

IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN

Education Minnesota Local 1314

and

ISD No. 318, Grand Rapids

NAME OF ARBITRATOR: George Latimer
Assistant Faith Latimer

DATE AND PLACE OF HEARING: October 9, 2007

DATE OF AWARD: November 8, 2007

APPEARANCES

FOR THE EMPLOYER: John M. Colosimo, attorney
Joe Silko Superintendent, ISD 318
Larry O'Brien former Human Resource
Director, ISD 318

FOR THE UNION: Rebecca Hamblin, attorney,
Education Minnesota
Paul Carlson Lead Negotiator, Local 1314
Jim Heinrichs, President Local 1314
Jim Poole, Field Staff, Education
Minnesota
Lee Johansen, Negotiations Specialist,
Education Minnesota (by phone)

INTRODUCTION

This is a grievance arbitration between Education Minnesota Local 1314 and Independent School District 318, Grand Rapids. Local 1314 (Union) is the exclusive representative of teachers employed by ISD 318 (District or Employer). Background to the current dispute includes the following.

In the summer of 2005, there was discussion between Union representatives and then District Superintendent Lloyd Styrowoll regarding the teaching of online learning

classes. These discussions included attempting to negotiate a Memorandum of Understanding (MOU) which referred the issue of online learning classes to the bargaining table. The proposed MOU language also provided that with respect to online courses scheduled to begin in the 2005-06 school year, any contract language would apply retroactively to July 1, 2005. This discussion continued between the Union and the incoming Superintendent, Joe Silko. Agreement was not reached on this MOU. (Union Ex 4, testimony of Jim Heinrichs and Joe Silko)

In September 2005 the District formally entered into the Itasca Area Schools Collaborative (IASC). This is a cooperative agreement between District 318, six other area school districts, and Itasca Community College. One District 318 school board member sits on the governing board of IASC, along with representatives from the seven other members of the collaborative and from the community. IASC is formed for the purpose of finding ways to perform certain functions more efficiently or effectively than can be done by each entity individually. Possible areas of cooperation include transportation, food services, accounting services and others. One service offered by IASC is an online learning program called Virtual Itasca Area Academy of Learning (VITAL). (Employer opening statement, testimony of Joe Silko, Union Exhibit 2)

The Union made proposals concerning online learning during negotiations for the 2005-07 collective bargaining agreement in the summer and fall of 2005. In September 2005 the Union learned the District had entered agreement with IASC, and that online classes were being offered through IASC by VITAL. This was a concern to the Union, which continued to pursue contract language regarding online learning.

Superintendent Silko testified that he was not regularly present at the bargaining table, however he did caucus with the management bargaining team. He took the position that it was impossible for the District to bargain pay or other terms and conditions of employment for teaching VITAL classes. In his view, since District 318 is not the employer, District 318 did not have authority to tell IASC what to pay its employees, nor to dictate the wage practices of its third party vendor, VITAL.

Union witnesses Paul Carlson and Jim Heinrichs testified that on November 10, 2005 the District spokesperson stated at the bargaining table that the District refused to bargain the issue any further. Superintendent Silko testified the Union responded by

proposing language that would apply in the event that District 318 offered online learning classes. Such language was agreed to, and became Article X Section 10 of the current contract. (Union Ex 1, Joint Ex 1)

The Union also filed a grievance on November 22, 2005 (Joint Ex 2). The Employer initially raised timeliness objections. The grievance eventually worked its way to this arbitration. Prior to hearing, the parties resolved the timeliness dispute, and this hearing was held on the substantive question set forth in the statement of the issue. The hearing was held on October 9, 2007 at the school district offices. Both parties had full opportunity to examine witnesses and submit documentary evidence. The parties' representatives submitted oral closing arguments in lieu of written briefs. The record was closed on October 9, 2007.

RELEVANT CONTRACT PROVISIONS

From the 2005-2007 Agreement between the parties

Article IV School Board Functions

Section 1. The Exclusive Representative recognizes that the 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.

