BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

WEST CENTRAL EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF BALDWIN-WOODVILLE

Case 17
No. 66317
MA-13486

(Christine Johnson Salary Placement)

Appearances:

Brett Pickerign, Executive Director, West Central Education Association, 105 21st Street, North, Menomonie, Wisconsin 54751, for the labor organization.

Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, for the municipal employer.

ARBITRATION AWARD

The West Central Education Association and the School District of Baldwin-Woodville are parties to a collective bargaining agreement which provides for final and binding arbitration of disputes arising thereunder. The Association made a request, in which the District concurred, for the Wisconsin Employment Relations Commission to appoint a member of its staff to hear and decide a grievance over the interpretation and application of the terms of the agreement relating to placement on the salary schedule. The Commission designated Stuart D. Levitan as the impartial arbitrator. Hearing in the matter was held in Baldwin, Wisconsin, on December 5; it was not transcribed.[1] The parties submitted written arguments on February 8, 2007, and waived their right to file replies.

The Association states the issue as:

> Did the District violate the Contractual Agreement between the Baldwin-Woodville School District and the West Central Education Association when it refused to pay back pay for the period of time in which Christine Johnson was paid at the incorrect lane on the schedule?

[1] The District made a tape recording of the proceeding, which it shared with the Association and the arbitrator.

The District states the issues as:

Is the grievance timely?

Did the District violate Article II, Section A, of the collective bargaining agreement when it paid the Grievant according to the Grievant's properly executed individual teaching contracts for the 2002-2003, 2003-2004, and 2004-2005 school years?

If the grievance was timely and if the District violated Article II, Section A, what is the appropriate remedy?

RELEVANT CONTRACTUAL LANGUAGE

RECOGNITION

. . .

B. The purpose of this article is to recognize the right of the bargaining agent to represent employees in negotiations with the District as provided in 111.70 of the Statutes.

. . .

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, or a Master's degree plus 8 graduate credits, or a Master's degree plus 16 semester graduate credits as indicated in *ARTICLE IX – SCHEDULE 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 VI – GRIEVANCE PROCEDURE

A. Purpose: The purpose of this procedure is to provide an orderly method for resolving differences during the term of this Agreement. A determined effort shall be made to settle any such differences through the use of the grievance procedure.

B. Definition: For the purpose of this Agreement, a grievance is any complaint regarding the interpretation or application of a specific provision of this Agreement.

C. Grievances shall be processed in accordance with the following procedure:

STEP 1

a. An earnest effort shall first be made to settle the matter informally between the teacher and his immediate supervisor.

b. If the matter is not resolved, the grievance shall be presented in writing by the teacher or employee representative to the immediate supervisor within fifteen (15) days after the facts upon which the grievance is based first occur or first became known. The immediate supervisor shall give his written answer within five (5) days of the time the grievance was presented to him in writing.

STEP 2

If not settled in Step 1, the grievance may within five (5) days be appealed to the Superintendent of Schools. The Superintendent shall give a written answer no later than ten (10) days after receipt of the appeal.

STEP 3

If not settled in Step 2, the grievance may within ten (10) days be appealed in writing to the School board. The Board shall give a written answer within twenty (20) days after receipt of the appeal.

D. The parties agree to follow each of the foregoing steps in the processing of a grievance. If the employer fails to give a written answer within the time limits set out for any step, the employee may immediately appeal to the next step. Grievances not processed to the next step within the prescribed time limits shall be considered dropped.

E. The written grievance shall give a clear and concise statement of the alleged grievance including the facts upon which the grievance is based, the issue involved, the specific section(s) of the Agreement alleged to have been violated, and the relief sought.

F. The employee representative may assist in processing the grievance at any step.

G. Saturdays, Sundays, and legal holidays shall be excluded in computing time limits under this Article.

ARTICLE VII – BINDING ARBITRATION

A. In order to process a grievance to Binding Arbitration, the following must be complied with:

1. Written notice of a request for such arbitration shall be given to the District within ten (10) days of receipt of the District's last answer.

