

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

**THE MUSKEGO-NORWAY CAUCUS,
UNITED LAKEWOOD EDUCATORS**

and

MUSKEGO-NORWAY SCHOOL DISTRICT

Case 79
No. 69112
MA-14483

(Staff Development During Staff Meetings Grievance)

Appearances:

Mr. Miguel Salas, UniServ Director, United Lakewood Educators, 13805 West Burleigh Road, Brookfield, Wisconsin 53005-3058, appearing on behalf of the Association.

Mr. Michael Aldana, Quarles & Brady, S.C., 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of the District.

SUMMARY OF BENCH AWARD

The Muskego-Norway Caucus of the ULE (ULE or Association) and the District, above, agreed to submit for final and binding arbitration a dispute arising under their July 1, 2007 - June 30, 2009 collective bargaining agreement (Agreement). At their joint request, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz of its staff as the Arbitrator. At the Arbitrator's request, the parties agreed that the case would be arbitrated on an expedited basis with a bench award followed by issuance of a short written summary of the award.

Following the conclusion of the parties' presentation of evidence and oral closing arguments at a hearing in Muskego on August 28, 2009, the Arbitrator rendered a bench award. This is a written summary of that bench award.

ISSUES

The parties agreed that the ISSUES for determination this matter are as follows:

1. Did the District violate the Agreement during the 2008-09 school year at Bay Lane Middle School or Muskego High School by the manner in which it conducted certain staff meetings?
2. If so, what shall the remedy be?

PORTIONS OF THE AGREEMENT

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ARTICLE VIII -- CONTINUED EDUCATION PROCEDURES

. . .

8.05 Staff Development

The School Board and the Muskego-Norway Caucus, United Lakewood Educators, recognize the importance of Staff Development for the professional staff. The School District may require all professional staff members to participate in the Staff Development during the contracted day. Staff Development is independent from the In-service Program and teachers must meet the contracted requirements of each program.

The Staff Development Committee shall have the responsibility to develop and implement a program. The Staff Development Committee shall consist of administrative appointees of the School Board and teachers appointed by the ULE.

Sixteen hours of staff development will be provided with the dates being established on the calendar by the Administration and the ULE Chief Negotiator.

. . .

ARTICLE XI -- GRIEVANCE & BINDING ARBITRATION PROCEDURE

. . .

11.11 It is understood that the function of the arbitrator shall be to interpret and apply specific terms of this agreement. The arbitrator shall have no power to arbitrate salary adjustments, except improper application thereof, not to add to, subtract from, alter, or amend any term of this agreement.

. . .

ARTICLE XIII -- SCHOOL CALENDAR AND TEACHING HOURS

13.01 Work Days

The number of hours during which full-time teachers will be expected to be present at the various schools will be a total of eight (8) consecutive hours per day. The exact clock hours will be determined by the respective building principals.

13.011 Teachers are expected to remain after normal closing hours for administratively called meetings (See 13.04)

. . .

13.04 Staff Meetings

An effort will be made to keep administratively called meetings to a minimum number. Except in emergency situations, an agenda will be posted on the faculty bulletin boards for all meetings at least twenty-four (24) hours in advance. Teachers will be allowed to add items to the agenda through their principal or the ULE building representatives.

13.05 Extended Employment

. . . Compensation for non-teaching professional work outside of calendar days identified in this contract shall be at an hourly rate of Twenty-One Dollars (\$21.00) during this contract. This hourly rate does not apply to traditional contracts given to guidance counselors and librarians.

. . .

BACKGROUND

The grievance giving rise to this proceeding was signed, dated and filed by Association Grievance Co-Chair Linda Bernards-Idzikowski on September 29, 2008. In its initial form the grievance read, in pertinent part, as follows:

Description of Incident:

On Wednesday, September 17, 2008 administration at Bay Lane Middle School directed members of the ULE bargaining unit to attend staff development beyond the contracted day and beyond the 16 hours of mutually agreed upon staff development days in the School Calendar.

Sections of Contract Which Have Been Violated:

8.05 Staff Development
13.01 Work Days
13.05 Extended Employment

Remedy Sought:

Cease and desist from requiring staff to attend staff development beyond the contracted day and beyond the staff development calendar days and in all ways make bargaining unit members whole for any staff development time required beyond the contracted day and School Calendar staff development days.

The grievance was at denied at Steps II and III of the Agreement grievance procedure. The grievance response of the District's Superintendent, Joe Schroeder, read as follows:

TO: Linda Bernards-Idzikowski
FR: Joe Schroeder
RE: Step III Grievance
DA: November 18,2008

This letter serves as my written response to the Step III grievance regarding Sections 8.05 Staff Development, 13.01 Work Days, and 13.05 Extended Employment. This grievance concerns Bay Lane Middle School's staff meetings held on September 17, 2008, October 15, 2008 and November 12, 2008. According to the initial grievance dated September 29, 2008, the ULE contended that the meetings violated the aforementioned subsections of the contract by conducting staff development beyond the contracted day and beyond the sixteen hours of calendared staff development time.

I have reviewed the relevant sections of the contract, the 2008-09 and 2007-08 staff meeting agendas, and Bay Lane's August 2008 staff newsletter. I also have reflected upon our November 11 meeting with Kelly Thompson and Miguel Salas.

Through my review, it is evident that the fall 2008 staff meetings were conducted similarly to how they had been conducted in the past, even as recently as the 2007-08 school year, and that contract language supports the practices employed by Mr. Olson.

Specifically,

1) Meetings continued to be held one time per month, extending beyond the contracted day and were in alignment with Subsection 13.011 which states,

"Teachers are expected to remain after normal closing hours for administratively called meetings. (See 13.04)"

2) Per the absence of language to the contrary, learning at staff meetings does not breach 13.04 and, further, is not mutually exclusive to the staff development hours outlined in subsection 8.05. Frankly, I am not sure how a member of the education profession separates learning from one situation to the other, given the idea that one's professional development is ongoing and fluid, whether in formal or informal settings.

3) Upon learning in September from union representatives that the meeting outside of the contracted day was a concern (13.05), Mr. Olson communicated willingness to consider other staff meeting structures that could work within these parameters. I was glad to hear during our meeting on November 11 that, given such options, this issue is no longer a prevailing concern of the union and that you intend to work with Mr. Olson to find an acceptable option.

Therefore, given these findings, I must uphold the decision at Step II and deny your request to pay staff for their attendance at staff meetings.

At the same time, at our Nov. II meeting, we discussed general concerns you have had, which you believe contributed to a challenging start to date with new Bay Lane administration. As I shared at our meeting, I would like to help both parties work through these concerns and am willing to facilitate future discussion(s) to help address them. Specifically, it appears very appropriate to arrange a meeting where up to three Bay Lane faculty representatives (including you) join a meeting with Bay Lane administrators, Erik Olson and Jeff Petersen, which I would facilitate with the goal of moving relationships and continuous school improvement efforts forward in a positive direction. If interested, please contact me with potential times and dates for this meeting and thanks for the dialogue.

At some point during the pre-arbitral processing of the grievance, without objection by the District, the Association amended the grievance to assert the same claims with regard to additional 08-09 staff meetings at Bay Lane and to assert the claim that at various 08-09 staff meetings at the Muskego High School the administration directed members of the ULE bargaining unit to attend staff development beyond the 16 hours of mutually agreed upon staff development days in the school calendar. The grievance was ultimately heard and denied by the District School Board and the instant arbitration ensued. While the record suggests that the Association placed emphasis during the pre-arbitral steps on its claim that the District was violating the 16 hour provision of Sec. 8.05, it is clear that the Association did not withdraw its additional claim that the District was violating Sec. 8.05 by requiring participation in staff development activities at Bay Lane staff meetings after the end of the contractual day.

POSITIONS OF THE PARTIES

The Association argues, among other things, that the District has changed the character of staff meetings at Bay Lane and the High School from dissemination of operational information needed by teachers in order to work in those buildings to extensions of the sort of intensive and interactive educational skill building associated with the 16 hours of jointly designed staff development provided for in Sec. 8.05. By doing so at both buildings, the District has violated the third paragraph of Agreement Sec. 8.05 which expressly limits staff development to 16 hours per school year on the dates established for that purpose on the calendar. Furthermore, by doing so during portions of meetings that extended beyond the end of the Bay Lane contracted day, the District also violated the first paragraph of Sec. 8.05 which expressly limits the District's right to require staff members to participate in Staff Development to periods of time "during the contracted day." The District's rights under Sec. 13.011 to require staff to remain beyond the contracted day for administratively called meetings and under Sec. 13.04 to establish the initial agenda for staff meetings must both be read together with and subject to the 16 hour and "during the contracted day" limitations on the District's right to require staff to participate in staff development. Association negotiators testified that it has always been the Association's understanding that the Agreement reserves to the District the right to require teachers to attend staff meetings concerning operational matters that teachers need to know in order to work in the building involved. The bargaining history evidence shows that staff development was converted years ago from an open-ended set of three optional methods by which teachers could meet their staff development requirement in return for compensation in one form or another, to a uniform system whereby all employees would be required to attend a uniform 16 hours of staff development programming for which two former in service days were exchanged during bargaining. The District's use of staff meetings for additional staff development violates not only the language of the current Sec. 8.05, but also the spirit and purpose of the parties' agreement in that regard. By way of remedy for the violations, the Arbitrator should order the District to cease and desist requiring staff development participation at staff meetings generally, or at least order the District to cease and desist requiring staff development participation at staff meetings after the end of the contracted day. The Arbitrator should also order the District to make whole the employees affected by the violations at the \$21.00 per hour rate provided in Sec. 13.05.

The District argues, among other things, that its conduct of staff meetings at Bay Lane and the High School in 2008-09 did not violate the Agreement in any respect and that the Association's sudden objections to the scope, content, methodology and time of day of certain of the agenda items covered in those meetings fly in the face of longstanding practice at many schools in the District, and particularly at Lake Denoon Middle School. Agreement Sec. 13.011 clearly and unequivocally authorizes the District to require teachers to attend administratively called staff meetings even when those staff meetings extend beyond the end of the contracted day. Section 13.04 clearly and unequivocally authorizes the District to determine its portion of the agenda for staff meetings, subject only to the expressed requirements that the District ordinarily post the meeting agenda 24 hours in advance and that teachers be allowed to add items to the agenda through their principal or the ULE building

representatives. Those rights are not made subject to any limitation as to the length of the meeting or the nature of agenda topics or methods of addressing those topics during those meetings or the time of day at which those topics are addressed during the meeting. Under Sec. 11.09, the Arbitrator cannot add such limitations where, as here, the record clearly establishes that the District has never agreed -- expressly or implicitly -- to any such limitations on its Sec. 13.011 and 13.04 rights. Contrary to the Association's contentions, staff development is not limited by the Agreement to the 16 hours of activities referenced in the third paragraph of Sec. 8.05. Rather, it is the far broader range of activities and opportunities for the improvement of teachers' educational skills that has long been offered or provided to District teachers in a variety of forms including but not limited to 16 hours referred to in Sec. 8.05. The Association has not presented a coherent or consistent or contractually-based or practice-based definition of the staff development that it now, for the first time, claims cannot be a part of staff meeting agendas. Those claims fail based on the Agreement language alone, but also because, as the District has shown, staff development topics and activities of the sort grieved in the instant matter have been a part of the staff meeting agendas at various District schools for many years, and especially so at Lake Denoon Middle School. The Association representatives' claimed understanding that staff meetings are limited to nuts and bolts subjects relating only to building operations are not only inconsistent with that evidence concerning past practice, but they are also wholly irrelevant because they are merely subjective understandings that were never communicated to the District and never agreed upon by the District in any way. On those bases, the grievance, as amended, must be denied in all respects. If a violation is somehow found, the record does not provide a reliable basis on which to determine the extent of any of the violations alleged, making the monetary relief requested by the Association speculative and hence inappropriate.

DISCUSSION

In a contract interpretation case such as this, the Association bears the burden of persuasion on the stipulated issues. The Association has met that burden only as to its claim that the District violated Agreement 8.05 when it required Bay Lane teachers to participate in staff development during portions of staff meetings that were beyond the end of the Bay Lane contractual 8 hour day. The Association has failed to meet its burden as to its claims that the District violated the Agreement when it required Bay Lane and High School teachers to participate in staff development during portions of staff meetings that were not beyond the end of the contractual 8 hour day.

Section 13.01 generally establishes an 8 hour contracted day, with exact clock hours determined by the respective building principals. Section 13.011 makes an exception to the 8 hour contracted day so as to allow the District to require teachers to attend administratively called meetings that extend later than the end of the 8 hour contracted day.

Section 13.04 calls on the District to make an effort to keep administratively called meetings to a minimum number. It goes on to provide that the District has the right to determine agenda items for staff meetings subject to the requirements that it post the agenda 24

hours in advance except in emergencies and that it add items proposed by teachers through their principal or the ULE building representatives.

Article XIII itself contains no expressed limitation on the length of staff meetings or on the topics or methodology of staff meeting agenda items, and Sec. 13.011 authorizes the District to require teachers to attend staff meetings that extend beyond the end of the contracted day. However, the Arbitrator agrees with the Association that it is necessary and appropriate to read those sections together with the Agreement as a whole, including the second sentence of the first paragraph of Sec. 8.05 regarding Staff Development. That sentence expressly provides that the District "may require all professional staff members to participate in the Staff Development during the contracted day." That sentence persuasively implies that the District may not require professional staff members to participate in staff development outside the contracted day. If it did not mean that, the sentence would be rendered meaningless -- an interpretation that the parties cannot be presumed to have intended.

