

MATTHEW GOLDBERG
Arbitrator ♦ Mediator ♦ Attorney at Law
130 Capricorn Avenue
Oakland, California 94611

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between:)	
)	
MT. DIABLO EDUCATION ASSOCIATION,)	
)	
Association,)	ARBITRATOR'S
)	OPINION AND AWARD
and)	
)	
MT. DIABLO UNIFIED SCHOOL DISTRICT,)	
)	
Employer.)	
_____)	
Re: Training Compensation Grievance)	
_____)	

This arbitration arises pursuant to a Collective Bargaining Agreement between the **MT. DIABLO EDUCATION ASSOCIATION**, (referred to below as "Association," "Union" or "MDEA"), and **MT. DIABLO UNIFIED SCHOOL DISTRICT**, (referred to below as "Employer" or "District"). Under its terms, **MATTHEW GOLDBERG** was selected to serve as neutral Arbitrator and render a final and binding decision.

A hearing in this matter was conducted on June 7, 2010 in Concord, California. All parties had full opportunity to examine and cross-examine witnesses, and to submit evidence and argument. Posthearing briefs were received on or about August 10, 2010.

APPEARANCES:

On behalf of the Association:

LAURA JURAN, Esq. of CALIFORNIA TEACHERS ASSOCIATION, 1705 Murchison Drive, Burlingame, California 94011

On behalf of the Employer:

DOUGLAS FREIFELD, Esq. of FAGEN, FRIEDMAN & FULFROST, 70 Washington Street, Suite 205, Oakland, California 94607

THE ISSUE

Counsel were unable to agree to a statement of the issue to be decided in this matter. The Association proposes that the issue should be:

Did the District violate the contractual agreement by not compensating teachers who attended a Holt math technology training and/or an Edusoft training. If so, what should be the remedy?

The District would phrase the issue:

Did the grievants' attendance at Holt training and Edusoft training without additional compensation violate the collective bargaining agreement? If so, what should the remedy be?

Pursuant to the parties' stipulation granting the Arbitrator authority to frame the issue, it is determined that the question to be decided here is:

Did the District violate the Collective Bargaining Agreement by not compensating teachers who attended a Holt math technology training and/or an Edusoft training? If so, what should be the remedy?

RELEVANT CONTRACT SECTIONS

**ARTICLE 3
GRIEVANCE PROCEDURE**

3.12 Modification

3.12.1 The arbitrator shall have no power to add to, delete, or amend the terms of the Agreement.

**ARTICLE 9
HOURS**

9.1 Site Time

9.1.1 Unit members shall report to their work site thirty (30) minutes before regular classes begin and shall remain at their work site in accord with the following minimum daily requirements:

- 415 Minutes - Infant Ed., Preschool, K-5
- 420 Minutes - 6-8
- 435 Minutes - 9-12

9.1.2 The thirty (30) minutes set forth above is included in the required site time provided for all instructional levels.

9.2 Additional Duties

9.2.1 Each unit member may be assigned additional duties which are related to their responsibilities as a unit member. Such duties may include, but are not limited to:

- 9.2.1.1 Site meetings of reasonable length
- 9.2.1.2 Parent Student Conferences
- 9.2.1.3 I.E.P.
- 9.2.1.4 S.S.T.

9.2.2 Such duties may not be assigned on Saturdays or Sundays or in the evening except as described in §9.3.

9.3 Evening

9.3.1 Unit members may be assigned the following evening activities without additional compensation:

- Back-to-School, once per year
- Open House, once per year

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**ARTICLE 14
SALARIES**

14.5 Hourly Compensation

14.5.1 Certificated Hourly Rate

- 14.5.1.1. Unit members who are authorized to receive extra compensation on an hourly basis for work in addition to their regular assignment (i.e., summers, weekends, nonwork days and evenings) shall receive twenty (\$20.00) per hour for each additional hour computed to the nearest quarter hour.
- 14.5.1.2. Assignments for which hourly compensation may be paid shall include but not be limited to:
- 14.5.1.2.1. Curriculum Development
 - 14.5.1.2.2. Staff Development

14.7 Standards-Based Intervention Pay

- 14.7.1. Effective with the fall of 2000, unit members who are authorized to receive extra compensation on an hourly basis for work in addition to their regular assignment as Standards-Based Intervention teachers shall receive twenty-five dollars (\$25.00) per hour for each additional hour computed to the nearest hour.
- 14.7.2. The District shall determine which programs qualify for such pay. However, these programs shall provide standards-based academic instruction, such as extended day and retention programs.

FACTS

In the fall of 2009, the District required certain middle school teachers to attend training on the newly adopted Holt math textbook, and on the use of Edusoft software, which allows teachers to track student progress. The Association contends that these training sessions were in the nature of staff and curriculum development, and therefore constituted "work in addition to [the teachers'] regular assignments" within the meaning of Article 14.5.1. Conversely, the District contends that the training sessions were "site meetings of reasonable length," and therefore not subject to any additional compensation as part of the teachers' normal duties

pursuant to Article 9.2.

