

BEFORE THE ARBITRATOR

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 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 NORWAY-RAYMOND SCHOOL DISTRICT NO. 7 :
 : Case 7
 and : No. 42744
 : MA-5791
 DROUGHT EDUCATION ASSOCIATION, :
 SLUE/COUNCIL 26, WEAC, NEA :
 :

Appearances:

Ms. Esther Thronson, Executive Director, Southern Lakes United Educators, WEAC Council 26, on behalf of the Association.
Mr. Barry Forbes, Representative, Wisconsin Association of School Boards, Inc., on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1987-89 collective bargaining agreement between the Norway-Raymond School District No. 7 (hereafter the Board or the District) and Drought Education Association (hereafter the Association), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and resolve the dispute between them involving tuition reimbursement for Ms. Heidi Helming for a counseling course she took during the summer of 1989. The undersigned was designated arbitrator and made full written disclosures to which there were no objections. Hearing was held on November 28, 1989 at Franksville, Wisconsin. No stenographic transcript of the proceeding was made, and all post-hearing briefs were received by January 13, 1990.

ISSUE:

The parties stipulated that the following issue shall be decided in this case:

Did the Board violate the collective bargaining agreement when it denied tuition reimbursement for Heidi Helming; if so, what is the appropriate remedy.

RELEVANT CONTRACT PROVISIONS:

ARTICLE V - WORKING CONDITIONS

. . . .

G. Every teacher shall be required to complete a 5-year credit cycle requirement by obtaining 6 semester hours of college credit each 5 years. The credits must be obtained from an accredited institution and in a relevant area of education. Failure to meet this requirement will result in no teacher advancement on the salary schedule. All courses expected to fulfill this requirement must have prior approval of Board. Credit requirement will be prorated for the part-time teachers. Cycles commence with the 1983-84 contract.

ARTICLE XII - COMPENSATION

. . . .

3. Horizontal advancement shall continue on the basis of credits earned as verified by grade report or official transcript. Such advancement shall occur on the first pay day in September. No advancement will be given on the salary scale for credits earned which do not apply to the education field.

B. Tuition up to \$100 per credit for the 1987-88 school year and up to \$110 per credit for the 1988-89 school year shall be paid for which prior board approval has been granted with the substantiation of successful completion (C or better). Part-time teachers will be prorated, after credit requirement is met.

BACKGROUND:

At the hearing, the District stipulated and agreed that it would waive

any procedural/timeliness objections it had previously raised, or might raise, regarding this case and it agreed that the undersigned should immediately reach the merits of this case.

There are twelve certified teachers (8.7 FTE's) on the staff at the District currently, including District Administrator Englund who was hired in October of 1983 and who, along with his administrative tasks, also performs teaching assignments as a physical education teacher for the District. As a general rule, Mr. Englund has received between six and twelve requests per year from teachers seeking credit approval for tuition reimbursement, with more requests being filed in recent years.

FACTS:

Grievant Heidi Helming has been employed by the District as a kindergarten teacher and library supervisor for approximately the past three years. Helming is certified by the State of Wisconsin in both areas of her employment. On May 16, 1989, Helming submitted a "Credit Approval Form" requesting Board approval for tuition reimbursement for two 3-credit courses, one entitled "Principles of Counseling" and the other entitled "Theories of Counseling". On the form, Helming indicated that the purpose of her wish to take these courses was that she intended ". . . to get my Masters in Counseling", and that Helming expected the classes to meet from June 12 through July 21, 1989. The printed part of the form also indicates that approval for reimbursement should be obtained before registration for the course(s) and that if approved, tuition reimbursement will be given for completion of course(s) with a grade of "B or better". 1/

Although there is a dispute regarding whether the following procedure was followed in Helming's situation, District Administrator Loren Englund stated that, as a general rule, when he receives a request for tuition reimbursement/credit approval from a teacher, he checks to make sure it is filled out properly and he then informs the teacher that he will place their request on the next Board of Education agenda for consideration. Englund stated that he normally informs the requesting teacher of the date of the meeting at which the Board will consider their request. The Board will then consider and discuss the request, as scheduled, in an open meeting setting at which the teacher making the request is allowed to be present and to speak in support of the request. At such a meeting, Englund may make a recommendation regarding approval or non-approval of the requests made. Generally, the Board will then approve or deny credit reimbursement. There have been instances, however, when the Board has been unable to make a decision regarding approval or denial of reimbursement and it has requested further information regarding the relevancy of the course to the teacher's field of teaching. In these cases, the Board has discussed the matter at a subsequent meeting, and it has asked the requesting teacher to state his/her reasons for requesting approval to the Board at such a later meeting. The Board has then normally granted these requests.

Englund further stated that the Board has not often denied a request for tuition reimbursement since his hire as Administrator in 1983. Englund stated that, in his experience, so long as a course is relevant to the position the teacher holds with the District and the course meets the needs of the District, the Board has granted tuition reimbursement. As a general matter, in the past, Englund stated that if the Board denied tuition reimbursement to a teacher, the teacher was given the opportunity to defend the relevancy of their request or to submit a new form with different courses selected that would be relevant to the teacher's assignment.

With regard to Helming's May 16, 1989 request, it is undisputed that this was the first such request Helming had made as a District employe. However, there is a dispute regarding what Englund told Helming concerning the processing of that request. According to Englund, Englund believed he followed his normal procedure in Helming's case -- that when Helming submitted the Approval Form to him personally, he believed (although he was not positive) that he told her that the Board would consider her request at the next regular Board meeting. The next regular Board meeting was May 18, 1989. Helming did not appear at this meeting. Helming stated that Englund never told her that her request would be considered at the next Board meeting, or that Helming could or should appear at that meeting or what date Englund expected that meeting to take place.

At its May 18 meeting, the Board denied Helming's request for tuition reimbursement on the grounds that the courses listed were "not relevant to the position Helming had with the District". However, the Board approved advancement on the salary schedule for Helming's successful completion of the

1/ Ultimately, Helming took and completed only one of the courses listed on her Credit Approval Form -- Theories of Counseling. The parties stipulated that Helming paid \$330 for this 3-credit course and that she successfully completed it pursuant to Article XII B. of the 1987-89 Agreement.

course. At the May 18 meeting, the Board indicated to Englund that if Helming wished to talk to the Board about its denial of her request, Englund should tell Helming she would be welcome to appear before the Board in the future.

After the Board's May 18 meeting, Englund stated that he returned Helming's Credit Approval Form to her; that he told her that it had been denied and the specific reasons for denial; that he told Helming that she could talk to the Board about its denial of her request and that if she wished to do this, she should let Englund know and he would agenda her presentation. In contrast, it should be noted that Helming stated that Englund never told her that she could appear before the Board after her request had been denied and that Englund never told her the reasons why the Board denied her request for tuition reimbursement.

With specific regard to Helming's case, Englund stated that the Board denied Helming's tuition reimbursement request on the basis that the Board believed that the courses Helming had selected were not relevant to Helming's position with the District. 2/ Englund also stated that the Board did not ask him about the requirements for a Masters in Counseling and that he did not make any statements or recommendation regarding Helming's request for credit reimbursement.

The Union submitted the 1981-1983 Agreement which contained no clauses similar to Articles V G. and XII A.3. and B., and the Union also submitted the 1983-85 Agreement which contains the referenced Articles as they currently appear in the effective Agreement. No evidence was presented by either party regarding the bargaining history surrounding the above-referenced Articles.

Evidence was submitted regarding examples of tuition reimbursement in three situations which occurred prior to Helming's case. One such example occurred in 1986 regarding Ms. Duesing, a Masters-degreed fourth grade teacher then also teaching science, who had requested reimbursement for a 5-credit chemistry course. Reimbursement was approved by the Board pursuant to Duesing's written request. Ms. Duesing was present at the Board meeting where reimbursement was considered. Another credit reimbursement example cited was that of Ellen Gutknecht, art teacher, then assisting with remedial math and reading, whose 1987 request for tuition reimbursement for a 3-credit course on the Education of Exceptional Children was granted by the Board at a meeting at which Gutknecht was not present. The last reimbursement example involved a 1989 request by District Administrator/Physical Education Teacher Englund for tuition reimbursement for a 3-credit course in Gifted and Talented Childrens' Education. Englund was present at the May 18, 1989 meeting where his request was approved by the Board (and at which Helming's request was denied).

Finally, Ms. Helming testified without contradiction that the Theories of Counseling course she successfully completed in 1989 actually proved useful to her and her students. Helming stated that since so many families have two parents working or they may have suffered through a divorce or the children in a family may be evidencing emotional problems, she believed that her newly acquired knowledge in the counseling field would help her to identify problems and answer questions that her students might raise which touch upon these family problems. Helming cited one example where this occurred, after Helming completed the counseling course: A divorced mother of one of Helming's students, who feared her former spouse might be abusing her child, requested that Helming observe the student's emotional/physical condition and report to the mother regarding the situation. In addition, Helming stated that the District does not provide counseling services for kindergarten students because the students are not physically present at school on the day the District's Counselor is present. Helming also stated that she has received advance Board approval for tuition reimbursement for a Developmental Reading class which she stated she believed to be relevant to her current teaching assignment. Helming stated, however, that she felt the counseling course she took in 1989 was more relevant to her teaching assignment than was the above-referenced Reading course.

