

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 TOMAHAWK SCHOOL DISTRICT : Case 40
 : No. 50501
 and : MA-8274
 :
 TOMAHAWK EDUCATION ASSOCIATION :
 :

Appearances:

- Mr. Gene Degner, Executive Director, WEAC UniServ Council #18, P.O. Box 1400, Rhinelander, Wisconsin 54501, on behalf of the Association.
- Mr. Stephen Garbowicz, Representative, Tomahawk School District, 18 East Washington Avenue, Tomahawk, Wisconsin 54487, on behalf of the District.

ARBITRATION AWARD

According to the terms of the 1993-1996 collective bargaining agreement between Tomahawk School District (hereafter District) and Tomahawk Education Association (hereafter Union or Association), the parties requested that the Wisconsin Employment Relations Commission appoint a member of its staff to act as impartial arbitrator of a dispute between them regarding the correct placement on the salary schedule for 1993-94 for two teachers, Ann Swenty and Bruce Bradley. Hearing was held on May 9, 1994, at Tomahawk, Wisconsin. A stenographic transcript of the proceedings was made and received by July 1, 1994. The parties submitted their initial briefs by July 18, 1994 and their reply briefs by July 29, 1994, whereupon the record was closed.

Issues:

The parties stipulated that the following issues should be decided regarding Mr. Bradley's situation:

Is the Board in violation of the collective bargaining agreement by not paying Bruce Bradley for credits beyond his B.A. degree for the 1993-94 school year?

If so, what is the appropriate remedy?

The parties were unable to stipulate to the issues to be decided regarding Ms. Swenty's case, although they agreed to allow the undersigned to frame these issues based upon the relevant evidence and argument herein. The Union suggested the following issues statement regarding Ms. Swenty:

Is the Board in violation of the collective bargaining agreement by not paying Ms. Swenty for credits beyond her initial B.A. degree starting the second semester of the 1993-94 school year?

If so, what is the appropriate remedy?

The District suggested the following issues statement regarding Ms. Swenty:

Must the District pay for undergraduate credits earned prior to employment to enable a teacher to become certified so as to become employable in the District?

If so, what is the appropriate remedy?

Based upon the relevant evidence and argument, I conclude that the Union's issues regarding Ms. Swenty's situation more appropriately describe this dispute and they shall, therefore, be determined in this case.

Relevant Contract Provisions:

ARTICLE 9 - COMPENSATION

- A. Experience-Credit for experience in another school system will be evaluated by the District Administrator at the time the teacher is employed and approved by the School Board.
- B. Teachers of special subjects, or where shortages exist, may be placed on the schedule according to the School Board Action.
- C. (1985) When a teacher supplies a statement before September 15 or January 15 from a recognized college that he/she has completed 6, 12, 18, 24 or 30 semester credits beyond the bachelors degree or the masters degree, they will receive the appropriate compensation with the next full pay period. For credits to apply to this schedule, they must be necessary to receive a degree, major or minor fields, or a course that will be beneficial to the school only. Teachers who receive National Science Foundation or similar grants/stipends for course tuition payments will be allowed to use those credits earned for advancement on the salary schedule. However, in those instances where the District pays tuition for course credit or allows release time, teachers will not be allowed to use those credits earned for advancement on the salary schedule.
- D. (1985) Teachers with a masters degree will receive advancement accordingly per block of six semester credits, not to exceed 30 semester credits. These credits must be in related fields of teaching only.
- E. When a teacher supplies a statement on or before September 15 from a recognized college or university that he/she has completed his/her Masters Degree, he/she will be placed on the appropriate step on the Master Degree Schedule.
- F. While the Board encourages any teacher among its employ to seek an advanced degree, it is the Board's position that a teacher with an advanced degree should not receive additional compensation unless said degree provided a benefit to the educational goals of the school. An advanced degree must be in the area, directly and not peripherally or remotely, that prepares the teacher directly for the course the teacher is teaching. This will not affect teachers presently placed on the Masters schedule.
- G. Special Services are paid above schedule according to action of School Board.

