

ARBITRATION SUMMARY AND AWARD LOG

OCB AWARD NUMBER 759

OCB GRIEVANCE NUMBER: 32-00-911023-0277-06-10

GRIEVANT NAME: AMES, F.

UNION: OEA/SCOPE

DEPARTMENT OHIO VETS CHILDREN'S HOME

ARBITRATOR: RIVERA, RHONDA

MANAGEMENT ADVOCATE: BUTLER, VALERIE

2ND CHAIR: KITCHEN, LOU

UNION ADVOCATE: SHOUB, GRANT

ARBITRATION DATE: FEBRUARY 24, 1992

DECISION DATE: MAY 5, 1992

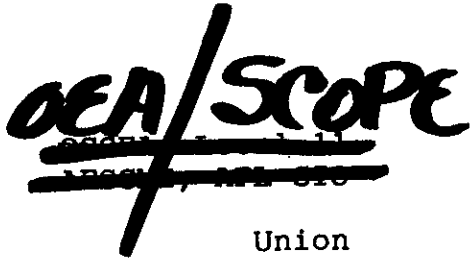
DECISION: GRANTED

CONTRACT SECTION

AND/OR ISSUES: 10.01- DID GRIEVANT POSSESS PROPER CERTIFICATION NECESSARY TO TEACH AT THE OHIO CHILDREN'S VETERANS HOME?

HOLDING: GRIEVANT HAD BEEN INFORMED BY THE SUPERINTENDENT THAT HER CURRENT CERTIFICATION WAS SUFFICIENT TO TEACH. SUBSEQUENT TO HER DISCOVERING THAT THIS WAS NOT THE CASE, SHE WAS TOLD THAT SHE WOULD HAVE TWO YEARS TO OBTAIN PROPER CERTIFICATION. GRIEVANT MADE A GOOD FAITH EFFORT TO COMPLY. THEREFORE, GRIEVANT IS TO BE REINSTATED WITH FULL BACK-PAY AND BENEFITS, ALONG WITH TWO YEARS TO COMPLETE CERTIFICATION.

COST: \$562.50



In the Matter of the
Arbitration Between

Grievance No. 32-001-911023-
0277-06-10

Grievant (F. Ames)

Hearing Date: February 24, 1992

Brief Date: April 2, 1992

Award Date: May 5, 1992

Arbitrator: R. Rivera

Ohio Veteran's Children Home
Office of Collective Bargaining

Employer.

For the Employer: Valerie Butler
Lou Kitchen

For the Union: Grant Shoub
Henry Stevens

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Present at the Hearing in addition to the Grievant and Advocates were Arthur Lunt, SCOPE/OEA (witness), Bill Mulbargol, Ex-Director OEA/WEA, Q. E. Ames, Jr., father (observer), Ralph Fussner, Mgr. Rep. OVCH, Ron Camic, Management Representative (witness), John Davis, Management Representative - OVCH (witness), Bruce Barcelo, Principal - OVCH (witness), David Fischer, former Director of Education (witness), James Hopper, Compliance Coordinator, Ohio Department of Education (witness).

Preliminary Matters

The Arbitrator asked permission to record the hearing for the sole purpose of refreshing her recollection and on condition that the tapes would be destroyed on the date the opinion is

rendered. Both the Union and the Employer granted their permission. The Arbitrator asked permission to submit the award for possible publication. Both the Union and the Employer granted permission. The parties stipulated that the matter was properly before the Arbitrator. Witnesses were sequestered. All witnesses were sworn.

Joint Exhibits

1. OEA/SCOPE Contract
2. Grievance Trail
 - a. Grievance
 - b. Step 3 response
 - c. Step 4 response
 - d. Request for Arbitration
3. Recommendation for termination - Memo 8/30/91 (with attachments)
4. Pre-disciplinary Notice, 9/19/91
5. Memos from Joette Derrick requesting additional information from both the Union and Mr. Barcelo - 9/24/91
6. Pre-disciplinary Hearing Officer's Report, 10/11/91
7. Termination Letter from Superintendent Prestino - 10/21/91
8. Grievant's position descriptions dated 3/20/90 and 7/25/86
9. Grievant's Non-tax teaching certificate - 1/15/87

Union Exhibits

1. Memo to Home Administrators from Grievant applying for Junior High position dated 7/17/87
2. Rebuttal by Grievant to Mr. Huff relating to memos of 3/13, 4/6, 4/17 and 5/1

3. Memo to D. Fisher from Grievant dated 8/31/90
4. Memo to Dr. Fisher from Grievant dated 9/13/90
5. Letter to Mr. Barcelo from Grievant dated 12/7/90
6. Memo with various school attachments to Mr. Barcelo and D. Fisher from Grievant dated 4/24/91
7. Statement dated 9/23/91 by Edward L. Wyngard, Dean CSU College of Education
8. University of Dayton Registration form
9. Grievant's Official Transcript from CSU dated 2/18/92
10. Schedule of Classes available from Winter 91 through Winter 92
11. Grievant Settlement dated 5/17/91
12. Memo to D. Fisher from Chuck Lunt, SCOPE vice-president

Employer's Exhibits

1. Department of Education Report of School Evaluation (3/19/91) on Woodrow Wilson School (OVCH)
2. § 3319.30 - Necessity for Certificate
3. § 3319.28 - Temporary Certificates
4. § 3319.36 - Failure of teacher to make reports; exception
5. §§ 3301-35-03 - Educational Resources
6. §§ 3301-23-26 - Rule for Temporary Certificates
7. Memo to Leon Huff from Ron Camic dated 4/17/89
8. IOC to Dave (Fischer) from RC (Ron Camic) dated 8/21/90
9. Position Description Teacher (Science) at OVCH dated 3/20/90
10. Accelerated Check Sheet for Degree Holders Seeking Teaching Certification dated 5/16/89
11. Accelerated Check Sheet dated 8/22/90

12. OSV official Grade Report Winter 91(?)
13. CSU fee statement dated 4/16/91
14. Memo to Grievant from Barcelo dated 1/11/91

Issue(s)

Employer's Issues

1. Did the Grievant possess the proper certification necessary to teach at the Ohio Children's Veteran's Home in accordance with section 10.01 of the contract?
2. Did the Employer have just cause for terminating the Grievant's employment for failing to possess proper certification to teach at the Ohio Children's Veteran's Home? If not, what shall the remedy be?

Union's Issue

Was Grievant dismissed for just cause under Article 13? If not, what shall the remedy be?

Relevant Contract Sections

ARTICLE 1 - BARGAINING UNIT
§ 1.01 - Recognition

The Agreement is made and entered into pursuant to the provisions of Chapter 4117 of the Ohio Revised Code by and between the State of Ohio, represented by the Office of Collective Bargaining, hereinafter referred to as "Employer" and the State Council of Professional Educators, Ohio Education Association (OEA) and National Education Association (NEA), hereinafter referred to as the "Association."

This Agreement is made for the purpose of promoting cooperation and harmonious labor relations among the Employer, employing agencies, employees of

the bargaining unit, and the Association, establishing an equitable and peaceful procedure for the resolution of differences, and protecting the public interest by assuring the orderly operations of state government.

ARTICLE 5 - GRIEVANCE PROCEDURE

§ 5.01 - Purpose

The State of Ohio and the Association recognize that in the interest of harmonious relations, a procedure is necessary whereby employees can be assured of prompt, impartial and fair processing of their grievances. Such procedure shall be available to all employees and no reprisals of any kind shall be taken against any employee initiating or participating in the grievance procedure. The grievance procedure shall be the exclusive method of resolving both contractual and disciplinary grievances except where otherwise provided by this Agreement.

The parties intend that every effort shall be made to share all relevant and pertinent records, papers, data and names of witnesses to facilitate the resolution of grievances at the lowest possible level.

§ 5.02 - Definitions

- A. Grievance - refers to an alleged violation, misinterpretation or misapplication of specific provision(s), article(s), and/or section(s) of this Agreement.
- B. Disciplinary Grievance - refers to a grievance involving a suspension or termination.
- C. Day - refers to calendar day except where otherwise specified. Times shall be computed by excluding the first and including the last day, except that when the last day falls on a Saturday, a Sunday or a legal holiday, the act may be done on the next succeeding day which is not a Saturday, Sunday or legal holiday. "Work days" refers to Monday through Friday excluding legal holidays.
- D. Appointing authority is the public official of a department, board, commission or body who had the authority to appoint or discharge an employee. The term, "appointing authority" also includes the public official's designee.

E. Employing agency is the department, board, commission, or body within which the employee is appointed. If there is more than one (1) appointing authority within the employing agency, the term employing agency refers to the entire department under the control of the director of the department.

§ 5.03 - Qualifications

A grievance under this procedure may be brought by any employee or group of employees or the Association setting forth the name(s) or group(s) of the grievant(s). At each step of the grievance procedure, except step 1 the grievant must specify on the written grievance form the specific provision(s) of the Agreement alleged to have been violated and the desired resolution. The parties shall use the mutually developed grievance form for the processing of grievances.

Where a group of employees desires to file a grievance involving an alleged violation which affects more than one (1) employee in the same way, the grievance may be filed by the Association provided that at least one (1) employee so affected signs the grievance. Grievances so initiated shall be called class grievances. The caption of the grievance shall bear the name of one (1) affected employee with the designation et al. Class grievances shall be filed within fifteen (15) working days of the date on which any of the affected employees knew or reasonably could have had knowledge of the event giving rise to the class grievance. Class grievances shall be initiated directly at Step 2 of the grievance procedure.

When a decision has been accepted by the appropriate parties at any step of this grievance procedure, the grievance shall be terminated. Should the grievant fail to comply with the time limits specified herein, that grievance shall be terminated and considered resolved in favor of the Employer.

§ 5.05 - Grievance Procedure

The following procedure applies to the processing of grievances:

A. **Step 1: Immediate Supervisor**
An employee having a grievance shall first attempt to resolve it informally with his/her immediate supervisor within fifteen (15) working days of the date on which the employee knows or reasonably could have had knowledge of the event giving rise to the grievance, but no later than thirty (30) days after the event. If being on approved paid leave prevents a grievant from having knowledge of an occurrence, then the time lines shall be extended by the number of days the employee was on such leave except that in no case will the extension exceed ninety (90) days after the event. At this step, the employee may be represented by an Association representative if the employee so desires. Within seven (7) days after the employee has notified the supervisor of the grievance, the supervisor shall respond to the employee in writing. If the employee is not satisfied with the result of this informal step, the employee may pursue the formal steps which follow:

B. **Step 2 - Next Level Supervisor**
Should the grievant not be satisfied with the written answer received at Step 1, within ten (10) days after receipt thereof, the grievant or the Association, if requested, may file the grievance with the next level supervisor. If the requirements of Step 1 have not been attempted by the employee, the employee shall have no right to file a formal grievance.

Upon receipt of the grievance, the next level supervisor shall indicate the date of receipt on the grievance form. Within fourteen (14) days of receipt, a meeting shall be held with the grievant. The grievant shall receive notification at least two (2) days prior to the meeting. An Association representative may attend the meeting and shall represent the employee if requested.

Within ten (10) days of this meeting, the next level supervisor shall respond on the grievance form and return a copy to the grievant and to the Association representative.

C. **Step 3 - Employing Agency Director**
Should the grievant not be satisfied with the written answer received at Step 2, within ten (10) days after receipt thereof, the grievant or the Association, if requested, may file the grievance with the employing agency. Upon receipt of the

grievance, the Director or designee shall hold a meeting within thirty (30) days to discuss the grievance. The grievant shall receive notification at least two (2) days prior to the meeting. An Association representative may attend the meeting and shall represent the employee if requested.

The Director or designee shall render a decision in writing and return a copy to the grievant and the Association representative within fifteen (15) days after the conclusion of the meeting.

By mutual agreement, the parties may waive this meeting and the Director or designee shall render a written decision within fifteen (15) days of execution of the waiver.

- D. Step 4 - Office of Collective Bargaining
If the grievant or the Association is not satisfied with the written answer received at Step 3, within ten (10) days after receipt thereof, the Association may file the grievance and any supporting documentation with the Director of the Office of collective Bargaining. No hearing shall be held at this Step. The Director of the Office of Collective Bargaining shall review the documents submitted, issue a decision in writing and return copies to the grievant, the Association, and the Director within twenty (20) days after receipt of the grievance. The director of the Office of collective Bargaining may request a meeting to discuss resolution of the grievance. A request to discuss resolution of the grievance shall not exceed the fifteen (15) days in which the Association has to appeal to arbitration as set forth below.

- E. Request for Arbitration
If the Association is not satisfied with the answer at Step 4, it may submit the grievance to arbitration under the provisions of Article 6, by filing a written notice with the Director of the Office of collective Bargaining and a copy to the employing agency Director within fifteen (15) days after receipt of the Step 4 decision.

§ 5.06 - Association Representation

- A. In each step of the grievance procedure, certain specific Association representatives are given

approval to attend the meetings therein prescribed. However, it is understood by the parties that, in the interest of resolving grievances at the earliest possible step of the grievance procedure, it may be beneficial that other individuals, not specifically designated, be in attendance provided that their presence will not interfere with or interrupt normal school or work facility operations.

- B. A grievant and the Association site representative shall be allowed time off, with pay at base rate, from regular duties for attendance at scheduled meetings under the grievance procedure. Grievance meetings will usually be held during normal business hours.
- C. The Association shall be the exclusive representative of the employee in all matters pertaining to the enforcement of any rights of the employee under the provisions of this Article and in accordance with Chapter 4117.03(A)(5) of the Ohio Revised Code.
- D. At any step in the grievance procedure, the Association shall have the final authority in respect to any aggrieved employee to decline to process a grievance if, in the judgment of the Association, the grievance lacks merit or justification under the terms of this Agreement or has been adjusted or rectified under the terms of this Agreement to the satisfaction of the Association.

§ 5.07 - Time Extensions and Step Waivers

- A. The grievant or the Association representative and representatives of the Employer may mutually agree in writing at any step to a short time extension. Any step in the grievance procedure may be waived by written mutual consent. In emergency situations as defined by the Governor of the State of Ohio, an Appointing Authority, employing agency Director, or the Director of the Office of Collective Bargaining, the time limitations shall be suspended by both parties for the duration of the emergency. In the absence of such extensions or emergency situations, at any step where a grievance response of the Employer has not been received by the grievant and the Association representative within the specified time limits,

the grievant may file the grievance to the next successive step in the grievance procedure within the same number of days from the date the decision was due as specified in Section 5.06 Of this Article.

Except as provided above, grievances shall be processed within the specified time limits.

- B. Certain issues which by their nature cannot be settled at Step 1 of the grievance procedure or which would become moot due to the length of time necessary to exhaust the grievance steps may be mutual agreement be filed at the appropriate advanced step where the action giving rise to the grievance was initiated. By mutual agreement, in lieu of a step meeting, a grievance response may be issued by a representative of the Employer based on a review of written documents only.

§ 5.08 - Disciplinary Grievance Procedure

An employee with a disciplinary grievance or an authorized Association representative shall file a grievance under the procedures listed below unless mutually agreed otherwise:

- A. An employee who is serving in his/her original probationary period does not have the right to file a disciplinary grievance.
- B. An employee who is reduced during the probationary period following promotion does not have the right to file a disciplinary grievance.
- C. An employee or an authorized Association representative may file a grievance directly to the Director of the employing agency either within ten (10) days of the effective date of the action or within ten (10) days after receipt of the notice as to the action, whichever is later. Upon receipt of the grievance, the Director or designee shall schedule a meeting to be held within ten (10) days. An Association representative may attend the hearing and shall represent the employee if requested. The Director or designee shall render a decision in writing and return a copy to the grievant and the Association representative within ten (10) days after the meeting.

If the Association is not satisfied with the Director's or designee's answer, within ten (10) days of the receipt thereof, the grievance may be submitted for appeal to the Director of the Office of Collective Bargaining. The appeal shall be made in writing by sending the grievance form and all supporting documentation to the Director of the Office of Collective Bargaining. No meeting shall be required. The Director of the Office of collective Bargaining or designee shall review the submitted documentation and issue a decision in writing and return a copy to the grievant and the Association within twenty (20) days of the appeal. If the Association is not satisfied with the answer at this step, it may submit the grievance to arbitration by written notice to the Director of the Office of Collective Bargaining with a copy to the Director of the employing agency.

- D. During the life of this Agreement, verbal reprimands shall be grievable through Step 2. Written reprimands shall be grievable through Step 3. If a verbal or written reprimand becomes a factor in a disciplinary grievance that goes to arbitration, the arbitrator may consider evidence regarding the merits of the verbal and written reprimand.

§ 5.09 - Reduction in Force Grievance

Grievances which arise under Article 18 shall be filed directly with the Office of Collective Bargaining as stipulated in Sections 18.01 and 18.13.

ARTICLE 10 - CAREER DEVELOPMENT

§ 10.01 - Career Development

The Employer recognizes the value of continuing education and professional development of its employees.

Each employee has the responsibility to maintain current certifications required for their present classification title and parenthetical subtitle.

ARTICLE 13 - PROGRESSIVE DISCIPLINE
§ 13.01 - Standard

Employees shall only be disciplined for just cause.

Facts

The Ohio Veterans' Children's Home (OVCH) is a twenty-four hour facility that operates 365 days a year. Its mission is to educate and house children between 5 to 17 years old who are considered "indigent" by juvenile courts or human service agencies throughout the State. The Woodrow Wilson School is part of OVCH and provides elementary and high school instruction from Kindergarten through grade 12. For the major portion of time during the event of this Grievance, Mr. Huff was the Superintendent, Mr. Camic was the Assistant Superintendent, Dr. Fisher was the Education Administrator, and Mr. Barcelo was the Principal of the School. (At the time of the Hearing, Mr. Prestino was the Superintendent; no person filled the Assistant Superintendent slot; the Education Administrator position had been deleted, and Mr. Barcelo remained as principal.)

The Grievant holds a B.S. achieved in 1982. In 1983, she began working as an educational tutor at OVCH under Chapter I and from 1984-1987 she was a reading teacher's aide at OVCH. In the Spring of 1987, two teaching positions were to open up at the OVCH junior high school level. The Grievant consulted with Mr. Jim Davis who helped her obtain a certificate. On January 15, 1987, Grievant obtained a "non-tax" teaching certificate. On

July 17, 1987, she applied for a position. Under that certificate, she taught life science, earth science, and spelling in 1987-88, 1988-89.

On March 13, 1989, Mr. Morton asked the Grievant to see him "to discuss the progress on your certification" (Joint Exhibit 3). She received a second memo from Mr. Morton referring to a meeting 2 weeks in past. Again, he asked her to see him "to discuss your findings so that we can set a fair and reasonable date for your complete certification" (Joint Exhibit 3). On April 17, 1989, Morton again wrote the Grievant asking about progress and asking her to schedule a meeting to finalize her plans (Joint Exhibit 3).

On April 17, 1989, Camic wrote to Huff saying "I am concerned that the above-noted teacher is properly certified." (Joint Exhibit 3).

Finally on May 1, 1989, Mr. Morton wrote the Grievant a full page memo which culminated with these words: "If full certification is not on file at OVCH on or before July 27, 1989, your employment as a teacher at OVCH will be terminated on that date." (Joint Exhibit 3).

The Grievant wrote to Mr. Huff a document entitled "Rebuttal of Memo's 3/13, 4/6, 4/17, and 5/1" (Union Exhibit 2). This memo was written to confirm what Mr. Huff told the Grievant, namely that her then current certification "non-tax certificate" was valid to teach at OVCH. In that memo, she stated she would begin

doing what she could to obtain another certificate. She noted she had begun taking courses in August.

On August 4, 1989, David Fisher sent the following memo to the Grievant.

SUBJECT: Teacher Certification

Your Ohio teacher certificate is as follows:

Type: Non-Tax
Grade:
Class:
Status:
Area: Administrative
Supervision
Teaching Subjects

It is valid from 7/1/86.

Your teaching certificate is permanent if you teach in an Ohio private school. If, however, you wish to have valid certification for public school teaching in Ohio, you will need to submit your transcripts to one of the following places for evaluation in order to ascertain which college level courses you will have to take to obtain Ohio public school certification:

(Joint Exhibit 3)

The Grievant registered at University of Dayton for an Education course on August 10, 1989, and on May 16, 1989, drew up a plan with Dr. Wyngard, Chair of CSU Education Department (and Trustee of OVCH) to complete a B.S. in Special Education (Employer Exhibit 10). She taught in the 89-90 school year.

On May 24, 1990, Hazel Fife, Personnel Officer, wrote Grievant a memo which stated: "We need to be advised on (sic) what steps you have taken toward achieving the standard teacher

certification" (Joint Exhibit 3). On June 1, 1990 David C. Fischer wrote the Grievant as follows:

In a letter to you of 8-4-89, I notified you that you do not have Ohio public school certification. I also suggested a course of action to remedy that. You were similarly counseled by Jack Morton last spring, I believe. You were also asked by Human Resources to submit by the end of this week, evidence of completed coursework toward public school certification. That has not been done. You were also given an opportunity to obtain three graduate credit hours through Wright State here at the Home, and you indicated that you would take advantage of that opportunity, but in fact have not done so.

Not until you have given Human Resources some evidence of movement toward public school certification, do I intend to meet with you.

(Joint Exhibit 3)

Then on June 21, 1990, David C. Fischer wrote the Grievant the following memo:

SUBJECT: Certification

To follow up a recent conversation which you and I had re your certification status:

1. You have a non-tax (permanent) teaching certificate. That certificate is valid and entitles you to teach at the Home. It would not entitle you to teach in an Ohio public school as I understand it.
2. You were encouraged last year by Mr. Morton and Mr. Camic to pursue public school certification.
3. You apparently have worked out a "game plan" with Dr. Wyngard of Central State for obtaining public school certification.
4. You are the only educational staff member teaching at the Home under a non-tax certificate, and it is the desire of the Home's administration that you teach under the same certification as your colleagues.

5. I am requesting, therefore, that you please submit to me your 'game plan' for obtaining public school certification including the timeline in which you will obtain it.

Then on August 1, 1990, Mr. Fischer wrote the Grievant and the Union Steward the following memo.

Ron Camic and I would like to meet with the two of you as soon as it is mutually convenient, and apparently with our various respective vacation schedules that won't be possible 'til around Wed., 8/15.

As preparation for this meeting, please be aware of the following:

1. A non-tax certificate is an improper certificate on which to teach at the Home. (Not the Home's rules; the Ohio Dept. of Education's.)
2. The Home will ask Grievant for a game plan and timeline for obtaining either elementary or secondary certification.
3. The Home may be willing to have Grievant continue teaching here depending on the reasonableness of the terms of #2.

On August 16, 1990, Mr. Fischer wrote the following memo to the Grievant.

SUBJECT: Highlights of Today's Mtg. Re Your Certification

If you disagree with any of the following points, please let me know right away:

1. Items 1., 2., & 3. of my memo to you of 8/1/90 were reviewed.
2. Your non-tax certificate will be grounds for a finding when the Home's school program is reviewed by the Ohio DOE's Div. of Elem. and Sec. Educ. this fall.

3. The Home has made it clear to you (my memo to you of 6/21/90 and prior counseling by Jack Morton over a year ago) that your non-tax certification jeopardizes your status here.

4. You submitted a grid signed by Dr. Wyngard indicating what your options are re types of certification and hours required to obtain them if pursued through Central State.

5. I suggested to you that of the four options (elementary, secondary, special K-12, & handicapped), becoming certificated in special K-12 would not necessarily guarantee your continuation here because the Home does not regard itself as a special education facility and has not gone out of its way to hire special education teachers; further, that if we were to seek special education unit funding from the Div. of Special Educ. to help underwrite a special education teacher, it is highly unlikely we would get it; further still, that if you desire to teach jr. high or high school science, a special K-12 certificate would not be appropriate.

6. You are to submit a game plan and timeline for obtaining public school certification. The tentative deadline for submitting this is Fri., Aug. 31st. If you cannot meet this deadline -- the contingency being when you can meet with Dr. Wyngard -- you will let me know presumably within the next few days, and a new deadline will be set.

7. When a game plan and timeline are submitted, it will be up to the Home to determine whether such terms are reasonable insofar as your continuing status is concerned. A finding against our school will remain for as long as you remain on the staff with certification which the ODOE does not consider legitimate.

8. Included in information which you submit re your future certification may be information re temporary certification.

9. Mr. Camic stressed that whatever timeline is established, it will be monitored closely for steady, continuing progress toward certification and that any interruption in same could be grounds for disciplinary action including a request for removal.

10. You noted that you might not be able to enroll in classes for fall quarter at Central State because the deadline for fall registration has passed. I suggested that enrollment might well be possible with payment of a late registration fee provided there are openings in the appropriate class(s).

11. I also suggested that your timeline might well be shortened if you investigate what classes from U.D. and/or Wright State could be substituted for classes which Dr. Wingard outlines for you. In other words, if the timeline is x years away because a C.S.U. class is only available during a certain quarter at a certain time of day, a U.D. or W.S.U. class meeting at a more convenient time could be substituted with Dr. Wingard's approval. You were urged, therefore, to seek information from U.D. and W.S.U. re possible classes.

12. Mr. Lunt offered the possible financial assistance of the OEA/NEA.

On August 31, 1990, the Grievant wrote a memo to D. Fischer as follows:

DATE: 8/31/90

SUBJECT: Clarification of highlights to meeting on 8/16/90 and follow-up information

1. Point 5 of Memo 8/16/90 suggests there were four options for certification, whereas, there were only three discussed. Those three were elementary, secondary and the one I submitted prior to the meeting which was special education of the developmentally handicapped.
2. Point 9 discusses a timeline for working on certification and it should also note that we discussed doing a timeline based on available information which at the present time will only take us through next summer. Also, it was discussed that there were times at which interruptions in working towards certification would be out of my hands due to various circumstances and they would not be cause for any disciplinary action.

3. It needs to be clearly noted once again, that my use of the non-tax certification was approved last year after investigation and again this year as investigated through personnel and the memo dated 6/21/90. Each time this was checked through the State Board of Education.
4. In response to the meeting on 8/16/90, I have checked the possibility of elementary and secondary certification. Enclosed you will find a checklist for courses to obtain elementary certification. This avenue would require another 60 hours or so in coursework and is not conducive to the educational background I have or a timely change in certification.
5. Enclosed you will also find an accelerated check sheet for obtaining certification on the secondary level. This area was checked in four areas of concentration including Science, Math, Social Studies and English. Among these choices, English is the best area for study. It is conducive to my educational background and will mean a more timely change in certification. As noted on the check sheet I would need 32 hours of coursework plus student teaching. If I pursue the special education of developmentally handicapped certification, I will need 36 hours to complete which includes student teaching. Since you have discouraged the latter choice, I have checked the secondary certification further. It would be possible to complete 8 hours this winter, 6-10 hours in the spring and 3 in the summer based on the scheduled classes and permission to use some work hours for class time as there are classes that fit perfectly to my work schedule and would not cause a hardship.
6. Enclosed you will find a copy of the rules for temporary certificates as provided by Dr. Wingard. I was told that upon completion of 9 more hours (3 of which I now have) I could be approved for a temporary certificate, which would give me another certification on file until I change to the standard certificate.

7. I have also enclosed Dr. Wingard's card in case you would like to check the coursework I've submitted any further. Dr. Wingard will be my advisor and C.S.U. my agent in pursuing certification change. In pursuing the secondary certificate, I will be choosing an area more conducive to the "needs" of the home as there has been a vacancy left unfilled in the high school English department since Mr. Barry's retirement. I am also looking at the needs of the Junior High, as that section will lose its English teacher, Mr. LaCour, to retirement within the next five years.

8. I am looking forward to meeting with you to discuss these findings pursuant to my beginning classes in the near future.

(Union Exhibit 3)

Attached was a new accelerated check sheet signed by D. Wingard on August 22, 1990 approving a secondary education certificate program in English (Employer's Exhibit 11).

On September 13, 1990, the Grievant wrote the following memo to Dr. Fischer:

Your latest communication suggests I committed myself to classes this fall, which is not the case. I committed myself to continue pursuing a change in certification and to check the requirements for elementary, secondary and temporary certificates. I said in our August meeting that I would not be able to take classes in the fall, but that I would begin Winter quarter. I also mentioned specifically that a registration date had passed. I checked the information needed and have sent you those results. I have also worked out my schedule so that the classes offered within the next 3 quarters will net me the most hours possible whether or not I took a class in the fall or not, which as I stated before, is not possible. Also, since I'm now pursuing the secondary English option instead of the previous Special Education DH option, the coursework is different, therefore, any class I would have registered for then would

be obsolete now since you discouraged the later option.

As for the use of work time to get to my classes, I have discussed the time needed with Mr. Barcelo, who said it is workable. The time needed is at the end of my day after I've taught all my scheduled academic classes. I would not need a substitute to teach in my place. This subject was also mentioned at the August meeting and you said you were willing to work with me to obtain a new certification. The schedule is as follows:

Tues & Thurs - 4:00 p.m. class
Mon, Wed & Fri - 3:00 p.m. class

I teach till 2:13 each day, therefore, I would need to leave after that time on Mon, Wed & Fri and as for Tues & Thurs I could conceivably be there on time if I leave at 3:30 p.m. Thank you for your cooperation in this matter.

On September 18, 1990, D. Fischer wrote a memo to Grievant entitled "certification deadline" which contained the following:

Effective immediately, you have two years to secure appropriate public school certification.

During this period, please submit transcripts of relevant courses taken and passed each semester (or quarter) in order to demonstrate progress toward certification and a good-faith effort to secure this certification.

Contrary to your most recent memo to me, and as noted in our August meeting, late registration at Central State was available as late as September 14th for the present quarter.

If you do not submit transcripts during any semester (or quarter), it is your responsibility to submit instead documentation that pertinent courses were not reasonably available (at C.S.U., W.S.U., or U.D.). Such documentation must be a signed statement from appropriate college faculty attesting to the fact that an applicable course was not available during that semester or quarter.

Failure to comply with the terms of this plan may result in formal disciplinary action up to and including dismissal.

PLEASE NOTE that the Home cannot set a precedent of allowing you to pursue coursework completion during the regularly scheduled work day.

On September 19, 1990, Chuck Lunt (OEA Representative) wrote to D. Fischer which pointed out inter alia that unless the Grievant were given permission to leave work after classes but before the end of official workday, she would have significant difficulty to get all the classes needed within the time frame. Mr. Lunt pointed out that Mr. Barcelo, the principal, that leaving work early (after classes) was "workable."

On December 7, 1990, the Grievant wrote Mr. Barcelo as follows:

After reviewing the schedule and catalog of classes again, the coursework I anticipate completing Winter quarter is as follows: ENG 311-01 Advanced Composition MWF 3:00 p.m.-3:50 p.m. On Mondays, Wednesdays, and Fridays, I teach until 2:13 and would need to leave after that time to get to classes. Thank you for your cooperation. (Union Exhibit 5)

On January 11, 1991, Mr. Barcelo wrote a memo to Grievant as follows:

SUBJECT: Your Certification

On 9/18/90, you were given notification that you would have two years to secure appropriate public school certification.

You were instructed to submit regular, periodic documentation of your progress toward reaching that goal.

You were encouraged to look into courses at any or all near-by universities.

You took no coursework during the recently ended fall quarter.

You were advised that the Home would not allow your leaving work before the end of normal working hours in order to attend a class.

You were advised that failure to comply with the Home's directive to secure public school certification could result in formal disciplinary action up to and including dismissal.

This is to further advise that if at the end of the present winter quarter you do not furnish the Home with evidence of satisfactory completion of a reasonable number of course hours toward public school certification, it will be considered a violation of Home Work Rule 2-c., and disciplinary action will be taken accordingly.

(Employer's Exhibit 14)

On April 15, 1991 he wrote again:

SUBJ: Your Certification

This memorandum is a follow-up to prior discussions and correspondence with you regarding your need to obtain a public school teaching certificate. The Department of Education has indicated that the non-tax certificate which you currently possess is no longer acceptable certification for teaching at the Ohio Veterans' Children's Home.

It was stated in a September, 1990 memorandum to you that you would be given two years to obtain appropriate certification. You were also directed to keep the Home apprised of your progress toward obtaining the necessary certification. To date, you have submitted insufficient evidence of coursework completed, coursework presently enrolled in, and intended coursework for meeting Department of Education certification requirements.

Please be advised that failure to provide the information requested below by Friday, April 26,

1991, may lead to disciplinary action up to and including your termination:

1. Information indicating the total number of quarter or semester hours necessary to obtain your certificate.
2. Assurance that you will obtain certification in the area in which you are currently teaching.
3. A schedule (by quarter or semester) of which courses you will be taking.
4. A copy of your grades or a transcript which verifies course completion.

(Joint Exhibit 3)

On April 24, 1991, the Grievant wrote a memo to Barcelo and Fischer. The Grievant pointed out that she had previously supplied the Employer with the checksheet (Employer's Exhibit 11) dated August 22, 1990 which indicated that EDU 400 was completed last Winter (90) and that she was currently enrolled in EDU 153 (Spring 91). She said she had already "given assurances that I will continue the pursuit of the classwork." She noted that EDU 400 and EDU 153 were given at 5:30 p.m. but that all the Education courses at CSU during the next summer were given during working hours. The Grievant attached the worksheet, a grade report for EDU 400 and registration materials for EDU 153 (Employer Exhibits 13 & 14).

On April 15, 1991, the Grievant received a written reprimand from Mr. Barcelo for insubordination for not supplying information as directed in the memo of September 18, 1990. This Grievance was settled on April 17, 1991, and the Employer stated

"In light of the fact that no deadline was specified on (sic) the 9/18/90 directive to you, the reprimand for failure to follow a written directive is hereby rescinded." (Union Exhibit 11)

On August 30, 1991, Barcelo recommended that the Grievant be disciplined for Neglect of Duty (Rule 1), Insubordination (Rule 2), and because she violated Section 10.01 of the Contract (Joint Exhibit 3).

On September 24, 1991, a pre-disciplinary meeting was held (Joint Exhibit 14). She presented a statement from Dr. Wyngard which read:

TO WHOM IT MAY CONCERN:

Please be advised that Grievant enrolled at this institution during the summer of 1989 for the purpose of completing the requirements for certification in English, grades 7-12. The attached checksheet details the courses required.

None of the remaining courses were available after 4:00 p.m. during summer school 1991 as evidenced by the schedule of classes. Grievant is currently enrolling in one course for the current quarter. (Union Exhibit 7)

Attached was an application for teaching certification signed by Dr. Wyngard.

On October 11, 1991, the Hearing Officer wrote to the Superintendent.

As you directed in your memo of September 19, 1991, a hearing was held on September 24, 1991 in the Administration Building Board Room. In attendance were Bruce Barcelo, Chuck Lunt, Henry Stevens and Grievant.

Based on the attached "Rules for Temporary Certification" Grievant is not eligible for

temporary certification. Therefore, her certification can not be resolved in this manner.

After reviewing all the available documentation and information, it is found that there is Just Cause for discipline. This is based on the following:

1. Grievant was made aware on several occasions of the possible consequences of the lack of certification.
2. The request for certification is reasonable.
3. Management very clearly laid out a plan for certification.
4. Grievant did not inform management of her certification progress in the timely manner requested.

On October 21, 1991, the Grievant was terminated by Prestino, Superintendent, in this manner.

Having reviewed the extensive file surrounding your lack of certification, I feel that the Educational Administrators at the Ohio Veterans' Children's Home have given you every opportunity to secure proper certification in your field. It appears that this certification issue has now been dragging on in excess of two years. If a good faith effort had been made on your part, I feel that certification would have been made well in advance of this meeting.

Since you are not properly certified, it is my decision to terminate your employment at the Ohio Veterans' Children's Home. This is a difficult decision for me to make at this time, however, when I look around and see other dedicated and qualified employees with proper certification being laid off, it is impossible for me to justify someone without that certification.

Your last day of employment at the Ohio Veterans' Children's Home will be today, October 22, 1991.
(Joint Exhibit 5)

The Grievant filed a Grievance on October 23, 1991, which was denied at Step 3 (November 22, 1991) and denied at Step 4 (December 19, 1991). Arbitration was requested (November 14, 1991) and a Hearing was held on February 24, 1992 with briefs received April 2, 1992.

In addition to the paper trail presented in the foregoing exposition, testimony was taken at the Arbitration Hearing. Mr. James Hopper, from Department of Education (DOE), testified. He and his partner evaluated the Woodrow Wilson School for the DOE. This evaluation found 3 certification problems, one of which was the Grievant (see Exhibit E-1 dated 2/22/91, 3/19/91). He stated that Woodrow Wilson was a public school and, therefore, a non-tax certificate would never be valid therein. (He pointed to ORC § 3319.30.) (Employer's Exhibit 2) He said that a temporary certificate could be applied for by the Superintendent of the School District (§ 3319.28) (Employer's Exhibit 3) In this case, the Superintendent of the Home was Superintendent of the School District. The standards are found in §§ 3301-23-26 (Employer's Exhibit 6). He also testified that a regular teaching certificate could be applied for pursuant to § 3319.22. If the person applying was not working, then the School of Education handled the application; if the person was working, then the District (i.e., OVCH) handled the application. He said it was unlawful pursuant to ORC § 3319.36 to pay an improperly certified teacher (Employer's Exhibit 4). Mr. Hopper testified that he was at OVCH on April 11, 1991 to review the report. According to

Hopper, an institution that was out-of-compliance could file a plan of correction. Then if after a year or year and a half, compliance was not complete, the DOE would meet with the school board (Trustees of OVCH). After that meeting, if there was still no compliance or good faith plan, Charter revocation was possible. He said that had the Home petitioned for a temporary certificate for the Grievant, a plan lasting 2 years for compliance was possible.

Mr. Camic, the Assistant Superintendent at the time of the Grievance, also testified. His testimony added nothing to the paper trail.

Mr. David Fischer also testified. He claimed that the statement found in Joint Exhibit 3 (see p. 14) was just routine to all teachers. Moreover, he claimed that his words found in the June 21, 1990 memo (p. 15) Joint Exhibit 3 "didn't mean what they sound like." Mr. Fischer could not remember if he ever proposed getting a temporary certificate for the Grievant. He also said he never wrote directly to the Grievant telling her not to pursue English certification. Mr. Fischer was directed to Joint Exhibit 3 where he referred to "currently" teaching. He said "currently" meant science. The Grievant pointed out that at the time of Joint Exhibit 3 she was teaching both science (life science and earth science) and English (spelling). She admitted that her position description did reflect science. The Grievant presented a schedule (Union Exhibit 10) which indicated that she had, since Winter of 91, taken whatever education courses were

available in non-working hours. She also presented her current transcript from CSU showing 8 quarter hours of Education with a 4.0 GPA at of February 18, 1992 (Union Exhibit 9).

Discussion

Under 10.01 of the Contract "Each employee has the responsibility to maintain current certifications required for their present classification title ..." As of May 1989, the Grievant had been told by the Superintendent of the Institution that her current certification (non-tax) was sufficient. While lower echelon personnel had doubts as to the validity of the non-tax certificate at OVCH, the Grievant was entitled to rely on the highest ranking administrator. Simultaneous with the assurance by Mr. Huff, the Grievant was encouraged by Mr. Huff to get another certificate, and the Grievant was amenable, even eager to do so. The Grievant confirmed the position of both parties in her rebuttal memo to Mr. Huff (Union Exhibit 2). Then in August 1989, the Grievant received a memo from Mr. Fischer on the status of her certificate. His words were "the certificate is valid." (Joint Exhibit 3) The Arbitrator finds that that memo confirmed Mr. Huff's assessment, and the Grievant was entitled to rely on it.

Then on June 21, 1990, the Grievant received yet another memo from Mr. Fischer (Joint Exhibit 3) which stated in pertinent part "You have a non-tax teaching certificate. That certificate is valid and entitles you to teach at the Home." (Joint Exhibit

3) Mr. Fischer unconvincingly testified that he did not mean what he apparently said. This testimony bordered on the ludicrous. Thus, as of June 21, 1990, the Superintendent and subsequently, the educational administrator had directly and explicitly told the Grievant that the non-tax certificate was valid to teach at the Home!

Finally on August 1, 1990, the Grievant received yet another Fischer memo now stating that a non-tax certificate was improper to teach at OVCH (Joint Exhibit 3). Thus, on August 1, 1990, only weeks before the 90-91 school year, the Grievant received clear notice that her current certificate would not be honored at OVCH. The Grievant and her Union Representative met with Fischer (and Camic) on August 16, 1990. Fischer responded with a confirming memo (Joint Exhibit 3). The Grievant responded in a memo of August 31, 1990 (Union Exhibit 3). Attached to that memo was information on her then current pursuit of a certificate. In this memo, the Grievant said that English certification would be the fastest route to certification. She again wrote Fischer (Union Exhibit 4) on September 13, 1990, saying she was pursuing an English certification and had switched away from special education as he (Fischer) had recommended.

In apparent response, Fischer sent the Grievant, on September 18, 1990, a memo which stated she had two years to secure appropriate certification (Joint Exhibit 3). In this explicit statement of a time limit, Fischer did not say she had to pursue science education; rather, this memo ratified in

essence her previous two memos wherein she explicitly told Fischer about the English certification. So the Arbitrator concludes, based on the testimony and the paper trail, that as of September 18, 1990, the Grievant knew 1) that she had two years to obtain a teaching certificate, 2) that English was an acceptable subject matter, and 3) that she had to show good faith progress in that direction.

Simultaneously to the playing out of the Grievant's issue, the OVCH was evaluated by the DOE and found to be out-of-compliance in a variety of aspects. These variances included three (3) teacher certification problems, one (1) of which was the Grievant's. The Home administrators attempted to show that they were under a great pressure from DOE to bring the Grievant into compliance. However, the testimony of Mr. Hopper indicated that the DOE would work out compliance plans and even if full compliance was not forthcoming after 1 or 2 years, the DOE's next step was to meet with the school district superintendent to secure compliance. Only after those steps might a charter be revoked. Mr. Hopper testified that he received no information from the school administrators on any "plan" with the Grievant. The arbitrator believes that had the Superintendent chosen to share the dilemma with DOE's representation and secure an approved compliance plan, the Grievant need not have been fired. In his demand memo of April 15, 1991, Mr. Barcelo requires by April 26, 1991 assurance that "you will obtain certification in the area in which you are currently teaching." The OVCH points

to that memo to show that the Grievant knew that English certification was not proper. However, unrefuted testimony showed that the Grievant had taught both science and English. The OVCH itself utilized the Grievant in both capacities. The discharge of October 21, 1991 was predicated on lack of proper certification (see Joint Exhibit 7), yet the Grievant had until September 18, 1992 to procure that certification according to the OVCH's own statements. She also had to pursue, in good faith, a degree. The record reveals that she took every course available to her in her non-working hours. These hours were the only ones available to her since the Home administrators refused to let her leave early, after her classes.¹

The Grievant had every right to rely on the promise that she had until September 18, 1992 to complete her certification and, she had the right to rely on the implicit recognition of English as the proper area. Given her time restrictions, she made a good faith effort to comply. To fire her on October 18, 1991 for improper certification was without just cause. Consequently, she has lost nearly 8 months of her plan time due to the inability of OVCH management to follow its own rules.

Award

Grievant is to be reinstated in the position she held on October 21, 1991 and given full back pay and benefits. She is to

¹The question of whether this refusal was proper under the Contract is the subject of another ongoing grievance not before this Arbitrator.

receive until June 1993 to comply with the requirement to be certified in English. If the OVCH requires certification in Science, she is to be given a full 2 years from the date of this Award to comply. The Arbitrator retains jurisdiction solely to see that the Award is carried out.

May 6, 1992
Date

Rhonda R. Rivera
Arbitrator