

BEFORE THE ARBITRATOR

 :
 In the Matter of the Arbitration :
 of a Dispute Between :
 :
 STANLEY-BOYD SCHOOL DISTRICT : Case 58
 : No. 49935
 : MA-8110
 and :
 :
 STANLEY-BOYD EDUCATION ASSOCIATION :
 :
 :

Appearances:

Ms. Mary Virginia Quarles, UniServ Director, Central Wisconsin UniServ Council-West
 Davis and Kuelthau, S.C., by Mr. Roger E. Walsh, 111 East Kilbourn
 Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, appearing on
 behalf of the District.

ARBITRATION AWARD

Stanley-Boyd School District, hereinafter referred to as the District,
 and Stanley-Boyd Education Association, hereinafter referred to as the
 Association, are parties to a collective bargaining agreement which provides
 for final and binding arbitration of grievances. Pursuant to a request for
 arbitration the Wisconsin Employment Relations Commission appointed Edmond J.
 Bielarczyk, Jr., to arbitrate a dispute over overload pay. Hearing in the
 matter was held in Stanley, Wisconsin on March 3, 1994. Post-hearing arguments
 and reply briefs were received by the arbitrator by May 25, 1994. Full
 consideration has been given to the testimony, evidence and arguments presented
 in rendering this award.

ISSUES

During the course of the hearing the parties agreed upon the following
 issue:

"Did the District violate the Contract when it failed
 to pay the grievant overload pay for her Student
 Assistance Program work during the 1992-1993 school
 year?"

"If yes, what is the appropriate remedy?"

A second issue was raised at the hearing over the timeliness of grievance
 concerning the 1991-1992 school year. That portion of the issue is as follows:

"Is the grievance timely?"

"If yes, did the District violate the Contract when it
 failed to pay the grievant overload pay for the 1991-
 1992 school year?"

"If yes, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

PERTINENT CONTRACT PROVISIONS

. . .

ARTICLE VII - Teaching Conditions

. . .

D. Definition of the School Day.

* * *

All full-time high school and grades 7 and 8 teachers shall normally be assigned no more than seven (7) pupil/teacher contact periods, of which no more than 6 can be teaching periods. In the event such teacher is assigned no more than seven (7) pupil/teacher contact periods, but is assigned a seventh (7th) teaching period, or in the event such teacher is assigned more than seven (7) pupil teacher contact periods, such teacher will be paid pursuant to Article X, Paragraph D, provided however, that if such teacher who is assigned no more than seven (7) pupil/teacher contact periods volunteers to teach a seventh (7th) teaching period in lieu of a supervisory period, such teacher will not receive the additional pay pursuant to Article X, Paragraph D. A pupil/teacher contact period includes a teaching period, or a supervisory period in which a teacher is assigned to supervise students in a study hall or during a lunch period, or the teacher is assigned to the tutoring room for student assistance. Facilitating for the student assistance program will be considered a teaching period. Homerooms and assemblies will not be scheduled during the regular class periods and will not count toward the total of seven (7) periods. Homerooms shall be divided equitably among the teachers and shall not be scheduled on a daily basis. [Emphasis added].

. . .

ARTICLE X

. . .

D. Extra Period Compensation - Secondary.

A secondary teacher (Grades 7-12) who is assigned to teach a seventh (7th) teaching period or who is assigned more than seven (7) teaching pupil/teacher contact periods, as provided in Article VII, Paragraph D, will be compensated at that teacher's hourly base wage for each such period.

BACKGROUND

The instant matter arose out of a dispute for additional pay for duties. Since at least the 1983-84 school year the District has had a Student Assistance Program (SAP). Since that time Diane Wulterkens, hereinafter referred to as the grievant, has been assigned by the District to perform SAP duties as well as her duties as a Social Studies teacher. In May, 1991, the grievant applied for and was awarded the position of Guidance Counselor. At the hearing the parties stipulated the previous occupant of this position did not perform any SAP duties. However, the grievant was informed she would perform the SAP duties as well as other new responsibilities which the previous incumbent did not perform. The other additional duties were education for employment, completion of various reports, and coordinating eighth and tenth grade testing.