POSITIONS OF THE PARTIES:

ASSOCIATION:

The Association argued that since Helming timely requested tuition reimbursement for the Theories of Counseling course, such should have been granted by the Board. Further, the Association asserted that once the Board approves a course for horizontal movement on the salary schedule, it is contractually obliged to reimburse the teacher for the course tuition. Thus, if a course is approved for credit on the salary schedule, pursuant to Article V G., that course must necessarily be relevant and apply to the education field such that tuition reimbursement should be granted as a matter

2/ The Board's minutes of its May 18 meeting do not list any reasons for its denial of Helming's request, or for its granting Englund's request for tuition reimbursement for the class relating to Gifted and Talented Education.

of course. The Association pointed to evidence from Helming that she had used the knowledge gained in the counseling course and that she felt it was relevant to her position with the District and to the field of education. Finally, the Association asserted that Helming's testimony relating to how she was treated by Englund should lead to a conclusion that she was treated with less consideration by Englund than were other teachers and that she was given less information regarding her options. This, the Union speculated, might tend to show that the Board was unfairly economizing on tuition reimbursement or that it was somehow offended by Helming's failure to appear at the May 18 hearing to defend her tuition reimbursement request.

In sum, the Association asserted that Articles V G., XII A.3. and B. should be read together to require that once horizontal movement is granted, tuition reimbursement must also be granted, and that the grievance should therefore be sustained and Helming reimbursed the \$330 for the 3-credit course she successfully completed in 1989.

BOARD:

The Board argued that the clear and unambiguous language of Article XII B. gives the Board the right to refuse a teacher's request for tuition reimbursement. The Board pointed out that there are no contractual limits on the Board's discretion to grant or deny such requests, and that the Board denied Ms. Helming's request based upon a reasoned and fair decision that the courses for which Helming requested reimbursement were not relevant to her position and did not otherwise suit the needs of the Board.

Because the Board argued that the contractual language at issue is clear, it contended that any evidence of past practice submitted by the Union is irrelevant. In addition, the Board argued that the Association had failed to prove the existence of any practice which would require the Board to pay for credit reimbursement in this case. On the contrary, the Board asserted, the "practice" proved tended to support the Board's arguments entirely here -- that the Board decides on a case-by-case basis whether a course is relevant or not and, therefore, whether to approve or deny tuition reimbursement.

Finally, the Board asserted that what Helming knew and what Helming did following her request for credit reimbursement is not relevant or material in this case. Nor is it relevant, the Board contended, whether Helming utilized some of the counseling techniques she had learned, during the 1989 school year. Thus, the Board sought denial and dismissal of the grievance.

DISCUSSION:

The District has argued that the language of Article XII B. is clear -- granting the District unfettered discretion to approve or deny tuition reimbursement requests. Based upon the entire record in this case, I cannot find that the District violated the collective bargaining agreement by denying Helming's reimbursement request.

I agree with the District's assertions that the language of Article XII B. is clear. I note in this regard that the only section of the relevant agreement which deals with tuition reimbursement directly is Article XII B. That provision contains no restrictions on the District's apparent discretion to approve or deny such requests for tuition reimbursement except that the teacher must have "successfully" completed the course for which the Board granted prior approval, as provided in the contract.

The Union has cited Articles V G. and XII A.3. as well as the fact that the District granted Helming horizontal advancement on the salary schedule as a basis for a finding that the District should have granted Helming's request for tuition reimbursement, as a matter of course. I disagree. Specifically, I note that Articles V G. and XII A.3. deal with separate provisions of the agreement, and neither of these provisions mentions tuition reimbursement. Rather, these provisions address themselves to the requirement that teachers gain credits in order to advance on the salary schedule (Article V G.) and the mechanics of how and when such horizontal movement will occur (Article XII A.3.). Thus, Article V G. states that to advance on the salary schedule, a teacher must gain prior Board approval for and must thereafter complete:

"6 semester hours of college credit each 5 years
from an accredited institution and in a relevant area
of education . . ." (emphases supplied).

Article XII A.3. specifically describes how and when horizontal movement on the salary schedule will occur and it adds:

" . . . No advancement will be given on the salary scale for
credits earned which do not apply to the education
field . . ." (emphasis supplied).

Nothing in Article V G. requires the District to take any action. Nor does this language prohibit the District from taking any action. Article V G., in

addition, does not address either tuition reimbursement or horizontal movement on the salary schedule for credits earned. Rather, this language appears to function in some descriptive fashion which appears to have no effect on the actual operation of the agreement. Therefore, I need not and do not intend to construe the quoted language of Article V G. herein.

In regard to the above-quoted portion of Article XII A.3., this language specifically prohibits the District from granting horizontal movement on the salary schedule for certain types of credits. Therefore, I must address the proper interpretation of this language in order to determine the validity of the Union's major argument here -- whether the District must grant tuition reimbursement whenever it grants horizontal movement.

