
In the Matter of the Arbitration between:
East Metro Integration District 6067,
Employer,

BMS File No. 11-PA-0996

and
United Educators, Local 6067,

Union.

**GRIEVANCE ARBITRATION
OPINON AND AWARD**

Pursuant to **Article X** of the collective bargaining agreement effective July 1, 2009 through June 30, 2011, the parties have brought the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.

A grievance was filed on March 29, 2011.

The hearing was conducted on August 4, 2011.

The parties gave oral arguments and the record of hearing closed on August 4, 2011.

APPEARANCES:

FOR THE EMPLOYER:

Shari Thompson, Business Mgr.
East Metro Integration District
30 East County Road B
Maplewood, MN 55117

FOR THE UNION:

Eric Bakke, Union Rep.
East Metro Integration District
30 East County Road B
Maplewood, MN 55117

ISSUE:

Whether the request for pre-approval of funds for Continuing Education made by Michelle Deremer that was denied by the School District violated Section 5.5 of the collective bargaining agreement?

If so, what is the proper remedy?

RELEVANT CONTRACT SECTIONS:

ARTICLE V – Compensation – Section 5.5 Continuing Education

Monies are available to compensate each teacher for pre-approved continuing education credits and other incentives for continuing education. There is \$700 per teacher per year available to reimburse every employee. In the event that monies are not used in any one year; the teacher may accumulate the monies to a minimum of \$1400. Criteria to be used in approving expenditures for continuing education include:

- *Relevance to teacher’s instructional assignment*
- *Individual professional improvement goals School/district improvement goals*
- *State graduation standards*
- *Curriculum development efforts*
- *College/University courses*

FACTUAL BACKGROUND:

Michelle Deremer is employed by East Metro Integration District 6067 as a teaching specialist in the area of Special Language Pathology. Ms. Deremer is a member of United Educators, Local 6067, which is the exclusive bargaining representative for teachers in the School District.

Prior to February 11, 2011 Ms. Dremer requested reimbursement funds from the School District under **Section 5.5** of the collective bargaining agreement. She wanted to participate in a two (2) day Continuing Education Seminar.

After receiving Ms. Deremer’s request for Continuing Education reimbursement funds, the School Administration reviewed Ms. Deremer’s attendance record and learned that Ms. Deremer had used all of her contractually allotted sick time. It also appears from evidence

submitted at hearing that Ms. Deremer did not have two personal leave days available. The collective bargaining agreement provides for fourteen (14) sick leave days and two (2) personal leave days and Ms. Deremer had been absent for approximately sixteen¹ days at the time of the request.

The request for pre-approval of Continuing Education funding was denied based upon the grievant's attendance.

The Union did not view the denial of reimbursement funds as consistent with the criteria for use identified at **Article V, Section 5.5** of the collective bargaining agreement and grieved the denial. The parties were unable to resolve the dispute and submitted it to arbitration for a final and binding decision.

SUMMARY OF UNION'S POSITION:

The Employer did not apply the specific criteria established at **Article V, Section 5.5** of the collective bargaining agreement to be used to determine whether Continuing Education expenditures may be approved, when it denied Ms. Deremer's request. Instead, the Employer cited Ms. Deremer's attendance record and said that Ms. Deremer had consumed fourteen (14) sick days. Nothing in **Section 5.5** of the agreement indicates that the administration's concerns about an employee's attendance may form the basis for denial of monies set aside and allotted to each teacher for Continuing Education.

The Employer has historically made Continuing Education monies available, when teachers have asked to use the funds for appropriate Continuing Education experiences, like the two (2) day seminar in which Ms. Deremer wished to enroll. The Union argues that the historical practice has been to approve funding up to the annual limit for any appropriate Continuing

¹ Testimony varied on this point. However, the documentary evidence reflects less than 2 days of personal leave remaining and all 14 days of sick leave had been used.

Education program. The denial of funding for Ms. Deremer was the first time that a teacher in the School District was denied Continuing Education funding based upon attendance. The use of Continuing Education funds has never been contingent upon attendance nor did the parties negotiate criteria for approval that provides for a review of a teacher's use of sick leave and personal leave.

Not only does the use of attendance records to determine eligibility for Continuing Education Course funding directly violate the plain language of **Section 5.5** of the collective bargaining agreement but by applying a unique standard to Ms. Deremer's request, the Employer has treated Ms. Deremer disparately. Ms. Deremer should have been treated the same as any other teacher in the School District. When she submitted a request for **Section 5.5** Continuing Education monies for the purpose of participating in a two (2) day seminar that falls within the **Section 5.5** criteria, the funding should have been approved.

SUMMARY OF EMPLOYER'S POSITION:

The School District did not deny the grievant the use of contractually allocated funding for Continuing Education. In an effort to resolve the issue, the Employer proposed to carry over funds beyond the period of time provided for in the collective bargaining agreement in order to assure that the money would be available to Ms. Deremer to use for Continuing Education. In the course of the school year Ms. Deremer, in fact, made another request for Continuing Education funds and the request was approved.

The School District denied Ms. Deremer's simultaneous request for leave to attend a two day educational seminar and her request to pay for the seminar from Continuing Education funds available under **Section 5.5** of the contract because she had no leave time available. Ms. Deremer

had consumed all fourteen (14) days of her sick leave and February is only half way through the school year.

Article 7, Section 7.8 of the collective bargaining agreement provides that “ Leave, without pay, may be granted with prior approval of the Superintendent or delegated agent for emergencies....” Leave without pay is clearly discretionary and the Employer exercised discretion when it denied Ms. Deremer’s request.

Ms. Deremer is a Speech Pathology Specialist. It is very difficult to obtain a substitute teacher with the necessary background to provide an appropriate learning experience for students on her case load. Furthermore, Ms. Deremer had missed so much time from her students in the first half of the school year that the Principal believed that the primary objective of delivering educational services to students would not be met by Ms. Deremer’s absence. The School District had to give priority to direct student contact over Continuing Education at that time.

There are periods of time during the school year, when teachers do not have direct contact with students. Ms. Deremer needed to select a Continuing Education seminar that was offered during a period of time that did not conflict with student contact.

The School District did not violate **Section 5.5** of the collective bargaining agreement because Ms. Deremer did not have the requisite leave time available to participate in the two (2) day seminar for which she proposed to use funds provided under **Section 5.5** of the agreement.

OPINION:

Article 5, Section 5.5 of the collective bargaining agreement makes funding available for Continuing Education. There is no evidence that the seminar in which Ms. Deremer proposed to participate failed to meet the contractually established criteria for approving the expenditure. However, the evidence clearly establishes that Ms. Deremer could only participate in the two (2)

day seminar, if she obtained prior approval of leave time. Upon review of **Article III, Managerial Rights** and **Article VII, Leaves and Absences** it is clear that the Employer has discretion in determining whether to grant leave to participate in a Continuing Education seminar, during a student contact day.

The School District's determination that Ms. Deremer's absence from the building was inconsistent with the educational objectives of her program was reasonable. Ms. Deremer had already lost fourteen (14) days of student contact, which is a substantial amount of time away from students. The School District was unable to obtain substitute teachers with the requisite training to serve the special needs of Ms. Deremer's students, when she was away from the building. Since the primary goal of the School District was not being met during Ms. Deremer's absence and other opportunities were available for Ms. Deremer to obtain Continuing Education experiences that did not conflict with student contact, the denial of leave time was a reasonable exercise of managerial discretion.

The School District did not violate **Article V, Section 5.5** of the collective bargaining agreement, when it denied Ms. Deremer's request for Continuing Education funds. **Section 5.5** sets aside funds to be used for Continuing Education but does not contain a leave of absence provision. The denial was based upon the fact that Ms. Deremer was unable to obtain approval for leave of absence to attend a two (2) day seminar at the time it was offered.

AWARD:

The grievance is hereby denied.

Dated: August 22, 2011

James A. Lundberg, Arbitrator