The Holt Training

A committee of teachers and administrators charged with the year-long process of selecting a new math textbook for the 2009-2010 school year ultimately voted to adopt the Holt Algebra textbook. Training in the use of the technology resources associated with the new textbook was discussed at a meeting subsequent to the adoption. Holt offered to provide the training free. The committee decided that the training would occur during one of three in-service days in August of 2009,¹ prior to the start of regular classes. However, it was not conducted during that time.

Rather, the training was provided after the school year commenced. Two middle school math teachers, 8th Grade algebra teacher John Lynch and 7th/8th grade math teacher Anita Johnson testified regarding their experiences with the training. Lynch teaches at Sequoia Middle School,² while Johnson is an instructor at Valley View Middle School. Lynch received an e-mail from his principal Hellena Postrk³ announcing a mandatory Holt training session to be held on Monday, September 30, from 3:15 to 6:15 p.m. Lynch spoke with Postrk thereafter, and told her that he thought that the teachers should be paid for their time attending the training. Although it was expected that the training would occur during a paid in-service day, it was scheduled instead "on teachers' own time." Postrk responded that the teachers would be paid for any time spent after 5:00 p.m. Lynch also informed Postrk that the scheduled training conflicted with his work in the District's Adult Education Center, where he teaches algebra from

¹All dates following refer to 2009, unless noted otherwise.

²Lynch has worked at Sequoia Middle School for about six years, having worked for the District for 12.

³Postrk has been Principal at Sequoia for five years. She was a teacher at the school for five years prior.

3:45 to 6:00 p.m. on Mondays and Wednesdays.⁴ For him, attending the training at that time would result in a "double penalty," as it would cause him to lose income from his supplemental duties. Postrk advised Lynch that he could attend the training in October at Foothill Middle School instead.

Lynch ultimately attended that training. It took place on a work day, and began at 3:15 p.m. Lynch is required to arrive at Sequoia each school day at 7:35 a.m. Classes end at 2:35 p.m., and he sometimes has after-school supervision duties that run until 2:55 p.m. On the day of the training, he had to drive from Sequoia to Foothill. Lynch testified that the trainer went through the presentation as quickly as he could, and the session ended by 5:00 p.m. Lynch was unable to recall having attended any trainings that took place after school hours during the twelve years he has taught in the District.

Johnson's experience was similar. She learned that the mandatory Holt training would be held at one of three school sites which did not include Valley View. Math department chairman Amber Glasgow announced the mandatory training via an e-mail and mentioned that they would be paid for their time. She related to her colleagues that she had learned from Valley View Principal Nadine Rosenzweig they would not be paid for the training. Rosenzweig purportedly also said that although she wanted to pay them, teachers at the other middle schools were not being paid, and the District needed to be consistent. Glasgow informed Johnson that they would not be paid for the time prior to 5:00 p.m. Rosenzweig⁵ testified that she recalled receiving a memorandum to that effect. At the time, she thought funds would be available from to pay the teachers from grant program. This turned out not to be the case. Johnson ultimately attended the training at Sequoia (to which she had to drive from Valley View)

⁴Lynch receives \$25 per hour for his work at the Adult Education Center, pursuant to Article 14.7.1.

⁵Rosenzweig has been Principal of Valley View for ten years.

on September 30 which began at 3:15 p.m. and concluded "abruptly" at 5:00 p.m.

Both Lynch and Johnson filed grievances about the pay controversy. Lynch's was submitted September 14, alleging that training constituted "staff development," and as such those attending should receive the hourly rate from 3:15 - 6:15 pm. Alternatively, they should be given the option not to attend a training beyond site time. Postrk denied the grievance September 16. She found that under District guidelines, mandatory training would be paid at the certificated hourly rate only after 5 p.m. Lynch's October 7 Step 2 appeal was denied on October 18 on the same grounds.

The Johnson grievance was filed the same day that she received the training, which she described as "mandatory training after site time." Like Lynch, Johnson requested payment for her attendance at the training from 3:15 p.m. to 5:00 p.m. Rosenzweig denied the grievance October 9, stating that "according to district guidelines, teachers are not paid extra for mandatory training unless held on weekends or non work days." Johnson's second step appeal was denied on October 28. The District's Step 2 response, written by Assistant Superintendent Gail Isserman, stated that the training was not held in the "evening," and thus did not fall under Article 14.5.1.

Johnson testified that she arrives at school at 7:30 a.m. each day and is free to leave the site at 2:30 p.m., although she often stays later on her own initiative, grading papers, posting grades, cleaning up, and preparing for the next day. She considers 2:30 p.m. to be the beginning of the "evening," as it is the end of a long work day.⁶ Regularly scheduled staff meetings are held once a month on a Monday, and they usually run until 4:00 p.m. As with Lynch, Johnson does not recall previously being required to attend training held after 2:30 p.m. during her nine years with the District. Johnson does, however, periodically attend IEP and SST

⁶Johnson typically says "good night" to co-workers as she leaves the campus.

meetings, which take place after 2:30 p.m. on school days.

