. The paraprofessional unit, meanwhile, had a net loss of one position.

Middle School Principal Robert Stevens testified that, in addition to reducing costs, a principal objective of the restructuring was to address concerns that some employees were performing work that was not consistent with their official job classifications. He testified that a goal in the restructuring process was to more equitably align classifications and duties, even though this resulted in lesser cost savings due to an increase in the number of secretary positions.

The Union filed four grievances challenging the School District's actions with respect to the 2013-14 restructuring plan. Two grievances were filed on behalf of each unit. The parties agreed to consolidate these grievances for purposes of this proceeding.

At the arbitration hearing, the Union submitted evidence showing that the benefits provided by the two contracts differ in several respects. The apparent purpose of this evidence was to demonstrate that the elimination or diminution of unit work has a significant impact on

the terms and conditions of individual unit members, even if the impact on the unit as a whole may be negligible.

POSITIONS OF THE PARTIES

Union

The Union contends that the School District violated the parties' collective bargaining agreement by implementing a restructuring plan that assigned bargaining unit work to non-unit employees without first negotiating with the Union. In support of this contention, the Union maintains that the School District failed to provide detailed information concerning the job duties of those employees impacted by the reorganization and that such information was a necessary prerequisite to any meaningful negotiation. The Union claims that the School District's actions resulted in harm to specific employees who, as a result of the reorganization, were denied the pay and benefits specified in their respective collective bargaining agreements. As a remedy, the Union requests that all position eliminations and layoffs that resulted from the reorganization be rescinded and that all impacted employees be made whole.

School District

The School District initially asserts that the Union has not pointed out any provision in either collective bargaining agreement that limits the ability of the School District to restructure its workforce. In contrast, both agreements contain provisions preserving the School District's authority to determine "the organizational structure and selection and direction of the number of personnel." The School District asserts that several Minnesota arbitrators have recognized that public employers have the inherent managerial authority to determine matters of organizational structure in the absence of contract language expressly restricting that right. Accordingly, the

School District argues that it had no duty to bargain with respect to the implementation of its restructuring plan and that the grievances should be denied.

DISCUSSION AND OPINION

The Contract Language

The plain language of the parties' collective bargaining agreement generally provides the starting point for any contract interpretation dispute. In this case, however, since the Union has asserted only general allegations and has not identified a violation of any specific contract provision, it is first necessary to narrow this dispute by disposing of two matters that are not relevant to any genuine issue.

First, the Union alleges the School District acted in bad faith by failing to provide detailed job descriptions for those positions impacted by the restructuring plan. While the School District maintains that such descriptions do not exist, the Union argues that the Attendance Clerk Job Description introduced into evidence at the hearing demonstrates that such descriptions, in fact, do exist.

The existence of such descriptions, however, is not a relevant issue in this proceeding. The only importance of such descriptions would be as an aid in negotiating over the impact of the restructuring plan. But, since the School District has declined to negotiate with respect to the plan in any respect, its failure to produce detailed job descriptions does not provide any new or different issue for resolution. The salient issue simply is whether the School District was obligated to bargain with the Union about the details of the restructuring plan.

This leads to the second preliminary consideration: namely, that the School District is obligated by the Public Employment Labor Relations Act (PELRA) to negotiate only with respect to terms and conditions of employment. Minn. Stat. sec. 179A. 07, subd. 2. PELRA

expressly exempts matter of "inherent managerial policy" from the duty to bargain, which includes a public employer's right to determine "such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and number of personnel." Minn. Stat. sec. 179A. 07, subd. 1. Both of the collective bargaining agreements at issue also contain provisions preserving the School District's authority to determine "the organizational structure and selection and direction of the number of personnel."

These provisions make it clear that a public employer in Minnesota, absent any express contractual limitation, has the right to determine matters of organizational structure and workforce size without first engaging in collective negotiations. Minnesota arbitration decisions clearly have endorsed these principles. *See, e.g.*, County of Stearns and LELS, BMS Case No. 11-PA-0434 (Toenges, 2011); Independent School District No. 911 and Service Employees International Union, BMS Case No. 11-PA-0385 (Lundberg, 2011). As such, the School District cannot be faulted for unilaterally modifying its organizational structure or eliminating positions in response to budgetary pressures.

Once these two non-issues are put aside, the only relevant question in this matter becomes clear: Did the School District harm the interests of unit employees by reassigning their "unit work" to employees outside that unit?

The leading treatise on labor arbitration describes the variegated landscape for deciding this issue in the following terms:

> Arbitrators are divided on the question of whether, in the absence of contract provisions to the contrary, management has the right to assign bargaining-unit work to employees outside of the unit. . . . In holding that management has such right, some arbitrators have emphasized the absence of a specific restriction in the contract. . . . Other arbitrators have ruled against the right of management . . . on the basis that the recognition, seniority, or job-security clause is violated by such action. . . . Some

> arbitrators take an intermediate position [and] recognize that the assignment of such work outside the bargaining unit may be proper where there is "good cause" [or] where it is de minimis.

ELKOURI & ELKOURI, HOW ARBITRATION WORKS 13-136 to 13-139 (7th ed. 2012).

In this instance, the parties' collective bargaining agreement contains no express restriction on the School District's right to reorganize the performance of unit work. Many arbitrators would find this lack of an express limitation to be sufficient to enable an employer to redistribute work functions without restriction. *See, e.g.*, Minnesota Teamsters Public & Law Enforcement Employees' Union, Local 320 and Chisago County, BMS Case No. 12-PA-0053 (Fields, 2013).

Even if the intermediate position described in the *Elkouri* excerpt quoted above were applied, however, the School District's actions in this matter still would pass muster for several reasons.

First, it is not clear as a factual matter that the School District actually transferred work outside of the two bargaining units. The School District's reorganization consolidated some positions of the same class which resulted in the elimination of one of those positions. As an example, the School District consolidated the two media centers and eliminated one of the two pre-existing media clerk positions. Since the two media clerk positions were within the same bargaining unit, this action did not transfer work outside of any bargaining unit.

Even where the School District replaced positions in one unit with a lower classified position in another unit, this was not necessarily accompanied with a transfer of bargaining unit work. When the School District eliminated one of two attendance clerk positions and created a new attendance paraprofessional position, for example, many of the more significant tasks

previously assigned to the clerk positions were not listed in the job description of the attendance paraprofessional.

Second, arbitrators commonly uphold an employer's change in work assignments where the alteration of duties is de minimis in nature. *See, e.g.*, Costco Wholesale Corp.. 114 LA 39 (Hockenberry, 2000): WCI Components, 95 LA 11 (Byars, 1990). Here, the secretarial/clerical unit and the paraprofessional unit each experienced a net loss of only one position as the result of the School District's restructuring plan.

Third, and finally, it does not appear that the School District's reorganization was undertaken in bad faith. The School District restructured its staff in response to a sizeable budgetary shortfall. In addition, the testimony of Principal Stevens suggests that the School District made efforts during the restructuring process to align work duties equitably with the proper job classifications and unit designations.

Based upon these circumstances, I find that the School District did not violate the parties' agreement in implementing its restructuring plan.

AWARD

The grievance is denied.

Dated: January 17, 2014

_____

Stephen F. Befort
Arbitrator