. . .

Facts:

Bruce Bradley has been employed by the District as an Industrial Arts teacher since September 23, 1993, when he was hired to replace a teacher who quit after the 1993-94 school year began. Prior to his hire, the District interviewed Bradley but the subject of his placement on the salary schedule was not discussed at that time. In a private conversation after he was hired and had signed his contract, High School Principal John Stahmer told Bradley that he would not be paid for six undergraduate credits he had earned before his hire in the 1993-94 year but that he would be paid for these credits starting in the 1994-95 school year. Bradley stated that Stahmer also told him that there had been a misunderstanding between Stahmer and District Administrator Powell; and that Powell had expected Stahmer to hire Bradley at the BA step without credits for 1993-94. Bradley stated that at this time he told Stahmer that this arrangement was okay, and Bradley admitted that he had signed the 1993-94 contract given to him, showing he would receive no credit for the six under-graduate credits he had earned in 1988 after he had earned his BA degree.

Ms. Ann Louise Swenty was hired by the District as a half-time Kindergarten teacher in 1991. Swenty stated that at her initial interview for the position, Principal Kirkel and Assistant Principal Meyer asked Swenty at what level she was being paid in her then-current job (Kindergarten teacher in Waupaca School District). Swenty replied she was paid at a BA + 6 with five years' experience and Kirkel and Meyer said they would go by this rate for hiring Swenty. Kirkel and Meyer asked Swenty whether she had any other credits beyond her undergraduate degree. Swenty told them that she did but these were undergraduate credits. When Swenty came in to the Elementary School Building to sign her 1991-92 contract, Kirkel stated that they doubted if the District would pay for undergraduate work done after her degree but that they would check into it. Ultimately, Swenty's individual employment contract for 1991-92 listed her salary at "Step No. 5 BA + 6" for a 50% contract. On the addendum attached to Swenty's 1991-92 contract a legend in capital letters read as follows:

PLEASE REPORT ANY DISCREPANCIES TO THE DISTRICT
ADMINISTRATION OFFICE BY NOVEMBER 25, 1994. 1/

Swenty signed her 1991-92 contract and did not report any discrepancy in pay to the District.

The six credits for which the District paid Swenty ("Math Their Way," I and II) were graduate credits she received in 1990, before she was employed by the District. Notably, Swenty was originally certified to teach Early Childhood in 1985. She could teach only Nursery School and Kindergarten with that license. She went back to school and took courses to receive her K-3 certification in 1986, admittedly for her own reasons -- so that she would be more employable in the field of education. Swenty took the six graduate credits for which Tomahawk School District has paid her, while she was employed at her previous job, as a Kindergarten teacher for Waupaca School District. The District offered Swenty a 50% contract as a Kindergarten teacher for 1992-93 at Step 6, on the BA + 6 Lane. She accepted this contract and made no objections to her pay rate in 1992-93. For the 1993-94 school year, Swenty was

1/ This legend has appeared on many contract addenda issued by the District from 1991 to date, although not all contracts included an addendum. No addendum (or legend) was attached to Bradley's 1993-94 contract.

offered and accepted a full-time Kindergarten teaching position. Again, Swenty's contract listed her at the BA + 6 Lane at the Step 7 for experience in her 1993-94 contract.