Article V Teacher Rights

Section 3 Meet and Confer: Public employees who are professional employees as defined by 179A.03 of P.E.L.R.A. have the right to meet and confer with public employers regarding policies and matters not included under 179A.03, Subd. 19, pursuant to 179A.06, Subd. 4 of P.E.L.R.A. Representatives of the District and the Exclusive Representative will meet if requested by either party quarterly of each school year.

Section 14 Extra-District Agreements

The parties agree that the primary provider of educational services is Independent School District 318, and any cooperative venture agreements between District 318 and other school districts, consortiums of districts, or other agencies shall be subservient to this Teachers Master Agreement and individual contracts generated by M.S. 122A.40.

The parties agree that prior to entering into any such cooperative venture, the intention must be brought to the Exclusive Representative for meet and confer discussions. Any area of that discussion which impacts on job security and/or the working conditions of the existing staff shall be referred to the negotiation committee of the Exclusive Representative with the possibility of entering into addendum agreements to the Master Agreement.

Article X Hours of Service
Section 10 On Line Learning

This section applies only to on line learning as provided directly by ISD #318.

Subd. 1. Definition

On Line learning is defined as the teaching of students using the communication of information transmitted or received primarily by electronic means.

On Line learning classes shall be offered for students needing credit recovery, homeschooling, or low incidence (enrollment) offerings or when special circumstances necessitate the need for participation.

Subd. 2. Compensation

Teaching one on line course/class is the equivalent of teaching one class period during the regulation day. One semester course/class will be considered one tenth of a full time teachers contracted year.

Subd. 3. Overload

If an on line course/class is taught as an overload, it shall be compensated at prorata pay. Prorata will be defined as 1/7 (1/4 per semester class). Overload is defined as teaching a 6th class during prep time.

Subd. 4. Equipment

The district shall be responsible for the repair and maintenance of telecommunications classroom equipment. Teachers are not required to maintain telecommunications equipment.

Subd. 5. Grading

District grading and make up policies shall prevail for on line courses/classes.

STATEMENT OF THE ISSUE

Did the District violate Article V Section 14 of the collective bargaining agreement by failing to meet and confer with the Union prior to entering into a collaborative agreement with the Itasca Area Schools Collaborative (IASC) in September 2005? And Did the District violate Article V Section 14 by discontinuing certain negotiations with the Union in November 2005?

If so, what shall the remedy be?

UNION POSITION

The Union position is that the language at issue speaks clearly. The following statements are specific:

“any cooperative venture agreements...shall be subservient to this Teachers Master Agreement”, and “prior to entering into any such cooperative venture, the intention must be brought to the Exclusive Representative for meet and confer discussions. Any area of that discussion which impacts on the job security and/or

the working conditions of the existing staff shall be referred to the negotiation committee of the Exclusive Representative with the possibility of entering into addendum agreements to the Master Agreement.”

The Union points out this language bargained by Local 1314 is unusual, perhaps unique to this contract. (Union opening argument and testimony of Lee Johansen)

The Union argues the Statute cited by the Employer (M.S. 471.59) is not relevant. There is no dispute that the District can legally enter in to such cross-district arrangements. However the Union contract requires the District to do certain things first, which it failed to do. Union witness Carlson has served on the Meet and Confer committee for ten years. He testified the Employer never brought the intention to join IASC to meet and confer. There was no evidence to contradict this testimony.

The Union argues that what occurred here was contracting out work. The Union submitted a proposal made by former Superintendent Lloyd Stryroll in which the Superintendent stated the District’s intention to begin an online learning program. It further proposes that the “conditions in ISD 318 for the deployment of online learning” be referred to the bargaining table. (Union Exhibit 4)

The Union asserted at least one teacher performed online teaching in Spring of 2005, and was compensated by District 318. Then on Sept 19, 2005, a teacher began teaching an online course, and was paid instead by VITAL. (U Ex 6) Therefore from the Union’s perspective, the ‘Employer’ shifted from District 318 to IASC. The Union submitted a contract describing VITAL services which states in part:

“\$250 per course student fee that will be assessed to enrolling districts within the region and collected through the IASC”...

and states that students register through IASC and teachers are paid by IASC. (Union Ex 3, testimony of Jim Heinrichs)

Testimony of Superintendent Silko confirmed that District 318 represents about half the students in the collaborative, and that District 318 School Board has a seat on IASC’s governing board. Therefore the Union argues the Employer clearly is a part of IASC management.

