

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between
THE ADMINISTRATORS AND SUPERVISORS COUNCIL
and
THE MILWAUKEE BOARD OF SCHOOL DIRECTORS

Case 365
No. 56583
MA-10336

(Vern Mamon grievance, No. 97/225)

Appearances:

Mr. John Weigelt, ASC Executive Director, with **Ms. Barbara Buhai**, then-ASC Assistant Executive Director on the brief, appearing on behalf of ASC.

Mr. Donald L. Schriefer, Assistant City Attorney, appearing on behalf of the Employer.

ARBITRATION AWARD

At the joint request of the above parties, the Wisconsin Employment Relations Commission designated the undersigned Marshall L. Gratz as arbitrator to hear and decide a dispute concerning the above-noted grievance, which the parties submitted to arbitration under their 1995-97 contract (Agreement).

The Arbitrator heard the grievance at the Milwaukee Public Schools (MPS) Administration Building in Milwaukee, Wisconsin on July 15, 1998. The proceedings were transcribed. Post-hearing briefs were exchanged on October 2, 1998 and reply briefs were exchanged on October 16, 1998. The Arbitrator ruled on the Employer's motion to strike certain portions of ASC's reply brief on December 2, 1998, marking the close of the hearing.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

ISSUES

At the hearing the parties authorized the arbitrator to decide the following issues:

1. Was the Grievant paid in accordance with the contract?
2. If not, what is the remedy?

PORTIONS OF THE AGREEMENT

(The specific provision at issue in this case is Appendix A, Sec. A.7., which is set forth, below, followed by various other provisions relating to arguments advanced by one or both of the parties.)

APPENDIX A - SALARIES

A. SALARY SCHEDULES

. . .

7. When an individual is assigned to fill an assignment for a higher rank individual, that person shall receive eleven dollars and three cents (\$11.03) per day beginning with the second day of such assignment in addition to his/her base salary while performing such duties, if a job in which he/she is placed has at least that amount of salary differential from the one he/she is presently involved in. If any such assignment extends beyond a semester in length at a school or a period of six (6) months at a work site, those in such assignments shall be compensated in the same manner in which he/she would have been paid if he/she were appointed to the job. This differential does not apply to certificated employees who lack the appropriate credentials, or classified employees who lack necessary qualifications for promotion.

. . .

PART IV

WORKING CONDITIONS

A. WORK YEAR . . . Assistant principals in the middle schools (one hundred ninety-seven [197] days), senior high schools (two hundred [200] days, and elementary schools (one hundred ninety seven [197] days shall be placed on the same work year as the principals.

. . .

D. SCHOOL CLASSIFICATION AND STAFFING

1. The school classification formula is enumerated in Appendix B.

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PART VI

REDUCTION IN FORCE

B. DEFINITIONS

1. Seniority for layoff shall mean the number of years served with the board from date of original appointment.

2. Seniority for reduction in rank shall mean the number of years earned in the specific position.

3. Reduction in rank shall mean the removal from an administrative or supervisory position into a non-bargaining unit position or the movement from a higher level position within the bargaining unit.

. . .

C. REDUCTION IN RANK AND LAYOFF PROCEDURE FOR PRINCIPALS AND ASSISTANT PRINCIPALS

In the event that it becomes necessary to reduce the number of principals or assistant principals, such reduction in rank or layoff shall be based on seniority. . . . If such a reduction or layoff occurs in the ranks of the principals or assistant principals, a person may assume a lower ranked position if he/she is qualified for the job by licensing and experience and has more system-wide seniority.

D. REDUCTION IN RANK AND LAYOFF PROCEDURE FOR CERTIFICATED, NON-FIELD ADMINISTRATORS AND SUPERVISORS

In the event that it becomes necessary to reduce the number of certificated and non-field administrators and supervisors, such reduction in rank or layoff shall be based on seniority.

. . .

The reduction in rank and/or layoff will come from within specific classifications of individuals.

An individual in a higher ranked position with more system-wide seniority than a person in a lower ranked position may assume the lower ranked position if he/she is qualified by licensure and/or training and experience.

. . .

APPENDIX A – SALARIES

. . .

C. MOVEMENTS WITHIN SCHEDULE III

1. When an employee is promoted or reclassified from one (1) pay grade to a higher pay grade and the employee is in compliance with Part IV, Section I, of the agreement, he/she will be treated as follows:

. . .

3. Principals currently assigned to schools in which there is a change in classification pursuant to Appendix B shall have their salaries adjusted in accordance with the change in classification of the school. . . . If the current salary of the principal is above the maximum rate of the new classification level, the principal's salary will remain frozen or "red circled" until such time as the rate again falls within range due to general salary adjustments affecting the minimum and maximum of the grade, or until such time as the principal transfers to a school of a classification equal to or above his/her individual classification.

4. Individuals in other positions which are reclassified to a lower grade or who are involuntarily transferred to lower level positions in Schedule III shall similarly have their salaries "red circled" until the individual rate again falls within the grade as described in paragraph 3 above. Demotion, voluntary transfer, or reduction in rank to a position in a lower grade shall cause the employee's salary to change as specified in 2 above.

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SALARY SCHEDULE III

EFFECTIVE JULY 1, 1996 TO JUNE 30, 1997

GRADE	WORK YEAR	MINIMUM	MAXIMUM
18	12 MONTH	74,154	107,213
	200 DAYS	63,512	91,832
	197 DAYS	62,548	90,436
...			
15#	12 MONTH	64,055	92,615
	200 DAYS	54,865	79,327
	197 DAYS	54,033	78,119
...			
12#	12 MONTH	55,335	80,005
	200 DAYS	47,393	68,526
	197 DAYS	46,675	67,483
11#	12 MONTH	52,699	76,193
	200 DAYS	45,137	65,264
	197 DAYS	44,453	64,269
10#	12 MONTH	50,189	72,567
	200 DAYS	42,989	62,154
	197 DAYS	42,338	61,209

...

0	12 MONTH	26,508	27,892
	200 DAYS	42,989	23,890

...

#Effective July 1, 1996, the number of workdays for all principals and assistant principals shall be increased by two (2) days.

APPENDIX B

SCHOOL CLASSIFICATION SYSTEM -- PRINCIPALS

For purposes of compensation of principals, schools are classified into three (3) basic categories:

1. High school
2. Middle schools, K-8, city wide (middle and elementary) and total exceptional education schools
3. Attendance area elementary schools

Accordingly, the principalships shall be classified according to these divisions as well as the student enrollment and placed on the appropriate grade within the salary structure as follows:

Category of school

<u>Grade</u>	<u>[H.S.]</u>	<u>[Middle School etc.]</u>	<u>[Att. Area Elem.]</u>
15	All		
14		575 or more students	651 or more students
13		Less than 575 students	326-650 students
12			less than 326 students

...

BACKGROUND

The Board is the governing body with respect to a K-12 public school district consisting of the Milwaukee Public Schools (MPS). For many years, ASC has been recognized by MPS as bargaining agent concerning wages, hours and conditions of employment for a bargaining unit composed of certain MPS administrators and supervisors, resulting in a series of contracts including the Agreement. The Grievant, Vern Mamon, is an employee of the MPS who since November 1991 had served as a Middle School Assistant Principal at Malcolm X Academy.

On August 27, 1997, Dr. Myra Vachon, Acting Executive Director of Human Resources for MPS, confirmed to Grievant in writing that he was being temporarily reassigned to the position of Assistant Principal of Custer High School, effective August 25, 1997. That letter further stated that Grievant would receive an additional \$11.03 per day, representing the underfill differential for the position. Pursuant to MPS' interpretation of Agreement Appendix A, Sec. A.7, Grievant was paid the underfill differential throughout the first semester of his assignment. When his assignment extended beyond a semester, his compensation was raised to the Assistant Principal-High School Grade on Agreement Salary Schedule III, in the manner in which Grievant would have been paid if he were appointed to the Assistant Principal-High School job.

On October 7, 1997, the Union filed a grievance on Grievant's behalf, seeking to have him compensated at the higher Assistant Principal-High School rate for the entire period of his temporary assignment. MPS denied the grievance on the basis that a high school assistant principal is a "higher rank individual" than a middle school assistant principal, such that Grievant was only entitled to the underfill differential until the second semester, according to Appendix A, Sec. A.7.

The grievance was ultimately submitted for arbitration as noted above. At the hearing, ASC presented the testimony of recently-retired ASC Executive Director Chuck Gobel. MPS presented the testimony of Edward Burnette, its Manager of Compensation and Records.

The evidence establishes that, since 1983, every job title within the ASC bargaining unit has been evaluated on the basis of 12 factors that assess job-specific qualities such as qualifications, responsibilities, working conditions and time demands. As a result of the evaluation, each job title winds up with a total number of points. The job titles are then sequenced in the order of total points, and placed within the Grades 0-18 contained in Agreement Appendix A Salary Schedule III, above. The higher the evaluation total points, the higher the Grade within which the job title is placed on the salary schedule. The "Assistant Principal-Middle School" job title is evaluated at 453 points and placed within Grade 11. The "Assistant Principal-High School" job title is evaluated at 479 points and placed within Grade 12. By comparison, the Assistant Principal-Elementary School job title is evaluated lower than both of those and placed within Grade 10; whereas the Principal-Senior High School is evaluated higher and placed at Grade 15.

The 1982 Arthur Young final report on the basis of which the job evaluation system was adopted by the Board in 1983 contains the following as part of its description of the system,

Using these relative weights and points [i.e., the 12 factor Job Evaluation System], the system was tested to see if the relative rankings were reasonable. . . . After all the jobs had been evaluated, the overall values and sequencing of the jobs were reviewed with the Division heads. These individuals were asked to comment on the overall reasonableness of the ranking obtained. . . .

According to Gobel, the language of Appendix A, Sec. A.7. at issue in this case has been a part of the parties' contract since at least 1983, but with the underfill differential dollar amount changing over time. Gobel testified that his understanding has always been that the Agreement's references to rank referred to a hierarchy of authority in which all assistant principals are of the same rank and all principals are of a higher rank. Gobel acknowledged that there is not a list setting forth the hierarchy of ranks as he interprets the term either in the Agreement or elsewhere.

According to Burnette, the District's on-going job evaluation and compensation system lists all of the job titles in the ASC bargaining unit in order of their relative total points. Burnette testified that his understanding has been that the Agreement's references to rank refer to that hierarchy of job titles and the corresponding Grades 0-18 set forth in Salary Schedule III in Appendix A of the Agreement. On that hierarchy, an Assistant Principal-High School is a higher paid and higher rank individual than an Assistant Principal-Middle School.

Additional background information is set forth in the summaries of the parties' positions and in the discussion, below.

POSITION OF THE ASC

Grievant's temporary assignment to Custer High School was at the same level as his ranking: that of assistant principal. One's rank at MPS is a position of authority based on title. It is not defined by geographic location or pay grade level and it is different than a job classification. Read as a whole, the Agreement clearly distinguishes "rank," "pay grade" and "classification."

Agreement Part IV, Sec. D.1. and Appendix B establish classifications of principals by type of school and student enrollment, and then place the various classifications within the rank of principal at various grades on the salary schedule. The grades in Appendix A, Salary Schedule III reflect both the job location and work year of individuals within a certain classification. Part IV, Sec. A. defines and equates the work year for Assistant Principals and Principals at various levels depending the type of school involved. Read together, those provisions clearly demonstrate that there may be several different pay grades within a classification and several classifications within a rank.

Appendix A, Sec. C provides that Principals assigned to schools where there is a change in classification pursuant to Appendix B have their salaries adjusted in accordance with the change in classification of the school. As above, the "classification" depends on type of school, but there is no mention of the term "rank." That clearly demonstrates that there is no hierarchical ranking among Principals and Assistant Principals according to school at MPS, just the two unitary ranks of Principal and Assistant Principal.

In the layoff language, Part VI, Sec. C specifically refers to "the ranks of principals or assistant principals", i.e., to "the rank of principal" and "the rank of assistant principal," not to "within the ranks" of each group.

Dictionary definitions similarly distinguish "rank" and "classification." "Rank" is defined in Black's Law Dictionary as a position in society or grade of official standing, a title of distinction conferred upon an officer in order to fix his relative position in reference to other officers. In contrast, it defines "classification" as an arrangement into groups or categories on the basis of established criteria.

The Arthur Young study has nothing to do with rank. At best it confirms ASC's contention that distinctions among Assistant Principals at the various levels are by classification or category and not by rank. The study rated pay grades, not positions. It explains why an Assistant Principal moving from a middle school to a high school was entitled to more money. It does not justify, however, declaring that a High School Assistant Principal is ranked higher than a similarly-situated Middle School Assistant Principal.

The Board has failed to prove the necessary elements of a past practice, as well.

It is undisputed that when an Assistant Principal moves to a Principal position, he or she assumes a position of a higher rank. That being true it would be incongruous to also suggest that an Assistant Principal's placement in another Assistant Principal position at a different school results in reassignment to a position of a higher rank. The contract provisions for pay grade classifications relied on by MPS pertain to a difference in pay among similar positions, while a change in rank reflects a promotion with its attendant benefits.

For those reasons, the grievance should be sustained.

POSITION OF MPS

The job evaluation system initiated by the Arthur Young study in the early 1980's analyzed and ranked each position in the ASC bargaining unit into one of the Salary Schedule Grades 0-18 based on 12 factors assessing job-specific qualities. The Arthur Young report specifically states that the purpose of its job evaluation system was to establish a "ranking" for each position relative to every other. It follows that each position's placement within one of

the Grades 0-18 in the classification system developed by Arthur Young is equated with that position's rank relative to other positions. The reference to "rank" in Agreement Appendix A, Sec. A.7 obviously correlates with and corresponds to a position's rank from Grade 0-18 in this job classification system.

Grievant was temporarily assigned to an Assistant Principal-High School position ranked at Grade 12 from an Assistant Principal-Middle School position ranked at Grade 11. Because Grievant was temporarily transferred to a position of a higher rank, MPS properly compensated him in accordance with Appendix A, Sec. A.7.

There is no merit to ASC's contention that "rank" in Sec. A.7. refers to positions that are above or below one another in a reporting hierarchy as in the military. MPS is a school system, not the military. The dictionary definition of "rank" is not confined to the narrow sense advocated by ASC; it also includes "a row, line or series . . . an orderly arrangement . . . an official grade or position . . . a relative position, usually in a scale classifying persons or things; grade; degree." Citing, Webster's New World Dictionary of the American Language. The Grade 0-18 job classification system provides a ready reference for the rank of every ASC position relative to every other on the basis of each job's profile under the 12-factor analytical system, as opposed to the hierarchy of titles relied on by ASC which Gobel admitted is not documented in the Agreement or elsewhere. Indeed, Sec. A.7. can normally only apply to temporary assignments into positions that are at a higher rank in the Grade 0-18 job classification scheme. There is no rational explanation and no contract language or other documentation explaining why only some subset of temporary transfers to higher paying positions rather than all such transfers were intended to be covered by Sec. A.7. Grievant's transfer is more than a mere Assistant-Principal-to-Assistant Principal transfer. The formal titles for these positions differ, as do as their grade or rank as determined by the job evaluation system. There is not a single classification called Assistant Principal.

Viewing the Agreement as a whole provides no support for ASC's proposed interpretation of "rank" in Sec. A.7., either. The Part VI, Sec. C reference to "ranks of the principals or assistant principals" notably used the disjunctive "or" between the two plurals, showing by grammatical logic and common sense that the plural term "ranks" refers to ranks of Principals and ranks of Assistant Principals. Furthermore, the dictionary definitions of the terms "rank," "classification" and "grade" are conceptually almost indistinguishable. The three terms are so closely connected in meaning that the equation of one with another is entirely logical and only to be expected in a context such as periodic contract bargaining where provisions tend to be negotiated over a period of many years, frequently by separate bargaining teams.

For those reasons, the grievance should be denied.

DISCUSSION

This case turns on whether MPS' assignment of the Grievant, who was a Middle School Assistant Principal, to fill an assignment as a High School Assistant Principal constituted an assignment "for a higher rank individual" within the meaning of Agreement Appendix A, Sec. A.7.

None of the parties' arguments based on dictionary definitions and on the use of the term "rank" elsewhere in the agreement provide a persuasive basis on which to resolve this dispute. As variously defined in the dictionary, rank can mean relative standing in a reporting or power hierarchy as ASC argues, or it can mean relative standing in a hierarchy ordered by job responsibilities or compensation so as to be synonymous with job classification or pay grade as MPS argues. As used most pertinently in Agreement Part VI.B., rank could refer to "the rank of Principal" and "the rank of Assistant Principal" as ASC argues, or it could refer to the "ranks of principals and ranks of Assistant Principals" as MPS argues. The Arbitrator is reluctant to offer opinions on the basis of the limited evidentiary record developed in this case, about the meaning and application of such fundamental Agreement provisions as those governing the layoff procedure for Principals and Assistant Principals.

The Arbitrator finds it preferable to interpret Agreement Appendix A, Sec. A.7. in terms of its evident purpose and the well-established arbitral standard of contract interpretation that, where possible, contract language should be construed in such a way as to lead to reasonable results rather than results that do not make sense.

The evident purpose of Appendix A, Sec. A.7. is to provide and define additional compensation payable to ASC unit employes when they are assigned to fill an assignment which the parties agree is sufficiently different to justify that additional compensation.

Under ASC's proposed interpretation of Appendix A, Sec. A.7., in this case Grievant should have been compensated immediately at the higher pay grade of a High School Assistant Principal because he was assigned to fill an assignment at the same rank as his own rather than that of a higher rank individual. However, had Grievant been assigned instead to fill an assignment as a Principal -- which ASC acknowledges is a higher rank individual than Grievant -- his compensation would have been limited for the first semester to the \$11.03 per day differential specified in Appendix A, Sec. A.7, and he would not have been paid at the higher grade of a High School Principal until the assignment extended beyond a semester in length. Thus, under ASC's interpretation, Grievant would be paid more for working in an assignment to the same rank than he would be paid for working in an assignment for a higher rank individual. That result does not make sense. It follows that the parties probably did not intend Appendix A, Sec. A.7 to be interpreted in a way that would produce that result.

In contrast, under MPS' proposed interpretation of Appendix A, Sec. A.7., the Grievant would initially be paid the \$11.03 per day differential whether he was assigned to fill an assignment for a High School Assistant Principal or for a High School Principal, because MPS interprets both of those as assignments for a higher rank individual. When the assignment extended beyond a semester in length, MPS would then increase Grievant's pay to the higher pay grade of High School Assistant Principal or High School Principal in the respective situations. Thus, the results of applying MPS' proposed interpretation of Appendix A Sec. A.7. would not involve the incongruous and unreasonable results that would follow from the ASC's interpretation of that provision.

For that reason, the Arbitrator finds MPS' proposed interpretation of Appendix A Sec. A.7. to be more in keeping with what must have been the parties' mutual intent. Accordingly, the Arbitrator concludes that MPS properly limited the increase in Grievant's compensation to the dollars per day differential specified in Appendix A, Sec. A.7. until Grievant's assignment as a high school assistant principal extended beyond a semester.

DECISION AND AWARD

For the foregoing reasons and based on the record 1/ as a whole, it is the decision and award of the Arbitrator on the ISSUES noted above that

1. Yes. The Grievant was paid in accordance with the contract.
2. Accordingly, the grievance is denied and no consideration of a remedy is necessary or appropriate.

Dated at Shorewood, Wisconsin this 24th day of May, 1999.

Marshall L. Gratz /s/

Marshall L. Gratz, Arbitrator

1/ A dispute arose between the parties concerning the scope of the record when ASC submitted certain evidence for the first time in its reply brief. The Arbitrator granted MPS' motion to strike and advised the parties that the Arbitrator would "not consider evidence submitted for the first time during the briefing process to be a part of the record on which this case will be decided."

The evidence in question consisted of excerpts from various of the parties' pre-1983 contracts showing that Appendix A, Sec. A.7. had been a part of those agreements. ASC offered that evidence in response to the assertion in MPS' brief that ASC witness Gobel had testified at tr. 16 that 1983 was the first time that provision became a part of the contract.

However, Gobel's testimony on that point was only to the effect that Appendix A, Sec. A.7. had been in the contract "at least since 1983. . . . I believe it may have been put in the contract in '83 but I'm not certain of that. But I know it's been there at least since 1983." The Arbitrator does not find that testimony or the record as a whole sufficient to support MPS' contention that Appendix A, Sec. A.7. was first put into the contract in 1983.

Therefore, Arbitrator's refusal to consider the evidence included in the ASC reply brief has had no effect on the outcome of this case.
