

BEFORE THE ARBITRATOR

In the Matter of the Arbitration  
of a Dispute Between

PEWAUKEE EDUCATION ASSOCIATION

and

PEWAUKEE SCHOOL DISTRICT

Case 16  
No. 52130  
MA-8847

Appearances:

Mr. John Weigelt, UniServ Director, Cedar Lake United Educators Council, on behalf of the Pewaukee Education Association.

Mr. Robert W. Butler, Staff Counsel, Wisconsin Association of School Boards, Inc., on behalf of the Pewaukee School District.

ARBITRATION AWARD

The Pewaukee Education Association, hereinafter the Association, requested the Wisconsin Employment Relations Commission to appoint a staff arbitrator to hear and decide the instant dispute between the Association and the Pewaukee School District, hereinafter the District, in accordance with the grievance and arbitration procedures contained in the parties' labor agreement. The District subsequently concurred in the request and the undersigned, David E. Shaw, of the Commission's staff, was designated to arbitrate in the dispute. A hearing was held before the undersigned on March 10, 1995, in Pewaukee, Wisconsin. There was no stenographic transcript made of the hearing and the parties submitted post-hearing briefs in the matter by May 1, 1995. Based upon the evidence and the arguments of the parties, the undersigned makes and issues the following Award.

ISSUE

The parties stipulated there are no procedural issues and that the substantive issue before the Arbitrator in this case is:

Whether the District violated Article XV of the Master Agreement in denying a lane change to the Grievant?

With regard to the issue of remedy, the Association states:

If so, the Grievant should be moved into the Masters lane retroactive to the beginning of the 1994-1995 school year.

The District states:

If so, what is the appropriate remedy?

### CONTRACT PROVISIONS

The parties cite the following provisions of their Agreement:

#### **ARTICLE XV - COMPENSATION**

. . .

##### **D. Advancement on Salary Schedule**

1. To qualify for the Bachelor 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).

4. The normal increment is subject to the approval of the administration based upon evaluation of the performance of the teacher during the teaching day as defined in the Agreement. Teachers shall be kept informed of their progress in writing and shall be given instruction for improvement when necessary, noting specific difficulties. Teachers shall be informed in writing by March 1 if increment approval is being questioned. This notice will be in addition to previous notice of difficulties observed.
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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## BACKGROUND

The Grievant has been employed by the District as a teacher for seventeen years, teaching Technical Education at the time in question, and was in the BA + 15 lane on the salary schedule.

On May 12, 1994, the Grievant submitted an "Application for Credit Reimbursement" for a graduate school course he was taking that coming summer at Cardinal Stritch College, Course

Ed 554, a research class required for a Master's Degree in Educational Professional Development. The Grievant indicated on the application that the course would place him in a different lane on the salary schedule.

In order to obtain a Master's Degree in that program, students are required to take the comprehensive examination and the Millers Analogy Test (MAT). Cardinal Stritch requires that students complete Ed 554 before they take the comprehensive examination and students are encouraged to take Ed 554 during summer school due to the amount of time involved to do the required research. The MAT may be taken at any time during the Master's Program and a minimum score is not required. The College scheduled the comprehensive exam for November of 1994.

In late July or early August of 1994, the Grievant requested that he be moved to the Master's Lane for the coming 1994-95 school year, realizing at the time that he would not be able to take the comprehensive examination by September 1, 1994. Due to requests from students, including the Grievant, the comprehensive examination was moved up to October 12, 1994.

The Grievant discussed the situation with the District's Business Manager, Michael Barry, who advised him that the lane change could not be granted, but indicated he would discuss the matter with the Superintendent, Lee Wille.

The District received the Grievant's transcript of Ed 554 prior to September 1, 1994, but he did not complete the comprehensive examination and the MAT until October of 1994.

By letter of September 21, 1994, Wille advised the Grievant that his request for a lane change was denied:

Dear Mr. VanderMeuse:

I have reviewed your request for advancement to the MA lane of the salary schedule and have denied your request. I do so mindful of the many contributions that you've made to the district. While we value those contributions very much, we believe that the language in Article XV, Paragraph D. 2. is unequivocal in requiring that a teacher have gained the Master's degree as a prerequisite for placement in the Master's lane. In the past we have denied similar requests on this basis and I believe that I must continue to do so.

Sincerely,

Lee /s/

Lee Wille

Also by letter of September 21, 1994, Wille advised the Association's representative, John Weigelt, that he had denied the requests of the Grievant and another employe for a lane change:

Dear John:

I'm writing to confirm our phone conversation of September 21, 1994.

I have denied advancement to the Master degree schedule for two teachers in the Pewaukee School District. Ms. Jane Johann-Reichart and Mr. Ron VanderMeuse have both applied for advancement from the BA + 15 to the MA lanes. I've denied that placement because they have not gained the Master's degree prior to September 1 of the contract year. I've been in repeated contact with Cardinal Stritch College. Dean Bojar has informed me that neither of the above individuals met the requirements for an August award of the Master's degree. In Ms. Johann-Reichart's, (sic) case her paper was not completed and she had not completed the Miller Analogies Test. In Mr. VanderMeuse's case, he has not completed the Miller Analogies Test and has not completed his comprehensive examination.

I understand that you will grieve both of these decisions and that you will present those grievances separately. This letter is also notification that the school district waives the first and second level grievance steps and agrees to move the grievance directly to the Board of Education. I've scheduled a hearing for 7:00 p.m. on Monday, October 10, 1994 in the Asa Clark library.

Sincerely,

Lee /s/

Lee Wille

A grievance was filed based on the District's refusal to approve the change to the Master's Lane on the salary schedule for the Grievant. The grievance was processed through the grievance procedure and the parties proceeded to arbitrate their dispute before the undersigned.

## POSITIONS OF THE PARTIES

### Association

The Association takes the position that the contract language in question, Article XV, Section D, of the Agreement is unclear and vague. Therefore, the Arbitrator must provide an interpretation of the language which is fair and which does not harm either party. In this case, although the true intent of the parties is not known, it is reasonable to conclude that they would have allowed a lane change where all the real work of attaining the degree had been accomplished and all that remained was to complete the formalities of the MAT and the comprehensive examination and the awarding of the diploma. An award for the District in this case would yield a nonsensical result and harm the Grievant and, therefore, is a result to be avoided.

In support of its position, the Association cites the following from Elkouri and Elkouri, How Arbitration Works:

An agreement is not ambiguous if the arbitrator can determine its meaning without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends. But an agreement is ambiguous if "plausible contentions may be made for conflicting interpretations" thereof. 1/

While the Superintendent, Lee Wille, testified that he found the language of Article XV, Section D of the Agreement to be clear and unambiguous, his explanations of what it meant and what it requires demonstrates its ambiguity. Wille testified that he relied upon Subparagraph 2 of Section D in denying the lane change in this case. The operative phrase upon which he relied is the language "gained the degree." On cross-examination Wille testified that to him that meant "to receive a degree for my purposes the degree is granted when it says it was granted on the transcript." However, he also stated he would accept the statement of a degree having been attained if he had some knowledge that a degree had been granted. He further testified that the receipt of such information is "situational."

The District has asserted that Article XV must be read as a whole and that each paragraph relates to the others. Given that position and the language of Subparagraph 7 of Section D, it is difficult to reconcile the District's decision in this case not to grant a lane change.

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1/ 4th Ed., at p. 342.

Subparagraph 7 states that "credit information for moving from one lane to another must be in the office of the Superintendent by August 1 . . ." Wille conceded that the Grievant had provided that credit information for ED 554 by August 1. On cross-examination, Wille testified that "credit information is documentation of course credit. . . . It includes information about courses and documentation of degrees and so on. . . . And anything I can't think of right now." Wille conceded that the MAT is not a credit.