Mark York has been the Executive Director of the Association for approximately eight years. Before that, he was a teacher for twelve years in Benicia. York is responsible for bargaining, representation, grievance processing, and legal services for the represented teachers. He testified that the Association recommended to unit members who were required to attend the Holt training that they file a grievance, and developed a "boilerplate" grievance language for them to use. He believed that the District was violating the Agreement by not compensating teachers for mandatory training that occurred after the teachers' site time had expired. In his view, "site time" is the contractual 420 minutes each school day during which teachers are required to be on site.

Edusoft Training

Edusoft is a software program which enables teachers to input students' electronic tests, then aggregates and organizes the information therefrom. Along with the entire staff, Johnson was required to attend Edusoft training on Monday, September 28. There had been no site meeting scheduled on that day. The session was led by the Student Services Coordinator Micah Palechek and lasted about one hour, from 2:30 to 3:30 p.m. The training was not compensated.

Johnson filed a first step grievance September 29, which states:

When a district agent directs teachers to attend a mandatory training which takes place after site time, teachers so directed are "authorized" to receive the negotiated hourly rate for this time as a result of that directive. . .

The grievance requested that teachers "who are directed to attend mandatory training which takes place after the conclusion of site time" to be paid the certificated hourly rate. Rosenzweig denied the first step grievance October 8, stating that the meeting was "not was not a mandatory training, but "part of our Monday scheduled meetings" which "took place right after

school." She denied the second step appeal October 28.

Rosenzweig testified that the Edusoft meeting was designed to help teachers use the software to track the progress of underperforming students and develop goals for students to enhance proficiency in English and language arts. She characterized the session as relating to staff, professional and/or and curriculum development. Rosenzweig noted that this was not the first time that Edusoft software was used at regularly scheduled faculty meetings. The program contains many assessments and is commonly referred to in faculty, grade-level and staff meetings.

Site Meetings

Rosenzweig stated that staff development customarily takes place during Valley View's Monday site meetings. Faculty are informed about student health, discipline and behavioral issues. Curriculum is also discussed. Outside speakers frequently come to make presentations to the faculty. Site meetings each Monday are organized according to a particular pattern: the first Monday of a month is for department meetings, the second faculty meetings, the third, grade level meetings, the fourth, "Principal's Advisory" meetings, and the fifth, "collaboration" meetings. According to Rosenzweig, the Edusoft training session was a collaborative meeting, which focused on encouraging the faculty to work together.

Postrk testified that she holds regular site meetings at Sequoia each Wednesday. They tend to run for approximately two hours, ending at 3:00 p.m.⁷ The meetings follow the same general pattern as those at Valley View: the first Wednesday, department meetings; the second Wednesday, staff meetings; the third, grade-level meetings; and the fourth, committee meetings. The meetings often include Professional Learning Community ("PLC") content, which Postrk described as staff development. She stated that nearly all of the site meetings involve

⁷Wednesdays are a short school day at Sequoia.

professional, staff, and curriculum development, as focusing on such topics as curriculum, instruction strategies, identifying students who need extra support, analyzing pacing guidelines, and talking about common assessments.

Lynch testified, in contrast, that "staff development" and formal training does not occur at site meetings, although there are collaborative discussions about teaching methods. Site meetings topics typically include "general school things," such as the technology needs of the school and fund-raising. Johnson testified that classroom management, achievement level, and curriculum issues are often discussed at site meetings. She added that the Edusoft software has occasionally been a minor topic at faculty-wide staff meetings, and that outside speakers sometimes give presentations at such meetings.

Bargaining History

York, who researched the history of the current Article 14.5.1 going back to 1979, discovered that provisions for additional hourly compensation for additional duties were inserted into the 1979-82 contract. The current language was added to the 1998-2001 contract and has not been changed since. He stated that the Association has made proposals during bargaining, based upon teachers' complaints, to limit the frequency and duration of the "site meetings of reasonable length" referred to in Article 9.2. At some point, the Association specifically proposed that site meetings end prior to 5:00 p.m. These proposals have been rejected by the District. During negotiations for the 2004-07 contract, the District proposed, to "clarify and establish a teacher work day which recognizes a teacher's full spectrum of professional responsibilities and meets the needs of students, parents and operational demands."⁸ The proposal was not accepted.

⁸York testified that the District was not proposing that the duties triggering additional compensation pursuant to Article 14 be subsumed into Article 9, and thus no longer subject to additional compensation. (Tr. 119.)

Gail Isserman, the Assistant Superintendent of Personnel Services for the District,⁹ was a member of the District's negotiating team during negotiations for the 2004-07 and 2007-10 contracts. In the earlier sessions, the Association initially proposed that the term "reasonable" as applied to the length of site meetings in Article 9 be defined "in terms of length and frequency of meetings" which might extend the contractual duty day. The Association also proposed that the term "evening" in Article 9 be "defin[ed]. . . as it relates to additional compensation eligibility under section 9.3.1." Neither proposal resulted in any change in Contract language.

Similarly, in the negotiations for the current Agreement, the Association suggested detailed language with respect to frequency and duration of site meetings, and proposed that "Evening shall be defined as after 5:00 p.m." for purposes of Article 9. These proposals also did not result in any changes to the relevant language in the Agreement. The Association proposed an additional change in the language in the parenthetical "(i.e., summers, weekends, non work days and evenings)" in then-Article 14.7.1.1 (now Article 14.7.1), to "such as, but not limited to, summers, weekends, non work days and evenings." This proposal was likewise rejected.

Past Practice

York became aware that teachers would not be compensated for attending an after-school Reading Assistance Program ("RAP") training at the beginning of the 2009-10 school year. He asked Isserman if the training was mandatory, and told her that if it was, the teachers needed to be compensated. She responded via letter that the training was non-mandatory, but that even if it were, the District would not pay teachers for any training that took place prior to 5:00 p.m. Prior to receiving the letter, the District had never, to York's knowledge, taken such

⁹Isserman has worked for the District in various administrative capacities since 1993. She is responsible for overseeing the functions of the Personnel Office, including hiring, discipline, retirements, contract negotiation and management, and recruiting.

a position. There had been a number of previous cases where teachers had been told that they needed to attend a training. In each case, the Association took the position that if the training were mandatory and scheduled after the conclusion of the teachers' site time, teachers were entitled to compensation. The District responded by declaring the trainings at issue not mandatory.

York testified that other than the Holt and Edusoft trainings at issue, he did not know of any mandatory training which occurred on a regular work day after the expiration of daily site time. In one instance, the District held a mandatory SB 472 training that was during the summer and hence outside the negotiated work year. The District initially declined to provide compensation for attendance, but later agreed to do so at the \$20 per hour rate after consultation with the Association.

Isserman noted that, several years ago, the Association filed a grievance with respect to teachers being compensated for performing bus duty at Pleasant Hill Elementary School. The District denied the grievance in its initial steps and the matter was not pursued further. She also stated that in 2006, the Association objected to certain teachers being compelled to attend twice-a-year Feeder Pattern staff development meetings, held from 3:00 to 5:00 p.m. The meetings were the result of a Consent Degree that had arisen from an earlier lawsuit requiring a minimum amount of annual training for Special Education teachers. Then-Association President Mike Noce asked in correspondence whether the meetings were mandatory or optional. The District responded that the teachers would be paid if the meetings lasted beyond 5:00 p.m, and its determination was not grieved.

POSITION OF THE ASSOCIATION

The District violated Article 14.5.1 of the Agreement when it failed to compensate teachers for the time they spent attending the mandatory Holt and Edusoft trainings. These

trainings were in addition to the teachers' regular assignments, and, as such, the District was required to compensate them at \$20 per hour. The District's interpretation of the Contract language at issue expands the teachers' negotiated work day, and would therefore render Article 14.5.1 meaningless.

Both the Holt and Edusoft trainings clearly fall within the meaning of "staff development" as it appears in Article 14.5.1.2. The Holt training in particular also falls within the meaning of "curriculum development." It taught teachers how to use computer and web resources associated with a recently adopted textbook, and instructed them in the use of a new textbook to present the math curriculum to students. Even the Valley View principal considered the Holt training to be compensable staff development prior to being told that the District would not provide compensation for any training that occurred before 5:00 p.m. Likewise, the Edusoft training instructor taught teachers how to use new software to track their students' progress, and thus constitutes "staff development."

It is also clear that both the Holt and Edusoft trainings were held in addition to the teachers' "regular assignments." The Agreement does not explicitly define "regular assignment," but Article 9.1.1 does set forth "site time" requirements which require middle school teachers to be on site for a minimum of seven hours per day, after which they are free to leave. The Holt and Edusoft trainings occurred well after the teachers' site time had ended. In addition, they were discrete events, which, in contrast to regularly scheduled staff meetings, were separate from, and in addition to their routine responsibilities. They also occurred in the "evening" for purposes of Article 14.5.1.1, as they took place after the conclusion of the normal work day. These trainings must therefore be considered as work "in addition to their regular assignment."

The Association has consistently maintained that mandatory trainings for staff or

curriculum development must be compensated if they occur outside of site time. Whenever the District has claimed that teachers should or must attend a training or "meeting," the Association has inquired whether the training or "meeting" is mandatory, so as to conform to the Contract's qualifications. When it advised teachers to attend the RAP training on September 7 following their site time, the Association informed the District that if the training was required, the teachers needed to be compensated. When the District required teachers to attend the SB 472 training in the summer, the Association again demanded that the training be compensated, and the District ultimately acquiesced. The Association's decision not to pursue a grievance related to the Spring Feeder Patterns meeting is in no way inconsistent with the above positions, as the Association simply concluded that the meetings appeared to simply be an extension of regular meetings, rather than additional, mandatory trainings.

