BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
HOWARD-SUAMICO EDUCATION ASSOCIATION	Case 41 No. 45177 MA-6524
and	
HOWARD-SUAMICO SCHOOL DISTRICT	

Appearances:

Mr. Lawrence J. Gerue, Program Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, Wisconsin 54303, appearing on behalf of the Association.

Godfrey & Kahn, S.C., by Mr. Dennis W. Rader, Attorney at Law, Suite 600, 333 Main Street, Green Bay, Wisconsin 54301, appearing on behalf of the District.

ARBITRATION AWARD

Howard-Suamico Education Association, hereafter Association, and the Howard-Suamico School District, hereafter the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Association, with the concurrence of the Employer, requested the Wisconsin Employment Relations Commission, hereafter Commission, to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On February 15, 1991, the Commission designated Coleen A. Burns, a member of its staff, as Arbitrator. Hearing was held on March 25, 1991 in Green Bay, Wisconsin. The hearing was transcribed and the record was closed on May 28, 1991, upon receipt of post-hearing written argument.

ISSUE:

The District presents the following issue:

> Is the grievance arbitrable?

The parties have stipulated to the following statement of the issue:

> Did the District violate the Collective Bargaining Agreement when specific groups of school district employes attended an inservice on August 16, 17, and 21, 1990 and were not paid on a pro rata contract basis?

RELEVANT CONTRACT PROVISIONS:

> ARTICLE II -- MANAGEMENT RIGHTS
>
> A. The Board hereby retains and reserves unto itself, without limitation, 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 executive management and administrative control of the school system and its properties and facilities, and the professional activities of its employees;

2. To hire all employees and, subject to the provisions of law, to determine their qualifications and the conditions for their continued employment, of their dismissal or demotion, and to promote, 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 decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aids of every kind and nature;

5. To determine class schedules, the hours of instruction, and the duties, responsibilities, and assignments of teachers and other employees with respect thereto, and with respect to administrative and extra duty activities, and the terms and conditions of employment.

B. 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 judgement 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 thereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

ARTICLE IV -- GRIEVANCE PROCEDURE

A. Purpose -- The purpose of this procedure is to provide an orderly method of resolving differences arising during the term of this agreement. A determined effort shall be made to

settle any such differences through the use of the grievance procedure.

B. For the purpose of this Agreement, a grievance is defined as any complaint by a teacher, teachers and/or the Association regarding or relating to the interpretation, application or alleged violation of the terms of this Agreement.

C. Procedure --

1. An earnest effort shall first be made to settle the matter informally between the teacher and his building principal or in the instance where there is not a building principal involved, the immediate supervisor. The supervisor should be made aware that this complaint may result in a grievance.

2. If the matter is not resolved, the grievance shall be presented in writing by the teacher to the immediate supervisor within ten (10) days after the facts upon which the grievance is based first occurred or became known. The immediate supervisor shall give his written answer within (10) days of the time the grievance was presented to him in writing. Grievances shall be filed on forms set forth in Appendix "D".

3. If the grievance is not resolved after receipt of the reply from the immediate supervisor, it may be appealed to the District Administrator within five (5) days. The District Administrator shall give a written answer no later than five (5) days after receipt of the appeal.

4. If not resolved in step three above, the grievance may within five (5) days be appealed to the Board. The Board shall give a written answer within fifteen (15) days after receipt of the appeal. An employee who has been notified of a recommendation for dismissal or non-renewal of contract may process the grievance commencing at this fourth (4th) step. The grievant and the Association will be given the opportunity to meet with the Board prior to the Board's making their decision.

5. Unresolved grievances may be settled through binding arbitration.

(a) In order to process a grievance to binding arbitration, the following must be complied with:

(1) Written notice of a request for such arbitration shall be given to the Board within five (5) days of receipt of the Board's last answer.

(2) The matter must have been processed through the grievance procedure within the prescribed time limits.

(3) The issue must involve the interpreta-tion or application of a specific provision of this Agreement.

(b) Grievances involving the same account or same issue may be consolidated in one proceeding provided the grievances have been processed through the grievance procedure by the time arbitration is requested.

