BEFORE THE ARBITRATOR

ROSE MARIE BARON

In the Matter of the Petition of

STANLEY-BOYD SCHOOL DISTRICT

to initiate arbitration between said Petitioner and

STANLEY-BOYD EDUCATION ASSOCIATION

Case 49 No. 45232
INT/ARB-5929
Decision No. 26887-A

APPEARANCES:

On behalf of the Stanley-Boyd School District, Roger F. Walsh, Esq., Davis & Kuelthau, S.C.

On behalf of the Stanley-Boyd Education Association, Virginia Quarles, Executive Director, Central Wisconsin UniServ Council-West.

I. BACKGROUND

The Stanley-Boyd School District, a municipal employer (hereinafter referred to as the "District" or the "Board") and the Stanley-Boyd Education Association (the "Association" or the "Union") representing all full-time and part-time certificated teachers under contract to the Employer, have been parties to a collective bargaining agreement covering wages, hours and conditions of employment which expired on June 30, 1991.

On February 9, 1990, the District notified the Association that it was opening negotiations on an item specified in the collective bargaining agreement; the parties met on six occasions but were unable to reach agreement on this item. On January 31, 1991, the District filed a petition with the Wisconsin Employment Relations Commission requesting arbitration. The Commission conducted an investigation which resulted in a finding that the parties were at impasse. An order requiring final and binding arbitration was issued on May 14, 1991. The parties selected the undersigned from a panel of arbitrators; an order of appointment was issued by the Commission on June 3, 1991. Hearing in this matter was held on July 15, 1991 at the Stanley-Boyd High School. No transcript of the proceedings was made. At the hearing the parties had opportunity to present evidence and testimony and to cross-examine witnesses. Briefs were submitted by the parties according to an agreed-upon schedule.

II. ISSUE

The issue before the arbitrator is which of the parties' final offers relating to a change to an eight period day schedule is the more reasonable. The final offers are attached hereto as Appendix 1 (Stanley-Boyd School District) and Appendix 2 (Stanley-Boyd Education Association).

III. STATUTORY CRITERIA

The parties have not established a procedure for resolving an impasse over terms of a collective bargaining agreement and have agreed to binding interest arbitration pursuant to Section 111.70, Wis. Stats. In determining which final offer to accept, the arbitrator is to consider the factors enumerated in Sec. 111.70(4)(cm)7:

> 7. Factors considered. In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator shall give weight to the following factors:
>
> a. The lawful authority of the municipal employer.
>
> b. Stipulations of the parties.
>
> c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
>
> d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
>
> e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.
>
> f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.
>
> g. The average consumer prices for goods and services, commonly known as the cost-of-living.
>
> h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

IV. POSITIONS OF THE PARTIES

The following is a summary of the positions of the parties as expressed in their post-hearing briefs.

A. Stanley-Boyd School District

The eight-period day is mandated by state law, Wis. Stats 121.02, (District Ex. 4) and the rules promulgated by the Department of Public Instruction (District Ex. 5). The new standards require more classes to be offered to students; the result will be to increase the number of class periods and to decrease the time in each class period. The time students spend in school will remain at 419 minutes a day; teachers' time would increase by 10 minutes (District Ex. 8 and 9).

During the 1990-91 school year, all but three of the school districts in the Cloverbelt Athletic Conference had adopted the eight period day (Osseo-Fairchild, Owen-Withee, and Stanley-Boyd had not yet done so). The District's decision to change to an eight period day for the 1991-92 school year is a reasonable one and is supported by the comparables. The District, while maintaining its long-standing objection to the use of Altoona and Mosinee as comparables, will include them for purposes of comparison in the instant case.

Of the twelve districts that have an eight period day, ten provide for a normal teacher load of up to six teaching periods plus one supervision period (District Exhibits 11 and 26). Overload pay is given for teaching or supervision in excess of this schedule, if the contract so provides. The District contends that Stanley-Boyd's final offer for six teaching periods and one supervisory period is identical to 83% of the comparables.

Stanley-Boyd's overload pay provision is among the highest of the comparable school districts which provide overload pay (District Exhibits 12 and 27), i.e., third highest at the minimum level and second highest at the maximum level.

Stanley-Boyd's final offer will not significantly increase teacher workloads. The Association conceded at the hearing that even if teachers were assigned six teaching periods requiring six different classroom preparations under the new system, such an assignment was also possible under the existing contract. The District concludes that the final offer has no impact on this situation. Total teaching time is in fact reduced from 310 minutes to 275 minutes; with the addition of a 45 minute supervision period, the total

teacher/pupil contact time is increased from 310 to 320 minutes. neither ordinary supervision nor tutorial supervision periods require preparation.

A complaint made by the teachers was that they do not know what classes they will be teaching from year to year. However, nothing in the District's final offer creates this situation, which could occur under existing language.

It is the District's position that if the Association's final offer is selected, the teachers would get a windfall if there was an eight period day, but only six pupil/teacher contact periods (overload pay would be required for the additional contact period).

The District has the unilateral right to change to an eight period day but has an obligation to bargain the impact of this decision. In the instant case 83% of the comparables have provisions similar to that proposed by the district, thus a quid pro quo is usually not required as consideration for changes in contract provision. However, the District has offered a two-year no-layoff provision as a quid pro quo for the change to an eight period day. This guarantee was a major concession by the School District to obtain approval of the Association's bargaining committee during mediation.

The District concludes that the Association's final offer would be very costly to the District, i.e., approximately $87,438 per year for overload pay for teachers covering supervisory periods. Teachers would get more money, but would be spending 35 minutes less in their six teaching period. The District argues that the ten minutes of extra teacher/pupil contact time is more than offset by 35 minutes less teaching time. Since the District must change to the eight period day in order to be in compliance with statutory school district standards, and its final offer is in line with most of the comparables, the District's final offer is a most reasonable approach. The Association's bargaining committee had reached tentative agreement on the District's final offer, and while it is not binding, it is relevant evidence of the reasonableness of the proposals in that agreement.

B. Stanley-Boyd Education Association

The Association contends that the comparables are well established. Arbitral precedent has established the Cloverbelt Athletic Conference schools as primary and secondary comparables. Augusta was added to the Conference last year and is deemed appropriate by both parties according to the hearing record.

Primary Comparables	Secondary Comparables
Altoona	Augusta
Auburndale	Cornell
Cadott	Fall Creek
Colby	Gilman
Mosinee	Greenwood
Neillsville	Loyal
Osseo-Fairchild	Owen-Withee
	Thorp

Although the Association has provided information regarding the comparable school districts, it nevertheless contends that the basic issue in this matter is the status quo, that is, the party proposing a change in the status quo must meet a certain standard in order to prevail. Awards of Arbitrators Malamud, Rice and Reynolds are cited setting forth their criteria, which include a demonstration of need, exceptional circumstances, that the new language should not impose an inequitable or unfair burden on the opposing party, and that a quid pro quo is provided by the party proposing the change.

The Association argues that the District has shown no compelling need to change the language since under the present contract it has the right to impose an eight period day and assign seven periods of student contact time. However, the contract specifically provides that teachers who work more than six duty periods are to be paid for the seventh period under the "extra period" provision of the contract, Article X, D. The District seeks to escape the economic impact of its decision by having teachers work more duty periods without the District having to pay out any more money.

The Association further contends that the District has not offered a quid pro quo in that no new benefit in the form of payment or additional preparation time for more than four separate class preparations (see, e.g., Association Ex. 20 and 21 for examples). The District's final offer thus fails all standards for changing the status quo. It does not have a compelling need to change the language and it does not offer anything in return for its change in workload, i.e., more work is required without an increase in pay or benefits.

It is also argued that the Board's language imposes an unfair and inequitable burden on the bargaining unit. In addition to increasing the teacher workday by an additional period of student contact time without overload pay, teachers are assigned an additional group of students for whom it is necessary to prepare, to grade papers and projects, etc. Teachers will lose preparation time, i.e., from 50 to 66 minutes per day to 45. Some teachers will be assigned to study halls, others to tutorial study halls which the Association claims are instructional and not supervisory. Added to the burden is the loss of two teachers who have not been replaced and whose classes have been distributed among the high school teachers. The Board has previously hired non-bargaining unit members to handle tutorials; it now proposes to require some teachers to perform instructional tasks, i.e., classroom and tutorials, for seven period with no overload payment. Other teachers will have six instructional period and a supervisory period without overload payment. Further, the Board is using the eight period day to cover its reduction of high school staff.

The Association urges the arbitrator to give no weight to the bargaining history of this reopener. Arbitral authority is cited for the proposition that evidence of what the parties did or did not do in bargaining is properly excluded and that the arbitrator's jurisdiction extends to the issue of which final offer is more reasonable.

Finally the Association calls to the arbitrator's attention to errors in two of the Board's exhibits, Exhibit 11 (the Association does not challenge the Board's right to establish the number of periods) and Exhibit 12 (Cornell's contract language requires overload compensation per semester, thus the figures should be doubled).

V. DISCUSSION AND FINDINGS

A careful review of the positions of the parties leads the arbitrator to conclude that a determination as to which of the final offers to accept will be based on only two of the statutory factors cited earlier since none of the others has been raised or is in contention herein.

The factors to be considered are Section 7(d), comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services, and Section 7(j), such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Association's correction of the District's Ex. 11 regarding its position on total number of periods per day, i.e., "7" is not correct as the Association does not contest the Board's right to have an eight hour day, is noted and accepted by the arbitrator. Also noted is the Association's argument that District Ex. 12 reports the overload pay of the Cornell School District incorrectly, i.e., the amounts at the minimum and maximum per semester should be doubled since the contract states, "...3% of their annual schedule salary for each additional period per semester or fraction thereof." The arbitrator makes no finding on this point since the difference in figures does not change the fact that of the eleven comparables which provide overload pay, Stanley-Boyd is the third highest at the minimum level, exceed by Fall Creek and Mosinee, and second highest at the maximum level, exceeded only by Fall Creek.

A. Section 7(d): The Comparable School Districts

The parties have traditionally utilized the Cloverbelt Athletic Conference as its base of comparison; the District has had a long-standing objection to the inclusion of Altoona and Mosinee. For purposes of this arbitration only the District has acquiesced to the use of these school districts and has also concurred in the addition of Augusta, a new admission to the athletic conference. In the Association's brief, it has designated the fourteen school districts into two categories, i.e., primary and secondary comparables. The arbitrator notes that nowhere in the presentation of evidence is any distinction made as to the primary or secondary status of the comparable school districts (see e.g., Association Ex. 5, fifteen comparables and Stanley-Boyd listed alphabetically; Association Ex. 20, eleven comparables and Stanley-Boyd; District Ex. 10, 11 and 12, twelve comparables (no data on Augusta) and Stanley-Boyd; District Ex. 25, 26 and 28, Altoona and Mosinee.

It is held that the Cloverdale Athletic Conference consisting of Altoona, Auburndale, Augusta, Cadott, Colby, Cornell, Fall Creek, Gilman, Greenwood, Loyal, Mosinee, Neillsville, Osseo-Fairchild, Owen-Withee and Thorp constitute the appropriate comparables under Section 7(d). No distinction shall be made by the arbitrator between primary and secondary comparables.

It should be noted that although it acquiesced in its inclusion in the comparables, none of the District's exhibits contain data on Augusta; the Association has provided survey data and contract language in Exhibit 37. Augusta has an eight period day, six periods are instructional and one period is supervisory; there is no overload language. Thus of the fifteen comparables, thirteen have eight period days; one, Owen-Withee is currently in negotiations on this matter, and one, Osseo-Fairchild has a seven period day.

The District's final offer proposes an eight period day of which no more than seven shall be pupil/teacher contact periods. These may be six teaching periods and one supervision or five teaching periods and two supervisory periods. Supervision may be in a study hall, during a lunch period, or in the tutoring room. Overload compensation would become effective if a teacher is assigned more than seven pupil contact periods. In addition the District offers a no-layoff provision for 1991-93 which will be discussed further below. The Association's final offer is to continue the provisions of the 1989-91 agreement. The Association does not contend that the Board does not have the right to implement the eight period day. What it does argue is that the present overload compensation should be continued so that teachers assigned to more than six pupil contact periods will be compensated at their hourly base wage.

Table I below summarizes relevant information concerning instructional and supervisory periods and the point at which overload compensation is applied.

It is not necessary to engage in extensive statistical analysis of the data on the comparables since inspection will reveal that the overwhelming proportion of them, twelve of fifteen or 80%, have adopted the eight period day with seven pupil/teacher contact periods, one, Mosinee, has a nine period day with seven professional duty periods, and two have seven period days with six pupil/teacher contact periods. Of the thirteen districts which have adopted the eight or nine period day, three have no provision for overload compensation (Augusta, Gilman and Thorp). The predominant pattern is for six teaching periods and one supervisory period or some combination which yields seven pupil/teacher contacts. Overload compensation generally becomes effective upon the assignment of a seventh teaching period (eighth professional duty period in Mosinee). There are admittedly some variations among the districts in the manner in which overload pay is effectuated, such as when a combination of teaching and supervision or substitution of a supervisory period with a teaching period is specified. Nevertheless it is clear that a pattern exists within the Cloverbelt Athletic Conference.

TABLE I

CLOVERBELT ATHLETIC CONFERENCE COMPARABLES

Name	Periods per day	Teaching Periods	Supervisory Periods	Overload Compensation
Augusta	8	6	1	no provision
Altoona	8	6	1	@7th teaching period
Auburndale	8	6	1	@7th teaching period
Cadott	8	6	1	may volunteer for 7th teaching period in lieu of supervision
Colby	8	6 or 5	0 or 2	@7th teaching period or or 8th teaching and supervision combo
Cornell	8	6	1	@7th teaching period
Fall Creek	8	6	1	option-may teach or supervise 7 or 8 periods in 8 hour day
Gilman	8	6	1	no provision
Greenwood	8	6	1	@7th teaching period
Loyal	8	6	1	@7th teaching period
Mosinee	9	7 professional duty		@8th professional duty
Neillsville	8	6	1	@7th teaching period
Osseo-Fairchild	7	6 or 5	0 or 1	no provision
Owen-Withee	7*	6 or 5	0 or 1	no provision
Thorp	8	7 or 6	0 or 1	no provision
FINAL OFFER:				
District	8	6 or 5	1 or 2	@8th pupil/teacher contact period
Association	8**	6 periods of duty		@7th pupil-teacher contact period

*Owen-Withee was in the process of collective bargaining regarding the eight period day at the time of hearing.

**The Association's final offer was to maintain the current contract language; it has not contested the right of the Board to adopt an eight period day.

The final offer of the District for seven pupil/teacher contacts or periods of professional duty is similar to thirteen of the comparables. Stanley-Boyd's provision for overload pay at the eighth pupil/contact period does not distinguish between teaching and supervision and is similar to that of Mosinee and Colby; this approach appears to be more flexible than the districts which require a seventh teaching period (in addition to supervision) before overload compensation is available. The final offer of the Association to retain the status quo of six periods of professional duty with overload pay at the seventh pupil/teacher contact period is not supported by the comparables; only two districts have a seven period day and neither of these provides overload pay.

Thus under the statutory criterion comparing wages, hours and conditions of employment of the teachers employed by the Stanley-Boyd School District with other teachers in the Cloverbelt Athletic Conference, it must be concluded that the offer of the District is preferable to that of the Association.

