

BEFORE THE ARBITRATOR

-----  
 In the Matter of the Arbitration :  
 of a Dispute Between :  
 : Case 11  
 EAST TROY EDUCATION ASSOCIATION : No. 45641  
 : MA-6686  
 and :  
 EAST TROY COMMUNITY SCHOOL DISTRICT :  
 :  
 -----

Appearances:

Ms. Esther Thronson, Executive Director, Southern Lakes United Educators,  
 WEAC UniServ Council #26, on behalf of the East Troy Education  
 Association.  
 Foley & Lardner, Attorneys at Law, by Mr. Lawrence T. Lynch, on behalf of  
 the East Troy Community School District.

ARBITRATION AWARD

The East Troy Education Association, hereinafter the Association, and the East Troy Community School District, hereinafter the District, jointly requested that the Wisconsin Employment Relations Commission designate a staff arbitrator to hear and decide the instant dispute between the parties in accord with the grievance and arbitration procedures contained in their labor agreement. David E. Shaw was appointed to arbitrate in the dispute. A hearing was held before the undersigned on July 29, 1991 in East Troy, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by September 16, 1991. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

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

Did the District violate Article IX, B, 4 of the Collective Bargaining Agreement when they denied tuition reimbursement to Pete Piazza and Dan Richardson?

If so, what shall the remedy be?

The District also raises the following procedural issue with regard to Richardson:

As to Richardson's grievance, was the grievance timely filed?

CONTRACT PROVISIONS

The following provisions of the parties' 1990-92 Agreement are cited:

VI. GRIEVANCE PROCEDURE

A.

1. A grievance is a claim which alleges that one or more provisions of this agreement have been incorrectly interpreted and applied. Such claim must be based on an event or condition which affects wages, hours, and/or conditions of employment of one or more teachers.
2. For purposes of the grievance procedure, school day is defined as a day when pupils are present.
3. The purpose of this procedure is to secure equitable solutions to the problems which from time to time arise, affecting the welfare and working conditions of teachers.
4. A grievance affecting a group or class of teachers in more than one school may be submitted in writing by the chairman of the PR & R to the District Administrator directly, and the processing of such grievance shall commence at Level Two.
5. Grievances of teachers will be considered and processed in the following manner:

B. Level One

1. A teacher who believes he/she has cause for a grievance will orally discuss the matter with his principal or supervisor with the objective of resolving the matter informally at the lowest possible administrative level. If there is a failure to resolve the matter, the aggrieved teacher may present his grievance in writing to his principal or supervisor, either directly or through the Association's representative.
2. Written grievances must include a summary of the facts on which the grievance is based and the provision of this agreement the party alleges to have been incorrectly interpreted and applied.
3. If a teacher does not present a grievance in writing to his principal or supervisor within twenty (20) school days after the event or conditions occurred on which the complaint is based, any

grievance respective to that matter shall be considered as waived provided the teacher knew, or should have known, of the event or condition.

C. Level Two

1. If no satisfactory decision has been rendered within ten (10) school days after the teacher presented the written grievance in Level One, the aggrieved teacher may within five (5) school days thereafter file the written grievance with the chairman of the Association PR & R Committee.
2. Within five (5) school days after receiving the written grievance, the chairman of the PR & R Committee will refer it to the District Administrator or his designee (hereinafter in this article, where the title of District Administrator appears, designee may be substituted therefore).
3. Within ten (10) school days after receipt of the written grievance by the District Administrator, he will meet with the aggrieved teacher and not more than two Association representatives to resolve the grievance.

D. Level Three

1. If no satisfactory decision has been rendered by the District Administrator within fifteen (15) school days after the first meeting with the teacher, the aggrieved teacher may, within five (5) school days thereafter, file the written grievance with the chairman of the PR & R Committee.
2. Within five (5) school days after receiving the written grievance, the PR & R Committee may refer it to the Board or a designated sub-committee of Board members (hereinafter in this article where the title Board appears, sub-committee may be substituted therefore) if the PR & R Committee determines that the grievance is meritorious and in the best interests of the school system.
3. Within ten (10) school days after receiving the written grievance, the Board will meet with the aggrieved teacher and the Association representative for the purpose of resolving the grievance.

E. Level Four

1. If no satisfactory decision has been rendered within ten (10) school days after the first meeting with the Board, the aggrieved teacher may, within five (5) school days thereafter, request in writing that the chairman of the PR & R Committee appeal his grievance to arbitration.
2. If the PR & R Committee decides the grievance is meritorious, the Committee may within twelve (12) school days from the time the grievance is submitted to the chairman appeal the grievance to arbitration by notifying the Board in writing of such an appeal.

F.

1. The arbitrator will be agreed upon by the Board and PR & R Committee. If no agreement on an arbitrator is reached within ten (10) school days after the written notice of appeal, the Wisconsin Employment Relations

Commission will be requested by joint letter to submit a list of five persons suitable for selection as an arbitrator. If the parties cannot agree to one person named on the list, the parties shall strike a name alternately beginning with the Association until one name remains.

Such remaining person shall act as arbitrator. In subsequent selections, the parties shall alternate the first striking of a name.

2. The decision of the arbitrator shall be binding.
3. The arbitrator may consider or decide only the particular issue or issues presented to him by the Board and the Association, and his decision must be based solely upon an interpretation of the provisions of this agreement. The arbitrator has no jurisdiction over the application of established school district policy.
4. The expenses of the arbitrator, including the arbitrator's fee, shall be divided equally between the Board and the Association.

G. Decisions respective to the written grievances will be in writing and will be transmitted to the aggrieved and to the Chairman of the PR & R Committee.

H.

1. The sole remedy available to any teacher for any alleged violation of this agreement or his rights hereunder shall be pursuant to the foregoing grievance procedure; providing that nothing contained herein shall deprive any teacher of any legal right which he presently has.
2. Any aggrieved party or parties may be represented by themselves or, at their option, by a representative selected by the Association. When a teacher is not represented by the Association, the Association shall have the right to be present and to state its views at all stages of the grievance procedure.

- I. A grievance may be withdrawn at any level without establishing a precedent for the interpretation of any subsequent grievances.
- J. It is agreed that harmonious relations between the parties are most likely to exist where grievances are processed promptly and in good faith. Therefore, the number of days indicated at each level shall be considered a maximum, and every reasonable effort shall be made to expedite the process. It is recognized, however, that due to special circumstances, the parties may wish to extend the times provided at various levels. When this occurs, an extension of time shall be in writing. Grievances must be processed within the time limits established for each level or within the time agreed to in writing or they shall be settled on the basis of the last decision.
- K. In the event a grievance is filed at such time that it cannot be processed through all the levels of the foregoing grievance procedure by the end of the school year and which is left unresolved until the beginning of the following year could result in irreparable harm to a teacher, the parties agree to make a good faith effort to reduce the time limit set forth herein so that the grievance procedure may be completed prior to the end of the school year or as soon thereafter as is feasible.
- L. Under the foregoing procedures, every effort will be made to have grievances processed at times which will not require a replacement for the teacher or teachers involved for the performance of normal teaching duties.
- M. It is understood that teachers filing grievances do so in good faith and that no reprisals will be taken against any participants in the grievance procedure.
- N. Forms for written grievances shall be jointly prepared by the District Administrator and the PR & R Committee and shall be given appropriate distribution to facilitate operation of the foregoing grievance procedure.

. . . .

IX. COMPENSATION

. . . .

- B. Change in Status and Salary Schedule Advancement  
  
In order to maintain the highest educational standards, the Board and Association recognize each teacher's need for an ongoing commitment to

his/her professional education. The Board and Association encourages each and every teacher to continue his/her professional education and growth while employed by the District. The following clauses enable the staff and Board to attain the goal of excellence in our District.

1. Credits defined. As used in Article IX, credits are defined as semester hours. Conversion from quarter hours to semester hours shall be made by multiplying quarter hours by 2/3.

2. Approval

Prior approval for all courses taken for the purpose of advancing from one level of preparation to another level of preparation must be obtained from the District Administrator at least ten (10) days prior to the registration date for the course. Within ten (10) days after receipt of the written request, the District Administrator's written decision will be rendered to the requesting teacher. The ten day limit may be waived in case an approved class has been canceled or a teacher is unable to secure attendance.

Approval may be granted for a maximum of three (3) credits per any one semester or (9) nine credits during the semester for all full time teachers. When a particular program or course requirement calls for more than the allowed credits as outlined above, approval will be at the discretion of the District Administrator.

Any credits earned without prior approval will not be reimbursed nor will the credits be recognized for salary schedule advancement in the year earned and the following contract year.

3. Conditions for Approval

All approved graduate credits taken after the attainment of the BA degree shall apply to advancement on the salary schedule. Only credits that are part of a Master's Degree program in field, or are directly relevant to the teacher's responsibilities as assigned, shall be counted for advancement from one level of preparation to another.

Three-fourths of the approved graduate credits must be approved in the field they are teaching.

No recognition for horizontal movement on the salary schedule will be given for credits taken after the MA level unless they are directly related to the field they are teaching.

4. Reimbursement

Tuition costs will be reimbursed for approved undergraduate or workshop credits that are deemed to be in the best interests of the school district. These credits will not count toward salary schedule advancement.

Beginning with the 1988-89 school year, tuition costs for approved graduate credits will be reimbursed if in the teaching field or deemed to be in the best interests of the school district. Tuition costs will not be reimbursed for credits earned during the second semester and/or summer preceding leaving the East Troy School District.

The reimbursement rate will be equal to the highest per credit rate in the Wisconsin State University system.

Tuition cost taken first semester will be reimbursed by February 15. Tuition cost for credits taken the 2nd semester will be reimbursed by June 30th. Tuition cost for credits taken during the summer will be reimbursed by September 15. This is contingent upon all necessary information being submitted one week prior to the above dates.

5. Advancement

Teachers who during the second semester or summer earn an advanced degree or sufficient credits to move horizontally on the salary schedule will be advanced to the correct placement on the salary schedule for the September 15 payroll providing that transcripts or official grade reports verifying the additional training have been received by the District Administrator by September 1. Teachers who earn an advanced degree or sufficient credits to move horizontally on the salary schedule during the first semester will be advanced to the correct placement on the February 15 payroll providing that transcripts or official grade reports verifying the additional training are received by February 1. Only



one-half of the schedule difference will be paid for the balance of the contract year.

. . . .

#### BACKGROUND

The Grievants, Piazza and Richardson, are teachers in the District's employ and Piazza is also Chair of the Association's PR & R Committee. Early in 1990, Richardson, Piazza and another teacher submitted a "Summer Workshop Request". Shortly thereafter, the District Administrator, Kangas, received materials regarding a "Bicentennial Summer Institute" from a Professor Kozlowicz at the UW-Whitewater with a cover letter of March 1, 1990 that read in relevant part:

The University of Wisconsin-Whitewater has received a grant from the Bicentennial Commission of the U.S. to support a summer institute on teaching the American Judiciary for middle and high school social studies teachers in Southeastern Wisconsin. I would like to invite you to participate in this innovative project.

Participating teachers (limited to 15 middle and 15 high school teachers) will have the opportunity to take two courses (earning six graduate credits) this summer to assist them in incorporating materials on teaching about the American Judiciary into their curricula.

The grant will cover the tuition costs for the two courses and provide participating teachers a stipend of \$300.00. Teachers from schools where the school district pays tuition may be able to use their district reimbursement as an additional stipend.

. . . .

Kangas forwarded the materials to Piazza with the following note written on the envelope:

Mr. Piazza

Consider this instead of a summer work shop. You could move way over on the salary schedule.

DK

Both Piazza and Richardson applied for the program and were notified by letter in April of 1990 from Kozlowicz that they had been accepted into the program. The letter to Piazza read in pertinent part:

Dear Mr. Piazza:

I am pleased to inform you that you have been accepted for participation in the Summer Bicentennial Institute this summer. As indicated, you will complete two courses:

820-496/696      Special Studies:      The American

Judiciary -- A Bicentennial Perspective  
Instructor: John F. Kozlowicz, Political  
Science Department

June 18, 1990 to July 6, 1990; MTWRF; 10:00 a.m.  
-1:00 p.m.

820-490/690 Workshop: Developing Materials for  
the Study of the American Judiciary  
Instructors: John F. Kozlowicz, Political Science  
Department  
Charles E. Cottle, Political  
Science Department

July 16, 1990 to August 3, 1990; MTWRF; 10:00  
a.m. - 1:00 p.m.

In addition, we will have two pre-summer meetings and two post-summer meetings. As some of you have indicated a preference for a day-school meeting and some for a Saturday meeting, I will schedule one of each. Information will follow on the exact dates. They will be in May and/or early June.

The grant from the Bicentennial Commission of the United States will pay for your tuition as well as pay a stipend of \$300 at the conclusion of the workshop. If your school district reimburses you for courses taken, you should be able to recover this as an additional stipend.

. . .

Also in April of 1990, both Piazza and Richardson submitted "Graduate Course Work Request for Approval" forms to Kangas. Those forms have spaces to check for "Cost Per Credit" and whether the request is "For Salary Schedule Advancement and Tuition Payment" or "For Salary Schedule Advancement". On his form, Richardson indicated "0" for "Cost Per Credit" and checked "For Salary Schedule Advancement". On his form, Piazza left blank "Cost Per Credit", but checked "For Salary Schedule Advancement and Tuition Payment". Kangas approved both requests, but on Piazza's he wrote on the form where Piazza had checked for both salary schedule advancement and tuition payment, "Mr. Piazza, we can only give you salary schedule advancement."

In May of 1990, Piazza sent Kangas a copy of the bill from UW-Whitewater for the \$598.30 tuition for the two courses with the following note written across the front:

Note - there was tuition charged to my account for these courses - so I do expect tuition reimbursement - How I paid my tuition is beyond the District's financial or contractual interest.

Thanks  
Pete

Piazza and Richardson successfully completed the course work and pre-summer and post-summer workshops in the program, the latter workshops occurring in November and December of 1990. Their tuition costs were paid by the grant from the Bicentennial Commission and they each received the \$300 stipend from

the grant. Neither Piazza nor Richardson received reimbursement of the tuition cost from the District on September 15, 1990.

On September 25, 1990, Piazza sent Kangas a memorandum regarding his request for tuition reimbursement which read in relevant part:

Chief,  
I need to talk to you about the reimbursement for last summer school. I honestly believe the District owes me tuition reimbursement for the approved six credits work on the U.S. Judiciary. I also have an idea that...

By letter dated October 16, 1990 Kangas responded to Piazza's September 25th memo, and the letter stated in relevant part:

Dear Mr. Piazza:

In my opinion the master agreement between the East Troy Community School District and the E.T.E.A. provides that teacher "tuition costs" will be reimbursed under certain conditions. One being that the teacher pay the tuition. "Reimbursement" to me means to pay someone back for money they have spent out of their own pocket. According to the April 9, 1990 letter from Professor Kozlowetz at the University of Wisconsin - Whitewater, the Bicentennial Commission of the United States paid for your tuition on top of which it gave you a \$300 stipend. Because of this you did not occur (sic) any "tuition costs". Thus, I feel that this relieves the East Troy Community School District of it's (sic) responsibility (sic) to reimburse you for "tuition costs".

Piazza responded to Kangas' letter of October 16th with the following memorandum of October 28, 1990:

Date: October 28, 1990  
To: Mr. Don Kangas  
From: Pete Piazza  
Re: Tuition Reimbursement

At noon, Monday, October 22, I received your written decision (dated October 16) concerning reimbursement for last summer's work. After review, I must advise you that a written grievance will be filed with you this week. Mr. Richardson will join as a co-grievant. I trust that you received the list of participants that you requested.

Although I am disappointed in your decision, I believe the grievance procedure will result in a decision fairly and quickly. Accordingly, the Grievance Procedure should begin at Level Two.

In Good Faith,

Pete Piazza /s/  
Pete Piazza

On November 1, 1990, Piazza filed a written grievance on behalf of himself and Richardson regarding the District's refusal to reimburse them the tuition costs for the courses. On November 15, 1990, Kangas responded to the November 1st grievance in writing and denied the grievance as to Richardson as untimely and on the merits as to both of them. The dispute was processed through the grievance procedure and ultimately to arbitration before the undersigned.

#### POSITIONS OF THE PARTIES

##### Association:

With regard to the issue of whether Richardson's grievance is timely, the Association cites Article VI, A, 4, of the Agreement. That provision states: "A grievance affecting a group or class of teachers in more than one school may be submitted in writing by the Chairman of the PR & R to the District Administrator directly, and the processing of such grievance shall commence at Level Two". The Grievant, Piazza, is the Chairman of the Association's PR & R (Professional Rights and Responsibilities) Committee. In that capacity, on October 28, 1990, Piazza notified the District Administrator of the grievance over tuition reimbursement and indicated it would be a group grievance - "Mr. Richardson will join as a co-grievant." Having "mutually waived" the timeline, Piazza and Kangas met on October 30, 1990 to attempt to resolve the dispute pursuant to Article VI, C, 3. When they failed to resolve the matter, a written grievance was presented on November 1, 1990. The Association notes that Kangas' response to the written grievance addressed Piazza and Richardson separately and did not challenge Piazza's grievance as untimely, but did challenge Richardson's. The Association asserts that since this is a group grievance presented by the PR & R Chairman commencing at Level Two, there was no requirement that Richardson speak to Kangas regarding the matter. Further, it was not necessary to even meet on October 30 to try and resolve the matter.

Having waived the timelines Piazza could have presented the written grievance of November 1, 1990 without any further attempt to resolve the issue with the District Administrator. The Association also cites arbitral precedent for the proposition that the contractual timelines for filing grievances is to shield the parties from stale claims and not to avoid resolving the disputes by relying on procedural technicalities and that there is a well-established presumption of arbitrability in labor arbitration, and doubts on the question of procedural arbitrability should be resolved in favor of coverage. The Association concludes it has met its obligation to present the group grievance in a timely fashion given the mutual agreement to waive the timelines.

With regard to the substantive issue, the Association disputes the assertion that the tuition must come out of the teacher's pocket in order to be reimbursed and that it is the District's business to determine how and where the money came from that entered the teacher's pocket. The Association asserts that is not the intent of the applicable contract language either as negotiated or written. Reimbursement is defined as "to repay or to pay back or compensate a person money spent, or losses or damages incurred." The Association asserts that the grievants were charged and paid tuition for summer school. The Agreement uses the phrase "tuition reimbursement" for two reasons. First, to make sure that approved courses taken by the teachers are completed before any monetary costs are incurred by the District. Secondly, to allow for the separation of tuition expenses from other routine or not-so-routine fees associated with Graduate School. It is asserted that there is no intent, either express or implied, to allow the District to apply any other interpretation. All other reasons for course approval and tuition payment are clearly stated and defined, and if the intent were to allow further restrictions on the conditions for tuition reimbursement by the District, such conditions would be stated in the written language.

The Association asserts that the contract specifically states that approved credits will be tuition-reimbursed, the level of reimbursement and the dates for reimbursement. The Grievants have complied with those requirements and there is nothing that can unilaterally release the District from its obligation to reimburse the Grievants their tuitions costs. The Agreement puts no limit on how a teacher pays his or her tuition. The Grievants applied for and received and met the conditions for a grant from the Bicentennial Commission and used part of the grant to pay their tuition. According to the Association, the grant conditions specifically allow for tuition reimbursement from any other source to a participant. The District was not a participant in the grant and had no controls over the monies to be paid under it. Rather, the grant was received by the Grievants, who met the conditions for its use and it was their choice to use part of the funds from the grant for tuition, not the District's. It is asserted that the source of the funds to pay the Grievant's tuition is "beyond the scope of our contract." The Association asserts that as an alternative position, the stated "workshop rate" in the parties' Agreement could be paid in lieu of the tuition reimbursement. The Association calculates that amount as 168 hours times the contract workshop rate of \$10.50 to equal \$1,764.00.

The Association next cites bargaining history as to the evolution of the language in the Agreement related to salary schedule advancement and credit reimbursement from the contract years of 1986-87 through 1991-92. Citing the testimony of Piazza, the Association asserts that the form used by the District, "Graduate Course Work Request for Approval", was developed for use in 1988 and is outdated given the changes made in the Agreement for 1990-91 and 91-92. In that regard, the Association asserts that Richardson stating zero under "Cost Per Credit" on the form was based on his assumption that no tuition amount needed to be indicated because of the language in the new Agreement. There is no contractual requirement to provide a dollar amount for reimbursement until one week prior to the September or February reimbursement dates in the Agreement. The Association further asserts that the bargaining history regarding the current language did not include any exceptions as the District is now attempting to apply. It asserts that all the parties involved in developing the language in the Agreement were aware of the availability of grants and that it is significant that no language concerning or limiting a teacher's property rights to the grants or the right to apply for a grant and receive it and use it is included in the language. This is especially telling when all of the other conditions are so carefully spelled out. The Association notes that there is no testimony from the District to the contrary regarding the intent of the language. Further, such restrictions to reimbursement were never proposed and this implicitly recognizes that the source of funds for tuition payment is not the District's concern.

District:

With regard to the timeliness of Richardson's grievance, the District cites Article VI, B, 3, of the Agreement as requiring that a grievance be filed in writing within twenty (20) school days after the event or conditions occurred on which the complaint is based or the grievance is considered waived, provided the teacher knew or should have known of the event or condition. It asserts that it is undisputed that the first time Richardson's name was brought up in connection with the dispute as to Kangas' decision on tuition reimbursement was in Piazza's October 28, 1990 memorandum to Kangas. September 15, 1990 is the date pursuant to Article IX, B, 4 of the Agreement for tuition reimbursement for credits taken during the summer and is the latest date from which the twenty school day time period would begin to run for Richardson. October 28, 1990 is 28 school days after September 15 and the written grievance was not filed until November 1, 1990, or 34 school days after the grievable

event. The District further asserts that Richardson knew on April 5, 1990 that he was not going to receive any tuition reimbursement for the course when his request was approved. Thus, regardless of whether the April 5 or the September 15, 1990 date is used, Richardson's grievance is untimely.

With regard to the substantive issue, the District asserts that Piazza admitted he did not pay a cent out of his own pocket towards tuition costs for either of the courses and that the \$598.00 in tuition costs was paid directly from the Bicentennial Commission grant. In addition, Piazza received a \$300 stipend from the grant. The District disputes the Association's contention that the tuition payment made from the Bicentennial Commission to the UW-Whitewater for the Grievants' tuition was their "personal property" with which they could do whatever they pleased. Rather, the District asserts that the sole purpose of the grant was to pay the tuition for the classes and neither Grievant would have received the money if he did not attend the classes. Thus, the tuition was not their personal property. Since neither Grievant paid any tuition for the classes, neither incurred any tuition costs and thus the District was not required to reimburse them under Article IX, B, 4, of the Agreement.

The District also asserts that no reliance can be placed on Professor Kozlowicz's "understanding" of the tuition reimbursement situation, since he has nothing to do with the parties' Agreement and no authority to determine rights or obligations under that Agreement.

The District next contends that it is the clear intent of Article IX, B, 4, of the Agreement to lessen the financial burden on teachers who take graduate level courses by reimbursing them for tuition that they have to pay to take such courses. It asserts that neither Grievant's situation falls within the intent of that section as neither had to spend any of their own money to take the courses. Further, they each received a \$300 stipend on top of having their tuition paid by the Bicentennial Commission. Thus, through this grievance, the Grievants are attempting to realize a \$598.00 profit. The District contends that there is no evidence that the intent of the parties in negotiating the applicable contract language was to allow teachers to "double-dip" or receive a windfall in situations such as this. Rather, the only reasonable interpretation of the facts in this situation is that neither Grievant incurred any tuition costs which the District was required to reimburse under the Agreement. Hence, the grievance should be denied.

## DISCUSSION

### Timeliness

The Association relies on the provision in Article VI, A, 4, of the Agreement for a "group grievance", as a basis for arguing that Richardson's claim was included as part of the grievance from the time Piazza initiated the grievance process. That provision, however, provides that such a grievance may be submitted when it is a grievance "affecting a group or class of teachers in more than one school..." (Emphasis added). It appears from the evidence that both Richardson and Piazza are at the High School and that, therefore, that condition to the submission of a "group grievance" was not met. Further, the evidence indicates that it was not until Piazza's October 28, 1990 memorandum to Kangas that there was any mention of the matter of Richardson's reimbursement or that the matter should be considered a "group grievance". Thus, Richardson's inclusion and the characterization of the dispute as a group grievance appear to be more an afterthought rather than the original intention of the Grievants.

September 15, 1990 is the date in the Agreement for the District to

reimburse teachers who have taken summer courses for the cost of tuition. As the matter cannot be considered a group grievance and the parties' Agreement requires that an individual grievant present a grievance in writing within "twenty (20) school days after the event or conditions occurred on which the complaint is based...", and there was no written grievance submitted on Richardson's behalf until November 1, 1990, well beyond twenty school days, Richardson's grievance is considered untimely.

#### Substantive Issue

The contract provision in issue is Article IX, B, 4, "Reimbursement", which provides, in relevant part, that "tuition costs for approved graduate credits will be reimbursed..." The Association asserts that there are no contractual restrictions as to how or where the teacher obtains the money to pay for the cost of tuition. Conversely, the District contends that in this case the grant paid for Piazza's tuition and, thus, there was no "cost" to Piazza for which the District is required to reimburse him.

The Association's argument is clever, but not convincing. The evidence indicates that in this case, the grant from the Bicentennial Commission paid the tuition for the courses and that Piazza did not incur the cost of the tuition. Perhaps the Association's argument would be more persuasive had the grant been for a lump sum of money out of which Piazza could have chose to pay the tuition; however, in this case, the tuition was paid directly from the grant and Piazza did not have an option as to what to do with the money. While he obtained the grant for his use, the money for tuition from the grant was not his to control.

The Association did not present evidence sufficient to persuade the undersigned that Article IX, B, 4 was intended by the parties to be a guaranteed payment by the District of an amount equal to the cost of tuition regardless of whether the teacher actually incurred the cost. It is also noted that Piazza was made aware of the District's position on this point when he sought approval for taking the courses in April of 1990. Hence, surprise or reliance cannot be convincingly argued at this point. Prof. Kozlowicz' statements in the grant materials regarding the use of tuition reimbursement as an additional stipend are not relevant as he has nothing to do with how the parties interpret or apply their labor agreement in that regard.

Given the circumstances in this case, it is concluded that the District did not violate Article IX, B, 4 of the Agreement when it denied Piazza tuition reimbursement for the courses he took in the summer of 1990. 1/

Based upon the foregoing, the evidence and the arguments of the parties, the undersigned makes and issues the following

#### AWARD

The grievance as to Richardson is untimely.

The grievance as to Piazza is denied.

Dated at Madison, Wisconsin this 8th day of January, 1992.

---

1/ As the parties stipulated that the substantive issue before the undersigned was whether or not the District violated Article IX, B, 4 of their Agreement, the Association's alternative theory regarding payment at the "workshop rate" is not addressed.

By David E. Shaw /s/  
David E. Shaw, Arbitrator