

**BEFORE THE ARBITRATOR**

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In the Matter of the Arbitration  
Between:

Case No. 9370/17-05-099(jvm)

Chicago Teachers Union, Local 1, AFT  
The Union

Grievant: Simeon Career Academy/  
Rivanna Jihan

and

Submission: July 9, 2021

Remedy Issued: July 30, 2021

Board of Education of the City of  
Chicago,  
The Employer

Sherwood Malamud, Arbitrator

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**APPEARANCES:**

Dowd, Bloch, Bennett, Cervone, Auerbach & Yokich, Attorneys at Law,  
by Josiah A. Groff, 8 South Michigan Avenue, 19<sup>th</sup> Floor, Chicago  
IL 60603, appearing on behalf of the Union.

Chicago Public Schools Law Department, by Charles T. Little, Senior  
Assistant General Counsel, One North Dearborn Street, Suite 900,  
Chicago IL 60602, appearing on behalf of the Employer.

**ARBITRATION AWARD**

**Jurisdiction of Arbitrator On the Matter of Remedy**

In the Award issued on December 8, 2019, the Arbitrator concluded that the Chicago Public Schools (CPS) violated the parties' Collective Bargaining Agreement. In paragraph 7 of the Award, the Arbitrator said:

7. The Arbitrator shall retain jurisdiction to address any issue(s) that may arise from the implementation of this remedy. Either party, with notice to the other party, may invoke this arbitral retained jurisdiction.

The parties jointly contacted the Arbitrator to assist in the implementation of the remedy formulated by the Arbitrator. The Arbitrator afforded the parties an opportunity to set out the areas of agreement and disagreement. The Arbitrator includes the areas of agreement in his exercise of his retained jurisdiction. In addition, the Arbitrator resolves those areas of disagreement.

The remedy as formulated in the Award states:

The record evidence establishes that CPS and its contractor Aramark attempted to correct the cleanliness issue at Simeon. This is particularly true during the 2018 – 2019 school year. This finding undermines the Union’s request for the Arbitrator to fashion an extraordinary monetary remedy, here. There is no evidence in the record that any teacher suffered a compensable loss. There is no evidence in the record from which the Arbitrator may infer a monetary cost to a teacher working in an unhealthy and dirty work setting.

The Arbitrator agrees with the Union that an appropriate remedy should be fashioned to address the contractual breach. However, a monetary award by itself will not clean the building.

In the remedy fashioned below, the Arbitrator directs with great specificity how the Employer should comply with Article 44-5 of the Agreement. This remedy falls within the Arbitrator’s remedial jurisdiction. It does not run afoul of the IELRA. This remedy provides an opportunity for teachers, custodians, Aramark supervisors and managers, as well as, CPS administration to communicate. It provides the opportunity for feedback between custodians and teachers; the expression of appreciation and the opportunity for two way communication.

The Arbitrator directs that the Employer construct a form for placement in each classroom, washroom teacher office and lounge. The form should provide separate boxes in which a custodian will check off whether the room in question was swept, deep cleaned and trash discarded. This portion of the form should be completed on a daily basis. There should be a space on the form for the teacher who is assigned to that space to check off if it appears to the teacher on the day following that the cleaning activity had been performed. In addition, there should be space for the teacher to make any comments, requests or suggestions. There should be space for the custodian to likewise make a suggestion or request. There should be space on the form for the teacher and custodian to print their names. The forms for the classrooms, the washrooms and the gyms should be collected by the building Principal on the night before he/she does a walk-through the building. The form should have a place for the Principal to sign off after reviewing the

daily forms and the completion of a weekly walk through. The Principal should communicate any issues or problems to Aramark and its subcontractor TFM, the ones responsible for supervision and management of the custodians and Building Engineers at Simeon.

This close documentation should continue for 2 years, the period of time covered by the grievance. The parties' Agreement as to how to document and over what period such documentation shall continue shall supersede the procedure outlined in the above paragraph.

The Board shall continue a rodent and bug control program to address the threat suhe Arbitrator's ch infestation poses to teacher health and safety.

### **The Arbitrator's Exercise of Retained Jurisdiction**

#### **Areas of Agreement:**

The Union states in its presentation to the Arbitrator that:

- I. "The Union believes the parties have reached agreement on the following issues for implementation of the remedy:" The CPS does not contradict or object to the Union's characterization of the agreement. The Union sets forth the areas of Agreement, as follows:
  - A. The parties have reached agreement about which parts of the school should be subject to tracking. The Union confirmed the categories of rooms included and excluded in my email of June 4, 2020, and on May 6, 2021, the Union provided a list of specific rooms numbers falling within the included categories.
  - B. The Board asked that the Union designate a particular teacher who will track cleaning of each room and the Union agrees.

- C. The Board asked that teachers check cleaning first thing in the morning, and the Union agrees to that.

The Arbitrator includes the above areas of agreement as part of the remedy.

II. The rationale underlying the remedy as formulated by the Arbitrator is to encourage communication among teachers and custodians, as well as, administrative personnel of CPS, and Aramark and its sub- contractors who clean Simeon School building.

III. The matter of communication brings the Arbitrator to the first issue, documentation of the cleaning tasks performed. CPS suggests this be done electronically by the lead custodian. The teachers argue that this would vest the lead custodian with the authority to document that certain tasks had been performed, when they had not or had not been satisfactorily performed. The violation of Article 44-5 found was the result of the failed performance of cleaning duties by Aramark personnel or their sub-contractor. Some custodians were discharged by Aramark for poor performance.

Arbitral statements in this Remedy to take certain actions are directed to the parties to the Agreement which governs this dispute, i.e., CPS and teachers represented by the CTU. The arbitrator references Aramark and its sub-contractors, but does not direct their employees to take any action pursuant to this Award. The Arbitrator adopts Exhibit A as a form that provides for custodial input, it does not direct that custodians provide that input.

Documentation, therefore, is an important element of this remedy. Digital documentation would require some custodial personnel to carry digital devices, which apparently is contrary to current Aramark policy. A paper record was contemplated by the

remedy the Arbitrator issued in December, 2019.

The Employer is justifiably concerned that the chart prepared will be vandalized. The Arbitrator suggests that the paper chart be placed in a desk drawer or closet which is available to both teacher and custodian. To the extent that a desk or closet is available in all the classrooms, and to the extent possible, a consistent location for storing the chart should be used. The Chart need not be placed under lock and key. If it can be stored and secured, but available to both teacher and custodian, it would be preferable.

Union Exhibit A is a fair representation of a chart for use in a classroom. The Arbitrator adopts and directs that the form created by the Union and identified as Exhibit A shall be employed to document the custodial work performed and when and by whom the form was reviewed.

IV. The Principal or her designee shall collect and review the charts on a weekly basis. The Union's delegate shall have access to the charts through the Principal or her designee. It is the arbitral intent that this regular communication will assist in keeping the building clean.

V. The cleaning tasks. Both the Union and the Employer identify the following as weekly cleaning tasks, and as part of the remedy the Arbitrator directs that:

Designated spaces will be cleaned on a weekly basis in the following manner:

- i. High/low dusting
- ii. Clean vertical surfaces (eg. Objects in the room) and disinfect high touch objects.
- iii. Clean horizontal surfaces and disinfect high touch objects.
- iv. Clean floors (vacuum or mop).

VI. The Union and Employer disagree over the frequency necessary to clean washrooms and locker rooms. The Employer argues it should be completed on a weekly basis. The Union maintains it should be done on a daily basis.

The Arbitrator agrees with the Union position with regard to washrooms and locker rooms. Simeon is a heavily used building. Toilets and urinals shall be disinfected on a daily basis. Restocking supplies shall be performed as needed.

VII. As the parties agreed, teachers will check the “clean status” of a room as the first thing in the morning.

VIII. The document provided to the Arbitrator concerning his exercise of his retained jurisdiction contains a statement of how the building should be cleaned on a daily basis. It is not clear that the Employer disagrees with this proposal. The Arbitrator includes segments of the proposal as part of his remedy in the exercise of his retained jurisdiction:

For the 2021-2022 and 2022-2023 school year, Simeon will be regularly cleaned to the following specifications: All designated spaces (meaning the list previously agreed to by the parties) will have trash emptied and be swept on a daily basis. Having trash emptied shall include picking up and removing large debris from the floor and putting such items in a trash bin.

Simeon administration has, and will continue to, identify for teachers which custodians are responsible for cleaning which areas of the school. When possible, teachers should directly contact custodians in person with any concerns.

As part of its proposed remedy presented to the Arbitrator for

the implementation of his retained jurisdiction, the Union proposes:

“Teachers will be able to provide feedback regarding cleaning in the following manner:

If it is not possible to do so, or if this contact with the custodian does not resolve issues, each teacher may provide feedback in the SmartSheet (Exhibit A) for their classroom and areas they have been designated [as their responsibility.] This feedback should be based on observations at the beginning of the school day.”

The Board and the Union will agree upon a list of teachers who are responsible for non-classroom designated areas. The same teacher shall be responsible for the same non-classroom areas for the entire school year (except in cases of resignation or leaves from work). The Union shall promptly notify the Board of any resignations or leaves and in this situation the Parties will agree on replacements.

*In the event that a teacher has flagged a cleaning concern or indicated that a task was not completed, the Principal or her designee, shall report from SmartSheet any concerns raised by teachers as well as any areas where cleaning was not indicated as complete will be shared weekly with the [Board’s] Quality Assurance and Senior Assurance Managers responsible for Simeon who will review the issues with custodians as well as any third party vendor(s) who may be assigned to Simeon.*

The Arbitrator has deleted from the italicized paragraph any arbitral direction to Lead custodians and Aramark managers. Such remarks may be beyond this arbitrator’s jurisdiction.

**Final Remarks in the Exercise of the Arbitrator's Retained  
Jurisdiction**

When the Arbitrator fashioned the remedy in the Award issued in December 2019, he did so without any knowledge of the Covid-19 pandemic. In exercising his retained jurisdiction, the above additions/modifications of the remedy are fashioned without regard to the precautions brought on by the pandemic. The parties made no reference to the pandemic in their submissions to the Arbitrator. The parties may agree or disagree over any precautions necessitated by the pandemic. Such concerns are outside the scope of the issues litigated by the parties and the Award and Remedy issued by this Arbitrator.

This Remedy in the exercise of the Retained jurisdiction of the Arbitrator was issued on July 30, 2021.



Sherwood Malamud  
Arbitrator