

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

MERRILL EDUCATIONAL SUPPORT  
PERSONNEL ASSOCIATION

and

MERRILL AREA SCHOOL DISTRICT

Case 29  
No. 50571  
MA-8302

Appearances:

Mr. Thomas S. Ivey, Executive Director, Central Wisconsin UniServ Council,  
P.O. Box 1606, Wausau, Wisconsin 54402-1606, for the Association.  
Godfrey & Kahn, S.C., 333 Main Street, P.O. Box 13067, Green Bay, Wisconsin  
54307-3067, by Mr. Robert W. Burns, for the District.

SUPPLEMENTAL ARBITRATION RULING

BACKGROUND

On June 19, 1995, this Arbitrator issued an Award in a dispute regarding employee posting and transfer rights. In that Award she stated:

7. The Arbitrator will retain jurisdiction for the purpose of resolving issues regarding qualifications and remedies and will relinquish such jurisdiction in sixty days unless the parties notify her those issues are unresolved.

On August 21, 1995, the parties jointly notified the Arbitrator that they had a dispute as to the correct placement on the salary schedule of the Grievants who, pursuant to the Award and the District's determination, were found to be qualified. The parties were in further dispute over whether the Arbitrator had jurisdiction to determine the question.

The parties submitted briefs, the last of which was received on October 23, 1995. Based on the arguments of the parties and the entire record, the Arbitrator issues the following ruling:

## SUPPLEMENTAL ARBITRATION RULING

### THE POSITIONS OF THE PARTIES

#### The Association

The Association argues that the stipulation under which the grievance was originally submitted to the Arbitrator confers jurisdiction to the Arbitrator to decide the instant dispute. Citing awards of other arbitrators, it asserts it is proper for an arbitrator to retain jurisdiction to resolve disagreements as to remedies. Further, it believes such authority necessarily flows from the Arbitrator's jurisdiction to issue an Award that makes a grievant whole. Finally, it finds jurisdiction in this Arbitrator's award in which she explicitly retained jurisdiction.

#### The District

The District claims the Arbitrator lacks jurisdiction to decide the instant dispute because the issue of salary placement was not involved in the original grievance. At that time, the District had maintained that grievants did not have any contractual rights to be considered for the desired positions, therefore, salary schedule placement was not at issue.

The District understands the award compels it to give the grievants interdepartmental transfer rights, which it has done in compliance with the award. It points out that none of the record developed at the arbitration hearing pertained to salary schedule placement and a decision at this point would deprive the District of due process. The District also notes that the Association has proposed collective bargaining agreement modification that addresses the instant dispute, an implicit acknowledgement that the issue must be bargained.

Asserting that the collective bargaining table is the correct place to resolve this dispute, the District notes that the Association, in August, 1995, proposed language to govern such disputes. The District argues that it is not trying to avoid the make-whole remedy since the grievants have already received substantial remedies. Finally, the District cites the original written grievance which asserts the grievants' right to transfer, but does not refer to salary schedule placement.

### DISCUSSION

Pursuant to the Arbitrator's award, the District assessed whether or not grievants were qualified, found them qualified, and placed them in the disputed positions. Obviously, assigning grievants to the positions necessarily entailed assigning a salary rate. Therefore, it is impossible to separate the act of appointing them to the disputed positions and the act of determining the appropriate salary schedule placement. That is to say, the implementation of the Award could not be made without the District's making some determination, right or wrong, regarding their salary.

The assignment of the position cannot be separated from the setting of the salary rate.

While the District correctly argues that the original grievance did not refer to the salary schedule placement, the facts could not possibly be otherwise since the grievants had been denied the position altogether and no placement at all had been made.

The undersigned concludes that the issue of salary schedule placement is properly an element of remedy in this case and inasmuch as she has retained jurisdiction as to remedy, the question of the grievants' proper placement falls under that jurisdiction and will be decided by this Arbitrator.

The District correctly notes that the parties are entitled to make whatever relevant record they desire on this issue. Accordingly, the parties are directed to confer and report to the arbitrator whether they wish to make legal argument, based on the current state of this record, or to develop a further record of stipulated facts and documents, and to have further hearing. The parties are directed to make such report to the Arbitrator by April 9, 1996.

#### SUPPLEMENTAL ARBITRATION RULING

1. The undersigned Arbitrator has jurisdiction to decide the question of grievants' correct salary schedule placement.
2. The parties are entitled, if they desire, to develop further record in this matter.
3. The parties are directed to report to the Arbitrator by April 9, 1996 regarding the record on which the question of correct salary schedule placement is to be decided.

Dated at Madison, Wisconsin this 18th day of March, 1996.

By Jane B. Buffett /s/  
Jane B. Buffett, Arbitrator