BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
WISCONSIN INDIANHEAD VOCATIONAL, TECHNICAL and ADULT EDUCATION DISTRICT	:	Case 44 No. 45363 MA-6576
and	:	
WISCONSIN FEDERATION OF TEACHERS, LOCAL 395, AFT, AFL-CIO	:	

Appearances:
Mr. William Kalin, WFT Representative, 11 Bridgeview Drive, Superior, Wisconsin 54880, appearing on behalf of the Union.
Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Mr. Stephen L. Weld, 715 South Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the District.

ARBITRATION AWARD

The Wisconsin Federation of Teachers, Local 395, AFT, AFL-CIO, hereafter the Union, and the Wisconsin Indianhead Vocational, Technical & Adult Education District, hereafter the District or Employer, are parties to a collective bargaining agreement which provides for the final and binding arbitration of grievances arising thereunder. The Union, with the concurrence of the District, requested the Wisconsin Employment Relations Commission, hereafter Commission, to appoint a staff member as single, impartial arbitrator to resolve the instant grievance. On March 21, 1991, the Commission appointed Coleen A. Burns, a member of its staff, as Arbitrator. Hearing was held on May 15, 1991. The record was reopened for further hearing which was held on October 28, 1991, in Shell Lake, Wisconsin. The hearing was transcribed and the record was closed on December 11, 1991, upon receipt of post-hearing written argument.

ISSUE:

The Union frames the issue as follows:

> Whether the District violated Article IV, Section G, of the collective bargaining agreement when it assigned Bruce Nelson's second semester 1990/91 teaching schedule?
>
> If so, what is the appropriate remedy?

The Employer frames the issue as follows:

> Does WITC have the right to assign overtime and compensate accordingly under its authority to schedule hours and assign workloads?

The undersigned adopts the Union's statement of the issue.

RELEVANT CONTRACT LANGUAGE:

ARTICLE III - GRIEVANCE PROCEDURE

Section A. Definition

1. A grievance is defined as any dispute arising out of the

interpretation or application of the master agreement or any dispute arising out of the reasonableness of Board policy relating to wages, hours, and working conditions adopted after the signing of this agreement.

Section B. Procedures for Adjustment

1. The grievant shall submit the grievance in writing to the appropriate administrator with or without representation, within 20 school days following the act or condition which is the basis for the grievance. The appropriate administrator shall give an answer within 10 school days.

. . .

ARTICLE IV - WORKING CONDITIONS

. . .

Section D. Employment Opportunities

. . .

3. (a) For apprenticeship, the student contact hourly rate of pay shall be contract salary divided by 1330.

. . .

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 ours 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.

2. Class hours of teaching shall be scheduled so that three (3) hours of consecutive lecture teaching or four (4) hours of consecutive lecture/lab combination teaching shall be maximum.

3. When more than one (1) section of a class is scheduled, the senior teachers shall have their choice of section assignment.

4. All teachers shall be entitled to one (1) duty-free lunch period during this regular teaching day.

5. Teachers shall express in writing preference in

teaching assignments. Such requests shall be submitted at least twenty (20) school days prior to the completion of the preceding semester. If the instructor does not receive the assignment, they shall be notified in writing of the reasons.

6. Teachers may express in writing preferences for extracurricular assignments.

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

8. Teacher contract hours shall be as follows:

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

(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 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 responsi-bilities 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.

. . .

3. Exercise of Management Rights: The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Board; the adoption of policies, rules, regulations and practices in furtherance thereof; and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement.

RELEVANT BACKGROUND

Bruce Nelson, hereafter the Grievant, is a Machine Tool instructor at the New Richmond campus and has been employed by the District since 1968. In November of 1990, Mr. Gary Moldenhauer, Trade and Industry Supervisor, provided the Grievant with a "draft" teaching schedule for the spring semester of 1991. The Grievant returned the schedule with the following notation:

> Gary, I have looked at this schedule and it doesn't fit my needs for this semester. I am going to be running evening CAD/CAM training sessions. Please look at it again with the following parameters. (1) Don't give me an overload, and (2) Make my days end at 3:00 p.m. Please work with me on this one.

On November 14, 1991, the Grievant received the following:

> If you can find a common time, arrange to meet with me on above. Student schedule attached to back for your review. As we discussed Bruce, the workload will be shared until we can staff with a third instructor.

On November 27, 1990, a grievance was filed which stated as follows:

> Pursuant to Article III, Section B.1., p.7, of the Master Contract between Local 395 WFT, AFL-CIO, AFT and the Wisconsin Indianhead VTAE District, the following grievance is hereby submitted.

> You are in violation of Article IV, Section G.1.. You are requested to revise the attached assigned work schedule designated for Bruce Nelson in order to comply with this provision.

The grievance was denied at all steps and, thereafter, submitted to grievance arbitration.

The District provided the Grievant with a draft schedule and the final assigned schedule. Thereafter, the Grievant and his students arrived at another mutually agreeable schedule. Pursuant to the practice of the parties, the Grievant was compensated according to the final assigned schedule. The final assigned schedule provided the Grievant with an 8 hour span on Monday and Tuesday, provided the Grievant with five consecutive lecture/lab combinations and assigned the Grievant 26 hours of instruction.

POSITIONS OF THE PARTIES

Union

The term "emergency substitute" as used in Article IV, Section G.7., applies to situations similar to the instant grievance, where the District is unable or unwilling to secure the necessary number of instructors to provide the classes for the students within the work parameters of the collective bargaining agreement. The testimony of the Union witnesses demonstrates that Article IV, Section G.7., has, and does, apply to overloads. The language in question has remained unchanged since 1973-74. The Union has consistently understood and maintained that the teaching of overloads is voluntary on the part of the instructor.

As the testimony of Personnel Director Wayne Sabatke demonstrates, he unilaterally developed the administrative procedure for Article IV, Section G., in November 1981 and has since unilaterally updated this procedure. The Union has never agreed to the same. With no change in the relevant contract language from 1973-74 to present, and with no document that the parties have agreed to a change in the interpretation of the contract language, the contract language must be interpreted as existed prior to November 1981.

The Board's proposal for the 1989-90 and 1990-91 negotiations clearly contains a change that would have allowed the District to assign the schedule presently in question. No changes were made in Article IV, Section G., during the bargaining process.

The District attempts to show that the Union tried, but failed through the bargaining process, to have the District agree that the teaching of overloads was voluntary. This premise is not factual. As the District's exhibits clearly show, the Union was addressing the teaching of evening school, not an overload situation in a full-time program. Article IV, Section D., Employment Opportunities, never has nor presently does it, relate to overload situations. Rather, this language relates to courses taught as evening courses or part-time adult education courses.

The February 9, 1981 "memorandum" contains an admission against the District's interest in this case and speaks for itself. Testimony of Personnel Director Sabatke is fraught with inconsistencies and contradictions relating to the District's contention that the Grievant was considered to be a manager who was teaching a class.

The scheduling of Bruce Nelson for the spring semester of 1990-91 is in violation of the collective bargaining agreement. Specifically, on Monday and

Thursday, the Grievant's teaching day exceeds the seven hour span in violation of Article IV, G (1); on Tuesday, the Grievant is assigned five consecutive lecture/lab combinations in violation of Article IV, G(2); and the assigned schedule provides the Grievant with 26 periods per week in violation of Article IV, G (9). The Union requests the Arbitrator to find that the District did violate the collective bargaining agreement and to direct the District to cease and desist from further unilateral assignment of work beyond the seven hour span and beyond the specified number of contract periods per week.

District

As the District stated at the arbitration hearing, the District objects to the inclusion of the alleged violation of Article IV, G.9 at the arbitration stage of the grievance process. The purpose of a grievance process is to have issues raised and resolved at the earliest level. In this case, neither the Campus Administrator nor the District Director had an opportunity to discuss or possibly resolve the Article IV, G.9 issue. As a result, the Union should be precluded from raising the issue at this time.

The District is exercising it managerial rights under Article IV, to assign overloads. Article IV, G., does not specifically address the issue of whether non-emergency, non-temporary extra tasks can be assigned on a non-voluntary basis and, if assigned or volunteered for, what they should be paid. In the absence of specific limiting language, the general statement of authority found in Article IV, R.1., and the specific rights found in Article IV, R.2., must be construed to include the right to assign overtime/overloads. Through the years, the District has made such assignments. When made, the overloads were paid at 1/1330 pursuant to Article IV, D.3(a).

The District did try to comply with the Grievant's request to adjust his schedule. However, despite its best efforts, the District has been unable to find a third certified qualified instructor to fill the program needs on its New Richmond campus. With only two certified qualified Machine Tool instructors on staff, the District had little choice but to assign the overload to both instructors and pay them for these overloads.

Article IV, G.7, is not relevant. This subsection is limited to emergency or temporary substituting and does not refer to overloads which are assigned on a semester or yearly basis.

As Personnel Director Way Sabatke stated at hearing, he has always taken the position that the District has the right to assign overloads and that the assignment of overloads is provided in the master agreement under the management rights clause. The fact that there was no dispute regarding the assignment and/or acceptance of overloads prior to 1984-85 does not establish the Union claim that the parties had any sort of understanding or agreement that all overloads would be voluntary. To the contrary, the fact that there was no prior dispute regarding the assignment and/or acceptance of overloads, reveals that the Union and the employes agree that the District had the right to make involuntary overload assignments.

During the negotiation of the 1973-74 contract, the Union unsuccessfully sought to include language which stated that faculty members who voluntarily accept employment to teach evening school shall be compensated at the rate of 1/1300 of their current contract salary per hour of instruction, as well as one-half hour of compensation for class preparation. The language ultimately adopted by the parties states:

> Contract teachers working outside the normal work day in full-time programs shall be paid an hourly rate of

contract salary divided by 1330.

Article IV, G.7, of the initial contract provided as follows:

> 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.

Between 1973 and 1980, Article IV, D.4, applied to assignments outside the work day and Article IV, G.7, applied to temporary or emergency situations. Temporary substitution required acceptance by the employe, but assignments outside the regular work day (overload) did not. The Union is attempting to achieve through arbitration what it was not able to achieve at the 1973 bargaining table.

In the negotiations which led to the 1980-81 contract, the year of the first Nelson grievance, D.4 and D.5 of Article IV, were removed from the contract. As Personnel Director Sabatke stated at hearing, there was no change in the voluntary/involuntary nature of overtime assignments. Since 1980-81, the District has utilized the 1/1330 figure found Article IV, D.3, when making overload payments.

In some cases, on some campuses, long term non-substitution assignments were accompanied by documents which stated that the overload was being accepted on a voluntary basis. There are more instances of overload assignments which were not covered by waivers than were covered by them. None of the waivers submitted at the Rice Lake, Superior or New Richmond campuses were signed or acknowledged by the administration. Close analysis of the many "waivers" substantiates the District's claim that the Union began, after the Luthens-Lorenz incident, to attempt to build a case that all overloads are voluntary. Only two waivers submitted by the Union were dated prior to Union President Susan Meyer's letter of September 23, 1984, stating that the Union had always considered all overloads to be voluntary and governed by Article IV, Subsection G.7. These two waivers make no mention that the overloads assigned to them were being accepted on a voluntary basis. The memo of the Administrative Assistant to the Regional Administrator in Superior instructing teachers to see their supervisors if they do not want overtime assigned does not imply or communicate that assigned overtime will be withdrawn if the instructor does not voluntarily accept it. It simply demonstrates that the administration is willing to review the assignment and/or consider other staffing possibilities to meet the needs of the program. As the testimony of the witnesses establish, the District does attempt to address instructor concerns regarding teaching schedules.

The 1981 incident is irrelevant. At that time, the Grievant was a supervisor assigning the overload and he was the employe who accepted the overload. When you assign yourself to do something, are you volunteering? Moreover, the 1981 situation and settlement must be disregarded because (1) in the settlement agreement the parties agreed it would have no precedential value and (2) the volunteering employe was also the appointing supervisor.

The Union has tried to circumvent the management rights clause by trying to create a past practice by the use of unilateral waiver forms. The District has not violated the collective bargaining agreement and the grievance must be dismissed.

DISCUSSION

The written grievance alleges that the District violated Article IV,

Section G(1), when it assigned the Grievant's work schedule. At hearing, the Union argued that the District's conduct violated Article IV, Section G. The District maintains that the Union has expanded the issue beyond the scope of the grievance and specifically objects to the inclusion of any alleged violation of Article IV, G(9).

The contractual grievance procedure does not require the grieving party to specifically identify the provision or provisions of the contract alleged to have been violated. It is evident that, during the processing of the grievance, the District was aware that the Union was disputing the District's right to assign the overload to the Grievant. 1/ Given that the provisions governing teaching assignments are contained in Article G of the contract, the District should not be "surprised" at the Union's reliance on any of the provisions of Article G. The undersigned rejects the District's assertion that the Union should be precluded from relying on Article IV, G(9).

During the 1980-81 school year, the Grievant filed a grievance which requested wages for preparation time. This grievance was ultimately resolved by the parties. The written grievance settlement stated, inter alia, "The parties agree that this voluntary resolution shall have no precedential value and that neither party may refer to it in any litigation or arbitration between the parties." On February 9, 1981, prior to the grievance settlement, Assistant Director of Personnel/Student Services Sabatke issued a letter setting forth the District's position with respect to the matters which gave rise to the grievance which was settled by the parties. The Union has asked the arbitrator to consider statements made in the February 9, 1981 letter when determining the merits of the instant grievance. The District argues that the written settlement agreement precludes the arbitrator from giving consideration to the February 9, 1981 letter. The undersigned agrees.

Since the time that the parties bargained their initial contract for the 1973-74 school year, the Union's bargaining unit employes have worked overloads. The term overloads, as used by the parties, is a general term which may refer to any of a number of situations, e.g., work beyond the seven hour span, work beyond the three hours of consecutive lecture teaching or four hours of consecutive lecture/lab, work beyond 25 courses in a week, or working through a duty-free lunch.

Historically, bargaining unit employes and the District have cooperated to develop work schedules acceptable to both parties. Prior to the instant dispute, bargaining unit employes, including the Grievant, have not objected to overload assignments.

While it may be that the issue of whether or not the District has the right to involuntarily assign overloads to bargaining unit employes has been discussed during contract negotiations, the record does not contain any evidence of such discussions. 2/ It is evident, however, that the issue has been a subject of discussion on other occasions.

1/ See Joint Exhibits #11 AND #12.

2/ During the negotiation of the current agreement, the District proposed, inter alia, changes to Article IV, Section G. The changes would have allowed the District greater flexibility in scheduling work hours. The District's proposals were not accepted. The proposals, on their face, do not expressly address the issue of whether or not the District may involuntarily assign overloads. Nor is it evident that this issue was the subject of discussion during the negotiation of the current agreement.

In a letter dated September 29, 1981, addressed to Union President Jerry Beguhn, then Assistant Director of Personnel/Student Services Wayne Sabatke proposed that the District and the Union meet to discuss and hopefully clarify Article IV, Section G. At the time, Sabatke was concerned about the number of grievances relating to:

a) Substitute pay
b) Hiring procedures
c) Overloads
d) Preparations
e) Student contact hours (22 vs 25)
f) Full-time equivalence
g) Designation of courses as lecture, lab, or shop

In response to Sabatke's letter, the parties met on November 9, 1981, to discuss the meaning and intent of Article IV, Section G. At that meeting, Sabatke distributed copies of the administrative procedures developed by the District. The administrative procedures, which pertained to Article IV, G, contained, inter alia, the following:

* * *

7. Substitution by staff qualifying for Master Contract representation beyond regular work day is voluntary. Qualifying staff are regular full-time teachers. Reimbursement is salary/1330. During 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. (a) Any assigned courses (student contact) over the specified hour limitations 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, 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 scheduled 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 also subject to the above limitations.

* * *

At the meeting, the Union agreed to review and respond to the District's administrative procedures. After reviewing the written administrative procedures, on March 30, 1982, the Union filed a written response. The Union's

response to Paragraph Seven, supra, was "The statement "regular work day" means work performed within the parameters of the collective bargaining agreement. Substituting will not be required." The Union's response to Paragraph 8 (a), supra, was "See seven above".

The evidence concerning the discussions on the administrative procedures which were held in the 1981-82 school year fails to establish that the parties reached any agreement on the issue of whether or not the District had the right to unilaterally assign overloads. Nor is it evident that the parties expressly discussed or agreed upon a definition of the term "substitutions".

On September 20, 1984, Union President Susan M. Meyers sent the following letter to the Rice Lake Campus Administrator:

> Roger Luthens and Gene Lorenz have each agreed to teach classes which place them in an overload situation of one hour each (26 hours per week for Roger and 23 hours per week for Gene). This is being done on a voluntary basis only for the fall semester of the 1984-85 academic year at the rate of 1/1330 of their present contract 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. The Instructors involved and WFT Local 395 emphasize that the acceptance of these overloads is strictly voluntary on the part of the instructors, that they have been agreed to for this semester only, and that the acceptance of the overloads is not precedent setting.
>
> In the case of Luthens and Lorenz, WFT Local 395 would like to note that these overloads were presented to these instructors without prior notice or consultation. At that time they informed the administration that one of the instructors preferred not to accept the overload (which added another preparation to his schedule), but that the other instructor would be willing to teach both classes, resulting in an overload of 4 hours a week (for a total of 24 hours per week). This was rejected by the administration.
>
> WFT Local 395 would like to point out that the procedures followed here verge on assignment of overloads. Again we emphasize that acceptance of overloads is voluntary. It is hoped that in the future, instructors will be consulted in advance concerning their willingness to accept an overload.

On October 30, 1984, Assistant Director Personnel/Student Services Wayne Sabatke responded to Union President Meyers as follows:

> I am in receipt of copy of your letter of September 20, 1984 to Don Mense concerning overload assignments. I have also received copies of letters to Marilyn McCarty from Robert Zimmermann and A.J. Halverson on the same subject. In all of these letters, Article IV, Section G, Item 7 of the Master Contract is quoted as the basis for your unit's determination that overloads are voluntary.

> We consider the use of Article IV, Section G, Item 7 as a grossly misinterpretation of language which specifically references substituting teaching by regular staff. In no way does management consider this language to make reference to overload assignments.
>
> The Master Contract is silent on this issue and management will continue as we have in the past to assign reasonable overloads. I stress the word reasonable as we recognize the effect of diminishing returns when we assign excessive student contact hours with our staff.
>
> I can appreciate your unit's concern on a seemingly open-ended assignment formula, but would stress that we are not in violation of the Master Contract by assigning such overloads. We will continue to assign such overloads as our management units deem necessary to meet the needs of students.
>
> You raise an interesting issue in which we have had concerns and obviously, discussion as how we should handle this situation. We are in disagreement with your position and would be happy to meet with you to discuss this concern. Please contact this office to establish a mutually agreed upon date.

There followed a series of correspondence in which the Union reaffirmed its position that overloads were voluntary and the District reaffirmed its position that the District had the right to assign overloads.

In October of 1984, the District began to receive the following "waiver" form from members of the Union's collective bargaining unit: 3/

> I have agreed to teach an overload of the stated number of hours on a voluntary basis for the _____ (semester) of the _____ (school year) at the rate of 1/1330 of my present salary per hours. 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 his stated semester only, and that it is not precedent setting.

In a letter dated February 6, 1985, Wayne Sabatke advised Union President Meyers, inter alia, as follows:

3/ The record demonstrates that on least two occasions prior to the 1984-85 school year, instructors provided the District with a signed statement indicating that the instructor was agreeing to teach an overload. These signed statements do not contain any statements either acknowledging or denying the District's right to involuntarily assign overloads.

> Your instruction to have faculty sign statements is a new process this year, which is not being recognized by administration nor are they being signed by administration acknowledging such.

