

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	
WISCONSIN FEDERATION OF TEACHERS,	:	
LOCAL 395, AFL-CIO	:	Case 40
	:	
and	:	No. 41992
	:	MA-5524
	:	
WISCONSIN INDIANHEAD VOCATIONAL,	:	
TECHNICAL AND ADULT EDUCATION DISTRICT	:	
	:	

Appearances:

Mr. William Kalin, Staff Representative, Wisconsin Federation of Teachers, appearing on behalf of the Union.
Mr. Stephen L. Weld, Mulcahy & Wherry, S.C., Attorneys at Law, appearing on behalf of the District, and Mr. William G. Thiel, on brief.

ARBITRATION AWARD

The Union and the Employer named above are parties to a 1987-89 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The Union made a request, with the concurrence of the Employer, that the Wisconsin Employment Relations Commission appoint an arbitrator to resolve a grievance concerning Ronald Hagen. The undersigned was appointed and held a hearing on May 3, 1990, in Shell Lake, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. The parties filed post-hearing briefs on July 2, 1990, and the record in the case was closed at that time.

ISSUE

The parties stipulated to the following issue:

Whether or not the District violated Article IV, Section G and/or Section H, when it assigned Ron Hagen to his 1989-1990 and 1990-1991 teaching schedules? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

ARTICLE IV - WORKING CONDITIONS

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Section D. Employment Opportunities

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2. No teacher assigned to a campus in the Wisconsin Indianhead VTAE District shall be transferred from one city to another city within the district unless mutually agreed upon by the teacher and the District Director or designee.

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Section G. School Day and Assignments

1. Teachers will have their regular teaching days scheduled within a span of seven (7) working hours at all attending centers, except nursing instructors in the ADN program may be scheduled a span of 8 1/2 working hours on regular teaching days, providing however, that such schedule shall not increase the number of their actual working hours beyond those worked by other teachers.

(a) Evening classes conducted by the adult education administrative units which are not part of state approved full-time programs shall not be considered part of the regular teaching day. This clause does not apply to teachers hired for specifically funded positions or projects.

. . .

7. Emergency or temporary substituting by a contracted teacher beyond the regular work day shall be voluntary and shall be reimbursed at an hourly rate of contracted salary divided by 1330.

8. Teacher contact hours shall be as follows:

(a) <u>Class Type</u>	<u>Periods Per Week</u>
Lecture, Demonstration and Discussion	22
Lecture and Lab	25
Skill, Laboratory and Shop	25
Cosmetologist Instructors	30 (60 minute periods)

(b) No more than three (3) communication preparations shall be assigned to a teacher in any given semester.

(c) A teacher should be assigned no more than five (5) preparations.

9. A full-time teaching schedule shall be for a 38-week duration based upon classroom assignment of 22-25 hours per week in their area except for Cosmetology (30) in their area.

10. Section G-1 does not apply to Farm Training, Production Agriculture, Circuit Teachers teaching non-credit courses and Project instructors.

11. Sections G-2, G-8, and G-9 do not apply to Farm Training instructors, Production Agriculture instructors, Librarians, Counselors, Career Education Evaluators, Circuit teachers teaching non-credit courses and project instructors.

Section H. Non-Teaching Duties

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2. Instructors except those circuit teachers teaching non-credit courses who must travel from one instructional center to another will be credited with contract hours in the following manner:

(a) Time allotted for travel will be deducted from the work week on the basis of 1/2 hour per 25 miles driving prorated up to 1/2 hour period. Driving distance and time allowance will be established prior to job assignments.

(b) Teaching contract hours will be assigned on the basis of 5/7 of the remaining work week contract hours.

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Section R. Management Rights

1. Recognition of Board Rights: The Union recognizes the right of the Board and the District Director to operate and manage the affairs of the Wisconsin Indianhead VTAE District, in accordance with its responsibilities under law. The Board and the District Director shall have all powers, rights, authority, duties and responsibilities conferred upon

them and invested in them by the laws and the Constitution of the State of Wisconsin.

2. Board Functions: The Board possesses the sole right and responsibility to operate the school system and all management rights repose in it, subject to the express provisions of this agreement. These rights include, but are not limited to the following:

. . .

G. The direction and arrangement of all the working forces in the system, including the right to hire, suspend, discharge or discipline or transfer employees.

. . .

I. The determination of the size of the working force, the allocation and assignment of work to employees, the determination of policies affecting the selection of employees, and the establishment of quality standards and judgment of employment performance.

. . .

K. The right to establish hours of employment, to schedule classes and assign work loads; and to select textbooks, teaching aids and materials.

BACKGROUND

The District has four campuses in Northwestern Wisconsin, at Rice Lake, New Richmond, Ashland and Superior, with courses offered in 26 other sites. The Grievant, Ronald Hagen, was hired by the District as a telephone service and repair instructor at the Rice Lake campus in the fall of 1984. Hagen worked full-time, and in the 1984-85 school year, had 15 hours of student contact time at the Rice Lake campus, with no travel involved. During the school years of 1985-86, 1986-87 and 1987-88, he had 17 hours of instruction at the Rice Lake campus, with no travel. The hours of instruction for those years were always within a seven-hour span and all the courses were for credit.

During the 1988-89 school year, Hagen was assigned to teach a non-credit course of Job Training and Safety at Rice Lake for a nine-hour span one day per month, and he was assigned to teach that course at Frederic for a nine-hour span one day per month. Frederic is about 50 miles from Rice Lake, and Hagen drove for two hours round trip when teaching at Frederic.

On September 9, 1988, Hagen wrote the following memo to Mary Ellen Filkins, campus administrator of the Rice Lake campus:

I would like to request the following information regarding the discharge of my duties as Job Training and Safety Instructor for Wisconsin Indianhead Technical College.

1. The hours that will be involved regarding student contact hours and travel time.
2. The method by which I will be compensated for the hours that fall outside the seven (7) hour span defined in the contract.
3. The method of transportation that I will be using to commute from Rice Lake to Frederic and back. Is the school to provide a vehicle or am I to provide my own transportation and be compensated for mileage.
4. Regarding the class to be held on the Rice Lake Campus of WITC, is there a regularly assigned classroom or are arrangements to be made prior to each class session.

Your prompt written response will be appreciated.

On September 16, 1988, Filkins sent the following memo to Hagen:

In response to your request for clarification, the JT & S classes have been scheduled with you this year as a part of your regular teaching assignment. They involve 8 days in each semester, 4 of which are out of town. Lois Eichman has advised you about the procedures for reimbursement of your travel expenses.

During the weeks in which you have JT & S class, you will have 25 student contact hours. In all other weeks, you will have 17 student contact hours. The length of the JT & S teaching day is set by the industry and has traditionally been taught in this manner. As we discussed, it is possible to schedule compensatory time for the longer teaching days and the travel time on a Friday or Monday. I would be happy to arrange this in any of several ways which would meet your needs and would be agreeable with John Graf.

The Rice Lake class is scheduled in room 309 for all sessions except September 28, when it is in room 323.

Hagen next had a meeting with Filkins and Zonnie Strandlund, who handles grievances for the Union. Filkins did not agree to change his schedule or to compensate him for travel or time beyond a seven-hour span. Another meeting was held with Filkins, Strandlund, Hagen and Wayne Sabatke, Administrator of Personnel Services for the District. Hagen testified that he was told that management could assign him as a circuit instructor, and that this was the first time he heard that he was a circuit instructor. On December 2, 1988, Sabatke sent the following letter (teaching schedules are omitted) to Hagen:

Enclosed please find your teaching week defined for weeks 1 through 4 which rotate throughout the first semester. Weeks 2 and 4 designate the apprenticeship assignment. Due to the circuit instruction assignment, which requires eight hours of instruction on the identified days, we have reduced the teaching days on the corresponding Fridays to stay within the designated teaching week of 35 hours.

The student contact in weeks 1 and 3 is low. Additional assignments could be assigned if the need should occur. The student contact for weeks 2 and 4 are at the maximum student contact load of 25 hours.

This information was outlined for me by Ms. Filkins and Mr. Graf. They have also communicated this information to you.

If you have any questions, please contact me.

On December 19, 1988, Sabatke sent the following letter to William Kalin, Staff Representative of WFT:

Enclosed is a copy of a letter to Ron Hagen with attachments. This information pertains to Mr. Hagen's concerns as they relate to apprenticeship teaching. I believe the issues as expressed to me by Mr. Strandlund affect contract language dealing with:

1. The seven hour span which defines a teaching day in relationship to a 35-hour teaching week.
2. The definition of circuit instruction as it pertains to the work load formula, Article IV, Section H, Item 2.

I believe issue #1 was resolved years ago as an outcome of two grievances filed by Local 395. This grievance deals with summer school issues and contract language, Article V, Section B. The work load application for summer school was determined to be the same as for the regular school year. The outcome of these two issues, one by arbitration and the other by mutual consent, was an agreement to modify the application of the work load definition to accommodate both the regular school year and summer school.

1. The arbitration was done by Duane McCrary

for the summer 1983 pay issue.

2. The second issue deals with pay for nurses in the summer. The mutual agreement resulted in modification of the administrative procedures in Article IV, Section G. See enclosures.

Bill, the administrative procedures are enclosed with a letter to Sue Cage, WFT Local President, dated June 12, 1984. These procedures were again modified February 20, 1985 as a result of the nursing pay issue for the summer of 1984. A copy of a letter sent to you is enclosed dated November 26, 1985 concerning these parameters as they affected Ms. Riedasch and Ms. Hofbauer.

The administrative procedure documents are written and modified as grievance arbitrations are awarded or when we have agreement on application of contract language.

These procedures reflect these decisions and are used so that our administration is consistent in the application of contract language.

Currently the meeting date with Mr. Hagen and Mr. Strandlund is set for December 20 at Rice Lake to follow our benefits meeting.

On January 24, 1989, Kalin sent the following letter to Sabatke:

After reviewing your letter of December 19, 1988, regarding the teaching assignment of Ron Hagen, Instructor at the Rice Lake Campus, and after discussing your proposed settlement of the issue with the appropriate representatives of Local 395, the Local has directed that I pursue the grievance to the next step of the grievance procedure.

As we discussed at our meeting of January 10, 1989, we are addressing the grievance to you with the understanding that you will direct it to the appropriate administrative level.

The Union contends that Instructor Ron Hagen has been assigned in violation of the collective bargaining agreement. The District is in violation of Article IV, Section G, No. 1 and Section H, No. 2.

The Union requests that this violation be remedied by modification of Mr. Hagen's teaching schedule and by compensating Mr. Hagen for his overload.

As we stated in the meeting of January 10, 1989, Mr. Hagen will agree to teach the additional load on a nonprecedent setting basis if he were compensated in accordance with Article IV, Section H, No. 2.

On February 28, 1989, Sabatke sent the following letter to Kalin:

I have reviewed the work load issue concerning Ron Hagen with Mr. Hildebrand. We do not feel that we have violated the contract in assigning Mr. Hagen circuit instruction.

We believe that the appropriate grievance level is the Board level step 3 of the grievance procedures. Our recommendation to the Board at their March meeting will be to deny this grievance. The Board has an option at this point, and we will communicate that decision following the March 20 meeting.

I do not understand your last paragraph. Please clarify.

On March 20, 1989, Sabatke notified Kalin that Kalin's grievance letter on the workload issue involving Hagen was presented to the Board and the Board decided to deny the grievance.

The grievance was processed to arbitration, with this Arbitrator scheduled to hold a hearing on October 30, 1989. Before the hearing started, the parties agreed to a stipulation that the District would pay Hagen 30 hours of his hourly rate, that Hagen would drop all claims regarding compensation for

the 1988-89 school year with prejudice, that the settlement was not precedential, that the parties agreed that Hagen's 1989-90 compensation would be resolved as part of ongoing negotiations, and that if those negotiations were not successful, the matter would be addressed by Arbitrator Mawhinney on January 10, 1990. While the matter was not resolved in negotiations, the arbitration hearing tentatively scheduled for January 10 was delayed until May 3, 1990.

During the 1989-90 school year, Hagen was assigned the non-credit Job Training and Safety course off campus, beyond a seven-hour span. For two days a month in the fall semester, he was assigned to be at New Richmond or Grantsburg for an eight-hour span. The New Richmond assignment required three hours of round trip driving, and the Grantsburg assignment required two and a half hours of driving time. In the spring semester, another instructor took over the New Richmond class, and Hagen continued teaching at the Grantsburg assignment. Hagen was offered compensatory time off on Friday afternoons, but due to the pending grievance, he worked a seven-hour span on Fridays.

Robert Hush, who has been employed at the District for 10 years and is a member of the Union's bargaining and benefits committee, testified that his assignments have never exceeded a seven-hour span, but that if an employee agrees to teach beyond the seven-hour span or an overload, he writes a letter stating that he has volunteered to do so and that it is a violation of the master contract. For example, Instructor Ted Simpson sent the following letter to the District on January 18, 1985:

I, Ted Simpson, agree to teach an overload of one-half hour per week (25.5 hours total) for the second semester of the 1984-85 school year. I understand I will be reimbursed at the rate of 1/1300th of my present contract salary per hour. The acceptance of this over-load is strictly voluntary, for the stated semester only, and is not precedent setting.

Similarly, on October 6, 1984, A.J. Halverson sent the following letter to the District:

I have agreed to teach an overload of the stated number of hours on a voluntary basis for the 1st & 2nd (semester) of the 1984-1985 (school year) at the rate of 1/1330 of my present salary per hour. This is in accordance with Article IV, Section G, Item 7 of the Master Contract.

According to the Master Contract, overloads are voluntary and may not be assigned.

I and WFT Local 395 emphasize that the acceptance of this overload is strictly voluntary on my part, that it has been agreed to for this stated semester only, and that it is not precedent setting.

Hush once taught a non-credit course in a high school, which was not part of a seven-hour span, and he taught it voluntarily and was compensated additionally for it. Hush stated that he did not consider Hagen to be a circuit instructor, and that the only circuit instructor that he was aware of was Edgar Donicht.

Donicht became employed by the District in August of 1988. Before that, he was employed by a consortium of vocational, technical and adult education districts that provided circuit instructors. The consortium was disbanded in June of 1988, and he became employed by the Indianhead District. Donicht's class schedule and travel plans for 1989-90 shows that he travels from his base at Rice Lake to Minong, Cable, Medford, Rice Lake and New Richmond on the first week of a four week circuit. In the second week, he travels from Rice Lake to Strum, Sparta, Onalaska and back to Rice Lake. In the third week, he travels to Fennimore, Middleton, Madison, Stevens Point and back to Rice Lake. In the fourth week, he travels to Rhinelander, Wausaukee, Green Bay and back to Rice Lake. He makes a complete circuit of this four-week plan eight times a year, and teaches training and safety, the same class as assigned to Hagen off campus. The schedule corresponds to the one Donicht had when he worked for the consortium.

Donicht testified that the term "circuit instructor" was a term used by those working for the consortium, but that he had never seen a definition of it. His individual teaching contract does not use the term "circuit instructor," but it was understood when he started working for the District that he would ride the circuit, be travelling, staying in motels, teaching in different locations, and be compensated for lodging, meals and mileage. The job posting for his position called for instruction throughout the state.

David Hartung, employed by the District at New Richmond since 1976 and former Union president, was present during most of the bargaining sessions for the 1989-91 contract. In September of 1989, the Union agreed to what Hartung called a waiver for a new employee or new position for credit courses in statistical process control and related quality subject areas. The parties signed the following joint letter:

The parties agree that the working conditions for full-time instructional position(s) teaching credit courses in Statistical Process Control and related Quality subject areas to include appropriate management courses be treated the same as instructional positions teaching non-credit courses.

Specific language items are those statements that reference circuit teachers in Article IV, sections G-10 and G-11 and Article IV, Section H-2. This agreement shall terminate June 30, 1991.

Hartung testified that the above exception expands the focus of Article IV, Section G-10 and G-11, as well as Section H-2, to include credit courses. The new position was for the New Richmond campus. Hartung testified that no one except Hagen had been changed by the District from a full-time instructor to a circuit instructor.

Non-credit courses are those that are not part of a degree or diploma program, or a vocational certification program. Such courses may include adult education courses, apprenticeships, occupational extension courses, or non state-aided courses. Sabatke, who has been the chief spokesman for the District during collective bargaining since 1969, noted that the language of Article IV, Section G-10 that adds the words "circuit teachers teaching noncredit courses" was added to the contract in the 1980-81 collective bargaining agreement. Sabatke testified that the contract's definition of class loads went back to the 1940's and 1950's, and the District had never been able to change the language except to get some exceptions for farm training instruction. The exceptions were by programs, but a need arose for an exception for non-credit courses on or off campus. The amendment to G-10 was the District's proposal, and although the District also wanted an extension of the seven-hour span, the parties agreed only to the non-credit language.

According to Sabatke, the District sought a change in contract language in 1980 because of a situation with Tony Ziesler. Ziesler was a full-time instructor on the Superior campus, teaching credit courses under contract for 1979-80. There was no need for Ziesler's credit program, but the District wanted Ziesler to teach non-credit energy extension education courses in Ashland, Superior, Hayward, Rice Lake and New Richmond. While the labor contract would not have allowed the District to take a full-time teaching credit and move him into either an on or off campus situation, the District intended to do this in the occupational extension area. Therefore, Sabatke stated that the situation with Ziesler triggered the District to go to the Union to get language to cover the situation of teaching non-credit courses on or off campus in different locations, like a farm training instructor. Ziesler resigned from his teaching position on January 23, 1980, in order to work as a consultant and teach part-time. Thus, the District did not actually make the transfer that it had intended. However, the District did obtain the language exempting circuit teachers teaching non-credit courses from the seven-hour span. The District, at that time, also sought flexibility from the seven-hour span, but the parties agreed only to non-credit courses. Thus, the language at issue now came into the contract in the 1980-81 contract.

Hush testified that during negotiations for the 1987-89 contract, the District made a proposal to get more flexibility in the work load. Union Exhibit #21 shows that on November 30, 1987, the District proposed, among other things, that the maximum teaching day would be 10 consecutive hours, that driving time would not be part of a teaching week which would consist of 35 hours, etc. Hush stated that if the Union had agreed to the District's proposals, Hagen's assignment at issue would have been proper. However, the Union did not agree to those proposals, and the language of Article IV was not modified. During the negotiations that took place in late 1989 and early 1990, the District again sought more flexibility. The District's proposals would have eliminated the seven-hour span, established a 35-hour week, and changed the provisions regarding driving time. The Union called those proposals the "Hagenization Clause." Hush testified that the parties spent many hours addressing this issue, with the main obstacle (from the Union's point of view) being the assignment of circuit work, as the Union does not believe that an instructor can be made a circuit instructor at the will of management, and the proposals which were rejected would have allowed that. While Hush was involved in the bargaining for the last two contracts, he was not involved in the bargaining that added the language of Article IV, G-1, G-10, G-11, or H-2. Hartung agreed with Hush's testimony that if the Union had agreed to the District's proposals in the last round of negotiations, the District could

change a full-time campus instructor to a circuit instructor.

Sabatke testified that the District continued to bring proposals regarding changes in Article IV to the bargaining table in 1987 and again in 1989, because the District does not have flexibility in the area where teachers teach courses for credit.

Sabatke does not have a definition of "circuit teacher," but defines teachers from the standpoint of what is being taught and where it is being taught. He testified that farm training and production agriculture instructors are on a circuit, as they go from farm to farm, but that they teach credit courses instead of non-credit courses. Sabatke stated that the term circuit instructor is a bad term, because what and where one is teaching defines the parameters. Other than Hagen, Sabatke considers Donicht to be a circuit instructor, as well as Bruce Nelson, who is teaching non-credit courses at Phillips on a voluntary basis. Sabatke noted that Hagen is paid for mileage, but drives on District time and stays with a 35-hour work week by cutting back on his schedules on Fridays.

Part of Sabatke's responsibilities include administration of the bargaining agreement in a manner to ensure uniformity at all campuses, although the existing language was developed for one campus. He also monitors the work load of instructors in an attempt to be efficient and productive with the existing staff. While the contract calls for 22 to 25 student contact hours, some instructors have lower student contact hours. With the reassignment of Hagen to off campus duty, Sabatke could show by the following chart the increase in student contact hours:

WORK ASSIGNMENTS
RON HAGEN

REGULAR TEACHING AT RICE LAKE

of Load	Work	Student	Actual Student	%
	<u>Week</u>	<u>Contact Max.</u>	<u>Contact</u>	
Fall '88 68%	35	25	17	
Spring '89 68%	35	25	17	
Fall '89 68%	35	25	17	
Spring '90 68%	35	25	17	

ASSIGNMENT OF CIRCUIT INSTRUCTORS

	Work <u>Week</u>	Student <u>Contact Max.</u>	Actual Student		% of Load <u>1 & 3</u>	% of Load <u>2 & 4</u>
			<u>1&3 Wk</u>	<u>2&4 Wk</u>		
Fall '88	35	25	17		68%	100%
Spring '89	35	25	17		68%	100%
Fall '89	35	25	17		68%	96%
Spring '90	35	25	17		68%	68/96%

Sabatke has developed administrative procedures so that the master agreement is applied in a consistent manner, rather than having four different interpretations at four campuses. Because instructors will not always be at the 25-hour maximum student contact time, Sabatke looked at acceptable ranges of student contact time. While Sabatke unilaterally developed administrative policy that included the acceptable ranges of student contact time in the summer of 1981, he later included the Union in discussions about that policy, which resulted in some modifications to the policy.

The administrative policy underwent several revisions, and partly as an outgrowth of a grievance filed by the Union in 1983 over summer pay, an arbitration award issued by Arbitrator Duane McCrary in 1984 and a grievance over nursing instructors' summer pay in 1984, Sabatke made the last revision in administrative policy in February 1985. In discussions with the Union about how to apply a daily rate on a full teaching load, Sabatke agreed that it was unlikely to always have instructors at a full load of 22 to 25 hours, so he worked out a range of ideal, acceptable and unacceptable ranges. The following policy was in effect when Hagen's work load was evaluated in the summer of 1988:

ADMINISTRATIVE PROCEDURES

This policy covers those instructional staff falling within the main body of the Master Contract; (see recognition clause). This administrative procedure will outline interpretations, procedures, and practices of management by numerical item in ARTICLE IV, Section G of the Master Contract for those staff covered by this portion of the contract.

1. The seven (7) hour (60 minutes/hour) span is a teaching day in which management will schedule classes in compliance with student contact hours identified in Item 8 of Section G. The seven (7) hour span does not specify a starting and ending time, therefore allowing for flexible scheduling. The only qualifier to the type of assignment is adult and continuing education classes conducted by adult education administration when offered in the evening (after 6:00 pm) (NOTE the two (2) limiting qualifiers). Curriculum updating, office hours, student counseling and student advising may be assigned during this time. The teaching schedule will reflect the seven (7) hour span, courses being taught, one (1) hour duty free lunch period, and office hours, a total of 35 hours/week. Overloads shall also be identified when appropriate. Inservice and workshop days are not considered teaching days. The length of this workday will be longer due to travel as caused by the size of the district. As inservice and workshops are conducted at different locations, some staff must travel. The length of the workday should be appropriate to the distance traveling to and from a specific location. The same consideration must be given to the length of time that a workshop may be conducted. This length of time for workshops or inservice days should be scheduled such that individual participation is justifiable in terms of time spent in said activity. Considering time spent in traveling, may question the justification to conducting said activity. Reasonableness is the key to the scheduling of these activities.

2. Item 2 refers to scheduled classes. This scheduling of classes is in reference to the workload limitation identified in Item 8 (a) of Section G. Overloads and substitution may be scheduled within the seven (7) hour span due to convenience and/or necessity, but the slot utilized must be rescheduled.

. . .

7. Substitution by staff qualifying for Master Contract representation beyond regular workday is voluntary. Qualifying staff are regular full-time teachers. Reimbursement is salary/1330. During the seven (7) hour span, if a teacher does not have a full load, substituting may be assigned. Where liability is a factor, a qualified staff must be used.

8. Teacher student contact hours is determined by the type of course. The teaching workload will correspond to courses identified on the course approval list. If an instructor teaches all lecture courses the student contact load is 22 hours per week. If an instructor teaches any lab, skill, laboratory, or shop, their workload will be identified as a maximum of 25 student contact hours. A student contact hour is defined as 60 minutes whereas up to a maximum of 10 minutes may be allowed as a break or to facilitate student movement between classes. Breaks are allowed for consecutive student contact hours for a particular course meeting more than one hour. These breaks cannot be used

to shorten scheduled class time.

- a. Any assigned courses over the specified student contact hour limitations per week is considered overload regardless of location, time and seven (7) hour span. Overloads are not to be scheduled during seven (7) hour span as the difference between the student contact load and teaching week is designated office hours. Office hours are defined as being available for student counseling, student advising, individual assistance, campus committee work, special curriculum assignments, etc. Overloads for full-time courses are reimbursed on 1330 of salary for student contact only. Overloads are not part of the seven (7) hour span. Overloads are to be schedule outside of the regular teaching day unless an adjustment is made to the seven (7) hour span. If an overload student contact hour is scheduled during the seven (7) hour span for an office hour or duty free lunch period, this hour is then to be scheduled outside the seven (7) hour span. The overload is extra pay and should be identified above and beyond the regular teaching day. Any assigned project hours above the 22/25 student contact load are subject to the above limitations. The work week equivalency is defined in Section 9.
- b. Maximum of three (3) communications preparations per semester is allowed for courses numbered 801.
- c. A teacher should be assigned no more than five (5) preparations. This is a guideline only is not mandatory. A teacher substan-tially below the maximum of 22 or 25 because of preparation limitation should be given additional courses. Less than twelve (12) hours of fifteen (15) hours (Reference maximum student contact load). Five (5) preparations is unacceptable, unless other specified assignments are approved such as curriculum development, instructional research, etc. Usually a preparation is defined by unique course number. Excep-tions to this definition would be such instructional structures such as fraction-alized courses, open lab, stacked classes, etc.

Note the special assignments should not cause the need for hiring of part-time staff. The following parameters as outlined represent guidelines and overlap. The number of preparations determine the acceptable load.

	<u>22 hours/week</u>	<u>25 hours/week</u>	
Ideal	20-22	22-25	- 5 preps or less
Acceptable	16-19	19-21	- 5 preps
	12-16	15-18	- 6 preps
Unacceptable	11 or less	14 or less	- for any number of preps

Scheduling should be revised to increase hours by duplicating courses or assigning other activities.

An exception to the above based formula is consideration given to probationary instructors. Cosmetology load is 30 student contact per week. The above ratio applies considering the 30 hours student contact.

- 9.a. A full-time teaching schedule equivalence is thirty-eight (38) weeks for 22-25 student contact hours per week. Student contact schedules are flexible so that the 22-25 student contact hours are averaged per semester. A full-time teaching schedule equivalence may be reduced in weeks by increased student contact to facilitate unique programming. This assignment of workloads is based upon the above equivalence and is used only for those instructors that are represented by the bargaining unit according to the Recognition Clause.
- b. To determine pay for part-time instruction by full-time staff; section 9a weekly equivalency (22 - 25 student contact hours) will be used to determine whether a daily rate or 1/1330 hourly rate is used. Section 8c student contact schedule will be used. The daily rate will be used for the Ideal Schedule. 1/1330 of salary will be used for Acceptable range.
- 10. This section exempts certain bargaining unit personnel from working parameter G1. The hours of assigned student contact for teacher position is listed below. Librarian and counselor work-week availability is also listed.

Farm Training Instructors	35 student contact hours
Production Ag Instructors	30 student contact hours
Counselor - thru June, 1983	32 1/2 student contact hours
Librarians - thru June, 1983	32 1/2 student contact hours
Career Education Evaluators - thru June, 1983	32 1/2 student contact hours
Circuit Teachers	32 student contact hours
Other Project Instructors	35 student contact hours

. . .

The Union informed the District that it was not bound by the above administrative procedures. While Sabatke stated that he believed the Union agreed with the policy on student contact hours, he was aware that the Union did not agree with the whole document. Kalin informed Sabatke of the Union's position in the following letter, dated June 19, 1985, that was in reference to the grievance over nurses' summer pay:

As we discussed at our meeting in Shell Lake on June 18, 1985, the Federation is in agreement with the General Release Form and the majority of the provisions of the Stipulation of Agreement. The provision of the Stipulation of Agreement with which we did not and cannot agree is the parenthesized portion of number one. i.e., "(See Administrative Procedure, Work Day and School Day Assignments, dated June 11, 1984, Subsection 8 (c) - amended)".

Wayne, I firmly believe that that provision of the Administrative Procedure was not discussed when we reached the settlement agreement regarding the nurses' summer pay grievance. We did agree that 22-25 hours shall be considered as full-time employment during the summer school.

Wayne, you are well aware that I did not and could not accept the provisions contained in 8.c. of the Administrative Procedures; for if I did, I would no longer be functioning as a representative of Local 395.

. . .

Sabatke responded to the above letter in November of 1985, noting that the application of the work load formula and parameters established for the regular year would apply to summer school.

When Sabatke evaluated Hagen's work load, Hagen was teaching 17 hours of student contact time. Filkins called Sabatke and asked him how to schedule Hagen. First, Sabatke looked at additional credit work on the Rice Lake campus, and at the areas in which Hagen was certified or certifiable. However, he saw there was a need for an instructor to teach a non-credit ar Frederic in the same area in which Hagen was certified. Sabatke felt that under the labor contract, he could assign Hagen eight additional student contact hours and still be within the 25 maximum contact hours, and that it would fall within the exception for circuit instructors teaching non-credit courses. Sabatke testified that the assignment would not work under the contract is this were a credit course, because it would exceed the seven-hour span if it were a credit course. Sabatke stated that there is no overload as the assignment is within the 25-hour contact time, and because it's a non-credit teaching assignment, it is one of the exceptions of Article IV, Section G-10. Further, Sabatke considered that Hagen's assignment should be no more than 35-hours per week, and the assignment fell within that parameter, as well as falling with the 25-hour contact load.

The District noted that other instructors -- such as Dado, Bark, Larson, Douglas and Lewis -- have been treated differently. Gary Dado was reassigned to credit and non-credit courses in 1989-90, because the dairy herd management program was suspended for 1989-90. Dado was offered credit courses on campus, non-credit courses both on and off campus, and other assignments as identified by the New Richmond administration. Dado resigned before that took place. Mike Bark was a full-time instructor who was given a special assignment in Ashland to teach credit and non-credit courses in hospitality in the Ashland region for the 1987-88 school year. Bark agreed to the change in assignment and to be treated like a farm training instructor, exempt from Article IV, G-1 under G-10. Larry Larson and Gary Douglas were production agriculture instructors, exempt from the seven-hour span requirement, who moved back from production agriculture to on campus credit instruction. Dave Lewis requested a transfer from an on-campus instructor into a farm training program.

On March 14, 1985, Susan (Cage) Meyers, Union President, sent a letter to the District noting that Chuck Reynolds, an instructor in the telephone service and repair program, was asked -- and agreed -- to teach two field service non-credit courses in electricity. Meyers' letter included the following:

It is necessary for us to stipulate that Mr. Reynolds agrees to this voluntary for this semester only because it is a violation of the Master Contract, Article IV, Section G, Item 1a.

I would also like to note that Mr. Reynolds is personally quite willing to teach these courses this semester in order to help WITI - Rice Lake and the District as a whole meet the changing needs of the community and region.

. . .

The above assignment to Reynolds allowed for the same assignment given to Hagen, except on a voluntary basis.

Hagen did not volunteer for his assignment in dispute in this grievance. Hagen also stated that he does not consider himself to be a circuit instructor, and that Donicht is the only circuit instructor that he knew of.

THE PARTIES' POSITION

The Union:

The Union points out that the parties failed in negotiations to reach an agreement regarding "flexibility," wherein the District proposed changes that would have allowed the type of scheduling at issue in this grievance. The labor contract remained the same. The Union notes Hartung's testimony that if the Union agreed to the District's proposals, management would have the right to change a full-time campus instructor into a circuit instructor. Hush testified that the District proposed modifying the seven-hour span up to 10

hours, changing the driving time compensation to a dollar amount, and other changes that would have allowed the District to schedule Hagen without violating the contract, but that none of those changes was made in the 1987-89 contract. The District also proposed to establish a 35-hour week, but the Union did not agree to that proposal, even though Sabatke's testimony referred to Hagen's schedule as being within the 35-hour work week. Thus, the Union submits that although the District was unsuccessful in obtaining language to allow the scheduling of teachers as it did with Hagen, it proceeded to schedule Hagen in total disregard of the contract.

The Union states that it has no objections to instructors exceeding the seven-hour span if it is voluntary on the part of the instructor. The Union introduced several exhibits to show that it was willing to allow the District latitude in developing new programs. Hush volunteered to teach beyond a seven-hour span, as did all other teachers. Donicht knew in advance that he would be teaching throughout the state, as did those involved in the farm training and production agriculture positions.

The Union submits that Sabatke's testimony regarding the inclusion of the language of Article IV, Section G-10, in the 1980-81 collective bargaining contract was misleading. The Union contends that the language was amended to allow instructors similar to Ziesler to teach non-credit circuit courses and remain in the bargaining unit. The Union agreed to the language of "circuit teachers teaching noncredit courses" in Article IV so that either the District could hire circuit teachers teaching non-credit courses and they would be in the bargaining unit, or that the existing staff could voluntarily agree to teach in that area and remain in the bargaining unit. The Union argues that it was never its intent to allow the District to assign a full-time campus instructor to teach non-credit circuit courses. The non-voluntary assignment of a campus instructor to circuit instruction occurred for the first time with Hagen.

While the District contends that Hagen was assigned circuit instruction because he was underloaded at 17 contact hours, the Union does not agree that Hagen was underloaded. Hush's class load was at 15 hours. Moreover, the District did not explore the possibility of assigning Hagen to teach courses on campus, where he could have been scheduled for 25 hours and remain on campus.

The Union asserts that it does not give credibility to the District's Administrative Procedures, but that even under those procedures, 15-18 hours is an acceptable work load. Hagen was at 17 hours per semester. Also, the procedures call for teachers with underloads to be given assignments such as curriculum development or instructional research, and those options were not explored with Hagen.

The Union notes that when Sabatke was asked to list the circuit instructors, he stated that it was not an area that the District used much of, but it has a lot of potential and that is why the District has been saying to the Union that it needs flexibility to take staff out and teach credit or non-credit courses, but that the District is restricted by the contract. The Union states that the District was not able to get the scheduling flexibility at the bargaining table, and is now trying to gain it at the grievance table.

The Union concludes that the scheduling of Hagen for 1988-89 and 1989-90 is in violation of Article IV, Section D-2, Section G-1 and 7, and Section H-2. The Union asks that the District be ordered to cease and desist from scheduling Hagen in violation of the contract to compensate him per Exhibit 14.

The District:

The District asserts that it has not violated Article IV, Section G-1, as the course in question is a non-credit course and should not be considered as a component of Hagen's regular teaching day, and that under Section H-2, in teaching such a course, Hagen constitutes a "circuit teacher." The District is exercising its management rights to assign an employee in accord with Article IV, Section R-2, and Sections G and K.

While the Union appears to be contending that in order to assign an employee to multi-campus teaching duties, that employee must voluntarily agree to it, the District notes that Donicht has taught the same non-credit course as Hagen on a day-to-day basis in excess of the seven-hour span. Further, the District notes that this case is unlike Union exhibits 19 and 20 where employees voluntarily agreed to teach an overload.

The District argues that the bargaining history underscores management's right to assign Hagen as it did. The 1980-81 contract added the language of Section G-10 to exempt circuit teachers teaching non-credit courses from Section G-1. The failure of the District to gain greater flexibility in subsequent bargains does not detract from the existing bargaining history and language of Section H-2, exempting circuit teachers from being credited with

contact hours for travel time. Nor does the fact that changes proposed by the District were not implemented in the current contract alter the inapplicability of Section G-1, G-2, G-8 and G-9 to circuit teachers teaching non-credit courses. The proposed changes would have, strictly for teachers teaching credit courses, expanded the regular teaching day and eliminated attribution of travel time between campuses to contact time, and given those teachers driving time reimbursement.

The District contends that Hagen constitutes, in part, a circuit teacher as that term is used in Article IV, Sections G and H. While the District anticipated that the Union would take the position that Donicht is a circuit teacher and Hagen is not, the testimony of Donicht himself showed that he had no knowledge of the term circuit teacher and that term is not included in his individual teaching contract. The District argues that it has the right to designate, in whole or in part, any instructor as a circuit teacher in the absence of limiting language in the contract. There is no language requiring the District to obtain the prior consent of an employee such as Hagen to act as a circuit teacher in teaching non-credit courses, and the District has the ability to assign employees such as Hagen as it sees fit to meet the needs of the District.

Moreover, the District contends that it acted equitably with respect to Hagen's teaching assignments for 1989-90, as the only time he is assigned responsibilities outside the seven-hour span is when he is teaching non-credit courses. Hagen has not been assigned in excess of teacher contact hours, and the District attempted to accommodate him by not scheduling him for office hours on Friday afternoons of the second and fourth weeks of the month when he taught courses at New Richmond or Frederic.

Because the master agreement is silent as to the concept of a circuit teacher, the District submits that it retains the ability to assign a teacher as a circuit teacher. The District notes that Exhibit 23 identifies an understanding that certain teacher teaching credit courses would be treated the same as instructional positions teaching non-credit courses, while this grievance involves a full-time instructor teaching a non-credit course.

The District points out that Hagen is not teaching an overload nor has he been forced to give up a duty-free lunch hour, unlike those situations covered by Exhibits 19 and 20. Additionally, Hagen's contact hours have not been increased beyond those specified in Section G-8. The District took into account Hagen's low number of contact hours, the need for instruction of non-credit courses in job training and safety at locations other than Rice Lake, and Hagen's ability to teach those courses, as well as management's desire to utilize his services as a full-time equivalency employee to the greatest extent, consistent with the master agreement.

While Hagen may believe that he was hired to teach at Rice Lake and that he does not consider himself to be a circuit instructor, those beliefs or suppositions cannot be used to undermine clearly established management rights in the absence of restrictive language in his personal contract or in the master agreement.

The District concludes that its assignments of Hagen do not constitute a violation of Article IV, Sections G or H.

DISCUSSION

At the heart of this grievance is the meaning of the term "circuit teacher," because the labor contract clearly exempts circuit teachers teaching non-credit courses from Article IV, Sections G-1 and H-2. Since Hagen was assigned to teach a non-credit course off the Rice Lake campus during the 1988-89 and 1989-90 school years, the question is whether Hagen was correctly called a "circuit teacher" by the District, thereby allowing the District to evade the terms of G-1 and H-2.

The language exempting circuit teachers teaching non-credit courses from parts of Article IV, Sections G and H, appear in G-10, G-11 and H-2. The language first came into the parties' contract in the 1980-81 labor agreement.

According to the District, it sought the language to cover the situation with Ziesler, when the District needed to transfer a full-time instructor teaching credit courses on campus to non-credit courses on or off campus in the occupational extension area. While Ziesler resigned and performed the work as a consultant and part-time teacher, the District contemplated moving him around several locations -- Rice Lake, Hayward, Superior, Ashland and New Richmond. The courses were all non-credit energy extension education courses (per Exhibit #37). The District obtained part of the language it wanted -- that part being the current language regarding circuit teachers teaching non-credit courses -- but failed to get more flexibility or relief from the seven-hour span requirement of Section G-1.

The Union claims, in its brief, that it agreed to include the language in question so that either the District could hire circuit teachers teaching non-credit courses and they would be in the bargaining unit, or that existing staff could voluntarily agree to teach in that area and remain in the bargaining unit. The Union further claims that it was never its intent to allow the District to assign a full-time campus instructor to teach non-credit circuit instruction, and that the non-voluntary assignment of a campus instructor to circuit instruction occurred for the first time with Hagen.

The problem with the bargaining history of the 1980-81 labor contract is that the evidence does not clearly show either parties' intent to the meaning of "circuit teachers teaching non-credit courses." However, if the District intended the change in language to cover the Ziesler situation, it must have intended the change to reflect the situation of a teacher teaching only non-credit courses at different locations. Sabatke's testimony supports this conclusion, as he stated that the District wanted to have teachers teaching non-credit courses on or off campus, in different locations, like a farm training instructor. Farm training instructors and production agriculture instructors are furthermore considered by Sabatke to be circuit teachers as they travel a circuit but teach credit courses.

Thus, the evidence tends to show that the current language which came into the parties' contract in the 1980-81 bargain does not apply to the same situation presented here.

The bargaining history related to the last two labor contracts reinforces the Union's position that the District has failed to achieve in bargaining what it now seeks in arbitration. The District's proposals (Exhibits #21 and #22) would have made major changes to Article IV. The District does not dispute that it sought more flexibility in the area where teachers teach credit courses. Hagen was assigned primarily to credit courses, until his 1988-89 and 1989-90 assignment of non-credit courses. The District argues that the changes it proposed in 1987 and 1989 and failed to achieve do not alter the exemption of circuit teachers teaching non-credit courses. This reasoning only gets back to the question of what is meant by a circuit teacher, which will be discussed again. Nonetheless, the bargaining history for 1987 and 1989 clearly shows that the District's proposals would have allowed for the assignment being grieved here. It follows that the Arbitrator should not grant now what the District failed to achieve in bargaining.

Therefore, I find that the bargaining history -- both for the language added in the 1980-81 contract as well as the bargaining proposals rejected for the last two contracts -- support a finding in favor of the Union.

The parties do not present a clear definition of the term "circuit teacher." However, I find that the totality of the evidence shows that the parties did not intend to allow the District to designate a full-time instructor to be a circuit teacher in the manner in which Hagen was so designated to be one. If the term "circuit teacher" first appeared to cover the Ziesler situation, Ziesler was to be travelling from location to location, just like a farm training instructor. Also, Article IV, Section H-2, provides that: "Instructors except those circuit teachers teaching non-credit courses who must travel from one instructional center to another will be credited with contract hours in the following manner . . ." The contract language contemplates that a teacher may travel from one place to another, as Hagen did. The exemption from allotment of travel time to the work week for circuit teachers teaching non-credit courses has more meaning when applied to situations as Ziesler's (those his never came about while under contract) and Donicht's current assignment. However, the language of Section H-2 covers Hagen's assignment.

Every time the parties used the exemption, the use of the term "non-credit courses" is modified by the use of the term "circuit teachers." The District tends to categorize non-credit teaching by itself, while the contract only contemplates the exemption for circuit teachers teaching non-credit courses. While Sabatke testified that he tends to put labels on people in terms of what they teach and where they teach, and that is not always inappropriate, the contract exemptions from the constraints found in Article IV are limited to circuit teachers teaching non-credit courses.

The District correctly notes that even Donicht -- a circuit teacher by anybody's definition -- had no clear knowledge of the term circuit teacher. Donicht noted that it was a term used by those working a circuit when he worked for the consortium of districts. The common sense meaning to the term circuit teacher is one who teaches at various locations, or one who in essence, travels a circuit. Donicht's schedule is a classic example of what a circuit teacher is -- he travels from place to place, making a complete circuit of a four-week schedule eight times a year. While the District points out that Donicht's individual teaching contract does not use the term circuit teacher, the job posting called for instruction throughout the state. Therefore, Donicht was aware that he would be working a circuit, much like the one he worked before starting with the District.

Even the District has considered a circuit teacher to be a breed apart. The administrative procedures, while not dispositive in this award, show that a circuit teacher may have 32 student contact hours. Donicht's contact hours range from a low of 28 to a high of 36 per week, although some office hours are credited to contact hours in his case.

The contract also calls for circuit teachers teaching non-credit courses to be exempt from Article IV, Section G-8, which specifies teacher contact hours. The parties agree that a maximum contact load for Hagen is 25 hours. When Sabatke considered that he could assign Hagen eight additional contact hours and still be within the 25 hours maximum of the contract, he was following Section G-8. If Hagen was truly considered to be a circuit teacher, there would have been no need to confine the contact hours to the language of G-8, as Hagen would have been exempt under G-11. Section G-11 of Article IV says that G-8 does not apply to circuit teachers teaching non-credit courses. The District, however, was trying to create some type of hybrid teacher -- a circuit teacher exempt from Sections G-1 and H-2 when off campus teaching a non-credit course, but a full-time instructor subject to G-8 for total work load.

The District argues that it has the right to designate any instructor as a circuit teacher in part. However, that would allow the District to get around the provisions of G-1 and H-2 in the manner it did with Hagen, which is at the heart of this grievance. There is no evidence that shows that the parties intended the exemption of a circuit teacher teaching non-credit courses to be applied to the hybrid assignment presented in this case.

While the District claims it has the right to designate an instructor as a circuit teacher in part in the absence of limiting language within the contract, the limiting language is within the contract in Article IV. Management's general right to transfer under Article IV, Section R-2(G) is restricted by the language of Article IV, Section D-2, which calls for no transfers from one city to another unless mutually agreed upon by the District and the teacher. Likewise, management's general right to establish hours of employment, to schedule classes, and to assign work loads under Article IV, Section R-2(K) is restricted by the specific requirements of Article IV, Sections G and H, such as G-1, G-2, G-3, G-4, G-5, G-7, G-8 and H-2.

Other teachers who have been reassigned have done so on a voluntary basis, such as Reynolds, Nelson, Bark and Lewis. Dado's reassignment never took place as he resigned. The situations with Larson and Douglas are the opposites of this grievance, where they moved from production agriculture back to on campus credit instruction. There is no evidence that the Union has failed to grieve the kind of reassignment that took place with Hagen. Instead, the Union sought to protect its interpretation of the contract at all times, such as the letters from Meyers regarding Reynolds, noting that he agreed to teach non-credit courses and that it violated the labor contract, as well as the letters from Simpson and Halverson. While the latter two did not involve the same situation as Hagen, Reynolds did. The Union and bargaining unit members were well aware of the contract's provisions and noted any potential violations.

While the District did make an attempt to give Hagen time off on Friday afternoons to accommodate him for teaching outside the seven-hour span, the attempt was unsatisfactory to Hagen and to the Union. Sabatke testified that he attempted to keep Hagen within a 35-hour work week. However, the contract does not call for a 35-hour work week, while it does call for a seven-hour span. Where the District violated the contract by assigning Hagen outside the seven-hour span, it could not rectify the violation by adhering to a 35-hour work week.

The District's goal of using teachers more efficiently and productively by having them teach more contact hours is a worthy one. The District could have accomplished this in several ways without violating the bargaining agreement, however.

Based on all the evidence, the Arbitrator finds that Ron Hagen is not a circuit teacher under Article IV, Sections G-10, G-11 and H-2. Therefore, the Arbitrator concludes that the District violated Article IV, Section G and Section H when it assigned Ron Hagen to his 1989-90 and 1990-91 teaching schedules. The parties previously stipulated that any remedy is limited to the school year for 1989-90, and that the 1990-91 schedule is not an issue if this award is issued before the fall semester of 1990-91. Therefore, the District is ordered to compensate Ron Hagen for the school year 1989-90 for any and all driving time and instructional overtime incurred as a result of the assignment to New Richmond and Grantsburg which resulted in the violation of Article IV. The Arbitrator will retain jurisdiction for 30 days from the date of this award to resolve any disputes which may arise over the application of this award.

AWARD

The grievance is sustained.

The District violated Article IV, Section G and Section H, when it assigned Ron Hagen to his 1989-90 and 1990-91 teaching schedules.

The District is ordered to compensate Ron Hagen for such violations for the school year 1989-90.

I shall retain jurisdiction over this matter for thirty (30) days from the date of this Award.

Dated at Madison, Wisconsin this 25th day of July, 1990.

By _____
Karen J. Mawhinney, Arbitrator