Mr. Heinrichs testified there has been a loss of about 13 teacher positions for the last 10 years in this District. The Superintendent confirmed a 10 year pattern of

enrollment decreases and teacher cutbacks. Mr. Heinrichs testified he ‘can’t say for sure’ if any teacher jobs have yet been affected by IASC. However under these conditions, the possibility of online offerings becoming a threat to job security is a real one.

The Union argues the above evidence suggests that the obligation to negotiate which is set forth in the second part of paragraph two of Section 14 applied to this situation.

The Union’s requested remedy is that the agreement between District 318 and IASC be declared ‘null and void’, and the district ordered to go back and bargain with the Union.

EMPLOYER POSITION

The Employer points out that M.S 471.59 allows for school districts to enter into joint arrangements such as IASC. State law also allows Minnesota students to enroll in online classes. Students are permitted educational credit for these classes offered by any vendor certified by the State Department of Education. The collective bargaining agreement cannot prevent either of these things from occurring. The Union contract requires certain subjects to be discussed prior to entering an interdistrict agreement, but only if terms and conditions of employment are affected. (Employer opening statement)

Secondly the Employer argues that “ISD 318 has nothing to do with setting the pay or wages for this separate legal entity.”. Any teacher who teaches an online class for IASC is ‘moonlighting’. This work has no effect on their employment status with District 318.

In this case, there is no obligation to negotiate because the district is not contracting for educational services. As Mr. Silko testified ‘we don’t opt in to VITAL services, students opt in”. (U Ex 7, Jan 13 2006 letter from Mr. Colosimo, Employer closing statement, testimony of Joe Silko)

Further, the District asserts that IASC has had no impact on District employees. There have been no job losses or reductions resulting from the District joining IASC. Therefore the second part of paragraph two Section 14 does not apply.

Finally, the District argues that Meet and Confer did in effect take place. There were ongoing informal conversations between teachers and administrators. In addition

the subjects of IASC and online learning were discussed at a 2005 Labor Management Committee meeting which included teachers. (District Ex 1, testimony of Mr Silko and former Human Resources Director Larry O'Brien)

ANALYSIS OF ARBITRATOR

As the Union has argued, the language in Article V Section 14 is very clear and specific. It requires Meet and Confer to occur prior to the District entering into a collaborative arrangement such as IASC. The Arbitrator is not persuaded by the Employer's assertion that Meet and Confer did in fact occur, by virtue of ongoing informal conversations between teachers and administration. The Meet and Confer obligation which applies to professional employees is specifically set forth in PELRA (M.S.179A.06 subd 4, .179A.07 subd 3, 179A.08 subd 2). It is not fulfilled by individual conversations or other labor management gatherings. This District and Union did have a meet and confer process in place. Union witness Carlson had a ten year history with this meet and confer committee. His testimony that the Employer never brought the issue of joining IASC to the committee was undisputed.

The second alleged violation is the District's failure to refer "to the negotiation committee of the Exclusive Representative with the possibility of entering into addendum agreements to the Master Agreement" any area "which impacts on job security and/or the working conditions of the existing staff".

The District made an undisputed assertion that no bargaining unit member has lost a job or had an involuntary job reduction, as a result of the collaboration with IASC, and that therefore there has been no 'impact'. Secondly it argues that since District 318 does not contract for educational services from IASC, the obligations in Section 14 do not apply. Finally it argues since IASC is a separate employer, District 318 has no authority to bargain terms and conditions of employment for its employees.

With respect to the District's second argument, the Arbitrator accepts the assertion that individual students are at liberty to enroll in an online learning class from VITAL or from any other vendor which is certified by the State Department of

Education, if they so choose. However when students do enroll in online classes through VITAL, certain conditions pertain to that arrangement. The document setting forth those conditions is labeled 'draft'. However no evidence was submitted to refute its accuracy.

The document reads:

1. There will be a \$250 per course student fee that will be assessed to enrolling districts within the region and collected through the Itasca Area Schools Collaborative (IASC). Those fees collected will be a line item in the budget that will then be used to pay the teacher stipends through IASC. Students will be registered through IASC and Teachers will be hired by IASC.
2. To cover the teacher stipend, there would be a minimum of 40 seats available each semester that would be divided equally among participating districts. If a district did not use all their student seats prior to first week of each semester, those seats would then be open to all districts to fill.
3. The committee recognized that this first year will be a building year, and we may not achieve our minimum student goals. If the minimum numbers are not met, the committee recommends that each district contribute dollars based on student numbers to make up the difference in teacher stipends.
4. There will be a \$400 per semester course fee for students from outside the region requesting courses above 1ADM. (Union Ex 3)

The above agreement sets forth a fee paid by District 318 to IASC for online classes, designates a number of student 'seats' reserved for District 318 and the other participating districts, and a formula for sharing costs in the event of insufficient enrollment, which District 318 is obligated to. This appears to indicate educational services are being contracted for.

With respect to the District's other arguments regarding the obligation to bargain, the Arbitrator rejects the argument that because there has been no job loss to date, questions relating to pay, workload and other details of online teaching are not subjects for negotiation. The context for this issue between the parties is relevant and includes the following:

The MOU proposal made by then Superintendent Strywoll in June 2005 reads as follows:

ISD 318 has witnessed the growth of On-Line Learning and in the desire not to lose students to other providers or other districts; ISD 318 proposes to begin, in collaboration with other area districts, an On-Line Learning Program. ISD 318 also wishes to assure EdMN 1314 that it is not the district's intention to undermine the master agreement or the security of its members.

It is with this in mind that ISD 318 proposes that ISD 318 and EdMN 1314 utilize the negotiations process to arrive at a mutually agreed upon language that would govern the conditions in ISD 318 for the deployment of On-Line Learning. ISD 318 further proposes that the On-Line Learning courses that are scheduled to commence during the 2005/06 school year be encouraged with the understanding that all terms governing On-Line Learning be retroactive to July 1, 2005.
(Union Ex 4)

This proposal makes two points clear. One is that as recently as June 2005 (within one month of the start of the term of the current collective bargaining agreement), the District was planning to offer online learning, even proposing retroactivity to address online teaching already 'in the works'. The second is a recognition that online learning has implications for the collective bargaining agreement, and for the security of the Union's members.

The July 25 correspondence from Mr. Heinrichs to Superintendent Silko also makes clear that pay for online teaching was being discussed by the parties in some detail. In fact issues related to IASC-offered online learning were the subject of negotiation through the fall of 2005, until the Employer refused to continue such bargaining in November 2005. The record also discloses that at least one teacher was performing online teaching for District 318 the previous spring. (Union Ex 1, 4 and 7, testimony of Mr. Heinrichs, Carlson, and Silko).

The Arbitrator concludes that the Union need not remain powerless until loss of positions can be directly linked to the practices of a third party vendor. Moreover, the conduct of the parties prior to this grievance supports that conclusion, as does the contract language. Whether or not the parties successfully reach agreement, the contract requires them to negotiate these issues.

Finally the assertion by the District that it has nothing to do with a vendor's practices is unconvincing. It is undisputed the District is part of management of the collaborative, and represents a significantly larger portion of the student base than any other member. The whole aim of the collaborative and the District's membership on its board, is presumably to support and enhance the policies and practices of the District.

Having concluded the District has failed to comply with the contract, the dilemma before the Arbitrator is how best to remedy the violation. The Union asks that the IASC

agreement be null and void as it pertains to District 318. The Arbitrator believes to do that would exceed his proper authority in this case. There are many activities and functions of IASC, which have no bearing on this case. The power of the Arbitrator is limited to the collective bargaining agreement. The terms of any other cooperative venture are explicitly subservient to that agreement. Therefore with respect to members of this bargaining unit, to the extent that terms of the VITAL contract are at variance with the collective bargaining agreement, District 318 must bargain with the Union.

AWARD

The District is ordered to negotiate with the Union regarding the impact of the VITAL contract on the terms and conditions of this bargaining unit, and to make good faith effort to reach agreement on this issue for the 2007-2009 contract.

George Latimer, Arbitrator

November 8, 2007