In my view, the phrase, ". . . credits . . . which do not apply to the education field" as used in Article XII A.3. is ambiguous. In this context, "the education field" could refer to the gamut of courses applicable to the entire field of education. However, "the education field" could also refer to the particular specialty of education that a teacher is certified and/or assigned to teach and for which that teacher is paid. In this regard, I note that the language of Article XII A.3. could be construed broadly since it could refer generally to the entire field of education. Furthermore, I note that Article XII A.3. does not specifically refer to the teacher's field of education, or use a similar, more restrictive phrase.

Given the contractual ambiguity which exists here, the question appropriately arises whether, based upon past practice, the District should have granted Helming tuition reimbursement. It is axiomatic that evidence of past practice may only be admitted to alter, change, add to or explain contractual language where the contract is either silent on the point in issue or the existing language is ambiguous. The evidence of practice in this case indicates that the District has granted tuition reimbursement to bargaining unit teachers where they have requested same for courses that apply directly to their teaching assignments (Duesing and Gutknecht examples). The fact that the District granted Administrator/Physical Education Teacher Englund's 1989 request for tuition reimbursement does not require a different conclusion regarding the District's practice concerning tuition reimbursement. Englund's request for tuition reimbursement for a course in Gifted and Talented Childrens' Education is in my view relevant and directly related to Englund's duties as District Administrator. Based upon the evidence submitted in this case, I need not address whether such a course would directly apply to Englund's teaching assignment. 3/ Thus, the evidence of past practice submitted in this case tends to support a broad interpretation of Article XII A.3. as well as a finding that the District's actions regarding Helming were proper.

Based upon the entire record here, I believe the phrase "education field" should be broadly construed so that the only instance in which the Board would be prohibited from granting salary schedule movement would be in the rare case in which a course did not generally apply to the entire education field. There is, furthermore, nothing in this agreement which requires that the District grant tuition reimbursement whenever it grants horizontal movement on the salary schedule.

Although I have found that the District has discretion in the area of tuition reimbursement, this does not mean that the District is free to exercise this discretion without limitation. The District's actions here, under long-standing arbitral doctrine, are subject to scrutiny to determine whether those actions were discriminatory, arbitrary or capricious. In this regard, I note that Englund testified without contradiction regarding the events which occurred at the May 18 Board meeting. Furthermore, no evidence was presented here to show that Englund deliberately misled Helming regarding the District's normal procedure in determining whether tuition reimbursement should be granted. Furthermore, no evidence was offered to show that Englund for any reason wished to keep Helming from making her case for tuition reimbursement to the Board of Education. On the contrary, Englund stated that he believed he had treated Helming's request in the same manner and given her the same information that he normally gave all teachers who made such requests.

In addition, the fact that the District granted Englund's request for

3/ The fact that the District granted Mr. Englund's request for tuition reimbursement for a course that, on its face, does not appear to be related to his physical education teaching assignment does not require that a different result be reached in Helming's case. I note that Englund is also a member of the District's management team in his position as District Administrator. The Union failed to show why Mr. Englund's request for tuition reimbursement was made and why the District granted that request. In these circumstances and absent any direct evidence on the point, it is conceivable that the District granted the request for tuition reimbursement to Englund in his capacity as District Administrator, not pursuant to his teaching duties covered by the agreement.

tuition reimbursement in 1989 while denying Helming's request, does not show that the District discriminated against Helming. As stated above, a course in Gifted and Talented Education would be relevant to Englund's duties as District Administrator (as would be almost any course in the entire field of education). Thus, the Association failed to prove that the District's denial of tuition reimbursement and its grant of horizontal movement to Helming was done on a discriminatory basis, based upon the record evidence here.

Finally, the Association failed to prove that the District's denial of tuition reimbursement to Helming was either arbitrary or capricious. The Board of Education (according to undisputed testimony from Englund) specifically found that the courses Helming submitted for tuition reimbursement approval were not relevant to her teaching position and it thereupon denied her request for tuition reimbursement. As noted above, Englund asserted that he told Helming this reason for the Board of Education's denial of her request. In addition, I note that Helming made no inquiries regarding the Board's denial of her request for tuition reimbursement prior to filing the instant grievance herein. On these facts, the District's actions in denying Helming's request for tuition reimbursement while granting her movement on the salary schedule were neither arbitrary nor capricious.

Based upon all the evidence and arguments herein and my analysis thereof, I conclude that the District has not violated the agreement herein and I must deny and dismiss the instant grievance.

AWARD

The Board did not violate the collective bargaining agreement when it denied tuition reimbursement for Heidi Helming.

Dated at Madison, Wisconsin this 23rd day of February, 1990.

By _____
Sharon Gallagher Dobish, Arbitrator