

In the Matter of the Arbitration

between

Board of Education of Harford County,

Employer

and

The Harford County Education Association,

Union

OPINION & AWARD

(Grievance of Thomas  
Engram, re: Planning Time)

APPEARANCES

For the Employer:

Leslie Robert Stellman, Esquire, of Blum, Yumkas, Mailman, Gutman,  
and Denick

Donald Harmon, Assistant Superintendent for Human Resources

William Ekay, Director of Secondary Education

For the Union:

Kristy K. Anderson, Esquire, Counsel for MSTA

Thomas Engram, Grievant

Pat Kohler, MSTA UNISERV Representative

Arbitrator:

Louis Aronin, Esquire

The instant grievance, involving the amount of planning time teachers at North Harford High school are allowed, was heard before the undersigned duly selected Arbitrator at North Harford High School, Pylesville, MD, on May 1, 2001. All parties were given a full opportunity to present oral and documentary evidence, to examine and cross-examine witnesses, and to file briefs. Briefs have been received and have been fully considered.

A.

Based on the evidence and the parties' briefs, the undersigned makes the following findings and Award.

### ISSUES

1. Was the grievance timely filed?
2. If the grievance was timely filed, then did the Employer violate the parties' Agreement by assigning duties to Grievant, Thomas Engram, during his planning time? If so, what is the appropriate remedy?
3. If there was a violation, does the delay in filing the grievance constitute estoppel?

### BACKGROUND

The evidence reveals the following:

1. The record indicates that the parties' Agreement has remained unchanged since 1972 as it regards the provision for teacher planning time.

The particular provision in issue reads:

§6. Planning Periods. Teachers in secondary schools shall be scheduled for at least five (5) planning periods per week or for reasonably comparable compensatory time. A planning period shall be approximately the same length as a normal class period for pupils in a given school. In cases where the length of the class periods vary, the weekly total of planning time should approximate the weekly planning time that would have been provided if the class periods were of equal lengths.

2. Prior to the 1999 school year, the class periods consisted of 7 periods each lasting approximately 47 minutes in duration

3. For reasons unrelated to the matter before us, the Employer decided to institute a system of "block scheduling". The "block scheduling" consists of 4 double periods per day with students getting 8 periods of instruction and classes are, in essence, double the length that existed prior to the 1999 school year, i.e., the classes are 81 minutes in duration.

Under "double scheduling", students' schedules change on alternate weeks rotating through 6 sequences of courses. The rotation of the schedule through a two-week period is known as an A/B model.

4. The evidence reveals that, prior to the shift to "block scheduling", when teachers taught a 7 period format, the teacher taught for 5 of the 7 periods and one period was a planning period where the teacher was able to plan his or her program and do related tasks free of any required activities. The other period involved assigned duties in the lunchroom, overseeing the computer lab, or overseeing detention rooms to which students had been assigned as a disciplinary measure.

5. The record indicates that, under the "block scheduling" system, teachers have 81 minutes of planning time on alternate days and 41 minutes on the other alternate days, and were assigned non-teaching duties for 40 minutes on those days.

6. The evidence reveals that, prior to the establishment of the "block scheduling" system, teachers in the North Harford High School or, more particularly Grievant, had, in the past, been given 450 minutes of planning time every two weeks (45 minutes x 10). By contrast, under the "block scheduling" system, the teacher

received 81 minutes for 5 days and 40.5 minutes for 5 days of the ten-day cycle yielding 607.5 minutes of planning time.

The Employer's Secondary School Director testified that, under the "block scheduling" system, teachers in the high school received 48 hours more planning time during a school year than they had been granted previously under the 7-period school day.

6. The Grievant testified that he had to spend extra time to perform the required planning to be an effective teacher. He stated that the 81-minute class required more planning and preparation than the former 45-minute class.

The record reveals that the school day has been 7 ½ hours at all times relevant.

7. The Grievant stated that his non-teaching duties consisted of cafeteria duty, which is 50 minutes 4 times in a 10-day period. And that, in addition, he has a 30-minute duty free lunchtime. He has the computer lab twice during the 10-day period for 40 ½ minutes each time.

8. The Grievant testified to teaching the same course content currently as he taught before. The difference was the double periods and not the total course content or total number of hours of the course.

9. Grievant stated that he was aware of the planning for a revision in the teaching schedule to "block scheduling" in August 1999. In early January 2000, he learned of the change in planning time. He stated he was not aware of this change conflicting with the collective bargaining agreement. He discussed the matter with

the Union representative sometime in January 2000 and the representative was not sure there was a violation of the agreement.

In March 2000, the Grievant called the Union's office and he grieved the change. Other teachers joined him in grieving the change in planning time. The Grievant stated that sometime in February 2000, he told the principal that he thought the contract had been violated but he never received a reply from the principal.

The grievance is dated May 1, 2000.

10. The Grievant testified that he had to take work home to prepare for teaching assignments in the past under the 7- period scheduled and also took work home under the "block schedule" program.

11. The record indicates that the timeliness of the filing of the instant grievance was first raised at the arbitration hearing.

12. The parties stipulated that Aberdeen High School has a different variation of the "block scheduling" involving 4 periods of 78 minutes per class and rotation on a 7 day basis. The teachers at Aberdeen, a part of the same County and covered by the same collective bargaining agreement, teach 3 periods each day and have one planning period each day. During the 7-day cycle, the teachers have one day with two planning periods. The parties also stipulated that Joppatowne High School, a part of the same unit, has a 90-minute class period with teachers being assigned to teach 3 or 4 classes per day and have planning periods of 85 minutes per day.

One of the high schools in the County has five 65-minute periods per day and rotates classes every 7 days. Teachers get one 65-minute period free of duties during 4 of 7 days and 2 periods of 65 minutes on 3 days of the 7 day cycle.

13. The parties stipulated that, if other teachers who joined in the grievance, were called, they would testify to teaching 3 periods of 81 minutes per day and getting 5 planning periods of 81 minutes during a 10-day cycle and 5 days of 41 minutes during each 10-day cycle.

The teachers would also testify to losing 41 minutes during a 10-day cycle due to assignments of non-teaching duties.

14. The Employer's witness testified that the 81 minutes of class were considered two periods. As evidence of that approach, the record indicates that a waiver has been obtained from the State of Maryland that an absence of one class equates to 2 days and that a student loses credit after 6 days of absence, which equates to 12 periods of a class.

## PERTINENT AGREEMENT PROVISIONSS

### ARTICLE III Board's Rights

Subject to the terms and conditions of this agreement and to the authority of the State Board of Education under Education Article of the Annotated Code of Maryland, it shall be the exclusive function of the Superintendent of Schools and the Board to determine the mission of the county public education system, set the standards of service to be offered, maintain the efficiency of operations, determine the methods, means, and personnel by which such operations are to be conducted, and to take whatever action and issue rules, policies, and regulations necessary to carry out the mission of the county public education system for which they are responsible and which is entrusted to them.

...

**5.4 Grievance Presentation.** All grievances shall be presented in writing at Step 1 within ten (10) school days from the date of their occurrence, signed by the grievant. The Administrator's answer at each Step shall be given in writing within ten (10) school days after the Step 1 meeting which shall be held within ten (10) school days following receipt of the appeal. Unless a grievance is appealed to the next step within five (5) school days after the Administrators' answer, it shall be deemed settled in accordance with the Administrator's answer, which shall be considered acceptable to the grievant and the Association.

...

**8.6 Planning Periods.** Teachers in secondary schools shall be scheduled for at least five (5) planning periods per week or for reasonably comparable compensatory time. A planning period shall be approximately the same length as a normal class period for pupils in a given school. In cases where the length of the class periods vary, the weekly total of planning time should approximately the weekly planning time that would have been provided if the class periods were of equal lengths.

...

**8.9** Teachers may not be scheduled on a regular basis for additional responsibilities to be performed during the minimum planning periods allowed by this agreement.

### POSITIONS OF THE PARTIES

The Employer asserts that the grievance filed more than 10 days after the employees knew of the changes in planning time is untimely filed and should be dismissed. The Employer cites cases in support of its position.

The Employer argues that the change to "block scheduling" did not reduce the amount of planning time that the teachers were entitled to. It notes the teachers had more time allowed for planning than prior to the change. It contends that the "block scheduling" involved combing 2 periods into one class and that it did not violate the

parties' Agreement that provides for 5 planning periods per week. It argues that the teachers are, in fact, getting 2 non-teaching periods per day, or a total of 81 minutes per day and 41 minutes on alternate days. It contends that the teachers are receiving 15 more minutes each day for planning, or an increase of 4.1%.

It argues that other school's schedules are not relevant.

The Employer contends that if the Arbitrator finds a violation, he is restricted from granting monetary compensation and may only grant compensatory time off.

The Employer cites studies favoring "block scheduling" and distinguished cases, which found violations relating to planning time.

The Union contends that the grievance is timely based on the facts and that, in any instance, the Employer waived the timeliness issue by failing to raise it until the instant hearing and cites cases in support. It also contends that the Employer's action involved a continuing violation and that, therefore, the grievance had no set time when it had to be filed. It cites cases in support.

As regards the change in scheduling and resulting change in planning time, the Union argues that the combination of 5 days of 81 minutes and 5 days of 37-40 minutes results in the teacher receiving "only two to three planning periods per week that are equivalent to the class period for students, which is 81 minutes".

It contends that the duties assigned to the teachers can be assigned to non-certificate personnel.

It argues that the 81 minutes teaching period requires a modification of teaching methods.

The Union asserts that other schools, in the County covered by the Agreement, have different schedules resulting in the conclusion "that a normal class period has been interpreted as a teaching period or the period of instruction". It argues that the other schools have complied with the parties' Agreement requiring 5 planning periods per week.

The Union asserts that block scheduling requires effective planning, citing authorities.

It disputes the Employer's contention that the 81-minute class consists of two 40-minute classes.

The Union cites several arbitration awards involving the denial of planning periods by various schools and the Award of compensation for that loss of planning time.

### DISCUSSION AND ANALYSIS

At the outset, we find that the grievance was timely filed under the circumstances present.

First, the alleged denial of planning time was arguably grievable each day of the school year and was, therefore, potentially an on-going or continuing grievance. Under that approach, there was no measure of time as to when the grievance would be untimely.

More importantly, where an employer fails to raise the question of arbitrability during the processing of the grievance and does not do so until the arbitration hearing, arbitrators, including the undersigned, have held that conduct to constitute a

waiver of the timeliness of the grievance. Thus, in the instant matter, we find that the failure to raise the timeliness issue prior to the hearing in this matter constituted a waiver and the grievance is timely under the parties' Agreement. We shall, accordingly, reach the merits.

The basic facts are not in dispute. The Employer changed its schedule of instruction from 7 periods of 47 minutes per period per day to a "block schedule" of 4 double periods of 81 minutes each per day.

We find that the Employer's change in the scheduling of classes was within its purview of determining the "methods, means, and personnel by which" it carried out its role of operating a school system. Our role is not to determine whether the 7 period or 4 class periods schedule is best. Our sole issue in this matter, is whether the Employer has violated Section 8.6 of the Agreement as it relates to providing teachers with a duty free planning period.

The parties' Agreement provides for "at least five (5) planning periods per week" and that a "planning period shall be approximately the same length as a normal class period for pupils in a given school".

The gravamen of the controversy, in reality, is the meaning of "normal class period". What we know is that there is no precise definition as to a set number of minutes. We also know, from the record, that different schools in the County, all covered by the same agreement, have different durations of classes. Thus, Aberdeen has a class duration of 78 minutes, Joppatown has 90 minutes, and one of the high schools has 5 periods of 65 minutes each. There is no question that the class duration and, thus, the measure of planning time, was anticipated by the

parties when they did not fix a definite number of classes or duration of a class but permitted flexibility.

We have no measure of what a "period" is. The Employer presents un rebutted evidence that it obtained a waiver from the Maryland Department of Education that equates missing one class to missing two periods of instruction. Thus, arguably, the 81- minute class is two 40.5 minute periods.

We find no measure and no definition of what the term "planning period" or "normal class period" means. We do know, however, that the intent of the parties was to provide 5 planning periods per week. We also know that when the current Agreement was negotiated in 1999, the North Harford High School, the only school involved in this dispute, had a schedule of 7 classes per day and the duration of the class was 45 minutes. The total time provided for planning time each week was 225 minutes. That equated to 450 minutes for 10 class days.

The record before us establishes that the teachers at North Harford High School are given 81 minutes on each of 5 days and 40.5 minutes on the other 5 days of a 10-day cycle, reflecting the cycle of the "block scheduling". The total of that planning time is 607.5 minutes.

It is clear, from the above undisputed facts, that the teachers at North Harford High School get more time for planning during each 10 day cycle than they did before.

The record before us also is undisputed regarding no increase in total weekly hours or teaching time assigned to any of the teachers, or more particularly, the Grievant.

Whether we view each "block" of time for a class as time periods of 40.5 minutes per period, as argued by the Employer, or look to the calculations set forth above, we must conclude that the teachers at North Harford High School are either getting approximately 25 periods for each 10-day cycle (5 of 81 minutes and 5 of 40.5 minutes = 15 of 40.5 minutes), which is more than 5 periods per week or are getting more total minutes in the aggregate 10-day cycle and each school year than they did in the past.

The Union argues that the teachers must work harder and, thus, need more planning time to cover an 81-minute teaching session than a 45 minute teaching session that existed in the past. If that is the case, it must be achieved through negotiations and not arbitration. It is clear beyond doubt that the teachers are receiving more planning time than they did under the 7 period schedule.

There is no evidence before us that the duties, assigned to the teachers of monitoring the lunch room, the computer lab, or the punishment room, has reduced the amount of time set forth above. It is our understanding that the above planning time is unencumbered and free of other duties.

Whether the non-teaching duties should be assigned to other than teachers is not an issue for the undersigned to resolve. As we noted at the outset, the sole issue was what constituted a class period as a measure of planning time.

We find decisions of arbitrators in cases involving different parties, different collective bargaining agreements, and different fact situations as informative but not controlling as to the unique facts present in the instant case.

Inasmuch as we have found no violation, we need not consider the scope of any remedy.

Based on all of the above, the undersigned finds that the Employer did not violate the parties' Agreement involving the number or duration of planning periods for the teachers at North Harford High School.

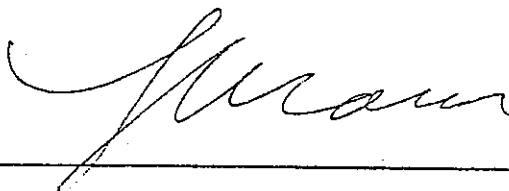
We shall deny the grievance.

## AWARD

Based on the evidence, the parties' briefs, and the discussion set forth above, the undersigned makes the following Award:

1. The grievance was timely filed under the circumstances presented in this matter.
2. The Employer did not violate Article VII, Section 9, of the parties' Agreement by assigning teachers of North Harford High School planning periods consisting of a total of 15 periods of 40.5 minutes per period during each 10-day cycle. It did not violate the parties' Agreement by providing planning time to the teachers at North Harford High School consisting of 5 sessions of 81 minutes and 5 sessions of 40.5 minutes during each 10-day cycle.
3. The grievance is denied.

June 12, 2001



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