

X-----X

In the Matter of the Arbitration between

**UNITED FEDERATION OF TEACHERS,
LOCAL 2, AFT, AFL-CIO**

“Union”

-and-

ARBITRATOR’S

OPINION AND AWARD

NEW YORK CITY DEPARTMENT OF EDUCATION
“Department”

Re: Union Initiated Grievance: Circular 6

X-----X

BEFORE: ARTHUR A. RIEGEL, ESQ., ARBITRATOR

APPEARANCES:

FOR THE UNION:

**HOWARD SOLOMON, DIRECTOR, GRIEVANCE DEPARTMENT
ELLEN GALLIN PROCIDA, SPECIAL REPRESENTATIVE**

FOR THE BOARD:

**DAVID BRODSKY, ESQ., DIRECTOR OF LABOR RELATIONS, NYC DEPARTMENT
OF EDUCATION**

BACKGROUND

In accordance with the collective bargaining agreement between the parties (Joint Exhibit 1) and consistent with the rules of the American Arbitration Association, the undersigned was designated to hear and finally determine the Union’s claim that the Department violated Article 7 of the Agreement. A hearing on this matter was held at the offices of the United Federation of Teachers on January 11, 2007.

The parties were represented and were given a full and fair opportunity to present relevant documentary evidence and to conduct direct and cross examination of witnesses. The record was closed after the parties made their oral closing arguments.

ISSUE

The issue to be resolved by the Arbitrator is as follows:

1. Did the Department of Education violate Article 7 and Circular 6R by giving teachers *split assignments* on their professional periods? If so, what shall be the remedy?
2. Did the Department of Education violate Article 7 and Circular 6R by assigning high school teachers a professional activity period while requiring that they perform certain tasks during instructional periods? If so, what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

ARTICLE 7(A)(6)-Professional Activity Options

a. Teachers at all levels must select a professional or administrative activity in accordance with this section and the provisions of Article 7 U (Professional Activity Assignment Procedures). Except as described in paragraph (d) below, this provision shall not create an additional teaching period, as that term is defined in the collective bargaining agreement.

The menu of activities to be offered to each teacher shall be from among the following:

- (1) Small group instruction (not to exceed 10 students)
- (2) One to one tutoring
- (3) Advise student activities such as clubs, teams or publications
- (4) Perform student assessment activities (including portfolios, performance tests, IEPs, ECLAS, etc.)
- (5) Professional development/prepare staff development workshops and demonstration lessons
- (6) Common planning time
- (7) Conflict resolution for students
- (8) Cafeteria Duty
- (9) Schoolyard Duty
- (10) Hallway Duty
- (11) AM Bus Duty
- (12) PM Bus Duty
- (13) Homeroom

- (14) Provide inter-disciplinary articulation
- (15) Develop multi-cultural curriculum
- (16) Develop Programs to integrate technology into the daily life of the classroom

Teachers performing homeroom fulfill the requirement of the professional period. Teachers selecting AM or PM bus duty will use their professional activity period as a preparation period. Any teacher who wishes to participate in a professional activity not listed on the above menu may, upon approval of the principal, select such an activity.

b. If the UFT chapter and the principal deem it necessary, then an organizational period will be permitted but limited to a few days at the beginning and end of the school term/year, as well as rare occasional meetings during the school term/year, in lieu of homeroom.

c. Such compensatory time positions as dean, programmer and grade advisor may be recreated. All contractual provisions dealing with compensatory time shall remain in place.

d. Provided that these periods are used to supplement, not supplant the current school program, and subject to the specific provisions regarding it, secondary teachers may use this time for a sixth teaching period compensated in accordance with article 7-0 of the Agreement (Shortage License Areas). The chapter's concurrence to ensure that this is truly supplemental is necessary.

e. To strengthen school tone and to ensure student safety and discipline, the Union and Board agree that the following compensatory time positions may be established:

- (1) In each school the principal shall have the discretion to establish and fill one compensatory time position of lunchroom coordinator to supervise school aides in each lunchroom for each lunch period;
- (2) At the secondary level, principals shall have the discretion to establish and fill the compensatory time position of dean, the number of which shall be based upon student enrollment, i.e., up to 1,000 students,

one dean; over 1,000 students, two deans; and
(3) In high schools, principals shall have the discretion to establish and fill one compensatory time position of programmer.

The above compensatory time positions shall be established and filled without following the procedural requirements that are applicable to other compensatory time positions, such as consultation, approval or voting. Contractual provisions regarding notification and selection of applicants for compensatory time positions shall be followed. This provision shall not result in any teacher being required to work beyond the maximum number of teaching periods provided for in this agreement. No teacher shall be involuntarily assigned to any of the above compensatory time positions. Resources available to the school shall be maintained at the same level which would be required if the proposal were not in effect.

ARTICLE 7(B)(8)- Professional Activity Options

a. Teachers at all levels must select a professional or administrative activity in accordance with this section and the provisions of Article 7 U (Professional Activity Assignment Procedures). Except as described in paragraph d below, this provision shall not create an additional teaching period, as that term is defined in the collective bargaining agreement.

The menu of activities to be offered to each teacher shall be from among the following:

- (1) Small group instruction (not to exceed 10 students)
- (2) One to one tutoring
- (3) Advise student activities such as clubs, teams or publications
- (4) Perform student assessment activities (including portfolios, performance tests, IEPs, ECLAS, etc.)
- (5) Professional development/prepare staff development workshops and demonstration lessons
- (6) Common planning time
- (7) Conflict resolution for students
- (8) Cafeteria Duty
- (9) Schoolyard Duty

- (10) Hallway Duty
- (11) AM Bus Duty
- (12) PM Bus Duty
- (13) Homeroom
- (14) Provide inter-disciplinary articulation
- (15) Develop multi-cultural curriculum
- (16) Develop Programs to integrate technology into the daily life of the classroom

Teachers performing homeroom fulfill the requirement of the professional period. Teachers selecting AM or PM bus duty will use their professional activity period as a preparation period.

Any teacher who wishes to participate in a professional activity not listed on the above menu may, upon approval of the principal, select such an activity.

b. If the UFT chapter and the principal deem it necessary, then an organizational period will be permitted but limited to a few days at the beginning and end of the school term/year, as well as rare occasional meetings during the school term/year, in lieu of homeroom, or in junior high and intermediate schools, such homerooms, if deemed necessary, may be regularly programmed.

c. Such compensatory time positions as dean, programmer and grade advisor may be recreated. All contractual provisions dealing with compensatory time shall remain in place.

d. Provided that these periods are used to supplement, not supplant the current school program, and subject to the specific provisions regarding it, secondary teachers may use this time for a sixth teaching period compensated in accordance with Article 7-0 of the Agreement (Shortage License Areas). The chapter's concurrence to ensure that this is truly supplemental is necessary.

e. To strengthen school tone and to ensure student safety and discipline, the Union and Board agree that the following compensatory time positions may be established:

(1) In each school the principal shall have the discretion to establish and fill one compensatory time

position of lunchroom coordinator to supervise school aides in each lunchroom for each lunch period.

(2) At the secondary level, principals shall have the discretion to establish and fill the compensatory time position of dean, the number of which shall be based upon student enrollment, i.e., up to 1,000 students, one dean; over 1,000 students, two deans.

The above compensatory time positions shall be established and filled without following the procedural requirements that are applicable to other compensatory time positions, such as consultation, approval or voting. Contractual provisions regarding notification and selection of applicants for compensatory time positions shall be followed. This provision shall not result in any teacher being required to work beyond the maximum number of teaching periods provided for in this Agreement. No teacher shall be involuntarily assigned to any of the above compensatory time positions. Resources available to the school shall be maintained at the same level which would be required if the position(s) were not in effect.

ARTICLE 7(C)(4)(g)- Professional Activity Options

(1) Teachers in eight period per day schools must select a professional or administrative activity in accordance with the provisions of this section and Article 7 U (Professional Activity Assignment Procedures). This provision shall not create an additional teaching period, as that term is defined in the collective bargaining agreement.

The menu of activities to be offered to each teacher shall be from among the following:

- a) Small group instruction (not to exceed 10 students)
- b) One to one tutoring
- c) Advise student activities such as clubs, teams or publications
- d) Perform student assessment activities (including portfolios, performance tests, IEPs, ECLAS, etc.)
- e) Professional development/prepare staff development workshops and demonstration lessons
- f) Common planning time

- g) Conflict resolution for students
- h) Cafeteria Duty
- i) Schoolyard Duty
- j) Hallway Duty
- k) AM Bus Duty
- l) PM Bus Duty
- m) Homeroom
- n) Provide inter-disciplinary articulation
- o) Develop multi-cultural curriculum
- p) Develop Programs to integrate technology into the daily life of the classroom

Teachers performing homeroom fulfill the requirement of the professional period. Teachers selecting AM or PM bus duty will use their professional activity period as a preparation period.

Any teacher who wishes to participate in a professional activity not listed on the above menu may, upon approval of the principal, select such an activity.

(2) Such compensatory time positions as dean, programmer and grade advisor may be recreated.

(3) To strengthen school tone and to ensure student safety and discipline, the Union and Board agree that in each school the principal shall have the discretion to establish and fill one compensatory time position of lunchroom coordinator to supervise school aides in each lunchroom for each lunch period;

The above compensatory time position shall be established and filled without following the procedural requirements that are applicable to other compensatory time positions, such as consultation, approval or voting. Contractual provisions regarding notification and selection of applicants for compensatory time positions shall be followed. This provision shall not result in any teacher being required to work beyond the maximum number of teaching periods provided for in this Agreement. No teacher shall be involuntarily assigned to any of the above compensatory time positions. Resources available to the school shall be maintained at the same level which would be required if the proposal were not in effect.

ARTICLE 7(K)(3)-Relief from Non-Teaching Chores and Professional Activity Options

a. The same relief from non-teaching chores provided in this Agreement for other teachers will be applicable to all special education teachers who teach pupils of the same level.

b. Special education teachers shall not be programmed to help children with disabilities on and off buses except as permitted by subparagraph d below. However, this shall not prevent their assignment for that purpose in cases of emergency.

c. Special education teachers shall have the same number of professional activity periods during the year as all other teachers who work on the same level in the school or in the special education setting.

d. Teachers at all levels must select a professional or administrative activity in accordance with the provisions of this section and Article 7 U (Professional Activity Assignment Procedures). Except as described in sub paragraph g below, this provision shall not create an additional teaching period, as that term is defined in the collective bargaining agreement.

The menu of activities to be offered to each teacher shall be from among the following:

- (1) Small group instruction (not to exceed 10 students)
- (2) One to one tutoring
- (3) Advise student activities such as clubs, teams or publications
- (4) Perform student assessment activities (including portfolios, performance tests, IEPs, ECLAS, etc.)
- (5) Professional development/prepare staff development workshops and demonstration lessons
- (6) Common planning time
- (7) Conflict resolution for students
- (8) Cafeteria Duty
- (9) Schoolyard Duty
- (10) Hallway Duty
- (11) AM Bus Duty
- (12) PM Bus Duty
- (13) Homeroom

- (14) Provide inter-disciplinary articulation
- (15) Develop multi-cultural curriculum
- (16) Develop Programs to integrate technology into the daily life of the classroom

Teachers performing homeroom fulfill the requirement of the professional period. Teachers selecting AM or PM bus duty will use their professional activity period as a preparation period. Any teacher who wishes to participate in a professional activity not listed on the above menu may, upon approval of the principal, select such an activity.

e. If the UFT chapter and the principal deem it necessary, then an organizational period will be permitted but limited to a few days at the beginning and end of the school term/year, as well as rare occasional meetings during the school term/year, in lieu of homeroom, or in junior high and intermediate schools such homeroom if deemed necessary, may be regularly programmed.

f. Such compensatory time positions as dean, programmer and grade advisor may be recreated. All contractual provisions dealing with compensatory time shall remain in place.

g. Provided that these periods are used to supplement, not supplant the current school program, and subject to the specific provisions regarding it, secondary teachers may use this time for a sixth teaching period compensated in accordance with article 7-0 of the Agreement (Shortage License Areas). The chapter's concurrence to ensure that this is truly supplemental is necessary.

h. To strengthen school tone and to ensure student safety and discipline, the Union and Board agree that the following compensatory time positions may be established:

- (1) In each school the principal shall have the discretion to establish and fill one compensatory time position of lunchroom coordinator to supervise school aides in each lunchroom for each lunch period;
- (2) At the secondary level, principals shall have the discretion to establish and fill the compensatory time

position of dean, the number of which shall be based upon student enrollment, i.e., up to 1,000 students, one dean; over 1,000 students, two deans; and

(3) In high schools, principals shall have the discretion to establish and fill one compensatory time position of programmer.

The compensatory time positions listed in this subsection shall be established and filled without following the procedural requirements that are applicable to other compensatory time positions, such as consultation, approval or voting. Contractual provisions regarding notification and selection of applicants for compensatory time positions shall be followed. This provision shall not result in any teacher being required to work beyond the maximum number of teaching periods provided for in this Agreement. No teacher shall be involuntarily assigned to any of the above compensatory time positions. Resources available to the school shall be maintained at the same level which would be required if the proposal were not in effect.

ARTICLE 7(U)- Professional Activity Assignment Procedures

1. The number of available positions for each professional activity and the qualifications and responsibilities required for each activity shall be set by the principal in consultation with the Chapter Leader. Each spring, but no later than April 15th, the principal shall meet to consult with the Chapter Leader on the number of positions for each menu item. Should the Union believe the number of positions for administrative activities set by the principal is inappropriate, or should a teacher believe a selection decision is in violation of the agreement, the Union may appeal to the Chancellor. The Chancellor or his/her designee will consult with the Union President, or his/her designee, prior to issuing a decision on the appeal. The Union may appeal the decision of the Chancellor or his/her designee within 15 days to the NYC Office of Labor Relations, which will issue a final and binding decision.

2. Teachers shall select each spring (following the time frame for program preferences listed under Articles 7 A, 7B, 7C, and 7K in this Agreement) in priority order, three (3) activities from the menu they want to participate in for the following school year. The principal shall make assignments based on qualifications and availability of positions. If more teachers seek particular activities than positions are available, the principal shall select the most qualified teacher(s); and if the candidates are equally qualified the candidate with the most school seniority will be selected. To the extent possible each teacher shall receive one of the three (3) activities for the following school year. If this is not possible, the teacher will be given the opportunity to select three (3) additional choices, one of which will be granted, subject to qualifications, and unless sufficient teachers do not choose a particular activity. If sufficient teachers do not choose a particular activity with any of their six (6) choices, the Principal will assign teachers to these activities on a rotational basis in inverse seniority order with no teacher being involuntarily assigned to an administrative activity for consecutive years.

3. For the 2005-2006 school year, the principal shall meet to consult with the Chapter Leader on the number of positions for each menu item for the spring 2006, and the menu will be issued for teachers to select preferences by December 23, 2005. Teachers shall be notified of their assignments by January 13, 2006 and begin their assignments on the first day of the Spring Semester.

4. Teachers new to the school system and those teachers in danger of receiving an unsatisfactory rating may be assigned by the principal to professional development or common planning as their professional activity, regardless of their preferences, to further enhance their teaching skills. A teacher in danger of receiving an unsatisfactory rating who is assigned to AM or PM bus duty may be assigned by the principal to professional development or common planning as their professional activity in lieu of AM or PM bus duty. Teachers hired in the fall will be offered

three choices by the principal from the menu.

5. Each teacher shall be notified in writing by the principal prior to the end of the school year, pursuant to Articles 7A, 7B, 7C, and 7K of the activity they have been assigned for the following school year and it will be incorporated as part of his/her program.

6. Teachers serving in compensatory time positions, pursuant to the SBO process (defined in Articles 7A, 7B, 7C and 7K and Circular 6) shall continue to do the work of their position during their professional periods (except to the extent the SBO specifically states otherwise) and must at the beginning of each term submit to the principal for approval a plan for the use of their professional periods.

7. Teachers serving as athletic coaches, pursuant to Article 15 of this Agreement, and receiving per session pay for such activity, shall be permitted to use their professional periods to further the work of their activity, and must at the beginning of each term, submit to the principal for approval a plan for the use of their professional periods.

8. Any teacher may grieve the failure to follow the terms of this provision pursuant to the regular grievance and arbitration provision of this Agreement. However the assignment of particular activities hereunder shall not be grievable. The Union may challenge the assignment of a particular activity by appealing, within 15 days, to the Chancellor/designee, who will consult with the Union prior to rendering a decision. The Union may appeal the decision of the Chancellor/designee to the New York City Office of Labor Relations, which will issue a final and binding decision.

ARTICLE 22 C- Arbitration (In pertinent part)

A grievance dispute which was not resolved at the level of the Chancellor under the grievance procedure may be submitted by the Union to an arbitrator for decision if it involves the application or interpretation of this Agreement. Grievances involving the exercise of Board discretion under any term of this Agreement may be submitted to

arbitration to determine whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion: namely whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences, or the absence of supporting factual reasons.

The arbitrator will issue his decision not later than 30 days from the date of the closing of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted. The arbitrator shall limit his decision strictly to the application and interpretation of this Agreement and he shall be without power or authority to make any decision:

1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this Agreement or of applicable law or rules or regulations having the force and effect of law;
2. Involving Board discretion under the provisions of this Agreement, under by-laws, or under applicable law, except that the arbitrator may decide in a particular case whether the provision was disregarded or applied in a discriminatory or arbitrary or capricious manner so as to constitute an abuse of discretion, namely whether the challenged judgment was based upon facts which justifiably could lead to the conclusion as opposed to merely capricious or whimsical preferences or the absence of supporting or factual reasons.
3. Limiting or interfering in any way with the powers, duties, and responsibilities of the Board under the by-laws, applicable law, and rules and regulations having the force and effect of law.

The decision of the arbitrator, if made in accordance with his jurisdiction under this Agreement, will be accepted as final by the parties to the dispute and both will abide by it.

The arbitrator may fashion an appropriate remedy where he finds a violation of this Agreement.

To the extent permitted by law, an appropriate remedy may include back pay. The arbitrator shall have no authority to grant a money award as a penalty for a violation of this Agreement except as a penalty is expressly provided for in this Agreement.

FACTS

The parties' collective bargaining agreement was modified prior to the onset of the 1997-98 school year and provided for periods to be devoted to professional activities. Special Circular 6, issued on April 3, 1997, was promulgated in connection with the change in the contract. Special Circular 6 was revised on March 10, 1998 and was promulgated as Special Circular 6R. In relevant part, the document stated as follows:

Special Circular No. 6, 1996-97, issued on April 3, 1997, described the implementation of the new contractual provision for the 1997-98 school year and provided for the process to be evaluated to determine whether any modifications may be required for succeeding school years. After consultation with the affected parties, modifications have been made and are incorporated in this circular. These modifications allow for the process to be enhanced as a result of the experience obtained during the 1997-98 implementation year.

The pertinent portions of the 2003-07 Agreement are found in Articles 7(A)(6), 7 (B)(8), 7 (C)(4)(g), 7 (K)(3) and 7(U).

Two disputes arose over the current implementation of provisions of Article 7. One dealt with the assignment of more than one professional period activity to certain teachers and the second concerned the assignment of professional period activities to high school teachers who are also assigned various tasks which the Union claims constitutes a homeroom assignment. Accordingly, the Union claims that these teachers are assigned two professional activity periods in violation of the

contract.

The Union filed a Step III grievance on March 17, 2006. A Step III hearing was held on April 10, 2006. The Union demanded the arbitration of the grievance on October 13, 2006. The instant proceeding was convened to adjudicate the dispute.

POSITIONS OF THE PARTIES

CONTENTIONS OF THE UNION

The Union contends that Circular 6 provides for teachers to select and then be assigned a single professional or administrative assignment. It emphasizes that since the inception of Circular 6 in 1996, teachers received a single activity. It stresses that commencing in February, 2006, teachers in certain schools were given a combination of activities. It maintains that the Department claims that they constitute a single assignment. As an example, it cites a situation of a teacher who requested common planning time, one of the contractually mandated choices. It posits that the teacher was given common planning time three days per week and professional development two days per week. The Union insists that this constitutes two separate activities and is in violation of the Agreement.

In support of their position, the Union quotes the following segments of the language in Article 7 of the Agreement:

- * To the extent possible each teacher shall receive one of the three activities for the following year.*
- * If this is not possible, the teacher will be given the opportunity to select (3) additional choices, one of which will be granted.*
- * Any teacher who wishes to participate in a professional activity not listed on the above menu may, upon approval of the principal, select such an activity.*

** Teachers new to the school system and those teachers in danger of receiving an unsatisfactory rating may be assigned by the principal to professional development or common planning as their professional activity.*

According to the Union, this language, coupled with a ten year past application of Circular 6 and the related contractual provision, leaves no doubt that teachers are to receive a single professional activity and that *split assignments* violate the Agreement. In addition, the Union avers that, since the parties did not negotiate a change in its language, Circular 6 remains in effect. It concludes that the only changes negotiated are the ones specifically set forth in the collective bargaining agreement/memorandum of agreement which refers to a single activity.

With respect to the second issue in dispute, the Union alleges that the Department has violated the contract by requiring high school teachers to perform Circular 6 activities in addition to being assigned a *homeroom*. The Union posits that in many high schools, including, but not limited to, Lafayette, Grover Cleveland, Murrow, Queens Academy HS, Stevenson, Long Island City, Port Richmond, Truman, Madison, Norman Thomas and the High School for Environmental Studies, either the second or third period is extended by two to ten minutes each day.

In addition, notes the Union, these teachers are being assigned to another Circular 6 menu item. It urges that it is not in dispute that *homeroom* is listed as one of the activities on the contractual list of menu items. Therefore, the Union asserts that teachers assigned to these periods are serving as homeroom teachers and cannot be assigned an additional Circular 6 activity.

The Union suggests that during the additional minutes that extend certain periods, teachers are required to perform the functions of a homeroom teacher. These activities include but are not limited to:

- * taking student attendance
- * announcements are made at this time
- * maintain order
- * distribute notices
- * distribute transportation passes
- * distribute lunch tickets/passes
- * PA notices
- * Distribution of report cards
- * Distribution of student programs
- * Provide general information to students, including reminders of administrative deadlines, etc.
- * In senior classes, information concerning college visits is disseminated

The Union further asserts that the activities set forth above are covered by Article 7(A)(6)(b) and, as such, the performance of those activities should be limited to the organizational periods at the beginning and end of the school term/year.

Additionally, claims the Union, the student's official class designation is based on the student's class during this administrative time. It urges that student program cards list the teacher to whose class they are assigned during this period of administrative time. It points out that it is uncontested that these tasks are being performed by the teachers assigned to teach either period 2 or period 3. It indicates that the Department disagrees with the characterization that these additional minutes constitute homeroom periods.

The Union maintains that these duties must be viewed in the context of Article 7(B)(4)(f) of the current Agreement, as well as Article 7(B)(4)(g) from the 1995-2000 Agreement. The Union

suggests that, although Article 7(B)(4)(f) refers to junior high and middle schools, the definition of *homeroom* is instructive in this matter. It stresses that *homeroom* classes are those in which children assemble for administrative purposes. It adds that the time involved in *homeroom* is usually a short period.

The Union urges that in junior high and middle schools, the number of teaching periods in a teacher's program is determined by whether the teacher is assigned to a homeroom.. It reasons that, since a homeroom assignment in the high school does not affect the number of teaching periods in a teacher's program, there is no need for this language in Article 7 to be included in the section dealing with high schools.

The Union insists that the absence of this language in Article 7(A) does not change the fact that the parties have agreed upon a definition of *homeroom*. It maintains the time spent in high schools through the extension of a class period fits the agreed upon definition of *homeroom* in that it is a short period of time where children assemble for administrative purposes.

The Union observes that further support for their position can be found in the 1995-2000 Agreement. It notes that in the 1995-2000 Agreement, Article 7(B)(4)(g) was identical to the current language except that the words *in the morning, at lunch time and at the close of the day* were included before the words *administrative purposes*. It opines that the parties removal of these time constraints further supports the Union's contention that the extension of a class period constitutes a *homeroom* in that it recognizes that the parties' understanding of *homeroom* has evolved such that *homeroom* can be held at times other than *in the morning, at lunch time and at the close of the day*.

The Union concludes that both of the issues present in this proceeding involve the assignment of a second Circular 6 activity to certain teachers. As a remedy, the Union requests that all teachers

who were given a second Circular 6 activity be compensated, as per the Agreement, for lost professional periods.

CONTENTIONS OF THE DEPARTMENT

Relative to the issue of *split assignments*, the Department maintains that the meaning of *activity* has changed. In its view, with the onset of the new Agreement, the professional period activity is no longer self directed but is assigned by the Principal. Therefore, contends the Department, no past practice or application applies.

The Department states that it does not deny that the language in the Agreement refers to activity in the singular but maintains that there is nothing in the language that prohibits a principal from assigning more than one item from the list to constitute a single activity. It opines that nothing in the Agreement precludes the principal from assigning a teacher more than one activity or a *split assignment*.

As to the matter of the assignment of Circular 6 activities to certain high school teachers , the Department posits that the additional time attached to any period during the school day does not constitute a *homeroom*. It notes that this arrangement has been in place in high schools for many years and has never been characterized as a *homeroom* before. It suggests that the Department, like any other school district, is required by state law to record student attendance. It recalls that for years high schools have opted to function this way in lieu of creating a separate *homeroom* class.

It indicates that, with the onset of the new Agreement in February 2006, there has been no change with regard to the responsibilities of the teachers in question. It observes that, prior to February 2006, teachers who were assigned to teach a class which was extended for the purpose of conducting the various activities listed above were not exempted from serving in another Circular

6 activity.

The Department concedes that in the past not all high school teachers who had these responsibilities were assigned an additional Circular 6 activity. It stresses, however, that those instances were the exception and the fact that the Union has never in the past tried to characterize this time as *homeroom* supports its position.

Moreover, urges the Department, prior to the modifications to Circular 6 agreed to in the October 2005 Memorandum of Agreement and incorporated into the current collective bargaining agreement, *homeroom* could not be assigned to a teacher without being authorized by an School Based Option (SBO) vote. It argues that the Union did not file any grievances prior to February 2006, alleging that *homerooms* were being assigned in violation of the contract and/or that teachers were being assigned a second professional activity in violation of Circular 6.

The Department rejects the Union's arguments relative to Article 7(A)(6)(b). It asserts that this provision was intended to cover administrative tasks unique to the beginning and end of the school term/year.

The Department concludes that it did not violate the collective bargaining agreement with respect to either of the issues placed before the Arbitrator. It avers that the grievances relative to both issues must be denied.

OPINION

After reviewing the documentary and testimonial evidence, the undersigned finds that the grievance concerning *split assignments* must be sustained while the grievance related to high school homeroom teachers must be denied. Since the subjects of this proceeding were discrete matters, each one will be discussed separately.

Split Assignments

In advance of the 1997-98 school year, the parties negotiated a provision such that teachers undertook a professional or administrative activity in lieu of what had previously been a duty assignment. Special Circular 6, 1996-97, described the implementation of the new provision. This circular was issued on April 3, 1997.

The parties negotiated a collective bargaining agreement covering the period 2003-07. Several elements of Article 7 of the 2003-07 Agreement reflect the changes to the process for the assignment of professional activity period..

The instant dispute concerns the Department's contention that teachers may be assigned more than one activity to be undertaken by teachers during the periods scheduled for this purpose. The undersigned is persuaded that the Department is precluded from doing so.

A review of all of the relevant contract language reveals that in every instance, the contract speaks to a single activity. There are no distinctions drawn based upon the number of periods a teacher has in his/her program for professional activities. Thus, the language suggests that, irrespective of the number of professional activity periods assigned to a teacher, only one professional activity can be assigned.

The Department argued strenuously that the new contract changed the nature of the assignment of professional activities to teachers. It indicated that, while previously the professional activity was self-selected by teachers, the new Agreement provided for the selection of professional activities to be controlled by the principals. It reasoned that this change negated any past practice that may have existed.

It is well settled that the plain language of a contract must be honored. While there may have

been a change in this area relative to the method of the selection or assignment of professional activities, there is nothing in the language to suggest a change in contract language such that the number of periods assigned to professional activities can be divided into two or more activities.

The issue is not the number of periods used for professional activities. Irrespective of the number of periods involved, the contract language refers to a single activity.

It is apparent that the parties negotiated certain changes in the language relating to the control over the assignment of professional activities. Had they intended for the principals to have the ability to assign more than one professional activity to a teacher, they would have done so.

In the absence of such a change, the Arbitrator concludes that the parties intended for there to be a continuation of the practice of limiting the assignment of professional activities to one such activity to each teacher.

In sum, the undersigned finds that the Department violated Article 7 of the collective bargaining agreement by assigning more than one professional activity to teachers.

High school teachers with homeroom assignments

The record suggests that certain high schools have added several minutes to a specific class period for the purpose of checking student attendance and other administrative tasks. It is also clear that high school teachers who check student attendance and accomplish the other relevant administrative duties are also assigned professional activities under the 2003-07 contract.

As background to this dispute, it must be noted that *homeroom* is a term of art which encompasses a period of time during which teachers assigned to such an activity check student attendance, distribute notices, make announcements and the like. It must be noted that under Article 7 of the CBA, the assignment of a teacher to a *homeroom* is on the list of agreed to menu items that

can be assigned to a teacher as a professional activity. Thus, if the assignment of high school teachers to extended class periods are in actuality being given a *homeroom*, those teachers would in effect have two professional activities assigned to them; the *homeroom* and the other professional activity.

This aspect of the grievance turns on whether the extended period designated for the various activities listed above attendance constitutes a *homeroom*. The undersigned concludes that the extended class period designated for these purposes does not constitute a *homeroom*.

This issue must be placed in a historical context. It is apparent that there is a long history of high schools not having *homeroom* periods. In those schools, there has been a consistent pattern of adding a short period of time to a specific class period, with the additional time used to accomplish various tasks.

Among these tasks is the taking of student attendance. The checking of student attendance is mandated by the State Education Department (SED) and these schools complied with the SED mandate through the use of the extra minutes added to an otherwise regular class period. The record indicates that this approach has never been the subject of a grievance despite the fact that, prior to the 2003-07 Agreement, *homeroom* assignments were considered professional activities.

Further, the evidence demonstrates that high schools have scheduled organizational periods pursuant to Article 7(A)(6)(b) to handle issues associated with the beginning and end of the school term/year. Accordingly, the Union's argument is rejected.

Moreover, prior to the MOA which led to the 2003-07 contract, teachers could not be assigned to *homerooms* unilaterally. Yet in the high schools in question, teachers were unilaterally assigned the responsibility of checking attendance and performing other activities as part of an

extended class period.

Since the Department unilaterally made an assignment that could not have been done if the extended class period had been viewed as a professional activity, the logical conclusion must be that the extended class period was not considered a *homeroom* and therefore not a professional activity. The Arbitrator concludes that the history of this issue indicates that the extended class period has not been considered a *homeroom* in the past and should not be considered one at this time.

The Union argued vigorously that Article 7(B)(4)(f) supports its position. It stressed that, despite the fact that this provision deals with junior high and middle schools, the definition of *homeroom* is relevant here. It added that there was a change in contract language after the expiration of the 1995-2000 contract expired such that the prescribed times of *homeroom* periods as being in the morning, at lunch time and at the end of the day were changed . It pointed out that the specified times were eliminated. In the Union's view, the extension of a class period is analogous to the flexible scheduling of *homeroom* periods.

The Union's argument in this respect cannot be credited. First and foremost, Article 7 of the CBA is divided into a number of sections. 7A concerns high schools, 7B deals with junior high and middle schools and 7C concerns elementary schools.

The Union's arguments about the implications of 7B to the high schools are misplaced. They and are not relevant to this proceeding. .

The record relative to the grievance concerning the high schools indicates that the extended class period used for attendance checking purposes and various task described above does not constitute a *homeroom*. Therefore, the teachers checking attendance and performing associated tasks have not been given two professional activity assignments since the time devoted to these tasks is

not a professional activity. They have one professional activity as required by the collective bargaining agreement. Thus, this aspect of the instant grievance must be denied.

CONCLUSION

The Department erred when it assigned more than one professional activity to certain teachers. The collective bargaining agreement limits the number of professional activities assigned to a teacher to a single activity irrespective of the number of periods per week devoted to said activity.

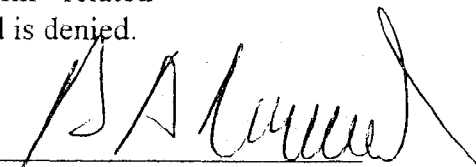
The Department acted in a manner that was consistent with the terms of the Agreement when it did not consider the extended class period in high schools used for the checking of student attendance and performing related activities to be a *homeroom*. Therefore, since the high school teachers were not given *homeroom* assignments, the Department did not violate the Agreement since it did not assign certain high school teachers to two professional activities, a *homeroom* and another professional activity.

Thus, based upon the above, the Arbitrator makes the following

A W A R D

1. The grievance concerning *split assignments* is sustained.
2. The Department is to cease and desist from assigning more than a single professional activity to individual teachers.
3. The grievance concerning high school teachers who check student attendance and perform related activities during an extended class period is denied.

Dated: February 23, 2007
Hewlett Harbor, NY


ARTHUR A. RIEGEL, ESQ.
ARBITRATOR

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, Esq., affirm that I am the individual described in and who executed the foregoing instrument, which is my Opinion and Award.



ARTHUR A. RIEGEL, ESQ.