These trainings were not, as the District may argue, "site meetings of reasonable length" as per Article 9.2. The nature of the trainings was wholly different from regular site meetings in content, location, timing, and regularity. At site meetings, teachers and administrators collaborate with one another and discuss general matters about the school, students, and curriculum. Teachers are not formally "trained" on specific subjects or skills. The trainings thus had an entirely different purpose from standard site meetings. Moreover, they went well past the time at which site meetings normally conclude, and some teachers were required to travel to a different site to attend. Further, they were scheduled in addition to, not in lieu of, regularly scheduled site meetings. The District initially scheduled the Holt training for a paid in-service day, but subsequently decided to schedule trainings at three school sites. The Edusoft training was not identified on a Valley View calendar that lists all site meetings for the year, and was held on a day when no such site meeting had been scheduled. It is clear, therefore, that the training sessions were distinct from, and on top of, the routine "site meetings of reasonable length"

referenced in Article 9.2.

It is also clear from the District's use of standards-based intervention pay pursuant to Article 14.7.1 that both parties have understood that, for purposes of extra compensation under Article 14, the "evening" includes time before 5:00 p.m. Article 14.7.1, which covers standards-based intervention pay, uses identical language to that found in Article 14.5: the extra compensation is due for "work in addition to their regular assignment." It is undisputed that the District pays standards-based intervention instructors for teaching time that occurs prior to 5:00 p.m. There is thus no reasonable justification arising from Article 14.5 for the District to refuse to compensate teachers for additional work that occurs prior to 5:00 p.m., when the Agreement contains identical language covering both situations. This interpretation would suppose that the phrase "work in addition to their regular assignment" has a different meaning in the two clauses.

In addition, the District's interpretation of Article 14.5 would lead to harsh and nonsensical results. If the Holt and Edusoft trainings are not compensable, and are rather simply a part of the teachers' regular assignment, according to the District's logic it could potentially require teachers to stay on site until 5:00 p.m. every for staff development or other purposes. The District could thereby extend the regular work day by over two hours without providing any additional compensation. Since no language in the Agreement limits the frequency of training sessions, the District would have free reign to compel teachers to work until 5:00 p.m. any day of the week. Such a result is absurd. It simply cannot be what the parties intended when they established site times and provided for extra compensation under various provisions, including Article 14.5.1. A fair and harmonized reading of the relevant language in the Agreement thus clearly demonstrates that the Holt and Edusoft trainings were compensable under Article 14.5.1.

Finally, the District's unilateral decision that the "evening" begins at 5:00 p.m. for

purposes of Articles 9 and 14 must be rejected. The parties never agreed that 5:00 p.m. demarcates the beginning of the evening. Indeed, the Association twice attempted to amend the language of Article 9.2 to explicitly define the evening as beginning at 5:00 p.m., but the District rejected these proposals. The District cannot now rely on a rejected proposal to unilaterally establish that claim. Further, the District previously attempted to expand Article 9.2 to establish a work day that recognizes a "teacher's full spectrum of professional responsibilities," including trainings. The Association rejected the District's proposal. Thus, the District is now attempting to expand the scope of Article 9.2 through arbitration. It must not be allowed to do so.

Based on the foregoing reasons, the District violated Article 14.5.1 of the Agreement by failing to provide hourly compensation to the teachers who attended the Holt and Edusoft trainings. The Association respectfully requests that the grievance be sustained, that the affected teachers be compensated at \$20 per hour for the time they spent traveling to and attending the sessions, and that the District be ordered to cease and desist from further violations of Article 14.5.1.

POSITION OF THE DISTRICT

The Association has failed to meet its burden of proving that the District violated the Agreement by failing to provide additional compensation to teachers for attending two after-school site meetings. The Contract language is unambiguous, and that language dictates that there is no entitlement to extra pay under these facts. The language is restrictive, and the activities did not take place in the "evening."

Should the language be viewed as ambiguous, neither past practice nor bargaining history supports the Union's position. There was no evidence that the District had ever paid additional compensation under similar circumstances. To the contrary, the District's consistent

view has been not to furnish extra pay even for required training unless it occurs in the evening, on a weekend over the summer, or otherwise not on a work day.

After-school site meetings are enshrined in Article 9.2 of the Agreement as non-compensable elements of teachers' typical duties. The Association's reliance on Article 14.5.1 is misplaced, as the language in that provision is clear and unambiguous. It explicitly sets forth the specific circumstances under which teachers are entitled to additional hourly compensation. Such compensation is due only where the assignment is "in addition to their regular assignment (i.e., summers, weekends, nonwork days and evenings." The two training sessions at issue simply do not meet these requirements, as they took place after school on normal work days, during time in which the grievants admitted that they often engaged in many sorts of required activities for which they admit no additional compensation is due. The grievance must therefore be denied.

The Association bears the burden of proof in this contract interpretation dispute. It has not met its burden, as the language in question clearly and unambiguously supports the District's position. The Holt and Edusoft trainings fall squarely within Article 9.2, since they were "site meetings of reasonable length," which the Agreement explicitly states are not subject to additional compensation. The record reflects that regularly held site meetings routinely include and comprise training of one sort or another. The principal typically addresses staff development and curriculum development during these meetings, and often special speakers from the site or the District Office conduct trainings on particular topics or skills. All of the elements that Lynch testified constitute "training" routinely occur at site meetings. Therefore, the record evidence demonstrates that the trainings at issue were "site meetings of reasonable length," and accordingly the District was not required to provide additional compensation.