In the Spring of 1992 the grievant became aware of an overload grievance which had been filed by another teacher, Larry Norrell. Norrell had claimed

his SAP assignment was an overload because it was in addition to his regular assignment of six teaching periods. While the grievant did not believe the grievance affected her she raised the matter with her principle, Robert Hauser. At the hearing the grievant testified she discussed the matter with Hauser and Hauser informed her if Norrell got overload pay she would too. Hauser testified he informed her that if Norrell got overload pay he would recommend that she receive it also. Norrell's grievance was voluntarily resolved by the parties on September 10, 1992. The grievant testified she did not become aware of the settlement until June, 1993. At that time she went to Hauser. Hauser directed her to submit her hours to District Administrator Charles Poulter. Thereafter the grievant submitted her claim to Poulter who denied her claim. On July 15, 1993 the following grievance was filed:

To: Dale Abrahamson, President - Board of Education
From: Stanley-Boyd Education Association
Concerning: Inequitable application of pay for SAP duties
Date: 7/15/93

On the last day of the 1992-93 school year, Diane Wulterkens found out that Larry Norrell had, in fact, been paid for his SAP (Student Assistance Program) time. She had not been. She knew that there had been a grievance pending concerning this situation and was told by Bob Hauser mid-year that when the grievance was settled, that if Larry would be paid, so would she. On June 4, Bob told her that Chuck Poulter had told him that she wouldn't be paid because "it was a union issue." Bob told her to go ahead and turn in her time anyway. This was done, but Chuck refused it.

Before she became a guidance counselor, she was paid for one and half hours per day, under the seven period day, to perform her SAP duties, while Larry was paid for one hour. This was the district's "in-kind" contribution to Drug Free Schools. Currently both she and Larry continue to be credited for the same time set aside for SAP.

Ken Fremstad, the guidance counselor she replaced, never did any SAP work. When she asked to be paid for her SAP time, as Larry had been, she was told it was part of her guidance job. If SAP work is inherently part of a guidance counselor's duties, why had Fremstad never done it? When she took over as guidance counselor, her one and a half hours of time was not given to someone else to do. She did Ken's job AND her former SAP duties. Not only does Diane facilitate groups, she also performs all the administrative and clerical tasks associated with SAP.

These SAP duties are nothing more or less than an assigned supervision, just as is Larry Norrell's. She must be paid for it, just as he is being paid.

Diane wants to continue her involvement with SAP. She's well qualified and does an excellent job. The Stanley-Boyd Education Association demands she be treated equitably and be paid for her SAP work.

Sincerely,

Richard A. Wulterkens
S-BEA Vice President

The matter was then processed in accordance with the parties grievance procedure to arbitration.

The grievant's duties include one on one personal counseling with students and talks with students about class scheduling and career planning. She sets her own work schedule as well as appointments with various students. Norrell, who received overload pay, teaches six other classes. Elementary teachers who receive overload pay for SAP duties perform the SAP duties during times when other Elementary teachers have prep time.

ASSOCIATION'S POSITION

The Association contends the grievance is timely because the grievant relied on Hauser in good faith. The Association argues the grievant did not purposely ignore or abuse the time limits set forth in the parties' collective bargaining agreement. The Association asserts that Hauser, as the District's first step in the grievance procedure, was clearly notified of the grievance. The grievant believed she would be a part of any settlement concerning Norrell. The Association argues the grievance is timely because only when those discussions concerning settlement failed was it time to file the grievance. The Association also points out the District failed to raise the timeliness issue until the arbitration hearing and therefore the District should be barred from raising the issue.

The Association also asserts that just because the grievant is a guidance counselor she should not be excluded from overload payments. In support of this position the Association points to Article III, Section A, which states... "The term 'teacher' shall refer to all employes represented by the Association in the bargaining or negotiation unit, as defined in Article II...".

The Association argues Larry Norrell received overload pay when facilitating the SAP was in addition to the teacher's full-time workload. In addition, elementary teachers Mary Jo Mulhern and Vicki Anderson receive overload pay for facilitating SAP in addition to their full time responsibilities as classroom teachers. The Association contends the District has not applied the contract to the grievant who also performs the SAP duties in addition to performing the duties of a full time guidance counselor. The Association argues such a conclusion is an inequitable application of the collective bargaining agreement.

The Association contends the grievant performed overload work. The Association asserts that when SAP is assigned as an overload the individual it was assigned to received overload pay. In the instant matter the previous guidance counselor was not assigned SAP duties. The District required the grievant to carry out all of the previous responsibilities of the position plus the responsibilities of SAP. The Association concludes this is an overload situation and argues the District is not allowed to escape the impact of this assignment on this teacher. The Association argues the District is requiring more than 100% of a guidance counselor but paying only 100%. The Association contends the District is not being equitable, a cornerstone of the collective bargaining agreement, when it pays all other teachers the overload rate when they perform SAP functions in addition to their normal workload and fails to pay the grievant for overload services rendered.

