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In Re the Arbitration Between:

BMS File No 15-PA-0798

Independent School District No. 94,  
Cloquet, MN,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Education Minnesota Cloquet,

Union.

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- Pursuant to **Article XIX** of the collective bargaining agreement effective July 1, 2013 through June 30, 2015 the parties brought the above captioned matter to arbitration.
- The parties appointed James A. Lundberg to serve as their neutral arbitrator from a list of arbitrators provided by the Minnesota Bureau of Mediation Services.
- The grievance was filed at the second step on October 10, 2014.
- At hearing the Employer argued that the grievance was untimely and asked the grievance be forfeited based upon **Article XIX, Section 3** of the collective bargaining agreement.
- The grievance and timeliness issues are properly before the arbitrator for final and binding determination pursuant to **Article XIX, Section 10** of the collective bargaining agreement.
- The Arbitration hearing was conducted on July 23, 2015 at Cloquet, Minnesota.

- Briefs were submitted on August 19, 2015 by e-mail transmission and the record was closed.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNON**

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**ISSUES:**

**Union's Statement of the Issue:**

- 1. Did the District violate Article VII, Section 3 of the Collective Bargaining Agreement by denying bargaining unit members the appropriate lane placement and lane advancement for coursework they completed in a graduate-level teacher preparation program?*
- 2. If so, what is the appropriate remedy?*

**Employer's Statement of the Issues:**

- 1. Is this dispute arbitrable?*
- 2. If so, did the District violate Article VII of the 2013-15 collective bargaining agreement when it followed its clear past practice of denying Master's Degree credits for foundational teaching licensure courses offered through the College of St. Scholastica Graduate Teaching Licensure program?*

**RELEVANT CONTRACT PROVISIONS:**

**ARTICLE III – DEFINITIONS**

**Section 1. Terms and Conditions of Employment:** Shall mean the hours of employment, the compensation therefore, and economic aspects relating to employment, but does not mean education policies of the school district.

**Section 2. Teacher:** Shall mean all persons employed by the school board in a position for which the person must be licensed by the State Board of Education/the State Board of Teaching, including all substitute teachers employed by the school board for thirty-one (31) or more days for the same teacher, but shall not include superintendent, assistant superintendent, principals, and assistant principals who devote more than 50% of their time to administrative or supervisory duties, confidential employees, supervisory employees, essential employees and such other employees excluded by law. Full-time teacher shall be defined as a teacher who is contracted to work the full basic teacher duty during the teaching day as defined in this agreement in **Article XIII, Section 1.** This definition shall include teachers who are assigned duties during the teaching day as the activities director. In such a case, the activities director shall be paid according to the appropriate step and lane of this agreement. The board may decide to hire an administrator or non-certified person to perform the duties of activities director. In such a case, the teachers' Collective Bargaining Agreement (CBA) will not apply.

**Section 3. License:** For purposes of the Agreement, certification and licensure shall be synonymous.

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

**Section 1. 2013-2014 Salary Schedule:** The wages and salaries reflected in Schedule A-1, attached hereto, shall be a part of the Agreement for the 2013-2014 school year.

**Section 2. 2014-2015 Salary Schedule:** The wages and salaries reflected in Schedule A-2, attached hereto, shall be a part of the Agreement for the 2014-2015 school year.

**Section 3. Placement of Salary Schedule:** The following rules shall be applicable in determining placement of a teacher on the appropriate salary schedule:

**Subd. 1 Credits:** (The language contained in Subd. 1 shall be applicable to lane changes granted in 1980 and thereafter, or until modified.)

- a. Bachelor's Degree +10 (15) lane will require 10 semester credits (15 quarter credits) of which 8 semester credits (12 quarter credits) must be at the graduate level.
- b. Bachelor's Degree +20 (30) lane will require 20 semester credits (30 quarter credits) of which 16 semester credits (24 quarter credits) must be at the graduate level.
- c. Bachelor's Degree +30 (45) lane will require 30 semester credits (45 quarter credits) of which 24 semester credits (36 quarter credits) must be at the graduate level.

- d. Bachelor's Degree+40 (60/Master's Degree) lane will require 40 semester credits (60 quarter credits) of which 32 semester credits (48 quarter credits) must be at the graduate level.
- e. Master's Degree +10 (15) lane will require 10 semester credits (15 quarter credits) of which 8 semester credits (12 quarter credits) must be at the graduate level.
- f. Master's Degree +20 (30) lane will require 20 semester credits (30 quarter credits) of which 16 semester (36 quarter credits) must be at the graduate level.
- g. Master's Degree +30 (45) lane will require 30 semester credits (4 quarter credits of which 24 semester credits (36 quarter credits) must be at the graduate level.

**Subd. 2. Areas of Credit:** All credits must be approved by the superintendent prior to taking the course based on the criterion listed below in this subdivision. If a Master's Program is approved, then all courses within the Master's Program must have prior approval. All credits must be in the teacher's major, minor, or a subject matter area in which the individual is teaching, or a subject area in which the individual has filed a plan of college work with the superintendent which will lead to a minor or a major and licensure by the Minnesota Department of Education.

Other courses may be approved for credit at the discretion of the superintendent. Effective July 1, 1996, a maximum of 10 semester credits (15 quarter credits) of video tape and/or correspondence courses may be used in

the life of a teacher. If a teacher has accumulated more than 10 semester credits (15 quarter credits) on or before July 1, 1996, those credits will continue to be applied. Beginning July 1, 2009, the superintendent will have discretion whether to grant credit approval for rigorous online courses.

There will be no credit accumulation limitations for these types of courses.

## **ARTICLE XIX – GRIEVANCE PROCEDURE**

**Section 1. Grievance Definition:** A “Grievance” shall mean a dispute or disagreement between the teacher (s) and the school board as to the interpretation or application or any term or terms of any contract required under the Public Employment Relations Act.

**Section 2. Representative:** The exclusive representative, administrator, or school board may be represented during any step of the procedure by any person or agent designated by such party to act on his or her behalf. The teacher(s) will be represented by the exclusive representative.

### **Section 3. Definitions and interpretations:**

**Subd. 1 Variation from Procedure:** The parties, by mutual written agreement, may waive any step and extend any time limits in a grievance procedure. However, failure to adhere to the time limits may result in a forfeit of the grievance, or, in the case of the employee, will require mandatory alleviation of the grievance as outlined in the last statement by the exclusive representative or employee.

Subd. 2. Days: “Days” mean calendar days excluding Saturday, Sunday, and legal holidays as defined by Minnesota Statutes or non-duty days during the school year.

Subd. 3 Computation of Time: In computing any period of time prescribed or allowed by procedures herein, the date of the act, event, or default for which the designated period of time begins to run shall not be included. The last day of the period so computed shall be counted, unless it is a Saturday, Sunday, or legal holiday, or non-duty day during the school year, in which event the period runs until the end of the next day which is not a Saturday, Sunday, legal holiday, or non-duty day during the school year.

Section 4. Step One: Any grievance must first be submitted in writing to the building principal within twenty (20) days after the date of the event or through the use of reasonable diligence, the employee should have had knowledge of the occurrence that gave rise to the grievance. An effort may first be made to adjust an alleged grievance informally between the teacher and the parties. The building principal will answer both the employee and the exclusive representative in writing within five (5) days of receipt of the written grievance.

Section 5. Step Two: If the exclusive representative is not satisfied with the written answer of the building principal in step one; the exclusive representative must submit the grievance in writing to the superintendent no later than fifteen (15) days after the receipt of the principal’s written response....

**ARTICLE XX – DURATION ...**

**Section 2. Effect:** This Agreement constitutes the full and complete Agreement between the school board and the exclusive representative representing the teachers of the District. The provisions herein relating to terms and conditions of employment supersede any and all prior agreements, resolutions, practices, school district policies, rules, or regulations concerning terms and conditions of employment inconsistent with these provisions

**FACTUAL BACKGROUND:**

In September of 2014 Annette Unertl and Phillip Beadle, teachers working for the Cloquet, Minnesota School District, met with Cloquet Superintendent, Ken Scarbrough to discuss their lane placement on the **Salary Schedule A-2**, which is incorporated into the collective bargaining agreement at **Article VII, Section 2.** Ms. Unertl and Mr. Beadle had both completed Master Degree programs, through the College of St. Scholastica Graduate Teaching Licensure (GLT) program. Both teachers were working on their Master’s Degrees, when they were hired by the Cloquet School District.

Ms. Unertl is currently working as a fourth grade teacher, had previous teaching experience, a BA degree, licensure in secondary education and twenty-six (26) graduate credits in the GLT program at the time she was hired. Her initial salary placement was at the BA lane.

Mr. Beadel is employed as an American Indian Education teacher. Mr. Beadle had a B.A. degree and was enrolled in the GLT program, when he became a teacher for the Cloquet School District. He possessed a BA degree and had earned thirty-

three (33) graduate credits at the time he was hired. Mr. Beadle's initial placement on the salary schedule was at the BA lane.

Neither Mr. Beadle nor Ms. Unertl had any discussions with the Education Association, regarding their lane placement on the salary schedule, until they learned from Superintendent Scarbrough in September of 2014 that they would never be compensated for their Masters Degrees earned in the GLT program at St. Scholastica. Upon learning that Superintendent Scarbrough would not approve the graduate credits or the degree program earned through St. Scholastica, Mr. Beadle and Ms. Unertl brought the problem to their Union Member Rights Advocate, Chris Swanson.

The Grievance form submitted by Mr. Swanson identifies the date that the grievance occurred as September 12, 2014. The grievance was "waived to Superintendent" following an original meeting on September 25, 2014, where the parties were unable to resolve the issue. The grievance was submitted at Step 2 on October 10, 2014.

The School District, through Superintendent Scarbrough, denied the grievance claiming it was "untimely" and the School District "did not believe that it [GLT program] complied with either the language or intent of the Collective Bargaining Agreement". The Superintendent opined that graduate credits earned for course work in the GTL program, which in his opinion were not at the graduate level

but simply provided employees the basic education required to meet teacher certification requirements, should not lead to movement on the salary schedule.<sup>1</sup>

At the time the grievance was submitted the Union believed that there could be other teachers who had not received appropriate placement, as a result of the Superintendent's views regarding the St. Scholastica GLT program. However, the Union had not specifically identified all teachers that may have been improperly placed on the salary schedule. Consequently, the grievance placed the School District on notice that other teachers may be joined in the grievance. The grievance statement says "The district has not granted course credits/lane changes allowed for in the contract and established through past practice. This currently affects several teachers, and potentially all future teachers in the unit, who are represented as grievants in this issue."

In addition to Ms. Unertl and Mr. Beadle the following teachers were added to the grievance and claim they were inappropriately placed as follows:

- Matthew Krafthefer, the School District is not compensating him for the Masters Degree he earned through the College of St Scholastica.
- Cheyenne Deters, the School District is not compensating her for graduate credits earned at the College of St. Scholastica, which would place her at the BA+40/MA lane on the salary schedule.

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<sup>1</sup> Taken from summary in written grievance form. The statement fairly summarizes the employer's position on the merits.

- Emily Foyt, was placed at the BA lane, rather than the BA+30 lane on the salary scheduled, as the School District is not compensating her for graduate credits earned at the College of St. Scholastica.
- Molly Asp, was placed at the BA lane, rather than the BA +30 (she has earned 33 graduate credits), as the School District is not compensating her for graduate credits earned at the College of St. Scholastica.
- Jolene Aho, was hired in June of 2015 and the Superintendent has not recommended lane placement based on earned graduate credits and the Masters Degree program she is enrolled in at St. Scholastica.
- Will Donofrio, is placed at the BA lane of the salary schedule, as the School District is not compensating him for thirty-three (33) graduate credits he has earned.

All of the grievants were hired by the School District with the knowledge that they were enrolled in the St. Scholastica Master's Degree Program (GTL) and were taking graduate level courses in the program.

The Union is asking for a remedy from September 12, 2014. While the practice that has resulted in this grievance developed over a period of roughly five years, prior lane placement errors are not before this Arbitrator.

The Dean of the St. Scholastica School of Education described the elements of the St. Scholastica Master's Degree Program (GTL) at length. In her testimony Dean Olsen confirmed that the program was accredited by an agency recognized by the U.S. Department of Education in 2008 and attained re-accreditation 2014. The program has passed review paper and on site review by the Minnesota Department

of Education. The Dean testified that the program does incorporate teacher licensure requirements in the course work toward the Master's Degree but that the course work is at the more rigorous level necessary to meet graduate degree standards. Dean Olsen, whose credentials establish her as an expert in the field, asserts that the degree of rigor in the GTL program is by no means compromised by incorporation of licensure requirements into the graduate course work. State assessment and nationally recognized accreditation has been granted to the program, as it appears on the transcripts of the grievants. Dean Olsen explained that the accreditation process starts with internal peer review by the St. Scholastica faculty for the purpose of assuring that accreditation of the Master's Degree program and all components is appropriate. The GTL program, including courses toward licensure, is comparable to many similar Master's Degree programs offered by other Colleges and Universities in the State of Minnesota. Other Colleges and Universities offering similar programs include the University of Minnesota, Winona State and St. Thomas.

Dean Olsen prepared a written comparison of the courses being challenged by the Superintendent and undergraduate courses that incorporate licensure requirements, which was submitted to the Superintendent. The comparison document was submitted into evidence as **Union Exhibit #2**. The exhibit clearly distinguishes the degree of difficulty between the undergraduate and graduate level courses. Dean Olsen's expert testimony regarding faculty peer review, program accreditation, State review, together with her written comparison of the graduate GTL program and undergraduate licensure program left no reasonable doubt that

the GTL program is a bona fide Master's Degree program and the courses at issue in this arbitration are bona fide graduate level courses.

The grievant's who testified at hearing assert that courses through the GTL program are far more rigorous than their undergraduate level courses and performance expectations are much higher.

Superintendent Scarbrough based his denial of placement on his belief that courses that incorporate certification requirements do not meet graduate level standards. Nothing in Superintendent Scarbrough's testimony, regarding his educational background or experience, suggests that he has specific expertise upon which he can reliably determine whether a State reviewed and accredited Master's Degree program is offering courses that are not at the graduate level. Moreover, the Superintendent said that he has no problem accepting graduate work done through St. Scholastica. It is the Superintendent's opinion that the courses offered through St. Scholastica that incorporate licensure requirements are "basic or foundational" and not on a graduate level. The Superintendent provided no metric to support his opinion, no thesis or other scholarly report to support his position, nor did he provide a complete expert review analysis of the GTL program or compare the GTL program with other Master's Degree programs. The Superintendent did not explain why State review and nationally recognized accreditation were insufficient verification of the quality of the GTL program and the courses taken through the GTL program.

The parties were unable to resolve the above grievance and the matter was brought to arbitration for a final and binding determination.

## **ISSUE #1: WHETHER THE GRIEVANCE IS ARBITRABLE?**

**ARTICLE XIX** of the collective bargaining agreement establishes the definition of a grievance and the procedures to be followed by the parties in processing a grievance.

### **“ARTICLE XIX – GRIEVANCE PROCEDURE, Section 1. Grievance**

**Definition:** A ‘Grievance’ shall mean a dispute or disagreement between the teacher(s) and the school board as to the interpretation or application of any term or terms of any contract required under the Public Employment Relations Act. ...

**Section 2. Representative:** ...The teacher (s) will be represented by the exclusive representative.”

The dispute before this Arbitrator is about the interpretation and application of the terms of the collective bargaining agreement establishing wages and the conditions under which wages shall be paid to teachers by the School District. There is no doubt that the dispute before the Arbitrator falls within the contractual definition of a “grievance”.

The Employer argues that the grievance was untimely, because the practice of denying graduate credits and Master’s Degree advancement from the St. Scholastica GTL program has been in place for at least five years. In fact, the initial lane placements of Ms. Unertl and Mr. Beadle did not take into consideration graduate credits earned through St. Scholastica. **Section 4. Step One** of the grievance procedure requires submission of the grievance “within twenty (20) days after the date of the event or through the use of reasonable diligence, the employee should have had knowledge of the occurrence that gave rise to the grievance.” The

Union has known about the practice for many years. Hence, the grievance is not timely. The School District bases the timeliness argument upon the following written statement made by the Superintendent in the grievance denial dated October 25, 2014 “EMC (Education Minnesota Cloquet) has either known or should have known of the issue giving rise to this purported grievance no later than October 5, 2009. However the grievance was submitted more than five years later, well past the 20-day period required by the Master Agreement.”

The grievance document and testimony over how the dispute arose establishes that the Union first became aware that the School District would not recognize the Master’s Degrees earned by Ms. Unertl and Mr. Beadle on or about September 12, 2014. The original meeting on the grievance was conducted on September 25, 2014, within the contractual timelines. Following the September 25, 2014 meeting, the STEP 2 grievance document was submitted on October 10, 2014, also within the contractual timelines. The face of the document and the testimony of witnesses conclusively establish that the grievance was timely submitted.

The School District’s brief argues that a past practice developed regarding the treatment of the St. Scholastica GTL program and degrees obtained thereunder over the past five (5) years. However, there is no evidence of mutual acceptance between the School District and Education Minnesota Cloquet. The evidence regarding initial placement of teachers on the salary schedule, including placement of Ms. Unertl and Mr. Beadle, is that the Superintendent directed the specific lane placement with no Union involvement. If there was any negotiation involved, it was between the Superintendent and the individual teachers, which circumvented the

“exclusive representative.” The School District cannot establish a past practice where the “exclusive representative” has not been a participant in the development or evolution of the practice. In this case, the alleged past practice was a form of direct negotiation between the Employer and the teacher over wage lane placement not a practice developed between the School District and the “exclusive representative.”

The School District actions that are challenged in this grievance arose no earlier than September 12, 2014, when the Union first became aware that the School District would not recognize the GTL Master’s Degree program from the College of St. Scholastica, because it was the Superintendent’s opinion that credits earned in the program “were not at the graduate level but simply provided employees the basic education required to meet teacher certification requirements.” The documented meetings and filings fall within the timelines established in the collective bargaining agreement.

As the Union was made aware of other teacher’s whose graduate credits earned through the GTL program at the College of St. Scholastica were being denied by the School District, the affected teachers were added to the grievance. It is clear from the documents submitted into evidence that the School District had knowledge of the grievance and knew the lane placement of teachers hired following the filing of the grievance would/could be impacted by this grievance. There is no credible evidence that the School District was in anyway prejudiced by the expansion of the grievance from two teachers to eight teachers. The School District controlled the

policy in question, the hiring and placement decisions and all of the hiring and personnel records involved in the process.

**AWARD:**

*The grievance was submitted within the timelines established by the collective bargaining agreement. Hence, the grievance is arbitrable.*

**SUMMARY OF UNION'S POSITION:**

The essence of the Union's argument is that language of the collective bargaining agreement is clear, unambiguous and supports their position.

The initial lane placement language of the collective bargaining agreement is clear and unambiguous. It says: "*The following rules shall be applicable in determining placement of a teacher of the appropriate salary schedule.*" **ARTICLE VII,**

**Section 3.**

**ARTICLE VII, Section 3, Subd. 1** identifies three placement standards, at each lane. A Degree, either a BA or an MA is one of the lane placement standards. A second lane placement standard is the number of credits in addition to a BA or MA Degree. The third standard is the number of credits beyond a BA Degree or MA Degree that must be at the graduate level. **Subd. 1** does not grant authority to the Superintendent to look independently to determine whether quarter or semester credits earned are, in fact, graduate credits.

**ARTICLE VII, Section 3, Subd 2** says:

**Subd. 2.** Areas of Credit: All credits must be approved by the superintendent prior to taking the course based on the criterion listed below in this subdivision. If a Master's Program is approved, then all courses within the

Master's Program must have prior approval. All credits must be in the teacher's major, minor, or a subject matter area in which the individual is teaching, or a subject area in which the individual has filed a plan of college work with the superintendent which will lead to a minor or a major and licensure by the Minnesota Department of Education.

The contract directs that "credits must be approved by the superintendent" prior to taking the course and "based on the criterion listed below in this subdivision." The criterion that the Superintendent "must" apply is "*All credits must be in the teacher's major, minor, or a subject matter area in which the individual is teaching or a subject area in which the individual has filed a plan of work with the superintendent which will lead to a minor or a major and licensure by the Minnesota Department of Education.*" The Superintendent is not granted authority to make an independent ruling based upon his opinion that a course is not a "graduate level course" or whether in his opinion a Master's Degree has been earned. The School District may not ignore the plain language of the collective bargaining agreement.

The School District has historically granted lane placement to teachers who earned Masters Degrees, which incorporated teaching licensure requirements in the program course work. Union Member Rights Advocate Chris Swanson testified that the four Cloquet teachers who are at the Masters Degree lane or higher on the salary schedule fulfilled their initial teaching license requirements in Master's Degree programs.

A Speech Pathologist, a School Psychologist and two (2) School Counselors who were hired by the School District between 2009 and 2014, earned their initial

education licenses in graduate programs. While the four employees cited hold licenses that require Master's Degrees, they fulfilled their initial licensing requirements through graduate level course work, just as seven (7) of the eight (8) grievant's in this case. Ms. Unertl obtained her secondary teaching licensure in an undergraduate course in 1984 but earned elementary licensure (not her initial licensure) in the GTL program.

The denial of lane placement by the Superintendent is not based upon mandated criteria established in the collective bargaining agreement but upon the Superintendent's arbitrary decision that some graduate credits earned by the grievants were not bona fide graduate credits and Master's Degrees earned by grievants are not bona fide Master's Degrees. The Superintendent is mistaken and the grievance should be sustained.

The Union asks for the following remedy:

- That the School District should be directed to "make whole" Annette Unertl, Phil Beadle, Matthew Krafthefer, Cheyenne Deters, Emily Foyt and Molly Asp for incorrect lane placement from September 12, 2014 forward.
- That the School District should approve the requests of Matthew Krafthefer and Emily Foyt's for final course approval and advancement to the Master's Degree lane retroactive to March 15, 2015.
- That Annette Unertl and Phil Beadle should be permitted to move to the Master's Degree lane at the beginning of the 2015-16 school year.
- That the School District be ordered to follow the collective bargaining agreement for all prospective course approval and lane placement

determinations including, but not limited to, those made by Molly Asp (Pearson), Jolene Aho and Will Donofrio.

The Union also asks that the Arbitrator retain jurisdiction over the remedy in this case.

**SUMMARY OF EMPLOYER'S POSITION:**

The School District's position is that **ARTICLE VII** of the collective bargaining agreement grants the Superintendent the authority to approve credits for placement on the salary schedule. The Superintendent was properly exercising his contractual authority, when he denied the lane placements sought by the grievants. Moreover, the Superintendent's actions are supported by a past practice.

The School District argues that the sole authority to approve credits for placement on the salary schedule rests with the Superintendent. There is no term in the collective bargaining agreement that suggests anyone inside or outside the District may approve credits nor does the collective bargaining agreement require the Superintendent to accept certain credits. Furthermore, the right to approve credits inherently includes the right to deny credits. It is essential for the Superintendent to exercise the right to review and the right to deny credits to ensure that courses receiving credit are of sufficient quality and rigor.

The language of the collective bargaining agreement does not suggest that any graduate level course of any sort will automatically be accepted for lane advancement on the salary schedule. Based upon the Superintendent's clear and informed understanding of the type of coursework involved in the GTL program, the Superintendent determined that teachers who earned their licensure through the

GTL program would be placed on the BA salary lane. Additional approved Master's level courses, including the seven credits required by GTL to earn a Master's Degree could be used for lane advancement.

The District believes that it denied credits for coursework that simply provides employees with the basic education required to obtain a teacher license. The Superintendent acted within his authority under the collective bargaining agreement and his actions were clearly consistent with the intent of **ARTICLE VII**. The Article provides employees with an incentive to seek education beyond basic coursework required to obtain teaching licensure. The School District argues that St. Scholastica literature says that the GTL program will allow students to "increase earning potential". The District reasons that GTL graduates are encouraged to obtain a Master's Degree to make more money not further their teaching proficiencies.

The District asserts that the practice of denying credits earned in the GTL program and refusing to approve the Master's Degree earned in the GTL program is a well established "past practice". It contends that the following four prong test for establishing a "past practice has been met": (1) clarity and consistency of the pattern of conduct; (2) longevity and repetition of the activity; (3) acceptability of the pattern; and (4) mutual acknowledgement of the pattern by the parties (citing BMS Case No. 11-PA-0787).

In it's brief the District says:

"Here, all four prongs are met. In 2010, the Superintendent wrote the Memo clearly outlining the types of graduate – level credits that will be denied for lane advancement on the salary schedule. This Memo was provided to the

Union. There was no evidence presented to suggest the Union found the Memo to be unclear or otherwise confusing. Additionally, the Superintendent consistently applied the determining factors and decision making process described in the Memo when reviewing GTL credits.”

They argue that the practice has been in place for nearly five years.

Both the plain language of the collective bargaining agreement and past practice support the Superintendent’s actions and the grievance should be denied.

**OPINION:**

The collective bargaining agreement does not indicate what, if any, program accreditation or other metric is needed to establish a bona fide Bachelor’s Degree, Master’s Degree or graduate level credits. However, the Arbitrator takes the equivalent of “judicial notice” of the context wherein degrees earned through Colleges and Universities in this country (USA) and the State of Minnesota gain acceptance. The U.S. Department of Education does not engage in accreditation. However, it does provide a list of recognized accrediting agencies. The State of Minnesota does on site and paper review’s of teacher education programs. Programs providing teacher education must pass the Minnesota evaluation.

The GTL program at the College of St. Scholastica has passed review by the Minnesota Department of Education and has been accredited by agencies recognized by the U.S. Department of Education. The evidence of accreditation and favorable review by the Minnesota Department of Education of the GTL Master’s Degree program is sufficient to establish that the Master’s Degree program is bona fide and falls within the meaning of the term Master’s Degree as it appears in

**ARTICLE VII, Section 3** of the collective bargaining agreement. Similarly, all credits earned through the St. Scholastica GTL Master's Degree program are bona fide graduate level courses as the term appears in **ARTICLE VII, Section 3**. The only neutral and generally accepted standard of program or course evaluation offered by the parties at hearing was accreditation.

The collective bargaining agreement does not grant the Superintendent of Schools the right to alter the stated wage schedule. Clearly, a teacher hired by the school district is to be paid at the rate identified in **ARTICLE VII**. The lane designations are based upon Bachelor's Degree and Master's Degree. Most but not all of the credits needed to move from one lane to another are to be at the graduate level. The collective bargaining agreement does not distinguish between credits applied toward teacher licensure earned in a Bachelor's Degree program or a Master's Degree program. The wage schedule requires the School District to pay a teacher for the degree that the teacher has earned and for additional credits earned beyond the degree. Most, but not all, credits must be at the graduate level and credits earned through an accredited Master's degree program are bona fide graduate level credits.

While the School District has made a practice over roughly five (5) years of paying teachers less than the agreed upon salary based upon their Bachelor's degree and the graduate level credits they earned beyond a Bachelor's Degree, the practice was not a mutually acceptable practice and it clearly and unequivocally violates the collective bargaining agreement. Because an Employer repeatedly violates a specific term of the collective bargaining agreement does not overrule the express terms of

the collective bargaining agreement nor does the continued unilateral violation of the contract create an accepted past practice. In this case, the School District has been violating the wage provisions of the collective bargaining agreement for roughly five (5) years. In this arbitration no remedy for the many years of contract violations is available for the teachers who have been victimized by the practice. A remedy through arbitration is only available from the date when the grievance herein arose, going forward.

The collective bargaining agreement does not specifically state from what institutions a Bachelor's Degree or Master's Degree may be earned. However, a Bachelor's or Master's degree earned through a program that has passed State review and been accredited from an agency recognized by the U.S. Department of Education certainly meets the contractual standard. In fact, the School District has a long history of hiring teachers with degrees from accredited programs. The reasonable interpretation of the terms Bachelor's Degree, Master's Degree and "graduate level" is that the degrees and credits are earned through an accredited program.

The Superintendent testified at hearing that he did not have a problem in general with courses and degrees earned through St. Scholastica and the Dean of the School of Education established that the institution has produced accredited degree programs. The GTL program at St. Scholastica is comparable to programs offered at other institutions of higher learning in the State of Minnesota. Additionally, the Dean of St. Scholastica provided the Superintendent with a thorough and credible explanation of how the graduate courses taken by teachers in the GTL program

incorporate the teacher licensure requirements but are more rigorous and have higher expectations of students than undergraduate courses.<sup>2</sup>

The School District produced no credible evidence that suggests there is any reasonable basis upon which credits and the Master's Degree earned in the GTL program should be denied. Furthermore, the School Districts actions in denying credits and degrees earned through the GTL program is based exclusively upon the Superintendent's conjecture, is not reasonably related to the express criteria found in the collective bargaining agreement and can fairly be described as arbitrary and capricious.

The Superintendent "must" approve credits based upon the rule in the first paragraph<sup>3</sup> of subdivision 2 of **ARTICLE VII** of the collective bargaining agreement. The non-discretionary rule says "All credits must be in the teacher's major, minor, or a subject matter area in which the individual is teaching, or a subject area in which the individual has filed a plan of college work with the Superintendent which will lead to a minor or a major and licensure by the Minnesota Department of Education." The credits and degrees earned by the grievants meet the criteria established in subdivision 2 of **ARTICLE VII** and must be approved by the Superintendent.

The second paragraph of **Article VII, Subd. 2** does grant discretion to the Superintendent. The discretionary language applies to approval of "rigorous online

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<sup>2</sup> The Arbitrator notes that colleges and universities often offer courses for both undergraduate credits and graduate credits but the graduate students are held to different standards and have different work product expectations.

<sup>3</sup> The second paragraph of the subdivision addresses circumstances not related to this grievance.

courses.” The discretionary language at **ARTICLE VII, Subd. 2** demonstrates that the parties know how draft language that grants discretion to the Superintendent. The parties did not grant discretion to the Superintendent to determine whether an accredited Master’s Degree program and the credits earned through the accredited program are acceptable for lane advancement.

The School District violated the plain language of the collective bargaining agreement and incorrectly placed the grievants on lower lanes of the salary schedule than they should have been based upon their degrees and graduate credits earned in the accredited GTL program offered at St. Scholastica. Remediation of the contractual breach requires placement of the teachers on the salary schedule at the lane they have earned, ordering and directing the School District to cease and desist from continuing the practice of not recognizing credits and degrees earned by teachers enrolled in the St. Scholastica GTL program, and requiring the School District to pay back pay from the beginning of the 2014 school year forward to teachers whose Master’s Degrees and graduate credits earned in the St. Scholastica GTL program were not recognized, together with interest thereon.

**AWARD:**

- 1. The Arbitrator finds that the School District has violated Article VII of the collective bargaining agreement by refusing to recognize for the purpose of lane placement Master’s Degrees earned by Cloquet teachers through the St. Scholastica GTL program and by refusing to recognize for the purpose of lane placement graduate level courses earned by Cloquet teachers through the St. Scholastica GTL program.***

- 2. The School District is hereby ordered to cease and desist from refusing to recognize for the purpose of lane placement Master's Degrees earned by Cloquet teachers through the St. Scholastica GTL program and from refusing to recognize for the purpose of lane placement graduate level courses earned by Cloquet teachers through the St. Scholastica GTL program.***
- 3. The School District is directed to make the grievants whole by placing each on the salary schedule lane earned by adding Degrees and graduate credits earned through the St. Scholastica GTL program and paying back-pay, together with interest thereon.***
- 4. Back pay shall be the difference between the amount the teacher has been paid and the amount the teacher would have been paid, if the teacher had been paid at the earned salary lane, including Degrees and graduate credits earned through the St. Scholastica GTL program.***
- 5. Annette Unertl shall be placed on the Master's lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.***
- 6. Phillip Beadle shall be placed on the Master's lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.***
- 7. Matthew Krafthefer shall be placed on the Master's lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.***

8. *Cheyenne Deters shall be placed at the BA+40/MA lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.*
9. *Emily Foyt shall be placed at the BA+30 lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.*
10. *Molly Asp shall be placed at the BA+30 lane of the salary schedule as of the start of the 2014 school year and shall receive back-pay from the start of the 2014 school year, together with interest thereon.*
11. *Jolene Aho shall be given credit and shall receive back-pay and interest there on for St. Scholastica graduate credits earned in the GTL program and placed on the corresponding salary lane from her date of hire forward. The School District shall recognize for the purpose of lane placement any degrees and graduate credits earned through the St. Scholastica GTL by Ms. Aho.*
12. *Will Donofrio shall be placed at the BA+30 lane as from the date of his hire and shall receive back-pay together with interest thereon. The School District shall recognize for the purpose of lane placement any degrees and graduate credits earned through the St. Scholastica GTL program by Mr. Donofrio.*
13. *The parties are directed to meet and discuss the appropriate interest rate to be paid on back-pay. If the parties are unable to agree upon the appropriate rate of back-pay, each party shall submit written arguments*

*in support of its' position to the Arbitrator, who shall review and select one of the rates proposed by the parties.*

**14. The Arbitrator shall retain jurisdiction over the remedy herein.**

**Dated: September 2, 2015**

  
James A. Lundberg, Arbitrator