Thereafter, there were times when this "waiver" form was submitted by an instructor who had an overload assignment and at other times it was not. At the Ashland Campus, District supervisors provided the following form to instructors with an overload assignment:

> WITC - ASHLAND CAMPUS
> SPECIAL SCHEDULING AGREEMENT
>
> I _____, the undersigned, am
> (Instructor's Name)
> in full agreement to the special schedule assigned for the _____ school year. Due to reasons of convenience for the students, staff, and administration, this special attached schedule is being provided.

The form was signed by the instructor, the District supervisor, and a Union representative.

As the Union argues, management personnel signed the form used at the Ashland campus. However, neither this form, nor any other form signed by management personnel acknowledges acceptance of the Union's position that overloads are voluntary. As the District argues, the "waiver" forms utilized by the Union involve a unilateral assertion of a right.

As the District argues, the memo of the Administrative Assistant to the Regional Administrator in Superior instructing teachers to see their supervisors if they do not want overtime assigned does not demonstrate acceptance of the Union's position that the all overloads are voluntary. Rather, it merely acknowledges that the administration is willing to review the assignment.
Neither the use of the waiver forms, nor any other record evidence, establishes that the parties reached any agreement on the issue of the assignment of overloads other than that which is reflected in the plain language of the contract.

As reflected in the remedy sought by the Union, the Union is primarily objecting to the District's unilateral assignment of work beyond the seven hour span and beyond the specified number of contact periods per week. Such overloads falls within the parameters of "overtime". Absent an express contractual restriction, the District may rely upon the management rights set forth in Article IV, R, to assign reasonable overtime. 4/ The contract does not contain an express restriction on the right of the District to assign overtime. For the reasons discussed more fully below, however, the undersigned is persuaded that, in the instant case, it was not reasonable for the District to involuntarily assign the Grievant work beyond the seven hour span.

4/ Elkouri and Elkouri, How Arbitration Works, BNA (4th Ed., 1985) p. 532.

The Grievant is an instructor in the Machine Tool program. As the record demonstrates, there would have been three instructors in the program had the third instructor not resigned during the summer of 1990. Since the District was not successful in its attempts to hire a third instructor, the available work was assigned to each of the two remaining instructors. This assignment provided each of the remaining instructors with an overload. 5/

In arguing that there has been a contract violation, the Union relies on Article IV, Section G(7), which states as follows:

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

As with the overloads discussed supra, the record fails to establish that the parties have agreed to any interpretation of Article IV, Section G(7) other than that which is reflected in the plain language of the provision.

The undersigned is satisfied that the "regular work day" referenced in Article IV, G(7) is set forth in Article IV, G(1). In the Grievant's case, the "regular work day" provided for in Article IV, G(7) is a span of seven working hours. The second semester 1990-91 schedule which was assigned to the Grievant required the Grievant to work an eight hour span on Monday and Tuesday.

In the present case, the Grievant, a contracted teacher, was required to work beyond the regular work day. The required work was work which would have been performed by the third instructor but for the instructor's resignation. The District intends to fill the vacancy left by the resignation of the third instructor. The undersigned is persuaded that, in the circumstances presented herein, that the Grievant is temporarily substituting for the third instructor.

As the Union argues, the Grievant's assigned second semester 1990/91 teaching schedule did involve "emergency or temporary substituting" within the plain meaning of Article IV, G(7). By assigning the Grievant "emergency or temporary substituting" work which required the Grievant to work an eight hour span, the District violated Article IV, G(7).

The parties are in agreement that the Grievant has received the appropriate compensation for all hours worked during the second semester of the 90/91 school year. The remedy sought by the Union is a cease and desist order.

Based upon the above and the record as a whole, the undersigned issues the following

AWARD

1. The District violated Article IV, G(7), when it assigned the Grievant the second semester 1990/91 teaching schedule.

5/ The other instructor has not grieved the overload assignment.

2. The District is to cease and desist from assigning the Grievant teaching schedules which violate Article IV, G(7).

Dated at Madison, Wisconsin this 5th day of March, 1992.

By _____
Coleen A. Burns, Arbitrator