The Association, in its reply brief, argues the District cannot rely on the fact the grievant was informed in May, 1991 that SAP would be a part of her guidance counselor responsibilities for three reasons. First, she cannot individually bargain. Second, the revised language was not in effect. Third, the language clarifying SAP as eligible for overload was not effective until the 1992-1993 school year.

The Association also points out that elementary teachers, whose days are not divided into class periods, receive overload pay for performing SAP duties. The Association concludes that all teachers, including the grievant, who perform SAP functions as an overload are eligible for the SAP overload payment. The Association contends the guidance counselor cannot be treated inequitably.

The Association also stresses the District errs when it strives to separate the guidance counselor overload from classroom teacher overload. The Association contends the District does not have the unilateral right to add more duties, including those specifically targeted for overload pay, to a guidance counselor workload and claim the counselor is exempt because they are not a teacher. The Association concludes there can be no doubt a guidance counselor is a 7-12 teacher who is covered by the overload language when facilitating SAP as an overload assignment.

DISTRICT'S POSITION

The District contends the issue as it relates to pay for the 1991-1992 school year should be dismissed on the basis of timeliness. The District points out the collective bargaining agreement, Article V, paragraph A, Step One, requires a grievance to be submitted within twenty (20) working days of the occurrence. The grievance was filed on July 9, 1993, considerably more than twenty working days after the end of the 1991-1992 school year. The District also contends that at most, the remedy herein would be overload pay only for the twenty (20) workday period prior to the filing of the grievance.

The District also contends the intent of Article VII, paragraph D, and Article X, paragraph D, apply only to classroom teachers. The District acknowledges that the term teacher applies to all employees represented by the Association. However, the District asserts that not all of the provisions of the collective bargaining agreement apply to each and every teacher. The District contends that Article VII, paragraph D, establishes eight (8) specific time segments of the school day for classroom teachers and normal workloads for classroom teachers. The master class schedule for grades 7 through 12 list each classroom teacher and their assignment for each of the eight periods. Guidance Counselors are not listed on the master schedule. The District contends both the original and revised third paragraph of Article VII, paragraph D, were never applied nor ever intended to apply to Guidance Counselors, Librarians or any other employee who is not a classroom teacher. The District further asserts the interest arbitration award which established the eight period day clearly indicates that overload pay provisions apply only to classroom teachers assigned to teacher periods during the school day.

The District asserts the grievant claims she should receive overload payment for her SAP duties because Norrell received overload pay for his SAP assignment. The District argues that Norrell did not receive overload pay merely because he was given the SAP assignment. The District contends Norrell received overload pay because in addition to his SAP assignment he was assigned six (6) teaching periods. SAP was Norrell's seventh period assignment. The District asserts Article VII, paragraph D, does not state overload pay will be paid for a SAP assignment but that facilitating SAP will be considered a teaching period. Further, Article X, Section D, provides overload pay only for

a teacher who is assigned a seventh teaching period or who is assigned more than seven (7) pupil/teacher contact periods. The District concludes the grievant is not governed by pupil/teacher contact periods, she was not assigned a seventh teaching period, and she was not assigned more than seven (7) pupil/teacher contact periods. The District contends the grievant is not assigned to any teaching period or to any pupil/teacher contact periods and is therefore not entitled to any overload pay.

In its reply brief the District contends Hauser did not tell the grievant that if Norrell were paid she would be also. Only that he would recommend for her to receive the pay. The District also acknowledges that elementary teachers do not have an eight period day but that they do have a preparation period. The District also asserts the arguments raised by the Association concerning timeliness of the grievance are not relevant as the parties' collective bargaining agreement is specific and clearly the grievance was not filed within twenty (20) working days of the Norrell settlement on September 10, 1992 and ten months, July 9, 1993, is far beyond twenty (20) working days. The District acknowledges the grievant is a teacher under the collective bargaining agreement, however, the District argues a guidance counselor is not included in the overload pay provision which provides for additional compensation only to a secondary teacher who is assigned a seventh teaching period or who is assigned more than seven (7) pupil/teacher contact periods.

