

IN THE MATTER OF THE ARBITRATION

BETWEEN)	Grievance No. BOM-2015-0319
)	
HOPEWELL AREA)	Issue: Overtime
SCHOOL DISTRICT)	
)	Date of Hearing: May 18, 2016
AND)	
)	Date Record Closed: June 20, 2016
HOPEWELL CUSTODIAL/MAINTENANCE)	
EDUCATIONAL SUPPORT PERSONNEL)	Date of Award: July 19, 2016
ASSOCIATION, PSEA/NEA)	

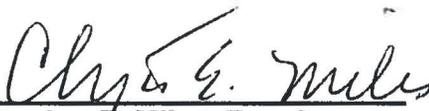
BEFORE: CHRISTOPHER E. MILES, ARBITRATOR

APPEARANCES:

For the Employer:	John Salopek, Solicitor
For the Union:	Katherine M. Voye, Staff Attorney
Place of Hearing:	Hopewell, PA

AWARD SUMMARY

The grievance filed on behalf of Mr. Edward Bujakowski is sustained, in part. Based upon the testimony and evidence presented in this case, it is found that the School District violated the provisions of Article V of the Agreement by utilizing substitute employees for extra work on Saturdays. However, the grievance was filed solely on behalf of Mr. Bujakowski and the remedy can only revert back to 20 workdays from the filing date of the grievance. Consequently, he shall be entitled to eight hours of overtime pay for Saturday, December 15, 2012. No other remedy is awarded.



Christopher E. Miles, Esquire
Labor Arbitrator

I. BACKGROUND

The grievance considered herein was filed by the Hopewell Custodial/Maintenance Educational Support Personnel Association (hereinafter referred to as the "Association") on behalf of Mr. Edward Bujakowski, a full time Custodian employed by the Hopewell Area School District (hereinafter referred to as the "School District"). The grievance dated January 11, 2013, claimed that "the District violated the Collective Bargaining Agreement when it denied the grievant the opportunity to work extra-duty assignments" in violation of Article V of the parties' collective bargaining agreement¹ and requested that the "District cease and desist" and "make the grievant whole, including but not limited to payment for all time lost." The grievance was processed pursuant to the procedure contained in the Agreement and having been unable to resolve the issue, it was appealed to arbitration. The undersigned was appointed to hear and decide the issue and a hearing was conducted in Hopewell, Pennsylvania on May 18, 2016. At that time, the parties were afforded full opportunity to present testimony and evidence, to cross-examine the witnesses, who were sworn, and to make arguments in support of their respective positions. The parties summarized their positions in post-hearing briefs which were received on June 20, 2016, at which time the record in this case was closed.

II. STIPULATIONS

Among other general provisos, the parties stipulated to the following facts:

1. The bargaining unit represented by the Association includes: eight (8) hour full-time maintenance employees; eight (8) hour full-time custodial employees; four (4) and six (6) hour part-time custodial employees; and five hundred (500) hours substitute custodial employees.
2. The relevant language of Article V is unchanged from the parties' 2003-2008 and 2008-2012 agreements.
3. Overtime assignments are offered by rotation, in seniority order.
4. On January 30, 2003, the parties agreed that the two most senior 500-hour substitutes, Paul Kisucky and Ivy Krigar, could work each Saturday for the remainder of the 2002-2003 school year. Mr. Kisucky worked at the High School and Ms. Krigar worked at the Junior High School, alongside the custodian who was assigned to perform extra duty work at their respective buildings.
5. On August 18, 2003, the parties agreed to continue this agreement through the 2003-2004 school year.
6. From January 30, 2003 through December 16, 2012, two bargaining unit employees worked on Saturdays at the High School, for eight paid hours each. One full-time High School custodian worked extra duty work at the overtime rate and Mr. Kisucky worked on Saturdays.

¹ Hopewell Area School District and Educational Support Personnel Association Agreement, July 1, 2012 - June 30, 2016 (Custodial Maintenance Personnel).

7. From January 30, 2003 through December 16, 2012, two bargaining unit employees worked on Saturdays at the Junior High School, for eight paid hours each. One full-time Junior High School custodian worked extra duty work at the overtime rate and Ms. Krigar worked on Saturdays.
8. No additional agreements or memorandums were entered with regard to this issue after August 18, 2003 and no grievances, or pre-grievances, challenging this issue were filed by any bargaining unit member, objecting to the continued assignment of Mr. Kisucky and Ms. Krigar to perform Saturday work, until the pre-grievance form filed on November 29, 2012.
9. The pre-grievance form submitted on November 29, 2012 challenged the assignment of Saturday work to substitutes instead of full-time employees.
10. Effective December 17, 2012, full-time custodial employees were offered first opportunity to work all Saturday shifts at the Junior High School and the High School, and Mr. Kisucky and Ms. Krigar were no longer assigned Saturday work as a matter of course.

III. SUMMARY OF THE TESTIMONY AND EVIDENCE

Mr. Edward Bujakowski, the Grievant herein, testified that he has been a Full Time Custodian at the Senior High School for 30 years. He said he was aware that Mr. Paul Kisucky was working on Saturdays and he filed a pre-grievance on November 29, 2012, and gave it to the Union President, Mr. James Poland. He said he requested back pay for the full time employees for the extra work on Saturdays performed by the substitute employees. Mr. Bujakowski stated that he did not previously ask anyone about the substitute employees working on Saturdays or the letters of agreement concerning the use of the substitute employees for the extra work on Saturdays because he did not know about the letters and he did not realize there was a violation of the Agreement. He acknowledged that he worked on some Saturdays, but he would have worked more if not for the substitute employees.

On cross-examination, the Grievant noted that Mr. Charles A. Kief was the Director of Buildings and Grounds and he signed the January 2003 agreement to use substitute employees for the extra work on Saturdays. He confirmed that a similar letter of agreement was signed in August 2003 by Dr. E. Robert Frioni, the Assistant to the Superintendent for Support Services.

Mr. Charles M. Reina testified that he has been employed by the School District for 26 years. He has been the Superintendent of the School District for ten years. Prior to that, he was the Assistant Superintendent since July 1, 2003. He confirmed that Mr. Kief, Director of Buildings and Grounds, signed the letters of agreement concerning the use of the substitute employees for the extra work on Saturday. Mr. Reina explained that the regular day to day substitutes are not members of the bargaining unit, but those who have logged 500 hours of work (500 hour substitutes) are bargaining unit members. He pointed out that Mr. Kisucky and

Ms. Krigar were 500 hour substitutes. Superintendent Reina explained that Mr. Bujakowski subsequently filed a grievance on January 14, 2013, after the pre-grievance filed on November 29, 2012.

Upon questioning by the Arbitrator, Mr. Reina acknowledged that it was the same two substitute employees who performed the extra work on Saturday. The Superintendent indicated that Mr. Kisucky was also employed as a Bus Driver and the substitutes did not bump into a full time. He went on to reveal that Mr. Kisucky was promoted to part time status after he was taken off the Saturday extra work assignment.

IV. RELEVANT PROVISIONS OF THE AGREEMENT

**ARTICLE V
QUALIFICATIONS AND ASSIGNMENTS**

A. Overtime and/or Extra Assignments

1. The Board retains the right to authorize overtime and extra-duty assignments as it deems necessary for the proper and efficient maintenance of school facilities. Extra duty and overtime assignments shall be equalized to the extent possible during the extension of this Agreement. Full-time employees in the building or work/assignment where overtime work is to be performed shall continue to be given the first opportunity to work such overtime.
2. Regular part-time employees shall be given the first opportunity for extra work assignments during the summer. Such summer work shall be assigned on a seniority basis.
3. Nothing in this Section A of Article V shall authorize the Employer to make overtime work assignments to part timers or substitutes for which they are not qualified.

**ARTICLE XIV
GRIEVANCE PROCEDURE**

C. Limitations of Complaints

A complaint alleging a grievance must be filed in writing with the Director of Buildings and Grounds within twenty (20) workdays after the occurrence of the event giving rise to the claim presented for adjustment. A complaint which shall not be filed within the aforesaid period of time shall neither be heard as a grievance nor be subject to binding decision by arbitration, except for cause allowed and exclusively determined by the Board.

V. CONTENTIONS OF THE PARTIES

A. Association

The Association contends that the School District violated the provisions of Article V of the Agreement by improperly assigning extra duty work to substitutes instead of first offering that work to its full-time custodial staff. It calls attention to Section 1 of Article V wherein it provides that "Full-time employees in the building or work/assignment where overtime work is to be performed shall continue to be given the first opportunity to work such overtime" and it asserts that the School District has continually utilized substitutes to perform work on Saturdays from January 30, 2003 through December 16, 2012. Although the Union recognizes that the parties executed an agreement to use the substitutes for the remainder of the 2002-2003 school year and then again for the 2003-2004 school year, it points out that no further memorandums or agreement on the subject were executed, even though the practice continued until a pre-grievance form was filed on November 29, 2012, challenging the assignment of Saturday work to substitutes instead of full-time employees. The Grievant, Mr. Edward Bujakowski, sought to correct the improper assignment of extra duty work to the substitutes and he also sought backpay for himself and other affected full-time custodial employees. Although the School District agreed on December 14, 2012, in response to the pre-grievance form, to abide by the Agreement, it continued to assign Saturday work to substitutes for the following Saturday, December 15, 2012, and on January 11, 2013, the Association filed a grievance protesting the contract violation which denied the Grievant and other full-time custodian employees the opportunity to work extra-duty assignments on Saturdays. In this regard, the Association submits that the appropriate remedy would be for all affected full-time employees to be made whole for lost overtime opportunities dating back to the 2004-2005 school year.

