

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration :  
of a Dispute Between :  
AUBURNDALE EDUCATION ASSOCIATION :  
and : Case 17  
: No. 39456  
AUBURNDALE SCHOOL DISTRICT : MA-4824  
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Appearances:

Ms. Mary Virginia Quarles, Executive Director, Central Wisconsin UniServ Council-West, 2805 Emery Drive, P.O. Box 1606, Wausau, WI 54401, appearing on behalf of the Association.  
Mr. Guy-Robert Detlefsen, Jr., Attorney at Law, 410 Daly Avenue, Suite 6, Wisconsin Rapids, Wisconsin 54494-4703, appearing on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, herein the Association and the District, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to the parties' request for the appointment of an arbitrator, the Wisconsin Employment Relations Commission appointed Jane B. Buffett, a member of its staff, to hear and decide a dispute regarding the interpretation and application of the agreement. Hearing was convened in Auburndale, Wisconsin, on May 10, 1988, at which time a conditional settlement of the dispute was reached. 1/ Said conditional settlement was not consummated and hearing was held in Auburndale on February 22, 1989. The hearing was transcribed and the transcript was received March 7, 1989. The parties submitted briefs and the District submitted a reply brief. On May 15, 1989, the Association notified the Arbitrator it did not wish to submit a reply brief and the record was closed on May 17, 1989.

ISSUE

The parties stipulated to the following issues:

Did the District violate the contract when it denied horizontal movement to Gerald Eichman for courses denied by Superintendent Rooney on September 22, 1988? If so, what is the appropriate remedy?

BACKGROUND

Grievant Gerald Eichman is employed by the District as a physical education teacher. At the time this dispute arose, he had not advanced beyond the Master's Degree column. On September 22, 1988, Superintendent Gary Rooney denied the advancement because the courses were not in the Grievant's teaching field and they had not been approved by the District. The denial was grieved by the Association and is the subject of this arbitration award.

RELEVANT COLLECTIVE BARGAINING AGREEMENT PROVISIONS

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ARTICLE VI

COMPENSATIONS

A. Contractual Salaries

1. The salaries of all teachers covered by this Agreement are determined by the Salary Schedule. The placement of a teacher on the salary schedule shall be determined by educational background and experience. Teachers entering the Auburndale system will be given credit for up to five (5) years teaching experience and fifty percent (50%) thereafter up to a total of eight (8) years.

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1/ The May 10, 1988 hearing was initiated by an earlier grievance, filed April 21, 1987, which addressed the same subject matter as the instant grievance.

2. A teacher shall advance on the salary schedule as his experience increases and his educational background increases. To continue advancement on the salary schedule, the following educational requirements must be met:

a. All four year degree teachers shall be required to enrich themselves by attaining 6 undergraduate credits or 3 graduate credits every 5 years. Undergraduate credits will not be considered for horizontal movement on the salary schedule. Undergraduate credits must have prior approval of the administration.

b. For advancement on the salary schedule beyond the Master's Degree column, the credits must be in the teachers' field of instruction or receive prior approval from the District Administrator.

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#### POSITIONS OF THE PARTIES

##### The Association

The Association asserts the contractual language, by specifying other situations in which administrative approval is required, clearly excludes the facts of this grievance from the approval requirement. It believes this position is supported by the past practice of previous administrators and is additionally supported by the District's attempt during bargaining to amend the educational credit provision. It disputes the District's reliance on reserved rights, arguing that such rights cannot negate other rights specifically set forth in the contract.

##### The District

According to the District, the contract is silent regarding prior approval for courses involving salary schedule advancement. The silence, then, should be filled in by past practice which shows that teachers had to receive prior approval for courses not in their teaching field. The District claims the bargaining history does not discredit its position and the District's proposal to amend the relevant provision was merely an attempt to clarify the rights it already possessed. In its third argument, District insists it possesses, as a matter of management rights which it has reserved to itself, the authority to approve or disapprove courses which result in increased compensation.

In its reply brief, District argues that there is no general assumption for advancement on the salary schedule for additional credits, that the Association could have bargained the absence of prior approval, and that, contrary to the Association's assertion, the doctrine of ejusdem generis does not apply.

