BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTHWEST UNITED EDUCATORS	Case 33 No. 50267 MA-8197
and	
BLOOMER SCHOOL DISTRICT	

Appearances:

Mr. Alan D. Manson, Executive Director, Northwest United Educators, appearing on behalf of NUE.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld, appearing on behalf of the District.

ARBITRATION AWARD

Northwest United Educators, hereinafter referred to as NUE, and Bloomer School District, hereinafter referred to as the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The parties jointly requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. A hearing was held in Bloomer, Wisconsin, on February 22, 1994. The hearing was not transcribed and the parties filed post-hearing briefs which were exchanged on April 20, 1994. The District advised that it would not file a reply brief and the NUE submitted a reply brief on May 2, 1994.

BACKGROUND:

The facts underlying the grievance are essentially undisputed. For the 1993-94 school year there were eleven teachers laid off, in whole or in part, and a senior teacher resigned. Several teachers were reassigned teaching duties for 1993-94 with a resulting change in teachers' classrooms. Additionally, the District hired a new elementary principal who started on July 7 or 8, 1993. Five teachers put in a request for additional compensation for extra hours worked prior to the start of the school year for packing and moving materials to the different classrooms and unpacking and preparing the room for classes. The parties agree that time spent in the normal preparation of classrooms is part of the teacher's professional responsibility and falls within the scope of normal duties.

There were three situations in the past in 1990, 1991 and 1992 where the District paid teachers for additional hours to prepare the classroom for classes. In 1990, the District built a new addition and did remodeling of other areas and the teachers packed up in May and June and teachers moved into these areas in August, 1990, and worked over weekends and/or evenings, and ten teachers received extra compensation. In 1991, the District had asbestos removed from classrooms and those classroom teachers had to pack up and remove materials and after the asbestos was removed, the materials were returned and unpacked. Eight teachers were given extra compensation for this work.

In 1992, a heavy rainstorm occurred in October and the roof leaked in the kindergarten classroom causing substantial water damage. The kindergarten

teacher worked before and after school cleaning up the damage and was paid for eight hours of additional work.

In 1992, Ann Zimmerman had a handicapped child in her class which required her to relocate her classroom from the second floor to the first floor. Zimmerman made no claim for extra pay. In 1993, Zimmerman was given the option of remaining in the first floor classroom or of returning to the second floor classroom. Zimmerman opted to move back to the second floor classroom and is one of the five seeking extra compensation.

The District denied pay to the five teachers who requested additional compensation in 1993-94 and the denial was grieved and is the subject of the instant arbitration.

ISSUE:

The parties stipulated to the following:

> Did the District violate the collective bargaining agreement, particularly Article V, Section 2, by refusing to pay four or five teachers for the additional hours they worked getting ready for the 1993-94 school year?
>
> If so, what is the appropriate remedy?

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE V - TEACHER RIGHTS

. . .

> 2. All rules and regulations governing employee activities and conduct shall be interpreted and applied as uniformly as is reasonably possible throughout the District; provided, however, that the parties recognize that valid differences in rules and regulations on similar issues may exist between the buildings and between grade levels and subject area fields.

NUE'S POSITION:

NUE contends that this is a simple case requiring answers to two questions. The first question asked by NUE is that in light of the pattern of extra work over the past several years for which extra pay was granted and the application of the requirements of Article V, Section 2, is prior approval an established requirement to qualify for extra pay for extra work? NUE asserts that the record clearly shows that prior approval was not necessary and therefore this question must be answered with a "no."

The second question asked by NUE is that in light of the past pattern of extra pay for extra work and the application of Article V, Section 2, is the District justified in denying extra pay for the claimed extra work on the basis that the work in this case was standard and a normal part of the teachers' responsibilities? NUE believes the answer is "no." It claims that work here was non-standard because of the lateness and number of room assignment changes. It submits lateness was beyond the control of the teachers and the only element over which a teacher had control was Zimmerman's voluntary relocation to accommodate a special needs student and the voluntary relocation is not a standard or normal change. It asserts that if there had been fewer changes, then custodial staff and teacher colleagues could have helped and the result would be closer to the standard situation. It claims that because of the number of changes and their lateness, this is a non-standard situation and the denial of extra pay is not justified. It requests that the District pay the teachers for the extra hours.

DISTRICT'S POSITION:

The District contends that there is no such thing as a binding "practice" and the instances cited by the Union as evidence of paying teachers for hours worked "beyond the norm" were extraordinary circumstances, all of which included prior District approval. The District asserts that the teacher reassignments for 1993-94, although more numerous than normal, are examples of the normal annual assignment of staff and classrooms which does not require extra pay for duties and Zimmerman's 1992-93 change to the first floor because of the special needs of a student was done without additional compensation.

The District insists that it has not violated Article V of the contract. It points out that it is stipulated that teachers spend time preparing their classrooms for the start of the school year and receive their normal compensation and teachers spend time outside their contractual hours preparing, planning and grading without extra compensation. The District notes there is no express language in the agreement requiring pay for hours worked prior to the start of the school year.