The District also argues that the Association contention that the agreement was modified to include facilitating the SAP as time eligible for overload pay when it was in addition to the teacher's full-time workload is not true. The District asserts the agreement was modified to state facilitating the SAP will be considered a teaching period. The District asserts "teaching period" is a phrase used in connection with classroom teachers, not guidance counselors. The District also acknowledged it did pay overload pay to two elementary teachers who gave up their preparation period in order to handle the SAP duties. The District asserts the guidance counselor has no contractual preparation period and can not give it up in return for additional compensation. Further, the grievant was aware when she commenced her duties as the guidance counselor beginning with the 1991-1992 school year that she would continue her SAP duties and that she would not receive additional compensation for these duties. The District points out the grievant was given other duties which the previous incumbent did not perform and she was expected to complete these duties during the normal workday. The grievant has no specified preparation time and her work time can not be quantified. The District concludes the SAP assignment is a part of the grievant's normal workload and does not result in her working above her normal 100% workload.

The District would have the arbitrator deny the grievance.

DISCUSSION

The parties collective bargaining agreement, Article X, paragraph D, specifically states that a secondary teacher who is assigned to teach a seventh class or who is assigned more than seven (7) pupil/teacher contact periods, as provided in Article VII, paragraph D, will receive overload pay. Article VII, paragraph D, specifically states facilitating the SAP will be considered a teaching period. The record demonstrates the grievant was assigned to facilitate the SAP. However, the burden is on the Association to demonstrate that this assignment amounted to a seventh class assignment. The fact that the previous incumbent did not perform this duty is irrelevant to the question of whether overload pay is warranted. The fact that the grievant performs other duties which the previous incumbent did not perform is also irrelevant as to whether the grievant is entitled to overload pay. Clearly Article VII, paragraph D, defines the normal school day as six (6) teaching periods.

Clearly Article X, paragraph D, requires the payment of overload pay if a seventh period is assigned to a teacher. Thus, in order to be eligible for overload pay the Association must demonstrate that the grievant was assigned a seventh teaching period.

The arbitrator notes here that while the Association is correct in that Norrell received overload pay for work which was in addition to his normal workload, Norrell received his payment in accord with Article X, paragraph D. Norrell's normal workload was six (6) teaching periods. Facilitating SAP became a seventh period by definition of the agreement.

The arbitrator also notes the Association is correct in that two (2) elementary teachers received overload pay for performing SAP duties which were duties in addition to their normal work load. However, these two (2) teachers lost their preparation period. There is no evidence the grievant has lost a preparation period. Thus how the District has treated the elementary teachers is distinguishable from the instant matter.

The record demonstrates the grievant sets her own work schedule. She counsels students and talks with them about class schedules and career planning.

She is assigned to perform SAP duties and therefore by contract definition she is assigned a teaching period. However, there is no evidence she is assigned other teaching periods. Thus, there is no evidence she is assigned more than six (6) teaching periods. In order for the overload pay provision of the agreement to apply the Association must demonstrate that the SAP assignment is a seventh teaching period assignment. While the grievant does perform other duties, e.g., one on one counseling, career planning, education for employment, etc., there is no evidence she had six other pupil/teacher contact periods. There is also no evidence she had lost a preparation period. The undersigned concludes the Association has failed to demonstrate the grievant was assigned a seventh teaching period and therefore has failed to demonstrate that the District's actions violated the collective bargaining agreement.

Turning to the grievant's claim of an implied promise by Hauser that if Norrell received overload pay so would she, the undersigned, finds Hauser's testimony credible and consistent with his actions. Hauser testified that when the grievant first raised the issue with him that he stated that if Norrell received overload pay he would recommend that the grievant also receive overload pay. Hauser also testified he would of stated he would recommend because he did not have the authority to approve the payment of overload pay. When the grievant approached him with the fact Norrell's grievance had been resolved with Norrell receiving overload pay, Hauser directed the grievant to write up the request and he recommended approval to District Administrator. The undersigned finds Hauser's testimony consistent with his actions and concludes Hauser did not promise the grievant she would receive overload pay if Norrell received overload pay.

Having found the District's actions did not violate the collective bargaining agreement the undersigned finds the question of timeliness moot. The above analysis applies whether it is the 1991-1992 school year or the 1992-1993 school year. Therefore the undersigned will not address the timeliness issue.

Based upon the above and foregoing and the testimony, evidence and arguments presented the undersigned finds the District did not violate the collective bargaining agreement when it failed to pay the grievant overload pay for her SAP work. The grievance is denied.

AWARD

The District did not violate the collective bargaining agreement when it failed to pay the grievant overload pay for her Student Assistance Program work during the 1991-1992 and 1992-1993 school year.

Dated at Madison, Wisconsin this 16th day of August, 1994.

By Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator