

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

NEAR NORTH EDUCATION  
ASSOCIATION-CRIVITZ

and

CRIVITZ SCHOOL DISTRICT

Case 11  
No. 42563  
MA-5731

Appearances:

Mr. R. A. Arends, Representative, WEAC Uniserv Council #21, P.O. Box 1030, Marinette, Wisconsin 54143, and Mr. Steve Pieroni, Staff Attorney, Wisconsin Education Association Council, 33 Nob Hill Road, Madison, Wisconsin 53713, appearing on behalf of the Association.

Mr. James A. Morrison, Morrison & Coggins, S.C., Attorneys at Law, 2042 Maple Avenue, Marinette, Wisconsin 54143, appearing on behalf of the District.

ARBITRATION AWARD

Near North Education Association-Crivitz, hereinafter the Association, and the Crivitz School District, hereinafter the District, jointly requested that the Wisconsin Employment Relations Commission appoint a staff arbitrator to hear and decide the instant dispute, in accordance with the grievance and arbitration procedure contained in the parties' labor agreement.

The undersigned was subsequently appointed to hear the dispute. A hearing was held on October 10, 1989, before the undersigned, in Crivitz, Wisconsin. A transcript of the proceedings was made and received by October 20, 1989. The parties submitted post-hearing briefs, the last of which was received by November 16, 1989.

ISSUE

The parties stipulated to the following statement of the issue:

1. Was the grievant, Mrs. Kust, denied salary schedule advancement for BS+36 pursuant to the 1988-89 salary schedule of the 1987-89 collective bargaining agreement?
2. If yes, Mrs. Kust will be placed at the appropriate step of column 7 effective the beginning of the 1988-89 school year.

## PERTINENT CONTRACT PROVISIONS

### ARTICLE XXII. SALARY SCHEDULE - (See Appendix A)

A. The salary schedules negotiated for the term of this agreement shall be as set forth in Appendix A of this Agreement.

B. No new teacher may be placed higher on the schedule in Appendix A than a teacher in the system with the same experience.

C. Credits equal to or above BS+30 shall be recognized on an equal basis to the Master schedule.

D. To qualify for increment rate increases, a teacher must complete the inservice requirements as outlined in the contract.

E. Credits to apply to the salary schedule must be graduate level in the field in which the individual is teaching, in the field of education, or have the approval of the Superintendent. Undergraduate credits may be applied to the salary schedule only by the prior approval of the Superintendent.

F. In order to provide incentive for teachers to continue their education, the District shall provide reimbursement for tuition and related fees up to \$60.00 per credit hour. "Credit hour" as used herein, shall be defined as those credits which are approved by the Superintendent or are preapproved for schedule advancement in Paragraph E. of this Article.

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## BACKGROUND

For the 1970-71 school year, the salary schedule in the parties' labor agreement established for the first time credit lanes beyond the bachelor's degree. Specifically, a BS+15 and an MS lane were added to the schedule. For the 1971-72 contract, the salary schedule contained BS, BS+6, +12, +18, +24, MS, MS+6, +12, +18, +24, and +30 lanes. This salary schedule continued in subsequent years, and in the 1979-81 contract, the following language was included on the 1979-80 salary schedule:

Credits equal to or above BS+30 shall be recognized on an equal basis to the master scale.

Credits to apply to the salary schedule must be graduate level in the field in which the individual is teaching, in the field of education, or have the approval of the Superintendent. Undergraduate credits may be applied to the salary schedule only by the prior approval of the Superintendent.

To qualify for increment rate increases, a teacher must complete the inservice requirements as outlined in the contract.

Commencing with the 1983-85 contract, and continuing through the 1989 salary schedule, the salary lanes were designated as follows:

BA BA+6 BA+12 BA+18 BA+24 MA MA+6 MA+12 MA+18  
MA+24 MA+30 BA+30

As of the date of hearing, the grievant, Mary Anne Kust, had been employed by the District as a full-time teacher for twelve (12) years, including a one year leave of absence. The parties stipulated at hearing that as of November 11, 1988, Kust had 37 graduate credits. However, Kust did not have a masters degree. On February 24, 1989, Kust filed a grievance with Elementary-Middle School Principal Gene L. Chapman requesting that she be placed on the 1988-89 salary schedule at the MA+6 lane, retroactive to the beginning of the school year, pursuant to Article XXII, C. , of the 1987-89 agreement which states as follows:

C. Credits equal to or above BS+30 shall be recognized on an equal basis to the Master schedule.

On March 2, 1989, Chapman denied the grievance on the basis that he did not have jurisdiction, and referred the grievant to Step II of the grievance procedure. On March 16, 1989, the grievant and the Association grieved the matter to Superintendent Gordon P. Rieden. The grievance was denied on April 6, 1989 by Rieden in the following letter:

April 6, 1989

Mary Ann Kust  
Route 1, Box 170  
Coleman, WI 54112

Dear Mrs. Kust:

I am in receipt of your grievance which I received on March 17. In your grievance, you indicated that you feel you should be placed on the salary schedule of MA+6 based upon the fact that you have 36 graduate credits beyond your bachelor's degree even though you have not received a master's degree nor been in an approved

master's degree program.

Beginning with the 1970-71 school year, the school district first established credit lanes beyond the bachelor's degree. In the negotiations for the 1971-72 contract, an agreement was made to establish additional credit lanes of BS+6, 12, 18 and 24 and MS+6, 12, 18, 24 and 30. At this time, the Board of Education and Union agreed that a BS+30 credits and a master's degree would be recognized on an equal basis. I very vividly remember when this discussion occurred because I had recommended to the board that they not establish BS+30 and master's degree as being equal because the simple accumulation of an additional 30 credits beyond a bachelor's degree is in no way comparable to having been awarded a master's degree. In the contract for 1979-81, the following language was included: "Credits equal to or above BS+30 shall be recognized on an equal basis to the master scale." You will note that this terminology is singular and is for one area only. It does not say masters +6, +12, +18, +24. Beginning with the contract for the 1983-84 school year and with subsequent contracts for the remaining years, the salary schedule specifically outlines MA and BA+30 as being the same. The contracts do not indicate MA+6 and BA+36 as being synonymous.

Based upon the historical development and the expression of the current contract, it is necessary that I deny your grievance. I hope that this reply satisfactorily answers the question and that the problem is resolved.

Sincerely yours,

Gordon P. Rieden  
Superintendent

The District Board subsequently denied the grievance on May 19, 1989, affirming the rationale in Rieden's letter of April 6th.

#### POSITIONS OF THE PARTIES

##### Association

The Association argues that the language of Article XXII is clear and unambiguous, and supports the Association's position that the parties intended to pay employees who earned credits above BA+30 laterally across the master lanes. The Association contends that had the parties intended to limit such credits to the master's column the parties would have used the words

"column" or "lane". Further, to accept the District's interpretation would result in an inconsistency between Article XXII and the salary schedule, whereas the Association's interpretation would not. The Association further contends that even if the language is found to be ambiguous, the bargaining history established through testimony supports the grievant's claim. The Association also argues that industrial practice supports the grievance, that the concept of payment for credits is not unique, and that the District is the beneficiary of the grievant's work.

### District

The District alleges that the testimony of District Administrator Rieden establishes that, in 1979, the parties agreed to equate a bachelor's degree plus 30 credits with the masters lane on the salary schedule. The District argues that the Association explicitly agreed there was to be no further lateral advancement for additional credits. The District also points to the testimony of Association member John Trombley as establishing the fact that during the bargaining for the 1979-81 contract, the Association never explicitly discussed with the District full lateral application of BS credits beyond the master's lane, and that the Association drafted the final language of Article XXII, which was accepted by the parties, without any specific reference to lateral advancement on the salary schedule. The District contends that the Association is seeking to expand its rights under the contract and has not met the burden of showing that the parties agreed to such an expansion. The District argues that any ambiguous language should be construed against the drafter of such language, in this case the Association. Further, the fact that the parties ratified a schedule without the explicit lateral advancement rather than one with the advancement as proposed by Representative Arends during negotiations for the 1983-85 contract clearly shows there was no agreement between the parties on this issue.

### DISCUSSION

The issue to be decided in this matter is whether the grievant was denied lateral advancement on the 1988-89 salary schedule of the 1987-89 collective bargaining agreement as a result of the additional credits she accrued beyond the BA+30 level. It is the position of the undersigned that the grievant was not denied salary advancement by the District pursuant to the 1988-89 salary schedule.

Contrary to the arguments of the Association, the undersigned does not find the language of Article XXII(C), to be clear and unambiguous. Aside from the obvious issue of the interpretation of the word "schedule", it is not at all clear what the phrase "...on an equal basis..." means. Further, Article XXII refers one to Appendix A for clarification of the salary schedule. If one were to depend on the salary schedule alone for an interpretation of Article XXII, it would be reasonable to conclude that an employe with a bachelor's degree and 30 or more graduate credits would be entitled only to the master's lane salary. The language of

Article XXII(C) does not clearly state that an employee with credits equal to or beyond BS+30 is entitled to lateral advancement beyond the master's lane, and the salary schedule only equates the BS+30 with the master's lane.

The Association points to the testimony of Trombley, chief negotiator for the Association during the 1979-81 contract, as evidence that the intent of the language of Article XXII was discussed and understood by both the Association and the District to be as the Association contends. However, while Trombley testified that the language was discussed at length among his own bargaining team, he also admitted that the Association never presented the District with a salary schedule which conveyed the Association's understanding of lateral advancement under the Association's proposed Article XXII language. Further, Trombley testified that the Association's draft of the Article XXII language was the only proposal given the District addressing the intent of the Association. 1/

The only testimony presented by the District regarding the District's interpretation of the language of Article XXII was that of Administrator Rieden. Rieden testified that he recalled discussions with the Association during the 1971-72 negotiations regarding the equating of graduate credits with a master's degree, and the ultimate agreement of the parties that there would be no lateral advancement beyond the master's lane. 2/ Rieden's recollection was not refuted by any Association witness. Trombley testified that he knew of Rieden's opposition to lateral advancement, and further, that there was no discussion between the parties during the 1979-80 negotiations in which the Association specifically described what would happen if an employee went beyond the BS+30 level. 3/ The only evidence of any direct discussions between the parties regarding the interpretation of Article XXII would seem to indicate that the Association was at least aware of Rieden's position on lateral advancement before the Article XXII language was agreed upon, and neither party clarified its understanding of the language with the other. Therefore, it cannot be said that there was a meeting of the minds as to the intent or interpretation of Article XXII.

It is clear that the Association intended the result it seeks, but there was insufficient evidence to establish that the District concurred with the Association's interpretation of Article XXII. Further, there was unrefuted evidence that the District Superintendent thought the parties had reached an agreement on a contrary interpretation of the provision. The Association's position

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1/ Tr. 82.

2/ Tr. 41.

3/ Tr. 73-76.

is further hampered by the fact that during the 1983-84 negotiations, a proposal with the lane headings which would have clarified the Association's intent was withdrawn by the Association.

4/ Given that the language of Article XXII was added to the 1979-80 salary schedule, and the BS+30 was added to the master's column in 1983, it is reasonable to conclude that the 1983 addition to the salary schedule was a clarification of the original language, and only granted master's lane salaries to employes with credits equal to or above BS+30.

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The grievance is denied and dismissed in its entirety.

Dated at Madison, Wisconsin this 28th day of November, 1989.

By Beverly M. Massing /s/  
Beverly M. Massing, Arbitrator

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1/ Tr. 82.

2/ Tr. 41.

3/ Tr. 73-76.

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4/ Tr. 87.