BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTH CENTRAL FACULTY ASSOCIATION	Case 40 No. 45260 MA-6542
and	
NORTH CENTRAL VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT BOARD	

Appearances:
Mr. Thomas J. Coffey, Executive Director, Central Wisconsin UniServ Council-North
Mr. Dean R. Dietrich, at hearing and on brief, and Mr. Jeffrey T. Jones, on brief, Ruc
and Adult Education District Board.

ARBITRATION AWARD

North Central Faculty Association (hereinafter Association) and North Central Vocational, Technical and Adult Education District Board (hereinafter District) have been parties to a collective bargaining agreement at all times relevant to this matter. Said agreement provides for arbitration of unresolved grievances by an impartial arbitrator appointed by the Wisconsin Employment Relations Commission (hereinafter Commission) from its staff. On February 4, 1991, the Association filed a request with the Commission to initiate grievance arbitration, which request was concurred in by the District on March 4, 1991. On March 7, 1991, the Commission appointed James W. Engmann, a member of its staff, as the impartial arbitrator in this matter. A hearing was held on May 7, 1991, in Wausau, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was not transcribed. The parties filed briefs and reply briefs, the last of which was received on June 24, 1991. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

STATEMENT OF FACTS

In October 1980, the District hired Mary Ann Van Slyke (hereinafter Grievant) as a part-time economics instructor, at which time the District placed her at Column III, Step 6, of the salary schedule. Consistent with the agreement, the Grievant was included in the bargaining unit. In each year thereafter, the District advanced the Grievant one step on the salary schedule, although her salary was pro rated based upon her part-time teaching load.

At the end of the 1989-90 school year, a full-time economics instructor opted for early retirement. Sometime before July 6, 1990, the District internally posted a position announcement for the full-time position of economics instructor. The District also recruited candidates outside the school through newspaper advertisements and notices of the position opening routed to all other VTAE Districts and job service agencies. The Grievant applied for the position and, pursuant to the agreement, was interviewed for the position. Other than the right to be given an opportunity for a personal interview, the District was not contractually required to give the Grievant any special consideration because of her bargaining unit member status.

The interviewing committee rated the Grievant as the number one candidate for the position. On July 30, 1990, a representative of the District telephoned the Grievant and offered her the full-time economics instructor position. At that time, the Grievant was on Step 13 as a part-time instructor. Based on budgetary considerations, the District advised the Grievant that her

placement would be at Step 9 as a full-time instructor. The Grievant advised the District that she did not believe she deserved placement at Step 9 because she had been placed at Step 13 as a part-time employe. The Grievant further stated that she was not happy with her placement on the salary schedule but that she would take the position.

On August 13, 1990, the Grievant signed an "Instructor's Contract" for the 1990-91 school year accepting the full-time economics instructor position. According to said contract, the Grievant was placed on Column VI, Step 9, of the salary schedule. On her contract, the Grievant noted, however, that as a condition of acceptance, she assumed she would receive horizontal advancement on the salary schedule for six graduate credits in economics which she was required to take per year for the next three years and an adjustment to reflect additional pay for any class overload and "ITV".

On November 26, 1990, the Grievant initiated the grievance process leading to the filing of the Grievance underlying this dispute. The Grievance was processed through the various levels of the grievance procedure and is now before the Arbitrator for resolution. At no time prior to hearing did the District raise the issue of timeliness of the filing of the grievance.

PERTINENT CONTRACT LANGUAGE

ARTICLE 1 AUTHORITY OF BOARD

The Board, on its own behalf and on behalf of the electors of the District, except to the extent expressly abridged, delegated or modified by a specific provision of this agreement, reserves and retains solely and exclusively all of the rights, power and authority it had prior to the execution of this agreement. The rights listed below in this article are illustrative of the powers retained by the Board and are not intended as an all inclusive list.

. . .

D.To employ all personnel and determine their qualifications, the conditions of their continued employment, promotion or demotion, or to transfer or reassign personnel for the educational welfare of the District.

. . .

ARTICLE II RECOGNITION AND SCOPE

A.Recognition

1.Pursuant to the resolution of the Board adopted June 12, 1973, the Board recognized the Association as the exclusive collective bargaining representative of all certified personnel employed by the North Central Vocational, Technical and Adult Education District Board excluding confidential, managerial and supervisory employees.

