BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BAYFIELD EDUCATION ASSOCIATION

and

BAYFIELD SCHOOL DISTRICT

Case 28
No. 62110
MA-12161

Appearances:

Mr. Barry Delaney, Executive Director, Northern Tier UniServ-West, appearing on behalf of the Association.

Mr. Christopher R. Bloom, Attorney at Law, Weld, Riley, Prenn & Ricci, S.C., appearing on behalf of the District.

ARBITRATION AWARD

The Association and District named above are parties to a 2001-2003 collective bargaining agreement that provides for arbitration of certain disputes. The parties jointly asked the Wisconsin Employment Relations Commission to appoint the undersigned to hear and resolve a grievance over pay for field trips. A hearing was held on April 29, 2003, in Bayfield, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs by June 9, 2003.

ISSUE

The parties ask:

> Did the District violate the collective bargaining agreement when it paid Curtis Stelmaszewski $14.00 per hour for 8 student trips to various post high school education sites during the summer of 2002? If so, what is the appropriate remedy?

BACKGROUND

The Grievant is Curtis Stelmaszewski, a special education teacher with the District for the past seven years. During the summer of 2002, he took special education children on eight field trips to colleges and technical schools. He was paid $14 an hour for his 64 hours on those trips, and his grievance is for the extended pay rate of pay rather than the $14 an hour. The grievance filed on August 29, 2002, states:

> I am filing a grievance for inadequate pay which I received on August 9th and August 23rd. I should have received extended contract pay for taking Special Education students to various Universities, Colleges, and Technical schools. Instead, I was given a "21st Century" rate of $14.00 per hour and I should have been given $32.00 an hour according to my current yearly teacher salary. I was told in the beginning of last May to stop the 21st Century Afterschool Program because we had no funding left. My pay stubs listed the 21st Century as the fund I was paid from at the $14.00 per hour rate of pay.
>
> I followed, by law, the IEP goals and objectives of these students, and I was directed to write a report on our visits and insert these reports into the student's IEP files. I discussed the pay situation with the District Administrator and I was told that it would be discussed with the District Finance Secretary. I received my second check (8-23-02) and still had not been paid extended contract wages, nor had I received any explanation from any one why I was denied extended contract wages. I discussed my extended contract pay situation with Mark Jansen on Tuesday. August 27th and with Jeff Miller on August 28th and once again I was told nothing about the matter.

The 21st Century Afterschool Program – referred to above – was a three-year federal grant to help kids after school. The Grievant worked for $14 an hour for after-school tutoring under the grant and there is no dispute about that pay. At the beginning of September of 2001, the Activities Director, Terry Bauer, told the Grievant that there was only $14,000 left in grant money, and in May of 2002, he told the Grievant to discontinue the after-school tutoring program because the 21st Century Funds had been depleted. The Grievant was paid $14.00 an hour under an agreement with the prior administration. In the first year of the work, he got $20 an hour. A former administrator took that rate down to $9.33 an hour, and the Grievant and he then agreed to $14 an hour.

The 21st Century Program has nothing to do with the disputed field trips at issue here other than the fact that the $14 an hour rate of pay came from that experience.

During the summer of 2002, the Grievant was involved in a Learn & Earn Program. Also during that summer, the Grievant proposed to the District that he conduct field trips with special education students, taking them to colleges, universities and technical schools. He

talked to Finance Manager Nancy Heaton about it, who sent him to the interim District Administrator, Donald Anderson, for approval. Anderson recalled that the Grievant came to his office in the first week in July of 2002 and proposed taking a couple of field trips. Anderson was concerned about the costs of these trips. The Grievant said he would use a school vehicle and he would accept $14 an hour. Anderson then agreed and talked to Mark Jansen, the incoming District Administrator, at a later time. Anderson did not think about where the $14 an hour figure came from and there was no discussion of extended contract pay. At first, the Grievant had approval for four trips but Jansen later gave him approval for four additional trips.

Special Education Director Jeffrey Miller and the Grievant talked about the field trips regarding special education students who were enrolled in the summer Learn & Earn Program. While Miller had no specific recollection of telling the Grievant to write up IEP's (Individualized Education Programs), the Grievant had a clear recollection of being directed by Miller to do so. Heaton also recalled that the Grievant said Miller asked him to write up IEP reports, and the Grievant told her that such a directive changed everything. At that point, the Grievant thought about the extended contract pay rate. Heaton agreed that he should be paid the extended contract pay rate for the IEP work, and Anderson also approved that rate for the one and one-half hour of time for that work.

THE PARTIES' POSITIONS

The Union

The Union contends that the Employer cannot unilaterally implement a wage rate or negotiate with an individual employee a wage rate that changes what is found in the collective bargaining agreement. The contract states that the Board can set its own wage rates for duties such as chaperoning and/or supervising of athletic and other events. This language applies to co-curricular or extra-curricular activities just like all of the specific activities listed on page 21 of the contract. The page has the heading of "Activity Schedule" and all of the specific wage rates are for coaches, club advisors, class advisors, and for other extra-curricular or co-curricular activities. Co-curricular activities are those activities that are complementary to but are not part of the regular curriculum. Extra-curricular activities are those that are outside of the regular curriculum or outside of the usual duties of a profession. The provision cited by the District does not apply to work done by a teacher during the regular school term or during the regular student day, where such work is a continuation of the regular curriculum that is extended beyond the school term or regular school day.

