BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between MONTICELLO EDUCATION ASSOCIATION and BOARD OF EDUCATION FOR SCHOOL DISTRICT OF MONTICELLO	Case 13 No. 47029 MA-7140

Appearances:

Ms. Mallory K. Keener, Executive Director, Capital Area UniServ South, 4800 Ivywood Trail, MacFarland, Wisconsin 53558, with Pamela Jacobs, Associate Counsel, Wisconsin Education Association Council, 33 Nob Hill Road, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of the Monticello Education Association, referred to below as the Association.

Mr. Robert W. Butler, Staff Counsel, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the Board of Education for School District of Monticello, referred to below as the Board.

ARBITRATION AWARD

The Association and the Board are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association requested, and the Board agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Michael Vesperman. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on August 20, 1992, in Monticello, Wisconsin. The hearing was transcribed, and the parties filed briefs and waived the filing of reply briefs by December 2, 1992. The Association supplied copies of unpublished arbitration awards cited in the parties' briefs on December 14, 1992.

ISSUES

The Board has posed an issue relating to the arbitrability of the grievance, which the parties stipulated can be phrased thus:

Does the Arbitrator have the authority to act to hear this dispute due to the fact that there was no contract in effect at the time of the filing of the grievance?

The parties stipulated that if this issue was resolved in the affirmative, then the grievance poses, on its merits, the following issues:

Did the District violate the Adherence to Schedule provisions of the 1988-89, 1989-90, 1990-91 master contract agreement when it hired Mr. Michael T. Vesperman placing him on the negotiated salary schedule with five years of teaching experience?

If so, what is the remedy?

RELEVANT CONTRACT PROVISIONS

Adherence to Schedule:

A. Teachers entering service in the Monticello public Schools for the first time shall be placed on schedule at the appropriate level according to their academic qualifications and experience.

. . .

C. The teacher degree, number of credits and the experience factor shall solely determine the Placement of the teacher on the salary schedule. The School Board reserves the right to make adjustments in the interest and welfare of the school district.

1. It is recognized by both the School Board and the MEA that in emergency situations the School Board shall be allowed some flexibility in hiring policy. An emergency situation would exist when the School Board had to hire a teacher at an unusual time of the year or had to find someone to teach an unusual combination of subjects. It is understood that this flexibility will be rarely used, and not used in a way that tends to distort the salary schedule in effect . . .

Grievance Procedure:

A. Definition

1. "Grievance" is a claim based upon an event or condition which affects the wages, hours, and conditions of employment of a teacher or group of teachers and/or the interpretation, meaning, or application of any of the provisions of this agreement.

. . .

B. Purpose

1. The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems which may from time to time arise affecting the welfare or working conditions of teachers.

. . .

DURATION

The provisions of this Agreement will be effective as of the first day of July, 1988, and shall continue and remain in full force and effective as binding on the parties until the thirtieth day of June, 1991. This Agreement shall not be extended orally, and it is expressly understood that it shall expire on the date indicated . . .

SIGNING FOR THE 1988-89, 1989-90, and 1990-91 CONTRACT
As Agreed upon:
1988-89, 1989-90 and 1990-91 Salary Schedules 1/

. . .

BACKGROUND

1/ The salary schedules for those years consist of nine vertical lanes (BA; BA 6; BA 12; BA 18; BA 24; BA 30; MA; MA6; and MA 12), and fourteen horizontal steps, numbered 0 through 13.

Vesperman's first contact with the District came in January or February of 1991, when he applied, and was interviewed for the position of Head Baseball Coach. He served for the District in that position in the Spring of 1991. He applied for the position of Head Basketball Coach, and was interviewed for that position on July 1, 1991.

During this period of time, the District was experiencing turn-over with its Special Education teachers. The Board's Elementary Learning Disabilities Teacher, Hawley Bauer, resigned her position effective May 30, 1991. Sometime around July 10, 1991, the Board's Middle School Special Education teacher, Nate Campbell, also resigned. By the time of Campbell's resignation, the Board had advertised to fill Hawley's position, but had received only eight applications. The District Administrator, James Egan, was concerned that the Board would be unable to fill both positions with qualified teachers. Egan was aware, from Vesperman's July 1, 1991, interview, that Vesperman was certified to teach Physical Education/Special Education, and asked Vesperman if Wisconsin's Department of Public Instruction (DPI) would grant Vesperman a provisional license to assume certain special education classes. Vesperman found out that DPI would do so if, within one year of July 1, 1991, he accumulated six credits of coursework. Vesperman so informed Egan.

At the time of his interviews with the District, Vesperman had a number of years of teaching experience. He had served as a substitute in the Madison Metropolitan School District for roughly one semester, and had served as a fulltime, long-term sub for another semester. He then served in the DeForest School District for ten years. He then served as a substitute teacher in the Mount Horeb School District for a year before teaching three school years at Beloit Catholic and Our Lady of Assumption.

One of the difficulties Egan faced in filling the special education positions was that the applicants he viewed as most qualified had many years of experience. Placing such teachers at the salary schedule step directly correlating to their teaching experience put the teachers at a salary the Board was unwilling to fund. For example, the applicant Egan considered the most qualified of the eight who initially applied to fill Hawley's position had roughly fifteen years of experience.

From at least February of 1991, the Board and the Association were in the process of bargaining a successor to their 1988-91 collective bargaining agreement. Throughout this bargaining the Board had advocated a proposal amending the Adherence to Schedule provision to provide that: "A maximum of five years experience will be allowed."

The parties' bargaining sessions, at least through July of 1991, were, at a minimum, strained. At their July 29, 1991, session, however, the parties made considerable progress. It is undisputed that the parties, after a presentation by Board representatives, agreed to amend the Adherence to Schedule provision to state: "Starting with the 1991-1992 collective bargaining agreement, a maximum of five years experience will be allowed." The parties dispute, however, whether a common understanding was reached regarding when this tentative agreement would be implemented. That dispute will be set forth through an overview of the testimony of the

participants.

Edward Koca

Koca serves as the Board's President, and was present for all of the negotiation sessions. He stated that the parties discussed the difficulty of filling the special education vacancies, and that other school districts in the area had language similar to that proposed by the Board. He thought the Board had communicated that it wished to hire employes based on the tentatively agreed to language, and he left the meeting believing that Ellen LaLuzerne, the Association's spokesperson, would draft a side letter to be submitted to Egan to reflect their understanding.

Donald Roe

Roe serves as a member of the Board's negotiations committee. He testified that the parties discussed the five year cap, and specifically that the Board had found a qualified applicant for Hawley's position who had fifteen years of experience but was willing to work under a five year cap on teaching experience. He felt the Board had communicated that it was having difficulty recruiting applicants for the position under the Adherence to Schedule language of the 1988-91 labor agreement. Roe stated he thought the Association agreed to the five year cap language, and to draft a side-letter reflecting that the Board could fill the existing openings under the tentatively agreed to cap on experience.

James Egan

Egan testified that the Board had considered the five year cap a priority issue from the start of negotiations. He made specific presentations to the Association on the cap at the June 10 and July 29, 1991, bargaining sessions. He felt the July 29 session was a productive one. He felt the parties mutually understood both that the cap had been agreed to, and that it could be implemented immediately. He detailed the discussions of that session thus:

> . . . I don't know if the Board or I kind of initiated the discussion that, you know, we're really in a pinch here, school is going to start in two weeks, you know, we need to get somebody because they're going to have to let some school district know that they're not going to be there anymore, and you know, get them in here and get them in for our in-service week that we have.
>
> And I think we just said is there any way, any flexibility that we can just have from you guys to give us permission to go out and just hire somebody.
>
> I think we had already agreed that was no problem with, you know,

> the language for the new contract. Both sides said, no problem with that, and we just said since we already have that language can we go ahead and start hiring people, we have got two positions to fill, and at that time about six applicants for the position and two weeks to go . . . They were kind of like, yeah, we see you got a problem, and, boy, we want somebody for special ed on this first day. Nobody wants to have a roan full of special ed children without a teacher. It seemed like there was no problem. 2/

When asked if the Association was aware, at the close of the July 29, 1991, meeting, that the Board intended to hire under the terms of the tentative agreement, Egan responded thus:

> I would assume they were, but I recall couldn't say. I'm assuming that. I think when we left we assumed that we had permission to go ahead and do that, and if we found somebody we wanted to offer a contract to with five years there wasn't going to be any question from the Union about doing that. 3/

Egan left the meeting with the understanding that LaLuzerne wanted to consult with other representatives, but would draft a side letter reflecting the parties' tentative agreement and the agreement to implement it immediately. Egan thought LaLuzerne committed to call him the following day. July 29, 1991, was a Monday, and Egan testified that he waited until Wednesday, but did not hear from LaLuzerne. He then called her office, leaving an emergency message for her to return his call. He stated he called again on Friday, but was informed LaLuzerne had left the office on vacation.

Robert Butler

Butler served as the Board's spokesperson during the negotiations for a successor to the 1988-91 agreement. He stated the July 29, 1991, session lasted roughly two hours. He left that meeting with the understanding that "there had been an agreement on the adherence to schedule language and that a side letter on the immediate application of that language would be forthcoming." 4/

Ellen LaLuzerne

2/ Transcript (Tr.) at 146-147.

3/ Tr. at 121.

4/ Tr. at 156.

LaLuzerne noted that the bargaining up to the July 29, 1991, session had been laborious. She noted that the Board's five year experience cap was discussed at length in that session, that the Board did relate its difficulty in filling Hawley's position, and that the Board described its inability to hire a qualified applicant due to its inability to pay for her years of experience. LaLuzerne stated that the parties reached a number of tentative agreements at that session, but did not sign any of them. She stated that the Association agreed in concept to the experience cap and that the Association would draft any side letter necessary to formalize the agreement. She noted, however, that she did not commit the Association to the immediate implementation of the agreement, but stated that she would first consult with Dana Lindh, the Association's President. She needed to learn from him what sort of ratification procedure would be necessary for the implementation of a tentative agreement before agreement on an entire contract had been reached. She testified that she informed Egan that she would call him after she had spoken with Lindh. LaLuzerne attempted, without success, to reach Lindh during the week of July 29. She noted that she was on vacation for the month of August, and that, upon her return, her office had no record of any phone messages from Egan. LaLuzerne testified that she was not authorized by the Association to commit it, prior to a ratification vote, to the immediate implementation of a tentative agreement.

The Board ultimately offered Vesperman a teaching contract. That contract was signed by Board representatives on August 14, 1991, and by Vesperman on August 16, 1991. That contract contains, among its provisions, the following:

> Mr. Vesperman is employed under a tentative negotiated contract agreement, that allows for a maximum of five years experience credit on the salary schedule. If that agreement is not ratified by the MEA, this contract shall be considered null and void.

Lindh was not directly involved in the collective bargaining which took place during the summer of 1991. Egan had, however, asked him as early as July 9, 1991, whether the Association would permit the Board to cap the experience of applicants for teaching positions at five years. Lindh responded that the Association would not agree to such a cap. At the beginning of the 1991-92 school year, Lindh informed members of the Association's grievance committee that it was possible the Board had placed newly hired teachers at a step which did not fully credit their prior experience. After an investigation, the Association filed the grievance which prompted this proceeding.

The Association orally presented its grievance with Egan on September 16, 1991. The matter was not resolved, and the Association filed a written grievance in the matter on September 26, 1991. The grievance, under the heading "Statement of Grievance", reads thus:

> The MEA believes the Master Contract was not followed when Mike Vesperman was hired. According to the Master Contract Agreement, Page 3, Line 2, Adherence to Schedule, Sections A, B,

> and C., Mike Vesperman should be placed at the proper level on the salary scale.

Under the heading "Remedy Sought", the grievance states: "To place Mike Vesperman at the proper level on the salary schedule--at 14 years of experience."

Lindh noted that the Association's grievance committee did not discuss the status of negotiations with the Association's negotiating committee. LaLuzerne stated the status of the matter in a letter to Egan dated September 18, 1991, which reads thus:

> It is my understanding, that the District hired an individual using the hiring placement language tentatively agreed to by the bargaining team. At an earlier bargaining session, we indicated we would have to discuss application of the new language with Dana Lindh, President of the MEA.
>
> At our negotiations meeting Monday evening, you had indicated that the Association may be filing a grievance over this issue. We had agreed that a meeting with Dana Lindh, President of the Association, and you, with a phone call to me, could be arranged to discuss this issue. However, I have spoken with Mr. Lindh, and he has indicated that the association has already filed a grievance over this issue.
>
> The issue is now in the hands of the grievance committee . . .

The parties processed the grievance through the three steps preceding grievance arbitration, without any resolution. At no point during this procedure did the Board expressly argue that the grievance was not arbitrable.

The parties were unable to informally resolve the negotiations for a successor to the 1988-91 agreement. Ultimately, an interest arbitrator resolved the matter, by accepting the Board's final offer, with the parties' stipulations, as the agreement to govern the 1991-92 and 1992-93 school years. The experience cap discussed above, and tentatively agreed upon at the July 29, 1991, bargaining session, was included in those stipulations.

Further facts will be set forth in the DISCUSSION section below.

THE ASSOCIATION'S POSITION

After an extensive review of the record, the Association asserts that "(t)he Arbitrator has authority to hear the dispute regarding the placement of Michael T. Vesperman on the salary

schedule with five years of teaching experience." Noting that the position ultimately to be filled by Vesperman was posted on July 1, 1991, that the Association, in September of 1991, grieved his placement by the Board, and that a "long and acrimonious dispute" ensued regarding that placement, the Association concludes that the Board's failure to challenge the arbitrability of the grievance until August of 1992 was inappropriate. This delay, the Association contends, both "adversely affected the Association's position in the arbitration", and manifested that the Board "intended to arbitrate the dispute". It follows, the Association concludes, that the Board's conduct should be interpreted as "an agreement to submit this dispute to arbitration."

The Association contends that arbitral authority will support a challenge to the substantive arbitrability of a grievance only if made prior to the hearing. Because no such challenge was made here, the Association concludes that it was not afforded proper notice, or a realistic opportunity to bring the dispute to another forum. Beyond this, the Association argues that judicial precedent establishes that "where a dispute does not arise under the collective bargaining agreement, the duty to arbitrate a dispute will terminate with the contract, unless the parties' actions show an intent to arbitrate." The Association also notes that judicial precedent requires that "doubts about the intent to arbitrate should be resolved in favor of coverage." In this case, the record, according to the Association, clearly shows the Board's intent to arbitrate the grievance. Any other conclusion would, the Association asserts, "be contrary to established labor-management practices and effectively eradicate the Union's right to this as well as other methods of redress for wrongs."

Turning to the merits of the grievance, the Association contends that bargaining history establishes that while the parties did negotiate a five year cap on payment for experience, the parties did not agree "to make this change effective prior to ratification of the entire agreement." Noting the parties never developed a signed agreement to implement their tentative agreement on this point, the Association contends that a misunderstanding developed between the negotiators. The Association notes that "(t)here is no evidence of intentional deception on the part of either side", but concludes that the "honest misunderstanding" concerning the implementation of the tentative agreement can not be made into an Association forfeiture of a contractual right.

Because the 1988-91 agreement required the Board to compensate Vesperman for his experience, the Association avers that he should be placed, for the 1991-92 salary schedule, in the BA+30 lane at step 13. The Association denies that his experience as a substitute teacher and as a parochial school teacher can be denied him, as demonstrated by the seniority list promulgated by the Board which notes Vesperman having fifteen years of experience. In the event the parochial school experience is not credited, the Association urges that Vesperman be placed in the BA+30 lane at step 12.

The Association's next major line of argument is that bargaining tradition in public sector education has established that items which are primarily economic in nature are implemented retroactively upon ratification of an agreement, while items which are primarily language based are implemented prospectively. In this case, the Association notes that the Board failed to invoke

the "emergency situations" mechanism from the Adherence to Schedule provisions, and thus is faced with the fact that the parties did not specifically agree to retroactively implement the primarily language-based tentative agreement on the five year experience cap.

The Association concludes that the Board's placement of Vesperman violated both the contract and the parties' past practices, and that Vesperman must be made whole for the pay and benefits he was denied due to the Board's violation of the agreement.

THE BOARD'S POSITION

After an extensive review of the record, the Board asserts that the grievance is not arbitrable. More specifically, the Board contends that "the Arbitrator does not have the authority to rule on the case at hand" because "the Union cannot file a grievance on behalf of an event which occurred after the expiration of the contract." Noting that the duration clause of the 1988-91 agreement expressly terminated its effective force on June 30, 1991, and that the Board hired Vesperman on August 8, 1991, the Board concludes that the clear and unambiguous language of the contract mandates the denial of the grievance. Beyond this, the Board contends that Commission, judicial and arbitral precedent deny the arbitrability of disputes which arise after the expiration of the agreement which states the right to grieve. Judicial inroads on this established doctrine turn, according to the Board, on the existence of rights which accrue or vest during the term of the lapsed agreement. Because Vesperman had no such rights prior to his hire, the Board concludes there is no persuasive legal basis supporting the arbitrability of the grievance.

Even if the grievance is found arbitrable, the Board argues that its placement of Vesperman in the BS+30 lane at step 5 was contractually appropriate. More specifically, the Board argues that it proposed the five year experience cap to the Association, which unequivocally accepted the proposal on July 29, 1991. Nor was this agreement tentative in nature, according to the Board, since "(t)he Board also sought the immediate implementation of the tentatively agreed to contract language." More specifically, the Board asserts that Association representatives fully understood the need prompting the proposal, and that the need was immediate. The Association, according to the Board, agreed to submit a side letter incorporating the agreement "as soon as practicable." The Board contends that, against this background, the Association must be understood to have foreseen the Board's reliance on the July 29, 1991, tentative agreement.

The Board argues that the law of contracts requires that "where one party can foresee the other party's reliance on their offer, and the offer is thus relied upon to fulfill or complete some action, the offer is irrevocable." The evidence here demonstrates, the Board contends, that it made a clear offer on July 29, 1991, which was accepted by the Association in the knowledge that the Board would rely on that acceptance in hiring Vesperman. It necessarily follows, the Board concludes, that the Association's attempt to make the acceptance tentative in nature must be rejected.

The Board's next major line of argument is that even if the Association's view of the merits is accepted, then Vesperman must be placed at step 9.75 of the contractual salary schedule. More specifically, the Board argues that "(n)o teacher, past or present, in the Monticello School District has received credit on the salary schedule" for either substitute teaching experience or parochial school teaching experience. It necessarily follows that five of the Vesperman's claimed years of experience must be rejected, according to the Board. Placement at step 9.75 thus, the Board concludes, fully rewards Vesperman for his experience including that of the 1992-93 contract year.

The Board concludes that the grievance must be denied either because the Arbitrator lacks jurisdiction over it, or because the "Board should not be penalized for relying on the Union's offer."

DISCUSSION

The Board has asserted a jurisdictional issue. This poses a threshold issue because "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." 5/ Wisconsin case law establishes that this threshold determination "is limited to a determination whether there is a construction of the arbitration clause that would cover the grievance on its face and whether any other provision of the contract specifically excludes it." 6/

There is no dispute the contract defines "grievance" broadly enough to cover the grievance on its face. The dispute is whether the terms of the Duration clause specifically exclude the grievance from arbitration. The Duration clause terminates the agreement on June 30, 1991, precludes any oral extension of the agreement and notes the parties' understanding that the agreement expires "on the date indicated".

The grievance was filed in September of 1991, and the application of the Duration clause to that grievance is clear and unambiguous. The Duration clause limits the period the "provisions of this Agreement . . . shall continue and remain in full force and effective as binding on the parties until the thirtieth day of June, 1991." There is, then, no apparent authority for arbitral consideration of the September, 1991, grievance under the 1988-91 contract.

The word "apparent" prefaces that the parties' dispute is less on the application of the

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5/ United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582, 46 LRRM 2416, 2419 (1960).

6/ Joint School District No. 10, City of Jefferson et. al. v. Jefferson Education Association et. al., 78 Wis.2d 94, 111, 253 N.W.2d 536, 545, (1977).

terms of the Duration clause than on defenses raised by the Association to a strict application of the clause. Initially, the Association questions whether the Board can raise a jurisdictional issue for the first time at the arbitration hearing.

On the present facts, I am unwilling to deny the Board's ability to raise the jurisdictional issue. Initially, it must be noted that the contract does not expressly address this point. As a result, the point is essentially legal in nature. Courts do not, absent the parties' express agreement to make an arbitrator's jurisdictional conclusions final and binding, defer to an Arbitrator's conclusion of a jurisdictional issue. 7/ Ignoring the issue thus begs further litigation on the enforcement of an award issued over a jurisdictional objection. Beyond this, while permitting a belated jurisdictional objection arguably rewards conduct which should arguably be deterred, it cannot be assumed that denying the Board's assertion of the jurisdictional objection necessarily enhances the bargaining process. In this case, the parties have defined "grievance" broadly to incorporate disputes not just on "the application of any of the provisions of this agreement', but also on "an event or condition which affects the wages, hours, and conditions of employment of a teacher or group of teachers". The clause is broad enough to incorporate disputes beyond the terms of the agreement. The "Purpose" section of the procedure calls for "equitable solutions" to "problems . . . affecting the welfare or working conditions of teachers". The grievance procedure should, then, be permitted to freely address any dispute, clearly arbitrable or not, which the parties are willing to discuss. Cutting off the Board's assertion of the jurisdictional point here could tend to encourage the early assertion of legal defenses. This could unduly formalize or legalize the parties' processing of grievances.