(c) Request for arbitration shall be to the Wisconsin Employment Relations Commission who shall designate a member of its staff as arbitrator. It is understood that the function of this arbitrator shall be to provide a binding opinion as to the interpretation and application of specific terms of this Agreement. This arbitrator shall not have power, without a specific written consent of the parties, to either advise on salary adjustments, except the improper applications thereof, or to issue any opinion that would have the parties add to, subtract from, modify or amend any terms of this Agreement.

(d) Each party shall bear the expenses of its representatives and witness in this hearing.

D. The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limit set out for in any step, the employee may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped.

E. The written grievance shall give a clear and concise statement of the alleged grievance, including the facts upon which the grievance is based, the issue involved, the specific

section(s) of the Agreement alleged to have been violated and the relief sought.

F. The employee representative may assist in processing the grievance in any step.

G. Saturday, Sunday, and legal holidays shall be excluded in computing time limits under this Article.

H. Up to an additional five (5) days may be requested by either party to any level beyond the second step of a grievance. Such request shall be granted with a reason given.

ARTICLE VI -- SALARY

M. All teachers who are employed by the Board to fulfill extended contracts shall do so by mutual agreement between both parties. Notice of such assignment shall be given no later than May 1. These extended contracts shall be reimbursed on a pro-rata daily rate. Employment beyond the teaching contract will be on a voluntary basis only. The pro-rata daily rate will be defined as follows:

Teacher's Scheduled Annual Teaching Salary = Pro-Rata Rate Daily Number of Contracted Days

Extended contracts are defined as any work performed by a bargaining unit member, which goes beyond the one-hundred eighty-seven (187) contracted days.

BACKGROUND

On August 9, 1990, Debra Gagnon, Principal of the new Forest Glen Elementary School, issued the following memo to employes who had been assigned to work at the school:

> A special workshop for all staff members of Forest Glen will be held at Rivers Bend, 792 Riverview Drive, at 8:00 a.m. on August 16 and 17. This will be the first time that all staff members will be under one roof, considering Forest Glen does not have a roof, that in itself is pretty amazing.
>
> It is my hope that this workshop will help us become better acquainted. Several activities have been planned to not only accomplish this goal but to help set a direction for our school. We have the perfect opportunity to set school philosophy, climate and goals for the year.
>
> Lunch will be served at noon with a dismissal time around 3:30 p.m. You will be compensated at a rate of $13.30 per hour. Please dress casual and bring

> your sense of humor. I can be reached at Bay View Middle School if you have any questions.
>
> * As of today, Forest Glen will be ready for students on August 23. Class Lists will be distributed on Friday.

On September 20, 1990, Kenneth Lehto, Chairman of the Teachers' Rights Committee, issued the following to Frederic Stieg, District Administrator:

> The teachers assigned to the new Forest Glen School were directed to attend a two-day in-service on August 16 and 17, 1990. Designated teachers from Bay Port and elementary team leaders were also directed to attend a one-day in-service on August 21, 1990.
>
> It is the Association's position that these days were beyond the teaching contract and should have been paid on a pro-rata basis.
>
> According to our contract (lines 00358-00363), "All teachers who are employed by the Board to fulfill extended contracts shall do so by mutual agreement between both parties. Notice of such assignment shall be given no later than May 1. These extended contracts shall be reimbursed on a pro-rata daily rate. Employment beyond the teaching contract will be on a voluntary basis only." The contract goes on to define extended contracts in lines 00368-00370, "Extended contracts are defined as any work performed by a bargaining unit member, which goes beyond the one-hundred eighty-seven (187) contracted days."
>
> This was brought to your attention by our Association's President, Sue Frozena and a request was made to have this rectified. We are now attempting to resolve this matter through our contract's grievance procedure.

On September 20, 1990, District Administrator Stieg issued the following to Teachers' Rights Committee Chairman Lehto:

> Your grievance regarding the alleged violation of the Master Agreement language in Article VI, Section M, lines 358-370 was received on Thursday, September 20, 1990.
>
> Your grievance is denied for the following reasons:
>
> 1. The grievance was not filed as per procedures stipulated in the Master Agreement.
>
> 2. The grievance was not filed within the time lines stipulated in the Master Agreement.
>
> 3. Pay given for grieved inservice activity was consistent with other district

inservice activities payment.

4. The inservice days were not extended contract days. Please note attached contracts that indicate an extended contract has been offered and accepted.

