
In the Matter of the Arbitration between:

BMS File No 11-PA-0385

Independent School District No. 911,
Cambridge—Isanti, Minnesota,

Employer,

and

**GRIEVANCE ARBITRATION
OPINION AND AWARD**

Service Employees International Union,
Local 284,

Union.

Pursuant to **Article XVI** of the Collective Bargaining Agreement effective July 1, 2007 through June 30, 2009, the parties have submitted the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral Arbitrator.

A grievance was filed on June 30, 2010.

The hearing was conducted on April 7, 2011 at 10:00 AM at Cambridge City Hall, Cambridge, Minnesota.

Briefs were filed on June 3, 2011.

APPEARANCES:

FOR THE EMPLOYER

Jennifer Early
Knutson, Flynn & Deans
1155 Centre Pointe Drive, Suite 10
Mendota Heights, MN 55120

FOR THE UNION

Laurie Stammer
SEIU, Local 284
450 Southview Blvd.
South St. Paul, MN 55075

ISSUE:

As stated by the Union:

Did the Employer violate the collective bargaining agreement when it terminated a senior employee and did not discontinue the work of the position held by that employee but assigned it outside of the paraprofessional bargaining unit?

As stated by the Employer:

- *Does the Arbitrator have jurisdiction over the grievance?*
- *Does the Arbitrator lack jurisdiction to review a claim that does not constitute a “grievance” pursuant to the terms of the CBA?*
- *Is the Arbitrator precluded from ruling on the grievance as the matter raised may only be decided by the district court?*
- *Does the CBA provide subject matter jurisdiction for the Arbitrator to determine the issues when they are related to the inherent managerial rights of the School District?*
- *Assuming the Arbitrator has jurisdiction over the Union’s claim, did the School District violate the terms of the CBA when it restructured its’ programs eliminating the position of Graduation Standards Instructional Assistant?*

FACTUAL BACKGROUND:

The grievant, Jane Ammon, has been employed by the Cambridge – Isanti School District for nineteen (19) years. By letter dated June 25, 2010 Ms. Ammon was notified that her position as Graduation Standards Instructional Assistant with the School District had been eliminated. The letter notifying her that her position was eliminated said in part: *“Please refer to your Instructional Assistant contract language Article XII, Seniority and*

*Layoff in its entirety.” She was informed that she would receive job postings relating to any open positions with the School District. The letter also said “the assignment/bumping meeting is scheduled for **Tuesday , July 20, 2010 starting at 8:30 AM at the Education Center/District Office** continuing until all opportunity for filling position is complete...”*

On June 30, 2010 Ms. Ammon and the Union filed a grievance which alleged the following:

My [Ms. Ammon] position was eliminated but its duties have not been. The District failed to file for a unit clarification and negotiate over my position and duties, therefore the duties of my position are considered “work of the paraprofessional unit.”

The grievance cited “**Article III** of the collective bargaining agreement together with all other **Articles** of the agreement or violations of State or Federal Law as the basis for the grievance.”

The remedy sought by Ms. Ammon was stated in the grievance form as follows:

The work of my position still exists; therefore it is the work of the paraprofessional unit. As the most senior qualified person within the paraprofessional unit for this work I should still have my position, and it should be within the paraprofessional unit. I also need to be made whole for any potential future damages to my MN PERA retirement account, or any other financial damages suffered due to this action.

The grievance was denied by the School District at each Step and demand for arbitration was made by written notice dated October 28, 2010.

DISCUSSION:

The Cambridge – Isanti School District has cut back expenditures in many areas in response to dwindling financial support. The School District determined that it would reduce non-classroom personnel and programs, before making reductions that would directly impact student instruction. By June 25, 2010 the School District determined that it needed to eliminate the position held by the grievant. The work that grievant was performing did continue to be part of the workload of the School District. However, the Employer changed the organizational structure and reassigned duties performed by Ms. Ammon to other personnel.

Article IV, Section 1 of the collective bargaining agreement says:

Section 1. Inherent Managerial Rights: *The Exclusive Representative recognizes that the School District is not required to meet and negotiate on matters of inherent managerial policy, which include, but are not limited to, such areas of discretion or policy as the functions and programs of the Employer, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel.*

When the Employer determined that it would eliminate the program staffed by Ms. Ammon and a member of the School District faculty, it exercised inherent managerial rights specifically defined in the collective bargaining agreement. The Employer has the right to determine the “*organizational structure*” of the School District and the “*direction and number of personnel.*”

According to **Article XVI, Section 1. Grievance Definition:** “A “*grievance*” shall mean an allegation by an employee resulting in a dispute or disagreement between the

employee and the School District as to the interpretation or application of terms and conditions of employment insofar as such matters are contained in this Agreement.”

The grievant, Ms. Ammon, and the Union challenged the Employer’s exercise of discretion based upon the fact that work that had been assigned to Ms. Ammon had not disappeared but is now being performed by other employees. Moreover, some of the work is being performed by employees who work in a lower job classification. Hence, they contend that the elimination of the position was improper under the collective bargaining agreement.

The collective bargaining agreement does not create Union jurisdiction over specific duties nor does it extend jurisdiction to the arbitrator over an issue of organizational structure, direction of the work force or the number of personnel.

The jurisdiction of the arbitrator under the collective bargaining agreement is established in **Article XVI, Section 8. Arbitration Procedures: Subd. 7. Jurisdiction** which says:

The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure. The jurisdiction of the arbitrator shall not extend to proposed terms or changes in terms and conditions of employment as defined herein and contained in this written agreement; nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration in compliance with the terms of the grievance and arbitration as outlined herein; nor shall the jurisdiction of the arbitrator extend to matters of inherent managerial policy, which shall include but are not limited to such areas of discretion of policy as the function and

programs of the Employer, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel. ...

The elimination of Ms. Ammon's position was an organizational restructuring that falls within the inherent managerial rights established in the collective bargaining agreement. The grievance challenges the restructuring and reassignment of work but the collective bargaining agreement prohibits the arbitrator from reviewing the challenge, because the Employer exercised inherent managerial rights. The arbitrator does not have jurisdiction over the School District's determination of organizational structure.

Similarly, the School District determined that it needed to reduce a number of staff positions. As a result of the reduction of staff, the grievant was laid off. The School District exercised the inherent managerial right to determine the number of personnel and the arbitrator does not have jurisdiction over the number of personnel.

The arbitrator typically does have jurisdiction over contractual matters, such as, whether the School District followed the contract when it laid off Ms. Ammon. Since the Union framed the statement of the issue rather broadly and argues that Ms. Ammon was "terminated", the process used to layoff Ms. Ammon is subject to review.

The collective bargaining agreement at **Article XII** establishes seniority rights and a layoff procedure to be followed, when employee hours are reduced.

Ms. Ammon is one of the most senior employees within the bargaining unit. She was notified that her position was eliminated and she was notified of her right to claim other work under the seniority and bumping provisions of the collective bargaining agreement. She was also provided notice of job openings. There is no evidence that the School District violated any term of the Seniority and Layoff provision of the collective

bargaining agreement. In fact, two positions were available to Ms. Ammon that paid wages at the same rate she had been paid but included more hours. Ms. Ammon accepted appointment to one position but later refused the position. The School District acknowledges the grievant's status as "on layoff". Grievant was not terminated. There is no evidence of a violation of the "just cause" provision of the collective bargaining agreement found at **Article XI**.

The Arbitrator finds that the School District has followed the terms of the collective bargaining agreement in the matter of the layoff of Ms. Ammon. Ms. Ammon has been given an opportunity to bid on jobs that fall within her pay grade and other positions. There is no evidence that Ms. Ammon was denied any opportunity to bump into any less senior position within the District.

AWARD:

The grievance is hereby denied based upon the Arbitrator's lack of jurisdiction over inherent managerial rights and based upon the finding that the School District violated no contractual provision.

Dated: June 17, 2011

**/s/ James A. Lundberg
James A. Lundberg, Arbitrator**