



HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT

SCHOOL COMMITTEE MEETING

Buker Elementary School
Multi-Purpose Room

Wednesday, August 1, 2018

7:00 PM

1. **Call to Order** 7:00
2. **Pledge of Allegiance**
3. **Approval of Warrants**
 - 3.1. July 18, 2018 Exhibit A
4. **Citizens' Comments**
5. **Chair's Report**
6. **Superintendent's Report**
 - 6.1. Arbitrator's Ruling in Custodial Union Grievance Exhibit B
7. **Consent Agenda**
8. **New Business**
 - a. End of FY18 Close Exhibit C
 - b. Grounds & Maintenance Agreement Exhibit D
 - c. Timeline for Superintendent's Review Exhibit E
 - d. School Committee Goals for 2018-2019
 - e. Open Meeting Law Complaint
 - f. Donation: Raised Garden Bed (est. value \$400) from the MRMS Class of 2018 Exhibit F
9. **Other**
 - a. Topics for next meeting
10. **Vote to Adjourn** 9:30

David Polito, Chairperson HWRSC

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 2

Voucher Date: 07/20/2018

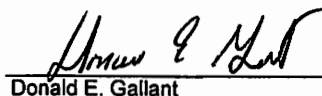
Prepared By:



Printed: 07/18/2018 03:08:32 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$10,929.79 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2018 to June 30, 2019 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.



Donald E. Gallant

Treasurer



Leslie Davidson

Assistant Treasurer

1

School Committee Member

2

School Committee Member

3

School Committee Member

Jeffrey Sands

Assistant Superintendent for
Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL
DISTRICT

Fund		Amount
001	GENERAL FUND	\$5,388.60
100	PRIOR YEAR ENCUMBRANCES	\$3,618.76
202	REVOLVING FUNDS	\$0.00
205	ATHLETIC/EXTRA CURR REVOLVING	\$0.00
302	94-142 IDEA 240	\$1,922.43
402	STATE GRANTS FY EVEN YEARS	\$0.00
701	CAFETERIA FUNDS	\$0.00
		\$10,929.79

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 1001

Voucher Date: 07/20/2018

Prepared By:

Donald E. Gallant

Printed: 07/18/2018 02:52:31 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$533,019.16 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2018 to June 30, 2019 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

Donald E. Gallant
Donald E. Gallant

Treasurer

Leslie Davidson

Assistant Treasurer

1

School Committee Member

Jeanie Behr
2 School Committee Member

Margaret Z. B...
3 School Committee Member

Jeffrey Sands

Assistant Superintendent for
Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL
DISTRICT

Fund

001

GENERAL FUND

Amount

\$533,019.16

\$533,019.16

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 1002

Voucher Date: 07/20/2018

Prepared By:

Donald E. Gallant

Printed: 07/18/2018 03:02:36 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$48,495.97 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2018 to June 30, 2019 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

Donald E. Gallant
Donald E. Gallant

Treasurer

Leslie Davidson
Leslie Davidson

Assistant Treasurer

James Bertoldo
2 James Bertoldo

School Committee Member

Michelle Z. Buly
3 Michelle Z. Buly

School Committee Member

Jeffrey Sands

Assistant Superintendent for
Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL
DISTRICT

Fund	Amount
001 GENERAL FUND	\$48,495.97
	\$48,495.97

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 2546

Voucher Date: 06/27/2018

Prepared By:

Donald E. Gallant
Printed: 07/18/2018 01:25:33 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$86,535.58 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2017 to June 30, 2018 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

Donald E. Gallant
Donald E. Gallant Treasurer

Leslie Davidson
Leslie Davidson Assistant Treasurer

1 *John T. Boring*
School Committee Member

2 *John T. Boring*
School Committee Member

3 *Jeffrey Sands*
School Committee Member

Jeffrey Sands
Jeffrey Sands Assistant Superintendent for Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT

Fund		Amount
001	GENERAL FUND	\$78,959.97
202	REVOLVING FUNDS	\$1,306.00
205	ATHLETIC/EXTRA CURR REVOLVING	\$179.00
302	94-142 IDEA 240	\$5,395.00
402	STATE GRANTS FY EVEN YEARS	\$695.61
		\$86,535.58

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 2545

Voucher Date: 06/27/2018

Prepared By:

Don Gallant

Printed: 07/18/2018 01:07:13 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$178,391.89 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2017 to June 30, 2018 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

Donald E. Gallant
Donald E. Gallant Treasurer

Leslie Davidson Assistant Treasurer

1 *[Signature]* School Committee Member

2 *[Signature]* School Committee Member

3 *[Signature]* School Committee Member

Jeffrey Sands Assistant Superintendent for Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT

Fund		Amount
001	GENERAL FUND	\$92,089.71
202	REVOLVING FUNDS	\$482.92
301	TITLE I	\$271.35
302	94-142 IDEA 240	\$1,232.00
402	STATE GRANTS FY EVEN YEARS	\$1,034.91
502	PRIVATE GRANTS & GIFTS	\$83,281.00
		\$178,391.89

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 2602

Voucher Date: 07/20/2018

Prepared By:


Printed: 07/18/2018 01:38:45 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$13,500.00 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2018 to June 30, 2019 (period cannot overlap fiscal year end.)


I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

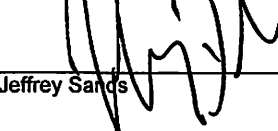

Donald E. Gallant Treasurer

Leslie Davidson Assistant Treasurer


1 School Committee Member


2 School Committee Member


3 School Committee Member


Jeffrey Sands Assistant Superintendent for Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT

Fund	Amount
601 TRUST FUNDS	\$13,500.00
	\$13,500.00

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT VOUCHER

Voucher No: 2601

Voucher Date: 07/20/2018

Prepared By:

Donald E. Gallant

Printed: 07/18/2018 01:35:38 PM

HAMILTON WENHAM REGIONAL SCHOOL DISTRICT is hereby authorized to draw warrants against HAMILTON WENHAM REGIONAL SCHOOL DISTRICT funds for the sum of \$269,403.38 on account of obligations incurred for value received in services and for materials as shown below for period July 1, 2018 to June 30, 2019 (period cannot overlap fiscal year end.)

I certify that this claim is just and correct, and the services and/or materials herein represented have been received during the period listed above. All items are properly coded and not in excess of the budget.

Donald E. Gallant

Donald E. Gallant

Treasurer

Leslie Davidson

Assistant Treasurer

Michelle Z. Barclay

1

School Committee Member

2

Jeffrey Sands

School Committee Member

3

Jeffrey Sands

School Committee Member

Jeffrey Sands

Assistant Superintendent for
Admin. and Finance

HAMILTON WENHAM REGIONAL SCHOOL
DISTRICT

Fund	Amount
001 GENERAL FUND	\$269,403.38
	\$269,403.38

AMERICAN ARBITRATION ASSOCIATION

HAMILTON-WENHAM REGIONAL SCHOOL : ARBITRATION OPINION & AWARD
DISTRICT :
WENHAM, MASSACHUSETTS :

AND : AAA CASE NO. 01-17-0004-6802
CLASS ACTION/OVERTIME BYPASS

AFSCME, COUNCIL 93, :
AFL-CIO : AWARD DATE: JULY 9, 2018
:
.....

The undersigned Arbitrator, who was mutually selected by the above-named parties in accordance with the terms of their current Collective Bargaining Agreement and appointed by the American Arbitration Association, held arbitration hearings on April 5, and May 5, 2018 at the Office of the Hamilton-Wenham Regional School District in Wenham, MA. The Hamilton-Wenham Regional School District (the HWRSD or Employer) was represented by Naomi Stonberg, Esq., Attorney. AFSCME Council 93 (the Union) was represented by Sean Cronin, Esq., Attorney. Witnesses were sworn. Post-hearing briefs were filed by both parties.

THE ISSUES: The issues agreed to for submission to arbitration are:

1. Are the grievances of Mike Mullarkey, Oct. 5-6, 2017; Frank Cirinna, Oct. 2, 3, 4, 5 and 6, 2017; Frank Cirinna, March 27, 28, 29, 30 and 31, 2017; and Frank Cirinna March 26, 27, 2018 arbitrable?

2. Did the Hamilton-Wenham Regional School District violate the Collective Bargaining Agreement by utilizing substitute custodians to cover regular shifts, instead of offering overtime to bargaining unit custodians, when one was absent, as was the case in a number of instances since December 2016?

3. If so, what shall be the remedy?

THE AGREEMENT: The parties' July 1, 2015 to June 30, 2018 Labor Agreement provides in pertinent part:

ARTICLE I - RECOGNITION

1.1 The Committee recognizes the Union as the sole and exclusive bargaining agent for the purposes of collective bargaining respecting wages, hours, and other conditions of employment for all regular full-time custodians and maintenance employees, but excluding all teachers, teaching assistants and office personnel employees, cafeteria employees, administrative employees and all other employees of the Committee.

1.2 Definition

Unless otherwise indicated by the context, the term "employee" when used herein shall refer to any of the employees covered by this agreement. The term "employee" shall refer to any permanent employee who is normally scheduled to work a minimum of twenty (20) hours per week, and whose entire salary and benefits are paid from the school department budget.

ARTICLE IV - CONDITIONS OF EMPLOYMENT

4.5 Substitutes

The Hamilton-Wenham Regional School District will do its best to develop a list of pre-qualified individuals who can be called upon on an as needed basis to work when employees are out. The Committee has agreed to place an ad in a local newspaper during the month of July 2008 seeking said substitutes.

ARTICLE V - MANAGEMENT RIGHTS

5.1 In recognition of the fact that the laws of the Commonwealth of Massachusetts vest in the Committee responsibility to the people of the Towns of Hamilton and Wenham for the quality of education in, and the efficient operation of the Hamilton-Wenham Regional School District, it is herein agreed that, as to every matter expressly not covered by this Agreement, the Committee retains exclusively to itself all rights and powers that it has or may hereafter be granted by law or by the rules and regulations of any pertinent agency of the Commonwealth and may lawfully exercise the same at its discretion without such being made the subject of a grievance or unfair labor practice charge.

ARTICLE VI - WAGES, HOURS OF WORK, AND OVERTIME

6.7 Overtime

a. Premium pay for overtime will be paid at the rate of time and one-half (1 1/2) the employee's regular straight time hourly rate for the hours actually worked in excess of eight (8) hours in any one day or forty (40) hours in his/her work week. Premium pay for overtime work shall not be pyramided. For the purposes of this section, an employee's workday shall be the twenty-four (24) hour period commencing at the start of his/her normal scheduled shift.

d. Overtime will be evenly distributed to members of the bargaining unit. The Committee may require bargaining unit members to work a reasonable amount of overtime, as determined by the Director of Facility and Maintenance.

e. Overtime that involves duties normally and customarily performed by the custodial staff in a particular school will first be assigned/offered to the custodians working in the school in question. If the custodian(s) working at the school in question is unable or unwilling to accept the overtime detail, then the assignment will be offered to other bargaining unit members who ordinarily and customarily perform said work.

f. The Director of Facilities and Maintenance, working in conjunction with a Head Custodian, a School Principal, and/or the Maintenance Foreman, (all) when applicable, is responsible for assigning all Custodial and Maintenance Staff overtime across the District. All overtime must be approved in advance by the Director of Facilities and Maintenance or his/her designee.

ARTICLE VIII - GRIEVANCE AND ARBITRATION PROCEDURE

8.1 The purpose of this article is to establish a procedure for the settlement of disputes that may arise between the parties involving the interpretation and/or application of a specific provision of the Agreement. A "grievance" shall mean a complaint that as to an employee the Committee has interpreted and applied this Agreement in violation of a specific provision hereof. Except for grievances that are expressly excluded from the grievance procedure by other provisions of this agreement, all grievances shall be handled as follows:

Step 1: The aggrieved employee shall first

present the grievance to the Principal of the building to which the employee is assigned within ten (10) working days following the event forming the basis for the grievance.

* * * *

Step 5:

* * * *

Any arbitration hereunder shall be conducted in accordance with the then current rules of the American Arbitration Association applicable to labor arbitrations, subject to the provisions of the Agreement. The function of the arbitrator is to determine the interpretation or application of specific provisions of this Agreement. There shall be no right in arbitration to obtain, and no arbitrator shall have any authority or power to award or determine any change in, modification or alteration or addition to or distraction from, any of the provisions of the Agreement. In reaching his/her decision, the arbitrator shall be subject to the principle that there is no restriction intended on the rights or authority of the Committee other than those expressly set forth therein. The arbitrator may or may not make his/her award retroactively as the equities in the case require. The decision of the arbitrator, if within the scope of his/her authority and power under this agreement, shall be final and binding upon the Committee, the Union and the employees who initiated the grievance. The expenses of the arbitrator's services and the proceeding shall be borne equally by the Committee and the Union. (Jt. Ex. #1.)

BACKGROUND:

This dispute involves whether the HWRSD has the right to hire substitutes to replace absent workers instead of offering the time on an overtime basis to the appropriate bargaining unit employee. A review of the contract language for the past years shows the bargaining history.

The July 1, 2005 - June 30, 2008 contract provided as follows with respect to the issues in dispute here:

ARTICLE I - RECOGNITION

1.1 The Committee recognizes the Union as the sole and exclusive bargaining agent for the purposes of collective bargaining respecting wages, hours, and other conditions of employment for all regular full-time custodians and maintenance employees, but excluding all teachers, teaching assistants and office personnel employees, cafeteria employees, administrative employees and all other employees of the Committee.

1.2 Definition

Unless otherwise indicated by the context, the term "employee" when used herein shall refer to any of the employees covered by this agreement. The term "employee" shall refer to any permanent employee who is normally scheduled to work a minimum of twenty (20) hours per week, and whose entire salary and benefits are paid from the school department budget.

ARTICLE IV - CONDITIONS OF EMPLOYMENT

4.5 Floaters: The Hamilton-Wenham Regional School District will do their best to have floaters work when employees are out ill.

6.7 Overtime

a. Premium pay for overtime will be paid at the rate of time and one-half ($1\frac{1}{2}$) the employee's regular straight time hourly rate for the hours actually worked in excess of eight (8) hours in any one day or forty (40) hours in his/her work week. Premium pay for overtime work shall not be pyramided. For the purposes of this section, an employee's workday shall be the twenty-four (24) hour period commencing at the start of his/her normal scheduled shift.

d. The Committee may require any employee to work a reasonable amount of overtime. The Committee will endeavor to distribute equitably the opportunity to work available overtime, insofar as practicable. This provision however, shall not form the basis for any claim for wages or overtime premiums not worked.

e. All schools in the District will make every attempt to assign custodial overtime on a fair and equitable basis.

f. Overtime will be first assigned/offered to custodians working at the school in question. If a custodian working at the school in question is unable or unwilling to accept the overtime detail, then the assignment will be offered to other custodians working in the District.

g. The head custodian, working in conjunction with that school's principal, is responsible for assigning overtime in their building.

h. Every attempt will be made to form a look ahead schedule in order to better plan for previously scheduled use of building that would require custodial overtime.

i. Overtime will be evenly distributed to custodians.

j. There are times when it is very difficult to meet the needs of the staff of the school in question (i.e. sick days, vacation schedules, last minute requests, etc.) Each head custodian will work as closely as possible with his/her principal or assistant principal to handle each situation as fairly as possible. Any problem should be brought to the attention of the principal or the assistant principal as soon as possible. (Jt. Ex. #4)

It is important to note that for many years, the head custodian, a bargaining unit employee, nominally working with the school's principal, decided how to fill any opening. If it was to be done on an overtime basis, it was offered solely to bargaining unit employees. There is no record evidence of floaters being used under this contract. The floater language, apparently was removed, as it does not exist in subsequent contracts.

Christopher Stoeck, custodial supervisor and Union member,

testified that he has been a local representative for the past fifteen years and has negotiated contracts from 2003 to the present. In 2008, the Union bargaining team consisted of Mr. Stoeys, Frank Cirinna and Terry Sherman. They negotiated with Marineo McGrath, then superintendent of schools. Mr. Stoeys testified that Supt. McGrath brought up the District's need to have substitutes, and testified that the Union understood that they were to be used as a last resort. Union witnesses testified that the parties agreed that only if the District had tried the custodian on site, and all other custodians had declined to work the overtime, would a substitute be brought in. The witnesses statements were unrebutted. Supt. McGrath, who left the District in 2012, was not called to testify.

The July 1, 2008 to June 30, 2011 Contract continued the language in the former contract unchanged. However, it contained the following relevant change from the prior contract:

ARTICLE IV - CONDITIONS OF EMPLOYMENT

4.5 Substitutes: The Hamilton Wenham Regional School District will do its best to develop a list of prequalified individuals who can be called upon on an as needed basis to work when employees are out. The Committee has agreed to place an ad in a local newspaper during the month of July 2008 seeking said substitutes. (Jt. Ex. #3.)

Mr. Richard Shruhan, former director of buildings and grounds from 2007 until September of 2014, testified that, notwithstanding this new clause, that assigning overtime to custodians was one of his responsibilities, and he continued to assign overtime as he had before the new substitute clause. He did not develop a list of

substitutes; nor did he use substitutes at all. Rather, the extra hours that resulted when an employee was out, went to custodians on an overtime basis. He stated that he had no need to advertise for substitutes because he never had any trouble getting custodians to fill in. He was never told to call in a substitute or to create a substitute list. Management never conveyed to him that there was any problem with the process he used. He noted that the District used students in the summer, and that other than that, the District never used non-bargaining unit custodians. His contract was not renewed.

The July 1, 2011 to June 30, 2014 Collective Bargaining Agreement provided no changes to the recognition clause or the overtime article. The conditions of employment language, noted above, remained unchanged in this new contract.

On July 1, 2012, Dr. Michael Harvey began his employment with the District as superintendent of schools. His first priority was to gain control of the budget, which had been rising. He found little supervision over buildings and operations. He reported that overtime was excessive and disorganized. He concluded that he needed to hire an assistant superintendent for finance and administration to deal with operations and the cleaning and maintenance of the schools.

In November of 2013, Jeffrey Sands was hired to fill this position. He reviewed the assignment of custodians and examined the school buildings. He wanted the head custodian at each building to be present on the first shift when students were in school. He

found that the assignment of overtime was very costly and was at best chaotic. He testified that Mr. Shruhan was not responsible for defining and/or distributing overtime, and he did not participate in the negotiations. The head custodians were assigning overtime (often to themselves) on their own without approval or real supervision by management. Despite the fact that there was contract language about hiring of substitutes (and before that floaters) a substitute list did not exist.

The next contract was an interim agreement that ran from July 1, 2014 to June 30, 2015. No one notified the Union before that contract took effect that management intended to change the way the vacancy created by an absent custodian was to be filled. During the term of that contract, in July of 2014, Mr. Sands, who had read the contract in general, and Article 4.5 in particular, created a substitutes list and in July began calling in subs to fill in for absent custodians instead of assigning the work of the absent custodian to other custodians on an overtime basis.

The procedure he used was as follows: (1) decide if the hours needed to be filled. (2) If he decided they did, he then went on to decide whether the position should be filled by a substitute or by a bargaining unit employee on an overtime basis. (3) He first tried to find a substitute, but if none was available, he would then use the contractual overtime procedure, first offering the hours to the custodians at the impacted school. (4) If none of those custodians accepted the overtime, then it would be offered to custodians at other schools. Mr. Sands assigned overtime for activities such as

basketball games and other after hour school activities to custodians (instead of substitutes).

The HWRSD consists of three elementary schools, one middle school and one high school. Each locale has one head custodian on the first shift, and at least one custodian on the second shift. The middle school and high school each have three custodians. Mr. Sands testified that because of overlapping shifts, custodians worked together at each site for fifteen minutes each day. If a custodian was absent due to illness or vacation, the substitute, who was called in, would work along side of a custodian for those fifteen minutes, and more if two custodians were assigned to the building on a given shift. Mr. Sands believed, given the large number of hours worked by substitutes as custodians, that regular custodians were aware that substitutes were being used to fill in when bargaining unit members were absent. However, no grievances were filed between July of 2014 and October of 2016, when the first grievance was filed, notwithstanding that during that 15-month time period, substitutes worked 4,300 hours, most, if not all, of which were filling in for absent custodians. (District Ex. #3.)

Three Union witnesses (Mr. Cirinna, Mr. Marshall and Mr. Stoey) testified that they were unaware of substitutes being used prior to December, 2016. Mr. Shruhan testified that he was unaware of substitutes being used during his tenure, which ended in 2014. However, Mr. Marshall acknowledged that earlier in 2015, Joe S had worked as a sub for him because, while Mr. Marshall had been offered the overtime, he had declined it because he could not work

eight hours of overtime daily for eight weeks. No one grieved this assignment. Thus, there was some knowledge that a Union member was aware that the District was using substitutes to fill in for custodians who were out.

The 2015-2018 negotiation team for the Union consisted of Sean McCrea, spokesperson, Mr. Cirinna, and Mr. Stoey. The District's team consisted of Supt. Harvey and Assistant Supt. Sands. The Employer did not want the head custodians assigning overtime anymore because overtime payments had gotten out of hand. On April 14, 2015, the Employer proposed that all overtime be approved in advance by the director of facilities and maintenance, as follows:

Delete "Overtime" sections 6.7e, 6.7f, 6.7g, 6.7h, 6.7i, and 6.7j. as currently written. Replace with a new section 6.7e that reads as follows: "The Director of Facilities and Maintenance, working in conjunction with a Head Custodian, a School Principal, and/or the Maintenance Foremen, (all) when applicable, is responsible for assigning all Custodial and Maintenance Staff overtime across the District. All overtime must be approved in advance by the Director of Facilities and Maintenance or his/her designee." (District Ex. #2.)

In addition, there were maintenance employees to be included in the bargaining unit, and language was needed to reflect that change.

The Union did not propose any changes to Article 4.5 regarding the use of substitutes. However, it was concerned about maintenance employees getting custodial overtime. It proposed that custodians (rather than maintenance employees) should have first right to custodial overtime. There were only two maintenance employees at that time (and now there are three). The parties agreed to add language including maintenance employees in the bargaining unit, and for the custodians to be offered custodial overtime first and

maintenance personnel being offered maintenance overtime first. Mr. Stoey testified that he recalled discussions that only if no custodians could work the custodial overtime would the maintenance employees be offered the custodial overtime. He testified that he understood that only if no one could work the overtime, would a substitute be called in. Thus, the Union understood that filling a vacancy created by a custodian who was out would first be offered to custodians in the building where the opening occurred, then to custodians in other buildings, then to maintenance personnel, and then, if still unfilled, substitutes could be called in.

Mr. McCrea testified that he served as a staff representative for AFSCME Council 93 from the winter of 2015 until spring of 2016. He replaced another staff representative, Carol Markland, part way through the negotiations with both of them attending one meeting together. The big issue during the negotiations was incorporating the maintenance division into the contract. They were added to the recognition clause and language was added so the custodians got the custodial overtime, and only if no custodian wanted it would it go to a maintenance employee. He did not remember the topic of substitutes ever coming up. He was not aware that substitutes had ever been offered custodial work during the prior contract. In the 54 contracts that he covered, he had never seen language where a non-bargaining unit employee would be called in first to perform bargaining unit work. He testified that overtime meant any time there was a vacant shift opportunity that would push someone over forty hours a week such as: if someone was out sick, on vacation or

on a personal day. He did recall that the District wanted more control over overtime and the responsibility for overtime assignment was shifted from the head custodian to the director of facilities under this new contract. This meant that custodians would not assign overtime to themselves. If he thought that the director was going to use substitutes in lieu of assigning bargaining unit work to custodians on an overtime basis, he would not have signed the contract.