In October, 1993, Union official Torkelson spoke to Swenty and Bradley about the credits for which they were receiving pay. Torkelson explained that the Union was checking to make sure that all teachers hired in the last three or four years were being paid properly for credits beyond their degree. It was due to this Union investigation that the instant grievance was filed after it was discovered that Bradley was not being paid for three two-credit undergraduate courses he took in 1988 (after he received his degree) at UW-Stout in Industrial Arts, and that Swenty was not being paid for the following courses taken at UW-Oshkosh in 1986-87 after she received her undergraduate degree but before she was hired by the District:

Credits

2.0	1)	310 Measurement and Evaluation in Elementary Education
2.0	2)	311 Language Arts for Elementary Education
2.0	3)	317 Social Studies
2.0	4)	384 Contemporary Methods of Elementary Math
4.0	5)	400 Student Teaching in Elementary
<u>1.0</u>	6)	455 Problems in Student Teaching
13.0		

These courses, including the two Student Teaching courses, were necessary for Swenty to become certified to teach K-3. It is undisputed that Swenty did not need a K-3 license to teach Kindergarten for the District.

The Union offered testimony from fourteen teachers regarding the types of courses (undergraduate and graduate) for which the District has granted salary advancement upon hire, to show that the District has had a consistent past practice of paying newly hired teachers for all credits, both undergraduate and graduate they have received after their initial undergraduate degree. That evidence can be analyzed as follows:

- 1) Marcia Sattelberg - hired in 1975, directly after receiving her BA; placed at BA Lane; got credit later for undergraduate courses (1-2 credits) she had taken before hire when she applied for BA + 6 movement; has received her MA and is now placed at MA + 12; the 12 credits are all undergraduate.
- 2) Karen Torkelson - employed by the District since 1974 at BA + 9; received credit and salary advancement for three graduate courses she took before she was hired by the District; changed her certification to a 316 license after hire and has taught grades 1-5 remedial reading; is now placed at MA + 12 step; some of the 12 credits are graduate and some are undergraduate; did her student teaching in reading at the graduate level and received advancement on the salary schedule for it; also

received salary advancement for a first aid course because the District needed someone in each building to take first aide.

- 3) Leneya Schwartz - hired as a Special Education teacher K-6 (E.D. students) by the District in 1981 and given four years' experience and placed on the BA + 9 lane; these nine credits were graduate credits; got a different certification after hire as an Elementary teacher K-8; took a leave of absence to do her student teaching for the K-8 Elementary license and she was then over BA + 30 so she did not seek credit/advancement for this student teaching course; her original certification was from Illinois and it was not recognized by Wisconsin so Schwartz had to re-take math, science, language arts, and social studies courses; Schwartz received advancement on the salary schedule for all courses taken up until she reached BA + 30 without having gotten her Masters; all courses had been taken while employed by the District.
- 4) Bonnie Penn - hired on a provisional license as a Chapter 1 Reading and Math Teacher in 1990; received full advancement/credit for graduate courses taken before hire toward her Masters until she had more than BA + 30 credits; at that point, she did not get further movement on lane until she received her Masters.
- 5) Bill Kolasa - hired with a two-year teachers license 29 years ago; received both his BA and MA in Elementary Administration while employed by the District; received salary advancement for all courses; now at MA + 12 or + 16 and all courses beyond MA were graduate courses.
- 6) Jane Loretz - hired as Chapter 1 Reading teacher in 1991 on a provisional license; had no credits beyond her BA at hire; took courses after hire and received her Chapter 1 Reading certification license after hire; has received salary advancement for all 18 graduate credits taken since her hire.
- 7) Lynn Derleth - was employed by the District as a teacher's aide for 11 years; in 1979, Derleth got her BA and then worked as a substitute teacher for the District until her hire in 1990 as a full-time Chapter 1 Reading teacher; at the time of her hire as a full-time teacher, Derleth was placed at the BA + 6 or + 12 lane for all courses taken before her hire as a full-time teacher but while otherwise employed by the District as an aide/sub; when hired as a teacher Derleth had only a provisional 316 Reading teacher's license; she then completed graduate course work for a regular 316 license prior to her full-time hire and she received advancement

on the salary schedule for those graduate courses completed before her hire.

