BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

WASHBURN EDUCATION ASSOCIATION

and

BOARD OF EDUCATION ON BEHALF OF THE SCHOOL DISTRICT OF WASHBURN

Case 38
No. 53389
MA-9340

Appearances:

Mr. Barry Delaney, Executive Director, Northern Tier UniServ-West, P. O. Box 311, Hayward, Wisconsin 54843, for the Washburn Education Association, referred to below as the Association.

Ms. Kathryn J. Prenn, Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, for the Board of Education on behalf of the School District of Washburn, referred to below as the District.

ARBITRATION AWARD

The Association and the District 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 parties jointly requested that the Wisconsin Employment Relations Commission appoint an Arbitrator to resolve a dispute reflected in a grievance filed on behalf of Paul Randolph and Reino Hill. The Commission appointed Richard B. McLaughlin, a member of its staff. Hearing on the matter was held on April 24 and May 22, 1996, in Washburn, Wisconsin. The hearing was transcribed, and the parties filed briefs and reply briefs by August 22, 1996.

ISSUES

The parties stipulated the following issues for decision:

> Are the work loads of the Grievants in violation of the collective bargaining agreement?

If so, what is the appropriate remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE IV

(GRIEVANCE PROCEDURE)

. . .

B. DEFINITION

1. For the purpose of this Agreement, a grievance is defined as any complaint regarding the interpretation or application of a specific provision of this Agreement.

. . .

D. GRIEVANCE PROCEDURE

. . .

Step IV: . . . The arbitrator shall have no power . . . to add to, subtract from, modify or amend this Agreement.

. . .

ARTICLE VIII

(RESERVATION OF RIGHTS)

A. The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by applicable law, rules and regulations to establish the framework of school policies and projects including, but without limitation because of enumeration, the right:

. . .

2. To employ and re-employ all personnel and, subject to the provisions of law or State Department of Public Instruction regulations, determine their

qualifications and conditions of employment, or their dismissal or demotion, their promotion and their work assignment subject to this Master Agreement;

. . .

ARTICLE IX

(WORK SCHEDULES)

. . .

C. It is recognized that employees in the bargaining unit assume an obligation for all teaching functions related to a quality educational program including:

1. Daily preparation

. . .

D. The Board of Education shall endeavor to distribute the teaching work load relatively equally over the school year among qualified employees.

ARTICLE X

(TEACHING WORK LOAD)

. . .

B. The parties recognize that there will be situations of imbalance resulting from change in teaching compliment and changes in student load. However, the parties also recognize the concept of a reasonable teaching work load and agree that on a continuing basis employees will not be expected to perform an unreasonable teaching work load.

. . .

ARTICLE XI

(CONDITIONS OF EMPLOYMENT)

. . .

E. SCHOOL YEAR AND SCHOOL DAY

. . .

The Board of Education shall make an effort to provide preparation time for each teacher.

. . .

ARTICLE XIII

(CONDITIONS OF SALARY)

. . .

G. OTHER CONDITIONS

1. EXTENDED SCHOOL YEAR CONTRACTS

Teachers, who because of the special needs of the program are placed on an extended contract covering more than the period of regular contract will be paid 100% of their regular school year contract.

. . .

ARTICLE XVII

(TEACHER RIGHTS)

. . .

E. Rules and regulations governing employee activities and conduct shall be interpreted and applied uniformly.

. . .

ARTICLE XIX

(TERMS OF AGREEMENT)

. . .

B. This Agreement may be altered, changed, added to, deleted from or modified only through the voluntary, mutual consent of the parties in written and signed amendment to this Agreement.

. . .

E. This Agreement, reached as a result of collective bargaining, represents the full and complete agreement between the parties and supersedes all previous agreements between the parties.

BACKGROUND

The grievance, dated September 11, 1995, states:

> Having been made aware of our teaching schedules for the 1995-96 school year during our August 25th day of preparation for the start of classes, we do protest and grieve the fact that each of us is required to teach a semester with a scheduled "overload" of 7 class periods and only 1 period of "prep time." The usual, normal and typical schedule is one of 6 teaching periods, 1 period of preparation time, and 1 period of study hall supervision.
>
> Article X, Section B of the master agreement states that "on a continuing basis employees will not be expected to perform an unreasonable work load." Since we both were required to teach this same schedule last year, we believe that this unreasonable work load is being expected on a continuing basis. Also, we believe that our schedules violate Article 9, Sections C and D, as well as the last paragraph of Article 17, Section E. In addition, the lack of additional monetary compensation violates Article 13, Section G, Subsection 1.
>
> We seek relief in the form of a full time teaching schedule of no more than 6 classes plus at least 1 period of preparation time and no

> more than 1 period of study hall supervision, and compensation in accordance with Article 13, Section G, Subsection 1.

