

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	Case 50
STANLEY-BOYD EDUCATION ASSOCIATION	:	No. 46727
	:	MA-7054
and	:	
	:	
STANLEY-BOYD SCHOOL DISTRICT	:	
	:	

Appearances:

Ms. Mary Virginia Quarles, UniServ Director, Central Wisconsin UniServ Counsel-West, P.O. Box 1606, Wausau, Wisconsin 54402-1606, for the Association.

Davis & Kuelthau, S.C. 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-6613, by Mr. Roger E. Walsh, and Mr. Ronald S. Stadler, for the District.

ARBITRATION AWARD

Stanley-Boyd Education Association and Stanley-Boyd School District are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was held in Stanley, Wisconsin on March 3, 1992. A transcript was taken and received on March 19, 1992. The parties filed briefs and reply briefs, the last of which was received May 20, 1992.

ISSUE

The parties stipulated to the following statement of the issue:

Did the District violate Article 7, Section D, paragraph 6 by its assignment during the 1991-92 school year? If so, what is the remedy? 1/

BACKGROUND

The District operates two elementary schools: Stanley and Boyd. Prior to the beginning of the 1991-92 school year, elementary teachers have been responsible for escorting their students to the lunchroom, and guiding them through the lunch line. (For teachers of younger students, this responsibility included putting the milk and napkins on each student's tray and seeing that they were seated at the tables.) At this point, all teachers excepting fifth and sixth grade teachers at Stanley School had no further supervisory duties during the lunch period. Fifth and sixth grade teachers at Stanley remained in the lunch room for a total of twenty minutes. Kindergarten teachers returned to their rooms at some time during the lunch period to set out the rest mats for the children.

At or about the beginning of the 1991-92 school year, Elementary Principal Gene Luoma notified teachers at Stanley they would have additional lunch room supervisory duties. Teachers were assigned to give additional

1/ The contract document does not number paragraphs. For the sake of clarity, the parties and the arbitrator have numbered each individual paragraph as if consecutively numbered.

supervision either by remaining in the lunch room or supervising in the hallway. Thirty minutes before the end of the students' lunch period, the teachers were free to take their thirty-minute duty-free lunch period. (The details of this responsibility varied slightly. The kindergarten teachers left supervision early in order to lay out the rest mats and still have a thirty-minute, duty-free lunch period.) For most teachers, the total supervisory time was twenty minutes. Since in previous years, all but the fifth and sixth grade teachers had been supervising students for five to ten minutes, the additional responsibilities added during the 1991-92 school year amounted to approximately ten to fifteen minutes.

The teachers grieved the new supervisory assignment. The dispute remained unresolved throughout the grievance procedure and is the subject of this arbitration award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE VII - TEACHING CONDITIONS

. . .

D. Definition of the School Day.

. . .

[Paragraph 3]

All full-time high school and grades 7 and 8 teachers shall be assigned no more than seven (7) pupil/teacher contact periods, of which no more than 6 can be teaching periods. A pupil/teacher contact period includes a teaching period, or a supervisory period in which a teacher is assigned to supervise students in a study hall or during a lunch period, or the teacher is assigned to the tutoring room for student assistance. Homerooms and assemblies will not be scheduled during the regular class periods and will not count toward the total of seven (7) periods. Homerooms shall be divided equitably among the teachers and shall not be scheduled on a daily basis.

. . .

[Paragraph 6]

The administration shall provide all teachers with a thirty (30) minute duty-free lunch period. The administration shall provide non-professional personnel to supervise students during the hot lunch periods and during the noon hour playground period.

. . .

POSITIONS OF THE PARTIES

A. The Association

The Association believes the District cannot require the disputed supervisory duties because the collective bargaining agreement obligates the District to provide non-professional personnel to supervise during the hot lunch period and the noon hour playground period, and this requirement precludes the District from assigning noon hour supervision to teachers.

According to the Association, the District's interpretation of the disputed paragraph would alter its meaning to require the District to hire non-professional employees only to assist teachers in supervising during the lunch hour. Additionally, the Association points to another paragraph of the same contract that defines a secondary teacher's supervisory period as including supervising students during a lunch period. The Association argues from that language that when the parties intended the District to have the right to assign supervisory duties during lunch, that right was explicit. Since there is no explicit right granted the District as regards the elementary teachers, argues the Association, none exists.

B. The District

The District maintains that as long as it provides teachers with a duty-free lunch and provides non-professional personnel to supervise the students during the hot lunch periods and noon hour playground period, it is free to make other supervisory assignments to teachers during the students' lunch period. Additionally, it denies the existence of any binding past practice of not assigning additional lunch time supervision, since fourth and fifth grade teachers have previously received such assignment and the collective bargaining agreement provides that it supersedes any contrary or inconsistent practice. The District rejects the argument that the reference to non-professionals who supervise during the lunch hour prohibits the District from requiring any supervisory duties of the teachers.

ADDITIONAL FACTS AND DISCUSSION

Both parties agree the contract expressly obligates the District to provide a thirty-minute, duty-free lunch for elementary teachers. Both parties also agree that the disputed change in assignment has not deprived the teachers of their duty-free lunch. The dispute over the District's right to make the additional assignment centers on the second sentence of the paragraph:

The administration shall provide non-professional personnel to supervise the students during the hot lunch periods and during the noon hour playground period.

Does that reference to assigning supervisory duties to non-professionals prohibit the District from assigning any lunch time supervisory duties to the teachers?

The Association argues that any interpretation that requires the District to hire such non-professional personnel but allows it to also require supervisory duty of teachers defeats the intent of the provision. The undersigned finds plausible the argument that this sentence, immediately following the sentence guaranteeing to teachers a thirty-minute lunch, exists to clarify the teachers' freedom from duty and implies that all supervision of students will be performed by the non-professional personnel. It is also reasonable to say, as the Association argues, that the District's interpretation of the sentence would be more accurately expressed by the sentence: "The administration shall provide non-professional personnel to assist teachers in supervising students..."

On the other hand, the District correctly points out that the only obligation expressly imposed upon the District is to provide non-professional personnel. The District's theory is that once that personnel is provided, the District is not prevented from also assigning supervisory duties to teachers. This interpretation follows the view that the employer can assign duties to employes as long as they are the kind of duties ordinarily performed by such an employe and are not restricted by the contract. According to this view, the Association's interpretation would have to be based on language such as: "Only non-professional personnel shall supervise students..." The District's theory, too, is reasonable.

Since this provision is susceptible to two plausible, yet conflicting, interpretations, the arbitrator is compelled to resolve the ambiguity by resorting to evidence outside the contract language.

Documents admitted to the record indicate that the 1967-68 contract provided:

The Board of Education shall attempt to provide non-professional personnel to supervise the students during hot lunch periods.

The 1969-70 contract modified that provision to create the language which has remained in place since that time. The parties offered no evidence of what bargaining table conduct that gave rise to the change from "shall attempt to provide" to "shall provide" and the undersigned draws no conclusion as to the parties' intent based on the contract's evolution.

The parties' practices surrounding this subject are more instructive, however. The parties do not dispute that two instances of lunch time duties have existed prior to the 1991-92 school year: the supervision the fifth and sixth grade Stanley School teachers have performed for the full twenty-minute period, and the supervision all the teachers have performed for the five to ten minutes it took students to get through the lunch line and be seated. The assignments have existed without protest from the Association and they therefore indicate the parties' understanding of the correct interpretation of this ambiguous provision.

The supervision provided by the fifth and sixth grade teachers, is undeniable and clear evidence of the parties' intent. It involved several teachers, took place every school day and lasted twenty minutes. It was therefore a significant, open and visible practice. Although some individual teachers were not aware of the practice, it was sufficiently conspicuous that

the Association must be held to have knowingly condoned it.

The assignment for helping the students through the lunch line is less weighty evidence because it required less time and might possibly be considered merely an extension of the teachers' duty to escort students to the lunch room, and not supervision of the hot lunch period. By itself, helping in the lunch line is less significant than the supervision of the fifth and sixth grade teachers. Taken together, however, these two kinds of supervision clearly indicate that the parties' understanding of the disputed contract language allowed for the assignment of supervisory duties to teachers during the hot lunch period.

Based on that evidence it is clear that the District's obligation to hire non-professional personnel to supervise students during the hot lunch period does not preclude it from also assigning supervisory duties to teachers as long as no other contractual provision is violated thereby. 2/

The undersigned is not dissuaded from this conclusion by the Association's argument that where the parties intended to allow the District to make supervisory assignments during lunch, they did so with clearer language than appears in the disputed paragraph. The language upon which the Association relies (see above, in the Relevant Collective Bargaining Agreement Provisions section) cannot be used as an interpretive tool because it is merely a definition of a "pupil/teacher contact period", and not itself a statement of the parties' obligations regarding the lunch period. Being insufficiently parallel with the provision governing the elementary teachers, it cannot be used to prove an implied prohibition on supervisory duties for the elementary teachers.

In summary, the disputed provision obligates the District to provide a thirty-minute, duty-free lunch period to elementary teachers and obligates it to provide non-professional personnel to supervise students during the hot lunch period, but it does not prohibit the District from assigning supervisory duties to teachers once the first two obligations are fulfilled. Consequently, the supervisory assignments made at the beginning of the 1991-92 school year, as modified, 3/ did not violate the collective bargaining agreement.

In light of the record and above discussion, the Arbitrator issues the following

AWARD

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- 2/ Some of the disputed assignments involve supervision in the hallway. At issue here is the supervision itself during the hot lunch period, not the location.
- 3/ As noted above, the kindergarten teacher's assignment was modified to allow time to lay out the rest mats and still not intrude upon the thirty-minute duty-free lunch. Also, some other supervisory assignments had to be modified slightly to assure the full thirty-minute lunch.

1. The District did not violate Article 7, Section D, paragraph 6 by its assignment during the 1991-92 school year.

2. The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 7th day of August, 1992.

By Jane B. Buffett /s/
Jane B. Buffett, Arbitrator