- 8) Judie Davis - Hired by the District right out of college 21 years ago as an elementary teacher; Davis had no experience and no credits at hire; Davis now has her Masters and two courses she took after her Masters for which she received salary advancement were undergraduate courses.
- 9) Karen Nocco - was employed by the District as a full-time teacher for four years; took nine years off to raise her children then taught one year at Antigo School District before being re-hired by the District as a full-time teacher and has worked for the District for the past eight years; when first hired by the District, Nocco was hired at the BA Lane -- she had no experience and no credits; at rehire, the District gave Nocco full credit for five years' teaching experience and for all of the courses she had taken beyond her Masters; Nocco was rehired at MA + 6 and of these six graduate credits she took two courses before she began working for the District again, and received salary advancement for these.
- 10) Sharon Eisenman - hired at BA level without credits or experience 18 years ago by the District; now at BA + 30, she received advancement for all credits even though some of these credits were undergraduate credits; all courses were taken by Eisenman during her District employment.
- 11) Margaret Harry - when hired as a teacher by the District in 1988 at BA + 6, these six credits were earned prior to Harry's hire as a teacher for the District; Harry was a District teacher's aide when she earned these 6 credits for recertification of her license.
- 12) Gary Nelmark - hired by the District right out of college 21 or 22 years ago with no credits or experience; now at MA + 30 and has received advancement for all courses taken since hire even though some were undergraduate courses.
- 13) Mary Lou Seipp - when hired in 1962, Seipp had only a two year teaching degree; she received her BA in 1972 and is now at the BA + 30 level; did her student teaching for her BA while employed by the District in her own classroom, only one course taken after her BA was undergraduate.
- 14) Nadene Derleth - hired out of college by the District 22 years ago with no credits or experience; has taken undergraduate courses after getting her MA and received salary

advancement therefor.

The District submitted documentary evidence regarding former District teacher David Kukowski to contradict the Union's evidence of practice. Prior to his hire at the District, Kukowski had a BA in Business and then returned to school and got his teacher certification. When he was later hired by the District in 1988, the District hired him at 0 years experience and he received no salary advancement for any of the teacher certification courses he had taken including his student teaching.

The parties submitted portions of collective bargaining agreements covering all contracts from 1984 through the effective agreement. These documents showed that very few substantive changes have been made to Article 9 that would affect this case.

The 1984-85 agreement contained the same language in Article 9, Sections A and B as appears in those Sections in the effective labor agreement. Article 9, Section C of the 1984-85 language was deleted by the parties in the 1987-89 contract. Article 9, Sections F through H of the 1984-85 labor contract read the same as Article 9, Sections E, F, and G of the effective labor agreement.

Article 9, Sections A through H of the 1984-85 agreement read as follows:

ARTICLE 9

COMPENSATION

- A. Experience - Credit for experience in another school system will be evaluated by the Superintendent at the time the teacher is employed and approved by the School Board.
- B. Teachers of special subjects, or where shortages exist, may be placed on the schedule according to the School Boards Action.
- C. The salary schedule is subject to annual review.
- D. When a teacher supplies a statement before September 15 from a recognized college that he has completed 6, 12, 18, 24 or 30 semester credits beyond the bachelors degree or the masters degree, he will be placed on the appropriate schedule, wherever the basic salary fits. Remuneration for these credits will be \$369.66 per block of six credits. For credits to apply to this schedule, they must be necessary to receive a degree, major or minor fields, or a course that will be beneficial to the school only.
- E. Teachers with a masters degree will receive remuneration of \$369.66 per block of six semester credits, not to exceed 30 semester credits. These credits must be in related fields of teaching only.
- F. When a teacher supplies a statement on or before September 15 from a recognized college or university that he has completed his Masters Degree, he will be placed on the appropriate step on the Master Degree Schedule.
- G. While the board encourages any teacher among its employ to seek an advanced degree, it is the board's position that a teacher with an advanced degree should not receive additional compensation unless said degree provided a benefit tot he educational goals of the school.

An advanced degree must be in the area, directly and not peripherally or remotely, that prepares the teacher directly for the course the teacher is teaching. This will not affect teachers presently placed on the Masters Schedule.

- H. Special Services are paid above schedule according to action of the School Board.

. . . .

In addition, the second sentence of Section D and a reference to \$369.66 in Section E of the 1984-85 contract were deleted in the 1985-87 contract.

Also in the 1985-87 contract the first sentence of Section D was changed so that bargaining unit members could apply for movement on the salary schedule in both September and January of any year (as in the effective labor agreement). Other changes were made to Article 9, Sections C, D, K and L of the effective agreement in the 1985-87 agreement and then noted as such in each successive labor agreement, until the agreement read as quoted above.

Positions of the Parties

Union:

The Union urged that because Article 1 - Recognition clearly states that the Union is the exclusive representative of all unit employes ". . . whether under contract, on leave, employed or to be employed by the Board . . .," the credits that both Swenty and Bradley earned prior to their hire by the District should have been paid for by the District from their hire forward. In addition, the Union argued, the clear language of Article 9C further supports such a conclusion. The Union observed that if Article 9C were interpreted as the District has done, the District Administrator would have total discretion to approve or deny credit advancement to new employes even in the absence of a written policy allowing this discretion and despite the clear language of Article 9C, which is supported by overwhelming past practice evidence. the Union also observed on this point that District Administrator Powell could cite no examples where credits were denied by the District after a degree was reached.

The Union pointed out that the District Administrator's actions regarding Swenty and Bradley harshly and arbitrarily affected them while all other teachers hired before them were treated more favorably. The Union asserted that Article 6 of the labor agreement requires the District to maintain its policies, rules and regulations regarding mandatory subjects of bargaining during the term

of the labor agreement. The Union urged, therefore, that by negative implication, because the District does not have a written rule or policy to support Mr. Powell's actions, consistent past practices supporting the contract and the Union's views should be enforced.

In regard to the Bradley case, the Union urged that Bradley lost salary for credits due to Principal Stahmer's error and that because Bradley disclosed the six undergraduate post-degree credits on his application, he should have been paid for them as they were relevant to his teaching in the District. In addition, the Union contended that the District's agreement to pay Bradley for these credits after the 1993-94 school year amounted to an admission that payment should have been made for 1993-94.

In regard to the Swenty case, the Union urged that were Swenty treated like other District teachers she would have been given lane advancement for all undergraduate credits she took prior to her hire. The Union noted that District teachers Karen Torkelson, Leneya Schwartz and Bill Kolasa all received different certifications by returning to school and also received lane advancement therefor. The Union asserted that Swenty's January, 1994 request for lane advancement for courses taken in 1985-87 long before her hire by the District, was appropriate and indistinguishable from other teachers (such as Sattelberg) who have held back on reporting credits until they have earned a full six credits before applying for advancement on lane. In addition, the Union noted that District Administrator Powell admitted that all of Swenty's credits except her student teaching credits were the kind of courses for which the District has paid other staff teachers. As the District did not prove that Swenty's student teaching credits for her K-3 license were different from the other credits she had earned, the Union urged that the District must also pay for these credits.

District:

The District urged that the labor agreement is silent regarding the issue of payment for credits raised in this case. The District asserted in this regard that Article 9 A through C do not address the issue(s) herein. These sections deal only with giving salary schedule credit for teaching experience gained outside the District. Given the absence of contract language to the contrary, the District argued, the Management Rights Clause (Article 2) contained in the labor agreement gives the District the unfettered discretion to deny Bradley and Swenty payment for credits earned by them prior to their hire.

In regard to Bradley, the District contended that Article 9B controls his situation. Under this section, the Board of Education could and did place Bradley, a teacher of a special subject, on the salary schedule at its discretion because of the shortage of applicants for his position. In regard to Swenty, the District asserted that Article 9A controls her situation and it cited a grievance arbitration decision, "Albany School District, Case No. A/P M-90-156." The District noted that Swenty's application for salary advancement for credits she earned before she was hired by the District did not constitute "experience." In addition, the District observed that ten of the fourteen teacher witnesses had admitted that all of the credits they were given salary schedule advancement for had been earned by them after hire. The cases of Nocco, Penn, Harry and Lynn Derleth were either distinguishable from Bradley and Swenty's cases or the witnesses were unsure regarding the facts of their credit advancement, in the District's view, so that these four exceptions should not control this case.

The District observed that District Administrator Powell stated that in his view, Article 9C means that once a teacher is employed by the District,

they may apply for salary advancement twice a year for credits they have earned. The District urged that the case of former teacher David Kukowski supports its interpretation of Article 9C. In Kukowski's case, Kukowski was given no credit in the District on the salary schedule for the undergraduate courses (which he took before his hire by the District but after he had received a BA degree in Business) which lead to his getting a teaching certificate. In all of the circumstances, the District sought denial and dismissal of the grievances.

Reply Briefs

Union:

The Union argued that Article 2, Management Rights must be subordinate to the more specific language of Article 9C. Although the Union agreed with the District's analysis of Article 9A, that it applies only to years of teaching experience, the Union disagreed with the District's argument that it had applied Article 9B to Bradley's case. The Union observed that the District was attempting to use Article 9B as an excuse in Bradley's case. Had there been an actual shortage of Industrial Arts teachers, the District would have had to use Article 9B to hire Bradley above, not below, the schedule, offering him more experience and/or education credits than he actually possessed. The Union pointed out that the District, in fact, offered Bradley a lower position on the schedule (BA, no credits) than he actually should have had.

The Union contended that the Albany School District award is inapplicable to this case because the language regarding how teachers could move horizontally on the salary schedule in that case was much more strict and granted the district in that case much broader discretion than does the language of Article 9C. The Union observed that here only two alternative conditions need be met by a teacher wishing horizontal advancement -- the credits received must be either (1) necessary to receive a degree in a major or minor field or (2) they must be "beneficial to the school only." The Union urged that both Swenty and Bradley's courses met the second criteria and should be paid, pursuant to Administrator Powell's admissions that such courses (with the exception of student teaching) have generally been paid for by the District. In addition, the Union argued that Article 9C contains no time limitation by which a teacher must request horizontal movement, thus the District must pay both Swenty and Bradley for all credits they earned prior to their hire.

District:

The District strongly disagreed with the Union's interpretation of Article 1, that the contract covers all teachers for the entire time period prior to their hire by the District. Such an interpretation would lead to absurd results, in the District's view. In addition, the District contended that Article 9, Sections A through C are clear and unambiguous. The District reiterated its assertion that the Bradley situation should be covered by Article 9B. The District observed that implicit within Article 9C is the notion that teachers must be employed by the District before they can earn and then request credit for horizontal advancement. This is supported, in the District's opinion, by the language regarding when payment will be made, ". . . with the next full pay period . . .," which assumes the teacher is already on payroll.

In regard to past practice, the District asserted that Administrator Powell clearly enunciated the District's practices of not paying for courses taken prior to hire as in the Kukowski case, and other more recent cases. Mr. Powell also made it clear that student teaching and undergraduate courses

taken prior to hire were never credited and the District should not be ordered to do so for Ms. Swenty. The District strongly disagreed with the Union's apparent assertion that the lack of a written policy on credits must mean that the District's actions in this case were arbitrary.

Discussion:

The District has asserted that Article 9 is clear and unambiguous. I disagree. Rather, I find that the contract is silent on many points relevant to this case. Initially, I note that Article 9A is not at issue here. Rather, the essence of the Union's claims is whether the District should have granted horizontal advancement to Swenty and Bradley for undergraduate credit they earned prior to their hire by the District. It is significant that Article 9 does not specifically address what type of credits -- undergraduate or graduate -- will be compensated. Also, Article 9C does not address what the District must do when teachers who have previously earned credits are hired by the District. Article 9C states that credits "must be necessary to receive a degree, major or minor fields, or a course that will be beneficial to the school only." One can infer from this portion of Article 9C that credits of any kind -- either undergraduate or graduate -- will be compensated if they otherwise meet the requirements of Article 9C. Thus it appears that based upon this record, the District has paid for any credits that are necessary to receive a degree.

