

In the 2013-14 school year, much of the upper Midwest had one of the worst winters on record. The Minnesota Governor closed all of the state's schools on January 6, 2014 due to extreme cold weather. The District subsequently closed its schools on January 7, 2014 due to continued cold weather.

On January 22, 2014, Stender sent Julie Sandstede (Sandstede), Association Co-president, an e-mail indicating his interest in making up the two lost student days (January 6-7, 2014). He wanted to replace the lost student days with in-service days for the teachers. He further stated his belief that the parties' contract allowed the District to require such lost day rescheduling.⁶

On January 23, 2014, Association Co-president, Bobby Spry (Spry), e-mailed Stender expressing dislike for the concept of making up lost days incurred due to inclement weather when some teachers worked those days even though the students were absent. Sandstede also e-mailed Stender on January 23, 2014 indicating the Association could not meet and confer with the District on January 28, 2014 due to a scheduling conflict. She also indicated that teachers had never been required to make up emergency closing days in the past.⁷

The District closed schools again on January 27 and 28, 2014 due to extreme cold.⁸ These dates were also set by calendar to be student attendance days.⁹

The parties' representatives met on January 30, 2014. The Association was told that no decision had been made whether students would or would not be required to make up the lost 4 student attendance days. If students were not required to make up the student attendance days, the District's intent was to convert all lost days to in-service days.¹⁰

At the January 30, 2014 meeting, the Association told the District that there was no precedent for making up emergency closure days; there was no past practice of making up emergency closing days; such actions would be disruptive to teachers' schedules; and, there could be added costs, such as for childcare, for teachers when the calendar is extended.¹¹

On February 4, 2014, Stender sent an e-mail to all of the District's teachers expressing the District's intent to make up 4 student attendance days lost due to emergency closure for inclement weather by attaching 4 in-service days for teachers in the first week of June 2014. The e-mail also indicated that if further days were lost due to emergency closings, those days may be required to be made up also.¹²

On February 10, 2014, the Association filed a grievance regarding Stender's February 4, 2014 e-mail that provided for making up 4 days in June 2014 for closings in January 2014. The grievance paraphrased language from Article XII Section 3 of the parties' contract that "...if the total school days is less than 175 the days may be made up upon consultation with the designated representative." On February 13, 2014, Stender denied the grievance at Step One of the grievance procedure. A hearing at Step Two of the grievance procedure was held on February 19, 2014.¹³

On February 21, 2014, the District again invoked an emergency closure of schools due to snow.¹⁴ This brought the total days closed to inclement weather to 5 for the 2013-14 school year. All days lost were on the calendar as student attendance days. This is as it stood at the time of the arbitration hearing. It is unknown if other days will be lost later this spring.

⁶ Union Ex. 6.

⁷ Id.

⁸ District Ex. 1.

⁹ Joint Ex. 3.

¹⁰ District Ex. 1.

¹¹ Test. Sandstede.

¹² Union Ex. 7.

¹³ Joint Ex. 2.

¹⁴ District Ex. 1.

Stender issued a Step Two response to the grievance on February 24, 2014.¹⁵ Stender denied the grievance stating for justification “strong managerial rights language” and no violation of the Master Agreement. The response also recommended skipping Step Three of the grievance procedure and advancing the grievance to arbitration.

On February 27, 2014, the Association agreed to advance this grievance to arbitration.

The undersigned was selected as arbitrator and a hearing on this matter was held on April 15, 2014. Both parties were accorded full opportunity to present testimony and other evidence in support of their respective positions.

ISSUE

Does the District have an unfettered right to alter the agreed upon calendar when schools are closed due to emergency? If not, what restrictions exist by contract to limit the alteration of the calendar?

CONTRACT PROVISIONS

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 employer, its overall budget, utilization of technology, the organizational structure and selection and direction and number of personnel.

Section 2. Management Responsibilities: The exclusive representative recognizes the right and obligation of the School District to efficiently manage and conduct the operation of the School District within its legal limitations and with its primary obligation to provide educational opportunity for the students of the School District.

Section 3. Effect of Laws, Rules and Regulations: The exclusive representative recognizes that all employees covered by this Contract shall perform the teaching and nonteaching services prescribed in this Contract and shall be governed by the laws of the State of Minnesota, and by School District rules, regulations, directives, and orders, issued by properly designated officials of the School District. The exclusive representative also recognizes the right, obligation and duty of the School District and its duly designated officials to promulgate rules, regulations, directives and orders from time to time as deemed necessary by the School District in so far as such rules, regulations, directives and orders are not inconsistent with the terms of the Contract and recognizes that the School District, all employees covered by this Contract, and all provisions of this contract are subject to the laws of the State of Minnesota, Federal laws, rules and regulations of the State Board of Education, and valid rules, regulations and orders of State and Federal government agencies. Any provision of this Contract found to be in violation of any such laws, rules, regulations, directives or orders shall be null and void and without force and effect.

ARTICLE XII

LENGTH OF THE SCHOOL YEAR

Section 1. Length of the School Year: The school year normally includes 176 student contact days and 180 contract days. The School District may add up to four (4) days of professional development contiguous to the school calendar starting with the 2010-2011 school year. Teachers will be paid their individual daily rate (Salary/181, 182, 183, 184) for each additional day up to four (4). The

¹⁵ Joint Ex. 2.

maximum number of student contact days will be 176 per school year and the maximum number of contract days 184.

Section 2. Teacher Duty Days: Pursuant to M.S. 126.12, the School District and president of the designated representative shall, prior to April 1 of each school year establish the number of school days and teacher duty days for the next school year, and the teacher shall perform services on those days, including those legal holidays on which the School District is authorized to conduct school, and pursuant to such authority has determined to conduct school.

Section 3. Emergency Closings: In the event that a student or teacher duty day is lost for an emergency and the total school days is less than 175, the teacher shall perform duties on other days when school may be legally held, upon consultation with the designated representative.

ARGUMENTS

The Association argued that this matter is simple but a “big deal” to the teachers of the District. The Association maintained that the teachers schedule around the agreed upon calendar. The Association asserted that based on expectations of when the school year ends, teachers make plans, including nonrefundable vacation deposits and termination of childcare arrangements.

The Association also claimed that the contract contains a buffer against the unexpected; i.e. emergency closings. The Association averred that Article XII Section 3 is that buffer of not falling below 175 “total school days.” [Emphasis added.] In keeping with this argument, the Association argued that “total school days” are not limited to student attendance days. Teachers did not expect an extension of the school year beyond the calendar and are thus inconvenienced by an extension thereof.

The Association asserted that an adoption of the District’s interpretation of Article XII Section 3 would render the language meaningless.

The Association contended this is not a past practice case but more a case of mutually accepted understanding of the language and a clear pattern and practice of the language of Article XII Section 3 that has been honored by the parties.

The Association was dismissive of the District’s insistence on 180 days of work entitlement. The Association claimed that work performed on nights and weekends by dedicated teachers far exceeds the 180 contract days without acknowledgement or reward. In addition, it was at the sole discretion of the District when school was closed for emergencies. Many teachers worked those days anyway.

The Association also questioned whether the District was placing the emphasis on “providing educational opportunity for the students of the School District” as espoused in Managerial Rights since the Superintendent said it was doubtful the students would be asked to make up the lost student attendance days.

The District argued that there is no factual dispute in this matter. The teachers’ contract days were set at 180 and the District is entitled to 180 days work whether they are student attendance days or in-service days. The District maintained that this is what the District has paid for.

The District made two arguments regarding Article XII Section 3. If “total school days” are total days including in-service days and student contact days, then the language is inapplicable because as of April 15 (the hearing date) the number of total days had not dropped below 175. If “total school days” means student contact days, then the language relating to the District rescheduling after consulting with the Association applies and the District did consult with the Association. In either case, the District maintains that Article XII Section 3 “falls out” because it is either inapplicable or the District met the conditions set by the language.

The District’s other argument focuses on the District’s perceived need for additional instruction for their teachers. The District maintained that it had already paid for 180 days of teacher work and only got 175. To ask the District to pay more for additional in-service days under the auspices of Article XII Section 1 would be “ludicrous, unfair, and unconscionable.” The District maintained it had a legitimate

reason for the make up days. The District claimed it merely wanted the number of days it bargained for. The District admitted that teachers work extra over contractual time and that it was commendable, but not more than any professional should be willing to do.

The District also argued that the contract must be read as a whole, most specifically, Article XIX Section 2 wherein the contract supersedes any prior contracts, resolutions, practices, policies, rules or regulations.

The District asked what it thought was a rhetorical question toward the end of its closing arguments. Would it be different if they had the students make up the days, too?

CONCLUSIONS OF LAW

The first arbitral principle applicable in this case is that a contract must be read as a whole.

Sections or portions cannot be isolated from the rest of the agreement and given construction independently of the purpose and agreement of the parties as evidenced by the entire document... The meaning of each paragraph and each sentence must be determined in relation to the contract as a whole. [Cites omitted.]¹⁶

Reading the language of Article 4 on which the District relies most heavily, it is noted that the District's "primary obligation (is) to provide educational opportunity for the students of the School District." It seems inconsistent with this primary obligation, when read in conjunction with Article XII Section 1, that the District reduced the "normal" calendar of student attendance days from 176 to 173 so that the in-service days could be expanded from the normal 4 days up to 7 days. It becomes even more enigmatic that when emergency closings further reduced student attendance days to 168 from the normal 176, that, in Stender's words, it was "doubtful" that students would be required to make up any lost student attendance days because the State minimum instructional hours had been met. Notwithstanding the lost educational opportunity for students of the School District, the District opportunistically expects to expand the in-service days for teachers from the "normal" 4 days up to 12 days. These matters on their surface appear to be an extraordinary deviation from the "normal" school year envisioned by those who constructed the contract language of Article XII Section 1.

A second principle of arbitration applicable here is giving effect to all clauses and words in the agreement.

It is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not carefully write into a solemnly negotiated agreement words intended to have no effect. [Cites omitted.]¹⁷

Given that the subheading of Article XII Section 3 is "Emergency Closings," it stands to reason that the authors of this language intended it to relate specifically to the issue at hand. The District's argument that this language "falls out" regardless of its interpretation is the antithesis of the arbitral principle above. The fact that the District argued two different constructs of this language identifies an ambiguity that the parties would be wise to address in future bargaining. Article XII Section 1 references "student contact days and contract days." Section 2 references "school days and teacher duty days." Section 3 references "a student or a teacher duty day" and "total school days." Hence, the ambiguity of

¹⁶ *How Arbitration Works, Seventh Edition*, Elkouri and Elkouri, p. 9-34.

¹⁷ *Id.* At p. 9-35.

what the addition of the word “total” to school days really means. The Association argued that a mutual understanding has been honored between the District and the Association for 27 consecutive years.

A practice, whether or not fully stated in writing, may be the result of an agreement or mutual understanding. And in some industries there are contractual provisions requiring the continuance of unnamed practices in existence at the execution of the collective bargaining agreement... A practice thus based on mutual agreement may be **subject to change only by mutual agreement. [Emphasis added.]** Its binding quality is due, however, to the agreement in which it is based. [Cites omitted.]¹⁸

The evidence in Union Exhibit 8 supports the teachers’ contention that the mutual understanding was that there were 5 buffer days built into the normal work year of 180 days and that when emergency closings fell within that five day parameter, the teachers would be held harmless. The lost days were not a result of the teachers’ will or any machinations by them. It is logical that they would be held harmless. They lost none of their salary or benefits due to the shortened years. In point of fact, each year of the current contract was treated as previous years with emergency closings, including the first year of Stender’s tenure as Superintendent.

This arbitrator has little choice but to construe the language in Article XII Section 3 “total school days” as meaning the combined student attendance days and in-service teacher days. The 175 school days is a buffer for inclement weather or other emergency closings. Teachers have heretofore been credited for emergency closing days as part of their contractual 180 days, including during the term of this collective bargaining agreement. Since the teachers had to have their lesson plans prepared and be ready to teach the students on those days, but were prevented from doing so at the sole discretion of the School District, this is as it should be. The current extension of this collective bargaining agreement must follow the same criteria.

Finally, an arbitrator must avoid harsh, absurd or nonsensical results.

When one interpretation of an ambiguous contract would lead to harsh, absurd, or nonsensical results, while an alternative interpretation, equally plausible, would lead to just and reasonable results, the latter interpretation will be used. [Cites omitted.]¹⁹

This arbitrator cannot compel the District to extend the calendar for additional in-service days. This matter is governed by clear and unequivocal language in Article XII Section 1. If the District chooses to extend the calendar, it must pay the teachers their contractual daily rate. It is a simple choice to be made at the sole discretion of the District. It is noted that the extension, by contract, is limited to 4 days.

There are two additional points of concern. If there were more emergency closings after April 15, 2014, different rules would apply. The District would fall below the minimum instructional hours set by the State. The total school days would fall below the buffer level of 175.

Secondly, this matter is a continuing contract violation. The Superintendent made it so in his February 4, 2014 e-mail when he referenced future make up of potential future emergency closings. It would be a mistake for the District to believe this ruling applies only to the first four days that were lost in January 2014. It was the District’s reference to a prematurely filed grievance that raises this point of concern, but it was the District that first raised the specter of future ramifications for future emergency closings.

¹⁸ *Id.* At p. 12-10.

¹⁹ *Id.* At p. 9-41.

AWARD

The District has an unfettered right to make up lost days if the total school days as identified above fall below the 175 days specified in Article XII Section 3 after consultation with the Association.

The District has an unfettered right to add up to four in-service days contiguous to the end of the school year with the daily pay to teachers as specified in Article XII Section 1.

The District does not have the right to extend the school calendar for the first five days lost by emergency closing pursuant to the tacit agreement that those days are hold harmless days for the teachers.

In all other respects, the grievance is granted.

DATED this 25th day of April, 2014.

Charles E. Boldt, Arbitrator
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