

**Patton #3**

**American Arbitration Association**

**VOLUNTARY LABOR ARBITRATION TRIBUNAL**

In the Matter of the Arbitration between

EMPLOYER

AND

UNION

AWARD OF ARBITRATOR

THE UNDERSIGNED Arbitrator(s), having been designated in accordance with the, arbitration agreement entered into by the above-named Parties, and dated 2005-2006 and having been duly sworn and having duly heard the proofs and allegations of the Parties, AWARDS as follows:

The grievance is granted. The Employer shall immediately make Person 1 whole by reimbursing her in the amount of \$ 100.00 per credit hour for tuition spent on the courses, "Development & Implementation of Individual Education Programs" and "Students with Learning Disabilities."

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Arbitrator's signature (dated)

July 12, 2006

AMERICAN ARBITRATION ASSOCIATION  
AD HOC LABOR ARBITRATION

EMPLOYER

AND

UNION

Person 1

Tuition Reimbursement

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ARBITRATOR'S OPINION AND AWARD

Arbitrator Anne T. Patton

July 12, 2006

Chronology

Date of Grievance; September 30, 2005

Date of Hearing: April 27, 2006

Date of Record Closing: June 7, 2006

**Statement of issues**

1. Whether the Employer violated Section 5.2B of the Agreement by denying Person 1's request for tuition reimbursement?
  2. If so, what remedy is appropriate?
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Brief Statement of the Award

The grievance is granted.

## INTRODUCTION

This dispute involves the Employer's refusal to reimburse Person 1's request for tuition reimbursement for special education classes.

On September 20, 2005, Person 1 filed this grievance stating that she was being denied reimbursement for classes taken in courses related to her instructional responsibilities as stated in Section 5.2 B of the current contract. The relief sought is to make Person 1 whole, including reimbursing her for classes taken for special education certification. Joint Exhibit 2.

On October 4, 2003, Person 1's immediate supervisor denied the grievance. On October 13, 2005, the Union appealed.

On November 4, 2005, Superintendent Person 2 denied the grievance on the basis that the course work was not related to Person 1's instructional responsibilities in the teacher's area of certification. Joint Exhibit 2 at 4-6.

The Union appealed the grievance to Step III.

On November 28, 2005, the Personnel Committee of the Board conducted a hearing. Person 1 was present with Union representatives. On the same date, the Committee issued a Memorandum. Joint Exhibit 2 at pages 7-12. The Personnel Committee concluded that the course work was outside Person 1's area of certification and that it was not necessary to decide whether the course work was related to her instructional responsibilities, Joint Exhibit 2 at page 11.

On December 12, 2005, the Board adopted the findings and decision of the Personnel Committee and decided to deny Person 1's request for tuition reimbursement, Employer Exhibit 5.

On December 16, 2005, the Union filed a Demand for Arbitration with the American

Arbitration Association, Joint Exhibit 2 at page 14.

On April 27, 2006, [the hearing was conducted at the Employer's administrative offices in City A, Michigan. Each party had ample opportunity to present evidence and argument. Each party filed a post-hearing brief. On June 7, 2006, upon receipt of the post-hearing briefs, the American Arbitration Union declared the record closed.

## **STATEMENT OF FACTS**

### **Background**

The Employer is a geographically large school district with an enrollment of about 730 students. The Union represents a unit of employees, which includes about 50 teachers. The parties are signatories to a Master Contract dated 2005-2006.

### **Person 1's Request for Reimbursement**

Person 1 has been a teacher with the school district for six years. She has a Bachelor of Arts degree in Business and Accounting. Person 1 is employed as a business education instructor. Her class assignments include Management Support I and II, Accounting, Business Law, and Broadcasting. All students, including every special education student, is required to take the Management Support I class, which involves life skills in the business world, using Microsoft, doing personal banking, handling credit and debit cards, writing a resume, being interviewed and finding a job.

Person 1 testified that the special education students present a challenge. Each student has unique needs. Without knowing those needs, Person 1 cannot properly teach them. She has no prior experience teaching special education. The special education teacher, Person 3, visits one of her classes where seven of the 17 students are special education students. Each special education student must have an Individual Education Plan (IEP), Both Person 1 and Person 3 are

responsible for preparing the IEPs. However, Person 1, not Person 3, does the lesson plan for the special education students in her class,. Person 1's ability to instruct and engage special education students is evaluated annually. Union Exhibit 12.