In the alternative, Article 9C provides that if a course benefits the school only, it will also qualify for payment. In the absence of contract language detailing how or by whom a course will be found to benefit the school only, this task must be left to the sole discretion of the Board of Education. One example of such a course, we might safely assume, was the first aid course taken by Karen Torkelson because the District needed someone at each school who could give first aid. The District granted Torkelson horizontal advancement for this course, not necessary for any degree. The District may also have determined that other courses among those described by witnesses herein were ones which would benefit the school only. But no evidence was submitted into this record to show for a fact that any courses either did or did not fit into this special category. Indeed, the fact that the fourteen witnesses herein were paid for credits that fit into the alleged past practice described by the Union herein does not mean that the District necessarily concurred in or recognized that such a mutually established policy or past practice existed. Rather, each of the District's decisions regarding payment for credits were the result of the District's exercise of its management discretion to approve or deny such credit advancement requests in conjunction with the requirements of Article 9. Practices which are based upon discretionary authority are, in the absence of a contractual provision to the contrary or clearly defined past practice premised upon mutual agreement, subject to change based on that same discretion.

The first sentence of Article 9C also clearly states that "teachers" will be compensated "with the next full pay period" for courses "beyond the bachelors or the masters degree" if they submit credit statements for credits earned "before September 15 or January 15." As the District asserted, this language strongly implies that at the time of application for horizontal credit, individuals must be employed as teachers by the District. However, as pointed out by the Union, the contract fails to specify that the credits must be earned or completed while the individual is employed as a teacher. Given the silence of the labor agreement on this point, the Union's evidence regarding past practice becomes admissible and relevant.

That practice can be summarized as follows. It appears that teachers who

received their 316 Reading license after hire by the District as Reading teachers with provisional licenses were given salary advancement credit for all graduate courses taken toward their 316 licensure even if those courses were completed prior to District hire (Torkelson, Penn, Lynn Derleth and Loretz). It is also clear on this record that once a teacher has been hired by the District and has gotten his/her BA or Masters degree, the District has given teachers salary advancement for both undergraduate and graduate level courses taken up to BA + 30 and it has given credit beyond a Masters for all undergraduate and graduate courses taken during the teacher's employment. 2/ It is also clear that the District has given salary advancement for graduate courses completed prior to a teacher's hire. (Torkelson, Swenty, Schwartz, Penn, Nocco, Lynn Derleth).

The Union has asserted that several unusual cases support their assertions in this case. The record showed that Lynn Derleth and Margaret Harry had been employed by the District as teacher's aides and/or substitutes and at the time of their hire as teachers, the District gave them salary advancement credit for graduate (Derleth) and undergraduate (Harry) courses they took while employed as aides/subs, although technically taken prior to their hire as teachers. In my view, the determinative fact regarding Lynn Derleth was that the credits she took were graduate credits and she therefore fit under the District's general policy of paying for graduate credits earned in the teaching field before hire. Harry's case appears to fit within the general rule allowing payment for credits earned during the employe's employment with the District.

2/ Those paid for undergraduate credits were Sattelberg, Torkelson, Davis and Nelmark. Those paid for graduate credits taken beyond their Masters were Kolasa, Nocco, Nadene Derleth. Only one witness, Sharon Eiseman received advancement for credits taken after she received her BA and after her hire by the District.

Another exception to the general rules demonstrated in this case is the case of Marcia Sattelberg. Sattelberg was given salary advancement credit for one or two undergraduate credits she took prior to her hire by the District when she put in her request, after her hire at BA 0, for movement to the BA + 6 lane. This case does not appear to fit into any general rule proven here and it stands as one unexplained exception.

