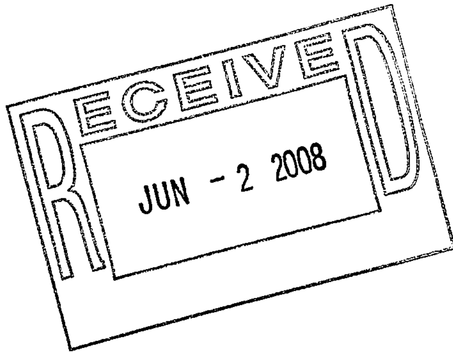
In Re the Arbitration Between

MADISON TEACHERS, INC.
And
MADISON METROPOLITAN SCHOOL DISTRICT



ARBITRATOR'S DECISION and AWARD
Milo G. Flaten, Arbitrator

Athletic Directors
A/PM 08-007

Scope and Background

The dispute from which this Grievance descends, came about in May, 2007 when the Madison Metropolitan School District (hereafter, "the Employer") decided to relieve four Athletic Directors that had been employed at each of the four high schools in the City of Madison, Wisconsin. To replace these employees, the Employer created two non-bargaining managerial positions and posted openings to fill the jobs. The four relieved Athletic Directors were declared to be surplus and were assigned to other duties in the District. The newly created job posting stated that the prospective two new non-bargaining managerial Athletic Directors were to work with two high schools each, one on the east side of town, the other on the west. Two months later the Employer filled the positions with new employees from outside the District.

Challenging the Employer's action, Madison Teachers, Incorporated (hereafter, "the Union") filed an organizational grievance claiming the Employer breached the Collective Bargaining Agreement (hereafter, "the Contract") it had with the Employer. The Employer

denied the grievance, the Union invoked Arbitration and Milo G. Flaten was selected to preside as arbitrator.

Following phone calls and correspondence, a date for hearing was set, postponed, reset and re-postponed, and finally held in Madison on January 8, January 10, and February 12, 2008.

Appearing for the Employer was Attorney Robert Butler of the Wisconsin Association of School Boards and Attorney Malina Piontek, Assistant Director of Labor Relations. The Union was represented by Attorney Timothy E. Hawks and Attorney B. Michele Sumara of Hawks, Quindel, Ehlke and Perry, S.C. of Milwaukee.

Claims of the Parties

The Union claims the Employer abrogated the Contract when it gave the four Athletic Directors notice that they were considered to be surplus even though the jobs in which they were engaged were not eliminated or even substantially changed. It reasons that when a bargaining unit employee is declared surplus it's the same as not being reappointed and the Contract has a specific procedure for non-reappointment which was not followed.

The Union claims further that the Employer struck at the very heart of the Contract when it changed a stated unit position from a recognized Union job to a management position. The Union declares that the Athletic Director position had long ago been recognized by the Employer when it signed the Contract. The Union then points to Contract Section I-B-1-d where the Employer specifically agreed to include "All employees identified as non-faculty personnel in the capacity of athletic directors..." as positions which they recognized. How, then, the Union asks, can the Employer turn around and in effect abolish the job?

To make sure all bases are covered, the Union's grievance further states that even though the athletic director positions were abolished by declaring the jobs to be surplus, that doesn't meet contract requirements either because the level of participation (by students) has not been reduced, and neither has the number of sports offered (to the students).

The Employer answered the Union's written grievance by stating that it merely created a new job in the management of the district and Employers can create new supervisory positions any time they choose to without violating the contract. The Employer's continued answer to the grievance then advises that if the Union thinks the position (of athletic director) should be placed in the teacher bargaining unit, "it should file a petition for unit clarification with the WERC."

The Employer's answer to the grievance then goes on to assert that the former athletic directors all had been notified they would not be reappointed to their positions. This apparently was inserted in case there were any issues regarding the reappointment portion of the contract.

Issue

In this case at least eleven witnesses testified and over 100 exhibits were entered into the record during the three-day hearing. That amount of evidence puts the dispute in sharper focus than the original grievance did. The parties also proffered their individual versions of which issues should be decided in their briefs and reply briefs.

After reviewing this volume of evidence it has now become clear that the original grievance statement cannot adequately phrase the questions to be answered. Thus, it is understandable that their stated issues differed a bit from the first ones submitted.

In its brief the Employer quotes from the record what their opponent feels is at stake in this case. While that version is not the same as the issue the Union itself expressed in its post-

hearing brief, it nevertheless seems clear that that stated issue correctly covers that which should be decided. It reads:

"1) Did the employer violate the contract when it delivered notices of surplus to the four ADs serving in the District in May of 2007; and, if so, what is the appropriate remedy? 2)Did the employer violate the contract when it terminated the services of the four ADs without complying with the procedural requirements of non- reappointing them to the extracurricular position, and if so, what is the appropriate remedy? and, 3) Did the employer violate the posting provisions of the agreement when it posted the AD positions outside the scope of the collective bargaining agreement, and, if so, what is the appropriate remedy?"

Further Discussion

Keeping the above issues in mind, this observer also notes the proven past practices of the parties. In this regard it might be important that the ousted athletic directors were not given written notice that they would not be reappointed. However, both sides seem to indicate whether the ousted athletic directors got notice of their non-reappointment or not isn't crucial to the case. And the evidence and testimony they presented rather substantiates their feelings. This observer agrees that written notice is not the issue upon which this case is to be decided and evidence pertaining thereto is merely dancing around the real issue.

The Employer relies heavily on a Wisconsin unit clarification case. The case, South Milwaukee Education Association and South Milwaukee School District, Case 47, No. 60028, Decision #30277, was photocopied as it was published by the Wisconsin Employment Relations Commission. In it an athletic director was about to be hired and the union petitioned to keep the Employer from excluding the position from the teachers bargaining unit. There, the WERC

concluded in a factual situation remarkably similar to this case, that the position of athletic director is supervisory within the meaning of Wisconsin law and therefore should be excluded from the Union's bargaining unit.

In the situation at hand, the Employer argues, it reorganized the AD duties in the same way, which in effect eliminated the position from the bargaining unit and made the displaced athletic directors surplus in the reorganized district.

But this matter is a contract case not a clarification case. The rights and obligations of the parties in this case, and especially of the arbitrator, are governed completely by the contract and its terms.

In the contract at hand the Employer promised that from July 1,2007 until June 30, 2009 athletic directors in the four schools would be represented by the Union and that they would be members of the bargaining unit. No amount of reassignment of duties or creation of superficial boundaries can change that. This grievance is not about whether the Employer's new athletic directors are supervisors. It's about whether the Employer fulfilled its written obligation under the contract.

Decision

By delivering surplus notices to each of the four bargaining unit athletic directors and replacing them with administrator positions from outside the district, the Employer breached the contract with the Union. Having decided the case as indicated, there is no need to decide the allegations concerning the breach of the non-reappointment section of the contract.

Award

That the Employer should restore the four displaced high school athletic directors to their former positions and make them whole from any financial loss they may have suffered as a result of the breach.

Dated May 30, 2008

Milo G. Flaten, Arbitrator