Each Grievant signed the grievance. Both grievants serve as instructors of social studies. Each is a full-time teacher, although Reino Hill, unlike Paul Randolph, was hired on a part-time basis.

Prior to the 1991-92 school year, the District's secondary grades, Middle School through Grade 12, had a seven period day. From the 1991-92 school year through at least the 1995-96 school year, there has been an eight period day in effect. For the 1990-91 school year, Randolph taught six classes and had one class period of prep time. In that school year, Hill taught three classes, supervised two periods of study hall and had one class period of prep time. For the 1991-92 and 1992-93 school years, each Grievant taught six classes, supervised one study hall and had one period of prep time.

Starting in the 1993-94 school year, the District added a one credit course entitled "Current Events." The District's Registration Handbook describes the course thus:

> A class dedicated to the news, events and issues of current interest. Various mass media are utilized. This is an elective intended for non-college bound students.

The District implemented this offering in response to a recommendation resulting from an audit of the District by the State of Wisconsin's Department of Public Instruction. The only two District teachers certified to teach this course are Hill and Randolph. The District assigned the course to Hill for the entire 1993-94 school year. In that year, Hill taught seven periods of classes and had one period of prep time. Randolph taught six periods of classes, supervised one study hall and had one period of prep time. At the time Hill had been first assigned to teach Current Events, he had been informed that the District hoped to hire another social studies teacher who was expected to assume certain Social Studies duties then performed by Hill. Due to State imposed cost controls, however, the District was unable to hire an additional social studies instructor. Sometime in the Spring of 1994, Hill approached Kenneth Kasinski, then High School Principal for the District, to inform him that he wanted some relief from his teaching load. Hill suggested that the Current Events class be split, by semester, between himself and Randolph. Since Randolph coached football, Hill suggested he would assume the course for the first semester of the 1994-95 school year.

Kasinski agreed with Hill's suggestion. For the first semester of the 1994-95 school year, Hill taught seven classes, including Current Events, and had one period of prep time. Randolph, in that semester, taught six classes, supervised one period of study hall and had one period of prep

time. In the second semester, Hill picked up the study hall supervision which Randolph had to give up to instruct Current Events. This same pattern carried into the Grievants' teaching schedules for the 1995-96 school year, thus prompting the September 11 grievance.

Article X, Section B has been in the parties' labor agreement for at least twenty years. While its contents may have been discussed in collective bargaining over that span of time, the parties have not specifically defined, through bargaining, what may constitute a reasonable teaching load, or how an unreasonable teaching load is to be addressed. The provision played no role in the parties' bargaining for a 1995-97 labor agreement. Certain unit members communicated to the bargaining team that overload pay should be addressed in collective bargaining. The Association's bargaining team determined, however, that the economic nature of the issue made it less achievable through the bargaining process than through the grievance arbitration process.

Article X, Section B has been in existence longer than the eight period day. Before the Board of Education authorized the implementation of the eight period day, it formed a committee to study the potential impact of the change from a seven to an eight period school day. The committee consisted of one Board member, Phyllis Krutsch; Kasinski; then incumbent District Administrator Fred Schlichting and three teachers; Lynn Adams, Bruce Rapps and Nicholas Pristash. Issues related to the implementation of an eight period day were discussed by the Study Committee and at periodic staff meetings. At staff meetings and at meetings of the Study Committee, teachers often expressed concern that an eight period day should not require more than six instructional periods. Board representatives were aware of this concern, but were also aware that, at a minimum, teachers in certain disciplines would probably have to assume a teaching load of seven instructional periods. Board representatives did not offer teachers at any of these meetings a guarantee that the eight period day could not result in a teaching load exceeding six instructional periods.

The remaining factual background necessary to pose the parties' dispute is best set forth as an overview of the testimony of the Grievants and of Kasinski.

The Testimony of Reino Hill

Hill testified that District teachers, as a group, opposed the implementation of an eight period day. He noted the loss of prep time was among the primary reasons for this opposition. The implementation of the eight period day coupled with the nature of the Current Events class makes his teaching load unreasonable. Current Events, by its nature, precludes the possibility of carrying over lesson plans from one semester to another. It also required reading and media watching to a greater degree than Hill was accustomed to. He testified that the Current Events course added significantly to his prep work outside of the school day, and added perhaps twenty hours per week beyond the school day to his work load. The loss of the study hall supervision

only aggravated the diminution of prep time necessitated by the eight period day, since the Current Events class required a higher degree of preparation than other social studies classes.

The addition of the seventh class "tremendously" affected his personal life, and affected him physically and psychologically. He noted he became more cynical regarding the news, more irritable at home and experienced stress pains during the semester he assumed the seventh instructional class.

The Testimony of Paul Randolph

Randolph estimated the Current Events class added fifteen to seventeen hours to his non-school hours work load. He noted that his need to prep history classes declined with his experience teaching the class, but the prep demands for Current Events were constant over time due to the nature of the course. He could not, for example, rely on past tests as a guide for ongoing Current Events tests. Teaching a load of seven instructional classes detracted from his ability to prepare for his other courses. He felt that load also detracted from his home life, since he had less time for his family. Randolph has a more extensive involvement with the District's Gifted and Talented programs than does Hill. He also acknowledged that he has sought to become an Assistant Baseball Coach. He sought the additional duties because he loves to coach, which provides both a release from his classroom duties and some additional compensation.

The Testimony of Kenneth Kasinski

Kasinski presently serves as the District Administrator, and has done so for two years. He noted he played an active role, then as Principal, in the implementation of the eight period day. He felt the change afforded the District greater flexibility to offer more classes and thus respond to ongoing changes in graduation requirements. He noted the added class permitted the District to stretch existing staff farther in meeting student needs within State imposed cost controls. He did not feel that staff, as a whole, opposed the implementation of an eight period day. He noted he never guaranteed any teacher only a single supervisory duty or two prep periods. Teachers who instructed over the Fibre Optics Network were an exception to this rule, since their work spanned many locations and required greater preparation.

Both as Administrator and as Principal, Kasinski plays a significant role in establishing teaching schedules. He noted he attempted to allocate duties as equitably as possible. The complexity of this allocation should not be underestimated. He noted the following factors, among others, affected his allocation of teaching duties: the certification required by an offering and the certification of existing staff; the number of different types of preparation an individual teacher must assume; the presence of lab duties within a teacher's load; a teacher's intellectual capacity; a teacher's work ethic; a teacher's interest level; the location of the courses to be taught by a teacher; the number of LD students within a teacher's work load; the teacher's involvement in co-curricular offerings; the teacher's ability and interest regarding supervisory duties; and the District's ability to fund course offerings.

Kasinski noted he felt that a teaching work load of seven instructional classes per day could not be considered unreasonable since the District had committed, in the labor agreement, to providing teachers a full period of prep time. While certain disciplines might permit the assignment of eight periods of instruction, Kasinski noted the District had not made such an assignment.

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

THE PARTIES' POSITIONS

The Union's Initial Brief

The Union notes that "two phrases" from Article X, Section B "are key to the issue at hand." The key references are "reasonable teaching load" and "on a continuing basis."

The Union contends that Kasinski's and Schlichting's testimony establishes that the administration views it impossible to assign an unreasonable teaching load to a teacher who maintains one prep period. This view, according to the Union, renders Article X, Section B meaningless and is belied by the administration's accommodation of Adams and Walther when they were assigned seven teaching periods. The testimony of a number of teachers who considered the assignment of seven teaching periods unreasonable must, in the Union's view, be credited over that of administrators who lack "first hand experience."

While acknowledging that a comparison of work loads between teachers of academic classes and non-academic classes is impossible on this record, the Union contends that it is apparent that "(h)aving to prepare and to present a lesson for an academic class" is quite different from preparation for non-academic classes. That Hill "has been assigned seven teaching periods for the last four" school years and Randolph "has been assigned seven teaching periods for the last three years" in academic classes underscores, according to the Union, that "the District has treated (Hill and Randolph) differently than the other academic teachers (and has) also done so on a continuing basis."

The Union then rebuts a series of anticipated District arguments. First, the Union asserts that "the number of teaching periods per day has more of an impact on determining teaching load than class size." Even if this is not the case, the Union asserts that both Hill and Randolph compare favorably to other academic teachers regarding the daily number of students taught. The Union then contends that if the number of different preparations a teacher must undertake to prepare for scheduled classes is taken as a key determinant of teaching work load, then Hill and Randolph compare favorably to other academic teachers. The Union adds that the District's assertion "that the number of teaching periods assigned to teachers is based upon the number of different preparations a teacher has does not correspond to the assignments they have made." If the number of special education students included in a teacher's schedule is a determinant of the reasonableness of a teaching load, then it must follow that Hill and Randolph shoulder a heavy work load since "(i)t is not possible for any other academic teacher to be assigned more special education students than" either of them. Since each teacher instructs all students within their grade levels, it is impossible to conclude any other teacher bears a heavier work load based on the

"student make-up of the class."

Both Hill and Randolph were considered full-time teachers carrying a reasonable load when each was assigned six teaching periods. Similar considerations govern full-time administrators. The Union asserts that based on this, Hill's and Randolph's assumption of an additional class must be considered unreasonable.

That many other teachers are certified to teach social studies classes establishes, according to the Union, that the District could have rotated classes among teachers to avoid saddling Hill and Randolph with a seven teaching period work load. The Union puts the point thus:

> Through switching when teachers teach specific classes or when they have prep periods or study halls, it is possible for some, if not all, of the 26 employees to teach . . . one 7th grade social studies class at some time . . . Then Mr. Hill would have a teaching load of six periods, one study hall period, and one preparation period and so would Mr. Randolph.

To continue the Grievants' work loads without such an accommodation continues an unreasonable denial of prep time which is exacerbated by the nature of the Current Events subject matter.

That the Study Committee concluded that a six teaching class work load would be the standard only underscores that the Grievants' work load is unreasonable, according to the Union. Even if the District stopped short of guaranteeing such a work load to each teacher, the atypical and unreasonable work load assigned the Grievants is apparent.

The Union concludes by making the following remedial request:

> That the District be ordered to cease and desist from assigning (the Grievants) seven teaching periods and that the District be ordered to assign the two grievants a teaching load of six teaching classes and at least one preparation period for such time the District continues to operate under an eight-period day. The District may assign one supervisory period to each grievant.
>
> The District be ordered to pay the grievants an additional 1/8 of what they earned as full-time salaried teachers for one semester during the 1995-96 year. In addition, in the event that this arbitration decision is not issued prior to the start of the 1996-97 school year, the Union requests that the Arbitrator award the grievants a prorated amount (based upon a 184 workday year) of

> 1/8 of their 1996-97 full-time salary for each day they teach seven periods during the 1996-97 year.

The Employer's Initial Brief

After a review of the evidentiary background, the District argues that the labor agreement cannot be read to provide any guarantee regarding the number of teaching periods in a day or the number of student contact periods within a teacher's work load. The District contends that this conclusion is established by reading together the provisions of Article IV, Section B, 1; Article VIII, Section B; Article IX, Section C; and Sections B and E of Article XIX. Nor can the recommendations of the Study Committee be read to contradict this conclusion. The evidence establishes, according to the District, that no administrative personnel ever afforded the Union any reasonable basis to conclude that teachers could rely on being assigned no more than six student contact periods in an eight period day. It follows, the District concludes, that even if the contract permitted an oral agreement to limit a teacher's work load to no more than six contact periods, "there was no such agreement."

The District then argues that "when the District was on a seven period day, more than one-half of the secondary teachers were typically assigned to teach six of the seven periods." Significantly, then as now, "teachers received only one prep period." That teachers other than the Grievants have been assigned to teach seven instructional periods in the eight period day underscores that the Grievants are seeking relief for a load other teachers have assumed as part of the job.

The District then argues that the evidence will not support the Union's assertion that the Grievants have been assigned an unreasonable work load. The District notes the evidence makes clear that it has a dedicated workforce which is willing to work beyond the stated work day to perform their duties. What is not so clear is how one teacher's work load can be compared to another teacher's. As the District puts the point:

> Indeed, when you factor in all of the variations such as class size, type of class, number of repeated sections, whether the class involves a lab, whether EEN students are in the class, general student behavior, etc., there is no objective basis upon which to make a comparison.

Noting that even the testifying teachers, including the Grievants, could not agree on such a standard, the District concludes that any characterization of the Grievants' work load as unreasonable is facile.

The evidence establishes, according to the District, that it has complied with all relevant

contract language. The Current Events course flows from a DPI audit, not a District whim. Against this background, any violation of Article IX, Section C is the Grievants', not the District's. Article IX, Section D has been complied with since the District has equally allocated the burden of this class among the only two District teachers certified to teach it. Nor can the Union demonstrate a violation of Article IX, Section B. The District challenges the assertion that the Grievants' work loads are unreasonable. Even if they are, the District notes that the added class lasts a single semester for each teacher. Noting that it split the course between the Grievants on Hill's suggestion, the District concludes its assignment cannot be considered either unreasonable or continuous. Article XIII, Section G, 1 has not been violated since that provision covers only extended year contracts. Article XVII, Section E has not been violated since there is no evidence of "any rule or regulation which has been applied differently to the grievants than the District's other teachers." Since each Grievant has a prep period, it is apparent that Article XI, Section E has been complied with.

Even if a contract violation could be found on this record, the District asserts the remedy requested by the Union "is beyond the scope of the Arbitrator's authority." A grant of overload pay would have no contractual basis, and would fly in the face of Article XIII, Section G. Altering the Grievants' schedules raises additional problems. Other teachers carry full loads. If the Union's position is accepted, there is no place to move the "additional" class complained of by the Grievants. The agreement will not permit an Arbitrator to delete any course from the District's curriculum. Even if the Current Events course was deleted, the power to partially lay off either Grievant is the District's not the Arbitrator's. Nor can an arbitrator claim the authority to create supervisory duties for the Grievants. If no such duty is created, and the award requires an additional prep for the Grievants, the District will have been compelled to undertake a sort of discrimination the Grievants allegedly are challenging.

Against this background, the District concludes that "if the Arbitrator finds that there has been a contract violation . . . the only . . . appropriate remedy would be an order for the parties to resolve the issue at the bargaining table with the Arbitrator retaining jurisdiction during the interim." Since "the Union has never attempted to bargain issues relating to overload pay" at the table, any award of overload pay would have no contractual basis.