Moreover, even if the trainings are not found to constitute "site meetings," Article 9.2

contains expansive language ("such duties include but are not limited to") indicating that duties not explicitly described in the Agreement nevertheless fall within the ambit of non-compensable "additional duties which are related to [unit members'] responsibilities as a unit member." The Holt and Edusoft trainings are unquestionably related to the teachers' existing responsibilities under the Agreement. The content of both trainings relates to the teachers' primary duty of educating their students. Both trainings dealt with helping teachers improve their classroom teaching. They thus directly related to the teachers' primary responsibilities, rather than to the types of supplemental duties which entitle teachers to additional compensation, such as coaching or leading other outside activities. Indeed, the content of the two trainings was similar to content of regular site meetings, which undisputedly do not trigger any additional compensation.

The Holt and Edusoft trainings do not fall under Article 14.5.1, as the Association urges. The Association's argument is an attempt to rewrite the contract through arbitration. Article 14.5.1 allows for additional compensation for after-school trainings only when they occur in certain narrowly defined circumstances: in the evening, on the weekend, during the summer, or on a nonwork day. None of these circumstances apply, as the trainings took place on school days in the afternoon and were completed by 5:00 p.m.

Moreover, the compensation contemplated by Article 14.5.1 is for work performed "in addition to" the unit members' regular assignment. It defines work that is "in addition to" regular duties as, "i.e., summers, weekends, nonwork days and evenings." "I.e.," or "that is," is a limiting rather than expansive term. The Association contends that "i.e." is unclear, susceptible of different meanings, and seeks to argue that it is an expansive "e.g.," meaning "included, but not limited to," thus drawing the after-school trainings within its ambit. However, it cannot succeed on this record. The Association attempted during bargaining to change the language from "i.e."

to "such as but not limited to," but the proposal was rejected. The Association now seeks to gain through arbitration what it was unable to obtain through bargaining.

The Association's fallback attempt to read ambiguity into the Agreement where none exists is to claim that the Holt and Edusoft trainings actually occurred in the "evening." This argument requires the Arbitrator to accept that the term "evening" means something quite different from what the record evidence shows. The trainings simply did not occur in the evenings. They took place at the end of the normal school day and concluded by or well before 5:00 p.m. Further, the parties' understanding of the term "evening" can be inferred from Article 9.3, which lists two "evening" activities – Back-to-School Night and Open House – which may be assigned without additional compensation. These activities truly occur in the "evening," as they begin at 6:30 p.m. or later. It is reasonable to infer, therefore, that the term "evening" as used in the Agreement, contemplates a similar time frame. It would defy logic and consistency to hold that in the context of Article 14.5.1, "evening" has an entirely different meaning, and includes hours prior to 5:00 p.m.

The Association attempts to characterize "evening" as the time after which teachers have completed a "regular workday." However, there is no evidence that teachers even have a "regular workday." They regularly attend mandatory and non-mandatory meetings that are held after students leave but prior to 5:00 p.m., for which they do not receive additional compensation. The "regular workday" thus necessarily varies in length according to the day and whether and what type of meeting is held after the conclusion of classes. The Association's argument that the Agreement contemplates that "evenings" begin whenever teachers conclude their "regular workday" is thus unpersuasive. Indeed, the Association has repeatedly proposed to define "evening" as "past 5:00 p.m." Its expansive interpretation of the term for purposes of this dispute is therefore disingenuous.

The Association has also failed to show any past practice supporting its assertion that the Holt and Edusoft trainings were compensable. In order to establish a binding past practice, the Association must demonstrate that the alleged practice is unequivocal, clearly enunciated and acted upon, and readily ascertainable over a period of time as a fixed and established practice. The Association has failed utterly to make any such showing. No evidence whatsoever exists of even a single prior occurrence of extra pay in circumstances similar or even analogous to the present case. The only instance cited by the Association where teachers received additional compensation took place during the summer, a situation in which Article 14.5.1 specifically mandates such compensation. The Association therefore cannot rely on any alleged practice to escape the clear and unambiguous language of the Agreement.

The bargaining history demonstrates that the Association has made repeated efforts to achieve the result that it now seeks in the present dispute. The Association not only proposed to change the "i.e." in then-Article 14.7.1 to "such as but not limited to," it also proposed to limit the amount of site meetings teachers are required to attend, to limit the duration of such meetings, and to establish a rate of pay when such meetings exceeded the proposed time limits. None of these proposals were accepted. The Association cannot be allowed to have the contract rewritten in arbitration to achieve the results it was unable to reach at the bargaining table.

Finally, to the extent that the Arbitrator concludes that a remedy is warranted, it would be appropriate only to order a remedy for the named grievants. Other teachers had the opportunity to grieve the District's actions, but did not do so. For the foregoing reasons, the District respectfully requests that the grievance be denied.

DISCUSSION

When a party alleges that the Contract is violated, it is in essence requesting that the Arbitrator enforce the mutual contractual intent of the parties as expressed in the language of their Agreement. When that language is clear and unambiguous, there is no need to "interpret" it. The language is simply enforced as written. Where, however, contract language is ambiguous or vague, mutual intent is difficult to determine. It then becomes necessary to resort to technical rules of contract instruction, or refer to extrinsic evidence such as bargaining history or past practice, to discover the true meaning of the words used and thus the intent which the moving party seeks to enforce.

Briefly stated, the Association asserts that the training in the two instances under examination constituted "work in addition to their regular assignment," entitling participants to hourly compensation over and above their regular salaries under Article 14.5.1. The training sessions, it maintains, were held on teachers' "own time." The Holt training in particular was to have been conducted on an in-service, or regular work day. Because it was not, math instructors were required to devote time to work-related duties which they ordinarily would have had to themselves.

The Contract, however, is clear on its face. Article 14.5.1.1 declares that the District's obligation to pay additional compensation does not arise unless work is performed during four designated time periods: in the summer, on week-ends and non-work days, and most importantly for present purposes, in the evening. The parenthetical in that section provides plain and unmistakable evidence of that intent. While the Association maintains that the two training sessions at issue constitute "staff development" and/or "curriculum development" within the meaning of Article 14.5.1.2, "work in addition to their regular assignment" is not defined in Article 14.5.1.1 in terms of the type of work, or whether it is mandatory. It is defined in terms of when

it is performed.

As the Employer suggests, the use of "i.e." restricts, rather than expands the definition of "work in addition." It stands in contrast to the "including, but not limited to" language of 9.2 which signifies that the items listed are simply examples. The "i.e.," variously defined as "that is," "that is to say," or "that means," specifically lists the work times during which teachers are entitled to be paid extra compensation. By extension, work not performed during those times, regardless of the nature of the work, is not work which entitles the teacher performing it to extra hourly compensation, save for the exception provided in Section 14.7. Notably, the Association's attempt to expand the scope of 14.5.1.1 in negotiations by substituting the phrase "including, but not limited to" for "i.e." was rejected, further underscoring the parties' intent to limit eligibility for extra hourly compensation for curriculum and/or staff development to the four situations listed and for standards-based intervention pay.

Accordingly, despite the fact that the two training sessions involved "curriculum development" and/or "staff development," as used in Article 14.1.5.1.2., and were mandatory, none of these characterizations create an obligation under the Agreement to provide additional compensation. Nor do they indicate that such payment is "authorized." Similarly unavailing is the Association's effort to base entitlement to compensation on the fact that unlike site meetings, the training sessions were discrete events separate and on top of their ongoing responsibilities. As stated, the Contract defines "work in addition" as work which takes place during four specific time periods, with one notable exception provided in Section 14.7.

The Association further maintains because the training sessions could not be deemed "site meetings of reasonable length" for various reasons, they cannot be viewed as "additional duties" excluded from eligibility for extra compensation under Article 9. However, the list of "additional duties" in Article 9 is not all-encompassing. The "may include, but are not limited to"

language of 9.2.1 indicates that the list in which "site meetings" is set forth is not an all-inclusive one. As such, the two training sessions in question may be regarded as "additional duties which are related to" unit member responsibilities for which additional compensation need not be paid. While the Association assertion asserts that the District's interpretation of 9.2 would render 14.5.1 meaningless, as 14.5.1 "demands" that there be additional compensation for curriculum and staff development "beyond one's regular assignment," the Contract only provides for such additional compensation when the staff and/or curriculum development takes place in one of the four periods listed, save in the case of Standards Based Intervention Pay.

Admittedly, the Holt training and the Edusoft training were distinct from what typically might be seen as a "site meetings," and were not part of the regular routine. The Edusoft training, however, was termed by the site administrator to be a collaborative meeting, and resembled site meetings in the respect that they involved the entire faculty and discussed items of mutual professional interest. Although the Association argues that site meetings are typically of shorter duration, the only evidence on the point was provided by Postrk, who stated that they tend to run for two hours after a shortened school day.

While the Association has taken the position that mandatory training for curriculum or staff development must be the source of additional compensation if the training occurs outside of site time, nothing in the Contract supports that view. To impose such a requirement here would be contrary to the Article 3.12.1, which denies the Arbitrator any power to "add to, . . . , or amend the terms of the Agreement." While teachers who were required to attend SB 472 were compensated for their additional time, the training took place in the summer, one of the pre-conditions for receiving additional payment codified in the Contract.

Thus, in order for the teachers attending the Holt and Edusoft training to be eligible for hourly pay, the Association must establish that the sessions took place in the "evening." To

meet this criteria, it argues that there is some ambiguity to the word "evening," and that for teachers, "evening" means the period after their site time obligation is concluded.

