BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
CRANDON EDUCATION ASSOCIATION	Case 17 No. 45312 MA- 6558
and	
SCHOOL DISTRICT OF CRANDON	

Appearances:
Mr. R. A. Arends, Executive Director, WEAC Uniserv Council No. 21, P. O. Box 1030, Marinette, Wisconsin 54143, appearing on behalf of the As
Mr. Steve Garbowicz, Drager, O'Brien, Anderson, Burgy & Garbowicz, Attorneys at Law, P. O. Box 639, Eagle River, Wisconsin 54521, appear

ARBITRATION AWARD

Pursuant to a request by Crandon Education Association, hereinafter referred to as the Association, and the subsequent concurrence by the School District of Crandon, hereinafter referred to as the District, the undersigned was appointed arbitrator by the Wisconsin Employment Relations Commission on March 7, 1991, pursuant to the procedure contained in the grievance/arbitration provisions of the parties' collective bargaining agreement, to hear and decide a dispute as specified below. A hearing was conducted by the undersigned on May 14, 1991, at Crandon, Wisconsin. The hearing was transcribed. The parties completed their briefing schedule on July 1, 1991.

ISSUES:

Since the parties were unable to jointly stipulate as to the issues, I have framed the issues as follows:

1. Did the District violate the collective bargaining agreement by failing to give the grievants credit for their private school teaching experience toward placement on the 1990-91 salary schedule?

2. If so, what is the appropriate remedy?

FACTUAL BACKGROUND:

The District hired Judith Guckenberg and Susan Stefonek, herein grievants, in August of 1990 to teach during the 1990-91 school year. Both teachers were denied salary schedule placement credit for their private parochial school experience by District Administrator Robert Jaeger.

Harold Nickel was District Administrator for about fifteen years prior to the time (1986) Jaeger took over. Nickel did not allow private/parochial school experience to be utilized in determining salary schedule placement during his tenure as District Administrator. The Association was unaware of the District's policy and practice denying credit for private/parochial school experience on the salary schedule during Nickel's tenure as District Administrator.

There have been at least four individuals hired in the last five or six years in the Crandon School District who did not receive credit for their private school teaching experience. Of those individuals, the Association was

aware of two of their situations. Roger Margolofsky, who was employed in the 1986-87 school year, did not receive credit for four years of teaching experience for teaching in a private/parochial school. Margolofsky informed the Association grievance committee that he had been denied credit on the salary schedule for private school teaching experience. Said committee told Margolofsky to talk to the District about the problem. Thereafter, Margolofsky informed the committee that the matter had been remedied and the committee did not pursue it any further.

Another employee, Jennifer Novak, was hired by the District and employed for one or two years; and was also not given credit for private school teaching experience. The Association grievance committee became aware of that fact toward the end of the 1989-90 school year. They contacted high school principal Don Fritcher and complained that Novak was improperly placed on the salary schedule. Fritcher's response was that she was on the proper step because of her parochial school experience. Thereafter, Novak resigned and the Association grievance committee did not pursue the matter any further.

Because of the Novak experience, the Association grievance committee decided to sit down with new teachers for the next school year to discuss their placement on the salary schedule. As a result, the Committee found the problem with the aforesaid grievants which led to the filing of the instant grievances.

Since the instant grievances were filed, the Association has also brought the matter up in negotiations.

PERTINENT CONTRACTUAL PROVISIONS:

ARTICLE I

RECOGNITION

> The provisions of this agreement shall be applicable to all regular certified full time and part time (not including substitutes) non-supervisory teaching personnel employed by the Board of Education of the School District of Crandon, Crandon, Wisconsin, including classroom teachers, librarians, special teachers and guidance personnel.
>
> The superintendent, assistant superintendent, principals, assistant principals and district curriculum coordinator are excluded from this coverage.

ARTICLE II

MANAGEMENT RIGHTS

> A. The Board, on its behalf and on behalf of the School District, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and constitution of the State of Wisconsin and of the United States, including but without limiting, the generality of the foregoing, the right:
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> . . .

2. To hire all employees subject to the provisions of law, to determine their qualifications and the conditions of their continued employment, or their dismissal or demotion, and to promote and transfer all such employees.

. . .

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 the Wisconsin Statutes, Section 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution of Laws of the State of Wisconsin and the United States of America.

. . .

ARTICLE XI I

DISCIPLINE PROCEDURE

. . .

B. No teacher shall be discharged, non-renewed, suspended, disciplined, reprimanded or reduced in rank or compensation without just cause. All information forming the basis for any such action will be made available to the teacher.

. . .

ARTICLE XXIX

COMPENSATION

A. The basic salaries of teachers covered by this agreement are set forth in Appendix D which is attached to and incorporated in this agreement. Such salary schedule shall remain in effect during the term of this agreement.

. . .

C. All full time teachers shall be placed on the step of the schedule appropriate to their earned degrees, credits and experience.

. . .

E. Credit on the salary schedule for experience outside of the School District shall be for the first eight (8) years.

. . .

ARTICLE XXX

GENERAL PROVISIONS

D. This agreement shall supersede any rules, regulations or practices of the Board which shall be contrary to or inconsistent with its terms. The provisions of this agreement shall be incorporated into and be considered part of the established policies of the Board.

ASSOCIATION'S POSITION:

The Association primarily relies on the language of Article XXIX to support its position. In this regard, the Association argues that the grievants are entitled to the annual compensation which is specified in the agreement and that they "shall be placed on the step of the schedule appropriate to their earned degrees, credits and experience," according to Article XXIX, Section C. The Association adds that Article XXIX, Section E defines how many years, at maximum, shall be allowed for initial schedule placement, if the experience is gained outside the District. The Association maintains that the aforesaid contract language is clear and allows no discretion on the part of the District to ignore the prior private/parochial school "experience" of the grievants when placing them on the salary schedule. The Association argues the industry practice is that one "school year" of experience places a teacher one step higher on the pay scale, regardless whether that experience was gained at a private/parochial school or a public school. The Association claims the industry practice has been followed in the District except in the instant case.

The Association maintains that if the Arbitrator agrees with its interpretation of the disputed contractual language he cannot look at the past practice relied upon by the District. Assuming arguendo that the Arbitrator can look to past practice, the Association claims that past practice is not binding in the instant case because: one, the past practice herein was not done with the knowledge and assent of the Association; and two, the past practice cited herein was not long standing.

The Association adds that there is no bargaining history which supports the District's interpretation of the disputed language. The Association also notes that Article XXX prohibits the Arbitrator from considering the past practice if he agrees with the Association's interpretation of Article XXIX.

The Association further argues that the District reduced the grievants in compensation without just cause in violation of Article XII.

Finally, the Association rejects the District's reliance on Article II, the management rights clause, as giving it discretion with respect to the "experience" it credits when initially placing teachers on the salary schedule. The Association believes the District's discretion is limited by the clear requirements of Article XXIX herein.

For a remedy, the Association requests that the Arbitrator order the District to place the grievants at the proper step on the salary schedule and to make them whole by paying Judith Guckenberg $1999.00 in back pay and $165.00 in interest and by paying Susan Stefonek $5193.00 in back pay and $428.00 in interest.

DISTRICT'S POSITION:

The District basically maintains that Article XXIX, Section C, which provides that teachers are to receive their appropriate placement on the salary schedule in accordance with their earned degrees, credits and "experience", allows the District to determine what experience shall be. The District reaches this conclusion for the following reasons: one, "experience" is not defined in the agreement; two, certain experiences qualify one or provide one experience to teach in another setting, others do not; three, under the management rights clause, the District is entitled to determine the qualifications of individuals in the District and to take those qualifications and place teachers appropriately on the salary schedule based on what the District construes the proper and necessary experience to be to teach in the Crandon School District; four, the District has established a policy that private/parochial teaching experience has not been considered the equivalent of public school teaching experience and therefore credit for teaching in those types of schools has not been allowed towards placement on the salary schedule in the District; and five, the District has a past practice of hiring individuals who did not receive credit for their private school teaching experience.