It appears that Wille relied upon the Grievant not having taken the MAT or completed his comprehensive examination as the bases for denying the lane change. The MAT is irrelevant as it is only an entrance requirement for the graduate school, and one is only required to sit for the MAT and no actual score is required. As to the comprehensive examination, where, as here, the examination is never failed by anyone, and it is given at a time that goes past the contractual timeline and the course work has already been completed, the relevance of the examination fails for purposes of a lane change. On cross-examination, Wille stated he would grant a lane change in a situation where an employe had not received his/her diploma, apparently viewing the awarding of a diploma as less significant than the MAT or the comprehensive examination that everyone passes. However, diplomas are withheld for a variety of important reasons by a university, e.g., where the student has not paid all of the expenses owed or has not completed some course work or paper or other task as required for graduation.

In this case the Grievant has been harmed and the harm has been caused by the District's interpretation of the contract language in a manner which could not possibly have been the intent of the parties who drafted the language. The very reason for the structure of the salary schedule is to reward greater education, necessarily implying that greater education enhances teaching skills. That is the purpose of granting a lane change, and the employer has a right to expect that increased pay is in exchange for something, i.e., better teaching occurs when a teacher takes advanced courses. Better teaching does not result from taking the MAT or the comprehensive examination that no one ever fails. To deny a lane change for the entire school year due to the fact that the comprehensive examination is schedule two or three weeks after the school year has begun allows the District to reap the reward of unpaid salary that could not have been contemplated by the parties when the language was bargained. Where contract language is ambiguous, arbitrators must strive to give it a construction which is reasonable and equitable to both parties, rather than one that would give one party an unfair advantage.

The Association requests that the grievance be sustained and that the lane change be made effective retroactive to the beginning of the 1994-95 school year.

#### District

The District takes the position that its interpretation of Article XV, Section D, is supported by the clear and unambiguous language of that provision, and that no past practice exists which

would abrogate that clear language. It is a principal of contract interpretation that if language is clear and unequivocal, the language will not be given a meaning other than that expressed. Even if the parties disagree as to its meaning, language that is unambiguous will be given its clear meaning. While past practice or bargaining history is irrelevant to questions of interpretation of clear and unambiguous contract language, the District asserts that it provided evidence that the established practice regarding granting lane movement under Article XV, Section D, has been in complete agreement with the expressed terms of that provision. Further, when it was discovered in one instance that it had not been followed, the lane movement was rescinded.

In interpreting the language of Article XV, Section D, the District asserts it has applied the clear terms according to their ordinary and popularly accepted meaning. Under that clear language, there are certain requirements that must be met in order to qualify for a change to the Master's Lane. First, the teacher must have gained the degree either in the field in which he/she is teaching or an alternative field with prior approval. Second, the employe must attain the necessary credentials to justify the transfer from one lane to another. Third, proper credentials shall be considered as statements of degrees attained or status towards a degree. The language states that credentials must be certified by a college registrar or other proper college official. Fourth, the application for lane movement and credit reimbursement must be filed in the Superintendent's office by August 1 of the contract year the employe desires the change to go into effect. Fifth, the work required by the college for the conferring of the degree must be completed by September 1 of the contract year in which the employe desires the lane change to go into effect.

Applying those contractual requirements to the facts in this case, it is clear that the District acted properly in denying the Grievant's request for a lane change. The Grievant was required to provide credentials demonstrating that he had earned a Master's Degree from Cardinal Stritch College. The Grievant failed to provide the proper credentials to verify that he had achieved the Master's Degree. The language of Article XV, Section D, Subparagraph 6, explicitly states that credentials must be certified by a college registrar or other proper college official. The Grievant conceded at hearing that as of the date of the hearing (March 10, 1995) he had not provided a copy of his degree to the District. Thus, he failed to provide the necessary documentation to establish that he achieved the degree. While the Grievant complied with the requirement to make application for the lane change and credit reimbursement prior to August 1, he failed to meet the requirement that the work required for the conferring of the degree be completed by September 1 of the contract year in which the employe desired the change to go into affect. Although the Grievant testified he had completed all of the required course work prior to September 1, 1994, he conceded on cross-examination that he had not taken his comprehensive examination and the MAT prior to September 1, 1994. The Grievant testified that Cardinal Stritch required that both tests be taken prior to the issuance of a Master's Degree. That testimony supports the District's position that he had failed to complete the work which was required to be completed in order for the College to confer a Master's Degree. That was further supported by Wille's testimony as to his conversation in September of 1994, with the College's Associate Dean of Teacher Education and the letter from the Associate Dean to Wille dated September 19, 1994, stating that the Grievant

had not completed the work that would allow the

College to issue him a Master's Degree. Hence, it is clear that the Grievant failed to comply with all of the requirements of Article XV, Section D, of the Agreement in order to qualify for a change to the Master's Lane.

The District also asserts that the Grievant's failure to secure the Master's Degree by September 1, 1994, was not the result of the District's actions or inactions. It is clear from the evidence that had the Grievant structured his program of study differently, he could have completed his course work and have taken the comprehensive examination and MAT by September 1, 1994. The Grievant's own testimony established that he could have taken Ed 554 in prior semesters, but he elected not to. Had he taken that course earlier, he would have been able to take the comprehensive examination in the summer of 1994, rather than having to wait until October of 1994. The Grievant also testified that the MAT must be completed before a Master's Degree is issued and that he could have taken it prior to September of 1994. He testified there were no course prerequisites to taking the MAT. Thus, he could have taken it at any time during his tenure at Cardinal Stritch.

The Grievant's request to move to the Master's Lane was denied because he had failed to complete the work and submit the required documentation of the completion of the work to the District by September 1, 1994. The Grievant's inability to complete the Master's Degree by September 1, 1994, was not due to the District's actions. Thus, the grievance should be denied.

## DISCUSSION

Despite the Association's valiant attempts to demonstrate otherwise, the applicable language of Article XV, Section D, of the parties' Agreement is clear and unambiguous. Subsection 2 of Section D expressly provides that "To qualify for the Master Degree schedule, a teacher shall have gained the degree . . ." Subsection 5 requires that the teacher attain the necessary credentials in order to move to a new lane. Subsection 6 states, "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." Finally, Subsection 7 expressly requires that "Credit information for moving from one lane to another . . . must be in the office of the superintendent by August 1 and the work completed by September 1 of the contract year."

Read together, the above subsections require that to move to the Master's Lane, the teacher must have completed all of the college's requirements for earning the degree by September 1 of the contract year and have provided a certified statement from a college registrar or proper college official by August 1 of the contract year that the degree had been earned or that the requirements for earning the degree would be fulfilled by September 1.

In this case, the Grievant had not completed Cardinal Stritch College's requirements for a Masters in Educational Professional Development, i.e., he had not taken the MAT and the comprehensive examination as of September 1, 1994. Regardless of whether those requirements are more mere formalities than substantive, they are required by the College in order to earn the degree. The Arbitrator is not in a position to second guess the College in that regard, nor are the parties, for that matter.

The posited situations in which the Superintendent testified he might have to consider the circumstances had to do with possible instances where a teacher would have completed the requirements for the degree, but the formality of awarding the degree would not take place until after September 1st or where there was a delay in the school forwarding the documentation to the District through no fault of the teacher's. As noted above, such was not the case in this instance.

Based upon the clear language of the applicable provisions of Article XV, Section D, of the Agreement, the Grievant was required to have completed all of the College's requirements for attaining a Master's Degree by September 1, 1994, in order to qualify for movement to the Master's Lane on the salary schedule for the 1994-95 school year. Since the Grievant was unable to meet those requirements by September 1, 1994, the District did not violate Article XV of the Agreement by denying the Grievant the change to the Master's Lane for the 1994-95 school year.

Based upon the foregoing, the evidence and the arguments of the parties, the undersigned makes the following

#### AWARD

The grievance is denied.

Dated at Madison, Wisconsin, this 27th day of July, 1995.

By David E. Shaw /s/  
David E. Shaw, Arbitrator