

**BEFORE
SEYMOUR STRONGIN
ARBITRATOR**

May 27, 2008

In the Matter of the Arbitration between-

**MONTGOMERY COUNTY BOARD
OF EDUCATION**

-and-

MCEA Grievance 2007-06: Remedy Issue

**MONTGOMERY COUNTY
EDUCATION ASSOCIATION**

APPEARANCES:

For the Board:

James E. Fagan, Esq.
Venable LLP
575 7th Street, NW
Washington, DC 20004-1601

For the Association:

Kristy K. Anderson, Esq.
MSTA
140 Main Street
Annapolis, MD 21401-2020

At an earlier hearing on the merits, Montgomery County Education Association (“MCEA”) charged that the Board of Education of Montgomery County (“Board”), since the 2006-2007 school year and continuing during the

current school year, has been in violation of Article 16, Section F (2) of the parties' Agreement by scheduling certain Interdisciplinary Resource Teachers ("IRTs") at certain middle schools to teach more than four classes.¹ The Association asked that the Board be found to be in violation of this provision of the Agreement, and that all affected IRTs be made whole for their losses. In addition to opposing the grievance on the merits, the Board asked that, in the event of a ruling favorable to the Association, a separate hearing be held on the measure of damages, if any. Following hearing and argument on the merits, the Arbitrator sustained the grievance and, pursuant to the Board's request in such event, the Arbitrator provided the instant separate hearing on the remedial issue.

The facts of this case on the merits were not in any substantial dispute and are briefly repeated here: In 1987, secondary schools were for the most part organized around a seven period per day schedule, with that same schedule followed each day. For ease of reference, this traditional schedule will be referred to as "7/1". There were some schools, apparently, operating on a six-period schedule, with some reference to a six-period schedule in the Agreement at that time. As still provided in Article 16, Section F (1.a), regular classroom teachers in 7/1 schools were required to teach no more than five classes per day: "Where the school is organized on a seven period schedule, each classroom teacher will be assigned no more than five regular classes."

In recognition of the fact that IRTs have more responsibilities than regular classroom teachers—including working a longer school year and a longer work day and earning greater pay—in 1987 the parties agreed in Article 16, Section F (2) to provide IRTs with additional daily planning time, as follows:

¹ The class of grievants is defined as those employees bearing Position Code 1054.

“Secondary resource teachers ... will have a reduced teaching schedule, when possible, *except in no case will they be required to teach more than four classes.*”

(Emphasis supplied.) This language played a pivotal role in the decision on the merits.

The parties agree that the record in the instant hearing contains relevant information (Union Exhibit 1) collected during the period following the issuance of the decision on the merits that demonstrates that the additional class of 90 minutes assigned to the grieving IRTs was taught every other day over a 184 day instructional year, for a period of three semesters. Those assignments constituted a total of 69 hours of additional direct instruction time per semester for those IRTs, not taking into account the additional planning and instructional time required to teach the fifth class.

According to the Association, the wrongful requirement that certain IRTs teach more than four classes, thereby denying to them an opportunity to perform principally planning work, resulted in an extended contractual workday by 90 minutes on each occasion when they were scheduled to a fifth class to teach, and correspondingly more work to do away from school than they would normally perform. Accordingly, the Association proposes as an appropriate remedy that those IRTs who were compelled to teach a fifth class be compensated for those 69 hours per semester when they taught a fifth class, the amount of \$2,872 per IRT for each semester, based upon an average annual teacher salary of \$65,000, or average hourly rate of \$41.63.

For its part, the Board emphasizes that the Agreement lacks an express provision providing for compensation after an eight-hour workday and that the IRTs, and other professionals in the bargaining unit, by the express terms of the

Agreement, “will often work more than eight hours per day, and the professional salary schedule is based on an eight-hour workday.” Accordingly, the Board argues that monetary compensation is without merit and would result in an arbitrary windfall payment to the IRTs. In its post-hearing brief, the Board raises numerous other contentions that, in the Arbitrator’s view, should more properly have been raised, as some were, at the hearing on the merits. Other of the Board’s contentions that monetary compensation was inappropriate in situations where planning time was wrongfully denied, were rejected years ago under similar Agreement language in several other counties within the state. Such arguments aside, at the instant hearing limited to remedy, the Board offered two alternatives to counter the remedy urged by the Association.

As a first option, the Association, noting Union Exhibit 1, referred to earlier, contends that those IRTs who were required to teach five classes had only 15% less planning time—a figure the Arbitrator does not find support for in the record given the totality of IRTs’ responsibilities--than the IRTs who taught four classes. Based upon the highest IRT contractual supplemental rate per semester of \$3450, the Board suggests compensation of \$258.75 per IRT, per semester. As a second option, the Board accepts the figure of 69 hours per semester as displaced by the assignment of a fifth class to teach and applies the hourly stipend rate of \$14.00, contractually applicable to compensate teachers who are required “to provide emergency class coverage during scheduled planning time.”

As already noted, numerous of the Board’s arguments are made here in the face of prior arbitration awards, including one from this Arbitrator, between the Association and Boards of Education in various Maryland counties, under similar contract language and wage administration “culture.” Each of these

decisions clearly speaks to the improper extension of the workday by removal or reduction of contractual planning time, and by providing a monetary compensation at the appropriate hourly stipend as an appropriate remedy. See *Board of Education of Prince George's County and Prince George's County Educators' Association (Arbitrator J. A. Sickles)* *Howard County Education Association and Board of Education of Howard County (Arbitrator I. Kaplan)*; and *Teachers Association of Anne Arundel County and Board of Education of Anne Arundel County (Arbitrator S. Strongin)*. Implicit in these decisions also, is the same presumption as that applied here, that the prescribed contractual workday, at the least, provides teachers with a full day's work, so, as here, the displacement of a 90 minute period cannot be accommodated without performing the work normally done during that time after school hours, along with other work also normally done by IRTs after school hours--thus the 90-minute extension of the workday found here. Finally, the Board's arguments going to sufficiency of proof in various respects, also as noted earlier, seem better directed to the merits. The Arbitrator will presume that the Board's acceptance of Union Exhibit 1, the accumulated relevant and mutually accepted data concerning the IRTs' claims, carries with it the acceptance of the necessarily imperfect nature of accommodating the many individual variances inherent in class action grievances, including reasonable use of time and earnings averages.

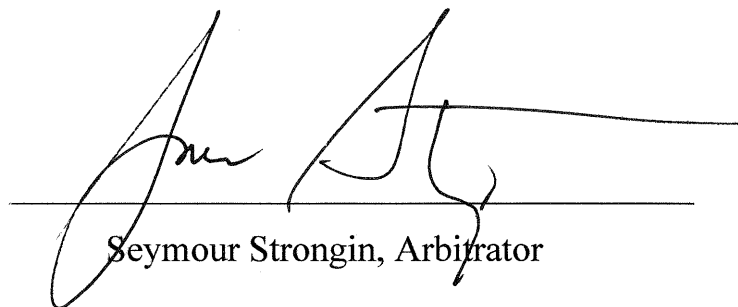
Neither of the Board's proposed options for resolution of the remedy here meets the requirement of an appropriate or just remedy. As for the first option, the Board offers as fair compensation for teaching the additional 90 minute class the amount of \$258.75 per affected IRT per semester, or, based upon 96 hours of wrongfully removed planning time, compensation for extending the

workday at the hourly rate of \$3.75. The inappropriateness of this option clearly speaks for itself. The second option at least provides for a lawful hourly rate of \$14.00 during the relevant period. This rate, however, is expressly applicable to emergency situations, as described in the Agreement, requiring a teacher to give up his/her planning time to teach when a substitute cannot be obtained. At best, it is a sporadic and unforeseen event, as opposed to the regularly scheduled, repeated improper deprivation of planning and other time, which gave rise to this grievance. The occasions are clearly not two of a kind.

The Association's requested remedy, on the other hand, has the ring of appropriateness. It is grounded on reasonable application of facts, not all to the Association's advantage, *e.g.* no consideration of the additional planning and other preparation time necessary in connection with teaching the fifth class, and is clearly grounded on several past decisions—not controlling but persuasive--approving the concepts of extension of the workday by wrongful elimination or reduction of planning time, and the appropriateness of a monetary remedy to correct those wrongful extensions. The suggested hourly stipend, based upon average teachers' wages, is reasonable, not punitive, and is accordingly accepted.

DECISION

Consistent with the foregoing opinion, the appropriate remedy for the violation of Article 16, Section F (2), discussed and decided by this Arbitrator in his decision on the merits issued November 20, 2007, is the payment of the hourly stipend of \$41.63, for each hour that an Interdisciplinary Resource Teacher had his/her regular workday extended as a consequence of the wrongful assignment of a fifth class to teach during the relevant period as mutually defined by the parties.



Seymour Strongin, Arbitrator

Washington, District of Columbia