

TIME REQUIRED TO
RENDER AWARD: 96 DAYS

IN THE MATTER OF THE ARBITRATION BETWEEN

closed

THE EAST GRAND FORKS
EDUCATION ASSOCIATION,

MINNESOTA BUREAU OF
MEDIATION SERVICES
CASE NO. 05-PA-1093

Association,

and

INDEPENDENT SCHOOL DISTRICT
NO. 595 (EAST GRAND FORKS),

DECISION AND AWARD
OF
ARBITRATOR

Employer.

APPEARANCES

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For the Employer:

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On September 22, 2005, in East Grand Forks, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, during which evidence was received concerning a grievance brought by the Association against the Employer. The grievance alleges that the Employer violated the labor agreement between the parties by failing to pay the grievant, Jennifer J. Loer, the

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salary required by the agreement. Post-hearing briefs were received by the Arbitrator on October 16, 2005.

FACTS

The Employer operates the public schools in East Grand Forks, Minnesota. The Association is the collective bargaining representative of the Teachers who are employed in the Employer's schools.

The grievance was brought during the term of the parties' labor agreement that is effective from July 1, 2003, through June 30, 2005. Hereafter, I may refer to this agreement as the "current labor agreement."

The grievant has been employed as a Teacher in the Employer's schools for seven years. She is licensed to teach vocal and instrumental music to students in kindergarten through twelfth grade. She holds a Bachelor of Arts degree in Music Education and a Master of Arts degree in Music.

The salary schedule established by the current labor agreement is similar in structure to the salary schedules that appear in many labor agreements between school districts and unions representing Teachers. It provides two kinds of salary increment to Teachers. "Step" increments, expressed by movement down the vertical axis of the schedule, are achieved annually by a year of service, and "lane" increments, expressed by movement across the schedule's horizontal axis, are achieved by education.

The headings across the top of the schedule describe the lanes. Thus, for example, "BA15" means that to qualify for this

lane, a Teacher must have a Bachelor of Arts degree and at least fifteen additional credits. In the present grievance, the parties disagree whether credits the grievant received during 2004 qualify for a lane advancement she requested.

The salary schedule in the current labor agreement that established Teachers' salaries for the 2004-2005 school year is reproduced below, with the amount of annual salary that appears in each cell of the schedule:

	<u>BA</u>	<u>BA15</u>	<u>BA30</u>	<u>BA45</u>	<u>BA60</u>	<u>MA</u>	<u>BA75</u>	<u>MA15</u>	<u>BA90</u>	<u>MA30</u>
1	25625	26650	27675	28700	29725	30750	31775	32800	33825	34894
2	25755	26886	28083	29346	30666	31365	32590	33598	34609	35940
3	25885	27126	28493	29992	31607	32054	33405	34397	35393	36985
4	27074	28307	29663	31152	32756	33199	34540	35525	36515	38097
5	28893	30124	31481	32968	34573	35016	36359	37342	38331	39913
6	30708	31941	33298	34787	36391	36833	38175	39160	40150	41732
7	32526	33758	35116	36604	38208	38651	39993	40977	41967	43549
8	34343	35577	36933	38421	40025	40467	41810	42794	43784	45366
9	36160	37393	38751	40239	41843	42286	43628	44611	45601	47184
10				42057	43661	44103	45445	46429	47420	49001
11				43873	45477	45920	47262	48247	49236	50818
12					47294	47738	49080	50063	51054	52635
13						49555		51882		54453

As I note below, although this salary schedule is similar in structure to many, the intervening presence, among the MA lanes, of two advanced BA lanes, BA75 and BA90, is unusual.

Article XVII of the parties' labor agreement is entitled, "Placement on Salary Schedule." It contains eight unnumbered paragraphs. Below, I set out their full text, but, for ease of reference in this Decision, I have added a number at the beginning of each paragraph:

1. Individual contracts will be modified to reflect qualified lane changes once every semester effective at the beginning of the semester, provided however, a

transcript of qualified credits is submitted to the Superintendent's Office no later than 15 days after the semester begins. Credits submitted by transcript after the 15th day even though otherwise qualifying shall not be considered until the following semester. If a transcript is not available by the 15th day, other satisfactory evidence of successful completion of the course will be accepted pending receipt of the official transcript; however, any pay adjustment shall not be made until the official transcript is received.

2. All regular teacher contracts will be on a 37-week basis, and the school calendar will be established by the Board of Education.
3. The diploma or degree which a Teacher holds from a teachers' college, liberal arts college or university shall determine the salary bracket in which he or she is to be placed, and records from the school shall be accepted to indicate the extent of a teacher's training beyond the BA degree. Only graduate or undergraduate credits taken beyond a Bachelors degree, and after student teaching has taken place, shall apply for lanes beyond the Bachelors degree, and only credits earned beyond a Master's degree shall apply for lanes beyond the Master's degree. These credits need not necessarily be in their teaching field.
4. A school term of one hundred eighty-five (185) school days shall be the basis of this schedule unless otherwise specified in the contract between the teacher and the Board. The preschool workshop is included in the 185 days.
5. The teacher's initial step placement on the salary schedule shall be recommended by the Superintendent of Schools to the School Board.
6. Effective the 1993-1994 school year the salary schedule shall have a BA, BA15, BA30, BA45, BA60, MA, BA75, MA15, BA90, and MA30 lanes. These are quarter hours of credit beyond each degree. Any teacher on the BA75 lane who, with additional credits, attains a Masters degree shall move to the MA15 lane at their appropriate step and an additional 15 credits will move them to the MA30 lane. Any teacher on the BA90 lane who, with additional credits, attains a Masters Degree shall move to the MA30 lane at their appropriate step. Credits earned beyond BA60 and prior to July 1, 1993, shall not count toward lane advancement for BA75 and BA90 lanes. A grade of "B" or better must be earned in all graded coursework to be counted for lane change purposes.

7. All credits earned to gain the BA60, BA75 and BA90 lanes must be germane to the teacher's current teaching situation. The term germane is to be defined as "coursework that is relevant and appropriate to the teacher's current and specific teaching field and/or to the improvement of instruction based on individual teacher's needs." For example, classes in technology, classroom management, and classroom discipline could be considered germane. All of the costs of the credits used for lane change purposes (workshop cost, materials, fees, etc,) shall be the responsibility of the teacher. The total of 15 credits to gain each lane must meet the following criteria:

Traditional college coursework	8 credit minimum
Extension courses	5 credit maximum
Nontraditional courses (video, etc.)	2 credit maximum
Workshops	6 credit maximum

8. These credits must be submitted to a committee of teachers for preapproval. The committee shall then submit its recommendations to the Superintendent for final disposition.

The grievant gave testimony that I summarize as follows.

At the beginning of the 2004-2005 school year, she wanted to take courses that would qualify her for lane advancement on the salary schedule from her then current Master's degree lane, "MA" on the salary schedule, to the "MA15" lane. In September of 2004, her husband, Brian Loer, sent an e-mail to Val Korynta, the secretary to the Superintendent of Schools, Walter L. Aanenson. In the e-mail, Brian Loer asked whether four courses he described were acceptable for the grievant's lane advancement to the MA15 lane. The grievant testified that her husband told her that Korynta responded by e-mail that she could take any course she wanted because she had a Master's degree.

The grievant enrolled in the four courses, all of which were offered by Loyola Marymount University (hereafter, "Loyola"). In this proceeding, the parties disagree whether two

of the courses, which are entitled "Teaching Beginning Golf" and "Teaching Intermediate Golf," qualify under Article XVII of the labor agreement for lane advancement to the MA15 lane. (Hereafter, I may refer to these two courses as "the courses at issue.")

The grievant testified that, at that time, she was interested in golf, though she played rarely, and that her husband played golf. She was not teaching or coaching in any sport, but she thought that it might be possible in the future to qualify as a substitute golf teacher or coach. She was aware that another Teacher, Debra R. Schantzen, had taken the same two courses several years before and had been allowed to use them for lane advancement from the MA15 lane to the MA30 lane. Each of the two courses at issue is a three-credit course. The grievant testified that she received videotapes and three or four books from Loyola and that she completed the two courses. She paid Loyola a fee of \$300 for each course.

On December 3, 2004, Brian Loer sent Korynta a copy of a letter addressed to the grievant by Donald R. Jacobs, Director of Enhancement Course Programs at Loyola, part of which is set out below:

. . . This letter acknowledges that [the grievant] has successfully completed Enhancement Course Number PESX 902, titled, "Teaching Beginning Golf" on 11/17/04 and received a grade of "CR." . . .

On the copy of this letter that Brian Loer sent to Korynta, he wrote, "Val: Is this enough to show you or do you need a transcript?"

On December 10, 2004, Aanenson sent the grievant the following e-mail:

You have submitted a request for 3 credits to be used toward a lane change for a course called: Enhancement Course Number PESX902," titled "Teaching Beginning Golf." You also indicate that you received a grade of "CR" from Loyola Marymount University in Costa Mesa, CA. I have requested information from Loyola in regard to the course level and the meaning of CR as a grade. To date I have not heard from them. My question, was this class a continuing education class or a college course, what does "CR" mean as a grade, and will this course make you a better teacher of music? My last question, were you serious about asking for the three semester credits toward a lane change for this course?

On December 14, 2004, the grievant sent Aanenson the following e-mail response to his e-mail of December 10, 2004:

Hopefully, this will clear up any questions you have.

1. What does "CR" mean as a grade?"

It means a grade of B or higher.

2. Will this course make you a better teacher of music?

This course will not directly affect my teaching of band. It was taken to expand my horizons and learn something different. I can possibly use it in the future if an extra curricular coaching/golf position opens? Also, because I have a Master's degree, I understand I can take any class I would like for a lane change. (I seem to remember being told that Underwater Basket weaving was also acceptable -- jokingly of course.)

3. Were you serious about asking for the three semester credits toward a lane change for this course?

Yes, very serious. I have no problem using this class for a 3 semester credit class as I was required to provide a time log showing exactly how many hours I worked on the class. In order to receive the credit, I had to have a minimum of 45 hours of work on the class. This class took well over 45 hours to complete.

If you are interested in finding out more about these classes, a website to visit would be [omitted].

These courses have been taken by other teachers in the district without a problem so I really don't think it should be an issue for me either. These classes are no different than any other video course that many teachers have taken for salary adjustments and definitely no different than getting a lane change using Dewey Walsh classes. If you have any other questions, please give me a call at the middle school.

The grievant completed the second of the two courses at issue, "Teaching Intermediate Golf," and, during December of 2004, she presented a transcript of her successful completion of both courses to the Employer. On January 5, 2005, Aanenson sent her the following letter, denying her the use of the two courses toward lane advancement to the MA15 lane:

Please be informed that the school district will not honor the following classes toward lane change:

PESX 902 Teaching Beginning Golf
PESX 903 Teaching Intermediate Golf

Based on information from Loyola Marymount University courses with numbers 800-999 are considered continuing education, professional development, and personal enrichment classes, which do not carry degree granting credit. Loyola Marymount University goes on to say that these courses are not even accepted for degree credit at their own university.

It is good that you chose to expand your own personal interests by taking community education or continuing education classes, but these classes do not qualify for lane changes.

Under terms of Master Contract Article XVII, "only graduate or undergraduate credits taken beyond a Bachelor's degree, and after student teaching has taken place, shall apply for lane changes beyond the Bachelor's degree, and only credits earned beyond a Master's degree shall apply for lanes beyond the Master's degree. Since these classes do not fit the scope of the Master Contract, your request to use the continuing education classes for lane change is denied.

On January 19, 2005, the Association brought the present grievance in behalf of the grievant, alleging that the Employer's refusal to accept the two courses at issue for her

lane advancement to the MA15 lane violated Article XVII of the labor agreement.

DECISION

The parties disagree about the proper interpretation of Article XVII. As I understand the Employer's argument about meaning, it is the following. Paragraph 1 requires the submission of a transcript of "qualified credits" to obtain lane advancement. The second and third sentences of Paragraph 3 give the primary definition of the kind of credits that are "qualified":

Only graduate or undergraduate credits taken beyond a Bachelors degree, and after student teaching has taken place, shall apply for lanes beyond the Bachelors degree, and only credits earned beyond a Master's degree shall apply for lanes beyond the Master's degree. These credits need not necessarily be in their teaching field.

The Employer concedes that the latter of these two sentences means that qualified credits "need not necessarily be in [the teacher's] teaching field." Nevertheless, the Employer urges that the definition given in the first of these two sentences requires that qualified credits be "graduate or undergraduate" credits -- at least when their use is proposed for advancement to any lane other than the BA60, BA75 and BA90 lanes. The description of credits to be used for advancement to the BA60, BA75 and BA90 lanes is given in Paragraph 7. For these credits, the concept of "germaneness" applies, *i.e.*, the "coursework [must be] relevant and appropriate to the teacher's current and specific teaching field and/or to the improvement of instruction based on individual teacher's needs."

The Employer concedes, however, that, for advancement to the BA60, BA75 and BA90 lanes, the last sentence of Paragraph 7 relaxes the requirement that credits be "graduate and undergraduate credits":

The total of 15 credits to gain each lane must meet the following criteria:

Traditional college coursework	8 credit minimum
Extension courses	5 credit maximum
Nontraditional courses (video, etc.)	2 credit maximum
Workshops	6 credit maximum

The Employer argues that, notwithstanding this provision in Paragraph 7, which applies only to lane advancements into the BA60, BA75 and BA90 lanes, the definition of qualified credits given in Paragraph 3 -- that credits be "graduate or undergraduate credits" -- applies for any other lane advancement, including advancement to the MA15 lane, which is at issue in this case. The Employer presented evidence showing that Loyola does not accept the courses at issue for use in any of its undergraduate or graduate programs.

The Association makes the following arguments about interpretation of Article XVII. Patric O. Hurley, a Teacher in the Employer's schools for thirty years, gave testimony that I summarize as follows. He was a member of the Association's negotiating team during the 1980s and 1990s. During bargaining for the 1993-95 labor agreement, the parties added most of the language that appears in the paragraphs that I have numbered as Paragraphs 6, 7 and 8. To show that amendment, the Association presented in evidence the following memorandum, dated October 14,

1994, from John Roche, then Superintendent of Schools, addressed to all Teaching Staff*:

I would like to remind all of you of the "new" language for lane change as negotiated in the Master Contract. All of you are aware that our salary schedule now contains lanes for the BA60, BA75, and BA90 effective July 1, 1993. There appears to be some confusion as to which credits are applicable and count for lane change for the aforementioned lanes. Please be aware that Master Contract language in regard to these lanes is as follows:*

6. Effective the 1993-1994 school year the salary schedule shall have a BA, BA+15, BA+30, BA+45, BA+60, MA, BA+75, MA+15, BA+90, and MA+30 lanes. These are quarter hours of credit beyond each degree. Any teacher on the BA+75 lane who attains a Masters degree shall move to the MA+15 lane at their appropriate step and an additional 15 credits will move them to the MA+30 lane. Any teacher on the BA+90 lane who attains a Masters Degree shall move the MA30 lane at their appropriate step. Credits earned beyond BA+60 and prior to July 1, 1993, shall not count toward lane advancement for BA+75 and BA+90 lanes. A grade of "B" or better must be earned in all graded coursework to be counted for lane change purposes.
7. All credits earned to gain the BA+60, BA+75 and BA+90 lanes must be germane to the teacher's current teaching situation. The total of 15 credits to gain each lane must meet the following criteria:

Traditional college coursework	8 credit minimum
Extension courses	5 credit maximum
Nontraditional courses (video, etc.)	2 credit maximum
Workshops	6 credit maximum
8. These credits must be submitted to a committee of teachers for preapproval. The committee shall then

* In this reproduction of the memo, I include the numeration of the paragraphs of Article XVII that I have adopted throughout this Decision for ease of reference, though I note that the contract language has never included such numbers.

submit its recommendations to the Superintendent for final disposition.

This means that all credits used to gain the BA60, BA75, and BA90 lanes must be germane and must be preapproved. This is true even if you are in an approved Master's degree program.

In reviewing the lane change requests that we have received, it is apparent that all of you are not aware of this. In order to prevent any misunderstanding in this regard, please be sure to follow all of the requirements for lane change as stated in the Master Contract. I know that many of you are putting forth a lot of effort and dollars as you work toward your advancement on the salary schedule. It would be too bad if the District had to deny your lane change request because of an oversight on your part.

Hurley testified that, during bargaining for the next labor agreement, for 1995-97, the parties added three sentences to Paragraph 7, which I have underlined in the following reproduction of the text of that paragraph; that text is substantially the same as that of the current labor agreement:

7. All credits earned to gain the BA60, BA75 and BA90 lanes must be germane to the teacher's current teaching situation. The term germane is to be defined as "coursework that is relevant and appropriate to the teacher's current and specific teaching field and/or to the improvement of instruction based on individual teacher's needs. For example, classes in technology, classroom management, and classroom discipline could be considered germane. All of the costs of the credits used for lane change purposes (workshop cost, materials, fees, etc.) shall be the responsibility of the teacher. The total of 15 credits to gain each lane must meet the following criteria:

Traditional college coursework	8 credit minimum
Extension courses	5 credit maximum
Nontraditional courses (video, etc.)	2 credit maximum
Workshops	6 credit maximum

Hurley testified that the 1993-95 amendment added two new lanes to the salary schedule, the BA75 and BA90 lanes. These

additions were made to encourage Teachers who had a Bachelor's degree and sixty additional credits, the usual credit level needed for a Master's degree, but who had not completed the thesis usually needed for that degree, to seek additional education. He also testified that the requirement of germaneness described in Paragraph 7 and the approval process described in Paragraph 8 were added with the intention that they apply only to lane advancement to the BA60, BA75 and BA90 lanes.

Hurley testified that he was not aware that a Superintendent of Schools had ever denied a lane change request before the denial in this case, and other witnesses for the Association corroborated this testimony.

Debra R. Schantzen, a Teacher in the Employer's schools for fourteen years, gave testimony that I summarize as follows. She has a Master's degree and is licensed to teach in Grades 1 through 6. She teaches Reading, Spelling, English and Health. In 1999, she completed by correspondence the same courses from Loyola that are at issue in this case -- "Teaching Beginning Golf" and "Teaching Intermediate Golf." She was permitted by the Employer to use those courses for lane advancement to the MA30 lane. She did not coach or teach Golf or any other Physical Education course at that time, but since then she has become the Golf coach at the Middle School. The grievant and the grievant's husband asked Schantzen about the courses at issue before the grievant took them. Schantzen told them that the courses were beneficial and had helped her become a Golf coach.

Schantzen also testified that she had been permitted to use credits for courses taken at St. Thomas University in 1996 for her lane advancement to the MA15 lane -- "Story Telling," "Building Self Concept and Managing Behavior" and "Strategies for Responsibility." The transcript for these courses describes them as part of a "Continuing Education" program with "No Degree Granted."

Mark W. Swenson, a Teacher in the Employer's schools for fourteen years, testified as follows. He has a Master's degree, and he is a Sixth Grade Science Teacher. In 1998, he completed a two-credit course, "Educating Our Future," at St. Thomas University and was permitted to use the credits for advancement to the MA30 lane. He did not think that the course was in a degree granting program, and he did not take it intending to obtain another degree. The transcript for that course describes it as a "graduate level" course, and the coding on the transcript assigns the course the coding, "CTED 845," indicating that it is a continuing-education course.

Swenson also testified that he is a member of the Association's team in bargaining for the parties' 2005-07 labor agreement and that the Employer has made two proposals relevant to lane change -- 1) that "Community Education or Continuing Education credits, which are non-degree granting credits, cannot be used to apply for lane changes" and 2) that "in order to be considered for application on the salary schedule, all courses must be approved by the Superintendent, in writing, prior to taking the course."

I make the following rulings resolving the grievance. The evidence of bargaining history shows how the parties amended Article XVII by their 1993-95 and 1995-97 labor agreements. Paragraphs 6, 7 and 8 were added when the parties created two new lanes, the BA75 and BA90 lanes. The substantive changes made in those paragraphs relate to those new lanes and to the BA60 lane -- first, in Paragraph 7, the addition of the requirement of germaneness for credits used to advance to these three lanes, second, in Paragraph 7, the relaxation of the requirement that credits used for such advancement be graduate and undergraduate credits and third, in Paragraph 8, the establishment of a process for "preapproval" of credits to be used for advancement to these three lanes.

The new language of Paragraphs 6, 7 and 8, on its face, relates only to the BA60, BA75 and BA90 lanes, and that limitation implies that the three substantive requirements added by that language were absent from the contract before the addition of these new paragraphs. Therefore, for advancement to the salary schedule's other lanes, neither germaneness of credits, as specified in Paragraph 7, nor the process for preapproval of credits, specified in Paragraph 8, is required. The definition given in Paragraph 3, however, of the kind of credits that qualify for advancement to the other lanes continues to apply, i.e., they must be "graduate or undergraduate" credits.

In the present case, because advancement to the MA15 lane is at issue, and not advancement to one of the three lanes to which Paragraphs 6, 7 and 8 relate, germaneness of the courses at issue is not required, their preapproval by the Paragraph 8

process is not required, but the credits must meet the Paragraph 3 standard -- that they be graduate or undergraduate credits.

The evidence about the previous way in which requests for lane advancement have been administered is insufficient to show that the Employer has waived adherence to the Paragraph 3 standard. Aanenson testified that, when he approved Schantzen's use of the same golf-teaching courses in 1999, he was new to the Superintendent's position and made a mistake. He also testified that the Employer does not have the administrative staff to screen all credits proposed by Teachers for lane advancement and must rely on the good faith of Teachers. Nothing in the evidence indicates that the Employer, by past approval of non-standard credits, intended to be bound in the future to relinquish the Paragraph-3-standard.

The Association argues that the Employer has conceded a reading of the current language consistent with that of the Association by proposing to amend Article XVII in the parties' bargaining about the 2005-07 labor agreement to provide 1) that "Community Education or Continuing Education credits, which are non-degree granting credits, cannot be used to apply for lane changes" and 2) that "in order to be considered for application on the salary schedule, all courses must be approved by the Superintendent, in writing, prior to taking the course." As I read the first proposal, it would merely clarify that community education and continuing education credits do not meet the Paragraph 3 standard. As a clarification, the proposal does not imply concession to a different meaning. The second proposal

would add an approval process for all credits -- something new, but not relevant to the issues in this case.

My ruling that the Paragraph 8 preapproval process applies only to credits used for lane advancement to the BA60, BA75 and BA90 lanes does not make adherence to the Paragraph 3 standard unenforceable when considering whether credits to be used for advancement to other lanes are "qualified credits." Though the preapproval process does not apply, Paragraph 3, nevertheless, requires that such credits be graduate or undergraduate credits. Here, the Employer's denial of the request to use the courses at issue for lane advancement to the MA15 lane and the Association's grievance of that denial have properly raised the issue as one to be resolved in the grievance process.

I conclude that the credits given for the courses at issue, Teaching Beginning Golf and Teaching Intermediate Golf, did not meet the Paragraph 3 standard -- that they be graduate or undergraduate credits. Loyola does not accept the courses at issue for credit in any of its undergraduate or graduate degree granting programs, and there is no evidence that they could be used in such a program at other institutions.

AWARD

The grievance is denied.

January 20, 2006

Thomas P. Gallagher, Arbitrator