Stressing that the above argument is only to be considered "in the alternative," the District urges that "the Arbitrator dismiss this grievance in its entirety."

The Union's Reply Brief

The Union contends that it is not necessary to find a "guarantee" to conclude that Article X, Section B has been violated. Board administrators may not have guaranteed teachers a six course limit for the eight period day, but "when they told the teachers that a six-period teaching load was going to be implemented, they certainly implied that a seven-period teaching

load was unreasonable." Beyond this, the Union challenges the assertion that the normal load under the seven period day was anything beyond five teaching periods. The Union then contends that even though "there is not enough information in the record to compare the teaching load of the grievants with the teaching load of every other individual teacher," it does not follow that "no comparison can be made." Urging that the loads of academic teachers can be compared, the Union concludes that "of the fifteen teachers who have taught academic classes full-time over the six years that the eight-period day has been in effect, only one teacher (other than the two grievants) has ever been assigned six teaching periods." That teacher successfully requested relief, and the Grievants' request should be no less successful.

That the Grievants share the additional class during the school year cannot be taken to mean its assignment is not continuous. The Union argues that the repetition of the assignment from year to year makes it continuous. Beyond this, the Union argues that it is no less in the Arbitrator's authority to determine the appropriate pay for an unreasonable schedule than to determine the underlying violation itself. A resolution of the stipulated issues does not require arbitral determination of how the District should be staffed or which teachers should assume a particular duty. Noting that it has offered the solution of rotating the seventh class among teachers, the Union concludes that the District's challenge to the Arbitrator's remedial authority should not be overemphasized.

The District's Reply Brief

The District initially challenges the Union's attempt to distinguish between "academic" teachers and "non-academic" teachers. The labor agreement contains no such distinction, and the Union's attempt to create it reflects no more than its desire to "find a way to reduce its argument to the smallest subset possible within the bargaining unit." The District highlights its concern by noting that if an academic teacher can be overloaded with a seventh class, must it follow that a non-academic teacher cannot be overloaded?

Beyond this, the District challenges the factual accuracy of the Union's assertion that District administrators do not believe it is possible to assign an unreasonable load under Article X, Section B. Noting that neither the prep period the Union takes as a given nor the District's actions toward Adams can be considered contractually mandated, the District asserts that "an unfortunate and unanticipated outcome of the grievance" might be District reluctance to go "beyond what is required by contract."

An examination of the evidence establishes, according to the District, that testimony highlighting the "unreasonableness" of a seven period teaching assignment reflects no more than can be expected when nothing is on the line. However, the distinction between "real teachers," identified by the Union as academic teachers, and all the other teachers puts serious administrative issues into play. If, for example, the 25% of the teaching staff who perform "academic" work can

be distinguished from the 75% who do not, it is not apparent why all teachers share the same salary schedule. Beyond this, the District challenges the persuasive force of the criteria advanced by the Union to demonstrate that the Grievants carry an unreasonable work load as compared to their peers. A review of those criteria establishes no more than that the comparison asserted by the Union is far more complex than the Union acknowledges and can produce results not desired by either party.

Similar analysis applied to the Union's suggested rotation underscores both that the comparison advanced by the Union is facile and that if implemented could yield unanticipated results. That all teachers work beyond forty hours makes the Union's citation of the onerous hours put in by the Grievants suspect. The District again stresses that no readily apparent basis to distinguish between teachers can be found on the record. Even if it could, it is not apparent how a teacher's summer off can be justified. If the justification for the time off is the hours beyond forty put in during the school year, it is not apparent what happens to this justification if overload pay is granted within the school year.

Even if a remedy implicating teaching schedules could be afforded on the facts posed, the District notes that it should be postponed until the 1997-98 school year "for the reason that seniors are already signed up for the class and need the class in order to meet graduation requirements."

DISCUSSION

The stipulated issue on the merits of the grievance is broadly stated, but the only contract provision which can be considered seriously in issue is Article X, Section B.

The grievance cites Article IX, Section C, presumably to point to the lack of prep time the Grievants perceive in their assignment to a seven instructional period day in alternating semesters. Article IX, Section C, states, however, a duty assumed by teachers regarding daily preparation. The District's assignment of a seventh class has no bearing on either Grievant's obligation, under that section, to "assume an obligation" for the "(d)aily preparation" of any of the assigned classes.

The citation to Article IX, Section D, raises more questions than the record can resolve. Presumably, the Grievants contend that the District has failed to "endeavor to distribute" teaching work loads "relatively equally over the school year among qualified employees."

The record will not permit any reliable conclusion to be reached regarding the application of this provision to the Grievants' assignment. The provision requires the District to "endeavor" to maintain a "relatively" equal work load distribution. There is no evidence that Kasinski acted in anything other than good faith in approving the Grievants' work loads. Nor is there any basis to question his testimony that administrators consider a teacher's work load when schedules are put together. That he agreed with Hill's suggestion to split the Current Events duties manifests his

"endeavor" to equalize the work load. It is also apparent that the Current Events course has been distributed equally among the two teachers certified to teach it.

Presumably, the Grievants' contention is that the standard of comparison under Article IX, Section D is the work load of other teachers. Hill did testify that he put in longer hours than other teachers. He also noted he "hates to have to point the finger" at any particular teacher. This exemplifies the impossibility of establishing a basis of comparison. Even if an individual teacher's estimate of work beyond normal school hours is taken to be accurate, it is not apparent how the necessary comparison is to be made. Is a non-college prep class more or less demanding than a college prep class? Is an LD student more or less demanding than a Gifted and Talented student? Does the expenditure of time outside of the school day correlate directly with teaching effort or efficiency? Ultimately, the Grievants seek to establish that seven instructional classes are necessarily more demanding than six. This point is, however, better addressed under Article X, Section B. Whether the difference between six or seven instructional periods manifests a failure, on the District's part, to "endeavor" to maintain a relatively equal work load distribution poses too fine a motivational and an educational policy issue to be resolved on this record.

Nor does Article XIII, Section G, Subsection 1 have any demonstrated bearing on the grievance. That provision governs "extended school year contracts." How the Current Events course is to be considered an extended contract is not apparent.

There is no persuasive evidence of a District violation of Article XVII, Section E. Even assuming the "employee activities and conduct" governed by this section extend to teaching assignments, no "rules and regulations" regarding the assignment of the seventh class are apparent in the record. Even if such a rule is implied, it is not apparent how the District violated such a proscription by assigning the seventh class. It can be noted that the Grievants are not the only teachers to be assigned a seventh class.

This focuses the grievance on Article X, Section B. That provision notes the parties' mutual recognition of "the concept of a reasonable teaching work load" and their agreement that "on a continuing basis" no teacher "will . . . be expected to perform an unreasonable teaching load." As noted by the Association, this provision demands a determination whether the assignment of the Current Events course as a seventh class constitutes "an unreasonable teaching load" and whether that unreasonable load has been required "on a continuing basis."

On balance, the record will support the contention that the Grievants' work load is "unreasonable . . . on a continuing basis" within the meaning of Article X, Section B. The statement of this conclusion should not, however, be taken to belie the complexity of the underlying issue.

Article X, Section B contains language which is notably vague. This vagueness does not necessarily pose some neglect on the negotiators' part. Rather, it points to the underlying

significance and complexity of the issues governed by the provision. The difficulty of obtaining agreement on a point as sensitive as establishing equitable work loads is matched by the potential difficulty of codifying that agreement.

Two sentences compose Article X, Section B. The first addresses the complexity of the work load issues governed by Article X. It acknowledges that factors underlying work load ("teaching compliment and changes in student load") make precise balance in work load impossible. Thus, "situations of imbalance" are permitted by the first sentence to address the complexity of work load issues. This underscores the difficulty posed here. The Grievants' assignment to the Current Events course is based on a number of non-District driven factors. State-imposed cost controls precluded expansion of staff. Changes in graduation requirements coupled with the recommendations of a DPI audit pointed the District toward the Current Events course when funding was not readily available.

The problems acknowledged by the first sentence are, however, given limits in the second. However difficult equitable work load allocation may be, the second sentence states that those problems should not result in "an unreasonable teaching work load" which exists "on a continuing basis." Read together, the sentences establish that unreasonable work loads can exist, but must not be permitted to become continuous.

What constitutes a reasonable teaching load in the abstract is a policy determination too fine for grievance arbitration. The more narrow issue posed is whether the Grievants' assumption of the Current Events course as a seventh class on an alternating semester basis can be considered unreasonable and continuous under Article X, Section B.

Neither by contract nor in practice have the parties chosen to define the assignment of a seventh class, standing alone, as an "unreasonable teaching work load." Article X, Section B has spanned seven and eight period days. While the extent of District assignment of six instructional classes with one prep period (6/1 assignment) on a seven period day cannot be determined, it is apparent from the evidence that such assignments were, at a minimum, not uncommon in the 1990-91 school year. Witness testimony supports this conclusion for prior years. It is, then, apparent that the parties did not treat a 6/1 assignment, standing alone, as a violation of Article X, Section B, during the duration of the seven period day.

Beyond this, it can be noted that a 7/1 assignment for an eight period day has not been limited to the Grievants. Paula Eskola, a Vocational Education instructor; Daniel Karius and Sheree Collins, Physical Education and Health Instructors; Toni Pedersen, an Art instructor; and Lynn Adams, an instructor within a number of disciplines, are among District teachers who have assumed a 7/1 assignment on an eight period day. Thus, the 7/1 assignment, standing alone, has not been given determinative significance by the parties in establishing an "unreasonable" load.

More significantly, the labor agreement fails to state that an unreasonable teaching load is

determined by the number of instructional assignments. Arbitration seeks to afford bargaining parties the benefit of their agreement. In this case, the parties could have chosen to peg an unreasonable teaching load to the number of instructional periods assigned per school day. They have not done so. It cannot, then, be presumed that a 7/1 assignment, standing alone, defines an "overload."

No less apparent on the record, however, is that a 7/1 assignment on an eight period day has been treated as a significant event. No view of the record will support the assertion that the Study Committee or District administration guaranteed that each teacher would receive a 6/1/1 assignment or that no teacher would receive a 7/1 assignment. It is evident, however, that the Study Committee was aware of teachers' concerns about a 7/1 assignment. It is no less evident this concern played a significant role in staff meetings. No teacher unequivocally testified that Board representatives guaranteed a 6/1/1 assignment pattern. However, virtually all the testifying teachers testified that they understood that a sort of consensus had been achieved by the Study Committee concerning the desirability of avoiding 7/1 assignments.

More significantly, teaching schedules reflect this understanding. For the 1994-95 and the 1995-96 school years, a 6/1/1 assignment was the "rule" proven by limited 7/1 "exceptions." Significantly, District administration has, in the past, acted to address individual concerns regarding a 7/1 work load. For example, in the 1993-94 school year, Lynn Adams undertook a 7/1 load for one quarter, to fill in for the resignation of another teacher. She sent a letter to Kasinski expressing her concern with the load, and Kasinski hired a part-time teacher to relieve her of the seventh class for the remaining three quarters of that school year. In the same school year, Susan Walther assumed a seventh class. In the spring, she expressed her concern to Kasinski, who relieved her of the seventh class at the end of the year. Paula Eskola has volunteered to assume seven instructional classes. She carries such a load at present, but noted she has never been required to maintain the seventh class. Rather, she noted that her continuing desire to assume the class has been honored by the District. As noted above, Kasinski responded favorably to Hill's suggestion to split the Current Events course between himself and Randolph.

The record establishes, then, that the parties have treated the assignment of a seventh class as significant. The difficulty posed here is to determine whether such an assignment to the Grievants can establish a violation of Article X, Section B. The conclusion that it does is, in significant part, procedural. Kasinski testified at length, and persuasively, regarding the complexity of work load assignment and distribution. It is, however, apparent that he did not view Article X, Section B to impose any duty on him regarding the assignment of the Current Events course as the Grievants' seventh instructional period. Thus, the various factors he noted were relevant to establishing an equitable work load were never specifically weighed against the imposition of the seventh class on the Grievants. Beyond this, Kasinski noted the District's provision of a full period of prep effectively, in his estimation, addressed the reasonableness of every teacher's work load. The difficulty with this view is that it reads Article X, Section B out of existence. This may be defensible as a matter of educational policy, but is not defensible under the

parties' agreement. The parties put the provision in the agreement, and that agreement must be given effect. Step IV, of Section D of Article IV will not permit an arbitrator to "subtract from . . . or amend this Agreement."

The District's failure to specifically consider alternatives to the imposition of a seventh instructional class on the Grievants for any school year following the 1993-94 school year has effectively established the seventh class as an ongoing feature of their work load. This effectively denies any significance to the assignment of the seventh class. Whatever is said of the relative burdens borne by District teachers, the evidence indicates the imposition of a seventh class has been treated as a significant event. This may have been directly addressed by the removal of one period of instructional duties, as seen with Adams and Walther. It may have been addressed by obtaining the consent of the teacher, as can be seen with Eskola. It may have been addressed through consideration of the type of classes or number of preps or other scheduling considerations as appears to be the case with Pedersen, Karius and Collins. With regard to the Grievants, however, the imposition of the seventh class was treated as significant only to the extent it was split between them. As a scheduling matter, the imposition of the seventh class on the Grievants has lost its significance and has become an ongoing feature of their schedule.

Nor can the alternating semesters of instruction be considered to render the assignment something other than "continuous." It is apparent that, under the District's view, the two teachers certified to teach Current Events can expect not only the assignment of that class, but also the assignment of seven instructional periods every other semester. Article X, Section B does not define what constitutes "a continuing basis" for an assignment. It is apparent, however, that no other teacher has been routinely assigned a 7/1 schedule without some consideration for it. The assignment of the seventh period has, however, become a routine feature of the Grievants' teaching load.

Hill's 7/1 assignment spanned three school years and Randolph's spanned two at the time of the arbitration hearing. Each teacher was, at the time of hearing, scheduled for another 7/1 alternating semester assignment for the 1996-97 school year. To treat this as something other than "continuous" renders that term meaningless. The continuous assignment of Current Events has included the continuous assignment of six other periods of Social Studies courses. Article X, Section B, points to the rotation of "unreasonable" assignments. The routine nature of the 7/1 assignments posed here limits the rotation to the Grievants. There is no support for this in Article X, Section B.