B. Section 7(j): Such other factors--the Status Quo

The Association believes that the issue upon which this case must turn is that of the burden which falls upon the party who wishes to change the status quo and that this issue is more important than the comparables. The Association refers to Arbitrator Malamud's award in D.C. Everest, (Dec. No. 24678-A, 1988), Arbitrator Rice, Northeast Wisconsin VTEA, (Dec. No. 26365-A, 1991) and Arbitrator Reynolds, Spencer, (Dec. No. 23595-A) for standards to be applied in such a case. The party proposing the change must demonstrate a need for the change, i.e., that a legitimate problem exists; that a quid pro quo has been provided for the change; and that proof has been established by clear and convincing evidence.

The Association contends that the Board has not shown compelling need to change the contract language since under the present language it has the right to impose an eight period day and assign seven periods of student contact time. The District argues that it is required by state law to increase the number of courses offered to students and at the same time to revise the amount of time allotted to classroom periods while staying within the 419 minute total school day for students. In addition, the District has been required to increase the maximum teacher/pupil contact time, i.e., from six periods--310 minutes to seven periods--320 minutes in order to meet the standards set by the state. The District has also sought to clarify contact periods to include study hall, lunch room, or tutoring room in its proposal. The Association contends that the District's attempt to change the contract language is based upon its wish to avoid paying overload compensation to teachers assigned to seven periods.

The Arbitrator is not persuaded by the Association's argument that the District has failed to demonstrate a need for a change in contract language. Even if the state requirements are not new, i.e., the statute was adopted in 1983 with implementation required in 1988, the District has taken the lead in requesting a reopener to address the matter. Further, significant changes will be implemented in terms of how teacher time is spent under the new eight

period day. Regarding the District's position on overload compensation, it is quite apparent from the evidence of record that the total time for teaching six periods will be reduced from a maximum of 310 minutes to 275 minutes. The addition of a 45 minute supervisory period will bring the total contact time to 320 minutes, but it has been noted that the supervisory period will not require preparation. There is no question that the District is concerned about teachers receiving a windfall if it were only permitted to assign them to six contact periods unless overload compensation is paid. This arbitrator agrees with the comments of Arbitrator Rice in the award cited above:

> The arbitrator holds strongly to the view that basic changes in a collective bargaining agreement, such as a change in a salary schedule or a method of reclassifying employees, should be negotiated voluntarily by the parties unless there is evidence of a compelling need to change the existing language. In such a circumstance the parties (sic) seeking the change has the burden of demonstrating not only that a legitimate problem exists that requires contractual attention, but that its proposal is reasonably designed to effectively address that problem. at p. 17

It is the holding of the arbitrator that based upon the evidence of record the District has shown "...that a legitimate problem existed that required contractual attention and the proposal was reasonably designed to effectively address that problem." (Rice, p. 7).

The Association asserts that the Board has provided no quid pro quo for a major change in the overload pay provision of the contract. It states that no new benefit, such as payment or additional preparation time as found in Colby, Mosinee, Loyal and Augusta, have been offered. Further, the additional assignment is not voluntary as it is in Altoona, Cadott, Mosinee, Fall Creek and Augusta. The District does not believe that, where the comparables support its position, a quid pro quo is required. However, if it is, the District asserts that the "two year, no layoff caused by the change to an eight period day" provision is a major concession given by the District to obtain approval of the tentative agreement.

Arbitrators have long held that when a party proposes a significant reformation of a fundamental aspect of the collective bargaining agreement, some concession or trade-off, i.e., a quid pro quo, is offered which would persuade the other party to accept the offer. While the arbitrator agrees with the Association that money or additional preparation time would be an attractive trade-off which the teachers could directly relate to the proposed changes in work schedule, the Association's contention that there is no new benefit is not supported by the evidence. However limited the District's no-layoff concession may be, it is a benefit nevertheless. The arbitrator has not been presented with any standard for measuring the magnitude of a benefit, nor does she believe such exists. In this case the quid pro quo may not be as desirable or immediate a benefit to the members of the bargaining unit as cash reimbursement or preparation time, however, it offers protection in the event of potential future events. For example, the Association has alluded to the

Board's use of the eight period day to cover its reduction of high school staff (Brief, p. 15). While no explanation is given for this statement, it appears to the arbitrator that any future reduction in staff caused by or related to the eight period day during the 1991-92 and 1992-93 school years will be foreclosed by the language of the memorandum of agreement. This, in the arbitrator's opinion, constitutes a quid pro quo and it is so held.

Based on the discussion above, the arbitrator finds that the District has met its burden of proof regarding the change to the status quo. It should be noted that in so ruling, the arbitrator does not adopt the Association argument that the status quo issues are more important than the comparables. Although this arbitrator believes that substantial weight should be accorded to the issue of the status quo, it is secondary in significance to the comparison with teachers in the comparable communities.

Finally, the arbitrator agrees with the position of the Association that no weight should be given to the bargaining and mediation history in this matter and bases this decision solely on the parties' final offers.

In evaluating the final offers of the Stanley-Boyd School District and the Stanley-Boyd Education Association, it has been found that the District's offer was preferable under the comparison with school districts in the Cloverbelt Athletic Conference [Section 7(d)] and the status quo argument [Section 7(j) other factors].

VI. AWARD

The final offer of the Stanley-Boyd School District (Appendix 1) shall be adopted and incorporated into the parties' Collective Bargaining Agreement.

Dated this 14th day of August, 1991 at Milwaukee, Wisconsin.

Rose Marie Baron

Rose Marie Baron, Arbitrator

FINAL OFFER OF
STANLEY-BOYD BOARD OF EDUCATION

May 3, 1991

Effective June 15, 1991, the following revisions will be made to the 1989-91 contract, and will be effective in the event the School District changes to an eight (8) period day schedule:

1. Article VII - Teaching Conditions: Revise the third paragraph of Section D to read:

> All full time high school and grades 7 and 8 teachers shall be assigned no more than seven (7) pupil/teacher contact periods, of which no more than 6 ~~can be teaching~~ periods. A pupil/teacher contact period includes a teaching period, or a supervisory period in which a teacher is assigned to supervise students in a study hall or during a lunch period, or the teacher is assigned to the tutoring room for student assistance. Homerooms and assemblies will not be scheduled during the regular class periods and will not count toward the total of seven (7) periods. Homerooms shall be divided equitably among the teachers and shall not be scheduled on a daily basis.

2. Article X: Revise the first paragraph of Section D to read:

A secondary teacher (Grades 7-12) who is assigned more than seven (7) pupil/teacher contact periods, as provided in Article VII, paragraph D, will be compensated at his/her hourly base wage.

3. Insert as a last paragraph in Article VII, Section D, the following:

> In the event the School District returns to a seven period day schedule, the provisions in the 1989-91 contract in the third paragraph of Article VII, Paragraph D and the first paragraph of Article X, Paragraph D will be in effect.

4. Execute the attached Memorandum of Agreement.

APPENDIX 1

MEMORANDUM OF AGREEMENT

The School District agrees that during the 1991-92 and 1992-93 school years, it will not lay off any of the following employees who were employed on April 1, 1991, as a direct and sole result of utilizing the 8 period day scheduling: classroom teachers in grades 7 and 8 and in High School, excluding K-6 teachers, guidance counselors, librarians, and special education teachers. Layoffs caused by declining enrollment are excluded from this agreement not to layoff, and nothing in this Memorandum of Agreement is to be construed to prohibit the School District from reassigning employees.

Dated this _____ day of _____, 1991.

STANLEY-BOYD BOARD OF EDUCATION

_____
PRESIDENT

STANLEY-BOYD EDUCATION ASSOCIATION

_____
PRESIDENT

APPENDIX I

STANLEY-BOYD EDUCATION ASSOCIATION
FINAL OFFER
1989-91 REOPENER

APRIL 17, 1991

The 1989-91 Agreement shall not be modified.

MVR
4/17/91

APPENDIX 2