By memo dated November 15, 2004, Person 1 advised Superintendent Person 2 that she was interested in pursuing a Master's Degree in Special Education; Curriculum & Human Services through University A. She explained that the program takes 1.5 years to complete and, upon completion, she would be considered "highly qualified" as a special education teacher. She pointed out that she already had her Master's degree in Business Education when she hired into the district and that presently she has 14 credits towards the + 15 hours.

Person 1 gave the following reasons for pursuing the additional degree:

1. Should there be any further cut backs I believe it would help secure my teaching position at City A.
2. As a Business Education teacher 22-23 % of the students I teach are special education and would certainly benefit.

Finally, Person 1 asked whether the school district would pay the \$100.00 per credit towards this Masters. Employer Exhibit 6 at page 4,

By memo dated November 16, 2004, Person 1 further advised Person 2:

Attached is a copy of the Master Contract regarding tuition reimbursement, Basically it says, "courses taken outside the teacher area of certification shall be subject to prior approval." As you know, it is my intent to complete the Master's of Education, Curriculum and Instruction and become certified in 2006 to become highly qualified to teach special education.

Especially because of the No Child Left Behind ruling and the critical financial situation in this State, I believe this additional certification would be beneficial to both me and City A School District. I enjoy teaching at City A High School, and am looking ahead to help secure my teaching position in the District. .

The cost per credit hour is \$326.00 and it would help a lot if the school district would pick up \$100.00 of that. Thanks for your consideration in this matter.

Employer Exhibit 6 at page 5.

By memo dated December 17, 2004, Person 2 advised that the Board of Education Negotiations and Personnel Committee had discussed Person 1's request and, although it commended her desire to continually improve, it had to deny her request for the following reason:

The language [in Section 5.2 8] states that reimbursement for hours taken outside of the teacher area of certification shall be granted only to those teachers in order to become a highly qualified teacher in the subject area in which the teacher is assigned. Since Special Education is not a subject area in which you have been specifically assigned, iC does not qualify for this exception. Therefore, the request for reimbursement for classes toward Special Education certification has been denied.

Employer Exhibit 6 at page 7.

By memo dated January 7, 2005, Person 1 submitted a request for tuition reimbursement to Person 2 to enroll in the class "Introduction to the Student with Learning Disabilities" through University A She pointed out that 228/0 of the student population are special education students, all of whom have to take her Management Support I class. Person 1 added that she presently had 15 special education students on her class load. Employer Exhibit 6 at page 8.

By memo dated January 7, 2005, Person 2 approved Person 1's request for tuition reimbursement for "the credits to be applied toward your Masters + 15 credit status," Employer Exhibit 6 at page 9.

By letter dated August 30, 2005. Person 1 submitted a request to Superintendent Person 2 for a \$100.00 per credit hour reimbursement for the following classes at University A:

Development & Implementation of Individual Education Programs (3 credits)

Students with Learning Disabilities (3 credits)

Additionally, Person 1 requested the \$100 reimbursement for the summer classes she had completed at University A. Union Exhibit 10.

By memo dated September 15, 2005, Person 2 responded as follows;

On August 30, 2005, you requested approval for reimbursement for classes you are enrolling to take and also for classes already completed for which you were previously denied both pre-approval for qualification for reimbursement and the reimbursement.

On December 17, 2004, you were given a memorandum denying your request for pre-approval of Masters courses outside of your certification area. That memo included a quotation from the Master Agreement between the City A Education Union and the Employer, Section 5.2, subsection Ft (page 32), which explained why the request was being denied. The same response applies to your current request. Reimbursement for hours taken outside of [the teacher area of certification shall be granted only to those teachers taking the courses in order to become a "highly qualified" teacher in the subject area in which the teacher is assigned. Since Special Education is not a subject area in which you have been specifically assigned, it does not qualify for this exception. Therefore, once again, the request for reimbursement for classes toward your becoming Special Education certified is being denied.

It is admirable that you want to expand your teaching capabilities by taking these Special Education courses, but your contract does not allow for reimbursement to you through the school district.

Union Exhibit 11.

On September 30, 2005, this grievance was filed.

### **Relevant Contractual Provision**

Section 5.2 B, the contract provision governing tuition reimbursement, provides;

B. Any teacher who enrolls in a CO/Me related to his instructional responsibilities at an accredited college or university shall receive, upon successful completion, \$ 100.00 per credit hour reimbursement from the Board toward the expense of said course. Courses taken outside the teacher area of certification shall be subject to prior approval. This credit hour reimbursement shall be granted for those credit hours needed in order to become a highly qualified teacher (as defined by ESEA) in the subject area in which the teacher is assigned but not for continuing certification (BA or BS +18). Payment shall be made only upon receipt of an official transcript from the College or University.

Teachers earning approved college credits prior to any semester shall be compensated and/or placed in the appropriate category (BA 20, M or MA + 15), for the coming semester provided that the teacher has notified the Superintendent in writing two weeks into the semester of completed hours (or degrees) and furnishes an official transcript within 90 days after the beginning of the semester. Payment at the advanced Level does not begin until after the receipt of the transcript and will be retroactive to the beginning of the current semester.

Joint Exhibit 1.

### **History of Section 5.2B**

#### Origin

The language in Section 5.2 B originated in the 3972-73 contract. At that time, the provision stated:

Any teacher who enrolls in a course related to his instructional responsibilities at an accredited college or university shall receive, upon successful completion, \$ 25.00 per credit hour reimbursement from the Board toward the expenses of said course.

Joint Exhibit 4 at page 1.

In the 1983-1986 Contract, the parties increased the reimbursement to 540.00 per credit hour and added the following sentence:

This credit hour reimbursement shall not be granted for those credit hours needed to obtain continuing certification (13A or BS + 18).

Joint Exhibit 4 at page 2.

In the 1987-89 Contract, the reimbursement was increased to \$65.00 per credit hour. Otherwise the language remained the same. Joint Exhibit 4 at page 1.

In the 1991-1993 Contract, the reimbursement was increased to 585.00 per credit hour. There were no other language changes. Joint Exhibit 4 at page 4.

In the 1994-1997 Contract, the reimbursement was increased to \$ 100.00 per credit hour. There were no other changes. Joint Exhibit 4 at page 5.

#### Change During the 2000 Negotiations

During the 2000 negotiations, the parties engaged in an expedited bargaining process.

They held four meetings from May to June 15. On August 30, 2000, they had a marathon bargaining session. The Board proposed to add the follow sentence to Section 5.2 B:

Courses taken outside the teacher area of certification shall be subject to prior approval.

Joint Exhibit 4 at page 6.

Person 2 testified that during bargaining the Employer explained to the Union its purpose for wanting the added restriction. According to Person 2, teachers were "straying away" and taking more off-campus or correspondence classes. The Employer wanted to draw a Line and eliminate this.

The Union initially rejected the proposal because, as former Local President Person 4 testified, there was no evidence of abuse. Ultimately, the Union agreed to accept the proposed restriction. According to Person 4, the Union understood that the restriction meant the Employer would pay for all course taken, except those taken to accomplish a career change.

#### Approvals Granted After the 2000 Change

Joint Exhibit 3 details the courses for which teacher were reimbursed. The following list shows some of the course titles, which were approved:

##### 2000-2001

School Law  
Diversity in the Classroom and Workplace  
Innovative Classroom Strategies Independent Study  
Prosem Instruction and Education Techniques  
Applying Instruction Techniques  
Improving Student Problem Solving  
Seminar in CEP  
Learning Styles/Multiple Intel  
Teaching with Block Schedule  
Educational Tests and Measurements  
Crisis Intervention with Youth  
Advanced Studies – Child Development  
Difficult Students  
High Performance Teaching

Educational Leadership  
Strategies Early Lit Inst

2001-2002

Advance Integrated Curriculum Design &. Evaluation  
Curriculum Leadership & Development  
Issues in Education  
School Personnel Management  
Elements of Successful Teaching  
Current Topics & Issues in Education  
Learning Theories & Styles  
New Innovations - Classrooms  
Teaching with Block Schedules  
Curriculum Development  
Teaching Through Learning Channels  
School Finance  
Successful Teaching For Accepting Responsibility  
Integrating Tech into Curriculum  
Math & Mat for Gifted  
Responsible Thinking Processes Difficult Students  
MLPP Workshop  
Elem Supervision & Evaluation Personnel Administration  
Elementary Principal

2002-2003

Admin Educational Programs  
Improving Teaching & Learning  
Leadership Curriculum Develop

Person 4 testified that from 1999 to 2003, he obtained prior approval and received tuition reimbursement for all credits hours in courses taken toward gaining an administrative endorsement, including School Law and School finance.