2. The matter must have been processed through the grievance procedure within the prescribed time limits.

3. The issue must involve the interpretation or application of a specific provision of the Agreement.

B. Grievances involving the same act or same issue may be consolidated in one proceeding provided the grievances have been processed through the grievance procedure by the time the parties meet to select an impartial third party.

. . .

BACKGROUND

Christine Johnson has been an employee of the School District of Baldwin-Woodville since 1993 and a full-time teacher at the District's Greenwood Elementary School since the 2002-2003 school year. This grievance challenges the District's decision not to make Johnson

whole for three years during which it purportedly underpaid her due to its unilateral action moving her from the BA + 8 to the BA salary lane.

On April 24, 2002, Johnson wrote to the then-superintendent, as follows:

> Another very exciting and busy year at Greenfield Elementary is coming to a close. This year has been challenging and rewarding for me as a Paraprofessional in the Early Childhood program and E.B.D. room. Looking forward to next year, I think that my skills and talents would best serve the district as a 3rd grade classroom teacher.
>
> I feel that being familiar with the students and having the students know me will be very beneficial to everyone – staff, students, parents, and administration. I have worked closely with many of the special needs students who will be entering third grade next fall. Hiring a teacher who is already familiar with these students' special needs will make the transition into a new school year much easier. I am also knowledgeable about the routines, procedures, and curriculum at Greenfield Elementary, and the staff and I have worked together for many years. All of these components put together with my experience and exceptional teaching ability would make me an excellent addition to the Baldwin-Woodvile teaching staff.
>
> Thank you for your time and consideration. I look forward to hearing from you.

Johnson attached to her letter of application her resumé, which showed she had worked for the District since 1993, including eight years as a substitute teacher. Johnson's resumé also included the following:

> *Education*
>
> ***University of Wisconsin – Eau Claire*** December 21, 1991
> B.S. Degree – Major in Elementary Education (K-8)
> Minor in Language Arts G.P.A.: 2.96
>
> ***Cardinal Stritch College*** Milwaukee, Wisconsin
>
> Earned 9 credits taking video courses for educators G.P.A.: 4.0
>
> ***University of St. Thomas*** St. Paul, Minnesota
> Earned 2 credits taking video courses for educators G.P.A.: 4.0

Johnson testified she believed she had attached a copy of the relevant transcripts to her application and resumé. There is no evidence that the District, at any time in the spring or summer of 2002, asked for a transcript or any other documentation of Johnson's academic

career. On or about August 14, 2002, the school board offered to Johnson the following individual teaching contract:

BALDWIN-WOODVILLE AREA SCHOOL DISTRICT
2002-2003 Teacher Contract

> It is hereby agreed by and between the School board and the Baldwin-Woodvile Afrea School District, hereinafter designated "School board," and **CHRISTINE JOHNSON**, a professionally trained educator legally qualified in the State of Wisconsin, hereinafter designated "Teacher," that the Teacher is to perform services as an **ELEMENTARY SCHOOL TEACHER**. The Teacher shall be employed for a term of 191 days in the 2002-2003 school year for the base salary of **TWENTY-EIGHT THOUSAND, EIGHT HUNDRED EIGHT DOLLARS ($28,808). [Degree: BA + 8. Step 1],** as shown on Schedule B Base Salary of the *Contractual Agreement*.
>
> . . .
>
> It is further agreed that this contract is specifically made subject to and will be amended and modified to comply with the terms and provisions of any applicable collective bargaining agreement between the School board and representatives of the collective bargaining unit which represents the Teacher entered into subsequent to the tender of this contract to the Teacher.
>
> . . .

Johnson accepted, executed and returned her contract in a timely manner, at which point she became a member of the bargaining unit represented by the association. Upon the commencement of the school year, the District began paying Johnson based on her placement at Step 1 of the BA + 8 lane. [2]

Shortly thereafter, the Association and District executed a new collective bargaining agreement. [3] Without any explanation other than a reference to the new master agreement, District staff placed in Johnson's school mailbox a new contract, which Johnson was instructed to sign and return by October 21, 2002. The new individual contract placed Johnson on BA, Step 1, with a salary of $28,148. District administrative assistant Suzanne Zimmer, believing that Johnson had not provided sufficient evidence of the educational credits necessary to be placed in the BA + 8 lane, unilaterally prepared the reduced contract. At no time did Zimmer or any other District staff explain to Johnson that she was being reduced in pay or request documentation to verify her additional credits, nor did Johnson, a probationary employee,

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[2] District administrative assistant Suzanne Zimmer testified she did not believe Johnson had ever been paid at the BA + 8 lane. However, the record – particularly union exhibits 1 a-c -- seems to indicate that she was.
[3] The Association and District ratified the new agreement on October 16 and October 21, respectively.

inquire as to the reasons for the new contract.[4] At no time did the District inform the West Central Education Association, the exclusive agent for collective bargaining for members of the bargaining unit, that it had tendered an employment contract with a lesser lane placement and reduced salary to one of its members. Johnson signed the new contract on October 17 (prior to the Board's approval of the new collective bargaining agreement), with Board approval coming on October 21. The District thereafter began paying Johnson at the lower BA rate.

Johnson signed her individual teaching contract for 2003-2004 on April 22, 2003, and her contract for 2004-2005 on May 20, 2004. The contracts placed Johnson at BA, Step 2 and Step 3, respectively, with corresponding annual salaries of $29,749 and $31,279. For those school years, the salaries for Steps 2 and 3, BA+8, were $30,146 and $31,983. At no time in 2003 or 2004 did Johnson ask about, or otherwise challenge, her placement in the BA lane.

In August, 2005, following an in-service program, Johnson became aware that she was not being paid at the BA + 8 lane. On August 30, she submitted a "Request to Change Lanes for the 2005-06 School Year" form, as follows:

> To: Teaching Staff
> From: Rusty Hellend, Superintendent
> Re: Advancement on Salary Schedule
> Date: August 2005
>
> If you have completed graduate work for professional improvement that will advance you on the salary schedule, it is necessary to complete this form before your contract can be changed. Along with completion of this form, it is necessary to provide the District Office with a transcript. You cannot be advanced on the salary schedule until a transcript is on file.
>
> As per the *CONTRACTUAL AGREEMENT,* ARTICLE II – PROFESSIONAL IMPROVEMENT REQUIREMENTS, C. (page 2), "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." The course work must be done PRIOR to the beginning of the 2005-06 school year.
>
> **Teacher's Name** Christine J. Johnson
>
> I, the undersigned, have earned enough graduate credits that will advance me on the Salary Schedule for the 2005-06 school year.

[4] Johnson testified that, given the various deductions (including for association dues) being taken out of her paycheck, she did not notice that her salary had been reduced).

I certify these credits have been approved by the Superintendent and were taken prior to the beginning of the 2005-06 school year.

I will be advancing from _____ to BA+~~16~~ 8

As part of this process, District staff reviewed and approved 12 post-graduate credits, 11 of which Johnson had acquired prior to August, 2002. Upon verification of these credits, the district placed Johnson at the BA + 8 lane, Step 4 for the 2005-06 school year.

When Johnson realized in May, 2006 that the District was not making her whole for the salary she would have earned had Zimmer not issued the reduced contract in 2002, she and the local association president met with superintendent Hellend in an attempt to resolve the matter informally. Hellend, who was not superintendent at the time of Johnson's hire, declined to act, taking the matter instead to the School board, which voted against making Johnson whole. Johnson testified she learned of the Board's action denying her request in late June; the date on which the Board acted is not in the record. The District offered no evidence that the board's action came anytime *prior* to late June.

On June 26, 2006, Association Director Brett Pickerign submitted to Hellend a letter captioned "Formal Grievances – Level 1." In it, Pickerign recapped the history of Johnson's lane placement, and claimed that the District had committed two violations of the collective bargaining agreement. First, he claimed that the District violated Schedules A and B of the 2003-05 collective bargaining agreement and Article IX – Section A of the 2005-07 agreement "by placing Christine Johnson in a pay category of the salary schedule lower than the one she had been placed in when hired by the District." He also claimed the District violated provisions of the agreement relating to the grievance procedure by unilaterally taking the matter to the School Board.

On July 17, 2006, District counsel Stephen L. Weld wrote Pickerign, denying the grievance "for a series of substantive and procedural reasons." Weld's letter read, in part:

> When Ms. Johnson applied in 2002 for a position with the District, she advised that she had completed 8 post-graduate credits. As a result, she was offered, and on August 15, 2002, accepted, a position with placement on the grid at BA + 8, Step 1. However, contrary to Article II, Section C, she failed to provide evidence of increased (post-graduate) professional preparation. As a result, she was offered, and accepted on October 17, 2002, a position at BA + 0, Step 1. Her compensation was reduced $660 (compare Attachments A and B). (emphasis in original)

Ms. Johnson continued to be placed at the BA + 0 column until she provided the evidence of increased professional preparation.

Weld also claimed the grievance was untimely, and did not follow the proper procedure.

On or about July 25, 2006, Pickerign submitted to School Board President Jeff Campbell a five-page letter captioned "Formal Grievance – Level 2," in which he alleged the district violated the 2003-2005 and 2005-2007 collective bargaining agreements by "placing Christine Johnson is a pay category of the salary schedule lower than the one she had been placed in when hired by the District." Pickerign also alleged the district violated Article VI of the agreement "when the Superintendent relinquished his obligation to settle the matter informally" and instead took the matter directly to the School Board and thus "usurped the grievant's right to petition the School Board on the matter and expect an impartial review." Pickerign also addressed three substantive and one procedural argument which Weld raised in his letter of July 17. As remedy, Pickerign sought to have the District "honor the proper placement of Christine Johnson at Lane BA + 8 for school years 2002-2003, 2003-2004 and 2004-2005, and award her all appropriate back pay."

On September 12, 2006, Weld wrote to Pickerign to inform him that the School board had unanimously denied the grievance at its August meeting. Weld explained the Board's action, in part, as follows:

> Amplification of the Board's rationale is appropriate. A Level 1 grievance is to be dealt with at the immediate supervisor level. The contract calls for a verbal contact with the immediate supervisor (Principal Hoffman) and then a written appeal to Mr. Hoffman if that discussion did not resolve the grievance. Instead of filing a written grievance with Mr. Hoffman, the Union, despite labeling the grievance as a Level 1 grievance, wrote directly to Superintendent Hellend.
>
> Despite its own failure to follow the grievance procedure, the Union castigates Superintendent Hellend for involving the Board of Education in his attempt to address and resolve the matter. Superintendent Hellend did not feel he had the authority to make the requested payments to Mrs. Johnson, so he consulted with the Board of Education, which did. The Board of Education opted not to make the payments.

On September 14, 2006, Pickerign gave written notice to the Board President that the association was requesting final and binding arbitration of the grievance. Upon the Board's concurrence, the matter was set for hearing before the undersigned Wisconsin Employment Relations Commission arbitrator.

POSITIONS OF THE PARTIES

In support of its position that the grievance should be sustained, the Union asserts and avers as follows:

The District's timeliness objections are unfounded and seek to distort the record by mischaracterizing the subject of the grievance and incorrectly identifying the date the facts upon which the grievance is based became known. The District seeks to withhold payment of a known contractual obligation by manipulating the grievance process.

The grievance is not about Christine Johnson's initial incorrect placement on the salary schedule, which the District acknowledged and corrected – thus waiving its timeliness objections – for the 2005/06 school year. The grievance is over the Employer's failure to make Johnson whole through back pay, the fact of which Johnson did not know until she met with the superintendent.

Even if the grievance arose prior to the District's refusal to pay back wages, the District is incorrect in identifying the moment those facts became known to the grievant. The original mistake was the district's illegal issuance of a second contract, which Johnson did not understand and which the Union was unaware of.

The Employer has acknowledged that Johnson's initial misplacement on the salary schedule was a continuing harm, which meant there was no timeliness issue. Unfortunately, when the District corrected the misplacement, it decided not to make whole an employee it had underpaid for three years. But Johnson was never notified about the lack of back pay until she asked about it later; the superintendent presented the issue to the board, which chose not to pay its obligation.

