

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

ALMOND AREA EDUCATION ASSOCIATION

and

ALMOND-BANCROFT SCHOOL DISTRICT

Case 19
No. 66775
MA-13628

Appearances:

Mr. Thomas S. Ivey, Jr. UniServ Director, Central Wisconsin UniServ Council, 370 Orbiting Drive, P.O. Box 158, Mosinee, Wisconsin 54455-0158, on behalf of the Union.

Ruder Ware, L.L.S.C., **by Attorney Jeffrey T. Jones**, 500 First Street, Suite 8000, P.O. Box 8050, Wausau, Wisconsin 54402-8050, on behalf of the District.

ARBITRATION AWARD

At all times pertinent hereto, the Almond Area Education Association (herein the Association) and the Almond-Bancroft School District (herein the District) were parties to a collective bargaining agreement covering the period from July 1, 2005 through June 30, 2007. On June 8, 2007, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration over a dispute concerning an allegation that the District had violated the collective bargaining agreement by assigning Scott Ahern (herein the Grievant) to supervise the Alternative Learning Center without compensation and by failing to provide him with a preparation period or a duty free lunch period. The undersigned was selected from a panel of WERC staff members to hear the dispute and a hearing was conducted on March 4, 2008. The proceedings were not transcribed. The parties filed their initial briefs by June 19, 2008 and reply briefs by August 17, 2008, whereupon the record was closed.

ISSUES

The parties did not stipulate to a statement of the issues:

The Association would frame the issues as follows:

Did the District violate the terms of the Collective Bargaining Agreement when they paid Mr. Ahern on a 50% teaching contract while:

1. Assigning him to a work schedule that required him to teach 4 classes and three supervisions during the first semester of the 2006-07 school year and 3 classes and 4 supervisions during the second semester of the 2006-07 school year, and
2. Refusing to provide Mr. Ahern with preparation time and/or a duty free lunch as provided for in the contract?

If so, what shall be the remedy?

The District would frame the issues as follows:

Whether the District violated the terms of the 2005-07 Collective Bargaining Agreement by paying the Grievant at the .5 FTE rate?

If so, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

ARTICLE II - MANAGEMENT RIGHTS

- A. The Board of Education, on its own behalf, hereby retains and reserves unto itself, without limitation, except as may be in violation with this contract or current legislation, 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:
 1. To the executive management and administrative control of the school system and its properties, programs and facilities.
 2. To employ and re-employ all personnel and, subject to the provisions of law and state Department of Public Instruction regulations, determine their qualifications and conditions of employment, their promotion, their work assignment, and for just cause, their dismissal or demotion.
 3. To establish and supervise the program of instruction and to make the necessary assignments for all programs of an extra-curricular nature that in the opinion of the Board, benefits students.

- B. The exercising of the foregoing powers, rights, authority, duties and responsibilities by the Board, the adoption of policies, rules, regulations, and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this agreement and Wisconsin Statute 111.70, and then only to the extent such specific and express terms hereof are in conformance with the Constitution and laws of the State of Wisconsin and the Constitution and laws of the United States.
- C. The Board's right to operate and manage the school system is recognized, including the determination and direction of the teaching force, the right to plan, and direct and control school activities; to schedule classes and assign work loads; to determine teaching methods and subjects to be taught; to maintain the effectiveness of the school system; to create, revise and eliminate positions; to establish and require observance of reasonable rules and regulations; to select and terminate teachers. No teacher shall be discharged based upon decision which is unsupported by just cause.

ARTICLE III – GENERAL PROVISIONS

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- B. It is recognized that employees in the bargaining unit assume an obligation for all teaching functions of a quality educational program including:
 - 1. Daily preparation
 - 2. Attendance at staff and in-service training meetings.
 - a. Not more than one faculty meeting per week.
 - b. The weekly faculty meeting shall not be scheduled to go beyond 4:00 p.m.
 - 3. Participation in meetings with parents.
 - 4. Supervision of all extra-curricular activities, such as clubs and athletics.
- C. Under the semester schedule, the normal teaching load for senior high school teachers shall consist of up to six teaching assignments, at least one study hall or special assignment, and one period for classroom preparation.

...

- H. The Board shall distribute the work load equally over the school year among qualified employees. The parties recognize that there will be situations of imbalance resulting from change in teaching complement and change in student load. However, the parties also recognize the concept of a reasonable work load and agree that on a continuing basis employees will not be expected to perform an unreasonable workload.

...

- K. The normal working day will consist of $7\frac{3}{4}$ hours. Within the $7\frac{3}{4}$ hours, a thirty (30) minute duty free lunch period will be provided according to state statute 118.235. The $7\frac{3}{4}$ hour day will be between 8:00 a.m. and 3:45 p.m., unless an individual teacher elects at the beginning of the school year to work from 7:45 to 3:30 p.m.
- L. All full-time elementary teachers will be provided with preparation time approximately equal to the high school preparation time, over a week's time. This preparation time will be provided to all elementary teachers during the time that special teachers are with the children.
- M. High school teachers who teach seven class periods or who instruct a combination or split class will receive additional compensation. Said compensation will be equal to the teacher's equivalent hourly rate for each additional class or each additional combination or split class. (If a teacher has seven periods per day, the teacher will receive the equivalent of one additional hour of pay per day. If the teacher has seven periods, one of which is a split period, the teacher will receive the equivalent of two additional hours of pay per day, etc.)

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ARTICLE VII – GRIEVANCE PROCEDURE

- A. Purpose – The purpose of this procedure is to provide an orderly method for resolving differences arising during the term of the Agreement. A determined effort shall be made to settle any differences through the use of the grievance procedure.
- B. Definition – For the purpose of this agreement a grievance is defined as any complaint regarding wages, hours and conditions of employment.
- C. Grievances shall be processed in accordance with the following procedure.

STEP 1

- a. An earnest effort shall first be made to settle the matter informally between the teacher and his/her immediate supervisor.
- b. If the matter is not resolved, the grievance shall be presented, in writing, by the teacher to the immediate supervisor within thirty (30) school days after the facts upon which the grievance is based first occurred or first became known. The immediate supervisor shall give a written answer within ten (10) days of the time the grievance was presented in writing to the supervisor.

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- E. The written grievance shall give a clear and concise statement of the alleged grievance, including the fact upon which the grievance is based, the issue involved, the specific sections of the agreement alleged to have been violated, and the relief sought. The parties shall draft mutually agreeable forms for the filing of grievances and the responses to same.

STIPULATIONS

At the hearing, the parties agreed to the following stipulations of fact.

1. The Grievant, Mr. Scott Ahern, was employed by the School District as a part-time (50%) Spanish teacher during the 2006-2007 school year.
2. Mr. Ahern commenced work at 7:45 a.m. His first class commenced at 8:20. His last class ended at 11:34 a.m. He normally left the School District between 11:45 a.m. and Noon. The teacher work day is 7 hours and 45 minutes long, including a 30 minute duty-free lunch.
3. During the first semester of 2006-2007, Mr. Ahern taught Spanish during periods 1 through 4. During the second period, he taught both Spanish II and Spanish III.

During the second semester of 2006-2007, Mr. Ahern taught Spanish during periods 1, 2 and 4. During the second period, he taught both Spanish II and Spanish III. During the third period, he was assigned a study hall.
4. Mr. Ahern's classroom is a divided classroom. One-half of the classroom is used for Spanish instruction and the other half is used for the Alternative Learning Center (ALC). There is a folding wall between the two classrooms.

5. During Mr. Ahern's 1, 3 and 4 class periods during the 2006-2007 school year, the folding wall between the two rooms was open.
6. Mr. Ahern was expected to monitor students in the ALC while teaching his Spanish language classes during periods 1, 3 and 4.
7. Mr. Ahern did not receive additional compensation for monitoring the ALC during his class periods 1, 3 and 4 for the 2006-2007 school year.
8. Joint Exhibit #1 is a copy of the parties' 2005-2007 collective bargaining agreement.
9. Joint Exhibit #2 is a packet of grievance materials pertaining to this matter.
10. Association Exhibit #1 is a packet of grievance materials presented at the Step 3 level of the grievance procedure on December 20, 2006.
11. During the 2006-2007 school year, Mr. Ahern's schedule did not include a preparation period.
12. During the 2006-2007 school year, Mr. Ahern was not provided a paid duty free lunch period within his scheduled employment time.