The Association argues that from the 2004-2005 school year through the date when the District ceased to assign substitutes to work Saturdays in violation of the Agreement, ten different full-time High School custodians and seven full-time Junior High School custodians were affected.

B. School District

The School District contends that the grievance considered herein is not a class action grievance but was filed only on behalf of Mr. Edward Bujakowski and no other bargaining unit member is entitled to any remedy granted. It argues that the "pre-grievance" is not a grievance and any remedy granted herein is limited to 20 workdays prior to the filing of the grievance on

January 11, 2013; i.e., December 11, 2012. In this regard, Mr. Bujakowski did not work on Saturday, December 15, 2012. Consequently, the Grievant is entitled to back pay only for the Saturday missed between December 11, 2012 and December 17, 2012 (the date that the new Saturday scheduling took effect). According to the School District, the back pay due is \$216.48 which represents Mr. Bajakowski's hourly rate of \$19.04 at the time and one-half overtime rate for eight hours. Therefore, the School District requests that the remedy be limited to the back pay for Mr. Bujakowski and that the grievance otherwise be denied.

VI. DISCUSSION AND FINDINGS

The issue to be resolved herein is whether the School District violated the provisions of Article V of the Agreement by utilizing substitute employees to perform extra work on Saturdays prior to offering the extra duty Saturday assignments to full time Custodians.

According to the record developed in this case, from January 30, 2003 through December 17, 2012, two substitute employees worked on Saturdays and were paid for eight hours each. Mr. Paul Kisucky worked at the Senior High School and Ms. Ivy Krigar worked on Saturdays at the Junior High School. Section 1 of Article V provides that "Full-time employees in the building or work/assignment where overtime work is to be performed shall continue to be given the first opportunity to work such overtime." Despite this language, on January 30, 2003, the parties agreed that the two most senior 500-hour substitutes, Mr. Kisucky and Ms. Krigar, could work each Saturday for the remainder of the 2002-2003 school year. Mr. Kisucky worked at the High School and Ms. Krigar worked at the Junior High School, alongside the custodian who was assigned to perform extra duty work at their respective buildings. On August 18, 2003, the parties agreed to continue this agreement through the 2003-2004 school year. As noted, the practice continued beyond the 2003-2004 school year.

The School District concedes that the utilization of the substitute employees is a violation of the relevant language; however, it maintains that any granted remedy can only go back to 20 days prior to the filing of the grievance. Several issues were raised with respect to the grievance. Mr. Edward Bujakowski submitted a "pre-grievance" (complaint) on November 29, 2012, alleging the violation and requesting back pay for the entire time of the violation. The School District responded by agreeing to cease the practice of utilizing the substitute employees prior to offering the extra work Saturday assignments to the full time employees. Nevertheless, a formal grievance was filed on January 11, 2013, alleging a violation of Article V and requesting back pay for the entire time of the violation; i.e., from July 2004 through December 16, 2012. The grievance was filed by Mr. Bujakowski and made no mention of other bargaining

unit members, therefore, the grievance is not a class action. In addition, the grievance procedure set forth in Article XIV requires that a "complaint alleging a grievance must be filed in writing with the Director of Buildings and Grounds within 20 workdays after the occurrence of the event." In this regard, the grievance specifically identifies December 15, 2012, as the date the grievance occurred, even though the record is clear that the practice of utilizing the substitute employees continued from 2004 until it was discontinued on December 17, 2012. In my opinion, any prior violation was waived by the Association. According to the language of the Agreement, a complaint which is not filed within the 20 workday period shall not be heard as a grievance nor be subject to binding arbitration. Consequently, since the School District complied with the request that the practice cease, effective December 17, 2012, the allowable remedy can only revert back to Saturday, December 15, 2012.

Therefore, after review and consideration of the testimony and evidence and the arguments presented by the parties, it is found that the Grievant, Mr. Bujakowski, is entitled to eight hours of overtime pay for Saturday, December 15, 2012. No other remedy is awarded.

AWARD

The grievance filed on behalf of Mr. Edward Bujakowski is sustained, in part. Based upon the testimony and evidence presented in this case, it is found that the School District violated the provisions of Article V of the Agreement by utilizing substitute employees for extra work on Saturdays. However, the grievance was filed solely on behalf of Mr. Bujakowski and the remedy can only revert back to 20 workdays from the filing date of the grievance. Consequently, he shall be entitled to eight hours of overtime pay for Saturday, December 15, 2012. No other remedy is awarded.



Christopher E. Miles, Esquire
Labor Arbitrator

July 19, 2016