

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

WISCONSIN DELLS SCHOOL DISTRICT
EMPLOYEES UNION LOCAL 1401-A,
WCCME, AFSCME, AFL-CIO

and

WISCONSIN DELLS SCHOOL DISTRICT

Case 20
No. 41732
MA-5455

Appearances:

Mr. Laurence S. Rodenstein, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Union.
Mr. Karl L. Monson, Consultant, Wisconsin Association of School Boards, Inc., 122
West Washington Avenue, Madison, WI 53703, appearing on behalf of the School
District.

ARBITRATION AWARD

Wisconsin Dells School District Employees Union Local 1401-A, WCCME, AFSCME, AFL-CIO, hereinafter the Union, and Wisconsin Dells School District, hereinafter referred to as the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission to appoint an arbitrator to hear and decide the instant dispute. The Commission appointed Coleen A. Burns, a member of its staff, as Arbitrator. Hearing in the matter was held on May 15, 1989, in the administration offices of the School District of Wisconsin Dells. The hearing was not transcribed. The record was closed upon receipt of post-hearing briefs on June 16, 1989.

ISSUE

The parties stipulated to the following statement of issue:

Did the employer violate the collective bargaining agreement by failing to assign the bowling trip bus route(s) to interested unit bus driver employees?

If so, what should be the remedy?

RELEVANT CONTRACT LANGUAGE

Appendix B - Bus Driver Salary Schedule

ADDITIONAL PROVISIONS

14. All extra-curricular trips will be assigned as evenly and fairly as possible among all interested unit employee drivers.

BACKGROUND

The Wisconsin Dells School District and the Wisconsin Dells Employees Union entered into a three-year Agreement for an initial collective bargaining agreement retroactive to July 1, 1988. Appendix "B" of the Agreement deals with the terms and conditions of employment governing the bus driver classification. Among the provisions contained in Appendix "B" is the Provision 14, as cited above. An identical provision appears in the employe handbook, which predated the collective bargaining agreement.

On December 9, 1988, a group grievance was filed on behalf of the unit drivers, alleging, inter alia, that the District violated Item 14 of Appendix "B" by having a management employe drive "bowling trips". The grievance further alleged that the District was contractually required to assign the trips to unit employes on the basis of seniority. The grievance was denied and, thereafter, submitted to grievance arbitration.

POSITIONS OF THE PARTIES

Union

There exists no past practice regarding the assignment of extra-curricular bus routes. The assignment procedure for extra-curricular bus routes under the contract differs in two material respects from the precontract situation:

- (1) A posting procedure was adopted by which interested individual unit drivers could sign up indicating interest in receiving extra-curricular assignments.
- (2) As a result of the posting procedure, management was able to assign interested employes on a rotating basis.

Under the pre-contract arrangement, assignment of extra-curricular bus work was done in an informal, uneven manner. The transition from an informal, uneven assignment pattern to a more formalistic system obviates any claim that a consistent and binding practice regarding the

assignment of extra-curricular routes survived the implementation of the initial Agreement.

The conduct of the District in establishing the formal posting system demonstrates the District's awareness of the need for changing its administration despite the fact that the language of the contract was identical to that of the handbook. As a result of the District's post-contract administrative conduct, any claim that No. 14 of Appendix "B" contractualizes the past practice of not regularly assigning bus routes for bowling trips is defective.

Furthermore, the record is devoid of any showing by the Employer of materiality in the pre-contract setting. The pre-contract setting did not have any means for the drivers to assent or not assent to a particular assignment. The Agreement does not provide the District with a legitimate basis for refusing a bus driver's legitimate right to demand an assignment consistent with the terms of the Agreement.

The District routinely assigns unit drivers to other bus routes which are also direct extensions of the curriculum. The District's attempt to categorize the bowling trip activity into a unique status among school activities is rejected by a review of the transportation department's extra-curricular log. Core education trips such as history are considered by the District to be extra-curricular. The artificial exclusion of bowling activity in this context is unwarranted .

The disputed provision constitutes a work jurisdiction clause which excludes the use of a supervisor to perform unit work. Appendix "B", No. 14 provides that all extra-curricular assignments must be offered to interested unit bus drivers. By practice, any bus assignments unit drivers do not or cannot work are given to the substitute drivers who are not regular employes, and, therefore, not currently in the unit.

The grievance asserts that the unit drivers were not given the opportunity to drive the bowling route. Instead, a non-unit employe, the transportation supervisor, was assigned the route and thereby performed unit work. The work jurisdiction clause provides no qualifiers to its scope of coverage. The bowling trips are subject to assignment in accordance with the provisions of Item 14 of Appendix "B". The grievance must be sustained.