The Union argues that the appropriate language is found in Article X(3) regarding extended employment. Under that provision, the District paid the Grievant a proration of his regular teaching salary for testing a student during the summer of 2002. The District also paid him a proration of his salary pursuant to Article X for writing reports of the eight trips in

question and placing those reports in the students' IEP's during the summer of 2002. If one duty is an extension of the regular curriculum duties, it follows that the duties involving the actual eight trips should also be considered an extension of the regular curriculum duties.

The Grievant testified that an IEP is an individual education plan for special education students and by law, such plan must be developed and put into writing. Most of the IEP requires the District to offer a curriculum that prepares the special education student for post-secondary education and/or an occupation. That curriculum includes visiting local WITC, colleges, and universities with a designated special education teacher to provide experiences for possible future educational choices. It also includes receiving community experiences in college and technical school visits. The visits or eight trips were part of the normal curriculum that the District was committed to provide those students and the trips were part of the normal school term duties that the Grievant was required to perform.

The IEP spells out that the Grievant was on these visits due to his status as a special education teacher, not just on the premise of chaperoning or supervising. The Grievant arranged the trips with the higher learning institutions, arranged for representatives to present information to students, went over this information with students, and presented work opportunities of local businesses within the area of the higher learning institutions. Such duties were an extension of the duties he performed during the regular school term. Thus, Article X(3), p. 11 of the collective bargaining agreement applies.

The Union is asking that he District provide the Grievant a prorated amount of his salary as provided in Article X (3) of the collective bargaining agreement for the time he spent taking special education students to technical schools and colleges during the summer of 2002.

The District

The District asserts that the contract clearly allows it to unilaterally establish wage rates for supervisory duties. The Grievant asked to take his students on field trips to area colleges and technical colleges, and he requested to be paid $14 per hour. That rate is equivalent to prior work performed by the Grievant as an after-school tutor at the District, as well as the rate associated with past field trips. The Grievant chaperoned and supervised the students on the field trips. The Board has the unilateral right to set is own wage rates for such chaperoning and supervisory work.

The District submits that the Grievant's field trips are not extended employment. The trips occurred after the summer Learn & Earn Program and were not part of the curriculum of that program. The Union has shown no practice or other evidence that supports its interpretation that a field trip which occurs after completion of a summer course is treated as extended employment. The District has examples of the proper interpretation of extended employment. The Grievant received an extended contract rate of pay for giving an assessment

of the reading level of one of his regular students on July 17, 2002. He also received an extended contract rate of pay for summarizing the results of the field trips in a report which can be placed in individual student's IEP. The District paid the Grievant at the rate he requested — that is not individual bargaining, since the Board could have unilaterally established any rate, including a lesser rate. Not only did the Board fulfill its contractual duties, but it also went one step further in allowing the Grievant to propose a wage rate at which to be compensated.

DISCUSSION

Article X of the collective bargaining agreement states: "All teachers shall be paid in accordance with the salary schedule. Extra curricular salary shall be paid in accordance with the salary schedule." There is no dispute that the District did not pay for the field trips under this Article. Article X also contains the provision for extended employment. The activity schedule is part of the salary schedule. It does not list anything such as field trips. There is a paragraph under the activity schedule that states: "Duties such as chaperoning and/or supervising of athletic and other events, the Board can set its own wage rates but no teacher can be required to work such duties." A final paragraph calls for $9.00 per hour in addition to their regular activity wages for teachers who are assigned to transport students.

So the basic question being asked here is whether the field trips fall under extended contract pay or fall under the language regarding chaperoning or supervising other events, which leaves the District free to set any wage rate. The Association believes that because the field trips resulted in extended employment, whereby the Grievant was ordered to write IEP's, that these field trips should also be considered part of extended employment. Not necessarily. The field trips were 64 hours of work while the IEP work was less than 2 hours of work. The minimal amount of extended work associated with the field trips cannot turn all of the hours into extended work without some evidence that these field trips were indeed part of an extended employment situation.

The Association also argues that most of the IEP requires the District to offer a curriculum that prepares the special education student for post-secondary education and/or an occupation. That curriculum includes visiting local WITC, colleges, and universities with a designated special education teacher to provide experiences for possible future educational choices, as well as receiving community experiences in college and technical school visits. However, the Grievant acknowledged that the field trips were not part of the summer Learn and Earn program. In fact, the Grievant never considered the field trips to be part of the curriculum until he did them and Miller told him to write IEP reports. That was the first time the Grievant thought about the extended contract pay and whether it should apply to his field trips. Thus, the field trips were obviously not a necessary part of the curriculum.

The District correctly points out that the Union bears the burden in this type of case of proving that the field trips were part of the extended contract and should be paid at that rate. I agree with the District that the Union has not convinced me that the field trips were part of an extended contract. First of all, the Grievant acknowledged that they were not part of the summer program. The Grievant thought of them after the summer program and got permission to take the field trips from the interim Administrator, Anderson, who thought he was only approving a couple of trips. Nobody considered them to be part of the curriculum until the Grievant was paid at the extended contract pay rate for submitting the IEP's. Moreover, the field trips fall within the contractual language under the activity schedule regarding chaperoning and/or supervising athletic or other events. It is a stretch to say that the field trips were part of a curriculum that was never intended to be done in the summer program, but it is hardy a stretch to say that the field trips were more akin to chaperoning and supervising other events. The term "other events" is fairly broad, but it is likely that this is exactly the type of thing that the parties had in mind when they bargained such language — an event that did not fall into a specific category in the contract.

Accordingly, I find no contractual violation.

AWARD

The grievance is denied.

Dated at Elkhorn, Wisconsin this 12th day of August, 2003.

Karen J. Mawhinney /s/
Karen J. Mawhinney, Arbitrator

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