

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MADISON TEACHERS INCORPORATED

and

MADISON METROPOLITAN SCHOOL DISTRICT

Case 235
No. 50074
MA-8140

Appearances:

Mr. Lee Cullen and Ms. Linda Harfst, Attorneys at Law, for the Union.

Ms. Beverly M. Massing, Assistant Labor Contract Manager, for the District.

ARBITRATION AWARD

The parties requested that the Wisconsin Employment Relations Commission designate the undersigned to serve as arbitrator in an expedited grievance arbitration process. Hearing was held November 15 and 18, 1993 in Madison, Wisconsin. A stenographic transcript of the hearing was prepared and the parties thereafter filed written argument and requests to supplement the record, the last of which was received January 7, 1994. I hereby receive the parties' supplemental submissions into the record.

Given the expedited nature of this proceeding, I will not extensively recite the background and argument of the parties in this Award.

ISSUE

The parties were unable to agree upon a statement of the issue to be resolved in this proceeding but did empower the Arbitrator to define the issue.

The Union would frame the issue as:

Did the District violate Section 7 of the May 1993 MEOC stipulation and settlement agreement by its attempted assignment of early childhood M-teams to James Schlagheck in September and October of 1993? If so, what remedy is appropriate?

The District proposes the following issue:

Did the stipulation entered into by the parties in April 1993 require the grievant to conduct evaluations for all non-public school children (including preschool children)?

The Arbitrator frames the issue as:

Does the District violate Paragraph 7 of the May 1993 MEOC stipulation by requiring the grievant to provide psychological services for preschool children? If so, what remedy is appropriate?

DISCUSSION

The question before me is a narrow one. To resolve the parties' dispute, I need only determine the most reasonable interpretation to be given Paragraph 7 of the Stipulation.

To some extent, the parties have litigated this dispute as if it were an interest arbitration proceeding. They have presented evidence and argument as if the question before me was whether or not the parties' contract should include a provision which would require the grievant to perform the duties in dispute. To a degree, this evidence and argument is helpful when determining the most reasonable interpretation of the Stipulation. However, I am herein asked to decide only the meaning of an existing agreement not what agreement the parties should enter into given the competing equities and interests.

The disputed language provides:

. . .

7. In consideration of the above actions, on May 1, 1993, the Respondent shall assign James Schlagheck as follows:

.6 Non Public Schools (NPS)
.4 Shorewood

The Complainant will complete his work at Lindbergh School by Friday, April 30, 1993. For the remainder of the 1992-93 school year, Mr. Schlagneck (sic) shall complete no fewer than eight (8) M-Team evaluations for his .6 Non-Public School assignment.

The Complainant's 1993-94 employment contract shall be revised to reflect this new assignment. This assignment shall also be considered as Mr. Schlagheck's assignment for all purposes under the Teachers' Collective Bargaining Agreement.

. . .

The District's psychologists provide services to children who are not enrolled in District operated programs or schools. Within that group of children, the grievant has only served those aged 5 or above who are enrolled in parochial/private schools. The grievant's assignment was described in a 1988 Memorandum of Understanding as ".3 psychologist for parochial/private special education." Other District psychologists provide service to preschool children.

Both parties agree the grievant's ".6 Non-Public School (NPS)" assignment under Paragraph 7 of the Stipulation includes a continuation of the grievant's ".3 psychologist for parochial/private special education." What is disputed is whether the Stipulation requires the grievant to additionally perform assignments for preschool children. I conclude that the Stipulation does require the grievant to perform these additional assignments.

I reach this result because the phrase "Non-Public School (NPS)" conveys a different meaning than "parochial/private special education." If the parties had only meant to expand the time the grievant would spend on existing responsibilities, it is most reasonable to assume they would have used the phrase ".6 parochial/private special education." By using a different phrase, it is most reasonable to assume the parties intended the Stipulation to be given a different meaning and thus to expand the scope of the grievant's responsibilities. Thus, I conclude the Stipulation allows the District to require the grievant to provide psychological services to preschool children.

Dated at Madison, Wisconsin this 10th day of February, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Peter G. Davis /s/
Peter G. Davis, Arbitrator