2.The following positions are specifically included in the bargaining unit.

a.Counselors

b.Regular part-time instructors (Appendix "A")

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ARTICLE III CONDITIONS OF EMPLOYMENT

A.The Salary Schedule set forth in Appendix "E" is a part of this agreement.

B.Initial placement on the Salary Schedule

1.The Director is authorized to evaluate the prospective faculty member's past educational, occupational and instructional experience and competency, and place the individual on the salary schedule at a step that, in his opinion, is fair and just.

2.No re-evaluation or change can be made, based on the past history of the faculty member's educational, occupational or instructional experience, after initial placement on the salary schedule unless the faculty member's duties are changed to another area of certification.

. . .

F.Seniority

1.Full-time seniority

a.Seniority is the length of service as an instructor or counselor in the District based on the date of hire. In the case of equal years of service, the tie shall be broken by applying the following criteria in the stated order:

. . .

2.Part-time seniority

a.Part-time seniority is the years of service as an instructor based on the following: instructors employed as regular part-time instructors for two consecutive semesters shall acquire part-time seniority with the beginning of the third consecutive semester, retroactive to the first semester. In the case of equal part-time seniority, the tie shall be broken by a fair drawing.

. . .

c.Nothing in this provision shall provide a guarantee of any instructional assignment to part-time instructors.

. . .

G.Layoff

. . .

4.Displacement for Courses in Two-year State-Approved Associate Degree Programs (aid code 10) and One- or Two-Year State-Approved Vocational Diploma Programs (aid codes 31 and 32)

. . .

m.Part-time instructors have no displacement rights.

. . .

ARTICLE VIII PROFESSIONAL POLICIES

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F.Job Posting

1.A vacancy in a permanent full-time bargaining unit position occurs when the District elects to fill a position or creates a new position.

2.A vacancy shall be posted and a copy given to the president of the Association.

3.The posting notice shall be the "Position Opening" sheet.

4.Each applicant who is presently a member of the bargaining unit and who meets the qualifications as stated on the "Position Opening" sheet shall be given an opportunity for a personal interview.

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ARTICLE X GRIEVANCE PROCEDURE

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B.Definitions

1.A "grievance" is a request for interpretation or claim of a violation of a specific article or section of the professional contract supplement agreement.

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C.General Procedures

1.Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

. . .

D.Faculty Initiation of Grievances

1.Step One

a.After an earnest informal attempt has been made by the Grievant with his/her immediate supervisor to solve his/her grievance, he/she may initiate the first formal step of the grievance procedure. To do so he/she shall present a written "statement of grievance" to the Vice President - Academic Affairs no later than fifteen days after the facts or incident first occurred upon which the grievance is based. On that same date copies of the written "statement of grievance" shall be given to the Association and placed in the "grievance file".

. . .

F.Arbitration

1.The sole function of the arbitrator shall be to determine whether or not the rights of the Grievant have been violated by the Board contrary to an express provision of the Professional Contract Supplement Agreement.

2.The arbitrator will confer with representatives of the Board and the Grievance Committee, and hold hearings promptly, and will issue his/her decision on a timely basis. The arbitrator's decision will be in writing and will set forth findings of fact, reasoning and conclusions of the issues submitted. The arbitrator will be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violation (sic) of the terms of this agreement. The arbitrator shall have no authority to add to, subtract from, or modify this agreement in any way.

. . .

APPENDIX "A" REGULAR PART-TIME INSTRUCTORS

. . .

4. Regular part-time instructors shall not be included in Article III, D.2., E.1.e., F., G.

5. Because of the nature of part-time positions, regular part-time instructor's conditions of employment may vary from semester to semester, and year to year.

ISSUE

The parties were unable to stipulate to a framing of the issue at hearing. The Association frames the issue as follows:

> Did the District violate Article III, Section B, Paragraph 2 of the collective bargaining agreement by its revised placement of Mary Ann Van Slyke on Step 9 for 1990-91? If so, what is the remedy?

The District frames the issue as follows:

> Whether the District violated the collective bargaining agreement by its placement of May Ann Van Sylke on Step 9 for 1990-91? If so, what is the appropriate remedy?

The parties agreed at hearing that the Arbitrator would frame the issue in the Award. The Arbitrator frames the issue as follows:

> Did the District violate Article III, Section B, Paragraph 2 of the collective bargaining agreement by its placement of the Grievant on Step 9 for 1990-91? If so, what is the appropriate remedy?