District

The District has not violated the collective bargaining agreement. The District does not consider bowling trips to be extra-curricular. Rather, they are co-curricular. Bowling bus trips are considered co-curricular because bowling is a "unit" of the physical education program for which students receive a "grade". Students do not receive a "grade" for extra-curricular activities. The extra-curricular log of the school district regarding bus trips does not indicate that the bowling bus trips were ever considered as extra-curricular.

The Union is attempting to change the bowling trips from a co-curricular activity to an extra-

curricular activity. This is inappropriate for the grievance procedure and for a grievance arbitrator.

DISCUSSION

Item 14 of Appendix "B" provides that "all extra-curricular trips will be assigned as evenly and fairly as possible among all interested unit drivers". At issue is whether the bowling trip is an "extra-curricular trip", within the meaning of Item 14 of Appendix "B".

The collective bargaining agreement does not define the term "extracurricular trip". It must be assumed, therefore, that the parties intended the term to be given its common and ordinary meaning. Commonly and ordinarily, an extra-curricular trip is one whose purpose is to transport students who are engaged in an extra-curricular activity. An extra-curricular activity is one which is outside of the school curriculum, or normal course of study.

As the record demonstrates, bowling is a unit of physical education which is taken by the students during the course of the normal school day. As such, bowling is a curricular activity, rather than an extra-curricular activity. Thus, the plain language of Item 14, Appendix "B", does not provide unit employees with the right to be assigned the bowling trips in dispute herein.

The agreement is the first to be negotiated by the parties. Bowling trips were not discussed during the negotiation of the Agreement. The evidence of bargaining history does not demonstrate that the parties had any mutual understanding that the "bowling trips" in dispute herein would be considered to be "extra-curricular" within the meaning of Item 14 of Appendix "B".

As this is the parties' initial agreement, there is no evidence of a past practice concerning the administration of Item 14 of Appendix "B". However, as the parties recognize, the language contained in Item 14, Appendix "B", is identical to language contained in the employe handbook which was in existence at the time that the parties negotiated the initial Agreement. Transportation Supervisor Anen, who has been in his position since 1981, testified that, prior to the initial collective bargaining agreement, unit personnel drove the bowling trip only when Anen was not available to drive the route. Anen's testimony was not contradicted by any record evidence. Since the bowling trip was historically driven by a supervisor and not assigned "as evenly as possible among all interested unit employees", it is evident that the bowling trip had never been treated as an extra-curricular trip within the meaning of the employe handbook. Thus, the evidence of the parties' practices does not warrant the conclusion that, at the time the parties negotiated the initial agreement, there was a mutual understanding that the bowling trips were an "extra-curricular" trip.

Historically, bus drivers who drove the "bowling trip" when the Transportation Supervisor was unavailable were paid at the extra-curricular rate of pay. While this fact may give rise to an inference that the "bowling trip" was understood by the parties to be an "extra-curricular" trip, any such inference is rebutted by the other record evidence.

As the Union argues, the Transportation Department Extra-Curricular Trip Log demonstrates

that, since the advent of the collective bargaining agreement, unit employes have driven trips which were logged as "Drama", "Creative Writing", "History", etc. However, the record contains insufficient evidence concerning the nature of these trips for the arbitrator to determine whether the trips are co-curricular or extra-curricular. Assuming arguendo, that such trips are co-curricular, the fact that unit employes drove such trips does not warrant the finding that the District must make co-curricular trips available to unit employes. The collective bargaining agreement is silent on the issue of co-curricular trips. It must be concluded, therefore, that the District has the discretionary right to make co-curricular trips available to unit employes, but is not contractually required to do so.

In summary, neither the plain language of Item 14, Appendix "B", nor any other record evidence, warrants the conclusion that the bowling trip is an extra-curricular trip governed by the provisions of Item 14, Appendix "B". Accordingly, the District did not violate the provisions of Item 14, Appendix "B", when it failed to assign the bowling trip to interested unit employes. Nor is there any other contract language which requires the District to offer the bowling trips to interested unit bus driver employes prior to assigning the work to non-bargaining unit personnel.

Based upon the above and the record as a whole, the undersigned issues the following

AWARD

1. The Employer did not violate the collective bargaining agreement by failing to assign the bowling trip bus routes to interested unit bus driver employes.
2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 8th day of February, 1990.

By Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

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