It submits that NUE bases its claim under Article V, Section 2 on three past occasions; a construction/renovation project, an asbestos removal project and a leaky roof. It states that NUE recognizes these as non-standard situations but NUE claims the instant case is also non-standard; however, according to the District, it has the right under Article II, Section 3, to

assign teachers and reassignments occur annually and preparing the classroom is part of the teacher's professional responsibility. It points out that Article V provides that valid differences in rules and regulations on similar issues may exist and the three prior instances all required a major move of all classroom materials, equipment and furniture and had prior approval, whereas the instant case is similar to other annual reassignments. It submits that a "valid difference," i.e. prior authorization, exists. The District submits that in prior situations the District agreed to pay for the extra work prior to its being done. The District insists that NUE has not established that a practice exists of compensating teachers for extra work whenever management reassigns teaching responsibilities or classrooms and any practice has been limited to unusual circumstances and only with prior approval. The District claims that Zimmerman's move in 1992-93 was without compensation and also Karyl Brandstatter's 1992-93 move was not compensated, which establishes that changes in classrooms are not compensated. It submits that there is no logical reason why they should be compensated for a similar move in 1993-94.

The District believes that even if the instant situation is found to be "non-standard," Article XX precludes an award in favor of NUE. It claims that Article XX requires that any practices must be in writing in order for them to be binding. It asserts that the arbitrator can only interpret and apply specific terms of the agreement and cannot "ignore clear-cut contractual language" and "may not legislate new language . . . ." It refers to the contractual authority of the arbitrator in Article IV and insists that the District cannot be held to a practice which it disputes and never agreed to. It concludes that there has been no violation of the contract and the grievance must be dismissed in its entirety.

NUE'S REPLY

NUE contends that the District uses faulty reasoning in its three arguments that 1) the comparable instances received prior approval; 2) the work was not unusual; and 3) the arbitrator lacks authority to change the contract.

NUE asserts that it has argued in its main brief that there was no clear prior approval in several of the cases and a discussion between Superintendent and Principal does not establish that bargaining unit members were clearly informed of an approval. It also points out that the initial rejection of payment supports NUE's position. In view of the total record, NUE claims that "prior authorization" has not been established in prior cases.

As to the second argument, NUE submits that the District's explanation of the larger than normal number of room changes and the unusual lateness due to a change in principal supports NUE's position that the extra work was non-standard.

As to the third argument, NUE disagrees with the District because the contract already provides for uniform interpretation by the District and it asserts a violation of the existing language which requires the arbitrator to

examine how the District treated employes in the past under similar circumstances. It maintains that the District's argument is ill-founded as NUE is simply asking the arbitrator to find a violation of an existing provision and not for a change in the agreement.

DISCUSSION

The main question to be answered in this case is a factual one and that it whether the 1993-94 changes in classrooms require the District to grant extra compensation to affected teachers. There were three other instances where extra compensation was granted. The parties agreed that normal preparation is part of the teachers' professional responsibilities and within the scope of their normal duties.

The first instance to be examined where extra compensation was paid occurred in 1992 when a combination of a leaky roof and heavy rainstorm caused damage to the kindergarten classroom requiring the teacher to perform additional work to clean up and return the classroom to teaching status. I conclude that this instance is distinguishable from getting a different classroom ready due to a reassignment. It appears that there were unexpected outside physical factors that caused the extra work to be required. This is similar to an act of God, neither within the control of the District nor the teacher, that required extra work to be performed to return the classroom to normal rather than a simple move from one classroom to another. So it is concluded this incident is an unusual case.

The next case involves the 1991 asbestos removal project. Here again, there is an outside physical problem, asbestos, which required the teachers to do extra work that would not normally have to be done but for the presence of the asbestos and the physical removal of it. This is not a normal occurrence but a one-time situation. The extra work to accommodate the asbestos removal would be unlikely to recur and therefore would be unusual or not normal. It also is a physical cause rather than a change in assignment which created the extra work and could be said to be unanticipated by the District or teachers involved. This does not seem to be comparable to the normal change in classrooms.

The last incident occurred in 1990 when teachers moved to the new addition. While this is somewhat comparable to a transfer to a different classroom, it is a wholesale move to a new classroom due to the physical construction of the new addition.

The above instances involving physical forces are distinguishable from layoffs and the exercise of contractual bumping rights resulting in a move to a different classroom. The present instances are comparable to Zimmerman's move from the second floor to the first floor in 1992, where she made no request for extra pay for extra work. Additionally, she was given the option to stay on the first floor or move back to the second floor at her option and she chose the second option. This appears distinguishable from the three prior incidents and falls within the normal teacher assignment. Although there may have been a higher than normal number of classroom reassignments in 1993-94, and while they were later in the year than normal, it is concluded that they were not as unusual as the leaky roof, asbestos removal or new addition moves and they fell within the normal teacher assignments.

In light of the above, it is unnecessary to determine whether any prior approval was required to be eligible for extra pay.

It is concluded that the District did not violate Article V, Section 2 of

the collective bargaining agreement by refusing to pay the teachers for the additional hours they worked getting ready for the 1993-94 school year.

Based on the above and foregoing, the record as a whole, and the arguments of the parties, the undersigned issues the following

AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 3rd day of June, 1994.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator