BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between SCHOOL DISTRICT OF GREENFIELD Greenfield, Wisconsin and GREENFIELD EDUCATION ASSOCIATION	Warren Rebholz 20-89 day replacement teacher rate Case 106 No. 48632 MA-7663

Appearances:

Mr. Warren L. Kreunen, von Briesen & Purtell, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, WI 53202-4470, appearing on behalf of the District.

Ms. Valerie Gabriel, Executive Director, Council #10, 13805 West Burleigh Road, Brookfield, WI 53005, appearing on behalf of the Association.

ARBITRATION AWARD

The parties jointly requested that the Wisconsin Employment Relations Commission designate the undersigned Arbitrator to hear and determine a dispute concerning the above-noted grievance under the grievance arbitration provisions of their 1991-93 collective bargaining agreement (herein Agreement).

The parties presented their evidence and arguments to the Arbitrator at a hearing held at the District office in Greenfield, Wisconsin, on February 25, 1993. The hearing was not transcribed, but the parties agreed that the Arbitrator could maintain an audio tape recording of the evidence and arguments for his exclusive use in award preparation. The parties summed up their positions on the record at the conclusion of the hearing. By arrangement at the hearing, the Arbitrator received an exhibit by mail on March 1, 1993, marking the close of the record.

STIPULATED ISSUES

At the hearing, the parties authorized the Arbitrator to decide the following issues:

1. Did the District pay Warren Rebholz less than 1/190th of the BA minimum required by Sec. 2 of Art. I [of the Agreement]?.

2. If so, what shall the remedy be?

PORTIONS OF THE AGREEMENT

ARTICLE I

RECOGNITION

. . .

2. Definition of Replacement Teachers:

A. The Board recognizes replacement teachers as part of the bargaining unit following twenty (20) consecutive days of replacing an absent regular teacher. At the expiration of the twenty (20) day period, the replacement teacher will be paid at the rate of 1/190th of the BA minimum salary per day.

After ninety (90) consecutive days as a replacement teacher, the teacher shall be placed on the appropriate step of the salary schedule and shall receive all contract rights and benefits except as specified in Section C, below.

B. When it is reasonable for the Administration to believe that the regular teacher will be absent for twenty (20) consecutive days or more, the replacement teacher shall be paid 1/190th of the BA minimum salary from the first day of employment.

When it is reasonable for the administration to believe that the regular teacher will be absent for ninety (90) consecutive days or more, the replacement teacher will receive all contract rights and benefits except as specified in Section C, below, from the first day of employment.

C. Replacement teachers shall not be given an individual contract and shall not be subject to the layoff and recall or nonrenewal provisions of this Agreement. Replacement reachers will be subject to termination upon the return of the absent teacher for whom they are working or the end of the school year, whichever is sooner. Satisfying these conditions shall be considered just cause for severing the employment relationship.

D. Replacement teachers shall not accrue seniority during their initial term of employment. If a replacement teacher is hired to fill a permanent vacancy within one year of a replacement

assignment, s/he will be credited with seniority for the duration of the replacement assignment(s) which occurred within the previous year.

The provisions of the fair share clause of this Agreement shall apply to replacement teachers after one (1) full pay period in a single assignment.

E. Replacement reachers who are recalled from layoff to fill the opening created by the absence of a regular teacher shall:

1) Accrue seniority as a full time teacher;

2) Be subject to layoff upon the return of the absent teacher; and

3) Begin a new two year period of recall upon completion of the replacement teacher assignment.

. . .

ARTICLE XV

PLACEMENT PROCEDURE

1. Outside Service: Credit for years of public school service outside of the School District of Greenfield, shall be rated as follows:

A. For prior public and private teaching experience immediately prior to teaching in the School District of Greenfield, full credit for the first five (5) years of experience and one-half (1/2) credit for the next ten (10) years of experience; the total years of experience shall not exceed ten (10) years.

B. If the division of years of experience results in a fraction of less than one-half (1/2), the fraction will be dropped; if one-half (1/2) or more, it will be credited at one-half (1/2).

C. Service to the United States . . .

D. Additional credit for experience may be allowed with the recommendation of the Superintendent and the approval of the

School Board.

2. Validation: It shall be the responsibility of each teacher to provide to the Board, definite evidence from teacher training institutions and from former employing boards, the number of credits earned and years of experience.

Each teacher must provide a current Wisconsin license or a copy of application for same prior to the first day of school. Any teacher not complying with this section may have his/her salary withheld until provisions of this section are met unless such failure occurs for reasons beyond the teacher's control.

. . .

BACKGROUND

The Association has represented the District's teachers for many years. Since at least their 1986-88 agreement, the parties' contracts have contained language materially the same as Art. I Sec. 2, along with conventional matrix salary schedules consisting of horizontal step rows based at least to some extent on experience and vertical lanes based on educational attainment. The parties' general procedure for salary schedule placement is set forth in Art. XV, above.

In their negotiations for a 1988-91 agreement covering the 1988-89, 1989-90 and 1990-91 school years, the parties agreed to give the District certain flexibility to hire new teachers with little or no experience at higher steps than would have been permitted under the parties' prior agreements. That agreement, referred to herein as the "hiring rate flexibility agreement," has never been reduced to a written form bilaterally approved by both parties. Although the District had initially proposed elimination of the first step on the schedule, that change was not implemented as a part of the ultimate agreement, and the salary schedules printed and distributed as a part of the parties' 1988-91 agreement made no reference to the hiring rate flexibility agreement.

The respective salary schedules prepared by the District for its internal use in recruitment and hiring during that contract term bore asterisks at the relevant step referring to footnotes which read as follows: "Minimum hiring level for new employees will be the 2.0 level" (in the 1988-89 schedule); "The District has the option of hiring new teachers with less than 2.5 years experience at the 2.5 salary level" (in the 1989-90 schedule); and "The District has the option of hiring new teachers with less than 3.0 years experience at the 3.0 salary level" (in the 1990-91 schedule).

The Association's January 24. 1989 summary of the proposed 1988-91 settlement as presented to its membership for ratification read on that point as follows:

> Salary Schedules - As a result of the manner in which these schedules distribute the settlement dollars on the salary schedules,

> the starting teacher salaries are not as high as they otherwise might be. The GEA and District Teams agreed that, in order to remain competitive with other districts in the area, the District would have the right to hire new teachers with no previous experience at a step higher than Step 1. The asterisks shown on the three schedules which were distributed to all teachers with the ratification materials should be placed next to Step 2 in 1988-89, next to step 2.5 in 1989-90 and next to step 3 in 1990-91. That means that the District could hire a new teacher with no experience at Step 2 or less in 1988-89, Step 2.5 or less in 1989-90 and at Step 3 or less in 1990-91.

In the succeeding round of negotiations leading to the Agreement (which covers the 1991-92 and 1992-93 school years), there was no discussion or agreement concerning addition of a reference to the hiring rate flexibility agreement. However, in order to provide its own representatives with guidance regarding the rate at which the District was, in fact, hiring new employes, the Association included an asterisk at Step 3 referring to a footnote stating "Hiring step, without experience," on each of the salary schedules for that contract term. It is undisputed that the District was unaware of that addition when the Agreement was ultimately signed.

Despite the hiring rate flexibility agreement, the parties' salary schedules for 1988-89 and subsequent years have continued to set forth full sets of salary figures for all educational lanes in Steps 1.0, 1.5, 2.0 and 2.5.

Both before and since the hiring rate flexibility agreement was reached, the District has consistently paid teachers working at least 20 but less than 90 days (referred to herein as 20-89 day replacements) at the lowest salary figure appearing in the BA lane of the applicable agreement salary schedule. Since the hiring rate flexibility agreement was reached, when the District hired individuals for regular teaching assignments or as replacements for 90 days or more (referred to herein as 90 day replacements), it has placed those with less than 2 years of experience hired in 1988-89 at Step 2, those with less than 2.5 years hired in 1989-90 at Step 2.5 and those with less than 3.0 years experience hired in and after 1990-91 at Step 3.

When it employed and paid Grievant Warren Rebholz as a 20-89 day replacement teacher at the lowest salary figure in the BA lane in April of 1992, Rebholz asked the Association if he was being properly paid, and, with Association's advice and assistance, the instant grievance was filed on Rebholz' behalf. The grievance asserts that the District violated Agreement Art. I Sec. 2 in that, "Mr. Rebholz has been hired as a replacement for over 20 consecutive days. Salary was based on B.A. minimum of the salary schedule step one. It should be based as 1/190th of the minimum salary paid teachers starting in the Greenfield District which is based on Step 3 of the salary schedule." The grievance requests by way of remedy, "payment as per contract."

The grievance remained unresolved and was submitted to arbitration as noted above.

POSITION OF THE ASSOCIATION

In the 1988-91 negotiations, the District sought and was granted the ability to hire certain new teachers at a higher step than their experience would otherwise have permitted. The District was authorized to decide to what extent it wished to exercise that authority for that year's hirees as a group, not to pick and choose which particular hirees or sub-groups of hirees would enjoy the raised hiring step. The steps below the raised hiring step chosen by the District each year were left on the schedule to avoid the potential unit-wide confusion about what teachers are to be paid that results when previously-existing steps are removed and remaining steps are renumbered.

Pursuant to the hiring rate flexibility agreement, the District raised the minimum pay step to the fullest extent permitted in the various years, and to what is now Step 3. The Association never agreed that the District could simultaneously maintain more than one minimum pay step in a given school year, or that it could pay a 20-89 day replacement at a lower step than a 90 day replacement with no experience. As the initial proponent of hiring rate flexibility, the District must bear responsibility for misunderstandings arising from the resultant agreement on that subject and cannot insist on an exception to the raised minimum pay step which that agreement authorized the District to establish.

There is no evidence that the Association knew of or acquiesced in the way the District was paying 20-89 day replacements since the hiring rate flexibility agreement was reached. The Association reasonably believed the District would be using the same raised minimum for 20-89 day replacements as it had uniformly implemented for new hires and for 90 day replacements. The instant grievance was promptly initiated when Rebholz brought his situation to the Association's attention.

The Arbitrator should order the District to pay Rebholz at the hiring step level which the District has uniformly used as the minimum for payment of regular teachers and 90 day replacement teachers. The hiring step established by the District pursuant to the hiring rate flexibility agreement is now Step 3. That is the level at which Rebholz should have been paid, not the lesser "ghost minimum" which the District seeks to impose without the agreement or knowing acquiescence of the Association. The grievance should therefore be granted with the District being ordered to make Rebholz whole.

POSITION OF THE DISTRICT

The lowest salary figure in the BA lane of each salary schedule has always been the sole "BA minimum." The agreement reached in January of 1989 did not alter that. The bargaining history evidence indicates only that the parties agreed that the District could, within agreed upon limits, hire above the schedule minimum. Association witness James Gibson admitted that he had no specific recollection of bargaining table statements on this subject. The Association's own ratification summary states that the District would have the right to hire a new teacher with no experience at a specified hiring step "or less," and the schedules prepared and used internally by the District for 1989-90 and 1990-91 similarly refer to the District having "the option of hiring

new teachers with less than [2.5] 3.0 years experience at the [2.5] 3.0 salary level."

Gibson's testimony about the possibility that elimination of a salary step could cause pay level confusion was offered only as a hypothetical reason why an association might oppose elimination and renumbering of steps, not as a reason that was actually discussed by the Association at the bargaining table during the 1988-91 negotiations. It appears, instead, that the steps below the 2.0, 2.5 and 3.0 in 1988-89, 89-90 and 90-91, respectively, were kept in the Agreement because the District retained the right to hire at any of them. The District's proposal in bargaining had been to "eliminate first full step of schedule," but the resultant agreement did not do that.

It follows that, under the Agreement, the District has the right to hire teachers without experience at Step 3 or below, confirming the continued status of the lowest salary figure in the BA lane as the "BA minimum." In light of the clear and unequivocal meaning of that term, and in light of the bargaining history evidence, there is no need to rely upon the District's longstanding and uniform practice consistent with its treatment of Rebholz in this case.

Grievant was properly paid, so the grievance should be denied.

DISCUSSION

Article I Sec. 2 provides 20-89 day replacement teachers with daily pay at 1/190th of "the BA minimum salary." In the context of numbers, a "minimum" conventionally refers to the least or lowest in a group. In the BA lane of the Agreement salary schedules, the least or lowest number is that for Step 1.0, at which Rebholz was paid in this case. Absent strong evidence of a contrary mutual intent of the parties, the Arbitrator finds this to be a compelling basis on which to deny the grievance.

The precise nature and implications of the parties' agreement regarding hiring rate flexibility in the 1988-91 negotiations are somewhat clouded by the fact that that agreement has never been knowingly reduced to a writing signed by both parties. (It is undisputed that the District signed the Agreement without knowledge that the Association had added to each schedule the asterisk at Step 3 referring to the "Hiring step, without experience" footnote that had not appeared in the 1988-91 agreement in its signed form.) However, whether that hiring rate flexibility agreement is deemed to be as the Association has described and represented it in its 1989 ratification summary or in its salary schedule footnotes or as the District has represented it in its salary schedule footnote in 1988-89 or in those for 1989-90 and 1991-92, that agreement is nowhere described in so many words as a change in "the BA minimum salary."

Indeed, the bargaining history evidence shows that the District had proposed elimination of the first step in the salary schedule and that the Association successfully resisted that elimination. The Association may have intended that the "ghost steps" below the Step referred to in the raised hiring rate agreement be retained merely to maintain the symmetry of the schedule index or to avoid the confusion that often accompanies step elimination with or without

renumbering. However, by agreeing to (and indeed insisting on) retention of salary rates for Steps 1.0, 1.5, 2.0 and 2.5 in the Agreement without a clear statement in the language of the Agreement that BA Step 1.0 would no longer be deemed the "BA minimum," the Association has provided a firm basis in the language of the Agreement supporting the propriety of paying 20-89 day replacements at the BA Step 1.0 rate.

Nothing in the bargaining history evidence indicates that the parties have ever focused bargaining table discussions on the implications for replacement teacher pay of their 1988-91 hiring rate flexibility agreement.

While the Association's representatives may well have expected that 20-89 day replacements would be paid at the same step as 90 day replacements with no experience, the language of the Agreement comfortably permits a difference in the treatment of those two groups. Article I Sec. 2 specifies that the 90 day replacement teachers "shall be placed on the appropriate step of the salary schedule and shall receive all contract rights and benefits except as specified in Section C . . .". In contrast, the language concerning 20-89 day replacements uses different language specifying a rate based on "the BA minimum salary." Thus, the Agreement uses different language in describing the pay levels applicable to those two categories of replacement teachers.

Moreover, it is clear that the parties intended that the 20-89 day group would be less advantageously treated than an identically-experienced 90 day replacement teacher in at least those circumstances in which both replacement teachers came to the District with more than three years of experience of the sort entitled to salary schedule credit under Art. XV.1. In such a case, the 90 day replacement would be higher paid by reason of an Art. XV placement in accordance with experience and education, whereas the 20-89 day replacement would not. Therefore, contrary to the Association's contentions, an interpretation of Art. I Sec. 2 whereby a 20-89 day replacement with no experience would be paid a different salary than a 90 day replacement with no experience is quite consistent with the parties' overall intentions as reflected in their comparative treatment of those two groups at other levels of identical experience.

For those reasons, the Arbitrator finds that the District's treatment of Rebholz in this case is firmly supported by the language of the Agreement and further supported -- rather than undercut -- by the bargaining history evidence. Additional analysis based on the District's evidence concerning the history of administration of Art. I Sec. 2 as regards 20-89 day replacements is not necessary.

The District properly paid Rebholz at the BA Step 1.0 rate for his work as a 20-89 day replacement teacher.

DECISION AND AWARD

For the foregoing reasons and based on the record as a whole it is the DECISION AND AWARD of the undersigned Arbitrator on the STIPULATED ISSUES noted above that:

1. The District did not pay Warren Rebholz less than 1/190th of the BA Minimum required by Sec. 2 of Art. I [of the Agreement].

2. The grievance is denied and no consideration of a remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin
this 6th day of July, 1993 by Marshall L. Gratz /s/
Marshall L. Gratz, Arbitrator