

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
**CHIPPEWA FALLS FEDERATION OF TEACHERS,
LOCAL 1907, WFT, AFL-CIO**

and

CHIPPEWA FALLS AREA UNIFIED SCHOOL DISTRICT

Case 149
No. 69165
MA-14507

(Combined Track Coach Grievance)

Appearances:

Ms. Summer H. Carlisle and Mr. Timothy E. Hawks, Attorneys, Hawks Quindel, S.C., 700 West Michigan Suite 500, P.O. Box 442, Milwaukee, Wisconsin, appearing on behalf of Chippewa Falls Federation of Teachers, Local 1907, WFT, AFL-CIO.

Mr. Stephen L. Weld, Attorney, Weld, Riley, Prens & Ricci, S.C., 3624 Oakwood Hills Pkwy., P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of Chippewa Falls Area Unified School District.

ARBITRATION AWARD

Chippewa Falls Federation of Teachers, Local 1907 WFT, AFL-CIO. hereinafter "Federation," and Chippewa Falls Area Unified School District, hereinafter "District," requested that the Wisconsin Employment Relations Commission provide a panel of staff arbitrators from which to select an arbitrator to hear and decide the instant dispute in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. Lauri A. Millot, of the Commission's staff, was selected. The hearing was held before the undersigned on April 6, 2010, in Chippewa Falls, Wisconsin. The hearing was not transcribed. The parties submitted briefs, the last of which was received by May 26, 2010 whereupon the record was closed. Based upon the evidence and arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The parties stipulated that there were no procedural issues in dispute, but were unable to agree as to the substantive issues.

The Federation framed the substantive issues as:

Did the Chippewa Falls School Board violate Article 8, Section B and Appendix C, Section 1 of the collective bargaining agreement when it failed to fully compensate track coaches for performing all of the head coaching duties for the men's and women's track teams? If so, what is the appropriate remedy?

The District framed the substantive issues as:

Did the District violate Article 8, Section B and/or Appendix C, Section 1 when it filled a single head track coach position and added a fifth Assistant Track Coach position? If so, what is the appropriate remedy?

Having considered the evidence and arguments of the parties, I frame the issues as:

Did the District violate 8, Section B and/or Appendix C, Section 1 of the parties' collective bargaining agreement when it compensated the Grievant at 8.5% of the BA base salary for his work as an assistant track coach and Head Coach Bestul at 13.5 % of the BA base salary for his work as head coach? If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

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ARTICLE I – Recognition and Scope

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Section B. *Management Rights*

The Board, unless otherwise herein provided, hereby retains and reserves unto itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right:

1. To the executive management and administrative control of the school system and its properties and facilities.

2. To hire all employees and, subject to the provisions of law, to determine their qualifications and the conditions for their continued employment.

The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement and Wisconsin statutes: 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin and the Constitution and laws of the United States.

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ARTICLE IV – Grievance Procedure

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Section C. *Procedure for Adjustment of Grievance*

Grievances shall be presented and adjusted in accordance with the following procedures:

- * Step I. Any teacher within the bargaining unit with a grievance may first discuss the matter with the principal, either directly or accompanied by a Federation representative, with the object of resolving the matter informally. Grievances must be presented to the principal within 60 days of the date the teacher knew or should have known of its existence or the right to process them shall be waived.
- * Step II. If a grievance has not been solved satisfactorily at Step I, the aggrieved teacher and/or the Federation may appeal to the Superintendent of Schools. The appeal shall be in writing on a mutually agreed to grievance form.
 1. Within five school days after receipt of the appeal, the Superintendent shall schedule a meeting with the grievance committee chairperson of the CFFT or their designee on the grievance. The aggrieved teacher shall have the right to attend said meeting.

2. The aggrieved teacher and the Federation representative or designee shall be given at least two school days notice of this meeting.
3. Within five days after the meeting on the appeal, the decision of the Superintendent shall be communicated in writing together with the supporting reasons to all parties present at the meeting.

* Step III. Within five school days after receiving the decision of the Superintendent, the aggrieved teacher through the Federation, or the Federation in its own name, may appeal the decision directly to the Board. The appeal shall be in writing and shall be accompanied by a copy of the decision at Step II. The Board may waive this step in the procedure and proceed directly to arbitration.

1. Should the Board choose not to waive the appeal directly to arbitration, within 30 days after receipt of the appeal, the Board shall discuss the appeal of the grievance at their next regular board meeting. Federation representatives shall have the right to attend and present their case.
2. The aggrieved teacher and the Federation representative or designee shall be given at least two school days notice of the hearing.
3. Within five school days after the meeting on the appeal, the Board shall communicate its decision, in writing, together with its supporting reasons to all parties present at the meeting.

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* Step IV. If the decision is rendered unsatisfactory to the aggrieved teacher or the Federation, within ten school days after receiving the decision of the Board, the Federation may appeal the decision of the Board directly to the Wisconsin Employment Relations Commission for arbitration by its staff.

1. The decision of the arbitrator shall be in writing and shall set forth the arbitrator's opinions and conclusions on the issues submitted in the written appeal.

2. Nothing in the foregoing shall be construed to empower the arbitrator to make any decision amending, changing, subtracting from, or adding to the provisions of this agreement. The decision of the arbitrator shall be final to the dispute and both will abide by it.

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ARTICLE XIII – Salary and Teacher Welfare

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Section B. Extra-Curricular Activities and Duties

1. Regular schedule attached as Appendix C.
2. All extra-curricular and extra duties shall be assigned on a voluntary basis.
3. Extra-curricular assignments shall be reimbursed at a percentage of the starting August salary for a teacher with the Bachelor's Degree.
4. Percentage amount of pay for any extra-curricular duty may be reimbursed in compensatory days. For every one-half percent (1/2%) of extra-curricular pay a teacher may take one (1) compensatory day in lieu of pay, with a limit of two (2) work days, provided, however, that the teacher shall notify the Board of his/her intention to take compensatory days off at the beginning of the school year and shall give the Board one week's notice as to which days he/she shall be taking off.

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Appendix C

Percentages are based on the BA salary in effect the fall of that school year. Any additions to the extra-curricular schedule will be negotiated at the appropriate time.

I. Athletics

The following percentages are calculated on base salary. This includes all season activities, including tournaments.

A. Senior High (9th grade through 12th grade)

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|-----|----------|------|-------|
| 46. | M. Track | Head | 13.5% |
| 47. | M. Track | Asst | 8.5% |
| 48. | W. Track | Head | 13.5% |
| 49. | W. Track | Asst | 8.5% |

BACKGROUND AND FACTS

The Grievant, James Johnston, is a 28 year employee of the District working in the capacity of school psychologist. He is currently assigned to three buildings; the high school, the alternative high school and one elementary school. In addition to his professional educational responsibilities, the Grievant has coached sports teams in the District for a number of years including 12 years wrestling and six years track at the middle school. For the last six years, the Grievant has coached track at the high school level: two years as an assistant coach, then as Women's Head Track Coach for school years 2006-2007, 2007-2008, 2008-2009, and then as an assistant coach in 2009-2010.

In 2008-2009, the District employed a Men's Head Track Coach, a Women's Head Track Coach and two Assistant Track Coaches. Track is a sport comprised of a number of individual events and relays, each requiring different skills and abilities from their respective athletes. To capitalize on the specialized skills of the coaches, each District track coach took responsibility for a number of events and worked with both the male and female athletes. The coaching staff for track for the 2008-2009 season included the Grievant as Head Women's Coach, Head Men's Coach Jamie Buchholtz, and four assistant coaches including Dave Martineau, Chuck Hull, Jodi Oechsle-Meyer, and Amanda Hill. The coaching staff divided the events as follows: the Grievant worked with high jump, hurdles, and distance runners; Martineau worked with shot put and discuss throwers; Hull worked with long distance runners and relays; Meyer-Oechsle and Hill worked with sprinters, the 4 x 100 and the 4 x 200 relay; and Hill also worked long and triple jumpers. The record does not contain the specific events that Buchholtz worked with, but it is clear that he worked with more than one event.

At the end of the 2008-2009 school year, the District issued lay off notices to professional teaching staff members. Technology Education teacher and Men's Head Track Coach Jamie Buchholtz received a lay off notice. Buchholtz's departure presented the District with an opportunity to re-evaluate the track coaching structure in light of concerns raised by parents. The parents reported that the male and female athletes were subjected to different rules for lettering, bus behavior, locker room usage, and practice attendance. The parents further questioned why their child's coach was not present at all athletic competitions.

District Activities Director Jason Schultz investigated the concerns raised by the parents and recommended unification of the men's and women's track teams under the management of one head coach. Schultz further recommended that addition of one assistant coach. District Administrator Mike Schock approved Schultz's recommendations. As a result, effective the

2009-2010 school year, there would be one Head Track Coach for both the male and female athletes and an additional assistant coach.

The District posted the Head Track Coach position on May 19, 2009. The posting read as follows:

CHIPPEWA FALLS HIGH SCHOOL is seeking a qualified individual for the following position for the 2009-2010 school year:

Head Track & Field Coach

Position will begin in Spring, 2010. Required: Acute knowledge of the game, some post-secondary education and WIAA approved coaches education within one year. Preferred: Certified teacher, five years coaching experience at the Varsity level, and playing experience at the collegiate or varsity level. The Head Coach position is responsible for providing leadership and guidance to student athletes and assistant coaches within the program. The Head Coach works closely with the Activities Director to determine goals and direction of the program. The Head Coach is responsible for the health, safety and welfare of every student athlete participating in their program for Chippewa Falls High School.

To apply for a position, please send a letter of application, resume and two letters of recommendation to: Jason Schultz, Director of Athletics & Activities, Chippewa Falls High School, 735 Terrill St., Chippewa Falls, WI 54729 by June 3, 2009.

The District hired Michael Bestul for the position. The Grievant did not apply for the head coach position, but was hired to the newly created assistant coach position. The coaching personnel for Track for 2009-2010 did not substantially change except for the hiring of Bestul the departure Buchholtz. The other coaches included the Grievant, Martineau, Hull, Oechsle-Meyer and Hill. The 2009-2010 track team included approximately 65 male and 35 female student athletes.

On July 16, 2009 the Federation filed a grievance asserting that the combination of the two Head Track Coach positions “caused a decrease in pay for Jim Johnston” in violation of the labor agreement. The Federation described the violation as:

According to the Master Agreement, Appendix C, there are two separate positions for Head Track Coaches, one for Men’s Head Track and one for Women’s Head Track, each to receive 13.5% compensation. The decision to change these from two extra-curricular positions to one has not been negotiated with the CFFT. The CFFT does not take issue with Michael Bestul being hired as Head Men’s Track Coach to replace Jamie Buchholtz at 13.5%

compensation, but these are two separate positions that need to be filled with two different people, each being paid 13.5%.

The District denied the grievance at all steps in the grievance procedure.

Additional facts, as relevant, are contained in the DISCUSSION, section below.

DISCUSSION

The Federation initiated this grievance asserting that the District had neither the right to eliminate one of the head Track coach positions nor the right to combine the responsibilities into one head coach. The Federation modified its position and maintains that the District is not fully compensating track coaches for performing all of the head coaching duties. Therefore, the issue in this case is not whether the District had the right to combine the two Head Track Coach positions, but rather whether it violated the collective bargaining agreement when it did not redistribute the “left over” head coaching compensation after the Head Women’s and Head Men’s Track Coach positions were eliminated and a Combined Head Track Coach position was created.

Article 8, Section B, sub-section 1 provides that extra-curricular activities and duties as, enumerated on Appendix C, will be compensated consistent with the “[r]egular schedule attached as Appendix C.” Appendix C provides for a Head Men’s Track Coach and Head Women’s Track Coach and Men’s and Women’s Assistant Coaches. The negotiated compensation for a track head coach is 13.5 percent and 8.5 percent for a track assistant.

The Federation first challenges the District’s failure to pay the total negotiated wages for the Track coaching responsibilities. In 2008-2009, the District employed two head coaches and four assistant coaches. The head coach was compensated at 13.5 percent and the assistant coach at 8.5 percent totaling 61 percent. In 2009-2010, the District employed one head coach and five assistant coaches for a total percentage of base compensation of 53.5 percent. The Federation maintains that the 7.5 percent difference between the 2008-2009 and 2009-2010 compensation - 61 less 53.5 - is due.

The parties have negotiated a wage for a head coach and for an assistant coach. That wage is based on responsibilities, the collection of duties performed, and other factors that the parties took into consideration. The District paid the head coach and assistant coaches consistent with the labor agreement. The discontinuation of a job does not require nor does the collective bargaining agreement allow for the unilateral redistribution of monies. Changes in rates of pay are generally accomplished via contract negotiations and unless the collection of duties that the Grievant is performing is significantly different than that which the job description and/or the parties have generally understood to be the duties of a head coach or an assistant coach, then there are no monies due.

The Federation argues that the Grievant is performing/performed duties in excess of the bargained for assistant coach position and is therefore due additional compensation. In 2008-2009, the Grievant was the Head Women's Track Coach and was responsible for setting the overall direction of the women's track program. The Grievant testified that he was responsible for organizing the women's track season which included determining what coaches would work with what events, ordering and maintaining equipment, ordering and maintaining uniforms, determining the events that the athletes would compete in, entering the athletes into events for meets, organizing and managing paperwork including physical cards and athletic code compliance forms, taking attendance and maintaining parent communication. The head coach was further responsible for setting policy and procedure for lettering and establishing the standards of appropriate behavior at practice, in the locker room, on the bus, and at competitions. The Grievant stated that he met with the Activities Director regarding attendance, transportation, and equipment. The Grievant also met regularly with the assistant coaches and gave them direction and guidance. In addition to his administrative duties, the Grievant coached male and female athletes in the specific track events of hurdles, high jump and mid-distance running. The Grievant estimated that the time involved was two to three hours daily for practice, one hour per week completing event entrance data for female athletes for meets, fifteen minutes per week meeting with the coaching staff to discuss how the staff was addressing the needs of the athletes, and several hours per week communicating with parents and the Activities Director.

In 2009-2010 the Grievant was no longer responsible for the overall direction of the Women's Track team. The Grievant's primary responsibility was to coach male and female athletes in mid-distance running, the 4 x 400 and 4 x 800 relays, pole vault, and hurdles. The Grievant also performed data entry of female athletes for two meets, amounting to approximately one hour per meet and assisted with busing issues since he was at the high school and Head Coach Bestul was at an elementary building. The Grievant no longer held coaches meetings, but instead attended coaches meetings under the direction of Bestul. The Grievant testified he no longer performed seasonal planning, was not responsible for the creation or enforcement of policies, including lettering; was not responsible for equipment, lockers, locker rooms, or uniforms.

The Grievant testified that he believed he was still performing approximately 30 percent of the head coaching duties. This record does not support a finding that the Grievant is performing a Head Coach collection of duties nor does it allow for the conclusion that the Grievant's workload is excessive or substantially different than that of the other assistant coaches. While it is true that he continued to perform data entry, this is not a function specifically identified as a head coach duty nor is it time consuming. The other duty which he performed that was administrative in nature was his involvement in bus scheduling, but he was not scheduling buses. Rather, that is an Activities Director function and the Grievant's involvement was limited to determining departure and return times based on the start and anticipated end time of meets. This involved little time or discretion and logistically made sense since he worked in the same building as the Activities Director and was familiar with the process since both Bestul and the Activities Director were new to their positions. The two

functions which the Federation relies on as evidence that the Grievant was performing head coach duties – data entry and bussing communication – are *de minimis* and not specifically enumerated as a head coach function. The majority of the Grievant's time is spent coaching athletes which is consistent with the other assistant coaches' obligations. I therefore concluded that the Grievant's primary duties have materially changed to those of an Assistant Coach and he is not entitled to additional compensation.

The Federation offered three prior examples of head coaches who have had their wages modified and the monies divided based on sharing the head coaching position. These situations are not similar to that of the Grievant herein. In all three situations, the involved coaches were unable to fulfill all of the duties of the head coach for a variety of personal reasons and creatively constructed a personnel configuration that allowed them to continue to as head coach with overall responsibility for the direction and management of their sport. While they may have shared the head coach duties, all involved reached an amicable distribution of monies based on the division of duties. Here Grievant did not apply for the head coach position and testified he was not responsible for the overall season planning and management which are the primary duties of a head coach. The Grievant was not interested in being a co-head coach nor did he perform responsibilities consistent with a shared head coaching situation.

The Federation points the Arbitrator to the decision issued in HARMONY INDEPENDENT SCHOOL, 84 LA 777 (Jacobowski, 3/22/85) wherein the school district eliminated the athletic director position and assigned the duties to various teachers, but did not compensate those teaching staff members for the additional work. HARMONY is distinguishable. In HARMONY, the school district assigned new administrative duties to the coaches and not only claimed it was their right to do so, but also unsuccessfully claimed that the newly assigned duties were minor. In contrast, here the District has not assigned the Grievant any additional duties. Instead, the District expected Bestul to complete all Head Track Coach duties and the two administrative duties that the Grievant was performing that were *de minimis*.

As to Bestul's salary, the Federation asserts he is performing not only the men's head coach position, but also seventy percent of the women's head coach position and therefore he is due more than the negotiated 13.5 percent. There is no question that Bestul is performing administrative functions for more athletes than either Buchholtz or the Grievant performed in prior years, but that does not necessarily translate into more work. Bestul is expected to establish policy and direction for all track athletes. Prior head coaches were expected to set policy and direction for one gender of athletes and to coach individual track events. Bestul's workload is not greater, but is applicable to more athletes and he is performing less direct event coaching than either Buchholtz or the Grievant performed. This record does not support a finding that Bestul is performing more work than prior head coaches and therefore he is not due additional monies.

Finally, 2009-2010 was the first year that the District reconfigured and implemented the new track coaching structure. The District believed one head coach and five assistant coaches was the optimum manner in which to organize and complete the coaching duties. If the

District determines another structure is more efficient, then the Federation and District can re-negotiate the salary.

AWARD

1. No, the District did not violate Article 8, Section B and/or Appendix C, Section 1 of the parties' collective bargaining agreement when it compensated the Grievant at 8.5% of the BA base salary for his work as an assistant track coach and Head Coach Bestul at 13.5 % of the BA base salary for his work as head coach.

2. The grievance is dismissed.

Dated at Rhinelander, Wisconsin, this 24th day of August, 2010.

Lauri A. Millot /s/

Lauri A. Millot, Arbitrator