STATE OF MINNESOTA

BUREAU OF MEDIATION SERVICES

IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

NORTH BRANCH SCHOOL DISTRICT,

ISD #138, NORTH BRANCH, MINNESOTA,

EMPLOYER,

and

ARBITRATOR'S AWARD
BMS Case No. 10-PA-0676
(Preparation Time – Travel)

NORTH BRANCH EDUCATION, ASSN.

UNION.

ARBITRATOR:	Rolland C. Toenges
GRIEVANT:	Jodiann Fanth
DATE OF GRIEVANCE:	August 25, 2009
DATE OF ARBITRATOR SELECTION:	January 18, 2010
DATE OF HEARING:	April 9, 2010
DATE OF EMPLOYER'S POST HEARING BRIEF:	May 28, 2010
DATE OF UNION'S REPLY BRIEF:	June 4, 2010
DATE HEARING CLOSED:	June 7, 2010
DATE OF AWARD:	June 12, 1010

ADVOCATES

FOR THE EMPLOYER:	FOR THE UNION:
Joseph E. Flynn, Attorney Knutson, Flynn & Deans	Meg Luger-Nikolai, Atty. Education Minnesota

WITNESSES

Randi Johnson, Dir. of Personnel & Finance

Andrea Grote, Teacher

Ronald Trunk, Teacher

John Grund, Teacher

Jodi Fanth, Teacher/Griev.

Anne Lawrence, Teacher

ALSO PRESENT

Susan Vento, Field Staff

COURT REPORTER

Sheila G. Smith, RPR
Ask, Trondson & Smith, LLC.

ISSUE

Did the Employer violate the Collective Bargaining Agreement, Article XI, Section 6, when it assigned the Grievant to teach in two different school locations for the 2009 – 2010 school year?[1]

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[1] The Employer, in its Post Hearing Brief, stated the issue as follows:

> "Whether the School District violated the Collective Bargaining Agreement between the Parties as the result of the schedule of the Grievant for the 2009-2010 school year?"

The Union, in its Post Hearing Brief, stated the issue as follows:

> "Whether the Districts violated the terms of the 2007-2009 collective bargaining agreement, specifically Article XI, Section 6, when it required Ms. Jodi Fanth to utilize her contractual preparation time to travel between school sites on a daily basis?"

JURISDICTION

The matter at issue, regarding interpretation of the Collective Bargaining Agreement between the Parties, came on for hearing pursuant to the Grievance Procedure in said Agreement. The relevant provisions of the Grievance Procedure, Article XIV, Article VII, Extra Compensation and Article XI, Hours of Service provide as follows:

> "Section 1. Grievance Definition: A "grievance" shall mean an allegation by a teacher or the exclusive representative resulting in a dispute or disagreement between the teacher employee or the exclusive representative and the school district as to the interpretation or application of terms and conditions of employment insofar as such matters are contained in this Agreement."
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> "Section 8. Arbitration Procedure: In the event that the teacher and the school board are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein.
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>> Subd. 1. Request: A request to submit a grievance to arbitration must be in writing signed by the aggrieved party, and such request must be filed in the office of the superintendent within five days following the decision in Level III of the grievance procedure.
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>> Subd. 2. Prior Procedure Required: No grievance shall be considered by the arbitrator which has not been first duly processed in accordance with the grievance procedure and appeal provisions.
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>> Subd. 3. Selection of Arbitrator: Upon the proper submission of a grievance under the times [terms] of this procedure, the parties shall, within ten days after the request to arbitrate, attempt to agree upon the selection of an arbitrator. If no agreement on an arbitrator is reached, either party may request the PERB to appoint an arbitrator, pursuant to Minnesota statute, providing such request is made within fifteen days after request for arbitration. The request shall ask that the appointment be made within thirty days after the receipt of said request. Failure to agree upon an arbitrator or the failure to request an arbitrator from the PERB within the time periods provided herein shall constitute a waiver of the grievance.
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>> Subd. 4. Submission of grievance information:

a. Upon appointment of the arbitrator, the appealing party shall, within <u>five days</u> after notice of appointment forward to the arbitrator, with a copy to the school board, the following:
   1. The issues involved.
   2. Statement of the facts.
   3. Position of the grievant.
   4. The written documents relating to Section 5 of the grievance procedure.
b. The school board may make a similar submission of information relating to the grievance either before or at the time of he hearing.

<u>Subd. 5. Hearing:</u> The grievance shall be heard by a single arbitrator and both parties may be represented by such person or persons as they may choose and designate, and the parties shall have the right to a hearing at which time both parties will have the opportunity to submit evidence, offer testimony, and make oral or written arguments relating to the issue before the arbitrator. The proceeding before the arbitrator shall be a hearing denovo.

<u>Subd. 6. Decision</u>: The decision by the arbitrator shall be rendered within <u>thirty days</u> after the close of the hearing. Decisions by the arbitrator in cases properly before him shall be final and binding upon the parties, subject, however, to the limitations of arbitration decisions as provided by in the P.E.L.R.A. of 1971.

<u>Subd. 7. Expenses:</u> Each party shall bear its own expenses in connection with arbitration, including connection with presenting its case in arbitration. A transcript of recording shall be made of the hearing at the request of either party. The parties hall share equally the fees and expenses of he arbitrator, the cost of the transcript or recording if requested by either or both parties and any other expenses that the parties mutually agree are necessary to conduct the arbitration.

<u>Subd. 8. Jurisdiction:</u> The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure. The jurisdiction of the arbitrator shall not extend to proposed changes in terms and conditions of employment as defined herein and contained in this written agreement, nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration in compliance with the terms of the grievance and arbitration procedure as outline herein; nor shall the jurisdiction of the arbitrator extend to matters of

inherent managerial policy which shall include but are not limited to such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel. In considering any issue in dispute, in its order the arbitrator shall give due consideration to the statutory rights and obligations of the public school board to efficiently manage and conduct the operation within the legal limitations surrounding the financing of such operations."

"ARTICLE VII, EXTRA COMPENSATION.

Section 1. Extra-Curricular Schedule: The wages and salaries reflected in Schedule C, attached hereto, shall be part of the Agreement for the first year and the second year of the contract.

Section 2. Extra Duty Schedule: The wage and salaries reflected in Schedule D, attached hereto, shall be part of the Agreement for the first year and the second year of the contract."

"Article XI HOURS OF SERVICE

Section 1. Basic Day: The basic Teacher's day, exclusive of lunch, shall be seven and one-half hours.

Section 2. Building Hours: The specific hours at any individual building may vary according to the needs of the educational program of the school district. The specific hours for each building will be designated by the school board.

Section 3. Additional Activities: In addition to the basic school day, teachers shall be required to reasonably participate in school activities beyond the basic teacher's day as is required by the school board or its designated representative. The normal duties for teachers include a reasonable share of extra-curricular, co-curricular, and supervisory activities as determined by the principal, superintendent or school board.

Section 4. Workshops-Meetings: Teachers may be required to stay after normal working hours for district administrative meetings or district workshops.

Section 5. Early Release: Discretionary early release of teachers by the school district shall not be subject to compensatory time by teachers in other buildings or the grievance procedure.

> Section 6. Preparation Time: The average amount of daily preparation time for the elementary staff shall be approximately equivalent to the amount of preparation time found in the secondary schools in the district. Preparation time is provided for classroom preparation, student and parent conferences, supervision of student makeup work, preparation of instructional materials, program development, student and program evaluation, staff meetings and related activities."

The Parties selected Rolland C. Toenges as the Arbitrator to hear and render a decision in the interest of resolving the disputed matter.

The arbitration hearing was conducted as provided by the terms and conditions of the Collective Bargaining Agreement (CBA) and the Public Employment Labor Relations Act (MS 179A.01 – 179A.30). The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute.

All witnesses were sworn under oath and were subject to cross-examination. A verbatim record was made of the hearing and provided to the Arbitrator and both Parties.

The Parties jointly stipulated that there were no procedural objections and the matter in dispute was properly before the Arbitrator. The Parties also jointly stipulated to Exhibits J-1 through J-5 and U-1 through U3.

BACKGROUND

North Branch Independent School District No. 138, North Branch, Minnesota (Employer), is a public school system consisting of ten schools serving some 3,876 elementary, middle and high school students.

The North Branch Education Association (Union), affiliated with Education Minnesota, is the exclusive representative of some 200 teaching staff in the North Branch School System.

Jodiann Fanth (Grievant) is a member of the Bargaining Unit and a teaches at North Branch Area Middle School and North Branch Area High School. The Grievant teaches eighth and ninth grade English. The Grievant has taught ten years, nine of which has been with the North Branch School System.

For the 2009 – 2010 school year, the Grievant was assigned to teach at two different locations (Area Middle School and Area High School). The Grievant's schedule is to teach at the Middle School from 8:05 a.m. to 11:48 a.m. The Grievant has a lunch break from 11:49 until 12:16 p.m. From 12:16 p.m. to 1:05 pm. the Grievant has open (preparation) time, part of which involves travel time to the High School where she begins teaching sixth period at 1:05 p.m. The distance between the Middle School and High School is approximately one half mile (.52). At the High School, the Grievant teaches sixth and seventh periods, which end at 2:50 p.m.[2]

The basic teaching day for teachers, as set forth in the CBA, is seven and one half hours (7 ½), exclusive of lunch.[3] The schedule calls for the teacher's day to begin at 7:15 a.m. and end at 3:15 p.m.

The Grievant's instructional time (classroom time) per day is approximately five hours and seven minutes (5:07).[4] The Grievant's scheduled non-instructional time is approximately two hours and twenty-three minutes (2:23). Non-instructional time includes teacher preparation time. Preparation time is for classroom preparation, student and parent conferences, supervision of student make-up work, preparation of instructional materials, program development, student and program evaluation, staff meetings and related activities.[5]

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[2] Employer Exhibit #3.

[3] Article XI, Section 1.

[4] 8:05 to 11:48 at Middle School = 3 hours –twenty-seven minutes. (3:27).

1:05 to 2:50 at the High School = 1 hour –forty minutes (1:40)

[5] Joint Exhibit #1, Article XI, Section 6.

Teachers are also required to reasonably participate in school activities beyond the basic teacher's day. A teacher's normal duties include a reasonable share of extracurricular, co-curricular, and supervisory activities, as determined by the principal, superintendent or school board.[6] Teachers may also be required to stay after normal working hours for district administrative meetings or district workshops.[7]

The grievance alleges that Article XI, Hours of Service of the CBA is being violated, because travel time between the two school buildings is infringing on preparation time, to which the Grievant feels entitled.[8] Moving from the Middle School to the High school involves traveling approximately one-half (.52) mile. The travel time varies depending on weather conditions and traffic. The Grievant's requested remedy is to have her schedule changed to allow the full preparation time to which she feels entitled or to be provided additional compensation.

The Parties processed the grievance through the CBA Grievance Procedure, but were not able to reach a mutually satisfactory resolution. Therefore, the disputed matter comes before the instant arbitration proceeding for resolution.

EXHIBITS

JOINT EXHIBIT:

J-1. Collective Bargaining Agreement, July 1, 2007 through June 30, 2009.

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[6] Joint Exhibit #1, Article XI, Section 3.

[7] Joint Exhibit #1, Article XI, Section 4.

[8] Joint Exhibits #2 & #4.

J-2. Grievance dated August 25, 2009.

J-3. Employer's grievance response, dated September 10, 2009.

J-4. Amended Grievance, dated September 17, 2009.

J-5. Employer's Grievance Response, dated October 15, 2009.

UNION EXHIBITS:

U-1. E-mail messages between Grote, Grund and Vento. RE: Preparation Time

U-2. E-mail messages between Grote, Trunk and Vento, Preparation Time.

U-3. Jodi Fanth detailed work activities, December 8, 2009 – December 16, 2009.

U-4. All Staff Professional Development Day, April 5, 2010.

EMPLOYER EXHIBITS:

E-1. Middle School Schedule, 2009/2010.

E-2. High School Seven Period Day Schedule, 2009/2010.

E-3. Work Schedule – Jodi Fanth.

E-4. Minnesota Statute, 122A. 50, Preparation Time.

POSITIONS OF THE PARTIES

THE UNION SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The Grievant is entitled to preparation time that she has been denied throughout the year.
- The schedule assigned to the Grievant violates the plain language of the CBA.
- The CBA language requires that the Employer provide ample preparation time.

- Where the CBA language is clear and unambiguous, the arbitrator need not resort to interpretive aids or extrinsic evidence in determining whether there is a violation.[9]

- "Where the language in a Collective Bargaining Agreement is clear and unambiguous, the arbitrator must give effect to the plain meaning of the language . . . even where one party finds the result unexpected or harsh."[10]

- Preparation time does not include travel and attendant travel duties.

- The Employer cannot dispute that the Grievant's travel time - from the time she leaves her middle school classroom to the time that she enters her high school classroom – is roughly fifteen (15) to eighteen (18) minutes.

- Preparation time is included in the CBA for the benefit of teachers and is to be used in the manner the teacher chooses. There is no suggestion that the activities listed in Article XI, Section 6 of the CBA are mandatory.

- There is no reference to travel time in Article XI, Section 6 and no evidence that the interruptions and delays due to travel time are to be considered preparation time.

- The Employer's characterization of work schedules as "typical" or "atypical" is irrelevant. There was no sworn testimony regarding what constitutes a "conventional" schedule.

- The Employer could not produce a single example of a teacher who has not been given adequate travel time, save for the Grievant.

- There is simply no evidentiary basis to distinguish the schedules of Mr. Grund, Mr. Trunk and Ms. Lawrence from any other employee. The sole issue is whether the Grievant received the preparation time guaranteed by the CBA.

- The Parties past practice of providing fifteen (15) minutes of travel time assures adequate preparation time. Amply corroborated testimony by teachers presently working in the school district clearly showed that such a practice exists.

- Past practice is to schedule preparation time that is separate from a travel schedule, not during the travel periods. In the present case, the Union can

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[9] Elkouri & Elkouri, How Arbitration Works, 6th Ed. 2003, pp 434.

[10] Kitsap County, 119 LA 1753 (Gaba, 2004)

establish all of the elements of a past practice of "building" travel time into a teacher's daily schedules when those individuals are required to travel.

- Witnesses testified that about ten (10) to fifteen (15) minutes of travel time were built into their schedules, in addition to their preparation time.

- The two teachers who declined to participate in the grievance were already receiving adequate preparation time in addition to the travel required of them.

- Witness Lawrence's schedule provides for travel time, in addition to preparation time, has been approved by five (5) different administrators and has been in effect for eleven years.

- Witness Trunk situation is even clearer – he was directed by administrators to incorporate travel time into his schedule, which continued over a period of three years.

- Witness Grund presently has travel time in addition to his preparation time, as he has had for the six years he has been with the school district.

- Further the Employer has recognized the need for travel time, allowing fifteen (15) minutes by promulgating this just four days prior to the instant hearing.

- Preparation time cannot be made up at the end of the day. This time exists outside of student contact hours and cannot be considered within the ambit of contractual preparation time.

- No less than four (4) witnesses testified that the practice is to schedule preparation time during student contact hours.

- The assertion of the Employer's witness that preparation time may be added at the end of the student contact day is at odds with the Employer's practice.

- Principals have repeatedly scheduled preparation time that takes place during the student contact day. Consequently, the Employer's suggestion to count time outside the student contact day as preparation time runs contrary to the CBA and the Employer's practice.

- Even if the Employer were to establish that preparation assigned outside of the student contact hours is consistent with its contractual obligation, it still falls short of showing that the Grievant is getting additional preparation time at the end of the day.

- The Grievant's day is not over when the bell rings. The Grievant is then obligated to patrol the hallways, maintain order and guide students out to waiting buses. None of these activities are among the uses of preparation time set forth in the CBA and certainly not helping the Grievant prepare for instruction.

- The Grievant is entitled to 48 to 51 minutes of preparation time each teaching day. The Grievant has been losing about a third of that time due to the requirement to travel form the middle school to the high school.

- The Employer had an opportunity to craft a schedule that comports with its obligation for preparation time before the school year started. If it had done so, it could have crafted a solution that would not increase its cost.

- The Union respectfully requests that the Arbitrator sustain the grievance and issue an order requiring the Employer to make the Grievant whole for the preparation time she has lost during the 2009-2010 school year.

THE EMPLOYER SUPPORTS ITS POSITION WITH THE FOLLOWING:

- The language of the CBA does not support the Grievant's claim.

- Teachers, as professional employees, are exempt from wage and hour laws. The CBA lays out duties, which provide them with certain basic duty pay, but also such additional duties as are reflected in Article XI, Section 1, Basic Day, Section 3, Additional Activities and Section 6, Preparation Time.

- The Grievant acknowledged, under cross-examination, that her compensation is not reduced when away from work while going to the bank, visiting her grandmother, coming and going, etc. due to her "professional" employee status.

- The Grievant admits that she, as well as other teachers, generally are not deducted pay for coming and going due to personal activities, or arriving late or leaving early during the basic duty day.

- The Union is attempting to re-craft the CBA through this arbitration as opposed to properly addressing the issue via contract negotiations.

- The grievance must be denied, as the Grievant's claim is not supported by long-standing practice of the Parties with respect to the matter at issue.

- The Grievant attempts to embellish the travel time between the schools by adding in time spent socializing and attending to administrative matters. Such socializing and administrative matters are not unique to the Grievant; teachers who do not travel between schools also experience these matters.

- If socializing unduly interrupts the Grievant's time, she has the responsibility to better manage it rather than expect additional compensation.

- The grievance must be denied because the Grievant's claim is based on a faulty, tortured and flawed reading of the CBA.

- Witness Grote's description of preparation time, "one prep period which is 49 minutes at the high school for every teacher so they can make copies, correct work, you know plan – do the lesson planning for the next day," bears little resemblance to the provisions of CBA, Article XI, Sections 1, 3 and 6.

- Preparation time is not a precise allowance and varies from 48 to 51 minutes. It also encompasses a much broader range of activities as enumerated in Article XI, Section 6.

- The Union's attempt to argue extra pay based on the language in CBA, Schedule D, of the CBA is without merit. The footnote on page 29 refers only to Emergency duty, Homebound Instruction, and Summer School.

- Although Schedules C and D of the CBA specify extra compensation for many extracurricular activities, there is no provision for extra pay for loss of preparation time. Surely, this omission is not to be filled in by the Arbitrator.

- The Grievant has received more than adequate preparation time, which is consistent with that received by other teachers.

- The Grievant has nearly two and one half (2 ½) hours available for preparation time, when classroom instruction and her lunch period are subtracted from her eight-hour duty day.

- It is noted that the High School recesses ten (10) minutes earlier than the Middle School, affording the Grievant that time plus the remaining fifteen (15) minutes of the duty day, which effectively equates her with other teachers in the length of preparation time.

- The Grievant has forty-one (41) minutes for preparation from the end of her lunch period and beginning of instruction at the High School, subtracting five (5) minutes for travel time between the schools. This plus the ten (10) minutes available due to the earlier recess at the High School provides her with fifty-one (51) minutes.

- Further, teachers have some fifty minutes available for preparation time in their duty day, before student instruction begins.

- There is nothing in the CBA that requires the preparation time be consecutive. Moreover, under state law, it may be provided in two blocks, without any other limitations.

- The language of the CBA does not support the Union's assertion that preparation time can occur only during the student duty day. There are basically two things that occur during the teacher day, 1) Student instruction time, and 2) preparing for instruction. What else would a teacher be doing for which they are compensated?

- The Union's Brief pursues frivolous arguments at the expense of addressing the issue in dispute:

    - Reference to a training meeting schedule developed by a Union members providing a fifteen (15) minute interval to travel back to their primary school.

    - Questioning who prepared Employer Exhibits #1, #2 and #3, rather than the validity – these are photocopies of formal schedules supplied by principals.

    - Reference to cases regarding past practice. This is a smokescreen, which is immaterial and irrelevant. The language of the CBA supersedes any past practice – moreover past practice is totally consistent with the language of the CBA.

    - Assertion that witnesses Trunk and Grund appeared at the Employer's request. The truth is that the Union attempted to insert hearsay evidence in lieu of calling the witnesses, claiming that the witness was on medical leave.

- The Union apparently could not convince other "similarly situated" teachers to participate in the grievance.

- The Union wants the Arbitrator to add language to the CBA (preparation time has to be within the student day), which is not within jurisdiction of the Arbitrator.

- Considering that the distance from the Middle School to the High School is approximately one-half mile, four or five minutes is the most that could be attributed to travel time between them.

- Witnesses, who claimed they were given extra time in scheduling because of traveling, were involved in substantially different situations than the Grievant and their situation is not analogous to the Grievant's.

- The one teacher witness, claiming extra compensation, was paid extra because of extending teaching duties an additional twenty minutes.

- School District records reveal that the District has never paid compensation for alleged "loss of preparation time." This being the case even though a number of teachers, besides the Grievant, have over the years been regularly assigned as roving specialist and occasionally assigned between the Middle School and High School.

- The Union has the burden of proof and has failed to sustain its burden.

- The Union has failed to demonstrate a practice that differs from the CBA language.

- The Union has failed to establish anything in the CBA that supports the Grievant's claimed loss of preparation time, because there has been none.

- The Union has failed to demonstrate that, the Grievant being a professional and exempt, is entitled to any extra payment.

- The Union is asking the Arbitrator, not to interpret the CBA, but to add provisions to the CBA, which are not there.

- Accordingly, the Employer respectfully requests that the grievance be denied.

DISCUSSION

To arrive at a decision in the instant case, several issues must examined and addressed:

1. What is the amount of preparation time to which the Grievant is entitled?

2. Does travel time between schools for instructional purposes fall within or outside the preparation time to which a teacher is entitled?

3. When is "preparation time" to be provided? Is it anytime during the teacher duty day or only during the student instruction day?

4. Is there sufficient evidence of a "past practice" that adds to, subtracts from or otherwise alters the CBA language?

It is clear that a preparation time allowance for licensed teachers is a well-established practice in Minnesota primary and secondary public education.

Minnesota Statutes, 122A.50, requires that all collective bargaining agreements must include provisions for preparation time or a provision indicating that the parties to the agreement chose not to include preparation time in the contract. If the parties cannot agree, they must incorporate a provision in the agreement providing a minimum of five additional minutes of preparation time for every 25 minutes of classroom instructional time. The preparation time is to be provided in one or two uninterrupted blocks during the student day. Exceptions to this may be made by mutual agreement between the district and the exclusive representative of the teachers.[11]

In the instant case, the Parties have agreed to the following language in their CBA:

> "Article XI, Section 1. Basic Day: The basic teacher's day, exclusive of lunch, shall be seven and one-half hours.
>
> Article XI, Section 3. Additional Activities. In addition to the basic school day, teachers shall be required to reasonably participate in school activities beyond the basic teacher's day as is required by the school board or its designated representative. The normal duties for teachers include a reasonable share of extracurricular, co-curricular, and supervisory activities, as determined by the principal, superintendent or school board.

[11] Employer Exhibit #4.

> Article XI, Section 4. Workshops-Meetings: Teachers may be required to stay after normal working hours for district administrative meetings or district workshops.
>
> Article 6. Preparation Time: The average amount of daily preparation time for the elementary staff shall be approximately equivalent to the amount of preparation time found in the secondary schools in the district. Preparation time is provided for classroom preparation, student and parent conferences, supervision of student makeup work, preparation of instructional materials, program development, student and program evaluation, staff meetings, and related activities."

A fair reading of Section 6, is that "Preparation Time" is applicable to a broad range of activities, not all of which would likely fall within the Student Day (8:05 am. to 3:00 p.m.)[12]. For example, the record shows that the Grievant attends various meetings prior to the beginning of the student day.[13] The Grievant also conducts student conference, usually from 4:30 p.m. to 8:00 p.m.[14]

It can be noted from the language of Article XI, Section 6, that the amount of preparation time is not specified, only that the amount of daily preparation time for elementary staff shall be approximately equivalent to that found in secondary schools in the District. It is also noted that there is no reference to when preparation time is to occur. [Emphasis Added]

The only reference to the amount of preparation time is found in the Extracurricular Salary Schedule "D"of the CBA. Here there is a reference by footnote, with respect to" Emergency Duty, Homebound Instruction and Summer School, that ". . . a teacher is guaranteed a minimum of 20 minutes of preparation time for each hour of direct student contact time. If the actual hours worked on site do not provide this minimum, the teacher's paid hours will be adjusted to reflect this additional time." Inasmuch as the Grievant's teaching assignment does not involve Emergency Duty,

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[12] The stated time span encompasses both the Middle School and the High School.

[13] Union Exhibit #3 and Grievant's testimony at pp 55.

[14] Grievant's testimony at pp 79; Randi Johnson testimony at pp 97.

Homebound Instruction or Summer School, the language of Schedule "D" does not apply to the instant dispute.[15]

Notwithstanding the lack reference in the CBA, as to the amount preparation time and when it is to be provided, the record shows that a regular teacher is allowed an average of between 48 and 51 minutes per teaching day and it is provided during the student day.[16]

The record shows that teachers have either in the past or present been allowed travel time in addition to their preparation time.

- Witness Ronald Trunk testified that he was given additional time to travel between buildings and it was built into his schedule. Grund also testified that, at a time when he didn't get his full preparation time because he had an extra class, he was paid for the extra time.[17] However, witness Randi Johnson testified that the extra pay was not for lost preparation time, but for two days when he worked for an additional twenty minutes as a part time teacher.[18]

- Witness John Grund testified that he travels between all school sites in the District and builds travel time into his schedule so he has the full preparation time of about 45 minutes.[19]

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[15] Testimony of Randi Johnson at pp 112.

[16] Testimony of Andrea Grote at pp 19; John Grund at pp 45; Jodi Fanth at pp 64; Jodi Fanth at pp 80, Randi Johnson at pp 95.

[17] Ronald Trump testimony at pp 29 – 33.

[18] Testimony of Randi Johnson at pp 107.

[19] John Grund testimony at pp 41 – 45.

- Witness Anne Lawrence testified that she travels between some five schools and has travel time built into her schedule. Lawrence testified that she develops her own schedule, which is approved by school administration. Lawrence testified that she has preparation time each day; her preparation time varies, but is about 48 minutes and is not reduced by her travel time. Lawrence testified that her travel time is scheduled as fifteen minutes and has been so for the eleven years she has been employed by the District.

The record shows that two other teachers that travel between schools (Norrgard and Brouwer) were contacted by the Union regarding becoming a party to the instant grievance, but declined. Witness Randi Johnson testified that she understands that they declined because they were OK with their preparation time.[20] Witness Andrea Grote testified that she believes they declined because they were getting their full preparation time. The circumstance with Norrgaard and Brauwer are inconclusive, as it is based on hearsay. Neither Norrgaard nor Brauwer appeared to testify.

The record shows that the Grievant's schedule provides 49 minutes from the end of her lunch period (12:16 p.m.) until she begins teaching sixth hour at the High School (1:05 p.m.). The instructional day at the Middle School begins three (3) minutes earlier than the High School, but the instructional day at the High School ends ten (10) minutes earlier than the Middle School, resulting in seven (7) minutes less instructional time than would be the case if she taught through seventh period at the Middle School.[21]

The net effect is for the Grievant to have 56 minutes (49 plus 7) non-instructional time during the student day to use for preparation time and travel time between the Middle School and High School. The distance between the Middle School and High

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[20] Testimony of Randi Johnson at pp 132 – 135.

[21] Employer Exhibits #1, #2 and #3.

School is .52 miles. Under normal circumstances this distance can be driven in several minutes.

The Grievant claims that the travel between the two schools actually requires more like fifteen (15) minutes due to administrative tasks and interruptions that occur while in the process of going to the High School. While some of these, such as shutting down the computer at the Middle School and starting up the computer at the High School are directly related to the change in schools, others, such as, preparing for instruction and being interrupted by questions from students and other teachers are not directly related to the change in schools and would likely occur even if there were no change.

The Grievant also claims that the additional non-instructional time gained, because of the earlier recess at the High School, does not benefit her because, after the 2:50 p.m. recess, she aides in the safe and orderly exit of students. However, it is axiomatic that if this need exists at the High School it also exists at the Middle School and she would likewise be engaged at the Middle School if she were there at recess time.

Travel to the High School does involve more than simply driving the .52 miles. Walking to the automobile in the Middle School parking lot and walking from the parking lot into the High School also requires several minutes. It is also reasonable that bad weather may require a longer travel. However on average it is reasonable that the Grievant can make the transition from the Middle School to the High School in about ten minutes, leaving approximately 46 minutes preparation time. According to the record, this is within the range of preparation time experienced by other teachers.

The record shows that the Grievant, as a professional employee, on occasion takes time off for personal reasons without being docked pay. While this is an accepted practice associated with professional employee status, there is also the expectation

that the professional employee will show flexibility in worki time when indicated in the work setting.

FINDINGS

Notwithstanding that the CBA is silent with respect to the amount of preparation time and when it is to be provided, the preponderance of evidence shows that teachers in the North Branch School System receive preparation time during the student day, ranging from 45 to 51 minutes.

The preponderance of evidence shows that teachers required to travel between schools generally receive preparation time equivalent to teachers not required to travel.

The preponderance of evidence shows that the Grievant, notwithstanding the requirement to travel between schools, receives preparation time that is "approximately equivalent" to that received by other teachers.[22]

Although the Grievant's preparation time is in the lower end of the range provided to teachers, the difference is too de minimis to warrant a finding of violation of the Collective Bargaining Agreement.

AWARD

The grievance is denied.

CONCLUSION

The Parties are commended on the professional and through manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

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[22] "Approximately equivalent" is the standard for comparability set forth in CBA, Article XI, Section 6.

Issued this 12th day of June 2010 at Edina, Minnesota.

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ROLLAND C. TOENGES, ARBITRATOR