

Chiesa #3

**STATE OF MICHIGAN
VOLUNTARY LABOR ARBITRATION**

In the Matter of the Arbitration Between:

UNION

-and-

EMPLOYER,

Grievant: Employee 1

OPINION AND AWARD

THE CASE

The step one grievance which is dated January 24, 2005, Step 1 being an informal step, in part reads as follows:

TO: Director 1, Director of Labor Relations

FROM: Representative 1 - Area Representative

FE: Grievance # XXX

DATE: 01/24/05

This letter is written as notice of the desire of the Education Union to meet within ten workdays and discuss Grievance # XXX on the informal basis at Step 1 of the Grievance procedure as provided in Article 21.05 of the 2000-2004 Agreement.

ALLEGED GRIEVANCE

Grievant Employee 1 was denied her MA+15 salary lane by Central Administration

AGREEMENT ARTICLE(S)

Appendix A, Salary Schedule

The February 3, 2005 formal grievance, which was filed at Step 2, in part reads as follows:

A. Aggrieved Article Appendix A, Salary Lanes
Date of Occurrence 1/12/05

B. Statement of Grievance: Grievant was denied approval of her 15 hours beyond her MA degree in order to qualify for the mA+15 salary lane.
Transcripts on file with Central.

Relief Sought: The 15 hours beyond her MA qualifies the grievant for the MA+15 salary lane and grievant should receive the salary adjustment.

The Employer's response following a February 21, 2005 meeting reads as follows:

This is a timely response at step two following a hearing Monday, February 21 at Central Administration attended by Human Resources Director, Director 1, Union grievance chair Chairperson 1 and grievant Employee 1.

The facts of the matter are identical to those in Grievance XX, filed earlier this year and the written response from this office concerning that grievance, dated November 4, 2004, is hereby incorporated by reference into this response. That grievance was withdrawn 12/17/04 with the proviso that the grievant "will be seeking an appointment with Director 1 to discuss her MA+30 program. Also, she will be submitting official transcripts for the MA+15 salary lane."

Grievant has modified her quest for pay for *a* second Masters Degree, in Psychology, which she obtained from University. Instead of seeking the MA+30 step, she now wants MA+15 status. Grievant relies on Appendix A-1 contract language stating "They may be undergraduate hours **in the teacher's area of teaching with pre-approval from the Superintendent or his/her designee** or graduate level classes in **the teacher's area of teaching.**" (Emphasis on contract language added.)

Grievant argues that psychology classes, while not in her areas of teaching certification, Special Education and Biology, are nonetheless helpful to her in understanding students. The Grievant wants to take an expansive view of contract language in order to encompass course work which she feels is worthwhile.

But clearly this is a pay issue. The Board has invested many thousands of dollars in the MA+ program since its inception in the 2000-04 teacher contract.

The goal is a professional advanced teaching force. The precise contract language which was cited in bold and underlined earlier in this memorandum was negotiated to establish precise parameters in professional preparation. The control of the practice clearly rests with the Superintendent. Graduate level courses which may be pursued independently, subsequently limited by

the 8-16-2001 Letter of Understanding, nonetheless must be "in the teacher's area of teaching."

Therefore, this grievance is denied.

- because the course work is not in the grievant's (sic) area of teaching;
- the grievant did not get her program of study pre-approved by the Superintendent;
- a search of the Postsecondary Education website in the U.S. Department of Education indicates that University is not accredited for teacher education either nationally or in Michigan; and
- according to the 8-18-2001 Letter of Understanding, the Superintendent's decision that credits in a field of study other than the above does not qualify will **not be subject to the grievance procedure.**

While the parties added the MA+15 and MA+30 salary lanes in the 2000-2001 school year, there remained a number of details to be resolved so the implementation was delayed.

The parties met in October of 2000 and attempted to resolve the details regarding the implementation of the two additional salary lanes. The record contains notes which were created by Union representatives, as well as a draft document dated October 17, 2000 which when fine-tuned would have been sent to instructional personnel.

While at the arbitration the Union complained of an October 30, 2000 communication sent to all instructional personnel, the record establishes that there were no complaints at the time the memo was sent and there were no grievances or formal objections. Board witnesses suggest that the first time they heard any complaints was at the arbitration. Nonetheless, in part the memo reads as follows:

To: ALL INSTRUCTIONAL PERSONNEL
From: Director 1
Re: MA15 & MA30 SALARY LANES
APPENDIX A OF THE SALARY SCHEDULE
Date: October 30, 2000

As a result of a meeting between Superintendent 1, Acting Superintendent, Director 1, Union President, President 1 and Vice-President Chairperson 1 the following clarifications will apply for credit toward the MA+ Salary Lanes:

Any undergraduate course must be approved by the superintendent or his designee in advance to count toward MA+ coursework (sic) credit.

Teachers who have a master's degree and are taking graduate-level courses in their certified teaching areas do not need advanced approval.

Teachers who have a master's degree and want to take graduate-level courses outside their teaching area must get approval in advance.

Typical examples of graduate work which would be approved outside the area of teaching are:

1. Reading Programs
2. Curriculum & Instructional Programs
3. Technology Programs
4. Counseling Certification Programs
5. Administration Programs

The Principals do not approve or recommend the coursework (sic). This salary initiative was designed to develop a group of highly effective master teachers who can meet the changing needs of education and it is the administration's intent to advance those aims.

There were a number of subsequent communications between the parties dealing with the MA+ salary lanes, implementation, cut-off dates, etc. Ultimately, the parties arrived at a Letter of Understanding which was memorialized in the current Collective Bargaining Agreement. That Letter of Understanding is dated August 16, 2001 and in part reads as follows:

The parties, having agreed to modify the Appendix A of their 2000-2005 Agreement, regarding the mA430 lane as follows:

Those bargaining unit members who have not qualified to receive Master's plus 30 pay by November 1, 2003 shall have to provide evidence of course work towards a specialist or doctorate degree in order to qualify for the MA+30 salary lane or second Master's. Credits must be in one of the following fields of study: educational instruction, educational curriculum, educational supervision/ administration, or in their teaching major or minor.

After November 1, 2003, a second Master's degree or thirty (30) hours in a program of study not in the above referenced fields may be substituted to qualify for the MA+30 salary lane or as a second Master's only upon prior approval of the Superintendent or his designee. The

Superintendent's decision, that credits in a field of study other than the above does not qualify, will not be subject to the grievance procedure.

The grievant is a very well regarded member of the instructional staff. She is certified in the area of emotionally impaired and biology. As of the arbitration hearing, the grievant was employed as a resource room teacher, dividing her time between the resource room students and regular education. She does not possess a major or a minor in psychology and is not certified to teach psychology.

The grievant related that she wished to further her education to help her help her students. Pursuant to that goal, she sought to enroll in University. University is accredited by the Accreditation Agency and apparently maintains a campus in City A, State B. The grievant's involvement would have been, and was, as an on-line student.

In April 2003, the grievant sought letters of recommendation. One is dated April 7, 2003 and was authored by Person 1 who at the time was a supervisor of student services. In part, the letter reads as follows:

April 7, 2003

To Whom It May Concern:

Employee 1 has been a valued employee for over *six* years in The Schools. Employee 1 first entered Employer as a teacher certified to teach the Emotionally Impaired. She worked in that capacity for five years. This school year, Employee 1 is serving as a Teacher Consultant.

Employee 1 is a very hard working employee. She takes the initiative to handle a problem and follows through until that problem is solved. She has a genuine love for learning that is demonstrated through attendance at workshops and in-services.

Employee 1 is an excellent candidate for your program.

The grievant also sought and received a letter of recommendation from Person 2 who at the time was the principal of Middle School. The letter is dated April 14, 2003 and in part reads as follows:

April 14, 2003

To whom it may concern:

It is my pleasure to recommend Employee 1 who is applying to enter the PhD program at your school. She is an outstanding teacher and Teacher Consultant she would be (sic) excellent student in your program *as* well as a great contributor in your Program.

Employee 1 has been teaching in the Employer for the past five years. She has taught both in a self contained classroom for Emotionally Impaired students this past year Employee 1 has been as Middle School's Teacher Consultant. Her role in this position is important in both an administrative sense as well as working with all who play a role in the Special Education Process. She evaluates the students as well as doing their annual reviews she manages the students Individual Education Plan (IEP).

Employee 1's positive attitude and her ability to form relationships with her students and peers make her an outstanding candidate for the PHD (sic) program. She contributes during staff meetings. She is open to new ideas and suggestions.

She has attended several workshops in curriculum in the areas of Special Needs Students.

I have found Employee 1 to be sensitive, aware, outgoing, confident and exceptionally thoughtful. I enthusiastically recommend her for Post Graduate School. I am confident that she will be an asset at your school.

If you have any questions regarding Employee 1's skills I can be reached at: Phone numbers.

The grievant conceded that she did not receive prior approval from the superintendent to take the courses she did. In her view, they were approved when members of administration authored the recommendation letters referenced above.

The courses successfully completed by the grievant were not offered through University's education department. In fact, if I recall the record correctly, University is not recognized as a university which could provide educational services leading to teacher certifications or enhance certifications in the state of Michigan.

The grievant submitted her transcript and request for the MA+ salary increase with the initial goal of being placed on the MA+30 salary lane. Apparently the +30 referenced in the Collective Bargaining Agreement and other documents relate to semester hours and while the grievant took 34 hours, the 34 hours were quarter hours. The quarter hours did not convert to 30 semester hours and if the notes and documentation are correct, the 34 quarter hours would convert to 23 semester hours.

The grievant then attempted to have her 34 quarter hours approved as a basis for placing her on the MA+15 salary lane.

The superintendent testified that if the courses the grievant had taken were in the grievant's area of certification; the courses would have been approved. However, he did relate that she did not secure prior approval necessary for taking courses which he construed as being outside of the grievant's area of certification. However, the superintendent went on to testify that he would have waived the requirement of prior approval if the courses were appropriate in the sense that if prior approval were sought, it would have been granted.

The superintendent went on to relate that the courses completed by the grievant were not educational psychology courses and were not offered as part of University's education department. He further related that University was not authorized to confer a degree in educational psychology.

When faced with the denial of her request, the grievant filed the grievance referenced above. It was processed through the grievance procedure and presented to me for resolution. Additional aspects of the record will be displayed and analyzed as necessary.

DISCUSSION AND FINDINGS

There was a full and complete hearing with both Parties given every opportunity to present any evidence they thought was necessary. In addition, both filed helpful post-hearing

briefs. It should be understood that I have carefully analyzed the entire record even though it would be impossible and probably inappropriate to mention everything contained therein.

Portions of the Collective Bargaining Agreement read as follows:

MASTERS SALARY QUALIFICATIONS

1.) The dollar differences between the MA, MA15, and the MA30 salary schedules at the end of 2003-2004 at each step on each schedule shall remain the same during the life of the 2004-2007 agreement as each step of each of these schedules is calculated for each year of the contract period. The current dollar differences are:

	1	2	3	4	5	6	7	8	9	10	11
MA15	756	813	856	906	960	1016	1074	1136	-1203	12B2	1361
MA30	2644	2845	3000	3172	3356	3556	760	3978	4213	4485	4763

To qualify for these additional lanes, the hours must be post Master's Degree courses. They may be undergraduate hours in the teacher's area of teaching with pre-approval from the Superintendent or his/her designee or graduate level classes in the teacher's area of teaching.

2.) To qualify for the higher educational level of the MA degree or salary lanes beyond the MA, an official transcript shall be provided to the Superintendent's office on or before the end of the first semester. The salary adjustments shall be made effective the date the transcript is provided.

I previously displayed the August 16, 2001 Letter of Understanding regarding the MA+30 lane and I am not going to reiterate it at this point.

The Union argues that the Employer violated the Collective Bargaining Agreement when it refused to place the grievant on the MA+15 pay schedule. It argues that the Letter of Understanding regarding the MA+30 salary lane is applicable only to situations involving requests for placement on the MA+30 schedule. The Union argues that the grievant tendered an official transcript of her graduate level courses in a timely fashion. It goes on to argue that the graduate level courses completed by the grievant were within her "area of teaching." It points out that the grievant was

already fully certified to teach emotionally impaired students and to assist other teachers meet the needs of such students and, thus, there can be no real question but that the psychology courses she is seeking salary credit for are in her "area of teaching." It maintains that nothing in Appendix A-1 or Joint Exhibit 1 or Joint Exhibit 3 so narrowly defines "area of teaching" as to prohibit the grievant from getting graduate credit for clinical psychology courses since the "area" in which she teaches is special education. It maintains the grievant's motivation was to become an even more effective master teacher. The Union argues that the master courses for which the grievant seeks credit as qualifying her for the MA+15 salary lane have helped her teach her special education students self-regulation skills that help those students "reframe their disability in a positive sense, and become independent learners by discovering individual strategies that meet their personal needs." It maintains that given the grievant's certification and assignment as a teacher consultant of emotionally impairment students, the Employer's denial of placing her on the appropriate step of the MA+15 schedule was a violation of the plain provisions of Appendix A-1 of the parties' 2004-2007 Collective Bargaining Agreement.

The Employer argues that it is difficult to understand the grievance because it is undisputed that the grievant did not obtain approval for her course work in psychology and both she and the Union admitted the course work is not from an education school and could not lead to an education degree. It maintains that the grievant decided to pursue her degree in psychology and that degree does not meet the requirements of the parties' agreement for salary lanes for advance degrees. The Employer maintains that the implementation memo clearly states "Teachers who have a master's degree and want to take graduate-level courses outside their teaching area must get approval in advance." It points out that the grievant does not teach psychology and is not a school psychologist. The grievant is certified in EI and biology and does not have a minor or major in psychology and is not certified to teach psychology. Further, it argues that the course work was not from University's education

division. Further, while the Employer agrees that any advance education a teacher obtains would have to help in some respect in performing their job, that's not what the case is about. It maintains that the courses taken by the grievant were not in her teaching area. The grievant does not teach psychology. It argues that the Union has simply failed to establish a contract violation or a violation of the implementation memo. Further, it points out that all of the examples offered by the Union do not support the Union's case and, indeed, each example involved courses taken in a teacher's area of certification or instruction or were courses which the implementation memo stated would be approved. The Employer suggests that as unfortunate as the situation may be, it's not its fault and its actions do not involve either a contract violation or a violation of the terms of the implementation memo.

In cases of this nature, it is the arbitrator's, and hence my responsibility, to interpret the language in question, hopefully arriving at the mutual intent of the parties and apply that intent to the factual scenario.

As I previously mentioned, the grievant is recognized *as* a valuable member of the instructional staff. This conclusion is amply supported by the letters of recommendation authored by Novak on April 7, 2003 and Person 2 on April 14, 2003.

The grievant has testified that the course work she completed at Walden helped her to be a more effective member of the instructional staff at The Schools. I have no doubt that the grievant firmly believes that the course work she completed at Walden University helped her perform her duties at Employer. Nonetheless, I am not persuaded that the fact that the course work she completed helped her to become more effective at The Schools is the standard to be utilized to determine whether the course work she completed qualifies her for the MA+15 salary lane.

Additionally, there is a suggestion by the grievant that she assumed that the previously

mentioned letters of recommendation fulfilled the requirement of receiving prior approval if prior approval were needed for her to engage in the course work at University. However, I am not persuaded that the letters of recommendation previously mentioned can be utilized to meet the requirement that the Superintendent or his designee provide approval in advance, assuming such approval was needed. There is no indication that either Person 2 or Person 1 was the superintendent's designees. Clearly, the superintendent did not approve the course work the grievant completed.

Notwithstanding the above, the testimony was that if the courses were appropriate, the lack of prior approval would not have stood in the grievant's way of being moved to the MA+15 salary lane. The pivotal question then becomes whether the courses taken by the grievant could form the basis of establishing her qualifications to be placed on the MA+15 salary lane.

I realize that there was testimony from a Union witness who suggested that being placed on the MA+15 salary lane was a “no brainier.” Further, the witness testified that the only restrictions outlined in the language related to the MA+30 salary lane. He went on to suggest that as a practical matter, instructional staff would take courses which could later be utilized to meet the requirement of a second master's degree or 30 hours in a program which would qualify for the MA+30 consideration.

Notwithstanding the above, I am not persuaded that taking any series of courses beyond the MA could be the basis for placing instructional personnel on the MA+15 salary lane. In Appendix A-1, the Section labeled Masters Salary Qualifications sets standards which would not allow any post-graduate courses to be utilized to meet the MA+15 salary lane requirements. The language in the Collective Bargaining Agreement indicates that pre-approval is needed unless the graduate level classes are "in the teacher's area of teaching." In regard to the content

of the October 30, 2000 memo sent to all instructional personnel and dealing with the MA+15 and MA+30 salary lanes, it is noted that the language requires approval from the superintendent in situations where instructional personnel take undergraduate classes or instructional personnel with a master's degree take graduate level courses outside their teaching area. The only situation in which advanced approval is not needed is when a teacher who has a master's degree takes graduate level courses in his/her certified teaching areas.

As I previously indicated, the Employer has taken the position that if the grievant's courses were within her teaching area, it would have considered them as a basis for moving the grievant to the MA+15 salary lane even if prior approval was not granted. Thus, setting aside the question of prior approval, the focal point of this dispute is whether the courses taken by the grievant fall within that definition of "certified teaching areas" or "teaching area".

There is no doubt that the grievant believes the courses she completed from Walden University helped her be a better teacher. However, as I previously stated, that is not the standard. The question is whether those courses fall within the grievant's "certified teaching area" or "teaching area." A careful analysis of the record persuades me that they do not.

As expressed at multiple points in the discussion, the grievant is certified in EI and biology. She does not teach psychology, does not teach educational psychology and does not practice as a psychologist at the Schools. Furthermore, she is not certified to teach psychology and she is not a psychologist. While the courses may be helpful, they do not fall within the grievant's "teaching area" or "certified teaching areas."

realize, as pointed out by the Union, that the purpose of the salary initiative is to develop a group of "highly effective master teachers who can meet the changing needs of education and it is the administration's intent to advance those aims." However, while that general objective is

displayed, the specific requirements for being placed on a MA+ salary lane are outlined in the contract and in the implementation memo. The general statement regarding the development of a group of highly effective "master teachers" does not trump the specific language.

The conclusion that the courses taken by the grievant should not be utilized to qualify her for an MA+15 salary lane is further supported by the fact that the psychology courses she completed at University did not emanate from University's educational department. Furthermore, if I recall the record correctly, University is not qualified to offer courses which would lead to certification or additional certification in the state of Michigan.

As a result of the above, I am persuaded that the courses taken by the grievant do not fall within the grievant's "teaching area" or "certified teaching areas."

Furthermore, I am not persuaded that several of the examples offered by the Union establish that the Employer has applied a different standard to the grievant than it has in the several examples contained in the record. Without displaying each and every example, it would be fair to conclude that the explanations contained in the record for the Employer's actions in relation to those individuals listed establish that the Employer has followed the implementation memo and the language in the Collective Bargaining Agreement. I cannot conclude that the evidence regarding what the Employer did in relation to other instructional personnel establishes that the grievant has been treated in a dissimilar fashion, nor does it support the Union's contention that the language in question should be interpreted as broadly as it seeks to interpret in this dispute.

As a result, and after carefully analyzing the entire record, I am persuaded that the Employer's position in this case must be adopted. The Employer did not violate the Collective Bargaining Agreement when, based on the course work discussed in this dispute, it failed to

place the grievant on the MA+15 salary lane. As a result, I have no alternative but to deny the grievance.

AWARD

The grievance is denied.

Dated: September 11, 2006

MARIO CHIESA, Arbitrator