BACKGROUND

Scott Ahern, the Grievant herein, was a substitute teacher in the Almond-Bancroft School District during the Spring semester of the 2004-05 school year. For the 2005-06 school year he was offered a .5 FTE contract as a Spanish teacher. His salary was set at 50% of the BA Step 1 level and he received pro-rated benefits. His part-time contract was renewed for 2006-07. Pursuant to the contract, he elected to begin his workday at 7:45 a.m. and he would typically leave school for the day between 11:45 a.m. and 12:00 p.m., shortly after completing his last class. He would then travel to Stevens Point, where he was taking classes at the University.

Ahern was assigned to a split classroom, one side of which he used for his Spanish classes and the other side of which served as the school's Alternative Learning Center (ALC). The two sides of the room are divided by an accordion wall, which can be opened, if needed. The ALC is where Middle School and High School teachers send disruptive students and also is where students serve in-school suspensions. During the 2006-07 school year, there were, on average, 1-2 students in the ALC on any given day, but often there were no students and sometimes as many as 5.

In the first Semester of the 2006-07 school year, Ahern taught 10 students in Spanish I during the first period, which later was reduced to 9. In the second period he taught 6 students in Spanish II and 1 student in Spanish III. In the third period he taught 17 students in Spanish Culture and in the fourth period he taught 9-10 students in 8th Grade Spanish. In the second semester, the third period Spanish Culture class was replaced by a Study Hall of 17-20 students. At the beginning of the year, Principal Jeff Rykal informed Ahern that he would have to monitor the ALC temporarily during the 1st, 3rd and 4th periods until a staff member could be found to assume this duty. This involved opening the accordion wall and making sure the students coming to the ALC filled out the appropriate forms and behaved themselves. He did not provide instruction, but would help students if asked and would collect and deliver make-up tests. Rykal told him there would be no additional compensation for monitoring the ALC.

In late September, Rykal told Ahern he was unable to find another staff member to monitor the ALC and that Ahern would have to continue to perform this duty. On November 7, 2006, Ahern filed a grievance, alleging that requiring him to monitor the ALC without compensation violated the contract. As and for a remedy, he requested to be relieved of the assignment and paid for all hours previously worked supervising the ALC at the per diem hourly rate. In the alternative, he sought overload pay at the per diem rate for all hours supervising the ALC going forward, as well as back pay for previously worked hours. On November 15, 2006, Rykal denied the grievance. The grievance was advanced to Step 2 on December 11, 2006, at which time the Association attached an addendum amending the original grievance to request additionally that Ahern be provided with a preparation period. The grievance was denied on December 14 by District Administrator Joe Garza and was scheduled for a Step 3 appeal to the Board of Education on December 20. On December 19, the Association again amended the grievance to request that, in addition to compensation for supervising the ALC and a preparation period, Ahern be provided with a paid duty-free lunch period. On December 20, the Board denied the grievance. Additionally, the Board notified the Association that it considered the December 11 and December 19 amendments to raise new issues in a manner not in accordance with the grievance procedure. Accordingly it took the position that the issues of preparation time and a paid duty-free lunch period were not arbitrable within the context of the original grievance and must be grieved separately. Further, it maintained that a back pay remedy for work performed prior to the grievance was untimely and inappropriate. The matter was thereupon advanced to arbitration. Additional facts will be referenced, as necessary, in the **DISCUSSION** section of this award.

POSITIONS OF THE PARTIES

The Association

Arbitrability

The Association argues that the grievance, as amended, is timely and is properly before the arbitrator. None of the District's responses at the various grievance steps refer to timeliness and no objection to timeliness was made before the hearing. Thus, the District has waived its

right to make a timeliness objection. Ahern learned his ALC assignment would be permanent in the first week of October 2006. He approached the Association and the grievance was filed on November 7, within the 30 day filing deadline. Ahern only learned of his right to a preparation period and duty-free lunch when he met with the Association leadership to prepare for the Step 3 hearing on December 20. The Board was not surprised by the amendments and had ample time to prepare its defense to them. The District continued its violation even after it was made aware of the problem by Ahern and the Association to its own benefit and Ahern's detriment. It should not, therefore, be able to avoid responsibility for its actions on the basis of a timeliness defense.

Merits

The Association asserts that the duties assigned to Ahern in 2006-07 exceeded the scope of his .5 FTE contract. The high school teaching day is broken up into 8 periods and the contract addresses teacher workload in a variety of ways. According to Article III, Section K, the contractual workday for a full-time teacher is 7 hours and 45 minutes. One-half of that amount is 3 hours, 52 minutes and 30 seconds. Ahern began work at 7:45 a.m. and so his work day should have ended at 11:37:30 a.m. His last class ended at 11:36 a.m., however, he received no preparation period or duty-free lunch. Had he been provided these, his workday would have been 75 minutes longer.

During the first semester, Ahern taught Spanish during the first four periods of the day. During the second semester, he taught Spanish during periods 1, 2 and 4 and had a study hall period 3. During second period he taught Spanish II and III simultaneously. In addition, Ahern was assigned to supervise the ALC during periods 1, 3 and 4. He did this the entire year without compensation. He was responsible to see that the students signed in, filled out the "Reflection" sheets and did school work. He also assisted the students at times when requested. The ALC averaged 1-2 students throughout the year, but occasionally there were as many as 4-5.

Principal Rykal attempted to argue that other teachers also have supervisory duties for which they are not compensated, such as monitoring hallways between classes, working with student aides and working with students in the elementary "recovery" program. He conceded, however, that all these examples were voluntary, which the ALC assignment was not. No other teacher was required to teach a class and handle a supervisory assignment concurrently and Ahern is entitled to be compensated for it. Further, all other teachers have a planning period and duty-free lunch. This is simply an attempt by the District to get necessary work done without paying for it. No other teacher had a comparable workload and Ahern was also unfairly deprived of a planning period and duty-free lunch. Any teacher could be reduced below full-time by taking away their plan time and lunch. The District got more than it paid for and Ahern deserves to be paid fairly for the work he did.

Article III makes it clear that a planning period is an integral part of a teacher's work day. It is unreasonable to assume that if a full-time teacher requires plan time, a part-time

teacher does not. Ahern was also entitled to a duty-free lunch period under Sec. 118.235 Stats., which is incorporated by reference into the contract. There is no exception for teachers employed less than full-time.

The District

Arbitrability

The District argues that the Association's amendments to the grievance should be disregarded. The requests for preparation time and a duty-free paid lunch were raised after the filing of the original grievance and cited new provision of the contract. In raising new issues and contractual provisions, the Association violated Article VII.

Merits

The contract does not provide for preparation period for part-time teachers. The only reference to preparation time is contained in Article III(C), which relates to full-time staff. The Grievant had four teaching periods in the first semester of 2006-07 and three teaching periods in the second semester, so he was not entitled to a preparation period. The Grievant was also not entitled to a paid duty-free lunch. Article III(K) only applies to teachers working a 7¾ hour day. The Grievant only worked from 8:20 a.m. to 11:34 a.m., so he was not entitled to a duty-free lunch. Further, neither the contract, nor Sec. 118.235, Stats., requires that the lunch be paid. The Grievant's work day ended at 11:34 a.m. and he was entitled to a duty-free lunch at any time thereafter. Further, since the lunch period for teachers doesn't begin until after 11:34, it would make no logical sense to provide a lunch to the Grievant when he was already finished with work, especially since he left school immediately to travel to take university courses.

