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State of Wisconsin
Before the Arbitrator

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

OPINION AND AWARD

MARSHFIELD TEACHERS' ASSOCIATION

Case 22

No. 42931 INT/ARB- 5402

To Initiate Arbitration
Between Said Petitioner

Decision No. 26632-A

and

MARSHFIELD SCHOOL DISTRICT

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the District: William G. Bracken, Director of Employee Relations Services - Wisconsin Association of School Boards

On Behalf of the Union: Mary Virginia Quarles, Executive Director - Central Wisconsin UniServe Council (West)

I. BACKGROUND

On April 20, 1989, the Parties exchanged their initial proposals on matters to be included in a new Collective Bargaining Agreement to succeed the Agreement which expired on June 30, 1989. Thereafter, the Parties met on four occasions in efforts to reach an accord on a new Collective Bargaining Agreement. On October 5, 1989, the Association filed the instant petition requesting that the Commission initiate Arbitration pursuant to

Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On January 16, 1990, a member of the Commission's staff conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and following offer exchanges and further bilateral negotiations, the Parties submitted to the Investigator their final offers, written positions regarding authorization by the Commission, as well as a stipulation on matters agreed upon. Thereafter the Investigator notified the Parties that the investigation was closed and advised the Commission that the Parties remain at impasse.

On September 18, 1990, the Parties were ordered by the Commission to select an Arbitrator to resolve their dispute. The undersigned was selected from a list provided by the Commission. His appointment was ordered October 15, 1990.

A hearing was scheduled and held January 7, 1991. The proceedings were transcribed. Post-hearing briefs and reply briefs were submitted. The reply briefs were received February 28, 1991.

II. FINAL OFFERS AND ISSUES

There are essentially four issues in dispute. They are (1) salary schedule for 1989-90 and 1990-91, (2) class overload pay, (3) whether consultation time should be considered preparation time, and (4) the amount of pay and conditions under which a teacher should be paid for room transfers.

A. Salary Schedule

1. The Association

The Association proposes a base in 1989-90 of \$19,425. Other common benchmarks would be BA Max--\$29,254, MA Base--\$22,921, MA Max--\$34,538, and Schedule Max--\$40,831. For 1990-91 these same benchmarks would be as follows: BA Base--\$20,490, BA Max--\$30,858, MA Base--\$24,178, MA Max--\$36,431, and Schedule Max--\$43,070.

The Association costs their 1989-90 offer at 6.5% average per teacher or \$1,985 and 6.36% or \$2,070 per teacher in 1990-91. They cost the Board's offer at 1989-90 at 6.36% or \$1,943 per teacher. In 1990-91 they estimate the Board's offer at \$1,959 or 6.03%.

2. The District

The Board's proposed salary schedule generates the following benchmarks:

	<u>1989-90</u>	<u>1990-91</u>
BA Base	\$19,400	\$20,400
BA Max	29,216	30,722
MA Base	22,892	24,072
MA Max	34,493	36,271
Schedule Max	40,779	42,881

Their salary only costing of the packages is essentially the same as the Association, except they note that the costing does not include longevity or the cost of the overload pay proposals. Thus, they also offer total package costing, too, as follows:

	<u>1989-90</u>	<u>1990-91</u>
Board	\$2,911/7.0%	\$3,050/6.8%
Association	3,284/7.9	3,314/7.4%

B. Class Overload Pay

1. The Association

The Association makes the following proposal:

A normal daily secondary workload shall be five (5) instructional periods and one (1) supervision period.

If more than five (5) instructional periods are assigned, the teacher shall be paid 3% of the schedule base (1989-90) and thereafter 4% of the schedule base per semester for each additional class.

Supervision that extends the workload to more than six (6) pupil contact periods shall be compensated at the same rate. (Homeroom, library supervision at the Senior High, and lunch supervision are excluded from the calculation of supervision or pupil contact periods as long as the daily total minutes for them, averaged on an annual pupil year basis, does not exceed 35 minutes per day.

Teachers may volunteer for but not be involuntarily assigned to a sixth instructional period in lieu of a supervision period with no additional compensation.

2. The District

The District does not propose a change in the status quo.

C. Consultation Time

1. The Association

The Association makes the following proposal:

Consultation time required by the implementation of programs such as Collaborative Consultation, Integration Consultation, Resource Based Teaching, Pod/House Consultation, etc., shall not be considered preparation time.

2. The District

The District makes no offer concerning this subject.

D. Transfer Time

1. The Association

The Association makes the following proposal:

NEW E.

Effective 1990-91, a teacher who is notified of a room transfer, whether inter- or intra-building, may use from one-half of one day to three full days to facilitate the move as determined by the building administrator. This will only be granted where justified due to amounts of equipment, books, etc., to pack and unpack. Teachers will be compensated under Appendix F.

2. The District

The District proposes the following:

3. Article VII - Vacancies, Transfers and Reassignments - New Section E.

A teacher who is notified of a building-to-building transfer may use from one-half of one day to one full day to facilitate the move as determined by the building administrator. This will only be granted in cases where justified due to large amounts of equipment, books, etc.,

to pack and unpack. Teachers will be compensated at the hourly rate in Appendix F.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. Salary Schedule

1. The Association

The Association believes they are in a catch-up position and contends that their offer best addresses that need. This catch-up occurred as a result of losing the 1987-89 interest arbitration case. For 1987-88 they were behind the average teacher in the Wisconsin Valley Conference by \$321 and \$315 behind in 1988-89. The Association's offer would restore \$101 of that loss in 1989-90 and \$95 of that loss in 1990-91, for a total of only \$196 of the \$636 loss. Thus, they would be \$41 above the average in 1988-89 and \$23 above the average in 1990-91. Even so, they would not improve their overall rank under their offer. Under the board offer their rank would slip overall.

The need for catch-up is also demonstrated by a benchmark analysis. They present a detailed picture of these comparisons showing that in all but the schedule maximum they are dramatically off the conference average. The only positive differential is the Schedule Maximum, and it is a misleading indicator since in Marshfield it is reached only after one earns 54 credits past the Master's degree. The average for the other conference schools is 35 credits for

Schedule Maximum. Nineteen (19) more credits are required in Marshfield to reach Schedule Maximum and then they will only rank only third in the conference. Just the tuition would cost \$2,071 for these additional 19 credits. They also note that Marshfield's schedule also requires more teaching experience to achieve Schedule Maximum. The other conference schools average 11 MA steps, but Marshfield requires 14, a 27% greater experience to achieve the maximum.

2. The District

The District stresses at the outset that their offer best matches the prevailing settlement both in terms of "salary only" and "total package" increases. The Board's offer is clearly above the average salary and package settlements in 1989-90. It is only \$11 off the average in 1990-91 in terms of salary but \$290 above on the package. The Association's offer is above the average at all benchmarks and is closer to the average only on a percentage basis for the 1990-91 salary-only comparison. They submit there is no justification for the teacher proposal which would result in a salary settlement \$252 greater than the average over the two years. The package value would be \$1,234 over the average. This means that if the Union prevails, the Marshfield district will be spending over \$303,000 above the average two-year settlement pattern. This does not include the cost of overload pay.

The Board, too, presents a benchmark analysis based on the dollar and percent increases. It is their conclusion that the increase under their offer is closest to the average at every benchmark. In fact, the Board's economic offer raises most wage rates by one-half to one percent above the average in each year.

The District does not believe catch-up is warranted because Marshfield ranks competitively at the benchmarks. Moreover, they believe it inappropriate to review past wage relationships going back to 1985-86 because those were the product of voluntary agreements. In fact, it was on this basis that Arbitrator Nielsen rejected the Associations's catch-up argument in 1988. Additionally, a catch-up agreement based on benchmark analysis is difficult because several conference schools have compressed salary schedules. Even so, at every benchmark the Board's final offer makes an improvement anywhere from \$323 to \$1,028 over the two-year contract. Any differences are also mitigated by an excellent fringe benefit package.

Catch-up is also not needed, the District suggests, when considering the historical rankings. When these are reviewed, there is no significant deterioration in the rank enjoyed by Marshfield teachers over the five years studied, as the Union advocates. Thus, there will be no hardship caused the Marshfield teachers with the selection of the Board's final offer.

The District also argues that their offer is supported by the following:

(1) the fact that no other public or private sector employee has received increases of the magnitude offered by the Board; (2) the fact the Board's offer is greater than the cost of living; (3) the fact that on a total compensation basis, Marshfield teachers enjoyed the highest health insurance contribution (for example, \$1,577 more per teacher per year for health insurance than the comparable average)--in this regard they strongly urge the Arbitrator to concentrate on the total package figures; and (4) the fact the Board made a significant concession on early retirement.

The District argues that the interest and welfare of the public are best reflected in the Board's final offer since there is an adequate supply of teachers overall and because there is no exodus of teachers because of salaries. They also stress the need for property tax relief from spending restraints.

B. Class Overload Pay

1. The Association

The Association relies heavily on Arbitrator Nielsen's award between the Parties in the predecessor contract. They proposed overload in 1987-89 because of the Board's change from modular scheduling (where the teacher averaged 209 minutes of instructional time) to a traditional schedule (where a teacher averages 252 minutes of instructional time).

In 1987-89 the Board refused to offer a quid pro quo for the change, and their failure to do so has left some teachers seven instructional periods per day and offers no assurances that such will not continue to occur.

They note, too, that Arbitrator Nielsen said in his award, "Contrary to the Board's assertion, the need for a provision of this type is established by the District's unilateral action in expanding the number of classes and thus the volume of work . . . (T)he addition of formal instruction time within the work day does affect the intensity of effort during the day, and may be properly held out as meriting some additional compensation." However, he rejected the Association's proposal since it provided a 20% overload premium. For this reason they have now proposed 4% per semester. In contrast, the Board's offer is totally nonresponsive to Nielsen's award. As Nielsen said in 1988, "The Board ignores the problem by refusing to make any gesture toward compensating teachers for the increased effort required by the traditional schedule."

The Association also argues that the comparables continue to support overload language. Seven of the eight comparables provide five periods as the normal workload. Wausau West still has modular scheduling. All of these seven provide for overload pay except D. C. Everest. While D. C. Everest's overload language provides no pay, it limits the Board's ability to inequitably assign overload on a continuing basis. Specifically, the Board may not assign

an overload two years in a row to the same teacher. In Marshfield there is no restriction or even a seventh class which are currently assigned to teachers.

The Association also questions the District's methodology in calculating the impact of the change to the traditional schedule. When counting teachers' instructional time, contact time, and supervision time under the modular scheduling, it counts those minutes including the passing times. When it compares these times for traditional scheduling, it uses figures that eliminate the passing time. The Association argues the Board can't have it both ways. The two systems are not equivalent, in the Associations' estimation. Modules were really 18 minutes long when accounting for passing time. That calculates to be 270 minutes per day for all student contact of which only 209 minutes of that were for class instruction. Therefore, there were 61 minutes for supervision including ODLs (study halls). This is not equivalent to 264 minutes of instructional time under the traditional schedule. Additionally, the Board has extended the student day, causing a lunch period six minutes less than under modular scheduling. Thus, overall, teachers can now be required to teach at least 264 minutes per day when they previously taught 209, a 26% increase. Teachers can be required to have at least 294 minutes per day of contact time with students when it previously was 270 minutes, a 9% increase. This doesn't account for a seventh period if the Board chooses to assign it. If the Board's

offer is accepted, they will continue to gain a 26% increase in instructional productivity.

Last, the Association contends that ODLs are still not instructional periods. This is in response to Board arguments that ODLs (Open Departmental Labs or Open-Door Labs) were really instructional time. They note that Arbitrator Nielsen rejected that by his acknowledgement that "informal instructional time during the work day" had been added.

2. The District:

At the outset the District does not believe that this is a repeat of the previous arbitration case with Arbitrator Nielsen. This case has many distinguishing aspects. They are: (1) the Nielsen award was an expedited award. Thus, the Arbitrator cannot be expected to go into as much detail and rationale in his written opinion. (2) There were many other issues to be considered. (3) The Board's case was based strictly on the basis of comparability and cost. There was no detailed accounting of the type of school-day configuration that was found in comparable school districts. (4) In this case the Board has spent a great deal of time trying to determine the significance of practices in school districts that allow districts to assign a six-period assignment in lieu of overload pay. This significant and subtle nuance

was not clearly brought to the attention of Arbitration Nielsen in the previous case.

The District cautions the Arbitrator against interpreting the Nielsen award as favoring overload pay. He was also reluctant to adopt the Union's proposal because it would "force the Board to either abandon its managerial choice of a standard schedule or pay a built-in penalty well beyond this contract term. The status quo is the lesser of the two evils." The same overriding educational policy dimension to the overload pay issue is present in this case.

In response to the Association's comparisons to other conference schools, the District notes that all of the high schools overload pay provisions of the other comparable school districts are based upon seven instructional periods per day. Marshfield is unique in the conference because it has an eight-instructional-period day. They submit there is simply no way to compare an overload situation in a seven-period day system with an overload in an eight-period system. They do not dispute that the normal workload in a seven-period day structure is five classes, one supervisory duty, and one preparation period or six classes and one preparation. However, in Marshfield an eight-period day means shorter class periods. Six classes are the norm with the teacher being guaranteed at least one preparation. The difference is made up in supervision. Thus, the Board argues that the workload in Marshfield is no different than the workload in other comparable school districts. In fact, under the Union's

proposal approximately one-half of the teachers would get overload pay whereas in comparable districts only a few do. Additionally, the Union has also not offered the Board anything in return for such a significant change in the Contract. The Union did not come in with a lower salary offer to induce the Board to accept overload pay.

The District asks the Arbitrator to note that there are inherent characteristics of a particular system whether it is a seven-period instructional day, an eight-period instructional day or module scheduling. The norm or number of classes that a teacher teaches in each of these systems will change because of the system selected. Nonetheless, they submit that the amount of time in the modular system is not significantly different than the eight-period day. Thus, a six-period teaching assignment is the norm in an eight-period day. In any event, the teacher still has a prep period. Accordingly, the Union may have submitted an overload proposal that may be relevant in a seven-period day system, but it is not relevant in an eight-period-day system.

The District also maintains that the Union's overload pay proposal has significant educational policy dimensions which cannot be ignored by the Arbitrator. Acceptance of the Association's proposal would cause the District to pay \$200,000 in overload pay, hire more teachers, or revert to a seven-period day. The first two options would be financially burdensome, and adoption of a seven-period day would severely curtail educational opportunities

for Marshfield School District students. There are many other problems detailed in their brief.

The Board also looks at other aspects of workload. They note Marshfield's pupil/teacher ratio of 15.5 pupils per all teachers is the third lowest among the Wisconsin Valley schools, and the average class size in the junior high or high school in Marshfield compares favorably with those in the Wisconsin Valley. Thus, the total number of students taught by a teacher with a normal workload shows that Marshfield teachers have the same number of students in a given day. This is an addition to the fact that the Marshfield teachers' number of minutes of classroom instruction is very comparable to the rest of the schools in the Wisconsin Valley.

C. Building Transfers

1. The Association

The Association states that this concept originated with the Board in 1989. The Association, however, felt that such compensation rightfully belonged in the Master Agreement. The difference is that the District's proposal is less equitable because it provided for only building-to-building transfers. Their proposal covers both intra- as well as inter-building transfers. Both moves, additionally, require the same packing and unpacking whether the second room is next door, 300 yards on the other side of the building, next door in an

adjoining building, or across town in another school. Additionally, the Association's proposal provides greater equity by allowing a wider range of payments. The Board will pay only one-half day or one full day. The Association's testimony shows that much greater effort may be required of a moving teacher.

2. The District

The District does not believe that the Association has justified its proposal for up to three days of time for all room transfers. The Board acknowledges that effort is required to make such transfers but states that there were some misunderstandings in past transfers. The teachers were entitled to more assistance, from the custodial staff for instance, than they got. They believe that it has a fair and reasonable proposal on the table and it will do its best to make sure that the custodial staff assists teachers in facilitating any kind of transfer.

D. Consultation Time

1. The Association

The Association acknowledges that this is not a major issue and has only a prospective impact. This is a fairness issue with them. Simply, they contend when something is added to a teacher's workload, something should be taken

away. Preparation time is usually impacted. Thus, their proposal is to protect the individual teacher's preparation time.

2. The District

The Board views the Union's proposal on consultation time as a further impediment to the professional duties of a teacher. Consultation time with collaborative consultation, integration consultation, resource base teaching, and so on, are important programs. These programs are part of the teachers' overall normal professional responsibilities. Teachers should be willing to conduct these programs because they are professionals.

IV. DISCUSSION AND OPINION

Both Parties agree that the two major issues are overload pay and salary schedule. As the major issues, they will be determinative of the outcome of the case. The differences with respect to the other issues are not significant enough to have a major bearing on the ultimate selection of the final offers. Thus, as go the major issues, so go the minor issues. Accordingly, no detailed discussion of them is necessary.

In looking at the salary issues, it is noted how close the Parties really are. They are separated on a percentage basis by less than 1/2 of 1% over the two years. In terms of dollars, the total difference between the offers per teacher is

\$153 over two years. This equates to \$6.37 per month or \$1.47 per week per teacher. After social security and income taxes, it would barely buy a deluxe burger, fries, and a coke on payday. Accordingly, the Arbitrator notes the differences on salary are also, upon close analysis, truly insignificant.

Even if there was a preference for one offer or other on salary, given the slight differences, it would not be great enough to compensate for the obvious shortcomings that both offers have with respect to overload pay. Again, the Parties have put an Arbitrator in the position of choosing between the lesser of two evils. Clearly this case will be won or lost on the overload pay issue and must be decided on the basis of which offer in this regard is least unreasonable. This is somewhat the same position that the Parties put Arbitrator Nielsen in. This Arbitrator has carefully read and re-read that award. He has also noted that both Parties view the award and/or portions of it as supporting their position. Certain comments must be made about the Nielsen award relative to its importance in this case.

Intending no disrespect for a respected neutral, Mr. Nielsen's jurisdiction was limited to resolving the unresolved issues for the 1987-88 to 1988-89 contract based on the particular final offers at dispute. He wasn't hired or appointed to resolve the issues in this case. His decision in no way, shape, or form can be read to be a partial resolution of the issues, and it is completely speculative what he might have done if the Association's overload offer then

was as it is now, closer to an 8% premium instead of a 20% premium. The award is not binding with respect to the resubmission of the overload issue and is merely valuable as guidance and is no more persuasive than the underlying arguments that it considered.

The genesis of the overload issue is found in the fact that the Employer, two contracts ago, converted from a modular schedule. In the modular schedule the teachers had 209 minutes of formal instructional time and 61 minutes of ODL (Open-Door Labs). Under the traditional schedule, a teacher teaching 6 classes of 44 minutes each would have 264 minutes of formal instruction time. It is the Parties' divergent views concerning the nature and status of the ODL time under the modular system which is at the heart of the dispute. If ODL is viewed as regular instructional time, as the Board sees it, then it is difficult to say that there was increased instructional workload under the new system. If ODL is viewed as purely a study hall or supervisory assignment, then there was a significant increase in the instructional workload.

The ODL is unique in its nature; it is neither fish nor fowl. It obviously is more than a study hall. It was interactive and specifically designed for instructional purposes, such as tutoring. However, the mere informality of it would dictate that it meant less instructional work for the teacher. For instance, it would not necessarily require preparatory time or generate tests or assignments that need grading.

Give the unique nature of ODL--as something more than study hall, but less than a formal class presentation--it must be concluded there was an increase in the instructional workload over the modular system. But it was not as significant or as dramatic as the Association suggests. It is difficult to quantify the actual increase in workload since the workload in the various ODLs no doubt varied from subject to subject and teacher to teacher. Of course, it must be kept in mind that the student school day was extended and the lunch hour was shortened too.

While there was an increase in instructional workload and while equity considerations would suggest increased compensation was in order, it doesn't necessarily mean that the traditional overload provision is the correct response or method of accomplishing this under these unique circumstances.

Certainly a factor in judging the appropriate response is the relative workload of comparable teachers. For instance, while the aggregate workload may have increased for the Marshfield teacher, it is possible that it still doesn't exceed the workload of comparable teachers. Relevant here is the argument of the District that with the shorter class periods of the eight-period day, a six-period instructional load doesn't generate as much work as, for instance, the five 54-minute instructional period in the Antigo district. The District also asserted that the six instructional periods was the normal workload in an eight-period configuration. The Association countered by claiming that in the junior

high schools in the athletic conference where an eight-period day exists that five instructional periods were actually the normal workload and that overload pay applied thereafter.

The difficulty in comparing a seven-period day with five instructional periods to an eight-period day along with (1) the need to gauge the instructional workload under the new configuration in Marshfield relative to other schools and (2) the need to determine if there was any evidence to support the District's assertion that six instructional periods is the normal workload in an eight-period day, requires a detailed analysis of workload and overload provisions in comparable districts. The following summarizes the situation in other districts:

<u>District/ School</u>	<u>Periods in Day</u>	<u>Instruc- tional Periods</u>	<u>Class Length</u>	<u>Total Instruc- tional Time</u>	<u>Overload Provisions</u>
Antigo HS	7	5	54 Min.	270 Min.}	Yes, for 6th class by practice.
Antigo JR	7	5	54	270 }	
DC Everest HS	7	5	45	225 }	No provision for pay, but 6th class must be assigned only in lieu of supervisory assignment and cannot be assigned for 2 consecutive years applies at high school only.
DC Everest JR	8	5	45	225 }	
Merrill HS	7	5	50	250	None.
Merrill JR	7	5	48	240	None.
Rhineland HS	7	5	50	250	None.
Rhineland JR	7	5	49	245	None.

<u>District/ School</u>	<u>Periods in Day</u>	<u>Instruc- tional Periods</u>	<u>Class Length</u>	<u>Total Instruc- tional Time</u>	<u>Overload Provisions</u>
Stevens Pt. HS	7	5	50	250	} Yes. 20% of salary for 6th class but not applicable if 6th class is assigned in lieu of supervisory assignment.
Stevens Pt. JR	8	5	45	225	
Wausau East HS	7	5	45	225	} Yes. 20% of salary for 6th class but not applicable if 6th class is assigned in lieu of supervisory assignment.
Wausau East JR	8	5	42	210	
Wausau West	Modular	-	-	-	
Wis. Rapids HS	7	5	50	250	} Yes. 15% of salary for each period exceeding five 55 minute periods (includes study halls).
Wis. Rapids JR	7	5	48	240	
Marshfield Assn. HS	8	5	43	215	} 4% for each class over 5 and each supervision over 6. No escape clause for supervisory assignment except by agreement by the teacher.
JR	8	5	44	220	
Marshfield Dist. HS	8	6/7	43	258/ 301	None.
JR	8	6/7	44	264/ 308	None.

An analysis of the status of workload/overload provisions in comparable districts yields the following conclusions. There is no factual basis in the

evidence for the District's assertion that six instructional periods is the norm for the eight-period day configuration. In the three junior high schools where it exists, five instructional periods are the norm. However, it is also noted that a teacher in Marshfield who teaches six classes, even though not entitled to overload pay, has less instructional time than teachers at Antigo Senior and Junior High Schools (270 minutes) and not significantly more than teachers in Merrill High School, Rhinelander High School, Stevens Point High School, and Wisconsin Rapids High School (250). Special attention must also be directed to another aspect of the overload situation at Wisconsin Rapids High School.

While 250/240 minutes appear to be the normal workload and while they have a strict overload provision (no escape clause), the contract evidently recognizes that management could reconfigure the five instructional periods to be as long as 55 minutes. Therefore, the instructional workload could be as long as 275 minutes before overload pay kicked in. This is similar, then, to Antigo. It is also noted that Merrill Senior/Junior High Schools and Rhinelander Senior/Junior High Schools have no overload pay provisions. Thus, some of the comparables support the Board in that (1) the workload in Marshfield (at six instructional classes) isn't as great or isn't significantly greater than some schools and in that (2) two districts have no overload provisions.

Several schools have some form of overload provision in their contracts (D.C. Everest Senior High School, Stevens Point Senior and Junior High

School, Wausau Senior and Junior High Schools and Wisconsin Rapids Senior and Junior High Schools). Antigo has a practice of paying overload for a sixth class. The actual instructional workload in some of these schools is also significantly less than it is at Marshfield with six classes.¹ The instructional/workload at the schools with less of an instructional load (D. C. Everest High, Stevens Point Junior High, Wisconsin Rapids Junior High) ranges from 210 minutes to 240 with 225 minutes being most common. This tends to support the Association's proposal which would have overload kick in after five classes, which are presently 43 and 44 minutes, or 215 and 220 minutes.

However, there is a dramatic difference between the Association's proposal and each and every one of these other schools. First, at D.C. Everest there is no financial mechanism in that overload provision. It simply requires some equity in the distribution of the overload assignment and as such is not a meaningful restriction on the rights of the District. Stevens Point High School teachers not only teach nearly as much as the Marshfield teachers, but there is an escape clause in the overload provision. This same escape clause applies to the junior high school in Stevens Point and to both levels in Wausau. The escape or safety valve is that there is no monetary payment if the sixth class is assigned in lieu of a supervisory period. Thus, in essence, the teachers in these

¹(As noted earlier, Antigo is at 270 minutes and Stevens Point High School and Wisconsin Rapids High School are at 250 minutes which is reasonably compared to 258/264.

districts only get overload pay if the sixth class is assigned in lieu of their preparation period.

The only schools at which there is no escape clause are Wisconsin Rapids and Antigo. Technically, in Wisconsin Rapids a teacher could be assigned five classes demanding 275 minutes of instructional time, and the threshold in Antigo is 270 minutes. Both of these are far greater workloads than would be the norm under the Association's proposal. This does not at all support the Association's proposal whose threshold, in reality, is five classes or presently 215/220 minutes.

Accordingly, based on a detailed analysis of overload provisions and the underlying workload in other schools, there is scant support for the Association's particular overload provision. It requires less instructional time than most schools. It would require overload even when a teacher would not necessarily be required to give up his/her preparation period and, in this same vein, contains no escape clause.

This last fact, that there is no escape clause, is viewed by the Arbitrator as a fatal flaw, and for reasons to be explained subsequently, is a greater evil, a more significant shortcoming than the deficiencies in the District's final offer. The fact there is no escape clause from the financial mechanism in the Association overload pay proposal does, indeed, just as argued by the District and as observed by Arbitrator Nielsen, infringe on the Board's right to make

educational policy.² The Association's proposal would more than likely have the practical effect of causing the Board to abandon the eight-period day. Even the Association recognizes the decision to go to an eight-period day need not be bargained and is a decision protected and solely reserved to the Board. The Board is obligated only to bargain the impact of the decision. In doing so, the Association has made a proposal which indirectly does what they cannot do directly and that is to substantially control the making of Board policy. The Arbitrator notes, in this regard, that the Association didn't make it a secret that they do not believe the eight-period day is good public policy.

While the Association's proposal is entitled to some consideration in view that the workload increased with the change to an eight-period day, while some equitable system of distributing the sixth-period class period deserves some consideration, and while teachers should not have their preparation periods usurped by extra instructional assignments, the Association's proposal goes way beyond these considerations. It would require overload pay in every case of a sixth assignment even if a preparation period wasn't lost. It would not allow any escape mechanism and, as such, would unreasonably infringe on Management's rights.

²In this respect it is observed that the Association is incorrect in their implication in their Brief that the only reason they lost overload before Arbitrator Nielsen was that the 20% figure was too high. Obviously its impact on managerial rights were a major concern too.

The Association's proposal should have, at a minimum, recognized the need for an escape mechanism. Additionally, some consideration should have been given to their relative underlying workload and the underlying purpose of an overload provision, and that is to compensate the teacher for loss of their formal preparation period. The Arbitrator isn't unsympathetic to the fact that the workload has increased under the eight-period day, and thus, some additional compensation should be considered. However, this could be viewed as a separate problem with potential solutions independent of overload considerations. It could be addressed with simple wage adjustments. An overload provision--at least as construed in the comparable districts--is designed to do something more than compensate a teacher for doing more instructional work when an instructional system is changed. In D.C. Everest, Stevens Point, and Wausau, the overload provision is designed to protect the integrity of the formal preparation period. It is not purely and unconditionally a payment for a sixth class assignment. Six instructional assignments in lieu of supervisory assignments are not compensable in these schools. Consequently, the only assignments that are compensable are those that are in lieu of the preparation period. The only schools (Antigo and Wisconsin Rapids) that don't have escape clauses in essence require 50 to 60 more minutes instructional time per day before their "escapeless" overload payments are to be made.

The Arbitrator, while he believes the Association's proposal to be more problematic, does observe defects in the District's final offer. Again, it does not give any consideration to the increased workload under the eight-period day--which does not necessarily have to be rectified with an overload provision. Moreover, it gives no protection against seven instructional assignments, provides for no equitable distribution of six assignments and provides no compensation if a teacher were to be deprived of his/her formal preparation period.

Hopefully the Parties can voluntarily address these problems. However, if they can't and they go to Arbitration again, their final offers will have to be weighted on their relative merits under the circumstances present at that time.

AWARD

The final offer of the District is accepted.



Gil Vernon, Arbitrator

Dated this 26th day of April 1991.