

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

PEWAUKEE EDUCATION ASSOCIATION

and

SCHOOL DISTRICT OF PEWAUKEE

Case 17
No. 52131
MA-8848

Appearances:

Cedar Lakes United Educators, 411 North River Road, West Bend, Wisconsin 53095, by Mr. John Weigelt, Executive Director, appearing on behalf of the Pewaukee Education Association.

Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison, Wisconsin 53703, by Mr. Robert W. Butler, Jr., appearing on behalf of the Pewaukee School District.

ARBITRATION AWARD

The Pewaukee Education Association (hereinafter referred to as the Association) and the Pewaukee School District (hereinafter referred to as the District) jointly requested that the Wisconsin Employment Relations Commission designate Daniel Nielsen of its staff to serve as arbitrator of a dispute concerning the appropriate salary schedule placement of teacher Jane Johann-Reichert for the 1994-95 school year. The Commission designated Arbitrator Nielsen. A hearing was held at the District offices in Pewaukee on April 3, 1995, at which time the parties were afforded full opportunity to present such testimony, exhibits, other evidence and arguments as were relevant to the dispute. No transcript was made of the hearing. The parties submitted briefs which were received by June 2, 1995, and the briefing schedule expired on June 13, 1995 without the submission of reply briefs, whereupon the record was closed.

Now, having considered the evidence, the arguments of the parties and the record as a whole, the Arbitrator makes the following Award.

I. Issue

The parties agreed that the following issue should be determined herein:

Did the District violate Article XV of the Master Agreement in denying a lane change to the grievant, Jane Johann-Reichert? If so, what is the appropriate remedy?

II. Relevant Contract Provisions

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ARTICLE XV

. . .

D. Advancement on the Salary Schedule

1. To qualify for the Bachelor's Degree plus fifteen (15) a teacher shall have gained the credits toward a Master degree and have prior written approval of the Superintendent for each specific course. Evidence of acceptance in graduate school must be provided by the individual teacher.
2. To qualify for the Master Degree schedule, a teacher shall have gained the degree either in the field in which he/she is teaching or in an alternative field with prior approval of the Board. When a Master's degree does not exist in his/her present teaching field, a teacher may qualify with comparable graduate study in that or another field, subject to the prior approval of the superintendent.
3. To qualify for either the Master Degree plus fifteen (15) credits or the Master Degree plus thirty (30) credits, the teacher's credits shall be on the graduate level, undergraduate level or vocational technical level. The teacher must have prior written approval of the superintendent, and must have earned the credits subsequent to having qualified for the Masters column of the salary schedule. Certification from the institution of satisfactory completion of the approved course shall be required before advancing the teacher on the schedule. (No individual currently at M+ will be displaced by the implementation of this provision).

. . .

5. Transfer from one group to another shall be made at the

beginning of the school year following attainment of the necessary credentials.

6. Proper credentials shall be considered as statements of degrees attained or status toward a degree. Such statements shall be certified by a college registrar or other proper college official.
7. Credit information for moving from one lane to another and/or for reimbursement must be in the office of the superintendent by August 1 and the work completed by September 1 of the contract year.

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III. Background Facts

The District provides general educational services to the citizens of Pewaukee in southeastern Wisconsin. The Association is the exclusive bargaining representative for the District's teachers. The grievant, Jane Johann-Reichert, has been a teacher in the District since the 1985-86 school year. At all times material to this case, she was working as a Reading Specialist for grades 4, 5 and 6.

Since 1983, the grievant had been working on a Masters degree through Cardinal Stritch College. Her pursuit of the degree was interrupted by three difficult pregnancies, and when she ultimately completed her coursework in 1994, she had earned 58 credits. In February of 1994, she submitted the first three chapters of her final research paper for approval by the school's oversight committee and her faculty advisor, Dr. Jenner. The committee promptly approved her research proposal and she began working on the project. She and Jenner had a number of problems arranging a meeting on the paper, and their relationship deteriorated. In July, she contacted the College's administration and was assigned a new advisor, Dr. Simmons. Simmons gave her an extension on the due date for the paper.

During the summer of 1994, while still working on the final paper, the grievant approached Lee Wille, the District Superintendent, and advised him that her coursework was finished, her comprehensive exams had been passed, and that her final paper would be completed by September 1st. Thus, she would be completing her Masters degree by September 1st, and wanted to be moved to the Masters lane of the salary schedule. The contract required that work on credits toward advancement on the salary schedule had to be completed by September 1st. Wille initially told her simply to be sure that the paper was in fact completed by September 1st. In a later conversation, he told her that the degree must be granted by that date.

On August 29th, the grievant met with Dr. Simmons. Simmons told her that Joanne Caldwell, Chair of the Reading/Language Arts Department, had advised her that there was a minor problem with issuing her degree. All students at Cardinal Stritch College are required to take the Miller Analogy Test, an entrance examination, by the time they complete twelve credits. The test is an assessment device, and it is not possible for a student to fail. Early in her career as a graduate student, the grievant had been aware of the test requirement, but when no one raised it after she passed twelve credits, she put it out of her mind.

The Miller Analogy Test is only offered twice a year at Cardinal Stritch College, and the grievant would not be able to take the test until October. She asked Simmons if she should contact Marquette University's testing center to see if she could take the test before September 1st, and Simmons discouraged her, explaining that the test was not a big deal, and that taking it at Marquette would create paperwork problems for the Department. The grievant finished her paper on August 31st, and took the Miller Analogy Test in October. Her Masters degree was granted on December 17, 1994.

Superintendent Wille spoke with the grievant when the problem with the Miller Analogy Test arose, and told her he couldn't approve her placement on the Masters lane unless the degree was granted prior to September 1st. He had several telephone conversations with the faculty and administrators at Cardinal Stritch, during which he was told the MAT was unimportant. He told them that if it was unimportant, they should be willing to grant the degree before the grievant took the test. On September 2nd, Dr. Anthea Bojar, the Associate Dean for Teacher Education, wrote to Wille, verifying that the grievant had completed all of the substantive requirements for her degree:

This is to certify that Jane Johann-Reichart has completed all of the requirements for master's degree except the Miller Analogies Test. There is not a required score on this test. She needs only to take it and is planning to take the test. For all practical purposes her degree requirements are completed.

If you have any questions, contact me.

Wille again asked the College to simply grant the degree if the MAT was of no significance. On September 19th, Bojar wrote to him again, saying that the College was unable to issue the degree.

On September 21st, Wille spoke by telephone with John Weigelt, the Executive Director of the UniServ representing the Association. He confirmed that he was denying the grievant's advancement to the Master's lane, and agreed to waive the first two steps of the grievance procedure. On October 12, 1994, the School Board voted to deny the grievance. It was thereafter referred to arbitration.

Additional facts, as necessary, will be set forth below.

IV. Arguments of the Parties

A. The Association

The Association takes the position that the contract language is ambiguous, in that plausible contentions can be made for each party's interpretation. Even Superintendent Wille conceded that the "granting" of a degree might occur when a transcript reflected that the degree was granted by the institution, or when he was provided with information indicating that the degree was granted. As the Superintendent characterized it, whether he had information that a degree had been granted was a "situational" judgment. The ambiguous nature of this judgment was highlighted on cross-examination, when he conceded that the receipt of the diploma would not prevent advancement on the salary schedule. This reflects his understanding that diplomas may be delayed, even after degrees are earned, for administrative reasons such as non-payment of fees or for minor lapses in turning in coursework.

It is clear from the Superintendent's own testimony that advancement on the salary schedule does not depend upon satisfying a single provision of Article XV, but on generally satisfying its requirements. Thus the arbitrator's task is to look to the article as a whole to determine the intent of the parties. In so doing the arbitrator should be guided by the standard principle that parties should be presumed to have bargained for results which are fair to both the employee and the employer.

The grievant was denied advancement solely because she had not completed the MAT. All parties concede that there was no actual course work outstanding, and that the MAT is an irrelevant administrative requirement of the College. The grievant could not fail the MAT, and simply sitting for the test would automatically trigger receipt of her Masters Degree. The entire purpose of allowing greater compensation for teachers moving across a salary schedule is to encourage additional education and, consequently, better teaching. It is irrational, and manifestly unfair, for the grievant to forfeit over one thousand dollars when she had completed the additional education sought by the contract. The District has received the benefit of its bargain with the grievant, and now relies on an absurd technicality to deny her the additional pay she has earned through years of work and study.

The parties did not anticipate every eventuality when they drafted the language of Article XV. The evident thrust of the Article is to reward persons for completing a course of instruction. The arbitrator must interpret the agreement broadly to vindicate that intent, and to avoid the nonsensical result urged by the District. For those reasons the grievance should be upheld and the grievant should be compensated for her lost wages.

B. The District

The District takes the position that the contract is clear and unambiguous, and that the

arbitrator may not ignore its provisions by upholding this grievance. The language of Article XV, Section D uniformly demands that:

First, a degree be obtained in the teacher's field of teaching or, with prior approval, an alternate field;

Second, that the teacher obtain the necessary credentials for lane movement;

Third, that the credentials consist of statements of degrees attained or status toward a degree as certified by the registrar or other appropriate college official;

Fourth, that the application for lane movement be filed by August 1st of the year in which it is to be effective; and

Fifth, that the work required for the degree be completed by September 1st.

Teachers meeting all of these requirements are granted lane movement, and those who do not are denied lane movement. There is no evidence of any loose interpretation or application of this language. In the one instance in which an employee was incorrectly allowed to move across the schedule without having a degree, the lane movement was rescinded when the error was discovered. Thus the District's strict interpretation of Article XV has been supported by both the way in which the language was written and the way in which the contract has been administered. The arbitrator has no basis for changing or ignoring this clear contract language.

In this case, the grievant simply did not meet the requirements for lane movement in time to receive credit for the 1994-95 school year. While the degree she was working on was in her teaching field, she was not able to provide the necessary credentials to the Superintendent by September 1st. The contract clearly defines what constitutes proper credentials, and the grievant did not provide any statement from the registrar or other appropriate official of Cardinal Stritch College showing she had earned a Masters Degree until December 17, 1994. Moreover, although she made the proper application for lane movement by the August 1st deadline, she did not complete the work required by the College until after September 1st. Specifically, Cardinal Stritch College's Associate Dean, Anthea Bojar, confirmed to Superintendent Wille on several occasions in September that the MAT was in fact part of the work required for a Master's Degree. The grievant did not take the MAT until October of 1994, even though she had been made aware of

this requirement much earlier, and could have taken it at any time during her career at Cardinal Stritch. Her choice to ignore this prerequisite cannot in any way be attributed to the District. Since the grievant did not meet the contract's criteria for lane movement in the 1994-95 school year, her grievance must be denied.

V. Discussion

The issue in this case is whether the contract requires the District to increase the grievant's level of pay for the 1994-95 school year on the basis of her having gained a Master's Degree. The right to advancement to the Master's Degree schedule is governed by Article XV, Section D of the contract:

D. Advancement on the Salary Schedule

. . .

2. To qualify for the Master Degree schedule, a teacher shall have gained the degree either in the field in which he/she is teaching or in an alternative field with prior approval of the Board. . . .

. . .

5. Transfer from one group to another shall be made at the beginning of the school year following attainment of the necessary credentials.
6. Proper credentials shall be considered as statements of degrees attained or status toward a degree. Such statements shall be certified by a college registrar or other proper college official.
7. Credit information for moving from one lane to another and/or for reimbursement must be in the office of the superintendent by August 1 and the work completed by September 1 of the contract year.

[Jt. Exhibit #1 - Emphasis added]

The Association argues that this language contains latent ambiguities, because the parties cannot have anticipated a situation where the substantive coursework would be completed, but the actual "gaining" of the degree would be stalled by an administrative detail. Contrary to the Association's argument, the language of the contract is clear as to the conditions for lane movement, and the grievant has not met those conditions.

In order to be entitled to advancement to the Master's lane of the salary schedule, a teacher must have both gained the degree (Article XV, Sections D(2)) and have submitted the proper credentials before the start of the school year (Article XV, Sections D(5)). The contract defines the proper credentials as being a statement of the degree attained, "certified by a college registrar or other proper college official" (Article XV, Sections D(6)). Despite efforts by both the grievant and the Superintendent, neither the registrar nor any other "proper official" of Cardinal Stritch College was willing to certify that she had gained a Master's Degree before she

took the Miller Analogies Test. While they told the Superintendent that it was of no significance, the faculty and administrators absolutely insisted on the taking of the MAT as a prerequisite to certifying her credentials. Without that certification, the grievant did not meet the conditions for advancement to the Master's lane under Article XV. 1/

In order to find in the grievant's favor, the arbitrator must redefine "gaining the degree" in Sections D(2) to read "earning the required credits", and redefine the credentials provisions of Sections D(6) to read "shall . . . ordinarily . . . be considered as statements of degrees attained or status toward a degree. Such statements shall . . . ordinarily . . . be certified by a college registrar or other proper college official." The language as written does not offer the statements of degrees attained, or the certification of the statements by the registrar, as merely examples of the type of thing that would constitute a proper credential. Instead, it uses mandatory language -- "shall" -- to indicate that only a statement of a degree attained, certified by the college, is to be used as the proper credential for salary schedule advancement. Substituting the assurances of the Assistant Dean that the grievant would be granted a degree if, in the future, she did one very easy thing in addition to her coursework requires the arbitrator to ignore the unambiguous and mandatory language used in the contract.

The outcome here is driven by the rigidity of the two institutions and some wishful thinking on the part of the grievant. The College informally characterized the MAT as a trivial detail, but then refused to back that characterization by certifying that the grievant had earned the Master's Degree before she had taken the test. The School District acknowledged that the substantive work on the degree was completed, but insisted on the formal certification called for by the contract. The grievant admits that she knew the MAT was a requirement for the Master's Degree, but chose to put it out of her mind when the College did not press the issue earlier in her academic career. She also elected not to investigate the possibility of taking the MAT somewhere other than Cardinal Stritch once she was told that, on the one hand, the College would insist on her taking the test before granting the degree but, on the other hand, the College would prefer to avoid the

1/ The contract also requires that the "work" on the degree be completed before September 1st. The District argues that the grievant had not completed her "work", because the MAT was not taken until October. In arriving at the conclusion that the grievant had not met the "proper credentials" requirement of the contract, I have not found it necessary to determine whether the term "work" may be defined in the very broad manner suggested by the District.

paperwork associated with having her take the MAT elsewhere.

It might fairly be said that this Award continues the pattern of placing form before substance. It is true, as the Association argues, that the grievant had completed the coursework and thus her students (and the District) would be given the benefit of her greater learning in the field. The contract, however, does not pay for greater learning, except to the extent that that learning is reflected by a recognized credential -- a credit granted or a degree conferred, proven by the certification of a College official.

One teacher may bring his or her students the benefit of rich life experiences and a rigorous course of personal study. That teacher receives no credit on the pay scale unless he or she can document those achievements with a certificate from a college registrar. Another teacher may bring nothing to the classroom but a bare credential showing a capacity for enduring graduate lectures, grinding out papers and surviving required exams. That teacher is absolutely entitled to extra compensation. In making this contract, the parties have recognized that there is, on the whole, a positive correlation between the knowledge and experiences required to obtain a credential and the enhancement of teaching skills. By precisely defining the credentials that trigger lane movement, the Association has succeeded in eliminating subjective management decision-making, and the District has succeeded in fashioning a system that is easy to administer. The tradeoff for having clearly defined criteria is that some deserving teachers may go uncompensated, while other less deserving teachers might well benefit from the system.

The role of a grievance arbitrator is not to reshape the contract to accommodate the exceptional case. Where the cost of general certainty is injustice in an individual case, the parties retain the right to make non-precedential exceptions to the contract's general rule. It may be that this is such a case, but the parties have not made any agreement to this point. The contract language is clear and unambiguous, and it does not entitle the grievant to advancement on the salary lanes in the 1994-95 school year as a matter of right. For that reason, and based upon the record as a whole, I have made the following

AWARD

The District did not violate Article XV of the Master Agreement in denying a lane change to the grievant, Jane Johann-Reichert. The grievance is denied.

Dated at Racine, Wisconsin this 10th day of July, 1995.

By Daniel J. Nielsen /s/