POSITION OF THE PARTIES

Association

On brief, the Association argues that the language is clear and unambiguous; that if the Arbitrator needs further guidance, the established past practice of the District supports the Association position; that the District's replies to the grievance and arguments at the hearing appear as inconsistent assertions of convenience attempting to ignore the clear language of the contract; that the District's procedural objection is without merit; and that

the Arbitrator should sustain the grievance, order a Step 14, Column VII salary schedule placement for 1990-91, and reimbursement for improper payment during the pendency of this grievance at 12% daily compound interest.

On reply brief, the Association argues that the Districts belated argument on timeliness is without merit; that the evidence in this case establishes that the parties stipulated at the beginning of the hearing that the substantive issue was properly before the arbitrator; that not only were no timeliness objections raised by the District in processing the grievance prior to arbitration, but the parties were well into the hearing before the issue was raised by the District; that pre-arbitral grievance processing engaged in without any reference to procedural noncompliance waives such procedural requirements; and that the District's timeliness argument also fails because of the continuing nature of the violation.

In addition, the Association argues that the District's assertion that the Grievant was a new instructor in 1990-91 is not true; that the disputed language of Article III(B)2 clearly applies to both part-time and full-time instructors; that the District's criticism of the Grievant for accepting the Step 9 placement on the salary schedule and then grieving it is without merit; that the District did not have an obligation to offer the Grievant full-time employment; that the crux of the dispute is that once full-time employment is offered, the salary schedule placement must be made according to the requirements of the collective bargaining agreement; that the so-called one-third rule utilized by the district for salary schedule placement cannot nullify clear contractual rights; that the evidence at hearing did not establish that regular part-time instructors first were included in the bargaining unit in 1980-82; that, while some ambiguity exists as to the meshing of the full-time and part-time seniority language, said clauses are not at issue here; that no instructor was moved back on the salary schedule when he/she was increased from part-time to full-time; that the District's concession that the language of Article III(B) is clear is in accord with the Association's position that the disputed language is determinative within the context of the agreement; and that the District did not establish that the Grievant was a new hire in 1990-91

District

On brief, the District argues that the grievance was untimely and, therefore, must be summarily dismissed; that arbitral law, the provisions of the agreement, and the evidence in this dispute unequivocally demonstrate that the grievance is not arbitral; that Article X(D)1(a) of the agreement mandates that a grievance be filed within 15 days of the occurrence of the grievance; and that the evidence unequivocally establishes that the grievance was not filed within the grievance timelines mandated by Article X(D)1(a).

In addition, the District argues that the Association's claim that the District's placement of the Grievant on Step 9 of the salary schedule constituted a violation of Article III(B) is totally without merit; that under the clear language of Article III(B)1, the District was vested with the authority to place the Grievant at Step 9; that pursuant to Article III(B)1, the
District was authorized to place the Grievant on Step 9 of the salary schedule; and that the Association's contention that the District has violated Article III(B)2 by placing the Grievant at Step 9 is totally without merit.

Finally, the District argues that the Association has failed to establish a binding past practice; that the Association's allegation that a past practice exists which requires the District to maintain a part-time employee's placement on the salary schedule when hired as a full-time employee is without merit;

that the language of Article III(B)1 is clear and, consequently, past practice is totally irrelevant to this dispute; that pursuant to that language, the District has the right to place new full-time employees on the salary schedule as it deems appropriate; and that to conclude that a past practice exists which modifies the language of Article III(B)1 would be contrary to the mandates of Article X(B) and Article X(F)1 and 2. The District request that the Arbitrator dismiss the grievance in its entirety.

On reply brief, the District argues the Association has mischaracterized the evidence in this dispute; that the Association omitted material facts which, when considered, clearly establish that the agreement's provisions were not violated by the District's placement of the Grievant on Step 9 of the salary schedule; that the Association's arguments are totally without merit; that an examination of all the evidence in this matter clearly establishes that the District's placement of the Grievant on Step 9 of the salary schedule as a new full-time employe was in accord with its rights under the terms of the agreement; that pursuant to Article III(B)1, the District was authorized to take that action; that, moreover, the grievance is untimely and should be summarily dismissed; and that the Association's arguments to the contrary are totally without merit.

DISCUSSION

Timeliness

The record is clear that the Grievant was offered the position with the disputed placement on or about July 30, 1990, and that on or about August 13, 1990, the Grievant signed an individual contract which included the disputed placement. She did not initiate the grievance underlying this dispute until November 26, 1990. The agreement requires a Grievant to "present a written 'statement of grievance' to the Vice President-Academic Affairs no later than fifteen days after the facts or incident occurred upon which the grievance is based. If the District had raised the issue of timeliness at that point, I have no problem agreeing with the grievance was not filed within the fifteen day requirement.

But the District did not raise the issue of timeliness until part way through the hearing in this matter. 1/ The majority of arbitrators agree that failure to raise such a defence until the arbitration step acts as a waiver thereto. 2/ This Arbitrator has so held. 3/ Therefore, the timeliness defense is denied.

Merits

1/ The District's assertion that it did not become aware of the timeliness issue until hearing is without merit. It knew when the Grievant filed her grievance that the incident she was grieving was her placement on the salary schedule which occurred several months prior to filing the grievance; indeed, the grievance itself cites the date of July 30, 1990.

2/ See, i.e., Vendo Company, 65 LA 1267, 1269 (Madden, 1976), citing numerous cases and quoting several arbitrators for the proposition that delay in raising such a defence is fatal to its efficacy.

3/ See, i.e., Oak Creek-Franklin Joint School District, Case 51, No. 44486, MA-6311 (Engmann, 9/91).

The Association argues that the language at issue here is clear and unambiguous. In the alternative, the Association argues that past practice supports its position. The District also argues that the language at issue here is clear and unambiguous and that, therefore, past practice is irrelevant to this decision. In contract interpretation, past practice is called upon in two occasions: first, in the absence of a written agreement, in which case the past practice may be binding on the parties if it is unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties; 4/ and, second, with ambiguous language, in which case the past practice is viewed as the binding interpretation the parties themselves have given to the disputed term. 5/ But past practice will not be used to interpret language which is clear and unambiguous. 6/ I agree that the language is clear and unambiguous and, thus, no need exists to refer to past practice to decide this matter.

When the Grievant was hired as a part-time instructor in 1980, the Director had the authority under Article III(B)1 of the contract to evaluate the Grievant's "past educational, occupational and instructional experience and competency" and to place her on the salary schedule at a step that, in the Director's opinion, was fair and just. At that time the Director placed the Grievant at Column III, Step 6. When the Grievant was offered the full-time instructor position, she had progressed to Step 13 as a part-time instructor. The Director placed her at Step 9 as a full-time instructor. The Association argues Article III(B)2 prevented the District from changing the Grievant' placement on the salary schedule from Step 13 to Step 9 unless her duties were changed to another area of certification, which they were not. The District argues Article III(B)1 authorizes it to evaluate the Grievant's "past educational, occupational and instructional experience and competency" and to place her on the salary schedule as a new full-time employe at a step that, in the Director's opinion, was just and fair. The crux of the dispute is whether the Grievant is a continuing employe, in which case the Association argues that Article III(B)2 prevents the District from changing her placement on the salary schedule, or whether the Grievant is a new full-time employe, in which case the District argues that Article III(B)1 authorizes it to evaluate and place the Grievant on the salary schedule.

Initially, the District argues that in determining to offer the Grievant placement at Step 9 on the salary schedule, the District did not re-evaluate her placement on the schedule as a part-time employe based upon her past history of "educational, occupational or instructional experience," as specified in Article III(B)2 of the agreement; therefore, no violation of said article could possibly have occurred.

This is a slippery argument. The District asserts that the decision to place the Grievant at Step 9 was an economic decision. Yet, Article III(B)1, the Article relied upon by the District, states that the Director is authorized to evaluate the faculty member's "past educational, occupational and instructional experience and competency, and place the individual on the salary schedule at a step that, in his opinion, is fair and just." Nowhere does the

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4/ Celanese Corporation of America, 24 LA 168, 172 (Justin, 1954).

5/ Eastern Stainless Steel Corporation, 12 LA 709, 713 (Killingsworth, 1949).

6/ See, i.e., Phelps Dodge Copper Products Corporation, 16 LA 229, 233 (Justin, 1951), and Tide Water Oil Company, 17 LA 829, 833 (Wyckoff, 1952).

agreement state that the Director is authorized to evaluate economics in placing the faculty member on the salary schedule.

Here is the slippery part. If one accepts the argument that the District did not re-evaluate the Grievant's placement based on her "educational, occupational or instructional experience" in violation of Article III(B)2, one must ask how the District was able to evaluate the Grievant's "past educational, occupation and instruction experience and competency" in placing her at Step 9 on the salary schedule in compliance with Article III(B)1. If the District did not evaluate the Grievant's "educational, occupational and instructional experience and competency," in placing her at Step 9 on the salary schedule and, instead, made a purely economic decision, this would seem to be a violation of Article III(B)1. And if the District did evaluate the Grievant's "past educational, occupational and instructional experience and competency," in placing her on Step 9, the District did, by definition, re-evaluate the Grievant since she had previously been evaluated for placement on the salary schedule using this criteria in 1980. 7/ Since the Association does not allege a violation of Article III(B)1, this Arbitrator will assume that the District evaluated the Grievant's past educational, occupational and instructional experience and competency in compliance with Article III(B)1. And since such evaluation, as noted above, is a re-evaluation of the Grievant, this argument by the District must fail.

The crux of the District's case is the argument that Article III(B)2 pertains to present full-time employes, not new full-time hires; that in regard to new hires, Article III(B)1 is applicable; and that the evidence establishes that as a full-time employee, the Grievant was a "new employe".

Specifically, the District asserts that Article III(F) states that nothing in the contract guarantees "any instructional assignment to part-time instructors." The Association does not argue that the Grievant or had a contractual right to the position. The Association argues, however, that once the Grievant was given the position, her placement on the salary schedule was subject to the agreement and, specifically, Article III(B)2. I find nothing in Article III(F) which specifies that the Grievant was a new employe and that Article III(B)2 did not apply to her.

The District also argues that as Article III(F) differentiates between full-time and part-time seniority, the Grievant's lack of full-time seniority indicates that when she was hired as a full-time employe, she was starting all over again. However, it is not uncommon for an employe to lose seniority when changing to a new position. This occurs, for example, when the contract specifies job class or department seniority and an employe moves from one job class or department to another. This lack of seniority in the new position, in and of itself, does not establish that the Grievant was a new employe. The District also argues that as a new full-time employe, the Grievant received a new instructor's contract and different fringe benefits. The fact that the District considered her a new instructor and gave her a contract consistent with that belief begs the question, since that is the issue this Arbitrator is to settle. As for the change in benefits, it is not uncommon for an employe's benefits to change when a change in position occurs. A part-time employe working less that half-time may receive no health insurance benefits, for example, but may get pro-rated health insurance benefits when the employe moves to a half-time or greater position. Again, this change in benefit levels does

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7/ Although Article III(B)2 does not specify "competence", the District does not assert that it made the placement it did under Article III(B)1 based on the Grievant's competence.

not establish that the Grievant became a new employe when such change occurred.

Furthermore, the District argues since Article III(B)1 and 2 were incorporated into the agreement prior to the time that part-time instructors were included in the bargaining unit, it is evident that Article III(B)2 was never intended to apply to part-time instructors hired to fill full-time positions. Nothing in the agreement gives any indication that Article III(B) was not meant to be applied to part-time employes. Certainly if the parties were of the mind to exclude part-time employes from the coverage of Article III(B), they could have easily so specified. Indeed, the parties did make such distinctions. Appendix "A", Paragraph 4, states, "Regular part-time instructors shall not be included in Article III, D.2., E.1.e., F., G." No where does it say that regular part-time instructors are not included in Article III(B).

As to the crux of the District's argument, the District asserts that Article III(B)2 clearly pertains to present full-time employes, not new full-time hires, such as the Grievant, to whom Article III(B)1 is applicable. I disagree. Nothing on the face of Article III(B)2 states or even suggests that this Article does not pertain to part-time instructors when they become full-time instructors. The Article says that "No re-evaluation or change can be made. . .after initial placement on the salary schedule. . .". The Article says "No re-evaluation or change." If the parties had wanted to exclude this Article from applying to part-time employes, they surely could have, as they did for other Articles in Appendix "A" discussed above. Indeed, the parties did provide for an exception to the standard of "No re-evaluation or change;" that is, "unless the faculty member's duties are changed to another area of certification." 8/ This expressed exception shows that the parties are quite capable of limiting language to those situations in which they want it to apply. Nowhere do the parties limit Article III(B)2 by saying "unless a part-time instructor fills a full-time instructor's position." Therefore, this Arbitrator will not read such a limitation into this language.

On its face, the language of Article III(B)1 supports this reading of Article III(B)2. The language is very specific as to which faculty members the Director is authorized to evaluate: "The Director is authorized to evaluate the prospective faculty members'. . .". The Grievant was not a prospective faculty member; she was a current faculty member and had been so for 10 years. Again, the language does not say prospective full-time faculty member; it says prospective faculty member. This is consistent with the limitation placed on the Director's authority under Article III(B)2 which states that no re-evaluation or change can be made of a faculty member's placement; thus, by the limitation of Article III(B)2, the only faculty members whom the Director has the discretion to place on the salary schedule in Article III(B)1 are "prospective" faculty members. The language of Article III(B)1 is written to acknowledge that limitation.

Thus, on its face, Article III(B)2 prevented the District from re-evaluating or changing the Grievant's placement on the salary schedule. Nothing in the agreement required the District to offer the position to the Grievant but, once it did, the agreement required that she be placed on the salary schedule consistent with the agreement. Therefore, I find that the District violated the Article III(B)2 of the agreement when it placed the Grievant on Step 9 of the salary schedule for 1990-91.

Remedy

8/ The District does not argue that this exception applies in this case.

The District argues that since the Grievant objected to her Step 9 placement on the salary schedule, the proper remedy for her was to reject the District's offer; that by misleading the District into believing that the salary offered was acceptable, it would be patently unfair to permit the Grievant to now reap a windfall; that the Grievant is attempting to gain through grievance arbitration what she failed to obtain when the position was first offer to her; and that placing the Grievant on Step 14 would constitute a rewriting of the instructor's contract signed by the Grievant.

The Grievant had every right under the contract to accept the position as offered and to grieve it later. Nor is the Grievant reaping a windfall; she is getting only what she was originally entitled to and, as such, this is not unfair to the District. The Grievant is not attempting to gain through grievance arbitration what she failed to get in the offer to her; she is attempting to gain what is rightfully hers: an offer consistent with the agreement. And if the instructor's contract is inconsistent with the master agreement, then the instructor's contract needs to be rewritten.

But as noted above in the Timeliness section above, if the District had raised the issue of timeliness when the Grievant filed the grievance, I would have found that the grievance was not filed within the 15 days required in the agreement. At that point, the Association's argument regarding a continuing violation would come into play.

The continuing violation theory is well accepted but somewhat ill defined in arbitral law. Examples of kinds of disputes which have been held to be continuing violations include improper wage rate, 9/ change in commission structure, 10/ failure to pay proper job rate, 11/ and salary increase denial. 12/ This arbitrator has acknowledged the validity of the continuing violation theory in a case involving the placement of a teacher on a salary schedule. 13/

Since the concept of continuing violation construes express contractual time limits so as to permit the filing of what would otherwise be an untimely grievance, the remedy is limited to no earlier than the filing of the grievance, as opposed to a total make whole remedy dating back to the time of the initial violation. 14/ Therefore, I have limited the remedy to the date of the filing of the grievance.

For these reasons, based upon the foregoing facts and discussion, the Arbitrator issues the following

AWARD

1. The grievance is properly before the Arbitrator.

9/ Bethlehem Steel Company, 34 LA 896, 898 (Seward, 1960).

10/ Sears, Roebuck & Company, 39 LA 567, 570 (Gillingham, 1962).

11/ Steel Warehouse Company, 45 LA 357, 360 (Dolnick, 1965).

12/ San Francisco United School District, 68 LA 767, 769 (Oestreich, 1977).

13/ Brodhead School District, Case 10, No. 41260, MA-5343 (1989) at 8.

14/ Brockway Company, 69 LA 115 (Eischen, 1977).

2. The District violated Article III(B)2 of the collective bargaining agreement when it placed the Grievant on Step 9 of the salary schedule for the 1990-91 school year.

3. The District shall place the Grievant on Step 14 effective November 26, 1990, and shall make her whole for all losses she incurred as a result of the improper placement.

Dated at Madison, Wisconsin, this 18th day of December, 1991.

By _____
James W. Engmann, Arbitrator