Teacher Person 5 testified that she was pre-approved for reimbursement for 20 credit hours of classes beyond her Master's plus 15, including Class Instruction, Closing the Achievement Gap, and Activity Class.

The parties stipulated that Teachers Person 6 and Person 7, the current Local President,

were reimbursed for classes in Education Leadership, which were not related to their instructional responsibilities. Neither was asked by the Employer to explain the relationship between the course and their instructional responsibilities.

Person 2 testified that about seven teachers had been approved for tuition reimbursement for taking courses related to school administration. He explained that the Employer had declared such courses to be a priority for grooming teachers for administrative positions.

#### The 2003 Negotiations

During the 2003 negotiations, the Employer proposed removing Section 5.2 B from the Contract. He explained that it had become more and more of an economic burden at a time of dwindling resources. There was extensive discussion between the parties regarding the No Child Left Behind requirements and the fact that not all teachers were "highly qualified." Although the Board initially resisted, it ultimately agreed to add language granting 100% tuition reimbursement to teachers who took courses to become highly qualified. The parties also discussed what subjects were not educationally related, such as dental classes and basket weaving. According to Person 4, the Employer never stated that it would not reimburse for credits over MA 15.

#### Approvals Granted After the 2003 Change

The following list identifies some of the course titles approved for tuition reimbursement:

##### 2003-2004

Leadership Curriculum Development  
Classroom Management K-12  
Internet Search & Research  
Classroom Instruction/Assessment/Data  
Outcomes Through Cooperative Learning  
Integrate Tech into Curriculum  
Tech in Business  
Crisis Intervention with Youth

Dev Lit for Children  
Counseling Parents

2004-2005

Educational Leadership  
Research Methods. Desgn/Ana  
Secondary Principal  
Closing the Achievement Gap  
M.A.G.I.C.  
AEI: Aims Workshop Sci Conn  
Computers in Education  
Current Issues  
Teaching Math K-8  
Elementary Ed  
Human Growth and Development Deviant Behavior  
Lit Instruction - Phonics  
Elem Supervision & Eval  
Advanced Studies Child Development

2005-2006

Principals of Ed Evaluation & Research  
Transforming Grading  
Response Ability Pathways  
Introduction to Student With Learning Disabilities  
High Performance Teaching

Joint Exhibit 3.

Person 2 testified that prior to the denial of Person 1's request the Employer had approved all requests for tuition reimbursement, He added that, since the denial of Person 1's requests, other requests had also been denied. He did not detail what courses were denied approval or on what basis.

**POSITIONS OF THE PARTIES**

The Union

The Union takes the position that the Employer violated Section 5.2 B of the Contract by denying Person 1's request for reimbursement. It claims that the language in that provision is

unambiguous. The key phrase, according to the Union, appears in the first sentence and constitutes the first criterion for reimbursement - - "related to instructional responsibilities." It argues that the two courses, which Person 1 wanted to take, related to her instructional responsibilities because all special education students are required to take her Management Support I class and she is evaluated on her ability to teach special education students. The Union concedes that a teacher must get pre-approval where the classes are related to instructional responsibilities but outside the area of certification. It notes, pointing to joint Exhibit 3, that the classes related to instructional responsibilities, but outside the area of certification, are "pedagogy" type courses because undergraduate classes are subject matter intensive leading to endorsements while graduate courses tend to "deal with the art of teaching." Thus, the Union concludes that the majority of graduate classes taken will fall outside of the teacher's certification.

This Union does not insist that "pre-approval" means automatic approval. It admits that the "very act of approving must allow for denial," However, the Union maintains that the Employer cannot deny any course outside of certification, if that course is related to the teacher's instructional responsibilities. It submits that under the clear and unambiguous language of Section 5.2 B pre-approval hinges on whether or not the class is related to instructional responsibilities. The Union notes that the Employer approved Laurent's request for a course on troubled youth. This means that the Employer must have recognized the chance she would have troubled children in her class. This action is inconsistent with the Employer's refusal to approve classes regarding special education students. It is also inconsistent with the Employer's approval of classes not related to instruction, such as administrative classes.

The Union argues that the Employer has an obligation to make reasonable and consistent

decisions. When a teacher submits a request for pre-approval, the decision-making process should include these questions: 1) Is the class related to instructional responsibilities? If so, it should be reimbursed. 2) If not related to instructional responsibilities, what criteria should be used in making the decision? As an example of the second question, the Union relies on Person 2's testimony that the Board set a goal of encouraging administrative degrees to groom teachers for administrative positions. The Union contends that the Employer never got to the second question when denying Person 1's request.

The Union maintains that there is nothing in the bargaining history of Section 5.2 B to suggest that the Employer has an unfettered right to deny reimbursement hi 2000, when the parties added the language, "Courses taken outside the teacher area of certification shall be subject to prior approval," the intent of the Employer, according to Person 2's testimony, was to eliminate reimbursement for correspondence courses. Additionally, Person 4 testified that the Employer's stated intent was to not reimburse for classes completely unrelated to teaching, such as a law degree. The Union notes that the classes Person 1 wanted to take were related to teaching and not taught by correspondence.

The Union contends that evidence of past practice supports its interpretation. Since 1972, and even after the change in 2000, the Employer continued to reimburse for classes, such as administrative degrees, that related only marginally to "instructional responsibilities." According to Person 2's testimony, Person 1's was the first request denied by the Employer since 1993, when he came to the school district. Based on this history, the Union understood that tuition would be reimbursed for classes in the educational arena and that "all classes outside of endorsements needed pre-approval, not so the Board could randomly approve or deny, but to make sure that the classes were related to the field of education."

The Union argues that the ramifications of the Employer's decision are "dire," and that the decision flies in the face of clear contract language, past practice, a long-standing relationship between the parties, and leaves employees at the whim of management. The reasons advanced by the Superintendent in support of the denial do not withstand scrutiny. First, he adds the words "either/or" to Section 5,2 B by stating that "in the event that advanced courses are either unrelated to a teacher's instructional responsibilities or outside a teacher's area of certification, reimbursement for such course work falls within the discretion of the Board of Education." The Union asserts that the Employer cannot revise contract Language on its own, especially when the language and the practice are clear. The second reason for the denial, the classes were beyond an MA + 15, contradict Person 2's testimony that classes to become highly qualified under the No Child Left Behind Act would be reimbursed, regardless of whether they were beyond an MA + 15. Additionally, Person 5 testified that she had been recently reimbursed for a class beyond MA 15. The Union maintains that the third reason for the denial is absurd – "related to the teacher's instructional responsibilities" means the same thing as the certificated endorsements." If the endorsements mean the same thing as teaching responsibilities, there would have been no reason to add the pre-approval sentence in 2000.

In short, the Union contends that the Employer provided no evidence to support its interpretation and the evidence of past practice proves just the opposite.

### **The Employer**

The Employer denies any violation of the Contract. It asserts that the issue is the unambiguous contract language, not the relatedness of the courses to Lauren's instructional responsibilities. It points out that under Section 1.8 of the Grievance Procedure, the Superintendent's ruling on a grievance is only an intermediate step. Thus, it is the decision of the

Personnel Committee as adopted by the Board of Education, which is at issue in this proceeding. The Personnel Committee felt it was completely unnecessary to "engage in a debate as to whether the courses in question were sufficiently related to Mrs. Person 1's instructional responsibilities so as to require reimbursement."

The Employer notes that under the Master Contract, the Board of Education and its administration have "the absolute discretion to either approve or deny reimbursement for coursework which is outside of a teacher's area of certification." Person 1 was well aware that approval of reimbursement was discretionary. The unambiguous language of the Contract grants the Employer "complete discretion" as to the approval of tuition reimbursement outside the teacher's area of certification. Under the contract language, the argument over whether a course is sufficiently related to a teacher's area of certification should not be allowed to take place because the contract language "specifically eliminates any room for argument in this instance." The Contract contains a specific provision giving the Employer the discretion to approve or deny a tuition reimbursement request "based upon its reserved powers to establish educational priorities within the school district and to fund those priorities as it sees fit," mindful of "scarce and ever dwindling financial resources."

While the Employer "applauds" Person 1's desire to further her own education, it insists that the arbitrator cannot deprive the Board of Education its contractual right to deny reimbursement without nullifying the language in the Master Contract.

### **ANALYSIS**

Resolution of this dispute turns on consideration of several issues: the extent of management rights detailed in Section 2.8, the impact of the maintenance of standards clause in Section 1.6, and the meaning of Section 5.2B. Additionally, there is a threshold issue. Which

decision is at issue in this arbitration - the Superintendent's answer or the Board's decision or both?

### **The Threshold Issue**

At the outset it is necessary to clarify which decision is at issue in this arbitration. Both the Superintendent and the Board denied the grievance, each for different reasons. Section 1.8 (B) 6 provides that the "final determination" shall be made by the Board. According to Section 1.8 (B) 5, the Superintendent has the obligation to answer the grievance and requires that the denial of any grievance shall be transmitted to the Secretary of the Board with a statement of reasons "why it is being disapproved."

According to these contractual provisions, the Superintendent's answer and statement of reasons is an intermediate step in the grievance procedure. Only the Board has the authority to make the "final determination." Moreover, according to Section 1.8 (B) 7, it is the "decision of the Board," which the Union has the right to submit to arbitration.

For these reasons, the decision under review in this proceeding is the decision made by the Board Of Education.

### **The Duty of Good Faith**

Modern contract law teaches that every contract, including a collective bargaining agreement imposes on each party a duty of good faith in performing the terms of the contract. St. Antoine, *The Common Law of the Workplace*, BNA, 2nd Ed., at page 82. Thus, both the Employer and the Union are required to act in good faith when exercising contractual rights and insisting upon performance of contractual obligations.

### **Section 2.8 - Rights of the Board**

The rights of the Board are spelled out in extensive detail in Section 2.8 of the Contract, as

follows:

The Board, on its own behalf and on behalf of the electors of the district, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of Michigan, and of the United States, including, but without limiting the generality of the foregoing, the right:

- A. To executive management and administrative control of the school system and its properties and facilities, and the activities of its employees;
- B. To hire all employees and, subject to the provisions of law, determine their qualifications and the conditions for their continued employment, or their dismissal or demotion, and to promote and transfer all such employees;
- C. To establish grades and courses of instruction, including special programs, and to provide for athletic, recreational and social events for students as deemed necessary or advisable by the Board;
- D. To decide upon the means and methods of instruction, the selection of textbooks and other teaching materials, and the use of teaching aids of every kind and nature;
- E. To determine class schedules, the hours of instruction, and the duties, responsibilities, and assignments of teachers and other employees with respect to the terms and conditions of employment. To determine duties, responsibilities and assignments with respect to administrative and non-teaching activities;
- F. The right to adopt reasonable rules and regulations.

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

The final paragraph states that the Board's rights may be limited "only by the specific and express terms of this agreement," Such a limitation appears in the maintenance of standards clause contained in Section 1.6 of the Contract.

### **The impact of Section 1.6 – Maintenance of Standards**

The Maintenance of Standards provision in Section 1.6 provides, in relevant part:

All conditions of employment, including teaching hours, extra compensation for duties outside regular teaching hour relief periods, leaves, and general teaching conditions shall be maintained at not less than the highest minimum standards in effect in the District at the time this Agreement is signed, provided that such conditions shall be improved for the benefit of teachers as required by the express provisions of the Agreement. This Agreement shall not be interpreted or applied to deprive teachers of professional advantages heretofore enjoyed unless expressly stated herein.

The obvious purpose of this maintenance of standards clause is to preserve all conditions of employment, including "freezing" any past practices not detailed in the Contract. This means that any past practice, which might have developed regarding tuition reimbursement, even though not mentioned in Section 5.2 B, cannot be altered or eliminated during the term of the Contract unless it was specifically repudiated during bargaining or unless the language giving rise to the practice was changed during negotiations. See, for example, Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, 59 Mich. L. Rev. 1017, 1030.

### **The Interpretation of Section 5.2 B**

The first sentence in Section 5.2 B has been in existence since about 1972: "Any teacher who enrolls in a course related to his instructional responsibilities at an accredited college or university shall receive, upon successful completion, \$ 100.00 per credit hour reimbursement from the Board toward the expense of said course." From 1972 until 2000, this language permitted reimbursement for courses related to instructional responsibilities regardless of whether the course was within the area of the teacher's certification. Obviously, any course within the area of the teacher's certification also related to instructional responsibility. Thus, no line was drawn between the area of certification and the course content as long as the course related to instructional responsibilities.

Overtime, the Employer saw the need to restrict the number of reimbursable courses

because of dwindling resources. This resulted in the addition of the second sentence in 2000, "Courses taken outside the teacher area of certification shall be subject to prior approval." The plain meaning of this restriction is that the Board has the right to grant or deny approval of a proposed course, if it is outside the teacher's area of certification. The Employer's declared purpose in proposing the restriction was to avoid spending money on "silly" courses, or on courses designed to accomplish a career change, or on courses offered by questionable teaching institutions. However, during the 2000 negotiations, the Employer did not propose any changes to the language in the first sentence regarding instructional responsibilities. Nor did it repudiate its prior practice of reimbursing for courses related to instructional responsibilities.

The parties agree that no prior approval is needed to be reimbursed for a course within the teacher's area of certification. The question posed by this case is whether the Board has the right to deny approval of a course solely on the basis that it is outside the teacher's area of certification, without considering whether the course is related to the teacher's instructional responsibilities.

The answer to this question is no. If a course is within a teacher's area of certification OR if it relates to the teacher's instructional responsibilities, Section 5.2 B allows reimbursement. Thus, the Board must consider whether the course is related to instructional responsibilities. When the parties added the second sentence, they did not delete the first sentence. Thus, the first sentence must be given its full meaning and effect - even if a course is outside the teacher's area of certification, it may be reimbursable if it relates to the teacher's instructional responsibilities. The only effect the addition of the second sentence has on the first Sentence is to require pre-approval of a course related to instructional responsibilities, but outside the area of certification. There is no dispute that the second sentence grants the Board the right to determine whether a

course relates to a teacher's instructional responsibilities.

This interpretation is consistent with evidence regarding past practice. Even after the restriction in the second sentence was added during the 2000 negotiations, the Employer continued to approve reimbursement for courses outside the area of a teacher's certification. In most cases, the approved courses involved teaching techniques, rather than subject matter. Other times, the course content pertained to a type of student, rather than subject matter. For example, classes regarding the gifted student and the troubled student were reimbursed. Additionally, the Employer pursued a policy of reimbursing for administrative courses, which were both outside the teacher's area of certification and not related to instructional responsibilities. Its rationale was to groom teachers for administrative positions. This policy benefited the teacher as well as the school district because it helped guarantee a pool of future, qualified administrators who could be promoted from within the district. In short, the record evidence demonstrates that the Employer gave "courses related to instructional responsibilities" a broad, not a narrow, interpretation. In fact, Person 1's request was the first to be denied.

The Board's undisputed right to grant or deny approval for tuition reimbursement by considering whether the course is related to instructional responsibilities is not an absolute right. As with the exercise of any contractual right, the Board, when making this determination, must be reasonable and act in good faith by applying consistent standards in a non-discriminatory way, which is also consistent with past practice.

#### **Application to the Facts**

The evidence is sufficient to show that the classes for which Person 1 requested reimbursement were related to her instructional responsibilities. The Employer should have granted its approval for reimbursement. Each course related to teaching techniques for special

education students, who are required to take Person 1's Management 1 course. For example, she learned that written materials for special education students should be double spaced and printed on colored paper because special education students perceive letters to "bounce" off of white paper. Union Exhibits 8 and 9. Person 1's annual evaluations include consideration of her ability to engage and teach these students. Additionally, the Employer acted inconsistent with prior decisions and past practice. In the past, the Employer had approved reimbursement for oiler courses related to teaching techniques for a particular kind of student, including a course regarding troubled youth, for which Person 1 was reimbursed. Further, Person 1's stated purpose for taking these courses is to become more expert in dealing with her special education students and to promote her job security with the district. There is no evidence she intends a career change involving abandoning her employment with the district.

### **CONCLUSION**

I conclude that the evidence is sufficient to prove that the Employer violated Section 5.2 B of the Master Contract by denying Person 1's request for tuition reimbursement for classes regarding special education teaching techniques. Section 5.2 B permits reimbursement, with Board approval, for classes related to instructional responsibilities, even though outside a teacher's area of certification. All special education students are required to take one of the courses, which Person 1 is assigned to teach. In the past, the Employer has reimbursed for classes relating to teaching a particular kind of student. Thus, the classes qualify for reimbursement because they relate to instructional responsibilities as interpreted by the Employer in the past.

**AWARD**

The grievance is granted. The Employer shall make Person 1 whole by immediately reimbursing her in the amount of \$ 100.00 per credit hour for tuition spent on the courses "Development & Implementation of individual Education Programs" and "-Students with Learning Disabilities."

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Anne T. Parton, Arbitrator

Dated: July 12, 20016