BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
NORTH CENTRAL FACULTY ASSOCIATION	Case 42 No. 45574 MA-6648
and	
NORTH CENTRAL VOCATIONAL, TECHNICAL AND ADULT EDUCATION DISTRICT BOARD	

Appearances:

Mr. Thomas J. Coffey, Executive Director, Central Wisconsin Uniserv Councils, 2805 Emery Drive, P.O. Box 1606, Wausau, Wisconsin 54402-1606, appearing on behalf of North Central Faculty Association, referred to below as the Association.

Mr. Dean R. Dietrich, Ruder, Ware & Michler, S.C., Attorneys at Law, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of North Central Vocational, Technical, and Adult Education District Board, referred to below as the Board.

ARBITRATION AWARD

The Association and the Board are parties to a collective bargaining agreement which was in effect at all times relevant to this proceeding and which provides for the final and binding arbitration of certain disputes. The Association requested, and the Board agreed, that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Ann Bjork, referred to below as the Grievant. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on August 21, 1991, in Wausau, Wisconsin. The hearing was not transcribed, and the parties filed briefs and reply briefs by October 14, 1991.

ISSUES

The parties did not stipulate the issues for decision. I have determined the record poses the following issues:

> Does the Board's refusal to pay the Grievant overload pay, beyond that already agreed to, violate the parties' 1989-91 collective bargaining agreement?
>
> If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE III

CONDITIONS OF EMPLOYMENT

. . .

D. Period of Employment

. . .

2. The salary schedule covers thirty-eight weeks including thirty-five hours in school each week.

. . .

E. Instructional Responsibilities

1. It is recognized that certain responsi-bilities and obligations are inherent in the job of a professional educator. This is necessary in order to insure quality educational programs.

Typical but not an all-inclusive list of re-sponsibilities expected of all instructors shall include:

. . .

2. Instructional responsibility shall be assigned in accordance with the "Instructor Responsibility Table of Percentages" as de-scribed in Appendix "G" for courses taught during the day in State Board approved full-time programs and the following provisions.

. . .

3. The following definitions shall apply in de-termining instructional responsibility as contained in the "Instructor Responsibility Table of Percentages", Appendix "G".

. . .

4. Instructor responsibility totaling 92% to 108% shall constitute a full semester load. Instructors who volunteer to accept an overload will be paid on a direct pro rata basis for the percentage of teaching in excess of 108% according to the provisions applying to the "Instructor Responsibility Table of Percentages" as applied to the total load each semester.

All overloads resulting from scheduling of instructional hours as determined by the "Instructor Responsibility Table of Percentages" as described in Appendix "G," but not including those overloads resulting from class size as described in Article III, E., 2, a. "Course Size," shall commence being paid on the first check of the overload period and shall continue to be paid in even amounts on the ensuing checks for the duration of the period of the overload. In circumstances where overloads are not confirmed in sufficient time to meet the datelines of a pay period, then the payment of the overload shall commence on the next paycheck.

. . .

5. Additional criteria established by the Wisconsin Board of Vocational, Technical and Adult Education and the North Central Association of Colleges and Secondary Schools, Commission on Higher Education, The Wisconsin State Board of Nursing, and other accrediting agencies deemed necessary for the successful operation of the programs must be complied with, and will take precedence over the previously described load formula.

Because of their special nature, the following positions shall not be included in D.2. and E.1., 2., 3., and 4, aforementioned. Time schedules for these positions shall be established to coincide with the special nature of the programs.

. . .

c. Biology instructor - Wausau

. . .

ARTICLE X

GRIEVANCE PROCEDURE

A. Purpose

The purpose of this procedure is to secure, at the lowest possible administrative level, equitable solutions to the problems which may from time-to-time arise affecting the welfare or working conditions of teachers as defined in the professional contract supplement agreement and provide an orderly method for resolving those problems.

B. Definitions

1. A "grievance" is a request for interpretation or claim of a violation of a specific article or section of the professional contract supplement agreement.

. . .

C. General Procedures

1. Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process. The time limits specified may, however, be extended by mutual agreement.

. . .

10. The time limits specified for a particular step may be extended by mutual agreement of the persons involved in the disposition of a grievance at that step. Such extension of time limits shall be in writing and signed by both the grievant and the Board's representative at that step.

D. Faculty Initiation of Grievances

1. Step One

a. After an earnest informal attempt has been made by the grievant with his/her immediate supervisor to solve his/her grievance, he/she may initiate the first formal step of the grievance procedure. To do so he/she shall present a written "statement of grievance" to the Vice President - Academic Affairs no

later than fifteen days after the facts or incident first occurred upon which the grievance is based. On that same date copies of the written "statement of grievance" shall be given to the Association and placed in the "grievance file".

. . .

F. Arbitration

1. The sole function of the arbitration shall be to determine whether or not the rights of the grievant have been violated by the Board contrary to an express provision of the Professional Contract Supplement Agreement.

2. . . . The arbitrator shall have no authority to add to, subtract from, or modify this agreement in any way.

The arbitrator shall have no authority to impose liability upon the Board arising out of acts occurring before the effective date or after the termination of this agreement. The decision of the arbitrator will be final and binding on both parties.

. . .

ARTICLE XI

RULES OF AGREEMENT

. . .

B. Duration

In accordance with Wisconsin Statute, this agreement shall be binding on both parties from July 1, 1989, to June 30, 1991, and annually unless re-opened.

. . .

APPENDIX "G"

INSTRUCTOR RESPONSIBILITY TABLE OF PERCENTAGES

Type of Class Assignment	Type I	Type II	Type III	Type IV	Special
Periods Per Week Equal to 100% Load	17	20	22	25	35

Periods Per Week Assigned	% Load	% Load	% Load	% Load	% Load

. . . . . .

BACKGROUND

The grievance filed by the Association lists the "Date of Origin of Grievance" as January 14, 1991, and states the basis of the grievance thus:

> The . . . (Board) has failed to justly compensate the . . . (Grievant) for an overload in her teaching assignment. The district has purposely only made partial payment for the overload that was worked . . .

Kenneth Mills, the Board's Vice-President of Academic Affairs, responded to the grievance in a memo dated January 29, 1991, which reads thus:

> . . . (The Grievant's) position has been included in the load formula for this school year and the District did compensate . . . (her) for last year. I believe for a position that was excluded from the load formula prior to this year, our payments to . . . (her) for last year . . . (were) fair and just . . .

In a formal response dated February 6, 1991, the Association stated its position that the Board's response constituted a refusal "to pay her what is due her in accordance with the contract." The Association also asserted that the Board "had side agreements in the past with other instructors in that position and has been aware that it was an overload situation for years." This set of responses sketches the themes that have dominated the processing of the grievance.

As the responses indicate, the grievance has a considerable history. The Grievant was first employed by the Board as a Biomedical Science Instructor in the 1987-88 school year. Her immediate predecessor was Murray Jensen, who taught for the 1986-87 school year. His immediate predecessor was Greg Hunter,

who taught for the 1984-85 and 1985-86 school years. His immediate predecessor was Wendell Bell, who taught from at least the 1971-72 through the 1983-84 school years.

The number of students in Biomedical Science I and II has varied considerably from Bell's through the Grievant's tenure. The Grievant calculated the number of students in these two classes peaked, for Bell, at roughly 173 through the 1981-82 through the 1983-84 school years. Enrollment in these two classes dropped during Hunter's and Jensen's tenure, and stood at roughly 149 for the Grievant's first year of teaching. Enrollment jumped the following year, in those classes, to about 207. Enrollment has continued to rise through the present school year.

The Grievant calculated that, if her position had been considered subject to the contractual overload provisions, she had taught the following levels of overload:

Semester	% Overload
Fall 1987	39
Spring 1988	15.5
Fall 1988	62.5
Spring 1989	39
Fall 1989	62.5
Spring 1990	39
Fall 1990	39

She calculated the Board's denial of overload compensation resulted in a $41,916 underpayment to her for the period noted above.

The position occupied by Bell, Hunter, Jensen and the Grievant was originally referred to as the Biology Instructor - Wausau, and, as noted above, is still so referred to in the parties' labor agreement. Thomas Kerkes, the Board's Dean of General Education, testified that the position was originally excluded from the load formula due to its close relationship to Health Occupations courses, and because it required some travel. When the lab was moved onto the NCTC campus, that travel was reduced. Larry Korpela, the Board's Personnel Director, testified that the fact that Biomedical courses were commonly offered on Saturday may also have played a role in the position's exclusion from the load formula.

Kerkes noted that the Board has offered Biomedical courses since 1971 in essentially the same form as presently taught by the Grievant. Kerkes noted that Bell told him that as long as Bell could control the design of the lab component of his courses, Bell could handle as many students as the Board could assign him. Kerkes noted that, after adding an Introduction to Biomedical Science course to Bell's schedule in the second semester of the 1982-83 school year, the Board afforded Bell a 25% overload for that semester. The Board offered him the same payment for the same semester the following year. This was the only overload payment made by the Board to Bell, Hunter or Jensen.

The Grievant testified that the number of students she was instructing was a source of concern to her from her date of hire. Sometime in the fall of 1989, she approached Richard Kramer, then grievance chair for the Association, regarding her workload. She testified that she did not seek Kramer out earlier because she was so overworked, she did not have the time to look into her contractual rights. Kramer and Mills had, at about this time, constructed an informal system to address work-related disputes before they became grievances. Kramer noted the informal procedure was being employed as a means to build trust between the parties, and to avoid the confrontational aspects of

grievance processing. Kramer and Mills would, under the procedure, fully discuss employe concerns before any formal grievance was presented. The procedure, Kramer noted, worked in every case except the matter posed here. Mills and Kramer met formally on the Grievant's concerns about six times between the fall of 1989 and the summer of 1990.

The parties' discussions culminated in a meeting of August 24, 1990. Among others present for this meeting were the Grievant, Kramer, Mills and Kerkes. Kerkes summarized the result of that meeting in a memo to Mills headed "Resolution of Biomedical Science Instructor/Paraprofessional Load Responsibilities", which reads thus:

> Tom Kerkes reported that the purpose of this meeting was to review the Biomedical Science job roles and lab coverage.
>
> It was agreed that:
>
> - (The Grievant) will increase her number of lab hours to 18 and be paid a 39% overload.
>
> - Eileen Presley will function in the lab during the hours which (the Grievant) is not present.
>
> - The late afternoon Biomedical Science lab hours will be staffed by a person having comparable qualifications to Eileen Presley.

The Board also agreed to pay the Grievant a 25% overload of the second semester of the 1989-90 school year. Kerkes viewed the agreement noted above and the 25% overload payment as "a sincere effort . . . to compensate" the Grievant for her work load and her performance. He did not feel the Board was obligated to make any such payment.

This agreement did not, however, resolve all of the parties' differences on the point. The Association felt that putting the Grievant on the load formula implied assent to affording her backpay for the period of time she was not on the formula. The Association also learned of the overload payments to Bell, and felt this set a relevant past practice. Discussions between the Board and the Association regarding backpay continued until the filing of the grievance posed here. The grievance was filed after the Board issued the Grievant a check for the 25% overload noted above, and informed the Association if the amount was insufficient, the Association should grieve the matter.

Further facts will be set forth in the DISCUSSION section below.

THE PARTIES' POSITIONS

The Association's Initial Brief

The Association phrases the issues thus:

> Did the District's failure to pay the Grievant overload pay violate the 1987-1989 and 1989-1991 Collective Bargaining Agreements?
>
> If so, what is the remedy?

After a review of the background to the grievance, the Association argues

that "(t)he workings of an informal dispute resolution should not be used by the District to avoid the equitable application of contract provisions for the Grievant." Testimony establishes, according to the Association, that the parties had "a mutual understanding that the grievant should be covered by the load formula in the contract." Contract language excluding the Biomedical Instructor from the load formula was "archaic" and "void", according to the Association, before the Grievant was hired. The Association contends that the Board's attempt to "revert to an old application of the language vestige" prompted the grievance. It follows, according to the Association, that accepting the Board's interpretation would produce a harsh result, untenable under established arbitral authority.

The Association's next major line of argument is that the grievance poses a stark need for "gap-filling". The gap results from the parties' mutual agreement to extend the load formula to the Grievant, placed alongside the Board's refusal to grant her the full back pay she deserves. The Board's attempt "to stop at only partial filling of the gap" is, according to the Association "where the District case fails."

The Association then argues that established arbitral authority requires that the agreement be construed as a whole, and that "when viewed in the context of the complete bargaining agreement", the Association's position is persuasive.

Viewing the record as a whole, the Association "requests the Arbitrator sustain the grievance and order the appropriate overload payment for the undisputed periods since the grievant's initial employment."

The Board's Initial Brief

The Board phrases the issues for decision thus:

> Whether the District violated the Collective Bargaining Agreement by not granting overload pay to Ann Bjork for the 1987-88, 1988-89 and 1989-90 School Years?
>
> If so, what is the appropriate remedy?

The Board notes that well established arbitral authority requires that "clear and unambiguous contract language must be given effect", and that "past practice cannot be used to modify or amend clear and unambiguous contract language." Contending that the Grievant's position "is not now, nor has it ever been, included in the overload pay formula", the Board concludes that Article III, Section 4, c, mandates the denial of the grievance. Beyond this, the Board asserts that Article X, Section F, 2, expressly recognized that "past practice can not be used to modify the clear and unambiguous contract language." Since, according to the Board, "it is well recognized that the Arbitrator does not have the authority to render an award granting payments under a contract that has already expired and then renegotiated into a new Labor Agreement", it follows that any remedy in this case must be restricted to the 1989-90 and 1990-91 school years.

The Board's next major line of argument is that the grievance was untimely filed and must be "(s)ummarily dismissed." This point, the Board contends, is jurisdictional in nature and can be raised at any point in the grievance procedure. The Board, citing a series of arbitration awards, asserts that:

> (1) a grievance filed after grievance timelines have expired is not arbitrable; and (2) the event triggering

> the running of grievance time limits includes those instances where, as here, a Grievant knows, or through notification should know, that a "cause" for a grievance has occurred.

Article X, Section C, 1, and Article X, Section D, 1, a, establish, according to the Board, that the parties' agreement expressly affirms the two principles noted above. Beyond this, the Board contends that Article X, Section F, 1 and 2, require that unless the express exclusion of the Grievant from the load formula is enforced, the parties' labor agreement has been improperly altered through arbitration.

The Board concludes by requesting "the Arbitrator to dismiss the Grievance in its entirety.

The Association's Reply Brief

The Association argues that each of the three major premises it views as the basis of the Board's case is flawed. More specifically, the Association contends that the Board's contention that clear and unambiguous contract language is posed here, is erroneous. That contention, according to the Association, relies on the Board's "mislabeling" of the Grievant's position. The Association argues that to characterize the Grievant as the "Biology Instructor - Wausau . . . is not based on the facts and is only a convenient method to deny the grievant's rights to be covered under the load formula." That the Board is paying her under that formula underscores the validity of its position, the Association concludes. The Association further contends that its view of the contract is firmly rooted in the language of the overload provision, and does not require any unwarranted arbitral inferences.

While acknowledging that "a contractual violation does not normally span two labor agreements", the Association argues that the parties' informal attempt to resolve the grievance accounts for the delay, and that the Board's attempt to assert a remedial issue "is not reasonable or equitable".

The final major basis of the Board's position, addressed by the Association, concerns the timeliness of the filing of the grievance. Since no such issue "was raised by the District prior to the arbitration hearing", and since arbitral authority supports waiver in such instances, it follows, according to the Association, that "(t)he timeliness objection of the District must fail."

The Association concludes by requesting that the grievance be sustained.

The Board's Reply Brief

The Board reaffirms its contention that the Grievant "is not entitled to receive an award stemming from a previous contract that has since expired", and bases this contention on established arbitral precedent. Beyond this, the Board contends that the grievance was not timely filed, in clear violation of Article X, which requires its summary dismissal.

The Board then challenges the Association's characterization of the evidence. More specifically, the Board argues that the Association "has never brought the issue of overload pay for the Biology Instructor to the table." The Board also challenges the Association's view that the job title is obsolete. Rather, the Board urges that "(t)he title is not obsolete and the Association was . . . fully aware that this position has been excluded from the overload pay formula." The Board also challenges the Association's view of the facts surrounding the overload payment to Bell. That payment was limited to

the last two semesters of his last two years of employment, and the Board concludes that "(t)he payments made by the District should stand alone and not form the basis for the Association's claim for more money." Viewing the Association's case as a whole, the Board concludes that the fact that the Grievant's position can be made to fit the load formula "doesn't mean that it should be in the formula". The clear language of the contract, according to the District, mandates that it should not be so included.

The Board concludes by requesting the dismissal of the grievance.

DISCUSSION

The parties' failure to stipulate the issues for decision poses the first matter requiring discussion. The Association, as noted above, contends that the merits of the grievance impact the 1987-89 as well as the 1989-91 agreement.

There is no factual or contractual basis to support the extension of arbitral authority into the 1987-89 agreement. The Grievant did not question the propriety of her salary calculation until the Fall of 1989. The parties' 1989-91 agreement has an effective term from July 1, 1989, through June 30, 1991. The Board had, then, no pending grievance at any time during the effective date of the 1987-89 agreement.

More significantly here, Subsection 1 of Section F of Article X poses an insurmountable barrier to the Association's position by stating: "The arbitrator shall have no authority to impose liability upon the Board arising out of acts occurring before the effective date . . . of this agreement." The establishment of, contracting for, and performance of the Grievant's teaching schedule for the 1987-88 and 1988-89 school years constitute "acts occurring before" July 1, 1989. Article X, Section F, 1, of the parties' 1989-91 agreement clearly and unambiguously shields the Board from any liability for those acts. The language cited is not amenable to interpretation and must be enforced as written. The issues for decision adopted above accordingly omit any mention of the parties' 1987-89 agreement.

The threshold issue posed by the parties' arguments regarding the 1989-91 agreement focuses on the timeliness of the filing of the grievance. This point is governed by the requirement of Article X, Section D, 1, Step One, that "the grievant . . . shall present a written 'statement of grievance' . . . no later than fifteen days after the facts or incident first occurred upon which the grievance is based."

While the parties' arguments demonstrate that this language can plausibly be read to focus either on the establishment of the Grievant's teaching schedule or on the breakdown of the parties' informal discussions, their conduct is reconcilable only to the latter view. Kramer and Mills had established an informal procedure to resolve work-related problems prior to the initiation of a grievance. That procedure was set up to build trust, and, by any account, had served the parties well. That procedure did not break down until Board representatives informed the Association that the Grievant would be issued a check consistent with the Board's view of the payment appropriate to the second semester of the 1989-90 school year. Significantly, Board representatives informed the Association to grieve the matter if they wished. The Board's formal responses to the grievance do not put the timeliness of its filing at issue. To find the grievance untimely would only serve to frustrate the purposes of the parties' informal settlement discussions, 1/ and would fly

1/ The uncertainty regarding the status of those discussions could have been

in the face of the Board's conduct at, and after, the break-down of those discussions. Thus, the "incident" at issue here is the Board's issuance of the disputed backpay check. There is no persuasive evidence that the Grievant failed to file a grievance within fifteen days of that time. Accordingly, the issues for decision stated above presume the merits of the grievance under the parties' 1989-91 agreement is the matter to be addressed.

---

addressed by the immediate filing of a grievance, followed by the execution of a written waiver of the grievance timelines consistent with the requirements of Article X, Section C, 10. It remains the case, however, that finding the grievance untimely here would only serve to chill the parties' attempt to experiment with alternative modes of dispute resolution.

The discussion of the merits of the grievance must start with the fact that Article III, Section E, 5, c, of the parties' agreement excludes the "Biology instructor - Wausau" from the load formula which generates overload payments under Appendix G. The Association notes that the reference is archaic. The contract can not, however, be considered ambiguous on this point. The grievance and the disputed back payment are both premised on the fact that Bell is the Grievant's predecessor. There is no dispute that Bell was the Board's "Biology instructor - Wausau". That Bell received overload payment is an essential part of the Association's assertion that equity requires a similar payment for her. The Board's payment to the Grievant reflects the accommodation it afforded Bell. Thus, there is no dispute that the contract clearly excludes the Grievant from the load formula. Discussion of the merits of the grievance must start with this fact.

The Association has not persuasively established any basis to exclude the Grievant from the operation of Article III, Section E, 5, c, other than the parties' mutual agreement to do so. The Association's request for back pay has, then, been given no contractual basis. The Association persuasively notes that the Grievant's position can be fit into the load formula of Article III and Appendix G, but doing so requires the elimination of the exclusion of the position from the load formula at Article III, Section E, 5, c. This renders meaningless the admonition of Article X, Section F, 2, that "(t)he arbitrator shall have no authority to . . . subtract from . . . this agreement in any way."

The Association seeks to avoid the operation of the sections noted above by asserting that the exclusion of the "Biology instructor - Wausau" is an archaic reference, rendered meaningless by changes in the position over time. Even ignoring the arrogation of arbitral authority this presumes, the assertion is flawed. The exclusion has been applied, without challenge, from 1971 until the present grievance. Even after Bell had been afforded an overload payment for the second semester of two school years, his next two successors were excluded from the load formula. The language, if archaic, has been consistently applied. Beyond this, it must be noted that the parties' August 24, 1990, settlement agreement which moved the Grievant onto the load formula dealt with more issues than whether the language was dated or not. At a minimum, it is apparent the parties discussed the Grievant's number of lab hours and how to staff her lab hours when she was not available. The record will not, then, support a conclusion that the parties mutually understood the exclusion of Article III, Section E, 5, c, was no longer operative. Rather, the Association's argument is that the Board, through an arbitration decision, should be forced to acknowledge this point.

The arrogation of arbitral authority which is the inevitable conclusion of the Association's position is, ultimately, what precludes the result the Association seeks. The difficulties with that position are manifested practically. For example, at what point did the position title become archaic? Was the movement of the lab sufficient to do this? Was the number of students enrolled sufficient to do it? If the latter, should the point at which the reference became archaic be defined as the 172 students enrolled in Bell's Biomedical Science courses in 1982, or some higher or lower number? While these are points which are grist in the mill of collective bargaining, they are points

on which the contract offers no clues. The absence of guidance reflects that the Association seeks arbitral guidance on points the parties have not addressed in bargaining.

The Association's case essentially urges that the Board, through the August 24, 1990, settlement agreement, acknowledged that the Grievant should be covered by the load formula, but has reneged on that acknowledgement by seeking to limit her receipt of any backpay beyond the 25% type of overload afforded Bell. This line of argument is both factually and contractually flawed. The argument is factually flawed because the Board has never acknowledged any contractual debt to the Grievant. Rather, the settlement and the payment represent, in the Board's view, an unrequired acknowledgement that the Grievant has shouldered a heavy teaching load and deserves to be recognized for it. Thus, the record will not support any assertion that the Board has reneged on an agreement to eliminate any operation of Article III, Section E, 5, c, to the Grievant. Rather, the record establishes that the Association persuasively bargained with the Board regarding the inequity of continuing to mechanically apply that section to the Grievant in light of her teaching load. To construe the parties' conduct as evidence of an agreement that the load formula exclusion should never have been applied to the Grievant seeks an inference with no persuasive evidentiary support. The result urged by the Association seeks the creation of an agreement through arbitration which was never factually reached by the parties in their informal bargaining on the point.

The contractual flaw in the Association's position is that not only does the contract not provide for the result it seeks, but a section of the contract must be overturned to reach it. This can not persuasively be considered filling a gap in the parties' agreement. The article cited by the Association which discusses the need to divine the parties' "spirit and intent . . . expressed in the agreement" is premised on doing so in cases "(w)hen grievances arise in an area not unequivocally covered by the agreement". 2/ This premise is significant here. The agreement here unequivocally excludes the Grievant's position from the load formula. To afford the Association the remedy it seeks, Article III, Section E, 5, c, must be rendered meaningless. If anything, this result creates a contractual gap.

A collective bargaining agreement, whether won through amicable bargaining, self help or arbitration is a document reflecting hard fought for rights and duties. The meticulous detail of the provisions of the agreement at issue here manifest that the parties did not take the words of the document lightly. The document, by its existence, defines the power afforded each bargaining party and in so doing limits that power. It would be unthinkable to either bargaining party that the other could unilaterally eliminate an undesired part of their agreement. It is no less unthinkable that an arbitrator reach that result. The Board has acknowledged that the Grievant is a hard-working teacher, deserving of compensation beyond what the agreement strictly provides. The Grievant's case does, then, have a strong equitable basis. The cost of extending the parties' agreement beyond that reached on and after August 24, 1990, is, however, the arbitral elimination of a negotiated provision. The damage this does to the labor agreement outweighs whatever equity the Association can claim.

AWARD

2/ See "Labor arbitration in the San Francisco Bay Area", 48 LA 1381, 1390 (Eaton, 1967).

The Board's refusal to pay the Grievant overload pay, beyond that already agreed to, does not violate the parties' 1989-91 collective bargaining agreement.

The grievance is, therefore, denied.

Dated at Madison, Wisconsin, this 13th day of December, 1991.

By _____
Richard B. McLaughlin, Arbitrator

RBM/sh
H2561H.24