State law and contract law requires the district honor the terms of the first individual contract it issued to Johnson. Contrary to the district's assertion, the first contract was not conditional; it was valid and legally binding, and committed the employee to paying Johnson at the BA + 8 lane. Upon signing that contract, Johnson became a member of the bargaining unit represented by the Association; from that moment, the District was prohibited from engaging in this sort of individual bargaining.

The master agreement and equity requires that the District repay the wages it denied an employee erroneously moved back on the salary schedule.

Equity is an important consideration when interpreting contract language, and should be an important consideration in this matter. Christine Johnson had all the credentials that she was credited for on her initial contract, and is seeking to be compensated for the work she did. To deny her that compensation is to unjustly enrich the District with wages she legally earned and to which she is entitled. Denying this grievance would be a tremendous injustice; doing so would defy the law and the collective bargaining agreement, and should defy the District's sense of fair play and the arbitrator's sense of equity.

In support of its position that the grievance should be denied, the Employer asserts and avers as follows:

> This grievance is untimely and therefore not arbitrable. As a creature of the contract, the arbitrator is required to interpret the contract, not issue Solomonic pronouncements on what he believes is fair or just. Arbitrators are required to uphold provisions setting time limits for filing grievances, however harsh the result.
>
> The parties' collective bargaining agreement requires that grievances be filed within 15 days after the facts upon which the grievance is based occur or become known. To be arbitrable, grievances must be processed within the stated time limits; grievances not processed in a timely fashion "shall be considered dropped." The relevant language is clear and unambiguous.
>
> The instant grievance was filed ten months after the grievant testified she was first aware of her placement in the BA + 0 lane.
>
> Although grievances involving wage rates and salary placement are usually considered to be of a continuing nature, any continuing violation ceased when the District moved the grievant to the BA + 8 lane for the 2005-2006 school year.
>
> Moreover, the collective bargaining agreement under which the grievance was filed is in effect July 1, 2005 to June 30, 2007; events occurring outside that period are not grievable. The Union cannot grieve actions arising under prior collective bargaining agreements. Arbitrators simply do not have jurisdiction to remedy violations occurring under earlier agreements.
>
> This grievance is not timely and not arbitrable.
>
> Even if the grievance were timely and arbitrable, it is without merit because the District adjusted Johnson's placement on the salary schedule following receipt of evidence of increased professional preparation, as required by Article II, Section C. Prior to 2005, the District did not have documentation verifying Johnson's graduate credits.
>
> The District admits that this was an unfortunate situation but one which it rectified as soon as it received the necessary documentation. And this is not a forum for equity.
>
> Further, the grievant is not entitled to back pay for prior years; as a continuing violation, the remedy is limited to the date the grievance was filed and not back to the time of the initial contract violation.

Finally, the Union's processing of this grievance reflects bad faith on its part. The processing of this grievance to arbitration is simply frivolous, resulting in a waste of WERC and school district dollars.

DISCUSSION

Claiming several procedural defects, the District has raised a spirited challenge to the arbitrability of this grievance. Before I can consider this matter on its merits, I must first determine whether this grievance is even arbitrable.

The District has challenged arbitrability of this grievance on the grounds that it is untimely and that the Association has failed to follow certain procedural steps in the grievance process. I find its arguments unpersuasive.

The District contends the grievance failed to conform with Step 1(b), Section C, Article VI, which requires that the grievance "be presented in writing ... to the immediate supervisor within fifteen (15) days after the facts upon which the grievance is based first occur or first become known."

I find that this clause does not prevent consideration of this grievance. First, the fact which the grievant is challenging is the District's denial of back pay, not the District's initial placement of Johnson in the BA lane. Johnson began seeking back pay in May, 2006, and met with superintendent Hellend for that purpose at that time. Hellend declined to act, instead taking the matter directly to the School Board, which voted against making Johnson whole for the three years she was kept in the BA lane. It is thus the Board's action rejecting Johnson's request that is the critical event in the processing of this grievance; if more than 15 days lapsed between Johnson becoming aware of the Board's action and the June 26 submission to Hellend of the "Formal Grievance – Level 1," the grievance would indeed be untimely.