This alleged grievance is denied for these reasons as well as all other rights accorded to the district in the collective bargaining agreement.

On or about November 2, 1990, Teachers' Rights Committee Chairman Lehto issued the following to Dennis McKay, President of the District's Board of Education:

> Please find enclosed a copy of a grievance letter to Mr. Stieg and his response. As you can see, this action was initiated on September 20, 1990. When I met with Mr. Stieg about this matter, we agreed that maybe this issue could be resolved with a meeting involving the Association's negotiating team and Mr. Stieg. I have been informed that this doesn't seem to be possible, so we are now continuing the grievance process.
>
> What this grievance amounts to, is that several teachers throughout our District were directed to attend a two-day in-service on August 16 and 17, 1990. It is the Association's position that these days were beyond the teaching contract and should have been paid on a pro-rata basis.
>
> According to our contract (lines 00358-00363), "All teachers who are employed by the Board to fulfill extended contracts shall do so by mutual agreement between both parties. Notice of such assignment shall be given no later than May 1. These extended contracts shall be reimbursed on a pro-rata daily rate. Employment beyond the teaching contract will be on a voluntary basis only."
>
> In accordance with Article IV of the contract between the Board of Education and the Howard-Suamico Education Association, an attempt was made to resolve this difference during a meeting with Mr. Stieg. We are now taking the next step.

On or about November 29, 1990, District Administrator Stieg issued the following to Teachers' Rights Committee Chairman Lehto:

> The Board of Education reviewed your grievance and concluded that there is no violation of the Master Agreement.

On or about December 3, 1990, Teachers' Rights Committee Chairman Lehto issued the following to Board of Education President McKay:

> In accordance with Article IV of the contract between the Board of Education and the Howard-Suamico Education

> Association, an attempt was made to resolve the grievance regarding the in-service pay for teachers at Forest Glen on August 16 and 17. Some designated teachers from Bay Port and some elementary team leaders were also directed to attend a one-day in-service on August 21, 1990. It is the Association's position that these days were beyond the teaching contract and should have been paid on a pro-rata basis.
>
> We are hereby notifying you that we are requesting an arbitrator to settle this matter.

POSITIONS OF THE PARTIES

Association

Arbitrability

The Association does not agree with the District's claim that the grievance was not timely filed. The grievance was filed on September 20, 1990, five days after the payroll affected by the August inservice workshops was issued to the staff. As Mr. Lehto testified at hearing, he understood that there had been discussions between the Association President and the District Administrator concerning the issue of proper payment for the members who had attended the inservice. If these discussions had been successful, there would have been no need for a grievance to be filed.

The Association's position, that the grievance is timely, is supported by numerous arbitration awards. (Cites omitted) The cited cases should be sufficient to prove the point that advance notice of a management position is not necessarily the trigger to a grievance. Rather, the point at which the grievance timelines begins to run is when the event actually occurs. In this case, the triggering event is the September 15, 1990 payroll.

The Association did knowingly skip steps 1 and 2 of the grievance procedure. The reasons for this are very clear. Approximately 40 members were affected by this grievance and no school principal was in a position to effectively address the grievance. Therefore, the Association took the grievance directly to the only management person who had the authority to make a ruling which would have resolved the problem. Initiating the grievance at Step 1 and going through the whole process would have been pointless and would only have resulted in postponing a decision. There are several arbitration cases which have found that failure to implement all the steps of the grievance procedure was allowable when a policy-type grievance was involved. (Cite omitted) Moreover, the failure to follow steps 1 and 2 has not prejudiced the District in any way. The lower level management (school principals) would, in all likelihood, have consulted with the District Administrator before writing their responses to the grievance. Only the District Administrator had authority to change a level of pay for services rendered. A decision on the merits is extremely important to the parties. The Arbitrator should find the grievance to be arbitrable.

Merits

The timing of the inservice workshop is very significant in that it was held the Thursday and Friday prior to the first workday of the 1990-91 school year. The team service members inservice was held the day before the first

workday of the new school year. None of these days had ever been negotiated as part of the school calendar by the Association.

Requesting the bargaining unit members to attend special inservice workshops is tantamount to asking these members to agree to an extended contract. Under the provisions of Article VI M., bargaining unit employes were entitled to be paid at their pro rata rate.

Several bargaining unit members have worked during the summer months in differing capacities. The salary for Drivers Education work is determined by contract. The salary for curriculum work is determined by the Board. The work in dispute is neither Drivers Education work nor curriculum work. The work was labeled as inservice and, in fact, was inservice. The fact that the Association has acquiesced to the District regarding payment, at less than pro rata pay, for certain types of work of benefit to the District does not preclude the filing of the instant grievance.

Article VI, M. specifies a date certain, May 1, by which extended year contracts are to be issued. The Association is not choosing to make an issue of the May 1 deadline. Nevertheless, this violation does not excuse the District from following the remaining portions of the Article.

The Arbitrator should find that a contractual violation did occur and order the District to pay all bargaining unit members who participated in the August 16, 17 and 21st inservices on the basis of their individual pro rata salaries. Should the Arbitrator conclude that the grievance is not arbitrable, the Arbitrator should rule on the merits of the case in an advisory manner.

District

Arbitrability

The grievance is not arbitrable because the Association did not comply with the grievance procedure and did not file the grievance in a timely manner. As set forth in Article IV, Section C., the first effort to settle this grievance must have been accomplished informally between a teacher and a building principal. Since the grievance was presented directly to District Administrator Stieg, there is a per se violation of the grievance provision.

The Association has bypassed Step 1 and Step 2 of the grievance procedure. An appeal to Step 3 cannot be taken if the underlying required steps have not yet been accomplished. Having failed to follow the required steps, the Association has rendered the issue inarbitrable.

The memorandum of August 9, 1990, clearly notified the teachers that they would receive $13.30 per hour for attending the inservice held on August 16 and 17, 1990. The first notice to the District of its grievance was not filed until September 20, 1990. This was a span of 41 days, whereas the Agreement requires the filing of a grievance within ten days. When District Administrator Stieg responded to the grievance of September 20, 1990, he expressly stated "the grievance was not filed within the time limits stipulated in the Master Agreement."

As District Administrator Stieg testified at hearing, within a day or two before the first inservice, he was approached by a group of teachers who complained that they were entitled to be paid on a pro rata basis, rather than the $13.30 per hour. This fact provides additional proof that the teachers had knowledge of the facts underlying the grievance in August of 1990.

The facts did not change from August 9, 1990 through September 15, 1990. The occurrence of a payday was merely a ministerial act by the District which did not add additional facts or impact the effect upon the teachers. August 9, 1990 is the proper date for the timelines to begin for the purpose of determining whether or not this grievance was timely filed. The grievance is untimely and, therefore, the Arbitrator does not have jurisdiction to hear this case.

Merits

The contract language concerning extended contracts refers to a mutual agreement between the District and the teachers to fulfill extended contracts. Where, as here, the meaning of the contract is plain, there is no need to resort to rules of construction. Parties to a labor agreement are held to understand the significance of its clear language and, consequently, the clear meaning of contract language should be enforced.

Article VI, Section M., states "Notice of assignments for extended contracts shall be received no later than May 1." This infers "extension" at the end of the teaching contract, not at the beginning of the contract as was argued by the Association. The Notice of Assignment was not given prior to May 1. It is illogical to try to extend that which has not yet begun, but that is a conclusion one must arrive at in order to conclude that a violation of the agreement occurred.

Consideration of "past practice" is particularly appropriate if the practice in question does not conflict with express provisions of the labor agreement and such considerations will be of assistance in resolving an ambiguous point in the agreement. Administrator Stieg testified at hearing that he has been at the District since the summer of 1985 and that, since that date, new teachers have attended an inservice on the drug and alcohol program. The new teachers were not paid as an extension of a contract, but rather at a rate similar to that paid in this instance. Payment of inservice activities at an hourly rate has been unequivocal, has been clearly enunciated and acted upon, and has been readily ascertainable over a reasonable period of time as a fixed and established practice of the parties. The District has not received any grievances based upon the numerous times teachers were paid at the substitute teacher rates for inservice activities during the summertime.

To obtain relief, the Association must prove that attending an inservice is the type of activity which can be covered by an extended contract. The Association has failed to present any evidence that would support its argument that the inservice was an extension of the individual teaching contract. The testimony of District witnesses establish that extended contracts have historically been extensions of teaching duties and have not been utilized for inservice activities. A fundamental difference between an extended contract and an inservice is the fact that extended teaching contracts are budgeted for by the District.

Driver Education and curriculum work is arguably more close to extended contract work than inservice. At least, it relates to active teacher effort being expended in delivering an educational product. There is no argument that Driver Education and curriculum work is improperly compensated.

DISCUSSION

Arbitrability

Employes who attended the August 16 and 17, 1990 inservices were sent a memo, dated August 9, 1990, which advised the employes that they would be compensated at the rate of $13.30 per hour for attendance at these inservices. It is evident, therefore, that at some point in time between August 9, 1990 and the date of the first inservice on August 16, 1990, employes who attended this inservice were notified of the District's intent to compensate the employes at the rate of $13.30 per hour. The employes who attended the August 16 and 17, 1990 inservices, as well as the employes who attended the August 21, 1990 inservice, received payment for attendance at the inservices on September 15, 1990. 1/

Article IV, C, contains a five step grievance procedure culminating in arbitration. Article IV, C(1), contains Step One of the grievance procedure and provides as follows:

> 1. An earnest effort shall first be made to settle the matter informally between the teacher and his building principal or in the instance where there is not a building principal involved, the immediate supervisor. The supervisor should be made aware that this complaint may result in a grievance.

Article IV, C(2), contains Step Two of the grievance procedure and provides as follows:

> 2. If the matter is not resolved, the grievance shall be presented in writing by the teacher to the immediate supervisor within ten (10) days after the facts upon which the grievance is based first occurred or became known. The immediate super-visor shall give his written answer within (10) days of the time the grievance was presented to him in writing. Grievances shall be filed on forms set forth in Appendix "D".

The District maintains that the ten day time limit set forth in Article IV, C(2), began in August of 1990 when the employes received notification of the District's intent to compensate the employes at the rate of $13.30 per hours. The Association argues that the ten day time limit began on September 15, 1990, when the employes received payment for attendance at the August inservices.

Where as here, an employer announces its intention to do a certain act, but does not do the act until a later date, arbitrators have held that the occurrence giving rise to the grievance is the later date. 2/ To hold

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1/ The memo of August 9, 1990 does not reference the August 21, 1990 inservice. The employes who attended the August 21, 1990 inservice were paid a flat rate of $100. It is not clear that these employes were aware of this rate prior to September 15, 1990, the date on which they were paid for the inservice.

2/ See Genesco Community Unit School District, 75 LA 131 (Berman, 1980) and cases cited therein.

otherwise would be to encourage the filing of premature grievances in that, during the interval between the announcement of the intent to do a certain act and the consummation of the act, an employer has an opportunity to change its mind. Applying this principle to the present case, the undersigned is persuaded that the ten day time limit for filing the written grievance at Step Two commenced on September 15, 1990, the date on which the employes received payment for their attendance at the August inservice meetings.

Since the Association's written grievance was presented on September 20, 1990, it was presented within the ten day time limit set forth in Article IV, C(2) . However, as the Association acknowledges, the Association did not file the written grievance at Step Two. As the Association further acknowledges, it bypassed Steps One and Two of the grievance procedure and filed the written grievance at Step Three which provides as follows:

> 3. If the grievance is not resolved after receipt of the reply from the immediate supervisor, it may be appealed to the District Administrator within five (5) days. The District Administrator shall give a written answer no later than five (5) days after receipt of the appeal.

The District, contrary to the Association, argues that the Association's failure to process the grievance at Step One and Step Two of the grievance procedure precludes the arbitrator from asserting jurisdiction to decide the merits of the grievance.

The Association argues that the grievance procedure language should be construed against forfeiture of the right to process a grievance to arbitration. The Association further argues that its decision to bypass Steps One and Two of the grievance procedure was reasonable because the District Administrator was the only management representative with authority to resolve the District-wide issue presented in the grievance. According to the Association, it would have been pointless to process the grievance at Step One and Step Two and that such processing would have caused unreasonable delay. Relying upon its assertion that lower level supervisors did not have authority to resolve the grievance, the Association denies that the District was prejudiced by the Association's conduct.

As stated above, Article IV contains a five step grievance procedure. Article IV, Section D, provides as follows: "The parties agree to follow each of the foregoing steps in the processing of a grievance." One of the "foregoing steps," Step Four, provides, inter alia, that "An employee who has been notified of a recommendation for dismissal or non-renewal of contract may process the grievance commencing at this fourth (4th) step." Given this language, it is reasonable to conclude that if the parties had intended a grievant to have the right to bypass Steps One and Two and file a grievance with the District Administrator at Step Three, then the parties would have expressly provided such a right. As a review of Article IV discloses, the Article does not expressly provide the Association with the right to bypass Steps One and Two of the grievance procedure in matters involving a District-wide policy, or for any other reason.

In summary, the plain language of Article IV provides a five step grievance procedure and imposes a duty to follow each step of this grievance procedure. The one exception to the duty to follow each step of the grievance procedure, contained in Step Four, is not applicable to the instant case.

At hearing, Kenneth Lehto, the Association's Teachers Rights Grievance Chairperson, stated that the Association decided to bypass Steps One and Two of the grievance procedure because (1) the affected teachers had different principals and there was a question as to which principal should receive the grievance (2) questions of pay were normally decided by the District Office and (3) Association representatives had told Lehto that the Association President had tried to resolve the matter with the District Administrator and Lehto assumed, therefore, that there would be no point in going back to the principals. The District Administrator stated that he could not recall having had the discussion with the Association President, but that if he had such a discussion, he would not have agreed to modify the grievance procedure. 3/

Lehto does not claim, and the record does not demonstrate, that the District Administrator, or any other District representative, agreed that the Association could bypass Steps One and Two of the grievance procedure. 4/ Neither does the Association argue, nor the record demonstrate, that the parties have a practice of bypassing steps in the grievance procedure.

Giving effect to the plain language of the Article IV, the undersigned concludes that the Association violated the provisions of Article IV when it bypassed Steps One and Two of the grievance procedure and filed the written grievance at Step Three. Given this contract violation, the undersigned rejects the Association's claim that it was reasonable to bypass Steps One and Two of the grievance procedure. The undersigned turns to the issue of whether this violation precludes the undersigned from asserting jurisdiction to decide the merits of the grievance.

Article IV, C(5)a, provides as follows:

> (a) In order to process a grievance to binding arbitration, the following must be complied with:
>
> (1) Written notice of a request for such arbitration shall be given to the Board within five (5) days of receipt of the Board's last answer.
>
> (2) The matter must have been processed through the grievance procedure within the prescribed time limits.
>
> (3) The issue must involve the interpretation or application of a specific provision of this Agreement.

Paragraph Two of Article IV, C(5)a, imposes a two-fold requirement, i.e., the matter must be processed through the grievance procedure and such processing must be within the prescribed time limits. In the present case, the Association bypassed Steps One and Two of the grievance procedure and filed the

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3/ The Association President did not testify at hearing.

4/ Indeed, when the District Administrator responded to the written grievance of September 20, 1990, he stated that "the grievance was not filed as per procedures stipulated in the Master Agreement."

written grievance at Step Three. It must be concluded, therefore, that the Association did not process the matter through the grievance procedure. Since the Association did not process the matter through the grievance procedure, the Association did not comply with Paragraph Two of Article IV, C(5)a. Having failed to comply with Paragraph Two of Article IV, C(5)a, the Association does not have a right to process the grievance to binding arbitration.

As a general principle, contract language is liberally construed against forfeiture and in favor of a grievant's right to process a grievance to arbitration. This general principle, however, does not provide the undersigned with the right to ignore clear contract language. Giving effect to the clear language of Article IV, the undersigned concludes that the Association's failure to process the grievance at Steps One and Two of the grievance procedure precludes the Association from processing the grievance to arbitration.

Absent the consent of both parties, the undersigned does not have jurisdiction to issue an advisory opinion on the merits of the grievance. Since the District has not agreed to the Association's request for an advisory opinion on the merits of the grievance, the undersigned has not issued such an opinion.

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

AWARD

1. The grievance is not arbitrable.

2. The grievance is dismissed.

Dated at Madison, Wisconsin this 24th day of July, 1991.

By _____
Coleen A. Burns, Arbitrator