The parties disagree as to the scope of the term "staff development" as used in the second sentence of the first paragraph of Sec. 8.05. Association witness Frederick Schuler testified to the effect that as used throughout Sec. 8.05, that term is limited to the 16 hours referenced in the second and third paragraphs of that section. District witness Kelly Thompson testified that, as used in the second sentence of the first paragraph, that term is broader than and not limited to the 16 hours referenced elsewhere in that section. When the evidence beyond the language of the Agreement is considered, the record as a whole persuasively establishes that "staff development" as used in the second sentence of the first paragraph of Sec. 8.05 includes not only the 16 hours referenced in the third paragraph of that section, but also a wide range of other staff development opportunities including, among others, staff meetings, staff collaboration time, department meetings, grade meetings, educational improvement team meetings, and various summer staff development opportunities.

In that context, the Arbitrator finds the 16 hours reference in the third paragraph of Sec. 8.05 only guarantees the number of hours of staff development to be jointly developed and established on the calendar as provided elsewhere in Sec. 8.05, but it does not preclude the District from requiring teachers to participate in additional staff development at staff meetings. Rather, the District is free to require teachers to participate in additional staff development at staff meetings so long as that staff development is conducted during the portions of those staff meetings that occur "during the contracted day."

The Association has shown that the District required Bay Lane teachers to participate in staff development during portions of 2008-09 staff meetings after the end of the Bay Lane contracted day. In that respect, but only in that respect, the District has been shown in this case to have violated the Agreement, specifically the second sentence of the first paragraph of Sec. 8.05.

The Association has not claimed or shown that the District required High School teachers to participate in staff development during portions of 2008-09 staff meetings after the end of the High School contracted day.

While the Association has also shown that the District required Bay Lane and High School teachers to participate in staff development during portions of 2008-09 staff meetings before the end of the contracted day, that showing does not prove a violation of the Agreement, because Sec. 8.05 does not limit staff development to 16 hours per year.

Neither the past practice evidence, nor the historical origins of what is now Sec. 8.05, nor the Association negotiators' subjective and unilateral understanding that staff meeting content is somehow limited to operational information about working in the particular building, provide persuasive support for the Association's assertions that the District committed violations in addition to those found above.

Remedy

The Arbitrator concludes that the appropriate remedy for the violation noted above is to require the District to cease and desist from requiring teachers to participate in staff development during portions of staff meetings after the end of the contracted day. The Arbitrator finds it appropriate in the first instance to leave it to the parties to attempt to resolve the standards by which future staff meeting agenda items will be parsed between periods before and after the end of the contracted day. The Arbitrator has reserved jurisdiction for a specified period of time in case either of the parties finds it necessary to request that the Arbitrator resolve any disputes as to the meaning of "staff development" or of the other terms of the remedial order issued in this Award.

The Arbitrator concludes that no additional relief is warranted. Monetary relief has not been ordered as regards the violation found for two reasons. First, the Association's longstanding acquiescence at Lake Denoon Middle School in all of the same conduct that is being challenged in this grievance would reasonably have led the District to believe that the Association did not consider any of that conduct to be violative of the Agreement. And second, the record indicates that it will not be possible to determine to a reasonable degree of certainty the extent of the violation found in terms of the cumulative amount of time after the end of the contracted day that staff development participation occurred in the Bay Lane staff meetings during 2008-09.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole, it is the **DECISION AND AWARD** of the Arbitrator on the **ISSUES** noted above, that:

1. The District did violate Agreement Sec. 8.05 during the 2008-09 school year at Bay Lane Middle School by the manner in which it conducted certain staff meetings, to wit, by requiring teachers to participate in staff development during portions of staff meetings after the end of the contracted day.
2. The District did not violate the Agreement during the 2008-09 school year at Bay Lane Middle School or Muskego High School when it required teachers to participate in staff development during portions of staff meetings prior to the end of the contracted day.
3. By way of remedy for the violation noted in 1, above, the District shall cease and desist from requiring teachers to participate in staff development during portions of staff meetings after the end of the contracted day.
4. The Arbitrator reserves jurisdiction for a period of 30 calendar days from the date of this award (or for such additional period as the Arbitrator may order within that period), to resolve, at the request of the Association or the District, any dispute that may arise as to the meaning and application of the remedy ordered in 3., above.
5. The Association's requests for monetary relief and for other relief besides that noted in 3. and 4., above, are denied.

Dated at Shorewood, Wisconsin, this 2nd day of September, 2009.

Marshall L. Gratz /s/

Marshall L. Gratz, Arbitrator

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