The District adds that the Association has had, in fact, actual knowledge of a past practice on at least two different instances in the space of five years and chose to do nothing despite the fact that both issues, while maybe not grievable, could have been brought up in negotiations.

In conclusion, the District maintains that the disputed contract language is unclear; that the District has the authority to determine what "experience" is given credit toward placement on the salary schedule; that past practice controls and is binding in the instant case; and that the grievances should be denied and dismissed.

DISCUSSION:

There are no procedural issues and the instant dispute is properly before the Arbitrator for a final and binding decision on the merits pursuant to the terms of the parties' collective bargaining agreement.

At issue is whether the grievants should receive credit for their private and/or parochial school teaching experience toward placement on the salary schedule. The Association argues that Article XXIX is clear in its requirement that the grievants receive credit for their private school teaching experience. The District takes the opposite position. For the reasons listed below, the Arbitrator agrees with the District's position.

In this regard, the Arbitrator notes, contrary to the Association's assertion, that the language of Article XXIX is ambiguous and subject to differing interpretations with respect to what exactly is meant by the phrase: "All full time teachers shall be placed on the step of the schedule appropriate to their earned degrees, credits and experience." While it is true, as alleged by the Association, that credit on the salary schedule for experience outside the District shall be limited to the first eight (8) years when initially placing a teacher on the salary schedule, nowhere does it specifically define what is meant by the term "experience." Nor does the agreement say exactly how "experience" is to be credited on the salary schedule. Since the agreement does not define what is meant by "experience", the Arbitrator is free to look to past practice to give meaning to the language.

The record is clear that the District has a past practice of not awarding

credit to teachers for their private/parochial school teaching experience. The practice of not crediting teaching in those types of schools towards placement on the salary schedule in the District is longstanding (at least five years, if not longer 1/) and mutual. In this regard, the Arbitrator notes that the Association was aware of at least two individuals who did not receive credit for their private/parochial school teaching experience and chose not to pursue the matter past the oral stage of the grievance procedure or bring the matter up in negotiations. 2/

The Association claims that the industry practice is that one "school year" of experience, public or private school, places a teacher one step higher on the pay scale. However, the Association introduced no persuasive evidence of such practice applicable in the instant dispute. In addition, the District did not reduce the grievants' compensation without just cause within the meaning of Article XII since it acted according to past practice as noted above; and, contrary to the Association's assertion, within its authority under Article II, Management Rights.

Based on all of the above, and absent any persuasive evidence to the contrary, the Arbitrator finds that the answer to the issue as framed by the undersigned is NO, the District did not violate the collective bargaining agreement by failing to give the grievants credit for their private school teaching experience towards placement on the 1990-91 salary schedule, and it is my

AWARD

The instant grievances are denied and the matter is dismissed.

Dated at Madison, Wisconsin this 8th day of August, 1991.

1/ The District provided testimony, unrefuted by the Association, that it was the practice and policy of the District for fifteen years prior to 1986 to disallow private/parochial school experience to be utilized in determining salary schedule placement.

2/ Although the Association was unaware of District Administrator Nickel's practice of failing to give teachers credit for their private school teaching experience on the salary schedule, I am of the opinion the Association "should have reasonably known" of a practice that went on for at least fifteen years. As Evelyn Kisvonan, Association President and a member of the negotiating committee since approximately 1974, acknowledged: "The union's job or purpose here is to make sure everyone's getting paid their proper amount of salary. . . ." Tr 60-61.

By _____
Dennis P. McGilligan, Arbitrator