

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WAUPACA SCHOOL DISTRICT

and

WAUPACA TEACHERS ASSOCIATION

Case 33
No. 62343
MA-12247

Appearances:

Mr. Timothy E. Smith, UniServ Director, Central Wisconsin UniServ Councils, Unit 3, 625 Orbiting Drive, P.O. Box 158, Mosinee, WI 54455-0158, on behalf of Waupaca Teachers Association.

Davis & Kuelthau, S.C., by **Attorney James R. Macy**, 219 Washington Avenue, P.O. Box 1278, Oshkosh, WI 54903-1278, on behalf of the District.

ARBITRATION AWARD

Pursuant to the 1999-2001 labor agreement between the School District of Waupaca (District) and Waupaca Teachers Association (Association), the parties jointly requested that the Wisconsin Employment Relations Commission appoint Arbitrator Sharon A. Gallagher to hear and resolve a dispute between them concerning the proper extra-curricular schedule pay for Grievant Barbara Blair during the 2002-03 school year. Hearing on the matter was held on August 12, 2003, as Waupaca, Wisconsin. A stenographic transcript of the proceedings was made and was received on August 22, 2003. The parties agreed to submit their post-hearing briefs postmarked 45-calendar days after their receipt of the transcript and they reserved the right to file reply briefs herein. The Arbitrator received all documents as of October 28, 2003, whereupon the record was closed.

ISSUES

The parties were unable to stipulate to an issue or issues before the Arbitrator. However, the parties agreed to allow the Arbitrator to frame the issues based upon the relevant evidence and argument in this case and after having fully considered the parties' suggested issues, as follows:

Association: Did the Employer violate the collective bargaining agreement by not compensating Barbara Blair at the proper rate for her work with the Pride Program? If so, what should the remedy be?

District: Did the District violate the extra curricular salary schedule of the collective bargaining agreement when it provided the Grievant two years of experience upon her assignment to the Pride Program Coordinator position? If so, what is the appropriate the remedy?

After having considered the parties' suggested issues, as well as the relevant evidence and argument herein, I find that the District's issues reasonably state the controversy herein and they shall be determined herein.

RELEVANT CONTRACT PROVISIONS

ARTICLE I **MANAGEMENT RIGHTS**

The Board on its own behalf and on behalf of the electors of the District, hereby retains and reserves unto itself all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the Sate of Wisconsin, and of the United States, including the following:

- A. To direct all operations of the school system;
- B. To establish reasonable work rules and schedules of work;
- C. To hire, promote, transfer, schedule, and assign employees and positions with the school system;
- D. To suspend, demote, discharge and take other disciplinary action against employees in accord with the terms of this agreement;
- E. To maintain efficiency of school system operations;
- F. To take whatever action is necessary to comply with State or Federal law;
- G. To introduce new or improved methods or facilities;
- H. To change existing methods or facilities;
- I. To determine the kinds and amounts of services to be performed as pertains to school system operations and the number and kinds of classifications to perform such services;
- J. To determine the methods, means and personnel by which school system operations are to be conducted;
- K. To take whatever action is necessary to carry out the functions of the school system in situations of emergency.

The exercise of the foregoing powers, rights, authority, duties, and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement and Wisconsin Statutes, Section 111.70 and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin, and the Constitution and laws of the United States.

ARTICLE II
HIRING OF TEACHERS

A. Hiring of Teachers

1. Any new teacher to the system may be given unlimited credit for years of teaching experience outside the School District of Waupaca, such credit to be evaluated by the school administration.

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3. The Board of Education shall have the right to hire personnel above the salary schedule whenever necessary due to a shortage in a particular field or to unusual skills required. The salary schedule is to be construed as a minimum and not to be construed as preventing the District Administrator from recommending the Board grant additional compensation to either men or women over and above the amounts provided in the schedule. However, this section is not be construed as authorizing a merit pay system.

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ARTICLE III
COMPENSATION

A. Salary Schedule (See Appendix A)

1. The salary structure will be 3.8% cumulative on the vertical lane and a 2% cumulative on the horizontal lanes.
2. Part-time teachers covered by this contract shall receive vertical advancement on the schedule on a pro-rated basis.

