February 2, 1990

Mr. Stephen L. Weld
Mulcahy & Wherry, S.C.
PO Box 1030
Eau Claire, WI 54702-1030

Mr. William Kalin
Representative
Wisconsin Federation of Teachers
1703 Logan Avenue
Superior, WI 54880

re: Wisconsin Indianhead VTAE District
Case 36 No. 39705 MA-4889
(parties' 7-14-89 request for award clarification)

Gentlemen:

I have now received and considered Mr. Weld's July 14, 1989 letter jointly requesting award clarification; my July 31 response requesting answers to certain questions; your jointly-signed answers letter dated January 10, 1990; Mr. Weld's unilateral response to Question #6 bearing that same date (copy for Mr. Kalin's file enclosed); and Mr. Kalin's unilateral response to Question #6 dated January 25, 1990. This letter constitutes my supplemental award providing the clarification you have jointly requested.

The August 29, 1988 DECISION AND AWARD at issue read as follows:

> 1. The District did not violate the Agreement by its failure to employ Grievant as an FTI prior to January 15, 1988.
>
> 2. The District did violate the Agreement, and specifically the second paragraph of Art. IV.R.1. thereof, by its failure on and after January 15, 1988 to transfer Grievant to the FTI position then held by Arlene Burke.
>
> 3. By way of remedy for said violation, the District shall immediately offer to employ Grievant L. David Lewis in the Farm Training Instructor position held by Arlene Burke on January 15, 1988 or in an equivalent Rice Lake Campus position, without loss of seniority or other rights and privileges that he would have enjoyed had his full-time employment not been

> terminated as of that date. **In addition, the District shall make Grievant Lewis whole (without interest) for losses of pay and benefits experienced by him as a consequence of the District's Agreement violation noted in 2, above. The District shall be entitled to the customary set-offs including but not limited to a set-off for Grievant's interim earnings which he would not have earned had the abovenoted violation not occurred.**

The parties have requested a clarification of the bold-faced portion of the Award. As stated in the parties' July 14 letter, the issue and parties' positions are succinctly framed as follows:

> The District interpreted this to mean that Grievant Lewis was to have been paid on the basis of a normal 38 week teacher's contract as Grievant had been paid in the 1986-87 contract year and, for that matter, since the commencement of his employment in 1979. The Federation contends that Grievant Lewis should have received pay and benefits based on a 44 week contract. The Federation reasons that the FTI position of Arlene Burke called for 6 weeks of teaching beyond the normal school year and, therefore, had an extended or 44 week contract.

The boldfaced back pay order language directed that Grievant Lewis be made "whole (without interest) for losses of pay and benefits experienced by him as a consequence of the District's Agreement violation noted in 2, above." That violation, in turn, was a "failure on and after January 15, 1988 to transfer Grievant to the FTI position then held by Arlene Burke." There appears to be no dispute that the "position . . . held by Arlene Burke" on January 14, 1988 was a 44 week position. This is confirmed both in terms of job posting specifications for that position (Answer to Question #3), the fact that Mr. Splett was initially hired into that position to work 44 weeks, and the fact that Ms. Burke wound up in fact performing 44 weeks of work (answer to Question #4). Nothing in the information supplied appears to have made the extended nature of the contract for an FTI position specific only to either Ms. Burke or Mr. Splett. Indeed, the Answer to Question #1 indicates, instead, that the length of contract for such positions in a particular year depends on "an annual review by the College of the need; which in turn is determined by the size of the geographic area served and the student load."

The District evidently determined that the position held by Arlene Burke was one for which the need required 44 weeks of work. Since the violation for which Grievant was to be made whole was the District's failure to transfer Grievant to that position, it follows that the boldfaced backpay portion of the DECISION AND AWARD, above, ordered that Grievant was to be made whole for the loss of a 44 week position, subject to customary set-offs.

While it is true that the foregoing analysis results in Grievant

enjoying an advantage relative to the 38 week length of contract to which he had been assigned in each of the eight years prior to 1987-88 (Answer to Question #1), the District eliminated what had been Grievant's prior position. Grievant's prior position was not the one to which Grievant was improperly denied a transfer. It therefore is not the one by which his loss is to be measured.

For the foregoing reasons, and subject to customary set-offs, it is the Arbitrator's SUPPLEMENTAL AWARD regarding the question presented in the parties' July 14, 1989 letter that

> In determining his back pay for the 1987-88 school year, Mr. Lewis is entitled to pay for six weeks of summer instruction because of the extended nature of Mr. Burke's particular assignment rather than being entitled only to compensation for a normal 38 week teaching position.

Please note that I have not forwarded copies of this letter to anyone other than the two of you. I leave it to you to communicate about the matter to those you respectively represent.

Very truly yours,

/s/ Marshall L. Gratz
Marshall L. Gratz
Arbitrator

4449 North Maryland Avenue
Shorewood, WI 53211
phone: (414) 963-9793