In sum, Article X, Section B fails to define an "unreasonable teaching load," and what period of time constitutes "a continuing basis" for the assignment of such a load. The parties have, however, in the implementation of an eight period day, treated a 7/1 assignment as one worthy of some consideration. No such consideration can be seen in the routine assignment of the Grievants to a 7/1 schedule every other semester for a period spanning, at least for Hill, four school years. To fail to apply Article X, Section B to the grievance would deny that provision of any meaning.

This poses the issue of remedy, which is no less thorny than the issue on the merits. The issue is sufficiently thorny that I can see no more appropriate remedy than the bargaining order pointed to in the District's initial brief. This is not to reject the potential applicability of elements of the relief sought by the Association. However, those elements cannot, on the facts now posed, be granted without posing more problems than the remedy would address. Some discussion of this point is necessary, and hopefully will set some appropriate background for the parties' bargaining.

Initially, it must be noted that no remedy can be effective prior to the 1996-97 school year. This reflects the difficulty of applying the vague direction of Article X, Section B to the facts. That Hill taught a 7/1 schedule in the 1993-94 school year put him in no different position than Walther regarding the application of Article X, Section B. For the 1994-95 school year, Kasinski accommodated Hill's request to split the class on an alternating semester basis. The reasonableness of that accommodation cannot be questioned prior to the filing of the grievance at the commencement of the 1995-96 school year. Assessing the impact of the grievance on each Grievant for that year is not without difficulty. Randolph had only assumed the 7/1 assignment for a single semester at that time. The reasonableness of the alternating semester accommodation poses, at least for him, a significant contractual issue regarding the "continuous" nature of the assignment. On balance, the record will not reliably support a conclusion that the 7/1 assignment had become a routine and objectionable feature of both Grievants' teaching loads until the start of the 1996-97 school year.

It is impossible to further specify the appropriate remedy until the parties have bargained the point. To indefinitely guarantee the Grievants a 6/1/1 assignment affords the Association a guarantee it has yet to secure in bargaining, and could pose significant issues regarding the scope of the District's authority to assign under Article VIII. The provision of overload pay poses a significant point, but can neither be presumed to be appropriate nor dismissed as inappropriate at this time. This reflects both contractual and factual complexities posed by the record. Article X, Section B does not expressly afford monetary compensation for an unreasonable teaching load, and arguably points against such a remedy. As noted above, the provision points not to compensating teachers for an overload, but to rotating assignments so that no overload is assumed by a teacher "on a continuing basis." To afford overload pay under Article X, Section B would pose the potentially significant issue of whether the pay would effectively grant a license to continue the overload. On a more factual basis, Hill's testimony would indicate that nothing less than relief from the seventh class would be appropriate to him. Randolph's testimony might indicate the provision of monetary relief would be satisfactory for the overload.

Against this background, the most appropriate response is the order to bargain noted below. This puts the parties with the greatest expertise in a position to determine if the Grievants' classroom assignments can be changed to alter the 7/1 assignment. Even if it is impossible to rotate the Current Events class, it may be that the Social Studies classes assumed by the Grievants can be adjusted or rotated to limit their assignment, with Current Events, to six instructional

periods per day. Whether this or other work load adjustments can be made is better left to educators than arbitrators. As the District notes, removal of the Current Events class in the 1996-97 school year poses significant contractual issues and may disrupt the progress of current students toward graduation. To the extent no adjustment in work load is possible in the present school year, the possibility of overload compensation takes on a significance it otherwise could not support under Article X, Section B.

The Award stated below is deliberately open-ended, and the retention of jurisdiction acknowledges the lack of guidance provided by this Award. Further guidance will, however, be provided only if and to the degree it proves impossible for the parties to mutually agree on an appropriate remedy. This manifests the vagueness of the direction given by Article X, Section B and encourages the remedy to be implemented by the parties with the greatest understanding of the scheduling issues posed.

AWARD

The work loads of the Grievants are in violation of the collective bargaining agreement.

To remedy the violation of Article X, Section B posed by the Grievants' assumption of a 7/1 assignment on a continuing basis, the parties shall bargain regarding how the Grievants' assignment in the current or subsequent school years can be adjusted to ameliorate the imposition of a 7/1 assignment for the 1996-97 school year. Such adjustment may include the provision of additional compensation for that assignment. I will retain jurisdiction over this matter for a period of not less than sixty days from the date of issuance of this Award in the event the parties are unable to agree on a remedy appropriate to the violation found in the Award.

Dated at Madison, Wisconsin, this 20th day of December, 1996.

By Richard B. McLaughlin /s/
Richard B. McLaughlin, Arbitrator

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