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E. Extra-Curricular Activities

Extra-curricular activities and other assigned duties are set forth in Appendix B. Teachers assigned to such activities shall be paid in accordance with said appendices. Such activities are subject to approval by the Board. Upon presenting the Administration vouchers 2 weeks prior to payday stating activities performed, the appropriate payments will be made. Payroll information cut-off dates will be two weeks prior to any given pay date. Approved extra-curricular pay vouchers received by the Business office by the payroll cut-off date will be processed on the next regular payroll. Extra-curricular activities that incorporate the whole year shall be paid on the 1st pay date in January and the 1st pay date is June after having received approved extra pay vouchers.

Teachers requesting a release from an extra-curricular activity which was part of their original contract will be granted if a qualified replacement as determined by the District is available or vacancy conditions allow for a replacement. Teachers assigned at least three (3) years may apply for an unconditional release but thereafter must give at least one (1) additional year notice of resignation. The unconditional release is subject to the limitation on the number of requests per year noted herein.

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It is understood that only one assignment per high school, and one assignment per middle school will be released under the unconditional release procedure per year. Releases shall be granted based upon seniority of the assignment in the event that 2 or more applications for release are made in the same year.

Final decisions on the extra-curricular assignments shall be made by May 30th.

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1999-00
APPENDIX B
EXTRA-CURRICULAR SCHEDULE

BOYS ATHLETICS **0-4 YEARS** **5-9 YEARS** **10+ YEARS**

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GIRLS ATHLETICS **0-4 YEARS** **5-9 YEARS** **10+ YEARS**

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<u>GROUPS</u>	<u>0-4 YEARS</u>	<u>5-9 YEARS</u>	<u>10+ YEARS</u>
FBLA	\$753	\$828	\$907
FHA	\$753	\$828	\$907
Newspaper	\$1,428	\$1,711	\$1,879
Yearbook - H.S.	\$2,134	\$2,346	\$2,581
Yearbook - M.S. (Total for 2)	\$1,951	\$2,191	\$2,412
Forensics	\$2,542	\$2,786	\$3,009
Forensics - Asst.	\$1,515	\$1,635	\$1,757
Forensics M.S. - 2 positions	\$753	\$828	\$907
Soccer Club	\$1,060	\$1,181	\$1,298
Class Play	\$877	\$968	\$1,187
FFA	\$1,044	\$1,148	\$1,263
Comet Country (Total for 2)	\$753	\$828	\$907
Odyssey of the Mind Coord.	\$470	\$516	\$567
Odyssey of the Mind Asst.	\$470	\$516	\$567
Art Club - HS and MS and ELEM	\$753	\$828	\$907
Pep Club	\$1,429	\$1,711	\$1,879
National Honor Society	\$520	\$571	\$628
Cheerleading - HS	\$1,556	\$1,711	\$1,879
Cheerleading - MS	\$753	\$828	\$907
Debate Coach	\$408	\$448	\$495
Photo Club	\$408	\$448	\$495
German Club	\$520	\$571	\$628
Spanish Club	\$520	\$571	\$628
Middle School Jazz Band	\$470	\$516	\$567
FOCUS Coordinator	\$470	\$516	\$567
FOCUS Coach	\$470	\$516	\$567
Pride Coordinator	\$753	\$828	\$907

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MUSIC DEPARTMENT No breakdown by experience after this point

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Evening Performances (Dramatics) \$35.42

ASSIGNED DUTIES

Trip Chaperone - PER TRIP \$35.42

Dance Chaperone - PER DANCE \$35.42

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BACKGROUND

The District has had a practice of allowing teachers to initiate new activities in the District for students which are not formally recognized or paid by the District. The teacher in these circumstances generally first speaks with his/her building principal about starting a new club or activity and discusses what the activity would involve as well as the potential for student participation. The teacher would then make a written proposal to their building principal requesting that the activity be allowed in the District on a voluntary basis. If the principal approves this, the teacher may proceed with the activity or club but it is non-paid. 1/ This approach allows the teacher to develop the activity, its rigor, the time necessary to perform it and it allows the District to determine over a period of time whether the new activity is popular with students and whether it is in the best interest of students. No evidence was submitted herein to show that a teacher who had initiated and worked in a non-paid voluntary activity or club was remunerated formally by the District while the teacher remained a volunteer.

1/ The principal has the authority to approve a non-paid, voluntary activity or club on his/her own without further Board approval.

District Administrator Dr. David Poeschl stated herein without contradiction that after several years, volunteer teachers in an activity/club make a formal proposal to the Board to approve and formalize the club the activity and that thereafter, if the Board approves the activity, the activity will be brought to the negotiation table to negotiate a pay scale for the new position and that rate of pay is then added to the labor agreement.

The Grievant submitted a proposal in 1996 to compensate her for her volunteer work with the Pride Program (Association Exh. 7). It is undisputed that the Pride Program was not formally approved and placed in the labor agreement through negotiations with the Association until the 1999-2000 labor agreement was concluded.

The District submitted documentation (District Exh. 3-6) which indicated that Association proposals have been brought forth in the past to formally pay activities/clubs which had previously been participated in by teachers on a volunteer basis. In addition, the Association submitted documents (e-mails received by the Grievant from fellow teachers) which indicated that Teacher Linda Klein had received no experience credit on the extra-curricular salary schedule for her 23 years of volunteer work with the German Club when she was formally hired to perform those duties, but that she was given 8 years of experience on the extra-curricular schedule for her volunteer work with the Yearbook (Association Exh. 3). Teacher Bonnie Overman stated in her e-mail to the Grievant that she was given 5 years experience on the extra-curricular salary schedule when she was hired as the Junior Varsity Volleyball Coach. 2/

2/ Neither Klein nor Overman testified herein. Klein did not state any reason why she was given experience credit for the Yearbook and not for the German Club in her e-mail to the Grievant.

FACTS

The Grievant, Barbara Blair, has been employed as a teacher by Waupaca School District for the past 15 years. During the 1994-95 school year, Blair initiated the "Pride Program" as an informal volunteer activity in the District with approval of her principal therefor. The Pride Program is an international peer-to-peer alcohol and drug prevention program targeted for elementary through high school students which uses dance, songs and skits to help prevent the use of alcohol and drugs by students. With her building principal's approval, Blair brought in a training team from West Bend to train 50 students to initiate the Pride Program in the District. During the summer before the 1995-96 school year, Blair worked with these students to develop dances, songs and skits that would be presented during the 1995-96 school year.

From 1995 through the end of the 1998-99 school year, Blair and her students put on Pride Program presentations in the Waupaca Schools at all levels (elementary, middle and high school) and they put on presentations in all other school districts in the County as well as at the State Prevention Conference. In 1996, Blair requested that the Board formally recognize/approve the Pride Program but this request was denied. By the end of the 1998-99 school year, Blair had 100 students in her elementary through high school Pride Program activities. From 1994 through 1999, Blair was not formally paid by the District for her work with the Pride Program; the Pride Program was not recognized by the Board as a formal activity; and the Pride Program was not listed in the master contract as a paid activity. However, Blair did receive chaperone fees from the Board of Education as follows for her Pride Program presentations:

1995-96:	\$180.42
1996-97:	\$563.04 and \$77
1997-98:	\$135.07
1998-99:	\$464.40, \$1,178.31, \$200

District records also show that Blair and/or the Pride Program received the following undesignated funds for the Pride Program.

1995-96:	\$500
1996-97:	\$1,000
1997-98:	\$1,000
1998-99:	\$1,200 3/

3/ The evidence failed to show what these funds were used for (Association Exh. 5).

Blair stated herein that she spent two nights per week on the Pride Program during the school years 1995-96 through 1998-99. In 1999, Blair stated that she decided to take a “temporary leave” from the Pride Program and that she told her building principal, Mr. Gunderson, this at the end of the school year. Blair denied that she quit the activity 1999 because there was a shortage of funds found by the District after the Pride Program went out of operation. Rather, Blair stated that she did not recall submitting a formal letter of resignation from Pride Program activities in 1999. Blair explained that because the Pride Program was not then a paid position in the District, there was no need for her to formally resign from Pride Program activities in 1999 (Tr. 38-39). 4/

4/ In 1999, the use of Pride Program funds were audited and records showed that the program was short \$71.36 (Association Exh. 5). Blair refunded this amount to the District. Blair stated this shortage was due to a clerical error.

During the 1999-01 through 2001-02 school years, there was no Pride Program at the District because no one was interested in providing it. The Association and the District agreed to add the position of Pride Program Coordinator to the 1999-2001 labor agreement, after the Board had approved it as a formal activity and the parties agreed upon contractual rates of pay therefor.

Blair submitted an application for the Pride Program Coordinator position for the 2002-03 school year in response to the following posting dated October 28, 2002:

. . .

POSITION:	PRIDE Coordinator
LOCATION:	Waupaca High School
STARTING WAGE:	ASAP-As soon as possible
WAGE:	Based on the most current extra-curricular schedule 0-4 Years of Experience \$812 5-9 Years of Experience \$892 10+ Years of Experience \$978

JOB DESCRIPTION: This position is responsible for coordinating Pride Activities such as songs, plays and skits that help prevent drug and alcohol abuse.

QUALIFICATIONS: Candidates shall be willing to design activities and work with a wide range of student abilities.

APPLICATION: Complete district application and sign-off on criminal records check.

. . .

Building Principal Gunderson interviewed Blair for the position in accord with District practice. According to Gunderson's practice, he asked Blair about her experience with the Pride Program. Blair indicated that she had five year's experience as Pride Program Coordinator. Gunderson questioned Blair regarding which years she had worked in the Pride Program and according to Blair, 5/ Gunderson observed that Blair's prior experience should put her in the second pay tier for the position (5-9 years) (Tr. 21).

5/ Gunderson denied herein that he told Blair that her experience would put her in the second tier of the pay schedule. Gunderson asserted that as a general rule, his only discussions regarding extra-curricular salaries are with Dr. Poeschl who has the complete discretion to place successful applicants on the extra-curricular schedule.

Blair admitted that Gunderson never stated that he had the authority to place Blair in the second pay tier for the position. Indeed, Blair admitted herein that she was aware that Gunderson lacked the authority to decide where to place her on the extra-curricular pay schedule (Tr. 36-37). In addition, Blair stated that when she asked Gunderson for a contract, he told her she would not get one because teachers were not signing contracts that year.

The evidence showed that there are no District requirements for volunteer activities — these are left totally to the discretion of the volunteer teachers who engage in them. Teachers may also walk away from a volunteer activity or club which has not been formally approved by the Board at any time they choose. 6/ District Administrator Poeschl also stated without contradiction that in the past 11 years since he has been District Administrator, the Association never proposed to the District that teachers who had volunteered in an informal club or activity should receive credit for years of experience on the extra-curricular salary schedule for the time spent working as a volunteer. In addition, Poeschl stated that the Association never proposed that teachers who volunteered in an activity should automatically have a right to the position after it became a formalized paid activity or club in the District.

6/ Dr. Poeschl stated herein that Blair never told him or anyone in the administration that she was taking a "leave of absence" from the Pride Program in 1999. Poeschl stated that he did not expect Blair to do so as the Pride Program was then a volunteer activity.

The District submitted several documents (District Exh. 3-6), which showed Association proposals for contracts with the District from 1995 through 2003. These documents showed that the Association proposed pay on the extra-curricular schedule for activities/clubs which had previously been voluntary or informal. These clubs included the following:

95-97 Contract: Debate Coach, Meister Singers, Girls' Concert Chorale, and Madrigal Dinner
97-99 Contract: German and Spanish Clubs, Middle School Jazz Band, FOCUS Program
99-2000 Contract: Pride Coordinator

The Union presented no evidence to contradict the District's assertion that all of these clubs/activities had previously been non-paid volunteer activities which were later approved by Board action and then brought to negotiations for agreement upon a dollar figure to place in the master contract for each activity/club.