The Association's claim that the Grievant should be compensated doubly for having to monitor the ALC while teaching also has no merit. There is no assertion by the Association that the District does not have the right to make such an assignment. Clearly, the Management Rights clause grants such authority. Further, a fair reading of the contract as a whole indicates that the parties did not intend that teachers should receive additional pay for monitoring students. The contract defines a full-time teacher as one who has six teaching assignments, one study hall or special assignment, and one preparation period. The Grievant taught four classes in the first semester and three in the second semester, so he was clearly not a full-time teacher. Article III(M) provides overload pay for teachers who teach seven classes or who teach a split class. This language clearly does not apply to the Grievant, because he fits neither category. Likewise, Article III(H) does not apply to the Grievant. His duties monitoring the Lac were minimal and did not constitute an unreasonable work load. Almond-Bancroft in a small district and the teachers often are called upon to perform extra duties without extra compensation. Teachers work with students aides and oversee independent studies without compensation. Likewise, elementary teachers accept students with discipline problems into their classrooms without extra pay. If the Association were to prevail, the Grievant would essentially be paid as

a full-time teacher, even though he only worked half days, which would enrich him by approximately \$13,400 - \$13,600. This would be a harsh and unreasonable result. The Grievant usually had to monitor one to two students, and occasionally none. This had no disruptive effect on his teaching and the grievance should be denied.

The Association in Reply

Arbitrability

The Association reiterates its position that the matters of preparation time and a paid duty-free lunch are properly before the arbitrator. They are not new issues, but are subsumed within the grievance, which deals with Ahern's assigned schedule, associated workload and compensation. There is also no evidence that the District was in any way disadvantaged by the amendments at and before the Step 3 hearing. The record shows that the District gave the amendments due consideration in its deliberations. Further, Article VII, Section E does not contain language restricting amendments to grievances or placing time limits on them. In that way the parties are able to completely explore their grievances and seek complete resolution before arbitration. This is a preferable system to requiring separate grievances to be filed.

Merits

In many respects, the District mischaracterizes Ahern's work assignments. Ahern's Spanish III class was not the equivalent of an Independent Study. It was a regularly scheduled class that required daily preparation. Also, his supervision of the ALC was not a minimal assignment. He supervised students virtually every day. They often had work to do, or were making up tests, and usually were sent there for disciplinary reasons. Thus the ALC assignment was akin to a study hall. If the District finds a need to staff the ALC every period, it must be for a reason, which belies the District's contention that it is a *de minimis* assignment.

The Association further contends that compensating Ahern for the ALC assignment would not create a harsh or unreasonable result. What is unreasonable is that the District is getting extra service from Ahern without compensation. He is entitled for fair compensation for the work he performs. Allowing the District to impose a work load that is not commensurate with his contract is unfair. To pay him fairly for what he does is not unjust enrichment.

The District in Reply

Arbitrability

The District reiterates its position that the amendments to the grievance were not timely and that it did not waive its right to raise that objection. It asserts that under the contract language, the grievance is to be filed within thirty days after the facts giving rise to the

grievance become known. Ahern knew about the ALC assignment at the outset of the school year. Thus, the District believes any remedy awarded should not predate November 7, 2007. Further, the District did object to the amendments as they were added. The preparation time and lunch period issues were raised prior to the Step 3 hearing. At the hearing the Board specifically stated that they were added inappropriately under Article VII and that a new grievance needed to be filed on those issues.

Merits

Article III(H), cited by the Association, specifically recognizes that there will be occasion periods of unbalanced workload. The District asserts that this language refers to course load and not supervisory assignments, but even if not, the ALC assignment given to the Grievant did not result in an unreasonable workload. There were, on average 1-2 student at a time in the ALC and sometimes none. Ahern's duties were to make sure that they filled out the proper forms and had something to do. There is no evidence that his classroom teaching was disrupted. Further, there is no contract language or existing practice that supports paying him for this duty. Also, arbitral precedent supports the proposition that adding extra students to a teacher's classroom is not tantamount to adding an extra duty for which compensation must be paid. Here, the contract does not provided for overload pay for supervising students under these circumstances, but only in the event of the addition of a seventh teaching period or a split class, neither of which is the case here. Teachers do not extra pay for ancillary duties.

The Association's arguments regarding planning time and a paid lunch period are without merit. There is no contract language providing preparation time for part-time teachers, even on a *pro rata* basis. Further, it makes no sense to provide a paid lunch period to a teacher who only works half days and who leaves the building before the lunch period begins, nor does Sec. 118.235 support the Association's position on this point. As to other points raised by the Association, the District asserts that they are without basis. Ahern was only responsible for making sure students coming to the ALC filled out the proper form and had work to do. Any assistance her provided those students was minimal and did not disrupt his teaching. Further, often there were no students in the ALC and Ahern should clearly not deserve compensation for those times. Ahern testified that he (and others) supervised students in the hallways without compensation. This involved as much student supervision as monitoring the ALC, so it is inconsistent for the Association to seek compensation for one but not the other. Finally, there is no merit to the assertion that part-time teachers require preparation time. Working a half day gave the Grievant plenty of time for preparation.

DISCUSSION

Arbitrability

The issues here are twofold. First, the District asserts that by filing the grievance on November 7, any remedy should not be awarded retroactive to that date, inasmuch as the Grievant had been aware of his work assignment since the beginning of the school year. The

second issue involves the District's contention that Ahern improperly amended the grievance before the Step 3 hearing to add claims for preparation time and a paid duty-free lunch and that these claims should be dismissed.

As to the matter of retroactivity, the contract specifies that the grievance must be brought within 30 school days after the facts upon which the grievance is based first occurred or became known. The grievance was filed on November 7, 2008 and there is no contention that it was untimely. Ahern testified that he had been supervising the Adult Learning center (ALC) since the beginning of the year, but only learned in late September that the assignment would be permanent, and that it was this that prompted the grievance. If finding that he would be permanently assigned to supervise the ALC was the occurrence giving rise to the grievance, he cannot logically claim relief for any time prior to that. If his grievance is based on having to supervise the ALC at all without extra compensation, he was aware of that circumstance from the beginning of the year and in that event the grievance is untimely and should be dismissed altogether. The District does not make that assertion, however. So, under the circumstances, and given the contract language, it seems to me that Ahern cannot equitably claim relief for a period previous to 30 school days prior to the filing of the grievance.

As to the additional claims for a preparation period and a paid duty-free lunch, I find that these are not appropriately brought in the context of this grievance and they are denied. The Association takes the position that they are part of a comprehensive grievance concerning Ahern's work schedule and should be included, but I do not agree. The original grievance specifically concerns the fact that Ahern was expected to supervise the ALC without additional compensation and the citations to the contract in the grievance are directed specifically to that issue. The claims for preparation time and a paid lunch for a part-time teacher are distinct issues that have different premises and are based on different contract language. In fact, the only connection they have to the ALC assignment is the fact that they all concern the same grievant. While Ahern could have brought all three claims in the original grievance, therefore, it would be inappropriate to permit him to raise the additional claims at the Step 3 level. The Association argues that it would work no injustice on the District to consolidate the claims, but the fact remains that the contract sets forth specific procedures for bringing and advancing grievances and the Grievant did not comply as to the preparation period and lunch period issues. Whether or not there was specific prejudice to the District in this case, it is clear that allowing grievants to amend grievances to raise new claims throughout the contractual process, particularly when there is no language permitting it, unfairly denies the District the opportunity to fully evaluate claims from the outset of the process, which hinders orderly processing of claims, and should be discouraged.

Merits

The original grievance seeks compensation for the fact that Ahern was required to supervise the ALC during three of his teaching periods without additional compensation. The grievance cites Article III, Sections C, H and M in support of the claim for relief.

- C. Under the semester schedule, the normal teaching load for senior high school teachers shall consist of up to six teaching assignments, at least one study hall or special assignment, and one period for classroom preparation.

...

- H. The Board shall distribute the work load equally over the school year among qualified employees. The parties recognize that there will be situations of imbalance resulting from change in teaching complement and change in student load. However, the parties also recognize the concept of a reasonable work load and agree that on a continuing basis employees will not be expected to perform an unreasonable workload.

...

- M. High school teachers who teach seven class periods or who instruct a combination or split class will receive additional compensation. Said compensation will be equal to the teacher's equivalent hourly rate for each additional class or each additional combination or split class. (If a teacher has seven periods per day, the teacher will receive the equivalent of one additional hour of pay per day. If the teacher has seven periods, one of which is a split period, the teacher will receive the equivalent of two additional hours of pay per day, etc.)

It is the Association's position that Ahern's assignment supervising the ALC was an additional duty which entitles him to overload pay. I do not agree.

Ahern was a part-time teacher working on a 50% contract. Under that contract, he taught Spanish classes during the first four periods of the day in the first semester and taught Spanish during periods 1, 2 and 4 of the second semester and supervised a study hall during period 3. He was released after period 4 and left the school immediately in order to attend an afternoon class in Stevens Point. The contract does not define the workload for a part-time teacher, but Section C. makes it clear that a full-time teacher may be assigned a combination of teaching and other duties for seven of the eight periods of the day, along with one preparation period. Further, Section K defines a normal workday as 7 hours 45 minutes. In fact, Ahern's workday went from 7:45 a.m. to 11:34 a.m., or 3 hours 49 minutes. There is no claim, however, that Ahern's teaching load was disproportionate or that he was required to work more than 3 hours 52½ minutes, but rather that his supervision of the ALC was over and above his teaching load and entitled him to extra compensation.

The evidence indicates that the ALC assignment was involuntary and was originally intended to be temporary until another staff member could be identified to take the assignment.

When no such staff member could be found, Ahern was told the assignment would continue indefinitely. There is no contract language that directly applies to this situation. Section M deals specifically with teachers who teach seven periods or who teach a split class. The ALC assignments was neither. Section H establishes the principal that teachers will not be subjected to an unreasonable workload on a continuing basis. It recognizes, however, that circumstances may result in imbalance from time to time. It also does not define an unreasonable workload.

The ALC assignment required Ahern to monitor student sent to the ALC for disciplinary reasons during periods 1, 3 & 4, while he was teaching Spanish. This involved making sure they signed the appropriate forms and had work to do. Usually there were 1-2 students per day in the ALC, but occasionally none and sometimes as many as 4-5. He did not provide instruction. Ideally, there would be a staff member detailed to monitor the ALC, but none was available, presumably because all other staff were teaching or assigned to other duties during those periods. The fact that Ahern's classroom was proximal to the ALC area and, in fact, accessed it via a removable accordion wall, made it arguably possible for Ahern to monitor the activity in the ALC at the same times that he was teaching. The contract makes no provision for the compensation of teachers monitoring the ALC. It is presumed, therefore, that had Rykal identified another teacher available to monitor the ALC during those periods, they would not have been given extra compensation for the assignment. Having Ahern monitor the ALC, while teaching his classes was not an ideal situation, but there is no evidence that having the ALC students in his room was unduly burdensome to Ahern or interfered overly with his teaching, especially given the minimal number of students he typically had to supervise and the low level of supervision involved. Since he was not expected to provide instruction or special services to these students, the impact was not significantly different, and perhaps less than, what would have occurred if 1-2 students were added to his classes, which would not entitle him to additional compensation. Further, there is precedent for teachers performing this type of duty. According to Principal Jeff Rykal, in the elementary school, students who are disruptive or misbehave are sent to the next door classroom. The teacher in that room monitors them, but does not provide instruction, much the same as what occurs in the ALC. This duty does not provide extra compensation. Thus, while I agree that assigning Ahern to monitor the ALC resulted in somewhat of an imbalance in his workload under Section H, I cannot say on this record that it was unreasonable under the circumstances. The grievance is denied.

For the foregoing reasons therefore, and based upon the record as a whole, I hereby issue the following

AWARD

Dated at Fond du Lac, Wisconsin, this 24th day of November, 2008.

John R. Emery /s/

John R. Emery, Arbitrator

JRE/gjc
7370