Three other cases of record were unusual. One teacher (Seipp), was hired more than 20 years ago with only a two-year teaching degree at the time of her hire by the District. Seipp was allowed to complete her undergraduate degree and perform her student teaching requirement in her own classroom while employed by the District. One other District teacher, Kolasa, was also hired on a two-year license more than 20 years ago. He later earned his BA and MA while employed at the District. The record does not show how Mr. Kolasa completed his student teaching requirement. Mr. Kolasa stated he was given salary advancement for all courses he took up to BA + 30 and then for all courses he took after he got his MA. Leneya Schwartz, who got her Elementary education K-8 license after she was hired by the District as a licensed Special Education teacher, took a leave of absence in order to complete her undergraduate student teaching course for that license. Ms. Schwartz stated that she did not receive salary advancement credit for the undergraduate courses she took which were necessary to receive K-8 certification or for her student teaching requirement as she was then already placed at the BA + 30 lane. The operative factor in the cases of Schwartz, Seipp and Kolasa that distinguishes them from Swenty and Bradley is that Seipp and Kolasa had already been hired by the District when they took undergraduate credits necessary to receive a degree and received horizontal advancement therefor. It is clear that Schwartz' case supports the District's arguments in this case, and undermines the Union's.

The undergraduate credits taken by Swenty in the 1980's do not qualify for horizontal advancement under the literal language of Article 9C because they were neither necessary to receive a degree nor were they determined to be beneficial to the school only, in the Board's discretion. The only question remaining is whether the evidence of past practice proffered herein demonstrates that Swenty's 13 undergraduate courses should have been paid. Regarding pre-hire courses paid for in the past by the District, I note that the only teacher who stated she received advancement for undergraduate credits taken before hire was Sattelberg. In my view, this solitary case appears to be an exception to the general rule to the contrary (as evidenced by the Schwartz and Kukowski). Therefore, I find insufficient basis on this record for requiring the District to pay Swenty for 13 undergraduate courses she took approximately five years before her hire by the District which were neither necessary for a degree in any field nor beneficial to anyone but Swenty. 3/

3/ It is undisputed that Swenty knew she was not going to be paid for any undergraduate credits at the time of her hire in 1991, yet she waited more than two years to complain about this situation.

In regard to Bradley's case, I note that the District has argued that it relied upon Article 9B to hire Bradley and place him on the salary schedule. I agree with the Union that had the District actually used Article 9B to place Bradley on the schedule at the time of hire, it would not have hired Bradley at BA 0. Rather, it would have used Article 9B to place Bradley higher on the salary schedule than his experience level would otherwise require. Thus, in my opinion, Article 9B is not applicable to the Bradley case.

As stated above, Article 9 is silent regarding how the District should count undergraduate credits earned prior to hire. Given the silence of the contract on this point, the District was free to exercise its discretion and to refuse to pay Bradley for the six undergraduate credits he took prior to his hire. That refusal also comports with the general rules/past practices of the District which show that the District has normally refused to pay for undergraduate credits earned before hire.

Thus, in all of the circumstances of this, the Union has failed to prove that a clear past practice exists that would require the District to pay Swenty and Bradley for post-BA undergraduate credits taken by them prior to their hire by the District.

AWARD

The Board is not in violation of the collective bargaining agreement by not paying Bruce Bradley for credits beyond his BA degree for the 1993-94 school year.

The Board is not in violation of the collective bargaining agreement by not paying Ann Swenty for credits beyond the initial BA degree 4/ starting the second semester of the 1993-94 school year.

Therefore, the grievance is denied and dismissed in its entirety.

Dated at Oshkosh this 27th day of October, 1994.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator

4/ I note that the District has paid Swenty for six graduate level courses earned prior to her hire. That decision shall not be disturbed by this Award.