BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

SENECA EDUCATION ASSOCIATION

and

SENECA SCHOOL DISTRICT

Case 28
No. 53348
MA-9322

Appearances:
Mr. H. Leroy Roberts, Executive Director, South West Education Association, appearing on behalf of the Association.
Mr. Michael L. Seiser, District Administrator, appearing on behalf of the District.

ARBITRATION AWARD

Seneca Education Association, hereinafter referred to as the Association, and Seneca School District, hereinafter referred to as the District, are parties to a collective bargaining agreement which provides for the final and binding arbitration of disputes arising thereunder. The Association made a request, with the concurrence of the District, that the Wisconsin Employment Relations Commission designate a member of its staff to act as an arbitrator to hear and decide a grievance over the meaning and application of the terms of the agreement. The undersigned was so designated. Hearing was held on January 10, 1996, in Seneca, Wisconsin. The hearing was not transcribed and the parties filed post-hearing briefs and reply briefs, the last of which were exchanged on February 27, 1996.

BACKGROUND:

The basic facts underlying this case are not in dispute. The grievant was hired as a teacher for the 1994-95 school year at three-fourths time teaching five periods plus a prep period. For the 1995-96 school year, the grievant was offered and signed a three-fourths time contract. The grievant was assigned a combined class of Applied Math I and Applied Math II as well as four class periods and a prep period. The District considered her a six-eighth or three-fourths time teacher. On August 7, 1995, the grievant asserted that as she was teaching six classes and a prep period, her contract should be seven-eighths time. The District disagreed and a grievance was filed and processed to the instant arbitration.

ISSUE:

The parties stipulated to the following:

> Did the District violate Article VII of the collective bargaining agreement and thereby not provide the grievant with the benefits in other articles of the contract?

PERTINENT CONTRACTUAL PROVISIONS:

> ARTICLE VII - TEACHING LOAD AND HOURS
>
> A teaching load for high school teachers (9-12) shall consist of up to 6 classes and 2 preparation periods or by mutual consent 6 classes, 1 study hall, and 1 preparation period; and 1 extra duty. A teacher assigned 5 classes plus 1 preparation period will be given the option of supervising 2 study halls to maintain full-time status. All teachers are guaranteed one preparation period per day.
>
> Any departure, which increases teaching, study hall and/or supervisory duties, from the above, which is voluntarily agreed to by the teacher, shall necessitate the payment of overload pay in the amount of $1,800.00 per year.

ASSOCIATION'S POSITION:

The Association contends that the grievant teaches six classes and is therefore a full-time teacher and should be paid accordingly. It submits the six classes are: Pre-Algebra, two periods of Algebra, Applied Math I, Applied Math II and Career Math. It points out that the grievant has separate books and different lesson plans for the two Applied Math classes. It insists that while Applied Math I and II are taught during the same time period, they are different classes and support the conclusion that the grievant teaches six classes.

The Association argues that the clear and unambiguous language of the contract states that an employe teaching six classes must have two preparation periods and is considered full time. It maintains that one needs to look no further than this language and the District's argument on past practice should not be considered. It notes that the language in question was first negotiated in the 1976-78 contract and it identified classes and preparation periods. It asserts that classes are not

identified as class periods or hours but simply, "classes," and according to the Association's negotiator, classes are subjects taught. It further claims that only when employes volunteer are more than one subject or class allowed during a time period. It maintains that the present contract language does not alter the fact that classes and subjects are synonymous and more than one class during a time period is voluntary and only when the employe is on a full-time contract. It acknowledges that the District has low enrollment in all classes so it is not uncommon for teachers to voluntarily assist a student or two by offering a special college prep course but this practice does not negate the language which defines full time by the number of classes taught. According to the Association, acceptance of the position that employes can be required to teach any number of classes during a given period could have absurd results. It submits that if six classes were assigned to three periods, a full-time employe would be reduced to half time and if all classes could be assigned to one period, then the District would pay a one-eighth contract. It disagrees with the District that this would not occur because six classes are argued to be five by the District in the instant case. It suggests that allowing more than six classes and two prep periods is contradictory.

The Association argues that the grievant is entitled to full-time status even if assigned five classes and a prep period as the contract states the employe will be given the option of supervising two study halls to maintain full-time status. Also, it notes that teachers who are full time and voluntarily teach more than one class during the same time period are entitled to overload pay.

It concludes that all the above support a finding that classes are subjects taught and the grievant teachers six classes and must be full time.

The Association points out that it is a longstanding principle of contract interpretation that an arbitrator cannot "ignore clear-cut contractual language" and "may not legislate new language." It states that it is clear that the grievant is not receiving the benefits of a full-time contract and she should be. It insists that clear language controls past practice and had the parties intended the language to mean time periods or class periods instead of classes, they could have said so.

As a remedy, the Association seeks all past salary for full-time employment as well as 100 percent of benefits. It also argues that the grievant was denied a prep period and as such, an overload has occurred. It requests an award in its favor.

DISTRICT'S POSITION:

The District believes the issue to be determined is whether hours worked in a day or subjects taught in a day constitutes the definition of contract length. The District contends that combined classes such as Applied Math I and II are common occurrences in the District. It argues that given the size of the District, the only way to offer students a variety of courses is to periodically combine classes because it cannot justify classes of 2, 3 or 4 students on a regular basis. The District allows that there are a few college prep and gifted and talented courses

occasionally offered with low numbers but other than these, classes are combined when practical. The District submits that a ruling in favor of the grievant would reduce the quality curriculum now offered to students and the financial burden may cause a reduction in staff resulting again in a reduction of course offerings. It requests a finding in its favor as the best interest of the students is directly related to the outcome.

ASSOCIATION'S REPLY:

The Association submits that the contract language clearly refers to classes and not teaching periods as asserted by the District. It also maintains that the District's obligation to bargain is with the Union and not the grievant as to the number of classes she teaches in order to be full time.

DISTRICT'S REPLY:

The District disputes the Association's statement of facts claiming that the board approved the Applied Math sequence at a board meeting prior to any course being offered in the 1994-95 school year, and there is no recollection of any conversation at a board meeting in April with respect to making the grievant full time. It maintains that the grievant was aware in March, 1995, not August, 1995, that Applied Math I and II would be offered the same period. It denies that the District refused to honor contract language as the grievant was contracted for five periods and a prep and is paid for same.

The District admits that the grievant teaches two classes the same period but so do several other teachers and this is a common practice and has never been an issue before this case. The District insists that it only assigns multiple classes the same period when it will work, when low numbers make it economically sound, and after teachers are consulted, rather than to not offer any classes. It labels the Association's argument that the District could assign any number of classes in a single period as "ludicrous." As to the overload language, the District claims that this refers to teachers teaching a seven period student contact day only. The District requests that the grievance be denied.

DISCUSSION:

Article VII of the parties' collective bargaining agreement provides, in part, as follows:

> A teaching load for high school teachers (9-12) shall consist of up to 6 classes and 2 preparation periods or by mutual consent 6 classes,

1 study hall, and 1 preparation period; and 1 extra duty.

The Association insists that the term classes is clear and unambiguous and refers to subject matter taught and not to class periods. On the other hand the District argues that classes means class periods. The undersigned finds that the term "classes" used in Article VII is ambiguous. It can reasonably be interpreted in two equally plausible senses. Classes can mean a class period as it is used in a sentence with prep periods, study hall and extra duty which are for a period, so classes may be inferred to be a period. Classes may also refer to a class as a subject matter such as a class of English I and a class of English II. Generally, a class is for a class period so the terms may be synonymous and used interchangeably. In the instant case, the situation presented is a combined class where two subject matters are taught in the same class period. The language above does not clearly and unambiguously establish whether a combined class is a class period or two separate classes. Thus, the language is ambiguous and in order to interpret ambiguous language resort to negotiating history and/or past practice is necessary to determine the meaning of the language.

With respect to negotiating history, Larry Stephenson served on the negotiating team for the Association in the mid 1970's and stated that classes are subjects taught and the acceptance of teaching more than one per period has been voluntary in the past. 1/ The problem with this interpretation is that prior to the instant contract, the language of Article VII read that a normal teaching load was five classes and two study halls, or by mutual agreement, six classes and one study hall, five prep periods a week and one extra duty. 2/ The language is silent on a teacher volunteering for a combined class and the Association correctly points out that the District's obligation to bargain is with the Association and not the teacher as to the number of classes taught. In other words, a teacher cannot waive the provisions of the contract, only the Association can and if classes referred to subject matter then a combined class would waive the express provisions of the contract which a teacher could not do voluntarily. Thus, it must be concluded that bargaining history fails to establish the meaning of the term "classes" in Article VII.

Turning to past practice, it appears that combined classes is a common occurrence at the District due to its small size. 3/ There was no evidence of any prior grievances filed over this practice. Additionally, there was no evidence that teachers always volunteered for combined classes. There was no showing of mutual agreement that a combined class changed the class number from five to six. It is concluded that the past practice establishes the meaning of classes to be class periods and not subject matter. Therefore, the assignment of a combined class to the

1/ Ex. 13.

2/ Ex. 12.

3/ Exs. 9 and 14.

grievant counts as one class and not two.

The Association claims that as the grievant was assigned five classes plus one preparation period she must be given the option to supervise two study halls to maintain full-time status. The evidence established that the grievant was never a full-time employe so she was not entitled to "maintain full time status." Additionally, it appears there were no available study halls to supervise, so the grievant's original assignment at a three-fourths contract was not a violation of the contract. 4/

Based on the above and foregoing, the record as a whole and the arguments of the parties, the undersigned issues the following

AWARD

The District did not violate Article VII of the parties' collective bargaining agreement, and therefore, the grievance is denied in all respects.

Dated at Madison, Wisconsin, this 6th day of May, 1996.

By Lionel L. Crowley /s/
Lionel L. Crowley, Arbitrator

4/ Ex. 8.