

LABOR ARBITRATION

In the Matter of an Arbitration

-between-

SCHOOL DISTRICT OF BROWARD COUNTY * Expedited Arbitration

-and-

BROWARD TEACHERS UNION

ARBITRATOR'S OPINION AND AWARD

**ROGER I. ABRAMS
ARBITRATOR**

January 25, 2021

The School Board of Broward County, Florida and the Broward Teachers Union are parties to a Memorandum of Agreement (MOU) regarding the reopening of brick-and-mortar school operations. They have asked their Arbitrator in this expedited proceeding to determine whether the School District can require teachers (and other related instructors) to work in a “live” setting as opposed to remotely as had been the case when the schools were closed. This brief opinion explains the basis for the Arbitrator’s Award.

A virtual hearing was held on January 21, 22 and 23 using Zoom. Each party presented documents and witnesses. As a general matter, the Union’s witnesses explained their serious medical concerns about teaching “live” based on the continued spread of the Covid-19 pandemic. The School District’s witnesses explained the school system’s operational need to have “live” classes in the public schools.¹

The COVID pandemic has generated justified fear on the part of the public with more than 400,000 deaths so far. The Union emphasizes that many teachers are worried about the risk of contracting COVID at school. The parties’ MOU sets the guideposts for resolving this dispute:

1. Paragraph 13 of the MOU requires the School District to “strive to provide the choice of a remote assignment to the highest possible number of requesting employees.”

2. Further, the provision states the District’s right to protect “the operational needs and capacity of the school department.”

3. The District is prohibited from acting in an “arbitrary and capricious” manner.

¹ The District argues that the Union failed to file a timely grievance, but the District did not raise its arbitrability claim until the arbitration. It waived its affirmative defense.

4. The employees are not guaranteed a remote assignment.

5. Which teachers would be called back to the classroom must be based on the four tiers set forth in Paragraph 13 of the MOU consistent with the operational needs of the schools.

The School District may not simply order all teachers to report without considering operational needs, in particular, how many students will be attending. It did not do so here. The School District's witnesses explained examples of how the school principals achieved this goal.

It is not within the Arbitrator's power to decide whether it is a good idea or a bad idea to have teachers return to their classrooms. **Rather, it is the Arbitrator's job to decide what the parties have agreed to in their Memorandum of Agreement.**

AWARD

The District may require teachers to return to their classrooms to meet operational needs based on the number of students who intend to return to school. The evidence presented supports the conclusion that the District did so here.

The District cannot act in an arbitrary and capricious fashion. In order to monitor compliance with this guidepost, the Union must be supplied information in a timely fashion of how the principals exercised their right to grant or deny remote assignments. At the hearing, the Superintendent of Schools stated that the District could and would supply that information. That promise is made part of this order.

In accordance with the parties' agreement to expedite this proceeding, the Arbitrator retains jurisdiction for thirty days to address any issues that may arise in the application of this Award.

CONCLUSION

As the Arbitrator stated at the end of 24 hours of hearing, the men and women of the Broward School District – both teachers and administrators – are an impressive group. It is challenging in the best of times to operate this huge county-wide public school system. This is not the best of times, but it shall pass. In the meanwhile, if the parties act in good faith – as partners in this important project – they will get through this period of time and secure the best interests of the students, the teachers and the people of Broward.

So ordered.

A handwritten signature in black ink, appearing to read "Roger I. Abrams", enclosed within a thin black rectangular border.

Roger I. Abrams
Arbitrator

University Park, FL
January 25, 2021