While the term "evening" is somewhat exact, it is undisputably different from "afternoon." Evening commonly means the time when the light is fading, into the night. The Association's view of "evening" as simply any time after the site time obligation or regular duties are completed would take its ordinary significance and stretch it beyond recognized limits. Assuming there is some ambiguity to the term, the insertion of a certain amount of vagueness could well be intentional: the meaning of "evening," at least in terms of the hours when it occurs, changes with the seasons. Bargaining history supports the view that the parties sought to attach a less-than-specific qualification to this "work in addition" criteria.

The Association's efforts to describe "evening" with reference to a specific hour was rebuffed in negotiations, plainly indicating a mutual intent to avoid drawing a thick black line around the concept. Ironically enough, the District now urges that 5:00 has been the consistent starting point for paying the hourly rate, while the Association asserts that the time limitation is being unilaterally imposed. Clearly, the Contract does not support such a view. No definitive determination as to when "evening" begins can be made here. Contrary to the Association's view, this does not in effect expand the meaning of the workday. The concept of "workday" itself does not exist in the Contract, and is not simply defined according to certain "minimum daily requirements."

Even allowing for some uncertainty about the meaning of "evening," other clues from the Contract provide strong evidence that the parties did not intend that it begin at the time when teachers would otherwise be permitted to leave their work sites. Applying technical rules of construction, the Contract must be read as a whole. Where one interpretation would nullify a provision, while another would give full force and effect to the whole, it is the latter which should

be applied. The District maintains that the meaning can be inferred from the two "evening activities" listed in 9.3, "Back to School" and "Open House," both of which take place after 6:30. However, this contention is not dispositive. The Contract merely provides that the District may conduct these activities in the evening without furnishing unit members extra compensation. The fact that they may be held at and after 6:30 does not necessarily define the "evening."

Additional reference to 9.2 does prove elucidating, however. 9.2.2 specifically prohibits the District from assigning site meetings, parent teacher conferences, IEP's and SST's in the evenings, except as provided for in 9.3. There is no dispute that site meetings are routinely held at the conclusion of the instructional day. The parties have demonstrated through this consistent practice that they do not consider the times when such meeting are held to be in the "evening" and hence violative of the Agreement. The two training sessions that were conducted were held at the same time as regularly scheduled site meetings. Accordingly, they were not held in the evening, as the parties mutually understand and apply the term.

Interpreting the Contract in the manner suggested by the Association would place Articles 9.2.2. and 9.3 in irreconcilable conflict, and would result in the nullification of the clear wording of 9.2.2. Because the period in which the activities were conducted did not fall within any of the four categories listed in 14.1.5.1, attendees were not entitled to receive additional hourly compensation for the Holt and Edusoft training sessions.

The Association maintains that the use of standards-based intervention pay under Article 14.7 signifies that the parties have understood the term "evening" to include time before 5:00 p.m. However, this Contract clause unambiguously provides an exception to the "work in addition" rule based on the nature of the work, rather than the time during which it is performed. It is only in this instance that work "in addition" that is not performed in the evening, during summers, etc., may be eligible for extra hourly compensation. Although the Association asserts

that the phrase "work in addition" must be defined in the same way in 14.5.1 as it is in 14.7.1, the parties have provided an unambiguous definition for that phrase, and an exception to that definition.

The Association argues that additional compensation for the work in question would result in a fair logical and consistent application of the Agreement. Although teachers may have been compensated by being released for work on the text book selection committee and for certain types of training in the past, the compensation may only be furnished where warranted by the Contract. Comparisons cannot be made to instances where extra compensation is specifically provided for non-teaching duties, as these duties are also enumerated as among those for which the additional compensation is to be paid. The fact that the Holt training was originally scheduled for an in-service day likewise does not provide a contractual basis for providing additional compensation when the training was re-scheduled to occur after the end of the teaching day.

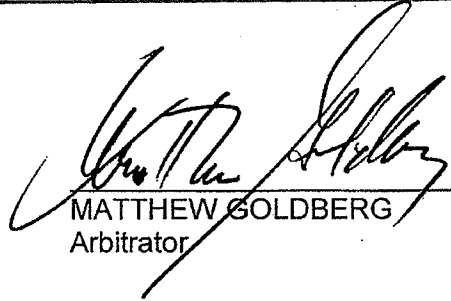
The Association hypothesizes that interpreting the Contract in a way which does not provide for extra compensation here would lead to a harsh, absurd or nonsensical result, as teachers could, at least in theory, be required to stay on site every day until 5:00 p.m. for staff development or other purposes. There is no evidence of any such occurrences, or that the "site meetings of reasonable length" language has been applied in any way to be considered abuse of the privilege. Article 9 does not define what constitutes "the workday." It simply provides for "minimum daily requirements." Unit members, as professionals, often exceed these minimums as a matter of routine, without any expectation of additional compensation.

For all of the foregoing reasons, it is determined that District was not required to pay additional hourly compensation to those who attended the Holt and Edusoft training sessions in the fall of 2009.

AWARD

The grievance is denied. The District did not violate the Collective Bargaining Agreement
by not compensating teachers who attended a Holt math technology training and/or an Edusoft
training.

Dated: October 2, 2010


MATTHEW GOLDBERG
Arbitrator