However, the date of the Board's action is not in the record. As the party claiming untimeliness, the District bears the burden of establishing the facts supporting such a conclusion. That is, the Union does not have to prove the grievance timely; the District has to prove that it is not. Johnson testified under oath she learned of the District's decision "in late June." The District did not rebut that testimony. Because the District has failed to provide any evidence at all that the District's action rejecting Johnson's request for back pay was more than 15 days prior to June 26, the provisions of Article VI, Section C, Step 1(b) do not make this matter untimely.

The District also challenges the grievance because it was filed directly with the superintendent, despite the contractual requirement that it be presented to the employee's "immediate supervisor," namely principal Gary Hoffman.

Given the nature of this controversy, however, presenting the grievance to the elementary school principal would have been a meaningless act. This grievance reflected a

fundamental management dispute with the school board and central office, something which Hoffman no authority to settle. Indeed, according to Weld's letter of September 12, 2006, even the Superintendent "did not feel he had the authority to make the requested payment." The factual predicate of the controversy had already involved Hellend declining to act and the School Board rejecting Johnson's request to be made whole; it is absurd to contend that Hoffman could or would have granted relief that his Superintendent and School Board had already denied. The employer has thus superseded Article VI, Section C., Step 1, making the matter appropriately filed with the Superintendent under Step 2.

Under that provision, Hellend was to give a written answer within ten days, or else the matter could be advanced to review by the School board. Yet, contrary to the express terms of the agreement, Hellend himself took the matter directly to the board for an *ex parte* proceeding at which Johnson and the association were not present. As the Association claimed in its grievance of June 26, 2006, Hellend thus improperly denied Johnson her contractual right to an independent review of the matter.

The District's contention that the grievance is untimely is further undercut by its own statement of the issue, which it framed as follows:

> Did the District violate Article II, Section A, of the collective bargaining agreement when it paid the Grievant according to the Grievant's *properly executed* individual teaching contracts for the 2002-2003, 2003-2004, and 2004-2005 school years? (*emphasis* added).

By basing its theory of the case on the contracts of 2002-2003, 2003-2004, and 2004-2005 school years as being "properly executed," the District has made consideration of those contracts fit matter for this award. That is, notwithstanding its subsequent arguments over timeliness, the District has actually *required* me to reach back as far as 2002, to determine whether the individual teacher contracts were indeed "properly executed."

Under the terms of the collective bargaining agreement and state law, they were not.

Upon Johnson's timely return of the contract which the Board approved on August 14, 2002 and she signed the following day, the contract became "consummated and valid." Or, in the District's own statement of the issue, a "properly executed individual teaching contract." As of that moment, Johnson became an employee of the school district and a member of the collective bargaining unit represented by the Association.

Although the District maintains the contract was somehow conditional on Johnson's submission of a transcript proving her educational credits, the contract itself has only two conditional aspects beyond its return in a timely manner. One, which is not applicable here, involves grounds for termination. The other provides:

> It is further agreed that this contract is specifically made subject to and will be amended and modified to comply with the terms and provisions of any applicable collective bargaining agreement between the School board and representatives of the collective bargaining unit which represents the Teacher entered into subsequent to the tender of this contract to the Teacher.

This standard language is in keeping with Sec. 111.70(3)(a)4, explicitly referenced in the agreement's recognition clause,[5] which establishes that it is a prohibited practice for an employer

> To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit. Such refusal shall include action by the employer to issue or seek to obtain contracts, including those provided for by statute, with individuals in a collective bargaining unit while collective bargaining, mediation or fact-finding concerning the terms and conditions of a new collective bargaining agreement is in progress, unless such individual contracts express language providing the contract is subject to amendment by a subsequent collective bargaining agreement ….

Under the terms of the contract which Johnson signed on August 14 and Sec. 111.70(3)(a)4., Stats., the District had the right to issue Johnson a new contract *only to the extent required by the new collective bargaining agreement* which the parties ratified in October 2002. Most typically, this would be to insert a new, higher number as the salary, reflecting the new salary schedule in the successor agreement. But there was nothing in the agreement -- which the District had not yet executed when Johnson signed it on October 17 – which pertained to verification of educational credits or initial lane placement on the salary schedule.

Thus, under the collective bargaining agreement and state statutes, the 2002-203 contract which Zimmer unilaterally prepared for Johnson in October 2002 was invalid. Or, in the terms the District used to frame the question before me, was not a "properly executed individual teaching contract." Therefore, given the automatic progression through the salary schedule, the successor contracts to the invalid contract were themselves not proper.

Further as to the merits, the District claims its adjustment of Johnson's placement on the salary schedule was consistent with Article II, Section C., which provides:

> 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.

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[5] The collective bargaining agreement's recognition clause endorses "the right of the bargaining agent to represent employees in negotiations with the District as provided in 111.70 of the Statutes." This reference thus effectively incorporates the parties' respective statutory rights and responsibilities into the collective bargaining agreement.

The District admits that Article II, Section C "ordinarily applies" to post-employment credits, but insists that its administrative assistant was within her rights to issue a new, reduced contract because the "undisputed testimony … was that postgraduate courses of new hires must also be verified."

There are several things wrong with this assertion. The first, of course, is that the clear language of Article II, Section C does not *ordinarily* apply to post-employment credits – it *explicitly* applies to post-employment credits. The clear language of this provision unambiguously applies to existing contracts that "need to be adjusted because of increased professional preparation." Johnson's placement on the salary schedule was not being affected by "increased professional preparation;" her initial placement was being set by her existing professional preparation at the time the District offered her a teaching contract.

Further, by her own testimony, Zimmer *never asked Johnson for a transcript*, because, she said, "it's just natural" to require a transcript. But what's "natural" to a veteran administrative assistant (Zimmer had been at her job since November, 1986) is not necessarily natural to a newly-hired teacher. And since, by her own testimony, Zimmer was not present for Johnson's interview, she was thus not aware of any direction district administrators may have given her regarding the submission of a transcript. Nor could Zimmer recall a situation like this ever happening before, where a teacher had been issued an individual contract which was then superseded by a new contract with a lesser lane placement. Finally, Zimmer could not cite any written material new teachers were given regarding the need to provide transcripts, or any written policy requiring a transcript to verify a newly-hired teacher's additional credits. "I just know what we do," she testified.

After her lengthy services to the District, Zimmer no doubt knows what the District does. But the issue is not what Zimmer knows; it's what Johnson knew, and when she knew it. And there is no evidence at all that Johnson was ever informed that she needed to provide a transcript to maintain her placement in the BA + 8 lane, or that she was being reduced in pay for failure to provide that documentation.

The District's unilateral action moving Johnson from BA + 8 to BA in October 2002 violated Paragraph B of the Recognition clause and Article II, Section C of the collective bargaining agreement. Once she understood how teacher salary schedules worked, Johnson took the necessary steps to have her lane placement adjusted. Given the facts of the situation – that the District, by adjusting her lane placement based on pre-2002 educational credits, was implicitly acknowledging that she was entitled to BA + 8 status for the 2002-2003 school year – Johnson could reasonably have expected that the District would rectify its error by making her whole. When the School Board, ostensibly for financial reasons, declined to do so, Johnson grieved. She did so in a timely manner, at the appropriate level.

Although the District rightly argues that a grievance arbitration is not an equity forum, I do believe that there is one equitable consideration I need to make. Given the length of time which passed between the District's initial transgression and Johnson's first objection, and the

many pressures on school district budgets, I find it would be unduly disruptive to require the District to make Johnson whole immediately.

Accordingly, on the basis of the collective bargaining agreement, the record evidence and the arguments of the parties, it is my

AWARD

That the grievance is sustained. The District shall make Christine Johnson whole for the wages she would have earned had she been maintained at the BA + 8 lane for the 2002-03, 2003-04 and 2004-05 school years. The District may structure the payments as it finds necessary, provided Johnson is made whole by December 31, 2008. The District shall inform Johnson and the Association of its payment plan by June 7, 2007.

Dated at Madison, Wisconsin, this 25th day of April, 2007.

Stuart D. Levitan /s/
Stuart D. Levitan, Arbitrator

SDL/gjc
7126