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.

SUPPLEMENTAL ARBITRATION AWARD

On December 20, 1996, I issued a decision which included the following 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. 1/

1/ Board of Education on Behalf of the School District of Washburn, MA-9340 (McLaughlin, 12/96) at 19-20.

In a letter filed with the Commission on February 19, 1997, the Association noted:

> The parties have had one negotiations session for the purpose of resolving the remedy for the above mentioned case. No agreement has been reached and no other negotiations sessions are scheduled.
>
> Therefore, the Union respectfully requests that you write a remedy for the above mentioned case.

By February 25, 1997, I confirmed that the parties mutually requested the issuance of a determination of remedy and that they did not wish to file further argument.

RELEVANT CONTRACT PROVISIONS

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.

DISCUSSION

As noted in the initial award, "Article X, Section B contains language which is notably vague." This posed difficulties on the interpretation of the section and on how its vague mandate can be implemented. The District contended that the difficulty of translating the broad mandate of Article X, Section B into a remedy could best be effected through bargaining. I found this line of argument persuasive, and in the initial Award, I stated:

> 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. . . . 2/
>
> 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. 3/

Bargaining has not, however, yielded a mutually agreeable solution.

As preface to an examination of the issue of remedy, it is necessary to note that the initial award addressed it in part:

> 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. . . . 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. 4/

The remedial issue thus posed is how to remedy the violation of Article X, Section B, starting with the 1996-97 school year.

The parties' arguments on remedy question the propriety of granting financial relief, workload relief, a combination of them or neither of them. The underlying complexities were touched upon in the initial award:

2/ Ibid., at 18.

3/ Ibid., at 19.

4/ Ibid., at 18-19.

> 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. 5/

A review of the record convinces me that the remedy must be financial. The Supplemental Award set out below grants the Association's request for financial relief, but does not grant the requested cease and desist order for workload relief.

It is appropriate to detail the basis for the Supplemental Award. Article X, Section B is a workload provision which points to rotating workloads rather than to overload compensation. This set the background for deferring the issue of remedy to bargaining, since workload considerations are inevitably complex and best left to "the parties with the greatest understanding of the scheduling issues posed." 6/ The failure of the bargaining process to resolve the issue of workload relief does not, however, afford greater insight into scheduling and workload issues than contained in the original evidentiary record. That record turned less on how to assemble or

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5/ Ibid., at 19.

6/ Ibid.

modify a teaching schedule than on how the factors underlying those schedules bear on Article X, Section B.

Against this background, it is unpersuasive to attempt direct workload relief. An order to cease and desist assigning the Grievants to Current Events has a direct curricular impact, but the evidence affords no guidance on what that impact may be. Direct arbitral involvement in the setting of curriculum is, at best, a last resort. Whether teaching loads can be reallocated to afford the Grievants relief is, on the present record, speculative. Any arbitral foray into the sensitive areas of curriculum or workload assignment should have a solid evidentiary base. In this case, an instruction to cease a particular assignment or to reallocate teaching assignments is unadorned speculation.

With this as background, the provision of financial relief is the alternative with the least intrusive impact on sensitive issues of educational policy. Presumably, the compensation afforded below addresses the "unreasonable" teaching loads the Grievants were assigned and presumably performed in the 1996-97 school year. This also affords a financial disincentive for the District to continue the assignments. Presumably, this will encourage meaningful effort toward rotating the assignment or devising some other form of workload relief. The award of overload compensation is not well rooted in the language of Article X, Section B, but reflects that the parties' inability, to this point, to redress the issue in a non-financial fashion makes the financial award more desirable than uninformed arbitral intrusion into the establishment of District curriculum or the assignment of teaching workloads.

There is no guarantee this financial incentive will produce the success in bargaining that the initial award failed to spur. It is conceivable recurring reassignment of Current Events as the Grievants' alternating seventh class could prompt the need for workload relief. The financial award entered below recognizes, however, that arbitral forays into educational policy must come as a last resort. If Article X, Section B, must again be put into dispute, the evidentiary record developed in a future grievance arbitration must focus in detail on what, if any, scheduling alternatives exist to ongoing 7/1 schedules assigned to Hill and Randolph.

SUPPLEMENTAL AWARD

As the remedy appropriate to its violation of Article X, Section B, the District shall pay the Grievants an additional 1/8 of what they earned as full-time salaried teachers for any semester(s) during the 1996-97 school year in which they taught seven periods of an eight period day.

Dated at Madison, Wisconsin, this 20th day of May, 1997.

By Richard B. McLaughlin /s/

RBM/mb
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Richard B. McLaughlin, Arbitrator