#### DISCUSSION

The collective bargaining agreement does not explicitly state whether the District has the right to deny advancement on the salary schedule to teachers before the Master's Degree column (that is, teachers whose salary schedule placement is to the left of the Master's degree column), who take graduate courses in areas outside of their teaching field and whose courses are not approved by the District. 2/ The contract does, however, unambiguously require District approval for undergraduate credits 3/ and graduate credits outside the applicants teaching field which are to be used for advancement beyond the Master's Degree column. These two provisions indicate the parties deliberately addressed the question of District approval of credits and further indicate the parties were competent to draft clear language requiring such approval. The applicable principle of contract interpretation is that requirements that are expressly provided as to some elements may not be inferred from silence as to other elements in the same section. 4/ Since the parties set forth the

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2/ The District did not claim the right to deny advancement for graduate courses in a teacher's field of teaching. For simplicity's sake, this award refers to "approval of courses outside the teaching field" as "approval of courses" or "approval of credits".

3/ Undergraduate credits cannot be used for advancement on the salary schedule, but can be used to fulfill a teacher's enrichment requirement. The difference between enrichment credits and advancement credits does not impact on this award.

4/ This principle can be referred to by its Latin name: inclusion unius est exclusio alterius. The rationale of this decision is not based on the principle of ejusdem generis which, as the District observes, is usually applied to interpreting lists.

approval requirement so clearly in cases of undergraduate courses and graduate courses for advancement beyond the Master's Degree column, the conclusion is inescapable that they did not intend an implied approval requirement for graduate courses offered for advancement before the Master's Degree column.

The District argues that it retains the right to deny Grievant's salary advancement based on disapproval of courses under a theory that all rights not expressly restricted by contract are retained by the District as an inherent management right. While the District may be correct as to inherent management rights that are not addressed by a contract provision, the record does not demonstrate that the parties understood denial of salary advancement for courses such as Grievant's as an inherent management right. In their agreement, the parties explicitly granted approval rights to the District in two circumstances. The parties thereby indicated their understanding that when the contract is silent as to approval, the District does not possess such a right. Furthermore, if the parties had believed that approval was an inherent right of management, the two provisions regarding approval would have been superfluous. Since parties are presumed to intend that all parts of their agreement have meaning, and there is no basis to conclude otherwise regarding the instant collective bargaining agreement, the undersigned rejects the conclusion that these parties believed the District had an inherent right to approve or disapprove graduate credits for advancement before the Master's Degree column.

Contrary to the District's assertion, the history of the parties' relationship does not support its position. The record includes a letter written by a former superintendent, Lee Paul, stating that, to the best of his recollection, he required teachers to get prior approval for all courses not in the applicant's teaching field in order to be advanced on the salary schedule prior to the Master's Degree column. However, his letter did not state that he had ever denied such approval, nor were there documents created during his administration that reflected any approval procedure, nor was there any other testimony of any specific instance of that superintendent's disapproving a course and not granting the salary schedule advancement. Thus, there was no past practice of an approval requirement during the Paul administration.

When Superintendent Rooney began his administration, in the 1984-85 school year, he instituted a form on which teachers were to list additional course work. The form contained the following explanation:

For those of you who have completed or are planning to complete additional graduate or undergraduate hours prior to the first Tuesday in September, would you please submit the below information. I will return this information to you for your records which should eliminate any problem either at present or in the future concerning class approval.

. . .

Even though the teachers complied with this instruction by completing and returning this form which included the reference to approval of courses, no practice regarding approval was created thereby, for there is no evidence that course approval was denied and salary schedule advancement was denied prior to the instant case. Only such a denial and subsequent Association acquiescence would have been evidence that the parties mutually accepted the proposition that the District could disapprove graduate courses offered for advancement before the Master's Degree column. Since mutual acceptance of a practice is an essential factor in the creation of a binding past practice, the forms showing the Superintendent's notations of approval and disapproval do not reflect a practice of requiring District approval of graduate courses for advancement before the Master's Degree column.

In summary, the agreement's approval requirements for undergraduate courses and courses to be used for advancement beyond the Master's Degree column indicate that the agreement does not require approval when it does not specify it. Therefore, no approval is required for graduate courses to be used for advancement before the Master's Degree column. Additionally, there is no past practice which contradicts this conclusion.

In light of the record and the above discussion, the Arbitrator issues the following

#### AWARD

1. The District violated the contract when it denied horizontal movement to Gerald Eichman for courses denied by Superintendent Rooney on September 22, 1988.

2. The District shall advance Grievant retroactively as it would have if his courses had not been denied on September 22, 1988. The District shall make the Grievant whole for all salary and fringe benefit losses resulting from the contract violation found herein.

Dated at Madison, Wisconsin this \_\_\_\_ day of June, 1989.

By \_\_\_\_\_  
Jane B. Buffett, Arbitrator