

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
 :
COLEMAN EDUCATION ASSOCIATION : Case 22
 : No. 44418
 and : MA-6299
 :
COLEMAN SCHOOL DISTRICT :
 :

Appearances:

Mr. Lawrence Gerue, Executive Director, United Northeast Educators on behalf of the Association.
Mr. Dennis W. Rader, Godfrey & Kahn, S.C., on behalf of the District.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Association and the District respectively, are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was appointed by the Commission to hear the matter. Hearing was held on November 8, 1990 in Coleman, Wisconsin. The stenographic transcript was received on November 27, 1990. The parties completed their briefing schedule on January 17, 1991. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUES:

The parties, at hearing, framed the issues as follows:

1. Was the grievance timely filed?
2. Is the District required to recognize a course "Discipline With Love and Logic" offered through Aurora University taken by Carla Bushmaker for advancement on the salary schedule pursuant to the provisions of the collective bargaining agreement? If so, what is the appropriate remedy?

The parties further stipulated that in the event that the arbitrator finds the grievance to be untimely filed, she, nevertheless, will proceed to a decision on the merits. Furthermore, the parties agree that there will be no dismissal should it be concluded that the grievance was untimely filed and the parties agree that they will be bound by the determination as to the merits of the dispute.

RELEVANT CONTRACTUAL LANGUAGE

RELEVANT CONTRACT PROVISIONS

GRIEVANCE ADJUSTMENT

B. Procedures

1. The Grievant shall, within 10 days of the event giving rise to the grievance or knowledge of the event, submit the grievance to his principal, with or without representation. The principal shall give an answer within three days.

MANAGEMENT RIGHTS

The Board, unless otherwise herein provided, hereby retains and reserves unto itself, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Wisconsin, and of the United States, including, but without limiting the generality of the foregoing, the right:

- (1) To the executive management and administrative control of the school system and its properties and facilities, and the activities of its employees; as they relate to their employment.
- (2) To hire all employees and, subject to the

provisions of law, to determine their qualifications and the conditions for their continued employment, to relieve from duty because of lack of work, to discipline, demote or dismiss for proper cause, and transfer all such employees.

- (3) To establish grades and courses of instruction, including special programs and to provide for athletic, recreational and social events for students, all as deemed necessary or advisable by the Board.
- (4) To approve the means and methods of instruction, the selection of textbooks and other teaching materials.
- (5) To determine class schedules, hours of instruction, and the duties, responsibilities, and assignments of teachers and other employees with respect thereto.

The exercise of the foregoing powers, rights, authority duties and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement and Wisconsin Statutes; Section 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

Enumeration of the foregoing rights of the Board does not limit the negotiability of those items relating to wages, hours and conditions of work, in subsequent negotiations for renewal of the Agreement.

PROFESSIONAL COMPENSATION

III. ***

C. Salary Schedule Stipulation

1. A teacher anticipating earning credits which will effect his/her placement on the salary schedule shall so notify the Superintendent in writing on or before the 15th day of May. A form of this purpose shall be mutually agreed upon.
2.
 - a. Credits out of field must have prior written approval of the Board to count toward placement on the salary schedule. Out-of-field credits are those not normally offered through the schools of education, in the major field of the teacher, in the teaching assignment of the teacher.
 - b. Degree programs out-of-field must have prior written approval of the Board to be counted toward horizontal movement on the salary schedule. Once a degree program is approved, no further credit approval is necessary.
 - c. Stipulations (a) and (b) above shall be effective as of August 16, 1976. Any teacher presently employed by the Board and who is actively participating in a program as defined under previous contracts shall not lose their right to continue that program.
3. Credits affecting salary and/or certification must be filed with the Superintendent on or before October 1st.
4. Advancement on the salary schedule beyond

the Master's Degree or equivalent level must have Board approval or must be in the teaching field in which the teacher is assigned.

5. The Board has the right to approve any course for horizontal movement on the salary schedule that they feel will improve the quality of education.
6. Advancement on the salary schedule shall be limited to one (1) step per year.
7. No teacher above shall suffer a loss in salary to be placed on the 1989-89-1989-90 salary schedules. In the event that the Board has agreed to retain or hire special teachers in short supply, arrangements to pay above schedule shall be made through the association.

SCHOOL DISTRICT OF COLEMAN

SALARY SCHEDULE

1988-89

(SEE APPENDIX A)

FACTS:

The District employs the grievant, Carla Bushmaker, as a special education teacher in the area of learning disabilities. On November 7, 1989, the grievant requested approval of graduate credits for both reimbursement and lane advancement for a course entitled "Discipline With Love and Logic," hereinafter referred to as "Discipline." The request was denied in November. Notwithstanding the denial, Bushmaker attended the course which ran from December of 1989 through January of 1990. In April of 1990, Bushmaker sent a copy of her transcript with her grade in the course to the District. At the same time, she requested to be advanced one lane on the salary schedule. The District denied her request refusing to credit the "Discipline" course.

Bushmaker filed a grievance on May 16, 1990. The Association filed another on her behalf on May 23, 1990. The District denied both grievances as untimely and restated its position on the approval of out-of-field credits. On June 25, 1990, the Association advanced the grievance to arbitration before the undersigned.

POSITION OF THE PARTIES:

District

The District maintains that it is not required to credit this course for three reasons: 1) the grievance was not timely filed; 2) the Association is bound by its previous withdrawal of a grievance on the identical issue involved in the instant dispute; and 3) the District acted within its authority when it did not advance Bushmaker on the salary schedule after she completed the course "Discipline."

With respect to the untimely filing of the grievance, the District points to contract language requiring the grievant to submit a grievance to the principal within 10 days of the event giving rise to the grievance. It argues that the event giving rise to the grievance was the District's initial denial on or about November 7, 1989 based upon its determination that the course was not within the grievant's teaching field. The grievance was not filed within 10 days of November 7, and is therefore untimely according to the District.

The District's second argument is that the Association is bound by its previous withdrawal of an identical grievance. Citing Elkouri and Elkouri, How Arbitration Works, the District maintains that by not appealing the initial grievance further, the Association, in effect, withdrew the grievance. It submits that this voluntary withdrawal should be held binding and the grievance denied.

Finally, the District asserts that it acted within its authority when it did not approve the "Discipline" course for advancement on the salary schedule. It stresses that the District's past practice regarding approval of graduate credits and salary placement has been accepted by the Association. The District maintains that it has the discretion to determine whether the course is in the requesting teacher's field under its management rights clause and there is no evidence that the District abused its discretion when it determined that the course is not within the grievant's teaching field. It requests that the grievance be dismissed.

Association

With respect to the issue of timeliness, the Association disagrees with the District's claim that the grievance was not timely filed. It believes that there could be as many as four "trigger points" for the timely filing of the grievance. It argues that the grievant had no specific information which could have been used to counter Administrator Larmour's determination in November of 1989. It argues that the second point at which she might have filed was on December 12, 1989 when she had provided additional information to Larmour and he refused to reconsider his original decision. The third point at which the grievant could timely file was when she submitted a transcript, while the fourth point in time on which the grievance could be timely filed was after the first pay period of the 1990-1991 school year, when Larmour's decision would operate to her detriment. According to the Association, Larmour could have changed his mind and decided to accept the course at anytime up until this point. The Association argues that the arbitrator should not allow the District to be the sole determiner of the best time to initiate a grievance.

With respect to the merits of the grievance, the Association argues that the course "Discipline" is in the major field and/or teaching assignment of the grievant and did have direct application to her particular teaching assignment. While the Association agrees that the collective bargaining agreement gives the District Administrator the power to approve or disapprove out-of-field courses for advancement on the salary schedule and credit reimbursement, it also believes the Administrator must remain flexible when an employe is able to provide information which may negate his prior decision. This, it asserts, is one of those instances when the Administrator should have changed its mind.

The Association, as a remedy, requests appropriate lane placement and credit reimbursement for the grievant, who completed the disputed course.

DISCUSSION:

Timeliness

The agreement's grievance adjustment language as it defines the timely filing of a grievance is clear and unambiguous. It provides that the grievant shall, within 10 days of the event giving rise to the grievance or knowledge of the event, submit the grievance to his principal with or without representation. The underlying question here is what constitutes the event giving rise to the grievance. The Association argues ultimately that "the event" under these facts does not arise until the District fails to advance Bushmaker on the schedule by granting her credit during the 1990-1991 school year.

This argument is rejected. Employes routinely apply for District approval of courses which they wish to take anticipating District payment for said courses as well as credit for lane advancement. An employe's decision to take a course in the first place may very well depend on whether he or she may be assured of reimbursement and on whether said course will fulfill the requisites for lane advancement. The application is in writing as is the Administrator's approval or denial. The District's response to the Request for Approval form or the grievant's initial receipt of said response is the event which gives rise to the grievance. In cases where the employe does not initially receive the District's written response it is the receipt of the response which creates the knowledge of the event to which the contract language refers. While there is merit to the Association argument that the grievant may not possess the necessary course information to contest the Administrative determination at that time, the contract language does not address this difficulty. Furthermore, should the grievance be processed at this point, there is nothing to stop the grievant from securing a course description, syllabus, or statement from the instructor as to the relevance of the course to the field placement during the grievance process. Because the grievance was not filed within 10 days of the District's initial response the grievance is untimely.

However, because the parties have agreed that there will be no dismissal in the event that the grievance was found to be untimely and further agreed to be bound by a determination on the merits, the undersigned shall proceed to review the merits.

Merits

The Association concedes that the collective bargaining agreement gives the District Administrator the authority to approve or disapprove out-of-field courses for credit reimbursement. Thus the first issue to be addressed is whether "Discipline" is an in-field course and as such, not subject to approval or denial by the Administrator or an out-of-field course subject to Article III, C 1., 2., 3., and 5.

Pursuant to Article III, C 1., a teacher anticipating earning any credits which will affect his/her placement on the salary schedule shall notify the superintendent in writing on or before May 15. Subsection 2 provides that credits out-of-field must have prior written approval of the Board to count

toward placement on the salary schedule and defines out-of-field credits. By inference, credits which do not fall within the out-of-field credit definition are in-field credits and not subject to prior approval pursuant to subsection 2., but merely notification as provided in subsection 1.

Subsection 2.a. defines out-of-field credits as those not normally offered through schools of education, in the major field of the teacher in the teaching assignment of the teacher. Conversely, if the course is in the major field and in the teaching assignment of the teacher it is in-field credit. Bushmaker has been employed as a teacher in the area of learning disabilities, special education, for the District. She submitted a request for approval of the "Discipline" course in November of 1989. The District denied credit reimbursement and salary advancement claiming this was out-of-field credit. The grievant testified that she considered the course to be in-field. A letter from the instructor who taught the "Discipline" course contains evidence establishing that said course would be beneficial to special education teachers. Mere assertions on the part of the grievant and her instructor are insufficient to establish that "Discipline" as a course may be utilized as in-field credit in the special education/learning disabilities area. Proof that the course satisfies a degree requirement for a master's in that particular field, direct references in course outline/syllabus/brochures to the special education field or some other tangible evidence establishing relevancy is necessary for the undersigned to conclude that "Discipline" constitutes in-field credit in the special education area. The grievant and the Association have not met their burden in this respect so as to lead the undersigned to the conclusion that administrative approval pursuant to Article III, Sec. 2.a. is unnecessary.

Rather, because the Association has not established that this course must be automatically counted as in-field credit, the question then becomes one of reviewing the course as out-of-field credit pursuant to the guidelines set forth in the collective bargaining agreement. Section 2.a. requires prior approval by the administrator while Sec. 5 gives the District the right to approve any course for horizontal movement on the salary schedule which it feels will improve the quality of education.

There is no dispute between the parties with respect to the District's authority to approve or deny out-of-field courses for both credit reimbursement and salary advancement. The District has established that it routinely exercises its discretion in denying and approving course requests. There has been no showing that the District has abused its discretion by acting arbitrarily or capriciously in this case. Therefore, it is inappropriate for the arbitrator to substitute her judgment for that of the Administrator and she declines to do so.

Accordingly, it is my decision and award that

1. The grievance was not timely filed.
2. The District is not required pursuant to the collective bargaining agreement to recognize the course "Discipline With Love and Logic" offered through Aurora University taken by Carla Bushmaker for advancement on the salary schedule and/or credit reimbursement.

Dated at Madison, Wisconsin this 4th day of April, 1991.

By _____
Mary Jo Schiavoni, Arbitrator