The Union submitted a copy of its initial proposal dated April 14, 2015. (Union Ex. #1.) It submitted another proposal dated July 30, 2015. (Union Ex. #2.) The parties signed a new three-year agreement with the changed language concerning a shift of control of overtime from the head custodians to the director of facilities and maintenance. They also included a provision making the maintenance employees a part of the bargaining unit.

In October of 2016, Robert Marshall, who regularly worked on the second shift (1 p.m. to 9 p.m.), was called in to replace an absent custodian on the first shift, but then was not allowed to work his regular second shift, and instead was sent home, without being able to earn overtime pay. He talked to the Union about this and a grievance was filed over the use of a substitute to replace Mr. Marshall on his own shift. The Union claimed that he should have worked overtime on October 11-13 in addition to his regular shift at the Cutler School, and then having worked a double shift should have been paid overtime on those days.

Mr. Marshall testified that in the past he always was assigned

overtime in addition to working his regular shift when Mr. Mullarkey, the first shift custodian, was out sick or on vacation. Thus, he would be asked to work the first shift (5 a.m. to 1 p.m.) to cover his co-worker's vacation on an overtime basis, and then would report for his own shift. On the days grieved, Mr. Marshall worked the early shift, but a substitute was called to come in to cover for his regular second shift, after he had worked the morning shift. As a result Mr. Marshall was sent home instead of being allowed to work his regular shift and he was not paid overtime. The parties settled this grievance at step 3 in part due to Mr. Marshall being sent home during his regular shift. In settling the matter, Supt. Harvey wrote: "In settling this grievance, we are preserving the District's right to fill shifts of regular custodians who are absent by utilizing substitute custodians in accordance with Article 4.5 of the collective bargaining agreement."

According to Mr. Marshall and Mr. Cirinna, they learned during the grievance procedure in December, 2016, that the District was not offering custodial shifts to bargaining unit custodians on an overtime basis and was instead using substitutes. They were both unaware that this had become the norm.

On December 28, 2016, Mr. Cirinna, a head custodian, filed a "class action" grievance alleging that at the Cutter School there was a:

Violation of 6.7 overtime and any related articles and past practice for failure to offer overtime shift on 12/12/16 to members of the bargaining unit and instead first offering it to a non-union substitute.

The grievants are unnamed. On January 27, 2017, Sean Cronin, Associate General Counsel, AFSCME Council 93, wrote this to Mr. Sands:

I am emailing you to inquire about the class action grievance filed on 12/28/16 which is attached. To date the Union has not received at Step 1 response or request to discuss this issue at the Step 1 level. At this point the union is requesting to advance this to your step. Given that we've met to discuss the overtime procedure call out in November at both step 2 and step 3, I suggest that we combine these steps for this grievance. I believe given the parties familiarity with the related articles this will save us time.

By email dated January 30, 2017, Mr. Sands responded:

I became aware of this grievance on Tuesday January 3rd. I spoke with Principal Clifford that same day and instructed her to respond to Frank via email that she would be unable to resolve the issue at Step 1. It is my understanding that Principal Clifford emailed Frank on January 3, as directed. Other than your email (below) I haven't received any other communication on the matter since that day.

I agree with your suggested next step. Please contact us when you return to the office next week so we can schedule a time to meet. (Jt. Ex. #5a.)

By letter dated March 22, 2017 Superintendent Harvey wrote:

This email is in response to your grievance dated December 28, 2016. You have indicated that this grievance is a "class action grievance". Please note that the grievance provision in the collective bargaining agreement does not provide for class action grievances. The language specifically requires that there be a named "aggrieved employee" (Article VIII Step 1).

At the grievance hearing, the Union maintained that there is a requirement that the bargaining unit members be offered overtime first before substitutes are called in to fill in for regular shifts for an absent bargaining unit member. The Union cited the modification in 6.7 (e) to support its position that substitutes cannot be called in to cover regular shifts if there are bargaining unit members at the school who can perform the work. However, the bargaining history shows that the section was modified because of the Union's concern that the newly

hired maintenance staff would be called on to perform overtime instead of building based custodians. Furthermore, Article 4.5 clearly and unambiguously provided the District with the right to call in substitute workers "on an as needed basis to work when employees are out." The District has consistently called upon substitute workers to fill in for absent employees to cover regular shifts prior to utilizing custodians to perform overtime and can demonstrate this practice through payroll records.

By Letter dated June 1, 2017, the Negotiating Subcommittee Chairperson responded to Mr. Cirinna that it was denying the grievance.

In 2017 and 2018, seven other grievances were filed, and were held in abeyance by agreement of the parties, pending arbitration. There is no issue about their timeliness or arbitrability. They are:

Frank Cirinna, December 13, 14, 2017;

Bob Bosse: December 18, 19, 20, 21, and 22, 2017;

Bob Bosse October 10, 11, 12, and 13, 2017;

Mike Mullarkey: May 12, 19, 2017;

Bob Benea: May 18 and 19, 2017;

Terry Sherman: April 18, 19, 20 and 21, 2017

Frank Cirinna: March 28 and 29, 2018 (Jt. Ex. #7.)

In addition, other grievances were filed. The grievants were: Mr. Mullarkey for October 5-6, 2017 (filed on October 23); Mr. Cirinna on October 2-6, 2017 (filed October 23, 2017); Mr. Cirinna for March 27-31, 2018 and Mr. Cirinna for March 26-27, 2018. Mr. Cirinna claimed that he was not offered the overtime first as he should have been. Instead, it was given to other members of the bargaining unit, rather than to him. Mr. Stoey worked overtime on

October 6, Mr. Legere worked October 2 and 3. Mr. Cirinna was offered October 2, 3, and 6 (and later October 5), but he turned them down because he had not been offered all of this time before others.

In addition, on October 23, 2017, Mr. Cirinna, as head custodian at the Winthrop School, filed this grievance:

Statement of Grievance: Violation of 6.7 Over Time (A-B-C-D-E-F)

List applicable violation: Violation of 6.7 Over Time and any related articles and past practice for Failure to offer Over Time shift(s) on date(s) of 10/02/17 (thru) 10/6/17, to members of the Bargaining Unit (2905). Instead of FIRST Offering it to NON Union Substitute.

Adjustment required: make the Grievant and All Monies Whole (District Ex. #4.)

Mr. Cirinna felt that the whole bargaining unit was being deprived of overtime. His recollection was that the term substitute was meant to apply to summer employees and not to non-union replacements during the regular school year. The use of the word substitutes was a reference to summer students. He acknowledged that the actual language of Article 4.5 did not say summer or students.

The contract provides that employees have ten (10) working days to file a grievance. The parties concur that the work days between October 2 and 23 are as follows: October 2, 3, 4, 5, 6, 10, 11, 12, 13, 16, 17, 18, 19, 20, and 23. Ten days after October 2 is October 17; ten days after October 3 is October 18; ten days past October 4 is October 19; ten days after October 5 is October 20 and ten days after October 6 is October 23.

The Union filed another grievance on behalf of Mr. Cirinna in December, 2017 that contains the following:

Violation of 6.7 Over Time (A-B-C-D-E-F)

Violation of 6.7 Over Time and any related articles and past practice for Failure to offer Over Time shift(s) on date(s) of 12/13/17 (thru) 12/14/17, to members of the Bargaining Unit (2905). Instead of FIRST Offering it to NON Union Substitute. (Jt. Ex. #7.)

THE POSITION OF THE UNION:

The Union contends that the clear meaning of Article 6.7 (e) requires that, when a custodian is absent for whatever reason, his bargaining unit custodial work must be offered on an overtime basis to unit custodians assigned to the specific building first, then, if not filled, to all other custodial bargaining unit members. Overtime work involves duties that are normally and customarily performed by the custodial staff. Here, the District violated the contract when it did not offer the duties that are normally and customarily performed by the custodial staff (which it defines as "overtime") first to the custodian in the building, but instead offered it to substitutes. There was a clear practice of offering overtime to the custodians first until 2014, when the District unilaterally sought to modify this understanding.

The past practice of the parties is that overtime was assigned to the custodian at the same site where a custodian was out. From 2007 until mid-2014, Mr. Shruhan made the decision to assign such vacancies on an overtime basis. His understanding was that he could assign overtime when a custodian was out to a custodian at the same site. This understanding was shared by Mr. Cirinna, Mr. Stoey and

Bob Marshall. Given that all agree that this was the practice, it is clear that the Union and the District had a meeting of the minds as to how overtime was to be assigned.

The Union maintains that the 2008 negotiations, which first included language about "substitutes," did not modify the overtime language. Mr. Cirinna made clear at the hearing that the purpose of the substitute language, which was proposed by the District, was to ensure it had enough summer help. The District did not call any witnesses involved in the 2008-2011 contract negotiations to contradict this. It offered no evidence to support its position. During those negotiations, the Union was told by management that substitutes would be called only after all custodians were offered the overtime. Mr. Shruhan confirmed the understanding on behalf of management by the practice he followed. The addition of substitutes in the 2008 contract was not intended to alter how overtime was assigned when a custodial vacancy occurred.

The Union asserts that the contract language was unclear and ambiguous as it is has more than one meaning. Therefore, the past practice and intent of the parties is relevant and supports the Unions's position. It has met its burden of proof and the grievances should be granted. Furthermore, allowing substitutes to perform most or many of the extra work hours created when there is a vacancy would result in a forfeiture to the employees and render Article 6.7 meaningless. Therefore, it asks that the grievances be granted and the employees compensated on an overtime basis for the time they would have worked had a substitute not been called in.

THE POSITION OF THE EMPLOYER:

The HWRSD argues since the contract language is clear and unambiguous, the arbitrator should not consider extrinsic evidence such as bargaining history and past practice. Article 4.5 gives the District the clear right to develop a list of pre-qualified individuals who can be called upon on an as needed basis to work when employees are out. That language has been in effect since 2008. It established that replacing absent custodians did not automatically create overtime. Rather, the Employer had the right to decide whether to call in a substitute at straight time or bring in a custodian on overtime. Mr. Sands' decision to create a substitute list pursuant to Article 4.5 was consistent with the contract. In addition, since overtime was not defined in the contract, under the strong language of the management rights clause the HWRSD had the power and right to use substitutes to fill in for custodians.

The Employer asserts that here, where the Union has the burden of proof, the Union has not established a binding past practice, let alone its case. It has failed to meet the required burden of proof. The superintendent and assistant superintendent did not have knowledge of the alleged past practice. Mr. Shruhan did not have the authority to bind the District to a practice. Since July, 2014, the District has been using substitutes to fill in for absent custodians. The substitutes worked along side the custodians and had overlapping shifts. The Union President had substitutes filling in for him on a regular basis. The fact that 4300 hours of

substitute service occurred in a 15-month period makes the Union's argument that it had no knowledge of substitutes being used spurious. (HWRSD Ex. #3.) Any past practice that might have existed prior to July, 2014, was modified for more than two years at the time of the filing of the first grievance occurred. During that time a new contract was negotiated, and became effective in July, 2015.

The Employer contends that Article 4.5 provides a process for staffing during member absences. The process is as follows: (1) Ascertain if the position needs to be filled. If not the position is not filled. (2) If yes, the Employer decides whether to fill it with a substitute or with regular custodians by offering it to bargaining unit members on an overtime basis. (3) If it is to be filled by a substitute, one is called in. (4) If no sub is available, then members at the impacted school are offered the opportunity to work on an overtime basis based on seniority. There can be no contractual right to overtime because, under Article 4.5, the director of facilities and maintenance can decide to fill a shift with a substitute.

The Employer maintains that bargaining history demonstrates that the District retained the right to fill shifts with substitutes. The Committee proposed Item 7 (Co. Ex. #2) that all overtime had to be approved in advance. The Union did not submit any proposal to modify either Article 4.5 or the overtime language. The only concern expressed by the Union was that overtime for custodians could be assigned to maintenance employees thus

depriving custodians of their work. The District proposed Article 6.7 (e) to address the Union's expressed concern.

The Employer asserts that the Union's argument that its members were entitled to overtime any time an employee was absent is absurd. Article 4.5 specifically gives the District the right to bring in a substitute, which provides a significant cost reduction and promotes safety if a custodian was expected to work double shifts for months to fill in for an absent employee.

In summary, a number of the grievances were not timely filed and are not arbitrable. The District did not violate the contract when it brought in substitutes pursuant to Article 4.5. The grievances should be denied.

OPINION

The first issue to be decided is whether the grievances that were not held in abeyance were timely filed? The contract language mandates the timing of a grievance as follows:

Step 1: The aggrieved employee shall first present the grievance to the Principal of the building to which the employee is assigned within ten (10) working days following the event forming the basis for the grievance.

Thus, to be timely filed a grievance must be presented "within ten working days of the event forming the basis for the grievance."

With respect to the grievances filed on October 23, the work days between October 2 and 23 were: October 2, 3, 4, 5, 6, 10, 11, 12, 13, 16, 17, 18, 19, 20 and 23. From October 2 the tenth day is October 17. From October 3 it is October 18. From October 4 it is October 19. From October 5 it is October 20. From October 6, the tenth day is October 23. Thus, counting backward from October 23

for ten working days results in October 6 being the cut off day for a timely grievance. Any incidents occurring before that date are not timely filed. Therefore, I find that the grievances of Mike Mullarkey and Frank Cirinna, that were filed on October 23, and grieve the assignments on October 6, are timely filed. There is insufficient evidence before me to determine whether the grievances of Mr. Cirinna, claiming violations on March 27, 28, 29, 30 and 31, 2017; and March 26, 27, 2018 are arbitrable. For example, there is no evidence as to the dates on which they were filed. All other grievances (except those held in abeyance) were not filed within ten days of the occurrence and therefore are untimely.

The next issue is whether the Union has established that the District violated the contract by assigning substitutes to cover regular shifts of custodians who are out, instead of offering the openings to bargaining unit custodians on an overtime basis. The Union is the moving party and has the burden of proof. The parties changed the contract language to provide that it would be the director of facilities and maintenance, not head custodians, who would approve overtime, and such approval had to be done in advance. Article 6.7 provides:

f. The Director of Facilities and Maintenance, working in conjunction with a Head Custodian, a School Principal, and/or the Maintenance Foreman, (all) when applicable, is responsible for assigning all Custodial and Maintenance Staff overtime across the District. All overtime must be approved in advance by the Director of Facilities and Maintenance or his/her designee.

This language clearly establishes that in regard to assigning overtime it is the director of facilities and maintenance who has

the authority to assign overtime and must approve it in advance. A review of the overtime provision, which does not define overtime, shows there is a procedure for offering overtime work assignments to custodians, and then if none agree to fill the vacant shift(s), to offer it to maintenance personnel. Notably, the overtime article does not provide that once all bargaining unit employees have declined the offer, the last resort is to offer the work to non-bargaining unit substitutes. Thus, the overtime provision does not tie the use of substitutes to what the Union seeks here, namely substitutes to be called only after the work has been offered to bargaining unit employees on an overtime basis.

Nor does Article 4.5 tie the use of substitutes to bargaining unit employees first having declined an offer of overtime before the work assignment may be offered to substitutes. It reads:

The Hamilton-Wenham Regional School District will do its best to develop a list of pre-qualified individuals who can be called upon on an as needed basis to work when employees are out. The Committee has agreed to place an ad in a local newspaper during the month of July 2008 seeking said substitutes.

This language has been in the contract since 2008. Prior to that there was a clause about "floaters: being used when employees were "ill." The 2008 contract language went further, allowing substitutes "when employees are out," which is even broader than simply "ill," as it includes vacation time, personal leave, worker's compensation, etc.

It is a well-established principle of contract interpretation, that if contract language is clear and unambiguous, then bargaining history, and past practice are not needed to interpret the

provision and are no longer relevant. Is the language of Article 4.5 clear and unambiguous?

This language simply provides three things: (1) development of a list of substitutes, (2) placing an advertisement in a local newspaper to seek said substitutes, and (3) calling upon them on an as needed basis to work when employees are out. It does not contain any restrictions. For example, it does not say, as suggested by Mr. Cirinna as the limited basis for which the clause could be used, that when custodians are out during the summer months then students may be called upon to work as substitutes. In fact, while the ad was to be placed in July 2008, the language makes no mention of summer time or summer help. It has no restriction as to the time of year it may be utilized.

Nor is the clause tied to the overtime provision in any way. For example, it does not say that substitutes are to be called only after custodians have been offered the work that would have been performed by the absent bargaining unit custodian. Nor does it say that substitutes may be called upon only after all bargaining unit employees have been offered the work on an overtime basis and turned it down. If the parties meant that it was to apply only after bargaining unit employees were offered the work on an overtime basis, and the position was still left unfilled, they could have said so. They did not, and the language that is in the clause is clear and unambiguous. When an employee is out, then a substitute can be called in to replace the employee. There are no express limitations or restrictions; nor may the arbitrator adopt

those suggested by the Union given other language in the parties' Agreement.

The management rights clause, which is strongly worded, reads:

. . . as to every matter expressly not covered by this Agreement, the Committee retains exclusively to itself all rights and powers that it has or may hereafter be granted by law or by the rules and regulations of any pertinent agency of the Commonwealth and may lawfully exercise the same at its discretion without such being made the subject of a grievance or unfair labor practice charge. (Jt. Ex. #1)

Since these matters are not expressly covered by the Agreement, under this provision, "the Committee [District] retains exclusively to itself all rights and powers that it has...." Thus, the arbitrator cannot impose a condition, where the parties themselves have not done so "expressly."

Does it matter that the Employer did not choose to implement this language for a number of years? It does not. The Employer has a right to enforce clear and unambiguous language at any time. See, Marysville Unified Teachers Association, CTA/NEA v. Marysville Joint United School District, Cal. PERB Dec. No. 314 (1983). In that case the Board ruled that the fact that the District had not implemented or enforced the shorter lunch period language for some years did not prevent it from enforcing the language in the future. For example, if a contract contains a clause giving management the right to discharge an employee for certain reasons, and the employer does not utilize that provision for twenty years, that does not mean that it has relinquished the right to terminate the employment of others in the 21st year.

This contract establishes that substitutes may be used when a

bargaining unit custodian is "out," for whatever reason, whether it be on vacation, sick leave, worker's compensation or other reasons. The import of this language is that in deciding to fill a position that is open because a custodian is "out," the director has a number of options. He can decide not to fill the position at all, and leave it vacant. He can decide to fill it. If he decides to fill it, he again has several options. He can fill it on an overtime basis with a bargaining unit employee, which is the way that it was done prior to July, 2014. If he decides that filling it on an overtime basis is too costly or would result in exhausting custodians who repeatedly have to work a double shift for someone who is out long term, he can decide to use a substitute. If overtime is offered, it must be done in a manner consistent with the contract. The key language is contained below.

e. Overtime involves duties normally and customarily performed by the custodial staff in a particular school will first be assigned/offered to the custodians working in the school in question. If the custodian(s) working at the school in question is unable or unwilling to accept the overtime detail, then the assignment will be offered to other bargaining unit members who ordinarily and customarily perform said work.

Given (1) that the work involved is bargaining unit work, (2) the bargaining history as attested by the Union witnesses without dispute (which neither Dr. Harvey, nor Mr. Sands were a party to), (3) the undisputed past practice prior to their arrival in HWRSD, and (4) given the loss in overtime pay incurred by the custodians in the bargaining unit, it is understandable that the Union and custodians will not be pleased with this decision. However, the arbitrator is bound by the terms of the contract.

Certainly, if Article 4.5 had limiting language like "substitutes will only be called after the extra work has been offered to all bargaining unit custodians pursuant to Article 6.7, and they are unavailable," this case would come out differently. But no such limiting language is used in this clause, and the arbitrator is barred from adding it by Article VIII, which states in relevant part:

. . . The function of the arbitrator is to determine the interpretation or application of specific provisions of this Agreement. There shall be no right in arbitration to obtain, and no arbitrator shall have any authority or power to award or determine any change in, modification or alteration of or addition to or subtraction from, any of the provisions of the Agreement. In reaching his/her decision, the arbitrator shall be subject to the principle that there is no restriction intended on the rights or authority of the Committee other than those expressly set forth therein. (Jt. Ex. #1, emphasis added.)

Thus, the parties' Agreement limits the arbitrator's authority to add to or modify the terms of the contract. An arbitrator cannot add the words sought by the Union because her authority is limited by Article VIII as well as the management rights clause. Suffice it to say, that notwithstanding the testimony of Union witnesses with regard to the bargaining history and the past practice, there is no restriction set forth in Article 4.5 and I cannot add one, which I would be doing were I to rule for the Union here.

All of this would have been better handled, had the administration officially notified the custodians and the Union that it was changing the system for filling vacancies of custodians who are out, and no longer going to follow what had been the past practice. Had it done so, prior to the signing of the 2014 interim

agreement, that would have put the Union on notice, and it could have sought to negotiate a restriction on the use of substitutes. Not notifying the Union was not in the spirit of good labor relations.

On the other hand, by the time the parties entered negotiations in April, 2015, the Union should have been aware that the administration had changed the way it filled the vacancies created by custodians who were "out," as those substitutes hired to fill in worked along side regular custodians for at least fifteen minutes of the day, and longer where two custodians were assigned. Given the large number of hours worked by substitutes in the place of regular custodians, it seems unlikely that working custodians did not know there was a substitute in the building. Certainly, Mr. Marshall knew, as he admitted that when Mr. Mullarkey was out long term, it was a substitute who worked because Mr. Marshall could not work the overtime. There is no evidence as to whether that overtime was offered to other bargaining unit employees at the time.

It also seems unlikely that had Mr. Cirinna known of the change in practice that he would not have filed a grievance prior to 2017. However, given the contract language and the restrictions placed on an arbitrator, it is unlikely that the Union would have prevailed.

In conclusion, I find that the District did not violate the contract when it assigned a substitute to cover a regular custodian's shift when he was out as complained of in the arbitrable grievances. The grievances are denied.

AMERICAN ARBITRATION ASSOCIATION
HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT
WENHAM, MASSACHUSETTS

AND

AFSCME, COUNCIL 93
AFL-CIO

AAA Case No. 01-17-0004-6802
Class Action - Overtime Bypass

AWARD

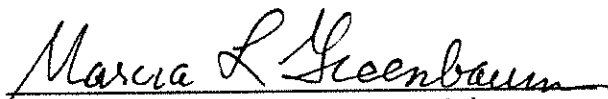
1. The grievances of Mike Mullarkey and Frank Cirinna related to an alleged violation on October 6, 2017 are timely filed and arbitrable. The grievances claiming violations on the dates of October 2, 3, 4, and 5 are not timely, and are not arbitrable.

There is insufficient evidence before me to determine whether the grievances of Mr. Cirinna, claiming violations on March 27, 28, 29, 30 and 31, 2017; and March 26, 27, 2018 are arbitrable.

The grievances that were held in abeyance by agreement of the parties are timely and arbitrable.

2. The District did not violate the contract when it assigned work to substitute custodians to cover regular shifts instead of offering overtime to bargaining unit custodians, when one was absent.

3. The grievances are hereby denied.


Marcia L. Greenbaum, Arbitrator
July 9, 2018

MEMORANDUM

TO: Hamilton Wenham Regional School Committee
 Michael Harvey, Ed.D., Superintendent
 Jeff Sands, Assistant Superintendent

FROM: Naomi Stonberg

DATE: July 16, 2018

RE: Custodian Arbitration

I am pleased to enclose the arbitrator's decision in which Arbitrator Greenbaum ruled that the District did not violate the collective bargaining agreement by hiring substitute custodians to fill in for absent custodians instead of filling the positions by assigning overtime to custodians. The custodial collective bargaining agreement contained a provision in which the District could create a substitute list to be utilized to replace absent custodians. Prior to Michael Harvey's and Jeff Sands' employment with the District, despite the contract language, there was no substitute list and custodial absences were filled through overtime. In addition, head custodians who were in the bargaining unit were assigning the overtime. The result was very costly overtime and, in some instances, poor coverage.

When Jeff Sands was hired, he did an operational review of the buildings and custodian assignments and usage. Jeff and Mike reviewed the contract and determined that there was no substitute list and all absences were being filled on an overtime basis at a considerable cost to the District. They decided to recruit substitute custodians and to utilize these substitutes whenever possible to replace absent custodians. Starting in July 2014, they replaced custodians with substitutes whenever possible. In addition, during the last round of negotiations, they were able to gain greater control over overtime and removed the head custodians from the assignment of overtime. The District saved a considerable amount of money through the use of substitutes and improved in efficiency from avoiding custodians working double shifts. The union argued that there was a past practice of filling absent custodian positions on an overtime basis and that any changes in this practice needed to be bargained. The Union filed several grievances asking the arbitrator to order that custodians be paid overtime in each instance that a substitute custodian was utilized.

The arbitrator accepted the District's argument that since the contract language was clear and unambiguous, the use of substitute custodians did not violate the collective bargaining agreement. In addition, the Arbitrator held that when an employee is absent, management can decide when to fill the position. If the decision is made to fill the position, management can decide whether to fill the position by using a substitute custodian or by assigning overtime to bargaining unit members. This decision will result in the continuation of significant savings and management control over custodial overtime. Jeff Sands and Michael Harvey should be commended for their hard work and the time and effort they put into preparing for and testifying at the arbitration.



HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT

FINAL FY18 Year-end Financial Close As of July 27, 2018

For presentation to the School Committee on August 1, 2018

Prepared by:

Jeffrey D. Sands, Assistant Superintendent for Finance & Administration

Vincent Leone, Director of Accounting & Payroll



FINAL FY18 Operating Expense Actuals (after Offsets)

Overview

- Salary Costs
 - Incorporates Actual Costs and encumbrances as of 6/30/18.
- Operating Costs
 - Incorporates Actual Costs and encumbrances as of 6/30/18.

We are pleased to report that a comprehensive Year-end Closing Process for FY18 has been completed as of July 27, 2018.

As a result, the District has ended the Fiscal Year \$8,166 or 0.027% favorable to Budget. Said differently, the District expended 99.973% of the funds that were appropriated for FY18.



FINAL FY18 Operating Expense Actuals (after Offsets)

Summary by DESE Budget Category

Summary by DESE Category		FY18	FY18	FY18
		Budget	YE Final	Over/Under
Administration		\$ 1,135,489	\$ 1,107,495	\$ 27,994
Capital, Operations, Maintenance		\$ 2,227,622	\$ 2,288,596	\$ (60,974)
Guidance, Counseling, Testing		\$ 1,065,718	\$ 1,067,619	\$ (1,901)
Inst. Materials		\$ 873,876	\$ 828,839	\$ 45,037
Instructional Leadership		\$ 2,931,318	\$ 2,831,552	\$ 99,766
Insurance, Retirement, Other		\$ 3,978,971	\$ 3,933,325	\$ 45,646
Other Teaching Services		\$ 2,408,619	\$ 2,266,182	\$ 142,437
Prof. Dev.		\$ 209,594	\$ 181,488	\$ 28,106
* Pupil Services		\$ 2,079,027	\$ 2,054,598	\$ 24,429
Teachers		\$11,358,184	\$ 11,346,491	\$ 11,693
** Tuitions		\$ 1,931,399	\$ 2,285,466	\$ (354,067)
District Totals		\$30,199,816	\$ 30,191,650	\$ 8,166

* - YE Final Actuals include a \$7,821 transfer to cover the deficit in the Food Service Revolving Account for FY18; \$50,000 was Budgeted.

** - YE Final Actuals include an additional \$60,000 in Circuit Breaker Offset for FY18: \$864,160 was Budgeted.



FINAL FY18 Operating Expense Actuals (after Offsets)

Proposed Budget Transfers by DESE Category

- 1.) Transfer \$61,000 from “Instructional Leadership” to “Capital, Ops, Maint”
- 2.) Transfer \$2,000 from “Instructional Leadership ” to “Guidance, Counseling, Testing”
- 3.) Transfer \$36,000 from “Instructional Leadership” to “Tuitions”
- 4.) Transfer \$27,000 from “Administration” to “Tuitions”
- 5.) Transfer \$45,000 from “Inst. Materials” to “Tuitions”
- 6.) Transfer \$45,000 from “Ins, Retire, & Other” to “Tuitions”
- 7.) Transfer \$142,000 from “Other Teaching Services” to “Tuitions”
- 8.) Transfer \$28,000 from “Prof Dev” to “Tuitions”
- 9.) Transfer \$24,000 from “Pupil Services” to “Tuitions”
- 10.) Transfer \$8,000 from “Teachers” to “Tuitions”

* - YE Final Actuals include a \$7,821 transfer to cover the deficit in the Food Service Revolving Account for FY18; \$50,000 was Budgeted.

** - YE Final Actuals include an additional \$60,000 in Circuit Breaker Offset for FY18: \$864,160 was Budgeted.



FINAL FY18 Operating Expense Actuals (after Offsets)

Budget Transfers: Motion for School Committee Vote

Motion for FY18 Budget Transfers:

Motion: The Hamilton-Wenham Regional School Committee approves the FY18 Operating Expense Budget Transfers as recommended herein by the Assistant Superintendent of Finance & Administration and as presented on the previous slide entitled “Proposed Budget Transfers by DESE Category”.

- * - YE Final Actuals include a \$7,821 transfer to cover the deficit in the Food Service Revolving Account for FY18; \$50,000 was Budgeted.
- ** - YE Final Actuals include an additional \$60,000 in Circuit Breaker Offset for FY18: \$864,160 was Budgeted.



FINAL FY18 Actuals

Proposed Regional Transportation Transfer

Transfer \$12,662 from “Transportation Chapter 71” Revenue Account to “Regional Transportation Reimbursement Fund”. Note : \$340,686 was Budgeted in FY18 versus actual receipts of \$353,348. *

* - The HWRSD School Committee voted to establish the Regional Transportation Reimbursement Fund at its regular meeting on May 7, 2015 (Approved 6-0-0).



FINAL FY18 ACTUALS

Regional Transportation Transfer: *Motion for School Committee Vote*

Motion for FY18 Regional Transportation Transfer:

Motion: The Hamilton-Wenham Regional School Committee approves the FY18 Regional Transportation Transfer as recommended herein by the Assistant Superintendent of Finance & Administration and as presented on the previous slide entitled “Proposed Regional Transportation Transfer”.



FY18 Annual Audit Update

- Our FY18 Annual Audit with Powers & Sullivan (P&S) is well underway.
- P&S was provided preliminary information during May 2018.
- P&S was on-site the week of May 14th.
- P&S will finalize their on-site review the week of July 30th.
- The District will schedule P&S to make an Audit Presentation to the School Committee during October 2018.
- The District will submit it's E&D for certification to MA DOR by October 31st, as required.

AGREEMENT BETWEEN THE TOWN WENHAM AND THE HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT

GROUNDS MAINTENANCE AND GENERAL CLEANUP (NON WINTER CONDITIONS)

Agreement made as of June 25th 2018 between the Town of Wenham ("Wenham") and the Hamilton – Wenham Regional School District ("School District") pursuant to G.L. ch40, § 4A, for the grounds maintenance and general cleanup at the School District property.

WHEREAS, the Hamilton – Wenham Regional School District has need of grounds maintenance and general cleanup services, not including services for treatment of snow, ice or other winter conditions;

WHEREAS, the Director of the Departments of Public Works for the town of Wenham is willing to provide such services to the School District; and

WHEREAS, the parties believe that this inter-municipal arrangement will reduce operational expenses to the benefit of all;

WHEREFORE, the town of Wenham by and through its Board of Selectmen and the Hamilton-Wenham Regional School District by and through its School Committee, agree to the following:

SERVICES: Personnel from Wenham Department of Public Works will be assigned by their Director to perform the tasks described on herein. More specifically, the services include the following:

1. Mow all lawn areas and athletic fields of the Buker, Cutler, and Winthrop Elementary Schools, including playgrounds and traffic islands, as well as the rear athletic field at the Middle/High School;
 - A. The weekly mowing schedule will be as follows: Monday – Buker School and rear athletic field at the Middle/High School, Tuesday - Cutler School, Wednesday – Winthrop School.
 - B. Mowing will be completed by 8AM on each respective day except for back field areas. The DPW Director shall notify the School District Director of Maintenance and Facilities if staff is unable to complete certain specific areas on a given day.
 - C. In the case of moderate to heavy rain, mowing will be delayed by one day.
 - D. In July and August, mowing will be every other week (except athletic fields that are irrigated), unless otherwise specifically requested by the School District Director of Maintenance and Facilities.
2. Provide the following services to the Buker, Cutler, and Winthrop Schools:
 - A. Clean-up of all clippings, debris, trimmings at the end of each work period;
 - B. Hand blow all walks after mowing;
 - C. Weed control all walkways on an as-needed basis;
 - D. Trim walks, walled areas, fenced areas, flower beds and sand pans (mulch beds) and such other areas as requested by the School District Director of Maintenance and Facilities;
 - E. Prune and shear trees and shrubs on an as-needed basis, but no less than twice during the growing season;
 - F. For items #4-6, the DPW Director will send written acknowledgement of receipt of request for supplemental services that specifies an anticipated completion date (generally expected to coincide with the next time staff is regularly scheduled to be on site, exempting emergency situations/conditions);
 - G. Collection of all loose brush, limbs and branches that are of a size capable of chipping, and removal of all resulting chips on an as needed basis. Once notified, DPW response time on these tree issues shall not exceed two workweek days;

3. Repair potholes as requested with cold patch within two work days, with permanent repairs coinciding with the next round of municipal asphalt work;
4. Prep baseball fields at the three elementary schools as needed in April before the start of the Little League season. Lining and further maintenance will be performed at the request of Recreation Department or relevant Little League officials with any such additional costs being borne by those entities. The DPW Director may consult with the School District Director of Maintenance and Facilities regarding maintenance of these fields.

Services shall not include disease/insect control, soil testing, or options regarding the necessity for fertilizers or soil treatments. The DPW Director shall determine the grass height for mowing and the dates and times when mowing shall be performed.

Hand power mowers of approximately 17 inches in width (or a green machine) are to be used around trees and shrubs where large machine uses are impractical. Due care shall be taken to prevent damage to trees and shrubs. Trimmings may be performed either by hand or by machine, as determined by the DPW workers.

Tools and equipment shall be attended at all times and removed from the premises or securely stored on site when not in use. In no event shall any products, equipment or tools be accessible to students. The DPW Directors shall task one person at each site to be responsible to ensuring that work areas are clean and secure at the end of each work day. The DPW Director will routinely perform Quality Assurance/Control checks on work performed for the School District.

DPW Director will determine what personnel to assign to each task. It is understood that personnel will be available at times consistent with the needs of the Towns and work schedule or personnel may be reassigned by the DPW Director if needed for Town business. At all times, the assigned personnel shall remain exclusively employees of their employing town and shall not be considered employees of the School District.

If the School District requests application of fertilizers and /or mulch, the work crew will apply said materials. Further, if the School District requests the application of pesticides, the products shall be applied so long as the application is scheduled in advance and is applied by a licensed contractor.

COMMUNICATION: As under previous agreements, the DPW Director will meet and consult with the School District Director of Maintenance and Facilities to prepare a work schedule for each building's grounds. The DPW Director and School District Director of Maintenance and Facilities shall meet on a quarterly basis at minimum to coordinate schedules and ensure appropriate service levels.

Further requests for work or for changes in schedule shall be transmitted by building Principals through the School District Director of Maintenance and Facilities, who shall be the primary point of contact between the School District and the DPW Director.

Any changes to the regular weekly mowing schedule outlined in Section 1A of this Agreement under Services will be made no later than September 1 by the DPW Director in consultation with the School District Director of Maintenance and Facilities. In no event shall mowing occur directly outside classrooms during school hours, except upon prior approval by the School District Director of Maintenance and Facilities in consultation with Building Principals.

COMPENSATION: If the School District requests application of products, the School District may purchase and provide the product to the DPW personnel, or it may consult with the DPW Directors to arrange for purchase by and through the DPW Departments. The School District will reimburse the DPW Department at cost for any purchases made at the request of the School District.

The Town of Wenham will bill the School District for all services performed on a monthly basis. Fees for services shall be as set forth in Attachment A. Billings shall detail the services provided, the hours for each service, and the cost of all products and materials purchased and used at the request of the School District.

Remittance shall be made within thirty days of receipt of each statement. The School District's maximum annual financial liability under this Agreement shall not exceed \$20,000.00.

Wenham shall maintain detailed records of all of their services performed, personnel assigned, hours worked, and equipment and materials used. These records shall be made available for review by the School District upon request. Financial statements summarizing the services provided under this Agreement shall be provided by the Town to the School District on an annual basis within thirty days of the end of the fiscal year.

AMENDMENT: This Agreement may not be modified except by writing executed by all parties.

TERMS OF AGREEMENT: This Agreement may be canceled upon written notice provided by any party to each other party, effective thirty (30) days after receipt of the notice or on such later date as set forth in the notice, with payment due for the services provided up to the date and time of the receipt if the notice. Therefore, this MOA shall remain intact until such time that the Parties dissolve the agreement and/or enter into another Inter-municipal Agreement.

HAMILTON-WENHAM REGIONAL
SCHOOL DISTRICT SUPERINTENDENT



Michael M. Harvey Ed.D.

WENHAM BOARD OF SELECTMEN

Catherine Harrison, Chair

John Clemenzi, Vice Chair

Jack Wilhelm, Clerk

DATE OF AGREEMENT

_____, 2018

Tentative Schedule for Superintendent's Evaluation—June 2018

July 20, 2018	Superintendent's Evaluation Materials posted to Dropbox.
August 10, 2018	Individual SC Members submit their evaluations to SC Chair.
August 11-September 12, 2018	SC Chair compiles individual evaluations into composite document.
September 12, 2018	Chair shares draft composite evaluation with SC for review at SC Meeting.
September 26, 2018	SC votes final evaluation document.

DONATIONS

SC Meeting: August 1, 2018

8th Grade Class of 2018 Miles River Middle School \$400

- A raised garden bed to enhance the outdoor classroom area.



HAMILTON-WENHAM REGIONAL SCHOOL DISTRICT

Miles River Middle School

787 Bay Road

Hamilton, MA 01982

Telephone: 978-468-0362

Fax: 978-468-8454

Craig Hovey - Principal

Elizabeth Lovell - Assistant Principal

June 25, 2018

To: Michael Harvey - Superintendent
 Jeff Sands - Assistant Superintendent

The following is a gift proposal to be accepted by HWRSD for the Miles River Middle School:

Donor: MRMS: 8th Grade Class of 2018 - Jullie Snyder (Staff Representative)

Recipient: Miles River Middle School

Gift Description: A raised garden bed to be constructed to enhance our outdoor classroom area. The garden bed will be approximately 4'x10' and located outside the rear entrance. It will be constructed by Student Council with assistant from HWRSD facilities department. The bed will be filled with soil, planted and maintained by Student Council representatives.

Estimated Value: \$400

The receipt of the gift and construction of the garden has my support. Please let me know if you have any questions.

Sincerely,

Craig Hovey
 Principal
 Miles River Middle School

OK 6/26/17