The District also submitted evidence (District Exh. 2) showing teacher proposals to receive compensation for various volunteer programs. These included the all-school elementary special choir which had been in existence for 10 years at the time the teachers involved (Teachers Michael and Grams) proposed that the District pay them for their work with this activity; the Chess Club Advisor position, which had been in existence on a volunteer basis for 5 years before Teacher Hiddemen proposed that his participation be paid by the District; and Teacher Petroff's proposal in 2000 to receive compensation for her work with the Middle School Vocal Jazz Ensemble, which she had formed in 1999-2000. The Association proffered no evidence to contradict that of the District on this point.

Finally, the District submitted a document (District Exh. 8) which listed 74 teachers who had been hired for extra-curricular activities, each teachers' experience placement for that activity/club as well as the year in which the Board approved the activity. This document showed that only 5 teachers received credit for prior experience when they were hired into an approved extra-curricular activity. These teachers included the Grievant, Barbara Blair, for the Pride Program Coordinator, Melanie O'Keefe for Freshman Volleyball, Bonnie Overman for Junior Varsity Volleyball, Dave Peterson for Middle School Wrestling and Lisa Simonson for H. Girls Track.

Dr. Poeschl admitted herein that District Exhibit 8 was not all-inclusive but was a representative sample of the extra-curricular activities approved between the 1996-97 school year and the 2002-03 school year. Poeschl stated that he was unaware why Peterson and Simonson received experience credit for prior work in the activities they were hired into, but that he was aware that Melanie O'Keefe received one year's experience because she was a paid volleyball coach when she did her student teaching at the District and he decided to give her credit for that one year of paid participation as the Volleyball Coach prior to her being hired as a full-time teacher and Volleyball coach. Poeschl stated that he gave the Grievant two years' experience because he understood that Blair had objected to being placed on the zero tier on the extra curricular schedule and Poeschl hoped that by giving Blair two years' experience, she would be satisfied. Poeschl stated that Bonnie Overman had four years of prior experience in the J.V. Volleyball coach position as a paid position at the District, as Overman had quit the position after four years in it before she was later rehired by the District with four years' of experience.

The Association provided two examples of teachers (Koll and Easland) which were not covered by District Exhibit 8 and the Association also asserted that Dan Wolfgram, who had been hired as the Meister Singers Director, received two years of experience when hired into that program and that Gwynne Pfeiffer had received two years' experience when she was hired as the Art Club Advisor after that activity was placed in the labor agreement. District Administrator Poeschl stated herein that Ms. Pfeiffer received zero experience credits for her previous activities with the Art Club before it was placed in the labor agreement. Poeschl did not address why Easland was apparently given two year's experience for her work with the yearbook and why Koll received eight years of experience for coaching Varsity Baseball when he was hired as Coach of the activity. However, Poeschl stated that it is his discretion to place teachers on the extra-curricular pay schedule which is negotiated following the Board approval of the activity and the parties' negotiation of a rate therefor. Poeschl admitted that Appendix B does not state that the years of experience must be "formal" years of experience or "paid" years of experience.

POSITIONS OF THE PARTIES

The Union

The Union argued that the collective bargaining agreement requires the District to compensate teachers assigned to extra-curricular activities according to the terms of the Appendix B; that Appendix B provides three salary tiers for all extra-curricular compensation based on a teacher's experience in the activity. The Union asserted that this case concerns the simple question whether Barbara Blair gained experience working as the Pride Program Coordinator (PPC) for six years and whether she should then have been credited with that experience upon her hire as PPC in 2002-2003. As the record clearly showed, Ms. Blair had five years' experience working the Pride Program (1994-99), and she should have been paid at

The evidence showed, through teacher e-mails, that the District has been inconsistent in its application of the three-tiered extra-curricular pay schedule contained in Appendix B. The Union noted that the labor agreement does not require an extra-curricular activity to be “formalized” before a teacher may be given experience credit on Appendix B. As Blair told Principal Gunderson that she had five years’ experience as PPC during her interview with Gunderson, she should have been placed on the second tier of the extra-curricular salary schedule. In fairness, Gunderson should have told Blair she would not receive credit for her prior PPC experience at or after her interview. Gunderson failed to do this.

Finally, the Union observed that Superintendent Poeschl failed to prove that formalization of extra-curricular activities was necessary before the District would credit a teacher’s prior experience with that activity. Here, the PPC job posting specifically referred to the three-tiered pay schedule of Appendix B, but made no reference to formalization. In these circumstances, the Union urged that it had proved a clear violation of the collective bargaining agreement. Therefore, the grievance should be sustained, Ms. Blair should be given five years’ experience on the extra-curricular salary schedule for her 1994-99 Pride Program experience and she should be made whole for her work as the PPC on the second pay tier in 2002-03. In addition, the Union sought an order that the District comply in the future with the terms of the collective bargaining agreement.

The District

The District argued that the pertinent language of the labor agreement was Articles I, III and IX in this case and that these Articles clearly and unambiguously control this case. The District argued that because these contract clauses reserve to the District the authority to formalize extra-curricular activities and to determine the compensation of teachers assigned to those activities under Appendix B, no violation of the labor contract has occurred. Only if an activity becomes formally recognized by the Board and is included thereafter in the collective bargaining agreement will a teacher be hired, assigned and paid for such an activity. Before formalization and recognition by the Board, a teacher may volunteer to perform the activity but the Board sets no requirements for that activity or the teacher’s voluntary acts. Teachers are not paid for their volunteer time and they can walk away from their volunteer work at any time, unlike formal extra-curricular activities. Thus, the evidence undisputedly showed that District Superintendent Poeschl has discretion to place teachers on an extra-curricular salary tier and that he did so in Blair’s case.

Assuming in the alternative that the contract language is ambiguous, the District argued that it has a clear, unequivocal and mutually accepted past practice which would demonstrate that Blair was not entitled to credit on Appendix B for her involvement with the Pride Program prior to its recognition as a formal extra-curricular activity. In the past, the District noted teachers have received no credit on Appendix B for their volunteer work in activities prior to

paid extra-curricular activities were given extra-curricular salary schedule credit for such paid participation. Therefore, the District's past practice showed that Blair could not automatically expect to receive credit for her voluntary participation in the Pride Program before it was formally recognized by the District and placed in the labor agreement as a paid extra-curricular activity.

In prior negotiations, the District observed, the Union has never sought credit toward experience for teachers who had volunteered in an activity before it was formalized by the Board and placed in the labor agreement. Nor has the Union proposed that volunteers in an activity should be paid extra for their volunteer work prior to the formalization and the volunteer's hire into the extra-curricular activity. Therefore, the Arbitrator should not afford the Union rights/benefits it has never bargained for. As Article II specifically reserves to the District the discretion to give new teachers credit for years of teaching outside the District, so should the District be granted discretion, in the complete silence of the labor agreement on the point, to grant (or deny) experience to teachers who are hired into extra-curricular activities covered by the Master Agreement.

In Reply

The District

On October 22, 2003, the undersigned received a reply brief from the District. On October 28, 2003, the Union advised it would not file a reply brief.

In its reply, the District reiterated many of its arguments made in its initial brief. In addition, the District urged that the clear language of Articles I, III and IX, as well as the unequivocal past practice proven in this case, support its arguments herein. The District did not dispute the contribution that Blair has made to the Pride Program. However, the District noted that the contract grants it the discretion to credit teachers for their experience when placing them on the extra-curricular pay schedule. In this regard, the District noted that it has refused to give teachers credit for their voluntary non-paid work on informal activities in the past. As the Union failed to grieve these instances, this also supports the District's position herein.

In addition, the District contended that the Union's argument that Appendix B applies to extra-curricular activities is an implicit admission that there is a distinction in the District between formal and informal activities. Indeed, nothing in Appendix B requires the District to credit Blair for volunteer time she spent working in the Pride Program. The contract is silent on this point. The Union should have, but did not, bargain for advantages in this area. The fact that the Union and the District have placed certain extra-curricular activities in Appendix B of the Master Agreement necessarily means that those activities have been formalized by the

issue compel a conclusion that the District was under no obligation to credit Blair for her involvement with the Pride Program prior to the formal recognition of the activity by the District in 2002-03.

DISCUSSION

The labor agreement is conspicuous in its silence regarding how volunteer experience is to be measured and when it will be credited to teachers later hired to perform contractual extra-curricular activities. However, Article III, Section E of the contract specifically states that extra-curricular activities and other assigned duties are “set forth in Appendix B,” “shall be paid in accordance with” Appendix B and that “such activities are subject to approval by the Board.” The implication of this language is that only if an activity or assigned duty is listed in Appendix B, is approved by the Board and has a contractual pay rate, will it be established as a District extra-curricular activity.

The District cited Article II, Section A, Hiring of Teachers, in support of its argument that the District has the discretion to give teachers credit for experience at the time of hire, without regard to the salary schedule. In my view, Article II, by its terms does not apply to this case. Article II does not refer to extra-curricular activities or assigned duties. Rather, it refers only to “teaching experience” and “salary schedule” and states that a reason for hiring teachers “above the salary schedule . . .” may be “due to a shortage in a particular field or to unusual skills required.” This language makes clear that the parties intended Article II to apply only to the hire and placement on the salary schedule of classroom teachers.

Given the silence of the agreement regarding the specific dispute before me, evidence of past practice and bargaining history is relevant to “fill in the blanks” in the labor agreement thereon. In this case, the evidence demonstrated that the District has a long-standing, mutually accepted past practice of allowing its teachers to propose new extra-curricular activities which the teachers then establish as non-paid volunteers and which may later be formally recognized by the Board of Education; and that if Board approval is later granted, this then leads to the District and Association negotiating a rate of pay for the activity to be placed in the Master Agreement. Thereafter, the District posts the activity/club and takes applications and hires someone, often the teacher who performed the activity as a non-paid volunteer for one or more years prior to its being approved by the Board. The uncontradicted evidence also showed that the Association has never proposed that teachers who volunteer in an activity/club should automatically be hired into it after it is posted by the District and the Association has never proposed in negotiations that teachers who volunteer in an activity/club should automatically receive experience credit on the extra-curricular pay schedule for the time they spent as non-paid volunteers in the activity/club before it received Board approval and was given a rate of pay in the labor agreement.

In addition, the evidence showed that for the 1995-1997 through 1999-2000 agreements the Association proposed that a number of activities/clubs which had formerly been provided by volunteer teachers become paid activities/clubs at the rates proposed by the Association during those contract negotiations. In addition, the evidence showed that District teachers have made formal proposals to the Board of Education that their various volunteer programs should become paid activities/clubs under the extra-curricular schedule.

Furthermore, a list of 74 teachers was submitted which included each teacher's hire date into the extra-curricular activity as well as their placement for that activity on the extra-curricular pay schedule and the year in which the Board approved the activity. This documentary evidence showed that only 5 teachers received credit for prior experience when they were hired into an approved extra-curricular activity. Of these 5, the District was unable to explain why 2 of them (Peterson and Simonson) had received experience credit for prior work in the activities they were hired into, but the District did satisfactorily explain its reasoning for placing the other 3, O'Keefe, Overman and Grievant Blair, on the extra-curricular schedule as the District did in those cases. Regarding 2 other teachers who the Association asserted were given experience credit (Easland and Koll), District Administrator Poeschl could not explain why these two employees appeared to have been given credit for experience when they were placed in an approved activity covered by the extra-curricular pay schedule. However, the evidence showed that no grievances have been filed regarding the placement of teachers on the extra-curricular pay schedule prior to this case. In fact, the District Administrator has exercised his discretion to determine experience levels in all cases prior to Blair's without drawing any objection for the Association.

It should be noted that in 1994-95 Blair proposed the Pride Program to her principal and that he approved it as a volunteer activity. Thereafter, Blair determined what, if any, activities the Program would engage in. Although Blair began receiving some money from the District (in 1995 through 1999) to reimburse her for Program expenses and for her time spent chaperoning students engaged in the Program and although the Pride Program received certain undesignated District funds from 1995 through 1999, there is no evidence to show what these funds were used for and the Association did not contend that the payments made to Blair constituted compensation for her work in the Program.

In 1996, Blair proposed, in writing, that the Board approve/recognize the Pride Program. Blair's request was denied. Despite this denial, Blair continued to volunteer and run the Pride Program without any direction or supervision by the District. From 1994 through 1999, the Pride Program remained a volunteer activity exclusively in the hands of Blair. Significantly, when Blair decided in 1999 that she wished to take a "temporary leave" from her Pride Program activities, she did not submit a letter of resignation (as would have been required of a teacher in an approved activity). Blair merely informed her principal of her intentions to cease her Pride Program involvement.

The Board approved the Pride Program in 1999 and the District and the Association negotiated rates of pay for Pride Program Coordinator to be placed in the 1999-2000 labor agreement. Blair applied for the Pride Program Coordinator opening in 2002 for the 2002-03 school year. Blair submitted an application and was interviewed for the PPC position by Principal Gunderson. Thus, the evidence showed that the Pride Program has been treated as other volunteer activities have been treated in the past and that Blair was fully aware of this. In addition, the evidence showed that upon its recognition/approval as a formal paid activity the Pride Program was treated, again, as any other approved paid activity in the District.

The Association has argued that Blair had five years of experience with the Pride Program (1994-99) and should have been placed on the second tier of the extra-curricular schedule for the activity for her work in 2002-03. I disagree. The undisputed evidence of past practice in this case militates against such a conclusion. The Association has argued that because neither the labor agreement nor the job posting 7/ states that an activity must be formalized or approved before a teacher can receive experience credits on the extra-curricular pay schedule for such an activity, Blair should have received credit for her experience in the Pride Program as a volunteer. On the contrary, as discussed above, the specific language of Article III, Section E, requires Board approval of extra-curricular activities. In addition, the evidence in this case requires a conclusion that the District may but it need not recognize the experience of a volunteer teacher in an activity prior to the approval of that activity and its inclusion with a rate of pay into the master labor agreement.

7/ Clearly, the contract language must trump the language used in a job posting, contrary to the Association's assertions.

The Association has objected to Principal Gunderson's comment to Blair in her interview for the PPC position, that Blair's five years of prior experience with the Pride Program (1994-99) should have put her on the second pay tier for the position. For purposes of this Award, I am assuming that Principal Gunderson made the statement alleged by Blair in Blair's interview. However, even assuming that Gunderson made the statement alleged by Blair, Blair admitted that she knew that the decision where to place her on the extra-curricular pay schedule had to be made by the District Administrator and Blair also admitted that Gunderson never stated to her that he had the authority to place her on the extra-curricular pay scale for the PPC position. Thus, Gunderson's alleged statement was mere conjecture and did not cause Blair any injury as Gunderson lacked the authority to decide Blair's pay level for the activity.

The fact that District Administrator Poeschl gave Blair two years' experience for her volunteer work in the Pride Program does not require a different conclusion as Poeschl had the

practice, to grant Blair some or no experience for work with the Pride Program as a volunteer. The past practice evidence showing four unexplained instances (Koll, Easland, Peterson, Simonson) where teachers were given credit for some experience upon their hire into a contractually recognized extra-curricular activity can also be put down to the exercise of District discretion in this area. The Association's failure to file grievances regarding the prior denial of experience credit to teachers and the Association's actions in bargaining demonstrated that the Association acquiesced in the District's exercise of its discretion over the years, to grant or deny experience credit on Appendix B.

Based upon the express language of Article III – Compensation, Section E, the silence of the labor agreement regarding who will determine the level of experience for an extra-curricular activity and how such determinations shall be made, and the specific and detailed bargaining history and past practice of the District, fully demonstrated by the evidence in this case, I find no violation of the contract has occurred and I issue the following 8/

8/ Indeed, the existence and content of Article I – Management Rights, also supports such a conclusion as well.

AWARD

The District did not violate the extra-curricular salary schedule of the collective bargaining agreement when it provided Grievant Barbara Blair two years of experience upon her assignment to the Pride Program Coordinate position. Therefore, the grievance is denied and dismissed in its entirety.

Dated in Oshkosh, Wisconsin, this 5th day of January, 2004.

Sharon A. Gallagher /s/

Sharon A. Gallagher, Arbitrator

