

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

BALDWIN-WOODVILLE SCHOOL DISTRICT

and

WEST CENTRAL EDUCATION ASSOCIATION

Case 16
No. 60668
MA-11684

Appearances:

Mr. Brett J. Pickerign, Executive Director, West Central Education Association, 105 - 21st Street North, Menomonie, Wisconsin 54751, appearing on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., by **Mr. Stephen L. Weld**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the District.

ARBITRATION AWARD

West Central Education Association, hereafter Association or Union, and Baldwin-Woodville School District, hereafter Employer or District, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. The Association and the Employer requested the Wisconsin Employment Relations Commission to appoint Coleen A. Burns, a member of the Commission's staff, to hear and decide the instant grievance. A hearing was held in Baldwin, Wisconsin, on May 9, 2002. The hearing was not transcribed. The record was closed on June 13, 2002, upon receipt of post-hearing written argument.

ISSUE

The Association frames the issue as follows:

Did the District violate Article IX of the contractual agreement between Baldwin-Woodville School District and West Central Education Association

when it failed to advance Deb Keefer and Deb VanDenMeerendonk on the Career Step of the salary schedule to a lane appropriate to their recognized level of educational credit although both teachers completed a satisfactory year of service and submitted the appropriate credits to warrant advancement on the schedule?

The District frames the issue as follows:

Did the District violate Article IX when it placed the two grievants on the salary schedule based on their actual years of service?

The undersigned determines the appropriate issue to be as follows:

Did the District violate Article IX of the parties' collective bargaining agreement when it determined that, for the 2001-02 school year, Deb Keefer was appropriately placed on the salary schedule at MA, Step 12, and Deb VanDenMeerendonk was appropriately placed on the salary schedule at MA +16, Step 11?

If so, what is the appropriate remedy?

RELEVANT 1999-01 CONTRACT LANGUAGE

ARTICLE II – PROFESSIONAL IMPROVEMENT REQUIREMENTS

- A. To advance from one column to the next on the salary schedule, one must earn 8, 16, 24, 32, 40 semester graduate credits, a Master's degree, a Master's degree plus 8 graduate credits, or a Master's degree plus 16 semester graduate credits as indicated in ARTICLE IX, SCHEDULES A & B – BASE SALARY. Graduate credits for advancement to any lane must be prior approved by the Superintendent. The Superintendent will approve any graduate credits taken as part of a Master's degree program and/or graduate credits in the teacher's area of certification. The Superintendent may approve course work outside of the teacher's area of certification.

...

- C. Teacher contracts that need to be adjusted because of increased professional preparation will be adjusted in September of that year following receipt of evidence of increased professional preparation.

...

ARTICLE IX – COMPENSATION

- A. Work must be satisfactory to advance on schedule. If a year is lost due to partially unsatisfactory work, it can only be made up by an additional year of experience. No teacher shall be held from advancement on the salary schedule except for cause as determined under the evaluation procedure in ARTICLE X.
- B. Outside experience shall be established at the time of employment. After this level is established, it is considered the starting base and is not open for reconsideration.

...

- L. Teachers who are at the top of the salary schedule for more than one (1) year shall be at the Career Step

***SCHEDULE B – BASE SALARY
2000-2001***

<u>STEP</u>	<u>BA</u>	<u>BA + 8</u>	<u>BA + 16</u>	<u>BA + 24</u>	<u>BA + 32</u>	<u>BA + 40</u>	<u>MA</u>	<u>MA + 8</u>	<u>MA + 16</u>
1	27,802	28,423	29,038	29,655	30,274	30,586	30,896	31,510	32,124
2	28,808	29,454	30,089	30,733	31,375	31,697	32,019	32,661	33,303
3	29,812	30,483	31,142	31,809	32,476	32,809	33,144	33,814	34,471
4	30,818	31,513	32,196	32,886	33,577	33,922	34,267	34,966	35,660
5	31,822	32,542	33,248	33,963	34,678	35,034	35,392	36,117	36,838
6	32,827	33,573	34,302	35,041	35,778	36,145	36,516	37,270	38,017
7	33,833	34,602	35,354	36,118	36,879	37,257	37,641	38,420	39,196
8	34,838	35,632	36,405	37,196	37,979	38,368	38,765	39,574	40,375
9	0	36,661	37,460	38,273	39,079	39,481	39,889	40,725	41,554

10	0	0	38,512	39,350	40,181	40,593	41,013	41,877	42,732
11	0	0	0	0	41,281	41,705	42,137	43,029	43,910
12	0	0	0	0	0	42,817	43,260	44,180	45,089
13	0	0	0	0	0	0	0	45,332	46,266
Career	39,851	41,902	43,975	44,945	47,164	48,270	49,375	51,723	54,070

The parties' 1999-00 salary schedule was structured in the same manner as the above schedule, with the exception of the salary amounts.

The parties' 1978-79 collective bargaining agreement contained the following provision in Article IX:

- M. Teachers who are at the top of the salary schedule for more than one (1) year shall receive an additional one per cent of their total scheduled salary (not including extracurricular, etc., payments). This provision will go into effect with the second semester of the 1978-79 year and will result in a 0.5 per cent longevity payment for that year.

The parties' 1979-81 collective bargaining agreement contained the following provision in Article IX:

- M. Teachers who are at the top of the salary schedule for more than one (1) year shall receive an additional two percent of their total scheduled salary (not including extracurricular, etc., payments)

The parties' 1981-83 collective bargaining agreement contained the following provision in Article IX:

- N. Teachers who are at the top of the salary schedule for more than one (1) year shall be at the Career Step

Except for renumbering, the above provision continued into the parties' 2000-01 collective bargaining agreement.

The parties' 1978-79 contractual salary schedule had the following columns: Steps on Schedule; Years of Experience; BA; BA +8 Grad. Sem. Credits; BA +16 Grad. Sem. Credits; BA +24 Grad. Sem. Credits; BA +32 Grad. Sem. Credits; MA; and MA +8 Grad. Sem. Credits. The "Steps on Schedule" column contained fourteen steps, numbered 1 through 14, each of which corresponded to fourteen "Years of Experience" steps, numbered 0 through

13. The BA column maxed out at Step 11, Years of Experience 10. The BA +8 column maxed out at Step 12, Years of Experience 11. The next three columns maxed out at Step 13, Years of Experience 12. The next two columns maxed out at Step 14, Years of Experience 13.

In the 1981-82 collective bargaining agreement, the salary schedule format was changed by deleting all references to "Grad. Sem. Credits" and adding a Career Step below the "Steps on Schedule" column. Each educational lane contained a Career Step wage rate, which rate varied from \$17,969 at the BA lane to \$22,467 at the MA +8 lane.

In the 1983-84 collective bargaining agreement, deleting the "Years of Experience" column and the "Steps on Schedule" column and adding a "Step" column again changed the salary schedule format. This "Step" column contained thirteen numerical steps, identified as 1 through 13, and a Career Step. The number of lanes and the designation of these lanes remained unchanged. The salary attached to the Career Step varied from \$20,744 at the BA lane to \$25,937 at the MA +8 lane.

In the 1984-85 collective bargaining agreement, deleting Steps 12 and 13 changed the salary schedule format. Excluding the Career Step, the top step in each lane for which there was a salary is as follows: Step 8 of the BA lane; Step 9 of the BA+8 lane; Step 10 of the BA +16, BA +24, and BA +32 lanes; and Step 11 of the MA and MA +8 lanes. This structure continued in the 1985-86 collective bargaining agreement.

The record does not contain the salary schedules from the years' 1986-87 through 1997-98. The 1998-99 salary schedule contains a "Step" column, which contains thirteen numerical steps, from 1 to 13 and a Career Step. The number of lanes and the educational requirements of these lanes are identical to those of the 2000-01 salary schedule.

RELEVANT BACKGROUND

District Teacher Bruce Ashlin commenced employment with the District at the beginning of the 1990-91 school year. Ashlin was placed on the salary schedule at Step 1 of the BA lane. At the beginning of the 1998-99 school year, Ashlin, who was beginning his ninth year of District employment, was placed at the Career Step of the BA lane. For the 1999-00 school year, Ashlin was placed on the Career Step of the BA +16 lane. For the 2000-01 school year, Ashlin was placed on the Career Step of the MA lane.

When District Teacher Scott Benoy commenced employment with the District, he was placed at Step 1 of the BA lane. The 1998-99 school year was Benoy's tenth year of service. In that year, Benoy was placed at the Career Step of the BA +8 lane. For the 1999-00 school year, Benoy was placed on the Career Step of the BA +24 lane. For the 2000-01 school year, Benoy was placed on the Career Step of the MA lane.

When District Teacher Lisa Magnuson commenced employment with the District at the beginning of the 1990-91 school year, she was placed on the second step of the BA lane. Thereafter, Magnuson moved down one step each year until she was placed on the Career Step. For the 1999-00 school year, Magnuson was placed at the Career Step of the BA +24 lane. For the 2000-01 school year, Magnuson was placed on the Career Step of the MA lane.

District Teacher Debora Keefer commenced employment at the beginning of the 1990-91 school year. At that time, she was placed on the salary schedule at BA, Step 1. Thereafter, Keefer moved down one step per year until she was placed on the Career Step. At the beginning of the 1999-00 school year, Keefer was at the Career Step in the BA +24 lane and remained at that Step for the 2000-01 school year. This latter placement provided Keefer with a salary of \$44,945.

At the beginning of the 2001-02 school year, Keefer submitted documentation that she had received her Masters Degree. The District in accordance with Article II, Section A, approved all of these credits.

At the time of this submission, Keefer understood that she would be placed at the Career Step in the MA lane for the 2001-02 school year. Using the 2000-01 salary schedule, such a placement would result in a salary of \$49,375.

District Teacher Deborah VanDenMeerendonk commenced employment with the District at the beginning of the 1995-96 school year. At that time, she was placed on the salary schedule at BA +8, Step 5. VanDenMeerendonk moved down one step per year and, at the beginning of the 2000-01 school year, VanDenMeerendonk was placed at the Career Step in the BA +8 lane. As a result of this placement, VanDenMeerendonk received a salary of \$41,902. At the beginning of the 2001-02 school year, VanDenMeerendonk submitted documentation that she had earned her Masters Degree and an additional 16 credits. The District in accordance with Article II, Section A, approved all of these credits.

At the time of this submission, VanDenMeerendonk understood that she would be placed at the Career Step of the MA +16 lane. Using the 2000-01 salary schedule, such a placement would result in a salary of \$54,070.

When VanDenMeerendonk received her September paycheck, she noticed that she had not received the expected pay raise. VanDenMeerendonk contacted the District's Bookkeeper, Pam Rose, and was told that the District believed that it had been paying wrong; that the District did not want to increase VanDenMeerendonk's pay and then have to take back the pay; and that the District was consulting its attorney. Following this conversation, VanDenMeerendonk contacted District Superintendent Howard Ott and requested a meeting to discuss the matter.

District Superintendent Ott met with VanDenMeerendonk, Association Representative Cecie Krueger, District Bookkeeper Rose and District Administrative Secretary Zimmerman to discuss VanDenMeerendonk's placement on the 2001-02 salary schedule. During this meeting, Superintendent Ott told Grievant VanDenMeerendonk and Association Representative Krueger that he would refer the matter to the District's Attorney and Board of Education.

By letter dated September 27, 2001, Superintendent Ott notified VanDenMeerendonk of the following:

Please be advised that, in placing you on the salary schedule for the 2001-2002 school year, we became aware of the fact that your requested placement on the salary schedule (MA + 16, Career) is in doubt.

This is to advise that the District and the Union are reviewing the situation. Until that review and resulting discussions are completed, the District will continue to pay you at last year's wage rate.

If you have any questions regarding the situation, please contact the Union leadership.

By letter dated September 27, 2001, Superintendent Ott notified Keefer of the following:

Please be advised that, in placing you on the salary schedule for the 2001-2002 school year, we became aware of the fact that your proper placement on the salary schedule (MA, Step 12) will result in a pay reduction.

This is to advise that the District and the Union are reviewing the situation. Until that review and resulting discussions are completed, the District will continue to pay you at last year's wage rate.

If you have any questions regarding the situation, please contact the Union leadership.

When Association Representative Brett Pickerign was advised of the District's position with respect to the 2001-02 salary schedule placement of Keefer and VanDenMeerendonk, he responded by letter of October 17, 2001. In this letter, Association Representative Pickerign advised Superintendent Ott that WCEA held the position that a teacher should remain on the Career Step as the teacher moves horizontally across the salary schedule and provided Superintendent Ott with supporting rationale for this position. Consistent with the position expressed in Association Representative Pickerign's letter, the Association filed a grievance

alleging, inter alia, that VanDenMeerendonk should be placed at the Career Step of the MA +16 lane and that Keefer should be placed at the Career Step of the MA lane.

By letter dated December 13, 2001, Association Representative Pickerign was advised that the Board had denied this grievance and that the Board considered Keefer to be appropriately placed at MA, Step 12 and VanDenMeerendonk to be appropriately placed at MA+16, Step II. Using the 2000-01 salary schedule, such a placement would result in VanDenMeerendonk receiving a salary of \$43,910 and Keefer receiving a salary of \$43,260. After the grievance was denied, it was submitted to grievance arbitration.

POSITIONS OF THE PARTIES

District

Under the Association's interpretation, once a teacher arrives at his/her first Career Step, then the required number of steps to arrive at the Career Step in other lanes is waived. Not only does such an interpretation ignore the fact that teacher compensation is based on experience and education, but also it inequitably allows teachers who obtain their advanced education later in their career to receive more money than a teacher who obtains his/her advanced education earlier in his/her career and places teachers with the same years of service and the same level of education at two different steps, with two different salaries. Nothing in the contract indicates that the parties intended such inequities and, in the absence of clear contract language to the contrary, such inequities should not be permitted.

A longevity payment for teachers at the top of the schedule was first introduced into the 1978-1979 agreement. This provision was revised in the 1979-1981 agreement by eliminating the second sentence and changing "one percent" to "two percent".

The Career Step concept was added to the salary schedule in the 1981-1983 agreement, and Section M was revised to read, "Teachers who are at the top of the salary schedule for more than one (1) year shall be at the 'Career Step'". Subsequently, Section M was renumbered to Section L.

As the testimony of Association witness Begalke demonstrates, the longevity payment was converted to a dollar amount and called a Career Step because the Association wanted flexibility to adjust the Career Step differently from the remainder of the salary schedule. By converting from a percentage to a dollar amount, the Association achieved this goal.

The "top of the salary schedule", as used in Article IX, Section L, refers to "the maximum point or the last step in the lane". Section L does nothing more than explain what happens when an employee arrives at the top of a lane.

The collective bargaining agreements of the 1970's and early 1980's included a column in a salary schedule entitled "Years of Experience". In the 1983-84 contract, the "Years of Experience" column was removed. As Association witness Begalke testified, the "Years of Experience" column was eliminated because vertical movement was frozen in at least one of those years and, thus, the "Years of Experience" column no longer made sense.

A review of the salary schedule which existed under the 1981-82 agreement reveals that it would have been more advantageous for a teacher who earned additional graduate credits to submit them as earned because they would have received a higher salary by moving down a step and to the next lane than if they had stayed in the existing lane and moved to the Career Step. This continued to be the case in the 1983-84 and 1984-85 contracts.

It is not surprising that most teachers would move from Career Step to Career Step because their years of experience would have placed the teacher at the Career Step anyway. Other than the three teachers that the District believes were erroneously placed on the schedule, and, therefore overcompensated, the Association presented no evidence that teachers previously moved from Career Step to Career Step without completing the years of service required to achieve the Career Step in the new educational lane.

In the 1999-01 contract, a large proportion of the available monies under the QEO law were applied to the Career Step. As a result, the 2000-01 salary reflects a range between the top-numbered step of each lane and its respective Career Step of approximately 14%. The unfortunate result of placing more dollars on the Career Step is a temporary, potential reduction in compensation for some teachers who increase their education.

A teacher must complete the years of service or experience required to be placed on the Career Step of the respective lanes. If they have not fulfilled the years required, the appropriate placement is at the step that reflects their years of service.

Based upon the contract language and the Association's failure to demonstrate clear and unequivocal evidence of past practice, it must be concluded that the parties have not waived the traditional years of service requirement inherent in reaching the Career Step of each educational lane. As a result, based on years of service to the District, Grievant Keefer should be placed at MA, Step 12, and Grievant VanDenMeerendonk should be placed at MA +16, Step 11, for 2001-2002. The grievance must be denied.

Association

In reviewing contract language, it is important to keep two rules of contract interpretation in mind. First, unless the language is ambiguous, the arbitrator seldom needs to look beyond the written word to interpret the document. Secondly, and equally important, is

to view the agreement as a whole. By applying these rules of contract interpretation, it is clear that the District has violated the contract.

The salary schedule is generally understood to operate after a certain fashion. Teachers move down the schedule for gaining experience and across the schedule upon attainment of additional education.

When placing a teacher on the salary schedule, one must determine where the person begins. This is explained in Article IX, Section B, which states that: "Outside experience shall be established at the time of employment. After this level is established, it is considered the starting base and is not open for reconsideration." This provision clearly illustrates that the starting step, determined at the time of hiring, is the base upon which all future advancement shall proceed. Article IX, Section B, does not require that credited years of experience reflect actual years of outside experience and, as the record demonstrates, different administrators have applied different standards in establishing the value of outside experience.

Once the starting step is established, the contract language allows for two types of movement. One type, horizontal movement, is defined in Article II, Section A. The other type, vertical movement, is described in Article IX, Section A.

Article II, Section A demonstrates that, to advance across the schedules, the teacher must earn the specified credits or degree and must receive approval by the Superintendent. If these conditions are met, the teacher moves into the lane corresponding to the level of educational credits earned.

Article IX, Section A, governs vertical movement. This section makes it clear that vertical progress on the schedule is dependent upon completion of a satisfactory year of service and that the only reason to not advance a teacher after a year of service is for unsatisfactory service.

A key term used in both Articles to define movement is "advance". Under the common definition of the word "advance", it is clear that movement indicated under the contract is forward movement across and down the schedule.

As the steps increase in value, so do the step numbers and the credit amounts. Any effort to move a teacher in the opposite direction or to a step that equals a decrease in pay, is clearly a violation of the clear prohibition in Article IX, Section A, that states "No teacher shall be held from advancement on schedule, except for cause as determined under the evaluation procedure in Article X."

Even with cause, the District may only hold a teacher from advancement. Holding a teacher from forward progress or promotion is not the same as moving them back or demoting them, which is what the District is proposing by moving the teachers off the Career Step and back to a step on the schedule.

Construing Article IX, Section L, in accordance with its common and ordinary meaning, the requirements are clear. Once the conditions qualifying a teacher for initial placement on the Career Step is met, a teacher must exist, remain or continue on the Career Step.

The use of the term “shall” makes it clear that this is a mandatory result. The intention of the permanence of the placement on the Career Step is even more evident by the choice of the name given the step.

The relevant criteria are being at the top of the schedule for more than one (1) year and not at the top of a lane for more than one (1) year. The contract language does not specify that the right to remain at the Career Step is contingent upon remaining in the same lane. Nor is there any provision that allows for the removal of a teacher from the Career Step once that step is achieved. Only if language is inferred into the contract is there a basis for moving a teacher off the Career Step and back onto the numbered steps.

The District is basing its authority to reposition a teacher on the inference that the step number must reflect the years of credited experience. There is no contract provision that states that the step occupied by a teacher must reflect their years of credited experience. Additionally, bargaining history and the prior conduct of the parties shows that there is not a clear link between experience and the step occupied by a teacher.

The erosion in the link between experience and step was not only due to several step freezes, but also, to variable standards for awarding credit for prior experience when initially placing teachers on the salary schedule. The bargainers recognized this erosion when they deleted the “Years of Experience” column.

There are important differences in the old longevity language and the new Career Step language. First, the old language states that teachers at the top of the schedule receive a longevity payment, where the new language states that they are to be placed on a new step. This is a fundamental change because a longevity payment can be made to any step at the top of the schedule and still honor the requirement that teachers advance, whereas a movement of a teacher to a different place on the salary schedule makes it necessary to maintain the teacher on the Career Step or violate the requirement that teachers advance.

For example, under the 1979 contract, a teacher with eight years of credit and experience would be at BA Step 9, earning \$13,976. If they then turned in 24 credits the following year, and the salary schedule did not increase at all, the teacher would be earning \$15,344 for placement on the BA + 24 Step 10. This is advancement in visual placement on the schedule and in terms of dollars. However, if you apply this interpretation of movement to the current contract, you see that it violates the provision requiring advancement unless there is cause.

The fact that the District's proposed interpretation of Section L can no longer be universally applied without violating Section A is clear evidence that the meaning must have changed when the Career Step was negotiated into the Agreement. Just as the name Career Step should have made it clear that it would function differently than the old longevity step.

There is a past practice of maintaining teachers on the Career Step that is unequivocal; clearly enunciated and acted upon; and readily ascertainable over a reasonable period of time as a fixed and established practice that has been accepted by both parties. Thus, this practice is binding upon the parties and may be used to construe ambiguous contract language, or to imply a term of contract where the contract is otherwise silent.

The District is the agent that is responsible for placing the teachers on the salary schedule. Although the District claims that teachers were mistakenly maintained on the Career Step, the District had constructive knowledge that it was happening and did nothing to correct it.

The District by its agents, Pam Rose and Suzanne Zimmerman, consistently informed teachers that once placed on the Career Step that they would not move off the Career Step. The Grievants expended a significant amount of time and money to earn additional credits, expecting their income to increase as a result.

The teachers in this grievance relied upon the contract language and the statements of the District's agents. The District's claim of mistake is not a valid defense where, as here, they have taken no prior actions to stop the practice; have not placed the Association on notice that there was a mistake; and have not notified the Association of its intent to change the practice.

Equity is an important consideration when interpreting contract language. To the extent that an arbitrator can, a contract should be interpreted to avoid forfeiture. In addition, the concept of detrimental reliance is a factor in this case.

The District contends that the salary schedule is designed to reward experience and education. The District's interpretation, however, penalizes these teachers for investing significant expenditures of time and money to earn credits that would allow them to advance.

The District's claim that the Association's interpretation would result with two teachers with different years of experience and the same education being paid differently is unconvincing since this element of unfairness is present in some instances under the District's interpretation. For example, if two teachers hired with a Master's degree are hired 10 years apart, and neither works to increase their educational level, there will become a time when one teacher with 13 years of experience will be earning the same as the other teacher with 23 years of experience.

In the past, the District calculated the sum paid for education advancement in with the total package cost of a settlement offer. In this scenario, an increase in teacher lane movement would simply mean that the amount available for other teacher schedule increases would be less.

In 2000, the QEO costing law changed to exclude the calculation of the lane movement from the total package cost. In this year, the amount spent on lane movement must be paid in addition to negotiated salary increases. It was in the same year that this exclusion was to be applied that the District discovered its mistake.

In the past, the Association accepted the cost of teacher lane movement and never attempted to grieve the issue when the District made a "mistake". Since the Association accepted this cost impact, the District should not be allowed to escape its obligation to provide such movement when there is not such a cost impact.

The District has failed to recognize the plain language of the agreement and the past practices of the parties. The Association requests that the District move the Grievants to the Career Step that is commensurate to their educational credits and degrees retroactive to the beginning of the 2000-01 school year and award the appropriate back pay, with interest.

DISCUSSION

Issue

The parties were unable to stipulate to a statement of the issue. The Association frames the issue as follows:

Did the District violate Article IX of the contractual agreement between Baldwin-Woodville School District and West Central Education Association when it failed to advance Deb Keefer and Deb VanDenMeerendonk on the Career Step of the salary schedule to a lane appropriate to their recognized level of educational credit although both teachers completed a satisfactory year of service and submitted the appropriate credits to warrant advancement on the schedule?

The District frames the issue as follows:

Did the District violate Article IX when it placed the two grievants on the salary schedule based on their actual years of service?

As the arguments of the parties demonstrate, this dispute involves the 2001-02 salary schedule placement of two District teachers, *i.e.*, Deb Keefer and Deb VanDenMeerendonk. The Association argues that Grievant Keefer should be placed at the Career Step in MA lane and that Grievant VanDenMeerendonk should be placed at the Career Step in the MA +16 lane. The District argues that Grievant Keefer should be placed at Step 12 of the MA lane and that Grievant VanDenMeerendonk should be placed at Step 11 of the MA +16 lane. Given these arguments, and the parties' reliance on Article IX, the undersigned considers the following issue to be appropriate:

Did the District violate Article IX of the parties' collective bargaining agreement when it determined that, for the 2001-02 school year, Deb Keefer was appropriately placed on the salary schedule at MA, Step 12, and Deb VanDenMeerendonk was appropriately placed on the salary schedule at MA +16, Step 11?

If so, what is the appropriate remedy?

Merits

It is undisputed that Grievant VanDenMeerendonk is appropriately placed in the MA +16 lane and that Grievant Keefer is appropriately placed in the MA lane. In dispute is the appropriate Step placement. The District claims that each Grievant must be placed on the step of the relevant educational lane that reflects her experience within the District. Thus, the District argues that Grievant VanDenMeerendonk is appropriately placed on the Step 11 of the MA +16 lane and that Grievant Keefer is appropriately placed on Step 12 of the MA lane.

The Association claims that once a teacher reaches a Career Step the teacher's experience becomes irrelevant and that a teacher is entitled to move across the lanes of the Career Step solely upon the basis of educational attainment. Thus, the Association argues that Grievant Keefer is appropriately placed at the Career Step of the MA lane and that Grievant VanDenMeerendonk is appropriately placed at the Career Step of the MA +16 lane.

The District's 2000-01 salary schedule provides "steps" and "lanes." Normally on such a schedule, a teacher moves vertically "down" steps and horizontally "across" lanes. Normally on such a schedule, this vertical movement is achieved by working one complete school year and the horizontal movement is achieved by earning the educational requirement of that lane. Normally, when a teacher reaches the maximum step in a lane, the teacher remains on that step until the teacher obtains the educational credits that permit the teacher to move to the next lane. If the next educational lane contains additional downward steps, then the teacher moves down the steps of that lane as the teacher's experience warrants.

The District's 2000-01 salary schedule is contained in Schedule B. Schedule B does not contain any language that expresses, or implies, that the parties did not intend this normal schedule movement.

Under the District's position, the Grievants would move horizontally "across" lanes, but would move vertically "up" the steps of the salary schedule. Under the Association's position, the Grievants would move horizontally "across" lanes, but would remain on the Career Step, which is the top step in Schedule B. Thus, the Association's position, unlike that of the District, provides for normal schedule movement.

The District asserts, however, that teacher compensation is based upon experience and education. Thus, the District argues that the parties must have intended each Grievant to be placed on the step of the relevant educational lane that reflects her experience within the District.

Generally speaking, the District is correct when it asserts that teacher compensation is based upon experience and education. Specifically speaking, however, the parties' salary schedule does not establish a fixed relationship between a "Step" and experience within the District. Thus, the salary schedule, on its face, does not demonstrate that the parties intended each Grievant to be placed on the step of the relevant educational lane that reflects her experience within the District.

As each party recognizes, at one time, each step on the schedule was expressly linked to a specific "Years of Experience." As the testimony of retired Association Representative Begalke demonstrates, the "Years of Experience" column was deleted in the mid-1980's because the parties froze step movement for two years and, thus, the prior relationship between

“Step” placement and experience within the District no longer made any sense. This bargaining history evidence that the parties intentionally severed the historic relationship between a schedule step and experience, militates against the conclusion that the parties mutually intended each Grievant to be placed on the step of the relevant educational lane that reflects her experience within the District.

If the parties had intended a teacher to have experience at the highest step of each lane prior to moving to the Career Step of that lane, then the parties could have placed the Career Step at Step 9 of the BA lane; at Step 10 of the BA +8 lane; at Step 11 of the BA +16 and BA +24 lane; at Step 12 of the BA +32 lane; and at Step 13 of the BA +40 and MA lane. Given the failure of the parties to do so, as well as the parties’ placement of the Career Step below the last numerical Step, i.e., Step 13, the most reasonable construction of the plain language of the salary schedule is that, upon achieving the Career Step, teacher experience becomes irrelevant and, thereafter, teachers move horizontally across the Career Step as they obtain the requisite education.

As both parties recognize, the salary schedule does not stand-alone. As the Association argues, the salary schedule contained in Schedule B must be interpreted in a manner that is consistent with the language contained in Article IX, Compensation.

Article IX, Section A, expressly recognizes that, to advance on the schedule, a teacher must perform satisfactory work. It is undisputed that both Grievants have performed satisfactory work. Thus, as the Association argues, under Article IX, Section A, each Grievant is contractually entitled “to advance on schedule.”

Article IX, Section A, does not define “to advance on schedule.” As the Association argues, however, advancement on schedule is normally interpreted to mean vertical movement down steps and/or horizontal movement from left to right across lanes. Accordingly, the Association’s position, unlike that of the District, is consistent with the normal interpretation of “to advance on schedule.”

As the Association also argues, the normal effect of advancing on the salary schedule is to receive a salary increase, rather than a salary decrease. Under the 2000-01 salary schedule, which is the most recent salary schedule, the District’s placement of Grievant Keefer at MA, Step 12, would result in a salary decrease.

In summary, the Association’s position provides the Grievants with what is normally understood to be advancement on the salary schedule, while the District’s position does not. Thus, interpreting the salary schedule contained in Schedule B in a manner that is consistent with the language of Article IX, Section A, reasonably leads to the conclusion that the District’s schedule placement is not appropriate.

As the Association argues, “advancement” on educational lanes is expressly defined in Article II, Section A, and occurs by moving horizontally from one educational lane to another educational lane on the basis of earned credits. Thus, the language of Article II, Section A, confirms that, with respect to lane movement, the parties intended their salary schedule to be given its normal application.

Article II, Section A, is silent with respect to appropriate step placement. Step placement, however, is expressly addressed in the language of Article IX, Section C and L.

Article IX, Section C, recognizes that outside experience is established at the time of employment and, once established, may not be reconsidered. Consistent with this provision, the District’s Superintendents have provided up to five years’ credit for prior experience when initially placing new hires on a step of the salary schedule.

Article IX, Section C, is silent with respect to movement on to, or off of, the Career Step. However, Career Step placement is addressed in Article IX, Section L, which states as follows:

Teachers who are at the top of the salary schedule for more than one (1) year shall be at the Career Step

Notwithstanding the District’s argument to the contrary, Section L does not “merely” explain what happens when an employee arrives at the top of the lane. Rather, it provides the mechanism by which an employee moves to the Career Step.

As a review of the salary schedule reveals, there is a single Career Step. As with all “steps” on the schedule, there is not a single wage rate attached to the Career Step. Rather, the wage rate of the Career Step varies across lanes. Given this variation, the term “top of the salary schedule” is most reasonably construed to be the highest wage step within a lane, exclusive of the Career Step. Thus, for the purposes of Article IX, Section L, the “top of the salary schedule” is Step 8 in the BA lane; Step 9 in the BA +8 lane; Step 10 in the BA +16 and BA+24 lanes; Step 11 in the BA +32 lane; Step 12 in the BA +40 and MA lanes; and Step 13 in the MA +8 and MA +16 lanes.

In summary, Article IX, Section L, states only one condition precedent to moving to the Career Step, *i.e.*, that a teacher be at the highest wage step within a lane for more than one year. This provision does not restrict movement to a specific lane of a Career Step, nor does it specify that the right to remain on the Career Step is contingent upon remaining in the same lane. Nor does Section L provide for any movement off of the Career Step. Thus, the most reasonable construction of the plain language of Article IX, Section L, is that, once a teacher has moved onto the Career Step, then that teacher remains on the Career Step.

The testimony of retired Association Executive Director Begalke demonstrates that the parties negotiated Article IX, Section M, into their 1978-79 collective bargaining agreement for the purpose of providing additional monies to the teachers that no longer received a step increment. As the Association argues, this Section M longevity payment did not provide for movement to another step, but rather, was a percentage of the top step of each lane.

The Section M longevity payment was deleted when the parties negotiated the 1981-83 collective bargaining agreement. At that time, the parties agreed to the language of the existing Article IX, Section L. As Begalke's testimony demonstrates, the "Career Step" was intended to be "separate" from the other steps in the schedule, thereby allowing greater flexibility in the adjustment of off schedule wages. As the Association argues, the use of the term "Career Step," as well as the creation of a "step" that was separate from the other steps of the schedule, indicates that the Career Step was not intended to function in the same manner as the old longevity payment.

Begalke does not claim, and the record does not demonstrate, that when the Association and the District negotiated the "Career Step," the parties discussed how a Career Step teacher that obtains additional educational credits would move on the salary schedule. With respect to the issue before the undersigned, the evidence of bargaining history does not demonstrate that the parties intended any interpretation of Article IX, Section L, other than that reflected in the plain language.

It is not evident that "most teachers" that moved from one lane of the Career Step to another lane of the Career Step had sufficient experience to have been at the top step of the new lane. However, if such a fact had been established, it would not warrant the conclusion that such movement had occurred because the teacher had the "requisite" experience. The reason being that, absent evidence that such movement occurred precisely because the teacher had the "requisite" experience, such movement would be consistent with the Association's position, i.e., that teachers on the Career Step move horizontally across the Career Step as they obtain the requisite education. There is, however, evidence of movement along the educational lanes of the Career Step that is probative of the parties' intent.

At the beginning of the 1998-99 school year, when District teacher Ashlin was starting his ninth year with the District, he was placed at the Career Step of the BA lane. Such placement is consistent with the positions of both parties. At the beginning of the 1999-00 school year, Ashlin acquired sufficient credits to move from the BA lane to BA+16 lane. Ashlin, who was hired at Step 1 of the salary schedule, was not placed at Step 10 of the BA +16 lane, the "Step" that the District maintains would be commensurate with his experience. Rather, he moved directly from the Career Step of the BA lane to the Career Step of the BA +16 lane. At the beginning of the 2000-01 school year, when District teacher Ashlin acquired sufficient credits to move from the BA +16 lane to the MA lane, he was not placed at

Step 11 of the MA lane, the “Step” that the District maintains would be commensurate with his experience. Rather, he moved directly from the Career Step of the BA +16 lane to the Career Step of the MA lane.

In the 1998-99 school year, District teacher Benoy was placed on the Career Step of the BA +8 lane. Such placement is consistent with the positions of both parties. At the beginning of the 1999-00 school year, when Benoy acquired sufficient credits to move from the BA +8 lane to the BA +24 lane, he was placed on the Career Step of the BA +24 lane. Inasmuch as this was his eleventh year with the District, this placement is consistent with the positions of both parties. In the 2000-01 school year, when District teacher Benoy acquired sufficient credits to move from the BA +24 lane to the MA lane, he was not placed at Step 12, the “Step” that the District maintains would be commensurate with his experience. Rather, he moved directly to the Career Step of the MA lane.

For the 1999-00 school year, District teacher Magnuson was placed at the Career Step of the BA +24 lane. This placement is consistent with the positions of both parties. At the beginning of the 2000-01 school year, when District teacher Magnuson acquired sufficient credits to move from the BA +24 lane to the MA lane, she was not placed on Step 12, the “Step” that the District maintains would be commensurate with her experience. Rather, she moved directly from the Career Step of the BA +24 lane to the Career Step of the MA lane.

The District argues that, when Ashlin, Benoy and Magnuson were not placed on steps that were commensurate with their experience, the District made a “mistake.” However, given that these placements occurred over a two year period; affected three different employees, one of whom was the recipient of the “mistake” in two separate school years; and it is not evident that, prior to the incident giving rise to this grievance, any similarly situated employee was treated in a manner that was not a “mistake,” it would not be reasonable to conclude that these placements of Ashlin, Benoy and Magnuson were a “mistake.” Rather, the most reasonable conclusion is, as the Association argues, that these placements reflect the mutual understanding of the parties.

As the District argues, acceptance of the Association’s position would mean that teachers with the same educational requirement, but different years of experience, would be treated differently. For example, an inexperienced teacher who is hired at Step 1 of the BA lane would work eight years to move to the BA Career Step. If that teacher then earned a MA by the end of the year in which the teacher moved to the BA Career Step then that teacher would move to the Career Step of the MA lane in the succeeding year. Thus, such a teacher would move to the Career Step of the MA lane in his/her tenth year, while a teacher that had been hired at the same time, but with a MA degree, would not move to the Career Step of the MA lane until the teacher’s thirteenth year of work.

The District views this as an inequity because it allows a teacher who obtains his/her advanced education later in his/her career to receive more money than a teacher who obtains his/her advanced education earlier in his/her career and places teachers with the same level of education, but fewer years of service to the District, at two different steps, with two different salaries. As the treatment of Benoy, Magnuson, and Ashlin demonstrates, such “inequities” were permitted for several years without complaint from either side. This evidence of prior conduct rebuts the District’s claim that the parties could not have mutually intended such an “inequity.” Moreover, as discussed above, there is contract language that indicates that the parties did intend such “inequities.”

The testimony of Superintendent Ott establishes that teacher and Association representative John Walker expressed to Superintendent Ott his opinion that the two Grievants should be placed back into the salary schedule. Ott’s testimony, however, also confirms that Walker did not tell Ott that, when voicing this opinion, he was speaking on behalf of the Association. Given this testimony, as well as the testimony that other teacher Association representatives consistently told Ott that this was not the Association’s position, Walker’s opinion is entitled to be given the same weight as that of the District’s Bookkeeper’s and Administrative Secretary’s contrary opinion, i.e., not persuasive.

Conclusion

Notwithstanding the District’s assertions to the contrary, the language of the collective bargaining agreement does not require the conclusion that the parties intended the Grievants to be placed on the Step of the educational lane that is commensurate with their experience within the District. Moreover, such a conclusion is inconsistent with the evidence of bargaining history, as well as the evidence of the parties’ prior conduct.

The most reasonable construction of the plain language of Article IX, Section L, is that it provides teachers “who are at the top of the salary schedule for more than one (1) year” not only with the right to move to the Career Step, but also, it provides such teachers with the right to remain on the Career Step. Given this right to remain on the Career Step, a Career Step teacher that obtains the educational credits required by Article II, Section A, moves horizontally, from left to right, on the Career Step until the teacher reaches the appropriate educational lane. Such a construction of the collective bargaining agreement is consistent with the other relevant provisions of the collective bargaining agreement; the normal application of a teacher salary schedule; the evidence of bargaining history and the evidence of the prior conduct of the parties.

The District’s determination that, for the 2001-02 school year, Grievant Keefer was appropriately placed at MA, Step 12, and Grievant VanDenMeerendonk was appropriately placed at MA +16, Step 11, violates Article IX, Section L, of the parties’ collective

bargaining agreement. For the 2001-02 school year, Grievant Keefer has the contractual right to be placed on the Career Step of the MA lane of the salary schedule and Grievant VanDenMeerendonk has the contractual right to be placed on the Career Step of the MA +16 lane of the salary schedule.

The appropriate remedy for the District's failure to appropriately place the Grievants on the salary schedule for the 2001-02 school year is to require the District to appropriately place the Grievants on the salary schedule for the 2001-02 school year. Additionally, it is appropriate for the remedy to include a requirement that the District make whole the Grievants for all wages and benefits lost as a result of the District's failure to appropriately place the Grievants on the salary schedule for the 2001-02 school year.

The Association requests that this make whole remedy include interest on monies due the Grievants. The contract, however, does not require such interest payments. Nor does the record demonstrate that the District knowingly violated the terms of the collective bargaining agreement, or otherwise acted in bad faith. Inasmuch as the facts of this case do not warrant the imposition of the extraordinary remedy of interest on monies due the Grievants, the Association's request for such interest is denied.

Based upon the above and foregoing, and the record as a whole, the undersigned issues the following:

AWARD

The District violated Article IX of the parties' collective bargaining agreement when it determined that, for the 2001-02 school year, Deb Keefer was appropriately placed at MA, Step 12, of the salary schedule.

The District violated Article IX of the parties' collective bargaining agreement when it determined that, for the 2001-02 school year, Deb VanDenMeerendonk was appropriately placed at MA +16, Step 11, of the salary schedule.

To remedy the above violations of the parties' collective bargaining agreement, the District shall immediately:

1. Place Deb Keefer on the MA lane of the Career Step for the 2001-02 school year and make whole Deb Keefer for all wages and benefits lost as a result of the District's failure to place Deb Keefer on the MA lane of the Career Step for the 2001-02 school year.

2. Place Deb VanDenMeerendonk on the MA +16 lane of the Career Step for the 2001-02 school year and make whole Deb VanDenMeerendonk for all wages and benefits lost as a result of the District's failure to place Deb VanDenMeerendonk on the MA +16 lane of the Career Step for the 2001-02 school year.

Dated at Madison, Wisconsin, this 19th day of September, 2002.

Coleen A. Burns /s/

Coleen A. Burns, Arbitrator