The Association has also contended that the Board's belated assertion of the jurisdictional point adversely impacted the Association's ability to prepare for the litigation of its case. This point has considerable persuasive force, but has been, and must be, addressed as an evidentiary point potentially requiring the continuance of the hearing, not as a basis to deny the assertion of the jurisdictional objection.

The Association has also contended that the Board's conduct manifests a legal and a factual intent to arbitrate. The Association focuses primarily on the fact that the arbitration hearing was convened before any jurisdictional point was raised. 8/ The Board's belated assertion of the jurisdictional objection does support the inference made by the Association. This fact can also,

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7/ Ibid., 78 Wis.2d at 106-111, 253 N.W.2d at 542-545.

8/ The Association cites Montello School District, (Fleischli, 7/83) to ground its assertion. The award does note the District voiced its objection prior to the arbitration hearing. This supports the Association's position, but is not compelling authority here. Fleischli's analysis highlights the facts of his own case less to estabslih that any later notice would be impermissible than to highlight that the notice was as prompt as possible.

however, support other inferences. That the Board processed the grievance to arbitration may signal no more than its willingness to permit the Arbitrator to address the jurisdictional point, or no more than a change in focus due to a change in advocates. It may signal no more than the Board's willingness to discuss points of controversy through the steps of the grievance procedure without regard to their arbitrability. Beyond this, the Board inserted into the individual teaching contract offered Vesperman in August of 1991 a clause voiding the contract if the tentative agreement to cap experience was not ratified. This indicates, at a minimum, that the Board did not wish to arbitrate Vesperman's placement under the 1988-91 agreement. In sum, to conclude the Board's conduct constitutes an intent to arbitrate the merits of the grievance requires an inference not firmly rooted in record evidence.

Nor can the Association's legal point be accepted. Doing so effectively overturns the Commission's conclusion that although an employer can be compelled, under its statutory duty to bargain, to process grievances after a contract has expired, it cannot be compelled to arbitrate those grievances. 9/

9/ See Racine Unified School District, Dec. No. 24272-B (WERC, 3/88).

Beyond this, it must be noted that the issue posed here is not whether Vesperman's placement is arbitrable at all, but whether that placement is arbitrable under the parties' 1988-91 agreement. Through the interest arbitration process, the parties eventually came to a sucessor to the 1988-91 agreement. The Association essentially argues that Vesperman's salary schedule placement is dictated by the 1988-91 agreement, but the salary corresponding to that placement is dictated by the successor agreement. How the two agreements can be thus selectively applied is not apparent. It is, however, apparent that adopting this assertion effectively reads the Duration clause of the 1988-91 agreement out of existence. Whatever obligation the Board was under regarding Vesperman's placement in August of 1991 was either a legal function of the Board's statutory duty to maintain the "status quo" during the gap between the 1988-91 agreement and its successor or a contractual function of the agreement the parties bargained to become effective after June 30, 1991. In either event, Vesperman's placement is beyond the scope of an Arbitrator's authority under the 1988-91 agreement.

Finally, it must be noted that Vesperman had no contractual right to the position he assumed in September of 1991 which accrued during the term of the 1988-91 agreement. The position he filled became open during that agreement, but neither the Board nor Vesperman took any action to put him in that position prior to his July, 1, 1991, interview for a coaching position. That interview and any action by the Board or Vesperman to place him into a special education teaching position came after the June 30, 1991, expiration of the 1988-91 labor agreement. There is, then, no basis to conclude the facts posed here concern "a dispute which arises under the contract, but which is based on events that occur after its termination". 10/

The Duration clause of the 1988-91 agreement limited the effective term of the provisions of that agreement to the period from July 1, 1988, through June 30, 1991. The effect of the Adherence to Schedule provisions of that agreement were not extended beyond June 30, 1991, by the parties, and cannot be extended by an Arbitrator whose authority arises under that agreement. I have, then, no jurisdiction to consider the merits of the grievance.

AWARD

The Arbitrator does not have the authority to act to hear this dispute due to the fact that there was no contract in effect at the time of the filing of the grievance.

Dated at Madison, Wisconsin, this 7th day of January, 1993.

10/ Nolde Brothers, Inc. v. Bakery & Confectionary Workers Union, AFL-CIO, 430 U.S. 243, 253, 94 LRRM 2753, 2756 (1977).

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator