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In Re the Arbitration Between:

BMS File No. 15-PA-0386

Independent School District  
No. 314, Braham Minnesota,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Braham Education Association,

Union.

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- Pursuant to **Article XVII** of the collective bargaining agreement effective July 1, 2013 through June 30, 2015 the parties have brought the above captioned matter to arbitration.
- The grievance was filed on August 14, 2014.
- The parties selected James A. Lundberg to serve as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- At hearing the Employer questioned whether the arbitrator has jurisdiction over the dispute.
- The arbitration hearing was conducted on June 5, 2015 at Braham, Minnesota.
- Briefs were submitted by e-mail transmission on June 30, 2015 and the record was closed.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE ASSOCIATION**

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**ISSUES:**

**Issue One:**

*Whether the arbitrator has jurisdiction over the grievance.*

**Issue Two:**

*Whether the School District violated Article VII of the 2013-2015 collective bargaining agreement, when it denied a lane change to Karen Leniz from MA to MA+45?*

*If so, what is the proper remedy?*

**RELEVANT CONTRACT PROVISIONS:**

**ARTICLE VII – BASIC SCHEDULES AND RATES OF PAY**

...Section 3. Status of the Salary Schedule: The salary schedule shall not be construed as a part of the teacher's continuing contract. A teacher's advancement is subject to the right of the School District to withhold increments, lane changes, or other salary increases for just cause....

Section 4. Placement on Salary Schedule: The following rules shall apply in determining placement of a teacher on the appropriate lane on the salary schedule: All teachers employed must maintain a valid Minnesota teacher's license (or variance) for the subject area (s) for which they are assigned.

Subdivision 1. Course Work: Course work toward an advanced degree shall be accepted if the advanced degree is germane to the teaching assignment or areas of licensure as determined by the School District. Course work toward lane advancement need not be part of an advanced degree program up to and including the M.A. lane.

Subdivision 2. Germane: Credits to be considered toward lane advancement on the salary schedule must be germane to the teaching assignment as determined by the School District considering the recommendation of the Superintendent or areas of licensure. From the BA---MA lane, all credits have to be germane to the teacher assignment. Any teacher moving past the MA lane will have some discretion on their choice of graduate level courses. All credits can still be germane to their teaching assignment. However, 15 of the 45 credits can be taken at the discretion of the teacher with the approval of the Superintendent to be outside the scope of their teaching assignment. Also, any and all of the credits could be through an Administration Licensure program or for any course in Technology. All credits have to be at a graduate level.

Subdivision 3. Prior Approval: All credits, in order to be considered for application on salary schedule, must be approved in writing by the Superintendent prior to taking the course. Last minute course substitutions during registration will be considered by the Superintendent if the teacher contacts the Superintendent or representative as soon as possible regarding the substitutions prior to the 2<sup>nd</sup> class period.

Subdivision 4. Grades & Credits: To apply on the salary schedule, credits beyond the BA+15 lane must be graduate credits and each lane carry a grade average of B or higher. Undergraduate credits may apply to the BA +15 lane for course work, germane to the teaching assignment. The maximum number of credits of Pass/Fail courses allowed per lane change shall be five (5). The Quarter Credit system is the basis on which this contract's lanes are based. (1 semester credit 1.5 quarter credit.)

Subdivision 5. Contract Lane Changes: Individual contracts will be modified to reflect lane changes twice every year effective at the beginning of the school year and at the

beginning of the second semester providing a transcript is submitted to the School District prior to November 1 and March 1 on forms provided retroactive to the beginning of the school year or the beginning of the second semester, respectively. Any lane changes will be subject to Article VII, Section 3....

Subdivision 9. Step Advancement: A teacher must teach a minimum of 75 per cent of his/her contractual teaching days in a school year to qualify for a salary step advancement.

## **ARTICLE XVII – GRIEVANCE PROCEDURE**

“Grievance” shall mean an allegation by a teacher of Association resulting in a dispute or disagreement between the teacher and the School district or its administrative agents as to the interpretation or application of terms and conditions of employment contained in this Master Agreement.

## **ARTICLE XVIII – DURATION**

...Section 2. Effect. This Master Agreement constitutes the full and complete Agreement between the School District and the Association representing the teachers of the School District. The provisions herein relating to terms and conditions of employment supersede any and all prior Agreements, resolutions, rules and regulations concerning terms and conditions of employment inconsistent with these provisions.

### **ISSUE ONE: *Whether the grievance is arbitrable?***

The Employer argues that “there are no terms in the Master Agreement between Braham Education Association and Independent School District No. 314, which provide a remedy within the authority of an arbitrator to award.” The Association argues that the contract language is clear and unambiguous but cites no specific language in any of the

nine provisions of the collective bargaining agreement that allow a teacher to use credits earned while attaining a Master's Degree for purposes of advancing past Lane 5 (BA+60MA) on the salary schedule.

**Article XVII** of the collective bargaining agreement defines a grievance as "Grievance" shall mean an allegation by a teacher of Association resulting in a dispute or disagreement between the teacher and School District or its administrative agents as to the interpretation or application of the terms and conditions of employment contained in this Master Agreement.

**DISCUSSION:**

The core of the collective bargaining agreement between ISD No. 314, School District and the Braham Teachers Association is the salary schedule, which includes salary step increases and lane changes. Salary steps and lane changes provide for compensation increases as a teacher gains experience and knowledge in his or her field. Karen Leniz alleges she is entitled to compensation at the MA+45 salary lane, based upon her understanding of the terms and conditions of employment contained in the Master Agreement. The School District has interpreted the provisions differently. Few, if any, disputes fall more directly within the scope of the grievance provisions of the contract.

The jurisdiction of the arbitrator is based upon the following provisions found at

**Article XVII:**

If the aggrieved is not satisfied with the disposition of the grievance by the Superintendent, the grievance may be submitted to arbitration before an impartial arbitrator.... Questions arising over arbitrariness of an alleged grievance shall be

submitted to arbitration for determination. The arbitrator shall have no power to alter, add to, or subtract from the express terms of the Master Agreement. Both parties agree to be bound by the award of the arbitrator.

The arbitrator has jurisdiction over the above dispute, which was brought to arbitration because the grievant was not satisfied with the Superintendent's disposition of the grievance. In this case, the Education Association alleges that the Superintendent's interpretation of the terms and conditions of the collective bargaining agreement is arbitrary. *The grievance falls directly within the scope of the arbitration provision and is arbitrable.*

**FACTUAL BACKGROUND:**

The grievant, Karen Leniz, is a licensed, elementary school teacher employed by the Braham, Minnesota School District, ISD No. 314. She has worked for the School District, since the 2000-2001 school year. Ms. Leniz is a member of the Braham Education Association.

The School District is organized by the Braham Education Association. Wages and terms and conditions of employment for teachers are governed by a collective bargaining agreement.

Braham teacher salaries are comprised of two components. One component is the annual wage step increase, which recognizes teaching experience. The other wage component provides additional compensation for achieving a Masters Degree and also for completing "lane change eligible" course work.

While both education and experience are recognized as elements that increase the teacher's value to the School District, the collective bargaining agreement requires that

lane change eligible course work must be approved by the Superintendent before the teacher takes the course, must be a graduate level course and must be germane to the teaching assignment. If courses are to be applied to a lane change beyond the Master Degree, 15 credits may be taken outside the scope of the teaching assignment and still be considered "germane". For example, any course in technology would be germane and courses through an administrative licensure program are considered "germane".

The "lanes" of the salary schedule progress from BA, with no additional credits by 15 "quarter credit" increments to BA plus 60 quarter credits. The BA+60 lane is shared with the MA lane, meaning a teacher with a Masters Degree is paid the same as a teacher who has a BA degree and has earned 60 additional "lane change eligible" quarter credits. The salary schedule progresses beyond the Master/BA+60 lane by 15 quarter credit increments. The salary schedule has no provision for "specialist" degrees nor does it incorporate a PHD lane or equivalent. The salary schedule tops out at MA+60 credits. For a teacher with only a BA degree, the salary schedule tops out at the BA+60 lane.

Teachers with a BA degree often enter a pre-approved Masters Degree program and apply the credits they earn toward their Master's Degree to incremental lane changes on the salary schedule. When the teacher earns a Master's Degree additional lane changes are available but the teacher is not required to participate in a specific degree oriented program. The salary schedule does not place any time limit within which a teacher may or must earn a Master's Degree nor is there any statement in the salary schedule or other sections of the collective bargaining agreement that designates an order or sequence that a teacher must follow in obtaining a Master's Degree and/or lane change eligible graduate credits.

When Ms. Leniz was hired by the School District she had no prior teaching experience and claimed no lane change eligible graduate course credits. Hence, she was placed at Step one, BA lane on the salary schedule. Initially, Ms. Leniz sought advancement on the salary schedule by taking pre-approved graduate courses that were germane to her teaching assignment and/or licensure. She advanced on the salary schedule to the BA+60 lane. After she arrived at the BA+60 salary lane, Ms. Leniz sought and obtained pre-approval of a Master's Degree program, which she completed. When Ms. Leniz completed her Master's Degree, she sought and received recognition of her advanced degree but did not initially ask for advancement on the salary schedule. On July 1, 2014 Ms. Leniz asked to be moved on the salary schedule to the MA+45 lane. At the time she made the request, Ms. Leniz possessed a Master's Degree from a pre-approved program and she had earned at least 45 additional graduate quarter credits for pre-approved courses.

The Employer denied Ms. Leniz request for advancement on the salary schedule based upon the following:

the credits were already used for lane changes and salary advancement, they cannot be used for lane changes following completion [ of the degree].

The School District's decision was grieved but the parties were unable to resolve the dispute through the grievance procedure. Hence, the issue was brought to arbitration for a final and binding determination.

**SUMMARY OF THE POSITION OF THE EDUCATION ASSOCIATION:**

The Education Association argues that the lane change request must be granted based upon the plain language of the collective bargaining agreement.

**Article VI** of the collective bargaining agreement establishes the eligibility standards for "lane change eligible" courses. In order for a course to be lane change eligible it must be:

- a graduate level course;
- germane to the teacher's teaching assignment or licensure (as determined by the School District);
- pre-approved in writing by the Superintendent prior to taking the course; and
- the teacher must carry a B average or higher.
- course work toward lane advancement need not be part of an advanced degree program..

Ms. Leniz earned a Master's degree and she also earned more than 45 credits for pre-approved graduate level, germane courses that were not part of her Master's Degree program. Based upon the plain language of the collective bargaining agreement Ms. Leniz has complied with all of the contractual requirements for placement on the MA+45 salary lane and the Association asks for an order directing the School District to place the grievant at the MA+45 lane, as of July 1, 2014.

In response to the Employer's position the Union contends that there is no contractual basis for denying the lane change because "the credits were already used for changes and salary advancement and can not be used for advancement following completion [of the degree]. In fact, the opposite is true. An example of a teacher who used credits that were part of his Master's program, used the same credits to move from BA to BA+15 and then applied the credits to move to the MA lane, when he completed his degree.

There is no contractual provision that prohibits jumping 3 lanes past the Master's lane. In fact, examples of employees who jumped more than one lane were given at hearing. The contract does not require teachers to advance lane by lane. While the Association is uncertain as to the meaning of "stockpiling" credits, they point out that teachers are not obligated to make every incremental step along the way nor are they obligated to take certain courses at certain times or to meet a specific schedule.

The lane change qualified credits Ms. Leniz submitted with her request to move to MA+45 were not applied to her Master's program. There is nothing in the collective bargaining agreement that says lane change eligible credits taken outside of an approved Masters's Degree program may only be applied to a lane change, after the Master's Degree is earned. In this case Ms. Leniz took her courses in a different order than the Superintendent prefers but her course work meets all of the criteria established in the collective bargaining agreement. Moreover, the School District receives the same benefit from the course work taken by Ms. Leniz regardless of whether the courses were taken before or after she completed her Master's program. Ms. Leniz has earned a Master's Degree and has earned more than 45 lane change eligible credits in addition to her Master's Degree and the contract says she is to be paid at the MA+45 lane.

There is no past practice that modifies the express language of the collective bargaining agreement. While past practice can be used to fill a gap or assist in interpretation of a contractual provision, there is no need to look to past practice in this case. There exists no gap in the contractual language and the plain language is clear and unambiguous. The contract has a zipper clause at **Article XVIII** acknowledging that it is

the full and complete agreement and the Arbitrator does not have authority to rewrite or modify the agreement, **Article XVII.**

The past practice cited by the School District supports a preferred way of advancing on the salary schedule but there is no evidence of any prior submission or denial of advancement based upon the facts presented in this case. There is no evidence that the situation has ever been addressed in the past. Hence, no past practice can be established.

The Association asks that the grievance be upheld and the School District be directed to place the grievant at the MA+45 lane and that grievant be awarded back-pay from the date that the lane change should have taken effect.

**SUMMARY OF EMPLOYER'S POSITION:**

The Employer takes the position that credits earned by a teacher before he/she has earned a Master's Degree may not be applied to lane changes beyond the Master's lane. First, the teacher must attain a Master's Degree, then he/she must obtain approval of courses intended to be applied to lane changes beyond the Master's Degree. As explained by the Superintendent, the process is linear and recognizes the importance of concentrated study applied to a Master's Degree and the professional benefits of obtaining the degree. Hence, advancement past Lane 5 (BA+60/MA) on the salary schedule is not allowed.

The School District argues that a teacher may not use the same credits for more than one lane advancement or use credits for advancement that have not been pre-approved. Even if, the language of the collective bargaining agreement is unclear or ambiguous, past practice supports the Employer's position.

The School District cites *Ramsey County v. Am. Federation of State, County and Municipal Employees, Council 91, Local 8*, 309 N.W.2d at 788 in support of the claim that a past practice exists. To determine if there is a binding past practice the following factors must be present:

Clarity and consistency;

Longevity and repetition;

Acceptability;

A consideration of the underlying circumstances; and

Mutuality.

The Employer does not dispute that there has never been an instance in the past fifteen years in which a lane change request, such as grievants', has been granted or denied. The fact is that no other teacher has ever been so bold as to submit a request for credits previously utilized for another lane change as the language in the Agreement does not support such an action. The lack of a "practice" does not establish that the actions are permitted.

The evidence supports the fact that over the past fifteen years teachers have always been required to obtain their Master's Degree and then seek additional graduate level credits to advance past Lane 5 (BA+60/MA) on the salary schedule. Teachers in the Braham School District have never been allowed to apply credits earned in obtaining a Master's Degree to salary lane changes beyond the Master's Degree. Also, in the most recent negotiations the parties discussed and agreed that teachers who previously attained more than 60 credits post Master's Degree would not be able to "bank" those credits to

move from Lane 8 (MA+45) to the new lane 9 (MA+60), as there had been no approval of the use of those credits for that purpose.

Based upon the history of the parties there is no support for the proposition that teachers may reuse previously applied credits when advancing from Lane 5 (BA+60/MA) nor may the teacher apply credits used to earn a Master's Degree to lane changes beyond the Master's Degree.

The lane change request made by the grievant is unreasonable because it would be fiscally irresponsible. In this case the School District did not anticipate that the grievant would be moving / jumping three lanes at one time. The budgeting process did not take into consideration the possibility that the grievant would be paid at a level higher than the Master's lane. If the grievant is compensated at the MA+45 lane, the School District will be off budget and the grievant will receive a financial windfall.

The School District contends that the Education Association did not meet its' burden of proof. There is no basis for allowing salary advancement beyond Lane 5 (BA+60/MA) without first earning a Master's Degree. Only after a Master's Degree is earned may the teacher advance on the salary schedule beyond Lane 5.

The grievance should be denied.

**OPINION:**

The salary lane change provisions of the collective bargaining agreement are intended to compensate teachers for acquiring additional education that they can use in their daily teaching activities. The School District benefits, when a teacher acquires additional education and the quid pro quo is advancement to a higher lane on the salary schedule. No evidence was submitted at hearing that remotely suggests that the School

District receives a lesser benefit from qualifying educational courses taken by a teacher before a Master's Degree is earned as opposed to those taken after a Master's Degree is earned. In fact, the contract at **Article VII, Section 4, Subdivision 3** says:

To apply on the salary schedule, credits beyond the BA+15 lane must be graduate credits and each lane carry a grade average of B or higher. Undergraduate credits may apply to the BA +15 lane for course work, germane to the teaching assignment.

The contract does not restrict the use of credits to a specific segment of the salary schedule. The arbitrator may not add to or modify the contract. Based upon the plain meaning of the language governing salary lane advancement, there is no difference between qualifying credits, not part of a degree program, earned before or after a Master's Degree. All pre-approved qualifying credits may be applied to salary lane advancement.

The Braham School District and Braham Education Association agreed in their contract that credits earned by teachers must meet specific criteria in order to be applied to salary lane changes. To qualify for a lane change the credits must be pre-approved by the School District, the credits must be germane and they must be graduate level credits. The collective bargaining agreement does not impose any restriction upon when or in what order pre-approved credits may be applied to a lane change and the arbitrator may not add such a term. Similarly, a Master's Degree is given credit for salary advancement, if the program is pre-approved. Nothing in the collective bargaining agreement requires a teacher to first earn a Master's Degree and then earn lane change eligible credits beyond

after earning a Master's Degree in order to have qualifying credits apply to salary lane advancement beyond a Master's Degree.

The collective bargaining agreement in this case has no PHD lane or Specialist lane. No specific advanced degree program is required beyond a Master's Degree in order to benefit from credits earned in addition to a Master's Degree. While the lane change eligible qualifying requirements for credits beyond a Master's Degree are somewhat more relaxed than the requirements used to evaluate credits earned before a Master's Degree, the credits must be pre-approved, graduate level and germane. Ms. Leniz earned 60 pre-approved, graduate level, germane credits in addition to her Master's Degree. Under the Employers' theory the grievant would receive no additional compensation for her Master's Degree, which is contrary to the purpose of the salary lane schedule.

From the testimony of witnesses it is clear that teachers in the Braham School District have been allowed to advance more than one lane, when they have accumulated a sufficient number of qualifying credits. Moreover, no provision in the collective bargaining agreement prohibits advancing more than one lane at a time.

The Employer may deny advancement on the salary schedule for "just cause." The Employer made no argument that just cause exists in this case and the arbitrator finds no "just cause" for denying the grievant advancement on the salary schedule to the MA+45 lane.

Ms. Lenitz has taken more than 45 qualifying credits in addition to completing a Master's Degree. Based upon the plain language of the collective bargaining agreement, the grievant has met the criteria for being paid at the MA+45 lane on the salary schedule

and there exists no “just cause” for denying grievant placement at the MA+45 lane.

Hence, the grievance must be upheld.

**AWARD:**

1. *The grievance is hereby upheld.*
2. *The School District is directed to place grievant on the MA+45 salary lane as of the date that she submitted her request for placement at the MA+45 salary lane.*
3. *The School District shall pay back pay to grievant in the amount of the difference between the MA salary lane and the MA+45 salary lane from the date that the grievant submitted her request for placement at the MA+45 lane to date, together with interest thereon at the rate payable on a judgment in the State of Minnesota, during the same time period.*

Dated: July 14, 2015

  
James A. Lundberg, Arbitrator